

Chapter 615 Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance 26/06/2017

An Ordinance to provide for the imposition of requirements relating to customer due diligence and record-keeping on specified financial institutions; to provide for the powers of the relevant authorities to supervise compliance with those requirements and other requirements under this Ordinance; to provide for the regulation of the operation of a money service and the licensing of money service operators; to establish a review tribunal to review certain decisions made by the relevant authorities under this Ordinance; and to provide for incidental and related matters.

[8 July 2011]

*(Enacting provision omitted—E.R. 2 of 2012)*

*(Format changes—E.R. 2 of 2012)*

## Part 1

### Preliminary

#### 1. Short title

- (1) This Ordinance may be cited as the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance.

(2)-(4) *(Omitted as spent—E.R. 2 of 2012)*

*(Amended E.R. 2 of 2012)*

#### 2. Interpretation

- (1) Schedule 1 contains interpretation provisions that apply to this Ordinance in accordance with their terms.
- (2) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend Part 2 of Schedule 1.

#### 3. Application to Government

This Ordinance applies to the Government, except as otherwise expressly provided.

#### 4. Immunity

- (1) A relevant authority or any other person does not incur any civil liability for anything done or omitted to be done by the relevant authority or the person in good faith in the performance or purported performance of a function conferred or imposed on the relevant authority by or under this Ordinance.
- (2) The protection conferred by subsection (1) does not affect any liability of the Government for the thing done or omitted to be done by a public officer in the performance or purported performance of the relevant function.

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## Part 2

### Requirements Relating to Customer Due Diligence and Record-keeping

#### 5. Schedule 2 has effect with respect to financial institutions

- (1) Subject to subsections (2), (3) and (4), Schedule 2 has effect with respect to financial institutions.
- (2) Schedule 2 has effect with respect to an authorized insurer only in relation to long term business carried on by the insurer.
- (3) Schedule 2 has effect with respect to an appointed insurance agent or authorized insurance broker only in relation to any transaction carried out by the appointed insurance agent or authorized insurance broker involving a contract of insurance described in column 3 of Part 2 of the First Schedule to the Insurance Companies Ordinance (Cap. 41).
- (4) Schedule 2 applies in relation to the issue of a stored value facility within the meaning of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584) by an SVF licensee or a bank only if— (*Amended 18 of 2015 s. 68*)
  - (a) the maximum value that can be stored on the facility exceeds \$3,000; and
  - (b) the facility is in form of a physical device provided by the issuer to the user and the value is stored on the device. (*Amended 18 of 2015 s. 68*)
- (5) If a financial institution knowingly contravenes a specified provision, the financial institution commits an offence and is liable—
  - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (6) If a financial institution, with intent to defraud any relevant authority, contravenes a specified provision, the financial institution commits an offence and is liable—

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
  - (b) on summary conviction to a fine of \$500,000 and to imprisonment for 1 year.
- (7) If a person who is an employee of a financial institution or is employed to work for a financial institution or is concerned in the management of a financial institution knowingly causes or knowingly permits the financial institution to contravene a specified provision, the person commits an offence and is liable—
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (8) If a person who is an employee of a financial institution or is employed to work for a financial institution or is concerned in the management of a financial institution, with intent to defraud the financial institution or any relevant authority, causes or permits the financial institution to contravene a specified provision, the person commits an offence and is liable—
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
  - (b) on summary conviction to a fine of \$500,000 and to imprisonment for 1 year.
- (9) In any proceedings for an offence under subsection (7) against a person who is an employee of a financial institution or is employed to work for a financial institution, it is a defence for the person to prove that he or she acted in accordance with the policies and procedures established and maintained by the financial institution for the purpose of ensuring compliance with the relevant specified provision.
- (10) A fine imposed on a partnership on its conviction of an offence under this section is to be paid out of the funds of the partnership.
- (11) In this section—
- long term business** (長期業務) has the meaning given by section 2(1) of the Insurance Ordinance (Cap. 41); (*Amended 12 of 2015 s. 154*)
- specified provision** (指明的條文) means section 3(1), (3) or (4), 5(1) or (3), 6(1) or (2), 7(2), 9, 10(1) or (2), 11(1) or (2), 12(3), (4), (5), (6), (8), (9) or (10), 13(2), 14(1) or (2), 15, 16, 17(1), 18(4), 19(1), (2) or (3), 20(1), (2), (3) or (5), 21, 22(1) or (2) or 23 of Schedule 2.

## 6. Amendment of Schedule 2

The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend Schedule 2.

## 7. Relevant authority may publish guidelines

- (1) A relevant authority may publish in the Gazette any guideline that it considers appropriate for providing guidance in relation to the operation of any provision of Schedule 2.
- (2) A guideline published by the Monetary Authority, Securities and Futures Commission or Insurance Authority may incorporate or refer to a guideline or document, or any part of a guideline or document, from time to time issued or published by the Monetary Authority, Securities and Futures Commission or Insurance Authority under the relevant Ordinance.
- (3) A relevant authority may from time to time amend the whole or any part of any guideline published under this section in a manner consistent with the power to publish the guideline under this section, and—
  - (a) the other provisions of this section apply, with necessary modifications, to the amendments to the guideline as they apply to the guideline; and
  - (b) any reference in this or any other Ordinance to the guideline (however expressed) is, unless the context otherwise requires, to be construed as a reference to the guideline as so amended.
- (4) A failure by any person to comply with a provision in any guideline published under this section does not by itself render the person liable to any judicial or other proceedings but, in any proceedings under this Ordinance before any court, the guideline is admissible in evidence; and if any provision set out in the guideline appears to the court to be relevant to any question arising in the proceedings, the provision must be taken into account in determining that question.
- (5) In considering whether a person has contravened a provision of Schedule 2, a relevant authority must have regard to any provision in the guideline published under this section that is relevant to the requirement.
- (6) A guideline published under this section is not subsidiary legislation.
- (7) In this section—

**relevant Ordinance** (有關條例)—

  - (a) in relation to the Insurance Authority, means the Insurance Ordinance (Cap. 41); (*Amended 12 of 2015 s. 155*)
  - (b) in relation to the Monetary Authority, means the Banking Ordinance (Cap. 155); and
  - (c) in relation to the Securities and Futures Commission, means the Securities and Futures Ordinance (Cap. 571).

## Part 3

### Supervision and Investigations

#### 8. Interpretation of Part 3

In this Part—

*authorized person* (獲授權人), except in section 17, means a person authorized under section 9(12);

*investigator* (調查員) means a person directed or appointed to investigate any matter under section 11.

#### 9. Power to enter business premises etc. for routine inspection

- (1) For the purpose of ascertaining whether a financial institution is complying or has complied with, or is likely to be able to comply with, the requirement specified under subsection (2), an authorized person may at any reasonable time—
  - (a) enter the business premises of the financial institution;
  - (b) inspect, and make copies or otherwise record details of, any record or document relating to the business carried on, or any transaction carried out, by the financial institution; and
  - (c) make inquiries of—
    - (i) the financial institution; or
    - (ii) subject to subsection (6), any other person, whether or not connected with the financial institution, whom the authorized person has reasonable cause to believe to have information relating to, or to be in possession of, any record or document referred to in paragraph (b),  
concerning any record or document referred to in paragraph (b), or concerning any transaction carried out in the course of the business carried on by the financial institution.
- (2) The specified requirement is the requirement not to contravene—
  - (a) any provision of this Ordinance;
  - (b) any notice or requirement given or imposed under this Ordinance;
  - (c) any of the conditions of any licence under this Ordinance; or
  - (d) any other condition imposed under this Ordinance.
- (3) Subject to subsection (8), an authorized person in exercising any power under subsection (1)(b) may require—
  - (a) the financial institution; or

- (b) subject to subsection (7), any other person, whether or not connected with the financial institution, whom the authorized person has reasonable cause to believe to have information relating to, or to be in possession of, any record or document referred to in subsection (1)(b), to do any of the acts specified in subsection (4).
- (4) The specified acts are—
  - (a) to give the authorized person access to any record or document referred to in subsection (1)(b), and produce the record or document within the time and at the place specified by the authorized person; and
  - (b) to answer any question regarding the record or document.
- (5) Subject to subsection (8), an authorized person in exercising any power under subsection (1)(c) may require the financial institution or the other person referred to in subsection (1)(c) to—
  - (a) give the authorized person access to any record or document referred to in subsection (1)(b), and produce the record or document within the time and at the place specified by the authorized person; and
  - (b) answer any question raised for the purposes of subsection (1)(c).
- (6) An authorized person may only exercise the power under subsection (1)(c)(ii) if the authorized person has reasonable cause to believe that the information sought cannot be obtained by the exercise of the power under subsection (1)(c)(i).
- (7) An authorized person may only exercise the power under subsection (3)(b) if the authorized person has reasonable cause to believe that the record or document or the information sought cannot be obtained by the exercise of the power under subsection (3)(a).
- (8) This section is not to be construed as requiring a financial institution to disclose any information or produce any record or document relating to the affairs of any of its customers to an authorized person who is appointed by a relevant authority (referred to in this section as *other regulatory authority*) other than the relevant authority in relation to the financial institution, unless the other regulatory authority is satisfied, and certifies in writing that it is satisfied, that the disclosure or production is necessary for the purposes of this section.
- (9) If a person gives an answer in accordance with a requirement imposed under subsection (3) or (5), the authorized person may in writing require the person to verify, within the time specified in the requirement, the answer by statutory declaration.

- (10) If a person does not give an answer in accordance with a requirement imposed under subsection (3) or (5) for the reason that the information concerned is not within the person's knowledge, the authorized person may in writing require the person to verify, within the time specified in the requirement, that fact and reason by statutory declaration.
- (11) A statutory declaration under subsection (9) or (10) may be taken by the authorized person.
- (12) A relevant authority may authorize in writing any person, or any person belonging to a class of persons, as an authorized person for the purposes of this section.
- (13) A relevant authority must provide an authorized person authorized by it with a copy of its authorization.
- (14) When exercising a power under this section, an authorized person must as soon as reasonably practicable produce a copy of the relevant authority's authorization for inspection.
- (15) In this section—  
**business premises** (業務處所)—
- (a) in relation to an authorized institution, means any premises used by the institution in connection with its business, including—
    - (i) the institution's principal place of business in Hong Kong;
    - (ii) a local branch or local office established or maintained by the institution;
    - (iii) a place of business of the institution used solely for the purposes of—
      - (A) the administration of the affairs or business of the institution;
      - (B) the processing of transactions; or
      - (C) the storage of documents, data or records; and
    - (iv) a place of business of the institution, or a place of business of the institution belonging to a class of places of business, declared in a notice under section 2(14)(ca) of the Banking Ordinance (Cap. 155) not to be a place of business, or a class of places of business, for the purposes of the definition of **local office** in section 2(1) of that Ordinance;
  - (b) in relation to a licensed corporation, means its premises as approved by the Securities and Futures Commission under section 130(1) of the Securities and Futures Ordinance (Cap. 571);
  - (c) in relation to an authorized insurer, means any premises at which the insurer carries on business;
  - (d) in relation to an appointed insurance agent, means—

- (i) any premises at which the principal of the agent carries on business; and
- (ii) if the agent carries on business in any non-domestic premises other than the premises referred to in subparagraph (i), the non-domestic premises;
- (e) in relation to an authorized insurance broker, means any premises at which the broker carries on business;
- (f) in relation to a licensed money service operator, means any premises at which the licensed money service operator may operate a money service as shown in the register maintained under section 27; (*Amended 18 of 2015 s. 69*)
- (g) in relation to the Postmaster General, means—
  - (i) any premises at which the Postmaster General operates a remittance service; and
  - (ii) any premises at which the remittance service operated by the Postmaster General is managed; and (*Amended 18 of 2015 s. 69*)
- (h) in relation to an SVF licensee, means any premises of the licensee that is used by the licensee in connection with its business; (*Added 18 of 2015 s. 69*)

**local branch** (本地分行), in relation to an authorized institution, has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155);

**local office** (本地辦事處), in relation to an authorized institution, has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155).

## 10. Offences for non-compliance with requirements imposed under section 9

- (1) A person commits an offence if the person, without reasonable excuse, fails to comply with a requirement imposed on the person under section 9(3), (5), (9) or (10).
- (2) A person who commits an offence under subsection (1) is liable—
  - (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
  - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (3) A person commits an offence if the person—
  - (a) in purported compliance with a requirement imposed on the person under section 9(3) or (5), produces any record or document or gives any answer that is false or misleading in a material particular; and
  - (b) knows that, or is reckless as to whether, the record or document or the answer is false or misleading in a material particular.



- (4) A person who commits an offence under subsection (3) is liable—
  - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (5) A person commits an offence if the person, with intent to defraud, fails to comply with a requirement imposed on the person under section 9(3), (5), (9) or (10).
- (6) A person commits an offence if the person, with intent to defraud, produces any record or document or gives any answer that is false or misleading in a material particular in purported compliance with a requirement imposed on the person under section 9(3) or (5).
- (7) A person commits an offence if, being a person who is an employee of a financial institution or is employed to work for a financial institution or is concerned in the management of a financial institution, the person, with intent to defraud, causes or allows the financial institution to fail to comply with a requirement imposed on the financial institution under section 9(3), (5), (9) or (10).
- (8) A person commits an offence if, being a person who is an employee of a financial institution or is employed to work for a financial institution or is concerned in the management of a financial institution, the person, with intent to defraud, causes or allows the financial institution to produce any record or document or give any answer that is false or misleading in a material particular in purported compliance with a requirement imposed on the financial institution under section 9(3) or (5).
- (9) A person who commits an offence under subsection (5), (6), (7) or (8) is liable—
  - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (10) Despite anything in this Ordinance, no criminal proceedings may be instituted against a person under subsection (1), (3), (5), (6), (7) or (8) in respect of any conduct if—
  - (a) proceedings have previously been instituted against the person for the purposes of section 14(2)(b) in respect of the same conduct; and
  - (b) those proceedings remain pending or because of the previous institution of those proceedings, no proceedings may again be lawfully instituted against the person for the purposes of that section in respect of the same conduct.

## 11. Relevant authorities may appoint investigators

- (1) If a relevant authority—
  - (a) has reasonable cause to believe that an offence under this Ordinance may have been committed; or
  - (b) for the purpose of considering whether to exercise any power under section 21 or 43, has reason to inquire whether a financial institution has contravened a specified provision as defined by section 5(11) or a provision specified in section 43(1),

the relevant authority may in writing direct one or more of the persons specified in subsection (2) or, with the consent of the Financial Secretary, appoint one or more other persons, to investigate the matter.
- (2) The specified persons are—
  - (a) in relation to the Monetary Authority, persons appointed by the Financial Secretary under section 5A(3) of the Exchange Fund Ordinance (Cap. 66);
  - (b) in relation to the Securities and Futures Commission, its employees;
  - (c) in relation to the Insurance Authority, its employees; and (*Replaced 12 of 2015 s. 157*)
  - (d) in relation to the Commissioner, public officers employed in the Customs and Excise Department.
- (3) The costs and expenses incurred by an investigator who—
  - (a) is appointed under subsection (1) with the consent of the Financial Secretary; and
  - (b) is not a person specified in subsection (2),

may be paid out of moneys provided by the Legislative Council.
- (4) A relevant authority must provide an investigator with a copy of its direction or appointment.
- (5) Before first imposing any requirement on a person under section 12(2), (3), (4) or (5), an investigator must produce a copy of the relevant authority's direction or appointment to that person for inspection.

## **12. Powers of investigators to require production of records or documents etc.**

- (1) This section applies to—
  - (a) a person in relation to whom an investigator is directed or appointed to investigate any matter under section 11;
  - (b) a person whom an investigator has reasonable cause to believe to be in possession of any record or document that contains, or is likely to contain, information relevant to an investigation under section 11; or
  - (c) a person whom an investigator has reasonable cause to believe to be otherwise in possession of information relevant to an investigation under section 11.

- (2) An investigator may in writing require a person in relation to whom this section applies to—
  - (a) produce, within the time and at the place specified in the requirement, any record or document specified in the requirement that—
    - (i) is or may be relevant to the investigation; and
    - (ii) is in the person's possession;
  - (b) attend before the investigator at the time and place specified in the requirement, and answer any question relating to any matter under investigation that may be raised by the investigator;
  - (c) respond to any written question relating to any matter under investigation that may be raised by the investigator; and
  - (d) give the investigator all other assistance in connection with the investigation that the person is reasonably able to give.
- (3) If a person produces a record or document in accordance with a requirement imposed under subsection (2)(a), the investigator may require the person to give an explanation or further particulars in respect of the record or document.
- (4) If a person gives any answer, response, explanation or particulars in accordance with a requirement imposed under subsection (2) or (3), the investigator may in writing require the person to verify, within the time specified in the requirement, the answer, response, explanation or particulars by statutory declaration.
- (5) If a person does not give any answer, response, explanation or particulars in accordance with a requirement imposed under subsection (2) or (3) for the reason that the information concerned is not within the person's knowledge or in the person's possession, the investigator may in writing require the person to verify, within the time specified in the requirement, that fact and reason by statutory declaration.
- (6) A statutory declaration under subsection (4) or (5) may be taken by the investigator.
- (7) Neither this section nor section 11 is to be construed as requiring a financial institution to disclose any information or produce any record or document relating to the affairs of any of its customers to an investigator who is directed or appointed to investigate a matter by a relevant authority (referred to in this section as *other regulatory authority*) other than the relevant authority in relation to the financial institution, unless—
  - (a) the customer is a person whom the investigator has reasonable cause to believe may be able to give information relevant to the investigation; and

- (b) the other regulatory authority is satisfied, and certifies in writing that it is satisfied, that the disclosure or production is necessary for the purposes of the investigation.
- (8) An investigator—
  - (a) may make interim reports on the investigation to the relevant authority; and
  - (b) must make interim reports on the investigation to the relevant authority as soon as reasonably practicable after being required by the relevant authority to do so.
- (9) An investigator must, as soon as reasonably practicable after he or she completes the investigation, make a final report on the investigation to the relevant authority.
- (10) A relevant authority may, with the consent of the Secretary for Justice, publish a report made under this section.

