

## PART 19

### INVESTIGATIONS AND ENQUIRIES

#### Division 1 – Preliminary

##### 19.1 Interpretation

(1) In this Part –

“agent” (代理人), in relation to a company, includes –

- (a) a banker or solicitor of the company; and
- (b) a person, whether an officer of the company or not, who is engaged as an auditor of the company;

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

“books” (簿冊) includes accounts and accounting information, however compiled or stored, and whether or not recorded in a legible form;

“delegate” (獲轉授人) –

- (a) in relation to an inspector, means a person to whom the inspector has delegated any power under section 19.13(1);
- (b) in relation to the Financial Secretary, means a person to whom the Financial Secretary has delegated any power under section 19.33;
- (c) in relation to the Registrar, means a public officer to whom the Registrar has delegated any power under section 19.37;

“document” (文件) means –

- (a) any register, books and tape recording;
- (b) any input or output, in whatever form, into or from an information system; and

- (c) any other document or similar material (whether produced mechanically, electronically, magnetically, optically, manually or by any other means);

“information” (資料) includes –

- (a) data, text, images, sound codes, computer programmes, software and databases; and
- (b) any combination of the things mentioned in paragraph (a);

“inspector” (審查員) means –

- (a) a person appointed under section 19.3 or 19.4 to investigate a company’s affairs; or
- (b) a person appointed under section 19.16 to continue an investigation;

“officer” (高級人員), in relation to a body corporate, means a director, manager or secretary of, or any other person involved in the management of, the body corporate;

“record” (紀錄) means any record of information (however compiled or stored) and includes –

- (a) any books, deed, contract, agreement, voucher and receipt;
- (b) any document or other material used with or produced by an information system;
- (c) any information that is recorded otherwise than in a legible form but is capable of being reproduced in a legible form;
- (d) any document, disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of other equipment) of being reproduced; and
- (e) any film (including a microfilm), disc, tape or other device in which visual images are embodied so as to be capable

(with or without the aid of other equipment) of being reproduced.

(2) For the purposes of this Part, a body corporate is an associated body corporate of a company if –

- (a) the body corporate and the company are members of the same group of companies; or
- (b) the body corporate and the company are substantially controlled by the same person.

## **Division 2 – Investigation of Company’s Affairs by Inspectors**

### **Subdivision 1 – Preliminary**

#### **19.2 Interpretation**

In this Division –

“company” (公司) –

- (a) in section 19.3, includes a registered non-Hong Kong company;
- (b) in section 19.4, includes –
  - (i) a non-Hong Kong company;
  - (ii) a company incorporated outside Hong Kong that –
    - (A) does business in Hong Kong; but
    - (B) does not have a place of business in Hong Kong; or
  - (iii) a company within a group of companies of which a company as defined by section 1.2(1) or described in subparagraph (i) or (ii) is a member, wherever incorporated;

“final report” (最終報告) means the final report mentioned in section 19.19;

“interim report” (中期報告) means the interim report mentioned in section 19.18;

“investigation” (調査) means an investigation into a company’s affairs under section 19.3 or 19.4.

## **Subdivision 2 – Appointment by Financial Secretary of Inspectors to Investigate Company’s Affairs**

### **19.3 Appointment of inspector on application by company or members**

(1) The Financial Secretary may, on application by a company, appoint a person to investigate the company’s affairs if the company has by special resolution declared that the company’s affairs ought to be so investigated.

(2) The Financial Secretary may also appoint a person to investigate a company’s affairs –

(a) in the case of a company having a share capital, on application by –

(i) at least 100 members; or

(ii) members holding at least 10% of the shares issued;

or

(b) in the case of a company not having a share capital, on application by at least 10% in number of the persons on the company’s register of members.

(3) An application for the purposes of subsection (1) or (2) must be supported by the evidence required by the Financial Secretary to show that the applicant has good reason for requesting the investigation.

(4) The Financial Secretary must not appoint a person under subsection (1) or (2) to investigate a company’s affairs unless the Financial Secretary is satisfied that it is in the public interest to do so.

(5) The Financial Secretary may, before making an appointment under subsection (1) or (2), require an applicant for an appointment under subsection (1) or (2) to give security for the payment of the expenses of the investigation, in an amount specified by the Financial Secretary.

#### **19.4 Appointment of inspector on Court's or Financial Secretary's initiative**

(1) The Financial Secretary must appoint a person to investigate a company's affairs if the Court of First Instance by order declares that the company's affairs ought to be so investigated.

(2) The Financial Secretary may appoint a person to investigate a company's affairs if it appears to the Financial Secretary that there are circumstances suggesting that –

- (a) the company was formed for a fraudulent or unlawful purpose;
- (b) the company's affairs are being or have been conducted –
  - (i) in a manner unfairly prejudicial to the interests of its members generally or of one or more members;
  - (ii) with intent to defraud its creditors or the creditors of any other person; or
  - (iii) for any other fraudulent or unlawful purpose; or
- (c) the persons concerned with the formation of the company or the management of its affairs have, in relation to the formation or management, engaged in fraud, misfeasance or other misconduct towards it, its members or its creditors.

(3) The Financial Secretary must not appoint a person under subsection (2) to investigate a company's affairs unless the Financial Secretary is satisfied that it is in the public interest to do so.

(4) The Financial Secretary may appoint a person under subsection (2) to investigate a company's affairs even though the company is in the course of being wound up voluntarily.

#### **19.5 Notice of appointment as inspector to be delivered to Registrar**

(1) A person who is appointed as an inspector under section 19.3 or 19.4 must deliver a notice of the appointment to the Registrar.

(2) The notice must be delivered to the Registrar within a reasonable time after the appointment and must be in the specified form.

### **Subdivision 3 – Financial Secretary’s Powers to Give Directions to Inspectors**

#### **19.6 General power of Financial Secretary to give directions regarding investigation**

(1) The Financial Secretary may give directions to an inspector regarding an investigation.

(2) The Financial Secretary may give directions under this section –

- (a) on the Financial Secretary’s own initiative; or
- (b) at the request of the inspector.

(3) The Financial Secretary may vary or revoke any directions given under this section.

#### **19.7 Financial Secretary may give directions regarding subject matter of investigation etc.**

(1) Without limiting section 19.6, the Financial Secretary may give directions to an inspector with respect to any or all of the following –

- (a) the terms or subject matter of the investigation (whether by reference to a specified area of a company’s operation, a specified transaction, a specified period of time or otherwise);
- (b) the matters the inspector must take into account or must not take into account in conducting the investigation;
- (c) the steps the inspector must take or must not take in conducting the investigation.

(2) Without limiting section 19.6, the Financial Secretary may also give directions to an inspector to require that the interim report or final report of the investigation –

- (a) is to include the inspector’s opinion with respect to a specified matter;

- (b) is not to make reference to a specified matter;
- (c) is to be made in a specified form or manner; or
- (d) is to be completed by a specified date.

(3) In this section –

“specified” (指明) means specified in directions given under this section.

### **19.8 Financial Secretary may give directions to terminate or suspend investigation**

(1) Without limiting section 19.6, the Financial Secretary may at any time before the completion of an investigation, direct the inspector –

- (a) to terminate the investigation; or
- (b) to suspend the investigation for a period as specified by the Financial Secretary.

