
Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011

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A BILL

To

Amend the Mandatory Provident Fund Schemes Ordinance to provide for the regulation of sales and marketing activities, and the giving of advice, in relation to registered schemes, to empower the Mandatory Provident Fund Schemes Authority to designate an electronic system for use for the purposes of the Ordinance, to create a new offence for a failure by an employer to comply with a court order made in civil proceedings for the payment of arrears of mandatory contributions or contribution surcharges, to provide for daily penalties for the offences under section 43B(1C) and (1E) of the Ordinance, to revise the criteria for appointment of the Chairman of the Mandatory Provident Fund Schemes Appeal Board, to revise the criteria for appointment to the panel of persons under section 35(5) of the Ordinance, and to provide for consequential and related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Mandatory Provident Fund Schemes (Amendment) (No. 2) Ordinance 2011.

(2) This Ordinance comes into operation on 1 November 2012.

2. Enactments amended

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

Part 2

Amendments to Mandatory Provident Fund Schemes Ordinance (Cap. 485)

3. Long title amended

Long title, after “approved trustees,”—

Add

“to regulate sales and marketing activities, and the giving of advice, in relation to registered schemes.”.

4. Section 2 amended (interpretation)

(1) Section 2(1), definition of *service provider*—

Repeal

“solicitor or actuary”

Substitute

“solicitor, actuary or registered intermediary”.

(2) Section 2(1)—

Add in alphabetical order

“*authorized financial institution* (認可財務機構) means an authorized institution as defined by section 2(1) of the Banking Ordinance (Cap. 155);

electronic system (電子系統) means an information system as defined by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

registered intermediary (註冊中介人) means—

(a) a principal intermediary as defined by section 34G; or

(b) a subsidiary intermediary as defined by section 34H;

regulated person (受規管者) means—

- (a) a registered intermediary; or
- (b) a responsible officer of a principal intermediary, as defined by section 34I;”.

5. Section 4 amended (exemptions)

Section 4(3)—

Repeal

“this Ordinance”

Substitute

“Part III”.

6. Section 6E amended (functions of Authority)

After section 6E(1)(d)—

Add

“(da) to regulate sales and marketing activities, and the giving of advice, in relation to registered schemes;”.

7. Section 6H amended (Authority may issue guidelines)

(1) Section 6H(1), after “self-employed persons”—

Add

“, regulated persons”.

(2) After section 6H(7)—

Add

“(8) Despite anything in this Ordinance, the Authority must consult the Securities and Futures Commission, the Monetary Authority, and the Insurance Authority, regarding guidelines that it proposes to issue under this section, or any amendment or revocation that it proposes to make in relation to guidelines issued under

this section, in so far as those guidelines apply, or the amendment or revocation applies, to regulated persons.”.

8. Section 6KA added

Immediately after section 6K—

Add

“6KA. Designation of electronic system by Authority

- (1) The Authority may designate an electronic system for use for the purposes of this Ordinance.
- (2) The Authority may designate under subsection (1) an electronic system that is established and operated by it.
- (3) An approved trustee who uses, or is required by law to use, a designated electronic system must take any action specified by the Authority as being necessary for ensuring the proper and efficient operation of the system.
- (4) The Authority may recover from a person who uses a designated electronic system any fee or charge paid or payable by the Authority to a third party in relation to the operation and administration of the electronic system that is attributable to such use.
- (5) The Authority may, if it reasonably considers it necessary to do so, suspend a designated electronic system from being used for the purposes of any provision of this Ordinance in relation to which the electronic system is designated.
- (6) A suspension under subsection (5)—
 - (a) may take effect in relation to any person who uses, or who is required by law to use, the designated electronic system;
 - (b) may take effect—

- (i) for a period, or until the occurrence of an event, determined by the Authority; or
 - (ii) until further notice by the Authority; and
 - (c) may take effect subject to any condition that the Authority considers appropriate.
- (7) As soon as practicable after making a designation under subsection (1) or a suspension under subsection (5), the Authority must publish information about the designation or suspension in any manner that the Authority considers appropriate.
- (8) In this section—
- designated electronic system* (指定電子系統) means an electronic system designated under subsection (1).”.

9. Section 19 amended (powers of Authority in relation to mandatory contributions)

- (1) Section 19, Chinese text, heading—

Repeal

“監督”

Substitute

“管理局”.

- (2) Section 19(1), after “provisions of this Ordinance”—

Add

“(except Part IVA)”.

10. Section 19A amended (power of Authority to require production of records)

- Section 19A(1), after “provisions of this Ordinance”—

Add

“(except Part IVA)”.

11. Section 30A amended (general power of inspection)

Section 30A(1), after “this Ordinance”—

Add

“(except Part IVA)”.

12. Section 32 amended (investigation)

Section 32(1)(a), after “this Ordinance”—

Add

“(except Part IVA)”.

13. Part IVA added

After Part IV—

Add

“Part IVA

**Sales and Marketing Activities, and Giving of
Advice, in relation to Registered Schemes**

Division 1—Preliminary

34E. Interpretation

In this Part—

appointed long term insurance agent (獲委任長期業務保險代理人) means an appointed insurance agent as defined by section 2(1) of the Insurance Companies Ordinance (Cap. 41) who is eligible to engage in long term business within the meaning of that Ordinance;

authorized long term insurance broker (獲授權長期業務保險經紀) means an authorized insurance broker as defined by section 2(1) of the Insurance Companies Ordinance (Cap. 41) who is eligible to engage in long term business within the meaning of that Ordinance;

certified public accountant (會計師) means a person who is registered as a certified public accountant by virtue of section 22 of the Professional Accountants Ordinance (Cap. 50);

disciplinary order (紀律制裁命令) means an order made under section 34ZW(3), (4), (5) or (6);

frontline regulator (前線監督)—

- (a) in relation to a person who is a principal intermediary, means the industry regulator assigned under section 34Z(1) or (2) as the regulator of the person for the purposes of this Part;
- (b) in relation to a person who is a subsidiary intermediary attached to a principal intermediary, means the industry regulator assigned under section 34ZA(1) or (2) as the regulator of the person, in the person's capacity as such a subsidiary intermediary, for the purposes of this Part; or
- (c) in relation to an individual who is a responsible officer of a principal intermediary, means the industry regulator assigned under section 34ZB(1) or (2) as the regulator of the individual, in the individual's capacity as such a responsible officer, for the purposes of this Part;

industry regulator (行業監督) means—

- (a) the Securities and Futures Commission;
- (b) the Insurance Authority; or
- (c) the Monetary Authority;

inspector (查察員), in relation to a regulated person, means—

- (a) the frontline regulator of the regulated person; or
- (b) a person directed by that frontline regulator under section 34ZQ(1)(b) to ascertain any matter in relation to the regulated person;

investigator (調查員)—

- (a) in relation to an investigation under Division 3, means—
 - (i) the Authority;
 - (ii) an industry regulator nominated by the Authority under section 34O(1)(b) to assist the Authority in the investigation; or
 - (iii) a person directed by the Authority or such an industry regulator under section 34O(1)(a)(ii) or (2)(b) in relation to the investigation; or
- (b) in relation to an investigation under Division 7 in respect of a regulated person, means—
 - (i) the frontline regulator of the regulated person; or
 - (ii) a person directed by that frontline regulator under section 34ZT(1)(b) in relation to the investigation;

performance requirement (作業要求)—

- (a) in relation to a registered intermediary, means—
 - (i) a requirement under section 34ZL; or
 - (ii) a condition to which the registration as a principal or subsidiary intermediary, or the approval of the attachment to a principal intermediary, is subject by virtue of section 34X; or
- (b) in relation to a responsible officer, means—
 - (i) a requirement under section 34ZM; or
 - (ii) a condition to which the approval as such responsible officer is subject by virtue of section 34X;

prescribed person (訂明人士)—

- (a) in relation to the Securities and Futures Commission, means an employee of the Commission;
- (b) in relation to the Monetary Authority, means a person appointed by the Financial Secretary under section 5A(3) of the Exchange Fund Ordinance (Cap. 66); or
- (c) in relation to the Insurance Authority, means a public officer employed in the Office of the Commissioner of Insurance;

Register (中介人紀錄冊) means the register of intermediaries for regulated activities established under section 34Q(1);

relevant insurance body (有關保險業團體) means—

- (a) The Hong Kong Confederation of Insurance Brokers; or
- (b) the Professional Insurance Brokers Association;

Type A regulatee (甲類受規管者)——

- (a) in relation to the Insurance Authority, means—
 - (i) a company that is authorized under section 8 of the Insurance Companies Ordinance (Cap. 41) to carry on long term business within the meaning of that Ordinance; or
 - (ii) an authorized long term insurance broker;
- (b) in relation to the Monetary Authority, means an authorized financial institution that is registered under section 119 of the Securities and Futures Ordinance (Cap. 571) for Type 1 or Type 4 regulated activity, or both, within the meaning of that Ordinance; or
- (c) in relation to the Securities and Futures Commission, means a corporation that is licensed under section 116 of the Securities and Futures Ordinance (Cap. 571) to carry on Type 1 or Type 4 regulated activity, or both, within the meaning of that Ordinance;