### **13. Offences for non-compliance with requirements imposed under section 12**

- (1) A person commits an offence if the person, without reasonable excuse, fails to comply with a requirement imposed on the person under section 12(2), (3), (4) or (5).
- (2) A person who commits an offence under subsection (1) is liable—
  - (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
  - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (3) A person commits an offence if the person—
  - (a) in purported compliance with a requirement imposed on the person under section 12(2) or (3), produces any record or document, or gives any answer, response, explanation or further particulars, that is or are false or misleading in a material particular; and
  - (b) knows that, or is reckless as to whether, the record or document, or the answer, response, explanation or further particulars, is or are false or misleading in a material particular.
- (4) A person who commits an offence under subsection (3) is liable—
  - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (5) A person commits an offence if the person, with intent to defraud, fails to comply with a requirement imposed on the person under section 12(2), (3), (4) or (5).

- (6) A person commits an offence if the person, with intent to defraud, produces any record or document, or gives any answer, response, explanation or further particulars, that is or are false or misleading in a material particular in purported compliance with a requirement imposed on the person under section 12(2) or (3).
- (7) A person commits an offence if, being a person who is an employee of a financial institution or is employed to work for a financial institution or is concerned in the management of a financial institution, the person, with intent to defraud, causes or allows the financial institution to fail to comply with a requirement imposed on the financial institution under section 12(2), (3), (4) or (5).
- (8) A person commits an offence if, being a person who is an employee of a financial institution or is employed to work for a financial institution or is concerned in the management of a financial institution, the person, with intent to defraud, causes or allows the financial institution to produce any record or document, or give any answer, response, explanation or further particulars, that is or are false or misleading in a material particular in purported compliance with a requirement imposed on the financial institution under section 12(2) or (3).
- (9) A person who commits an offence under subsection (5), (6), (7) or (8) is liable—
  - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (10) Despite anything in this Ordinance, no criminal proceedings may be instituted against a person under subsection (1), (3), (5), (6), (7) or (8) in respect of any conduct if—
  - (a) proceedings have previously been instituted against the person for the purposes of section 14(2)(b) in respect of the same conduct; and
  - (b) those proceedings remain pending or because of the previous institution of those proceedings, no proceedings may again be lawfully instituted against the person for the purposes of that section in respect of the same conduct.
- (11) A person is not excused from complying with a requirement imposed on the person under section 12 only on the ground that to do so might tend to incriminate the person.
- (12) If a person is convicted by a court on a prosecution instituted as a result of the findings of an investigation under section 11, the court may order the person to pay to the relevant authority the whole or a part of the costs and expenses of the investigation and the relevant authority may recover the whole or the part of the costs and expenses as a civil debt due to it.

- (13) If a relevant authority receives an amount under an order made under subsection (12) in respect of any of the costs and expenses of an investigation, and all or any of the costs and expenses have already been paid out of moneys provided by the Legislative Council, the relevant authority must pay to the Financial Secretary the amount received under the order to the extent that it has already been paid out of moneys provided by the Legislative Council.

**14. Application to Court of First Instance relating to non-compliance with requirements imposed under section 9 or 12**

- (1) If a person fails to comply with a requirement imposed by an authorized person under section 9(3), (5), (9) or (10) or by an investigator under section 12(2), (3), (4) or (5), the authorized person or the investigator may apply by originating summons to the Court of First Instance for an inquiry into the failure.
- (2) On an application under subsection (1), the Court of First Instance may—
- (a) on being satisfied that there is no reasonable excuse for the person not to comply with the requirement, order the person to comply with the requirement within the time specified by the Court; and
  - (b) on being satisfied that the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if the person and that other person had been guilty of contempt of court.
- (3) An originating summons under subsection (1) is to be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).
- (4) Despite anything in this Ordinance, no proceedings may be instituted against a person for the purposes of subsection (2)
- (b) in respect of any conduct if—
    - (a) criminal proceedings have previously been instituted against the person under section 10(1), (3), (5), (6), (7) or (8) or 13(1), (3), (5), (6), (7) or (8) in respect of the same conduct; and
    - (b) those criminal proceedings remain pending or because of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against the person under that section in respect of the same conduct.

**15. Use of incriminating evidence in proceedings**

- (1) If an investigator requires a person to give an answer or response to a question or to give an explanation or further particulars under section 12(2) or (3), the investigator must ensure that the person has first been informed or reminded of the limitations imposed by subsection (2) on the admissibility in evidence of the requirement and of the question and answer or response, or the explanation or further particulars.
- (2) Despite anything in this Ordinance and subject to subsection (3)—
  - (a) if an investigator requires a person to give an answer or response to a question or to give an explanation or further particulars under section 12(2) or (3); and
  - (b) the answer or response, or the explanation or further particulars, might tend to incriminate the person and the person so claims before giving the answer or response or giving the explanation or further particulars,  
the requirement and the question and answer or response, or the explanation or further particulars, are not admissible in evidence against the person in criminal proceedings in a court of law.
- (3) Subsection (2) does not apply to criminal proceedings in which the person is charged with an offence under section 13(1), (3), (5), (6), (7) or (8), or under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the answer or response, or the explanation or further particulars.

#### **16. Lien claimed on records or documents**

If a person claims a lien on any record or document in the person's possession that is required to be produced under this Part—

- (a) the lien does not affect the requirement to produce the record or document;
- (b) no fees are payable for or in respect of the production; and
- (c) the production does not affect the lien.

#### **17. Magistrate's warrants**

- (1) If a magistrate is satisfied by information on oath laid by an investigator, a person authorized under section 9(12), or an employee or staff member of a relevant authority that there are reasonable grounds to suspect that there is, or is likely to be, on premises specified in the information any record or document that may be required to be produced under this Part, the magistrate may issue a warrant authorizing a person specified in the warrant, a police officer, and any other person as may be necessary to assist in the execution of the warrant, to—
  - (a) enter the premises, if necessary by force, at any time within the period of 7 days beginning on the date of the warrant; and

- (b) search for, seize and remove any record or document that the person specified in the warrant or the police officer has reasonable cause to believe may be required to be produced under this Part.
- (2) If an authorized person has reasonable cause to believe that a person found on the premises is employed in connection with a business that is or has been carried on on the premises, the authorized person may require that person to produce for examination any record or document that—
  - (a) is in the possession of that person; and
  - (b) the authorized person has reasonable cause to believe may be required to be produced under this Part.
- (3) An authorized person may, in relation to any record or document required to be produced under subsection (2)—
  - (a) prohibit any person found on the premises from—
    - (i) removing the record or document from the premises;
    - (ii) erasing anything from, adding anything to or otherwise altering anything in, the record or document; or
    - (iii) otherwise interfering in any manner with, or causing or permitting any other person to interfere with, the record or document; or
  - (b) take any other step that appears to the authorized person to be necessary for—
    - (i) preserving the record or document; or
    - (ii) preventing interference with the record or document.
- (4) Any record or document removed under subsection (1) may be retained—
  - (a) for a period not exceeding 6 months beginning on the day of its removal; or
  - (b) if the record or document is or may be required for the purpose of any criminal proceedings or any proceedings under this Ordinance, for any longer period that may be necessary for the purpose of those proceedings.
- (5) If an authorized person removes any record or document under this section, the authorized person must, as soon as reasonably practicable after the removal, give a receipt for the record or document.
- (6) An authorized person who has removed any record or document under this section may permit any person who would be entitled to inspect the record or document but for the removal to inspect it and to make copies or otherwise record details of it at all reasonable times.
- (7) An authorized person who enters any premises under this section must, if required, produce the warrant for inspection.



- (8) Section 102 of the Criminal Procedure Ordinance (Cap. 221) applies to any property that has by virtue of this section come into the possession of a relevant authority, as it applies to property that has come into the possession of the police.
- (9) A person commits an offence if the person—
  - (a) without reasonable excuse, fails to comply with a requirement or prohibition imposed on the person under subsection (2) or (3); or
  - (b) obstructs an authorized person exercising a power conferred by subsection (2) or (3).
- (10) A person who commits an offence under subsection (9) is liable—
  - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (11) In this section—

*authorized person* (獲授權人) means a person authorized by a warrant issued under subsection (1) to carry out the acts set out in paragraphs (a) and (b) of that subsection.

#### 18. Production of information in information systems etc.

- (1) If any information or matter contained in a record or document is recorded otherwise than in a legible form but is capable of being reproduced in a legible form, any person who is empowered to require the production of the record or document under this Part is also empowered to require the production of a reproduction of the recording of the information or matter, or the relevant part of the recording, in a legible form.
- (2) If any information or matter contained in a record or document is recorded in an information system, any person who is empowered to require the production of the record or document under this Part is also empowered to require the production of a reproduction of the recording of the information or matter, or the relevant part of the recording, in a form that enables the information or matter to be reproduced in a legible form.
- (3) In this section—

*information system* (資訊系統) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553).

#### 19. Inspection of records and documents seized etc.

- (1) If an authorized person or an investigator has taken possession of any record or document under this Part, the authorized person or the investigator must permit any other person who would be entitled to inspect the record or document had the authorized person or the investigator not taken possession of it under this Part to inspect it and to make copies or otherwise record details of it at all reasonable times.
- (2) A person who gives a permission under subsection (1) may impose any reasonable condition as to security or otherwise that the person thinks fit.

## **20. Destruction of documents etc.**

- (1) A person commits an offence if the person destroys, falsifies, conceals or otherwise disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any record or document that the person is required by an authorized person or an investigator to produce under this Part, with intent to conceal, from the authorized person or the investigator, facts or matters capable of being disclosed by the record or document.
- (2) A person who commits an offence under subsection (1) is liable—
  - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

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## **Part 4**

### **Disciplinary Actions by Relevant Authorities**

#### **21. Relevant authorities may take disciplinary actions**

- (1) Subject to sections 22 and 23, if a financial institution contravenes a specified provision as defined by section 5(11), the relevant authority may exercise any one or more of the powers specified in subsection (2).
- (2) The specified powers are—
  - (a) to publicly reprimand the financial institution;
  - (b) to order the financial institution to take, by a date specified by the relevant authority, any action specified by the relevant authority for the purpose of remedying the contravention; and
  - (c) to order the financial institution to pay a pecuniary penalty not exceeding the amount that is the greater of—
    - (i) \$10,000,000; or

- (ii) 3 times the amount of the profit gained, or costs avoided, by the financial institution as a result of the contravention.
- (3) A financial institution that is ordered to pay a pecuniary penalty under this section must pay the penalty to the relevant authority within—
  - (a) 30 days; or
  - (b) any longer period that the relevant authority may specify by notice under section 22(2),  
after the order has taken effect as a specified decision under section 75.
- (4) If a financial institution fails to comply with an order to take remedial action made under subsection (1), the relevant authority may further order the financial institution to pay a daily pecuniary penalty not exceeding \$100,000 for each day on which the failure continues after the date specified in the order as being the date by which the remedial action must be taken.
- (5) The Court of First Instance may, on an application of a relevant authority made in the manner specified in subsection (6), register an order to pay a pecuniary penalty made under subsection (1) or (4) in the Court of First Instance and the order is, on registration, to be regarded for all purposes as an order of the Court of First Instance made within the civil jurisdiction of the Court of First Instance for the payment of money.
- (6) For the purpose of making an application under subsection (5), the relevant authority must produce to the Registrar of the High Court a notice in writing requesting that the order be registered, together with the original and a copy of the order.
- (7) A relevant authority must pay into the general revenue any pecuniary penalty received by it under an order made under this section.
- (8) If a relevant authority has exercised a power under subsection (1) in respect of a financial institution, the relevant authority may disclose to the public details of its decision, the reasons for which the decision was made, and any material facts relating to the case.
- (9) The powers specified in subsections (2)(c) and (4) are not exercisable in relation to the Government.

## **22. Procedural requirements in respect of exercise of powers under section 21**

- (1) A relevant authority may only exercise its powers under section 21 in respect of a financial institution after giving the financial institution a reasonable opportunity to be heard.

- (2) If a relevant authority exercises a power under section 21 in respect of a financial institution, the relevant authority must inform the financial institution of its decision by notice in writing.
- (3) A notice under subsection (2) must include—
  - (a) a statement of the reasons for the decision;
  - (b) in so far as applicable, the terms in which the financial institution is reprimanded under the decision;
  - (c) in so far as applicable, the action that the financial institution is required to take under the decision;
  - (d) in so far as applicable, the amount of any pecuniary penalty imposed under the decision and, if the penalty is to be paid within a period other than that specified in section 21(3)(a), the period within which it is required to be paid; and
  - (e) a statement that the financial institution may apply to the Review Tribunal for a review of the decision.

### 23. Guidelines on how relevant authorities exercise power to impose pecuniary penalty

- (1) A relevant authority must, before it first exercises its power to impose a pecuniary penalty referred to in section 21(2)(c), publish in the Gazette and in any other manner that it considers appropriate, guidelines to indicate the manner in which it proposes to exercise that power.
- (2) In exercising its power to impose a pecuniary penalty referred to in section 21(2)(c), the relevant authority must have regard to the guidelines published by it under subsection (1).
- (3) Guidelines published under subsection (1) are not subsidiary legislation.

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## Part 5

### Regulation of Operation of Money Service

#### Division 1—Preliminary

### 24. Interpretation of Part 5

In this Part—

**authorized officer** (獲授權人員) means a person appointed under section 46;

**director** (董事) includes any person occupying the position of director by whatever name called;

**licence** (牌照) means a licence granted under section 30 or renewed under section 31 and includes a licence that is deemed to have been granted under section 82;

**register** (登記冊) means the register of licensees maintained by the Commissioner under section 27;

**ultimate owner** (最終擁有人)—

- (a) in relation to an individual—
  - (i) means another individual who ultimately owns or controls the money service business of the first-mentioned individual; or
  - (ii) if the first-mentioned individual is acting on behalf of another person, means the other person;
- (b) in relation to a partnership, means an individual who—
  - (i) is entitled to or controls, directly or indirectly, not less than a 10% share of the capital or profits of the partnership;
  - (ii) is, directly or indirectly, entitled to exercise or control the exercise of not less than 10% of the voting rights in the partnership; or
  - (iii) exercises ultimate control over the management of the partnership; and
- (c) in relation to a corporation, means an individual who—
  - (i) owns or controls, directly or indirectly, including through a trust or bearer share holding, not less than 10% of the issued share capital of the corporation;
  - (ii) is, directly or indirectly, entitled to exercise or control the exercise of not less than 10% of the voting rights at general meetings of the corporation; or
  - (iii) exercises ultimate control over the management of the corporation.

## 25. Persons to whom this Part does not apply

This Part does not apply to the Government nor to—

- (a) an authorized institution;
- (b) a licensed corporation that operates a money service that is ancillary to the corporation's principal business;
- (c) an authorized insurer that operates a money service that is ancillary to the insurer's principal business;
- (d) an authorized insurance broker that operates a money service that is ancillary to the broker's principal business; (*Amended 18 of 2015 s. 70*)
- (e) an appointed insurance agent that operates a money service that is ancillary to the agent's principal business; (*Amended 18 of 2015 s. 70*)
- (f) an SVF licensee that operates a money service that is ancillary to the licensee's principal business; or (*Added 18 of 2015 s. 70*)

- (g) a system operator or settlement institution of a designated retail payment system that operates a money service that is ancillary to its business as a system operator or settlement institution. (*Added 18 of 2015 s. 70*)

## **26. Delegation of functions**

- (1) Subject to subsection (2), the Commissioner of Customs and Excise may in writing delegate any of his or her functions under this Ordinance to any public officer employed in the Customs and Excise Department.
- (2) The Commissioner of Customs and Excise must not delegate any of the functions under this section or section 51.

## **27. Commissioner to maintain register of licensees**

- (1) The Commissioner must maintain a register of licensees, in any form the Commissioner thinks fit, containing—
  - (a) the name of every licensee; and
  - (b) in respect of each licensee—
    - (i) if the licensee is licensed to operate a money service at specified premises, the address of every premises at which the licensee may operate a money service; or
    - (ii) in any other case, the correspondence address of the licensee.
- (2) The register is to be kept at the office of the Commissioner.
- (3) The register must be made available for inspection by members of the public to enable any of them to ascertain whether he or she is dealing with a licensee.
- (4) Members of the public are entitled, without charge, to inspect the register during normal office hours.

## **28. Certified copy of register or entry in register admissible as evidence**

- (1) Any person may, on payment of the fee specified in Schedule 3, obtain—
  - (a) a certified copy or an uncertified copy of the register or of an entry in or extract from the register; or
  - (b) a certificate by the Commissioner stating that the name of a person has been entered on or removed from the register or has not been entered on the register.
- (2) A copy of the register, or of an entry in or extract from the register, purporting to be certified by the Commissioner is admissible in evidence in any criminal or civil proceedings on production without further proof and is evidence of the facts stated in the copy.

- (3) The fact that the name of a person does not appear on a copy of the register purporting to be certified by the Commissioner is evidence that the person was not, at the date on which the copy is so certified, licensed.
- (4) A certificate purporting to be signed by the Commissioner and stating that the name of a person has been entered on or removed from the register, or has not been entered on the register, is admissible in evidence in any criminal or civil proceedings on production without further proof and is to be conclusive evidence of the facts stated in the certificate.

## **Division 2—Licence for Operating Money Service**

### **29. Restriction on operating money service**

- (1) A person commits an offence if the person operates a money service without a licence.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 6 and to imprisonment for 6 months.
- (3) If a person is convicted of an offence under this section, the magistrate may order that the person is to be disqualified from holding a licence for a period specified in the order beginning on the date of the order.

