

PART 20

MISCELLANEOUS

Division 1 – Miscellaneous Offences

20.1 Offence for false statement

(1) A person commits an offence if, in any return, report, financial statement, certificate or other document, required by or for the purposes of any provision of this Ordinance, the person knowingly or recklessly makes a statement that is misleading, false or deceptive in any material particular.

- (2) A person who commits an offence under subsection (1) is liable –
- (a) on conviction on indictment to a fine of \$300,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (3) This section does not affect the operation of –
- (a) Part V of the Crimes Ordinance (Cap. 200); or
 - (b) section 19, 20 or 21 of the Theft Ordinance (Cap. 210).

20.2 Offence for improper use of “Limited”, “Corporation” or “Incorporated”

- (1) A person commits an offence if the person –
- (a) is not incorporated with limited liability; and
 - (b) uses, trades or carries on business under a name or title of which –
 - (i) the word “Limited”, or a contraction or imitation of that word, is the last word;
 - (ii) the Chinese version of the word “Limited”, or of a contraction or imitation of that word, is the last word; or

- (iii) the Chinese characters “有限公司” form part.
- (2) A person commits an offence if the person –
 - (a) is not incorporated; and
 - (b) uses, trades or carries on business under a name or title of which –
 - (i) the word “Corporation” or “Incorporated”, or a contraction or imitation of that word, is the last word;
 - (ii) the Chinese version of the word “Corporation” or “Incorporated”, or of a contraction or imitation of that word, is the last word; or
 - (iii) the Chinese characters “註冊公司” or “法人團體” form part.

(3) A person who commits an offence under subsection (1) or (2) is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

Division 2 – Miscellaneous Provisions Relating to Investigation or Enforcement Measures

20.3 Court may order inspection or production of documents if offence suspected

- (1) The Court of First Instance may, on application by the Secretary for Justice, make an order under subsection (2) or (3) if it is satisfied that –
- (a) there is reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the company’s affairs; and
 - (b) evidence of the commission of the offence is to be found in –

- (i) any books or papers of, or under the control of, the company; or
- (ii) any books or papers of a person carrying on a banking business, which relate to the company's affairs.

(2) The Court of First Instance may, in the case of books or papers mentioned in subsection (1)(b)(i), make an order –

- (a) authorizing a person named in the order to inspect the books or papers, or any of them, for the purpose of investigating and obtaining evidence of the offence; or
- (b) requiring the secretary of the company, or any other officer of the company named in the order, to produce the books or papers, or any of them, to a person, and at a place, named in the order.

(3) The Court of First Instance may, in the case of books or papers mentioned in subsection (1)(b)(ii), make an order authorizing a person named in the order to inspect the books or papers, or any of them, for the purpose of investigating and obtaining evidence of the offence.

20.4 Enforcement of requirements by order of Court

(1) This section applies if a company or an officer of a company contravenes a requirement of this Ordinance –

- (a) to deliver a document to the Registrar; or
- (b) to give notice to the Registrar of any matter.

(2) The Registrar, or a member or creditor of the company, may serve a notice on the company or officer requiring the company or officer to comply with the requirement.

(3) If the company or officer fails to make good the contravention within 14 days after service of the notice, the Court of First Instance may, on

application by the Registrar, or by a member or creditor of the company, make an order –

- (a) in the case of a contravention by the company, directing the company and any officer of the company to make good the contravention within the time specified in the order; or
- (b) in the case of a contravention by the officer, directing the officer to make good the contravention within the time specified in the order.

(4) An order may provide that all costs of and incidental to the application are to be borne –

- (a) in the case of a contravention by the company, by the company or by any officer of the company responsible for the contravention; or
- (b) in the case of a contravention by the officer, by that officer.

(5) This section does not affect the operation of any Ordinance imposing penalties on a company or any officer of a company in respect of the contravention.

20.5 Registrar may give notice to suspected offender about not instituting proceedings under certain conditions

(1) If the Registrar has reason to believe that a person has committed an offence specified in the Schedule,¹ the Registrar may give the person a notice in writing that –

- (a) alleges that the person has committed an offence specified in the Schedule, and contains the particulars of the offence;
- (b) contains the terms of the notice by reference to subsection (5) or (6);

¹ There will be a Schedule for the applicable offences in the Bill.

- (c) specifies the period and amount for the purposes of that subsection; and
 - (d) contains any other information that the Registrar thinks fit.
- (2) A notice may be given only before the proceedings on the offence commence.
- (3) The Registrar may, by a further notice in writing, extend the period specified under subsection (1)(c). This power is exercisable within, or after the end of, that period.
- (4) A notice under subsection (1) may not be withdrawn within the period specified in the notice or that period as extended under subsection (3).
- (5) Where the offence is an offence constituted by a failure to do an act or thing –
 - (a) no proceedings will be instituted against the person in respect of that offence if, within the period specified in a notice under subsection (1) or that period as extended under subsection (3), the person pays to the Registrar the amount specified in the notice and does the act or thing; or
 - (b) proceedings may be instituted against the person in respect of that offence if, within the period specified in a notice under subsection (1) or that period as extended under subsection (3), the person has not paid to the Registrar the amount specified in the notice or has not done the act or thing.
- (6) Where the offence is not an offence constituted by a failure to do an act or thing –
 - (a) no proceedings will be instituted against the person in respect of that offence if, within the period specified in a notice under subsection (1) or that period as extended under subsection (3), the person pays to the Registrar the amount specified in the notice; or

(b) proceedings may be instituted against the person in respect of that offence if, within the period specified in a notice under subsection (1) or that period as extended under subsection (3), the person has not paid to the Registrar the amount specified in the notice.

