

Anti-Money Laundering and Counter-Terrorist Financing Ordinance

(Cap. 615)

Contents

Section		Page
Part 1		
Preliminary		
1.	Short title	1-2
2.	Interpretation	1-4
3.	Application to Government	1-4
4.	Immunity	1-4
Part 2		
Requirements Relating to Customer Due Diligence and Record-keeping		
5.	Schedule 2 has effect with respect to financial institutions	2-2
5A.	Schedule 2 has effect in relation to DNFBPs	2-6
6.	Amendment of Schedule 2	2-10
7.	Guidelines for operation of Schedule 2	2-10
Part 3		
Supervision and Investigations		
Division 1—Preliminary		

Section		Page
8.	Interpretation of Part 3	3-2
	Division 2—Powers to Enter, Inspect and Investigate	
9.	Power to enter business premises etc. for routine inspection	3-6
9A.	When power under section 9 invoked by other regulatory authority	3-24
10.	Offences for non-compliance with requirements imposed under section 9	3-24
11.	Relevant authorities may appoint investigators	3-30
12.	Powers of investigators to require production of records or documents etc.	3-34
12A.	When power under section 12 invoked by other regulatory authority	3-38
13.	Offences for non-compliance with requirements imposed under section 12	3-40
	Division 3—Regulatory Assistance to Non-Hong Kong Regulator Concerning VA Activities	
13A.	Interpretation of Division 3	3-46
13B.	International enforcement cooperation	3-46
13C.	International supervisory cooperation	3-50
13D.	Regulator-related requirements	3-58
13E.	Investors' and public interest condition	3-60

Section		Page
Division 4—Miscellaneous Enforcement Matters		
14.	Application to Court of First Instance relating to non-compliance with requirements imposed under section 9 or 12	3-62
15.	Use of incriminating evidence in proceedings	3-64
16.	Lien claimed on records or documents	3-66
17.	Magistrate’s warrants	3-66
18.	Production of information in information systems etc.	3-72
19.	Inspection of records and documents seized etc.	3-74
20.	Destruction of documents etc.	3-74
Part 4 Disciplinary Actions by Relevant Authorities		
20A.	Part 4 does not apply to licensed VAS provider	4-2
21.	Relevant authorities may take disciplinary actions	4-2
22.	Procedural requirements in respect of exercise of powers under section 21	4-6
23.	Guidelines on how relevant authorities exercise power to impose pecuniary penalty	4-6

**Part 5
Regulation of Operation of Money Service**

Section		Page
Division 1—Preliminary		
24.	Interpretation of Part 5	5-2
25.	Persons to whom this Part does not apply	5-4
26.	Delegation of functions	5-6
27.	Commissioner to maintain register of licensees	5-6
28.	Certified copy of register or entry in register admissible as evidence	5-8
Division 2—Licence for Operating Money Service		
29.	Restriction on operating money service	5-10
30.	Grant of licence	5-10
31.	Renewal of licence	5-16
32.	Amendment of conditions in licence	5-20
33.	Form of licence	5-22
34.	Revocation or suspension of licence	5-22
35.	Commissioner's approval required in respect of persons proposing to become licensee's directors	5-28
36.	Commissioner's approval required in respect of persons proposing to become licensee's ultimate owners	5-30

Section	Page
37. Commissioner’s approval required in respect of persons proposing to become licensee’s partners	5-32
38. Adding new business premises	5-34
39. Application to operate at particular premises	5-36
39A. Licensee’s duty to display original of licence	5-38
40. Licensee’s duty to notify Commissioner of changes in particulars	5-40
41. Licensee’s duty to notify Commissioner of cessation of business	5-40
42. Licence ceases to be valid on death etc. of licensee	5-42
Division 3—Commissioner’s Disciplinary and Other Powers	
43. Commissioner may take disciplinary actions	5-42
44. Procedural requirements in respect of exercise of powers under section 43	5-46
45. Guidelines on how Commissioner exercises power to impose pecuniary penalty	5-46
46. Commissioner may appoint authorized officers	5-48
47. Warrant to enter premises to remove evidence of commission of offence	5-48
48. Authorized officer’s power to arrest and search, etc.	5-52

Section		Page
Division 4—Miscellaneous		
49.	<i>(Repealed)</i>	5-54
50.	Amendment of Schedule 3	5-54
51.	Regulations	5-54
52.	Offence to provide false information in connection with application for licence etc.	5-54
53.	Time limit for prosecution	5-56
Part 5A		
Regulation of Trust or Company Service Providers		
Division 1—Preliminary		
Subdivision 1—Interpretation and Disapplication of this Part		
53A.	Interpretation of Part 5A	5A-2
53B.	Disapplication	5A-4
Subdivision 2—Delegation by Registrar of Companies and Register of Licensees		
53C.	Delegation of functions	5A-6
53D.	Registrar to maintain register of licensees	5A-6
53E.	Certified copies and their evidential value	5A-8
Division 2—Licensing of Trust or Company Service Providers		
Subdivision 1—Restriction on Carrying on Trust or Company Service Business		

Section	Page
53F. Offence of carrying on trust or company service business without licence	5A-10
Subdivision 2—Application for, Grant and Renewal of, Licence	
53G. Application for and grant of licence	5A-12
53H. Licence granted only if fit and proper test satisfied	5A-12
53I. Fit and proper test	5A-14
53J. Conditions when granting licence	5A-18
53K. Renewal of licence	5A-18
53L. Conditions when renewing licence	5A-20
53M. Amendment of conditions of licence	5A-22
Subdivision 3—Form and Validity Period of Licence	
53N. Form of licence	5A-22
53O. Validity period of licence	5A-24
53P. Cessation of validity when certain events happen	5A-24
Subdivision 4—Revocation or Suspension of Licence	
53Q. When licence may be revoked or suspended	5A-26
53R. Procedure for revoking or suspending licence	5A-28
Division 3—Approvals by Registrar	

Section	Page
53S. Approval required to become ultimate owner of licensee	5A-30
53T. Approval required to become partner of licensee	5A-30
53U. Approval required to become director of licensee	5A-32
53V. How to apply for approval	5A-34
Division 4—Notifications to Registrar	
53W. Notification of changes in particulars	5A-34
53X. Notification of cessation of business	5A-36
53Y. How to give notifications	5A-36
Division 5—Registrar’s Disciplinary Powers	
53Z. Disciplinary action by Registrar	5A-36
53ZA. Procedure for exercising disciplinary powers	5A-40
53ZB. Guidelines for imposing pecuniary penalty	5A-42
53ZC. Registration of pecuniary penalty order	5A-42
53ZD. Application of disciplinary powers in respect of directors of corporations	5A-44
Division 6—Warrants to Enter Premises	
53ZE. Registrar may appoint authorized officers	5A-44
53ZF. Magistrate’s warrant to enter premises	5A-44

Section	Page
53ZG. Power to require production of material in legible form	5A-46
Division 7—(Repealed)	
53ZH. <i>(Repealed)</i>	5A-50
53ZI. <i>(Repealed)</i>	5A-50
53ZJ. <i>(Repealed)</i>	5A-50
53ZK. <i>(Repealed)</i>	5A-50
Division 8—Miscellaneous	
53ZL. Amendment of Schedule 3A	5A-50
53ZM. Regulations	5A-50
53ZN. Offence of providing false or misleading information	5A-50
53ZO. Time limit for prosecution	5A-52
53ZP. Requirements for authentication and delivery of relevant instruments	5A-52
Division 9—Transitional Arrangements for Trust or Company Service Providers	
53ZQ. Transitional arrangements	5A-56
Part 5B Regulation of Activities Involving Virtual Assets	
Division 1—Interpretation	
53ZR. Interpretation of Part 5B	5B-2
53ZRA. Meaning of <i>VA</i> or <i>virtual asset</i>	5B-12

Section	Page
53ZRB. Meaning of providing VA service and performing regulated function	5B-18
53ZRC. Meaning of <i>related corporation, subsidiary and wholly owned subsidiary</i>	5B-24
Division 2—Restriction on Carrying on Activities Involving Virtual Assets	
53ZRD. Licence required for carrying on VA service business	5B-28
53ZRE. Offence to issue advertisements relating to unlicensed person's provision of VA service	5B-32
53ZRF. Offence involving fraudulent or deceptive devices etc. in transactions in virtual assets	5B-38
53ZRG. Offence to fraudulently or recklessly induce others to invest in virtual assets	5B-42
Division 3—Register and Application for, and Grant of, Licences for VA Service	
Subdivision 1—Register	
53ZRH. Register of licensed persons	5B-44
53ZRI. Certified copy of register	5B-48
Subdivision 2—Fit and Proper Test	
53ZRJ. Fit and proper test	5B-50
Subdivision 3—Licensed Provider	
53ZRK. Application for and grant of licence	5B-56
Subdivision 4—Licensed Representative and Accreditation to Principal	

Section	Page
53ZRL. Application to be licensed representatives	5B-62
53ZRM. Approval and transfer of accreditation	5B-64
Subdivision 5—Variation of Licensed VA Service	
53ZRN. Variation of licensed VA service	5B-68
Division 4—Approvals by Commission	
53ZRO. Requirements for responsible officers	5B-68
53ZRP. Approval of responsible officers	5B-70
53ZRQ. Ultimate ownership	5B-72
53ZRR. Premises for keeping records or documents	5B-74
Division 5—Provisions Supplementary to Divisions 3 and 4	
53ZRS. Procedural requirements	5B-76
Division 6—Client Assets	
53ZRT. Client assets held by licensed providers and their associated entities	5B-80
Division 7—Licensed Persons’ Obligations Regarding Notification, Annual Fees and Annual Returns	
53ZRU. Notification of change in particulars	5B-80
53ZRV. Notification of intended cessation of business etc.	5B-82
53ZRW. Associated entities: notification and restriction on business	5B-82

Section		Page
53ZRX.	Licensed representative ceasing to act for principal: consequences and notification	5B-86
53ZRY.	Annual fee and annual return	5B-88
	Division 8—Licensed Provider and its Associated Entities Required to Submit Audited Accounts etc.	
53ZRZ.	Interpretation of Division 8	5B-90
53ZS.	Auditable entity to appoint prescribed auditor	5B-90
53ZSA.	Eligibility of auditor for appointment	5B-92
53ZSB.	Auditable entity to notify financial year	5B-94
53ZSC.	Auditable entity to submit audited accounts etc.	5B-96
53ZSD.	Prescribed auditor of auditable entity to report on reportable matter etc.	5B-100
53ZSE.	Auditable entity to notify proposed change of prescribed auditor	5B-104
53ZSF.	Prescribed auditor to notify resignation	5B-106
53ZSG.	Vacant office of prescribed auditor must be filled	5B-106
53ZSH.	Power of Commission to appoint auditor for auditable entity	5B-108
53ZSI.	Powers of section 53ZSH auditors	5B-110
53ZSJ.	Offences for non-compliance with section 53ZSH auditor's requirement	5B-116

Section	Page
53ZSK. Section 53ZSH auditor to report to Commission	5B-120
53ZSL. Offences to destroy, conceal, or alter accounts, records, or documents, etc.	5B-120
53ZSM. Immunity in respect of communication with Commission by prescribed auditor	5B-122
53ZSN. Operation of Companies Ordinance not affected	5B-126
Division 9—Discipline, Intervention and Other Powers	
Subdivision 1—Disciplinary Powers etc.	
53ZSO. Interpretation of Subdivision 1	5B-126
53ZSP. Disciplinary action by Commission	5B-128
53ZSQ. Other circumstances for revocation or suspension in respect of licensed persons etc.	5B-132
53ZSR. Determination concerning misconduct and fit and proper person	5B-140
53ZSS. Guidelines for imposing pecuniary penalty	5B-144
53ZST. Registration of pecuniary penalty order	5B-146
53ZSU. Procedural requirements for exercising disciplinary powers or powers under section 53ZSQ	5B-146
53ZSV. General provisions relating to exercise of disciplinary powers or powers under section 53ZSQ	5B-150

Section		Page
53ZSW.	Licensed person or responsible officer remains subject to obligations as such, despite suspension of licence or approval	5B-152
	Subdivision 2—Intervention Powers: Restrictions on Business or Property	
53ZSX.	Interpretation of Subdivision 2	5B-154
53ZSY.	Grounds for imposing prohibition or requirement under section 53ZSZ, 53ZT or 53ZTA	5B-154
53ZSZ.	Restriction of business	5B-158
53ZT.	Restriction on dealing with property	5B-160
53ZTA.	Maintenance of property	5B-162
53ZTB.	Withdrawal, substitution or variation of prohibitions or requirements	5B-164
53ZTC.	Exercise of Subdivision 2 power—procedural requirements and effect on agreement	5B-166
53ZTD.	Power to impose prohibition or requirement not affected by revocation or suspension of licence	5B-172
53ZTE.	Application to Court of First Instance relating to non-compliance with prohibition or requirement	5B-176
	Subdivision 3—Winding Up and Other Orders	
53ZTF.	Winding up orders	5B-180
53ZTG.	Bankruptcy orders	5B-180

Section	Page	
53ZTH.	Injunctions and other orders	5B-182
Division 10—Miscellaneous		
53ZTI.	Applicant to provide information	5B-188
53ZTJ.	Particulars of disciplinary actions to be entered on register	5B-188
53ZTK.	Codes or guidelines on matters under Part 5B	5B-190
53ZTL.	Rules on matters under Part 5B	5B-194
53ZTM.	Amendment of Schedules 3B to 3F	5B-200
53ZTN.	Commission may waive or refund fees	5B-200
53ZTO.	Offence for making false or misleading representation in connection with application	5B-200
53ZTP.	Offence for providing false or misleading information, if information required under this Ordinance	5B-202
53ZTQ.	Offence for providing false or misleading document, if document required in connection with Commission's function	5B-204
53ZTR.	Certain representations prohibited	5B-208
53ZTS.	Offence for obstructing person in performance of functions	5B-208
53ZTT.	Time limitation for prosecution	5B-210
53ZTU.	Power of Commission to intervene in proceedings	5B-210
53ZTV.	Civil proceedings by Commission	5B-214

Section	Page	
53ZTW.	Conflict of interest	5B-214
53ZTX.	Evidence regarding Commission's records or documents	5B-220
53ZTY.	Transitional provisions	5B-220
Part 5C		
Regulation of Dealings in Precious Metals and Stones		
Division 1—Preliminary		
Subdivision 1—Interpretation and Disapplication		
53ZTZ.	Interpretation of Part 5C	5C-2
53ZU.	Meaning of <i>dealing in precious metals and stones</i>	5C-12
53ZUA.	Disapplication of Part 5C	5C-14
Subdivision 2—Delegation of Functions and Register of Precious Metals and Stones Dealers		
53ZUB.	Delegation of functions	5C-16
53ZUC.	Commissioner to maintain register	5C-16
53ZUD.	Certified copy of register	5C-18
Division 2—Restriction on Dealing in Precious Metals and Stones		
53ZUE.	Offence of carrying out certain transaction without registration	5C-20

Section		Page
Division 3—Category A Registrant: Application for, Grant, Cancellation and Suspension of, Registration		
53ZUF.	Application for and grant of registration	5C-22
53ZUG.	Certificate of registration and branch certificates	5C-26
53ZUH.	Annual fee	5C-28
53ZUI.	Amendment of conditions of registration	5C-28
53ZUJ.	Provisions supplementary to sections 53ZUF and 53ZUI	5C-28
53ZUK.	Cessation of registration	5C-30
53ZUL.	Cancellation or suspension of registration	5C-32
53ZUM.	Supplementary provisions on cancellation or suspension of registration	5C-34
Division 4—Category B Registrant Subdivision 1—Application for, Grant, Renewal, Cancellation and Suspension of, Registration		
53ZUN.	Fit and proper test	5C-36
53ZUO.	Application for and grant of registration	5C-40
53ZUP.	Certificate of registration and branch certificates	5C-42
53ZUQ.	Renewal of registration as Category B registrant	5C-44

Section		Page
53ZUR.	Amendment of conditions of registration	5C-46
53ZUS.	Provisions supplementary to sections 53ZUO, 53ZUQ and 53ZUR	5C-48
53ZUT.	Cessation of registration	5C-50
53ZUU.	Cancellation or suspension of registration	5C-52
53ZUV.	Supplementary provisions on cancellation or suspension of registration	5C-56
Subdivision 2—Approvals by Commissioner		
53ZUW.	Approval required for becoming ultimate owner of Category B registrant	5C-56
53ZUX.	Approval required for becoming partner of Category B registrant	5C-58
53ZUY.	Approval required for becoming director of Category B registrant	5C-60
53ZUZ.	Provisions supplementary to sections 53ZUW, 53ZUX and 53ZUY	5C-60
Division 5—Registrant’s Duty to Display Certificate and Give Notifications		
53ZV.	Display of certificate of registration	5C-62
53ZVA.	Notification of changes of particulars	5C-64
53ZVB.	Notification of intended cessation of business etc.	5C-66
53ZVC.	How to give notifications	5C-68

Division 6—Disciplinary Powers

Section		Page
53ZVD.	Interpretation of Division 6	5C-68
53ZVE.	Disciplinary action against Category A registrant	5C-68
53ZVF.	Disciplinary action against Category B registrant	5C-70
53ZVG.	Notice regarding exercise of disciplinary powers	5C-74
53ZVH.	Guidelines for imposing pecuniary penalty on Category B registrant	5C-76
53ZVI.	Registration of pecuniary penalty order	5C-76
53ZVJ.	Application of disciplinary powers in respect of directors of Category B registrants	5C-78
Division 7—Non-Hong Kong Precious Metals and Stones Dealers		
53ZVK.	Non-Hong Kong precious metals and stones dealer must file cash transaction report	5C-78
Division 8—Enforcement		
53ZVL.	Commissioner may appoint authorized officers	5C-80
53ZVM.	Magistrate’s warrant to enter premises	5C-80
53ZVN.	Power to require production of material in legible form	5C-84
53ZVO.	Authorized officer’s power to arrest and search etc.	5C-86

Division 9—Miscellaneous

Section		Page
53ZVP.	How this Ordinance applies to hawker	5C-90
53ZVQ.	Amendment of Schedules 3H to 3K	5C-92
53ZVR.	Commissioner may waive fee	5C-92
53ZVS.	Regulations	5C-92
53ZVT.	Offence of providing false or misleading information	5C-92
53ZVU.	Time limit for prosecution	5C-94
53ZW.	Transitional arrangements for existing dealer	5C-96

Part 6

Anti-Money Laundering and Counter-Terrorist Financing Review Tribunal

Division 1—Interpretation

54.	Interpretation of Part 6	6-2
-----	--------------------------	-----

Division 2—Anti-Money Laundering and Counter-Terrorist Financing Review Tribunal

55.	Establishment of Tribunal	6-12
56.	Composition of Tribunal	6-14
57.	Chairperson and other members of Tribunal may be paid fees	6-14
58.	Schedule 4 has effect	6-14
59.	Application for review of specified decisions	6-16
60.	Determination of review by Tribunal	6-16

Section		Page
61.	Powers of Tribunal	6-18
62.	Use of incriminating evidence given under compulsion	6-22
63.	Contempt dealt with by Tribunal	6-24
64.	Privileged information	6-26
65.	Costs	6-26
66.	Notification of Tribunal determinations	6-28
67.	Form and proof of orders of Tribunal	6-30
68.	Orders of Tribunal may be registered in Court of First Instance	6-30
69.	Applications for stay of execution of specified decisions	6-30
70.	Applications for stay of execution of determinations of Tribunal	6-32
	Division 3—Appeals to Court of Appeal	
71.	Appeal to Court of Appeal with leave	6-32
72.	Powers of the Court of Appeal	6-34
73.	No stay of execution of Tribunal's determination on appeal	6-36
74.	No other right of appeal	6-36
	Division 4—Miscellaneous	
75.	Time when specified decisions take effect	6-36
76.	Power of Chief Justice to make rules	6-38

Section		Page
Part 6A		
Confidentiality Requirements		
76A.	Interpretation of Part 6A	6A-2
76B.	Confidentiality	6A-2
76C.	Permitted disclosures by specified person	6A-4
76D.	Permitted disclosures by relevant authority	6A-8
76E.	Person subject to inspection, investigation or disciplinary action must not disclose information	6A-16
76F.	Recipient of information disclosed under section 76C, 76D or 76E must not disclose it onwards	6A-20
76G.	Other enactments on disclosure of information not affected	6A-24
Part 7		
Miscellaneous Provisions		
77.	Regulations by Chief Executive in Council	7-2
78.	Standard of proof	7-2
79.	Prosecution of offences by relevant authorities	7-4
80.	Giving of notices by relevant authorities	7-6
81.	Legal professional privilege	7-10
82.	Transitional provision with regard to money changers and remittance agents carrying on business before commencement of this Ordinance	7-10

Section		Page
	Part 8	
	Consequential and Related Amendments	
	Division 1—(Omitted as spent)	
83.	<i>(Omitted as spent)</i>	8-2
	Division 2—(Omitted as spent)	
84.	<i>(Omitted as spent)</i>	8-2
	Division 3—(Omitted as spent)	
85.	<i>(Omitted as spent)</i>	8-2
	Division 4—(Omitted as spent)	
86.	<i>(Omitted as spent)</i>	8-2
	Division 5—(Omitted as spent)	
87.	<i>(Omitted as spent)</i>	8-2
	Division 6—(Omitted as spent)	
88-91.	<i>(Omitted as spent)</i>	8-4
Schedule 1	Interpretation	S1-2
Schedule 2	Requirements Relating to Customer Due Diligence and Record-keeping	S2-2
Schedule 3	Fees	S3-2
Schedule 3A	Fees in relation to Part 5A	S3A-2
Schedule 3B	VA Service	S3B-2
Schedule 3C	Fees in relation to Part 5B	S3C-2
Schedule 3D	Associated Entities—Prescribed Particulars	S3D-2

Section		Page
Schedule 3E	Annual Return—Information	S3E-2
Schedule 3F	Auditable Entities—Prescribed Financial Statements and Other Prescribed Documents	S3F-2
Schedule 3G	Transitional Arrangements for Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Ordinance 2022	S3G-2
Schedule 3H	Amount Specified for Definition of <i>specified cash transaction</i>	S3H-2
Schedule 3I	Amount Specified for Definition of <i>specified transaction</i>	S3I-2
Schedule 3J	Information to be Provided in Cash Transaction Report	S3J-2
Schedule 3K	Fees in relation to Part 5C	S3K-2
Schedule 4	Provisions Relating to Anti-Money Laundering and Counter-Terrorist Financing Review Tribunal	S4-2

An Ordinance to provide for the imposition of requirements relating to customer due diligence and record-keeping on specified financial institutions and designated non-financial businesses and professions; to provide for the powers of the relevant authorities and regulatory bodies 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 provide for the regulation of the operation of a trust or company service and the licensing of trust or company service providers; to provide for the regulation of activities involving virtual assets and the licensing of virtual asset service providers and their representatives; to provide for the regulation of dealings in precious metals and stones and the registration of dealers in precious metals and stones; 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.

(Amended 4 of 2018 s. 3; 15 of 2022 s. 3)

[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 Ordinance. (*Amended 4 of 2018 s. 4*)

(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.
- (1A) A regulatory body does not incur any civil liability for anything done or omitted to be done by the regulatory body in good faith in the performance or purported performance of a function conferred or imposed on the regulatory body by or under this Ordinance. (*Added 4 of 2018 s. 5*)
- (2) The protection conferred by subsection (1) does not affect any liability of the Government for the thing done or omitted to

Anti-Money Laundering and Counter-Terrorist Financing Ordinance

Part 1

1-6

Section 4

Cap. 615

be done by a public officer in the performance or purported performance of the relevant function.

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 a licensed individual insurance agent, licensed insurance agency or licensed insurance broker company only in relation to any transaction carried out by that agent, agency or company involving a contract of insurance described in column 3 of Part 2 of Schedule 1 to the Insurance Ordinance (Cap. 41). *(Replaced 12 of 2015 s. 154)*
- (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), (1A), (1B), (3) or (4), 5(1) or (3), 6(1) or (2), 7(2), 9, 10(1) or (2), 11(1) or (2), 12(3), (5), (6), (8), (9) or (10), 13(2), 13A(2), (4), (5), (6) or (7), 14(1) or (2), 15, 16, 17(1), 18(4), 19(1), (2), (2A) or (3), 20(1), (2), (3), (3A) or (5), 21, 22(1) or (2) or 23 of Schedule 2. (*Amended 4 of 2018 s. 6; 15 of 2022 s. 6*)

5A. Schedule 2 has effect in relation to DNFBPs

- (1) Schedule 2 has effect in relation to a DNFBP in accordance with this section.
- (2) An AML/CTF requirement applies to a DNFBP of a particular type if the relevant provision by or under which the requirement is made—
- (a) states that the provision applies to a DNFBP (without limiting the type of DNFBP) or to the particular type of DNFBP;

-
- (b) requires a DNFBP (without limiting the type of DNFBP) or the particular type of DNFBP to comply with the provision; or
- (c) otherwise applies the requirement or the provision to a DNFBP (without limiting the type of DNFBP) or to the particular type of DNFBP.
- (3) An AML/CTF requirement that applies to a DNFBP who is an accounting professional or a legal professional only applies, when, by way of business, the accounting professional or the legal professional, in Hong Kong, prepares for or carries out for a client a transaction concerning one or more of the following—
- (a) the buying or selling of real estate;
 - (b) the managing of client money, securities or other assets;
 - (c) the management of bank, savings or securities accounts;
 - (d) the organization of contributions for the creation, operation or management of corporations;
 - (e) the creation, operation or management of—
 - (i) legal persons; or
 - (ii) legal arrangements;
 - (f) the buying or selling of business entities;
 - (g) a service specified in the definition of *trust or company service* in section 1 of Part 1 of Schedule 1.
- (4) An AML/CTF requirement that applies to a DNFBP who is an estate agent only applies when the estate agent is involved, in Hong Kong, in a transaction concerning the buying or selling of real estate for a client (as defined by section 2(1) of the Estate Agents Ordinance (Cap. 511)).
- (5) An AML/CTF requirement that applies to a DNFBP who is a TCSP licensee only applies, when, by way of business, the

TCSP licensee, in Hong Kong, prepares for or carries out for a client a transaction concerning a service specified in the definition of *trust or company service* in section 1 of Part 1 of Schedule 1.

- (5A) An AML/CTF requirement that applies to a DNFBP who is a Category B PMS registrant only applies when, by way of business, the registrant carries out, in Hong Kong with a customer, a specified cash transaction that is not an excluded transaction. *(Added 15 of 2022 s. 7)*
- (5B) In relation to a Category B registrant, an excluded transaction means a specified cash transaction where—
- (a) the payment or payments in cash involved in the transaction is or are exclusively made by the Category B registrant to another Category B registrant; and
 - (b) the 2 Category B registrants are the only parties to the transaction. *(Added 15 of 2022 s. 7)*
- (6) To avoid doubt, for the purposes of this section, it is immaterial whether the subject matter of a transaction referred to in subsection (3), (4) or (5) is in Hong Kong or elsewhere.
- (7) In this section—

AML/CTF requirement (反洗錢及恐怖分子集資規定) means a requirement set out in Part 2, 3 or 4 of Schedule 2.

(Added 4 of 2018 s. 7)

6. Amendment of Schedule 2

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

7. Guidelines for operation of Schedule 2

(Replaced 4 of 2018 s. 8)

- (1) A relevant authority or a regulatory body 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, Insurance Authority or a regulatory body 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, Insurance Authority or the regulatory body under the relevant Ordinance.
- (3) A relevant authority or a regulatory body 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— (*Amended 4 of 2018 s. 8*)
 - (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 or a regulatory body must have regard to any provision in the guideline published under this section that is relevant to the requirement.
- (5A) To avoid doubt, in relation to a legal professional, the power to publish guidelines under this section does not affect the sole discretion of the Law Society to determine the content of Practice Direction P as defined by section 9A(3) of the relevant Ordinance in relation to the Law Society. *(Added 4 of 2018 s. 8)*
- (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);
 - (c) in relation to the Securities and Futures Commission, means the Securities and Futures Ordinance (Cap. 571);
 - (d) in relation to the HKICPA, means the Professional Accountants Ordinance (Cap. 50); *(Added 4 of 2018 s. 8)*
 - (e) in relation to the Law Society, means the Legal Practitioners Ordinance (Cap. 159); and *(Added 4 of 2018 s. 8)*
 - (f) in relation to the Estate Agents Authority, means the Estate Agents Ordinance (Cap. 511). *(Added 4 of 2018 s. 8)*

Anti-Money Laundering and Counter-Terrorist Financing Ordinance

Part 2

2-16

Section 7

Cap. 615

(Amended 4 of 2018 s. 8)

Part 3

Supervision and Investigations

Division 1—Preliminary

(Added 15 of 2022 s. 8)

8. Interpretation of Part 3

In this Part—

associated entity (有聯繫實體) has the meaning given by section 53ZR; *(Added 15 of 2022 s. 9)*

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; *(Amended 15 of 2022 s. 9)*

non-Part 5B prescribed person (非第5B部訂明人士) means a person who is any of the following (whether or not the person is also a licensed VAS provider or an associated entity of a licensed VAS provider)—

- (a) an authorized institution;
- (b) a licensed corporation;
- (c) an authorized insurer;
- (d) a licensed individual insurance agent;
- (e) a licensed insurance agency;
- (f) a licensed insurance broker company;
- (g) a licensed money service operator;
- (h) the Postmaster General;

- (i) an SVF licensee;
- (j) a TCSP licensee;
- (k) a PMS registrant; (*Added 15 of 2022 s. 9*)

prescribed person (訂明人士) means—

- (a) a non-Part 5B prescribed person;
- (b) a licensed VAS provider; or
- (c) an associated entity of a licensed VAS provider; (*Added 15 of 2022 s. 9*)

prescribed requirement (訂明規定) means—

- (a) in relation to a non-Part 5B prescribed person, the requirement not to contravene—
 - (i) any provision of this Ordinance;
 - (ii) any notice or requirement given or imposed under this Ordinance;
 - (iii) any of the conditions of any licence under this Ordinance;
 - (iv) any of the conditions of any registration under this Ordinance; or
 - (v) any other condition imposed under this Ordinance; or
- (b) in relation to a licensed VAS provider or an associated entity of a licensed VAS provider, the requirement not to contravene—
 - (i) any provision of this Ordinance;
 - (ii) any provision in a code or guideline published under any provision of this Ordinance;
 - (iii) any notice, prohibition or requirement given or imposed under or pursuant to any provision of this Ordinance;

- (iv) any conditions of any licence imposed by the Securities and Futures Commission under or pursuant to any provision in Part 5B; or
- (v) any other condition imposed by the Securities and Futures Commission under or pursuant to any provision of this Ordinance; (*Added 15 of 2022 s. 9*)

related corporation (有連繫法團)—see section 53ZRC. (*Added 15 of 2022 s. 9*)

Division 2—Powers to Enter, Inspect and Investigate

(*Added 15 of 2022 s. 10*)

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

- (1) For the purpose of ascertaining whether a prescribed person (***inspection subject***) is complying or has complied with, or is likely to be able to comply with, a prescribed requirement, an authorized person has the powers specified in subsection (1A) or (1B). (*Replaced 15 of 2022 s. 11*)
- (1A) In relation to an inspection subject who is a non-Part 5B prescribed person (***non-Part 5B inspection subject***), an authorized person may at any reasonable time—
 - (a) enter the business premises of the inspection subject;
 - (b) inspect, and make copies or otherwise record details of, any specified business record; and
 - (c) make inquiries—
 - (i) of the inspection subject; or
 - (ii) subject to subsection (6), of any information holder,concerning any specified business record, or concerning any specified transaction. (*Added 15 of 2022 s. 11*)

- (1B) In relation to an inspection subject who is a licensed VAS provider or an associated entity of a licensed VAS provider, an authorized person may at any reasonable time—
- (a) enter the business premises of the licensed VAS provider or an associated entity of the licensed VAS provider;
 - (b) inspect, and make copies or otherwise record details of, any specified business record; and
 - (c) make inquiries—
 - (i) of—
 - (A) the licensed VAS provider;
 - (B) an associated entity of the licensed VAS provider;
 - (C) a related corporation of the licensed VAS provider; or
 - (D) a related corporation of an associated entity of the licensed VAS provider; or
 - (ii) subject to subsection (6), of any information holder,
concerning any specified business record, or concerning any specified transaction or activity. (*Added 15 of 2022 s. 11*)
- (2) (*Repealed 15 of 2022 s. 11*)
- (3) Subject to section 9A, an authorized person in exercising any power under subsection (1A)(b) or (1B)(b) may—
- (a) require any of the following persons to do any of the acts specified in subsection (4)—
 - (i) if the power is exercised in respect of a non-Part 5B inspection subject—the inspection subject;

- (ii) if the power is exercised in respect of an inspection subject who is a licensed VAS provider or an associated entity of a licensed VAS provider—
 - (A) the licensed VAS provider;
 - (B) an associated entity of the licensed VAS provider;
 - (C) a related corporation of the licensed VAS provider; or
 - (D) a related corporation of an associated entity of the licensed VAS provider; and
 - (b) subject to subsection (7), require any information holder to do any of the acts specified in subsection (4). *(Replaced 15 of 2022 s. 11)*
- (4) The specified acts are—
 - (a) to give the authorized person access to any specified business record, and produce the record within the time and at the place specified by the authorized person; and
 - (b) to answer any question regarding the record. *(Replaced 15 of 2022 s. 11)*
- (5) Subject to section 9A, an authorized person in exercising any power under subsection (1A)(c) or (1B)(c) in respect of a person specified in that subsection may require the person—
 - (a) to give the authorized person access to any specified business record, and produce the record within the time and at the place specified by the authorized person; and
 - (b) to answer any question raised for the purposes of that subsection. *(Replaced 15 of 2022 s. 11)*
- (6) An authorized person may only exercise the power under subsection (1A)(c)(ii) or (1B)(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 (1A)(c)(i) or (1B)(c)(i). (*Amended 15 of 2022 s. 11*)

- (7) An authorized person may only exercise the power under subsection (3)(b) if the authorized person has reasonable cause to believe that the specified business record or the information sought cannot be obtained by the exercise of the power under subsection (3)(a). (*Amended 15 of 2022 s. 11*)
- (8) (*Repealed 15 of 2022 s. 11*)
- (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 used by the insurer in connection with its business; *(Replaced 12 of 2015 s. 156)*
- (d) in relation to a licensed individual insurance agent, means any premises at which the person by whom the agent is appointed as an agent carries on business; *(Replaced 12 of 2015 s. 156)*
- (e) in relation to a licensed insurance agency, means any premises at which—
 - (i) the agency carries on business; or
 - (ii) the person by whom the agency is appointed as an agent carries on business; *(Replaced 12 of 2015 s. 156)*
- (ea) in relation to a licensed insurance broker company, means any premises at which the company carries on business; *(Added 12 of 2015 s. 156)*
- (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; *(Amended 18 of 2015 s. 69; 4 of 2018 s. 9)*
- (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. Amended 4 of 2018 s. 9; 15 of 2022 s. 11)*

- (i) in relation to a TCSP licensee, means any premises at which the TCSP licensee carries on business, including a place of business used for the purpose of—
 - (i) the administration of the affairs or business of the TCSP licensee;
 - (ii) the processing of transactions; or
 - (iii) the storage of documents, data or records; (*Added 4 of 2018 s. 9*)
- (j) in relation to a licensed VAS provider, means its premises as approved by the Securities and Futures Commission under section 53ZRR; (*Added 15 of 2022 s. 11*)
- (k) in relation to an associated entity of a licensed VAS provider, means any premises of the associated entity; and (*Added 15 of 2022 s. 11*)
- (l) in relation to a PMS registrant, means, subject to section 53ZVP, any premises at which the registrant carries on a precious metals and stones business, including any premises used by the registrant for the purpose of—
 - (i) the carrying out of face-to-face transactions with customers;
 - (ii) the administration of the affairs or business of the registrant;
 - (iii) the processing of transactions; or
 - (iv) the storage of documents, data or records; (*Added 15 of 2022 s. 11*)

information holder (資料持有人) means—

- (a) in relation to an authorized person exercising a power in respect of a non-Part 5B inspection subject—a person (other than the inspection subject) whom the authorized

person has reasonable cause to believe to have information relating to any specified business record or any specified transaction, or to be in possession of any specified business record, in relation to the inspection subject (whether or not the person is connected with the inspection subject); and

- (b) in relation to an authorized person exercising a power in respect of an inspection subject who is a licensed VAS provider or an associated entity of a licensed VAS provider—a person—
 - (i) who is none of the following (but may or may not be connected with any of the following)—
 - (A) the licensed VAS provider;
 - (B) an associated entity of the licensed VAS provider;
 - (C) a related corporation of the licensed VAS provider;
 - (D) a related corporation of an associated entity of the licensed VAS provider; and
 - (ii) whom the authorized person has reasonable cause to believe to have information relating to any specified business record or any specified transaction or activity, or to be in possession of any specified business record, in relation to the inspection subject; (*Added 15 of 2022 s. 11*)

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).

- (16) In this section, in relation to a non-Part 5B inspection subject—
- (a) ***specified business record*** (指明業務紀錄) means any record or document relating to the business carried on, or any transaction carried out, by the inspection subject; and
 - (b) ***specified transaction*** (指明交易) means a transaction referred to in paragraph (a), whether or not there is any record or document relating to the transaction. (*Added 15 of 2022 s. 11*)
- (17) In this section, in relation to an inspection subject that is a licensed VAS provider or an associated entity of a licensed VAS provider—
- (a) ***specified business record*** (指明業務紀錄) means any record or document relating to—
 - (i) the business carried on by the licensed VAS provider or any associated entity of the licensed VAS provider;
 - (ii) any transaction or activity that was carried out in the course of any such a business or that may affect any such a business; or
 - (iii) any transaction carried out by—
 - (A) a related corporation of the licensed VAS provider; or
 - (B) a related corporation of an associated entity of the licensed VAS provider; and
 - (b) ***specified transaction or activity*** (指明交易或活動) means any transaction or activity referred to in paragraph (a)(ii) or (iii), whether or not there is any record or document relating to the transaction or activity. (*Added 15 of 2022 s. 11*)

9A. When power under section 9 invoked by other regulatory authority

- (1) This section applies if—
 - (a) a person (*subject person*) is required by an authorized person under section 9 to disclose information or produce a specified business record;
 - (b) the subject person is a prescribed person; and
 - (c) the person by whom the authorized person is authorized under section 9(12) (*other regulatory authority*) is not the relevant authority in relation to the subject person.
- (2) Section 9 is not to be construed as requiring the subject person to disclose any information or produce any specified business record relating to the affairs of any of its customers to the authorized person, unless the other regulatory authority is of the opinion, and certifies in writing that it is of the opinion, that the disclosure or production is necessary for the purposes of that section.
- (3) In this section—

specified business record (指明業務紀錄) has the same meaning as in section 9(16)(a) and (17)(a).

(Added 15 of 2022 s. 12)

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—
 - (a) the person is a related person of a person (*obligated person*) on whom a requirement is imposed under section 9(3), (5), (9) or (10); and

-
- (b) the person, with intent to defraud, causes or allows the obligated person to fail to comply with the requirement. *(Replaced 15 of 2022 s. 13)*
- (8) A person commits an offence if—
- (a) the person is a related person of a person (***obligated person***) on whom a requirement is imposed under section 9(3) or (5); and
- (b) the person, with intent to defraud, causes or allows the obligated person, in purported compliance with the requirement—
- (i) to produce any record or document that is false or misleading in a material particular; or
- (ii) to give any answer that is false or misleading in a material particular. *(Replaced 15 of 2022 s. 13)*
- (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) In this section—

related person (相關人士), in relation to a person (*first-mentioned person*), means a person who—

- (a) is an employee of the first-mentioned person;
- (b) is employed to work for the first-mentioned person; or
- (c) is concerned in the management of the first-mentioned person. (*Added 15 of 2022 s. 13*)

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;
- (b) in relation to a financial institution (other than a licensed VAS provider), for the purpose of considering whether to exercise any power under section 21 or 43, has reason to inquire whether the financial institution has contravened a specified provision as defined by section 5(11) or a provision specified in section 43(1);
- (c) in relation to a TCSP licensee, for the purpose of considering whether to exercise a power under section 53Z or 53ZD, has reason to inquire whether there has been a contravention referred to in section 53Z(2)(a) or (b); (*Added 4 of 2018 s. 11*)
- (d) in relation to a VASP regulated person, for the purpose of considering whether to exercise a power under section 53ZSP(3), has reason to inquire—
 - (i) whether the person is, or was at any time, guilty of misconduct for the purposes of section 53ZSP; or
 - (ii) whether the person is not or was not a fit and proper person for the purposes of section 53ZSP; or (*Added 15 of 2022 s. 14*)

(e) in relation to a PMS registrant, for the purpose of considering whether to exercise any power under section 53ZVE(3), 53ZVF(3) or 53ZVJ(2), has reason to inquire whether there has been a contravention referred to in section 53ZVE(2)(a) or (b) or 53ZVF(2)(a) or (b), *(Added 15 of 2022 s. 14)*

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. *(Amended 4 of 2018 s. 11; 15 of 2022 s. 14)*

(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; *(Replaced 12 of 2015 s. 157. Amended 4 of 2018 s. 11)*

(d) in relation to the Commissioner, public officers employed in the Customs and Excise Department; and *(Amended 4 of 2018 s. 11)*

(e) in relation to the Registrar, a public officer employed in the Companies Registry. *(Added 4 of 2018 s. 11)*

(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.
- (6) In this section—

VASP regulated person (虛擬資產服務提供者受規管人士) means a person who is or was a regulated person as defined by section 53ZSO(1). (*Added 15 of 2022 s. 14*)

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

- (1) This section applies to a person (***covered person***) who is— (*Amended 15 of 2022 s. 15*)
 - (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) Subject to section 12A, an investigator may in writing require a covered person to— (*Amended 15 of 2022 s. 15*)
 - (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 covered person produces a record or document in accordance with a requirement imposed under subsection (2)(a), the investigator may, subject to section 12A, require the person to give an explanation or further particulars in respect of the record or document. (*Amended 15 of 2022 s. 15*)
- (4) If a covered 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. (*Amended 15 of 2022 s. 15*)
- (5) If a covered 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. (*Amended 15 of 2022 s. 15*)
- (6) A statutory declaration under subsection (4) or (5) may be taken by the investigator.

- (7) *(Repealed 15 of 2022 s. 15)*
- (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.

12A. When power under section 12 invoked by other regulatory authority

- (1) This section applies if—
 - (a) a person (*subject person*) is required by an investigator under section 12 to disclose information or produce a record or document;
 - (b) the subject person is a prescribed person; and
 - (c) the person by whom the investigator is appointed or directed under section 11(1) (*other regulatory authority*) is not the relevant authority in relation to the subject person.
- (2) Neither section 11 nor 12 is to be construed as requiring the subject person to disclose any information or produce any record or document relating to the affairs of any of its customers to the investigator 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 of the opinion, and certifies in writing that it is of the opinion, that the disclosure or production is necessary for the purposes of the investigation.