Type B regulatee (乙類受規管者)——

- (a) in relation to the Insurance Authority, means—
 - (i) an appointed long term insurance agent;
 - (ii) a person who is registered with the Insurance Agents Registration Board as a responsible officer of an appointed long term insurance agent;
 - (iii) a person who is registered with the Insurance Authority, the Insurance Agents Registration Board, or a relevant insurance body—
 - (A) as a technical representative of an appointed long term insurance agent; or

-
- (B) as a technical representative of an authorized long term insurance broker; or
- (iv) a person who is registered with the Insurance Authority, or a relevant insurance body, as a chief executive of an authorized long term insurance broker;
- (b) in relation to the Monetary Authority, means—
- (i) a relevant individual who is registered under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 or Type 4 regulated activity, or both, within the meaning of the Securities and Futures Ordinance (Cap. 571); or
- (ii) a person who, with the consent of the Monetary Authority under section 71C of the Banking Ordinance (Cap. 155), is an executive officer of a registered institution appointed under section 71D of that Ordinance to be responsible for directly supervising the conduct of each business conducted by the registered institution that constitutes Type 1 or Type 4 regulated activity, or both, within the meaning of the Securities and Futures Ordinance (Cap. 571); or
- (c) in relation to the Securities and Futures Commission, means a person who is licensed under section 120 of the Securities and Futures Ordinance (Cap. 571) to carry on Type 1 or Type 4 regulated activity, or both, within the meaning of that Ordinance.

34F. Regulated activity, material decision and regulated advice

- (1) For the purposes of this Part, a person carries on a regulated activity if the person—
 - (a) invites or induces, or attempts to invite or induce, another person to make a material decision; or
 - (b) gives regulated advice.
- (2) Despite subsection (1), a person does not carry on a regulated activity if—
 - (a) the person issues an advertisement, invitation or document; and
 - (b) the issue is authorized by the Securities and Futures Commission under section 105 of the Securities and Futures Ordinance (Cap. 571).
- (3) For the purposes of this Part, a person makes a material decision if the person makes a decision as to any matter specified in subsection (5).
- (4) For the purposes of this Part, a person gives regulated advice if the person gives an opinion in relation to any matter specified in subsection (5).
- (5) The following matters are specified for the purposes of subsections (3) and (4)—
 - (a) whether, or when, to apply to join or become a member of a particular registered scheme;
 - (b) whether, or when, to apply to participate in a particular registered scheme as an employer;
 - (c) whether, or when, to pay contributions (including voluntary contributions) to a particular registered scheme, or to invest in a particular constituent fund of a particular registered scheme;
 - (d) the amount of contributions to be so paid, or the amount to be so invested;

- (e) whether, or when, to transfer accrued benefits from a registered scheme to another, or from a constituent fund of a registered scheme to another constituent fund of the registered scheme;
- (f) the amount of accrued benefits to be so transferred;
- (g) whether, or when, to transfer benefits from an occupational retirement scheme to a particular registered scheme;
- (h) the amount of benefits to be so transferred;
- (i) whether, or when, to make a claim for the payment of accrued benefits from a registered scheme;
- (j) the amount of such a claim.

34G. Principal intermediary

- (1) In this Part—
 - (a) a person is a principal intermediary if the person is registered under section 34T(4) as an intermediary for carrying on regulated activities; and
 - (b) except in section 34M(1), such a person is still a principal intermediary even though the registration is suspended under this Part.
- (2) In this Part, a reference to a registration of a person as a principal intermediary—
 - (a) is a reference to a registration under section 34T(4) as an intermediary for carrying on regulated activities; and
 - (b) except in section 34M(1), includes such a registration that is suspended under this Part.

34H. Subsidiary intermediary

- (1) In this Part—
 - (a) a person is a subsidiary intermediary if the person is registered under section 34T(5)(b)(i) or 34U(4) as an intermediary for carrying on regulated activities for a principal intermediary to which the person is to be attached; and
 - (b) except in sections 34T(2)(a) and 34V(1), such a person is still a subsidiary intermediary even though the registration is suspended under this Part.
- (2) In this Part, a reference to a registration of a person as a subsidiary intermediary—
 - (a) is a reference to a registration under section 34T(5)(b)(i) or 34U(4) as an intermediary for carrying on regulated activities for a principal intermediary to which the person is to be attached; and
 - (b) except in sections 34T(2)(a) and 34V(1), includes such a registration that is suspended under this Part.
- (3) In this Part—
 - (a) a person is a subsidiary intermediary attached to a principal intermediary if the person is approved under section 34T(5)(a)(i) or (b)(ii), 34U(7) or 34V(3) as being attached to the principal intermediary for the purpose of carrying on regulated activities; and
 - (b) except in sections 34M(1)(b) and 34W(3)(a), such a person is still a subsidiary intermediary attached to the principal intermediary even though—
 - (i) the registration of the person as a subsidiary intermediary is suspended under this Part; or

- (ii) the approval is suspended under this Part.
- (4) In this Part, a reference to an approval of the attachment of a person to a principal intermediary—
 - (a) is a reference to an approval under section 34T(5)(a)(i) or (b)(ii), 34U(7) or 34V(3) of the attachment of the person to the principal intermediary for the purpose of carrying on regulated activities; and
 - (b) except in sections 34M(1)(b) and 34W(3)(a), includes such an approval that is suspended under this Part.

34I. Responsible officer and specified responsibilities

- (1) In this Part—
 - (a) an individual is a responsible officer of a principal intermediary if the individual is approved under section 34T(5)(a)(ii) or (b)(iii) or 34W(3) as an officer with specified responsibilities in relation to the principal intermediary; and
 - (b) except in section 34ZD(1), such an individual is still a responsible officer of the principal intermediary even though the approval is suspended under this Part.
- (2) In this Part, a reference to the approval of an individual as a responsible officer of a principal intermediary—
 - (a) is a reference to an approval under section 34T(5)(a)(ii) or (b)(iii) or 34W(3) of the individual as an officer with specified responsibilities in relation to the principal intermediary; and
 - (b) except in section 34ZD(1), includes such an approval that is suspended under this Part.

- (3) In this Part, a reference to specified responsibilities in relation to a principal intermediary, is a reference to—
- (a) the responsibility to ensure that the principal intermediary has established and maintains proper controls and procedures for securing compliance by the principal intermediary, and by each subsidiary intermediary attached to the principal intermediary, with this Part; and
 - (b) the responsibility to ensure that the principal intermediary uses the intermediary's best endeavours to secure observance by subsidiary intermediaries attached to the principal intermediary of the controls and procedures mentioned in paragraph (a).

34J. Revocation or suspension of qualification as Type A regulatee

- (1) For the purposes of this Part, a person has a qualification as a Type A regulatee revoked on disciplinary grounds if—
- (a) in the case of the qualification mentioned in paragraph (a)(ii) of the definition of *Type A regulatee* in section 34E as an authorized long term insurance broker that is authorized by the Insurance Authority under section 69 of the Insurance Companies Ordinance (Cap. 41), the authorization is withdrawn under section 75(1) of that Ordinance on the grounds of breach of proper conduct;
 - (b) in the case of the qualification mentioned in paragraph (a)(ii) of that definition as an authorized long term insurance broker that is a member of a body of insurance brokers approved by the Insurance Authority under section 70 of the Insurance Companies Ordinance (Cap. 41),

- the membership is terminated in compliance with the system of disciplinary procedures established by the body of insurance brokers for the purposes of section 70(3) of that Ordinance;
- (c) in the case of the qualification mentioned in paragraph (b) of that definition—
- (i) as an authorized financial institution registered for Type 1 or Type 4 regulated activity, the registration is revoked under section 196(1)(i)(A) of the Securities and Futures Ordinance (Cap. 571) in relation to that regulated activity; or
 - (ii) as an authorized financial institution registered for Type 1 and Type 4 regulated activities, the registration is revoked under that section in relation to those regulated activities; or
- (d) in the case of the qualification mentioned in paragraph (c) of that definition—
- (i) as a corporation licensed to carry on Type 1 or Type 4 regulated activity, the licence is revoked under section 194(1)(i)(A) of the Securities and Futures Ordinance (Cap. 571) in relation to that regulated activity; or
 - (ii) as a corporation licensed to carry on Type 1 and Type 4 regulated activities, the licence is revoked under that section in relation to those regulated activities.
- (2) For the purposes of this Part, a person has a qualification as a Type A regulatee suspended if—
- (a) in the case of the qualification mentioned in paragraph (a)(ii) of the definition of *Type A regulatee* in section 34E as an authorized long term insurance broker that is a member of a body

of insurance brokers approved by the Insurance Authority under section 70 of the Insurance Companies Ordinance (Cap. 41), the membership is suspended;

- (b) in the case of the qualification mentioned in paragraph (b) of that definition—
 - (i) as an authorized financial institution registered for Type 1 or Type 4 regulated activity, the registration is suspended under section 196(1)(i)(B) of the Securities and Futures Ordinance (Cap. 571) in relation to that regulated activity; or
 - (ii) as an authorized financial institution registered for Type 1 and Type 4 regulated activities, the registration is suspended under that section in relation to those regulated activities; or
- (c) in the case of the qualification mentioned in paragraph (c) of that definition—
 - (i) as a corporation licensed to carry on Type 1 or Type 4 regulated activity, the licence is suspended under section 194(1)(i)(B) of the Securities and Futures Ordinance (Cap. 571) in relation to that regulated activity; or
 - (ii) as a corporation licensed to carry on Type 1 and Type 4 regulated activities, the licence is suspended under that section in relation to those regulated activities.