(2) If the inspector is appointed under section 19.4(1), the Financial Secretary must not give directions under subsection (1)(a) unless it appears to the Financial Secretary that –

- (a) matters have come to light in the course of the investigation which suggest that a criminal offence under the laws of Hong Kong has been committed; and
- (b) those matters have been referred to a law enforcement agency.

(3) If the Financial Secretary gives directions under subsection (1)(a), any directions given under section 19.7(2) or 19.18(1)(a) in relation to an interim report cease to have effect.

## **Subdivision 4 – Inspectors’ Powers**

### **19.9 Inspector may require production of records and documents etc.**

(1) An inspector appointed to investigate a company’s affairs may, by notice in writing, require any of the persons specified in subsection (2) to do any or all of the following –

- (a) produce, within the time and at the place specified in the notice, any record or document specified in the notice that –
    - (i) is or may be relevant to the investigation; and
    - (ii) is in the person’s custody or power;
  - (b) take all reasonable steps to preserve the record or document before it is produced to the inspector;
  - (c) attend before the inspector at the time and place specified in the notice, and answer any question, whether on oath or otherwise, relating to any matter under investigation that the inspector may raise with the person;
  - (d) answer any question relating to any matter under investigation that is specified in the notice;
  - (e) give the inspector all other assistance in connection with the investigation that the person is reasonably able to give.
- (2) The persons are –
- (a) the company;
  - (b) an officer or former officer of the company;
  - (c) an agent or former agent of the company;
  - (d) a person whom the inspector has reasonable grounds to believe –
    - (i) to be in possession of any record or document that contains, or is likely to contain, information relevant to the investigation; or
    - (ii) otherwise to be in possession of that information.

(3) An inspector must not require an authorized institution to produce any record or document, or disclose any information, relating to the affairs of a customer of the institution under subsection (1) unless –



- (a) the inspector has reasonable grounds to believe that the customer may be able to provide information relevant to the investigation; and
- (b) the inspector is satisfied that the production or disclosure is necessary for the purposes of the investigation and so certifies in writing.

(4) In subsection (1)(b), a reference to preserving a record or document includes preventing a person from –

- (a) removing, disposing of or destroying the record or document;
- (b) erasing, adding to or altering in any other manner an entry or other particulars contained in the record or document; or
- (c) interfering in any other manner with, or causing or permitting any other person to interfere with, the record or document.

(5) An inspector may administer an oath to any person for the purposes of subsection (1)(c).

#### **19.10 Inspector may require production of director's accounts**

(1) If an inspector appointed to investigate a company's affairs has reasonable grounds to believe that a director or former director of the company maintains or has maintained an account specified in subsection (2), the inspector may, by notice in writing, require the director or former director to produce to the inspector all documents relating to the account that are in the possession, or under the control, of the director or former director.

(2) The account is one of whatever description maintained by the director or former director (whether alone or jointly with any other person) with a bank, deposit-taking company or similar financial institution (whether in Hong Kong or elsewhere), into or out of which there has been paid –

- (a) any emolument, retirement benefit or compensation in respect of the directorship, particulars of which are not contained in the notes to the financial statement of the company for any financial year, contrary to section 9.27;
- (b) any loan or quasi-loan in favour of the director or former director, or any money that has resulted from, or has been used in the financing of any dealing in favour of the director or former director, particulars of which are not contained in the notes to the financial statement of the company for any financial year, contrary to section 9.27;  
or
- (c) any money that has been in any way connected with any misconduct of the director or former director (whether fraudulent or not) towards the company, or its members.

**19.11 Provisions supplementary to sections 19.9 and 19.10: powers to require explanation etc.**

(1) If a person produces a record or document pursuant to a requirement imposed under section 19.9 or 19.10, the inspector may –

- (a) make copies, or otherwise record the details, of the record or document; and
- (b) by notice in writing, require the person to provide any information or explanation in respect of the record or document.

(2) If a person gives any answer, or provides any information or explanation, pursuant to a requirement imposed under section 19.9 or subsection (1), the inspector may, by notice in writing, further require the person to verify, within the time specified in that further requirement, the answer, information or explanation by a statutory declaration.

(3) If a person does not give any answer, or provide any information or explanation, pursuant to a requirement imposed under section 19.9 or

subsection (1) for the reason that the answer, information or explanation is not within the person's knowledge or in the person's possession, the inspector may, by notice in writing, further require the person to verify, within the time specified in that further requirement, that reason and fact by a statutory declaration.

(4) A statutory declaration mentioned in subsection (2) or (3) may be taken by the inspector.

### **19.12 Inspector may exercise powers in relation to associated body corporate**

If an inspector appointed to investigate a company's affairs considers it necessary for the purposes of the investigation, the inspector may also exercise any of the powers under sections 19.9, 19.10 and 19.11 in relation to an associated body corporate of the company, as if the references to a company in those sections were references to an associated body corporate.

### **19.13 Delegation of powers by inspector**

(1) An inspector appointed to investigate a company's affairs may delegate in writing any or all of the powers conferred under sections 19.9, 19.10 and 19.11 to another person.

(2) An inspector may delegate powers under subsection (1) in relation to the company or an associated body corporate of the company.

(3) If 2 or more inspectors are appointed to investigate a company's affairs, the power under subsection (1) is exercisable by each of them.

## **Subdivision 5 – Resignation, Removal and Replacement of Inspectors**

### **19.14 Resignation of inspector**

An inspector may resign by notice in writing to the Financial Secretary.

**19.15 Revocation of appointment of inspector by Financial Secretary**

The Financial Secretary may revoke the appointment of an inspector by notice in writing to the inspector.

**19.16 Appointment of replacement inspector**

(1) If an inspector dies or resigns, or an inspector's appointment is revoked, the Financial Secretary may appoint another person to continue the investigation.

(2) For the purposes of this Division (except this section), a person appointed to continue an investigation under subsection (1) –

- (a) is to be regarded as having been appointed under the provisions of this Division under which the former inspector was appointed; and
- (b) is subject to any directions given to the former inspector under this Division that have not been revoked.

**19.17 Former inspector must hand over documents etc.**

(1) This section applies to –

- (a) an inspector to whom the Financial Secretary has given a direction to terminate the investigation under section 19.8(1)(a); or
- (b) a person –
  - (i) who has resigned as an inspector; or
  - (ii) whose appointment as an inspector has been revoked.

(2) The inspector or person must produce any document that the inspector or person has obtained or generated during the course of the investigation to –

- (a) the Financial Secretary; or

- (b) if directed by the Financial Secretary –
  - (i) a person appointed to continue the investigation under section 19.16(1); or
  - (ii) a person referred to in section 19.44(2)(a) and (b).
- (3) The inspector or person must also, if directed by the Financial Secretary, inform –
  - (a) the Financial Secretary;
  - (b) a person appointed to continue the investigation under section 19.16(1); or
  - (c) a person referred to in section 19.44(2)(a) and (b),of any matter that came to the inspector's or person's knowledge as a result of the investigation.
- (4) A document mentioned in subsection (2) must be produced in a form as directed by the Financial Secretary.