(Added 15 of 2022 s. 16)

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—
 - (a) the person is a related person of a person (***obligated person***) on whom a requirement is imposed under section 12(2), (3), (4) or (5); and
 - (b) the person, with intent to defraud, causes or allows the obligated person to fail to comply with the requirement. (*Replaced 15 of 2022 s. 17*)
- (8) A person commits an offence if—
 - (a) the person is a related person of a person (***obligated person***) on whom a requirement is imposed under section 12(2) or (3); and
 - (b) the person, with intent to defraud, causes or allows the obligated person, in purported compliance with the requirement—
 - (i) to produce any record or document that is false or misleading in a material particular; or
 - (ii) to give any answer, response, explanation or further particulars, that is or are false or misleading in a material particular. (*Replaced 15 of 2022 s. 17*)

- (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) In this section—

related person (相關人士) has the meaning given by section 10(11). (*Added 15 of 2022 s. 17*)

Division 3—Regulatory Assistance to Non-Hong Kong Regulator Concerning VA Activities

(*Division 3 added 15 of 2022 s. 18*)

13A. Interpretation of Division 3

(1) An expression used in this Division, and defined or otherwise explained in Part 5B, has the same meaning as in that Part.

(2) In this Division—

regulator (規管者), in relation to a jurisdiction outside Hong Kong, means any authority or regulatory organization in the jurisdiction;

VA requirements (虛擬資產規定), in relation to a jurisdiction outside Hong Kong, means legal or regulatory requirements that relate to any transaction or activity regarding any virtual assets or other similar transactions or activities that are regulated by a regulator of the jurisdiction.

13B. International enforcement cooperation

(1) For the purposes of this section, an issue of whether a person has contravened or is contravening any VA requirements of a jurisdiction outside Hong Kong (*other jurisdiction*) is an applicable matter if the Commission is of the opinion that the issue is of a nature similar to a matter described in section 11(1)(a) or (d) as that which the Commission has

reasonable cause to believe or has reason to inquire (as the case requires).

- (2) The Commission may provide assistance to investigate an applicable matter, at the request of a regulator of the other jurisdiction concerned who enforces or administers the VA requirements concerned, if—
 - (a) in the opinion of the Commission, the regulator meets the regulator-related requirements under section 13D(1); and
 - (b) in the opinion of the Commission, the investors' and public interest condition described in section 13E is satisfied in relation to the request.
- (3) A person may be directed or appointed under section 11 by the Commission to investigate an applicable matter as the person may be directed or appointed under that section by the Commission to investigate a matter described in subsection (1)(a) or (d) of that section.
- (4) Sections 11(3), (4) and (5), 12, 12A and 13, Division 4 and Part 6A (*section 13B-related provisions*) apply to a person directed or appointed to investigate an applicable matter, and a requirement imposed, by virtue of this section and to the doing of anything in compliance or purported compliance with such a requirement.
- (5) For the purposes of subsection (4)—
 - (a) a reference, in any of the section 13B-related provisions, to a requirement imposed under any provision of section 12 is to be read to include a requirement imposed by virtue of this section; and
 - (b) a reference, in any of the section 13B-related provisions, to the doing of anything in compliance or purported compliance with a requirement under any provision of section 12 is to be read to include the doing of the

thing in compliance or purported compliance with a requirement imposed by virtue of this section.

- (6) Subsections (7) and (8) apply if—
- (a) an investigator is directed or appointed to investigate an applicable matter by virtue of this section; and
 - (b) the investigator, exercising a power under section 12, requires a person—
 - (i) to give an answer or response to any question as raised by the investigator; or
 - (ii) to give an explanation or further particulars.
- (7) The investigator must ensure that the person has first been informed or reminded of the limitations imposed by subsection (8) on the purpose for which the requirement is imposed and the question and answer or response, or the explanation or further particulars, may be produced to the regulator of that other jurisdiction.
- (8) If—
- (a) any explanation, further particulars, answer or response (*subject information*) given by the person in accordance with a requirement under subsection (6)(b) (*subject requirement*) might tend to incriminate the person; and
 - (b) before giving the subject information, the person claims the subject information might tend to incriminate the person,
- without limiting section 15, the investigator must not provide evidence of the subject requirement or the subject information, to the regulator of the other jurisdiction concerned, for use in criminal proceedings against the person in that other jurisdiction.

13C. International supervisory cooperation

- (1) Subject to subsection (4), the Commission may, at the request of a regulator of a jurisdiction outside Hong Kong (*requesting jurisdiction*), provide assistance to the regulator to ascertain—
 - (a) whether a specified regulatee constitutes a risk to, or may affect, the financial stability of the requesting jurisdiction; or
 - (b) whether a specified regulatee is complying or has complied with, or is likely to be able to comply with, any VA requirements of the requesting jurisdiction that are enforced or administered by the regulator.
- (2) In this section—
 - (a) in relation to a regulator of a jurisdiction outside Hong Kong, a specified regulatee means a corporation that—
 - (i) is regulated by the regulator; and
 - (ii) is—
 - (A) a licensed VAS provider; or
 - (B) a related corporation of a licensed VAS provider; and
 - (b) a specified VAS provider means—
 - (i) if paragraph (a)(ii)(A) applies to a specified regulatee—the specified regulatee; or
 - (ii) if paragraph (a)(ii)(B) applies to a specified regulatee—the licensed VAS provider of whom the specified regulatee is a related corporation.
- (3) If the Commission decides to provide assistance in relation to a specified regulatee under subsection (1)—
 - (a) the Commission may authorize a person for the purposes of this section (*section 13C officer*);

- (b) the section 13C officer may require the specified VAS provider or a related corporation of the specified VAS provider to—
 - (i) provide to the section 13C officer, within the time and at the place specified by the section 13C officer, a copy of any record or document relating to—
 - (A) any VA service provided by the specified VAS provider; or
 - (B) any transaction or activity that was carried out in the course of, or that may affect, any VA service provided as mentioned in sub-paragraph (A); and
 - (ii) answer any question raised by the section 13C officer regarding any record, document, VA service, transaction or activity referred to in subparagraph (i).
- (4) Subsection (1) applies only if—
 - (a) in the opinion of the Commission, the regulator meets the regulator-related requirements under section 13D(1);
 - (b) in the opinion of the Commission, the investors' and public interest condition described in section 13E is satisfied in relation to the request; and
 - (c) the regulator has provided to the Commission—
 - (i) a written statement that conforms with subsection (5); and
 - (ii) a written undertaking that conforms with subsection (6).
- (5) The written statement must be to the effect of confirming that the regulator has not been, and will not be, able to—

- (a) obtain the information referred to in subsection (3)(b) by any other reasonable means; and
 - (b) fully ascertain the matters described in subsection (1) without the information.
- (6) The written undertaking must be to the effect that the regulator—
- (a) will use the information, obtained from the Commission because of the request for assistance, solely for ascertaining the matters described in subsection (1);
 - (b) will not use any of the information in any proceedings, in the requesting jurisdiction or elsewhere, unless—
 - (i) the regulator has made a separate request under section 13B, and the Commission has decided to provide assistance under that section; and
 - (ii) the regulator has obtained the same information from the Commission because of the separate request;
 - (c) will treat the information as confidential and will not disclose it to any other person, in the requesting jurisdiction or elsewhere, for any purpose without the consent of the Commission;
 - (d) will on receiving a demand, legally enforceable under the laws of the requesting jurisdiction, for the disclosure of any of the information—
 - (i) inform the Commission as soon as reasonably practicable; and
 - (ii) assist in preserving the confidentiality of the information by taking all appropriate measures as may be available (including but not limited to asserting legal exemptions or privileges under the laws of the requesting jurisdiction); and

- (e) will cooperate with the Commission in any action or proceedings, in the requesting jurisdiction or elsewhere, that seek to safeguard the confidentiality of any of the information.
- (7) Section 9 (except subsections (1), (1A), (1B), (3), (4), (5), (6), (7) and (12)), sections 9A and 10, Division 4 and Part 6A (*section 13C-related provisions*) apply to a section 13C officer and a requirement imposed under subsection (3) and the doing of anything in compliance or in purported compliance with such a requirement.
- (8) For the purposes of subsection (7), a reference, in any of the section 13C-related provisions, to a requirement imposed under any provision of section 9 is to be read to include a requirement imposed under subsection (3).

13D. Regulator-related requirements

- (1) A regulator of a jurisdiction outside Hong Kong (*requesting jurisdiction*) requesting assistance under section 13B or 13C meets the regulator-related requirements if—
 - (a) the regulator—
 - (i) performs, in the requesting jurisdiction, any function similar to a function of the Commission under this Ordinance; or
 - (ii) regulates, supervises or investigates banking, securities, insurance, activities involving virtual assets, or other financial services in the requesting jurisdiction; and
 - (b) the regulator is subject to adequate secrecy provisions in the requesting jurisdiction.
- (2) As soon as reasonably practicable after the Commission is satisfied that a regulator meets the regulator-related requirements, the Commission must cause the name of the

regulator to be published in the Gazette unless the name of the regulator has already been published under section 186(5) of the Securities and Futures Ordinance (Cap. 571).

- (3) Any matter published under subsection (2) is not subsidiary legislation.

13E. Investors' and public interest condition

- (1) For the purposes of section 13B or 13C, the investors' and public interest condition is satisfied in relation to a request for assistance, made by a regulator of a jurisdiction outside Hong Kong, if the Commission is of the opinion that—
- (a) it is desirable or expedient that the assistance requested should be provided in the interest of the investing public or in the public interest; or
 - (b) the assistance will enable or assist the regulator to perform the regulator's functions and it is not contrary to the interest of the investing public or to the public interest that the assistance should be provided.
- (2) In deciding whether the investors' and public interest condition is satisfied in a particular case where assistance is requested under section 13B or 13C, the Commission must take into account whether the regulator will—
- (a) pay to the Commission any of the costs and expenses incurred in providing the assistance; and
 - (b) be able and willing to provide reciprocal assistance within its jurisdiction in response to a comparable request for assistance from Hong Kong.
- (3) If—
- (a) the Commission receives from a regulator of a jurisdiction outside Hong Kong an amount paid in

respect of any of the costs and expenses incurred in providing assistance under section 13B or 13C; and

- (b) all or any of the costs and expenses have been paid out of moneys provided by the Legislative Council,

the Commission must pay to the Financial Secretary the amount received to the extent that the costs and expenses have already been paid out of moneys provided by the Legislative Council.

Division 4—Miscellaneous Enforcement Matters

(Added 15 of 2022 s. 18)

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), in respect of the answer or response, or the explanation or further particulars. (*Amended 15 of 2022 s. 19*)

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) *(Repealed 15 of 2022 s. 20)*

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.

Anti-Money Laundering and Counter-Terrorist Financing Ordinance

Part 3—Division 4

3-76

Section 20

Cap. 615

- (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.
-

Part 4

Disciplinary Actions by Relevant Authorities

20A. Part 4 does not apply to licensed VAS provider

In this Part—

financial institution (金融機構) excludes a licensed VAS provider.

(Added 15 of 2022 s. 21)

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

Anti-Money Laundering and Counter-Terrorist Financing Ordinance

Part 4

4-8

Section 23

Cap. 615

- (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.
-

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, more than a 25% share of the capital or profits of the partnership;

- (ii) is, directly or indirectly, entitled to exercise or control the exercise of more than 25% 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, more than 25% of the issued share capital of the corporation;
 - (ii) is, directly or indirectly, entitled to exercise or control the exercise of more than 25% of the voting rights at general meetings of the corporation; or
 - (iii) exercises ultimate control over the management of the corporation. (*Amended 4 of 2018 s. 14*)

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) a licensed insurance broker company that operates a money service that is ancillary to the company's principal business; (*Amended 12 of 2015 s. 158; 18 of 2015 s. 70*)
- (e) a licensed individual insurance agent or a licensed insurance agency that operates a money service that is ancillary to the agent's or agency's principal business; (*Amended 12 of 2015 s. 158; 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— (*Amended 15 of 2022 s. 22*)
 - (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.
- (3) If a person is convicted of an offence under this section, the court or 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.

(Amended 15 of 2022 s. 22)

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 of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575); (*Amended 4 of 2018 s. 15*)
 - (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.

39A. Licensee's duty to display original of licence

- (1) A licensee who is licensed to operate a money service at premises specified in the licence must display the original of the licence in a conspicuous place at the specified premises.
- (2) A licensee who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

(Added 4 of 2018 s. 16)

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), 39A(1), 40(1) or 41(1). (*Amended 4 of 2018 s. 17*)
- (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 the authorized officer has reasonable grounds to suspect that the person has committed or is committing an offence under section 29. *(Amended 15 of 2022 s. 23)*
- (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. *(Repealed 15 of 2022 s. 24)*

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.

Part 5A

Regulation of Trust or Company Service Providers

(Part 5A added 4 of 2018 s. 18)

Division 1—Preliminary

Subdivision 1—Interpretation and Disapplication of this Part

53A. Interpretation of Part 5A

In this Part—

disciplinary power (紀律處分權力) means a power that may be exercised by the Registrar under section 53Z;

licence (牌照) means a licence—

(a) granted under section 53G; or

(b) renewed under section 53K,

and, except in Subdivisions 2 and 3 of Division 2, includes a licence deemed to have been granted under section 53ZQ;

licensee (持牌人) means a person who holds a licence—

(a) granted under section 53G; or

(b) renewed under section 53K,

and, except in Subdivision 2 and Subdivisions 2 and 3 of Division 2, includes a deemed licensee as defined by section 53ZQ(5);

register (登記冊) means the register maintained under section 53D;

ultimate owner (最終擁有人)—

(a) in relation to an individual—

- (i) means another individual who ultimately owns or controls the trust or company 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, directly or indirectly, to more than a 25% share of the capital or profits of the partnership;
 - (ii) controls, directly or indirectly, more than a 25% share of the capital or profits of the partnership;
 - (iii) is, directly or indirectly, entitled to exercise or control the exercise of more than 25% of the voting rights in the partnership; or
 - (iv) 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, more than 25% of the issued share capital of the corporation;
 - (ii) is, directly or indirectly, entitled to exercise or control the exercise of more than 25% of the voting rights at general meetings of the corporation; or
 - (iii) exercises ultimate control over the management of the corporation.

(Amended 15 of 2022 s. 25)

53B. Disapplication

- (1) This Part does not apply to—
 - (a) the Government;

- (b) an authorized institution;
 - (c) a licensed corporation that operates a trust or company service business that is ancillary to the corporation's principal business;
 - (d) an accounting professional;
 - (e) a legal professional; or
 - (f) a person of a class or description prescribed under subsection (2).
- (2) The Secretary for Financial Services and the Treasury may by regulation prescribe a class or description of persons to whom this Part does not apply.

Subdivision 2—Delegation by Registrar of Companies and Register of Licensees

53C. Delegation of functions

- (1) The Registrar of Companies may in writing delegate any of his or her functions under this Ordinance to a public officer employed in the Companies Registry.
- (2) However, the Registrar of Companies must not delegate—
 - (a) the power to delegate under subsection (1); or
 - (b) the power—
 - (i) to amend Schedule 3A under section 53ZL; or
 - (ii) to make regulations under section 53ZM.

53D. Registrar to maintain register of licensees

- (1) The Registrar must maintain a register of licensees, in a form the Registrar considers appropriate, containing—
 - (a) the name of every licensee; and
 - (b) for—

- (i) an individual carrying on business as a sole proprietor—the business address of the sole proprietor;
 - (ii) a partnership—the business address of the partnership; or
 - (iii) a corporation—the business address of the corporation.
- (2) The register must be made available for inspection by any member of the public for the purpose of ascertaining whether a person is a licensee.
- (3) A member of the public is entitled, without charge, to inspect the register during normal office hours.

53E. Certified copies and their evidential value

- (1) A person may, on the payment of the fee specified in Schedule 3A, obtain—
 - (a) a certified copy of—
 - (i) an entry in the register; or
 - (ii) an extract from the register; or
 - (b) a certificate by the Registrar stating that the name of a person—
 - (i) has been entered in the register;
 - (ii) has not been entered in the register;
 - (iii) has been removed from the register; or
 - (iv) has not been removed from the register.
- (2) In a civil or criminal proceeding, a copy of an entry in or extract from the register purporting to be certified by the Registrar—

- (a) is admissible in evidence on production without further proof; and
 - (b) is evidence of the facts stated in it.
- (3) The fact that the name of a person does not appear on a copy of an entry in or extract from the register purporting to be certified by the Registrar is evidence that, at the date on which the copy is purported to be certified, the person was not a licensee.
- (4) In a civil or criminal proceeding, a certificate purporting to be signed by the Registrar stating that the name of a person has been entered in or removed from the register, or has not been entered in or removed from the register, is conclusive evidence of the facts stated in it.

Division 2—Licensing of Trust or Company Service Providers

Subdivision 1—Restriction on Carrying on Trust or Company Service Business

53F. Offence of carrying on trust or company service business without licence

- (1) A person commits an offence if the person carries on a trust or company service business 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 be disqualified from holding a licence for a period—
 - (a) beginning on the date of the order; and

- (b) specified in the order.

Subdivision 2—Application for, Grant and Renewal of, Licence

53G. Application for and grant of licence

- (1) The Registrar may, on application, grant, in accordance with this Subdivision, a licence to carry on a trust or company service business to—
 - (a) an individual carrying on business as a sole proprietor;
 - (b) a partnership; or
 - (c) a corporation.
- (2) The application—
 - (a) must be made in the form and way specified by the Registrar; and
 - (b) must be accompanied by—
 - (i) a copy of a valid business registration certificate; and
 - (ii) the fee specified in Schedule 3A.

53H. Licence granted only if fit and proper test satisfied

- (1) If the applicant is an individual carrying on business as a sole proprietor, a licence may be granted only if the Registrar is satisfied that—
 - (a) the individual is a fit and proper person to carry on a trust or company service business; 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 a trust or company service business.
- (2) If the applicant is a partnership, a licence may be granted only if the Registrar is satisfied that—

-
- (a) each partner in the partnership is a fit and proper person to carry on a trust or company service business; 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 a trust or company service business.
- (3) If the applicant is a corporation, a licence may be granted only if the Registrar is satisfied that—
- (a) each director of the corporation is a fit and proper person to be associated with a trust or company service business; 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 a trust or company service business.
- (4) If the Registrar decides not to grant a licence, the Registrar must inform the applicant of the decision by notice in writing.
- (5) The notice must include—
- (a) a statement of the reasons for the decision; and
 - (b) a statement that the applicant may apply to the Review Tribunal for a review of the decision.

53I. Fit and proper test

In determining whether a person is a fit and proper person for the purposes of section 53H, the Registrar must, in addition to any other matter that the Registrar considers relevant, have regard to the following matters—

- (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 of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575);
 - (iii) an offence under section 25(1), 25A(5) or (7) of, or an 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 an 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) 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 failed to comply with a requirement imposed under this Ordinance or a regulation made under section 53ZM;
- (d) if the person is an individual, whether he or she is an undischarged bankrupt or is the subject of any bankruptcy proceedings under the Bankruptcy Ordinance (Cap. 6);
- (e) if the person is a corporation, whether it is in liquidation or is the subject of a winding up order, or there is a receiver appointed in relation to it.

53J. Conditions when granting licence

- (1) On granting a licence, the Registrar may impose any condition that the Registrar considers appropriate.
- (2) If a condition is imposed, the Registrar must, at the time the licence is granted, inform the licensee by notice in writing.
- (3) The notice must include—
 - (a) a statement of the reasons for the decision under subsection (1); and
 - (b) a statement that the licensee may apply to the Review Tribunal for a review of the decision.
- (4) A condition takes effect at the time the licensee receives the notice or at the time specified in the notice, whichever is later.

53K. Renewal of licence

- (1) A licensee may apply to the Registrar for the renewal of a licence.
- (2) The application—
 - (a) must be made at least 60 days before the licence is due to expire;
 - (b) must be made in the form and way specified by the Registrar; and
 - (c) must be accompanied by the fee specified in Schedule 3A.
- (3) Sections 53H(1), (2) and (3) and 53I apply to an application for renewal as they apply to an application for the grant of a licence.
- (4) If the licence expires before the determination of the application, unless the application is withdrawn or the licence is revoked or suspended, the licence remains in force—

- (a) until it is renewed; or
 - (b) if it is not renewed, until the decision not to renew takes effect as a specified decision under section 75.
- (5) If the Registrar decides not to renew the licence, the Registrar must inform the licensee of the decision by notice in writing.
- (6) The notice 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 renewal takes effect—
- (a) on the day following the expiry of the licence; or
 - (b) if subsection (4) applies, on the day following the day on which the licence would have expired but for that subsection.

53L. Conditions when renewing licence

- (1) On renewing a licence, the Registrar may, if the Registrar considers appropriate—
- (a) impose a new condition;
 - (b) amend a previously imposed condition; or
 - (c) remove a previously imposed condition.
- (2) If a new condition is imposed or a condition is amended or removed, the Registrar must, at the time the licence is renewed, inform the licensee by notice in writing.
- (3) The notice must include—
- (a) a statement of the reasons for a decision under subsection (1)(a) or (b); and
 - (b) a statement that the licensee may apply to the Review Tribunal for a review of the decision.

- (4) The imposition, amendment or removal of a condition takes effect at the time the licensee receives the notice or at the time specified in the notice, whichever is later.

53M. Amendment of conditions of licence

- (1) The Registrar may, if satisfied that it is reasonable to do so in the circumstances, in relation to a licence—
 - (a) impose a new condition;
 - (b) amend a previously imposed condition; or
 - (c) remove a previously imposed condition.
- (2) If a new condition is imposed or a condition is amended or removed, the Registrar must inform the licensee by notice in writing.
- (3) The notice must include—
 - (a) a statement of the reasons for a decision under subsection (1)(a) or (b); and
 - (b) a statement that the licensee may apply to the Review Tribunal for a review of the decision.
- (4) The imposition, amendment or removal of a condition takes effect at the time the licensee receives the notice or at the time specified in the notice, whichever is later.

Subdivision 3—Form and Validity Period of Licence

53N. Form of licence

- (1) A licence is to be in a form specified by the Registrar.
- (2) The licence must specify—
 - (a) the period for which the licence is valid; and
 - (b) if the licensee—

- (i) is an individual carrying on business as a sole proprietor—the business address of the sole proprietor;
- (ii) is a partnership—the business address of the partnership; or
- (iii) is a corporation—the business address of the corporation.

53O. Validity period of licence

- (1) A licence that is granted under section 53G is valid for—
 - (a) 3 years beginning on the date on which the licence is granted; or
 - (b) if the Registrar considers it appropriate in a particular case, a shorter period—
 - (i) determined by the Registrar; and
 - (ii) beginning on the date on which the licence is granted.
- (2) A licence that is renewed under section 53K is valid for—
 - (a) 3 years beginning on the date on which the licence is renewed; or
 - (b) if the Registrar considers it appropriate in a particular case, a shorter period—
 - (i) determined by the Registrar; and
 - (ii) beginning on the date on which the licence is renewed.

53P. Cessation of validity when certain events happen

A licence ceases to be valid—

- (a) if the licensee is an individual carrying on business as a sole proprietor—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 the winding up of the corporation.

Subdivision 4—Revocation or Suspension of Licence

53Q. When licence may be revoked or suspended

- (1) The Registrar may, in a situation specified in subsection (2)—
 - (a) revoke a licensee’s licence; or
 - (b) suspend a licensee’s licence—
 - (i) for a period specified by the Registrar; or
 - (ii) until the occurrence of an event specified by the Registrar.
- (2) The situations are—
 - (a) where the licensee is an individual carrying on business as a sole proprietor, the Registrar is no longer satisfied that—
 - (i) the individual is a fit and proper person to carry on a trust or company service business; or
 - (ii) if there is an ultimate owner in relation to the individual, the ultimate owner is a fit and proper person to be associated with a trust or company service business;
 - (b) where the licensee is a partnership, the Registrar is no longer satisfied that—
 - (i) a partner in the partnership is a fit and proper person to carry on a trust or company service business; or

- (ii) if there is an ultimate owner in relation to the partnership, the ultimate owner is a fit and proper person to be associated with a trust or company service business; or
- (c) where the licensee is a corporation, the Registrar is no longer satisfied that—
 - (i) a director of the corporation is a fit and proper person to be associated with a trust or company service business; or
 - (ii) if there is an ultimate owner in relation to the corporation, the ultimate owner is a fit and proper person to be associated with a trust or company service business.

53R. Procedure for revoking or suspending licence

- (1) If the Registrar decides to exercise a power under section 53Q(1), the Registrar must inform the licensee of the decision by notice in writing.
- (2) The notice must—
 - (a) include a statement of the reasons for the decision;
 - (b) for a decision to suspend a licence, specify the duration and terms of the suspension; and
 - (c) include a statement that the licensee may apply to the Review Tribunal for a review of the decision.
- (3) The Registrar may exercise the power only after giving the licensee a reasonable opportunity to be heard.
- (4) A revocation or suspension takes effect at the time specified in the notice.
- (5) Any fee paid for the grant or renewal of a licence is not refundable on the revocation or suspension of the licence.

Division 3—Approvals by Registrar

53S. Approval required to become ultimate owner of licensee

- (1) A person must not become an ultimate owner of a licensee unless the Registrar gives approval in writing.
- (2) The Registrar may give approval only if—
 - (a) the licensee makes an application for the approval; and
 - (b) the Registrar is satisfied that the person is a fit and proper person to be associated with a trust or company service business.
- (3) In determining whether a person is a fit and proper person, the Registrar must, in addition to any other matter that the Registrar considers relevant, have regard to the matters specified in section 53I.
- (4) If the Registrar decides not to give approval, the Registrar must inform the licensee of the decision by notice in writing.
- (5) The notice 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.
- (6) 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.

53T. Approval required to become partner of licensee

- (1) A person must not become a partner of a licensee that is a partnership unless the Registrar gives approval in writing.
- (2) The Registrar may give approval only if—
 - (a) the licensee makes an application for the approval; and

- (b) the Registrar is satisfied that the person is a fit and proper person to carry on a trust or company service business.
- (3) In determining whether a person is a fit and proper person, the Registrar must, in addition to any other matter that the Registrar considers relevant, have regard to the matters specified in section 53I.
- (4) If the Registrar decides not to give approval, the Registrar must inform the licensee of the decision by notice in writing.
- (5) The notice 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.
- (6) 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.

53U. Approval required to become director of licensee

- (1) A person must not become a director of a licensee that is a corporation unless the Registrar gives approval in writing.
- (2) The Registrar may give approval only if—
 - (a) the licensee makes an application for the approval; and
 - (b) the Registrar is satisfied that the person is a fit and proper person to be associated with a trust or company service business.
- (3) In determining whether a person is a fit and proper person, the Registrar must, in addition to any other matter that the Registrar considers relevant, have regard to the matters specified in section 53I.

- (4) If the Registrar decides not to give approval, the Registrar must inform the licensee of the decision by notice in writing.
- (5) The notice 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.
- (6) 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.

53V. How to apply for approval

An application under this Division—

- (a) must be made in the form and way specified by the Registrar; and
- (b) must be accompanied by the fee specified in Schedule 3A.

Division 4—Notifications to Registrar

53W. Notification of changes in particulars

- (1) If there is a change in the particulars previously provided to the Registrar in connection with a licensee's application for the grant or renewal of a licence, the licensee must notify the Registrar of the change within 1 month beginning on the date on which the change takes place.
- (2) For the purposes of subsection (1), particulars previously provided in connection with an application for the grant or renewal of a licence include particulars notified under that subsection.

- (3) The Registrar must, as soon as reasonably practicable after receiving the notification, 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.

53X. Notification of cessation of business

- (1) If a licensee intends to cease to carry on the licensee's trust or company service business, the licensee must, before the intended date of cessation, notify the Registrar—
 - (a) of that intention; and
 - (b) of the intended date of cessation.
- (2) The Registrar must, as soon as reasonably practicable after receiving the notification, cancel the licence with effect from the intended date of cessation.
- (3) Any fee paid for the grant or renewal of a licence is not refundable on the cancellation of the licence.
- (4) A licensee who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

53Y. How to give notifications

A notification under this Division must be given—

- (a) in the form specified by the Registrar; and
- (b) in the way specified by the Registrar.

Division 5—Registrar's Disciplinary Powers

53Z. Disciplinary action by Registrar

- (1) Subject to sections 53ZA and 53ZB, the Registrar may, in a

situation specified in subsection (2), exercise, in respect of a licensee, one or more of the powers specified in subsection (3).

- (2) The situations are that—
 - (a) the licensee contravenes—
 - (i) a requirement set out in Schedule 2 that applies to a DNFBP who is a TCSP licensee;
 - (ii) a regulation made under section 53ZM; or
 - (iii) a condition of the licence; or
 - (b) there is a contravention of section 53S(1), 53T(1), 53U(1), 53W(1) or 53X(1).
- (3) The powers are—
 - (a) to publicly reprimand the licensee;
 - (b) to order the licensee to take, by a date specified by the Registrar, any action specified by the Registrar for the purpose of remedying the contravention; and
 - (c) to order the licensee to pay a pecuniary penalty not exceeding \$500,000.
- (4) If a licensee fails to comply with an order to take remedial action, the Registrar 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 compliance date.
- (5) A licensee who is ordered to pay a pecuniary penalty must pay it to the Registrar within—
 - (a) 30 days; or
 - (b) a longer period specified in the notice referred to in section 53ZA(1),after the order takes effect as a specified decision under section 75.

- (6) After a decision to exercise a disciplinary power takes effect as a specified decision under section 75, the Registrar may disclose to the public—
- (a) details of the decision;
 - (b) the reasons for which the decision was made; and
 - (c) any material facts relating to the case.

- (7) In this section—

compliance date (須予遵從日期) means the date specified in an order made under subsection (3)(b) as the date by which the remedial action must be taken;

remedial action (糾正行動) means an action ordered to be taken under subsection (3)(b).

53ZA. Procedure for exercising disciplinary powers

- (1) If the Registrar decides to exercise a disciplinary power in respect of a licensee, the Registrar must inform the licensee of the decision by notice in writing.
- (2) The notice must—
- (a) include a statement of the reasons for the decision;
 - (b) specify any action that the licensee is required to take under the decision;
 - (c) for a decision to publicly reprimand, specify the terms in which the licensee is to be reprimanded;
 - (d) for a decision to impose a pecuniary penalty—
 - (i) specify the amount of the penalty; and
 - (ii) if the penalty is to be paid within a period other than that referred to in section 53Z(5)(a), specify that other period within which it must be paid; and

- (e) include a statement that the licensee may apply to the Review Tribunal for a review of the decision.
- (3) The Registrar may exercise a disciplinary power only after giving the licensee a reasonable opportunity to be heard.

53ZB. Guidelines for imposing pecuniary penalty

- (1) The Registrar must publish guidelines indicating the way in which the Registrar proposes to exercise the disciplinary power to impose a pecuniary penalty.
- (2) The guidelines must be published—
 - (a) before the Registrar exercises a disciplinary power to impose a pecuniary penalty for the first time; and
 - (b) in the Gazette and in any other way the Registrar considers appropriate.
- (3) In exercising the disciplinary power to impose a pecuniary penalty, the Registrar must have regard to the published guidelines.
- (4) The guidelines are not subsidiary legislation.

53ZC. Registration of pecuniary penalty order

- (1) The Court of First Instance may, on an application made by the Registrar, register in that Court an order to pay a pecuniary penalty.
- (2) The application must be made by producing 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.
- (3) On registration, the order is to be regarded for all purposes as an order of the Court of First Instance made within the civil jurisdiction of that Court for the payment of money.
- (4) In this section—

pecuniary penalty (罰款) means a pecuniary penalty ordered to be paid under section 53Z(3)(c) or (4).

53ZD. Application of disciplinary powers in respect of directors of corporations

- (1) This section applies if—
 - (a) the Registrar exercises a disciplinary power in respect of a licensee that is a corporation in connection with a contravention referred to in section 53Z(2)(a)(i); and
 - (b) either—
 - (i) the contravention was caused or allowed by a director of the corporation; or
 - (ii) the director failed to take reasonable steps to prevent the contravention.
- (2) The disciplinary power is also exercisable by the Registrar in respect of the director as if the director were a licensee.
- (3) This Division is to be construed accordingly.
- (4) In this section—

director (董事) does not include a person who is an accounting professional or a legal professional.

Division 6—Warrants to Enter Premises

53ZE. Registrar may appoint authorized officers

The Registrar may appoint in writing a public officer employed in the Companies Registry to be an authorized officer for the purposes of this Division.

53ZF. Magistrate's warrant to enter premises

- (1) A magistrate may issue a warrant authorizing an authorized officer to take the actions referred to in subsection (2) if

satisfied by information on oath that there are reasonable grounds to suspect that an offence under section 53F—

- (a) is being committed on any premises; or
 - (b) has been committed on any premises.
- (2) The actions are—
- (a) to enter and search the premises; and
 - (b) to seize, remove or detain—
 - (i) a 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.
- (3) An authorized officer authorized by a warrant may call on any person to assist the authorized officer in entering and searching the premises.
- (4) An authorized officer who enters any premises under this section must, if required, produce the warrant for inspection.
- (5) A person who obstructs an authorized officer in the exercise of a power under this section commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.
- (6) In this section—

authorized officer (獲授權人員) means a person appointed as an authorized officer under section 53ZE.

53ZG. Power to require production of material in legible form

- (1) This section applies in relation to information or matter

- (*material*) contained in a record or document that—
- (a) is found on any premises entered under a warrant; and
 - (b) is not in a legible form or is in an information system.
- (2) If the material that is not in a legible form can be reproduced in a legible form, the authorized officer may require a person referred to in subsection (4) to produce the material or the relevant part of it in a legible form.
- (3) If the material is in an information system, the authorized officer may require a person referred to in subsection (4) to produce the material or the relevant part of it in a form that enables it to be reproduced in a legible form.
- (4) The persons for the purposes of subsections (2) and (3) are—
- (a) a person who appears to the authorized officer to be in charge of the premises; or
 - (b) a person who appears to the authorized officer to be able or likely to be able to produce the material—
 - (i) in a legible form; or
 - (ii) in a form that enables it to be reproduced in a legible form.
- (5) A person who obstructs an authorized officer in the exercise of a power under this section commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.
- (6) In this section—
- authorized officer*** (獲授權人員) means an authorized officer (as defined by section 53ZF(6)) authorized by a warrant issued under section 53ZF.

Division 7—(Repealed 15 of 2022 s. 26)

53ZH. *(Repealed 15 of 2022 s. 26)*

53ZI. *(Repealed 15 of 2022 s. 26)*

53ZJ. *(Repealed 15 of 2022 s. 26)*

53ZK. *(Repealed 15 of 2022 s. 26)*

Division 8—Miscellaneous

53ZL. Amendment of Schedule 3A

The Registrar of Companies may, by notice published in the Gazette, amend Schedule 3A.

53ZM. Regulations

The Registrar of Companies may make regulations for the better carrying out of the provisions and purposes of this Part.

53ZN. Offence of providing false or misleading information

- (1) A person commits an offence if the person in a specified document or for a specified purpose—
 - (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 a specified document or for a specified purpose—
 - (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.
- (4) In this section—
specified document (指明文件) means—
 - (a) an application made to the Registrar under this Part;
 - (b) a notification given to the Registrar under this Part; or
 - (c) any other document provided to the Registrar for any purpose under this Part;

specified purpose (指明目的) means a purpose in connection with an application made to the Registrar under this Part or a notification given to the Registrar under this Part.

53ZO. Time limit for prosecution

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

53ZP. Requirements for authentication and delivery of relevant instruments

- (1) The Registrar may, in relation to a relevant instrument—
 - (a) specify requirements for its authentication; and
 - (b) specify requirements as to the way it is to be delivered to the Registrar.
- (2) The Registrar may specify different requirements for different relevant instruments, or for different circumstances.
- (3) For the purposes of subsection (1)(a), the Registrar may—

- (a) require the relevant instrument to be authenticated by a particular person or a person of a particular description;
 - (b) specify the means of authentication; and
 - (c) require the relevant instrument to contain, or to be accompanied by—
 - (i) the name or licence number; or
 - (ii) the name and licence number, of the licensee to which the relevant instrument relates.
- (4) For the purposes of subsection (1)(b), the Registrar may—
- (a) require the relevant instrument to be delivered in hard copy form, in electronic form or any other form;
 - (b) require the relevant instrument to be delivered by post or any other means;
 - (c) specify requirements as to the address to which the relevant instrument is to be delivered; and
 - (d) in the case of a relevant instrument to be delivered by electronic means, specify requirements as to the hardware and software to be used and the technical specifications.

- (5) In this section—

address (地址) includes a number, or any sequence or combination of letters, characters, numbers or symbols of any language, used for the purpose of sending or receiving a relevant instrument by electronic means;

electronic record (電子紀錄) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

in electronic form (電子形式) means in the form of an electronic record;

in hard copy form (印本形式) means in a paper form or a similar form capable of being read;

relevant instrument (有關文書) means—

- (a) an application made to the Registrar under this Part; or
 - (b) a notification or any other document required to be given, sent or otherwise provided to the Registrar under this Part.
- (6) For the purposes of this section—
- (a) a reference to delivering a relevant instrument to the Registrar includes—
 - (i) for an application—making it; and
 - (ii) for a notification or any other document—giving, sending or otherwise providing it;
 - (b) a relevant instrument is delivered in electronic form if it is delivered—
 - (i) by electronic means; or
 - (ii) by any other means while in electronic form; and
 - (c) a relevant instrument is delivered by electronic means if it is delivered in electronic form to an information system.

Division 9—Transitional Arrangements for Trust or Company Service Providers

53ZQ. Transitional arrangements

- (1) A person who satisfies the conditions in subsection (2) is deemed to have been granted a licence to carry on a trust or company service business with effect from the commencement date, and this Ordinance applies in relation to the person accordingly.

- (2) The conditions are that immediately before the commencement date, the person—
 - (a) was carrying on a trust or company service business; and
 - (b) for that purpose, held a valid business registration certificate.
- (3) If a deemed licensee does not apply for a licence under section 53G during the transitional period, a licence deemed to have been granted ceases to have effect when the earliest of the following events occurs—
 - (a) the transitional period ends;
 - (b) the deemed licensee ceases to carry on its trust or company service business;
 - (c) the deemed licensee ceases to hold a valid business registration certificate;
 - (d) an event referred to in section 53P occurs in relation to the deemed licensee.
- (4) If a deemed licensee applies for a licence under section 53G during the transitional period, a licence deemed to have been granted ceases to have effect when the earliest of the following events occurs—
 - (a) the licence is granted;
 - (b) the licence is not granted and the decision not to grant takes effect as a specified decision under section 75;
 - (c) the application is withdrawn;
 - (d) the deemed licensee ceases to carry on its trust or company service business;
 - (e) the deemed licensee ceases to hold a valid business registration certificate;

(f) an event referred to in section 53P occurs in relation to the deemed licensee.

(5) In this section—

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

deemed licensee (當作持牌人) means a person to whom a licence is deemed to have been granted;

transitional period (過渡期) means the period of 120 days beginning on the commencement date.

Editorial Note:

* Commencement date: 1 March 2018.

Part 5B

Regulation of Activities Involving Virtual Assets

(Part 5B added 15 of 2022 s. 4)

Division 1—Interpretation

53ZR. Interpretation of Part 5B

In this Part—

associated entity (有聯繫實體), in relation to a licensed provider, means a company as defined by section 2(1) of the Companies Ordinance (Cap. 622)—

- (a) that is a wholly owned subsidiary of the licensed provider; and
- (b) that receives or holds, or is to receive or hold, in Hong Kong client assets of the licensed provider;

auditor (核數師) means a certified public accountant (practising) as defined by section 2(1) of the Accounting and Financial Reporting Council Ordinance (Cap. 588);

client (客戶) means a person for whom a licensed provider provides a service that constitutes a VA service;

client asset (客戶資產) means any client virtual asset or client money;

client money (客戶款項) means any money received or held by or on behalf of a licensed provider or an associated entity of a licensed provider—

- (a) that is so received or held on behalf of a client of the licensed provider;

- (b) in which a client of the licensed provider has a legal or equitable interest; or
- (c) that is any accretion to the money referred to in paragraph (a) or (b), whether as capital or income;

client virtual asset (客戶虛擬資產) means any virtual asset received or held by or on behalf of a licensed provider or an associated entity of a licensed provider—

- (a) that is so received or held on behalf of a client of the licensed provider; or
- (b) in which a client of the licensed provider has a legal or equitable interest;

conduct (行為) includes any act or omission, and any series of acts or omissions;

customer loyalty or reward point (客戶酬報或獎賞積分) means any digital representation of value (by whatever name called) that satisfies all of the following conditions—

- (a) it is not denominated in any currency;
- (b) it is issued as part of a scheme, the dominant purpose of which is to promote the purchase of goods, or the use of services, provided by its issuer or any merchant specified by its issuer;
- (c) it is issued to a person on the purchase of goods, or the use of services, provided by its issuer or any merchant specified by its issuer;
- (d) it may only be used by the person for the payment or part payment of, or in exchange for, goods or services (or both) provided by its issuer or any merchant specified by its issuer;

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

executive director (執行董事), in relation to a licensed provider, means a director of the licensed provider who actively participates in, or is responsible for directly supervising, the business of providing a VA service of the licensed provider;

futures contract (期貨合約) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

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

holding company (控權公司), in relation to a corporation, means any other corporation of which it is a subsidiary;

information (資訊、資料) includes data, text, images, sound codes, computer programmes, software and databases, and any combination of them;

in-game asset (遊戲用資產) means any digital representation of value that—

- (a) is purchased or otherwise acquired by a person;
- (b) is not denominated in any currency;
- (c) is issued as part of a game; and
- (d) may only—
 - (i) be used by the person to pay or in exchange for virtual objects or virtual services in the game;
 - (ii) be used by the person to pay or in exchange for any similar thing within or in relation to the game; or
 - (iii) be used by the person to pay or in exchange for any similar thing that is part of the game;

interest of the investing public (投資大眾利益) does not include any interest the taking into consideration of which is, or is likely to be, contrary to the public interest;

licensed person (持牌人) means a licensed provider or a licensed representative;

licensed provider (持牌提供者) means a corporation that is granted a licence under section 53ZRK;

licensed representative (持牌代表) means an individual who is granted a licence under section 53ZRL;

limited purpose digital token (有限用途數碼代幣) means—

- (a) a customer loyalty or reward point;
- (b) an in-game asset; or
- (c) any digital representation of value that—
 - (i) is similar to a customer loyalty or reward point or an in-game asset; and
 - (ii) is not intended by its issuer to be convertible into money or another medium of exchange accepted by the public;

officer (高級人員)—

- (a) in relation to a corporation, means a director, manager or secretary of, or any other person involved in the management of, the corporation; or
- (b) in relation to an unincorporated body, means any member of the governing body of the unincorporated body;

possession (管有), in relation to any matter, includes custody, control and power of or over the matter;

prescribed fee (訂明費用), in relation to a matter specified in column 2 of Schedule 3C, means the fee specified in column 3 of that Schedule opposite the matter;

principal (主事人), in relation to a licensed representative, means the licensed provider to which the representative is accredited;

public (公眾、大眾) means the public of Hong Kong, and includes any class of the public;

regulated function (受規管職能)—see section 53ZRB;

related corporation (有連繫法團)—see section 53ZRC;

responsible officer (負責人員), in relation to a licensed provider licensed to provide any VA service, means an individual approved by the Commission as a responsible officer of the licensed provider under section 53ZRP in relation to the VA service or a part of the VA service;

rules (規則), except in a reference to the Rules of the High Court (Cap. 4 sub. leg. A), means the rules made under section 53ZTL;

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

shadow director (幕後董事) means a person in accordance with whose directions or instructions the directors of a corporation are accustomed or obliged to act, but a person is not to be regarded as a shadow director only because of the fact that the directors act on advice given by the person in a professional capacity;

specified manner (指明方式), except in section 53ZSZ or 53ZT or section 15 of Schedule 3G, means the form and way specified by the Commission;

specified requirement (指明規定) means—

- (a) any provision of this Ordinance;
- (b) any provision in any code or guideline published under any provision of this Ordinance;

- (c) any notice, prohibition or requirement given or imposed under or pursuant to any provision of this Ordinance;
- (d) any conditions of licence imposed by the Commission under or pursuant to any provision of this Ordinance; or
- (e) any other condition imposed by the Commission under or pursuant to any provision of this Ordinance;

subsidiary (附屬公司)—see section 53ZRC;

ultimate owner (最終擁有人), in relation to a corporation, means an individual who—

- (a) owns or controls, directly or indirectly, including through a trust or bearer share holding, more than 25% of the issued share capital of the corporation;
- (b) is, directly or indirectly, entitled to exercise or control the exercise of more than 25% of the voting rights at general meetings of the corporation; or
- (c) exercises ultimate control over the management of the corporation;

VA or **virtual asset** (虛擬資產)—see section 53ZRA;

VA service (虛擬資產服務) means any of the services specified in Schedule 3B;

wholly owned subsidiary (全資附屬公司)—see section 53ZRC.