34K. Revocation or suspension of qualification as Type B regulatee

- (1) For the purposes of this Part, a person has a qualification as a Type B regulatee revoked on disciplinary grounds if—

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- (a) in the case of the qualification mentioned in paragraph (a)(i) of the definition of *Type B regulatee* in section 34E, the appointment as an agent is terminated under a code of practice approved by the Insurance Authority under section 67 of the Insurance Companies Ordinance (Cap. 41) on the grounds of breach of the code of practice (other than a failure to complete continuing professional training);
 - (b) in the case of the qualification mentioned in paragraph (a)(ii) or (iii)(A) of that definition, the registration is terminated under such a code of practice on the grounds of breach of the code of practice (other than a failure to complete continuing professional training);
 - (c) in the case of the qualification mentioned in paragraph (a)(iii)(B) or (iv) of that definition as a technical representative or chief executive of an authorized long term insurance broker that is authorized by the Insurance Authority under section 69 of the Insurance Companies Ordinance (Cap. 41)—
 - (i) the name of the person, who has been entered as such technical representative or chief executive in a register maintained under section 69(3) of that Ordinance, is removed from that register; and
 - (ii) the name is removed on the grounds of breach of any condition specified by the Insurance Authority to be a fit and proper person as such technical representative or chief executive (other than a failure to complete continuing professional training);

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- (d) in the case of the qualification mentioned in paragraph (a)(iii)(B) or (iv) of that definition as a technical representative or chief executive of an authorized long term insurance broker that is a member of a body of insurance brokers approved by the Insurance Authority under section 70 of the Insurance Companies Ordinance (Cap. 41)—
- (i) the name of the person is removed from a register of technical representatives or a register of chief executives (as the case may be) kept by the body of insurance brokers; and
 - (ii) the name is removed on the grounds of breach of any condition specified for the purposes of section 70(3) of that Ordinance by the Insurance Authority to be a fit and proper person as such technical representative or chief executive (other than a failure to complete continuing professional training);
- (e) in the case of the qualification mentioned in paragraph (b)(i) of that definition—
- (i) as a relevant individual registered as engaged in respect of Type 1 or Type 4 regulated activity, all or any of the person's relevant particulars are removed from the register under section 58A(1)(c) of the Banking Ordinance (Cap. 155) in relation to that regulated activity; or
 - (ii) as a relevant individual registered as engaged in respect of Type 1 and Type 4 regulated activities, all or any of the person's relevant particulars are removed from the register under that section in relation to those regulated activities;

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- (f) in the case of the qualification mentioned in paragraph (b)(ii) of that definition—
- (i) as a person who is an executive officer appointed to be responsible for directly supervising the conduct of each business that constitutes Type 1 or Type 4 regulated activity, the consent is withdrawn under section 71C(4)(c) of the Banking Ordinance (Cap. 155) in relation to a business that constitutes that regulated activity; or
 - (ii) as a person who is an executive officer appointed to be responsible for directly supervising the conduct of each business that constitutes Type 1 and Type 4 regulated activities, the consent is withdrawn under that section in relation to a business that constitutes those regulated activities; or
- (g) in the case of the qualification mentioned in paragraph (c) of that definition—
- (i) as a person licensed to carry on Type 1 or Type 4 regulated activity, the licence is revoked under section 194(1)(i)(A) of the Securities and Futures Ordinance (Cap. 571) in relation to that regulated activity; or
 - (ii) as a person licensed to carry on Type 1 and Type 4 regulated activities, the licence is revoked under that section in relation to those regulated activities.
- (2) For the purposes of this Part, a person has a qualification as a Type B regulatee suspended if—
- (a) in the case of the qualification mentioned in paragraph (a)(i) of the definition of ***Type B regulatee*** in section 34E, the appointment as an agent is suspended under a code of practice approved by the Insurance Authority under

section 67 of the Insurance Companies Ordinance (Cap. 41);

- (b) in the case of the qualification mentioned in paragraph (a)(ii) or (iii)(A) of that definition, the registration is suspended under such a code of practice;
- (c) in the case of the qualification mentioned in paragraph (a)(iii)(B) or (iv) of that definition as a technical representative or chief executive of an authorized long term insurance broker that is a member of a body of insurance brokers approved by the Insurance Authority under section 70 of the Insurance Companies Ordinance (Cap. 41)—
 - (i) the person is suspended from acting as such technical representative or chief executive; and
 - (ii) the suspension is shown in a register of technical representatives or a register of chief executives (as the case may be) kept by the body of insurance brokers;
- (d) in the case of the qualification mentioned in paragraph (b)(i) of that definition—
 - (i) as a relevant individual registered as engaged in respect of Type 1 or Type 4 regulated activity, all or any of the person's relevant particulars are suspended from the register under section 58A(1)(d) of the Banking Ordinance (Cap. 155) in relation to that regulated activity; or
 - (ii) as a relevant individual registered as engaged in respect of Type 1 and Type 4 regulated activities, all or any of the person's relevant particulars are suspended from the register under that section in relation to those regulated activities;

- (e) in the case of the qualification mentioned in paragraph (b)(ii) of that definition—
 - (i) as a person who is an executive officer appointed to be responsible for directly supervising the conduct of each business that constitutes Type 1 or Type 4 regulated activity, the consent is suspended under section 71C(4)(d) of the Banking Ordinance (Cap. 155) in relation to a business that constitutes that regulated activity; or
 - (ii) as a person who is an executive officer appointed to be responsible for directly supervising the conduct of each business that constitutes Type 1 and Type 4 regulated activities, the consent is suspended under that section in relation to a business that constitutes those regulated activities; or
- (f) in the case of the qualification mentioned in paragraph (c) of that definition—
 - (i) as a person licensed to carry on Type 1 or Type 4 regulated activity, the licence is suspended under section 194(1)(i)(B) of the Securities and Futures Ordinance (Cap. 571) in relation to that regulated activity; or
 - (ii) as a person licensed to carry on Type 1 and Type 4 regulated activities, the licence is suspended under that section in relation to those regulated activities.

Division 2—Prohibitions

34L. Prohibition against carrying on regulated activities etc.

- (1) A person must not carry on any regulated activity—

- (a) in the course of the person's business or employment; or
 - (b) for reward.
- (2) A person must not hold themselves out—
- (a) as carrying on regulated activities in the course of the person's business or employment; or
 - (b) as carrying on regulated activities for reward.
- (3) A person must not take or use—
- (a) the title of “principal intermediary”, “subsidiary intermediary”, “主事中介人” or “附屬中介人”; or
 - (b) any other title suggesting that the person carries on regulated activities—
 - (i) in the course of the person's business or employment; or
 - (ii) for reward.

34M. Exceptions to section 34L

- (1) Section 34L does not—
- (a) prohibit a principal intermediary from—
 - (i) carrying on regulated activities in the course of the principal intermediary's business; or
 - (ii) holding themselves out as so carrying on regulated activities; or
 - (b) prohibit a subsidiary intermediary attached to a principal intermediary from—
 - (i) carrying on regulated activities for the principal intermediary in the course of acting as an employee, agent or representative of the principal intermediary; or

- (ii) holding themselves out as so carrying on regulated activities.
- (2) Section 34L does not—
 - (a) prohibit a principal intermediary from taking or using the title of “principal intermediary” or “主事中介人”; or
 - (b) prohibit a subsidiary intermediary from taking or using the title of “subsidiary intermediary” or “附屬中介人”.
- (3) Section 34L does not—
 - (a) prohibit an approved trustee, a participating employer, or a service provider, from—
 - (i) carrying on regulated activities for the purpose of complying with a requirement under this Ordinance; or
 - (ii) holding themselves out as so carrying on regulated activities; or
 - (b) prohibit the Authority from—
 - (i) carrying on regulated activities for the purpose of performing a function under this Ordinance; or
 - (ii) holding itself out as so carrying on regulated activities.
- (4) Section 34L does not—
 - (a) prohibit a solicitor from—
 - (i) giving regulated advice wholly incidental to his or her practice as a solicitor in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159); or
 - (ii) holding himself or herself out as so giving regulated advice;

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- (b) prohibit counsel from—
 - (i) giving regulated advice wholly incidental to his or her practice as counsel; or
 - (ii) holding himself or herself out as so giving regulated advice;
 - (c) prohibit a certified public accountant from—
 - (i) giving regulated advice wholly incidental to his or her practice as a certified public accountant in a practice unit within the meaning of the Professional Accountants Ordinance (Cap. 50); or
 - (ii) holding himself or herself out as so giving regulated advice; or
 - (d) prohibit a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) (other than an approved trustee) from—
 - (i) giving regulated advice wholly incidental to the discharge of its duty as such trust company; or
 - (ii) holding itself out as so giving regulated advice.
 - (5) Section 34L does not prohibit a person from—
 - (a) giving regulated advice through—
 - (i) a newspaper, magazine, book or other publication that is made generally available to the public otherwise than on subscription; or
 - (ii) a television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise; or
 - (b) holding themselves out as so giving regulated advice.