#### **Subdivision 6 – Reports by Inspectors**

##### **19.18 Interim report to be made by inspector etc.**

- (1) An inspector –
  - (a) must, if directed by the Financial Secretary, prepare an interim report on the investigation; and
  - (b) may at any time prepare an interim report on the investigation if the inspector considers it appropriate to do so.
- (2) An interim report must be delivered to the Financial Secretary within the time directed by the Financial Secretary or, in the absence of directions, within a reasonable time after it is prepared.
- (3) An inspector must, within a reasonable time after the delivery of an interim report to the Financial Secretary, deliver to the Registrar a notice of that fact in the specified form.

(4) Irrespective of whether an interim report has been or will be prepared, an inspector –

- (a) may, at any time in the course of the investigation, inform the Financial Secretary of any matter that comes to the inspector's knowledge as a result of the investigation; and
- (b) must inform the Financial Secretary of any matter that comes to the inspector's knowledge as a result of the investigation, if directed to do so by the Financial Secretary.

#### **19.19 Final report to be made by inspector etc.**

(1) An inspector must, on the completion of the investigation, prepare a final report on the investigation.

(2) An inspector who is directed under section 19.8(1)(a) to terminate an investigation must prepare a final report on the investigation if directed to do so –

- (a) where the inspector is appointed under section 19.3(1) or (2) or 19.4(2), by the Financial Secretary; or
- (b) where the inspector is appointed under section 19.4(1), by the Court of First Instance.

(3) A final report must be delivered to the Financial Secretary within the time directed by the Financial Secretary or, in the absence of directions, within a reasonable time after it is prepared.

(4) An inspector must, within a reasonable time after the delivery of a final report to the Financial Secretary, deliver to the Registrar a notice of that fact in the specified form.

#### **19.20 Interim report or final report may cover affairs of associated body corporate**

If an inspector appointed to investigate a company's affairs or a delegate of the inspector has exercised any of the powers under sections 19.9, 19.10 and

19.11 in relation to an associated body corporate of the company, the inspector must also report on the affairs of that body corporate in the interim report or final report, so far as the inspector considers that the affairs of that body corporate are relevant to the investigation.

**19.21 Inspector must send report to affected persons etc.**

(1) If, in the opinion of an inspector appointed to investigate a company's affairs, any person named in an interim report or final report on the investigation would in the event of a publication or other disclosure of the report, or any part of the report, be adversely affected by the publication or disclosure, the inspector must, before delivering the report to the Financial Secretary –

(a) send the draft report or that part of the draft report to the person; and

(b) give the person a reasonable opportunity to be heard.

(2) Before an inspector sends a draft interim report or final report, or part of the draft report, to a person under subsection (1), the inspector may –

(a) cause any passages in the draft report or that part of the draft report to be concealed from view or to be obliterated; and

(b) require the person to keep the draft report or that part of the draft report confidential.

**19.22 Financial Secretary to file copies of inspector's report with Court**

(1) As soon as practicable after receiving an interim report or final report from an inspector appointed under section 19.4(1), the Financial Secretary must file a copy of the report with the Court of First Instance.

(2) The Financial Secretary may, before filing a copy of an interim report or final report with the Court of First Instance under subsection (1), specify the period and manner in which access to the report is to be restricted.

**19.23 Financial Secretary may send copies of inspector's report to applicants of investigation etc.**

(1) After receiving an interim report or final report from an inspector appointed to investigate a company's affairs, the Financial Secretary may –

- (a) send a copy of the report to the company at its registered office; or
- (b) on request and on receipt of payment of a fee which is charged on the same scale as that set out in the Schedule referred to in section 2.4(1), send a copy of the report to –
  - (i) a member of the company or a member of its associated body corporate the affairs of which are reported in the report under section 19.20;
  - (ii) the auditors of the company or body corporate;
  - (iii) a person whose conduct is mentioned in the report;
  - (iv) the applicant for the investigation; or
  - (v) any other person whose financial interest appears to the Financial Secretary to be affected by the matters dealt with in the report, whether as a creditor of the company or body corporate, or a possible investor or otherwise.

(2) Before sending a copy of an interim report or final report to any person under subsection (1), the Financial Secretary may –

- (a) cause any passages in the report to be concealed from view or to be obliterated; and
- (b) require the person to keep the copy of the report confidential.



#### **19.24 Publication of inspector's report**

(1) The Financial Secretary may publish, either in whole or in part, any interim report or final report delivered to the Financial Secretary under this Division.

(2) The Financial Secretary must deliver to the Registrar a copy of any interim report or final report, or any part of an interim report or final report, that is published under subsection (1) as soon as practicable after it is published.

(3) In this section –  
“publish” (發布) includes distribute, make available and disseminate.

#### **19.25 Inspector's report to be evidence**

In any civil proceedings before a court (including proceedings for the disqualification of a director) –

- (a) a document purporting to be a copy of an interim report or final report prepared by an inspector, or a part of such a report, and purporting to be certified by the inspector or the Financial Secretary as a true copy of the report or part, is admissible in evidence on its production without further proof; and
- (b) on being admitted in evidence under paragraph (a), the document is evidence of the facts stated in the report or that part of the report.

### **Subdivision 7 – Miscellaneous**

#### **19.26 Offences for failing to comply with requirements under Subdivision 4 etc.**

(1) A person commits an offence if the person, without reasonable excuse, fails to comply with any requirement imposed on the person under Subdivision 4.

(2) A person commits an offence if the person, with intent to defraud, fails to comply with any requirement imposed on the person under Subdivision 4.

(3) An officer or employee of a company or body corporate on which a requirement is imposed under Subdivision 4 commits an offence if the officer or employee, with intent to defraud, causes or allows the company or body corporate to fail to comply with the requirement.

(4) A person commits an offence if the person –

(a) in purported compliance with a requirement imposed on the person under Subdivision 4 –

(i) produces any record or document that is false or misleading in a material particular;

(ii) provides any information or explanation that is false or misleading in a material particular; or

(iii) says or states anything that is false or misleading in a material particular; and

(b) knows that, or is reckless as to whether or not, the record or document, the information or explanation, or the thing said or stated, is false or misleading in a material particular.

(5) A person commits an offence if the person, with intent to defraud, in purported compliance with a requirement imposed on the person under Subdivision 4 –

(a) produces any record or document that is false or misleading in a material particular;

(b) provides any information or explanation that is false or misleading in a material particular; or

(c) says or states anything that is false or misleading in a material particular.

(6) An officer or employee of a company or body corporate on which a requirement is imposed under Subdivision 4 commits an offence if the officer or employee, with intent to defraud, causes or allows the company or body corporate to, in purported compliance with the requirement –

- (a) produce any record or document that is false or misleading in a material particular;
- (b) provide any information or explanation that is false or misleading in a material particular; or
- (c) say or state anything that is false or misleading in a material particular.

(7) A person is not excused from complying with a requirement imposed on the person under Subdivision 4 only on the ground that to do so might tend to incriminate the person.