53ZRA. Meaning of VA or virtual asset

(1) In this Ordinance—

VA or **virtual asset** (虛擬資產), subject to subsection (2), means—

- (a) a cryptographically secured digital representation of value that—
 - (i) is expressed as a unit of account or a store of economic value;

- (ii) either—
 - (A) is used, or is intended to be used, as a medium of exchange accepted by the public, for any one or more of the following purposes—
 - (I) payment for goods or services;
 - (II) discharge of a debt;
 - (III) investment; or
 - (B) provides rights, eligibility or access to vote on the management, administration or governance of the affairs in connection with, or to vote on any change of the terms of any arrangement applicable to, any cryptographically secured digital representation of value;
 - (iii) can be transferred, stored or traded electronically; and
 - (iv) satisfies other characteristics prescribed by the Commission under subsection (3)(a); or
 - (b) a digital representation of value prescribed as a virtual asset by notice published under subsection (4)(a).
- (2) A digital representation of value is excluded from the definition of *VA* in subsection (1) if—
- (a) it—
 - (i) is—
 - (A) issued by a central bank or by an entity that performs the functions of a central bank or by an entity authorized by a central bank on its behalf; or

- (B) issued by a government of a jurisdiction, or by an entity authorized by the government of a jurisdiction and acting pursuant to an authority to issue currency in that jurisdiction;
 - (ii) is a limited purpose digital token;
 - (iii) constitutes securities or a futures contract;
 - (iv) constitutes any float or SVF deposit of a stored value facility as defined by section 2 of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584); or
 - (v) satisfies other characteristics prescribed by the Commission under subsection (3)(b); or
 - (b) it is a digital representation of value prescribed not to be a virtual asset by notice published under subsection (4)(b).
- (3) The Commission may, by notice published in the Gazette—
- (a) prescribe any characteristics necessary for a digital representation of value to be a virtual asset for the purposes of paragraph (a)(iv) of the definition of *VA* in subsection (1); and
 - (b) prescribe any characteristics the presence of which precludes a digital representation of value being a *VA* for the purposes of subsection (2)(a)(v).
- (4) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette—
- (a) prescribe, either generally or in a particular case, any digital representation of value to be a *VA* for the purposes of paragraph (b) of the definition of *VA* in subsection (1); or

- (b) prescribe, either generally or in a particular case, any digital representation of value not to be a VA for the purposes of subsection (2)(b).

53ZRB. Meaning of providing VA service and performing regulated function

- (1) In this Ordinance—

regulated function (受規管職能)—

- (a) subject to subsections (4)(c) and (7), means any function performed—
 - (i) for or on behalf of or by arrangement with a person carrying on a business of providing a VA service; and
 - (ii) in relation to the provision of the VA service; but
- (b) excludes any work ordinarily performed by an accountant, clerk or cashier.

- (2) In this Ordinance—

- (a) a person is to be regarded as providing a VA service if—
 - (i) the person carries on a business of providing a VA service; or
 - (ii) the person performs, for or on behalf of or by arrangement with a person carrying on a business of providing a VA service, any regulated function in relation to the provision of the VA service;
- (b) a person is to be regarded as providing a VA service on behalf of a licensed provider if the person performs, for or on behalf of or by arrangement with the licensed provider, any regulated function in relation to the provision of the VA service;

- (c) a corporation licensed under section 53ZRK to provide a VA service is to be regarded as being licensed for that VA service; and
 - (d) an individual licensed under section 53ZRL to provide a VA service on behalf of a licensed provider is to be regarded as being licensed for that VA service.
- (3) Subsection (4) applies if—
 - (a) a person (***subsection (3) person***) actively markets to the public any services that the subsection (3) person provides or purports to provide (***specified services***); and
 - (b) the provision of the specified services, if done in Hong Kong, would constitute providing a VA service.
- (4) For the purposes of this Ordinance—
 - (a) the subsection (3) person is to be regarded, in relation to the provision of the specified services, as carrying on a business of providing that VA service;
 - (b) the subsection (3) person’s marketing of the specified services is to be regarded as holding itself, himself or herself out as carrying on a business of providing that VA service; and
 - (c) an individual is to be regarded as performing a regulated function in relation to the provision of that VA service if—
 - (i) the individual performs a function (***function X***) in relation to—
 - (A) the subsection (3) person providing, or purporting to provide, the specified services; or
 - (B) the specified services that the subsection (3) person provides or purports to provide; and

- (ii) the performance of function X, if done in Hong Kong in relation to the provision of the VA service, would constitute performing a regulated function in relation to the provision of that VA service.
- (5) Subsection (4) applies regardless of—
 - (a) whether the specified services are provided or not;
 - (b) whether the specified services are marketed by the subsection (3) person or someone on the subsection (3) person's behalf; and
 - (c) whether the specified services are marketed in Hong Kong or from a place outside Hong Kong.
- (6) Subsection (7) applies if—
 - (a) a person (*subsection (6) person*) actively markets to the public a function (*function Y*) that the subsection (6) person performs or purports to perform; and
 - (b) the performance of function Y, if done in Hong Kong in relation to a business, carried on by any person, of providing a VA service would constitute performing a regulated function in relation to the provision of that VA service.
- (7) For the purposes of this Ordinance—
 - (a) the performance of function Y by the subsection (6) person is to be regarded as performing a regulated function in relation to the provision of a VA service; and
 - (b) the subsection (6) person's marketing of function Y is to be regarded as holding itself, himself or herself out as performing that regulated function in relation to the provision of that VA service.
- (8) Subsection (7) applies regardless of—
 - (a) whether function Y is performed or not;

- (b) whether function Y is marketed by the subsection (6) person or someone on the subsection (6) person's behalf; and
- (c) whether function Y is marketed in Hong Kong or from a place outside Hong Kong.

53ZRC. Meaning of *related corporation, subsidiary and wholly owned subsidiary*

- (1) This section applies to the construction of a reference to related corporation or subsidiary in this Ordinance.
- (2) Two or more corporations are related corporations of each other if one of them is—
 - (a) the holding company of the other;
 - (b) a subsidiary of the other; or
 - (c) a subsidiary of the holding company of the other.
- (3) When an individual—
 - (a) controls the composition of the board of directors of one or more corporations;
 - (b) controls more than half of the voting power at general meetings of one or more corporations; or
 - (c) holds more than half of the issued share capital (which issued share capital, for the purposes of this paragraph, excludes any part of it that carries no right to participate beyond a specified amount on a distribution of either profits or capital) of one or more corporations,each of the corporations referred to in paragraph (a), (b) or (c), and each of their subsidiaries, are related corporations of each other.
- (4) For the purposes of this Ordinance, a corporation is a subsidiary of another corporation if—

- (a) the other corporation—
 - (i) controls the composition of its board of directors;
 - (ii) controls more than half of its voting power at general meetings; or
 - (iii) holds more than half of its issued share capital (which issued share capital, for the purposes of this subparagraph, excludes any part of it that carries no right to participate beyond a specified amount on a distribution of either profits or capital); or
 - (b) it is a subsidiary of a corporation that is the other corporation's subsidiary.
- (5) For the purposes of subsection (4), in determining whether a corporation is a subsidiary of another corporation—
- (a) any shares held or power exercisable by the other corporation in a fiduciary capacity are to be regarded as not held or exercisable by it;
 - (b) subject to paragraphs (c) and (d), any shares held or power exercisable as mentioned in any of the following subparagraphs are or is to be regarded as held or exercisable by the other corporation—
 - (i) the shares are held, or the power is exercisable, by a nominee for the other corporation (except where the other corporation is concerned only in a fiduciary capacity);
 - (ii) the shares are held, or the power is exercisable, by, or by a nominee for, a subsidiary of the other corporation, not being a subsidiary that is concerned only in a fiduciary capacity;
 - (c) any shares held or power exercisable by a person under a debenture of the corporation or under a trust deed for

- securing the issue of the debenture is to be disregarded;
and
- (d) any shares held or power exercisable by, or by a nominee for, the other corporation or its subsidiary, not being held or exercisable as mentioned in paragraph (c), are or is to be regarded as not held or exercisable by the other corporation if—
 - (i) the ordinary business of the other corporation or its subsidiary (as the case requires) includes the lending of money; and
 - (ii) the shares are held or power is exercisable by way of security only for a transaction entered into in the ordinary course of that business.
 - (6) A corporation is a wholly owned subsidiary of another corporation if it has only the following as members—
 - (a) that other corporation;
 - (b) that other corporation's nominee;
 - (c) that other corporation's wholly owned subsidiary (as construed in accordance with this section);
 - (d) such wholly owned subsidiary's nominee.

Division 2—Restriction on Carrying on Activities Involving Virtual Assets

53ZRD. Licence required for carrying on VA service business

- (1) A person must not—
 - (a) carry on a business of providing any VA service; or
 - (b) hold itself, himself or herself out as carrying on a business of providing any VA service.

- (2) Subsection (1) does not apply to a licensed provider for the VA service.
- (3) Without affecting subsection (1), a person must not—
 - (a) perform any regulated function in relation to a business of providing a VA service; or
 - (b) hold itself, himself or herself out as performing such function.
- (4) Subsection (3) does not apply to a licensed representative who provides on behalf of his or her principal, a VA service for which the licensed representative is licensed.
- (5) A person who, without reasonable excuse, contravenes subsection (1)(a) or (b) commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years and, in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues; or
 - (b) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.
- (6) A person who, without reasonable excuse, contravenes subsection (3)(a) or (b) commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$20,000 for every day during which the offence continues; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$2,000 for every day during which the offence continues.

53ZRE. Offence to issue advertisements relating to unlicensed person's provision of VA service

- (1) A person (*subject person*) commits an offence if—
 - (a) the subject person issues, or has in the subject person's possession for the purpose of issue—
 - (i) an advertisement in which, to the subject person's knowledge, a person (*advertised person*) holds itself, himself or herself out as being prepared to provide a VA service; or
 - (ii) a document that, to the subject person's knowledge, contains such advertisement; and
 - (b) to the subject person's knowledge, the advertised person is not licensed for the VA service as required under this Part.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 5 and to imprisonment for 6 months.
- (3) A person does not commit an offence under subsection (1) merely because the person issues, or has in the person's possession for the purpose of issue, any advertisement or document if—
 - (a) the advertisement or document was so issued, or possessed for the purpose of issue, in the ordinary course of a business (whether or not carried on by the person), the principal purpose of which was receiving and issuing materials provided by others;
 - (b) the contents of the advertisement or document were not, wholly or partly, devised by the person or (if applicable) a related person of the person; and

- (c) for the purposes of the issue, neither the person nor any related person of the person selects, adds to, modifies or otherwise exercises control over the contents of the advertisement or document.
- (4) A person (*subject person*) does not commit an offence under subsection (1) merely because the subject person issues by way of live broadcast, or has in the subject person's possession for the purpose of issue by way of live broadcast, any advertisement or document if—
 - (a) the advertisement or document was so issued, or possessed for the purpose of issue, in the ordinary course of the business of a broadcaster (whether or not the subject person was such broadcaster);
 - (b) the contents of the advertisement or document were not, wholly or partly, devised by the subject person or (if applicable) a related person of the subject person;
 - (c) for the purposes of the issue, neither the subject person nor any related person of the subject person selects, adds to, modifies or otherwise exercises control over the contents of the advertisement or document; and
 - (d) in relation to the broadcast, the subject person acted, or (if the subject person was not the broadcaster) the subject person believed and had reasonable grounds to believe that the broadcaster acted, in accordance with—
 - (i) the terms and conditions of the licence (if any) by which the subject person or the broadcaster became entitled to broadcast as a broadcaster; and
 - (ii) any code of practice or guidelines (however described) that is or are—
 - (A) issued under or pursuant to the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562); and

(B) applicable to the subject person or the broadcaster as a broadcaster.

- (5) It is a defence to a charge for an offence under subsection (1) for the person charged to prove that the person took all reasonable steps and exercised all due diligence to avoid the commission of the offence with which the person is charged.
- (6) A person is taken to have established a matter that needs to be established for a defence under subsection (5) if—
- (a) there is sufficient evidence to raise an issue with respect to the matter; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.

(7) In this section—

advertisement (廣告) includes every form of advertising, whether made orally or produced mechanically, electronically, optically, manually or by any other means;

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

- (a) directed at, or the contents of which are likely to be accessed or read (whether concurrently or otherwise) by, the public; and
- (b) whether produced mechanically, electronically, optically, manually or by any other means;

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

- (a) by any visit in person;
- (b) in a newspaper, magazine, journal or other publication;

- (c) by the display of posters or notices;
- (d) by means of circulars, brochures, pamphlets or handbills;
- (e) by an exhibition of photographs or cinematograph films;
- (f) by way of sound or television broadcasting;
- (g) by way of social media;
- (h) by any information system or other electronic device; or
- (i) by any other means, whether mechanically, electronically, optically, manually or by any other medium, or by way of production or transmission of light, image or sound or any other medium,

and also includes causing or authorizing the material to be issued;

related person (有關連人士), in relation to a person who issues, or has in the person's possession for the purpose of issue, any advertisement or document, in the ordinary course of a business carried on by the person (whether or not the business of a broadcaster), means any officer, employee or agent of the person.

- (8) For the purposes of this section, an advertisement or document issued by a person on behalf of another is to be regarded as an advertisement or document issued by both persons.

53ZRF. Offence involving fraudulent or deceptive devices etc. in transactions in virtual assets

- (1) A person commits an offence if the person, directly or indirectly, in a transaction involving any virtual assets—
 - (a) employs any device, scheme or artifice with intent to defraud or deceive; or

- (b) engages in any act, practice or course of business that is fraudulent or deceptive, or would operate as a fraud or deception.
- (2) A person who commits an offence under subsection (1) is liable—
 - (a) on conviction on indictment to a fine of \$10,000,000 and to imprisonment for 10 years; or
 - (b) on summary conviction to a fine of \$1,000,000 and to imprisonment for 3 years.
- (3) If a person is convicted of an offence under subsection (1), the court before which the person is so convicted may, in addition to any penalty specified in subsection (2), make an order specified in subsection (4) in respect of the person.
- (4) The order is an order that, for the period (not exceeding 5 years) specified in the order, the person must not directly or indirectly in any way acquire, dispose of or otherwise deal in, in Hong Kong, any virtual assets without the leave of the court.
- (5) When making an order in respect of a person under subsection (4), the court may take into account any conduct by the person that previously resulted in the person being convicted of an offence in Hong Kong.
- (6) Where the court makes an order under subsection (4), the Commission may notify any licensed provider of the order in any manner that the Commission considers appropriate.
- (7) A person who fails to comply with an order made under subsection (4) 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) For the purposes of this section—
- (a) *court* (法庭) includes a magistrate; and
 - (b) a reference to a transaction includes an offer and an invitation (however expressed).

53ZRG. Offence to fraudulently or recklessly induce others to invest in virtual assets

- (1) A person commits an offence if the person makes any fraudulent misrepresentation or reckless misrepresentation for the purpose of inducing another person to enter into, or offer to enter into, an agreement to acquire, dispose of, subscribe for or underwrite any virtual assets.
- (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 7 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (3) In this section—

fraudulent misrepresentation (欺詐的失實陳述) means—

- (a) any statement that, at the time when it is made, is to the knowledge of its maker false, misleading or deceptive;
- (b) any promise that, at the time when it is made—
 - (i) its maker has no intention of fulfilling; or
 - (ii) is to the knowledge of its maker not capable of being fulfilled;
- (c) any forecast that, at the time when it is made, is to the knowledge of its maker not justified on the facts then known to its maker;

- (d) any statement from which, at the time when it is made, its maker intentionally omits a material fact, with the result that the statement is rendered false, misleading or deceptive; or
- (e) any forecast from which, at the time when it is made, its maker intentionally omits a material fact, with the result that the forecast is rendered misleading or deceptive;

reckless misrepresentation (罔顧實情的失實陳述) means—

- (a) any statement that, at the time when it is made, is false, misleading or deceptive and is made recklessly;
- (b) any promise that, at the time when it is made, is not capable of being fulfilled and is made recklessly;
- (c) any forecast that, at the time when it is made, is not justified on the facts then known to its maker and is made recklessly;
- (d) any statement from which, at the time when it is made, its maker recklessly omits a material fact, with the result that the statement is rendered false, misleading or deceptive; or
- (e) any forecast from which, at the time when it is made, its maker recklessly omits a material fact, with the result that the forecast is rendered misleading or deceptive.

Division 3—Register and Application for, and Grant of, Licences for VA Service

Subdivision 1—Register

53ZRH. Register of licensed persons

- (1) The Commission must maintain a register of licensed persons in a form it considers appropriate.

- (2) The register must contain—
- (a) in relation to each licensed person—
 - (i) the name and business address of the licensed person;
 - (ii) the conditions of the licence that the Commission considers appropriate to be contained in the register, and the effective date of the conditions;
 - (iii) the central entity identification number assigned by the Commission to the licensed person;
 - (iv) the date of grant of licence under this Part;
 - (v) the VA service for which the licensed person is licensed and the date from which the licence takes effect;
 - (vi) whether or not the licence is suspended; and
 - (vii) particulars of each instance of an exercise of a power under section 53ZSP or 53ZSQ entered in accordance with section 53ZTJ;
 - (b) in the case of a licensed provider—
 - (i) the name of each responsible officer;
 - (ii) its electronic mail address and website address;
 - (iii) its contact details, including contact details of its complaints officer; and
 - (iv) a list of the licensed representatives accredited to it; and
 - (c) in the case of a licensed representative—
 - (i) the name of his or her principal;
 - (ii) whether he or she is approved as a responsible officer and, if so, the VA service for which he or she is responsible; and

- (iii) the date of accreditation to his or her principal.
- (3) The register may contain any other particulars that the Commission considers appropriate.
- (4) The register must be made available for inspection by a member of the public to enable him or her—
 - (a) to ascertain whether he or she is dealing with a licensed person; and
 - (b) to ascertain the particulars of the licence.
- (5) A member of the public is entitled, without charge, to inspect the register during normal office hours.
- (6) In this section—

complaints officer (投訴主任), in relation to a licensed provider, means a person appointed by the licensed provider to handle complaints made to the licensed provider.

53ZRI. Certified copy of register

- (1) A person may, on the payment of the prescribed fee, obtain—
 - (a) a certified copy or an uncertified copy of an entry in, or extract from, the register maintained under section 53ZRH (***register***); or
 - (b) a certificate by the Commission stating that the name of a person—
 - (i) has been entered on the register;
 - (ii) has not been entered on the register; or
 - (iii) has been removed from the register.
- (2) In any criminal or civil proceedings, a document purporting to be a copy of an entry in, or extract from, the register, and purporting to be certified by an authorized officer of the Commission—

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

Subdivision 2—Fit and Proper Test

53ZRJ. Fit and proper test

- (1) In determining whether a person is a fit and proper person for the purposes of any provision of this Part, the Commission must, in addition to any other matter that the Commission considers relevant, have regard to the following matters—
 - (a) the financial status or solvency of the person;
 - (b) the educational or other qualifications, or experience of the person, especially whether the qualifications or experience are or is appropriate to the functions that

- the person applies to be, or is, licensed or approved to perform;
- (c) the ability of the person to provide the VA service competently, honestly and fairly;
 - (d) the reputation, character, reliability and financial integrity of the person;
 - (e) 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 of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575);
 - (iii) an offence under section 25(1) or 25A(5) or (7) of, or an offence specified in Schedule 1 to, the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405); or
 - (iv) an offence under section 25(1) or 25A(5) or (7) of, or an offence specified in Schedule 1 or 2 to, the Organized and Serious Crimes Ordinance (Cap. 455);
 - (f) 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 (e) 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;

- (g) whether the person has failed to comply with a requirement imposed under this Ordinance.
- (2) Without limiting subsection (1), in determining whether a person is a fit and proper person, for the purposes of any provision of this Part, the Commission may take into account—
 - (a) a decision made in respect of the person—
 - (i) by any relevant authority; or
 - (ii) by a regulator (as defined by section 13A) of a jurisdiction outside Hong Kong that, in the Commission’s opinion, performs a function similar to the functions of the Commission under this Ordinance or the Securities and Futures Ordinance (Cap. 571);
 - (b) any information in the possession of the Commission, whether provided by the person or not, relating to—
 - (i) any other person who is or is to be employed by, or associated with, the person for the purpose of providing a VA service;
 - (ii) any other person who will be acting for or on behalf of the person in relation to the provision of a VA service; or
 - (iii) where the person is a corporation in a group of companies—
 - (A) any other corporation in the same group of companies; or
 - (B) any ultimate owner or officer of the corporation or any corporation referred to in sub-subparagraph (A);
 - (c) whether the person has established effective internal control procedures and risk management systems to

ensure the person's compliance with all applicable regulatory requirements under any provision of this Ordinance; and

- (d) the state of affairs of any other business that the person carries on or proposes to carry on.
- (3) Where subsections (1) and (2) apply to a person that is a corporation, references to the person in the paragraphs of those subsections include, not only the corporation, but also any officer of the corporation.
- (4) Subsection (1)(c) does not apply in determining whether a person, being an ultimate owner of a corporation applying for, or holding, a licence to provide a VA service, is a fit and proper person to be associated with the business of providing the VA service.
- (5) In this section—
group of companies (公司集團) means any 2 or more corporations one of which is the holding company of the other or others (as the case requires).

Subdivision 3—Licensed Provider

53ZRK. Application for and grant of licence

- (1) The Commission may, on application, grant to the applicant a licence to provide a VA service.
- (2) The application must be—
 - (a) made to the Commission in the specified manner; and
 - (b) accompanied by the prescribed fee.
- (3) The Commission may grant a licence to an applicant only if—
 - (a) the applicant is a corporation that is—

- (i) a company as defined by section 2(1) of the Companies Ordinance (Cap. 622); or
 - (ii) a registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap. 622); and
- (b) the Commission is satisfied that—
 - (i) the applicant is a fit and proper person to be licensed for the VA service;
 - (ii) not less than 2 persons are applying to be responsible officers of the applicant and each person is a fit and proper person to be associated with the business of providing the VA service;
 - (iii) each director of the applicant, not falling within subparagraph (ii), is a fit and proper person to be associated with the business of providing the VA service;
 - (iv) 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 providing the VA service; and
 - (v) an application has been lodged under section 53ZRR for approval of premises to be used by the applicant for keeping records or documents required under this Part.
- (4) On granting a licence under this section, the Commission may impose any conditions on the licence.
- (5) Without limiting subsection (4), the Commission may impose on a licence conditions on—
 - (a) financial resources;
 - (b) knowledge and experience;

- (c) risk management policies and procedures;
 - (d) anti-money laundering and anti-terrorist financing policies and procedures;
 - (e) management of client assets;
 - (f) soundness of the business;
 - (g) financial reporting and disclosure;
 - (h) virtual asset listing and trading policies;
 - (i) prevention of market manipulation and abusive activities;
 - (j) avoidance of conflicts of interest;
 - (k) keeping of accounts and records by licensed providers and their associated entities;
 - (l) provision of contract notes, receipts, statements of account and notifications by licensed providers and their associated entities;
 - (m) financial statements and other documents, and the auditor's report;
 - (n) business conduct of licensed providers and their licensed representatives;
 - (o) notification of changes; and
 - (p) cybersecurity.
- (6) Without limiting subsections (4), (5) and (8), it is a condition of a licence granted under this section for providing a VA service that there is at least one responsible officer of the licensed provider who is available at all times to supervise the business of the VA service.
- (7) A licensed provider must not, when providing a VA service, use a name other than the name specified in the licence.

- (8) In relation to a licence of a person, the Commission may, at any time, if satisfied that it is reasonable to do so in the circumstances—
 - (a) impose any new conditions;
 - (b) amend any previously imposed conditions; or
 - (c) remove any previously imposed conditions.
- (9) Section 53ZRS applies in relation to the making of a decision under this section if the decision falls within section 53ZRS(1).
- (10) The imposition, amendment or removal of a condition under subsection (8) takes effect at the time of the service of the notice given under section 53ZRS(3) or at the time specified in the notice, whichever is the later.

Subdivision 4—Licensed Representative and Accreditation to Principal

53ZRL. Application to be licensed representatives

- (1) The Commission may, on application, grant to an individual a licence to provide a VA service; the effect of such a licence is that the individual licensed may provide the VA service on behalf of a licensed provider of the VA service if the individual is accredited to the licensed provider with approval under section 53ZRM.
- (2) The application must be—
 - (a) made by the individual to the Commission in the specified manner; and
 - (b) accompanied by the prescribed fee.
- (3) The Commission may grant a licence to provide a VA service under subsection (1) only if the Commission is satisfied that

the applicant is a fit and proper person to be so licensed for the VA service.

- (4) On granting a licence under this section, the Commission may impose any conditions on the licence.
- (5) In relation to the licence of a licensed representative, the Commission may, at any time, if satisfied that it is reasonable to do so in the circumstances—
 - (a) impose any new conditions;
 - (b) amend any previously imposed conditions; or
 - (c) remove any previously imposed conditions.
- (6) Section 53ZRS applies in relation to the making of a decision under this section if the decision falls within section 53ZRS(1).
- (7) The imposition, amendment or removal of a condition under subsection (5) takes effect at the time of the service of the notice given under section 53ZRS(3) or at the time specified in the notice, whichever is the later.
- (8) Without limiting subsections (4) and (5), it is a condition of a licence of a licensed representative that the representative must—
 - (a) at all times keep the Commission informed of particulars of his or her contact details including, in so far as applicable, his or her residential address, telephone number and electronic mail address; and
 - (b) inform the Commission of any change in the particulars within 7 business days after the change takes place.
- (9) A licensed representative must not, when providing a VA service, use a name other than the name under which the representative is licensed.

53ZRM. Approval and transfer of accreditation

- (1) The Commission may, on application, approve the accreditation of a licensed representative to a licensed provider and, on the Commission's approval of the accreditation, the licensed provider becomes the licensed representative's principal.
- (2) The Commission may, on application, approve the transfer of a licensed representative's accreditation to another licensed provider and, on the Commission's approval of the transfer, that other licensed provider becomes the licensed representative's principal.
- (3) An application for the purposes of subsection (1) or (2) must be—
 - (a) made by the licensed representative to the Commission in the specified manner; and
 - (b) accompanied by the prescribed fee.
- (4) The Commission may approve an accreditation or a transfer of accreditation under this Part only if the Commission is satisfied that the applicant concerned will be competent to carry out his or her duties to the requisite standard as a licensed representative for or on behalf of the licensed provider concerned.
- (5) On giving an approval under this section, the Commission may impose any conditions on the licensed representative and the licensed provider concerned.
- (6) In relation to an approval under this section, the Commission may, at any time, if satisfied that it is reasonable to do so in the circumstances—
 - (a) impose any new conditions;
 - (b) amend any previously imposed conditions; or
 - (c) remove any previously imposed conditions.

- (7) Section 53ZRS applies in relation to the making of a decision under this section if the decision falls within section 53ZRS(1).
- (8) The imposition, amendment or removal of a condition under subsection (6) takes effect at the time of the service of the notice given under section 53ZRS(3) or at the time specified in the notice, whichever is the later.

Subdivision 5—Variation of Licensed VA Service

53ZRN. Variation of licensed VA service

- (1) The Commission may, on application, add to, remove or otherwise vary the VA service for which a licensed provider or licensed representative is licensed.
- (2) The application must be—
 - (a) made by the licensed provider or licensed representative to the Commission in the specified manner; and
 - (b) accompanied by the prescribed fee.
- (3) If a person applies for adding a VA service, the application is, for the purposes of this Part, to be regarded as an application for a licence in relation to that VA service.

Division 4—Approvals by Commission

53ZRO. Requirements for responsible officers

- (1) A licensed provider must not provide any VA service unless—
 - (a) every executive director of the licensed provider who is an individual is approved under section 53ZRP as a responsible officer of the licensed provider in relation to the VA service;

- (b) not less than 2 individuals, at least one of whom must be an executive director of the licensed provider, are approved under section 53ZRP as the responsible officers of the licensed provider in relation to the VA service; and
 - (c) at least one responsible officer of the licensed provider ordinarily resides in Hong Kong.
- (2) A licensed provider who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2,000 for every day during which the offence continues.

53ZRP. Approval of responsible officers

- (1) The Commission may, on application by a licensed representative in the specified manner and payment of a prescribed fee, approve the applicant as a responsible officer of the licensed provider to which the applicant is accredited.
- (2) The Commission must refuse to approve an applicant as a responsible officer of a licensed provider unless the Commission is satisfied that—
 - (a) the applicant is a fit and proper person to be so approved; and
 - (b) the applicant has sufficient authority within the licensed provider.
- (3) On giving approval under this section, the Commission may impose any conditions on the responsible officer and the licensed provider concerned.
- (4) In relation to the approval of a person as a responsible officer of a licensed provider, the Commission may, at any time, if satisfied that it is reasonable to do so in the circumstances—

- (a) impose any new conditions;
 - (b) amend any previously imposed conditions; or
 - (c) remove any previously imposed conditions.
- (5) Section 53ZRS applies in relation to the making of a decision under this section if the decision falls within section 53ZRS(1).
- (6) The approval of an individual as a responsible officer of a licensed provider is deemed to be revoked if the individual—
- (a) ceases to act as a licensed representative for or on behalf of the licensed provider; or
 - (b) ceases to be accredited to the licensed provider.

53ZRQ. Ultimate ownership

- (1) A person must not become an ultimate owner of a licensed provider unless the Commission has, on application by the person, given its approval in writing.
- (2) The Commission may, on application in the specified manner and payment of a prescribed fee, approve the applicant to become an ultimate owner of a licensed provider.
- (3) The Commission may give an approval only if the applicant satisfies the Commission that the licensed provider will remain a fit and proper person to be licensed if the application is approved.
- (4) On giving an approval under this section, the Commission may impose any conditions on the applicant and the licensed provider concerned.
- (5) In relation to the approval for an ultimate owner of a licensed provider, the Commission may, at any time, if satisfied that it is reasonable to do so in the circumstances—
- (a) impose any new conditions;

- (b) amend any previously imposed conditions; or
 - (c) remove any previously imposed conditions.
- (6) Section 53ZRS applies in relation to the making of a decision under this section if the decision falls within section 53ZRS(1).
- (7) The imposition, amendment or removal of a condition under subsection (5) takes effect at the time of the service of the notice given under section 53ZRS(3) or at the time specified in the notice, whichever is the later.
- (8) Without limiting subsections (4) and (5), it is a condition of an approval that the approved ultimate owner must—
 - (a) at all times keep the Commission informed of particulars of the ultimate owner’s contact details; and
 - (b) inform the Commission of any change in the particulars within 7 business days after the change takes place.
- (9) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years, and to a further fine of \$5,000 for every day during which the person continues to be such ultimate owner without the Commission’s approval; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months, and to a further fine of \$500 for every day during which the person continues to be such ultimate owner without the Commission’s approval.

53ZRR. Premises for keeping records or documents

- (1) A licensed provider must keep records or documents required under any specified requirement only at any premises that are approved by the Commission.

- (2) An application to use premises for such purpose must be made to the Commission in the specified manner, and must be accompanied by the prescribed fee.
- (3) The Commission may approve an application made in accordance with subsection (2).
- (4) The Commission may approve an application only if the Commission is satisfied that the premises are non-domestic premises that are suitable to be used for keeping records or documents required under any specified requirement.
- (5) As soon as reasonably practicable after granting an application, the Commission must update the relevant particulars in the register maintained under section 53ZRH.
- (6) In this section—
non-domestic premises (非住宅處所) means any premises other than domestic premises.

Division 5—Provisions Supplementary to Divisions 3 and 4

53ZRS. Procedural requirements

- (1) This section applies in relation to the making of a decision to do any of the following (*subsection (1) decision*)—
 - (a) to refuse to grant a licence under section 53ZRK;
 - (b) to impose a condition on, or amend or remove a condition of, a licence under section 53ZRK;
 - (c) to refuse to grant a licence under section 53ZRL;
 - (d) to impose a condition on, or amend or remove a condition of, a licence under section 53ZRL;
 - (e) to refuse to approve an accreditation or transfer of an accreditation under section 53ZRM;

- (f) to impose a condition on, or amend or remove a condition of, an accreditation or transfer of an accreditation under section 53ZRM;
 - (g) to refuse to add, remove or otherwise vary, under section 53ZRN, any VA service for which a licensed provider or licensed representative is licensed;
 - (h) to refuse to approve a person as a responsible officer of a licensed provider under section 53ZRP or to refuse to approve a person to become an ultimate owner of a licensed provider under section 53ZRQ;
 - (i) to impose a condition in approving a person as a responsible officer of a licensed provider under section 53ZRP or to amend or remove a condition in relation to the approval of a person as such a responsible officer under that section;
 - (j) to impose a condition in approving a person to become an ultimate owner of a licensed provider under section 53ZRQ or to amend or remove a condition in relation to the approval of such an ultimate owner under that section;
 - (k) to refuse to approve premises under section 53ZRR.
- (2) If the Commission forms a preliminary view to make a subsection (1) decision in relation to a person, the Commission must, before making the decision, inform the person of the ground for the preliminary view and give the person a reasonable opportunity to be heard.
- (3) When the Commission makes a subsection (1) decision in relation to a person, it must, as soon as reasonably practicable, notify the person of the decision by written notice and the notice must include—
- (a) a statement of the reasons for the decision; and

- (b) a statement that the person may apply to the Review Tribunal for a review of the decision.

Division 6—Client Assets

53ZRT. Client assets held by licensed providers and their associated entities

- (1) Client assets of a licensed provider are not liable to be taken in execution against the licensed provider or an associated entity of the licensed provider under an order or process of a court.
- (2) Subsection (1) is not to be construed as taking away or affecting a lawful claim or lien that any person has in respect of client assets of a licensed provider (whether received or held by the licensed provider or an associated entity of the licensed provider).
- (3) However, the existence of any claim or lien referred to in subsection (2) does not relieve a licensed provider or an associated entity of a licensed provider of the duty to comply with the requirements of any code or guideline published under any provision of this Ordinance that apply to it.

Division 7—Licensed Persons' Obligations Regarding Notification, Annual Fees and Annual Returns

53ZRU. Notification of change in particulars

- (1) A licensed person or an ultimate owner of a licensed provider must, in the circumstances as prescribed under the specified requirements, notify the Commission in writing of any change, in any information that the licensed person or ultimate owner (as the case requires) has provided to the Commission under this Division or under Division 3 or 4,

within 7 business days after the change, together with a full description of the change.

- (2) If the information has been provided in connection with an application under this Part and the application has been refused or withdrawn, this section no longer applies in relation to the information.
- (3) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

53ZRV. Notification of intended cessation of business etc.

- (1) A licensed person who intends to cease to provide any VA service for which it is licensed must notify the Commission, in writing, as soon as reasonably practicable and in any event not later than 7 business days before the intended cessation.
- (2) A licensed provider must notify the Commission, in writing, at least 7 business days in advance if it intends to change the address at which it proposes to provide any VA service.
- (3) If a person becomes or ceases to be a director of a licensed provider, both the person and the licensed provider must, within 7 business days after the change, notify the Commission, by written notice, of the name and address of the person and of the nature of the position the person occupies or ceases to occupy.
- (4) A person who, without reasonable excuse, contravenes subsection (1), (2) or (3) commits an offence and is liable on conviction to a fine at level 5.

53ZRW. Associated entities: notification and restriction on business

- (1) An associated entity of a licensed provider must within 7 business days after it becomes, or ceases to be, such an

associated entity, notify the Commission, in writing, of that fact and other particulars specified in Schedule 3D.

- (2) If there is any change in the particulars required to be provided by an associated entity of a licensed provider under subsection (1), the associated entity must within 7 business days after the change notify the Commission, by written notice, of that fact and provide in the notice particulars of the change.
- (3) Unless otherwise authorized in writing by the Commission, an associated entity of a licensed provider must not, at any time after becoming such an entity, conduct any business other than that of receiving or holding client assets of the licensed provider.
- (4) If an associated entity of a licensed provider, without reasonable excuse, contravenes subsection (1), (2) or (3), the associated entity commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (5) If an associated entity of a licensed provider, with intent to defraud, contravenes subsection (1), (2) or (3), the associated entity 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.
- (6) If an associated entity of a licensed provider becomes aware that it does not comply with subsection (1), (2) or (3), it must within 1 business day after becoming aware of that fact notify

the Commission, by written notice, of that fact and of the surrounding circumstances.

- (7) If an associated entity of a licensed provider contravenes subsection (6), the associated entity commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (8) An associated entity of a licensed provider is not excused from complying with subsection (6) only on the ground that to do so might tend to incriminate it.
- (9) If a person is required under subsection (6) to notify the Commission of any matter, and the notification might tend to incriminate the person, then the notification is not admissible in evidence against the person in criminal proceedings in a court of law other than the proceedings in which—
 - (a) the person is charged with an offence under subsection (7) in respect of the notification; or
 - (b) the person is charged with an offence under Part V of the Crimes Ordinance (Cap. 200) in respect of the notification.

53ZRX. Licensed representative ceasing to act for principal: consequences and notification

- (1) A licensed representative accredited to a licensed provider ceases to be so accredited on the licensed representative ceasing to act for or on behalf of the licensed provider as a licensed representative.
- (2) If a licensed representative accredited to a licensed provider ceases to act for or on behalf of the licensed provider as a

licensed representative, the licensed provider must, within 7 business days after the cessation, notify the Commission of the cessation.

- (3) If an individual who is a licensed representative—
 - (a) ceases to be accredited to a licensed provider; and
 - (b) has not applied for transfer of the individual's accreditation to another licensed provider under this Part within 180 days after the cessation,the licence granted to the individual to be a licensed representative is deemed to have been revoked on the cessation.
- (4) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 6.

53ZRY. Annual fee and annual return

- (1) A licensed person must pay to the Commission a prescribed fee—
 - (a) within 1 month after each anniversary of the date of grant of the licence; or
 - (b) by another date approved by the Commission by written notice.
- (2) In default of full payment of the prescribed fee as required under subsection (1), the person must pay to the Commission an additional sum calculated as follows—
 - (a) 10% of the fee or such part of the fee that remains unpaid for the first month after the due date for its payment;
 - (b) 20% of the fee or such part of the fee for each subsequent month when it remains unpaid.

- (3) In calculating the additional sum for the purposes of subsection (2), any fraction of a month is treated as a month.
- (4) A licensed person must—
 - (a) submit an annual return to the Commission—
 - (i) within 1 month after each anniversary of the date of grant of the licence; or
 - (ii) by another date approved by the Commission by written notice; and
 - (b) include in the return the information specified in Schedule 3E.

Division 8—Licensed Provider and its Associated Entities Required to Submit Audited Accounts etc.

53ZRZ. Interpretation of Division 8

In this Division—

auditable entity (須予審計實體) means—

- (a) a licensed provider; or
- (b) an associated entity of a licensed provider;

prescribed auditor (訂明核數師), in relation to an auditable entity, means an auditor appointed under section 53ZS(1) or (3) or 53ZSG by the auditable entity;

section 53ZSH auditor (第53ZSH條核數師)—see section 53ZSH.

53ZS. Auditable entity to appoint prescribed auditor

- (1) A licensed provider must, within 1 month after it becomes licensed, appoint an eligible auditor to perform the functions required of an auditor of the licensed provider under or pursuant to the provisions of this or any other Ordinance.

- (2) A licensed provider must, within 7 business days after making an appointment under subsection (1), notify the Commission, by written notice, of the name and address of the auditor.
- (3) An associated entity of a licensed provider must, within 1 month after the associated entity becomes such an associated entity, appoint an eligible auditor to perform the functions required of an auditor of the associated entity under or pursuant to the provisions of this or any other Ordinance.
- (4) An associated entity of a licensed provider must, within 7 business days after making an appointment under subsection (3), notify the Commission, by written notice, of the name and address of the auditor.
- (5) A person who contravenes subsection (1) or (3) commits an offence and 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.
- (6) A person who contravenes subsection (2) or (4) commits an offence and is liable on conviction to a fine at level 5.
- (7) A reference in subsection (1) or (3) to an eligible auditor is to be construed in accordance with section 53ZSA.

53ZSA. Eligibility of auditor for appointment

- (1) A person is not eligible for appointment as an auditor of a licensed provider or any of its associated entities if the person—
 - (a) is an officer or employee of the licensed provider or any of its associated entities;
 - (b) is in the employment of an officer or employee described in paragraph (a); or

- (c) belongs to a class of persons prescribed by rules.
- (2) Subject to subsection (1), a person is eligible for appointment as an auditor of a licensed provider or any of its associated entities, even if the person is, apart from that appointment, already an auditor appointed by the licensed provider or the associated entity the accounts of which are to be audited, whether for the purposes of the Companies Ordinance (Cap. 622) or otherwise.