- (6) Section 34L does not prohibit a company from—
 - (a) giving regulated advice to a specified company; or
 - (b) holding itself out as so giving regulated advice.
- (7) In this section—

specified company (指明公司), in relation to a company, means—

 - (a) a wholly owned subsidiary of the company;
 - (b) another company that holds all the issued shares of the company; or
 - (c) a wholly owned subsidiary of that other company mentioned in paragraph (b).
- (8) For the purposes of this section, a company is a wholly owned subsidiary of another company if it has only the following as members—
 - (a) that other company;
 - (b) a nominee of that other company;
 - (c) a wholly owned subsidiary of that other company;
 - (d) a nominee of such a wholly owned subsidiary.

34N. Offence relating to prohibitions

- (1) A person who, without reasonable excuse, contravenes section 34L(1) or (2) 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 each day on which the offence is continued; or

- (b) on summary conviction to a fine at level 6 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 for each day on which the offence is continued.
- (2) A person who, without reasonable excuse, contravenes section 34L(3) 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 each day on which the offence is continued.

Division 3—Investigation concerning Contravention of Prohibition

34O. Initiating investigation

- (1) If the Authority has reasonable cause to believe that a person may have contravened section 34L—
 - (a) the Authority—
 - (i) may exercise the powers under section 34P for the purpose of investigating the contravention or the question whether or not there has been such a contravention; or
 - (ii) may in writing direct a person employed by the Authority to investigate, with those powers, the contravention or the question whether or not there has been such a contravention; or
 - (b) the Authority may, in writing, nominate an industry regulator to assist the Authority in the investigation.
- (2) If the Authority nominates an industry regulator to assist the Authority in an investigation under subsection (1)(b), the industry regulator—

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- (a) may exercise the powers under section 34P for the purpose of investigating the contravention or the question whether or not there has been such a contravention; or
 - (b) may in writing direct a prescribed person to investigate, with those powers, the contravention or the question whether or not there has been such a contravention.
 - (3) If the Authority or an industry regulator directs a person under subsection (1)(a)(ii) or (2)(b) in relation to an investigation—
 - (a) the Authority or industry regulator must provide the person with a copy of the direction; and
 - (b) the person must, before imposing a requirement under section 34P on another person, produce a copy of the direction to that other person.
 - (4) Before the Authority, or a person directed by the Authority under subsection (1)(a)(ii), imposes a requirement under section 34P on another person who is a Type A or Type B regulatee of an industry regulator, the Authority or the person so directed must consult the industry regulator.
 - (5) Before an industry regulator, or a person directed by an industry regulator under subsection (2)(b), imposes a requirement under section 34P on another person who is a Type A or Type B regulatee of another industry regulator, the industry regulator or the person so directed must consult that other industry regulator.
 - (6) Even though the Authority or an industry regulator has directed a person under subsection (1)(a)(ii) or (2)(b) in relation to an investigation, the Authority or industry regulator may still exercise the powers under section 34P for the purpose of the investigation.

- (7) Even though the Authority has nominated an industry regulator under subsection (1)(b) to assist the Authority in an investigation, the Authority—
- (a) may still exercise the powers under section 34P for the purpose of the investigation; or
 - (b) may still direct a person employed by the Authority under subsection (1)(a)(ii) in relation to the investigation.

34P. Investigation powers

- (1) An investigator may, in writing, require a person specified in subsection (2)—
- (a) to produce, within the time and at the place specified in the requirement, any record or document specified in the requirement—
 - (i) that is or may be relevant to any matter under investigation; and
 - (ii) that is in the person's possession;
 - (b) to attend before the investigator at the time and place specified in the requirement, and answer any question relating to any matter under investigation that the investigator may raise with the person;
 - (c) to respond to any written question relating to any matter under investigation that the investigator may raise with the person; or
 - (d) to give the investigator any assistance in connection with the investigation that the person is reasonably able to give.
- (2) The person specified for the purposes of subsection (1) is—
- (a) a person whom the Authority has reasonable cause to believe may have contravened section 34L; or

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- (b) a person whom the investigator has reasonable cause to believe—
- (i) to be in possession of any record or document that contains, or that is likely to contain, information relevant to any matter under investigation; or
 - (ii) to be otherwise in possession of such information.
- (3) If a person produces a record or document in compliance with a requirement imposed under subsection (1)(a), the investigator may require the person to give an explanation or further particulars in respect of the record or document.
- (4) If a person gives any answer, response, explanation or particulars in compliance with a requirement imposed under subsection (1) or (3), the investigator may, in writing, require the person to verify within the time specified in the requirement, the answer, response, explanation or particulars by a statutory declaration.
- (5) If, for the reason that the information concerned is not within the person's knowledge or possession, a person does not give any answer, response, explanation or particulars in compliance with a requirement imposed under subsection (1) or (3), the investigator may, in writing, require the person to verify, within the time specified in the requirement, that reason and fact by a statutory declaration.
- (6) This section is subject to section 34ZZB(2).

Division 4—Registration of Intermediaries and Approval of Responsible Officers

34Q. Register of intermediaries

- (1) The Authority must establish and keep a register of intermediaries for regulated activities.
- (2) The Register may be kept in any form that the Authority considers appropriate.
- (3) At all reasonable times, a member of the public—
 - (a) if the Register is kept in a documentary form, may inspect the Register free of charge; or
 - (b) if the Register is kept otherwise than in a documentary form, may inspect a reproduction of any information recorded in the Register in a legible form free of charge.
- (4) At all reasonable times, a member of the public may, on payment of a fee of the amount prescribed by the regulations, obtain—
 - (a) a copy of an entry in or extract of the Register; or
 - (b) a copy of such an entry or extract, certified by an authorized officer of the Authority as a true copy of the entry or extract.
- (5) A right under subsection (3) or (4) is only exercisable for the purpose of enabling the member of the public—
 - (a) to ascertain whether the member of the public is dealing with a registered intermediary in matters of or connected with any regulated activity; or
 - (b) to ascertain the particulars of the registration of a person as a principal or subsidiary intermediary.
- (6) In any legal proceedings—

- (a) a document purporting to be a copy of an entry in or extract of the Register, and purporting to be certified by an authorized officer of the Authority as a true copy of the entry or extract, is admissible in evidence on its production without further proof; and
- (b) on being admitted in evidence under paragraph (a), the document, unless there is evidence to the contrary—
 - (i) is presumed to be certified by an authorized officer of the Authority;
 - (ii) is presumed to be a true copy of the entry or extract; and
 - (iii) is proof of its contents.

34R. Register to be made available as on-line record

The Authority must make the Register available to the public in the form of an on-line record.

34S. Contents of Register

- (1) For every registered intermediary, the Register must contain—
 - (a) the name and the registration number of the intermediary;
 - (b) the condition (if any) to which the registration as a principal or subsidiary intermediary, or the approval of the attachment to a principal intermediary, is subject by virtue of section 34X;
 - (c) the name of the frontline regulator;
 - (d) a record of every disciplinary order (except an order under section 34ZW(5)(b)) that has been in force against the registered intermediary within the last 5 years;

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- (e) if the registration as a principal or subsidiary intermediary, or the approval of the attachment to a principal intermediary, is suspended under Division 5 or 6, a note to that effect; and
 - (f) any other particulars that are prescribed by the rules.
- (2) Without limiting subsection (1)—
- (a) for every principal intermediary, the Register must also contain—
 - (i) the address of the principal intermediary's principal place of business in Hong Kong; and
 - (ii) the name and the office address of every responsible officer of the principal intermediary; and
 - (b) for every subsidiary intermediary attached to a principal intermediary, the Register must also contain—
 - (i) the name of the principal intermediary;
 - (ii) the address of the principal intermediary's principal place of business in Hong Kong; and
 - (iii) if the subsidiary intermediary is also a responsible officer of the principal intermediary—
 - (A) a note to that effect;
 - (B) the condition (if any) to which the approval as such a responsible officer is subject by virtue of section 34X; and

- (C) where the approval of the subsidiary intermediary as such responsible officer is suspended under Division 5 or 6, a note to that effect.