(7) The payment of an amount specified in a notice given to a person under subsection (1) is not to be regarded as an admission by the person of any liability for the offence alleged in the notice to have been committed by the person.

(8) The Financial Secretary may, by notice published in the Gazette, amend the Schedule.

20.6 Limitation on commencement of proceedings

(1) Despite section 26 of the Magistrates Ordinance (Cap. 227), an information or complaint relating to an offence under this Ordinance may be tried if it is laid before or made to a magistrate –

- (a) within 3 years after the commission of the offence; and
- (b) within 12 months after the date on which the supporting evidence came to the Secretary for Justice’s knowledge.

(2) For the purposes of this section, a certificate of the Secretary for Justice as to the date on which the supporting evidence came to the Secretary’s knowledge is conclusive evidence of that date.

(3) This section does not apply to –

- (a) an indictable offence; or
- (b) an offence triable either on indictment or summarily.

(4) In this section –

“supporting evidence” (助控證據) means evidence sufficient, in the Secretary for Justice’s opinion, to justify the proceedings.

20.7 Application of fines

(1) When imposing a fine under this Ordinance, the court or magistrate may direct that the whole or any part of the fine is to be applied –

- (a) in or towards payment of the costs of the proceedings; or
- (b) in or towards rewarding the person on whose information, or at whose suit, the fine is recovered.

(2) Subject to a direction under subsection (1), a fine under this Ordinance must be paid into the general revenue.

(3) Subsection (2) has effect despite anything in any other Ordinance.

(4) In this section –

“court” (法院) means the Court of First Instance or the District Court.

Division 3 – Other Miscellaneous Provisions

20.8 Interpretation

In this Division –

“misconduct” (不當行為) means negligence, default, breach of duty or breach of trust;

“specified person” (指明人士) means –

- (a) an officer of a company; or
- (b) a person employed by a company as an auditor.

20.9 Court may require costs in action by company etc.

(1) This section applies where –

- (a) a company is a plaintiff in an action or other legal proceedings; and
- (b) it appears, by credible testimony, to the court having jurisdiction in the matter that there is reason to believe the company will be unable to pay the defendant’s costs if the defendant succeeds in the defence.

- (2) That court may –
 - (a) require sufficient security to be given for those costs; and
 - (b) stay all proceedings until the security is given.

(3) In this section –
“company” (公司) means –

- (a) a limited company; or
- (b) a company incorporated outside Hong Kong.

**20.10 Court may grant company officer etc.
relief in proceedings for misconduct**

(1) This section applies if, in any proceedings for any misconduct against a specified person, it appears to the Court of First Instance that the person –

- (a) is or may be liable for the misconduct;
- (b) has acted honestly and reasonably; and
- (c) ought fairly to be excused for the misconduct, having regard to all the circumstances of the case (including those connected with the person’s appointment).

(2) The Court of First Instance may relieve the specified person, either wholly or partly, from the liability on the terms that the Court thinks fit.

- (3) If the case is tried by a judge with a jury, the judge may –
- (a) withdraw the case in whole or in part from the jury; and
 - (b) direct judgment to be entered for the specified person on the terms as to costs or otherwise that the judge thinks fit.

**20.11 Court may grant company officer etc.
relief for misconduct on officer’s application**

(1) A specified person may apply to the Court of First Instance for relief if the person has reason to apprehend that a claim will or might be made against the person for any misconduct.

(2) On an application, the Court of First Instance may relieve the specified person, either wholly or partly, from the liability on the terms that the Court thinks fit if it appears to the Court that the person –

- (a) is or may be liable for the misconduct;
- (b) has acted honestly and reasonably; and
- (c) ought fairly to be excused for the misconduct, having regard to all the circumstances of the case (including those connected with the person's appointment).

20.12 Saving as to private prosecution

Nothing in this Ordinance relating to the institution of criminal proceedings by the Secretary for Justice precludes any person from instituting or carrying on any such proceedings.

20.13 Saving for privileged communication

If proceedings are instituted under this Ordinance against any person by the Secretary for Justice, nothing in this Ordinance is regarded as requiring any person to disclose any information that the person is entitled to refuse to disclose on grounds of legal professional privilege.

20.14 Power to make regulations

The Financial Secretary may make regulations for any matter required or permitted to be prescribed by the Financial Secretary under this Ordinance.