53ZSB. Auditable entity to notify financial year

- (1) A licensed provider must, within 1 month after it becomes licensed, notify the Commission, by written notice, of the date on which its financial year ends.
- (2) An associated entity of a licensed provider must, within 1 month after it becomes such an associated entity, notify the Commission, by written notice, of the date on which the associated entity's financial year ends.
- (3) Except with the approval in writing of the Commission under subsection (5)(a)(i) and subject to any conditions imposed under subsection (5)(b)—
 - (a) a licensed provider must not alter the date on which its financial year ends; and
 - (b) an associated entity of a licensed provider must not alter the date on which the associated entity's financial year ends.
- (4) Except with the approval in writing of the Commission under subsection (5)(a)(ii) and subject to any conditions imposed under subsection (5)(b)—
 - (a) a licensed provider must not adopt a period that exceeds 12 months as its financial year; and

- (b) an associated entity of a licensed provider must not adopt a period that exceeds 12 months as the associated entity's financial year.
- (5) On an application in writing by an auditable entity, the Commission—
 - (a) may grant approval in writing in respect of—
 - (i) an alteration of the date on which financial year of the auditable entity ends; or
 - (ii) the adoption of a period exceeding 12 months as the financial year of the auditable entity; and
 - (b) may impose any conditions that the Commission considers appropriate on the approval.
- (6) A person who contravenes subsection (1), (2), (3) or (4), or a condition imposed pursuant to subsection (5), commits an offence and is liable on conviction to a fine at level 5.
- (7) Nothing in this section affects the operation of section 429 of the Companies Ordinance (Cap. 622).

53ZSC. Auditable entity to submit audited accounts etc.

- (1) An auditable entity must—
 - (a) prepare prescribed financial statements and other prescribed documents for prescribed periods; and
 - (b) submit the financial statements and other documents, together with a report of the prescribed auditor, to the Commission not later than 4 months after the end of the financial year to which they relate.
- (2) A licensed provider that, in prescribed circumstances, ceases to provide the VA service for which it is licensed to provide, and an associated entity of a licensed provider that ceases to be such an associated entity, must—

- (a) prepare prescribed financial statements and other prescribed documents, which must be made up to (and including) the date of the cessation; and
 - (b) submit the financial statements and other documents, together with a report of the prescribed auditor, to the Commission not later than 4 months after the date of the cessation.
- (3) Without limiting subsections (1) and (2), the requirements under those subsections relating to the prescribed financial statements and other prescribed documents, and the report of the prescribed auditor, referred to in those subsections include the requirements that—
 - (a) the prescribed financial statements and other prescribed documents are to relate to prescribed matters and contain prescribed particulars;
 - (b) the report of the prescribed auditor is to contain prescribed particulars, including a prescribed statement of opinion;
 - (c) the prescribed financial statements and other prescribed documents, and the report of the prescribed auditor, are to be prepared in accordance with prescribed principles or prescribed bases; and
 - (d) without limiting section 387 of the Companies Ordinance (Cap. 622), the prescribed financial statements and other prescribed documents are to be signed by a prescribed person.
- (4) On an application in writing by the auditable entity by which any prescribed financial statements and other prescribed documents, and any report of the prescribed auditor, are required under subsection (1) or (2) to be submitted, the Commission may, if it is satisfied that there are special reasons for so doing, extend the period within which the

financial statements and other documents, and the report of the prescribed auditor, are required to be submitted, for the period and subject to the conditions that the Commission considers appropriate.

- (5) On the Commission granting the extension, subsection (1) or (2) (as the case requires) applies subject to the extension accordingly.
- (6) A person who, without reasonable excuse, contravenes subsection (1) or (2), or a condition imposed pursuant to subsection (4), commits an offence and 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.
- (7) A person who, with intent to defraud, contravenes subsection (1) or (2), or a condition imposed pursuant to subsection (4), 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.
- (8) A reference in any provision of this section to prescribed (except for a reference to prescribed auditor) means specified in Schedule 3F.

53ZSD. Prescribed auditor of auditable entity to report on reportable matter etc.

- (1) This section applies if a person in the course of performing the person's functions as an auditable entity's prescribed auditor—
 - (a) becomes aware of a reportable matter; or

- (b) proposes to include any qualification or adverse statement in any report prepared by the person on the prescribed financial statements or other prescribed documents of the auditable entity that are required to be submitted to the Commission under section 53ZSC.
- (2) In the circumstances specified in subsection (1)(a), the person must, as soon as reasonably practicable after the person becomes aware of the reportable matter, lodge with the Commission a written report on the reportable matter.
- (3) In the circumstances specified in subsection (1)(b), the person must, as soon as reasonably practicable after the person first proposes the inclusion of the qualification or adverse statement, lodge with the Commission a written report on the qualification or adverse statement.
- (4) In this section—
- reportable matter*** (須報告事項)—
- (a) in relation to a person acting as the prescribed auditor of a licensed provider, means a matter that, in the person’s opinion—
- (i) constitutes, on the part of the licensed provider or any of its associated entities, a failure to comply with any of the requirements specified by the Commission for this purpose in the codes or guidelines published under section 53ZTK; or
- (ii) adversely affects to a material extent the financial position of the licensed provider or any of its associated entities; or
- (b) in relation to a person acting as the prescribed auditor of an associated entity of a licensed provider, means a matter that, in the person’s opinion—

- (i) constitutes, on the part of the associated entity, a failure to comply with any of the requirements specified by the Commission for this purpose in the codes or guidelines published under section 53ZTK; or
- (ii) adversely affects to a material extent the financial position of the associated entity.

53ZSE. Auditable entity to notify proposed change of prescribed auditor

- (1) An auditable entity must notify the Commission in accordance with subsection (2), within the specified period, if any of the following circumstances (each a *notifiable circumstance*) occurs in relation to a person who is its prescribed auditor (*incumbent*)—
 - (a) the auditable entity gives notice to its members of a motion, to be moved at its general meeting—
 - (i) to remove the incumbent as its prescribed auditor before the expiry of the incumbent’s term of office; or
 - (ii) to replace the incumbent with another person as its prescribed auditor on the expiry of the incumbent’s term of office or not to reappoint the incumbent on the expiry;
 - (b) the incumbent ceases to be the auditable entity’s prescribed auditor before the expiry of the incumbent’s term of office, otherwise than in consequence of a motion referred to in paragraph (a).
- (2) The notification must be given by written notice and must state the particulars of the notifiable circumstance.
- (3) The specified period mentioned in subsection (1) is 1 business day after the notifiable circumstance occurs.

- (4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

53ZSF. Prescribed auditor to notify resignation

- (1) A person appointed as an auditable entity's prescribed auditor must, within the specified period, notify the Commission by written notice, giving the specified information, if any of the following circumstances (each a *specified change*) occurs—
- (a) the person resigns as such auditor before the expiry of the person's term of office as such auditor;
 - (b) the person does not seek reappointment as such auditor at the expiry of the person's term of office as such auditor;
 - (c) the person otherwise ceases to be such auditor.
- (2) In relation to a specified change—
- (a) the specified period is 1 business day after the change occurs; and
 - (b) the specified information is—
 - (i) the fact of the change and the reasons for the change; and
 - (ii) particulars of any connected circumstances that the person considers should be brought to the attention of the Commission or, where no such circumstances exist, a statement to that effect.

53ZSG. Vacant office of prescribed auditor must be filled

- (1) An auditable entity must appoint an eligible auditor to be its prescribed auditor, within the specified period, if the office of its prescribed auditor becomes vacant.

- (2) The specified period in subsection (1) means 1 month after the day on which the office of the prescribed auditor of the auditable entity becomes vacant.
- (3) A person who contravenes subsection (1) commits an offence and 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.
- (4) A reference in subsection (1) to an eligible auditor is to be construed in accordance with section 53ZSA.

53ZSH. Power of Commission to appoint auditor for auditable entity

- (1) The Commission may appoint an auditor (*section 53ZSH auditor*) to examine and audit, generally or in respect of any particular matters, the accounts and records of a licensed provider (*subject provider*), or any of its associated entities, and report to the Commission on any matters that the Commission directs if—
 - (a) the Commission has reasonable cause to believe that the subject provider, or any of its associated entities, has failed to comply with any specified requirement; or
 - (b) the Commission received a written report lodged under section 53ZSD by a prescribed auditor of the subject provider, or any of its associated entities, in relation to a reportable matter or a qualification or adverse statement.
- (2) A section 53ZSH auditor may examine any client assets of the subject provider received or held by the subject provider or any of its associated entities.

- (3) Subject to subsection (4), if a section 53ZSH auditor has examined and audited the accounts and records of the subject provider or any of its associated entities—
 - (a) the Commission may give, to the subject provider, a direction to pay for the costs or expenses for the examination and audit; and
 - (b) the subject provider is liable to pay, within the period and in the manner specified in the direction, the amount specified in the direction as the costs or expenses for the examination and audit.
- (4) The Commission must give the subject provider a reasonable opportunity of being heard before giving a direction to pay any costs or expenses.
- (5) The Commission may recover, from the subject provider, the amount specified in the direction as a civil debt due to it if the subject provider fails to comply with the direction.

53ZSI. Powers of section 53ZSH auditors

- (1) This section applies to a section 53ZSH auditor appointed in relation to a licensed provider (*subject provider*) or any of its associated entities to examine and audit the accounts and records of the subject provider or the associated entity.
- (2) For the purpose of carrying out the examination and audit, the section 53ZSH auditor may do any act or thing referred to in subsection (3), in addition to any other action that the section 53ZSH auditor may reasonably take for that purpose.
- (3) The section 53ZSH auditor may—
 - (a) examine on oath or otherwise—
 - (i) any officer, employee and agent of any of the following (each a *covered person*)—
 - (A) the subject provider;

- (B) an associated entity of the subject provider;
 - (C) subject to subsection (6), a specified related corporation;
 - (ii) for each covered person that is an auditable entity, a prescribed auditor of the covered person; and
 - (iii) subject to subsection (6), an auditor of a specified related corporation,
- in respect of any matter relating to a covered business or to any covered client assets and, for that purpose, administer oaths accordingly;
- (b) require any officer, employee and agent of a covered person to—
 - (i) produce any accounts and records concerning any matter relating to a covered business or to any covered client assets; and
 - (ii) explain the contents of the accounts and records so produced;
 - (c) require any prescribed auditor of a covered person who is an auditable entity, or any auditor of a covered person who is a specified related corporation, to—
 - (i) produce any accounts and records held by the prescribed auditor or auditor concerning any matter relating to a covered business or to any covered client assets; and
 - (ii) explain the contents of the accounts and records so produced;
 - (d) require any person receiving or holding covered client assets on behalf of the subject provider or any of its associated entities, or, subject to subsection (6), any person receiving or holding covered client assets on behalf of a specified related corporation, to—

-
- (i) produce any accounts and records kept by the person, or information in the person's possession, concerning any matter relating to the covered client assets; and
 - (ii) explain the contents of the accounts and records, and the information, so produced;
 - (e) employ any person the section 53ZSH auditor considers necessary to assist the section 53ZSH auditor in carrying out the examination and audit that the section 53ZSH auditor is appointed to carry out; and
 - (f) for the purpose of carrying out the examination and audit that the section 53ZSH auditor is appointed to carry out, authorize in writing any person employed by the section 53ZSH auditor to do any act or thing referred to in paragraph (b), (c), (d) or (e).
- (4) In this section—
- (a) ***specified related corporation*** (指明有連繫法團) means—
 - (i) a related corporation of the subject provider; or
 - (ii) a related corporation of an associated entity of the subject provider;
 - (b) ***covered business*** (受涵蓋業務)—
 - (i) means the business carried on by the subject provider or any of its associated entities;
 - (ii) subject to subsection (6), includes any other business carried on by the subject provider in conjunction with any VA service and any business of any of its associated entities; and
 - (iii) subject to subsection (6), includes any business carried on by a specified related corporation;

- (c) *covered client assets* (受涵蓋客戶資產) means client assets of the subject provider—
- (i) held or received by the subject provider;
 - (ii) held or received by any of the subject provider's associated entities; or
 - (iii) subject to subsection (6), held or received by any person on behalf of a specified related corporation.
- (5) A reference to an auditor, in relation to a specified related corporation, means any auditor appointed, under this Ordinance or otherwise, by the specified related corporation.
- (6) Subsections (3)(a)(i)(C) and (iii) and (d) and (4)(b)(ii) and (iii) and (c)(iii) apply if the section 53ZSH auditor, or a person authorized under subsection (3)(f), reasonably considers the application of those provisions is necessary for the purpose of carrying out the examination and audit of the accounts and records of the subject provider or any of its associated entities.

53ZSJ. Offences for non-compliance with section 53ZSH auditor's requirement

- (1) A person commits an offence if the person, without reasonable excuse, fails to comply with any requirement imposed on the person (including the requirement to answer any question put to the person) under section 53ZSI.
- (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 (including the requirement to answer any question put to the person) under section 53ZSI, produces any accounts or records or gives an answer that is false or misleading in a material particular; and
 - (b) knows that, or is reckless as to whether, the accounts or records 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—
 - (a) fails to comply with any requirement imposed on the person (including the requirement to answer any question put to the person) under section 53ZSI; or
 - (b) in purported compliance with a requirement imposed on the person (including the requirement to answer any question put to the person) under section 53ZSI, produces any accounts or records or gives an answer that is false or misleading in a material particular.
- (6) A person who commits an offence under subsection (5) 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.

53ZSK. Section 53ZSH auditor to report to Commission

- (1) A section 53ZSH auditor appointed to examine and audit any accounts and records must—
 - (a) make to the Commission any interim reports that the Commission requires; and
 - (b) make to the Commission a final report when the examination and audit concludes.
- (2) A report referred to in subsection (1) must be made within the period and in the manner that the Commission directs.
- (3) The Commission may, if it considers appropriate, forward a copy of any report made to it under subsection (1) to the auditable entity the accounts and records of which are the subject of the examination and audit referred to in the report.

53ZSL. Offences to destroy, conceal, or alter accounts, records, or documents, etc.

- (1) A person commits an offence if—
 - (a) a prescribed auditor or a section 53ZSH auditor is appointed under this Division to carry out any examination and audit; and
 - (b) the person—
 - (i) deletes, destroys, mutilates, falsifies, conceals, alters or otherwise makes unavailable any accounts, records or documents related to the examination and audit, or aids or abets or conspires with another person to do so;
 - (ii) with intent to prevent, delay or obstruct the carrying out of the examination and audit—

- (A) disposes or procures the disposal, in any manner and by any means, of any property related to the examination and audit; or
 - (B) aids or abets or conspires with another person to do so; or
 - (iii) with intent to prevent, delay or obstruct the carrying out of the examination and audit, leaves, or attempts to leave, Hong Kong.
- (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 7 years; or
 - (b) on summary conviction to a fine of \$500,000 and to imprisonment for 1 year.
- (3) It is a defence for a person charged with an offence under subsection (1) because of paragraph (b)(i) of that subsection to establish that the person did not intend to prevent, delay or obstruct the carrying out of any examination and audit.
- (4) A person is taken to have established a matter that needs to be established for a defence under subsection (3) if—
 - (a) there is sufficient evidence to raise an issue with respect to the matter; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.

53ZSM. Immunity in respect of communication with Commission by prescribed auditor

- (1) Without affecting section 4, no duty that a person appointed as a prescribed auditor may be subject to is to be regarded as contravened because of the person's communicating in good

faith to the Commission, any information or opinion on a matter that—

- (a) the person becomes aware of in the person's capacity as such auditor (whether or not in the course of performing the person's functions as such auditor); and
 - (b) is relevant to any function of the Commission.
- (2) Subsection (1) also applies to a person whose appointment as a prescribed auditor has ceased, in which case a reference to a matter in that subsection is to be construed on the basis that subsection (1)(a) requires the matter to be one that the person becomes aware of in the person's capacity as such auditor (whether or not in the course of performing the person's functions as such auditor) before the appointment has ceased.
- (3) Subsection (1) also applies to a prescribed auditor appointed by a former auditable entity, in which case a reference to a matter in that subsection is to be construed on the basis that subsection (1)(a) requires the matter to be one that the person becomes aware of in the person's capacity as such auditor.
- (4) Subsection (1) also applies to a person whose appointment as a prescribed auditor by a former auditable entity, has ceased, in which case a reference to a matter in that subsection is to be construed on the basis that subsection (1)(a) requires the matter to be one that the person becomes aware of in the person's capacity as such auditor before the appointment has ceased.
- (5) In this section—

former auditable entity (前須予審計實體) means a corporation that was formerly—

- (a) a licensed provider; or
- (b) an associated entity of a licensed provider.

53ZSN. Operation of Companies Ordinance not affected

Nothing in section 53ZS, 53ZSA or 53ZSG affects the operation of any other requirements relating to the appointment of an auditor, whether under the Companies Ordinance (Cap. 622) or otherwise.

Division 9—Discipline, Intervention and Other Powers

Subdivision 1—Disciplinary Powers etc.

53ZSO. Interpretation of Subdivision 1

(1) In this Subdivision—

disciplinary power (紀律處分權力) means a power that may be exercised by the Commission under section 53ZSP;

regulated person (受規管人士) means—

- (a) a licensed person;
- (b) a responsible officer of a licensed provider; or
- (c) a person involved in the management of the business of a licensed provider.

(2) In this Subdivision—

(a) a reference to revoking or suspending a licence of a licensed person means—

(i) to revoke or suspend the licence; or

(ii) to revoke or suspend the licence in relation to any VA service, or any part of any VA service, for which the licensed person is licensed; and

(b) a reference to revoking or suspending an approval for a person to be a responsible officer of a licensed provider means—

(i) to revoke or suspend the approval; or

- (ii) to revoke or suspend the approval in relation to any VA service, or any part of any VA service, for which the person is approved to be such responsible officer.

53ZSP. Disciplinary action by Commission

- (1) Subject to sections 53ZSR, 53ZSS, 53ZST, 53ZSU, 53ZSV and 53ZSW, the Commission may, on finding any of the circumstances specified in subsection (2) occurring or having occurred, exercise, in respect of the person, one or more of the powers specified in subsection (3).
- (2) The circumstances are that—
 - (a) a person is, or was at any time, a regulated person guilty of misconduct;
 - (b) the Commission forms the opinion that a person who is a regulated person is not a fit and proper person to be or to remain the same type of regulated person; and
 - (c) for a person who was formerly a regulated person, the Commission forms the opinion that, because of any matter occurring at any time while the person was a regulated person (whether or not together with any other matter), the person was not a fit and proper person to be, or to remain, the same type of regulated person.
- (3) The powers are—
 - (a) to publicly or privately reprimand the person;
 - (b) to order the person to take, by a date specified by the Commission (*compliance deadline*), any action specified by the Commission for the purpose of remedying any contravention, act or omission that led to the finding referred to in subsection (2) (*remedial action*);

- (c) to order the person 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 loss avoided by the person as a result of the person’s misconduct or of the person’s conduct that led to the Commission forming the opinion referred to in subsection (2)(b) or (c) (as the case requires);
 - (d) if the person is a licensed person—
 - (i) to revoke the person’s licence; or
 - (ii) to suspend the person’s licence for a period, or until the occurrence of an event, specified in the notice referred to in section 53ZSU;
 - (e) if the person is a responsible officer of a licensed provider—
 - (i) to revoke the approval granted under section 53ZRP; or
 - (ii) to suspend such approval for a period, or until the occurrence of an event, specified in the notice referred to in section 53ZSU; and
 - (f) to prohibit the person from doing all or any of the following in relation to any VA service for a period, or until the occurrence of an event specified in the notice referred to in section 53ZSU—
 - (i) applying to be licensed;
 - (ii) applying to be approved as a responsible officer of a licensed provider.
- (4) A person who is ordered to pay a pecuniary penalty under this section must pay the penalty to the Commission within—
- (a) 30 days; or

- (b) a longer period specified in the notice referred to in section 53ZSU,
after the order takes effect as a specified decision under section 75.
- (5) If a person fails to comply with an order to take remedial action, the Commission may further order the person to pay a daily pecuniary penalty not exceeding \$100,000 for each day on which the failure continues after the compliance deadline.
- (6) If the Commission exercises its power under subsection (3) against a person, the Commission may disclose to the public details of the decision including the reasons for it and any material facts relating to the case.
- (7) Any pecuniary penalty paid to or recovered by the Commission pursuant to an order made under subsection (3)(c) or (5) must be paid by the Commission into the general revenue.

53ZSQ. Other circumstances for revocation or suspension in respect of licensed persons etc.

- (1) Subject to sections 53ZSU, 53ZSV and 53ZSW, the Commission may in any of the situations specified in subsection (2)—
 - (a) revoke a licensed person’s licence; or
 - (b) suspend a licensed person’s licence for a period, or until the occurrence of an event, specified in a notice referred to in section 53ZSU.
- (2) The situations are that—
 - (a) if the licensed person is an individual—
 - (i) the licensed person enters into a voluntary arrangement with creditors, or has a bankruptcy

- order made against that person, under the Bankruptcy Ordinance (Cap. 6);
- (ii) the licensed person fails to satisfy a levy of execution; or
 - (iii) any of the following circumstances arises that in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed—
 - (A) the licensed person is convicted of an offence (other than an offence under this Ordinance) in Hong Kong or elsewhere;
 - (B) the licensed person has been found by a court to be mentally incapacitated, or is detained in a mental hospital, under the Mental Health Ordinance (Cap. 136);
- (b) if the licensed person is a corporation—
- (i) a receiver or manager of the property or business of the licensed person is appointed;
 - (ii) the licensed person fails to satisfy a levy of execution;
 - (iii) the licensed person enters into a compromise or scheme of arrangement with its creditors;
 - (iv) the licensed person has commenced, or is deemed to have commenced, winding up or has applied for deregistration under the Companies Ordinance (Cap. 622); or
 - (v) any of the following circumstances arises that in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed—

- (A) the licensed person is convicted of an offence (other than an offence under this Ordinance) in Hong Kong or elsewhere;
 - (B) any of the directors of the licensed person is convicted of an offence (other than an offence under this Ordinance) in Hong Kong or elsewhere;
 - (C) any of the directors of the licensed person has been found by a court to be mentally incapacitated, or is detained in a mental hospital, under the Mental Health Ordinance (Cap. 136);
- (c) the licensed person does not provide a VA service; and
- (d) the licensed person requests the Commission to so revoke or suspend the licence.
- (3) A licensed representative's licence is deemed to be revoked if the licensed representative dies.
- (4) A licensed provider's licence is deemed to be revoked if the licensed provider is wound up, or has been deregistered or struck off the Companies Register or is otherwise dissolved.
- (5) Subject to subsection (6), a licence of a licensed person is deemed to be suspended if—
 - (a) the licensed person fails to make full payment of—
 - (i) any annual fee payable by the licensed person under section 53ZRY(1); or
 - (ii) any additional sum payable by the licensed person under section 53ZRY(2) as a result of any default in making full payment, of the annual fee, within 3 months after the due date for payment of the annual fee under that section; or

- (b) the licensed person fails to submit an annual return, required to be submitted by the licensed person under section 53ZRY(4), within 3 months after the due date for submission of the annual return under that section.
- (6) A licence of a licensed person is not to be regarded as suspended under subsection (5) unless and until—
 - (a) in the case of a suspension under subsection (5)(a) by reference to any failure to make full payment of any annual fee or additional sum, the Commission has, by written notice given not less than 10 business days before the suspension is to take effect, informed the licensed person—
 - (i) of the requirement to make full payment of the annual fee or additional sum (as the case requires); and
 - (ii) of the consequence of the failure to comply with the requirement under this section; or
 - (b) in the case of a suspension under subsection (5)(b) by reference to any failure to submit an annual return, the Commission has, by written notice given not less than 10 business days before the suspension is to take effect, informed the licensed person—
 - (i) of the requirement to submit the annual return; and
 - (ii) of the consequence of the failure to comply with the requirement under this section.
- (7) Subject to subsection (8), the suspension under subsection (5) remains in force until the time the Commission—
 - (a) considers it appropriate that the licence should no longer be suspended; and
 - (b) informs the licensed person to that effect by written notice.

- (8) A licence is deemed to be revoked if—
- (a) the licence is suspended under subsection (5); and
 - (b) the situation described in subsection (5)(a) or (b) (as the case requires) has not been remedied within—
 - (i) 30 days after the day on which the suspension becomes effective under subsection (5); or
 - (ii) a further period that the Commission specifies by written notice to the licensed person.
- (9) Subject to sections 53ZSU, 53ZSV and 53ZSW, if a person that is a responsible officer of a licensed provider is convicted of an offence (other than an offence under this Ordinance) in Hong Kong or elsewhere that in the opinion of the Commission impugns the fitness and properness of the person to remain such a responsible officer, the Commission may—
- (a) revoke the approval granted under section 53ZRP in respect of the person as such a responsible officer; or
 - (b) suspend the approval for a period, or until the occurrence of an event, specified in the notice referred to in section 53ZSU.

53ZSR. Determination concerning misconduct and fit and proper person

- (1) For the purposes of section 53ZSP, a person is a regulated person guilty of misconduct if—
- (a) the person is a regulated person; and
 - (b) either—
 - (i) the person contravenes a material requirement; or
 - (ii) the person does or omits to do an act in relation to the provision of any VA service which act or

- omission, in the opinion of the Commission, is or is likely to be prejudicial—
- (A) to the interest of the investing public; or
 - (B) to the public interest.
- (2) For the purposes of section 53ZSP, a person was a regulated person guilty of misconduct if—
- (a) the person was a regulated person; and
 - (b) either—
 - (i) the person, while being such regulated person, contravened a material requirement; or
 - (ii) the person, while being such regulated person, did or omitted to do an act in relation to the provision of any VA service which act or omission, in the opinion of the Commission, was or was likely to be prejudicial—
 - (A) to the interest of the investing public; or
 - (B) to the public interest.
- (3) The Commission may form an opinion that a person’s act or omission referred to in subsection (1)(b)(ii) or (2)(b)(ii) is or is likely to be, or was or was likely to be, prejudicial as referred to in that subsection only if the Commission has had regard to prevailing guidelines.
- (4) Prevailing guidelines, in relation to an act or omission, means any provision—
- (a) set out in any codes or guidelines published under section 7 or 53ZTK; and
 - (b) in force at the time of occurrence of, and applicable in relation to, the act or omission.
- (5) If—

- (a) a person who is, or was at any time, a licensed provider guilty of misconduct within the meaning of subsection (1) or (2) as a result of the commission of any conduct—
 - (i) occurring with the consent or connivance of another person; or
 - (ii) attributable to any neglect on the part of another person; and
- (b) such other person is, or was at the time of occurrence of the conduct, a responsible officer of or a person involved in the management of the business of the licensed provider,

such other person is or was (as the case requires) also a regulated person guilty of misconduct for the purposes of section 53ZSP.

- (6) The Commission, in determining whether a regulated person is or was a fit and proper person at any time (*material time*) for the purposes of section 53ZSP, may, among the matters specified in section 53ZRJ and any other matters, take into account the conduct of the regulated person at the material time or any past conduct as the Commission considers appropriate in the circumstances of the case.

- (7) In this section—

material requirement (重要規定) means—

- (a) any provision of this Ordinance; or
- (b) any condition of a licence or any other conditions imposed under or pursuant to any provision of this Part.

53ZSS. Guidelines for imposing pecuniary penalty

- (1) The Commission must publish guidelines indicating the way in which the Commission proposes to exercise the

disciplinary power to impose a pecuniary penalty.

- (2) The guidelines must be—
 - (a) published before the Commission exercises a disciplinary power to impose a pecuniary penalty for the first time; and
 - (b) published in the Gazette and in any other way that the Commission considers appropriate.
- (3) In exercising the disciplinary power to impose a pecuniary penalty, the Commission must have regard to the published guidelines.
- (4) The guidelines are not subsidiary legislation.

53ZST. Registration of pecuniary penalty order

- (1) The Court of First Instance may, on application made by the Commission, register in that Court an order to pay a pecuniary penalty.
- (2) The application must be made by producing to the Registrar of the High Court a written notice, requesting that the order be registered, together with the original and a copy of the order.
- (3) On registration, the order is to be regarded for all purposes as an order of the Court of First Instance made within the civil jurisdiction of that Court for the payment of money.
- (4) In this section—

pecuniary penalty (罰款) means a pecuniary penalty ordered to be paid under section 53ZSP(3)(c) or (5).

53ZSU. Procedural requirements for exercising disciplinary powers or powers under section 53ZSQ

- (1) The Commission may exercise a power under section 53ZSP(3) or 53ZSQ(1) or (9) (except for a power under

section 53ZSQ(1) exercisable in a situation specified in section 53ZSQ(2)(d)) in respect of a person only after giving the person a reasonable opportunity to be heard.

- (2) In reaching a decision under section 53ZSP or 53ZSQ, the Commission may have regard to any information or material in its possession that is relevant to the decision, regardless of how the information or material has come into its possession.
- (3) If the Commission decides to exercise a power under section 53ZSP(3) or 53ZSQ(1) or (9) in respect of a person who is or was a regulated person, the Commission must inform the person of the decision by written notice and the notice must—
 - (a) include a statement of the reasons for the decision;
 - (b) specify the time at which the decision is to take effect;
 - (c) specify any action that the person is required to take under the decision;
 - (d) for a decision to publicly reprimand, specify the terms in which the person is to be reprimanded;
 - (e) for a decision to impose a pecuniary penalty—
 - (i) specify the amount of the penalty; and
 - (ii) if the penalty is to be paid within a period other than that referred to in section 53ZSP(4)(a), specify that other period within which it must be paid;
 - (f) for a decision to revoke or suspend a licence or to prohibit an application, specify the duration and terms of the revocation, suspension or prohibition; and
 - (g) except for a revocation or suspension in the situation specified in section 53ZSQ(2)(d), include a statement that the person may apply to the Review Tribunal for a review of the decision.

53ZSV. General provisions relating to exercise of disciplinary powers or powers under section 53ZSQ

- (1) The revocation or suspension of any licence under section 53ZSP or 53ZSQ does not operate so as to—
 - (a) avoid or affect an agreement, transaction or arrangement entered into by the licensed person whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension; or
 - (b) affect a right, obligation or liability arising under the agreement, transaction or arrangement.
- (2) If at any time the Commission is contemplating exercising any power under section 53ZSP or 53ZSQ in respect of a person who is or was a regulated person, it may, where it considers it appropriate to do so in the interest of the investing public or in the public interest, by agreement with the person—
 - (a) exercise any power the Commission may exercise in respect of the person under this Subdivision (whether or not the same as the power the exercise of which has been contemplated); and
 - (b) take any additional action that it considers appropriate in the circumstances of the case.
- (3) If the Commission exercises any power or takes any additional action in respect of a person under subsection (2)—
 - (a) it must comply with the procedural requirements under section 53ZSU, as if those requirements, in addition to applying to the exercise of any power under section 53ZSP or 53ZSQ, also apply with necessary modifications to the taking of any additional action under subsection (2); and

- (b) subject to the agreement of the person, it is not obliged to give the person a reasonable opportunity to be heard.
- (4) Subsection (2) does not apply to a revocation or suspension in the situation specified in section 53ZSQ(2)(d).
- (5) Nothing in this Subdivision affects the power of the Court of First Instance to make any order or exercise any other power under or pursuant to section 53ZTE, 53ZTF, 53ZTG or 53ZTH.

53ZSW. Licensed person or responsible officer remains subject to obligations as such, despite suspension of licence or approval

- (1) If a licence of a licensed person is suspended under section 53ZSP or 53ZSQ in relation to all or any, or any part of all or any, of the VA service provided by the licensed person, then during the period of the suspension, the licensed person—
 - (a) continues to be regarded for the purposes of the provisions of this Ordinance, but not section 53ZRD, as licensed for the VA service or VA services, or the part of the VA service or VA services, to which the suspension relates; and
 - (b) without limiting paragraph (a), continues to be required to comply with any provision of this Ordinance relating to a licensed person that would apply to the person were the licence not so suspended.
- (2) If an approval of a person as a responsible officer of a licensed provider is suspended under section 53ZSP or 53ZSQ, then during the period of the suspension, the person—
 - (a) continues to be regarded for the purposes of the provisions of this Ordinance, but not section 53ZRO, as such a responsible officer; and

- (b) without limiting paragraph (a), continues to be required to comply with any provision of this Ordinance relating to a responsible officer that would apply to the person were the approval not so suspended.
- (3) A licence of a licensed person may be revoked under section 53ZSP or 53ZSQ even if, at the time of revocation, the licence is suspended, whether in relation to all or any, or any part of all or any, of the VA service provided by the person, under any provision of this Part.
- (4) An approval of a person as a responsible officer of a licensed provider may be revoked under section 53ZSP or 53ZSQ even if, at the time of revocation, the approval is suspended under any provision of this Part.
- (5) This section does not affect the operation of any provision of this Ordinance that applies in relation to a suspension.

Subdivision 2—Intervention Powers: Restrictions on Business or Property

53ZSX. Interpretation of Subdivision 2

- (1) A reference in this Subdivision (except section 53ZTB) to a prohibition or requirement imposed under section 53ZSZ, 53ZT or 53ZTA means a prohibition or requirement imposed on a person under section 53ZSZ, 53ZT or 53ZTA, as from time to time substituted or varied under section 53ZTB (if applicable).
- (2) Section 53ZSO(2) applies to this Subdivision as that section applies to Subdivision 1.

53ZSY. Grounds for imposing prohibition or requirement under section 53ZSZ, 53ZT or 53ZTA

The Commission may impose a prohibition or requirement under

section 53ZSZ, 53ZT or 53ZTA in respect of, or with reference to, any licensed provider or any of its associated entities if it appears to the Commission that—

- (a) any of the following might be dissipated, transferred or otherwise dealt with in a manner prejudicial to the interest of any of the licensed provider's clients or creditors—
 - (i) any property of the licensed provider or any of its associated entities or its clients;
 - (ii) any property connected with the business that constitutes providing a VA service by the licensed provider;
- (b) the licensed provider is not a fit and proper person to remain licensed or is not a fit and proper person to provide any VA service for which it is licensed (having regard, among other matters, to the matters specified in section 53ZRJ);
- (c) the licensed provider or any of its associated entities—
 - (i) has failed to comply with a requirement under section 9(3); or
 - (ii) in purported compliance with a requirement under section 9(3), has furnished the Commission with information that was, at the time when it was furnished, false or misleading in a material particular;
- (d) the licence of the licensed provider may be revoked or suspended on any of the grounds specified in section 53ZSP(2) or 53ZSQ; or
- (e) the imposition of the prohibition or requirement is desirable in the interest of the investing public or in the public interest.

53ZSZ. Restriction of business

- (1) Subject to section 53ZSY, the Commission may by written notice—
 - (a) prohibit a licensed provider or any of its associated entities from—
 - (i) entering into transactions of a specified description or other than of a specified description;
 - (ii) entering into transactions in specified circumstances or other than in specified circumstances;
 - (iii) entering into transactions to a specified extent or other than to a specified extent;
 - (iv) soliciting business from persons of a specified description or from persons other than of a specified description; or
 - (v) carrying on business in a specified manner or other than in a specified manner; or
 - (b) require a licensed provider or any of its associated entities to carry on business in, and only in, a specified manner.
- (2) A prohibition or requirement imposed on a licensed provider or any of its associated entities under subsection (1) may relate to either or both of the following—
 - (a) transactions entered into in connection with the carrying on, by the licensed provider, of a business of providing a VA service;
 - (b) transactions entered into in connection with any other business that is carried on by the licensed provider in connection with the carrying on, by the licensed provider, of a business of providing a VA service.

- (3) A prohibition or requirement imposed on an associated entity of a licensed provider under subsection (1) may relate to transactions entered into in connection with any client assets of the licensed provider.

53ZT. Restriction on dealing with property

- (1) Subject to section 53ZSY, the Commission may by written notice—
- (a) prohibit a licensed provider or any of its associated entities—
 - (i) from doing any of the following—
 - (A) disposing of any relevant property;
 - (B) dealing with any relevant property in a specified manner or other than in a specified manner; and
 - (ii) from assisting, counselling or procuring another person to do any of the following—
 - (A) dispose of any relevant property;
 - (B) deal with any relevant property in a specified manner or other than in a specified manner; and
 - (b) require a licensed provider or any of its associated entities to deal with any relevant property in, and only in, a specified manner.
- (2) In this section—
- relevant property*** (相關財產), in relation to a licensed provider or any of its associated entities, means—
- (a) any property—
 - (i) held by the licensed provider on behalf of any of the clients of the licensed provider;

- (ii) held by an associated entity of the licensed provider, on behalf of the licensed provider or any of the clients of the licensed provider; or
 - (iii) held by any other person on behalf of, or to the order of, the licensed provider, or an associated entity of the licensed provider; or
- (b) any other property that the Commission reasonably believes to be owned or controlled by the licensed provider or any of its associated entities.
- (3) A reference to licensed provider in paragraph (a) of the definition of *relevant property* in subsection (2) means the licensed provider acting within the capacity for which the licensed provider is licensed.

53ZTA. Maintenance of property

- (1) Subject to section 53ZSY, the Commission may by written notice require a licensed provider or any of its associated entities to maintain property in Hong Kong, and in any specified place outside Hong Kong, such that—
 - (a) the property maintained is of the value and of the description that appear to the Commission to be desirable with a view to ensuring that the licensed provider will be able to meet its liabilities in relation to the business that constitutes providing a VA service by the licensed provider; and
 - (b) the property is maintained in a manner that will enable the licensed provider or any of its associated entities at any time freely to transfer or otherwise dispose of the property.
- (2) The Commission may in any requirement imposed under this section direct that, for the purposes of the requirement,

property of a specified description is or is not to be taken into account.

53ZTB. Withdrawal, substitution or variation of prohibitions or requirements

- (1) An original prohibition or requirement, unless it provides otherwise, remains in force in accordance with its terms until it is—
 - (a) withdrawn by the Commission under subsection (2)(a); or
 - (b) substituted by another prohibition or requirement, or varied, by the Commission under subsection (2)(b).
- (2) The Commission may, if it considers appropriate to do so, by written notice given to the person on whom an original prohibition or requirement is imposed (*subject person*)—
 - (a) withdraw the original prohibition or requirement; or
 - (b) substitute another prohibition or requirement for, or vary, the original prohibition or requirement.
- (3) A prohibition or requirement as substituted or varied under subsection (2)(b) may only be a prohibition or requirement that the Commission may impose under section 53ZSZ, 53ZT or 53ZTA.
- (4) The Commission may exercise its power under subsection (2) of its own volition or on the request of the subject person or any other person affected by an original prohibition or requirement.
- (5) Subsections (1), (2), (3) and (4) apply, with necessary modifications, to a revised prohibition or requirement as they apply to an original prohibition or requirement.
- (6) In this section—

original prohibition or requirement (原有禁止或要求) means a prohibition or requirement imposed on a person under section 53ZSZ, 53ZT or 53ZTA;

revised prohibition or requirement (經修改禁止或要求) means—

- (a) a prohibition or requirement that substitutes under this section—
 - (i) an original prohibition or requirement; or
 - (ii) an earlier revised prohibition or requirement; or
- (b) an original prohibition or requirement, or an earlier revised prohibition or requirement, as varied under this section.

53ZTC. Exercise of Subdivision 2 power—procedural requirements and effect on agreement

- (1) In this section—
 - (a) a reference to the Commission deciding to exercise a Subdivision 2 power is a reference to—
 - (i) the Commission imposing a prohibition or requirement under section 53ZSZ, 53ZT or 53ZTA;
 - (ii) the Commission withdrawing a prohibition or requirement under section 53ZTB; or
 - (iii) the Commission substituting another prohibition or requirement for, or varying, a prohibition or requirement under section 53ZTB; and
 - (b) a reference to the Commission deciding not to exercise a Subdivision 2 power is to be construed accordingly.
- (2) If the Commission, of its own volition, decides to exercise a Subdivision 2 power in relation to a person, the Commission must inform the person of the decision by written notice and the notice must include—

- (a) a statement of the reasons for the decision; and
 - (b) (except for a withdrawal of a prohibition or requirement) a statement that the person may apply to the Review Tribunal for a review of the decision.
- (3) If a request is made by any person to the Commission pursuant to section 53ZTB(4) for the Commission to exercise its Subdivision 2 power referred to in section 53ZTB—
 - (a) if the Commission decides to exercise a Subdivision 2 power as requested, the Commission must inform the person of the decision by written notice and the notice must include a statement of the reasons for the decision; or
 - (b) if the Commission decides not to exercise a Subdivision 2 power as requested, with or without also deciding to exercise a Subdivision 2 power in another way, the Commission must inform the person of the decision or decisions by written notice and the notice must include—
 - (i) a statement of the reasons for the decision or decisions; and
 - (ii) a statement that the person may apply to the Review Tribunal for a review of the decision or decisions.
- (4) A decision to exercise a Subdivision 2 power in relation to a person takes effect at the time the person receives the notice given in respect of the decision or at the time specified in the notice, whichever is the later.
- (5) If—
 - (a) the Commission decides to exercise a Subdivision 2 power in relation to a person (*intervention subject*); and

- (b) the reasons provided in accordance with subsection (2) or (3) relate specifically to matters that—
 - (i) refer to any person (*identified person*) who is identified in the statement of the reasons for the decision but who is not the intervention subject; and
 - (ii) are, in the opinion of the Commission, prejudicial to the identified person in any respect,

the Commission must, as soon as reasonably practicable after the decision, take all reasonable steps to serve on the identified person a copy of the notice given in respect of the decision.

- (6) Subsections (2), (3) and (5) do not require a notice, or a copy of a notice, given in respect of a decision to exercise a Subdivision 2 power to be served on any person if the notice or copy has been served on the person under any other provision of this Part.
- (7) The Commission must publish in the Gazette, and may publish by any additional means that it considers appropriate, a notice regarding a decision to exercise a Subdivision 2 power.
- (8) A notice published under subsection (7) may, if the Commission considers appropriate, include a statement of the reasons for the decision to exercise a Subdivision 2 power to which the notice relates.
- (9) A decision to exercise a Subdivision 2 power does not operate so as to render an agreement unenforceable by a party to the agreement if the party proves that in entering into the agreement the party—
 - (a) acted in good faith; and

- (b) was unaware of any notice given, served or published under this Subdivision in respect of or regarding the decision to exercise the Subdivision 2 power.
- (10) If, because of the application of this Subdivision or of the giving, service or publication of any notice under this Subdivision, a person rescinds an agreement, the person must restore to any other party to the agreement any money or other benefit received or obtained by the person under the agreement from that party.