34T. Registration as principal intermediary and related matters

- (1) A person may apply to the Authority for registration as an intermediary for carrying on regulated activities.
- (2) An application under subsection (1) must be accompanied by—
 - (a) both of the following—
 - (i) an application made by the principal applicant to the Authority for approval of attachment of a subsidiary intermediary to the principal applicant for the purpose of carrying on regulated activities;
 - (ii) an application made by the principal applicant to the Authority for approval of the subsidiary intermediary as an officer with specified responsibilities in relation to the principal applicant; or
 - (b) all of the following—
 - (i) an application made by an individual to the Authority for registration as an intermediary for carrying on regulated activities for a principal intermediary to which the individual is to be attached;
 - (ii) an application made by the principal applicant to the Authority for approval of attachment of the individual to the principal applicant for the purpose of carrying on regulated activities;

- (iii) an application made by the principal applicant to the Authority for approval of the individual as an officer with specified responsibilities in relation to the principal applicant.
- (3) An application under subsection (1) or (2)(a) or (b)—
 - (a) must be made in the specified form; and
 - (b) must be accompanied by an application fee of the amount prescribed by the regulations.
- (4) On application under subsection (1), the Authority may register the principal applicant as an intermediary for carrying on regulated activities if—
 - (a) it is satisfied—
 - (i) that the principal applicant is a Type A regulatee of an industry regulator;
 - (ii) that, within 1 year immediately before the date of the application, the principal applicant has not had any qualification as a Type A regulatee revoked on disciplinary grounds;
 - (iii) that the principal applicant does not have any qualification as a Type A regulatee suspended;
 - (iv) that, within 1 year immediately before the date of the application, the principal applicant has not had a registration as a registered intermediary revoked under section 34ZW(3)(a)(i); and
 - (v) that the principal applicant is not disqualified under section 34ZW(3)(a)(ii) from being registered as an intermediary for carrying on regulated activities; and

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- (b) it is satisfied—
- (i) that—
- (A) accompanying applications are made under subsection (2)(a);
- (B) if the accompanying application made under subsection (2)(a)(i) were an application under section 34V(1) for approval of attachment of the subsidiary intermediary to the principal applicant as a principal intermediary, the criteria for approval under section 34V(3) would be satisfied; and
- (C) if the accompanying application made under subsection (2)(a)(ii) were an application under section 34W(1) by the principal applicant as a principal intermediary, the criteria for approval under section 34W(3)(b), (c) and (d) would be satisfied; or
- (ii) that—
- (A) accompanying applications are made under subsection (2)(b);
- (B) if the accompanying application made under subsection (2)(b)(i) were an application under section 34U(1), and the accompanying application made under subsection (2)(b)(ii) were an application under section 34U(2) for approval of attachment of the individual to the principal applicant as a principal intermediary, the criteria for registration and for approval under section 34U(4) and (6) would be satisfied; and

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- (C) if the accompanying application made under subsection (2)(b)(iii) were an application under section 34W(1) by the principal applicant as a principal intermediary, the criteria for approval under section 34W(3)(b), (c) and (d) would be satisfied.
- (5) If the Authority registers under subsection (4) a principal applicant as an intermediary for carrying on regulated activities, the Authority—
- (a) in the case of accompanying applications under subsection (2)(a)—
- (i) must also approve the attachment of the subsidiary intermediary to the principal applicant for the purpose of carrying on regulated activities; and
- (ii) must also approve the subsidiary intermediary as an officer with specified responsibilities in relation to the principal applicant; or
- (b) in the case of accompanying applications under subsection (2)(b)—
- (i) must also register the individual as an intermediary for carrying on regulated activities for a principal intermediary to which the individual is to be attached;
- (ii) must also approve the attachment of the individual to the principal applicant for the purpose of carrying on regulated activities; and
- (iii) must also approve the individual as an officer with specified responsibilities in relation to the principal applicant.

- (6) If the Authority rejects an application made under subsection (1), the Authority must also reject the accompanying applications made under subsection (2) (a) or (b).
- (7) The Authority—
 - (a) must give the principal applicant a notice in writing of the results of—
 - (i) the application made under subsection (1); and
 - (ii) the accompanying applications made under subsection (2)(a) or (b); and
 - (b) must give an applicant a notice in writing of the results of the accompanying application made under subsection (2)(b)(i).
- (8) A notice under subsection (7)(a) or (b) must, in the case of the application or accompanying applications being rejected, include a statement of reasons for the rejection.
- (9) In this section—

principal applicant (主要申請人) means the person who applies under subsection (1) for registration as an intermediary for carrying on regulated activities.

34U. Registration as subsidiary intermediary

- (1) A person may apply to the Authority for registration as an intermediary for carrying on regulated activities for a principal intermediary to which the person is to be attached.

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- (2) An application under subsection (1) must be accompanied by an application made by a principal intermediary to the Authority for approval of attachment of the principal applicant to the principal intermediary for the purpose of carrying on regulated activities.
- (3) An application under subsection (1) or (2)—
- (a) must be made in the specified form; and
 - (b) must be accompanied by an application fee of the amount prescribed by the regulations.
- (4) On application under subsection (1), the Authority may register the principal applicant as an intermediary for carrying on regulated activities for a principal intermediary to which the principal applicant is to be attached if it is satisfied—
- (a) that the principal applicant is a Type B regulatee of an industry regulator but not a Type A regulatee of any industry regulator;
 - (b) that, within 1 year immediately before the date of the application, the principal applicant has not had any qualification as a Type B regulatee revoked on disciplinary grounds;
 - (c) that the principal applicant does not have any qualification as a Type B regulatee suspended;
 - (d) that, within 1 year immediately before the date of the application, the principal applicant has not had a registration as a registered intermediary revoked under section 34ZW(3)(a)(i);
 - (e) that the principal applicant is not disqualified under section 34ZW(3)(a)(ii) from being registered as an intermediary for carrying on regulated activities for a principal intermediary to which the principal applicant is to be attached;

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- (f) that if the principal applicant is an individual, the principal applicant has, within 1 year immediately before the date of the application, passed a qualifying examination specified by the Authority; and
 - (g) that—
 - (i) an accompanying application is made under subsection (2); and
 - (ii) the criteria for approval of the attachment under subsection (6) are satisfied.
 - (5) Subsection (4)(f) does not apply if the principal applicant—
 - (a) has been a subsidiary intermediary within the 3 years immediately before the date of the application; and
 - (b) has not had the registration as a subsidiary intermediary revoked under section 34ZP(4).
 - (6) On application under subsection (2), the Authority may approve the attachment if it is satisfied that—
 - (a) the principal intermediary consents to the principal applicant being an intermediary for carrying on regulated activities for the principal intermediary;
 - (b) the principal applicant is employed by, or acts as an agent or representative for, the principal intermediary; and
 - (c) the industry regulator first mentioned in subsection (4)(a) is the frontline regulator of the principal intermediary.
 - (7) If the Authority registers under subsection (4) the principal applicant as an intermediary for carrying on regulated activities for a principal intermediary to which the principal applicant is to be attached, the

Authority must also approve the attachment of the principal applicant to the principal intermediary under the accompanying application made under subsection (2) for the purpose of carrying on regulated activities.

- (8) If the Authority rejects an application made under subsection (1), the Authority must also reject the accompanying application made under subsection (2).
- (9) The Authority must give the principal applicant a notice in writing of the results of—
 - (a) the application made under subsection (1); and
 - (b) the accompanying application made under subsection (2).
- (10) The Authority must also give a notice in writing of the results of the accompanying application under subsection (2) to the principal intermediary under that application.
- (11) A notice under subsection (9) or (10) must, in the case of the application or accompanying application (as may be applicable) being rejected, include a statement of reasons for the rejection.
- (12) The Authority must publish the qualifying examination specified under subsection (4)(f) in any manner that it considers appropriate.
- (13) In this section—

principal applicant (主要申請人) means the person who applies under subsection (1) for registration as an intermediary for carrying on regulated activities for a principal intermediary to which the person is to be attached.

34V. Approval of attachment of subsidiary intermediary to principal intermediary

- (1) A principal intermediary may apply to the Authority for approval of attachment of a subsidiary intermediary to the principal intermediary for the purpose of carrying on regulated activities.
- (2) An application under subsection (1)—
 - (a) must be made in the specified form; and
 - (b) must be accompanied by an application fee of the amount prescribed by the regulations.
- (3) On application under subsection (1), the Authority may approve the attachment if it is satisfied—
 - (a) that the applicant consents to the subsidiary intermediary being an intermediary for carrying on regulated activities for the principal intermediary;
 - (b) that the subsidiary intermediary is employed by, or acts as an agent or representative for, the applicant; and
 - (c) that the subsidiary intermediary is a Type B regulatee of an industry regulator that is the frontline regulator of the applicant.
- (4) The Authority must give the applicant and the subsidiary intermediary a notice in writing of the result of the application made under subsection (1).
- (5) A notice under subsection (4) must, in the case of the application being rejected, include a statement of reasons for the rejection.

