

LEGISLATIVE COUNCIL BRIEF

**Anti-Money Laundering and Counter-Terrorist Financing Ordinance
(Chapter 615)**

ANTI-MONEY LAUNDERING AND COUNTER- TERRORIST FINANCING (AMENDMENT) BILL 2022

INTRODUCTION

At the meeting of the Executive Council on 14 June 2022, the Council ADVISED and the Chief Executive ORDERED that the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022 (the Amendment Bill) at **Annex** should be introduced into the Legislative Council (LegCo).

JUSTIFICATIONS

Hong Kong's Compliance with International Anti-Money Laundering and Counter-Terrorist Financing Standards

2. The Amendment Bill aims to enhance Hong Kong's regulatory regime for combating money laundering and terrorist financing (ML/TF) in fulfilment of Hong Kong's obligations under the Financial Action Task Force (FATF). The FATF is an inter-governmental body established in 1989 that sets international standards for combating ML/TF. Comprising 39 major economies of the world, the FATF oversees the implementation of the FATF Standards, promulgated in the form of 40 Recommendations and 11 Immediate Outcomes, through mutual evaluations (i.e. a peer-review process) conducted by member jurisdictions. Failure to comply with FATF Standards, whether in technical terms or effectively, is subject to scrutiny by the international community and runs the risk of being placed on the FATF's blacklist for possible countermeasures by member jurisdictions.

3. The FATF conducted a Mutual Evaluation on Hong Kong in 2018-19 to assess the compliance of Hong Kong's anti-money laundering and counter-terrorist financing (AML/CTF) regime with the FATF Standards. While the FATF recognised the strengths of Hong Kong's AML/CTF regime, they also highlighted, among other things, the absence of a statutory AML/CTF regulatory regime for dealers in precious metals and stones (DPMS) as a deficiency that should be addressed.

4. Moreover, the FATF updates its standards from time to time to combat emerging ML/TF risks. A latest addition to the FATF Standards was introduced in February 2019, requiring jurisdictions to subject virtual asset service providers (VASPs) to the same range of AML/CTF obligations that are currently applicable to financial institutions and designated non-financial businesses and professions (DNFBPs)¹. Member jurisdictions are expected to introduce AML/CTF regulation for VASPs as a matter of priority in view of the sector's rising risks to the international financial system.

5. Under the FATF Standards on VASPs, in managing and mitigating the risks from virtual assets (VAs), jurisdictions have the option of either (i) prohibiting VASPs from operating in their jurisdiction; or (ii) licensing or registering them so they are subject to AML/CTF controls and supervision. FATF members may opt for either approach, having regard to their ML/TF profile, as well as other policy goals (such as investor protection or financial stability considerations). In the case of Hong Kong, considering our status as an international financial centre and the development and adoption of VAs that have been taking place, the regulatory approach is considered more in line with our needs and situation.

6. In drawing up the detailed proposal, we have considered the regulatory approach of other economies. Some economies, such as Singapore, the United Kingdom and Japan, have already implemented a regulatory regime for VASPs focusing on AML considerations. The proposed regulatory regime in Hong Kong would be more rigorous and comprehensive. It includes additional elements of investor protection. For

¹ Under FATF's definition, "DNFBPs" cover casinos, accounting professionals, DPMS, estate agents, legal professionals, and trust or company service providers. Hong Kong has no casinos, and apart from DPMS, the rest of the sectors are already regulated under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Chapter 615) (AMLO).

example, the regime will consider applicants' company and management structure, and will also require the business model to be sound, with detailed risk management policies and other listing and counter-market manipulation measures. To further promote investor protection, the regime will at the initial stage stipulate that VASPs can only provide services to professional investors.²

Legislative Proposals

7. In view of the FATF's recommendations and the latest change to FATF Standards set out in paragraphs 3 and 4 above, we propose amending the AMLO to introduce (a) a licensing regime for VASPs; and (b) a registration regime for DPMS, so as to impose statutory AML/CTF obligations on these two sectors. Furthermore, opportunity will be taken to address a number of miscellaneous and technical issues under the AMLO which have been identified in the Mutual Evaluation and other FATF contexts. The key elements of the legislative proposals are set out below.

(A) Licensing Regime for VASPs

Coverage and Regulatory Authority

8. In the FATF parlance, a VASP is a person who, as a business, engages in specified activities involving VAs. The specified activities cover (i) exchange between VAs and fiat currencies; (ii) exchange between one or more forms of VAs; (iii) transfer of VAs; (iv) safekeeping and/or administration of VAs or instruments enabling control over VAs; and (v) participation in and provision of financial services related to an issuer's offer and/or sale of a VA. VA is defined by the FATF as "*a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes*".

9. Accordingly, VA will be defined in the AMLO making reference to the key elements set out in the FATF's definition. Moreover, given the rapid development in the VA sector, the Secretary for Financial Services and the Treasury will be empowered to prescribe by notice published in the Gazette whether a particular asset is to be considered a VA under the AMLO.

² Under the Amendment Bill, these requirements may be imposed by the Securities and Futures Commission (SFC) as licence conditions.

10. Having regard to the FATF Standards and the risks presented by VA activities in Hong Kong, we propose that a licence is to be required for the carrying on of a business of operating a VA exchange.³ The SFC is to be the licensing authority and a licence is to be granted subject to the meeting of a fit and proper person test and other regulatory requirements.

Licensing criteria

11. Under the proposed licensing regime, the SFC is to only grant a VASP licence to an applicant subject to its passing of a fit and proper person test. To ensure that the SFC will be able to effectively monitor the operation of a licensed VASP, only locally incorporated companies with a permanent place of business in Hong Kong or companies incorporated elsewhere but registered in Hong Kong under the Companies Ordinance (Chapter 622) is to be considered for the granting of a VASP licence⁴.

12. Making reference to the arrangements for regulating the securities sector, two classes of personnel (designated personnel), namely (i) responsible officers and (ii) licensed representatives, of a VASP are also subject to requirements under the proposed regime. In particular—

- (a) only individuals who have obtained SFC's approval may serve as responsible officers of a VASP. Each VASP applicant is required to have at least two responsible officers who are to assume general responsibility of overseeing the operation of the licensed VASP and ensuring compliance with AML/CTF and other regulatory requirements, and the responsible officers are to be held personally

³ Under the Amendment Bill, a VA service is defined to mean—
“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.”

The Amendment Bill provides for the meaning of VA service to be varied by the Secretary for Financial Services and the Treasury by subsidiary legislation.

⁴ In other words, natural persons or business establishments without a legal personality (e.g. sole proprietors or partnerships), or companies incorporated elsewhere and not registered in Hong Kong, will not be eligible.

accountable in case of non-compliance. Similar to the requirement under the Securities and Futures Ordinance (Chapter 571) (SFO) for licensed corporations, only responsible officers approved by the SFC in relation to a VASP may become executive directors of the VASP; and

- (b) only individuals who are licensed by the SFC to be licensed representatives and whose accreditation to a VASP are approved by the SFC may carry out regulated functions on behalf of the VASP in relation to its carrying on of a business of providing a VA service. In order to be licensed as a licensed representative, an individual is expected to meet qualification requirements as determined by the SFC and should be competent to carry out virtual asset trading services.⁵

Licensing Requirements

13. In the proposed licensing regime, the responsible officers and licensed representatives must be fit and proper to manage the VASP business and engage in the provision of a VA service respectively. The fit and proper person test will also take account of whether the VASP is operated in compliance with the AML/CTF and other regulatory requirements. Hence, the requirements will operate to enhance the overall AML/CTF competency level of the sector, as well as provide a substantial level of investor and customer protection.

Regulatory Requirements

14. Under the proposed regime, the licensed VASP itself and the designated personnel, are to abide by a robust set of regulatory requirements to be imposed as licence conditions by the SFC. In the case of the licensed VASP, the requirements are to cover a wide range of matters including, among other things, that the licensed VASP should have adequate financial resources, knowledge and experience, risk management policies and procedures, VA listing and trading policies, proper financial reporting and disclosure, as well as mechanisms to prevent market manipulative and abusive activities and conflicts of interest.

⁵ Being a licensed representative of a VASP is also a pre-requisite for an individual to be approved as a responsible officer of the VASP.

15. In addition, our plan is to impose requirements on licensed VASPs at the initial stage so they may only offer services to professional investors.⁶ The SFC is also empowered to impose conditions in relation to the approvals of the responsible officers and the licences of licensed representatives to ensure that they will perform their duties in compliance with the AML/CTF and other regulatory requirements.

Open-ended Licence

16. As a licensed VASP will need to make substantive investment in order to acquire the necessary scale and sophistication for operating a competitive VA exchange, a degree of certainty in the operating environment is necessary. As such, we propose that a licensed VASP should be granted an open-ended licence, i.e. one that will remain valid until the licence is revoked by the SFC, for example, due to misconduct or cessation of the licensed VASP's operation. In any case, a licensed VASP will be subject to the SFC's close and ongoing supervision in respect of conduct and operation, and the SFC is to have the power to review and revoke (or suspend) a licence as need be notwithstanding the open-ended nature of the licence. The SFC is to also have the power to take disciplinary actions, including suspension or revocation of licence, against VASPs which are found guilty of misconduct or not fit and proper.

Powers of the SFC

17. For effective implementation of the regime, it is proposed that the SFC be given supervisory powers for enforcing the AML/CTF and other regulatory requirements, including for example the power to enter business premises of the licensed VASP and its associated entities⁷ for conducting routine inspections; to request the production of documents and other records; to investigate non-compliances and to impose disciplinary sanctions (including reprimand, order for remedial actions, civil penalty and suspension or revocation of licence) against licensed persons involved with non-compliances. The SFC may also appoint an auditor to look into the affairs of a licensed VASP and its associated entities if it has reasons to

⁶ The professional investor requirement will be imposed as a regulatory requirement made by the SFC with the power given in the AMLO. In line with SFC's usual practice, the SFC will finalise the detailed regulatory requirements upon the enactment of the amended ordinance, and consult the sector and the public on the whole set of requirements before promulgation.

⁷ Associated entity is a wholly owned subsidiary of the licensed provider to receive or hold client assets of the licensed provider.

believe that the licensed VASP, or any of its associated entities, has failed to comply with any specified requirements⁸.

18. From the angle of investor protection, the default of a VA exchange would bring considerable loss to investors. We therefore see a need to enable the SFC to protect client assets of a licensed VASP in the event of an emergency, and to prevent the dissipation of client assets in case of misconduct on the part of a licensed VASP. Drawing reference from the SFO, it is proposed that the SFC be given intervention powers to impose prohibitions and requirements in relation to the operation of a licensed VASP where the circumstances so warrant. Specifically, the SFC may require the licensed VASP and its associated entities to conduct its business only in a specified manner, prohibit the licensed VASP and its associated entities from entering into any further transactions; restrict the licensed VASP and its associated entities from disposing of client assets and other property. In addition, the powers of SFC to appoint auditors as mentioned above will also serve to assist the SFC in protecting the interests of investors.

Sanctions

19. In the proposed licensing regime, sanctions will apply to deter unlawful practice and non-compliance including, among other things, carrying on a business of providing a VA service⁹ without licence, and non-compliance with AML/CTF requirements.

20. It is proposed that carrying on a business of providing a VA service without a VASP licence should be an offence punishable, on conviction on

⁸ As defined in the Amendment Bill, “*specified requirement*” means—

- (a) any provision of AMLO;
- (b) any provision in any code or guideline published under AMLO;
- (c) any notice, prohibition or requirement given or imposed under or pursuant to any provision of AMLO;
- (d) any conditions of licence imposed by the SFC under or pursuant to any provision in AMLO;
or
- (e) any other condition imposed by the SFC under or pursuant to any provision in AMLO.