53ZTD. Power to impose prohibition or requirement not affected by revocation or suspension of licence

- (1) This section applies despite any other provisions of this Part, but does not affect the operation of section 53ZSW.
- (2) Subsection (3) applies if—
 - (a) in respect of, or with reference to, a licensed provider or any of its associated entities, a Subdivision 2 prohibition or requirement is imposed; and
 - (b) at any time after the imposition takes effect, the licence of the licensed provider is revoked or suspended.
- (3) The revocation or suspension—
 - (a) does not affect the validity of the imposition of the Subdivision 2 prohibition or requirement that has taken effect; and
 - (b) without limiting paragraph (a), does not affect any power exercisable by the Commission under section 53ZTB, at the time when the revocation or suspension takes effect or at any later time,and a reference in this Part to a licensed provider is to be construed accordingly.
- (4) Subsection (5) applies to a licensed provider if—

- (a) the licence of the licensed provider is revoked or suspended; and
 - (b) a Subdivision 2 prohibition or requirement imposed in respect of, or with reference to, the licensed provider or any of its associated entities (whether before or after the revocation or suspension) is in force.
- (5) The licensed provider does not contravene the prohibition in section 53ZRD(1) on carrying on a business of providing a VA service merely because it complies with the Subdivision 2 prohibition or requirement.
- (6) To avoid doubt, if the Commission has decided to revoke or suspend the licence of a licensed provider, the Commission may, at any time before the revocation or suspension takes effect, impose or withdraw a Subdivision 2 prohibition or requirement in respect of, or with reference, to the licensed provider or any of its associated entities.
- (7) To avoid doubt, this section does not affect the power of the Commission to impose or withdraw a Subdivision 2 prohibition or requirement imposed in respect of, or with reference to, a licensed provider or any of its associated entities where the licence of the licensed provider has been suspended.
- (8) In this section—
 - (a) a reference to imposing a Subdivision 2 prohibition or requirement is to be read to mean—
 - (i) imposing a prohibition or requirement under section 53ZSZ, 53ZT or 53ZTA;
 - (ii) substituting a prohibition or requirement for another prohibition or requirement under section 53ZTB; or

- (iii) varying a prohibition or requirement under section 53ZTB,
and a reference to a Subdivision 2 prohibition or requirement being imposed is to be read accordingly;
 - (b) a reference to a Subdivision 2 prohibition or requirement means a prohibition or requirement imposed, substituted or varied as mentioned in paragraph (a)(i), (ii) or (iii); and
 - (c) a reference to withdrawing a Subdivision 2 prohibition or requirement means withdrawing a prohibition or requirement under section 53ZTB.
- (9) In this section—
 - (a) a reference to a licence of a licensed provider being revoked—
 - (i) means the licence being revoked under section 53ZSP or 53ZSQ; and
 - (ii) includes the licence being deemed under section 53ZRX to be revoked; and
 - (b) a reference to a licence of a licensed provider being suspended means the licence being suspended under section 53ZSP or 53ZSQ.

53ZTE. Application to Court of First Instance relating to non-compliance with prohibition or requirement

- (1) The Commission may apply to the Court of First Instance for an order under subsection (2) if a subject person fails to comply with a Subdivision 2 prohibition or requirement.
- (2) On an application under subsection (1), the Court of First Instance may inquire into the case and may—
 - (a) if the Court is satisfied that there is no reasonable excuse for the subject person not to comply with

the Subdivision 2 prohibition or requirement—order the subject person to comply with the prohibition or requirement within the period specified by the Court; and

- (b) if the Court is satisfied that the failure was without reasonable excuse—punish the subject person, and any other person knowingly involved in the failure, in the same manner as if the subject person and, where applicable, that other person had been guilty of contempt of court.
- (3) The Commission may apply to the Court of First Instance for an order under subsection (4) if there is a reasonable likelihood that a subject person will fail to comply with a Subdivision 2 prohibition or requirement.
- (4) On an application under subsection (3), the Court of First Instance may order the following persons to take any action, or refrain from taking any action, that the Court directs—
 - (a) the subject person;
 - (b) any other person whom the Court is satisfied is able to procure the subject person to comply with the Subdivision 2 prohibition or requirement.
- (5) An application under this section must be made by originating summons or originating motion.
- (6) An originating summons under this section must be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).
- (7) In this section—

Subdivision 2 prohibition or requirement (第2次分部禁止或要求)—see section 53ZTD(8);

subject person (施加對象), in relation to a Subdivision 2 prohibition or requirement, means the person in respect of whom the prohibition or requirement is in force.

Subdivision 3—Winding Up and Other Orders

53ZTF. Winding up orders

- (1) The Commission may present a petition for a licensed provider, or an associated entity of a licensed provider, to be wound up under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) on the ground that it is just and equitable that the licensed provider or the associated entity should be so wound up if—
 - (a) the licensed provider or the associated entity is a corporation in respect of which the Court of First Instance has jurisdiction to wind up under that Ordinance; and
 - (b) it appears to the Commission that it is desirable in the public interest that the licensed provider or the associated entity should be wound up.
- (2) The Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) applies to the petition as it applies in relation to a petition presented under that Ordinance.

53ZTG. Bankruptcy orders

- (1) The Commission may present a petition for a bankruptcy order against a licensed representative in accordance with the Bankruptcy Ordinance (Cap. 6) if—
 - (a) grounds exist for the presentation of a petition for a bankruptcy order against the licensed representative by his or her creditor in accordance with that Ordinance; and

- (b) it appears to the Commission that it is desirable in the public interest to present a petition for a bankruptcy order against the licensed representative in accordance with that Ordinance.
- (2) The Bankruptcy Ordinance (Cap. 6) applies to the petition as it applies in relation to a petition presented by a creditor.

53ZTH. Injunctions and other orders

- (1) The Court of First Instance may, on an application of the Commission, make one or more of the orders specified in subsection (2) if—
 - (a) a person has committed any contravention-related conduct; or
 - (b) it appears to the Commission that any contravention-related conduct has been, is being or may be committed.
- (2) The orders specified for the purposes of subsection (1) are—
 - (a) an order restraining or prohibiting the commission or the continued commission of any contravention-related conduct;
 - (b) if a person, or it appears that a person, has been, is or may become, involved in the commission of any contravention-related conduct, whether knowingly or otherwise—an order requiring the person to take any step that the Court of First Instance directs, including steps to restore the parties to any transaction to the position in which they were before the transaction was entered into;
 - (c) an order restraining or prohibiting a person from acquiring, disposing of, or otherwise dealing in, any property specified in the order;

- (d) an order appointing a person to administer the property of another person;
 - (e) an order declaring a contract relating to any virtual assets to be void or voidable to the extent specified in the order;
 - (f) for the purpose of securing compliance with any other order made under this section, an order directing a person to do or refrain from doing any act specified in the order; and
 - (g) any ancillary order that the Court of First Instance considers necessary in consequence of the making of any of the orders referred to in paragraphs (a), (b), (c), (d), (e) and (f).
- (3) The Court of First Instance must, before making an order specified in subsection (2), satisfy itself so far as it can reasonably do so—
- (a) that it is desirable that the order be made; and
 - (b) that the order will not unfairly prejudice any person.
- (4) The Court of First Instance may, before making an order specified in subsection (2), direct either or both of the following—
- (a) a notice of the application made in respect of the order be given to the persons that the Court considers appropriate;
 - (b) such a notice be published in the manner that the Court considers appropriate.
- (5) If the Court of First Instance considers it desirable to do so, it may grant an interim order that it considers appropriate pending the determination of an application made pursuant to subsection (1).

- (6) An order specified in subsection (2) may be made whether or not it appears to the Court of First Instance that—
- (a) the person against whom the order is to be made intends to engage again, or to continue to engage, in the commission of any contravention-related conduct;
 - (b) the person against whom the order is to be made has previously engaged in the commission of any contravention-related conduct; or
 - (c) there is an imminent danger of damage to any person in the event of the order not being made.
- (7) If the Court of First Instance has power to make an order specified in subsection (2) against a person, it may, in addition to or in substitution for such order, make an order requiring the person to pay damages to any other person.
- (8) If an order is made or granted under subsection (1) or (5), the Court of First Instance may—
- (a) reverse, vary or discharge the order; or
 - (b) suspend the operation of the order.
- (9) For the purposes of this section, a person commits contravention-related conduct if the person—
- (a) contravenes an applicable requirement;
 - (b) aids, abets, or otherwise assists, counsels or procures a person to contravene an applicable requirement;
 - (c) induces, whether by threats, promises or otherwise, a person to contravene an applicable requirement;
 - (d) is directly or indirectly in any way knowingly involved in, or a party to, any contravention of an applicable requirement; or
 - (e) attempts, or conspires with others, to contravene an applicable requirement.

(10) In this section—

applicable requirement (適用規定) means anything falling within paragraph (a), (c), (d) or (e) of the definition of ***specified requirement*** in section 53ZR.

Division 10—Miscellaneous

53ZTI. Applicant to provide information

- (1) This section applies to a person (***applicant***) who applies—
 - (a) for a licence under section 53ZRK or 53ZRL;
 - (b) for approval of accreditation or approval of transfer of accreditation to a principal under section 53ZRM;
 - (c) for variation of VA service under section 53ZRN;
 - (d) for approval to be a responsible officer under section 53ZRP;
 - (e) for approval of premises under section 53ZRR;
 - (f) for approval to become an ultimate owner under section 53ZRQ; or
 - (g) for any other matter requiring the approval of the Commission under this Part.
- (2) The applicant must provide the Commission with any information that the Commission reasonably requires to enable it to consider the application.
- (3) In considering an application referred to in subsection (1), the Commission may have regard to any information in its possession, whether provided by the applicant or not.
- (4) This section does not affect the Commission's power to require or have regard to information apart from this section.

53ZTJ. Particulars of disciplinary actions to be entered on register

- (1) For an exercise of a power under section 53ZSP or 53ZSQ (*decision*) against a licensed person, the Commission—
 - (a) must enter on the register maintained under section 53ZRH (*register*) the particulars of the decision that the Commission considers appropriate; and
 - (b) must enter the following particulars in relation to a decision on the register—
 - (i) if the decision is the subject of a review—the Tribunal’s determination of the review (when available);
 - (ii) if the Tribunal’s determination is the subject of an appeal—the Court of Appeal’s determination on appeal (when available).
- (2) The particulars of a decision entered on the register are to be kept in the register for a period of 5 years after—
 - (a) unless subsection (1)(b)(i) or (ii) applies—the day on which the decision takes effect;
 - (b) if subsection (1)(b)(i) applies but subsection (1)(b)(ii) does not apply—the day on which the Tribunal makes its determination; or
 - (c) if subsection (1)(b)(ii) applies—the day on which the Court of Appeal makes its determination.
- (3) Subsections (1) and (2) do not apply to a private reprimand under section 53ZSP(3)(a).
- (4) Despite subsections (1) and (2), the Commission is not required to enter on the register, or keep in the register, the particulars of, or in relation to, a decision if the decision is revoked by the Commission or is set aside on review or on appeal.

53ZTK. Codes or guidelines on matters under Part 5B

- (1) The Commission may publish codes and guidelines that it considers appropriate for providing guidance in relation to any provision under this Part.
- (2) The codes and guidelines must be published in the Gazette and in any other way the Commission considers appropriate.
- (3) To avoid doubt, the power of the Commission to publish codes or guidelines under this section is in addition to, and not in derogation of, any other power of the Commission to publish codes or guidelines under any provision of this or any other Ordinance.
- (4) The Commission may, from time to time, amend the whole or any part of any code or guideline published under this section in a way consistent with the power to publish the code or guideline under this section, and—
 - (a) the other provisions of this section apply, with necessary modifications, to the amendments to the code or guideline as they apply to the code or guideline; and
 - (b) any reference in this or any other Ordinance to the code or guideline (however expressed) published under this section is, unless the context otherwise requires, to be construed as a reference to the code or guideline as amended.
- (5) A failure on the part of a person to comply with a provision of any code or guideline published under this section does not by itself make the person liable to any legal proceedings, whether in the nature of judicial proceedings or otherwise.
- (6) Despite subsection (5)—
 - (a) the codes or guidelines may be taken into account in considering, for the purposes of any provision of this Ordinance, whether a licensed provider or a licensed representative is a fit and proper person to be or to remain licensed; and

- (b) in any proceedings under this Ordinance before any court—
 - (i) the code or guideline is admissible in evidence; and
 - (ii) if any provision set out in the code or guideline appears to the court to be relevant to any question arising in the proceedings, it is to be taken into account in determining that question.
- (7) Any code or guideline published under this section is not subsidiary legislation.

53ZTL.Rules on matters under Part 5B

- (1) The Commission may make rules for the better carrying out of the provisions and purposes of this Part.
- (2) Without limiting subsection (1), the Commission may make rules—
 - (a) to specify any conditions subject to which the provisions of this Part—
 - (i) do not have effect, or only have effect to a specified extent, in relation to any specified person or to members of a specified class of persons;
 - (ii) do not have effect in relation to any specified transaction or class of transactions entered into by any specified person or class of persons; or
 - (iii) are, where they require any application, statement, notice or other document (however described) to be lodged or filed with or submitted to the Commission, to be regarded as having been complied with if the application, statement, notice or other document (as the case requires) is lodged

- or filed with or submitted to any other specified person; and
- (b) to prescribe any matter that under this Part is to be prescribed by rules.
- (3) Except as otherwise provided in this Part, rules made by the Commission under this section—
- (a) may be of general or special application and may be made so as to apply only in specified circumstances;
- (b) may make different provisions for different circumstances and provide for different cases or classes of cases;
- (c) may authorize any matter or thing to be determined, applied or regulated by any specified person;
- (d) may provide for the exercise of discretion in specified cases; and
- (e) may, for the better and more effectual carrying into effect of any provision of this Ordinance or the rules, include any savings, transitional, incidental, supplemental, evidential and consequential provisions (whether involving the provisions of any principal legislation or the provisions of any subsidiary legislation).
- (4) Despite any other provisions of this Part but subject to subsection (6), if the Commission proposes to make rules under subsection (1), it must publish a draft of the proposed rules, in a manner that it considers appropriate, for the purpose of inviting representations on the proposed rules by the public.
- (5) If the Commission makes any rules under subsection (1) after a draft is published under subsection (4) in relation to the rules, it must—

- (a) publish, in a manner that it considers appropriate, an account setting out in general terms—
 - (i) the representations made on the draft; and
 - (ii) the response of the Commission to the representations; and
 - (b) if the rules are made with modifications that in the opinion of the Commission result in the rules being significantly different from the draft, publish, in a manner that it considers appropriate, details of the difference.
- (6) Subsections (4) and (5) do not apply if the Commission considers, in the circumstances of the case, that—
 - (a) it is inappropriate or unnecessary that those subsections should apply; or
 - (b) any delay involved in complying with those subsections—
 - (i) would not be in the interest of the investing public; or
 - (ii) would not be in the public interest.
- (7) To avoid doubt, subsections (4), (5) and (6) do not affect any other requirements that, apart from those subsections, apply to the making of any rules under any provision of this Part.
- (8) If rules are made by the Commission under subsection (1), the Chief Executive in Council may make regulations to provide that a person who contravenes any specified provision of the rules that applies to the person commits an offence and is liable to a specified penalty not exceeding—
 - (a) on conviction on indictment a fine of \$500,000 and imprisonment for 2 years; or

- (b) on summary conviction a fine at level 6 and imprisonment for 6 months.

53ZTM. Amendment of Schedules 3B to 3F

- (1) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend Schedule 3B.
- (2) The Commission may, by notice published in the Gazette, amend Schedule 3C.
- (3) The Commission may, after consultation with the Financial Secretary, by notice published in the Gazette, amend Schedules 3D, 3E and 3F.

53ZTN. Commission may waive or refund fees

The Commission may, in relation to any person or class of persons—

- (a) waive, in whole or in part, the payment of any fee under this Part; or
 - (b) refund, in whole or in part, any fee paid under this Part,
- if the Commission is of the opinion that otherwise the payment of the fee would be unduly burdensome or inappropriate.

53ZTO. Offence for making false or misleading representation in connection with application

- (1) A person commits an offence if the person—
 - (a) in connection with an application made to the Commission under this Part, whether for the person or for another person, makes a representation, whether in writing, orally or otherwise, that is false or misleading in a material particular; and

- (b) knows that, or is reckless as to whether, the representation is false or misleading in a material particular.
- (2) A person commits an offence if the person, in connection with an application made to the Commission under this Part, whether for the person or for another person—
 - (a) omits a material particular from a representation with the result that the representation is rendered false or misleading; and
 - (b) knows that, or is reckless as to whether, the material particular is omitted from the representation.
- (3) A person who commits an offence under subsection (1) or (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) In this section—

representation (表述) means a representation or statement—

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

53ZTP. Offence for providing false or misleading information, if information required under this Ordinance

- (1) A person commits an offence if the person—
 - (a) in purported compliance with a requirement to provide information imposed by or under any provision of this Ordinance—

- (i) provides to the Commission any information that is false or misleading in a material particular; or
 - (ii) 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 information is false or misleading in a material particular.
- (2) Subsection (1) does not apply to the provision of information that is false or misleading in a material particular if the provision of the information in purported compliance with a requirement imposed by or under any provision of this Ordinance would, apart from subsection (1), also constitute an offence under any provision of this Ordinance.
- (3) 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 1 year.

53ZTQ. Offence for providing false or misleading document, if document required in connection with Commission’s function

- (1) Subject to subsection (2), a person commits an offence if the person—
 - (a) otherwise than in purported compliance with a requirement to provide information imposed by or under any provision of this Ordinance but, in connection with the performance by the Commission of a function under this Ordinance, provides to the Commission any record or document that is false or misleading in a material particular; and

- (b) the person—
 - (i) knows that, or is reckless as to whether, the record or document is false or misleading in a material particular; and
 - (ii) has, in relation to the provision of the record or document, received prior written warning from the Commission to the effect that the provision of any record or document that is false or misleading in a material particular or omission of a material particular from a statement in the circumstances of the case would constitute an offence under this subsection.
- (2) A person may be convicted of an offence under subsection (1) only if the prosecution proves that—
 - (a) the Commission has reasonably relied on the record or document in question; or
 - (b) the person intended that the Commission would rely on the record or document in question.
- (3) However, subsection (2)(a) does not require it to be proved that the Commission who has reasonably relied on any record or document—
 - (a) was misled;
 - (b) suffered any detriment; or
 - (c) incurred any loss,as a result of the reliance.
- (4) A person who commits an offence under subsection (1) is liable—
 - (a) on conviction on indictment to a fine of \$500,000 and to imprisonment for 6 months; or

- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

53ZTR. Certain representations prohibited

- (1) Subject to subsection (2), a licensed provider or a licensed representative—
 - (a) must not represent that the abilities or qualifications of the licensed provider or the licensed representative (as the case requires) have been endorsed or warranted by the Government or the Commission; and
 - (b) must not permit any other person to make representations to the effect referred to in paragraph (a).
- (2) A statement to the effect that a person is licensed under this Ordinance does not by itself constitute a contravention of subsection (1).
- (3) If a licensed provider or a licensed representative, without reasonable excuse, contravenes subsection (1), the licensed provider or the licensed representative commits an offence and is liable on conviction to a fine at level 5.
- (4) In this section—

represent (表述) includes represent in any way, whether expressly or by implication.

53ZTS. Offence for obstructing person in performance of functions

- (1) A person who, without reasonable excuse, obstructs any specified person in the performance of a function under or in carrying into effect any provision of this Ordinance 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.

(2) In this section—

specified person (指明人士) means—

- (a) the Commission;
- (b) any member, employee, or consultant, agent or adviser, of the Commission; or
- (c) any person appointed to investigate any matter under this Ordinance.

53ZTT. Time limitation 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 3 years after the commission of the offence.

53ZTU. Power of Commission to intervene in proceedings

(1) If—

- (a) there are any judicial or other proceedings (other than criminal proceedings) that concern a matter provided for in any of the provisions in this Ordinance, or in which the Commission has an interest by virtue of its functions under this Ordinance; and
- (b) the Commission is satisfied that it is in the public interest for the Commission to intervene and be heard in the proceedings,

the Commission, after consultation with the Financial Secretary, may, by an application made in accordance with subsection (2) to the court hearing or otherwise having competent authority to hear the proceedings, apply to intervene and be heard in the proceedings.

- (2) An application made for the purposes of subsection (1) must be—
 - (a) made in writing; and
 - (b) supported by an affidavit showing that the conditions set out in subsection (1)(a) and (b) are satisfied.
- (3) A copy of the application made for the purposes of subsection (1) must be served on each of the parties to the proceedings to which the application relates as soon as reasonably practicable after the application is made.
- (4) Subject to subsection (5), the court to which an application is made for the purposes of subsection (1) may by order—
 - (a) allow the application, subject to any terms that it considers just; or
 - (b) refuse the application.
- (5) The court to which an application is made for the purposes of subsection (1) must not make an order pursuant to subsection (4)(a) or (b) without first giving the following persons a reasonable opportunity of being heard—
 - (a) the Commission;
 - (b) each of the parties to the proceedings to which the application relates.
- (6) If an application made for the purposes of subsection (1) is allowed under subsection (4)(a), the Commission, subject to the terms referred to in subsection (4)(a)—
 - (a) may intervene and be heard in the proceedings to which the application relates; and
 - (b) is to be regarded for all purposes as a party to the proceedings and has the rights, duties and liabilities of such a party.

- (7) Nothing in this section affects Order 15, rule 6 of the Rules of the High Court (Cap. 4 sub. leg. A).
- (8) In this section—
court (法庭) includes a magistrate and a tribunal, other than the Review Tribunal.

53ZTV. Civil proceedings by Commission

The Commission may begin or carry on any civil proceedings by a solicitor or otherwise.

53ZTW. Conflict of interest

- (1) Any member of the Commission or any person performing any function under this Ordinance (the member or person called in this section a *specified person*) must not directly or indirectly effect or cause to be effected, on the specified person's own account or for the benefit of any other person, a transaction regarding any virtual assets—
- (a) which transaction the specified person knows is, or is connected with a transaction or a person that is, the subject of any investigation or proceedings by the Commission under this Ordinance; or
- (b) which transaction the specified person knows is otherwise being considered by the Commission.
- (2) Subsection (1) does not apply to any transaction that a holder of virtual assets effects or causes to be effected by reference to any of their rights as such holder—
- (a) to participate in a scheme of arrangement sanctioned by the Court of First Instance under the Companies Ordinance (Cap. 622);
- (b) to charge or pledge the virtual assets to secure the repayment of money;

- (c) to realize the virtual assets for the purpose of repaying money secured under paragraph (b); or
 - (d) to realize the virtual assets in the course of performing a duty imposed by law.
- (3) A specified person must inform the Commission if, in the course of performing any function under this Part, the specified person is required to consider any matter relating to—
 - (a) any virtual assets—
 - (i) in which the specified person has an interest;
 - (ii) in which a corporation, in the shares of which the specified person has an interest, has an interest; or
 - (iii) that are of or issued by the same issuer as those in which the specified person has an interest; or
 - (b) a person—
 - (i) by whom the specified person is or was employed;
 - (ii) of whom the specified person is or was a client;
 - (iii) who is or was the specified person’s associate; or
 - (iv) whom the specified person knows is or was a client of a person—
 - (A) with whom the specified person is or was employed; or
 - (B) who is or was the specified person’s associate.
- (4) A person who, without reasonable excuse, contravenes subsection (1) or (3) 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.

(5) In this section—

associate (有聯繫者), in relation to a person, means—

- (a) the spouse, or any minor child (natural or adopted) or minor step-child, of the person;
- (b) any corporation of which the person is a director;
- (c) any employee or partner of the person;
- (d) the trustee of a trust of which the person, his or her spouse, minor child (natural or adopted) or minor step-child, is a beneficiary or a discretionary object;
- (e) another person in accordance with whose directions or instructions the person is accustomed or obliged to act;
- (f) another person accustomed or obliged to act in accordance with the directions or instructions of the person;
- (g) a corporation in accordance with the directions or instructions of which, or the directions or instructions of the directors of which, the person is accustomed or obliged to act;
- (h) a corporation that is, or the directors of which are, accustomed or obliged to act in accordance with the directions or instructions of the person;
- (i) a corporation at general meetings of which the person, either alone or together with another, is directly or indirectly entitled to exercise or control the exercise of 33% or more of the voting power;
- (j) a corporation of which the person controls the composition of the board of directors;
- (k) if the person is a corporation—

- (i) any of its directors or any of its related corporations or any director or employee of any of its related corporations; and
 - (ii) a pension fund, provident fund or employee share scheme of the corporation or of a related corporation of the corporation; or
- (l) without limiting the circumstances in which paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j) and (k) apply, in circumstances concerning the securities of or other interest in a corporation, or rights arising out of the holding of such securities or such interest, any other person with whom the person has an agreement or arrangement—
- (i) with respect to the acquisition, holding or disposal of such securities or such interest; or
 - (ii) under which they undertake to act together in exercising their voting power at general meetings of the corporation.

53ZTX. Evidence regarding Commission’s records or documents

- (1) Subsection (2) applies to a record or document purporting—
- (a) to be signed, executed or issued by or on behalf of the Commission; and
 - (b) to be signed or initialled by any member of the Commission or any person performing any function under any provision of this Ordinance.
- (2) The record or document is admissible in any proceedings as evidence of the facts stated in it, without proof of the signature or initials of the person purporting to sign or initial the record or document.

53ZTY. Transitional provisions

Anti-Money Laundering and Counter-Terrorist Financing Ordinance

Part 5B—Division 10

5B-222

Section 53ZTY

Cap. 615

The transitional provisions specified in Schedule 3G have effect.

Part 5C

Regulation of Dealings in Precious Metals and Stones

(Part 5C added 15 of 2022 s. 4)

Division 1—Preliminary

Subdivision 1—Interpretation and Disapplication

53ZTZ. Interpretation of Part 5C

In this Part—

branch (分行), subject to section 53ZVP, means any premises that—

- (a) are used by a registrant for the purpose of the carrying out of face-to-face transactions with customers; but
- (b) are not the principal place of business of the registrant;

branch certificate (分行證明書) means a certificate issued under section 53ZUG(1)(c) or 53ZUP(1)(c) in respect of a Category A registrant or a Category B registrant and includes any certificate issued under section 53ZVA for replacing such a certificate;

business premises (業務處所), in relation to a person who is registered as a registrant or who applies to be registered as a registrant, means, subject to section 53ZVP, any premises at which the registrant carries on a precious metals and stones business, including any premises used by the registrant for the purpose of—

- (a) the carrying out of face-to-face transactions with customers;

- (b) the administration of the affairs or business of the registrant;
- (c) the processing of transactions; or
- (d) the storage of documents, data or records;

cash (現金) includes cash in any currency;

Category A registrant (A類註冊人) means a person whose name is entered in the register as such under section 53ZUG and whose registration has not been suspended under section 53ZUL;

Category B registrant (B類註冊人) means a person whose name is entered in the register as such under section 53ZUP and whose registration has not been suspended under section 53ZUU and, except in sections 53ZUO, 53ZUP, 53ZUQ, 53ZUR, 53ZUS and 53ZUT, includes a person deemed under section 53ZW to be a Category B registrant;

certificate of registration (註冊證明書) means a certificate issued under section 53ZUG(1)(b) or 53ZUP(1)(b) in respect of a Category A registrant or a Category B registrant and includes any certificate issued under section 53ZVA for replacing such a certificate;

dealing in precious metals and stones (從事貴金屬及寶石交易)— see section 53ZU;

non-Hong Kong precious metals and stones dealer (非香港貴金屬及寶石交易商) means any person who deals in precious metals and stones in Hong Kong if—

- (a) the person—
 - (i) either—
 - (A) is an individual who does not ordinarily reside in Hong Kong; or

- (B) is a legal person, other than an individual, that is incorporated or established outside Hong Kong and is not a registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap. 622); and
- (ii) does not have a place of business in Hong Kong; and
- (b) the total number of days on which the person's precious metals and stones business is carried on in Hong Kong does not exceed 60 days in a calendar year;

precious-asset-backed instruments (貴重資產支持工具)—

- (a) means any certificate or instrument backed by one or more precious metals, precious stones or precious products that entitles the holder to such assets (in entirety or in part); but
- (b) does not include—
 - (i) any securities as defined by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571) (***Cap. 571 interpretation section***);
 - (ii) a futures contract as defined by the Cap. 571 interpretation section;
 - (iii) any interest in a collective investment scheme as defined by the Cap. 571 interpretation section;
 - (iv) a structured product as defined by the Cap. 571 interpretation section;
 - (v) an OTC derivative product as defined by the Cap. 571 interpretation section; or
 - (vi) a virtual asset;

precious metal (貴金屬) means gold, silver, platinum, iridium, osmium, palladium, rhodium or ruthenium, in a manufactured or unmanufactured state;

precious metals and stones business (貴金屬及寶石業務) means the business of dealing in precious metals and stones;

precious product (貴重產品) means any jewellery or watch made up of, containing or having attached to it, any precious metal or precious stone, or both;

precious stone (寶石) means diamond, sapphire, ruby, emerald, jade or pearl, whether natural or otherwise;

register (註冊紀錄冊), when used as a noun, means the register maintained under section 53ZUC;

register (註冊), when used as a verb, means enter in the register and a reference to registration is to be construed accordingly;

registrant (註冊人) means a Category A registrant or a Category B registrant;

specified cash transaction (指明現金交易) means a transaction carried out by a person, while carrying on a precious metals and stones business, in respect of which transaction a payment or payments in cash, of at least the amount specified in Schedule 3H in total, is or are made or received in Hong Kong, whether the transaction is executed—

- (a) in a single operation; or
- (b) in several operations that are linked or appear to be linked;

specified transaction (指明交易) means a transaction that—

- (a) is a transaction carried out by a person, while carrying on a precious metals and stones business, in respect of which transaction a payment or payments, of at least the amount specified in Schedule 3I in total, is or are made or received in any way or combination of ways (other

than in cash) in Hong Kong, whether the transaction is executed—

- (i) in a single operation; or
 - (ii) in several operations that are linked or appear to be linked; and
- (b) is not a specified cash transaction;

trading in (買賣), in relation to precious metals, precious stones, precious products or precious-asset-backed instruments, means selling, offering for sale, purchasing, offering to purchase or possessing for the purpose of sale;

ultimate owner (最終擁有人)—

- (a) in relation to an individual (**first-mentioned individual**) carrying on a precious metals and stones business—
 - (i) means another individual who ultimately owns or controls the precious metals and stones business; or
 - (ii) if the first-mentioned individual is acting on behalf of another person, means that other person;
- (b) in relation to a partnership, means an individual who—
 - (i) is entitled, directly or indirectly, to more than a 25% share of the capital or profits of the partnership;
 - (ii) controls, directly or indirectly, more than a 25% share of the capital or profits of the partnership;
 - (iii) is, directly or indirectly, entitled to exercise or control the exercise of more than 25% of the voting rights in the partnership; or
 - (iv) exercises ultimate control over the management of the partnership; or
- (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, more than 25% of the issued share capital of the corporation;
- (ii) is, directly or indirectly, entitled to exercise or control the exercise of more than 25% of the voting rights at general meetings of the corporation; or
- (iii) exercises ultimate control over the management of the corporation.

53ZU. Meaning of *dealing in precious metals and stones*

- (1) For the purposes of this Ordinance, a person deals in precious metals and stones if the person carries on any of the following activities by way of business—
 - (a) trading in, importing or exporting precious metals, precious stones or precious products;
 - (b) manufacturing, refining or carrying out any value-adding work on precious metals, precious stones or precious products;
 - (c) issuing, redeeming or trading in precious-asset-backed instruments;
 - (d) acting as an intermediary in respect of any of the activities in paragraph (a), (b) or (c).
- (2) However, a person who carries on a logistics service business does not deal in precious metals and stones only because the person imports or exports precious metals, precious stones or precious products in the ordinary course of that business.
- (3) In subsection (2)—

logistics service business (物流服務業務) means a business of transporting, or arranging for the transportation of, goods for other persons.

53ZUA. Disapplication of Part 5C

- (1) This Part does not apply to—
 - (a) the Government;
 - (b) an authorized institution;
 - (c) a pawnbroker licensed under the Pawnbrokers Ordinance (Cap. 166);
 - (d) a licensed corporation that carries on a precious metals and stones business that is ancillary to any regulated activity (as defined by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571)) carried out by the corporation for which the corporation is licensed under that Ordinance;
 - (e) an authorized insurer that carries on a precious metals and stones business that is ancillary to the insurer's principal business;
 - (f) a licensed insurance broker company that carries on a precious metals and stones business that is ancillary to the company's principal business;
 - (g) a licensed individual insurance agent or a licensed insurance agency that carries on a precious metals and stones business that is ancillary to the agent's or agency's principal business;
 - (h) an SVF licensee that carries on a precious metals and stones business that is ancillary to the SVF licensee's principal business; or
 - (i) a system operator or settlement institution of a designated retail payment system that carries on a precious metals and stones business that is ancillary to its business as a system operator or settlement institution.

- (2) Except for Divisions 1, 7, 8 and 9, this Part does not apply to a non-Hong Kong precious metals and stones dealer.
- (3) The Secretary for Financial Services and the Treasury may by regulation prescribe a class or description of persons to whom this Part does not apply.

Subdivision 2—Delegation of Functions and Register of Precious Metals and Stones Dealers

53ZUB. 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 a public officer employed in the Customs and Excise Department.
- (2) The Commissioner of Customs and Excise may not delegate—
 - (a) the power to delegate under subsection (1);
 - (b) the power to amend Schedule 3J or 3K under section 53ZVQ; or
 - (c) the power to make regulations under section 53ZVS.

53ZUC. Commissioner to maintain register

- (1) The Commissioner must maintain a register of persons registered under this Part in a form the Commissioner considers appropriate.
- (2) In relation to every Category A registrant or Category B registrant, the register must specify—
 - (a) the name of the registrant;
 - (b) whether the registrant is a Category A registrant or a Category B registrant;

- (c) the address of the registrant's principal place of business; and
 - (d) the address of each branch of the registrant (if any).
- (3) The register must be made available for inspection by a member of the public to enable him or her to ascertain whether he or she is dealing with a Category A registrant or a Category B registrant.
- (4) A member of the public is entitled, without charge, to inspect the register during normal office hours.
- (5) Despite subsection (4), the Commissioner may, if satisfied that it is reasonable to do so in the circumstances, withhold the address of the principal place of business or a branch of a registrant (or part of the address) in the register from a person who inspects the register.

53ZUD. Certified copy of register

- (1) A person may, on the payment of the fee specified in Schedule 3K, obtain—
- (a) a certified copy or an uncertified copy of an entry in, or extract from, the register; or
 - (b) a certificate by the Commissioner stating—
 - (i) that the name of a person has been entered in the register and that the person is specified to be a Category A registrant or a Category B registrant;
 - (ii) that the name of a person has not been entered in the register; or
 - (iii) that the name of a person has been removed from the register.
- (2) In any criminal or civil proceedings, a copy of an entry in, or extract from, the register, purporting to be certified by the Commissioner—

- (a) is admissible in evidence on production without further proof; and
 - (b) is evidence of the facts stated in it.
- (3) The fact that the name of a person does not appear on a copy of an entry in, or extract from, the register, purporting to be certified by the Commissioner is evidence that, at the date on which the copy is purporting to be certified, the person was not a registrant.
- (4) In any criminal or civil proceedings, a certificate purporting to be signed by the Commissioner and stating any of the following is admissible in evidence on production without further proof and is to be conclusive evidence of the facts stated in the certificate—
 - (a) that the name of a person has been entered in the register and that the person is specified to be a Category A registrant or a Category B registrant;
 - (b) that the name of a person has not been entered in the register;
 - (c) that the name of a person has been removed from the register.
- (5) Despite subsection (1), the Commissioner may, if satisfied that it is reasonable to do so in the circumstances, withhold the address of the principal place of business or a branch of a registrant (or part of the address) in the register or part of the address from a person who requests for a copy of an entry in, or extract from, the register.

Division 2—Restriction on Dealing in Precious Metals and Stones

53ZUE. Offence of carrying out certain transaction without registration

- (1) No person other than a registrant may carry out a specified transaction in Hong Kong.
- (2) No person other than a Category B registrant may carry out a specified cash transaction in Hong Kong.
- (3) A person who is not a registrant must not claim or hold out—
 - (a) that the person is a registrant; or
 - (b) that the person is authorized to carry out a specified transaction in Hong Kong.
- (4) A person who is not a Category B registrant must not claim or hold out—
 - (a) that the person is a Category B registrant; or
 - (b) that the person is authorized to carry out a specified cash transaction in Hong Kong.
- (5) A person who contravenes subsection (1), (2), (3) or (4) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.
- (6) If a person is convicted of an offence under this section, the magistrate may order that the person be disqualified from being registered as a registrant for a period—
 - (a) beginning on the date of the order; and
 - (b) specified in the order.

Division 3—Category A Registrant: Application for, Grant, Cancellation and Suspension of, Registration

53ZUF. Application for and grant of registration

- (1) The Commissioner may, on application, register a person as a Category A registrant for carrying on a precious metals and stones business that includes the carrying out of specified

transactions but excludes the carrying out of specified cash transactions.

- (2) An application for the grant of registration as a Category A registrant must be—
 - (a) made in the form and way specified by the Commissioner; and
 - (b) accompanied by the fee specified in Schedule 3K.
- (3) Without limiting subsection (2)(a), the application—
 - (a) must be accompanied by a copy of a valid business registration certificate of the applicant;
 - (b) must be accompanied by a declaration by the applicant that—
 - (i) the precious metals and stones business which the applicant proposes to carry on will be carried on for a lawful purpose; or
 - (ii) if the applicant has been carrying on a precious metals and stones business immediately before 1 April 2023 and makes the application during the transitional period—the applicant’s precious metals and stones business is carried on, and will continue to be carried on, for a lawful purpose; and
 - (c) must contain the address of each premises that the applicant intends to be used as business premises and the applicant’s correspondence address.
- (4) The Commissioner may register a person as a Category A registrant only if the Commissioner is satisfied of the matters specified in subsections (5) and (6).
- (5) The matter specified for the purposes of subsection (4) is that—

- (a) the precious metals and stones business that the person proposes to carry on will be carried on for a lawful purpose; or
 - (b) if the person has been carrying on a precious metals and stones business immediately before 1 April 2023 and makes the application during the transitional period—the person’s precious metals and stones business is carried on, and will continue to be carried on, for a lawful purpose.
- (6) The matter specified for the purposes of subsection (4) is that, in relation to an applicant who intends to use any domestic premises as business 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.
- (7) On registering a person as a Category A registrant, the Commissioner may impose any conditions that the Commissioner considers appropriate.
- (8) Section 53ZUJ applies to the determination of an application under subsection (1).
- (9) In this section—
transitional period (過渡期) has the meaning given by section 53ZW(8).

53ZUG. Certificate of registration and branch certificates

- (1) On granting a person’s application for registration as a Category A registrant, the Commissioner must—
- (a) enter the person’s name in the register and specify that the person is a Category A registrant;
 - (b) issue a certificate of registration; and

- (c) issue a branch certificate for each branch of the registrant (if any).
- (2) A certificate of registration issued in respect of a person registered as a Category A registrant—
 - (a) must state that the person is so registered;
 - (b) must be in a form specified by the Commissioner; and
 - (c) must specify the address of the principal place of business of the registrant.
- (3) A branch certificate issued for a branch of a Category A registrant must be in a form specified by the Commissioner and must specify the address of the branch.

53ZUH. Annual fee

A Category A registrant must pay to the Commissioner an annual fee specified in Schedule 3K annually on or before each anniversary of the date on which the registrant's registration takes effect.

53ZUI. Amendment of conditions of registration

- (1) In relation to the registration of a person as a Category A registrant, the Commissioner may, at any time, if satisfied that it is reasonable to do so in the circumstances—
 - (a) impose any new conditions;
 - (b) amend any previously imposed conditions; or
 - (c) remove any previously imposed conditions.
- (2) Section 53ZUJ applies to a decision made under subsection (1).

53ZUJ. Provisions supplementary to sections 53ZUF and 53ZUI

- (1) Subsections (2) and (3) apply if—

- (a) the Commissioner decides to impose a condition on granting the registration of a person as a Category A registrant under section 53ZUF; or
 - (b) in relation to the registration of a person as a Category A registrant, the Commissioner decides to impose a new condition or amend or remove a condition under section 53ZUI.
- (2) The Commissioner must inform the Category A registrant of the decision referred to in subsection (1) by written notice and the notice must include—
 - (a) a statement of the reasons for the decision; and
 - (b) a statement that the registrant may apply to the Review Tribunal for a review of the decision.
- (3) The imposition, amendment or removal of a condition referred to in subsection (1) takes effect—
 - (a) if subsection (1)(a) applies—at the time the registration takes effect; or
 - (b) if subsection (1)(b) applies—at the time the notice is given under subsection (2) or at the time specified in the notice, whichever is later.
- (4) If the Commissioner decides not to grant the registration of a person as a Category A registrant, the Commissioner must inform the person of the decision by written notice and the notice must include—
 - (a) a statement of the reasons for the decision; and
 - (b) a statement that the person may apply to the Review Tribunal for a review of the decision.

53ZUK. Cessation of registration

The registration of a person as a Category A registrant ceases to have effect—

- (a) if the registrant notifies the Commissioner that the registrant has the intention referred to in section 53ZVB(1)(a) or (b)—on the intended date of cessation (as defined by section 53ZVB(3)) as notified;
- (b) if the Commissioner has approved an application by the registrant to be registered as a Category B registrant under section 53ZUO;
- (c) if the registrant is an individual—on the death of the individual;
- (d) if the registrant is a partnership—on the dissolution of the partnership; or
- (e) if the registrant is a corporation—on the commencement of winding up of the corporation.

53ZUL. Cancellation or suspension of registration

- (1) In relation to a person registered as a Category A registrant, the Commissioner may in any of the situations specified in subsection (2)—
 - (a) cancel the person’s registration; or
 - (b) suspend the person’s registration for a period, or until the occurrence of an event, specified by the Commissioner.
- (2) The situations are that—
 - (a) the person is convicted of an offence for contravening section 53ZUE(2) or (4);
 - (b) the person contravenes a regulation made under section 53ZVS;
 - (c) the person contravenes any of the conditions of the person’s registration;

- (d) the person fails to pay the annual fee specified in Schedule 3K when it is due;
 - (e) the person fails to comply with an order made under section 53ZVE(3)(b) to take remedial action;
 - (f) the person ceases to hold a valid business registration certificate;
 - (g) there are circumstances suggesting that the person's business has been, is being or will be carried on for an unlawful purpose; and
 - (h) the person uses any domestic premises as business premises for its precious metals and stones business, 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.
- (3) The Commissioner may exercise a power under subsection (1) in relation to a person only after giving the person a reasonable opportunity to be heard.