(8) Despite anything in this Ordinance, no criminal proceedings may be instituted against a person under subsection (1), (2), (3), (4), (5) or (6) in respect of any conduct if –

- (a) proceedings have previously been instituted against the person for the purposes of section 19.27(2)(b) in respect of the same conduct; and
- (b) those proceedings remain pending, or by reason of the previous institution of those proceedings, no proceedings may again be lawfully instituted against the person for the purposes of section 19.27(2)(b) in respect of the same conduct.

(9) 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 one year; or
- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(10) A person who commits an offence under subsection (2), (3), (5) or (6) 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.
- (11) A person who commits an offence under subsection (4) 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.

**19.27 Inspector may apply to Court to inquire into failure to comply with requirements under Subdivision 4**

(1) If a person fails to comply with a requirement imposed on the person under Subdivision 4, the inspector may, by originating summons, apply to the Court of First Instance for an inquiry into the failure.

(2) The Court of First Instance may, if it is satisfied that the person has without reasonable excuse failed to comply with the requirement, do any or all of the following –

- (a) order the person to comply with the requirement within the period specified by the Court;
- (b) punish the person, and any other person knowingly involved in the failure, in the same manner as if the person and, if applicable, that other person had been guilty of contempt of court.

(3) Despite anything in this Ordinance, no proceedings may be instituted against a person for the purposes of subsection (2)(b) in respect of any conduct if –

- (a) criminal proceedings have previously been instituted against the person under section 19.26(1), (2), (3), (4), (5) or (6) in respect of the same conduct; and
- (b) those criminal proceedings remain pending, or by reason of the previous institution of those criminal proceedings,

no criminal proceedings may again be lawfully instituted against the person under section 19.26(1), (2), (3), (4), (5) or (6) in respect of the same conduct.

**19.28 Use of incriminating evidence in proceedings**

(1) If an inspector or a delegate of an inspector requires a person, under Subdivision 4, to give an answer to any question, or to provide any information or explanation in respect of any record or document produced, the inspector or delegate must ensure that the person has first been informed or reminded of the limitations imposed by subsection (2) on the admissibility in evidence of the inspector's or delegate's requirement and question (if applicable), and of the answer given, or information or explanation provided, by the person.

(2) Despite anything in this Ordinance, if the conditions specified in subsection (3) are satisfied, the inspector's or delegate's requirement and question (if applicable), and the answer given, or information or explanation provided by the person, are not admissible in evidence against the person in criminal proceedings other than those in which the person is charged with an offence in respect of the answer, information or explanation –

- (a) under section 19.26(4), (5) or (6);
- (b) under Part V of the Crimes Ordinance (Cap. 200); or
- (c) for perjury.

(3) The conditions specified for the purposes of subsection (2) are –

- (a) the answer, information or explanation might tend to incriminate the person; and
- (b) the person so claims before giving the answer, or providing the information or explanation.

**19.29 Expenses of investigation**

(1) The expenses of an investigation are to defrayed in the first instance out of the general revenue but the persons mentioned in subsection (2)

are liable to repay the expenses to the Government to the extent mentioned in that subsection.

- (2) Those persons and the extent of their liability are as follows –
- (a) if, on a prosecution for an offence instituted as a result of the investigation, a person is convicted of the offence by the court, the person is liable to repay the expenses to the Government to the extent ordered by the court;
  - (b) if the inspector who conducted the investigation was appointed under section 19.3 or 19.4(1), any body corporate dealt with by the interim report or final report is liable to repay the expenses to the Government to the extent directed by the Financial Secretary;
  - (c) if the inspector who conducted the investigation was appointed under section 19.3 on application by a company or members of a company, the company or any of those members who made the application are liable to repay the expenses to the Government to the extent directed by the Financial Secretary.

(3) When making an order or giving directions under a paragraph of subsection (2), the court or the Financial Secretary (as the case may be) may order or direct that 2 or more persons liable under that paragraph are to be jointly liable or jointly and severally liable for any of the expenses ordered or directed to be repaid to the Government.

(4) On making an order on the extent of a person's liability under paragraph (a) of subsection (2), the court may further order that the person is also liable to indemnify another person against any liability to which that other person may be subject under paragraph (b) or (c) of that subsection.

(5) If the inspector who conducted the investigation was appointed under section 19.3 or 19.4(1), the interim report or final report of the investigation may, if the inspector thinks fit, include a recommendation as to the

extent to which the expenses of the investigation should be repaid by a person referred to in paragraph (a), (b) or (c) of subsection (2).

(6) An inspector must include a recommendation mentioned in subsection (5) in the interim report or final report of the investigation if so directed by the Financial Secretary.

(7) The recommendation of an inspector under subsection (5) or (6) –

(a) in relation to a person referred to in paragraph (a) of subsection (2) –

(i) must not be disclosed to the court until after the person has been convicted; and

(ii) does not bind the court; and

(b) in relation to a person referred to in paragraph (b) or (c) of subsection (2), does not bind the Financial Secretary.

(8) For the purposes of this section, the expenses of an investigation include –

(a) expenses incidental to the investigation; and

(b) such reasonable sums for general staff costs and overhead expenses of the Government, and for the cost of insurance for the inspector as determined by the Financial Secretary.

(9) An amount that is repayable to the Government under subsection (2) is recoverable as a civil debt due to the Government.

### **Division 3 – Enquiry into Company’s Affairs by Financial Secretary**

#### **19.30 Interpretation**

In this Division –

“company” (公司) –

(a) in section 19.31(a), includes a registered non-Hong Kong company;

(b) in section 19.31(b), includes –

- (i) a non-Hong Kong company;
- (ii) a company incorporated outside Hong Kong that –
  - (A) does business in Hong Kong; but
  - (B) does not have a place of business in Hong Kong; or
- (iii) a company within a group of companies of which a company as defined by section 1.2(1) or described in subparagraph (i) or (ii) is a member, wherever incorporated.

**19.31 Circumstances under which Financial Secretary may enquire into company's affairs**

The Financial Secretary may enquire into a company's affairs if –

- (a) the Financial Secretary considers that doing so would assist the Financial Secretary in deciding whether to appoint an inspector under section 19.3(2); or
- (b) it appears to the Financial Secretary that there is a good reason for doing so.

**19.32 Financial Secretary may require production of records and documents etc.**

(1) For the purpose of enquiring into a company's affairs under section 19.31, if the Financial Secretary considers that a record or document is or may be relevant to the enquiry, the Financial Secretary may, by notice in writing, require –

- (a) the company; or
- (b) any other person who appears to the Financial Secretary to be in possession of the record or document,

to produce the record or document within the time and at the place specified in the notice.



(2) If a company or a person produces a record or document pursuant to a requirement imposed under subsection (1), the Financial Secretary may –

- (a) make copies, or otherwise record the details, of the record or document; and
- (b) by notice in writing, require an officer or former officer of the company or the person to provide any information or explanation in respect of the record or document.

(3) The Financial Secretary must not require an authorized institution to produce any record or document, or disclose any information, relating to the affairs of a customer of the institution under subsection (1) or (2) unless –

- (a) the Financial Secretary has reasonable grounds to believe that the customer may be able to provide information relevant to the enquiry; and
- (b) the Financial Secretary is satisfied that the production or disclosure is necessary for the purposes of the enquiry and so certifies in writing.