⁹ Actively marketing a service, which if provided in Hong Kong would be a VA service, to the Hong Kong public is to be regarded as carrying on a business of providing a VA service.

indictment¹⁰, to a fine of HK\$5 million and to imprisonment for seven years; and, in the case of a continuing offence, to a further fine of HK\$100,000 for every day during which the offence continues. To prevent local investors from being exposed to risks from unlicensed VA exchanges, we propose that the same offence may be constituted by any person actively marketing, whether in Hong Kong or elsewhere, to the public of Hong Kong the service of a VA exchange elsewhere, unless the person is properly licensed by the SFC for the purpose of providing the service. We also propose to make it an offence if a person, in connection with an application for the grant of a licence, makes a false or misleading statement in a material particular, which is to be punishable on conviction on indictment to a fine of HK\$1 million and to imprisonment for two years.

21. In case of non-compliance with the statutory AML/CTF requirements, the licensed VASP and its responsible officers commit offences and each is liable to a fine of HK\$1 million and to imprisonment for two years on conviction on indictment.¹¹ They may also be subject to a range of disciplinary sanctions, including suspension or revocation of licences, reprimand, an order to take remedial action and a pecuniary penalty (not exceeding HK\$10 million, or three times the amount of the profit gained or loss avoided, whichever is the greater) for misconduct such as contravening the AML/CTF or other regulatory requirements.¹²

22. Given the risk of investor fraud associated with VA, we propose to make it an offence for any person to make a fraudulent or reckless misrepresentation for the purpose of inducing another person to acquire or dispose of a VA, whether or not the transaction is conducted (or proposed to be conducted) within or outside a licensed VA exchange. A person who commits this offence is liable to a fine of HK\$1 million and to

¹⁰ For various offences mentioned in this paper, different penalties apply on conviction on indictment and on summary conviction. This paper only sets out penalties on conviction on indictment for conciseness.

¹¹ If the non-compliance is committed with intent to defraud, the licensed VASP or responsible officer is liable to a fine of HK\$1 million and to imprisonment for seven years on conviction on indictment.

¹² Other regulatory requirements include, in relation to a licensed VASP, the terms and conditions of its licence and in relation to a responsible officer (who must also be a licensed representative), the terms and conditions of the officer's licence and conditions imposed in relation to the SFC's approval for him or her as responsible officer.

imprisonment for seven¹³ years.

Review of SFC's Decisions

23. Following the arrangements of all other sectors regulated under the AMLO, it is proposed that decisions made by the SFC in implementing the licensing and supervisory regime for licensed VASPs and their officers should be subject to the established review mechanism of the Anti-Money Laundering and Counter-Terrorist Financing Review Tribunal.

Exemption and Transitional Period

24. Given that VA exchange is a new line of business distinct from the traditional services provided by entities regulated under the AMLO, it is not proposed to grant any exemption in respect of the VASP licensing requirement.

25. The Amendment Bill provides for transitional arrangements for existing operators carrying on a business of operating a VA exchange. If such an operator files an application with the SFC within the first nine months¹⁴ after the commencement of the relevant provisions on the licensing regime and confirms that it will comply with the regulatory requirements set by the SFC, the operator may be deemed to be licensed until the SFC has made a decision on its licence application. The operation by the operator of its VA exchange, while it has a deemed licensed status, would not be considered as contravening the amended AMLO¹⁵.

¹³ The term of imprisonment was proposed to be two years in the consultation document. On further consideration, we consider it more appropriate to be seven years to align with similar provisions of the SFO.

¹⁴ During the public consultation, a transition period of 180 days was proposed. Given the large number of requirements that an applicant has to fulfill in licence application and the highly specialised and technical nature of these requirements, the transitional period is proposed to be adjusted from 180 days to nine months.

¹⁵ Relevant provisions in the Amendment Bill will give SFC the power to issue a notice (specified notice) to unsuitable applicants informing them that they will not have a deemed licensed status. Examples of unsuitable applicants include those who fail to make sufficient rectifications on deficiencies identified by the SFC while processing the applications, and those who do not have a reasonable prospect of complying with the relevant regulatory requirements. These applicants will not have the deemed licensed status and will be required to close down their business by the end of the first 12 months (being the nine-month application period plus a three-month buffer for arranging the closing down of business) after the commencement of the VASP licensing requirement or within 3 months upon the issuance of the specified notice (whichever is longer).

(B) Registration Regime for DPMS in Hong Kong

Scope and Coverage

26. DPMS are among the six categories of DNFBPs appointed by the FATF for AML/CTF regulation primarily due to their involvement in cash-based transactions, which may be abused by criminals to launder and disguise proceeds in valuable commodities (e.g. gold, diamonds or high-value jewellery), or by terrorist and their associates to finance terrorism abroad. Specifically, the FATF requires that DPMS which engage in cash transactions exceeding USD/EUR15,000 (implemented locally as HK\$120,000) with customers should be subject to the same AML obligations as are other DNFBPs.

27. Given the FATF requirement to regulate DPMS, we propose to introduce a registration regime for DPMS whereby any person seeking to carry on a business of dealing in precious metals and precious stones in Hong Kong¹⁶ will be required to register with the Commissioner of Customs and Excise (C of C&E). It will be illegal for any person to carry on a precious metals and stones business in Hong Kong, or hold out to be a registered DPMS, without registration with the C of C&E. The proposed registration regime, under which there are to be two categories of registrants, will allow the C of C&E to separate DPMS who seek to engage in cash transactions at or above HK\$120,000 in the course of their business (and would thus pose higher risks) from those posing lower risks for AML/CTF supervision, while maintaining an up-to-date understanding of the overall sectoral landscape as required by the FATF.

Registration and Registration Requirements

28. Under the proposal, two categories of registration, i.e. Categories A and B, will be introduced with registration requirements as follows –

¹⁶ Dealing in precious metals and stones is defined to mean carrying on any of the following activities by way of business–

- (a) Trading in (defined to mean selling, offering for sale, purchasing or possessing for sale/resale), importing, or exporting precious metals, precious stones or precious products;
- (b) Manufacturing, refining, or carrying out any value-adding work (e.g. cutting, polishing, etc.) on precious metals, precious stones or precious products;
- (c) Issuing, redeeming, or trading in (as defined as mentioned above) precious-asset-backed instruments;
- (d) Acting as an intermediary for (a), (b) or (c) above.

- (a) **Category A registrants** (such registrants must not engage in any cash transactions with customers at or above HK\$120,000): The registration is relatively straightforward, subject only to the filing of an application which is accompanied by, among other things –
- (i) a copy of valid business registration certificate¹⁷;
 - (ii) address of each place of business in Hong Kong and correspondence address; and
 - (iii) a declaration that the precious metals and stones business which the applicant proposes to carry on will be carried on for a lawful purpose.

Category A registrants are not subject to the AML/CTF requirements stipulated in Schedule 2 to the AMLO, and will only be subject to certain statutory obligations (such as displaying certificates of registration at their business premises and notifying the C of C&E of changes in particulars and of cessation of business) and certain conditions of registration imposed by the C of C&E; and

- (b) **Category B registrants** (such registrants may engage in any cash transactions with customers at or above HK\$120,000): Applicants for Category B registration, like other DNFBPs regulated under the AMLO, will be subject to the meeting of a fit-and-proper test. Category B registrants will be subject to the AML/CTF requirements under the AMLO when they engage in cash transactions at or above HK\$120,000, the statutory obligations mentioned in the subparagraph (a) as well as relevant conditions of registration imposed by the C of C&E.

Powers of C of C&E

29. It is proposed that the C of C&E be given relevant powers for effective implementation of the regime. In particular, the C of C&E will be empowered to enter the registrants' place of business for routine inspection; to investigate non-compliance and to request the production of records, documents or other materials; and to impose disciplinary sanctions.

¹⁷ For hawkers licensed under the Hawker Regulation (Chapter 132AI) who are exempted from business registration, they may register on the strength of their hawker licence.

Sanctions

30. It is proposed that a person commits an offence if the person carries on a precious metals and stones business without being registered as a Category A or Category B registrant; engages in a specified cash transaction whilst carrying on a precious metals and stones business without being registered as a Category B registrant; or holds out to be a registered DPMS when the person is not registered as either a Category A or Category B registrant. Such a person is liable on conviction to a fine at level 6 (HK\$100,000) and to imprisonment for six months.

31. We also propose to make it an offence for any person, in connection with an application for registration or other specified matters, to make a false or misleading statement in a material particular, punishable by a fine at level 5 (HK\$50,000) and imprisonment for six months. Similar to existing licensing regimes for money service operators and trust or company service providers, a person who fails to comply with requirements on displaying certificates of registration or branch certificates, or notifying the C of C&E any change in particulars or of cessation of business, will be liable to a fine at level 5 (HK\$50,000).

32. In addition, a Category B registrant who contravenes the AML/CTF requirements in the AMLO will be subject to disciplinary proceedings and a range of disciplinary sanctions, including reprimand, remedial order, a pecuniary penalty not exceeding HK\$500,000¹⁸, and suspension or cancellation of registration. Disciplinary sanctions (save for pecuniary penalty) will also be in place for Category A registrants as a measure to ensure observance of registration requirements.

Review of C of C&E's Decisions

33. Similar to other sectors regulated under the AMLO, it is proposed that the Anti-Money Laundering and Counter-Terrorist Financing Review Tribunal be empowered to determine an application for review of future decisions made by the C of C&E in implementing the regulatory regime for DPMS.

¹⁸ This level is consistent with the maximum administrative fine that may be imposed against other DNFBPs for non-compliance with the AMLO.

Exemption and Transitional Period

34. To avoid regulatory overlap, it is proposed to exempt financial institutions (which are already regulated under the AMLO and their respective governing ordinances), as well as pawnbrokers (who are already subject to the regulation of the Pawnbrokers Ordinance (Chapter 166)), from the registration requirement, where they carry on a precious metals and stones business as an ancillary to their principal business. No exemption is given to other DNFBPs supervised under the AMLO, as presently they are obliged to observe the AML requirements in Schedule 2 to AMLO only when they engage in specified transactions of their respective sectors, which do not include carrying on a precious metals and stones business.

35. Considering that dealers from other jurisdictions may visit Hong Kong for trade fairs or dealing with local DPMS and other customers, an exemption from registration is also proposed for these “non-Hong Kong dealers” as they are likely to pose lower ML/TF risks to Hong Kong due to their transitory nature. It would also not be practical to require these dealers to be registered with C of C&E and to require them to comply with all AML/CTF requirements applicable to Category B registrants. To mitigate the ML/TF risks of non-Hong Kong dealers and to meet the FATF requirements, it is proposed that they be required to file a cash transaction report with the C of C&E when they engage in a cash transaction at or above HK\$120,000 in Hong Kong, and within one day upon completion of the transaction, and in any event before their (or in case of companies, their employee(s)', etc.) departure from Hong Kong. Such reports will enable the C of C&E to detect suspicious transactions and conduct follow-up investigations as necessary. Non-compliance is an offence punishable by a fine at level 5 and imprisonment for three months.

36. To facilitate the trade's migration to the registration regime, transitional arrangements will be provided for in the Amendment Bill. Specifically, DPMS who have been in operation immediately before commencement of the regime will be allowed nine months to apply for registration¹⁹. A pre-existing DPMS who has done so will be deemed to

¹⁹ Taking into account the large number of establishments and operations which may apply for registration and to facilitate smooth migration to the registration regime, the transitional period has been adjusted from 180 days (as mentioned in the public consultation) to nine months.

have been registered as Category B registrants for carrying on a precious metals and stones business until such time when the DPMS' application is determined or withdrawn.

37. To alleviate the compliance burden of DPMS (especially retailers) in light of the current economic conditions and difficulties being experienced by businesses, and to encourage their buy-in of the new registration regime, it is proposed that the registration and related fees²⁰ be waived for first registration, where the application for which is made within the transitional period referred in paragraph 36 above. The C of C&E will be empowered under the Amendment Bill to waive fees in relation to any person or class of persons.