53ZUM. Supplementary provisions on cancellation or suspension of registration

- (1) On deciding to cancel or suspend the registration of a person as a Category A registrant (*affected person*) under section 53ZUL, the Commissioner must inform the affected person of the decision by written notice and the notice must—
- (a) include a statement of the reasons for the decision;

- (b) for a decision to suspend registration, specify the duration and terms of the suspension; and
 - (c) include a statement that the affected person may apply to the Review Tribunal for a review of the decision.
- (2) Any fee paid for the grant of registration as a Category A registrant, or as an annual fee for the registration, is not refundable on the cancellation or suspension of the registration.
- (3) If the registration of the affected person is cancelled under section 53ZUL, the certificate of registration and each branch certificate (if any) in respect of the affected person cease to have effect from the day on which the cancellation takes effect as a specified decision under section 75.

Division 4—Category B Registrant

Subdivision 1—Application for, Grant, Renewal, Cancellation and Suspension of, Registration

53ZUN. Fit and proper test

- (1) In a reference in this Ordinance to a fit and proper person to carry on a precious metals and stones business or a fit and proper person to be associated with such a business, the business concerned is a precious metals and stones business that includes the carrying out of specified transactions and specified cash transactions.
- (2) In determining whether a person is a fit and proper person for the purposes of section 53ZUO, 53ZUQ, 53ZUU, 53ZUW, 53ZUX or 53ZUY, the Commissioner must, in addition to any other matter that the Commissioner considers relevant, have regard to the following matters—
 - (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 of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575);
 - (iii) an offence under section 25(1) or 25A(5) or (7) of, or an offence specified in Schedule 1 to, the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405); or
 - (iv) an offence under section 25(1) or 25A(5) or (7) of, or an 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) 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 failed to comply with a requirement imposed under this Ordinance or a regulation made under section 53ZVS;
- (d) if the person is an individual, whether he or she is an undischarged bankrupt or is the subject of any bankruptcy proceedings under the Bankruptcy Ordinance (Cap. 6);

- (e) if the person is a corporation, whether it is in liquidation or is the subject of a winding up order, or there is a receiver appointed in relation to it.

53ZUO. Application for and grant of registration

- (1) The Commissioner may, on application, register a person as a Category B registrant for carrying on a precious metals and stones business that includes the carrying out of specified transactions and specified cash transactions.
- (2) The Commissioner may register a person as a Category B registrant only if the Commissioner is satisfied of the matters specified in subsections (3) and (4).
- (3) The matters specified for the purposes of subsection (2) are that—
 - (a) if the applicant is an individual—
 - (i) the individual is a fit and proper person to carry on a precious metals and stones business; and
 - (ii) if there is an ultimate owner in relation to the individual—the ultimate owner is a fit and proper person to be associated with a precious metals and stones business;
 - (b) if the applicant is a partnership—
 - (i) each partner in the partnership is a fit and proper person to carry on a precious metals and stones business; and
 - (ii) if there is an ultimate owner in relation to the partnership—the ultimate owner is a fit and proper person to be associated with a precious metals and stones business; or
 - (c) if the applicant is a corporation—

- (i) each director of the corporation is a fit and proper person to be associated with a precious metals and stones business; and
 - (ii) if there is an ultimate owner in relation to the corporation—the ultimate owner is a fit and proper person to be associated with a precious metals and stones business.
- (4) The matter specified for the purposes of subsection (2) is that, in relation to an applicant who intends to use any domestic premises as business 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.
- (5) Section 53ZUN applies to a determination of an application under subsection (1).
- (6) On registering a person as a Category B registrant, the Commissioner may impose any conditions that the Commissioner considers appropriate.
- (7) Section 53ZUS applies to an application under subsection (1) and to the determination of the application.
- (8) Subject to section 53ZUU, registration of a person under this section have effect—
 - (a) for 3 years; or
 - (b) if the Commissioner considers it appropriate in any particular case—for any other period determined by the Commissioner, beginning on the date on which the registration takes effect.

53ZUP. Certificate of registration and branch certificates

- (1) On granting a person's application for registration as a

Category B registrant, the Commissioner must—

- (a) enter the person's name in the register and specify that the person is a Category B registrant;
 - (b) issue a certificate of registration; and
 - (c) issue a branch certificate for each branch of the registrant (if any).
- (2) A certificate of registration issued in respect of a person registered as a Category B registrant—
- (a) must state that the person is so registered;
 - (b) must be in a form specified by the Commissioner;
 - (c) must specify the address of the principal place of business of the registrant; and
 - (d) must specify the period for which the registration has effect.
- (3) A branch certificate issued for a branch of a Category B registrant must be in a form specified by the Commissioner and must specify the address of the branch.

53ZUQ. Renewal of registration as Category B registrant

- (1) The Commissioner may, on application by a Category B registrant, renew the registration of the registrant.
- (2) The application must be made at least 60 days before the registration is due to expire.
- (3) Sections 53ZUN, 53ZUO(2), (3), (4) and (7) and 53ZUP apply to an application for a renewal of the registration as they apply to an application for registration.
- (4) If the registration expires before the determination of the application, unless the application is withdrawn or the registration is cancelled or suspended, the registration remains in force—

- (a) until it is renewed; or
 - (b) if it is not renewed, until the decision not to renew takes effect as a specified decision under section 75.
- (5) On renewing a Category B registration, the Commissioner may, if the Commissioner considers appropriate—
 - (a) impose any new conditions;
 - (b) amend any previously imposed conditions; or
 - (c) remove any previously imposed conditions.
- (6) A renewal takes effect—
 - (a) on the day following the expiry of the registration; or
 - (b) if subsection (4) applies, on the day following the day on which the registration would have expired but for that subsection.
- (7) Subject to section 53ZUU, the registration of a person as a Category B registrant, if renewed, has effect—
 - (a) for 3 years beginning on the date on which the registration is renewed; or
 - (b) if the Commissioner considers it appropriate in any particular case—for any other period—
 - (i) determined by the Commissioner; and
 - (ii) beginning on the date on which the registration is renewed.

53ZUR. Amendment of conditions of registration

- (1) In relation to the registration of a person as a Category B registrant, the Commissioner may, at any time, if satisfied that it is reasonable to do so in the circumstances—
 - (a) impose any new conditions;
 - (b) amend any previously imposed conditions; or

- (c) remove any previously imposed conditions.
- (2) Section 53ZUS applies to a decision made under subsection (1).

53ZUS. Provisions supplementary to sections 53ZUO, 53ZUQ and 53ZUR

- (1) An application for the grant or renewal of registration as a Category B registrant must be—
 - (a) made in the form and way specified by the Commissioner; and
 - (b) accompanied by the fee specified in Schedule 3K.
- (2) Without limiting subsection (1)(a), an application for the grant or renewal of registration as a Category B registrant—
 - (a) must be accompanied by a copy of a valid business registration certificate of the applicant; and
 - (b) must contain the address of each premises that the applicant intends to be used as business premises and the applicant's correspondence address.
- (3) Subsections (4) and (5) apply if the Commissioner decides to—
 - (a) impose a condition on granting the registration of a person as a Category B registrant under section 53ZUO(6);
 - (b) impose a new condition or amend or remove a condition on renewing the registration of a person as a Category B registrant under section 53ZUQ(5); or
 - (c) in relation to the registration of a person as a Category B registrant, impose a new condition or amend or remove a condition in any other case under section 53ZUR(1).

- (4) The Commissioner must inform the person of the decision referred to in subsection (3) by written notice and the notice must include—
 - (a) a statement of the reasons for the decision; and
 - (b) a statement that the registrant may apply to the Review Tribunal for a review of the decision.
- (5) The imposition, amendment or removal of a condition referred to in subsection (3) takes effect—
 - (a) if subsection (3)(a) applies—at the time the registration takes effect; or
 - (b) if subsection (3)(b) or (c) applies—at the time the notice is given under subsection (4) or at the time specified in the notice, whichever is later.
- (6) If the Commissioner decides not to grant or renew the registration of a person as a Category B registrant, the Commissioner must inform the person of the decision by written notice and the notice must include—
 - (a) a statement of the reasons for the decision; and
 - (b) a statement that the person may apply to the Review Tribunal for a review of the decision.

53ZUT.Cessation of registration

The registration of a person as a Category B registrant ceases to have effect—

- (a) if the registrant notifies the Commissioner that the registrant has the intention referred to in section 53ZVB(2)(a) or (b)—on the intended date of cessation (as defined by section 53ZVB(3)) as notified;
- (b) if the Commissioner has approved an application by the registrant to be registered as a Category A registrant under section 53ZUF;

- (c) if the registrant is an individual—on the death of the individual;
- (d) if the registrant is a partnership—on the dissolution of the partnership; or
- (e) if the registrant is a corporation—on the commencement of winding up of the corporation.

53ZUU. Cancellation or suspension of registration

- (1) In relation to a person registered as a Category B registrant, the Commissioner may in any of the situations specified in subsection (2)—
 - (a) cancel the person’s registration; or
 - (b) suspend the person’s registration for a period, or until the occurrence of an event, specified by the Commissioner.
- (2) The situations are that—
 - (a) the person contravenes any of the conditions of the person’s registration;
 - (b) if the person is an individual, the Commissioner is no longer satisfied that—
 - (i) the individual is a fit and proper person to carry on a precious metals and stones business; or
 - (ii) if there is an ultimate owner in relation to the individual—the ultimate owner is a fit and proper person to be associated with a precious metals and stones business;
 - (c) if the person is a partnership, the Commissioner is no longer satisfied that—

- (i) each partner in the partnership is a fit and proper person to carry on a precious metals and stones business; or
 - (ii) if there is an ultimate owner in relation to the partnership—the ultimate owner is a fit and proper person to be associated with a precious metals and stones business;
- (d) if the person is a corporation, the Commissioner is no longer satisfied that—
 - (i) each director of the corporation is a fit and proper person to be associated with a precious metals and stones business; or
 - (ii) if there is an ultimate owner in relation to the corporation, the ultimate owner is a fit and proper person to be associated with a precious metals and stones business;
- (e) the person fails to comply with an order made under section 53ZVF(3)(b) to take remedial action within the meaning of that section;
- (f) the person ceases to hold a valid business registration certificate; and
- (g) the person uses any domestic premises as business premises for its precious metals and stones business, 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.

- (3) Section 53ZUN applies to a determination under subsection (2)(b), (c) or (d).
- (4) The Commissioner may exercise a power under subsection (1) in relation to a person only after giving the person a reasonable opportunity to be heard.

53ZUV. Supplementary provisions on cancellation or suspension of registration

- (1) On deciding to cancel or suspend the registration of a person as a Category B registrant (*affected person*) under section 53ZUU, the Commissioner must inform the affected person of the decision by written notice and the notice must—
 - (a) include a statement of the reasons for the decision;
 - (b) for a decision to suspend registration, specify the duration and terms of the suspension; and
 - (c) include a statement that the affected person may apply to the Review Tribunal for a review of the decision.
- (2) Any fee paid for the grant or renewal of registration as a Category B registrant is not refundable on the cancellation or suspension of the registration.
- (3) If the registration of the affected person is cancelled under section 53ZUU, the certificate of registration and each branch certificate (if any) in respect of the affected person cease to have effect from the day on which the cancellation takes effect as a specified decision under section 75.

Subdivision 2—Approvals by Commissioner

53ZUW. Approval required for becoming ultimate owner of Category B registrant

- (1) A person must not become an ultimate owner of a Category B registrant unless the Commissioner has given approval in

writing.

- (2) The Commissioner may give approval only if—
 - (a) the Category B registrant makes an application for the approval; and
 - (b) the Commissioner is satisfied that the person is a fit and proper person to be associated with a precious metals and stones business.
- (3) Section 53ZUN applies to a determination under subsection (2)(b).
- (4) Section 53ZUZ applies to an application under subsection (2)(a) and to the determination of the application.
- (5) A person who, without reasonable excuses, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

53ZUX. Approval required for becoming partner of Category B registrant

- (1) A person must not become a partner of a Category B registrant that is a partnership unless the Commissioner has given approval in writing.
- (2) The Commissioner may give approval only if—
 - (a) the Category B registrant makes an application for the approval; and
 - (b) the Commissioner is satisfied that the person is a fit and proper person to carry on a precious metals and stones business.
- (3) Section 53ZUN applies to a determination under subsection (2)(b).
- (4) Section 53ZUZ applies to an application under subsection (2)(a) and to the determination of the application.

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

53ZUY. Approval required for becoming director of Category B registrant

- (1) A person must not become a director of a Category B registrant that is a corporation unless the Commissioner has given approval in writing.
- (2) The Commissioner may give approval only if—
- (a) the Category B registrant makes an application for the approval; and
 - (b) the Commissioner is satisfied that the person is a fit and proper person to be associated with a precious metals and stones business.
- (3) Section 53ZUN applies to a determination under subsection (2)(b).
- (4) Section 53ZUZ apply to an application under subsection (2)(a) and to the determination of the application.
- (5) 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.

53ZUZ. Provisions supplementary to sections 53ZUW, 53ZUX and 53ZUY

- (1) An application for an approval of the Commissioner under section 53ZUW, 53ZUX or 53ZUY—
- (a) must be made in the form and way specified by the Commissioner; and
 - (b) must be accompanied by the fee specified in Schedule 3K.

- (2) If the Commissioner decides not to give the approval applied for by a Category B registrant under section 53ZUW, 53ZUX or 53ZUY, the Commissioner must inform the registrant of the decision by written notice and the notice must include—
 - (a) a statement of the reasons for the decision; and
 - (b) a statement that the registrant may apply to the Review Tribunal for a review of the decision.

Division 5—Registrant’s Duty to Display Certificate and Give Notifications

53ZV. Display of certificate of registration

- (1) A registrant must display the certificate of registration in a conspicuous place at the principal place of business of the registrant.
- (2) A registrant must display, in a conspicuous place at each branch of the registrant (if any), the branch certificate concerned.
- (3) If a certificate of registration or a branch certificate is issued in the form of an electronic record, the registrant concerned is to be regarded as complying with subsection (1) or (2) (as the case requires) if the registrant display a printed copy of the certificate in the manner described in subsection (1) or (2) (as the case requires).
- (4) A registrant who carries on a precious metals and stones business, on a website through the Internet or by other electronic means, must provide on the website or other electronic means a means specified by the Commissioner for verifying the registrant’s status as such.
- (5) A registrant who, without reasonable excuse, contravenes subsection (1), (2) or (4) commits an offence and is liable on conviction to a fine at level 5.

- (6) The Commissioner may, by notice published in the Gazette, specify that a registrant of a description specified in the notice is to be regarded as having complied with subsection (1) or (2) if the registrant displays a certificate of registration or a branch certificate in the manner specified in the notice.
- (7) A notice published under subsection (6) is not subsidiary legislation.
- (8) In this section—
electronic record (電子紀錄) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553).

53ZVA. Notification of changes of particulars

- (1) In relation to a registrant, this section applies to the following (*specified particulars*)—
 - (a) the particulars that the registrant has provided to the Commissioner in connection with an application under this Part for—
 - (i) registration as a Category A registrant or a Category B registrant; or
 - (ii) renewal of registration as a Category B registrant;
 - (b) any other particulars notified under this section.
- (2) Within 1 month of beginning on the day on which a change in any specified particulars occurs in relation to a registrant, the registrant must notify the Commissioner, in writing, of the change.
- (3) A registrant who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 5.
- (4) If a change notified under subsection (2) relates to any particulars specified in a certificate of registration or a branch certificate (*earlier certificate*)—

- (a) the Commissioner may issue, for replacement, a certificate of registration or a branch certificate (as the case requires) containing the particulars as changed; and
 - (b) the earlier certificate ceases to have effect from the day on which a certificate is issued under paragraph (a) for replacing it.
- (5) The Commissioner must, as soon as reasonably practicable after receiving the notification under subsection (2), amend any specified particulars in the register if necessary.

53ZVB. Notification of intended cessation of business etc.

- (1) A person who is a Category A registrant must notify the Commissioner, in writing, if the person intends—
- (a) to cease to carry on the person’s precious metals and stones business; or
 - (b) to cease to carry out specified transactions while carrying on the person’s precious metals and stones business.
- (2) A person who is a Category B registrant must notify the Commissioner, in writing, if the person intends—
- (a) to cease to carry on the person’s precious metals and stones business; or
 - (b) to cease to carry out specified transactions and specified cash transactions while carrying on the person’s precious metals and stones business.
- (3) The notification must be given before the date on which the cessation is to take effect (*intended date of cessation*).
- (4) The notification must state—
- (a) the person’s intention as referred to in subsection (1)(a) or (b) or (2)(a) or (b); and

- (b) the intended date of cessation.
- (5) The Commissioner must, as soon as reasonably practicable after the intended date of cessation, as notified, remove the relevant particulars from the register.
- (6) A person who, without reasonable excuse, contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 5.
- (7) Any fee paid for the grant or renewal of the registration of a person is not refundable on the cancellation of the registration.
- (8) The certificate of registration and each branch certificate (if any) in respect of the person cease to have effect from the intended date of cessation, as notified.

53ZVC. How to give notifications

A notification under this Division must be given—

- (a) in the form specified by the Commissioner; and
- (b) in the way specified by the Commissioner.

Division 6—Disciplinary Powers

53ZVD. Interpretation of Division 6

In this Division—

disciplinary power (紀律處分權力) means a power that may be exercised by the Commissioner under section 53ZVE or 53ZVF.

53ZVE. Disciplinary action against Category A registrant

- (1) Subject to section 53ZVG, the Commissioner may, in any of the situations specified in subsection (2), exercise, in respect

of the Category A registrant, one or more of the powers specified in subsection (3).

- (2) The situations are that—
 - (a) a Category A registrant contravenes—
 - (i) a regulation made under section 53ZVS; or
 - (ii) a condition of the registration; and
 - (b) there is a contravention of section 53ZV, 53ZVA or 53ZVB.
- (3) The powers are—
 - (a) to publicly reprimand the registrant; and
 - (b) to order the registrant to take, by a date specified by the Commissioner, any action specified by the Commissioner for the purpose of remedying the contravention.
- (4) After a decision to exercise a disciplinary power takes effect as a specified decision under section 75, the Commissioner may disclose to the public—
 - (a) details of the decision;
 - (b) the reasons for which the decision was made; and
 - (c) any material facts relating to the case.
- (5) The Commissioner may exercise a disciplinary power only after giving the registrant a reasonable opportunity to be heard.

53ZVF. Disciplinary action against Category B registrant

- (1) Subject to sections 53ZVG and 53ZVH, the Commissioner may, in any of the situations specified in subsection (2), exercise, in respect of the Category B registrant, one or more of the powers specified in subsection (3).
- (2) The situations are that—

- (a) a Category B registrant contravenes—
 - (i) a requirement set out in Schedule 2 that applies to DNFBP who is a Category B registrant;
 - (ii) a regulation made under section 53ZVS; and
 - (iii) a condition of the registration; and
 - (b) there is a contravention of section 53ZUW, 53ZUX, 53ZUY, 53ZV, 53ZVA or 53ZVB.
- (3) The powers are—
- (a) to publicly reprimand the registrant;
 - (b) to order the registrant to take, by a date specified by the Commissioner (*compliance deadline*), any action specified by the Commissioner for the purpose of remedying the contravention (*remedial action*); and
 - (c) to order the registrant to pay a pecuniary penalty not exceeding \$500,000.
- (4) If a Category B registrant fails to comply with an order to take remedial action, the Commissioner may further order the registrant to pay a daily pecuniary penalty not exceeding \$10,000 for each day on which the failure continues after the compliance deadline.
- (5) A Category B registrant who is ordered to pay a pecuniary penalty under this section must pay the penalty to the Commissioner within—
- (a) 30 days; or
 - (b) a longer period specified in the notice referred to in section 53ZVG,
- after the order takes effect as a specified decision under section 75.

- (6) After a decision to exercise a disciplinary power takes effect as a specified decision under section 75, the Commissioner may disclose to the public—
 - (a) details of the decision;
 - (b) the reasons for which the decision was made; and
 - (c) any material facts relating to the case.
- (7) The Commissioner may exercise a disciplinary power only after giving the registrant a reasonable opportunity to be heard.

53ZVG. Notice regarding exercise of disciplinary powers

If the Commissioner decides to exercise a disciplinary power in respect of a registrant under section 53ZVE or 53ZVF, the Commissioner must inform the registrant of the decision by written notice and the notice must—

- (a) include a statement of the reasons for the decision;
- (b) specify any action that the registrant is required to take under the decision;
- (c) for a decision to publicly reprimand, specify the terms in which the registrant is to be reprimanded;
- (d) for a decision to impose a pecuniary penalty on a Category B registrant—
 - (i) specify the amount of the penalty; and
 - (ii) if the penalty is to be paid within a period other than that referred to in section 53ZVF(5)(a), specify that other period within which it must be paid; and
- (e) include a statement that the registrant may apply to the Review Tribunal for a review of the decision.

53ZVH. Guidelines for imposing pecuniary penalty on Category B registrant

- (1) The Commissioner must publish guidelines indicating the way in which the Commissioner proposes to exercise the disciplinary power to impose a pecuniary penalty on a Category B registrant under section 53ZVF.
- (2) The guidelines must be—
 - (a) published before the Commissioner exercises a disciplinary power to impose a pecuniary penalty for the first time; and
 - (b) published in the Gazette and in any other way that the Commissioner considers appropriate.
- (3) In exercising the disciplinary power to impose a pecuniary penalty, the Commissioner must have regard to the published guidelines.
- (4) The guidelines are not subsidiary legislation.

53ZVI. Registration of pecuniary penalty order

- (1) The Court of First Instance may, on application made by the Commissioner, register in that Court an order to pay a pecuniary penalty.
- (2) The application must be made by producing to the Registrar of the High Court a written notice, requesting that the order be registered, together with the original and a copy of the order.
- (3) On registration, the order is to be regarded for all purposes as an order of the Court of First Instance made within the civil jurisdiction of that Court for the payment of money.
- (4) In this section—

pecuniary penalty (罰款) means a pecuniary penalty ordered to be paid under section 53ZVF(3)(c) or (4).

53ZVJ. Application of disciplinary powers in respect of directors of Category B registrants

- (1) This section applies if—
 - (a) the Commissioner exercises a disciplinary power in respect of a Category B registrant that is a corporation in connection with a contravention referred to in section 53ZVF(2)(a)(i); and
 - (b) either—
 - (i) the contravention was caused or allowed by a director of the corporation; or
 - (ii) the director failed to take reasonable steps to prevent the contravention.
- (2) A disciplinary power is also exercisable by the Commissioner in respect of the director as if the director were a Category B registrant.
- (3) This Division is to be construed accordingly.

Division 7—Non-Hong Kong Precious Metals and Stones Dealers

53ZVK. Non-Hong Kong precious metals and stones dealer must file cash transaction report

- (1) A non-Hong Kong precious metals and stones dealer must give to the Commissioner a report, in respect of any specified cash transaction carried out by the dealer, in accordance with subsection (2).
- (2) The report must—

- (a) be given in the form specified by the Commissioner and in the way specified by Commissioner;
 - (b) contain the information set out in Schedule 3J; and
 - (c) be given as soon as practicable and in any event before the earlier of the following—
 - (i) the expiry of 1 day after the transaction;
 - (ii) the earliest time when a specified individual leaves Hong Kong.
- (3) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a level 5 fine and to imprisonment for 3 months.
- (4) In this section—
- specified individual* (指明個人), in relation to a specified cash transaction carried out by a non-Hong Kong precious metals and stones dealer, means each of the following—
- (a) the dealer if the dealer is an individual and is in Hong Kong at the time of the transaction;
 - (b) an individual acting on behalf of the dealer in the transaction.

Division 8—Enforcement

53ZVL. Commissioner may appoint authorized officers

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

53ZVM. Magistrate's warrant to enter premises

- (1) A magistrate may issue a warrant authorizing an authorized officer to take the actions referred to in subsection (2) if

satisfied by information on oath that there are reasonable grounds to suspect that—

- (a) an offence under section 53ZUE or 53ZVK—
 - (i) is being committed on any premises; or
 - (ii) has been committed on any premises; and
 - (b) there is or may be on any premises anything that is or contains evidence of an offence under section 53ZUE or 53ZVK.
- (2) The actions are—
- (a) to enter and search the premises; and
 - (b) to seize, remove or detain—
 - (i) any record or document, or any cash or other article, found on the premises that—
 - (A) is, or appears to the authorized officer to be or to contain, evidence of the commission of the suspected offence; or
 - (B) appears to the authorized officer to be likely to be or to contain the evidence; and
 - (ii) anything that the authorized officer has reasonable cause to believe may be required as evidence in proceedings for the suspected offence.
- (3) An authorized officer authorized under the warrant may—
- (a) call on any person to assist the officer in entering and searching the premises;
 - (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; and
 - (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.

- (4) An authorized officer who enters any premises under this section must, if required, produce the warrant for inspection.
- (5) A person who obstructs an authorized officer in the exercise of a power conferred under this section commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.
- (6) In this section—

authorized officer (獲授權人員) means a person appointed as an authorized officer under section 53ZVL.

53ZVN. Power to require production of material in legible form

- (1) This section applies in relation to any information or matter (*material*) contained in a record or document that—
 - (a) is found on any premises entered under a warrant; and
 - (b) is not in a legible form or is in an information system.
- (2) If the material that is not in a legible form can be reproduced in a legible form, the authorized officer may require a person referred to in subsection (4) to produce the material or the relevant part of it in a legible form.
- (3) If the material is in an information system, the authorized officer may require a person specified in subsection (4) to produce the material or the relevant part of it in a form that enables it to be reproduced in a legible form.
- (4) The following persons are specified for the purposes of subsections (2) and (3)—
 - (a) a person who appears to the authorized officer to be in charge of the premises;

- (b) a person who appears to the authorized officer to be able, or likely to be able, to produce the material—
 - (i) in a legible form; or
 - (ii) in a form that enables it to be reproduced in a legible form.
- (5) A person who obstructs an authorized officer in the exercise of a power under this section commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.
- (6) In this section—

authorized officer (獲授權人員) means an authorized officer (as defined by section 53ZVM(6)) authorized by a warrant issued under section 53ZVM.

53ZVO. 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 53ZUE or 53ZVK; or
 - (b) the authorized officer has reasonable grounds to suspect that the person has committed or is committing an offence under this Part, other than an offence under section 53ZUE or 53ZVK, and 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 subsection (1) must take the person to a police station to be dealt with in accordance with the Police Force Ordinance (Cap. 232).
- (4) However, if further inquiries are necessary, an authorized officer may first take the person to an office of the Customs and Excise Service for further inquiries and then to a police station to be dealt with in accordance with the Police Force Ordinance (Cap. 232).
- (5) A person, whether arrested or not, must not be detained for more than 48 hours without being charged and brought before a magistrate.
- (6) 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.
- (7) 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.

(8) In this section—

authorized officer (獲授權人員) means a person appointed as an authorized officer under section 53ZVL.

Division 9—Miscellaneous

53ZVP. How this Ordinance applies to hawker

- (1) This section applies to a person who is a hawker holding a hawker licence in relation to the carrying on of a precious metals and stones business.
- (2) A requirement under this Part for an application under this Part to be accompanied by a copy of a valid business registration certificate is taken to be complied with, in respect of an application made by the person, if the application is accompanied by a copy of the hawker licence.
- (3) If the person is registered as a registrant by relying on subsection (2), a reference in this Ordinance to a registrant ceasing to hold a valid business registration certificate is taken to mean—
 - (a) the person ceasing to hold the hawker licence; or
 - (b) the person's hawker licence being suspended under section 125(1)(b) of the Public Health and Municipal Services Ordinance (Cap. 132).
- (4) If the person is registered as a registrant by relying on subsection (2), a reference in this Ordinance to premises used for the purpose of the carrying out of face-to-face transactions with customers or business premises or a place of business is taken to include—

- (a) the location of the fixed pitch from which the person may hawk, as specified in the licence; or
 - (b) the areas in which the person may hawk, as specified in the licence.
- (5) Subject to any necessary modifications, this Ordinance applies accordingly.
- (6) In this section—
- hawker licence* (小販牌照) means a licence issued under Part 2 of the Hawker Regulation (Cap. 132 sub. leg. AI).

53ZVQ. Amendment of Schedules 3H to 3K

- (1) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend Schedules 3H and 3I.
- (2) The Commissioner may, by notice published in the Gazette, amend Schedules 3J and 3K.

53ZVR. Commissioner may waive fee

The Commissioner may, in relation to any person or class of persons, waive, in whole or in part, the payment of any fee under this Part.

53ZVS. Regulations

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

53ZVT. Offence of providing false or misleading information

- (1) A person commits an offence if the person in a specified document or for a specified purpose—

- (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 a specified document or for a specified purpose—
- (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.
- (4) In this section—

specified document (指明文件) means—

- (a) an application made to the Commissioner under this Part;
- (b) a notification given to the Commissioner under this Part; or
- (c) any other document provided to the Commissioner for any purpose under this Part;

specified purpose (指明目的) means a purpose in connection with an application made to the Commissioner under this Part or a notification given to the Commissioner under this Part.

53ZVU. 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 the Commissioner.

53ZW. Transitional arrangements for existing dealer

- (1) This section applies to an existing precious metals and stones dealer, that is to say a person who immediately before 1 April 2023—
 - (a) has been carrying on a precious metals and stones business; and
 - (b) for that purpose, held a valid business registration certificate.
- (2) An existing precious metals and stones dealer is deemed to be a Category B registrant with effect from 1 April 2023, and this Ordinance applies in relation to the dealer accordingly.
- (3) If a person who is a deemed registrant does not apply for registration as a Category A registrant or a Category B registrant during the transitional period, the person ceases to be a deemed registrant when the earliest of the following events occurs—
 - (a) the transitional period ends;
 - (b) if the person has notified the Commissioner that the person has the intention referred to in section 53ZVB(2)(a) or (b)—the intended date of cessation (as defined by section 53ZVB(3)), as notified, begins;
 - (c) the person ceases to hold a valid business registration certificate;
 - (d) an event referred to in section 53ZUT(c), (d) or (e) occurs in relation to the person.
- (4) If a person who is a deemed registrant applies for registration as a Category A registrant or a Category B registrant during

- the transitional period, the person ceases to be a deemed registrant when the earliest of the following events occurs—
- (a) the Commissioner registers the person as a Category A registrant or a Category B registrant;
 - (b) the Commissioner's decision not to register the person takes effect as a specified decision under section 75;
 - (c) the application to register is withdrawn;
 - (d) if the person has notified the Commissioner that the person has the intention referred to in section 53ZVB(2)(a) or (b)—the intended date of cessation (as defined by section 53ZVB(3)), as notified, begins;
 - (e) the person ceases to hold a valid business registration certificate;
 - (f) an event referred to in section 53ZUT(c), (d) or (e) occurs in relation to the person.
- (5) If the deemed registrant is an individual in relation to whom there is an ultimate owner—
- (a) the ultimate owner is deemed to have been approved under section 53ZUW while the individual remains to be a deemed registrant; and
 - (b) this Ordinance applies in relation to the ultimate owner accordingly.
- (6) If the deemed registrant is a partnership—
- (a) if there is an ultimate owner in relation to the partnership—the ultimate owner is deemed to have been approved under section 53ZUW while the partnership remains to be a deemed registrant;
 - (b) each partner of the partnership is deemed to have been approved under section 53ZUX while the partnership remains to be a deemed registrant; and

- (c) this Ordinance applies in relation to the ultimate owner and each partner accordingly.
- (7) If the deemed registrant is a corporation—
- (a) if there is an ultimate owner in relation to the corporation—the ultimate owner is deemed to have been approved under section 53ZUW while the corporation remains to be a deemed registrant;
 - (b) each director of the corporation is deemed to have been approved under section 53ZUY while the corporation remains to be a deemed registrant; and
 - (c) this Ordinance applies in relation to the ultimate owner and each director accordingly.
- (8) In this section—
- deemed registrant*** (當作註冊人) means a person who is deemed to be a Category B registrant under subsection (2);
- transitional period*** (過渡期) means the period of 9 months beginning on 1 April 2023.
-

Part 6

Anti-Money Laundering and Counter-Terrorist Financing Review Tribunal

(Amended 4 of 2018 s. 19)

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; (*Amended 4 of 2018 s. 20*)

- (d) in relation to a specified decision falling within paragraph (d) of the definition of ***specified decision***, means the Commissioner; (*Amended 4 of 2018 s. 20; 15 of 2022 s. 27*)
- (e) in relation to a specified decision falling within paragraph (e) of the definition of ***specified decision***, means the Registrar; (*Added 4 of 2018 s. 20*)
- (f) in relation to a specified decision falling within paragraph (f) of the definition of ***specified decision***, means the Securities and Futures Commission; and (*Added 15 of 2022 s. 27*)
- (g) in relation to a specified decision falling within paragraph (g) of the definition of ***specified decision***, means the Commissioner; (*Added 15 of 2022 s. 27*)

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;
- (e) a decision of the Registrar—
 - (i) not to grant a licence under section 53H;
 - (ii) to impose a licence condition under section 53J;
 - (iii) not to renew a licence under section 53K;
 - (iv) to amend or impose a licence condition under section 53L or 53M;
 - (v) to revoke or suspend a licence under section 53Q;
 - (vi) not to give approval for a person to become an ultimate owner of a licensee under section 53S;
 - (vii) not to give approval for a person to become a partner of a licensee under section 53T;
 - (viii) not to give approval for a person to become a director of a licensee under section 53U; or

- (ix) to exercise a power under section 53Z or 53ZD;
(Added 4 of 2018 s. 20)
- (f) a decision of the Securities and Futures Commission—
 - (i) to refuse to grant a licence under section 53ZRK;
 - (ii) to impose a condition on, or amend or remove a condition of, a licence under section 53ZRK;
 - (iii) to refuse to grant a licence under section 53ZRL;
 - (iv) to impose a condition on, or amend or remove a condition of, a licence under section 53ZRL;
 - (v) to refuse to approve an accreditation or transfer of an accreditation under section 53ZRM;
 - (vi) to impose a condition on, or amend or remove a condition of, an accreditation or transfer of an accreditation under section 53ZRM;
 - (vii) to refuse to add, remove or otherwise vary, under section 53ZRN, any VA service that is licensed to be provided under a licence;
 - (viii) to refuse to approve a person as a responsible officer of a licensed VAS provider under section 53ZRP or to refuse to approve a person to become an ultimate owner of a licensed VAS provider under section 53ZRQ;
 - (ix) to impose a condition in approving a person as a responsible officer of a licensed VAS provider under section 53ZRP or to amend or remove a condition in relation to the approval of a person as such a responsible officer under that section;
 - (x) to impose a condition in approving a person to become an ultimate owner of a licensed VAS provider under section 53ZRQ or to amend or

- remove a condition in relation to the approval of such an ultimate owner under that section;
- (xi) to refuse to approve premises under section 53ZRR;
 - (xii) to appoint an auditor under section 53ZSH to carry out examination and audit, or give a direction to pay any of the costs and expenses of the examination and audit;
 - (xiii) to exercise a power under section 53ZSP against a person who is or was regulated person (as defined by section 53ZSO(1));
 - (xiv) to revoke or suspend a licence, or the approval of a person as a responsible officer, under section 53ZSP or 53ZSQ (section 53ZSQ(2)(d) excepted); or
 - (xv) to impose a prohibition or requirement under section 53ZSZ, 53ZT or 53ZTA or to substitute or vary, or to refuse to withdraw, substitute or vary, a prohibition or requirement under section 53ZTB; or (*Added 15 of 2022 s. 27*)
- (g) a decision of the Commissioner—
- (i) not to register a person as a Category A registrant or a Category B registrant under section 53ZUF or 53ZUO;
 - (ii) to impose a condition in relation to a Category A registrant's registration or a Category B registrant's registration under section 53ZUF or 53ZUO;
 - (iii) to impose, amend or remove a condition in relation to a Category A registrant's registration or a Category B registrant's registration under section 53ZUI or 53ZUR;

- (iv) to cancel or suspend a Category A registrant’s registration or a Category B registrant’s registration under section 53ZUL or 53ZUU;
- (v) not to renew a person’s registration as a Category B registrant under section 53ZUQ;
- (vi) to impose, amend or remove a condition in relation to a renewal of registration as a Category B registrant under section 53ZUQ;
- (vii) not to approve a person to become an ultimate owner, a partner or a director of a Category B registrant under section 53ZUW, 53ZUX or 53ZUY; or
- (viii) to exercise a power against a Category A registrant under section 53ZVE or a Category B registrant under section 53ZVF; (*Added 15 of 2022 s. 27*)

Tribunal (審裁處) means the Anti-Money Laundering and Counter-Terrorist Financing Review Tribunal established by section 55. (*Amended 4 of 2018 s. 20*)

Division 2—Anti-Money Laundering and Counter-Terrorist Financing Review Tribunal

(*Amended 4 of 2018 s. 21*)

55. Establishment of Tribunal

- (1) There is established a tribunal to be known as the “Anti-Money Laundering and Counter-Terrorist Financing Review Tribunal” in English and “打擊洗錢及恐怖分子資金籌集覆核審裁處” in Chinese. (*Amended 4 of 2018 s. 22*)
- (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), in respect of the evidence, answer or information. (*Amended 15 of 2022 s. 28*)

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

Anti-Money Laundering and Counter-Terrorist Financing Ordinance

Part 6—Division 4

6-40

Section 76

Cap. 615

- (b) regulating the procedure for the hearing of appeals under section 71.
-

Part 6A

Confidentiality Requirements

(Part 6A added 15 of 2022 s. 29)

76A. Interpretation of Part 6A

In this Part—

information (資料) means a matter, record or document to which section 76B applies;

specified person (指明人士) means—

- (a) a relevant authority;
- (b) a person who is or was a member, an employee, or a consultant, agent or adviser, of a relevant authority; or
- (c) a person who is or was—
 - (i) a person appointed under a provision of this Ordinance;
 - (ii) a person performing a function under, or carrying into effect, a provision of this Ordinance; or
 - (iii) a person assisting another person in the performance of a function under, or carrying into effect, a provision of this Ordinance.

76B. Confidentiality

(1) This section applies to—

- (a) a matter that comes to a specified person's knowledge in any of the following circumstances—
 - (i) by virtue of the specified person's appointment under this Ordinance;

- (ii) in the course of performing a function under, or carrying into effect, a provision of this Ordinance;
 - (iii) in the course of assisting another person in performing a function under, or carrying into effect, a provision of this Ordinance; and
 - (b) a record or document that has come into a specified person's possession in any of the circumstances mentioned in paragraph (a).
- (2) A specified person—
 - (a) must not communicate a matter referred to in subsection (1)(a)(i), (ii) or (iii) to a person; and
 - (b) must not allow another person to have access to a record or document referred to in subsection (1)(b).
- (3) A person who contravenes subsection (2) 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.

76C. Permitted disclosures by specified person

- (1) Despite section 76B, a specified person may—
 - (a) disclose information—
 - (i) in performing a function under this Ordinance;
 - (ii) for the purpose of carrying into effect a provision of this Ordinance; or
 - (iii) for the purpose of doing anything required or authorized under this Ordinance;
 - (b) disclose information that has already been made available to the public;

- (c) disclose information with a view to the institution of, or for the purposes of, any criminal proceedings in Hong Kong;
 - (d) disclose information with a view to the commencement of, or for the purposes of, an investigation carried out in Hong Kong under the laws of Hong Kong;
 - (e) disclose information for the purpose of seeking advice from, or giving of 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;
 - (f) disclose information in connection with any judicial or other proceedings to which the specified person is a party; and
 - (g) 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.
- (2) Despite section 76B, a person who is or was a section 53ZSH person may disclose information obtained or received by the person in the course of performing the person's duties as a section 53ZSH person—
- (a) for the purposes of any judicial or other proceedings arising out of the performance of the person's duties as a section 53ZSH person; or
 - (b) in the case of an employee or agent of a section 53ZSH auditor, to the auditor.
- (3) In this section—
- section 53ZSH auditor* (第53ZSH條核數師) has the meaning given by section 53ZRZ;
- section 53ZSH person* (第53ZSH條人士) means—

- (a) a section 53ZSH auditor; or
- (b) an employee or agent of a section 53ZSH auditor.

76D. Permitted disclosures by relevant authority

- (1) Despite section 76B, a relevant authority may—
 - (a) disclose information in the form of a summary compiled from any information in the possession of the relevant authority, including information provided by a person under a 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 a liquidator appointed under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);
 - (c) disclose information to the Review Tribunal;
 - (d) disclose information to the Securities and Futures Appeals Tribunal established by section 216 of the Securities and Futures Ordinance (Cap. 571);
 - (e) disclose information to a person who is or was an auditor appointed under this Ordinance, for the purpose of enabling or assisting the Securities and Futures Commission to perform its functions under this Ordinance;
 - (f) 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;
 - (g) subject to subsection (2), disclose information to—
 - (i) the Chief Executive;

- (ii) the Financial Secretary;
 - (iii) the Secretary for Justice;
 - (iv) the Secretary for Financial Services and the Treasury;
 - (v) the Monetary Authority;
 - (vi) the Insurance Authority;
 - (vii) the Securities and Futures Commission;
 - (viii) the Commissioner;
 - (ix) the Registrar;
 - (x) the Official Receiver;
 - (xi) the Privacy Commissioner for Personal Data;
 - (xii) The Ombudsman;
 - (xiii) a public officer authorized under subsection (6);
 - (xiv) the Accounting and Financial Reporting Council continued under section 6 of the Accounting and Financial Reporting Council Ordinance (Cap. 588);
 - (xv) an inspector appointed by the Financial Secretary to investigate the affairs of a corporation;
 - (xvi) the Commissioner of the Independent Commission Against Corruption;
 - (xvii) the Law Society; or
 - (xviii) the Estate Agents Authority;
- (h) if the information is obtained by an authorized person under section 9 or an investigator under section 12, disclose information to—
- (i) the Secretary for Justice;
 - (ii) the Commissioner of Police;

- (iii) the Commissioner of the Independent Commission Against Corruption; or
 - (iv) the Review Tribunal;
 - (i) subject to subsection (2), disclose information to an authority or regulatory organization outside Hong Kong that, in the opinion of the relevant authority—
 - (i) performs, in the jurisdiction of the authority or regulatory organization (*recipient jurisdiction*), any function similar to a function of a relevant authority or regulatory body under this Ordinance or regulates, supervises or investigates banking, securities, insurance, activities involving virtual assets, or other financial services or legal or accounting services in the recipient jurisdiction; and
 - (ii) is subject to adequate secrecy provisions in the recipient jurisdiction; or
 - (j) disclose information for the purpose of, or otherwise in connection with, an audit required under section 5F of the Insurance Ordinance (Cap. 41) or section 16 of the Securities and Futures Ordinance (Cap. 571).
- (2) A relevant authority may disclose information under subsection (1)(g) or (i) only if satisfied that it is desirable or expedient that the information should be disclosed, having regard to—
 - (a) the public interest and the interest of the investing public; and
 - (b) the recipient's need for the information in performing the recipient's functions.
- (3) Despite section 76B—
 - (a) the Insurance Authority may—

- (i) disclose information with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the performance by a Cap. 41 prescribed person of his or her professional duties;
 - (ii) disclose information to a Cap. 41 prescribed person for the purpose of enabling or assisting the Insurance Authority to discharge its functions under the Insurance Ordinance (Cap. 41); or
 - (iii) disclose any information to an auditor or actuary specified below if, in the opinion of the Insurance Authority, the information is necessary for the auditor or actuary to discharge his or her duties under the Insurance Ordinance (Cap. 41)—
 - (A) an auditor or actuary of an authorized insurer or a licensed insurance broker company; or
 - (B) an auditor appointed under section 95ZF of the Insurance Ordinance (Cap. 41) for the supervised group of a designated insurance holding company; and
- (b) a Cap. 41 prescribed person may disclose any information disclosed to that person under paragraph (a)(ii) if the Insurance Authority has given its consent to the disclosure.
- (4) A relevant authority may, in disclosing information under subsection (1) or (3), impose any condition that the relevant authority considers appropriate.
- (5) Subsection (1)(f) does not require a relevant authority to disclose, in or in relation to a civil proceeding, any information that the relevant authority may disclose, or has disclosed, under that subsection.