### **30. Grant of licence**

- (1) An application for the grant of a licence—
  - (a) must be made to the Commissioner in the form and manner specified by the Commissioner; and
  - (b) must be accompanied by the fee specified in Schedule 3.
- (2) The Commissioner may, on an application under subsection (1), grant to the applicant a licence to operate a money service.
- (3) The Commissioner may grant a licence to an applicant only if the Commissioner is satisfied that—
  - (a)(i) where the applicant is an individual—
    - (A) the individual is a fit and proper person to operate a money service; and
    - (B) if there is an ultimate owner in relation to the individual, the ultimate owner is a fit and proper person to be associated with the business of operating a money service;
  - (ii) where the applicant is a partnership—
    - (A) each partner in the partnership is a fit and proper person to operate a money service; and

- (B) if there is an ultimate owner in relation to the partnership, the ultimate owner is a fit and proper person to be associated with the business of operating a money service; or
    - (iii) where the applicant is a corporation—
      - (A) each director of the corporation is a fit and proper person to be associated with the business of operating a money service; and
      - (B) if there is an ultimate owner in relation to the corporation, the ultimate owner is a fit and proper person to be associated with the business of operating a money service; and
  - (b) in relation to an application to operate a money service at any particular premises—
    - (i) the premises are suitable to be used for the operation of a money service; and
    - (ii) where the premises are domestic premises, the applicant has secured the written consent of every occupant of the premises for any authorized person as defined by section 8 to enter the premises for the purpose of exercising the powers under section 9.
- (4) In determining whether a person is a fit and proper person under subsection (3)(a), the Commissioner must, in addition to any other matter that the Commissioner considers relevant, have regard to the following—
- (a) whether the person has been convicted of—
    - (i) an offence under section 5(5), (6), (7) or (8), 10(1), (3), (5), (6), (7) or (8), 13(1), (3), (5), (6), (7) or (8), 17(9), 20(1), 61(2) or 66(3);
    - (ii) an offence under section 14(1) of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) for a contravention of section 7 or 8 of that Ordinance;
    - (iii) an offence under section 25(1), 25A(5) or (7) of, or any offence specified in Schedule 1 to, the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405); or
    - (iv) an offence under section 25(1), 25A(5) or (7) of, or any offence specified in Schedule 1 or 2 to, the Organized and Serious Crimes Ordinance (Cap. 455);
  - (b) whether the person has a conviction in a place outside Hong Kong—
    - (i) for an offence in respect of an act that would have constituted an offence specified in paragraph (a) (i), (ii), (iii) or (iv) had it been done in Hong Kong;



- (ii) for an offence relating to money laundering or terrorist financing; or
  - (iii) for an offence for which it was necessary to find that the person had acted fraudulently, corruptly or dishonestly;
- (c) whether the person has persistently failed to comply with any requirement imposed under this Ordinance or any regulation made by the Commissioner under section 51;
  - (d) whether the person, being an individual, is an undischarged bankrupt or is the subject of any bankruptcy proceedings under the Bankruptcy Ordinance (Cap. 6);
  - (e) whether the person, being a corporation, is in liquidation or is the subject of a winding up order, or there is a receiver appointed in relation to it.
- (5) On granting a licence, the Commissioner may impose any condition that the Commissioner thinks fit.
  - (6) If the Commissioner imposes any condition on a licence, the Commissioner must, at the time the licence is granted, inform the licensee by notice in writing.
  - (7) An imposition of any condition under subsection (5) takes effect at the time the notice under subsection (6) is received by the licensee, or at the time specified in the notice under subsection (6), whichever is the later.
  - (8) If the Commissioner refuses to grant a licence under this section, the Commissioner must inform the applicant by notice in writing.
  - (9) A notice under subsection (6) or (8) must include—
    - (a) a statement of the reasons for the decision; and
    - (b) a statement that the licensee or applicant, as the case requires, may apply to the Review Tribunal for a review of the decision.
  - (10) Subject to section 34, a licence granted under this section is valid for 2 years or, if the Commissioner considers it appropriate in any particular case, any other period determined by the Commissioner, beginning on the date on which it is granted.

### **31. Renewal of licence**

- (1) A licensee may apply to the Commissioner for a renewal of the licensee's licence.
- (2) An application for the renewal of a licence—
  - (a) must be made not later than 45 days before the licence is due to expire;
  - (b) must be made to the Commissioner in the form and manner specified by the Commissioner; and

- (c) must be accompanied by the fee specified in Schedule 3.
- (3) The Commissioner may, on an application under subsection (2), renew the licence.
- (4) Section 30(3) and (4) applies to an application for renewal of a licence under this section as it applies to an application for a licence.
- (5) On renewing a licence, the Commissioner may amend or remove any condition of the licence previously imposed on the licensee, or impose any new condition on the licensee, that the Commissioner thinks fit.
- (6) If the Commissioner amends or removes any condition or imposes any new condition, the Commissioner must, at the time the licence is renewed, inform the licensee by notice in writing.
- (7) An amendment, removal or imposition of any condition under subsection (5) takes effect at the time the notice under subsection (6) is received by the licensee, or at the time specified in the notice under subsection (6), whichever is the later.
- (8) If the Commissioner refuses to renew a licence under this section, the Commissioner must inform the licensee by notice in writing.
- (9) A notice under subsection (6) or (8) must include—
- (a) a statement of the reasons for the decision; and
  - (b) a statement that the licensee may apply to the Review Tribunal for a review of the decision.
- (10) A licence in respect of which an application for renewal is made under this section and which expires before the determination of the application by the Commissioner remains in force—
- (a) until the licence is renewed; or
  - (b) if the renewal is refused, until the Commissioner's decision to refuse to renew the licence takes effect,
- unless the application is withdrawn or the licence is revoked or suspended under section 34.
- (11) A renewal granted under this section takes effect—
- (a) on the day following the expiration of the licence; or
  - (b) if subsection (10) applies, on the day following the day on which the licence would have expired but for that subsection.
- (12) Subject to section 34, a licence renewed under this section is valid for 2 years or, if the Commissioner considers it appropriate in any particular case, any shorter period determined by the Commissioner, beginning on the date on which it is renewed.

## 32. Amendment of conditions in licence

- (1) The Commissioner may, in relation to a licence, amend or remove any condition of the licence previously imposed on the licensee, or impose any new condition on the licensee, if the Commissioner is satisfied that it is reasonable to do so in the circumstances.
- (2) If the Commissioner amends or removes any condition or imposes any new condition in respect of a licence, the Commissioner must inform the licensee by notice in writing.
- (3) A notice under subsection (2) must include—
  - (a) a statement of the reasons for the decision; and
  - (b) a statement that the licensee may apply to the Review Tribunal for a review of the decision.
- (4) An amendment, removal or imposition of any condition under this section takes effect at the time the notice under subsection (2) is received by the licensee, or at the time specified in the notice under subsection (2), whichever is the later.

### **33. Form of licence**

A licence is to be in a form specified by the Commissioner and must—

- (a) specify—
  - (i) in relation to a licence to operate a money service at specified premises, the address of every premises at which the licensee may operate a money service; or
  - (ii) in any other case, the correspondence address of the licensee;
- (b) be endorsed with the conditions imposed or amended under section 30, 31 or 32; and
- (c) specify the period for which the licence is valid.

### **34. Revocation or suspension of licence**

- (1) The Commissioner may exercise any of the powers specified in subsection (2) if—
  - (a) the Commissioner is of the opinion that in relation to a licence—
    - (i) where the licensee is an individual—
      - (A) the individual is no longer a fit and proper person to operate a money service; or
      - (B) if there is an ultimate owner in relation to the individual, the ultimate owner is no longer a fit and proper person to be associated with the licensee's business of operating a money service;
    - (ii) where the licensee is a partnership—

- (A) any partner in the partnership is no longer a fit and proper person to operate a money service; or
  - (B) if there is an ultimate owner in relation to the partnership, the ultimate owner is no longer a fit and proper person to be associated with the licensee's business of operating a money service; or
- (iii) where the licensee is a corporation—
  - (A) any director of the corporation is no longer a fit and proper person to be associated with the licensee's business of operating a money service; or
  - (B) if there is an ultimate owner in relation to the corporation, the ultimate owner is no longer a fit and proper person to be associated with the licensee's business of operating a money service; or
- (b) a licensee operates a money service at any domestic premises, and—
  - (i) any occupant of the premises revokes his or her written consent previously given for any authorized person as defined by section 8 to enter the premises for the purpose of exercising the powers under section 9; or
  - (ii) any new occupant of the premises refuses to give such a written consent.
- (2) The specified powers are—
  - (a) to revoke the licence; or
  - (b) to suspend the licence for a period specified by the Commissioner or until the occurrence of an event specified by the Commissioner.
- (3) The Commissioner may only exercise a power under subsection (1) after giving the licensee a reasonable opportunity to be heard.
- (4) If the Commissioner exercises a power under subsection (1) in respect of a licence, the Commissioner must inform the licensee of the decision by notice in writing.
- (5) A notice under subsection (4) must include—
  - (a) a statement of the reasons for the decision;
  - (b) for a decision to suspend a licence, the duration and terms of the suspension;
  - (c) for a decision to revoke a licence, the time within which the licence is to be surrendered to the Commissioner; and
  - (d) a statement that the licensee may apply to the Review Tribunal for a review of the decision.

- (6) A revocation or suspension of a licence under this section takes effect at the time specified in the notice under subsection (4).
- (7) If a licence is revoked or suspended under this section, no licence fee paid in respect of the grant or renewal of the licence is to be refunded.
- (8) If a person whose licence is revoked does not surrender the licence to the Commissioner within the time specified in the notice given to the person under subsection (4), the person commits an offence and is liable on conviction to a fine at level 5.

**35. Commissioner's approval required in respect of persons proposing to become licensee's directors**

- (1) In relation to a licensee that is a corporation, a person must not become a director of the corporation unless the Commissioner has, on an application of the licensee, given his or her approval in writing.
- (2) An application for the approval of the Commissioner under this section—
  - (a) must be made in the form and manner specified by the Commissioner; and
  - (b) must be accompanied by the fee specified in Schedule 3.
- (3) The Commissioner may give an approval under this section only if the Commissioner is satisfied that the person in relation to whom the application is made is a fit and proper person to be associated with the licensee's money service business.
- (4) In determining whether a person is a fit and proper person under subsection (3), the Commissioner must, in addition to any other matter that the Commissioner considers relevant, have regard to the matters specified in section 30(4)(a), (b), (c), (d) and (e).
- (5) If the Commissioner refuses to give an approval under this section, the Commissioner must inform the licensee by notice in writing.
- (6) A notice under subsection (5) must include—
  - (a) a statement of the reasons for the decision; and
  - (b) a statement that the licensee may apply to the Review Tribunal for a review of the decision.
- (7) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

**36. Commissioner's approval required in respect of persons proposing to become licensee's ultimate owners**

- (1) A person must not become an ultimate owner of a licensee unless the Commissioner has, on an application of the licensee, given his or her approval in writing.
- (2) An application for the approval of the Commissioner under this section—
  - (a) must be made in the form and manner specified by the Commissioner; and
  - (b) must be accompanied by the fee specified in Schedule 3.
- (3) The Commissioner may give an approval under this section only if the Commissioner is satisfied that the person in relation to whom the application is made is a fit and proper person to be associated with the licensee's money service business.
- (4) In determining whether a person is a fit and proper person under subsection (3), the Commissioner must, in addition to any other matter that the Commissioner considers relevant, have regard to the matters specified in section 30(4)(a), (b), (c), (d) and (e).
- (5) If the Commissioner refuses to give an approval under this section, the Commissioner must inform the licensee by notice in writing.
- (6) A notice under subsection (5) must include—
  - (a) a statement of the reasons for the decision; and
  - (b) a statement that the licensee may apply to the Review Tribunal for a review of the decision.
- (7) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

**37. Commissioner's approval required in respect of persons proposing to become licensee's partners**

- (1) In relation to a licensee that is a partnership, a person must not become a partner in the partnership unless the Commissioner has, on an application of the licensee, given his or her approval in writing.
- (2) An application for the approval of the Commissioner under this section—
  - (a) must be made in the form and manner specified by the Commissioner; and
  - (b) must be accompanied by the fee specified in Schedule 3.
- (3) The Commissioner may give an approval under this section only if the Commissioner is satisfied that the person in relation to whom the application is made is a fit and proper person to operate a money service.

- (4) In determining whether a person is a fit and proper person under subsection (3), the Commissioner must, in addition to any other matter that the Commissioner considers relevant, have regard to the matters specified in section 30(4)(a), (b), (c), (d) and (e).
- (5) If the Commissioner refuses to give an approval under this section, the Commissioner must inform the licensee by notice in writing.
- (6) A notice under subsection (5) must include—
  - (a) a statement of the reasons for the decision; and
  - (b) a statement that the licensee may apply to the Review Tribunal for a review of the decision.
- (7) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

### **38. Adding new business premises**

- (1) A licensee who is licensed to operate a money service at premises specified in the licence must not operate a money service at any premises other than those specified premises unless the Commissioner has, on an application of the licensee, added the new premises to the licence.
- (2) An application under this section must be made in the form and manner specified by the Commissioner.
- (3) The Commissioner may grant an application under this section on payment of the fee specified in Schedule 3 and may impose any condition that the Commissioner thinks fit.
- (4) The Commissioner may grant an application under this section only if the Commissioner is satisfied that—
  - (a) the premises in respect of which the application is made are suitable to be used for the operation of a money service; and
  - (b) where the premises referred to in paragraph (a) are domestic premises, the licensee has secured the written consent of every occupant of the premises for any authorized person as defined by section 8 to enter the premises for the purpose of exercising the powers under section 9.
- (5) If the Commissioner refuses to grant an application under this section, the Commissioner must inform the licensee by notice in writing.
- (6) A notice under subsection (5) must include—
  - (a) a statement of the reasons for the decision; and
  - (b) a statement that the licensee may apply to the Review Tribunal for a review of the decision.
- (7) The Commissioner must, as soon as reasonably practicable after granting an application under this section, add the relevant particulars to the register.

- (8) A licensee who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

### **39. Application to operate at particular premises**

- (1) A licensee who is not required under the licence to operate a money service at particular premises must not operate a money service at any particular premises unless the Commissioner has, on an application of the licensee, added the premises to the licence.
- (2) An application under this section must be made in the form and manner specified by the Commissioner.
- (3) The Commissioner may grant an application under this section on payment of the fee specified in Schedule 3 and may impose any condition that the Commissioner thinks fit.
- (4) The Commissioner may grant an application under this section only if the Commissioner is satisfied that—
  - (a) the premises in respect of which the application is made are suitable to be used for the operation of a money service; and
  - (b) where the premises referred to in paragraph (a) are domestic premises, the licensee has secured the written consent of every occupant of the premises for any authorized person as defined by section 8 to enter the premises for the purpose of exercising the powers under section 9.
- (5) If the Commissioner refuses to grant an application under this section, the Commissioner must inform the licensee by notice in writing.
- (6) A notice under subsection (5) must include—
  - (a) a statement of the reasons for the decision; and
  - (b) a statement that the licensee may apply to the Review Tribunal for a review of the decision.
- (7) The Commissioner must, as soon as reasonably practicable after granting an application under this section, amend the relevant particulars in the register.
- (8) A licensee who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

### **40. Licensee's duty to notify Commissioner of changes in particulars**

- (1) If there is any change in the particulars that are provided to the Commissioner in connection with a licensee's application under section 30 or 31, the licensee must notify the Commissioner in writing of the change within one month beginning on the date on which the change takes place.



- (2) For the purposes of subsection (1), particulars that are provided in connection with a licensee's application under section 30 or 31 include particulars notified under that subsection.
- (3) The Commissioner must, as soon as reasonably practicable after receiving a notification under subsection (1), amend any relevant particulars in the register if necessary.
- (4) A licensee who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

#### **41. Licensee's duty to notify Commissioner of cessation of business**

- (1) If a licensee intends to cease to operate a money service or (if applicable) to cease to operate a money service at any of the premises specified in the licence with effect from a particular date (referred to in this section as *date of cessation*), the licensee must—
  - (a) before the date of cessation, notify the Commissioner in writing of that intention and the date of cessation; and
  - (b) return the licence to the Commissioner for cancellation or amendment within 7 days beginning on the date of cessation.
- (2) The Commissioner must, as soon as reasonably practicable after receiving a licence under subsection (1)(b)—
  - (a) cancel or amend the licence; and
  - (b) remove the relevant particulars from the register.
- (3) If a licence is returned for cancellation under this section, no licence fee paid in respect of the grant or renewal of the licence is to be refunded.
- (4) A licensee who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

#### **42. Licence ceases to be valid on death etc. of licensee**

A licence ceases to be valid—

- (a) if the licensee is an individual, on the death of the individual;
- (b) if the licensee is a partnership, on the dissolution of the partnership; or
- (c) if the licensee is a corporation, on the commencement of winding up of the corporation.

### **Division 3—Commissioner's Disciplinary and Other Powers**

#### **43. Commissioner may take disciplinary actions**

- (1) Subject to sections 44 and 45, the Commissioner may exercise any one or more of the powers specified in subsection (2) if a licensee—
  - (a) contravenes any regulation made under section 51;
  - (b) contravenes any of the conditions of the licensee's licence; or
  - (c) contravenes section 35(1), 36(1), 37(1), 38(1), 39(1), 40(1) or 41(1).
- (2) The specified powers are—
  - (a) to publicly reprimand the licensee;
  - (b) to order the licensee to take, by a date specified by the Commissioner, any action specified by the Commissioner for the purpose of remedying the contravention; and
  - (c) to order the licensee to pay a pecuniary penalty not exceeding \$1,000,000.
- (3) A licensee who is ordered to pay a pecuniary penalty under this section must pay the penalty within—
  - (a) 30 days; or
  - (b) any longer period that the Commissioner may specify by notice under section 44(2),  
after the order has taken effect as a specified decision under section 75.
- (4) If a licensee fails to comply with an order to take remedial action made under subsection (1), the Commissioner may further order the licensee to pay a daily pecuniary penalty not exceeding \$10,000 for each day on which the failure continues after the date specified in the order as being the date by which the remedial action must be taken.
- (5) The Court of First Instance may, on an application of the Commissioner made in the manner specified in subsection (6), register an order to pay a pecuniary penalty made under subsection (1) or (4) in the Court of First Instance and the order is, on registration, to be regarded for all purposes as an order of the Court of First Instance made within the civil jurisdiction of the Court of First Instance for the payment of money.
- (6) For the purpose of making an application under subsection (5), the Commissioner must produce to the Registrar of the High Court a notice in writing requesting that the order be registered, together with the original and a copy of the order.
- (7) If the Commissioner has exercised his or her powers under subsection (1) in respect of a licensee, the Commissioner may disclose to the public details of the decision, the reasons for which the decision was made, and any material facts relating to the case.