(C) Miscellaneous Amendments

38. In addition to the regulatory regimes for VASPs and DPMS, a number of technical issues relating to the AMLO, identified in the FATF's Mutual Evaluation report on Hong Kong and other FATF contexts, will be addressed in the proposed legislative amendments as follows –

- (a) amending the technical definition of “politically exposed person” (PEP) in accordance with the FATF requirement, and allowing more flexibility in the treatment of former PEPs who are no longer entrusted with a prominent public function by allowing a financial institution to take a risk-sensitive approach in determining the degree of customer due diligence that is to be taken in respect of such persons;
- (b) better aligning the definition of “beneficial owner” in relation to a trust under the AMLO with that of “controlling person” under the Inland Revenue Ordinance (Chapter 112) (IRO), by clarifying that, where a trust is concerned, it includes trustees, beneficiaries and class(es) of beneficiaries;

²⁰ Including the registration fees for Category A registrants (covering one year) and for Category B registrants (covering the period of the registration which is three years or another period specified by the C of C&E), plus the relevant fees for conducting “fit-and-proper” tests for Category B registrants. The estimated registration and related fees for a Category A registrant is around HK\$260, and for a Category B registrant, HK\$2,620 (on the basis that one person is to undergo the fit and proper tests).

- (c) allowing the engagement of digital identification systems to assist the conduct of customer due diligence in situations where a customer is not physically present for customer identification and verification purposes (i.e. non-face-to-face (NFTF) situations) so as to provide more flexibility for financial institutions and DNFBPs who adopt NFTF technologies;
- (d) enhancing the deterrent effect for unlicensed money service operation by providing for a penalty of to a fine of HK\$1 million and imprisonment for two years on conviction on indictment; and
- (e) consolidating the different provisions under individual Parts of AMLO (which provide for confidentiality of information obtained under AMLO for AML/CTF purposes and permit disclosure to specified persons) into provisions applicable across different Parts of the AMLO and including a prohibition on a person subject to inspection, investigation or disciplinary action from disclosing information.

OTHER OPTIONS

39. In order to meet the FATF's requirements as explained in paragraphs 3 and 4 above, it is necessary to put in place a statutory regulatory regime for the VASP and DPMS sectors. Any voluntary scheme without enforcement effect will not be accepted in fulfillment of the relevant AML/CTF Standards. As for the proposals on miscellaneous amendments, legislative amendments are necessary to existing provisions in the AMLO. The current proposal is the only option.

THE AMENDMENT BILL

40. The main provisions of the Amendment Bill are set out below -

- (a) Part 1 sets out preliminary provisions such as the short title and provides for the commencement of the Amendment Bill²¹;
- (b) Part 2 contains amendments to the AMLO and comprises -
 - (i) Division 1, in which clauses 4 and 5 establish the two new regulatory regimes for VASPs and DPMS by adding new Parts 5B and 5C and Schedules 3B to 3G; and
 - (ii) Division 2 (comprising clauses 6 to 34) which deals with customer due diligence requirements and other miscellaneous matters;
- (c) new Part 5B and Schedules 3B to 3G provide for the licensing regime for VASPs where-
 - (i) new sections 53ZR to 53ZRC (read with new Schedule 3B) defining terms including virtual asset, VA service, regulated function, associated entity;
 - (ii) sections 53ZRD to 53ZRG impose the requirement for a licence to carry on a business of providing a VA service and other restrictions on activities involving VA;
 - (iii) sections 53ZRH to 53ZRS provide for the grant of a licence to a corporation to provide a VA service (licensed provider), the grant of a licence to a licensed provider's representative, the fit and proper person test, and the grant of approval (including for a person to be a licensed provider's responsible officer), while Schedule 3C sets out the fees payable for the applications;
 - (iv) sections 53ZRT to 53ZRX (read with Schedules 3D and 3E) set out obligations of licensed providers, their associated entities and licensed representatives regarding notifications, annual fees and annual returns;

²¹ It is proposed that the Amended Ordinance will come into effect on 1 January 2023 except for the Part and provisions relating to the VASP regime which will come into effect on 1 March 2023. Between the enactment and commencement of the Amendment Bill, the SFC and Customs and Excise Department (C&ED) will prepare for the implementation of the new regimes including, inter alia, the preparation of rules and guidelines.

- (v) sections 53ZRY to 53ZSM (read with Schedule 3F) set out audit requirements applicable to a licensed provider and any of its associated entities;
- (vi) sections 53ZSN to 53ZTG provide for the SFC's power to discipline a licensed person and to intervene in the business of a licensed provider or any of its associated entities;
- (vii) section 53ZTX adds a new Schedule 3G to the principal Ordinance to provide for transitional arrangements;
- (d) new Part 5C and Schedules 3H to 3J provide for the registration regime for DPMS where-
 - (i) section 53ZTY sets out the definitions of terms, including precious metals, precious stones, dealing in precious metals and stones, precious metals and stones business, Category A registrant, Category B registrant, registrant, branch, and non-Hong Kong precious metals and stones dealer;
 - (ii) section 53ZTY also defines specified cash transaction to mean, in essence, a transaction carried out by a person, while carrying on a precious metals and stones business, where a payment or payments in cash, of at least the amount specified in Schedule 3E (i.e. \$120,000) in total, is or are made or received in Hong Kong in respect of the transaction;
 - (iii) section 53ZUD makes it an offence if a person carries on a precious metals and stones business without registration or if a person (other than a Category B registrant) carries out, by way of business, a specified cash transaction in Hong Kong;
 - (iv) sections 53ZUE to 53ZUY provide for registration of a person as a Category A registrant or Category B registrant; the fit and proper test applicable to registration as a Category B registrant; approval for becoming a director, partner or ultimate owner of a Category B registrant;
 - (v) sections 53ZUZ to 53ZVB specifies obligations of registrants regarding the display of certificates and notifications;
 - (vi) section 53ZVC to 53ZVI provides for the C of C&E's

- powers to take disciplinary actions;
 - (vii) section 53ZVJ requires a non-Hong Kong precious metals and stones dealer carrying out a specified cash transaction to give to the C of C&E, within the specified time, a report containing the information specified in Schedule 3I in respect of the transaction;
 - (viii) sections 53ZVK to 53ZW provides for enforcement, transitional arrangement and other miscellaneous matters;
- (e) Part 2, Division 2, contains amendments for applying the customer due diligence and record-keeping requirements (AML/CTF requirements) and other provisions in the AMLO to licensed persons under Part 5B and registrants under Part 5C-
 - (i) in Schedule 1 to the AMLO, the definition of financial institution is amended to cover a licensed VASP and the definition of DNFBP is amended to cover a Category B DPMS registrant;
 - (ii) a new section 13A is added to Schedule 2 to the AMLO to provide for a financial institution's obligation to obtain and pass on information in relation to a transfer of virtual assets that amount to no less than the specified amount (i.e. HK\$8,000);
 - (iii) under section 5A of the AMLO, as amended by clause 7, the AML/CTF requirements only apply to a Category B DPMS registrant when, by way of business, the registrant carries out, in Hong Kong with a customer, a specified cash transaction; for a specified cash transaction carried out exclusively between 2 Category B DPMS registrants, the AML/CTF requirements do not apply to the paying registrant;
 - (iv) clauses 8 to 17 extend to licensed VASPs and their associated entities and DPMS registrants the provisions on the powers to conduct routine inspections and to investigate into suspected non-compliance with the AMLO;
 - (v) Clause 18 adds sections 13A to 13E to provide for assistance to a regulator of a jurisdiction outside

- Hong Kong, with reference to provisions providing for similar assistance under the SFO;
- (vi) to provide for confidentiality requirements applicable across different Parts of AMLO, Clauses 24, 26 and 29 repeal existing provisions in AMLO and, instead, add new Part 6A (i.e. sections 76A to 76G);
 - (vii) Clause 27 amends section 54 to extend the review mechanism under AMLO to the decisions made by the SFC and the C of C&E under new Parts 5B and 5C;
- (f) Clauses 22 and 33(4), (8), (16), (18) and (19) amend the existing provisions of section 29 of, and Schedule 2 to AMLO to, implement proposals on increased penalty for unlicensed money service operation, PEP, customer due diligence requirements for NTF situations, definition of beneficial owner for trusts (the proposals are explained in paragraph 38(a) to (d) above); and
- (g) similar to the provisions referred to in subparagraph (e)(vi) above, a related amendment is made by clauses 34 to permit disclosure of information obtained in performing functions under the SFO to certain persons who enforce the AMLO.

LEGISLATIVE TIMETABLE

41. The legislative timetable will be –

Publication in the Gazette	24 June 2022
First Reading and commencement of the Second Reading debate	29 June 2022
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

ECONOMIC IMPLICATIONS

42. The proposal would strengthen Hong Kong's AML/CTF regulatory regime and bring the regime in line with international standards. This is conducive to reinforcing Hong Kong's status as an international financial centre. While the proposal would entail additional compliance

costs for VASPs and DPMS, the additional costs should be relatively small for VASPs in comparison to their other costs and the proposed waiver of registration and related fees for DPMS in their first registration would alleviate the cost burden of small businesses.

FINANCIAL AND CIVIL SERVICE IMPLICATIONS

43. The registration regime for DPMS is estimated to cover more than 8 000 DPMS in Hong Kong, of which some 4 000 are expected to apply for Category B registration, and the other some 4 000 to apply for Category A registration. To administer the registration regime for DPMS and supervise the DPMS registrants, C&ED will create 72 permanent non-directorate civil service posts, involving a full-year recurrent expenditure of HK\$40.8 million. In addition, a team of 19 Post-retirement Service Contract staff will be engaged for seven months to cope with the influx of applications during the transitional period. The total staff cost of which will be HK\$7 million. A new computer system for processing applications and enforcement work, involving an estimated non-recurrent expenditure of HK\$15.9 million, will also be put in place. The recurrent costs of the system is estimated at HK\$6.3 million per annum and will be absorbed by C&ED from within its existing resources. To cover the administrative expenses of operating the registration regime for DPMS, registration and related fees will be charged on the basis of cost-recovery. The estimated revenue forgone arising from the proposed one-off waiver of fees for first registration referred in paragraph 37 above would be around HK\$11.8 million at most (on the basis that majority of dealers will have one to two directors to undergo fit and proper tests).

OTHER IMPLICATIONS

44. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The amendments proposed in the Amendment Bill will not affect the current binding effect of the AMLO. It has no productivity, environmental, family or gender implications. There are no sustainability implications other than the economic implications.

PUBLIC CONSULTATION

45. FSTB conducted a public consultation to gauge the views from the public and the relevant financial sectors on the legislative proposals

from November 2020 to January 2021. Overall speaking, from the responses received, there is broad support for the Government to strengthen Hong Kong's AML/CTF system having regard to international standards, in keeping with our status as an international financial centre. A majority of the respondents indicated agreement with the overall direction and principles, as well as the broad framework of the legislative proposals. They expressed understanding of the need to regulate the VASP and the DPMS sectors in fulfillment of our obligations under the FATF, and shared our view that a balanced approach to legislation should be adopted, complementing the need to have an effective system for addressing ML/TF risks in the concerned sectors, while minimising regulatory burden and compliance costs on the businesses. Respondents also expressed views regarding the precise scope, coverage and parameters of the legislative proposals, by and large reflecting their sectoral interests or industry backgrounds. We also consulted the LegCo Panel on Financial Affairs and the Financial Leaders Forum in February and April 2022 respectively and received support for our proposals.

PUBLICITY

46. A press release will be issued on the gazettal of the Amendment Bill. A spokesperson will be made available for answering media enquiries.

ENQUIRIES

47. Enquiries relating to this Brief can be directed to Mr Justin TO, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) at 2810 2067.

Financial Services and the Treasury Bureau
22 June 2022

Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022

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A BILL

To

Amend the Anti-Money Laundering and Counter-Terrorist Financing Ordinance to apply customer due diligence and record-keeping requirements to virtual asset service providers and to dealers of precious metals and precious stones when they conduct certain transactions; for that purpose to establish a regulatory regime for such service providers and another regulatory regime for such dealers; and to make related and miscellaneous amendments.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Ordinance 2022.
- (2) Subject to subsection (3), this Ordinance comes into operation on 1 January 2023.
- (3) Section 4 (in so far as it relates to the new sections 53ZRD, 53ZRE, 53ZRF, 53ZRG and 53ZTX and new Schedule 3G) comes into operation on 1 March 2023.

2. Enactments amended

The enactments specified in Parts 2 and 3 are amended as set out in those Parts.

Part 2

Amendments to Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615)

Division 1—Establishment of New Regulatory Regimes

3. Long title amended

The long title, after “company service providers;”—

Add

“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;”.