(4) If an authorized institution produces a record or document relating to the affairs of its customer pursuant to a requirement imposed under subsection (1), the Financial Secretary may also require that customer to provide any information or explanation in respect of the record or document.

(5) If a company or a person does not produce a record or document pursuant to a requirement imposed under subsection (1), the Financial Secretary may, by notice in writing, require the company or person to state, to the best of the company's or person's knowledge and belief, where the record or document is.

### **19.33 Financial Secretary may delegate powers under section 19.32**

The Financial Secretary may delegate in writing any or all of the powers conferred under section 19.32 to another person.

**19.34 Offences for failing to comply with requirements under section 19.32 etc.**

(1) A person commits an offence if the person, without reasonable excuse, fails to comply with any requirement imposed on the person under section 19.32.

(2) A person commits an offence if the person, with intent to defraud, fails to comply with any requirement imposed on the person under section 19.32.

(3) An officer or employee of a company on which a requirement is imposed under section 19.32 commits an offence if the officer or employee, with intent to defraud, causes or allows the company to fail to comply with the requirement.

(4) A person commits an offence if the person –

(a) in purported compliance with a requirement imposed on the person under section 19.32 –

(i) produces any record or document that is false or misleading in a material particular; or

(ii) provides any information or explanation that is false or misleading in a material particular; and

(b) knows that, or is reckless as to whether or not, the record or document, or the information or explanation, is false or misleading in a material particular.

(5) A person commits an offence if the person, with intent to defraud, in purported compliance with a requirement imposed on the person under section 19.32 –

(a) produces any record or document that is false or misleading in a material particular; or

(b) provides any information or explanation that is false or misleading in a material particular.

(6) An officer or employee of a company on which a requirement is imposed under section 19.32 commits an offence if the officer or employee, with

intent to defraud, causes or allows the company to, in purported compliance with the requirement –

- (a) produce any record or document that is false or misleading in a material particular; or
- (b) provide any information or explanation that is false or misleading in a material particular.

(7) A person is not excused from complying with a requirement imposed on the person under section 19.32 only on the ground that to do so might tend to incriminate the person.

(8) 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 one year; or
- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(9) A person who commits an offence under subsection (2), (3), (5) or (6) is liable –

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(10) A person who commits an offence under subsection (4) 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.

### **19.35 Use of incriminating evidence in proceedings**

(1) If the Financial Secretary or a delegate of the Financial Secretary requires a person, under section 19.32, to provide any information or explanation in respect of any record or document produced, the Financial Secretary or

delegate must ensure that the person has first been informed or reminded of the limitations imposed by subsection (2) on the admissibility in evidence of the Financial Secretary's or delegate's requirement and of the information or explanation provided by the person.

(2) Despite anything in this Ordinance, if the conditions specified in subsection (3) are satisfied, the Financial Secretary's or delegate's requirement, as well as the information or explanation provided by the person, are not admissible in evidence against the person in criminal proceedings other than those in which the person is charged with an offence in respect of the information or explanation –

- (a) under section 19.34(4), (5) or (6);
- (b) under Part V of the Crimes Ordinance (Cap. 200); or
- (c) for perjury.

(3) The conditions specified for the purposes of subsection (2) are –

- (a) the information or explanation might tend to incriminate the person; and
- (b) the person so claims before providing the information or explanation.

#### **Division 4 – Enquiry by Registrar**

##### **19.36 Registrar may require production of records and documents etc.**

(1) For the purpose of enquiring into whether any specified act has been done, if each of the conditions specified in subsection (2) is satisfied, the Registrar may, by notice in writing, require a person –

- (a) to produce, within the time and at the place specified in the notice, any record or document specified in the notice; and

- (b) if the record or document is produced, to provide any information or explanation in respect of the record or document.
- (2) Subject to subsection (3), the conditions are –
  - (a) the Registrar has reason to believe that –
    - (i) a specified act has been done;
    - (ii) the record, document, information or explanation is relevant to the enquiry; and
    - (iii) the person is in possession of the record or document; and
  - (b) it is so certified in writing by the Registrar.
- (3) Subsection (2)(a)(iii) does not apply if the person who is to be required to produce the record or document is –
  - (a) the body corporate to which the act relates; or
  - (b) an officer of that body corporate.
- (4) The Registrar must not require an authorized institution to produce any record or document, or disclose any information, relating to the affairs of a customer of the institution under subsection (1) unless –
  - (a) the Registrar has reasonable grounds to believe that the customer may be able to provide information relevant to the enquiry; and
  - (b) the Registrar is satisfied that the production or disclosure is necessary for the purposes of the enquiry and so certifies in writing.
- (5) If an authorized institution produces a record or document relating to the affairs of its customer pursuant to a requirement imposed under subsection (1), the Registrar may also require that customer to provide any information or explanation in respect of the record or document.

(6) If a person produces a record or document pursuant to a requirement imposed under subsection (1), the Registrar may make copies, or otherwise record the details, of the record or document.

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

(8) In this section –  
“specified act” (指明作為) means an act that would constitute an offence under section 15.7(7) or 20.1(1).

### **19.37 Registrar may delegate powers under section 19.36**

The Registrar may delegate in writing any or all of the powers conferred under section 19.36 to any public officer.

### **19.38 Offences for failing to comply with requirements under section 19.36 etc.**

(1) A person commits an offence if the person, without reasonable excuse, fails to comply with any requirement imposed on the person under section 19.36.

(2) A person commits an offence if the person, with intent to defraud, fails to comply with any requirement imposed on the person under section 19.36.

(3) An officer or employee of a body corporate on which a requirement is imposed under section 19.36 commits an offence if the officer or employee, with intent to defraud, causes or allows the body corporate to fail to comply with the requirement.

(4) A person commits an offence if the person –

(a) in purported compliance with a requirement imposed on the person under section 19.36 –

(i) produces any record or document that is false or misleading in a material particular; or

- (ii) provides any information or explanation that is false or misleading in a material particular; and
  - (b) knows that, or is reckless as to whether or not, the record or document, or the information or explanation, is false or misleading in a material particular.
- (5) A person commits an offence if the person, with intent to defraud, in purported compliance with a requirement imposed on the person under section 19.36 –
- (a) produces any record or document that is false or misleading in a material particular; or
  - (b) provides any information or explanation that is false or misleading in a material particular.
- (6) An officer or employee of a body corporate on which a requirement is imposed under section 19.36 commits an offence if the officer or employee, with intent to defraud, causes or allows the body corporate to, in purported compliance with the requirement –
- (a) produce any record or document that is false or misleading in a material particular; or
  - (b) provide any information or explanation that is false or misleading in a material particular.
- (7) A person is not excused from complying with a requirement imposed on the person under section 19.36 only on the ground that to do so might tend to incriminate the person.
- (8) A person who commits an offence under subsection (1) is liable –
- (a) on conviction on indictment to a fine of \$150,000 and to imprisonment for one year; or
  - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (9) A person who commits an offence under subsection (2), (3), (5) or (6) is liable –

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 3 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (10) A person who commits an offence under subsection (4) is liable –
- (a) on conviction on indictment to a fine of \$300,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

**19.39 Use of incriminating evidence in proceedings**

(1) If the Registrar or a delegate of the Registrar requires a person, under section 19.36, to provide any information or explanation in respect of any record or document produced, the Registrar or delegate must ensure that the person has first been informed or reminded of the limitations imposed by subsection (2) on the admissibility in evidence of the Registrar’s or delegate’s requirement and of the information or explanation provided by the person.