#### **44. Procedural requirements in respect of exercise of powers under section 43**

- (1) The Commissioner may only exercise the powers under section 43 in respect of a licensee after giving the licensee a reasonable opportunity to be heard.
- (2) If the Commissioner exercises a power under section 43 in respect of a licensee, the Commissioner must inform the licensee of the decision by notice in writing.
- (3) A notice under subsection (2) must include—
  - (a) a statement of the reasons for the decision;
  - (b) in so far as applicable, the terms in which the licensee is reprimanded under the decision;
  - (c) in so far as applicable, the action that the licensee is required to take under the decision;
  - (d) in so far as applicable, the amount of any pecuniary penalty imposed under the decision and, if the penalty is to be paid at a time other than that specified in section 43(3)(a), the time within which it is required to be paid; and
  - (e) a statement that the licensee may apply to the Review Tribunal for a review of the decision.

**45. Guidelines on how Commissioner exercises power to impose pecuniary penalty**

- (1) The Commissioner must, before he or she first exercises the power to impose a pecuniary penalty referred to in section 43(2)(c), publish in the Gazette and in any other manner that the Commissioner considers appropriate, guidelines to indicate the manner in which the Commissioner proposes to exercise that power.
- (2) In exercising the power to impose a pecuniary penalty referred to in section 43(2)(c), the Commissioner must have regard to the guidelines published under subsection (1).
- (3) Guidelines published under subsection (1) are not subsidiary legislation.

**46. Commissioner may appoint authorized officers**

The Commissioner may appoint in writing any public officer employed in the Customs and Excise Department to be an authorized officer for the purposes of this Part.

**47. Warrant to enter premises to remove evidence of commission of offence**

- (1) If a magistrate is satisfied by information on oath that there are reasonable grounds to suspect that an offence under section 29 has been committed or is being committed on any premises, the magistrate may issue a warrant authorizing an authorized officer to—
  - (a) enter and search the premises; and
  - (b) seize, remove or detain—

- (i) any record or document, or any cash or other article, found on the premises that is, or appears to the authorized officer to be, or to contain, or to be likely to be or to contain, evidence of the commission of the suspected offence; and
  - (ii) anything that the authorized officer has reasonable cause to believe may be required as evidence in proceedings for the suspected offence.
- (2) An authorized officer authorized under subsection (1) may—
  - (a) call on any person to assist the officer in entering and searching the premises that the officer is empowered to enter and search under that subsection;
  - (b) break into and forcibly enter the premises;
  - (c) remove by force any person or thing obstructing the officer in the exercise of those powers;
  - (d) detain any person found on the premises who appears to the officer to be, or to be likely to be, able to give information relevant to the investigation of the suspected offence until the premises have been searched;
  - (e) if any information or matter contained in a record or document found on the premises is recorded otherwise than in a legible form but is capable of being reproduced in a legible form, require any person—
    - (i) who appears to the officer to be in charge of the premises; or
    - (ii) who appears to the officer to be, or to be likely to be, able to produce a reproduction of the recording of the information or matter,  
to produce a reproduction of the recording of the information or matter, or the relevant part of the recording, in a legible form; and
  - (f) if any information or matter contained in a record or document found on the premises is recorded in an information system, require any person—
    - (i) who appears to the officer to be in charge of the premises; or
    - (ii) who appears to the officer to be, or to be likely to be, able to produce a reproduction of the recording of the information or matter,  
to produce a reproduction of the recording of the information or matter, or the relevant part of the recording, in a form that enables the information or matter to be reproduced in a legible form.
- (3) An authorized officer who enters any premises under this section must, if required, produce the warrant for inspection.

- (4) A person who obstructs an authorized officer exercising a power conferred by a warrant or by subsection (2) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

**48. Authorized officer's power to arrest and search, etc.**

- (1) An authorized officer may, without a warrant, arrest a person or detain a person for further enquiries if—
  - (a) the authorized officer has reasonable grounds to suspect that the person has committed or is committing an offence under section 29; and
  - (b) it appears to the authorized officer that service of a summons is impracticable because—
    - (i) the name of the person is unknown to, and cannot readily be ascertained by, the authorized officer;
    - (ii) the authorized officer has reasonable grounds to suspect that a name given by the person as his or her name is not the person's true name;
    - (iii) the person has failed to give a satisfactory address for service of the summons; or
    - (iv) the authorized officer has reasonable grounds to suspect that an address given by the person as an address for service of the summons is not a valid address.
- (2) An authorized officer who arrests or detains a person under this section must, if requested, produce evidence of his or her appointment as an authorized officer.
- (3) An authorized officer who arrests a person under this section must immediately take the person to a police station or, if in the opinion of the authorized officer further enquiries are necessary, first to an office of the Customs and Excise Department and then to a police station, there to be dealt with in accordance with the Police Force Ordinance (Cap. 232).
- (4) A person, whether arrested or not, must not be detained for more than 48 hours without being charged and brought before a magistrate.
- (5) If a person forcibly resists or attempts to evade arrest or detention under this section, the authorized officer may use any force that is reasonably necessary to effect the arrest or detention.
- (6) If an authorized officer has arrested a person under this section, the officer may—
  - (a) search the person, or the place at which the person has been arrested and its surrounding areas, for anything that may be related to the suspected offence; and
  - (b) take possession of anything found as a result of the exercise of the power under paragraph (a) that the authorized officer has reasonable grounds to suspect is related to the suspected offence.

- (7) A person may be searched only by an authorized officer of the same sex.

#### **Division 4—Miscellaneous**

##### **49. Preservation of secrecy**

- (1) Except in the performance of a function under this Ordinance, or for the purpose of carrying into effect a provision of this Ordinance or doing anything required or authorized under this Ordinance, a specified person—
- (a) must preserve and aid in preserving secrecy with regard to any matter coming to the specified person's knowledge—
    - (i) in the performance of any function under this Ordinance, or in carrying into effect any provision of this Ordinance; or
    - (ii) in the course of assisting any other person in the performance of any function under this Ordinance, or in carrying into effect any provision of this Ordinance;
  - (b) must not communicate any matter referred to in paragraph (a) to any other person other than the person to whom the matter relates; and
  - (c) must not suffer or permit any other person to have access to any record or document that comes into the specified person's possession—
    - (i) in the performance of any function under this Ordinance, or in carrying into effect any provision of this Ordinance; or
    - (ii) in the course of assisting any other person in the performance of any function under this Ordinance, or in carrying into effect any provision of this Ordinance.
- (2) Despite subsection (1), a specified person may—
- (a) disclose information that has already been made available to the public;
  - (b) disclose information with a view to the institution of, or for the purposes of, any criminal proceedings in Hong Kong;
  - (c) disclose information with a view to the commencement of, or for the purposes of, any investigation carried out in Hong Kong under the laws of Hong Kong;
  - (d) disclose information for the purpose of seeking advice from, or giving advice by, counsel, a solicitor or other professional adviser, who is acting or proposing to act in a professional capacity in connection with any matter arising under this Ordinance;

- (e) disclose information in connection with any judicial or other proceedings to which the specified person is a party; and
  - (f) disclose information in accordance with an order of a court, magistrate or tribunal, or in accordance with a law of Hong Kong or a requirement imposed under a law of Hong Kong.
- (3) Despite subsection (1), the Commissioner may—
- (a) disclose information in the form of a summary compiled from any information in the Commissioner's possession, including information provided by persons under any provision of this Ordinance, if the summary is so compiled as to prevent particulars relating to the business or identity, or the trading particulars, of any person from being ascertained from it;
  - (b) disclose information to the Review Tribunal;
  - (c) subject to subsection (4), disclose information to—
    - (i) the Financial Secretary;
    - (ii) the Monetary Authority;
    - (iii) the Insurance Authority;
    - (iv) the Securities and Futures Commission;
    - (v) the Privacy Commissioner for Personal Data;
    - (vi) The Ombudsman; or
    - (vii) a public officer authorized by the Financial Secretary under subsection (10);
  - (d) subject to subsection (4), disclose information to an authority or regulatory organization outside Hong Kong that, in the opinion of the Commissioner—
    - (i) performs functions similar to the functions of the Commissioner under this Ordinance or regulates, supervises or investigates banking, insurance or other financial services; and
    - (ii) is subject to adequate secrecy provisions; and
  - (e) disclose information with the consent of the person from whom the information was obtained or received and, if the information relates to a different person, with the consent also of the person to whom the information relates.
- (4) The Commissioner may disclose information under subsection (3)(c) and (d) only if the Commissioner is satisfied that—
- (a) it is desirable or expedient that the information should be disclosed in the interest of licensees or their customers, or in the public interest; or

- (b) the disclosure will enable or assist the recipient of the information to perform the recipient's functions and it is not contrary to the interest of licensees or their customers, or to the public interest, that the information should be so disclosed.
- (5) The Commissioner may, in disclosing any information under subsection (3), impose any condition that the Commissioner considers appropriate.
- (6) Without limiting subsection (5), the Commissioner may impose a condition that—
  - (a) the person to whom the information is disclosed; and
  - (b) any person obtaining or receiving the information (whether directly or indirectly) from that person, must not disclose the information to any other person without the consent of the Commissioner.
- (7) Subsection (3)(e) does not require the Commissioner to disclose in or in relation to any civil proceedings any information that the Commissioner may disclose, or has disclosed, under that subsection.
- (8) A person who—
  - (a) contravenes subsection (1); or
  - (b) knowing that the condition referred to in subsection (6) has been imposed in relation to a disclosure of information made under subsection (3), contravenes, or aids, abets, counsels or procures any person to contravene, that condition, commits an offence.
- (9) A person who commits an offence under subsection (8) is liable—
  - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (10) The Financial Secretary may authorize any public officer as a person to whom information may be disclosed under subsection (3)(c)(vii).
- (11) In this section—

***specified person*** (指明人士) means—

  - (a) the Commissioner;
  - (b) a person employed in the Customs and Excise Department; or
  - (c) a person assisting the Commissioner in the performance of a function under this Ordinance.

## 50. Amendment of Schedule 3

The Commissioner may, by notice published in the Gazette, amend Schedule 3.



## 51. Regulations

The Commissioner of Customs and Excise may make regulations for the better carrying out of the provisions and purposes of this Part.

## 52. Offence to provide false information in connection with application for licence etc.

- (1) A person commits an offence if the person, in connection with an application for the grant or renewal of a licence—
  - (a) makes a statement that is false or misleading in a material particular; and
  - (b) knows that, or is reckless as to whether, the statement is false or misleading in a material particular.
- (2) A person commits an offence if the person, in connection with an application for the grant or renewal of a licence—
  - (a) omits a material particular from a statement with the result that the statement is rendered false or misleading; and
  - (b) knows that, or is reckless as to whether, the material particular is omitted from the statement.
- (3) A person who commits an offence under subsection (1) or (2) is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

## 53. Time limit for prosecution

Despite section 26 of the Magistrates Ordinance (Cap. 227), proceedings may be instituted for an offence, other than an indictable offence, under this Part within 12 months after the offence is discovered by, or comes to the notice of, the Commissioner.

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# Part 6

## Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal

### Division 1—Interpretation

## 54. Interpretation of Part 6

In this Part—

*application for review* (覆核申請) means an application made under section 59(1);

*parties* (各方), in relation to a review, means—

- (a) the specified authority that made the specified decision in question; and

(b) the person who makes the application for review;

**review** (覆核) means a review of a specified decision by the Tribunal under section 60(1);

**Secretary** (局長) means the Secretary for Financial Services and the Treasury;

**specified authority** (指明當局)—

- (a) in relation to a specified decision falling within paragraph (a) of the definition of **specified decision**, means the Monetary Authority;
- (b) in relation to a specified decision falling within paragraph (b) of the definition of **specified decision**, means the Securities and Futures Commission;
- (c) in relation to a specified decision falling within paragraph (c) of the definition of **specified decision**, means the Insurance Authority; and
- (d) in relation to a specified decision falling within paragraph (d) of the definition of **specified decision**, means the Commissioner;

**specified decision** (指明決定) means—

- (a) a decision of the Monetary Authority to exercise any of the powers under section 21;
- (b) a decision of the Securities and Futures Commission to exercise any of the powers under section 21;
- (c) a decision of the Insurance Authority to exercise any of the powers under section 21;
- (d) a decision of the Commissioner—
  - (i) to exercise any of the powers under section 21;
  - (ii) to impose a licence condition under section 30;
  - (iii) to refuse to grant a licence under section 30;
  - (iv) to amend or impose a licence condition under section 31;
  - (v) to refuse to renew a licence under section 31;
  - (vi) to amend or impose a licence condition under section 32;
  - (vii) to revoke or suspend a licence under section 34;
  - (viii) to refuse to give approval to a person becoming a director of a licensee under section 35;
  - (ix) to refuse to give approval to a person becoming an ultimate owner of a licensee under section 36;
  - (x) to refuse to give approval to a person becoming a partner in a partnership that is a licensee under section 37;
  - (xi) to refuse to grant an application to add new premises to a licence under section 38;

(xii) to refuse to grant an application to operate a money service at particular premises under section 39; or

(xiii) to exercise any of the powers under section 43;

**Tribunal** ( 審 裁 處 ) means the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal established by section 55.

## **Division 2—Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal**

### **55. Establishment of Tribunal**

- (1) There is established a tribunal to be known as the “Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal” in English and “打擊洗錢及恐怖分子資金籌集(金融機構)覆核審裁處” in Chinese.
- (2) The Tribunal has jurisdiction to review specified decisions and to hear and determine any question or issue arising out of or in connection with any review, in accordance with this Part and Schedule 4.
- (3) If the Secretary considers it appropriate to do so, the Secretary may establish additional tribunals for the purposes of any reviews, and the provisions of this Ordinance apply, with necessary modifications, to each of those additional tribunals as they apply to the Tribunal.

### **56. Composition of Tribunal**

- (1) Except as otherwise provided in Schedule 4, the Tribunal consists of—
  - (a) a chairperson; and
  - (b) 2 other members, appointed by the Secretary.
- (2) The chairperson of the Tribunal must be a person who—
  - (a) is eligible for appointment as a judge of the High Court under section 9 of the High Court Ordinance (Cap. 4); and
  - (b) is not a public officer or is a public officer by virtue only of being the chairperson of a board or tribunal established under an Ordinance.

### **57. Chairperson and other members of Tribunal may be paid fees**

- (1) The chairperson and other members of the Tribunal may be paid a fee for their services in an amount that the Secretary considers appropriate.
- (2) The amounts payable under this section are a charge on the general revenue.

**58. Schedule 4 has effect**

- (1) Schedule 4 has effect with respect to the Tribunal.
- (2) The Secretary may, by notice published in the Gazette, amend Schedule 4.

**59. Application for review of specified decisions**

- (1) A person who is aggrieved by a specified decision made in relation to the person may apply to the Tribunal for a review of the decision within the period ending 21 days after the notice informing the person of the decision has been sent.
- (2) Despite subsection (1) and subject to subsection (3), on an application by a person who is aggrieved by a specified decision—
  - (a) the Tribunal may by order extend the time within which an application for review of the specified decision may be made under subsection (1); and
  - (b) on the making of the order, the time within which the application may be made under subsection (1) is extended accordingly.
- (3) The Tribunal may only grant an extension under subsection (2)—
  - (a) after the applicant and the specified authority have been given a reasonable opportunity to be heard; and
  - (b) if it is satisfied that there is a good cause for granting the extension.
- (4) An application for review—
  - (a) must be in writing; and
  - (b) must state the grounds for the application.
- (5) The Tribunal must, as soon as reasonably practicable after receiving an application for review, send a copy of the application to the specified authority.

**60. Determination of review by Tribunal**

- (1) The Tribunal may determine a review of a specified decision by—
  - (a) confirming, varying or setting aside the decision and, if the decision is set aside, substituting for the decision any other decision that the Tribunal considers appropriate; or
  - (b) remitting the matter to the specified authority with any directions it considers appropriate.

- (2) If the Tribunal varies, or substitutes any other decision for, a specified decision under subsection (1)(a), the decision as varied or the other decision substituting for the specified decision may be any decision (whether more or less onerous than the decision varied or substituted) that the specified authority had power to make in respect of the person who makes the application for review in question, whether or not under the same provision as that under which the specified decision has been made.
- (3) In reviewing a specified decision, the Tribunal must give the parties to the review a reasonable opportunity to be heard.
- (4) For the purposes of proceedings before the Tribunal, matters of fact are to be established on a balance of probabilities.

## 61. Powers of Tribunal

- (1) Subject to Schedule 4, the Tribunal may, for the purposes of a review, on its own initiative or on the application of any party to the review—
  - (a) receive and consider any material by way of oral evidence, written statements or documents, whether or not the material would be admissible in a court of law;
  - (b) determine the manner in which any material mentioned in paragraph (a) is received;
  - (c) by notice in writing signed by the chairperson of the Tribunal, require a person to attend before it at any sitting and to give evidence and produce any article, record or document in the person's possession or control relating to the subject matter of the review;
  - (d) administer oaths;
  - (e) examine or cause to be examined on oath or otherwise a person attending before it and require the person to answer truthfully any question that the Tribunal considers appropriate for the purpose of the review;
  - (f) order a witness to provide evidence for the purpose of the review by affidavit;
  - (g) order a person not to publish or otherwise disclose any material the Tribunal receives;
  - (h) prohibit the publication or disclosure of any material the Tribunal receives at any sitting, or any part of a sitting, that is held in private;
  - (i) stay any of the proceedings in the review on any grounds and on any terms and conditions that it considers appropriate having regard to the interests of justice; and
  - (j) determine the procedure to be followed in the review.
- (2) A person commits an offence if the person, without reasonable excuse—

- (a) fails to comply with an order, notice, prohibition or requirement of the Tribunal made, given or imposed under subsection (1);
  - (b) disrupts any sitting of the Tribunal or otherwise misbehaves during any sitting of the Tribunal;
  - (c) having been required by the Tribunal under subsection (1) to attend before the Tribunal, leaves the place where the person's attendance is so required without the permission of the Tribunal;
  - (d) hinders or deters any person from attending before the Tribunal, giving evidence or producing any article, record or document, for the purpose of a review;
  - (e) threatens, insults or causes any loss to be suffered by any person who has attended before the Tribunal, on account of that attendance; or
  - (f) threatens, insults or causes any loss to be suffered by the chairperson, or any other member, of the Tribunal at any time on account of the performance of the chairperson's or member's functions in that capacity.
- (3) A person who commits an offence under subsection (2) is liable—
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (4) A person is not excused from complying with an order, notice, prohibition or requirement of the Tribunal made, given or imposed under subsection (1) only on the ground that to do so might tend to incriminate the person.