- (6) The Financial Secretary may authorize a public officer as a person to whom information may be disclosed under subsection (1)(g)(xiii).
- (7) A person who, knowing of a condition imposed under subsection (4), contravenes the condition, or aids, abets, counsels or procures any person to contravene it, commits an offence.
- (8) A person who commits an offence under subsection (7) 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.
- (9) In this section—

Cap. 41 prescribed person (《第41章》訂明人士) means a prescribed person as defined by section 2(1) of the Insurance Ordinance (Cap. 41);

designated insurance holding company (指定保險控權公司) has the meaning given by section 95A(1) of the Insurance Ordinance (Cap. 41);

supervised group (受監管集團) has the meaning given by section 2(1) of the Insurance Ordinance (Cap. 41).

76E. Person subject to inspection, investigation or disciplinary action must not disclose information

- (1) This section applies to—
- (a) a person on whom a requirement under section 9 or 12 has been imposed by an authorized person or investigator; or
 - (b) a person who has been given a notice under section 22, 44, 53ZA or 53ZSU.

- (2) The person specified in subsection (1)(a) must not disclose any information obtained in the course of the requirement being imposed, or in the course of a compliance or purported compliance with the requirement, to any other person unless—
- (a) the relevant authority consents to the disclosure; or
 - (b) any of the conditions specified in subsection (4) is satisfied.
- (3) The person specified in subsection (1)(b) must not disclose any information obtained from the notice, or from any communication with the relevant authority in relation to the subject matter of the notice, unless—
- (a) the relevant authority consents to the disclosure; or
 - (b) any of the conditions specified in subsection (4) is satisfied.
- (4) The conditions specified for subsections (2)(b) and (3)(b) are that—
- (a) the information has already been made available to the public because of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by section 76B;
 - (b) the disclosure is for the purpose of seeking advice from, or giving advice by, counsel or 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;
 - (c) the disclosure by the person specified in subsection (1)(a) or (b) is in connection with any judicial or other proceedings to which the person is a party; and
 - (d) the disclosure is 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.

- (5) The relevant authority may impose any conditions that it considers appropriate on a consent given by it for the purposes of subsection (2)(a) or (3)(a).
- (6) A person who contravenes subsection (2) or (3) commits an offence and is liable on conviction to a fine at level 4.
- (7) In this section—

authorized person (獲授權人) has the meaning given by section 8;
investigator (調查員) has the meaning given by section 8.

76F. Recipient of information disclosed under section 76C, 76D or 76E must not disclose it onwards

- (1) If information is disclosed under section 76C (except subsection (1)(b) or (2)(b)) or section 76D (except subsection (1)(a), (f) or (i)) or section 76E, each specified recipient must not disclose the information to another person unless—
 - (a) the relevant authority consents to the disclosure;
 - (b) the information has already been made available to the public;
 - (c) the disclosure is for the purpose of seeking advice from, or giving advice by, counsel or 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;
 - (d) the disclosure by the specified recipient is in connection with any judicial or other proceedings to which the specified recipient is a party; or
 - (e) the disclosure is 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.

- (2) The relevant authority referred to in subsection (1)(a)—
- (a) in the case of information disclosed under section 76C—
 - (i) if paragraph (a) of the definition of *specified person* in section 76A applies—is the specified person;
 - (ii) if paragraph (b) of the definition of *specified person* in section 76A applies—is the relevant authority of whom the specified person is or was a member, an employee, or a consultant, agent or adviser; or
 - (iii) is the relevant authority concerned with a provision of this Ordinance where (as the case requires)—
 - (A) the specified person is or was a person appointed under that provision of this Ordinance;
 - (B) the specified person is or was a person performing a function under, or carrying into effect, that provision of this Ordinance; or
 - (C) the specified person is or was a person assisting another person in the performance of a function under, or carrying into effect, that provision of this Ordinance;
 - (b) in the case of information disclosed under section 76D—is the relevant authority disclosing it; or
 - (c) in the case of information disclosed under section 76E—is the relevant authority—
 - (i) by whom the person imposing the requirement referred to in section 76E(1)(a) is authorized

under section 9(12) or directed or appointed under section 11; or

(ii) by whom the notice referred to in section 76E(1)(b) is given.

- (3) A person who contravenes subsection (1) commits an offence.
- (4) Subsection (1) does not apply to a specified recipient of information disclosed under section 76E if the condition in section 76E(4)(a) is satisfied.
- (5) The relevant authority may, in giving consent under subsection (1)(a), impose any condition that the relevant authority considers appropriate.
- (6) A person who, knowing of a condition imposed under subsection (5), contravenes the condition, or aids, abets, counsels or procures any person to contravene it, commits an offence.
- (7) A person who commits an offence under subsection (3) or (6) 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) In this section—

specified recipient (指明收取人) means—

 - (a) the person to whom any information is disclosed (***first recipient***) under subsection (1); or
 - (b) a person obtaining or receiving any information, directly or indirectly, from the first recipient.

76G. Other enactments on disclosure of information not affected

- (1) Sections 76A, 76B, 76C, 76D, 76E and 76F do not prejudice

the following—

- (a) sections 120 and 121 of the Banking Ordinance (Cap. 155);
- (b) sections 53A, 53B and 121 of the Insurance Ordinance (Cap. 41);
- (c) section 50 of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584);
- (d) section 378 of the Securities and Futures Ordinance (Cap. 571);
- (e) any other provision in an Ordinance governing a financial regulator that relates to the sharing or disclosure of information by the financial regulator.

(2) In this section—

financial regulator (金融監管者) means an authority or body that regulates, supervises or investigates banking, securities, insurance, activities involving virtual assets or other financial services.

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 Parts 5, 5A, 5B and 5C). (*Amended 4 of 2018 s. 23; 15 of 2022 s. 30*)
- (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.
- (1A) Subsection (1B) applies to a notice or other document (however described) authorized or required to be given or sent under this Ordinance to a person (*intended recipient*)—
 - (a) by the Registrar; or
 - (b) by the Commissioner in connection with Part 5C.
(*Replaced 15 of 2022 s. 31*)
- (1B) A notice or other document referred to in subsection (1A) is given or sent to the intended recipient if—
 - (a) for an individual, it is left at, or sent by post to, the individual's last known—
 - (i) business address;
 - (ii) residential address; or
 - (iii) correspondence address;
 - (b) for a partnership, it is left at, or sent by post to, the partnership's last known—

- (i) principal place of business; or
 - (ii) business address;
 - (c) for a corporation that is a company as defined by section 2(1) of the Companies Ordinance (Cap. 622), it is left at, or sent by post to, the corporation's—
 - (i) registered office (within the meaning of that Ordinance); or
 - (ii) last known business address;
 - (d) for any other corporation, it is left at, or sent by post to, the corporation's last known business address; or
 - (e) for an intended recipient referred to in paragraph (a), (b), (c) or (d), it is sent by electronic means to the intended recipient's last known electronic mail address. (*Added 15 of 2022 s. 31*)
- (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.

(5) Despite subsection (4), section 141 of the Securities and Futures Ordinance (Cap. 571) applies, with necessary modifications, in relation to the giving or serving of a written notice or other document (however described) authorized or required to be given, or served (however described) to or on a licensed VAS person under this Ordinance as it applies in relation to the issuing or serving of a notice, decision or direction or other document referred to in that section. (*Added 15 of 2022 s. 31*)

(6) In subsection (5)—

licensed VAS person (持牌虛擬資產服務人士) means a licensed provider or a licensed representative within the meaning of Part 5B. (*Added 15 of 2022 s. 31*)

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.

Part 8

Consequential and Related Amendments

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*)

Anti-Money Laundering and Counter-Terrorist Financing Ordinance

Part 8—Division 6

8-4

Section 88

Cap. 615

88-91. *(Omitted as spent—E.R. 2 of 2012)*

Schedule 1

[ss. 2 & 5A]

(Replaced 4 of 2018 s. 25)

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. Amended 4 of 2018 s. 25*)

trust or company service (信託或公司服務) means the provision, in Hong Kong, by a person, by way of business, of one or more of the following services to other persons—

- (a) forming corporations or other legal persons;

- (b) acting, or arranging for another person to act—
 - (i) as a director or a secretary of a corporation;
 - (ii) as a partner of a partnership; or
 - (iii) in a similar position in relation to other legal persons;
- (c) providing a registered office, business address, correspondence or administrative address for a corporation, a partnership or any other legal person or legal arrangement;
- (d) acting, or arranging for another person to act—
 - (i) as a trustee of an express trust or a similar legal arrangement; or
 - (ii) as a nominee shareholder for a person other than a corporation whose securities are listed on a recognized stock market; (*Added 4 of 2018 s. 25*)

trust or company service business (信託或公司服務業務) means the business of providing a trust or company service. (*Added 4 of 2018 s. 25*)

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—

accounting professional (會計專業人士) means—

- (a) a certified public accountant as defined by section 2(1) of the Professional Accountants Ordinance (Cap. 50), or a certified public accountant (practising) as defined by section 2(1) of the Accounting and Financial Reporting Council Ordinance (Cap. 588); (*Replaced L.N. 66 of 2022*)
- (b) a corporate practice as defined by section 2(1) of the Accounting and Financial Reporting Council Ordinance (Cap. 588); or (*Amended L.N. 66 of 2022*)
- (c) a CPA firm as defined by section 2(1) of the Accounting and Financial Reporting Council Ordinance (Cap. 588); (*Replaced L.N. 66 of 2022*)

AFRC (會財局) means the Accounting and Financial Reporting Council continued under section 6 of the Accounting and Financial Reporting Council Ordinance (Cap. 588); (*Added L.N. 66 of 2022*)

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

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

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); (*Added 15 of 2022 s. 32*)

Category B PMS registrant (貴金屬及寶石B類註冊人) means—

- (a) a Category B registrant within the meaning of Part 5C; or
- (b) a deemed registrant as defined by section 53ZW(8); (*Added 15 of 2022 s. 32*)

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;

corporation (法團) means a company as defined by section 2(1) of the Companies Ordinance (Cap. 622) or other body corporate incorporated either in Hong Kong or elsewhere; (*Added 15 of 2022 s. 32*)

customer (客戶)—

- (a) includes a client; and
- (b) in relation to a Category B PMS registrant, includes a person who is a party to any transaction carried out by the registrant while the registrant carries on a precious metals and stones business, whether the person makes or receives any payment to or from the registrant; (*Added 15 of 2022 s. 32*)

director (董事), in relation to—

- (a) a corporation that is a company as defined by section 2(1) of the Companies Ordinance (Cap. 622)—means a director as defined by that section; and
- (b) any other corporation—means a person (by whatever name called) who occupies in the corporation a position

similar to that of a director referred to in paragraph (a);
(*Added 4 of 2018 s. 25*)

DNFBP (指定非金融業人士) means—

- (a) an accounting professional;
- (b) an estate agent;
- (c) a legal professional; (*Amended 15 of 2022 s. 32*)
- (d) a TCSP licensee; or (*Amended 15 of 2022 s. 32*)
- (e) a Category B PMS registrant; (*Added 15 of 2022 s. 32*)

Note—

DNFBP is an acronym for persons in the category described as designated non-financial businesses and professions in the Financial Action Task Force's Recommendations. (*Added 4 of 2018 s. 25*)

estate agent (地產代理) means—

- (a) a licensed estate agent as defined by section 2(1) of the Estate Agents Ordinance (Cap. 511); or
- (b) a licensed salesperson as defined by section 2(1) of the Estate Agents Ordinance (Cap. 511); (*Added 4 of 2018 s. 25*)

Estate Agents Authority (地產代理監管局) means the body established by section 4 of the Estate Agents Ordinance (Cap. 511); (*Added 4 of 2018 s. 25*)

financial institution (金融機構) means—

- (a) an authorized institution;
- (b) a licensed corporation;
- (c) an authorized insurer;
- (d) a licensed individual insurance agent; (*Replaced 12 of 2015 s. 162*)
- (e) a licensed insurance agency; (*Replaced 12 of 2015 s. 162*)

- (ea) a licensed insurance broker company; (*Added 12 of 2015 s. 162*)
- (f) a licensed money service operator; (*Amended 18 of 2015 s. 71*)
- (g) the Postmaster General; (*Amended 18 of 2015 s. 71; 15 of 2022 s. 32*)
- (h) an SVF licensee; or (*Added 18 of 2015 s. 71. Amended 15 of 2022 s. 32*)
- (i) subject to section 20A, a licensed VAS provider; (*Added 15 of 2022 s. 32*)

HKICPA (香港會計師公會) means the body known as the Hong Kong Institute of Certified Public Accountants incorporated by section 3 of the Professional Accountants Ordinance (Cap. 50); (*Added 4 of 2018 s. 25*)

information system (資訊系統) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553); (*Added 15 of 2022 s. 32*)

licensed VAS provider (持牌虛擬資產服務提供者) means a licensed provider within the meaning of Part 5B; (*Added 15 of 2022 s. 32*)

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*)

Law Society (律師會) means The Law Society of Hong Kong; (*Added 4 of 2018 s. 25*)

legal professional (法律專業人士) means—

- (a) a solicitor as defined by section 2(1) of the Legal Practitioners Ordinance (Cap. 159); or

- (b) a foreign lawyer as defined by section 2(1) of the Legal Practitioners Ordinance (Cap. 159); (*Added 4 of 2018 s. 25*)

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 individual insurance agent (持牌個人保險代理) has the meaning given by section 2(1) of the Insurance Ordinance (Cap. 41); (*Added 12 of 2015 s. 162*)

licensed insurance agency (持牌保險代理機構) has the meaning given by section 2(1) of the Insurance Ordinance (Cap. 41); (*Added 12 of 2015 s. 162*)

licensed insurance broker company (持牌保險經紀公司) has the meaning given by section 2(1) of the Insurance Ordinance (Cap. 41); (*Added 12 of 2015 s. 162*)

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);

PMS registrant (貴金屬及寶石註冊人) means—

- (a) a Category A registrant or a Category B registrant within the meaning of Part 5C; or
- (b) a deemed registrant as defined by section 53ZW(8); (*Added 15 of 2022 s. 32*)

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;

recognized stock market (認可證券市場) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571); (*Added 4 of 2018 s. 25*)

Registrar (處長) means—

- (a) the Registrar of Companies; or
- (b) a person to whom the Registrar of Companies has, under section 53C(1), delegated his or her functions; (*Added 4 of 2018 s. 25*)

Registrar of Companies (公司註冊處處長) means the person appointed as the Registrar of Companies under section 21(1) of the Companies Ordinance (Cap. 622); (*Added 4 of 2018 s. 25*)

regulatory body (監管機構), in relation to—

- (a) an accounting professional—means— (*Amended L.N. 66 of 2022*)
 - (i) (subject to subparagraphs (ii) and (iii)) the AFRC;
 - (ii) (for the purposes of section 4) the AFRC or the HKICPA; or
 - (iii) (for the purposes of section 7(1), (2) and (3)) the HKICPA as overseen by the AFRC under section 9(b) of the Accounting and Financial Reporting Council Ordinance (Cap. 588); (*Amended L.N. 66 of 2022*)
- (b) an estate agent—means the Estate Agents Authority; and
- (c) a legal professional—means the Law Society; (*Added 4 of 2018 s. 25*)

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, licensed individual insurance agent, licensed insurance agency or licensed insurance broker company, means the Insurance Authority; and (*Replaced 12 of 2015 s. 162*)
- (d) in relation to a licensed money service operator or to the Postmaster General, means the Commissioner; (*Amended 4 of 2018 s. 25; 15 of 2022 s. 32*)
- (e) in relation to a TCSP licensee, means the Registrar; (*Added 4 of 2018 s. 25*)
- (f) in relation to a licensed VAS provider or an associated entity of a licensed VAS provider, means the Securities and Futures Commission; and (*Added 15 of 2022 s. 32*)
- (g) in relation to a PMS registrant, means the Commissioner; (*Added 15 of 2022 s. 32*)

secretary (秘書), in relation to—

- (a) a corporation that is a company as defined by section 2(1) of the Companies Ordinance (Cap. 622)—means a company secretary as defined by that section; and
- (b) any other corporation—means a person (by whatever name called) who occupies in the corporation a position similar to that of a company secretary referred to in paragraph (a); (*Added 4 of 2018 s. 25*)

Securities and Futures Commission, 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; 15 of 2022 s. 32*)

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

Anti-Money Laundering and Counter-Terrorist Financing Ordinance

Schedule 1—Part 2

S1-24

Section 1

Cap. 615

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. Amended 4 of 2018 s. 25*)

TCSP licensee (信託或公司服務持牌人) means—

- (a) a person who holds a licence granted under section 53G or renewed under section 53K; or
- (b) a deemed licensee as defined by section 53ZQ(5); (*Added 4 of 2018 s. 25. Amended 15 of 2022 s. 32*)

virtual asset (虛擬資產)—see section 53ZRA. (*Added 15 of 2022 s. 32*)

(*Amended 12 of 2015 s. 162*)

Schedule 2

[ss. 5, 5A, 6, 7, 53Z &
53ZVF]

(Replaced 4 of 2018 s. 26. Amended 15 of 2022 s. 33)

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, more than 25% of the issued share capital of the corporation;

(B) is, directly or indirectly, entitled to exercise or control the exercise of more than 25% 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, more than a 25% share of the capital or profits of the partnership;
 - (B) is, directly or indirectly, entitled to exercise or control the exercise of more than 25% 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) a beneficiary or a class of beneficiaries of the trust entitled to a vested interest in the trust property, whether the interest is in possession or in remainder or reversion and whether it is defeasible or not; (*Amended 15 of 2022 s. 33*)
 - (ii) the settlor of the trust;
 - (iia) the trustee of the trust; (*Added 15 of 2022 s. 33*)
 - (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; (*Amended 4 of 2018 s. 26*)

business relationship (業務關係), as between a person and a financial institution or a DNFBP, means a business, professional or commercial relationship— (*Amended 4 of 2018 s. 26*)

- (a) that has an element of duration; or
- (b) that the financial institution or the DNFBP, at the time the person first contacts the financial institution or the DNFBP in the person's capacity as a potential customer of the financial institution or the DNFBP, expects to have an element of duration; (*Amended 4 of 2018 s. 26*)

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 (財務行動特別組織) means the Financial Action Task Force on Money Laundering established by the G-7 Summit held in Paris in 1989; (*Replaced 4 of 2018 s. 26*)

former politically exposed person (前政治人物) means—

- (a) an individual who, being a politically exposed person, has been but is not currently entrusted with a prominent public function in a place outside Hong Kong;

- (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); (*Added 15 of 2022 s. 33*)

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 or a DNFBP and a customer who does not have a business relationship with the financial institution or the DNFBP; (*Amended 4 of 2018 s. 26*)

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 Hong Kong and— (*Amended 15 of 2022 s. 33*)
 - (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 (先前客户)—

- (a) in relation to a financial institution other than a licensed VAS provider—means a customer with whom the financial institution has established a business relationship before 1 April 2012;
- (b) in relation to a licensed VAS provider—means a customer with whom the licensed VAS provider has established a business relationship before 1 June 2023;
- (c) in relation to a DNFBP other than a Category B PMS registrant—means a customer with whom the DNFBP has established a business relationship before 1 March 2018; or
- (d) in relation to a Category B PMS registrant—means a customer with whom the registrant has established a business relationship before 1 April 2023; (*Replaced 15 of 2022 s. 33*)

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; (*Amended 15 of 2022 s. 33*)

recognized digital identification system (認可數碼識別系統) means—

- (a) in relation to a financial institution or a DNFBP who is a TCSP licensee or a Category B PMS registrant, a digital identification system that is a reliable and independent source that is recognized by the relevant authority; or

- (b) in relation to a DNFBP who is an accounting professional, an estate agent or a legal professional, a digital identification system that is a reliable and independent source that is recognized by the relevant regulatory body; (*Added 15 of 2022 s. 33*)

virtual asset transfer (虛擬資產轉賬)—see section 13A(1) of this Schedule. (*Added 15 of 2022 s. 33*)

(*Amended 15 of 2022 s. 33*)

- (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 or a DNFBP— (*Amended 4 of 2018 s. 26*)
 - (a) for a financial institution, or a DNFBP who is a TCSP licensee or a Category B PMS registrant, identifying the customer and verifying the customer's identity on the basis of documents, data or information provided by— (*Amended 4 of 2018 s. 26; 15 of 2022 s. 33*)
 - (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; (*Amended 15 of 2022 s. 33*)
 - (iiia) a recognized digital identification system; or (*Added 15 of 2022 s. 33*)
 - (iv) any other reliable and independent source that is recognized by the relevant authority;

- (ab) for a DNFBP who is an accounting professional, an estate agent or a legal professional, 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 regulatory body;
 - (iii) an authority in a place outside Hong Kong that performs functions similar to those of the relevant regulatory body; (*Amended 15 of 2022 s. 33*)
 - (iiia) a recognized digital identification system; or (*Added 15 of 2022 s. 33*)
 - (iv) any other reliable and independent source that is recognized by the relevant regulatory body; (*Added 4 of 2018 s. 26*)
- (b) if there is a beneficial owner in relation to the customer, identifying the beneficial owner and taking reasonable measures to verify the beneficial owner's identity so that the financial institution or the DNFBP is satisfied that the financial institution or the DNFBP knows who the beneficial owner is, including, where the customer is a legal person or trust, measures to enable the financial institution or the DNFBP 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 or the DNFBP, unless the purpose and intended nature are obvious; and
- (d) if a person purports to act on behalf of the customer—
 - (i) for a financial institution, or a DNFBP who is a TCSP licensee or a Category B PMS registrant,

identifying the person and taking reasonable measures to verify the person's identity on the basis of documents, data or information provided by— (*Amended 4 of 2018 s. 26; 15 of 2022 s. 33*)

- (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;
- (ia) for a DNFBP who is an accounting professional, an estate agent or a legal professional, 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 regulatory body;
 - (C) an authority in a place outside Hong Kong that performs functions similar to those of the relevant regulatory body; or
 - (D) any other reliable and independent source that is recognized by the relevant regulatory body; and (*Added 4 of 2018 s. 26*)
- (ii) verifying the person's authority to act on behalf of the customer. (*Amended 4 of 2018 s. 26*)

(2) (*Repealed 4 of 2018 s. 26*)

3. When customer due diligence measures must be carried out

- (1) Subject to section 4 of this Schedule, a financial institution or a DNFBP must carry out customer due diligence measures in relation to a customer in the following circumstances—
(Amended 4 of 2018 s. 26)
- (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 or the DNFBP to be linked;
 - (c) *(Repealed 15 of 2022 s. 33)*
 - (d) when the financial institution or the DNFBP suspects that the customer or the customer’s account is involved in money laundering or terrorist financing;
 - (e) when the financial institution or the DNFBP 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.
- (1A) Subject to section 4 of this Schedule and despite subsection (1)(b), a financial institution must carry out customer due diligence measures in relation to a customer before carrying out for the customer an occasional transaction that is—
- (a) a wire transfer involving an amount equal to or above \$8,000 or an equivalent amount in any other currency;
or
 - (b) a virtual asset transfer involving virtual assets that amount to no less than \$8,000,

whether the transaction is carried out in a single operation or in several operations that appear to the financial institution to be linked. (*Added 15 of 2022 s. 33*)

(1B) Subject to section 4 of this Schedule and despite subsection (1)(b), a licensed VAS provider must carry out customer due diligence measures in relation to a customer before carrying out for the customer an occasional transaction that—

(a) involves an amount equal to or above \$8,000 or an equivalent amount in any other currency; and

(b) is not a wire transfer or a virtual asset transfer,

whether the transaction is carried out in a single operation or in several operations that appear to the licensed VAS provider to be linked. (*Added 15 of 2022 s. 33*)

(2) Despite subsection (1)(a), a financial institution or a DNFBP may verify the identity of a customer and any beneficial owner of the customer after establishing a business relationship with the customer if— (*Amended 4 of 2018 s. 26*)

(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 or a DNFBP 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 or a DNFBP is unable to comply with subsection (1), (1A), (1B) or (3), the financial institution or the DNFBP— (*Amended 4 of 2018 s. 26; 15 of 2022 s. 33*)

- (a) must not establish a business relationship or carry out any occasional transaction with that customer; or
- (b) if the financial institution or the DNFBP has already established a business relationship with that customer, must terminate the business relationship as soon as reasonably practicable.

(Amended 4 of 2018 s. 26)

4. Simplified customer due diligence

- (1) In any of the circumstances set out in section 3(1)(a) and (b), (1A) and (1B) of this Schedule, a financial institution or a DNFBP may, instead of carrying out all the customer due diligence measures, carry out only the measures set out in section 2(1)(a), (ab), (c) and (d) of this Schedule in relation to a customer if the financial institution or the DNFBP has reasonable grounds to believe that the customer falls within subsection (3). *(Amended 4 of 2018 s. 26; 15 of 2022 s. 33)*
- (2) If a customer of a financial institution or a DNFBP not falling within subsection (3) has in the customer's beneficial ownership chain an entity that falls within that subsection, the financial institution or the DNFBP 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) and (b), (1A) and (1B) 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. *(Amended 4 of 2018 s. 26; 15 of 2022 s. 33)*
- (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) and (b), (1A) and (1B) of this Schedule, a financial institution or a DNFBP may, instead of carrying out all the customer due diligence measures, carry out only the measures set out in section 2(1)(a), (ab), (c) and (d) of this Schedule in relation to a customer if the financial institution or the DNFBP has reasonable grounds to believe that the product related to the transaction falls within subsection (5). (*Amended 4 of 2018 s. 26; 15 of 2022 s. 33*)
- (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) and (b), (1A) and (1B) of this Schedule, to carry out the measure set out in section 2(1)(b) of this Schedule in relation to an account—*(Amended 15 of 2022 s. 33)*
 - (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 or a DNFBP must continuously monitor the business relationship with a customer by—*(Amended 4 of 2018 s. 26)*
 - (a) reviewing from time to time documents, data and information relating to the customer that have been obtained by the financial institution or the DNFBP 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 or the DNFBP's

- knowledge of the customer and the customer's business and risk profile, and with the financial institution's or the DNFBP's 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 the findings in writing.
 - (2) When a financial institution or a DNFBP carries out the duty under subsection (1)(a) in relation to a pre-existing customer before the financial institution or the DNFBP first carries out the customer due diligence measures in relation to the customer in accordance with the requirements under this Part, the financial institution or the DNFBP is only required to review the documents, data and information relating to the customer that are held by the financial institution or the DNFBP at the time the financial institution or the DNFBP conducts the review.
 - (3) If—
 - (a) a customer of a financial institution or a DNFBP has not been physically present for identification purposes;
 - (b) a customer, or a beneficial owner of a customer, of a financial institution or a DNFBP is known to the financial institution or the DNFBP, from publicly known information or information in the financial institution's or the DNFBP's possession, to be a politically exposed person; or

- (c) a customer, or a beneficial owner of a customer, of a financial institution or a DNFBP is involved in a situation referred to in section 15 of this Schedule, the financial institution or the DNFBP must, in monitoring the 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).
- (4) Subsection (3)(a) does not apply in relation to a customer of a financial institution or a DNFBP if the financial institution or the DNFBP has carried out the measure referred to in section 2(1)(a) or (ab) of this Schedule in relation to the customer on the basis of data or information provided by a recognized digital identification system. *(Added 15 of 2022 s. 33)*
- (5) Subsection (3)(b) does not apply in relation to a customer, or a beneficial owner of a customer, of a financial institution or a DNFBP if the financial institution or the DNFBP is satisfied that—
- (a) the customer or the beneficial owner of the customer is a former politically exposed person; and
- (b) the former politically exposed person does not present a high risk of money laundering or terrorist financing based on an appropriate risk assessment. *(Added 15 of 2022 s. 33)*

(Amended 4 of 2018 s. 26)

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 or a DNFBP 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— (*Amended 4 of 2018 s. 26*)

- (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 or the DNFBP's knowledge of the customer or the customer's business or risk profile, or with the financial institution's or the DNFBP's 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 or a DNFBP is unable to comply with subsection (1), the financial institution or the DNFBP must terminate the business relationship with the customer as soon as reasonably practicable.

(Amended 4 of 2018 s. 26)

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 anti-terrorist 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 or a DNFBP must also comply with the requirements under this Division.

(Amended 4 of 2018 s. 26)

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

- (1) If a customer has not been physically present for identification purposes, a financial institution or a DNFBP must carry out at least one of the following measures— (*Amended 4 of 2018 s. 26; 15 of 2022 s. 33*)
- (a) further verifying the customer’s identity on the basis of documents, data or information referred to in section 2(1)(a) or (ab) 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 information relating to the customer that has been obtained by the financial institution or the DNFBP;
 - (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.

- (2) Subsection (1) does not apply in relation to a customer of a financial institution or a DNFBP if the financial institution or the DNFBP has carried out the measure referred to in section 2(1)(a) or (ab) of this Schedule in relation to the customer on the basis of data or information provided by a recognized digital identification system. *(Added 15 of 2022 s. 33)*

(Amended 4 of 2018 s. 26)

10. Special requirements when customer is politically exposed person

- (1) If a financial institution or a DNFBP knows, from publicly known information or information in the financial institution's or the DNFBP's possession, that a customer or a beneficial owner of a customer is a politically exposed person, the financial institution or the DNFBP must, before establishing a business relationship with the customer— *(Amended 4 of 2018 s. 26)*
- (a) obtain approval from the 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 or a DNFBP comes to know, from publicly known information or information in the financial institution's or the DNFBP's 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, the financial institution or the DNFBP must not continue its business relationship with the customer unless

the financial institution or the DNFBP— (*Amended 4 of 2018 s. 26*)

- (a) has obtained approval from the 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.
- (3) Subsections (1) and (2) do not apply in relation to a customer or a beneficial owner of a customer of a financial institution or a DNFBP if the financial institution or the DNFBP is satisfied that—
- (a) the customer or the beneficial owner of the customer is a former politically exposed person; and
 - (b) the former politically exposed person does not present a high risk of money laundering or terrorist financing based on an appropriate risk assessment. (*Added 15 of 2022 s. 33*)

(Amended 4 of 2018 s. 26)

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) *(Repealed 4 of 2018 s. 26)*
- (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, debit card or prepaid card such as—
 - (A) withdrawing money from a bank account through an automated teller machine with a debit card;
 - (B) obtaining a cash advance on a credit card; or
 - (C) paying for goods or services with a credit card, debit card or prepaid card;
 - (ii) the card is not used as a payment system to effect a person-to-person transfer; and
 - (iii) the number (or equivalent unique identifier) of the credit card, debit card or prepaid card is included in the message or payment form accompanying the transfer. *(Replaced 15 of 2022 s. 33)*
- (3) Subject to subsection (3A), before carrying out a wire transfer, a financial institution that is an ordering institution must record— *(Amended 4 of 2018 s. 26)*
 - (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; (*Amended 4 of 2018 s. 26*)
 - (c) the originator's 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; (*Amended 4 of 2018 s. 26*)
 - (d) the recipient's name; and (*Added 4 of 2018 s. 26*)
 - (e) the number of the recipient's account maintained with the beneficiary institution and to 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 beneficiary institution. (*Added 4 of 2018 s. 26*)
- (3A) Subsection (3)(c) does not apply to a wire transfer involving an amount below \$8,000 or an equivalent amount in another currency. (*Added 4 of 2018 s. 26*)
- (4) (*Repealed 4 of 2018 s. 26*)
 - (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— (*Amended 4 of 2018 s. 26*)
 - (a) for a wire transfer involving an amount equal to or above \$8,000 or an equivalent amount in another currency—the information recorded under subsection (3)(a), (b), (c), (d) and (e) in relation to the transfer; and (*Added 4 of 2018 s. 26*)
 - (b) for a wire transfer involving an amount below \$8,000 or an equivalent amount in another currency—the

information recorded under subsection (3)(a), (b), (d) and (e) in relation to the transfer. (*Added 4 of 2018 s. 26*)

- (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; or
 - (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 or an intermediary institution in a wire transfer that is not a domestic wire transfer— (*Amended 4 of 2018 s. 26*)
- (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; or

- (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—

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.

(Amended 15 of 2022 s. 33)

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.

13A. Special requirements for virtual asset transfer

- (1) For the purposes of this Schedule, a virtual asset transfer is a transaction carried out—

-
- (a) by an institution (*ordering institution*) on behalf of an originator by transferring any virtual assets; and
- (b) with a view to making the virtual assets available—
- (i) to that person or another person (*recipient*); and
 - (ii) at an institution (*beneficiary institution*), which may be the ordering institution or another institution,
- whether or not one or more other institutions (*intermediary institutions*) participate in completion of the transfer of the virtual assets.
- (2) Subject to subsection (3), before carrying out a virtual asset transfer, a financial institution that is an ordering institution must obtain and record—
- (a) the originator’s name;
 - (b) the number of the originator’s account maintained with the financial institution and from which the virtual assets are transferred or, in the absence of such an account, a unique reference number assigned to the virtual asset transfer by the financial institution;
 - (c) the originator’s 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;
 - (d) the recipient’s name; and
 - (e) the number of the recipient’s account maintained with the beneficiary institution and to which the virtual assets are transferred or, in the absence of such an account, a unique reference number assigned to the virtual asset transfer by the beneficiary institution.
- (3) Subsection (2)(c) does not apply to a virtual asset transfer involving virtual assets that amount to less than \$8,000.

- (4) A financial institution that is an ordering institution in a virtual asset transfer must submit to the beneficiary institution—
- (a) for a virtual asset transfer involving virtual assets that amount to not less than \$8,000—the information obtained and held under subsection (2)(a), (b), (c), (d) and (e) in relation to the transfer; and
 - (b) for a virtual asset transfer involving virtual assets that amount to less than \$8,000—the information obtained and held under subsection (2)(a), (b), (d) and (e) in relation to the transfer,
- in accordance with codes and guidelines published under any provision of this Ordinance.
- (5) A financial institution that is a beneficiary institution in a virtual asset transfer must obtain and record the information under subsection (2) submitted to it by the institution from which it receives the transfer instruction.
- (6) If a financial institution acts as an intermediary institution in a virtual asset 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.
- (7) Where a financial institution (*instructed institution*) is a beneficiary institution or an intermediary institution in a virtual asset transfer—
- (a) if the institution (*instructing institution*) from which the instructed institution receives the transfer instruction does not submit all of the information under subsection (2) in connection with the virtual asset transferred to the instructed institution, the instructed institution must as soon as reasonably practicable—
 - (i) obtain the missing information from the instructing institution; and

- (ii) if the missing information cannot be obtained, either—
 - (A) consider restricting or terminating its business relationship with the instructing institution; or
 - (B) take reasonable measures to mitigate the risk of money laundering or terrorist financing involved; or

- (b) if the instructed institution is aware that any of the information submitted to it that purports to be information under subsection (2) 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.

(8) In this section—

originator (匯款人), in relation to a virtual asset transfer, means—

- (a) the person from whose account with the ordering institution the virtual assets for the virtual asset transfer are transferred; or
- (b) in the absence of such an account, the person who instructs the ordering institution to carry out the virtual asset transfer.

(Added 15 of 2022 s. 33)

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 or a DNFBP must, in a situation specified by the relevant authority or, in the case of a DNFBP who is an accounting professional, an estate agent or a legal professional, by the relevant regulatory body, in a notice in writing given to the financial institution or the DNFBP and in any other situation that by its nature may present a high risk of money laundering or terrorist financing— (*Amended 4 of 2018 s. 26*)

- (a) where a business relationship is to be established—
 - (i) obtain approval from the 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 the 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 or the DNFBP is satisfied that

the financial institution or the DNFBP 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.

(Amended 4 of 2018 s. 26)

Division 3—Prohibitions

16. Anonymous accounts etc.

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

(Amended 4 of 2018 s. 26)

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 or a DNFBP may carry out any customer due diligence measure by means of an intermediary specified in subsection (3) if— (*Amended 4 of 2018 s. 26*)
 - (a) the intermediary consents in writing to be the financial institution's or the DNFBP's intermediary; and
 - (b) the financial institution or the DNFBP 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 or a DNFBP 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 or the DNFBP that they have adequate procedures in place to prevent money laundering and terrorist financing— (*Amended 4 of 2018 s. 26*)
 - (i) an accounting professional; (*Replaced 4 of 2018 s. 26*)
 - (ii) an estate agent; (*Replaced 4 of 2018 s. 26*)
 - (iii) a legal professional; (*Replaced 4 of 2018 s. 26*)
 - (iv) a TCSP licensee; (*Replaced 4 of 2018 s. 26*)
 - (b) a financial institution that is an authorized institution, a licensed corporation, an authorized insurer, a licensed individual insurance agent, licensed insurance agency or licensed insurance broker company; (*Amended 12 of 2015 s. 163*)
 - (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 a person who carries on in an equivalent jurisdiction a business similar to that carried on by an estate agent, or an institution that carries on in an equivalent jurisdiction a business similar to that carried on by an intermediary financial institution, that— (*Amended 4 of 2018 s. 26*)

- (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 or the regulatory bodies (as may be applicable); or
 - (d) in the case of a financial institution, an institution that—
 - (i) is a related foreign financial institution in relation to the financial institution; and
 - (ii) satisfies the conditions in subsection (3A). (*Added 4 of 2018 s. 26*)
- (3A) The conditions are that—
- (a) the related foreign financial institution is required under group policy—
 - (i) to have measures in place to ensure compliance with requirements similar to the requirements imposed under this Schedule; and
 - (ii) to implement programmes against money laundering and terrorist financing; and
 - (b) the related foreign financial institution is supervised for compliance with the requirements mentioned in paragraph (a) at a group level—
 - (i) by a relevant authority; or
 - (ii) by an authority in an equivalent jurisdiction that performs, in relation to the holding company or the

head office of the financial institution, functions similar to those of a relevant authority under this Ordinance. *(Added 4 of 2018 s. 26)*

- (4) A financial institution or a DNFBP that carries out a customer due diligence measure by means of an intermediary must— *(Amended 4 of 2018 s. 26)*
- (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 or the DNFBP 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;
 - (b) ensure that the intermediary will, if requested by the financial institution or the DNFBP within the period referred to in section 20(2) or (3) of this Schedule, as the case requires, provide to the financial institution or the DNFBP 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; and
 - (c) in the case of a financial institution, if the intermediary is a specified intermediary under subsection (3)(d), take reasonable measures to mitigate the risk of money laundering or terrorist financing involved. *(Added 4 of 2018 s. 26)*
- (5) *(Repealed 4 of 2018 s. 26)*
- (6) Nothing in this section prevents a financial institution or a DNFBP from carrying out a customer due diligence measure by an agent but such a financial institution or a DNFBP

remains liable under this Ordinance for a failure to carry out that customer due diligence measure.

(7) In this section—

group of companies (公司集團) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622);

group policy (集團政策) means a policy of the group of companies to which the financial institution belongs that applies to—

- (a) the financial institution; and
- (b) the relevant related foreign financial institution;

holding company (控權公司), in relation to a financial institution, means a holding company within the meaning of section 13 of the Companies Ordinance (Cap. 622);

intermediary financial institution (中介人金融機構) means a financial institution mentioned in subsection (3)(b);

related foreign financial institution (相關外地金融機構), in relation to a financial institution, means another institution that—

- (a) carries on, in a place outside Hong Kong, a business similar to that carried on by an intermediary financial institution; and
- (b) falls within any of the following descriptions—
 - (i) it is within the same group of companies as the financial institution;
 - (ii) if the financial institution is incorporated in Hong Kong, it is a branch of the financial institution;
 - (iii) if the financial institution is incorporated outside Hong Kong—
 - (A) it is the head office of the financial institution;

or

(B) it is a branch of the head office of the financial institution. *(Replaced 4 of 2018 s. 26)*

(Amended E.R. 2 of 2014; 4 of 2018 s. 26)

19. Financial institutions and DNFBPs to establish procedures

(Amended 4 of 2018 s. 26)

- (1) A financial institution or a DNFBP 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.
- (2A) A financial institution that carries out virtual asset transfers must establish and maintain effective procedures for identifying and handling virtual asset transfers in relation to which section 13A(4) of this Schedule has not been complied with. *(Added 15 of 2022 s. 33)*
- (3) A financial institution or a DNFBP 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 the duties under sections 3, 4, 5, 9, 10 and 15 of this Schedule.

(Amended 4 of 2018 s. 26)

Part 3

Record-keeping Requirements

20. Duty to keep records

- (1) A financial institution or a DNFBP must— (*Amended 4 of 2018 s. 26*)
 - (a) in relation to each transaction the financial institution or the DNFBP 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 customer, keep— (*Amended 4 of 2018 s. 26*)
 - (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 at least 5 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 at least 5 years beginning on the date on which the business relationship ends.
- (3A) Records required to be kept under subsection (1)(b) for an occasional transaction that is carried out in any of the

circumstances set out in section 3(1)(b), (1A) and (1B) of this Schedule must be kept for a period of at least 5 years beginning on the date on which the occasional transaction is completed. *(Added 15 of 2022 s. 33)*

- (4) A relevant authority or a regulatory body may, by notice in writing to a financial institution or a DNFBP, require the financial institution or the DNFBP to keep the records relating to a specified transaction or customer for a period specified by the relevant authority or the regulatory body that is longer than that referred to in subsection (2) or (3), as the case requires, if— *(Amended 4 of 2018 s. 26)*
- (a) the relevant authority or the regulatory body 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 or the regulatory body in the notice.
- (5) A financial institution or a DNFBP to whom a notice is given under subsection (4) must keep the relevant records for the period specified in the notice.

(Amended 4 of 2018 s. 26)

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.