34W. Approval as responsible officer

- (1) A principal intermediary may apply to the Authority for approval of an individual as an officer with specified responsibilities in relation to the principal intermediary.
- (2) An application under subsection (1)—
 - (a) must be made in the specified form; and
 - (b) must be accompanied by an application fee of the amount prescribed by the regulations.
- (3) On application under subsection (1), the Authority may approve the individual as an officer with specified responsibilities in relation to the principal intermediary if it is satisfied—
 - (a) that the individual is a subsidiary intermediary attached to the principal intermediary;
 - (b) that the individual has sufficient authority within the principal intermediary, and will be provided with sufficient resources and support, for carrying out specified responsibilities in relation to the principal intermediary;
 - (c) that, within 1 year immediately before the date of the application, the individual has not had an approval as a responsible officer revoked under section 34ZW(4)(a)(i); and
 - (d) that the individual is not disqualified under section 34ZW(4)(a)(ii) from being approved as an officer with specified responsibilities in relation to a principal intermediary.
- (4) The Authority must give the applicant and the individual a notice in writing of the result of the application made under subsection (1).

- (5) A notice under subsection (4) must, in the case of the application being rejected, include a statement of reasons for the rejection.

34X. Authority may impose conditions on registration or approval

- (1) This section applies if the Authority—
- (a) registers a person as a principal or subsidiary intermediary;
 - (b) approves the attachment of a person to a principal intermediary; or
 - (c) approves an individual as a responsible officer of a principal intermediary.
- (2) The Authority may impose any conditions that it considers appropriate on the registration or approval when the Authority registers or approves the person or individual.
- (3) The Authority may also impose any conditions that it considers appropriate on the registration or approval after the Authority has registered or approved the person or individual.
- (4) Subsection (3) applies whether or not a condition has already been imposed on the registration or approval under subsection (2) or (3).
- (5) The Authority may amend or revoke any conditions imposed under subsection (2) or (3).
- (6) The power under subsection (2), (3) or (5) is only exercisable by notice in writing given to—
- (a) in relation to subsection (1)(a), the person;
 - (b) in relation to subsection (1)(b), the person and the principal intermediary; or
 - (c) in relation to subsection (1)(c), the individual and the principal intermediary.

- (7) A notice under subsection (6) must, in the case of any conditions being imposed or amended, include a statement of reasons for imposing or amending the conditions.

34Y. Procedural requirement for processing application etc.

- (1) The Authority must not reject an application made under section 34T(1) or 34U(1) for registration of a person as a principal or subsidiary intermediary, or impose a condition under section 34X(2) or (3) on such a registration, or amend such a condition under section 34X(5), without giving the person an opportunity to make representations as to why the application should not be rejected or why the condition should not be imposed or amended.
- (2) The Authority must not reject an application made under section 34V(1) for approval of an attachment of a person to a principal intermediary, or impose a condition under section 34X(2) or (3) on such an approval, or amend such a condition under section 34X(5), without giving the person and the principal intermediary an opportunity to make representations as to why the application should not be rejected or why the condition should not be imposed or amended.
- (3) The Authority must not reject an application made under section 34W(1) for approval of an individual as a responsible officer of a principal intermediary, or impose a condition under section 34X(2) or (3) on such an approval, or amend such a condition under section 34X(5), without giving the individual and the principal intermediary an opportunity to make representations as to why the application should not be rejected or why the condition should not be imposed or amended.

- (4) In this section, a reference to an opportunity to make representations is a reference to an opportunity to make oral representations or written representations, or both.

34Z. Assignment of frontline regulator for principal intermediary

- (1) As soon as practicable after the Authority registers a person as a principal intermediary, the Authority must assign an industry regulator as the regulator of the person for the purposes of this Part.
- (2) If the Authority considers appropriate, the Authority may replace the industry regulator assigned as the frontline regulator of a person registered as a principal intermediary by assigning another industry regulator as the regulator of the person for the purposes of this Part.
- (3) An assignment under subsection (1) or (2) must comply with subsections (4), (5) and (6).
- (4) If the person is a Type A regulatee of 1 industry regulator, the industry regulator is to be assigned as the regulator of the person for the purposes of this Part.
- (5) If the person is a Type A regulatee of the Monetary Authority and a Type A regulatee of another industry regulator—
- (a) subject to paragraph (b), the Monetary Authority is to be assigned as the regulator of the person for the purposes of this Part; or
- (b) where the Authority is satisfied that the person carries on the majority of its business activities as a Type A regulatee of that other industry regulator, that other industry regulator is to be assigned as the regulator of the person for the purposes of this Part.

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- (6) If the person is a Type A regulatee of the Insurance Authority and a Type A regulatee of the Securities and Futures Commission—
- (a) subject to paragraph (b), the Insurance Authority is to be assigned as the regulator of the person for the purposes of this Part; or
 - (b) where the Authority is satisfied that the person carries on the majority of its business activities as a Type A regulatee of the Securities and Futures Commission, the Commission is to be assigned as the regulator of the person for the purposes of this Part.
- (7) An assignment of an industry regulator as the frontline regulator of a person under subsection (1) or (2) ceases to be in force if—
- (a) another industry regulator is assigned as the frontline regulator of the person under subsection (2); or
 - (b) the registration of the person as a principal intermediary is revoked under this Part.

34ZA. Assignment of frontline regulator for subsidiary intermediary

- (1) As soon as practicable after the Authority approves the attachment of a person to a principal intermediary, the Authority must assign the frontline regulator of the principal intermediary as the regulator of the person, in the person's capacity as a subsidiary intermediary attached to the principal intermediary, for the purposes of this Part.
- (2) If—
- (a) the Authority assigns an industry regulator as the frontline regulator of a person in the person's capacity as a subsidiary intermediary attached to a principal intermediary; and

- (b) the Authority assigns under section 34Z(2) another industry regulator as the frontline regulator of the principal intermediary,
- the Authority must replace the industry regulator mentioned in paragraph (a) by assigning that other industry regulator mentioned in paragraph (b) as the regulator of the person, in the person's capacity as a subsidiary intermediary attached to the principal intermediary, for the purposes of this Part.
- (3) An assignment of an industry regulator as the frontline regulator of a person under subsection (1) or (2) ceases to be in force if—
- (a) another industry regulator is assigned as the frontline regulator of the person under subsection (2); or
- (b) the approval of the attachment of the person to the principal intermediary is revoked under this Part.

34ZB. Assignment of frontline regulator for responsible officer

- (1) As soon as practicable after the Authority approves an individual as a responsible officer of a principal intermediary, the Authority must assign the frontline regulator of the principal intermediary as the regulator of the individual, in the individual's capacity as a responsible officer of the principal intermediary, for the purposes of this Part.
- (2) If—
- (a) the Authority assigns an industry regulator as the frontline regulator of an individual in the individual's capacity as a responsible officer of a principal intermediary; and

- (b) the Authority assigns under section 34Z(2) another industry regulator as the frontline regulator of the principal intermediary,
- the Authority must replace the industry regulator mentioned in paragraph (a) by assigning that other industry regulator mentioned in paragraph (b) as the regulator of the individual, in the individual's capacity as a responsible officer of the principal intermediary, for the purposes of this Part.
- (3) An assignment of an industry regulator as the frontline regulator of an individual under subsection (1) or (2) ceases to be in force if—
- (a) another industry regulator is assigned as the frontline regulator of the individual under subsection (2); or
- (b) the approval of the individual as a responsible officer of the principal intermediary is revoked under this Part.

Division 5—Change in Status or Circumstances after Registration or Approval

34ZC. Principal intermediary ceasing to be Type A regulatee etc.

- (1) This section applies if—
- (a) a person is a principal intermediary;
- (b) the person—
- (i) ceases to be a Type A regulatee of an industry regulator; or
- (ii) has any qualification as a Type A regulatee of an industry regulator suspended; and
- (c) the industry regulator is the frontline regulator of the person.

- (2) The registration of the person as a principal intermediary—
 - (a) in the case of subsection (1)(b)(i), is revoked at the time the person ceases to be such a Type A regulatee; or
 - (b) in the case of subsection (1)(b)(ii), is suspended for the period during which that suspension is in force.

34ZD. Principal intermediary without responsible officer

- (1) The Authority may suspend the registration of a person as a principal intermediary for a period, or until the occurrence of an event, determined by the Authority, if the Authority is satisfied that the person ceases to have a responsible officer.
- (2) The Authority may revoke the registration of the person as a principal intermediary if—
 - (a) the person has not made an application under section 34W(1) for approval of an individual as a responsible officer of the principal intermediary within 90 days after the date on which the suspension takes effect; or
 - (b) the person has made such an application within 90 days after the date on which the suspension takes effect, and the Authority rejects the application.
- (3) The power under subsection (1) is not exercisable unless, before exercising the power, the Authority—
 - (a) has given the person a notice in writing of its intention to do so and the reasons for doing so; and
 - (b) has given the person an opportunity to make oral or written representations, or both, on those reasons.

- (4) A notice under subsection (3)(a) must also include a statement describing—
 - (a) the right of the person to make representations; and
 - (b) how and when the person may make representations.