## **62. Use of incriminating evidence given under compulsion**

- (1) This section applies to any evidence, answer or information given or provided by a person in accordance with a requirement or order of the Tribunal imposed or made under section 61(1)(c), (e) or (f).
- (2) Despite anything in this Ordinance and subject to subsection (3), neither the evidence, answer or information given or provided by the person nor the requirement or order imposed or made by the Tribunal is admissible in evidence against the person in criminal proceedings in a court of law.
- (3) Subsection (2) does not apply to criminal proceedings in which the person is charged with an offence under section 61(2)(a), or under Part V of the Crimes Ordinance (Cap. 200), or with perjury, in respect of the evidence, answer or information.

## **63. Contempt dealt with by Tribunal**

- (1) The Tribunal has the same powers as the Court of First Instance to punish for contempt.

- (2) Without limiting the powers of the Tribunal under subsection (1), the Tribunal has the same powers as the Court of First Instance to punish for contempt, as if it were contempt of court, a person who, without reasonable excuse, engages in any conduct falling within section 61(2)(a), (b), (c), (d), (e) or (f).
- (3) The Tribunal must, in the exercise of its powers to punish for contempt under this section, adopt the same standard of proof as the Court of First Instance in the exercise of the same powers to punish for contempt.
- (4) Despite anything in this Ordinance—
  - (a) no power may be exercised under this section to determine whether to punish a person for contempt in respect of any conduct if—
    - (i) criminal proceedings have previously been instituted against the person under section 61(2) in respect of the same conduct; and
    - (ii) those criminal proceedings remain pending or because of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against the person under that section in respect of the same conduct; and
  - (b) no criminal proceedings may be instituted against a person under section 61(2) in respect of any conduct if—
    - (i) any power has previously been exercised under this section to determine whether to punish the person for contempt in respect of the same conduct; and
    - (ii) proceedings arising from the exercise of that power remain pending or because of the previous exercise of that power, no power may again be lawfully exercised under this section to determine whether to punish the person for contempt in respect of the same conduct.

#### **64. Privileged information**

This Part and Schedule 4 do not require an authorized institution, acting as the banker or financial adviser of a person who makes an application for review, to disclose information in relation to the affairs of any of its customers other than that person.

#### **65. Costs**

- (1) The Tribunal may, in relation to a review, by order award to—
  - (a) any person whose attendance, whether or not as a witness, has been necessary or required for the purposes of the review; or
  - (b) any party to the review,

any sum that it considers appropriate in respect of the costs reasonably incurred by the person, or the party, in relation to the review and the application for review in question.

- (2) Costs awarded under subsection (1) must be paid by, and are recoverable as a civil debt from—
  - (a) if they are awarded to a person under subsection (1)(a), any party to the review that the Tribunal considers appropriate; or
  - (b) if they are awarded to a party to the review under subsection (1)(b), the other party to the review.
- (3) Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A) applies to the award of costs, and to the taxation of any costs awarded, by the Tribunal under subsection (1).

## **66. Notification of Tribunal determinations**

- (1) The Tribunal must, as soon as reasonably practicable after completing a review, deliver—
  - (a) its determination and the reasons for the determination; and
  - (b) any order made under section 65 in relation to the review and the reasons for the order.
- (2) If a sitting, or any part of a sitting, of the Tribunal relating to a review is held in private, the Tribunal may by order prohibit the publication or disclosure of—
  - (a) its determination, or the reasons for the determination, referred to in subsection (1)(a), or any part of the determination or reasons; or
  - (b) an order, or the reasons for an order, referred to in subsection (1)(b), or any part of such an order or any part of the reasons for such an order.
- (3) A person commits an offence if the person, without reasonable excuse, fails to comply with an order of the Tribunal made under subsection (2).
- (4) A person who commits an offence under subsection (3) is liable—
  - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

## **67. Form and proof of orders of Tribunal**

- (1) An order made by the Tribunal must be recorded in writing and be signed by the chairperson of the Tribunal.
- (2) A document purporting to be an order of the Tribunal signed by the chairperson of the Tribunal is, in the absence of evidence to the contrary, presumed to be an order of the Tribunal duly made and signed, without proof of its making, or proof of signature, or proof that the person signing the order was in fact the chairperson of the Tribunal.



**68. Orders of Tribunal may be registered in Court of First Instance**

- (1) After receiving a notice in writing given by the Tribunal in the manner prescribed by rules made by the Chief Justice under section 76, the Court of First Instance may register an order of the Tribunal in the Court of First Instance.
- (2) An order registered under subsection (1) is to be regarded for all purposes as an order of the Court of First Instance made within the jurisdiction of that Court.

**69. Applications for stay of execution of specified decisions**

- (1) Subject to subsections (2) and (3), the making of an application for review does not by itself operate as a stay of execution of the specified decision to which the application relates.
- (2) A person who makes an application for review or an application under section 59(2) may, at any time before the review or the application is determined by the Tribunal, apply to the Tribunal for a stay of execution of the specified decision to which the application relates.
- (3) The Tribunal must, as soon as reasonably practicable after receiving an application under subsection (2), conduct a hearing to determine the application.
- (4) The Tribunal may by order grant the stay subject to any condition as to costs, payment of money into the Tribunal or other matters that the Tribunal considers appropriate.

**70. Applications for stay of execution of determinations of Tribunal**

- (1) A party to a review may, at any time after the determination of the review by the Tribunal, apply to the Tribunal for a stay of execution of the determination.
- (2) On an application under subsection (1), the Tribunal may by order grant the stay subject to any condition as to costs, payment of money into the Tribunal or other matters that the Tribunal considers appropriate.

**Division 3—Appeals to Court of Appeal****71. Appeal to Court of Appeal with leave**

- (1) Subject to subsection (2), if a party to a review is dissatisfied with the determination of the review, the party may appeal to the Court of Appeal against the determination on a question of law or a question of fact or a question of mixed law and fact.
- (2) No appeal may be made under subsection (1) unless leave to appeal has been granted by the Court of Appeal.
- (3) Leave to appeal for the purpose of subsection (2) may be granted—

- (a) in respect of a particular issue arising out of the determination; and
  - (b) subject to any condition that the Court of Appeal considers necessary in order to secure the just, expeditious and economical disposal of the appeal.
- (4) Leave to appeal for the purpose of subsection (2) may only be granted if the Court of Appeal is satisfied that—
- (a) the appeal has a reasonable prospect of success; or
  - (b) there is some other reason in the interests of justice why the appeal should be heard.

## **72. Powers of the Court of Appeal**

- (1) The Court of Appeal may, in relation to an appeal against a determination of the Tribunal—
- (a) allow the appeal;
  - (b) dismiss the appeal;
  - (c) vary or set aside the determination and, if the determination is set aside, substitute for the determination any other determination that it considers appropriate; or
  - (d) remit the matter to the Tribunal or to the specified authority with any directions it considers appropriate.
- (2) If the Court of Appeal varies, or substitutes any other determination for, a determination under subsection (1)(c), the determination as varied or the other determination substituting for the determination may be any determination (whether more or less onerous than the determination varied or substituted) that the Tribunal had power to make in respect of the review in question, whether or not under the same provision as that under which the determination has been made.
- (3) In an appeal under this section, the Court of Appeal may make any order for payment of costs as it considers appropriate.

## **73. No stay of execution of Tribunal's determination on appeal**

- (1) Without prejudice to section 70, the lodging of an appeal under section 71 does not by itself operate as a stay of execution of the determination of the Tribunal appealed against.
- (2) If an appeal is lodged under section 71, the Court of Appeal may, on an application made to it by any party to the review, order a stay of execution of the determination of the Tribunal appealed against.
- (3) The Court of Appeal may, when making an order under subsection (2), impose any condition that the Court of Appeal considers appropriate, including conditions as to costs and payment of money into the Tribunal.

**74. No other right of appeal**

Subject to section 50 of the High Court Ordinance (Cap. 4) and section 71, the determination of the Tribunal is final and is not subject to appeal.

**Division 4—Miscellaneous****75. Time when specified decisions take effect**

- (1) Except as otherwise provided in this Ordinance, a specified decision takes effect—
- (a) where, before the expiry of the period of 21 days specified in section 59(1), the person in relation to whom the decision is made notifies the specified authority in writing that the person will not apply for a review of the decision, at the time the person so notifies the specified authority;
  - (b) where, within the period of 21 days specified in section 59(1), the person neither notifies the specified authority that the person will not apply for a review of the decision nor applies for a review of the decision, at the time the period expires; or
  - (c) where the person applies for a review of the decision within the period of 21 days specified in section 59(1) —
    - (i) if the decision is confirmed by the Tribunal, at the time the decision is so confirmed;
    - (ii) if the decision is varied, or substituted by another decision, by the Tribunal, at the time the decision is varied or substituted, subject however to the terms of the variation or substitution; or
    - (iii) if the application is withdrawn, at the time the application is withdrawn.
- (2) Despite subsection (1), the specified authority may, if it considers it appropriate in the public interest to do so in relation to a specified decision, specify in the notice in respect of the decision any time, other than that at which the decision is apart from this subsection to take effect, as the time at which the decision is to take effect, in which case the decision takes effect at the time so specified.

**76. Power of Chief Justice to make rules**

The Chief Justice may make rules—

- (a) providing for matters relating to the registration of an order of the Tribunal in the Court of First Instance under section 68(1); or
- (b) regulating the procedure for the hearing of appeals under section 71.

## Part 7

### Miscellaneous Provisions

#### 77. Regulations by Chief Executive in Council

- (1) The Chief Executive in Council may make regulations for the better carrying out of the provisions and purposes of this Ordinance (except Part 5).
- (2) Without limiting subsection (1), the regulations may include any savings, transitional, incidental, supplemental, evidential and consequential provisions (whether involving the provisions of any principal legislation or provisions of any subsidiary legislation).

#### 78. Standard of proof

If it is necessary for a relevant authority to establish or to be satisfied, for the purposes of any provision of this Ordinance (other than provisions relating to criminal proceedings or to an offence), that—

- (a) a person has contravened—
  - (i) any provision of any Ordinance;
  - (ii) any notice or requirement given or imposed under any Ordinance;
  - (iii) any of the conditions of any licence under this Ordinance; or
  - (iv) any other condition imposed under this Ordinance;
- (b) a person has been responsible for an unlawful act or omission;
- (c) a person has assisted, counselled, procured or induced any other person to do anything which results in the occurrence of any of the matters referred to in paragraph (a) or (b);
- (d) a person has been concerned in, or a party to, anything which results in the occurrence of any of the matters referred to in paragraph (a) or (b);
- (e) a person has attempted, or conspired with any other person, to commit anything which results in the occurrence of any of the matters referred to in paragraph (a) or (b); or
- (f) any of the matters referred to in paragraphs (a), (b), (c), (d) and (e) might occur,

it is sufficient for the relevant authority to establish, or to be satisfied as to, the matter referred to in paragraph (a), (b), (c), (d), (e) or (f), as the case requires, on the standard of proof applicable to civil proceedings in a court of law.

#### 79. Prosecution of offences by relevant authorities

- (1) A relevant authority may prosecute an offence under this Ordinance, or an offence of conspiracy to commit such an offence, in its own name but if a relevant authority so prosecutes, the offence must be tried before a magistrate as an offence that is triable summarily.
- (2) For the purpose of the prosecution of an offence mentioned in subsection (1), an employee or staff member of the relevant authority who is not qualified to practise as a barrister or to act as a solicitor under the Legal Practitioners Ordinance (Cap. 159)—
  - (a) may appear and plead before a magistrate in any case of which the employee or member has charge; and
  - (b) has, in relation to the prosecution, all the other rights of a person qualified to practise as a barrister or to act as a solicitor under that Ordinance.
- (3) This section does not derogate from the powers of the Secretary for Justice in respect of the prosecution of criminal offences.

#### **80. Giving of notices by relevant authorities**

- (1) A notice or other document (however described) authorized or required to be given or sent by the Commissioner to a licensee under this Ordinance is to be regarded for all purposes as duly given or sent if it is left at, or sent by post to, the premises or any of the premises specified in the licensee's licence as premises at which the licensee may operate a money service.
- (2) Section 127 of the Insurance Ordinance (Cap. 41) applies, with necessary modifications, in relation to the giving or sending of a notice or other document (however described) authorized or required to be given or sent by the Insurance Authority to a person under this Ordinance as it applies in relation to the giving or serving of a notice or other document referred to in that section. (*Amended 12 of 2015 s. 161*)
- (3) Section 134 of the Banking Ordinance (Cap. 155) applies, with necessary modifications, in relation to the giving or sending of a notice or other document (however described) authorized or required to be given or sent by the Monetary Authority to a person under this Ordinance as it applies in relation to the serving of a notice referred to in that section.
- (4) Section 400 of the Securities and Futures Ordinance (Cap. 571) applies, with necessary modifications, in relation to the giving or sending of a notice or other document (however described) authorized or required to be given or sent by the Securities and Futures Commission to a person under this Ordinance as it applies in relation to the issuing or serving of a notice, direction or other document referred to in that section.

#### **81. Legal professional privilege**

- (1) Subject to subsection (2), this Ordinance does not affect any claims, rights or entitlements that would, apart from this Ordinance, arise on the ground of legal professional privilege.
- (2) Subsection (1) does not affect any requirement made under this Ordinance to disclose the name and address of a client of a legal practitioner (whether or not the legal practitioner is qualified in Hong Kong to practise as counsel or to act as a solicitor).

**82. Transitional provision with regard to money changers and remittance agents carrying on business before commencement of this Ordinance**

- (1) A person whose name was entered in the register maintained under section 24B(2) of the pre-amended Organized and Serious Crimes Ordinance as a money changer immediately before the commencement date is, on that date, deemed to have been granted a licence to operate a money service at all the premises entered in the register immediately before that date as premises at which the person carries on business as a money changer, and this Ordinance applies to the person accordingly.
- (2) A person whose name was entered in the register maintained under section 24B(2) of the pre-amended Organized and Serious Crimes Ordinance as a remittance agent immediately before the commencement date is, on that date, deemed to have been granted a licence to operate a money service at all the premises entered in the register immediately before that date as premises at which the person provides a service as a remittance agent, and this Ordinance applies to the person accordingly.
- (3) A licence deemed to have been granted under subsection (1) or (2) remains in force—
  - (a) until the expiry of the period of 60 days beginning on the commencement date; or
  - (b) if the person has applied for a licence under section 30 before the expiry of that period, until—
    - (i) the licence is granted;
    - (ii) the Commissioner's decision to refuse to grant a licence takes effect; or
    - (iii) the application is withdrawn,
 whichever is the earliest.

- (4) In this section—

**commencement date** (生效日期) means the date of commencement of this Ordinance;

**money changer** (貨幣兌換商) has the meaning given by section 24A of the pre-amended Organized and Serious Crimes Ordinance;

**pre-amended Organized and Serious Crimes Ordinance** (修訂前的《有組織及嚴重罪行條例》) means the Organized and

Serious Crimes Ordinance (Cap. 455) in force immediately before the commencement date;

**remittance agent** (匯款代理人) has the meaning given by section 24A of the pre-amended Organized and Serious Crimes Ordinance.

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## Part 8

*(Omitted as spent—E.R. 2 of 2012)*

**Division 1**—*(Omitted as spent—E.R. 2 of 2012)*

83. *(Omitted as spent—E.R. 2 of 2012)*

**Division 2**—*(Omitted as spent—E.R. 2 of 2012)*

84. *(Omitted as spent—E.R. 2 of 2012)*

**Division 3**—*(Omitted as spent—E.R. 2 of 2012)*

85. *(Omitted as spent—E.R. 2 of 2012)*

**Division 4**—*(Omitted as spent—E.R. 2 of 2012)*

86. *(Omitted as spent—E.R. 2 of 2012)*

**Division 5**—*(Omitted as spent—E.R. 2 of 2012)*

87. *(Omitted as spent—E.R. 2 of 2012)*

**Division 6**—*(Omitted as spent—E.R. 2 of 2012)*

88. *(Omitted as spent—E.R. 2 of 2012)*

89. *(Omitted as spent—E.R. 2 of 2012)*

90. *(Omitted as spent—E.R. 2 of 2012)*

91. *(Omitted as spent—E.R. 2 of 2012)*

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## Schedule 1

[s. 2]

# Interpretation

## Part 1

1. In this Ordinance—

**currency** (貨幣) includes a cheque and a traveller's cheque;

**designated retail payment system** (指定零售支付系統) has the meaning given by section 2 of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584); (*Added 18 of 2015 s. 71*)

**document** (文件) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

**function** (職能) includes power and duty;

**money** (金錢) means money in whatever form or currency;

**money changing service** (貨幣兌換服務) means a service for the exchanging of currencies that is operated in Hong Kong as a business, but does not include such a service that is operated by a person who manages a hotel if the service—

- (a) is operated within the premises of the hotel primarily for the convenience of guests of the hotel; and
- (b) consists solely of transactions for the purchase by that person of non-Hong Kong currencies in exchange for Hong Kong currency;

**money laundering** (洗錢) means an act intended to have the effect of making any property—

- (a) that is the proceeds obtained from the commission of an indictable offence under the laws of Hong Kong, or of any conduct which if it had occurred in Hong Kong would constitute an indictable offence under the laws of Hong Kong; or
- (b) that in whole or in part, directly or indirectly, represents such proceeds,

not to appear to be or so represent such proceeds;

**money service** (金錢服務) means—

- (a) a money changing service; or
- (b) a remittance service;

**property** (財產) includes—

- (a) money, goods, choses in action and land, whether in Hong Kong or elsewhere; and
- (b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in paragraph (a);

**record** (紀錄) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);



**remittance service** (匯款服務) means a service of one or more of the following that is operated in Hong Kong as a business—

- (a) sending, or arranging for the sending of, money to a place outside Hong Kong;
- (b) receiving, or arranging for the receipt of, money from a place outside Hong Kong;
- (c) arranging for the receipt of money in a place outside Hong Kong;

**Review Tribunal** (覆核審裁處) means the Tribunal as defined by section 54;

**stored value facility** (儲值支付工具) has the meaning given by section 2A of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584); (*Added 18 of 2015 s. 71*)

**terrorist financing** (恐怖分子資金籌集) means—

- (a) the provision or collection, by any means, directly or indirectly, of any property— (*Amended 20 of 2012 s. 12*)
  - (i) with the intention that the property be used; or
  - (ii) knowing that the property will be used,
 

in whole or in part, to commit one or more terrorist acts (whether or not the property is actually so used); (*Amended 20 of 2012 s. 12*)
- (b) the making available of any property or financial (or related) services, by any means, directly or indirectly, to or for the benefit of a person knowing that, or being reckless as to whether, the person is a terrorist or terrorist associate; or (*Amended 20 of 2012 s. 12*)
- (c) the collection of property or solicitation of financial (or related) services, by any means, directly or indirectly, for the benefit of a person knowing that, or being reckless as to whether, the person is a terrorist or terrorist associate. (*Added 20 of 2012 s. 12*)

2. In the definition of **terrorist financing**, **terrorist** (恐怖分子), **terrorist act** (恐怖主義行為) and **terrorist associate** (與恐怖分子有聯繫者) have the meaning given by section 2(1) of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575).