- (2A) A DNFBP incorporated in Hong Kong must ensure that—

- (a) its branches; and
 - (b) its subsidiary undertakings that carry on the same business as a DNFBP 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 DNFBP. *(Added 4 of 2018 s. 26)*
- (2B) If the law of the place at which a branch or a subsidiary undertaking of a DNFBP carries on business does not permit the application of any procedures relating to any of the requirements referred to in subsection (2A), the DNFBP must—
- (a) inform the relevant authority, or if applicable, the relevant regulatory body, 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. *(Added 4 of 2018 s. 26)*
- (3) In this section—

branch (分行), in relation to a financial institution or a DNFBP, means a branch of the financial institution or the DNFBP outside Hong Kong at which it carries on a business similar to that carried on by the financial institution or the DNFBP, 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; *(Amended 4 of 2018 s. 26)*

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 and DNFBPs to prevent contravention of Part 2 or 3 of this Schedule

(Amended 4 of 2018 s. 26)

A financial institution or a DNFBP must take all reasonable measures— *(Amended 4 of 2018 s. 26)*

- (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	3,310
	plus for each additional business premises	2,220
	plus for each person who is subject to the fit and proper person test	860
5.	Application for the renewal of a licence	790
	plus for each additional business premises	355
	plus for each person who is subject to the fit and proper person test	860

Anti-Money Laundering and Counter-Terrorist Financing Ordinance

Schedule 3

S3-4

Cap. 615

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

Schedule 3A

[ss. 53C、53E、53G、
53K、53V & 53ZL]

Fees in relation to Part 5A

Column 1 Item	Column 2 Particulars	Column 3 Fee \$
1.	For certifying a copy of an entry in or extract from the register	260 per copy
2.	For providing a certificate referred to in section 53E(1)(b)	385 per copy
3.	Application for the grant of a licence plus for each person who is subject to the fit and proper test	3,440 975
4.	Application for the renewal of a licence plus for each person who is subject to the fit and proper test	2,910 975

Anti-Money Laundering and Counter-Terrorist Financing Ordinance

Schedule 3A

S3A-4

Cap. 615

Column 1	Column 2	Column 3
Item	Particulars	Fee
		\$
5.	Application for an approval to become an ultimate owner of a TCSP licensee	1,140 for each person in relation to whom the application is made
6.	Application for an approval to become a partner of a TCSP licensee	1,140 for each person in relation to whom the application is made
7.	Application for an approval to become a director of a TCSP licensee	1,140 for each person in relation to whom the application is made

(Schedule 3A added 4 of 2018 s. 27)

Schedule 3B

[ss. 53ZR & 53ZTM &
Sch. 3G]

VA Service

Part 1

VA Service

1. Operating a VA exchange, that is to say, providing services through means of electronic facilities—
 - (a) whereby—
 - (i) offers to sell or purchase virtual assets are regularly made or accepted in a way that forms or results in a binding transaction; or
 - (ii) persons are regularly introduced, or identified to other persons in order that they may negotiate or conclude, or with the reasonable expectation that they will negotiate or conclude sales or purchases of virtual assets in a way that forms or results in a binding transaction; and
 - (b) where client money or client virtual assets comes into direct or indirect possession of the person providing such service.

Part 2

Interpretation

Anti-Money Laundering and Counter-Terrorist Financing Ordinance

Schedule 3B—Part 2

S3B-4

Section 1

Cap. 615

1. Interpretation

An expression used in this Schedule, and defined or otherwise explained in Part 5B, has the same meaning as in that Part.

(Schedule 3B added 15 of 2022 s. 5)

Schedule 3C

[ss. 53ZR & 53ZTM]

Fees in relation to Part 5B

Part 1

Prescribed Fees

Column 1	Column 2	Column 3
Item	Particulars of matter	Fee
1.	Prescribed fee payable under section 53ZRI(1)(a) for—	
	(a) providing an uncertified copy of an entry in, or extract from, a register maintained under section 53ZRH	\$9 per page
	(b) certifying a copy of an entry in, or extract from, the register	\$200
2.	Prescribed fee for providing a certificate specified in section 53ZRI(1)(b)	\$200

Anti-Money Laundering and Counter-Terrorist Financing Ordinance

Schedule 3C—Part 1

S3C-4

Cap. 615

Column 1	Column 2	Column 3
Item	Particulars of matter	Fee
3.	Prescribed fee payable under section 53ZRK on an application for the grant of a licence for a licensed provider	\$4,740 for a VA service
4.	Prescribed fee payable under section 53ZRL on an application for the grant of a licence for a licensed representative	\$1,790 for a VA service
5.	Prescribed fee payable under section 53ZRM on an application for approval of an accreditation of a licensed representative	\$200
6.	Prescribed fee payable under section 53ZRM on an application for approval of a transfer of an accreditation of a licensed representative	\$200 for a VA service
7.	Prescribed fee payable under section 53ZRN on an application for variation of any VA service— <ul style="list-style-type: none"> (a) in the case of a licensed provider— <ul style="list-style-type: none"> (i) for adding any VA service 	\$4,740 for each VA service

Anti-Money Laundering and Counter-Terrorist Financing Ordinance

Schedule 3C—Part 1

S3C-6

Cap. 615

Column 1	Column 2	Column 3
Item	Particulars of matter	Fee
	(ii) for removing any VA service (subject to subparagraph (iii))	\$200 for each VA service
	(iii) for removing all VA services	Nil
	(b) in the case of a licensed representative—	
	(i) for adding any VA service	\$1,790 for each VA service
	(ii) for removing any VA service (subject to subparagraph (iii))	\$200 for each VA service
	(iii) for removing all VA services	Nil
8.	Prescribed fee payable under section 53ZRP(1) on an application for approval to be a responsible officer	\$2,950 for a VA service
9.	Prescribed fee payable under section 53ZRQ(2) on an application for approval to be an ultimate owner	\$3,000

Anti-Money Laundering and Counter-Terrorist Financing Ordinance

Schedule 3C—Part 2

S3C-8

Cap. 615

Column 1	Column 2	Column 3
Item	Particulars of matter	Fee
10.	Prescribed fee payable under section 53ZRR on an application for approval of premises	\$1,000
11.	Prescribed annual fee payable under section 53ZRY—	
	(a) in the case of a licensed provider	\$4,740 for a VA service
	(b) in the case of a licensed representative—	
	(i) who is not approved as a responsible officer of the licensed provider on whose behalf the licensed representative provides a VA service	\$1,790 for a VA service
	(ii) who is approved as a responsible officer of the licensed provider on whose behalf the licensed representative provides a VA service	\$4,740 for a VA service

Part 2

Interpretation

1. Interpretation

An expression used in this Schedule, and defined or otherwise explained in Part 5B, has the same meaning as in that Part.

(Schedule 3C added 15 of 2022 s. 5)

Schedule 3D

[ss. 53ZRW & 53ZTM]

Associated Entities—Prescribed Particulars

1. Interpretation

An expression used in this Schedule, and defined or otherwise explained in Part 5B, has the same meaning as in that Part.

2. Particulars to be notified on becoming an associated entity

For the purposes of section 53ZRW(1), the particulars required to be provided to the Commission after an associated entity of a licensed provider becomes such an associated entity are—

- (a) the name of the licensed provider;
- (b) the date on which it became such an associated entity;
- (c) its name and business name (if different);
- (d) the date and place of its incorporation;
- (e) its telephone and fax number, electronic mail address and website address (if any);
- (f) each of the following addresses, together with its effective date—
 - (i) the address of its principal place of business in Hong Kong (if any);
 - (ii) the address of its registered office;
 - (iii) its correspondence address;
 - (iv) the address of each of the premises where books and records relating to client assets of the licensed provider, received or held by it in Hong Kong, are kept;

- (g) the details of its bank account for holding client assets of the licensed provider received or held in Hong Kong, including—
 - (i) the name of the bank with which the account is opened; and
 - (ii) the number of the account;
- (h) whether it is aware of the existence of any matter that might render it insolvent or lead to the appointment of a liquidator;
- (i) the facts that gave rise to its becoming such an associated entity; and
- (j) in relation to each of its executive officers who are its directors responsible for directly supervising the receiving or holding of the client assets of the licensed provider—
 - (i) the executive officer's name;
 - (ii) the executive officer's Hong Kong identity card number, or details of documents issued by a competent government agency providing proof of identity; and
 - (iii) the executive officer's contact details, including residential address in Hong Kong (if any) and correspondence address.

3. Particulars to be notified on ceasing to be an associated entity

For the purposes of section 53ZRW(1), the particulars required to be provided to the Commission after an associated entity of a licensed provider ceases to be such an associated entity are—

- (a) the date of ceasing to be such an associated entity;
- (b) the name of the licensed provider;

Anti-Money Laundering and Counter-Terrorist Financing Ordinance

Schedule 3D

S3D-6

Section 3

Cap. 615

- (c) whether all client assets of the licensed provider received or held by it before it ceases to be such an associated entity have been fully accounted for and properly disposed of and, if not, the particulars of any such client assets that have not been fully accounted for and properly disposed of; and
- (d) the facts that gave rise to its ceasing to be such an associated entity.

(Schedule 3D added 15 of 2022 s. 5)

Schedule 3E

[ss. 53ZRY & 53ZTM]

Annual Return—Information

1. Interpretation

An expression used in this Schedule, and defined or otherwise explained in Part 5B, has the same meaning as in that Part.

2. Annual return must include certain information

(1) For the purposes of section 53ZRY(4)(b), the information that a licensed person must include in the annual return is—

- (a) the reporting period of the licensed person; and
- (b) a full description of any change in any prescribed information (if the description has not been provided to the Commission).

(2) In this section—

prescribed information (訂明資料) means any information that has been provided to the Commission under Divisions 3, 4 or 7 of Part 5B or any codes or guidelines published under section 53ZTK;

reporting period (申報期) means—

- (a) the period of 1 year to each anniversary of the date on which a person is licensed by the Commission as a licensed person; or
- (b) such other period as may be approved by the Commission by written notice.

(Schedule 3E added 15 of 2022 s. 5)

Schedule 3F

[ss. 53ZSC & 53ZTM]

Auditable Entities—Prescribed Financial Statements and Other Prescribed Documents

1. Interpretation

An expression used in this Schedule, and defined or otherwise explained in Part 5B, has the same meaning as in that Part.

2. Financial statements etc. required to be submitted annually by licensed provider

- (1) For the purposes of section 53ZSC(1)(a), the financial statements and other documents that a licensed provider must prepare, in respect of each financial year, are—
 - (a) a set of accounts consisting of each of the following, prepared in accordance with generally accepted accounting principles—
 - (i) a profit and loss account;
 - (ii) a balance sheet;
 - (iii) notes to the accounts;
 - (b) in so far as applicable, the following returns as required under any codes or guidelines published under section 53ZTK, each made up to the last day of the financial year—
 - (i) a liquid capital computation;
 - (ii) a required liquid capital computation;
 - (iii) a summary of bank loans, advances, credit facilities and other financial accommodation available to it;

- (iv) an analysis of its margin clients (if applicable);
 - (v) an analysis of collateral received from margin clients (if applicable);
 - (vi) an analysis of its rolling balance cash clients;
 - (vii) an analysis of its client assets;
 - (viii) an analysis of its proprietary derivative positions (if applicable); and
- (c) a business and risk management questionnaire.

(2) In this section—

margin client (保證金客戶) means a client to whom the licensed provider provides virtual assets margin financing.

3. Financial statements etc. required to be submitted annually by associated entity

For the purposes of section 53ZSC(1)(a), the financial statements and other documents that an associated entity of a licensed provider must prepare, in respect of each financial year, are—

- (a) a set of accounts consisting of each of the following, prepared in accordance with generally accepted accounting principles—
 - (i) a profit and loss account;
 - (ii) a balance sheet;
 - (iii) notes to the accounts;
- (b) an analysis of client assets as at the end of the financial year; and
- (c) a business and risk management questionnaire.

4. Financial statements etc. required to be submitted by licensed provider on ceasing to provide VA service

For the purposes of section 53ZSC(2)(a), the financial statements and other documents that a licenser provider must prepare if it ceases to provide the VA service for which it is licensed to provide are—

- (a) a set of accounts as referred to in section 2(1)(a) of this Schedule; and
- (b) a liquid capital computation as referred to in section 2(1)(b)(i) of this Schedule.

5. Financial statements etc. required to be submitted by associated entity on ceasing to such entity

For the purposes of section 53ZSC(2)(a), the financial statements and other documents that an associated entity of a licensed provider must prepare if it ceases to be such an associated entity are—

- (a) a set of accounts as referred to in section 3(a) of this Schedule; and
- (b) an analysis of client assets as referred to in section 3(b) of this Schedule.

6. Requirements applicable to prescribed auditor's report

(1) For the purposes of section 53ZSC(1)(b) or (2)(b), a report of the prescribed auditor submitted by a licensed provider or an associated entity of a licensed provider to the Commission must contain a statement by the prescribed auditor as to whether, in the prescribed auditor's opinion—

- (a) the profit and loss account and the balance sheet are in accordance with the records kept by the licensed provider or the associated entity under any codes or guidelines published under section 53ZTK and satisfy the requirements in the codes or guidelines;

- (b) the balance sheet gives a true and fair view of the state of affairs of the licensed provider or the associated entity as at the end of the financial year to which it relates;
 - (c) the profit and loss account gives a true and fair view of the profit or loss of the licensed provider or the associated entity for the financial year to which it relates;
 - (d) in the case of a licensed provider, each of the returns as referred to in section 2(1)(b) or 4(b) of this Schedule is correctly compiled from the records of the licensed provider or, if not correctly compiled, the nature and extent of the incorrectness;
 - (e) in so far as applicable, during the financial year in question, the licensed provider or the associated entity had in place systems of control, including internal controls and trading, custody, accounting and settlement systems, that were adequate to ensure compliance with regulatory requirements relating to client assets under any codes or guidelines published under section 53ZTK;
 - (f) in so far as applicable, during the financial year in question, the licensed provider or the associated entity has complied with regulatory requirements relating to client assets and record keeping under any codes or guidelines published under section 53ZTK; and
 - (g) in the case of a licensed provider, there appears to have been any contravention of regulatory requirements relating to financial resources under any codes or guidelines published under section 53ZTK by the licensed provider during the financial year in question.
- (2) A licensed provider or an associated entity of a licensed provider may submit 2 separate reports of the prescribed auditor in respect of a financial year, one containing a

Anti-Money Laundering and Counter-Terrorist Financing Ordinance

Schedule 3F

S3F-10

Section 6

Cap. 615

statement by the prescribed auditor concerning the matters referred to in subsection (1)(a), (b) and (c) and the other containing a statement by the prescribed auditor concerning the matters referred to in subsection (1)(d), (e), (f) and (g).

(Schedule 3F added 15 of 2022 s. 5)

Schedule 3G

[ss. 53ZR & 53ZTY]

Transitional Arrangements for Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Ordinance 2022

Part 1

Preliminary

1. Interpretation

- (1) An expression used in this Schedule, and defined or otherwise explained in Part 5B, has the same meaning as in that Part.
- (2) In this Schedule—
 - closing-down period* (結業期)—see section 11 of this Schedule;
 - first 9 months* (首9個月) means the period of 9 months beginning on 1 June 2023;
 - first 12 months* (首12個月) means the period of 12 months beginning on 1 June 2023;
 - objection period* (反對限期), in relation to a section 3 notice, section 5 notice or section 7 notice issued by the Commission in respect of a person, means a period specified by the Commission in the notice as the period within which the person may object to the deemed withdrawal of the person's application or applications under section 10 of this Schedule;
 - regulatory requirements* (規管性規定) means requirements under this Ordinance, and codes and guidelines published under section 53ZTK;

section 3 notice (第3條通知)—see section 3(5) of this Schedule;

section 5 notice (第5條通知)—see section 5(5) of this Schedule;

section 7 notice (第7條通知)—see section 7(5) of this Schedule;

specified form (指明格式) means a form specified by the Commission;

VA service (虛擬資產服務) means operating a VA exchange within the meaning of item 1 of Schedule 3B.

Part 2

First 12 Months

2. Section 53ZRD not contravened by continuing pre-existing VA service during first 12 months

- (1) An act by a corporation of carrying on, or holding itself out as carrying on, a business of providing a VA service does not constitute a contravention of section 53ZRD(1) if—
 - (a) the corporation has been carrying on the business of providing the VA service in Hong Kong immediately before 1 June 2023; and
 - (b) the act is done during the first 12 months.
- (2) An act by an individual of performing, or holding himself or herself out as performing, a regulated function in relation to a business, carried on by a corporation, of providing a VA service does not constitute a contravention of section 53ZRD(3) if—
 - (a) because of subsection (1), an act by the corporation done, during the first 12 months, of carrying on the business of providing the VA service does not constitute a contravention of section 53ZRD(1); and

- (b) the act by the individual is done during the first 12 months.
- (3) In subsections (1) and (2), a reference to a corporation does not include one to which a closing-down period under section 11(1), (3) or (4) of this Schedule applies.

Part 3

Persons Deemed to be Licensed or Approved After First 12 Months

3. Transitional arrangements apply to pre-existing provider on certain conditions

- (1) Section 4 of this Schedule applies to a corporation if all of the following conditions are met in relation to the corporation—
 - (a) the corporation has been providing a VA service in Hong Kong immediately before 1 June 2023;
 - (b) within the first 9 months, the corporation—
 - (i) makes an application (*application*) in accordance with section 53ZRK to be licensed to provide the VA service;
 - (ii) gives the Commission a confirmation that the corporation has been providing the VA service in Hong Kong immediately before 1 June 2023; and
 - (iii) gives the Commission a confirmation that the corporation will, on being deemed to be licensed to provide the VA service—
 - (A) comply with the regulatory requirements applicable to a licensed provider of the VA service; and

- (B) have arrangements in place to ensure the corporation complies with the regulatory requirements applicable to a licensed provider of the VA service;
 - (c) the Commission has not issued a section 3 notice under subsection (5) in respect of the corporation's application.
- (2) The condition in subsection (1)(b)(i) is regarded as not met in relation to the corporation if the Commission has not acknowledged receipt in writing that it has received the application.
- (3) If any of the matters specified in subsection (4) are not proved to the Commission's satisfaction in relation to the corporation, the Commission may—
 - (a) decide that section 4 of this Schedule is not to apply to the corporation; and
 - (b) decide to commence the deemed withdrawal procedure under section 10 of this Schedule in respect of the application.
- (4) The matters are that—
 - (a) all of the conditions specified in subsection (1)(a) and (b) are met in relation to the corporation; and
 - (b) the corporation has a reasonable prospect of successfully showing to the Commission that the corporation is capable of complying with the regulatory requirements applicable to a licensed provider of the VA service.
- (5) The Commission must inform the corporation of its decisions under subsection (3) by written notice (*section 3 notice*) given to the corporation.
- (6) The section 3 notice must—
 - (a) state the Commission's decisions referred to in subsection (3) and the reasons for the decisions; and

(b) state that the corporation has a right under section 10 of this Schedule to object to the deemed withdrawal of the application within the objection period.

(7) A section 3 notice may only be issued before the end of the first 12 months.

4. Corporate applicant deemed licensed provider pending determination of application

(1) If, under section 3 of this Schedule, this section applies to a corporation that made an application referred to in subsection (1)(b)(i) of that section, the corporation is deemed, for the period specified in subsection (2), to be licensed under section 53ZRK to provide the VA service to which the application relates.

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

(a) begins on the day immediately following the first 12 months; and

(b) ends on the day on which one of the following events happens (whichever happens first)—

(i) the corporation's application under section 53ZRK is withdrawn;

(ii) a refusal of the corporation's application under section 53ZRK takes effect as a specified decision under section 75;

(iii) a licence is granted to the corporation under section 53ZRK.

(3) During the period the corporation is deemed under this section to be licensed—

(a) the requirement in section 53ZRQ(1) does not apply in respect of the corporation;

- (b) the premises in respect of which an application is lodged under section 53ZRR(2) are deemed to be approved; and
 - (c) the corporation is deemed to have complied with section 53ZRR(1) in relation to the premises.
- (4) During the period the corporation is deemed under this section to be licensed and, if the corporation is granted a licence under section 53ZRK to provide the VA service, even after that, the day immediately following the first 12 months is to be regarded—
- (a) for the purposes of section 53ZRY(1), as the date of the grant of the licence to the corporation, unless another date is approved by the Commission under that section; and
 - (b) for the purposes of section 53ZRY(4), as the date on which the corporation is licensed, unless another date is approved by the Commission under that section.

5. Transitional arrangements apply to representative of pre-existing provider on certain conditions

- (1) Section 6 of this Schedule applies to an individual if all of the following conditions are met in relation to the individual—
- (a) within the first 9 months, the individual—
 - (i) makes an application in accordance with section 53ZRL to be licensed to provide a VA service on behalf of a corporation (*corporation*), but not as a responsible officer on behalf of the corporation;
 - (ii) makes an application in accordance with section 53ZRM to be accredited to the corporation;
 - (iii) gives the Commission a confirmation that the individual is providing the VA service in Hong Kong on behalf of the corporation at

-
- the time the individual's applications referred to in subparagraphs (i) and (ii) (*individual's applications*) are made; and
- (iv) gives the Commission a confirmation that the individual will, on being deemed to be so licensed comply with the regulatory requirements applicable to a licensed representative of a licensed provider of the VA service;
- (b) the individual's applications are made in connection with an application by the corporation to be licensed to provide the VA service;
- (c) the individual is providing the VA service in Hong Kong on behalf of the corporation at the time the individual's applications are made;
- (d) under section 3(1) of this Schedule, section 4 of this Schedule applies to the corporation;
- (e) the Commission has not issued a section 5 notice under subsection (5) in respect of the individual's applications.
- (2) A condition in subsection (1)(a)(i) or (ii) is regarded as not met in relation to the individual if the Commission has not acknowledged receipt in writing that it has received the application referred to in that subsection.
- (3) If any of the matters specified in subsection (4) are not proved to the Commission's satisfaction in relation to the individual, the Commission may—
- (a) decide that section 6 of this Schedule is not to apply to the individual; and
- (b) decide to commence the deemed withdrawal procedure under section 10 of this Schedule in respect of the individual's applications.
- (4) The matters are that—

- (a) all of the conditions specified in subsection (1)(a), (b), (c) and (d) are met in relation to the individual; and
 - (b) the individual has a reasonable prospect of successfully showing to the Commission that the individual is capable of complying with the regulatory requirements applicable to a licensed representative of a licensed provider of the VA service.
- (5) The Commission must inform the individual of its decisions under subsection (3) by written notice (*section 5 notice*) given to the individual.
- (6) The section 5 notice must—
- (a) state the Commission’s decisions referred to in subsection (3) and the reasons for the decisions; and
 - (b) state that the individual has a right under section 10 of this Schedule to object to the deemed withdrawal of the individual’s applications within the objection period.
- (7) A section 5 notice may only be issued before the end of the first 12 months.

6. Individual applicant deemed licensed representative pending determination of application

- (1) If, under section 5 of this Schedule, this section applies to an individual who made applications referred to in subsection (1)(a)(i) and (ii) of that section, the individual is deemed for the period specified in subsection (2)—
- (a) to be licensed as a licensed representative under section 53ZRL to provide the VA service on behalf of the corporation to which the applications relate; and
 - (b) to be accredited to the corporation.
- (2) The period specified for the purposes of subsection (1)—

- (a) begins on the first day of the period for which the corporation is deemed under section 4 of this Schedule to be licensed to provide the VA service; and
- (b) ends on the day on which one of the following events happens (whichever happens first)—
 - (i) the period for which the corporation is deemed under section 4 of this Schedule to be licensed to provide the VA service ends;
 - (ii) the individual’s application under section 53ZRL is withdrawn;
 - (iii) the individual’s application under section 53ZRM is withdrawn;
 - (iv) a refusal of the individual’s application under section 53ZRL or 53ZRM takes effect as a specified decision under section 75;
 - (v) the individual ceases, on or after the day immediately following the first 12 months, to act for or on behalf of the corporation in relation to the VA service;
 - (vi) the individual is granted a licence under section 53ZRL to provide the VA service on behalf of the corporation.
- (3) During the period the individual is deemed to be licensed under this section and, if the individual is granted a licence under section 53ZRL to perform a regulated function in relation to the provision of the VA service, even after that, the day immediately following the first 12 months is to be regarded—
 - (a) for the purposes of section 53ZRY(1), as the date of the grant of the individual’s licence, unless another date is approved by the Commission under that section; and

- (b) for the purposes of section 53ZRY(4), as the date of the grant of the individual's licence, unless another date is approved by the Commission under that section.

7. Transitional arrangements apply to individual applying to be responsible officer of pre-existing provider on certain conditions

- (1) Section 8 of this Schedule applies to an individual if all of the following conditions are met in relation to the individual—

- (a) within the first 9 months, the individual—
 - (i) makes an application in accordance with section 53ZRL to be licensed to provide a VA service on behalf of a corporation (*subparagraph (i) corporation*);
 - (ii) makes an application in accordance with section 53ZRM to be accredited to the subparagraph (i) corporation;
 - (iii) makes an application referred to in section 53ZRP for approval as a responsible officer in relation to the subparagraph (i) corporation;
 - (iv) gives the Commission a confirmation that the individual has been providing the VA service in Hong Kong on behalf of a corporation that was providing the VA service immediately before 1 June 2023;
 - (v) gives the Commission a confirmation that the individual is providing the VA service in Hong Kong on behalf of the subparagraph (i) corporation at the time the individual's applications referred to in subparagraphs (i), (ii) and (iii) (*individual's applications*) are made; and
 - (vi) gives the Commission a confirmation that the individual will, on being deemed to be so licensed,

- comply with the regulatory requirements applicable to a licensed representative and responsible officer of a licensed provider of the VA service;
- (b) the individual's applications are made in connection with an application by the subparagraph (i) corporation to be licensed to provide the VA service;
 - (c) the individual has been providing the VA service in Hong Kong on behalf of a corporation that was providing the VA service immediately before 1 June 2023;
 - (d) the individual is providing the VA service in Hong Kong on behalf of the subparagraph (i) corporation at the time the individual's applications are made;
 - (e) under section 3(1) of this Schedule, section 4 of this Schedule applies to the subparagraph (i) corporation; and
 - (f) the Commission has not issued a section 7 notice under subsection (5) in respect of the individual's applications.
- (2) A condition in subsection (1)(a)(i), (ii) or (iii) is regarded as not met in relation to the individual if the Commission has not acknowledged receipt in writing that it has received the application referred to in that subsection.
- (3) If any of the matters specified in subsection (4) are not proved to the Commission's satisfaction in relation to the individual, the Commission may—
- (a) decide that section 8 of this Schedule is not to apply to the individual; and
 - (b) decide to commence the deemed withdrawal procedure under section 10 of this Schedule in respect of the individual's applications.
- (4) The matters are that—

- (a) all of the conditions specified in subsection (1)(a), (b), (c), (d) and (e) are met in relation to the individual; and
 - (b) the individual has a reasonable prospect of successfully showing to the Commission that the individual is capable of complying with the regulatory requirements applicable to a licensed representative and responsible officer of a licensed provider of the VA service.
- (5) The Commission must inform the individual of its decisions under subsection (3) by written notice (*section 7 notice*) given to the individual.
- (6) The section 7 notice must—
- (a) state the Commission’s decisions referred to in subsection (3) and the reasons for the decisions; and
 - (b) state that the individual has a right under section 10 of this Schedule to object to the deemed withdrawal of the individual’s applications within the objection period.
- (7) A section 7 notice may only be issued before the end of the first 12 months.

8. Individual applicant deemed approved as responsible officer pending determination of applications

- (1) If, under section 7 of this Schedule, this section applies to an individual who made applications referred to in subsection (1)(a)(i), (ii) and (iii) of that section, the individual is deemed for the period specified in subsection (2)—
- (a) to be licensed as a licensed representative under section 53ZRL to provide the VA service on behalf of the corporation to which the applications relate;
 - (b) to be accredited to the corporation; and
 - (c) to be approved as a responsible officer of the corporation.

- (2) The period specified for the purposes of subsection (1)—
- (a) begins on the first day of the period for which the corporation is deemed under section 4 of this Schedule to be licensed to provide the VA service; and
 - (b) ends on the day on which one of the following events happens (whichever happens first)—
 - (i) the period for which the corporation is deemed under section 4 of this Schedule to be licensed to provide the VA service ends;
 - (ii) the individual’s application under section 53ZRL is withdrawn;
 - (iii) the individual’s application under section 53ZRM is withdrawn;
 - (iv) the individual’s application under section 53ZRP to be approved as a responsible officer is withdrawn;
 - (v) a refusal of the individual’s application under section 53ZRL, 53ZRM or 53ZRP takes effect as a specified decision under section 75;
 - (vi) the individual is granted a licence under section 53ZRM to provide the VA service on behalf of the corporation and the individual is approved under section 53ZRP as a responsible officer;
 - (vii) the individual ceases, on or after the day immediately following the first 12 months, to act for or on behalf of the corporation in relation to the VA service.
- (3) During the period the individual is deemed to be licensed under this section and, if the individual is granted a licence under section 53ZRL to perform a regulated function in relation to the provision of the VA service, even after that,

the day immediately following the first 12 months is to be regarded—

- (a) for the purposes of section 53ZRY(1), as the date of the grant of the individual's licence, unless another date is approved by the Commission under that section; and
- (b) for the purposes of section 53ZRY(4), as the date of the grant of the individual's licence, unless another date is approved by the Commission under that section.

9. Application of Ordinance to deemed persons

- (1) If a person is deemed for a period to be licensed to provide a VA service under section 4, 6 or 8 of this Schedule, this Ordinance applies to, and in relation to, that person as if the person were licensed, for that period, to provide the VA service under this Ordinance.
- (2) Subsection (1) has effect subject to sections 4(3) and (4), 6(3) and 8(3) of this Schedule.
- (3) If an individual is deemed for a period to be approved as a responsible officer under section 8 of this Schedule, this Ordinance applies to, and in relation to, that individual as if the individual were approved, for that period, as a responsible officer under this Ordinance.

10. Deemed withdrawal of applications

- (1) This section applies if—
 - (a) a person (*applicant*) has made an application or applications referred to in subparagraph (i), (ii) or (iii) (referred to in each case as *specified application*)—
 - (i) an application made in accordance with section 53ZRK to be licensed to provide a VA service;
 - (ii) both—

- (A) an application made in accordance with section 53ZRL for a licence to provide a VA service, but not as a responsible officer of a corporation providing the VA service; and
 - (B) an application made in accordance with section 53ZRM for accreditation to a corporation;
- (iii) all of the following—
 - (A) an application made in accordance with section 53ZRL for a licence to provide a VA service;
 - (B) an application made in accordance with section 53ZRM for accreditation to a corporation;
 - (C) an application referred to in section 53ZRP for approval as a responsible officer in relation to the corporation; and
- (b) the Commission has given, to the applicant in respect of the applicant's specified application, a specified notice, that is to say—
 - (i) if paragraph (a)(i) applies, a section 3 notice;
 - (ii) if paragraph (a)(ii) applies, a section 5 notice; or
 - (iii) if paragraph (a)(iii) applies, a section 7 notice.
- (2) On receiving a specified notice, an applicant may object to the deemed withdrawal of the applicant's specified application by giving to the Commission a written notice in the specified form within the objection period.
- (3) If the objection period in relation to the specified notice expires without the applicant having raised an objection in accordance with subsection (2), the applicant's specified application is to be regarded as having been withdrawn.

- (4) If the applicant objects to the deemed withdrawal within the objection period in accordance with subsection (2), the Commission must determine the specified application in accordance with (as the case requires)—
- (a) section 53ZRK;
 - (b) sections 53ZRL and 53ZRM; or
 - (c) sections 53ZRL, 53ZRM and 53ZRP.

Part 4

Closing Down if Corporation Not Deemed, or No Longer Deemed, to be Licensed

11. Duration of closing-down period

- (1) If a corporation makes an application to be licensed for a VA service under section 53ZRK and a section 3 notice is issued in respect of the application, the closing-down period applicable to the corporation—
- (a) begins on the day on which the section 3 notice is issued (*start day*); and
 - (b) subject to section 14 of this Schedule, ends on the later of the following—
 - (i) the expiry of the first 12 months;
 - (ii) the expiry of the 3 months beginning on the start day.
- (2) Subsection (1) applies whether or not the corporation has objected to the deemed withdrawal of the application in accordance with section 10 of this Schedule.
- (3) If—

- (a) a corporation has made an application to be licensed for a VA service under section 53ZRK and is deemed under section 4 of this Schedule to be licensed for the VA service; and
 - (b) the corporation has withdrawn the application, the closing-down period applicable to the corporation is, subject to section 14 of this Schedule, the period of 3 months beginning on the day on which the application is withdrawn.
- (4) If—
 - (a) the corporation has made an application to be licensed for a VA service under section 53ZRK and is deemed under section 4 of this Schedule to be licensed for the VA service; and
 - (b) on the refusal of the application (*decision*), the corporation—
 - (i) does not apply for a review of the decision; or
 - (ii) applies for a review of the decision but the decision is confirmed on review,the closing-down period applicable to the corporation is, subject to section 14 of this Schedule, the period of 3 months beginning on the day on which the decision takes effect as a specified decision under section 75.

12. Section 53ZRD not contravened by closing down business during closing-down period

- (1) An act, by a corporation to which section 11 of this Schedule applies, of carrying on, or holding itself out as carrying on, a business of providing a VA service does not constitute a contravention of section 53ZRD(1) if—
 - (a) the act is done during the closing-down period applicable to the corporation; and

- (b) the act is done solely for the purpose of closing down the business that is connected with the VA service.
 - (2) Subsection (3) applies to an individual if—
 - (a) in connection with an application made by a corporation to be licensed to provide a VA service under section 53ZRK, the individual has made the following applications—
 - (i) an application under section 53ZRL, to be licensed to provide the VA service on behalf of the corporation;
 - (ii) an application under section 53ZRM to be accredited to the corporation; and
 - (b) the corporation is one to which a closing-down period under section 11(1), (3) or (4) of this Schedule applies (*closing-down period corporation*).
 - (3) An act, by an individual referred to in subsection (2), of performing, or holding himself or herself out as performing, a regulated function in relation to a business, carried on by the closing-down period corporation, of providing a VA service does not constitute a contravention of section 53ZRD(3) if—
 - (a) the act is done during the closing-down period applicable to the closing-down period corporation; and
 - (b) the act is done solely for the purpose of closing down the business, of the closing-down period corporation, that is connected with that VA service.

13. Section 53ZRD not contravened by individual assisting to close down business in certain circumstances

- (1) Subject to subsection (2), an individual (*specified individual*) who does an act in relation to the carrying on, by a closing-

down period corporation, of a business of providing a VA service does not contravene section 53ZRD(3) if—

- (a) the act is done during the closing-down period applicable to the closing-down period corporation; and
 - (b) the act is done solely for the purpose of closing down the business, of the closing-down period corporation, that is connected with the VA service.
- (2) Subsection (1) applies only if—
- (a) no individual referred to in section 12(2) of this Schedule is able to assist the closing-down period corporation to close down that business; and
 - (b) the closing-down period corporation has given prior written notice to the Commission that the specified individual would be assisting the corporation, and the corporation has received from the Commission a written acknowledgement of receipt of the notice.

- (3) In this section—

closing-down period corporation (結業期法團) means a corporation in respect of which section 11 of this Schedule specifies an applicable closing-down period.

14. Extension of closing-down period

- (1) A corporation, in respect of which section 11 of this Schedule specifies an applicable closing-down period, may apply to the Commission for an extension of that closing-down period.
- (2) An application under subsection (1) must be made, in writing, before the end of the closing-down period applicable to the corporation (if applicable, as extended under this section).
- (3) On receiving the application, the Commission may extend the closing-down period applicable to the corporation for a period

that the Commission considers appropriate, having regard to the circumstances of the corporation's business and activities.

- (4) For the purposes of sections 12 and 13 of this Schedule, the closing-down period applicable to the corporation must be taken to include the period as extended under this section.

15. Requirements imposed by Commission

- (1) The Commission may, by a written notice served on a corporation to which, or an individual to whom, section 12 or 13 applies, impose on the corporation or individual (*recipient*) one or more of the requirements specified in subsection (2).
- (2) The requirements that the Commission may impose are—
- (a) to require the recipient to provide the VA service concerned in a specified manner;
 - (b) to require the recipient not to provide the VA service concerned in a specified manner;
 - (c) to require the recipient who is a corporation to deal with or refrain from dealing with, any assets whether in Hong Kong or elsewhere and whether or not they are the recipient's assets, in a specified manner; and
 - (d) to require the recipient who is a corporation to maintain assets in Hong Kong or a specified place outside Hong Kong so that—
 - (i) the assets are of a value or class or description that appear to be desirable to the Commission for the purpose of ensuring that the recipient will be able to meet the recipient's liabilities in respect of the business in the VA service concerned carried on by that recipient; and

- (ii) the assets are maintained in a manner that will enable the recipient at any time to freely transfer or otherwise dispose of the assets.
- (3) Without limiting subsections (1) and (2), the Commission may impose any requirement under subsection (1) to apply during any period within the first 12 months if the period forms part of the closing-down period applicable to—
 - (a) the corporation on which the requirements are imposed; or
 - (b) if the requirements are imposed on an individual acting in relation to the carrying on, by a corporation, of a business of providing a VA service—the corporation.
- (4) Any corporation or individual who fails to comply with a requirement imposed under subsection (1) commits an offence.
- (5) A corporation that commits an offence under subsection (4) is liable—
 - (a) on conviction on indictment to a fine of \$10,000,000; or
 - (b) on summary conviction to a fine of \$500,000.
- (6) An individual who commits an offence under subsection (4) is liable—
 - (a) on conviction on indictment to a fine of \$10,000,000 and to imprisonment for 7 years; or
 - (b) on summary conviction to a fine of \$500,000 and to imprisonment for 6 months.

(Schedule 3G added 15 of 2022 s. 5)

Schedule 3H

[ss. 53ZTZ & 53ZVQ]

Amount Specified for Definition of *specified cash transaction*

\$120,000 or an equivalent amount in another currency

(Schedule 3H added 15 of 2022 s. 5)

Schedule 3I

[ss. 53ZTZ & 53ZVQ]

Amount Specified for Definition of *specified transaction*

\$120,000 or an equivalent amount in another currency

(Schedule 3I added 15 of 2022 s. 5)

Schedule 3J

[ss. 53ZUB, 53ZVK &
53ZVQ]

Information to be Provided in Cash Transaction Report

Part 1

Information

1. Information to be provided

A cash transaction report, in relation to a specified cash transaction (*transaction*) carried out by a non-Hong Kong precious metals and stones dealer (*dealer*) with a customer (*customer*), must contain the following information—

- (a) basic information of the dealer;
- (b) travel information of each specified individual (as defined by section 53ZVK(4)) in relation to the transaction—
 - (i) last port before arrival in Hong Kong;
 - (ii) scheduled next port after departure from Hong Kong;
 - (iii) date of arrival in Hong Kong;
 - (iv) scheduled date of departure from Hong Kong; and
 - (v) particulars of means of transport used on arrival and departure (such as flight numbers, vehicle registration numbers and vessel names);
- (c) information on the transaction, including—
 - (i) transaction date;

- (ii) descriptions of the precious metals, precious stones, precious products or precious-asset-backed instruments traded;
 - (iii) amount of payment or payments in cash; and
 - (iv) address of the place where the transaction was carried out;
- (d) basic information of the customer.

Part 2

Interpretation

2. Interpretation

- (1) An expression used in this Schedule, and defined or otherwise explained in Part 5C, has the same meaning as in that Part.
- (2) In this Schedule—
 - basic information* (基本資料)—
 - (a) in relation to an individual, means the following particulars of the individual—
 - (i) full name;
 - (ii) number and place of issue of travel document;
 - (iii) nationality;
 - (iv) date and place of birth;
 - (v) domicile or place of permanent residence;
 - (vi) address in Hong Kong; or
 - (b) in relation to a person who is not an individual, means the following particulars of the person—
 - (i) name;

Anti-Money Laundering and Counter-Terrorist Financing Ordinance

Schedule 3J—Part 2

S3J-6

Section 2

Cap. 615

- (ii) address of the principal place of business of the person;
- (iii) if the person is a corporation, address of the registered office (or its equivalent) of the person in its place of incorporation;
- (iv) the following particulars of each individual acting on behalf of the person in the transaction—
 - (A) full name;
 - (B) the individual's identification document number and, if the individual's identification document is a travel document, place of issue of the travel document;
 - (C) capacity in which the individual acted for the dealer;
 - (D) address in Hong Kong.

(Schedule 3J added 15 of 2022 s. 5)

Schedule 3K

[ss. 53ZUB, 53ZUD, 53ZUF,
53ZUH, 53ZUL, 53ZUS,
53ZUZ & 53ZVQ]

Fees in relation to Part 5C

Part 1

Fees

Column 1	Column 2	Column 3
Item	Particulars of matter	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	\$1.3 per page or portion of a page
3.	For providing a certificate specified in section 53ZUD(1)(b)	\$160 per copy
4.	Application for registration as a Category A registrant	\$260

Anti-Money Laundering and Counter-Terrorist Financing Ordinance

Schedule 3K—Part 1

S3K-4

Cap. 615

Column 1	Column 2	Column 3
Item	Particulars of matter	Fee
5.	Annual fee payable by a Category A registrant under section 53ZUH	\$195
6.	Application for registration—	
	(a) as a Category B registrant	\$1,970
	(b) plus for each person who is subject to the fit and proper test	\$650
7.	Application for the renewal of registration—	
	(a) as a Category B registrant	\$1,060
	(b) plus for each person who is subject to the fit and proper test	\$650
8.	Application for an approval to become a Category B registrant's ultimate owner	\$690 for each person in relation to whom the application is made

Anti-Money Laundering and Counter-Terrorist Financing Ordinance

Schedule 3K—Part 2

S3K-6

Section 1

Cap. 615

Column 1	Column 2	Column 3
Item	Particulars of matter	Fee
9.	Application for an approval to become a Category B registrant's partner	\$690 for each person in relation to whom the application is made
10.	Application for an approval to become a Category B registrant's director	\$690 for each person in relation to whom the application is made

Part 2

Interpretation

1. Interpretation

An expression used in this Schedule, and defined or otherwise explained in Part 5C, has the same meaning as in that Part.

(Schedule 3K added 15 of 2022 s. 5)

Schedule 4

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

Provisions Relating to Anti-Money Laundering and Counter-Terrorist Financing Review Tribunal

(Amended 4 of 2018 s. 28)

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; (*Replaced 12 of 2015 s. 164. Amended 4 of 2018 s. 28*)
 - (d) in relation to the Commissioner, means a public officer employed in the Customs and Excise Department; and (*Amended 4 of 2018 s. 28*)
 - (e) in relation to the Registrar, means a public officer employed in the Companies Registry. (*Added 4 of 2018 s. 28*)

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.