4. Parts 5B and 5C added

After Part 5A—

Add

“Part 5B

Regulation of Activities Involving Virtual Assets

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 (控股公司), 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 53ZTK;

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 53ZSY, 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 *regulated function*

- (1) In this Ordinance—

***regulated function* (受規管職能)—**

- (a) subject to subsections (4)(c) and (6), 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 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 the specified services are provided 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 53ZSO or 53ZSP entered in accordance with section 53ZTI;
- (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) and (5), 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—Licensed Persons' Obligations Regarding Notification, Annual Fees and Annual Returns

53ZRT. 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.

53ZRU. 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.

53ZRV. 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.

53ZRW. 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.

53ZRX. 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 7—Licensed Provider and its Associated Entities Required to Submit Audited Accounts etc.

53ZRY. Interpretation of Division 7

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 53ZRZ(1) or (3) or 53ZSF by the auditable entity;
section 53ZSG auditor (第 53ZSG 條核數師)—see section 53ZSG.

53ZRZ. 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 53ZS.

53ZS. 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.

53ZSA. 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).

53ZSB. 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.

53ZSC. 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 53ZSB.
- (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 53ZTJ; 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 53ZTJ; or
 - (ii) adversely affects to a material extent the financial position of the associated entity.

53ZSD. 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.

53ZSE. 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.

53ZSF. 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 53ZS.

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

- (1) The Commission may appoint an auditor (*section 53ZSG 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 53ZSC 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 53ZSG 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 53ZSG 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.

53ZSH. Powers of section 53ZSG auditors

- (1) This section applies to a section 53ZSG 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 53ZSG auditor may do any act or thing referred to in subsection (3), in addition to any other action that the section 53ZSG auditor may reasonably take for that purpose.
- (3) The section 53ZSG 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 of the subject provider or its associated entities, 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 53ZSG auditor considers necessary to assist the section 53ZSG auditor in carrying out the examination and audit that the section 53ZSG auditor is appointed to carry out; and
 - (f) for the purpose of carrying out the examination and audit that the section 53ZSG auditor is appointed to carry out, authorize in writing any person employed by the section 53ZSG 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 53ZSG 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.

53ZSI. Offences for non-compliance with section 53ZSG 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 53ZSH.
- (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 53ZSH, 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 53ZSH; 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 53ZSH, 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.

53ZSJ. Section 53ZSG auditor to report to Commission

- (1) A section 53ZSG auditor appointed to examine and audit any accounts and records must—
 - (a) make to the Commission any interim reports that 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.

53ZSK. 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 53ZSG 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.

53ZSL. 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.

53ZSM. Operation of Companies Ordinance not affected

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

Division 8—Discipline, Intervention and Other Powers

Subdivision 1—Disciplinary Powers

53ZSN. 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 53ZSO;

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.

53ZSO. Disciplinary action by Commission

- (1) Subject to sections 53ZSQ, 53ZSR, 53ZSS, 53ZST, 53ZSU and 53ZSV, 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 53ZST;
- (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 53ZST; 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 53ZST—
 - (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 53ZST,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.

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

- (1) Subject to sections 53ZST, 53ZSU and 53ZSV, 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 53ZST.
- (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 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 53ZRX(1); or
 - (ii) any additional sum payable by the licensed person under section 53ZRX(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 53ZRX(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 53ZST, 53ZSU and 53ZSV, 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 53ZST.

53ZSQ. Determination concerning misconduct and fit and proper person

- (1) For the purposes of section 53ZSO, 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 53ZSO, 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 53ZTJ; 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 53ZSO.
- (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 53ZSO, 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.

53ZSR. 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.

53ZSS. 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 53ZSO(3)(c) or (5).

53ZST. Procedural requirements for exercising disciplinary powers

- (1) The Commission may exercise a power under section 53ZSO(3) or 53ZSP(2)(a), (b) or (c) or (9) in respect of a person only after giving the person a reasonable opportunity to be heard.

- (2) In reaching a decision under section 53ZSO or 53ZSP, 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 53ZSO or 53ZSP 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 53ZSO(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 53ZSP(2)(d), include a statement that the person may apply to the Review Tribunal for a review of the decision.

53ZSU. General provisions relating to exercise of disciplinary powers

- (1) The revocation or suspension of any licence under this Subdivision 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 disciplinary power 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 53ZST, as if those requirements, in addition to applying to the exercise of any disciplinary power under sections 53ZSO and 53ZSP, 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 53ZSP(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 53ZTD, 53ZTE, 53ZTF or 53ZTG.

53ZSV. 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 53ZSO or 53ZSP 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 53ZSO or 53ZSP, 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 53ZSO or 53ZSP 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 53ZSO or 53ZSP 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**

53ZSW. Interpretation of Subdivision 2

- (1) A reference in this Subdivision (except section 53ZTA) to a prohibition or requirement imposed under section 53ZSY, 53ZSZ or 53ZT means a prohibition or requirement imposed on a person under section 53ZSY,

53ZSZ or 53ZT, as from time to time substituted or varied under section 53ZTA (if applicable).

- (2) Section 53ZSN(2) applies to this Subdivision as that section applies to Subdivision 1.

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

The Commission may impose a prohibition or requirement under section 53ZSY, 53ZSZ or 53ZT 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 53ZSO(2) or 53ZSP; or
- (e) the imposition of the prohibition or requirement is desirable in the interest of the investing public or in the public interest.

53ZSY. Restriction of business

- (1) Subject to section 53ZSX, 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.

53ZSZ. Restriction on dealing with property

- (1) Subject to section 53ZSX, 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.

53ZT. Maintenance of property

- (1) Subject to section 53ZSX, 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.

53ZTA. 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 53ZSY, 53ZSZ or 53ZT.
- (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 53ZSY, 53ZSZ or 53ZT;
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.

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

- (1) This section applies if the Commission decides to exercise a Subdivision 2 power, that is to say, it—
 - (a) imposes a prohibition or requirement under section 53ZSY, 53ZSZ or 53ZT;
 - (b) withdraws a prohibition or requirement under section 53ZTA; or
 - (c) substitutes another prohibition or requirement for, or varies, a prohibition or requirement under section 53ZTA.
- (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 53ZTA(4) for the Commission to exercise its Subdivision 2 power referred to in section 53ZTA—
 - (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.

53ZTC. 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 53ZSV.

- (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 53ZTA, 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 53ZSY, 53ZSZ or 53ZT;
 - (ii) substituting a prohibition or requirement for another prohibition or requirement under section 53ZTA; or
 - (iii) varying a prohibition or requirement under section 53ZTA,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 53ZTA.
- (9) In this section—
 - (a) a reference to a licence of a licensed provider being revoked—
 - (i) means the licence being revoked under section 53ZSO or 53ZSP; and
 - (ii) includes the licence being deemed under section 53ZRW to be revoked; and
 - (b) a reference to a licence of a licensed provider being suspended means the licence being suspended under section 53ZSO or 53ZSP.

53ZTD. 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 53ZTC(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

53ZTE. 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 company 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.

53ZTF. 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.

53ZTG. 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 9—Miscellaneous

53ZTH. 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.

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

- (1) For an exercise of a power under section 53ZSO or 53ZSP (*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) 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.

53ZTJ. 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.

53ZTK. 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.

53ZTL. 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.

53ZTM. 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.

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

- (1) A person commits an offence if the person—
 - (a) in connection with any 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.

53ZTO. 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.

53ZTP. 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.

53ZTQ. 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.

53ZTR. 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.

53ZTS. 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.

53ZTT. 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.

53ZTU. Civil proceedings by Commission

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

53ZTV. 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.

53ZTW. 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.

53ZTX. Transitional provisions

The transitional provisions specified in Schedule 3G have effect.

Part 5C

Regulation of Dealings in Precious Metals and Stones

Division 1—Preliminary

Subdivision 1—Interpretation and Disapplication

53ZTY. Interpretation of Part 5C

In this Part—

branch (分行), subject to section 53ZVO, 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 53ZUF(1)(c) or 53ZUO(1)(c) in respect of a Category A registrant or a Category B registrant and includes any certificate issued under section 53ZV 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 53ZVO, 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 53ZUF and whose registration has not been suspended under section 53ZUK;

Category B registrant (B 類註冊人) means a person whose name is entered in the register as such under section 53ZUO and whose registration has not been suspended under section 53ZUT and, except in sections 53ZUN, 53ZUO, 53ZUP, 53ZUQ, 53ZUR and 53ZUS, 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 53ZUF(1)(b) or 53ZUO(1)(b) in respect of a Category A registrant or a Category B registrant and includes any certificate issued under section 53ZV for replacing such a certificate;

dealing in precious metals and stones (經營貴金屬及寶石業務)—see section 53ZTZ;

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)—

- (a) means any jewellery, watch, apparel, accessory, ornament or other finished product—
 - (i) that is made up of, containing or having attached to it, any precious metal or precious stone, or both; and
 - (ii) at least 50% of the transaction price of which is attributable to the precious metal or precious stone, or both; but
- (b) does not include any finished product that forms part of any medical device or industrial equipment;

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 53ZUB;

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;

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.

53ZTZ. 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.

53ZU. 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 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

53ZUA. 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 3I or 3J under section 53ZVP; or
 - (c) the power to make regulations under section 53ZVR.

53ZUB. 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.

53ZUC. Certified copy of register

- (1) A person may, on the payment of the fee specified in Schedule 3J, 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 or Stones

53ZUD. Offence of carrying on precious metals and stones business without registration

- (1) No person other than a registrant may carry on a precious metals and stones business in Hong Kong.

- (2) No person other than a Category B registrant may, by way of business, 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 on a precious metals and stones business 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, by way of business, 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

53ZUE. 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.

- (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 3J.
- (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 January 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 January 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 53ZUI 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).

53ZUF. 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.

53ZUG. Annual fee

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

53ZUH. 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 53ZUI applies to a decision made under subsection (1).

53ZUI. Provisions supplementary to sections 53ZUE and 53ZUH

- (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 53ZUE; 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 53ZUH.
- (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.

53ZUJ. Cessation of registration

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

- (a) if the registrant notifies the Commissioner of the registrant's intention to cease to carry on a precious metals and stones business under section 53ZVA—on the intended date of cessation as notified;
- (b) if the Commissioner has approved an application by the registrant to be registered as a Category B registrant under section 53ZUN;
- (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.

53ZUK. 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 53ZUD(2) or (4);
 - (b) the person contravenes a regulation made under section 53ZVR;

- (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 3J when it is due;
- (e) the person fails to comply with an order made under section 53ZVD(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.

53ZUL. 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 53ZUK, 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 53ZUK, 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

53ZUM. Fit and proper test

In determining whether a person is a fit and proper person for the purposes of section 53ZUN, 53ZUP, 53ZUT, 53ZUV, 53ZUW or 53ZUX, 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 53ZVR;
- (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.

53ZUN. 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.
- (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 53ZUM 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 53ZUR applies to an application under subsection (1) and to the determination of the application.
- (8) Subject to section 53ZUT, 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.

53ZUO. 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.

53ZUP. 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 53ZUM, 53ZUN(2), (3), (4) and (7) and 53ZUO 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 53ZUT, 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.

53ZUQ. 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 53ZUR applies to a decision made under subsection (1).

53ZUR. Provisions supplementary to sections 53ZUN, 53ZUP and 53ZUQ

- (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 3J.
- (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 53ZUN(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 53ZUP(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 53ZUQ(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.

53ZUS. Cessation of registration

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

- (a) if the registrant notifies the Commissioner of the registrant's intention to cease to carry on a precious metals and stones business under section 53ZVA—on the intended date of cessation as notified;
- (b) if the Commissioner has approved an application by the registrant to be registered as a Category A registrant under section 53ZUE;
- (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.

53ZUT. 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 53ZVE(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 53ZUM 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.

53ZUU. 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 53ZUT, 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 53ZUT, 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

53ZUV. 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 53ZUM applies to a determination under subsection (2)(b).
- (4) Section 53ZUY 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.

53ZUW. 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 53ZUM applies to a determination under subsection (2)(b).
- (4) Section 53ZUY 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 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 53ZUM applies to a determination under subsection (2)(b).
- (4) Section 53ZUY 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.