34ZE. Other change in relation to principal intermediary

- (1) This section applies if—
 - (a) a principal intermediary ceases to carry on any regulated activity;
 - (b) there is a change in the address or any contact details of a principal intermediary;
 - (c) a principal intermediary—
 - (i) acquires any qualification as a Type A regulatee;
 - (ii) ceases to be a Type A regulatee of any industry regulator; or
 - (iii) has any qualification as a Type A regulatee of an industry regulator suspended; or
 - (d) an individual ceases to be the responsible officer of a principal intermediary.
- (2) The principal intermediary must give the Authority a notice in writing of the cessation, change, acquisition or suspension within 7 working days after it occurs.
- (3) The Authority may revoke the registration of a person as a principal intermediary if the Authority is given a notice under subsection (2) that the person ceases to carry on any regulated activity.
- (4) A person who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable to a fine at level 5.

34ZF. Subsidiary intermediary ceasing to be Type B regulatee etc.

- (1) This section applies if—
 - (a) a person is a subsidiary intermediary attached to a principal intermediary;
 - (b) the person—
 - (i) ceases to be a Type B regulatee of an industry regulator; or
 - (ii) has any qualification as a Type B regulatee of an industry regulator suspended; and
 - (c) the industry regulator is the frontline regulator of the person in the person's capacity of such intermediary.
- (2) If the person is also a subsidiary intermediary attached to another principal intermediary, and the industry regulator is not the frontline regulator of that other principal intermediary, the approval of the attachment of the person to the principal intermediary mentioned in subsection (1)(a)—
 - (a) in the case of subsection (1)(b)(i), is revoked at the time the person ceases to be such a Type B regulatee; or
 - (b) in the case of subsection (1)(b)(ii), is suspended for the period during which that suspension is in force.
- (3) If the person is one specified in subsection (4), the registration of the person as a subsidiary intermediary and the approval of the attachment of the person to any principal intermediary—
 - (a) in the case of subsection (1)(b)(i), are revoked at the time the person ceases to be such a Type B regulatee; or

- (b) in the case of subsection (1)(b)(ii), are suspended for the period during which that suspension is in force.
- (4) The person specified for the purposes of subsection (3) is—
 - (a) a person who is also a subsidiary intermediary attached to another principal intermediary the frontline regulator of which is the industry regulator; or
 - (b) a person who is not approved as being attached to another principal intermediary.

34ZG. Subsidiary intermediary without principal intermediary

- (1) This section applies if—
 - (a) a person is a subsidiary intermediary attached to a principal intermediary; and
 - (b) the principal intermediary intends to withdraw the consent to the person being an intermediary for carrying on regulated activities for the principal intermediary.
- (2) A withdrawal of the consent takes effect on—
 - (a) the date on which the principal intermediary gives the Authority a notice in the specified form of the withdrawal; or
 - (b) if a later date is specified in such a notice as the date on which the withdrawal is to take effect, that later date.
- (3) The approval of the attachment of the person to the principal intermediary is revoked on the date on which the withdrawal takes effect.

- (4) Where the person is not approved as being attached to any principal intermediary after a revocation under subsection (3), the Authority may revoke the registration of the person as a subsidiary intermediary if—
- (a) no application has been made under section 34V(1) for approval of attachment of the person to another principal intermediary within 90 days after the date on which the revocation under subsection (3) takes effect; or
 - (b) such an application has been made within 90 days after the date on which the revocation under subsection (3) takes effect, and the Authority has rejected the application.

34ZH. Subsidiary intermediary whose principal intermediary having registration revoked

- (1) This section applies if—
- (a) a person is a subsidiary intermediary attached to another person who is a principal intermediary; and
 - (b) the registration of that other person as a principal intermediary is revoked under this Part.
- (2) The approval of the attachment of the person to that other person is revoked at the time of that revocation.
- (3) Where the person is not approved as being attached to any principal intermediary after a revocation under subsection (2), the Authority may revoke the registration of the person as a subsidiary intermediary if—

- (a) no application has been made under section 34V(1) for approval of attachment of the person to another principal intermediary within 90 days after the date on which the revocation under subsection (2) takes effect; or
- (b) such an application has been made within 90 days after the date on which the revocation under subsection (2) takes effect, and the Authority has rejected the application.

34ZI. Other change in relation to subsidiary intermediary

- (1) This section applies if—
 - (a) there is a change in the name of a subsidiary intermediary;
 - (b) there is a change in the address or any contact details of a subsidiary intermediary;
 - (c) a subsidiary intermediary—
 - (i) acquires any qualification as a Type B regulatee;
 - (ii) ceases to be a Type B regulatee of any industry regulator; or
 - (iii) has any qualification as a Type B regulatee of an industry regulator suspended; or
 - (d) a subsidiary intermediary ceases to be the responsible officer of a principal intermediary.
- (2) The subsidiary intermediary must give the Authority a notice in writing of the change, acquisition, cessation or suspension within 7 working days after it occurs.
- (3) A person who, without reasonable excuse, contravenes subsection (2), commits an offence and is liable to a fine at level 5.

34ZJ. Responsible officer no longer attached to principal intermediary

- (1) This section applies if—
 - (a) an individual is a responsible officer of a principal intermediary; and
 - (b) the approval of the attachment of the individual to the principal intermediary is revoked or suspended under this Part.
- (2) The approval of the individual as a responsible officer of the principal intermediary—
 - (a) in the case of a revocation of the approval of the attachment, is revoked at the time of that revocation; or
 - (b) in the case of a suspension of the approval of the attachment, is suspended for the period during which that suspension is in force.

34ZK. Responsible officer ceasing to have sufficient authority within principal intermediary etc.

- (1) This section applies to an individual who is a responsible officer of a principal intermediary.
- (2) The Authority may revoke the approval of the individual as a responsible officer of the principal intermediary if the Authority is satisfied that the individual has ceased to have sufficient authority within the principal intermediary, or to be provided with sufficient resources or support, for carrying out specified responsibilities in relation to the principal intermediary.

Division 6—Conduct and Other Requirements for Intermediaries and Responsible Officers

34ZL. Conduct requirements for registered intermediary

- (1) When carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary—
 - (a) must act honestly, fairly, in the best interests of the client, and with integrity;
 - (b) must exercise a level of care, skill and diligence that may reasonably be expected of a prudent person who is carrying on the regulated activity;
 - (c) may advise only on matters for which the principal or subsidiary intermediary is competent to advise;
 - (d) must have such regard to the client's particular circumstances as is necessary for ensuring that the regulated activity is appropriate to the client;
 - (e) must make such disclosure of information to the client as is necessary for the client to be sufficiently informed for the purpose of making any material decision;
 - (f) must use best endeavours to avoid a conflict between the interests of the principal or subsidiary intermediary and the interests of the client and, in the case of such a conflict, must disclose the conflict to the client;
 - (g) must ensure that client assets are promptly and properly accounted for; and
 - (h) must comply with other requirements that are prescribed by the rules.
- (2) A principal intermediary—

- (a) must establish and maintain proper controls and procedures for securing compliance by the principal intermediary, and by each subsidiary intermediary attached to the principal intermediary, with this Part;
 - (b) must use the principal intermediary's best endeavours to secure observance by subsidiary intermediaries attached to the principal intermediary of the controls and procedures established under paragraph (a);
 - (c) must ensure that the responsible officer has sufficient authority within the principal intermediary for carrying out specified responsibilities in relation to the principal intermediary; and
 - (d) must provide the responsible officer with sufficient resources and support for carrying out specified responsibilities in relation to the principal intermediary.
- (3) In this section, a reference to a client of a principal intermediary, or a subsidiary intermediary attached to a principal intermediary, when carrying on a regulated activity, is a reference to—
- (a) a person whom the principal or subsidiary intermediary invites or induces, or attempts to invite or induce, to make a material decision; or
 - (b) a person to whom the principal or subsidiary intermediary gives regulated advice.

34ZM. Conduct requirements for responsible officer

A responsible officer of a principal intermediary must use his or her best endeavours to carry out specified responsibilities in relation to the principal intermediary.

34ZN. Annual fees

- (1) A person who is a registered intermediary must pay to the Authority for every chargeable period an annual fee of the amount prescribed by the regulations. The fee for a chargeable period must be paid within 1 month after the first day of the chargeable period.
- (2) Subsection (1) applies to a chargeable period that begins on or after the date of the registration of the person as such registered intermediary.
- (3) If a person contravenes subsection (1), the person must pay to the Authority an additional fee of an amount equal to 10% of the annual fee that was unpaid on the date of the contravention.
- (4) The Authority may suspend the registration of a person as a registered intermediary for a period, or until the occurrence of an event, determined by the Authority if the person fails to pay to the Authority the annual fee for a chargeable period to which subsection (1) applies, or any additional fee payable under subsection (3) in relation to that annual fee, within 3 months after the first day of the chargeable period.
- (5) The power under subsection (4) is not exercisable unless the Authority has, by notice in writing given to the registered intermediary at least 10 days before the suspension is to take effect, informed the registered intermediary of the contents of this section.
- (6) Where the Authority suspends the registration of a person as a registered intermediary under subsection (4) for failing to pay an annual fee or additional fee, the Authority may revoke that registration if the person fails to pay to the Authority the annual fee or additional fee—
 - (a) within 30 days after the suspension takes effect; or

- (b) within any longer period that the Authority may specify in a notice in writing given to the registered intermediary.
- (7) The Authority—
 - (a) may specify a date for the purposes of this section; and
 - (b) must publish the date in any manner that it considers appropriate.
- (8) In this section—

chargeable period (收費期) means—

 - (a) a period of 12 months beginning on the date specified by the Authority under subsection (7)(a); or
 - (b) each successive period of 12 months.