(2) Despite anything in this Ordinance, if the conditions specified in subsection (3) are satisfied, the Registrar’s or delegate’s requirement, as well as the information or explanation provided by the person, are not admissible in evidence against the person in criminal proceedings other than those in which the person is charged with an offence in respect of the information or explanation –

- (a) under section 19.38(4), (5) or (6);
  - (b) under Part V of the Crimes Ordinance (Cap. 200); or
  - (c) for perjury.
- (3) The conditions specified for the purposes of subsection (2) are –
- (a) the information or explanation might tend to incriminate the person; and



- (b) the person so claims before providing the information or explanation.

## **Division 5 – Supplementary Provisions to Divisions 2, 3 and 4**

### **Subdivision 1 – Supplementary Provisions Applicable to Divisions 2 and 3**

#### **19.40 Magistrate’s warrants**

- (1) If a magistrate is satisfied on information on oath laid by –
  - (a) in relation to an investigation under Division 2, an inspector; or
  - (b) in relation to an enquiry under Division 3, the Financial Secretary or a delegate of the Financial Secretary,

that there are reasonable grounds to suspect that there is, or is likely to be, on premises specified in the information any record or document that may be required to be produced under the Division, the magistrate may issue a warrant in respect of the premises.

(2) A warrant issued under subsection (1) authorizes a person specified in it, and such other persons as may be necessary to assist in its execution, to –

- (a) enter the premises, if necessary by force, at any time within the period of 7 days beginning with the date of the warrant; and
- (b) search for, seize and remove, any record or document that the person so specified has reasonable grounds to believe may be required to be produced under Division 2 or 3 (as the case may be).

(3) If an authorized person has reasonable grounds to believe that another person on the premises is employed or engaged to provide a service in connection with a business that is or has been conducted on the premises, the

authorized person may require that other person to produce for examination any record or document that –

- (a) is in the possession of that other person; and
- (b) the authorized person has reasonable grounds to believe may be required to be produced under Division 2 or 3 (as the case may be).

(4) An authorized person may, in relation to any record or document required to be produced under subsection (3) –

- (a) prohibit any person found on the premises from –
  - (i) removing the record or document from the premises;
  - (ii) erasing anything from, adding anything to, or otherwise altering anything in, the record or document; or
  - (iii) otherwise interfering in any manner with, or causing or permitting any other person to interfere with, the record or document; and
- (b) take any other steps that appear to the authorized person to be necessary for –
  - (i) preserving the record or document; or
  - (ii) preventing interference with the record or document.

(5) Any record or document removed by an authorized person may be retained for –

- (a) a period not exceeding 6 months beginning with the day of its removal; or
- (b) if the record or document is or may be required for the purposes of any criminal proceedings, or any proceedings under this Ordinance, such longer period as may be necessary for the purposes of those proceedings.

(6) If an authorized person removes any record or document under this section, the person –

- (a) must as soon as practicable after the removal give a receipt for the record or document; and
- (b) may permit any other person who, but for the removal, would be entitled to inspect the record or document, at all reasonable times –
  - (i) to inspect it; and
  - (ii) to make copies or otherwise record details of it.

(7) Section 102 of the Criminal Procedure Ordinance (Cap. 221) applies to any property that has, by virtue of this section, come into the possession of an inspector, the Financial Secretary or a delegate of the Financial Secretary, as it applies to property that has come into the possession of the police.

(8) A person commits an offence if the person –

- (a) without reasonable excuse, fails to comply with a requirement or prohibition under subsection (3) or (4); or
- (b) obstructs an authorized person in the exercise of a power conferred by subsection (2), (3) or (4).

(9) A person who commits an offence under subsection (8) is liable –

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(10) In this section –

“authorized person” (獲授權人) means a person authorized by a warrant issued under subsection (1) to carry out the acts set out in paragraphs (a) and (b) of subsection (2).

**19.41 Officers must give assistance in prosecution instituted as a result of investigation etc.**

- (1) If –
- (a) an investigation under Division 2 or an enquiry under Division 3 has been carried out; and
  - (b) a prosecution for an offence is instituted as a result of the investigation or enquiry,

every officer or former officer, employee or former employee, or agent or former agent of any body corporate the affairs of which have been investigated or enquired into in that investigation or enquiry must give the Secretary for Justice all assistance in connection with the prosecution that the officer, employee or agent is reasonably able to give.

(2) Subsection (1) does not require a person to give any assistance in connection with the prosecution if the person is a defendant in the proceedings.

**19.42 Proceedings on specified materials**

(1) If it appears to the Financial Secretary from any specified materials that it is expedient in the public interest that a body corporate which may be wound up under the Companies (Winding Up Provisions) Ordinance (Cap. 32)

<sup>1</sup> should be wound up, the Financial Secretary may present a petition for it to be wound up.

(2) On a petition by the Financial Secretary under subsection (1), the Court of First Instance may make a winding up order if the Court thinks it just and equitable for the body corporate to be wound up.

(3) If it appears to the Financial Secretary from any specified materials that –

- (a) a company's or non-Hong Kong company's affairs are being or have been conducted in a manner unfairly

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<sup>1</sup> Provisional title of Cap. 32 after it is consequentially amended by the new Companies Ordinance. It is subject to change.

prejudicial to the interests of the members generally or of one or more members; or

- (b) an actual or proposed act or omission of a company or non-Hong Kong company (including one done or made on its behalf) is or would be so prejudicial,

the Financial Secretary may, whether or not a petition has been presented under subsection (1), present to the Court of First Instance a petition for an order to be made under section 14.4(1)(b) or (2).

(4) If it appears to the Financial Secretary from any specified materials that, in relation to a company or non-Hong Kong company, a person –

- (a) has engaged, is engaging or is proposing to engage in any conduct specified in section 14.8(1)(a); or
- (b) before the commencement of section 14.8, had engaged, was engaging or was proposing to engage in any conduct specified in section 14.8(2)(a), and the engagement or proposal still subsists,

the Financial Secretary may apply to the Court of First Instance for the remedies under section 14.9(1).

(5) If it appears to the Financial Secretary from any specified materials that, in relation to a company or non-Hong Kong company, a person –

- (a) has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing specified in section 14.8(1)(b); or
- (b) before the commencement of section 14.8, had refused or failed, was refusing or failing, or was proposing to refuse or fail, to do an act or thing that the person was required by the predecessor Ordinance and is required by this Ordinance to do, and the refusal, failure or proposal still subsists,

the Financial Secretary may apply to the Court of First Instance for the remedies under section 14.9(1).

(6) If it appears to the Financial Secretary from any specified materials that it is expedient in the public interest that a person be prohibited from taking part in the management of –

- (a) a company as defined by section 1.2(1); or
- (b) a company, wherever incorporated, that –
  - (i) is carrying on business in Hong Kong, or has carried on business in Hong Kong; and
  - (ii) may be wound up under the Companies (Winding Up Provisions) Ordinance (Cap. 32),

the Financial Secretary may apply to the Court of First Instance for an order specified in subsection (7).