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

- (1) An application for an approval of the Commissioner under section 53ZUV, 53ZUW or 53ZUX—
 - (a) must be made in the form and way specified by the Commissioner; and
 - (b) must be accompanied by the fee specified in Schedule 3J.
- (2) If the Commissioner decides not to give the approval applied for by a Category B registrant under section 53ZUV, 53ZUW or 53ZUX, 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

53ZUZ. 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).

53ZV. 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.

53ZVA. Notification of intended cessation of business

- (1) A registrant must notify the Commissioner, in writing, if the registrant intends to cease to carry on the registrant's precious metals and stones business.
- (2) The notification must be given before the date on which the cessation is to take effect (*intended date of cessation*).
- (3) The notification must state—
 - (a) the registrant's intention to cease to carry on a precious metals and stones business; and
 - (b) the intended date of cessation.
- (4) The Commissioner must, as soon as reasonably practicable after the intended date of cessation, as notified, remove the relevant particulars from the register.
- (5) A registrant who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.
- (6) Any fee paid for the grant or renewal of the registration of a person is not refundable on the cancellation of the registration.
- (7) The certificate of registration and each branch certificate (if any) in respect of the registrant cease to have effect from the intended date of cessation, as notified.

53ZVB. 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

53ZVC. 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 53ZVD or 53ZVE.

53ZVD. Disciplinary action against Category A registrant

- (1) Subject to section 53ZVF, 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 53ZVR; or
 - (ii) a condition of the registration; and
 - (b) there is a contravention of section 53ZUZ, 53ZV or 53ZVA.
- (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.

53ZVE. Disciplinary action against Category B registrant

- (1) Subject to sections 53ZVF and 53ZVG, 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 53ZVR; and
 - (iii) a condition of the registration; and
 - (b) there is a contravention of section 53ZUV, 53ZUW, 53ZUX, 53ZUZ, 53ZV or 53ZVA.
- (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 53ZVF,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.

53ZVF. Notice regarding exercise of disciplinary powers

If the Commissioner decides to exercise a disciplinary power in respect of a registrant under section 53ZVD or 53ZVE, 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 53ZVE(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.

53ZVG. 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 53ZVE.
- (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.

53ZVH. 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 53ZVE(3)(c) or (4).

53ZVI. 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 53ZVE(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.

(4) In this section—

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

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

53ZVJ. 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 3I; 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

53ZVK. 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.

53ZVL. 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 53ZUD or 53ZVJ—
 - (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 53ZUD or 53ZVJ.
- (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 53ZVK.

53ZVM. 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 53ZVL(6)) authorized by a warrant issued under section 53ZVL.

53ZVN. 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 53ZUD or 53ZVJ; 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 53ZUD or 53ZVJ, 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 53ZVK.

Division 9—Miscellaneous

53ZVO. 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).

53ZVP. Amendment of Schedules 3H, 3I and 3J

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

53ZVQ. 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.

53ZVR. Regulations

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

53ZVS. 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.

53ZVT. 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 January 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 January 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 of the person's intention to cease to carry on the precious metals and stones business concerned—the intended date of cessation, as notified, begins;
 - (c) the person ceases to hold a valid business registration certificate;

- (d) an event referred to in section 53ZUS(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 of the person's intention to cease to carry on the precious metals and stones business concerned—the intended date of cessation, as notified, begins;
 - (e) the person ceases to hold a valid business registration certificate;
 - (f) an event referred to in section 53ZUS(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 53ZUV 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 53ZUV while the partnership remains to be a deemed registrant;
- (b) each partner of the partnership is deemed to have been approved under section 53ZUW 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 53ZUV while the corporation remains to be a deemed registrant;
 - (b) each director of the corporation is deemed to have been approved under section 53ZUX 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 January 2023.”.

5. Schedules 3B to 3J added

After Schedule 3A—

Add

“Schedule 3B

[ss. 53ZR & 53ZTL &
 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

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

[ss. 53ZR & 53ZTL]

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

Column 1	Column 2	Column 3
Item	Particulars of matter	Fee
	(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
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

Column 1	Column 2	Column 3
Item	Particulars of matter	Fee
7.	Prescribed fee payable under section 53ZRN on an application for variation of any VA service—	
	(a) in the case of a licensed provider—	
	(i) for adding any VA service	\$4,740 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
	(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

Column 1	Column 2	Column 3
Item	Particulars of matter	Fee
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
10.	Prescribed fee payable under section 53ZRR on an application for approval of premises	\$1,000
11.	Prescribed annual fee payable under section 53ZRX—	
	(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

Column 1	Column 2	Column 3
Item	Particulars of matter	Fee
	(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 3D

[ss. 53ZRV & 53ZTL]

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 53ZRV(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 53ZRV(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;
- (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 3E

[ss. 53ZRX & 53ZTL]

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 53ZRX(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 6 of Part 5B or any codes or guidelines published under section 53ZTJ;

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 3F

[ss. 53ZSB & 53ZTL]

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 53ZSB(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 53ZTJ, 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 53ZSB(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 53ZSB(2)(a), the financial statements and other documents that a licensed 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 53ZSB(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 53ZSB(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 53ZTJ 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 53ZTJ;

- (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 53ZTJ; 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 53ZTJ 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 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 3G

[s. 53ZTX]

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 March 2023;
first 12 months (首 12 個月) means the period of 12 months beginning on 1 March 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 53ZTJ;

- 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 March 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.

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 March 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 March 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 has applied to be licensed under section 53ZRK for providing a VA service, the corporation is deemed, for the period specified in subsection (2), to be licensed under section 53ZRK to provide the VA service.
- (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 53ZRX(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 53ZRX(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 has applied to be licensed under section 53ZRL to provide a VA service on behalf of a corporation, 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; and
 - (b) to be accredited to that 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 53ZRX(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 53ZRX(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 March 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 March 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 to provide a VA service on behalf of a corporation, the individual is deemed for the period specified in subsection (2)—
 - (a) to be licensed as a licensed representative under section 53ZRL(1) to provide the VA service on behalf of the corporation;
 - (b) to be accredited to that corporation; and
 - (c) to be approved as 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 53ZRX(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 53ZRX(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(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;
 - (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 the act is done—

- (a) during the closing-down period applicable to the closing-down period corporation; and
- (b) 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 2(2) or 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 3H

[ss. 53ZTY & 53ZVP]

Amount Specified for Definition of *specified cash transaction*

\$120,000 or an equivalent amount in another currency

Schedule 3I

[ss. 53ZUA, 53ZVJ &
53ZVP]

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 53ZVJ(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;
 - (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

[ss. 53ZUA, 53ZUC,
53ZUE, 53ZUG, 53ZUK,

53ZUR, 53ZUY &
53ZVP]

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 53ZUC(1)(b)	\$160 per copy
4.	Application for registration as a Category A registrant	\$260
5.	Annual fee payable by a Category A registrant under section 53ZUG	\$195
6.	Application for registration— (a) as a Category B registrant	\$1,970

Column 1	Column 2	Column 3
Item	Particulars of matter	Fee
	(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 (b) plus for each person who is subject to the fit and proper test	\$1,060 \$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
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.”.

Division 2—Customer Due Diligence Requirements and Miscellaneous Matters

6. Section 5 amended (Schedule 2 has effect with respect to financial institutions)

- (1) Section 5(11), definition of *specified provision*, after “13(2),”—

Add

“13A(2), (4), (5), (6) or (7),”.

- (2) Section 5(11), definition of *specified provision*—

Repeal

“19(1), (2)”

Substitute

“19(1), (2), (2A)”.

- (3) Section 5(11), definition of *specified provision*—

Repeal

“20(1), (2), (3)”

Substitute

“20(1), (2), (3), (3A)”.

7. Section 5A amended (Schedule 2 has effect in relation to DNFBPs)

After section 5A(5)—

Add

“(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.

(5B) In relation to a Category B registrant, an excluded transaction is a specified cash transaction if—

- (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.”.

8. Part 3, Division 1 heading added

Part 3, before section 8—

Add

“Division 1—Preliminary”.

9. Section 8 amended (interpretation of Part 3)

- (1) Section 8, English text, definition of *investigator*—

Repeal the full stop

Substitute a semicolon.

- (2) Section 8—

Add in alphabetical order

“associated entity (有聯繫實體) has the meaning given by section 53ZR;

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;

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;

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;

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

10. **Part 3, Division 2 heading added**

Before section 9—

Add

“Division 2—Powers to Enter, Inspect and Investigate”.

11. Section 9 amended (power to enter business premises etc. for routine inspection)

(1) Section 9—

Repeal subsection (1)

Substitute

“(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).

(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.

(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.”.

(2) Section 9—

Repeal subsection (2).

(3) Section 9—

Repeal subsections (3), (4) and (5)

Substitute

“(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).
- (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.
- (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.”.
- (4) Section 9(6)—
- Repeal**
- “(1)(c)(ii)”
- Substitute**
- “(1A)(c)(ii) or (1B)(c)(ii)”.
- (5) Section 9(6)—
- Repeal**
- “(1)(c)(i)”
- Substitute**
- “(1A)(c)(i) or (1B)(c)(i)”.
- (6) Section 9(7)—
- Repeal**
- “record or document”
- Substitute**
- “specified business record”.
- (7) Section 9—
- Repeal subsection (8).**
- (8) Section 9(15), definition of *business premises*, paragraph (h)—
- Repeal**
- “; and”
- Substitute a semicolon.**
- (9) Section 9(15), Chinese text, definition of 業務處所, paragraph (i)(iii)—

Repeal

“錄。”

Substitute

“錄；”。

- (10) Section 9(15), definition of *business premises*, after paragraph (i)—

Add

- “(j) in relation to a licensed VAS provider, means its premises as approved by the Securities and Futures Commission under section 53ZRR;
- (k) in relation to an associated entity of a licensed VAS provider, means any premises of the associated entity; and
- (l) in relation to a PMS registrant, means, subject to section 53ZVO, 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;”.

(11) Section 9(15)—

Add in alphabetical order

“*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;”.

- (12) After section 9(15)—

Add

“(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.

- (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.”.

12. Section 9A added

After section 9—

Add

“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).”.

13. Section 10 amended (offences for non-compliance with requirements imposed under section 9)

- (1) Section 10—

Repeal subsections (7) and (8)

Substitute

- “(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.
- (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.”.
- (2) After section 10(10)—
- Add**
- “(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.”.

- 14. Section 11 amended (relevant authorities may appoint investigators)**
- (1) Section 11(1)(b)—
- Repeal**
- “a financial institution,”
- Substitute**
- “a financial institution (other than a licensed VAS provider),”.
- (2) Section 11(1)(b)—
- Repeal**
- “; or”
- Substitute a semicolon.**
- (3) Section 11(1)(c)—
- Repeal**
- “(b),”
- Substitute**
- “(b),”.
- (4) After section 11(1)(c)—
- Add**
- “(d) in relation to a VASP regulated person, for the purpose of considering whether to exercise a power under section 53ZSO(3), has reason to inquire—
- (i) whether the person is, or was at any time, guilty of misconduct for the purposes of section 53ZSO; or
 - (ii) whether the person is not or was not a fit and proper person for the purposes of section 53ZSO; or
- (e) in relation to a PMS registrant, for the purpose of considering whether to exercise any power under section 53ZVD(3), 53ZVE(3) or 53ZVI(2), has reason to inquire

whether there has been a contravention referred to in section 53ZVD(2)(a) or (b) or 53ZVE(2)(a) or (b).”

- (5) After section 11(5)—

Add

“(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 53ZSN(1).”.

15. Section 12 amended (powers of investigators to require production of records or documents etc.)

- (1) Section 12(1)—

Repeal everything before paragraph (a)

Substitute

“(1) This section applies to a person (*covered person*) who is—”.

- (2) Section 12(1), Chinese text—

Repeal

“某人” (wherever appearing)

Substitute

“該人”.

- (3) Section 12(1), Chinese text—

Repeal

“，本條適用於該人” (wherever appearing).

- (4) Section 12(2)—

Repeal everything before paragraph (a)

Substitute

“(2) Subject to section 12A, an investigator may in writing require a covered person to—”.