*(Amended 20 of 2012 s. 12)*

3. A person who only provides to financial institutions a message system or other support systems for transmitting funds is not, for the purposes of this Ordinance, to be regarded as a person operating a remittance service.

## Part 2

1. In this Ordinance—  
**appointed insurance agent** (獲委任保險代理人) has the meaning

given by section 2(1) of the Insurance Companies Ordinance (Cap. 41);

**authorized institution** (認可機構) has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155);

**authorized insurance broker** (獲授權保險經紀) has the meaning given by section 2(1) of the Insurance Companies Ordinance (Cap. 41);

**authorized insurer** (獲授權保險人) means an insurer authorized under the Insurance Ordinance (Cap. 41); (*Amended 12 of 2015 s. 162*)

**Commissioner** (關長) means the Commissioner of Customs and Excise, any Deputy Commissioner of Customs and Excise, any Assistant Commissioner of Customs and Excise or a person to whom the Commissioner of Customs and Excise has delegated any of his or her functions under section 26;

**financial institution** (金融機構) means—

- (a) an authorized institution;
- (b) a licensed corporation;
- (c) an authorized insurer;
- (d) an appointed insurance agent;
- (e) an authorized insurance broker;
- (f) a licensed money service operator; (*Amended 18 of 2015 s. 71*)
- (g) the Postmaster General; or (*Amended 18 of 2015 s. 71*)
- (h) an SVF licensee; (*Added 18 of 2015 s. 71*)

**Insurance Authority** (保監局) means the Insurance Authority established under section 4AAA of the Insurance Ordinance (Cap. 41); (*Replaced 12 of 2015 s. 162*)

**licensed corporation** (持牌法團) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

**licensed money service operator** (持牌金錢服務經營者) means the holder of a licence as defined by section 24;

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

**Postmaster General** (郵政署署長) means the Postmaster General of Hong Kong, and includes the deputy postmaster general and every assistant postmaster general;

**relevant authority** (有關當局)—

- (a) in relation to an authorized institution or SVF licensee, means the Monetary Authority; (*Amended 18 of 2015 s. 71*)
- (b) in relation to a licensed corporation, means the Securities and Futures Commission;

- (c) in relation to an authorized insurer, appointed insurance agent or authorized insurance broker, means the Insurance Authority; and
- (d) in relation to a licensed money service operator or to the Postmaster General, means the Commissioner;

**Securities and Futures Commission** (證監會) means the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap. 571); (*Amended 18 of 2015 s. 71*)

**settlement institution** (交收機構) has the meaning given by section 2 of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584); (*Added 18 of 2015 s. 71*)

**SVF licensee** (工具持牌人) means a person who is granted a licence under section 8F of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584); (*Added 18 of 2015 s. 71*)

**system operator** (系統營運者) has the meaning given by section 2 of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584). (*Added 18 of 2015 s. 71*)

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## Schedule 2

[ss. 3, 5, 6 & 7]

# Requirements Relating to Customer Due Diligence and Record-keeping

## Part 1

### Interpretation

#### 1. Interpretation

(1) In this Schedule—

**beneficial owner** (實益擁有人)—

(a) in relation to a corporation—

(i) means an individual who—

- (A) owns or controls, directly or indirectly, including through a trust or bearer share holding, not less than 10% of the issued share capital of the corporation;
- (B) is, directly or indirectly, entitled to exercise or control the exercise of not less than 10% of the voting rights at general meetings of the corporation; or
- (C) exercises ultimate control over the management of the corporation; or

- (ii) if the corporation is acting on behalf of another person, means the other person;
- (b) in relation to a partnership—
  - (i) means an individual who—
    - (A) is entitled to or controls, directly or indirectly, not less than a 10% share of the capital or profits of the partnership;
    - (B) is, directly or indirectly, entitled to exercise or control the exercise of not less than 10% of the voting rights in the partnership; or
    - (C) exercises ultimate control over the management of the partnership; or
  - (ii) if the partnership is acting on behalf of another person, means the other person;
- (c) in relation to a trust, means—
  - (i) an individual who is entitled to a vested interest in not less than 10% of the capital of the trust property, whether the interest is in possession or in remainder or reversion and whether it is defeasible or not;
  - (ii) the settlor of the trust;
  - (iii) a protector or enforcer of the trust; or
  - (iv) an individual who has ultimate control over the trust; and
- (d) in relation to a person not falling within paragraph (a), (b) or (c)—
  - (i) means an individual who ultimately owns or controls the person; or
  - (ii) if the person is acting on behalf of another person, means the other person;

***business relationship*** (業務關係), as between a person and a financial institution, means a business, professional or commercial relationship—

- (a) that has an element of duration; or
- (b) that the financial institution, at the time the person first contacts the financial institution in the person's capacity as a potential customer of the financial institution, expects to have an element of duration;

***correspondent banking*** (代理銀行服務) means the provision of banking services by an authorized institution to another institution to enable the latter to provide services and products to its own customers;

***customer due diligence measures*** (客戶盡職審查措施) means the measures set out in section 2(1) of this Schedule;

***equivalent jurisdiction*** (對等司法管轄區) means—

- (a) a jurisdiction that is a member of the Financial Action Task Force, other than Hong Kong; or

- (b) a jurisdiction that imposes requirements similar to those imposed under this Schedule;

**Financial Action Task Force** (財務特別行動組織) means the Financial Action Task Force on Money Laundering established by the G-7 Summit held in Paris in 1989;

**identification document** (識別文件)—

- (a) in relation to an individual, means his or her identity card, certificate of identity, document of identity or travel document, as defined by section 2(1) of the Immigration Ordinance (Cap. 115);
- (b) in relation to a company as defined by section 2(1) of the Companies Ordinance (Cap. 622), means the certificate of incorporation issued in respect of the company under the Ordinance under which the company was formed and registered; (*Replaced 28 of 2012 ss. 912 & 920*)
- (c) in relation to a registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap. 622), means the certificate of registration issued in respect of the company under the Ordinance under which the company was registered as a registered non-Hong Kong company; (*Replaced 28 of 2012 ss. 912 & 920*)
- (d) in relation to a corporation that is incorporated in a place outside Hong Kong other than a company falling within paragraph (c), means its certificate of incorporation or registration, or any other document evidencing its incorporation, issued by an authority in that place that performs functions similar to those of the Registrar of Companies;
- (e) in relation to a partnership that carries on business in Hong Kong, means its business registration certificate issued under section 6 of the Business Registration Ordinance (Cap. 310); and
- (f) in relation to a partnership that does not carry on business in Hong Kong, means its partnership agreement or any document evidencing its formation or registration issued by a governmental body;

**legal person** (法人) includes any public body and any body of persons, corporate or unincorporate;

**occasional transaction** (非經常交易) means a transaction between a financial institution and a customer who does not have a business relationship with the financial institution;

**politically exposed person** (政治人物) means—

- (a) an individual who is or has been entrusted with a prominent public function in a place outside the People's Republic of China and—

- (i) includes a head of state, head of government, senior politician, senior government, judicial or military official, senior executive of a state-owned corporation and an important political party official; but
- (ii) does not include a middle-ranking or more junior official of any of the categories mentioned in subparagraph (i);
- (b) a spouse, a partner, a child or a parent of an individual falling within paragraph (a), or a spouse or a partner of a child of such an individual; or
- (c) a close associate of an individual falling within paragraph (a);

**pre-existing customer** ( 先前客戶 ), in relation to a financial institution, means a customer with whom the financial institution has established a business relationship before the date of commencement of this Ordinance;

**public body** ( 公共機構 ) includes—

- (a) any executive, legislative, municipal or urban council;
  - (b) any Government department or undertaking;
  - (c) any local or public authority or undertaking;
  - (d) any board, commission, committee or other body, whether paid or unpaid, appointed by the Chief Executive or the Government; and
  - (e) any board, commission, committee or other body that has power to act in a public capacity under or for the purposes of any enactment.
- (2) For the purposes of paragraph (b) of the definition of **politically exposed person** in subsection (1), a person is a partner of an individual if the person is considered by the law of the place where the person and the individual live together as equivalent to a spouse of the individual.
- (3) For the purposes of paragraph (c) of the definition of **politically exposed person** in subsection (1), a person is a close associate of an individual if the person is—
- (a) an individual who has close business relations with the first-mentioned individual, including an individual who is a beneficial owner of a legal person or trust of which the first-mentioned individual is also a beneficial owner; or
  - (b) an individual who is the beneficial owner of a legal person or trust that is set up for the benefit of the first-mentioned individual.

- (4) For the purposes of this Schedule, a wire transfer is a transaction carried out by an institution (referred to in this Schedule as *ordering institution*) on behalf of a person by electronic means with a view to making an amount of money available to that person or another person (referred to in this Schedule as *recipient*) at an institution (referred to in this Schedule as *beneficiary institution*), which may be the ordering institution or another institution, whether or not one or more other institutions (referred to in this Schedule as *intermediary institutions*) participate in completion of the transfer of the money.

## Part 2

### Customer Due Diligence Requirements

#### Division 1—General

#### 2. What are customer due diligence measures

- (1) The following measures are customer due diligence measures applicable to a financial institution—
- (a) identifying the customer and verifying the customer's identity on the basis of documents, data or information provided by—
    - (i) a governmental body;
    - (ii) the relevant authority or any other relevant authority;
    - (iii) an authority in a place outside Hong Kong that performs functions similar to those of the relevant authority or any other relevant authority; or
    - (iv) any other reliable and independent source that is recognized by the relevant authority;
  - (b) if there is a beneficial owner in relation to the customer, identifying the beneficial owner and, subject to subsection (2), taking reasonable measures to verify the beneficial owner's identity so that the financial institution is satisfied that it knows who the beneficial owner is, including, where the customer is a legal person or trust, measures to enable the financial institution to understand the ownership and control structure of the legal person or trust;
  - (c) if a business relationship is to be established, obtaining information on the purpose and intended nature of the business relationship with the financial institution, unless the purpose and intended nature are obvious; and

- (d) if a person purports to act on behalf of the customer—
  - (i) identifying the person and taking reasonable measures to verify the person's identity on the basis of documents, data or information provided by—
    - (A) a governmental body;
    - (B) the relevant authority or any other relevant authority;
    - (C) an authority in a place outside Hong Kong that performs functions similar to those of the relevant authority or any other relevant authority; or
    - (D) any other reliable and independent source that is recognized by the relevant authority; and
  - (ii) verifying the person's authority to act on behalf of the customer.
- (2) Except where a situation referred to in section 15 of this Schedule exists, if an individual is a beneficial owner of a customer by virtue of paragraph (a)(i)(A) or (B), (b)(i)(A) or (B) or (c)(i) of the definition of *beneficial owner* in section 1(1) of this Schedule, the financial institution is not required to verify the identity of the individual unless—
  - (a) for an individual falling within paragraph (a)(i)(A) of that definition, the individual owns or controls, directly or indirectly, including through a trust or bearer share holding, not less than 25% of the issued share capital of the relevant corporation;
  - (b) for an individual falling within paragraph (a)(i)(B) of that definition, the individual is, directly or indirectly, entitled to exercise or control the exercise of not less than 25% of the voting rights at general meetings of the relevant corporation;
  - (c) for an individual falling within paragraph (b)(i)(A) of that definition, the individual is entitled to or controls, directly or indirectly, not less than a 25% share of the capital or profits of the relevant partnership;
  - (d) for an individual falling within paragraph (b)(i)(B) of that definition, the individual is, directly or indirectly, entitled to exercise or control the exercise of not less than 25% of the voting rights in the relevant partnership; or
  - (e) for an individual falling within paragraph (c)(i) of that definition, the individual is entitled to a vested interest in not less than 25% of the capital of the relevant trust property, whether the interest is in possession or in remainder or reversion and whether it is defeasible or not.



### 3. When customer due diligence measures must be carried out

- (1) Subject to section 4 of this Schedule, a financial institution must carry out customer due diligence measures in relation to a customer in the following circumstances—
  - (a) subject to subsection (2), before establishing a business relationship with the customer;
  - (b) before carrying out for the customer an occasional transaction involving an amount equal to or above \$120,000 or an equivalent amount in any other currency, whether the transaction is carried out in a single operation or in several operations that appear to the financial institution to be linked;
  - (c) despite paragraph (b), before carrying out for the customer an occasional transaction that is a wire transfer involving an amount equal to or above \$8,000 or an equivalent amount in any other currency, whether the transaction is carried out in a single operation or in several operations that appear to the financial institution to be linked;
  - (d) when the financial institution suspects that the customer or the customer's account is involved in money laundering or terrorist financing;
  - (e) when the financial institution doubts the veracity or adequacy of any information previously obtained for the purpose of identifying the customer or for the purpose of verifying the customer's identity.
- (2) Despite subsection (1)(a), a financial institution may verify the identity of a customer and any beneficial owner of the customer after establishing a business relationship with the customer if—
  - (a) this is necessary not to interrupt the normal conduct of business with regard to the customer; and
  - (b) any risk of money laundering or terrorist financing that may be caused by carrying out the verification after establishing the business relationship is effectively managed.
- (3) A financial institution that carries out verification after establishing a business relationship with a customer under subsection (2) must complete the verification as soon as reasonably practicable after establishing the business relationship.
- (4) If a financial institution is unable to comply with subsection (1) or (3), it—
  - (a) must not establish a business relationship or carry out any occasional transaction with that customer; or
  - (b) if it has already established a business relationship with that customer, must terminate the business relationship as soon as reasonably practicable.

#### 4. Simplified customer due diligence

- (1) In any of the circumstances set out in section 3(1)(a), (b) and (c) of this Schedule, a financial institution may, instead of carrying out all the customer due diligence measures, carry out only the measures set out in section 2(1)(a), (c) and (d) of this Schedule in relation to a customer if it has reasonable grounds to believe that the customer falls within subsection (3).
- (2) If a customer of a financial institution not falling within subsection (3) has in its beneficial ownership chain an entity that falls within that subsection, the financial institution is not required, when carrying out the measure set out in section 2(1)(b) of this Schedule in respect of the beneficial owners in that chain in any of the circumstances set out in section 3(1)(a), (b) and (c) of this Schedule, to identify, or verify the identities of, the beneficial owners of that entity or of any person in that chain beyond that entity.
- (3) The customer is—
  - (a) a financial institution;
  - (b) an institution that—
    - (i) is incorporated or established in an equivalent jurisdiction;
    - (ii) carries on a business similar to that carried on by a financial institution;
    - (iii) has measures in place to ensure compliance with requirements similar to those imposed under this Schedule; and
    - (iv) is supervised for compliance with those requirements by an authority in that jurisdiction that performs functions similar to those of any of the relevant authorities;
  - (c) a corporation listed on any stock exchange;
  - (d) an investment vehicle where the person responsible for carrying out measures that are similar to the customer due diligence measures in relation to all the investors of the investment vehicle is—
    - (i) a financial institution;
    - (ii) an institution that—
      - (A) is incorporated or established in Hong Kong;
      - (B) has measures in place to ensure compliance with requirements similar to those imposed under this Schedule; and
      - (C) is supervised for compliance with those requirements; or
    - (iii) an institution that—
      - (A) is incorporated or established in an equivalent jurisdiction;

- (B) has measures in place to ensure compliance with requirements similar to those imposed under this Schedule; and
    - (C) is supervised for compliance with those requirements;
  - (e) the Government or any public body in Hong Kong; or
  - (f) the government of an equivalent jurisdiction or a body in an equivalent jurisdiction that performs functions similar to those of a public body.
- (4) In any of the circumstances set out in section 3(1)(a), (b) and (c) of this Schedule, a financial institution may, instead of carrying out all the customer due diligence measures, carry out only the measures set out in section 2(1)(a), (c) and (d) of this Schedule in relation to a customer if it has reasonable grounds to believe that the product related to the transaction falls within subsection (5).
- (5) The product is—
- (a) a provident, pension, retirement or superannuation scheme (however described) that provides retirement benefits to employees, where contributions to the scheme are made by way of deduction from income from employment and the scheme rules do not permit the assignment of a member's interest under the scheme;
  - (b) an insurance policy for the purposes of a provident, pension, retirement or superannuation scheme (however described) that does not contain a surrender clause and cannot be used as a collateral; or
  - (c) a life insurance policy in respect of which—
    - (i) an annual premium of no more than \$8,000 or an equivalent amount in any other currency is payable; or
    - (ii) a single premium of no more than \$20,000 or an equivalent amount in any other currency is payable.
- (6) If a customer of a financial institution is a solicitor or a firm of solicitors, the financial institution is not required, in any of the circumstances set out in section 3(1)(a), (b) and (c) of this Schedule, to carry out the measure set out in section 2(1)(b) of this Schedule in relation to an account—
- (a) that is kept in the name of the customer;
  - (b) in which moneys or securities of the customer's clients are mingled; and
  - (c) that is managed by the customer as those clients' agent.
- (7) In this section—
- securities** (證券) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).