(7) The order is one requiring that the person must not, for the period specified in the order, without the leave of the Court –

- (a) be, or continue to be, a director, liquidator, or receiver or manager of the property or business, of the company or any other company; or
- (b) in any way, whether directly or indirectly, be concerned, or take part, in the management of the company or any other company.

(8) The period specified in an order of the Court of First Instance under subsection (7) must not exceed 15 years.

(9) In this section –

“specified materials” (指明材料) means –

- (a) any report made, or any record, document or information obtained, by an inspector or a delegate of an inspector in an investigation under Division 2; or

- (b) any record, document or information obtained by the Financial Secretary, or a delegate of the Financial Secretary, in an enquiry under Division 3.

### **19.43 Preservation of secrecy**

(1) Except in the performance of any function under this Ordinance, or for carrying into effect the provisions of this Ordinance, a person specified in subsection (3) –

- (a) must not permit any person to have access to any matter relating to the affairs of any person that comes to the specified person's knowledge in an investigation under Division 2 or an enquiry under Division 3, or otherwise in connection with the investigation or enquiry; and
  - (b) must not communicate any such matter to any person other than the person to whom the matter relates.
- (2) Subsection (1) has effect subject to section 19.44(1) and (2).
- (3) The persons specified for the purposes of subsection (1) are –
- (a) a public officer;
  - (b) an inspector or a delegate of an inspector or of the Financial Secretary, or an employee, agent, consultant or adviser of the inspector or delegate;
  - (c) an employee, agent, consultant or adviser who is employed or appointed for the purposes of an investigation under Division 2 or an enquiry under Division 3;
  - (d) a person who performs or has performed any function in an investigation under Division 2 or an enquiry under Division 3;
  - (e) a person who has assisted any other person in the performance of any function in an investigation under Division 2 or an enquiry under Division 3; and

- (f) a person who has been sent, under section 19.21(1) or 19.23(1), a report (including a draft of the report), or part of the report, on an investigation, and has been required to keep the report or that part of the report confidential under section 19.21(2) or 19.23(2).

#### **19.44 Permitted disclosure and restrictions**

- (1) A person specified in section 19.43(3) may –
  - (a) disclose information that has already been made available to the public;
  - (b) disclose information for the purpose of any criminal proceedings in Hong Kong or any investigation conducted by a law enforcement agency with a view to bringing any such proceedings;
  - (c) disclose information for the purpose of seeking advice from, or giving advice by, counsel, or a solicitor, or other professional adviser, acting or proposing to act in a professional capacity in connection with any matter arising under this Ordinance;
  - (d) disclose information in connection with any judicial or other proceedings to which the specified person is a party; and
  - (e) disclose information in accordance with an order of a court or tribunal, or in accordance with a law or a requirement made under a law.
- (2) The Financial Secretary may –
  - (a) subject to subsection (3), disclose information to –
    - (i) the Chief Executive;
    - (ii) the Secretary for Justice;



- (iii) the Secretary for Financial Services and the Treasury;
- (iv) the Commissioner of Police of Hong Kong;
- (v) the Commissioner of the Independent Commission Against Corruption;
- (vi) the Commissioner of Inland Revenue;
- (vii) the Registrar;
- (viii) the Official Receiver in a capacity other than that of a liquidator or provisional liquidator appointed under, or holding such office by virtue of, the Companies (Winding Up Provisions) Ordinance (Cap. 32);
- (ix) the Monetary Authority;
- (x) the Securities and Futures Commission;
- (xi) the Financial Reporting Council;
- (xii) the Market Misconduct Tribunal;
- (xiii) the Insurance Authority;
- (xiv) the Mandatory Provident Fund Schemes Authority;
- (xv) an inspector;
- (xvi) a person authorized to exercise the powers of the Financial Secretary under section 19.33;
- (xvii) a company recognized as an exchange company under section 19(2) of the Securities and Futures Ordinance (Cap. 571);
- (xviii) the Privacy Commissioner for Personal Data;
- (xix) the Ombudsman; or
- (xx) a public officer authorized by the Financial Secretary under subsection (7);

- (b) subject to subsection (3), disclose information in respect of a company whose affairs are or have been investigated under section 19.3 or 19.4, or enquired into under section 19.32, to –
  - (i) the Official Receiver in the capacity of a liquidator or provisional liquidator of the company appointed under, or holding such office by virtue of, the Companies (Winding Up Provisions) Ordinance (Cap. 32); or
  - (ii) any other person who –
    - (A) is a liquidator or provisional liquidator of the company appointed under that Ordinance; or
    - (B) acts in a similar capacity in relation to the company under any law of a place outside Hong Kong;
- (c) disclose information with the consent of –
  - (i) the person from whom the information was obtained or received; and
  - (ii) if the information does not relate to such person, the person to whom it relates; and
- (d) disclose information in summary form that is so framed as to prevent particulars relating to any person from being ascertained from it.

(3) The Financial Secretary must not disclose information under subsection (2)(a) or (b) unless the Financial Secretary is of the opinion that –

- (a) the disclosure will enable or assist the recipient of the information to perform the recipient's functions; and
- (b) it is not contrary to the public interest that the information be so disclosed.

(4) Subject to subsection (5), if information is disclosed under section 19.43(1) or subsection (1) or (2) (other than subsection (1)(a) or (2)(d)) –

- (a) the person to whom the information is so disclosed; and
- (b) any other person who obtains or receives the information from that person,

must not disclose the information to any other person.

(5) Subsection (4) does not prohibit a person mentioned in paragraph (a) or (b) of that subsection from disclosing the information to any other person if –

- (a) the Financial Secretary 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, acting or proposing to act in a professional capacity in connection with any matter arising under this Ordinance;
- (d) the disclosure is in connection with any judicial or other proceedings to which the person so referred to is a party; or
- (e) the disclosure is in accordance with an order of a court or tribunal, or in accordance with a law or a requirement made under a law.

(6) The Financial Secretary may attach such conditions as the Financial Secretary considers appropriate to –

- (a) a disclosure of information made under subsection (2); or
- (b) a consent granted pursuant to subsection (5)(a).

(7) The Financial Secretary may authorize any public officer as a person to whom information may be disclosed under subsection (2)(a)(xx).

### **19.45 Offences on breach of secrecy**

- (1) A person who contravenes section 19.43(1) commits an offence.
- (2) A person commits an offence if –
  - (a) the person discloses any information in contravention of section 19.44(4); and
  - (b) at the time of the disclosure –
    - (i) the person knew, or ought to have known, that the information was previously disclosed to the person pursuant to section 19.43(1) or 19.44(1) or (2) (other than section 19.44(1)(a) or (2)(d)); and
    - (ii) the person had no reasonable grounds to believe that the person was not prohibited from disclosing the information by virtue of section 19.44(5).
- (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.