- (5) Section 12(3)—

Repeal

“a person”

Substitute

“a covered person”.

- (6) Section 12(3)—

Repeal

“may”

Substitute

“may, subject to section 12A,”.

- (7) Section 12(4) and (5)—

Repeal

“a person”

Substitute

“a covered person”.

- (8) Section 12—

Repeal subsection (7).

16. Section 12A added

After section 12—

Add

“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.”.

17. Section 13 amended (offences for non-compliance with requirements imposed under section 12)

- (1) Section 13—

Repeal subsections (7) and (8)

Substitute

- “(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.
- (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.”.
- (2) After section 13(13)—
- Add**
- “(14) In this section—
- related person* (相關人士) has the meaning given by section 10(11).”.

18. Part 3, Division 3 and Division 4 heading added

After section 13—

Add

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

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-subparagraph (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 and costs and expenses

- (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.
- (4) 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.

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.

Division 4—Miscellaneous Enforcement Matters”.

19. Section 15 amended (use of incriminating evidence in proceedings)

Section 15(3)—

Repeal

“or for perjury,”.

20. Section 18 amended (production of information in information systems etc.)

Section 18—

Repeal subsection (3).

21. Section 20A added

Part 4, before section 21—

Add

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

In this Part—

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

22. Section 29 amended (restriction on operating money service)

(1) Section 29(2)—

Repeal

everything after “(1)”

Substitute

“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) Section 29(3), before “magistrate”—

Add

“court or”.

23. Section 48 amended (authorized officer's power to arrest and search, etc.)

Section 48(1)—

Repeal

everything after “enquiries”

Substitute

“if the authorized officer has reasonable grounds to suspect that the person has committed or is committing an offence under section 29.”.

24. Section 49 repealed (preservation of secrecy)

Section 49—

Repeal the section.

25. Section 53A amended (interpretation of Part 5A)

(1) Section 53A, Chinese text, definition of ~~登記冊~~—

Repeal

“冊 ; ”

Substitute

“冊 。”.

(2) Section 53A—

Repeal the definition of *information system*.

26. Part 5A, Division 7 repealed (confidentiality requirements)

Part 5A—

Repeal Division 7.

27. Section 54 amended (interpretation of Part 6)

Section 54, definition of *specified decision*, after paragraph (e)—

Add

“(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 53ZSG 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 53ZSO against a person who is or was regulated person (as defined by section 53ZSN(1));
- (xiv) to revoke or suspend a licence, or the approval of a person as a responsible officer, under section 53ZSO or 53ZSP; or
- (xv) to impose a prohibition or requirement under section 53ZSY, 53ZSZ or 53ZT or to withdraw, substitute or vary, or to refuse to withdraw, substitute or vary, a prohibition or requirement under section 53ZTA;
- (g) a decision of the Commissioner—
- (i) not to register a person as a Category A registrant or a Category B registrant under section 53ZUE or 53ZUN;
- (ii) to impose a condition in relation to a Category A registrant's registration or a Category B registrant's registration under section 53ZUE or 53ZUN;
- (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 53ZUH or 53ZUQ;
- (iv) to cancel or suspend a Category A registrant's registration or a Category B registrant's registration under section 53ZUK or 53ZUT;
- (v) not to renew a person's registration as a Category B registrant under section 53ZUP;
- (vi) to impose, amend or remove a condition in relation to a renewal of registration as a Category B registrant under section 53ZUP;

- (vii) not to approve a person to become an ultimate owner, a partner or a director of a Category B registrant under section 53ZUV, 53ZUW or 53ZUX; or
- (viii) to exercise a power against a Category A registrant under section 53ZVD or a Category B registrant under section 53ZVE;”.

28. Section 62 amended (use of incriminating evidence given under compulsion)

Section 62(3)—

Repeal

“or with perjury,”.

29. Part 6A added

After Part 6—

Add

“Part 6A

Confidentiality Requirements

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 53ZSG person may disclose information obtained or received by the person in the course of performing the person's duties as a section 53ZSG person—
- (a) for the purposes of any judicial or other proceedings arising out of the performance of the person's duties as a section 53ZSG person; or
- (b) in the case of an employee or agent of a section 53ZSG auditor, to the auditor.
- (3) In this section—
- section 53ZSG auditor** (第 53ZSG 條核數師) has the meaning given by section 53ZRY;
- section 53ZSG person** (第 53ZSG 條人士) means—
- (a) a section 53ZSG auditor; or
- (b) an employee or agent of a section 53ZSG 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 53ZST.
- (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.”.

30. Section 77 amended (regulations by Chief Executive in Council)

Section 77(1)—

Repeal

“5 and 5A”

Substitute

“5, 5A, 5B and 5C”.

31. Section 80 amended (giving of notices by relevant authorities)

- (1) Section 80—

Repeal subsection (1A)

Substitute

“(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.

(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.”.
- (2) After section 80(4)—
- Add**
- “(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.
- (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.”.

32. Schedule 1 amended (interpretation)

- (1) Schedule 1, Part 2, section 1, definition of *DNFBP*, paragraph (c)—
Repeal
“or”.
- (2) Schedule 1, Part 2, section 1, definition of *DNFBP*, paragraph (d), after “licensee;”—
Add
“or”.
- (3) Schedule 1, Part 2, section 1, definition of *DNFBP*, after paragraph (d)—
Add
“(e) a Category B PMS registrant;”.
- (4) Schedule 1, Part 2, section 1, definition of *financial institution*, paragraph (g)—
Repeal
“or”.
- (5) Schedule 1, Part 2, section 1, definition of *financial institution*, paragraph (h), after “licensee;”—
Add
“or”.
- (6) Schedule 1, Part 2, section 1, definition of *financial institution*, after paragraph (h)—
Add
“(i) subject to section 20A, a licensed VAS provider;”.
- (7) Schedule 1, Part 2, section 1, definition of *relevant authority*, paragraph (d)—
Repeal

“and”.

- (8) Schedule 1, Part 2, section 1, definition of *relevant authority*, after paragraph (e)—

Add

- “(f) in relation to a licensed VAS provider or an associated entity of a licensed VAS provider, means the Securities and Futures Commission; and
- (g) in relation to a PMS registrant, means the Commissioner;”.

- (9) Schedule 1, Part 2, section 1, definition of *Securities and Futures Commission*, after “*Securities and Futures Commission*”—

Add

“, *Commission*”.

- (10) Schedule 1, English text, Part 2, section 1, definition of *TCSP licensee*, paragraph (b)—

Repeal the full stop

Substitute a semicolon.

- (11) Schedule 1, Part 2, section 1—

Add in alphabetical order

“*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);

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);

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;

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;

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

licensed VAS provider (持牌虛擬資產服務提供者) means a licensed provider within the meaning of Part 5B;

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);

virtual asset (虛擬資產)—see section 53ZRA.”.

33. Schedule 2 amended (requirements relating to customer due diligence and record-keeping)

- (1) Schedule 2—

Repeal

“& 53Z]”

Substitute

“, 53Z & 53ZVEJ”.

- (2) Schedule 2, section 1(1), definition of *beneficial owner*, paragraph (c)(i)—

Repeal

“an individual who is entitled to a vested interest in more than 25% of the capital of”

Substitute

“a beneficiary or a class of beneficiaries of the trust entitled to a vested interest in”.

- (3) Schedule 2, section 1(1), definition of *beneficial owner*, after paragraph (c)(ii)—

Add

“(iia) the trustee of the trust;”.

- (4) Schedule 2, section 1(1), definition of *politically exposed person*, paragraph (a)—

Repeal

“the People’s Republic of China”

Substitute

“Hong Kong”.

- (5) Schedule 2, section 1(1)—

Repeal the definition of *pre-existing customer*

Substitute

“*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 March 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 January 2023;”.

- (6) Schedule 2, English text, section 1(1), definition of *public body*, paragraph (e)—

Repeal the full stop

Substitute a semicolon.

- (7) Schedule 2, section 1(1)—

Repeal the definition of *customer*.

- (8) Schedule 2, section 1(1)—

Add in alphabetical order

“*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);

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;

virtual asset transfer (虛擬資產轉賬)—see section 13A(1) of this Schedule.”

- (9) Schedule 2, section 2(1)(a)—

Repeal

“a financial institution or a DNFBP who is a TCSP licensee”

Substitute

“a financial institution, or a DNFBP who is a TCSP licensee or a Category B PMS registrant”.

- (10) Schedule 2, section 2(1)(a)(iii)—

Repeal

“; or”

Substitute a semicolon.

- (11) Schedule 2, after section 2(1)(a)(iii)—

Add

“(iiia) a recognized digital identification system; or”.

- (12) Schedule 2, section 2(1)(ab)(iii)—

Repeal

“or”.

- (13) Schedule 2, after section 2(1)(ab)(iii)—

Add

“(iiia) a recognized digital identification system; or”.

- (14) Schedule 2, section 2(1)(d)(i)—

Repeal

“a financial institution or a DNFBP who is a TCSP licensee”

Substitute

“a financial institution, or a DNFBP who is a TCSP licensee or a Category B PMS registrant”.

- (15) Schedule 2, after section 3(1)(c)—

Add

“(ca) before carrying out for the customer an occasional transaction involving virtual assets that amount to not 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;”.

- (16) Schedule 2, after section 5(3)—

Add

“(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.

(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.”.
- (17) Schedule 2—
Renumber section 9 as section 9(1).
- (18) Schedule 2, after section 9(1)—
Add
“(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.”.
- (19) Schedule 2, after section 10(2)—
Add
“(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.”.
- (20) Schedule 2, section 12(2)—
Repeal paragraph (c)
Substitute

- “(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.”.
- (21) Schedule 2, section 12(11)—
Repeal the definition of *business day*.
- (22) Schedule 2, after section 13—
Add
“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.”.
- (23) Schedule 2, after section 19(2)—
- Add**
- “(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.”.
- (24) Schedule 2, after section 20(3)—
- Add**
- “(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), (c) and (ca) 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.”.
-

Part 3

Related Amendment to Securities and Futures Ordinance (Cap. 571)

34. Section 378 amended (preservation of secrecy, etc.)

After section 378(3)(f)(xvii)—

Add

- “(xviii) the Commissioner of Customs and Excise;
(xix) the Estate Agents Authority;
(xx) The Law Society of Hong Kong;”.
-

Explanatory Memorandum

The main object of this Bill is to amend the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (*principal Ordinance*) to meet Hong Kong’s obligations under the Financial Action Task Force’s Recommendations (*FATF Recommendations*) for combating money laundering and terrorist financing.

2. Accordingly, the Bill proposes to apply the customer due diligence and record-keeping requirements (*AML/CTF requirements*) in the principal Ordinance to virtual asset service providers (*VASPs*) and precious metals and stones dealers (*PMS dealers*). VASPs and PMS dealers are not currently regulated and, as the means for enforcing the AML/CTF requirements, the Bill proposes to establish a licensing regime for VASPs, to be administered by the Securities and Futures Commission (*Commission*) and a registration regime for PMS dealers, to be administered by the Commissioner for Customs and Excise (*Commissioner*). The Bill also proposes to make miscellaneous amendments to the existing requirements under the principal Ordinance and to make a related amendment to another Ordinance.
3. The Bill contains 3 Parts.

Part 1—Preliminary

4. Clause 1 sets out the short title and provides for commencement.

Part 2—Amendments to Principal Ordinance

5. Part 2 of the Bill is divided into 2 Divisions. Division 1 comprises clauses 3 to 5. Division 2 comprises clauses 6 to 33.