## 5. Duty to continuously monitor business relationships

- (1) A financial institution must continuously monitor its business relationship with a customer by—
  - (a) reviewing from time to time documents, data and information relating to the customer that have been obtained by the financial institution for the purpose of complying with the requirements imposed under this Part to ensure that they are up-to-date and relevant;
  - (b) conducting appropriate scrutiny of transactions carried out for the customer to ensure that they are consistent with the financial institution's knowledge of the customer and the customer's business and risk profile, and with its knowledge of the source of the customer's funds; and
  - (c) identifying transactions that—
    - (i) are complex, unusually large in amount or of an unusual pattern; and
    - (ii) have no apparent economic or lawful purpose, and examining the background and purposes of those transactions and setting out its findings in writing.
- (2) When a financial institution carries out its duty under subsection (1)(a) in relation to a pre-existing customer before it first carries out the customer due diligence measures in relation to the customer in accordance with the requirements under this Part, the financial institution is only required to review the documents, data and information relating to the customer that are held by it at the time it conducts the review.
- (3) If—
  - (a) a customer of a financial institution has not been physically present for identification purposes;
  - (b) a customer, or a beneficial owner of a customer, of a financial institution is known to the financial institution, from publicly known information or information in its possession, to be a politically exposed person; or
  - (c) a customer, or a beneficial owner of a customer, of a financial institution is involved in a situation referred to in section 15 of this Schedule,the financial institution must, in monitoring its business relationship with the customer under this section, take additional measures to compensate for any risk of money laundering or terrorist financing that may be caused by the fact that the customer or beneficial owner is a customer or beneficial owner falling within paragraph (a), (b) or (c).

## 6. Provisions relating to pre-existing customers

- (1) In relation to a pre-existing customer who is not a customer to whom section 7 of this Schedule applies, a financial institution must, in addition to the situations specified in section 3(1)(d) and (e) of this Schedule, carry out the customer due diligence measures when—
  - (a) a transaction takes place with regard to the customer that—
    - (i) is, by virtue of the amount or nature of the transaction, unusual or suspicious; or
    - (ii) is not consistent with the financial institution's knowledge of the customer or the customer's business or risk profile, or with its knowledge of the source of the customer's funds; or
  - (b) a material change occurs in the way in which the customer's account is operated.
- (2) If a financial institution is unable to comply with subsection (1), it must terminate its business relationship with the customer as soon as reasonably practicable.

## 7. Provisions relating to pre-existing respondent banks

- (1) This section applies to a customer (referred to in this section as *respondent bank*) of an authorized institution—
  - (a) that is an institution located in a place outside Hong Kong carrying on a business similar to that carried on by an authorized institution; and
  - (b) with which the first-mentioned authorized institution has established a correspondent banking relationship before the date of commencement of this Ordinance.
- (2) An authorized institution must terminate its correspondent banking relationship with a respondent bank on the date of commencement of this Ordinance unless—
  - (a) it had carried out the measures set out in section 14(1) of this Schedule in relation to the respondent bank at some time before that date and was at that time satisfied that the anti-money laundering and antiterrorist financing controls of the respondent bank were adequate and effective;
  - (b) it had documented its responsibilities and the responsibilities of the respondent bank before that date; and
  - (c) it was satisfied at some time before that date that, in respect of those of the respondent bank's customers who could directly operate the accounts it maintained for the respondent bank, the respondent bank—
    - (i) had verified the identities of those customers, and would continuously monitor its business relationships with those customers, in accordance with requirements similar to those imposed under this Schedule; and

- (ii) was able to provide to it, on request, the documents, data or information obtained by the respondent bank in relation to those customers in accordance with requirements similar to those imposed under this Schedule.

## **Division 2—Special Requirements**

### **8. Requirements in this Division are additional to those in sections 3 and 5 of this Schedule**

In addition to complying with the requirements under sections 3 and 5 of this Schedule, a financial institution must also comply with the requirements under this Division.

### **9. Special requirements when customer is not physically present for identification purposes**

If a customer has not been physically present for identification purposes, a financial institution must carry out at least one of the following measures—

- (a) further verifying the customer's identity on the basis of documents, data or information referred to in section 2(1)(a) of this Schedule but not previously used for the purposes of verification of the customer's identity under that section;
- (b) taking supplementary measures to verify all the information provided by the customer;
- (c) ensuring that the payment or, if there is more than one payment, the first payment made in relation to the customer's account is carried out through an account opened in the customer's name with—
  - (i) an authorized institution; or
  - (ii) an institution that—
    - (A) is incorporated or established in an equivalent jurisdiction;
    - (B) carries on a business similar to that carried on by an authorized institution;
    - (C) has measures in place to ensure compliance with requirements similar to those imposed under this Schedule; and
    - (D) is supervised for compliance with those requirements by authorities in that jurisdiction that perform functions similar to those of the Monetary Authority.

### **10. Special requirements when customer is politically exposed person**

- (1) If a financial institution knows, from publicly known information or information in its possession, that a customer or a beneficial owner of a customer is a politically exposed person, it must, before establishing a business relationship with the customer—
  - (a) obtain approval from its senior management; and
  - (b) take reasonable measures to establish the customer's or beneficial owner's source of wealth and the source of the funds that will be involved in the proposed business relationship.
- (2) If a financial institution comes to know, from publicly known information or information in its possession, that an existing customer or a beneficial owner of an existing customer is a politically exposed person or has become a politically exposed person, it must not continue its business relationship with the customer unless it—
  - (a) has obtained approval from its senior management; and
  - (b) has taken reasonable measures to establish the customer's or beneficial owner's source of wealth and the source of the funds that are involved in the business relationship.

## 11. Special requirements for insurance policies

- (1) A financial institution must, whenever a beneficiary or a new beneficiary is identified or designated by the policy holder of an insurance policy—
  - (a) if the beneficiary is identified by name, record the name of the beneficiary;
  - (b) if the beneficiary is designated by description or other means, obtain sufficient information about the beneficiary to satisfy itself that it will be able to establish the identity of the beneficiary—
    - (i) at the time the beneficiary exercises a right vested in the beneficiary under the insurance policy; or
    - (ii) at the time of payout or, if there is more than one payout, the time of the first payout to the beneficiary in accordance with the terms of the insurance policy,whichever is the earlier.
- (2) A financial institution must carry out the measures specified in subsection (3)—
  - (a) at the time a beneficiary exercises a right vested in the beneficiary under an insurance policy; or
  - (b) at the time of payout or, if there is more than one payout, the time of the first payout to a beneficiary in accordance with the terms of an insurance policy,whichever is the earlier.
- (3) The specified measures are—

- (a) verifying the beneficiary's identity on the basis of documents, data or information provided by—
  - (i) a governmental body;
  - (ii) the relevant authority or any other relevant authority;
  - (iii) an authority in a place outside Hong Kong that performs functions similar to those of the relevant authority or any other relevant authority; or
  - (iv) any other reliable and independent source that is recognized by the relevant authority; and
- (b) where the beneficiary is a legal person or trust—
  - (i) identifying its beneficial owners; and
  - (ii) if there is a high risk of money laundering or terrorist financing having regard to the particular circumstances of the beneficial owners, taking reasonable measures to verify the beneficial owners' identities so that the financial institution knows who the beneficial owners are.

## 12. Special requirements for wire transfers

- (1) Subject to subsection (2), this section applies to a wire transfer involving an amount equal to or above \$8,000 or an equivalent amount in any other currency, that is carried out by a financial institution.
- (2) This section does not apply to the following wire transfers—
  - (a) a wire transfer between two financial institutions if each of them acts on its own behalf;
  - (b) a wire transfer between a financial institution and a foreign institution if each of them acts on its own behalf;
  - (c) a wire transfer if—
    - (i) it arises from a transaction that is carried out using a credit card or debit card (such as withdrawing money from a bank account through an automated teller machine with a debit card, obtaining a cash advance on a credit card, or paying for goods or services with a credit or debit card), except when the card is used to effect a transfer of money; and
    - (ii) the credit card or debit card number is included in the message or payment form accompanying the transfer.
- (3) Before carrying out a wire transfer, a financial institution that is an ordering institution must record—
  - (a) the originator's name;



- (b) the number of the originator's account maintained with the financial institution and from which the money for the wire transfer is paid or, in the absence of such an account, a unique reference number assigned to the wire transfer by the financial institution; and
  - (c) the originator's address or, in the absence of an address, the originator's customer identification number or identification document number or, if the originator is an individual, the originator's date and place of birth.
- (4) The information mentioned in subsection (3)(a) and (c) must, before it is recorded, be verified by the financial institution on the basis of documents, data or information provided by—
  - (a) a governmental body;
  - (b) the relevant authority or any other relevant authority;
  - (c) an authority in a place outside Hong Kong that performs functions similar to those of the relevant authority or any other relevant authority; or
  - (d) any other reliable and independent source that is recognized by the relevant authority.
- (5) Subject to subsections (6) and (7), a financial institution that is an ordering institution must include in the message or payment form accompanying the wire transfer the information recorded under subsection (3) in relation to the transfer.
- (6) A financial institution may, in relation to a domestic wire transfer, include in the message or payment form accompanying the transfer only the information recorded under subsection (3)(b) in relation to the transfer but if it does so, it must, on the request of the financial institution to which it passes on the transfer instruction or the relevant authority, provide to that financial institution or the relevant authority the information recorded under subsection (3)(a) and (c) in relation to the transfer within 3 business days after it receives the request.
- (7) If more than one individual wire transfer from a single originator is bundled in a batch file for transmission to a recipient or recipients in a place outside Hong Kong, a financial institution is not required to comply with subsection (5) in relation to each of the wire transfers if—
  - (a) the information recorded under subsection (3)(b) is included in the message or payment form accompanying each transfer; and
  - (b) the batch file contains the information recorded under subsection (3).
- (8) If a financial institution acts as an intermediary institution in a wire transfer, it must transmit all of the information that it receives with the transfer to the institution to which it passes on the transfer instruction.

- (9) Where a financial institution is a beneficiary institution in a domestic wire transfer—
- (a) if the wire transfer is not accompanied by the information required under subsection (3)(b), it must as soon as reasonably practicable—
    - (i) obtain the information from the institution from which it receives the transfer instruction; and
    - (ii) if the information cannot be obtained, either—
      - (A) consider restricting or terminating its business relationship with the institution referred to in subparagraph (i); or
      - (B) take reasonable measures to mitigate the risk of money laundering or terrorist financing involved;
  - (b) if the financial institution is aware that the accompanying information that purports to be the information required under subsection (3)(b) is incomplete or meaningless, it must as soon as reasonably practicable take reasonable measures to mitigate the risk of money laundering or terrorist financing involved.
- (10) Where a financial institution is a beneficiary institution in a wire transfer that is not a domestic wire transfer—
- (a) if the wire transfer is not accompanied by all of the information required under subsection (3), it must as soon as reasonably practicable—
    - (i) obtain the missing information from the institution from which it receives the transfer instruction; and
    - (ii) if the missing information cannot be obtained, either—
      - (A) consider restricting or terminating its business relationship with the institution referred to in subparagraph (i); or
      - (B) take reasonable measures to mitigate the risk of money laundering or terrorist financing involved;
  - (b) if the financial institution is aware that any of the accompanying information that purports to be the information required under subsection (3) is incomplete or meaningless, it must as soon as reasonably practicable take reasonable measures to mitigate the risk of money laundering or terrorist financing involved.
- (11) In this section—
- business day** (營業日) means any day other than—
- (a) a public holiday; or
  - (b) a gale warning day or a black rainstorm warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);

**domestic wire transfer** (本地電傳轉賬) means a wire transfer in which the ordering institution and the beneficiary institution and, if one or more intermediary institutions are involved in the transfer, the intermediary institution or all the intermediary institutions are financial institutions located in Hong Kong;

**foreign institution** (外地機構) means an institution—

- (a) that is located in a place outside Hong Kong; and
- (b) that carries on a business similar to that carried on by a financial institution;

**originator** (匯款人), in relation to a wire transfer, means—

- (a) the person from whose account with the ordering institution the money for the wire transfer is paid; or
- (b) in the absence of such an account, the person who instructs the ordering institution to carry out the wire transfer.

### 13. Special requirements for remittance transactions

- (1) This section applies to a remittance transaction, other than a wire transfer, involving an amount equal to or above \$8,000 or an equivalent amount in any other currency, that is carried out by a licensed money service operator.
- (2) Before carrying out a remittance transaction, a licensed money service operator must—
  - (a) identify the originator;
  - (b) verify the identity of the originator by reference to the originator's identification document; and
  - (c) record—
    - (i) the originator's name;
    - (ii) the originator's identification document number and, if the originator's identification document is a travel document, the place of issue of the travel document;
    - (iii) the originator's address;
    - (iv) the currency and amount involved; and
    - (v) the date and time of receipt of the instructions, the recipient's name and address and the method of delivery.

- (3) In this section—

**originator** (匯款人), in relation to a remittance transaction carried out by a licensed money service operator, means—

- (a) the person from whose account with the licensed money service operator the money for the remittance is paid; or
- (b) in the absence of such an account, the person who instructs the licensed money service operator to carry out the remittance transaction;

**remittance transaction** (匯款交易) means a transaction for sending, or arranging for the sending of, money to a place outside Hong Kong.

#### 14. Special requirements for correspondent banking relationships

- (1) An authorized institution must, before establishing a correspondent banking relationship with an institution located in a place outside Hong Kong that carries on a business similar to that carried on by an authorized institution (referred to in this section as **proposed respondent bank**)—
  - (a) collect sufficient information about the proposed respondent bank to enable it to understand fully the nature of the proposed respondent bank's business;
  - (b) determine from publicly available information the reputation of the proposed respondent bank and the quality of its supervision by authorities in that place that perform functions similar to those of the Monetary Authority; and
  - (c) assess the anti-money laundering and anti-terrorist financing controls of the proposed respondent bank.
- (2) An authorized institution must not establish a correspondent banking relationship with a proposed respondent bank unless—
  - (a) it has obtained approval from its senior management;
  - (b) having complied with subsection (1), it is satisfied that the anti-money laundering and anti-terrorist financing controls of the proposed respondent bank are adequate and effective;
  - (c) it has documented its responsibilities and the responsibilities of the proposed respondent bank; and
  - (d) it is satisfied that, in respect of those of the proposed respondent bank's customers who will be able to directly operate the accounts it is to maintain for the proposed respondent bank, the proposed respondent bank—
    - (i) will verify the identities of those customers, and will continuously monitor its business relationships with those customers, in accordance with requirements similar to those imposed under this Schedule; and
    - (ii) will be able to provide to it, on request, the documents, data or information obtained by the proposed respondent bank in relation to those customers in accordance with requirements similar to those imposed under this Schedule.

#### 15. Special requirements in other high risk situations

A financial institution must, in a situation specified by the relevant authority in a notice in writing given to the financial institution and in any other situation that by its nature may present a high risk of money laundering or terrorist financing—

- (a) where a business relationship is to be established—
  - (i) obtain approval from its senior management to establish the business relationship; and
  - (ii) either—
    - (A) take reasonable measures to establish the relevant customer's or beneficial owner's source of wealth and the source of the funds that will be involved in the business relationship; or
    - (B) take additional measures to mitigate the risk of money laundering or terrorist financing involved;
- (b) where a business relationship has been established—
  - (i) obtain approval from its senior management to continue the business relationship;
  - (ii) if there is a beneficial owner in relation to the relevant customer, take reasonable measures to verify the beneficial owner's identity so that the financial institution is satisfied that it knows who the beneficial owner is; and
  - (iii) either—
    - (A) take reasonable measures to establish the relevant customer's or beneficial owner's source of wealth and the source of the funds that are involved in the business relationship; or
    - (B) take additional measures to mitigate the risk of money laundering or terrorist financing involved; or
- (c) where an occasional transaction is to be carried out, take additional measures to mitigate the risk of money laundering or terrorist financing involved.

### **Division 3—Prohibitions**

#### **16. Anonymous accounts etc.**

A financial institution must not open, or maintain, any anonymous account or account in a fictitious name for any customer.