### **Subdivision 2 – Supplementary Provisions Applicable to Divisions 2, 3 and 4**

#### **19.46 Interpretation**

In this Subdivision –

“specified officer” (指明人員) –

- (a) in relation to an investigation under Division 2, means an inspector or a delegate of an inspector;
- (b) in relation to an enquiry under Division 3, means the Financial Secretary or a delegate of the Financial Secretary;

- (c) in relation to an enquiry under Division 4, means the Registrar or a delegate of the Registrar.

**19.47 Protection in relation to certain disclosures**

- (1) If –
  - (a) a person makes a disclosure to a specified officer otherwise than in compliance with a requirement made by the officer under Division 2, 3 or 4 (as the case may be); and
  - (b) the disclosure satisfies each of the conditions specified in subsection (2),

the person is not liable in any proceedings relating to a breach of duty of confidentiality by reason only of the disclosure.

- (2) The conditions are –
  - (a) the disclosure is of a kind that the person could be required to make in pursuance of a requirement made by the specified officer under Division 2, 3 or 4 (as the case may be);
  - (b) the person makes the disclosure in good faith and in the reasonable belief that the disclosure is capable of assisting the specified officer in the investigation under Division 2 or enquiry under Division 3 or 4;
  - (c) the information disclosed is not more than is reasonably necessary for the purpose of assisting the specified officer in the investigation under Division 2 or enquiry under Division 3 or 4;
  - (d) the disclosure is not prohibited by virtue of any enactment.

(3) Subsection (1) does not apply to a disclosure made by a person in the capacity as a banker or lawyer in respect of information to which the person owes a duty of confidentiality in that capacity.

#### **19.48 Protection of informers etc.**

(1) Any information concerning the identity of a protected person is not admissible in evidence in any proceedings before a court or tribunal.

(2) In such proceedings, a witness is not obliged –

(a) to disclose the name or address of a protected person who is not a witness in those proceedings; or

(b) to state any matter that would lead, or would tend to lead, to discovery of the name or address of a protected person who is not a witness in those proceedings.

(3) If a book, document or paper that is in evidence, or liable to inspection, in such proceedings contains an entry –

(a) in which a protected person is named or described; or

(b) that might lead to discovery of a protected person,

the court or tribunal (as the case may be) must cause all such entries to be concealed from view, or to be obliterated, so far as may be necessary to protect the identity of the protected person from discovery.

(4) In such proceedings, the court or tribunal may, despite subsection (1), (2) or (3), permit inquiry, and require full disclosure, concerning a protected person if –

(a) it is of the opinion that justice cannot be fully done between the parties to the proceedings without disclosure of the name of the protected person; or

(b) it is satisfied that the protected person made a material statement that the person –

(i) knew or believed to be false; or

(ii) did not believe to be true.

(5) This section has effect despite the preparation or publication of any interim report or final report of an investigation under Division 2.

(6) In this section –

“protected person” (受保障人士) means –

- (a) an informer who has given information to a specified officer with respect to an investigation under Division 2 or an enquiry under Division 3 or 4; or
- (b) a person who has assisted a specified officer with respect to such an investigation or enquiry.

#### **19.49 Legal professional privilege**

(1) Subject to subsection (2), this Part does not affect any claims, rights or entitlements that would, apart from this Part, arise on the ground of legal professional privilege.

(2) Subsection (1) does not affect any requirement under Division 2, 3 or 4 to disclose the name and address of a client of a legal practitioner (whether or not the legal practitioner is qualified in Hong Kong to practise as counsel or to act as a solicitor).

#### **19.50 Immunity**

(1) A person who complies with a requirement imposed by a specified officer under Subdivision 4 of Division 2 or section 19.32 or 19.36 does not incur any civil liability by reason only of that compliance.

(2) A person does not incur any civil liability in respect of anything done, or omitted to be done, by the person in good faith in the performance, or purported performance, of any function under this Part.

#### **19.51 Production of information in information systems etc.**

- (1) If –
  - (a) a specified officer requires any record or document to be produced under Subdivision 4 of Division 2 or section 19.32 or 19.36; and
  - (b) any information or matter contained in the record or document is recorded otherwise than in a legible form but is capable of being reproduced in a legible form,

the officer may require the production of a reproduction of the recording of the information or matter, or the relevant part of the recording, in a legible form.

- (2) If –
  - (a) a specified officer requires any record or document to be produced under Subdivision 4 of Division 2 or section 19.32 or 19.36; and
  - (b) any information or matter contained in the record or document is recorded in an information system,

the officer may require the production of a reproduction of the recording of the information or matter, or the relevant part of the recording, in a form that enables the information or matter to be reproduced in a legible form.

#### **19.52 Lien claimed on records or documents**

If a person claims a lien on any record or document in the person's possession that is required to be produced under Subdivision 4 of Division 2 or section 19.32 or 19.36 –

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

#### **19.53 Destruction of documents**

- (1) A person commits an offence if –
  - (a) the person destroys, falsifies, conceals or otherwise disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any record or document that is required to be produced under Subdivision 4 of Division 2 or section 19.32 or 19.36; and
  - (b) the person does so with intent to conceal, from the specified officer by whom the requirement was imposed,



facts or matters capable of being disclosed by the record or document.

- (2) A person who commits an offence under subsection (1) is liable –
  - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

**19.54 Inspection of records or documents seized etc.**

(1) This section applies if a specified officer has taken possession of any record or document under this Part.

(2) The specified officer must, subject to any reasonable conditions the officer may impose as to security or otherwise, permit any person who would be entitled to inspect the record or document had the officer not taken possession of it, at all reasonable times –

- (a) to inspect it; and
- (b) to make copies or otherwise record details of it.

**Division 6 – Investigation of Company’s Affairs by Persons Appointed by Company**

**19.55 Appointment of person by company to investigate its affairs**

(1) A company may, by special resolution, appoint a person to investigate its affairs.

(2) For the purpose of investigating the company’s affairs, the appointed person may, by notice in writing, require any officer or agent of the company to do any or all of the following –

- (a) produce to the appointed person any record or document relating to any matter under investigation that is in the officer’s or agent’s custody or power;

- (b) attend before the appointed person at the time and place specified in the notice, and answer any question, whether on oath or otherwise, relating to any matter under investigation that the appointed person may raise with the officer or agent;
  - (c) answer any question relating to any matter under investigation that is specified in the notice.
- (3) The appointed person may administer an oath to any person for the purposes of subsection (2)(b).

**19.56 Court may inquire into failure of officer or agent to attend before appointed person etc.**

(1) If an officer or agent of a company fails to comply with a requirement imposed on the officer or agent under section 19.55(2), the appointed person may apply to the Court of First Instance for an inquiry into the failure.

(2) The Court of First Instance may, if it is satisfied that the officer or agent has without any reasonable excuse failed to comply with the requirement, punish the officer or agent (as the case may be) in the same manner as if the officer or agent had been guilty of contempt of court.

**19.57 Report by appointed person**

(1) A person appointed to investigate a company's affairs under section 19.55(1) must, on the conclusion of the investigation, report on the investigation in any manner as that company in general meeting may direct.

(2) In any proceedings before a court –

- (a) a document purporting to be a copy of the report, and purporting to be signed by the appointed person and the company, is admissible in evidence on its production without further proof; and

(b) on being admitted in evidence under paragraph (a), the document is proof of any opinion of the appointed person expressed in the report.