Division 1—Establishment of New Regulatory Regimes

6. Clause 3 amends the long title to reflect the enhanced scope of the principal Ordinance.

7. Clauses 4 and 5 add new Parts 5B and 5C, and new Schedules 3B to 3J, to the principal Ordinance—
 - (a) new Part 5B, and new Schedules 3B to 3G, provide for the regulation of activities involving virtual assets and the licensing of VASPs and their representatives; and
 - (b) new Part 5C, and new Schedules 3H to 3J, provide for the regulation of dealings in precious metals and stones and the registration of PMS dealers.
8. New Part 5B contains 9 Divisions. Paragraphs 9 to 21 contain a brief description of sections in new Part 5B and of the related new Schedules 3B to 3G.
9. Division 1 of new Part 5B contains preliminary provisions. In particular, new sections 53ZR to 53ZRC (read with new Schedule 3B) define the terms relevant to Part 5B, including *associated entity*, *regulated function*, *ultimate owner*, *VA* or *virtual asset* and *VA service*.
10. Division 2 of new Part 5B (sections 53ZRD to 53ZRG) imposes restrictions on activities involving virtual assets. In particular—
 - (a) section 53ZRD prohibits any person from carrying on a business of providing a VA service or performing a regulated function in relation to such a business unless the person is licensed under new Part 5B;
 - (b) section 53ZRE regulates the issue of advertisements relating to the provision of VA service etc.;
 - (c) section 53ZRF creates an offence for the use of fraudulent or deceptive devices etc. in transactions involving any virtual assets;
 - (d) section 53ZRG creates an offence for the use of any fraudulent or reckless misrepresentation to induce others to invest in any virtual assets; and

- (e) contraventions of certain provisions of sections 53ZRD to 53ZRG constitute offences.
11. Division 3 of new Part 5B provides for licensing of VA service providers and consists of 5 Subdivisions—
 - (a) in Subdivision 1, section 53ZRH requires the Commission to maintain a register of licensed persons (meaning licensed providers and licensed representatives). Section 53ZRI provides for admission into evidence of certified copies of entries in, and extracts from, the register and the evidential value of those copies;
 - (b) in Subdivision 2, section 53ZRJ sets out the elements of the fit and proper test that is relevant to the grant or refusal of a licence or approval under Division 3 or 4 of new Part 5B and to the suspension or revocation of such licence or approval;
 - (c) in Subdivision 3, section 53ZRK provides for licensing of corporations by the Commission for a VA service;
 - (d) in Subdivision 4, sections 53ZRL and 53ZRM provide for licensing of an individual as a licensed representative, to provide a VA service on behalf of a licensed provider, and for approval for accreditation of a licensed representative to a licensed provider. Only a licensed representative whose accreditation to a licensed provider is approved may perform regulated functions on behalf of the licensed provider in relation to a business, carried on by it, of providing a VA service;
 - (e) the type of VA service for which licensed persons are licensed may be varied by the Commission under section 53ZRN upon application; and
 - (f) a fee (as specified in new Schedule 3C) is payable for an application for a licence or approval referred to in subparagraph (c), (d) or (e).

12. Division 4 of new Part 5B provides for approvals by the Commission—
- (a) under section 53ZRO, licensed providers must have approved responsible officers to supervise the business of providing of a VA service. Section 53ZRP provides for an application for, and the giving of, such an approval;
 - (b) under section 53ZRQ, no person may become an ultimate owner of a licensed provider unless the person has been approved by the Commission;
 - (c) section 53ZRR requires licensed providers to have suitable premises approved by the Commission for the keeping of records and documents; and
 - (d) a fee (as specified in new Schedule 3C) is payable for an application for an approval referred to in subparagraph (a), (b) or (c).
13. Division 5 of new Part 5B contains provisions supplementary to Divisions 3 and 4. Section 53ZRS provides that the Commission must, before refusing an application for a licence or accreditation or other approval, or imposing, amending or removing conditions in respect of any of them already granted by the Commission, give the person affected an opportunity of being heard.
14. Division 6 of new Part 5B specifies licensed persons' obligations regarding notification (sections 53ZRT, 53ZRU and 53ZRW), annual fees (as specified in new Schedule 3C) and annual returns (section 53ZRX read with new Schedule 3E). In addition, section 53ZRV (read with Schedule 3D) sets out general obligations of associated entities of licensed providers.
15. Division 7 of new Part 5B relates to audit requirements imposed on a licensed provider and an associated entity of a licensed provider (each an *auditable entity*). In particular—

- (a) section 53ZRZ requires an auditable entity to appoint an auditor (*prescribed auditor*);
- (b) under section 53ZS, an auditor employed by, or in other specified relationship with, the auditable entity is disqualified from being appointed;
- (c) section 53ZSA sets out requirements in relation to notification of financial years;
- (d) section 53ZSB (read with new Schedule 3F) contains requirements as to the submission of audited accounts;
- (e) section 53ZSC provides for the lodging of reports by the prescribed auditor with the Commission on specified matters;
- (f) section 53ZSD requires an auditable entity to notify the Commission of a proposed change of prescribed auditor. Section 53ZSE requires a prescribed auditor to notify the Commission of the auditor's resignation;
- (g) section 53ZSF requires an auditable entity to fill a vacant office of its prescribed auditor;
- (h) sections 53ZSG to 53ZSJ enable the Commission to appoint an independent auditor in respect of licensed providers and their associated entities, the powers and duties of such an auditor and offences for non-compliance with requirements imposed by such an auditor;
- (i) section 53ZSK creates the offence of destroying or altering documents related to an examination and audit carried out by an auditor appointed under new Part 5B; and
- (j) section 53ZSL provides for immunity in respect of communication in good faith to the Commission by a prescribed auditor.

16. Division 8 of new Part 5B provides for the Commission's powers to discipline licensed persons, to intervene in the business of a licensed provider or its associated entities and to conduct legal proceedings in respect of them in specified circumstances.
17. Subdivision 1 of Division 8 of new Part 5B covers disciplinary powers. In particular—
 - (a) sections 53ZSO and 53ZSQ set out the general disciplinary powers of the Commission exercisable in cases of misconduct etc. (such as the power to revoke or suspend a licence, to publish a reprimand and to impose a pecuniary penalty);
 - (b) section 53ZSR requires the Commission to publish guidelines about the power to impose a pecuniary penalty;
 - (c) section 53ZSS provides for the registration in the Court of First Instance of an order to pay a pecuniary penalty for it to be enforced as an order of the Court; and
 - (d) section 53ZSP provides for revocation and suspension of a licence in other specified circumstances.
18. Subdivision 2 of Division 8 of new Part 5B provides for the powers of intervention exercisable by the Commission in respect of, or with reference to, licensed providers or their associated entities. In particular—
 - (a) section 53ZSX sets out the grounds on which a prohibition or requirement may be imposed under sections 53ZSY to 53ZT;
 - (b) the prohibition or requirement that the Commission may impose covers restriction on businesses (section 53ZSY), restriction on dealings with property (section 53ZSZ) and requirements to maintain property (section 53ZT); and
 - (c) sections 53ZTA to 53ZTD address ancillary matters (including variation of a prohibition or requirement

- already imposed, procedures to be followed in imposing or varying a prohibition or requirement and application to the Court of First Instance for enforcement of a prohibition or requirement).
19. Subdivision 3 of Division 8 of new Part 5B provides for other powers to seek remedies through the court. In particular—
 - (a) sections 53ZTE and 53ZTF set out the powers to seek winding up orders and bankruptcy orders in respect of licensed persons; and
 - (b) section 53ZTG sets out the powers to seek injunctions and other orders for contravention of specified requirements.
20. Division 9 of new Part 5B provides for miscellaneous matters. In particular—
 - (a) section 53ZTH states the obligation of a person making a specified application under new Part 5B to provide information;
 - (b) section 53ZTI requires that, if any disciplinary power is exercised against a licensed person, relevant particulars must be entered on the register maintained under section 53ZRH and remain there for 5 years;
 - (c) section 53ZTJ provides for powers of the Commission to make non-statutory codes or guidelines;
 - (d) section 53ZTK provides for the rule-making powers of the Commission. Section 53ZTL empowers the Secretary for Financial Services and the Treasury to amend new Schedule 3B, the Commission to amend new Schedule 3C, and the Commission, after consultation with the Financial Secretary, to amend new Schedules 3D, 3E and 3F;

- (e) section 53ZTM empowers the Commission to waive or refund the fees payable in respect of applications under Part 5B, annual fees etc.;
- (f) sections 53ZTN to 53ZTP provide for offences for making false or misleading representations in applications and in other information and document required to be provided to the Commission;
- (g) section 53ZTQ prohibits representations of endorsement or warranty, by the Government or the Commission, of licensed persons' abilities or qualifications;
- (h) section 53ZTR creates the offence of obstruction;
- (i) section 53ZTS extends the time limit (specified in the Magistrates Ordinance (Cap. 227)) for prosecuting a summary offence under new Part 5B;
- (j) section 53ZTT enables the Commission to intervene in proceedings that concern a matter provided for in the principal Ordinance or in which the Commission has an interest by virtue of its functions under the principal Ordinance, if the Commission is satisfied that it is in the public interest to do so;
- (k) section 53ZTV requires any member of the Commission and any person performing functions under the principal Ordinance not to enter into specified transactions, and to disclose any interest that the member or person has in specified matters, to prevent cases of conflict of interests arising;
- (l) section 53ZTW provides for evidence regarding records or documents of the Commission; and
- (m) section 53ZTX adds a new Schedule 3G to the principal Ordinance to provide for transitional arrangements and, for this purpose, new Schedule 3G contains definitions of

terms including *first 9 months*, *first 12 months* and *objection period*.

21. In substance, the transitional arrangements provided for by new Schedule 3G regarding new Part 5B are as follows—
- (a) an existing VASP does not commit an offence by carrying on a business of providing a VA service during the first 12 months, even if the existing VASP is not licensed to provide the VA service;
 - (b) a corporation or an individual who applies under new Part 5B for a licence to provide a VA service is deemed to be licensed for doing so if certain conditions are satisfied;
 - (c) an individual who applies under new Part 5B to be approved as a responsible officer of a corporation for providing a VA service is deemed to be so approved if certain conditions are satisfied;
 - (d) the Commission may issue a notice to a person making an application referred to in subparagraph (b) or (c) if the relevant specified conditions are not satisfied, in which case—
 - (i) the person is not to be deemed licensed or approved; and
 - (ii) the person's application is to be deemed withdrawn unless the person raises an objection within the objection period;
 - (e) the deemed status mentioned in subparagraph (b) or (c) begins immediately on the expiry of the first 12 months and, if the application is not withdrawn, lasts until the person's application is granted or, if the person's application is refused, until the refusal takes effect as a specified decision under section 75 of the principal Ordinance;

- (f) if a person never has a deemed status (as mentioned in subparagraph (d)(i)) or if a person's deemed status has ended (as mentioned in subparagraph (e)), the person is allowed a period during which the person may take steps to close down the person's business of providing a VA service without contravening section 53ZRD; the Commission may, on application, extend the closing-down period if certain conditions are satisfied.
22. New Part 5C, proposed to be added to the principal Ordinance, contains 9 Divisions. Paragraphs 23 to 33 contain a brief description of sections in new Part 5C and of the related new Schedules 3H to 3J.
23. Division 1 of new Part 5C contains preliminary provisions. In particular—
- (a) sections 53ZTY and 53ZTZ set out the definitions of terms relevant to Part 5C, including *branch*, *Category A registrant*, *Category B registrant*, *dealing in precious metals and stones*, *non-Hong Kong precious metals and stones dealer*, *precious metal*, *precious metals and stones business*, *precious stone* and *registrant*;
 - (b) further, *specified cash transaction* is defined by section 53ZTY to mean, in essence, a transaction carried out by a person, while carrying on a precious metals and stones business, where a payment or payments in cash, of at least the amount specified in new Schedule 3H (currently \$120,000) in total, is or are made or received in Hong Kong in respect of the transaction, including such a transaction executed in several linked operations;
 - (c) section 53ZU states that new Part 5C does not apply to persons licensed under certain other regulatory regimes and that only Divisions 7, 8 and 9 of new Part 5C apply to a non-Hong Kong precious metals and stones dealer;