#### **17. Correspondent banking relationships with shell banks**

- (1) An authorized institution must not establish or continue a correspondent banking relationship with a corporation that—

- (a) is incorporated in a place outside Hong Kong;
  - (b) is authorized to carry on banking business in that place;
  - (c) does not have a physical presence in that place; and
  - (d) is not an affiliate of a corporation that—
    - (i) is incorporated in a particular jurisdiction;
    - (ii) is authorized to carry on banking business in that jurisdiction; and
    - (iii) has a physical presence in that jurisdiction.
- (2) For the purposes of subsection (1)(c) and (d)(iii), a corporation has a physical presence in a place or jurisdiction if—
- (a) the corporation carries on banking business at any premises in that place or jurisdiction; and
  - (b) at least one full-time employee of the corporation performs banking-related duties at those premises.
- (3) For the purposes of subsection (1)(d), a corporation is an affiliate of another corporation if—
- (a) the corporation is a subsidiary of the other corporation; or
  - (b) at least one individual who is a controller of the corporation is at the same time a controller of the other corporation.
- (4) In this section—

**associate** (相關者), in relation to a person entitled to exercise, or control the exercise of, voting rights in relation to, or holding shares in, a corporation, means any other person in respect of whom that first-mentioned person has an agreement or arrangement, whether oral or in writing, express or implied, with respect to the acquisition, holding or disposal of shares or other interests in that corporation or under which they act together in exercising their voting rights in relation to it;

**controller** (控制人), in relation to a corporation, means—

- (a) a person in accordance with whose directions or instructions the directors of the corporation, or of another corporation of which it is a subsidiary, are accustomed to act, but does not include any person in accordance with whose directions and instructions those directors are accustomed to act by reason only that they act on advice given by the person in his or her professional capacity; or
- (b) a person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, more than 50% of the voting rights at any general meeting of the corporation or of another corporation of which it is a subsidiary;

**subsidiary** (附屬公司) has the same meaning as in the Companies Ordinance (Cap. 622). (*Amended 28 of 2012 ss. 912 & 920*)

## Division 4—Miscellaneous

### 18. Carrying out customer due diligence measures by means of intermediaries

- (1) Subject to subsection (2), a financial institution may carry out any customer due diligence measure by means of an intermediary specified in subsection (3) if—
  - (a) the intermediary consents in writing to be the financial institution's intermediary; and
  - (b) the financial institution is satisfied that the intermediary will on request provide a copy of any document, or a record of any data or information, obtained by the intermediary in the course of carrying out the customer due diligence measure without delay.
- (2) A financial institution that carries out a customer due diligence measure by means of an intermediary remains liable under this Ordinance for a failure to carry out that customer due diligence measure.
- (3) The specified intermediary is—
  - (a) any of the following persons who is able to satisfy the financial institution that they have adequate procedures in place to prevent money laundering and terrorist financing—
    - (i) a solicitor practising in Hong Kong;
    - (ii) a certified public accountant practising in Hong Kong;
    - (iii) a current member of The Hong Kong Institute of Chartered Secretaries practising in Hong Kong;
    - (iv) a trust company registered under Part 8 of the Trustee Ordinance (Cap. 29) carrying on trust business in Hong Kong;
  - (b) a financial institution that is an authorized institution, a licensed corporation, an authorized insurer, an appointed insurance agent or an authorized insurance broker; or
  - (c) a lawyer, a notary public, an auditor, a professional accountant, a trust or company service provider or a tax advisor practising in an equivalent jurisdiction, or a trust company carrying on trust business in an equivalent jurisdiction, or an institution that carries on in an equivalent jurisdiction a business similar to that carried on by a financial institution mentioned in paragraph (b), that—
    - (i) is required under the law of that jurisdiction to be registered or licensed or is regulated under the law of that jurisdiction;

- (ii) has measures in place to ensure compliance with requirements similar to those imposed under this Schedule; and
  - (iii) is supervised for compliance with those requirements by an authority in that jurisdiction that performs functions similar to those of any of the relevant authorities.
- (4) A financial institution that carries out a customer due diligence measure by means of an intermediary must—
- (a) immediately after the intermediary has carried out that measure, obtain from the intermediary the data or information that the intermediary has obtained in the course of carrying out that measure, but nothing in this paragraph requires the financial institution to obtain at the same time from the intermediary a copy of any document, or a record of any data or information, that is obtained by the intermediary in the course of carrying out that measure; and
  - (b) ensure that the intermediary will, if requested by the financial institution within the period referred to in section 20(2) or (3) of this Schedule, as the case requires, provide to the financial institution a copy of any document, or a record of any data or information, obtained by the intermediary in the course of carrying out that measure as soon as reasonably practicable after receiving the request.
- (5) Subsection (3)(a) expires at midnight on 31 March 2018.  
(Amended L.N. 16 of 2015)
- (6) Nothing in this section prevents a financial institution from carrying out a customer due diligence measure by its agent but such a financial institution remains liable under this Ordinance for a failure to carry out that customer due diligence measure.
- (7) In this section—
- certified public accountant** (會計師) has the meaning given by section 2(1) of the Professional Accountants Ordinance (Cap. 50).

(Amended E.R. 2 of 2014)

## 19. Financial institutions to establish procedures

- (1) A financial institution must establish and maintain effective procedures for determining whether a customer or a beneficial owner of a customer is a politically exposed person.
- (2) A financial institution that carries out wire transfers must establish and maintain effective procedures for identifying and handling wire transfers in relation to which section 12(5) of this Schedule has not been complied with.



- (3) A financial institution must, in respect of each kind of customer, business relationship, product and transaction, establish and maintain effective procedures not inconsistent with this Ordinance for the purpose of carrying out its duties under sections 3, 4, 5, 9, 10 and 15 of this Schedule.

### **Part 3**

## **Record-keeping Requirements**

### **20. Duty to keep records**

- (1) A financial institution must—
  - (a) in relation to each transaction it carries out, keep the original or a copy of the documents, and a record of the data and information, obtained in connection with the transaction in accordance with Part 2 of this Schedule; and
  - (b) in relation to each of its customers, keep—
    - (i) the original or a copy of the documents, and a record of the data and information, obtained in the course of identifying and verifying the identity of the customer or any beneficial owner of the customer in accordance with Part 2 of this Schedule; and
    - (ii) the original or a copy of the files relating to the customer's account and business correspondence with the customer and any beneficial owner of the customer.
- (2) Records required to be kept under subsection (1)(a) must be kept for a period of 6 years beginning on the date on which the transaction is completed, regardless of whether the business relationship ends during that period.
- (3) Records required to be kept under subsection (1)(b) must be kept throughout the continuance of the business relationship with the customer and for a period of 6 years beginning on the date on which the business relationship ends.
- (4) A relevant authority may, by notice in writing to a financial institution, require the financial institution to keep the records relating to a specified transaction or customer for a period specified by the relevant authority that is longer than that referred to in subsection (2) or (3), as the case requires, if—
  - (a) the relevant authority is satisfied that the records are relevant to an ongoing criminal or other investigation carried out by it; or
  - (b) the records are relevant to any other purposes as specified by the relevant authority in the notice.

- (5) A financial institution to whom a notice is given under subsection (4) must keep the relevant records for the period specified in the notice.

## 21. Manner in which records are to be kept

Records required to be kept under section 20 of this Schedule must be kept in the following manner—

- (a) if the record consists of a document, either—
- (i) the original of the document must be kept; or
  - (ii) a copy of the document must be kept either on microfilm or in the database of a computer; or
- (b) if the record consists of data or information, a record of the data or information must be kept either on microfilm or in the database of a computer.

## Part 4

### Miscellaneous

## 22. Duties extended to branches and subsidiary undertakings outside Hong Kong

- (1) A financial institution incorporated in Hong Kong must ensure that—
- (a) its branches; and
  - (b) its subsidiary undertakings that carry on the same business as a financial institution in a place outside Hong Kong,  
have procedures in place to ensure compliance with, to the extent permitted by the law of that place, requirements similar to those imposed under Parts 2 and 3 of this Schedule that are applicable to the financial institution.
- (2) If the law of the place at which a branch or subsidiary undertaking of a financial institution carries on business does not permit the application of any procedures relating to any of the requirements referred to in subsection (1), the financial institution must—
- (a) inform the relevant authority accordingly; and
  - (b) take additional measures to effectively mitigate the risk of money laundering and terrorist financing faced by the branch or subsidiary undertaking as a result of its inability to comply with the requirement.
- (3) In this section—

**branch** (分行), in relation to a financial institution, means a branch of the financial institution outside Hong Kong at which it carries on a business similar to that carried on by the

financial institution, whether or not the business of the branch is limited by the laws or regulations of the place in which the branch is situated and whether or not the branch is referred to as an agency in that place;

**subsidiary undertaking** ( 附 屬 企 業 ) is to be construed in accordance with Schedule 1 to the Companies Ordinance (Cap. 622). (Amended 28 of 2012 ss. 912 & 920)

### 23. Financial institutions to prevent contravention of Part 2 or 3 of this Schedule

A financial institution must take all reasonable measures—

- (a) to ensure that proper safeguards exist to prevent a contravention of any requirement under Part 2 or 3 of this Schedule; and
- (b) to mitigate money laundering and terrorist financing risks.

## Schedule 3

[ss. 28, 30, 31, 35, 36, 37, 38,  
39 & 50]

### Fees

Item	Particulars	Fee \$
1.	For certifying a copy of an entry in or extract from the register	160 per copy
2.	For providing an uncertified copy of an entry in, or extract from, the register	1 per page or portion of a page
3.	For providing a certificate specified in section 28(1)(b)	160 per copy
4.	Application for the grant of a licence plus for each additional business premises plus for each person who is subject to the fit and proper person test	3,310 2,220 860
5.	Application for the renewal of a licence plus for each additional business premises plus for each person who is subject to the fit	790 355 860

and proper person test

- |     |   |  |
|-----|---|--|
| 6.  | Application for an approval to become a licensee's director       | 860<br>for each person<br>in relation to<br>whom the<br>application is<br>made |
| 7.  | Application for an approval to become a licensee's ultimate owner | 860<br>for each person<br>in relation to<br>whom the<br>application is<br>made |
| 8.  | Application for an approval to become a licensee's partner        | 860<br>for each person<br>in relation to<br>whom the<br>application is<br>made |
| 9.  | Application to add new business premises                          | 2,220<br>for each new<br>business premises                                     |
| 10. | Application to operate a money service at particular premises     | 2,220<br>for each business<br>premises   |

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## Schedule 4

[ss. 55, 56, 58, 61 & 64]

### Provisions Relating to Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal

#### 1. Interpretation

(1) In this Schedule—

*chairperson* (主席) means the chairperson of the Tribunal;

*ordinary member* (普通成員) means a member of the Tribunal other than the chairperson;

*panel member* (委員) means a member of the panel of persons appointed under section 2(1) of this Schedule.

(2) In this Schedule—

*application for review* (覆核申請), *parties* (各方), *review* (覆核), *Secretary* (局長), *specified authority* (指明當局), *specified*

*decision* (指明決定) and *Tribunal* (審裁處) have the same meaning as in Part 6.

## 2. Appointment of panel

- (1) The Secretary must appoint a panel of persons whom the Secretary considers suitable for appointment as ordinary members of the Tribunal and who are not public officers.
- (2) Subject to subsections (4) and (5), a panel member may be appointed for any term the Secretary considers appropriate.
- (3) A person whose term of appointment or reappointment as a panel member has expired may be reappointed.
- (4) A panel member may resign from office by giving notice in writing to the Secretary.
- (5) The Secretary may by notice in writing remove a panel member from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.
- (6) To avoid doubt, section 55(3) does not require the appointment of persons to more than one panel under subsection (1).

## 3. Tenure of chairperson

- (1) The term of appointment of a person as chairperson must not exceed 3 years.
- (2) A person whose term of appointment or reappointment as chairperson has expired may be reappointed.
- (3) The chairperson may resign from office by giving notice in writing to the Secretary.
- (4) A notice of resignation takes effect—
  - (a) on the date the Secretary receives the notice; or
  - (b) if a later date is specified in the notice, on that later date.
- (5) The Secretary may by notice in writing remove the chairperson from office—
  - (a) if the chairperson is no longer qualified for appointment as chairperson under section 56(2); or
  - (b) on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.

## 4. Appointment of ordinary members

- (1) For the purpose of determining a review, the Secretary, on the recommendation of the chairperson, must appoint 2 panel members as ordinary members of the Tribunal in relation to the review.

- (2) Subject to subsections (3) and (5), a panel member who is appointed as an ordinary member is appointed to act in relation to a specified review and may be reappointed after his or her term of appointment or reappointment as an ordinary member has expired.
- (3) An ordinary member may resign from office by giving notice in writing to the Secretary.
- (4) A notice of resignation takes effect—
  - (a) on the date the Secretary receives the notice; or
  - (b) if a later date is specified in the notice, on that later date.
- (5) If an ordinary member ceases to be a panel member, he or she ceases to be an ordinary member.

## **5. Further provisions relating to chairperson and ordinary members**

- (1) If the term of appointment of the chairperson expires after proceedings for a review have begun but before the review is determined, the person may continue to act as chairperson for the purpose of the review until the review has been determined.
- (2) Where there is a change in the membership of the Tribunal during the proceedings for a review, the proceedings may continue despite that change if the parties to the review so consent.
- (3) If the parties do not consent, the proceedings must be discontinued but they may begin anew.

## **6. Procedure**

- (1) The chairperson must convene sittings of the Tribunal as often as necessary to enable the Tribunal to determine a review.
- (2) At any time after an application for review has been received, the chairperson may give directions to the parties to the review concerning—
  - (a) procedural matters to be complied with by any of the parties; and
  - (b) the time within which those procedural matters are to be complied with.
- (3) At any sitting of the Tribunal, the chairperson and 2 ordinary members must be present.
- (4) The chairperson is to preside at every sitting of the Tribunal.
- (5) Every question before the Tribunal is to be determined by a majority of the votes cast by the chairperson and the ordinary members, except that a question of law is to be determined by the chairperson alone.

- (6) Subject to subsections (7) and (8), every sitting of the Tribunal must be held in public.
- (7) If the Tribunal, on its own initiative or on the application of any of the parties to the review, determines that in the interests of justice a sitting or any part of a sitting should not be held in public, the Tribunal may hold the sitting or that part of the sitting in private.
- (8) If an application is made under subsection (7) for a private sitting, any hearing of the application must be held in private.
- (9) At any sitting of the Tribunal relating to a review, the parties to the review are entitled to be heard—
  - (a) in person, or—
    - (i) in the case of a corporation, through an officer or employee;
    - (ii) in the case of a partnership, through a partner; or
    - (iii) in the case of a specified authority, through a representative; and
  - (b) through a solicitor or counsel or, with the leave of the Tribunal, through any other person.
- (10) The chairperson must prepare a record of the proceedings of every sitting of the Tribunal containing any particulars relating to the proceedings that the chairperson considers appropriate.
- (11) In this section—

**representative** (代表)—

  - (a) in relation to the Monetary Authority, means a person appointed by the Financial Secretary under section 5A(3) of the Exchange Fund Ordinance (Cap. 66);
  - (b) in relation to the Securities and Futures Commission, means an employee of the Commission;
  - (c) in relation to the Insurance Authority, means an employee of the Authority; and (*Replaced 12 of 2015 s. 164*)
  - (d) in relation to the Commissioner, means a public officer employed in the Customs and Excise Department.

## 7. Preliminary conferences

- (1) Subject to subsection (2), at any time after an application for review has been received, the chairperson may, on his or her own initiative or on the application of any party to the review, direct that a conference, to be attended by the parties or their representatives, is to be held for the purposes of—
  - (a) enabling the parties to prepare for the conduct of the review;
  - (b) assisting the Tribunal to determine issues for the purposes of the review; and

- (c) generally securing the just, expeditious and economical conduct of the review.
- (2) The chairperson may only give a direction under subsection (1) if the parties to the review agree to the giving of the direction.
- (3) The chairperson may consider any material that has been submitted to the Tribunal in relation to the application by the parties to the review before giving a direction under subsection (1).
- (4) The chairperson is to preside at a conference held in accordance with a direction given under subsection (1).
- (5) At a conference held in accordance with a direction given under subsection (1), the chairperson may—
  - (a) give any direction that he or she considers necessary or desirable for securing the just, expeditious and economical conduct of the review; and
  - (b) try to get the parties to the review to make all agreements as they ought reasonably to have made in relation to the review.
- (6) After a conference has been held in accordance with a direction given under subsection (1), the chairperson must report to the Tribunal on any matters relating to the conference that the chairperson considers appropriate.

## 8. Consent orders

- (1) At any time after an application for review has been received, the Tribunal or the chairperson may make any order that the Tribunal or the chairperson is entitled to make under any provision of this Ordinance, whether or not any other requirements applicable to the making of the order have been complied with, if—
  - (a) the parties to the review request, and agree to, the making of the order under this section by the Tribunal or the chairperson; and
  - (b) the parties consent to all of the terms of the order.
- (2) Despite anything in this Schedule or in Part 6, if the Tribunal or the chairperson makes an order under subsection (1), the order is to be regarded for all purposes as an order made by the Tribunal or the chairperson under the provision of this Ordinance in question and to be in compliance with the requirements otherwise applicable to the making of the order.
- (3) In this section—  
*order* (命令) includes any finding, determination and any other decision.

## 9. Chairperson as sole member of Tribunal



- (1) If, at any time after an application for review has been made but before any sitting of the Tribunal is held to determine the review, the parties to the review by notice in writing inform the Tribunal that they have agreed that the review may be determined by the chairperson alone as the sole member of the Tribunal, the chairperson may determine the review as the sole member of the Tribunal.
- (2) The chairperson may also determine an application as the sole member of the Tribunal if it is—
  - (a) an application made to the Tribunal under section 59(2) for the grant of an extension of the time within which an application for review may be made; or
  - (b) an application made to the Tribunal under section 69(2) for a stay of execution of a specified decision.
- (3) If the chairperson determines a review as the sole member of the Tribunal under subsection (1) or (2), the Tribunal constituted by the chairperson as the sole member of the Tribunal is to be regarded for all purposes as the Tribunal constituted also by 2 ordinary members.
- (4) After the chairperson has made any determination under subsection (2)(b) as the sole member of the Tribunal, the chairperson must report to the Tribunal—
  - (a) the making of the determination and the reasons for the determination; and
  - (b) any other matters relating to the determination that the chairperson considers appropriate.
- (5) If there is an application described in subsection (2)(b) and the chairperson—
  - (a) is precluded by illness, absence from Hong Kong or any other cause from performing the chairperson's functions; or
  - (b) considers it improper or undesirable that he or she should perform his or her functions in relation to the application,

a judge or a deputy judge of the Court of First Instance must, on appointment by the Chief Justice for the purpose, determine the application as if he or she were the chairperson duly appointed under this Ordinance, and the provisions of this Ordinance are to apply to him or her accordingly.

## 10. Privileges and immunities

Except as otherwise provided in this Ordinance—

- (a) the Tribunal, its chairperson and ordinary members; and
- (b) the parties to a review and any witness, solicitor, counsel or other person involved in a review,

have the same privileges and immunities in respect of the review as they would have if the review were civil proceedings before the Court of First Instance.