- (d) section 53ZUA empowers the Commissioner to delegate the functions under the principal Ordinance except the power to delegate or the power to amend new Schedules 3I and 3J or make regulations;
 - (e) section 53ZUB requires the Commissioner to maintain a register of registrants (i.e. Category A registrants and Category B registrants), which is to be made available for public inspection; and
 - (f) section 53ZUC provides for admission into evidence of certified copies of entries in, and extracts from, the register and the evidential value of those copies.
24. Division 2 of new Part 5C imposes restrictions on dealing in precious metals and stones—
- (a) section 53ZUD(1) makes it an offence for a person to carry on a precious metals and stones business without registration; and
 - (b) section 53ZUD(2) makes it an offence for a person (other than a Category B registrant) to carry out, by way of business, a specified cash transaction in Hong Kong.
25. Division 3 of new Part 5C (comprising new sections 53ZUE to 53ZUL) and Subdivision 1 of Division 4 (comprising new sections 53ZUM to 53ZUU) of new Part 5C provide for the following matters in relation to registration as Category A registrants and registration as Category B registrants respectively—
- (a) the Commissioner's power to register, how an application for registration is to be made, and that a fee (as specified in new Schedule 3J) is payable for the application;
 - (b) the Commissioner's power to impose conditions when granting registration;
 - (c) the Commissioner's power to amend previously imposed conditions;

- (d) the issue of a certificate of registration and of branch certificates;
 - (e) the Commissioner's power to revoke or suspend registration in certain situations and the procedure for revocation or suspension;
 - (f) the events on the occurrence of which registration ceases to be valid.
26. In order to be registered as a Category B registrant, a person must satisfy the fit and proper test. Section 53ZUM sets out the elements of the fit and proper test. On the other hand, a person applying to be registered as a Category A registrant mainly has to show that the precious metals and stones business that the applicant proposes to carry on will be carried on for a lawful purpose (section 53ZUE).
27. The registration of a person as a Category B registrant is valid for a period of 3 years or another period determined by the Commissioner and may be renewed (sections 53ZUN and 53ZUP). On the other hand, a person's registration as a Category A registrant is valid indefinitely.
28. Subdivision 2 of Division 4 of new Part 5C (comprising sections 53ZUV to 53ZUY) provides that the Commissioner's approval is required to hold certain positions in a Category B registrant after the registration and that it is an offence to do so without that approval. The Subdivision also states how to apply for approval and states that a fee (as specified in new Schedule 3J) is payable for the application.
29. In Division 5 of new Part 5C, section 53ZUZ requires a Category A registrant or Category B registrant to display the registrant's certificate of registration and branch certificates. Sections 53ZV and 53ZVA require notification to be given to the Commissioner of changes in certain particulars and of a registrant's intended cessation of business. Non-compliance with any of these requirements is an

- offence. Further, section 53ZVB states how the Commissioner is to be notified.
30. Division 6 of new Part 5C relates to the Commissioner's disciplinary powers. In particular—
- (a) sections 53ZVD and 53ZVE empower the Commissioner to take specified disciplinary actions against a Category A registrant and a Category B registrant respectively. A pecuniary penalty may only be imposed on a Category B registrant;
 - (b) section 53ZVF sets out the procedure for disciplinary action;
 - (c) section 53ZVG requires the Commissioner to publish guidelines about the power to impose a pecuniary penalty;
 - (d) section 53ZVH provides for the registration in the Court of First Instance of an order to pay a pecuniary penalty for it to be enforced as an order of the Court; and
 - (e) section 53ZVI empowers the Commissioner to exercise disciplinary powers against a director (as defined by that section) of a corporate Category B registrant.
31. In Division 7 of new Part 5C, section 53ZVJ requires a non-Hong Kong precious metals and stones dealer carrying out a specified cash transaction to give to the Commissioner, within the specified time, a report containing the information specified in new Schedule 3I in respect of the transaction. A failure to do so constitutes an offence.
32. Division 8 of new Part 5C provides for enforcement—
- (a) section 53ZVK empowers the Commissioner to appoint authorized officers;
 - (b) section 53ZVL empowers a magistrate, if satisfied there is reason to suspect the commission on any premises of an offence under section 53ZUD or 53ZVJ, to issue a

warrant authorizing an authorized officer to enter and search the premises;

- (c) section 53ZVM provides for the power to require materials to be reproduced in legible form; and
- (d) section 53ZVN provides for the circumstances in which an authorized officer has powers to arrest and detain without a warrant.

33. Division 9 of new Part 5C provides for miscellaneous matters. In particular—

- (a) section 53ZVP(1) empowers the Secretary for Financial Services and the Treasury to amend new Schedule 3H (which specifies the threshold amount for the definition of *specified cash transaction*);
- (b) section 53ZVP(2) empowers the Commissioner to amend new Schedule 3J (which sets out fees payable under new Part 5C) and new Schedule 3I (which specifies the information that a report, given under section 53ZVJ in respect of a specified cash transaction, must contain);
- (c) section 53ZVR empowers the Commissioner to make regulations for the purposes of new Part 5C;
- (d) section 53ZVS creates an offence for giving false or misleading information in connection with an application or other matters under new Part 5C;
- (e) section 53ZVT extends the time limit (specified in the Magistrates Ordinance (Cap. 227)) for prosecuting a summary offence under new Part 5C; and
- (f) section 53ZW contains transitional arrangements so that an existing PMS dealer who meets certain conditions may be deemed to be registered as a Category B registrant. The circumstances in which the deemed status ends, depending on whether or not a person applies for

registration during the transitional period of first 9 months specified in section 53ZW.

Division 2—Customer Due Diligence Requirements and Miscellaneous Matters

34. The customer due diligence (**CDD**) and record-keeping requirements (**AML/CTF requirements**) and other provisions in the principal Ordinance are applied to licensed persons under new Part 5B and registrants under new Part 5C by the following amendments to the principal Ordinance—

- (a) new definitions of terms are added to Schedule 1 to the principal Ordinance for use in provisions applicable across different regulatory regimes, including *licensed VAS provider* (equivalent to licensed provider within the meaning of new Part 5B), *PMS registrant* (equivalent to registrant within the meaning of new Part 5C), *Category B PMS registrant* (equivalent to Category B registrant within the meaning of new Part 5C) and *corporation*;
- (b) in Schedule 1 to the principal Ordinance, the definition of *financial institution* is amended to cover a licensed VAS provider and the definition of *DNFBP* is amended to cover a Category B PMS registrant (DNFBP is an acronym for persons in the category described as designated non-financial businesses and professions in the FATF Recommendations);
- (c) new paragraphs are added to the definition of *relevant authority* in Schedule 1 to the principal Ordinance and the definition of *pre-existing customer* in Schedule 2 to the principal Ordinance to cater for licensed VAS providers and Category B PMS registrants;
- (d) new sections 13A, 19(2A) and 20(3A), added to Schedule 2 to the principal Ordinance, apply to virtual asset transactions and others. Among other things, a financial

institution carrying out a transfer of virtual assets that amount to not less than \$8,000 must obtain particulars of the originator and recipient of the transfer and to submit the information to the financial institution acting for the recipient or an intermediary financial institution. Non-compliance is an offence under section 5 of the principal Ordinance (clause 6).

35. Under section 5A of the principal Ordinance, as amended by clause 7, the AML/CTF requirements only apply to a Category B PMS registrant when, by way of business, the registrant carries out, in Hong Kong with a customer, a specified cash transaction. But if a specified cash transaction is carried out exclusively between 2 Category B PMS registrants, the AML/CTF requirements do not apply to the paying registrant.
36. In Part 3 of the principal Ordinance, the existing sections are grouped into Divisions and relevant Division headings are added (clauses 8, 10 and 17). In addition, clauses 9, 11 to 17 amend sections 8 to 13 of the principal Ordinance to extend, to licensed VAS providers and their associated entities and PMS registrants, the provisions relating to—
- (a) entry into business premises for routine inspections;
 - (b) offences relating to those inspections; and
 - (c) the appointment of investigators, their powers and offences for non-compliance with requirements made by investigators.
37. Clause 18 adds new Division 3 (sections 13A to 13E) to Part 3 of the principal Ordinance to provide for regulatory assistance to a regulator of a jurisdiction outside Hong Kong, with reference to provisions providing for similar assistance under the Securities and Futures Ordinance (Cap. 571).

38. New section 20A is added by clause 21 so the provisions on disciplinary actions in Part 4 of the principal Ordinance are not applicable to licensed VAS providers (who are governed by the provisions referred to in paragraph 17).
39. In the existing principal Ordinance, section 49 (in Part 5) and Division 7 of Part 5A deal with confidentiality requirements. The Bill consolidates the provisions by repealing those existing provisions and adding new Part 6A (sections 76A to 76G) applicable across the existing Parts as well as the new Parts 5B and 5C (clauses 24, 26 and 29). In particular—
- (a) section 76B prohibits different relevant authorities under different parts of the principal Ordinance and persons assisting the relevant authorities from disclosing information that comes to their knowledge in performing functions under the principal Ordinance;
 - (b) sections 76C and 76D set out the disclosures that are permitted;
 - (c) section 76E prohibits a person subject to inspection, investigation or disciplinary action from disclosing information obtained in the course of the inspection, investigation or disciplinary action;
 - (d) section 76F prohibits a person receiving information under section 76C, 76D or 76E from disclosing the information onwards.
40. Clause 27 amends certain definitions in section 54 of the principal Ordinance so the review mechanism under the principal Ordinance apply to the decisions made by the Commission and the Commissioner under new Parts 5B and 5C.
41. Clause 30 amends section 77(1) of the principal Ordinance to exclude regulations for the purposes of new Parts 5B and 5C from the Chief Executive in Council's power to make regulations.

42. Clause 31 amends section 80 of the principal Ordinance to provide for notices etc. given by the Commission and the Commissioner under new Parts 5B and 5C.
43. Various other miscellaneous amendments are made.
44. The penalty, in section 29 of the principal Ordinance, for unlicensed money service operation is increased following FATF recommendations in view of the sustained level of unlicensed operations (clause 22). Clause 23 amends section 48 of the principal Ordinance to revise the conditions on which an authorized person may arrest or detain a person for further enquiries, without a warrant.
45. Clause 33 makes amendments to better align the definition of *beneficial owner* in relation to a trust under the principal Ordinance with that of *controlling person* under section 50A of the Inland Revenue Ordinance (Cap. 112), by clarifying that, where a trust is concerned, a beneficial owner includes a trustee, beneficiary and a class of beneficiaries.
46. Under sections 5 and 9 of Schedule 2 to the principal Ordinance, enhanced CDD requirements currently apply in relation to a customer who is not physically present. Those sections are amended by clause 33(8), (16) and (18) so that, if the CDD requirements are met using a reliable and independent digital identification system, the enhanced CDD requirements are not required. That change is in line with Financial Action Task Force's acceptance of digital identification systems as effective means to lower the money laundering and terrorist financing risks associated with a customer not physically present.
47. To implement the FATF Recommendations and relevant Financial Action Task Force's Guidance, clause 33(4) and (8) amends the definition of *politically exposed person (PEP)* and add a definition of *formerly politically exposed person (former PEP)*. Clause 33(16) and (19) amends sections 5 and 10 of Schedule 2 to the principal Ordinance. With these amendments, enhanced CDD under the

- existing section 10 of Schedule 2 to the principal Ordinance applies not only to a PEP from a place outside China but also a PEP from other parts of China outside Hong Kong. Further, such enhanced CDD may not be required for former PEP (who are no longer entrusted with a prominent public function) if risks of money laundering and terrorist financing are low.
48. Definitions of *business day* and *information system* in Schedule 2 to, and in sections 18 and 53A of, the principal Ordinance respectively are repealed and re-enacted in Schedule 1 to the principal Ordinance so that those definitions apply across different regulatory regimes (clauses 20 and 25).
 49. Clauses 19 and 28 repeal references to perjury in sections 15(3) and 62(3) of the principal Ordinance as the common law offence of perjury has already been codified in Part V of the Crimes Ordinance (Cap. 200).

Part 3—Related Amendment to Securities and Futures Ordinance (Cap. 571)

50. Under the provisions referred to in paragraph 39, information obtained by a person in performing functions under the principal Ordinance is permitted to be disclosed to the relevant authorities and regulatory bodies under the principal Ordinance (among others). Similarly, with the amendment by clause 34 to section 378 of the Securities and Futures Ordinance (Cap. 571), the Commission is permitted to disclose information obtained in performing functions under that Ordinance to persons who perform functions under the principal Ordinance.