34ZO. Annual return

- (1) A person who is a registered intermediary must deliver to the Authority for every reporting period a return in the specified form. The return for a reporting period must be delivered within 1 month after the last day of the reporting period.
- (2) Subsection (1) applies to a reporting period that begins on or after the date of the registration of the person as such registered intermediary.
- (3) The Authority may suspend the registration of the person as a registered intermediary for a period, or until the occurrence of an event, determined by the Authority if the person fails to deliver to the Authority the return for a reporting period to which subsection (1) applies within 3 months after the last day of the reporting period.

- (4) The power under subsection (3) is not exercisable unless the Authority has, by notice in writing given to the registered intermediary at least 10 days before the suspension is to take effect, informed the registered intermediary of the contents of this section.
- (5) Where the Authority suspends the registration of a person as a registered intermediary under subsection (3) for failing to deliver a return, the Authority may revoke that registration if the person has not delivered to the Authority the return—
 - (a) within 30 days after the suspension takes effect; or
 - (b) within any longer period that the Authority may specify in a notice in writing given to the registered intermediary.
- (6) The Authority—
 - (a) may specify a date for the purposes of this section; and
 - (b) must publish the date in any manner that it considers appropriate.
- (7) In this section—

reporting period (報告期) means—

 - (a) a period of 12 months beginning on the date specified by the Authority under subsection (6)(a); or
 - (b) each successive period of 12 months.

34ZP. Continuing training

- (1) The Authority may, in relation to individuals who are subsidiary intermediaries or a class of subsidiary intermediaries, specify—
 - (a) the training that is to be undertaken by those individuals; and

- (b) the time within which the training is to be completed by those individuals,
- as the Authority considers necessary for ensuring that those individuals will be able to comply with the performance requirements.
- (2) If the Authority is satisfied that an individual has failed to complete the training specified under subsection (1)(a) within the time specified under subsection (1)(b), the Authority may give the individual a notice in writing requiring the individual to complete the training within 30 days beginning on the date on which the notice is given or any longer period specified in the notice.
- (3) The Authority may suspend the registration of an individual as a subsidiary intermediary for a period, or until the occurrence of an event, determined by the Authority, if the Authority is satisfied that the individual has failed to comply with a notice given under subsection (2).
- (4) If, within 30 days after the suspension takes effect, the individual has not complied with the requirement set out in the notice given under subsection (2), the Authority may revoke the registration of the person as a subsidiary intermediary.

Division 7—Inspection and Investigation Concerning Failure to Comply with Performance Requirement

34ZQ. Initiating inspection powers for monitoring compliance

- (1) A frontline regulator of a regulated person—
- (a) may exercise the powers under section 34ZR for the purpose of ascertaining any matter specified in subsection (2); or

- (b) may direct a prescribed person to ascertain any specified matter with those powers.
- (2) The following matters are specified for the purposes of subsection (1)—
 - (a) whether or not the regulated person has complied, or has failed to comply, with the performance requirements;
 - (b) whether or not the regulated person is complying, or is failing to comply, with those requirements;
 - (c) whether or not the regulated person is likely, or is unlikely, to be able to comply with those requirements.
- (3) If a frontline regulator directs a person under subsection (1)(b) to ascertain any specified matter—
 - (a) the frontline regulator must provide the person with a copy of the direction; and
 - (b) the person must, before imposing a requirement under section 34ZR on another person, produce a copy of the direction to that other person.
- (4) Even though a frontline regulator has directed a person under subsection (1)(b) to ascertain any specified matter, the frontline regulator may still exercise the powers under section 34ZR for the purpose of ascertaining the specified matter.

34ZR. Inspection powers

- (1) An inspector—
 - (a) may enter at any reasonable time any place of business of the regulated person;
 - (b) may inspect any business record of the regulated person;

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- (c) may make copies or otherwise record details of any business record of the regulated person; and
 - (d) may make inquiries of the regulated person, or a person specified in subsection (5)—
 - (i) concerning any business record of the regulated person; or
 - (ii) concerning any transaction or activity that was undertaken in the course of, or may affect, the business conducted by the regulated person.
- (2) In exercising a power under subsection (1)(b) or (c), the inspector may require the regulated person, or a person specified in subsection (5)—
- (a) to give the inspector access to any business record of the regulated person;
 - (b) to produce to the inspector, within the time and at the place specified in the requirement, any business record of the regulated person; and
 - (c) to answer any question regarding any business record of the regulated person.
- (3) In exercising a power under subsection (1)(d), the inspector may require the regulated person, or the specified person—
- (a) to give the frontline regulator access to any business record of the regulated person;
 - (b) to produce to the frontline regulator, within the time and at the place specified in the requirement, any business record of the regulated person; and
 - (c) to answer any question raised for the purposes of subsection (1)(d).

- (4) The power under subsection (1)(d) or (2) is not exercisable in relation to a specified person unless the inspector has reasonable cause to believe that the information or record sought under that subsection cannot be obtained by exercising the power in relation to the regulated person.
- (5) The person specified for the purposes of subsections (1)(d) and (2) is a person whom the inspector has reasonable cause to believe—
 - (a) has information relating to any business record of the regulated person; or
 - (b) is in possession of any business record of the regulated person.
- (6) If a person gives an answer in compliance with a requirement imposed under subsection (1), (2) or (3), the inspector may, in writing, require the person to verify, within the time specified in the requirement, the answer by a statutory declaration.
- (7) If, for the reason that the information concerned is not within the person's knowledge or possession, a person does not give any answer in compliance with a requirement imposed under subsection (1), (2) or (3), the inspector may, in writing, require the person to verify, within the time specified in the requirement, that reason and fact by a statutory declaration.
- (8) This section is subject to section 34ZZB(1).
- (9) In this section—

business record (業務紀錄), in relation to a regulated person, means any record or document relating to—

 - (a) the business conducted by the regulated person; or

- (b) any transaction or activity that was undertaken in the course of, or may affect, the business conducted by the regulated person.

34ZS. Inspection powers exercisable in relation to former regulated person

- (1) An industry regulator may exercise the powers under section 34ZR for the purpose of ascertaining whether or not a person who was a regulated person of which the industry regulator was formerly the frontline regulator has complied, or has failed to comply, with the performance requirements at any time during the period the industry regulator was the frontline regulator of the person.
- (2) An industry regulator may direct any prescribed person to ascertain, with those powers, whether or not a person who was a regulated person of which the industry regulator was formerly the frontline regulator has complied, or has failed to comply, with the performance requirements at any time during the period the industry regulator was the frontline regulator of the person.
- (3) This Part is to be construed accordingly.

34ZT. Initiating investigation powers for suspected non-compliance

- (1) If a frontline regulator of a regulated person has reasonable cause to believe that the regulated person may have failed to comply with a performance requirement, the frontline regulator—
 - (a) may exercise the powers under section 34ZU for the purpose of investigating the failure or the question whether or not there has been such a failure; or

- (b) may in writing direct a prescribed person to investigate, with those powers, the failure or the question whether or not there has been such a failure.
- (2) If a frontline regulator directs a person under subsection (1)(b) in relation to an investigation—
 - (a) the frontline regulator must provide the person with a copy of the direction; and
 - (b) the person must, before imposing a requirement under section 34ZU on another person, produce a copy of the direction to that other person.
- (3) Before a frontline regulator, or a person directed by a frontline regulator under subsection (1)(b), imposes a requirement under section 34ZU on another person who is a Type A or Type B regulatee of an industry regulator that is not the frontline regulator, the frontline regulator or the person so directed must consult the industry regulator.
- (4) Even though a frontline regulator has directed a person under subsection (1)(b) in relation to an investigation, the frontline regulator may still exercise the powers under section 34ZU for the purpose of the investigation.

34ZU. Investigation powers

- (1) An investigator may, in writing, require a person specified in subsection (2)—
 - (a) to produce, within the time and at the place specified in the requirement, any record or document specified in the requirement—
 - (i) that is or may be relevant to any matter under investigation; and
 - (ii) that is in the person's possession;

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- (b) to attend before the investigator at the time and place specified in the requirement, and answer any question relating to any matter under investigation that the investigator may raise with the person;
 - (c) to respond to any written question relating to any matter under investigation that the investigator may raise with the person; or
 - (d) to give the investigator any assistance in connection with the investigation that the person is reasonably able to give.
- (2) The person specified for the purposes of subsection (1) is—
- (a) a person whom the frontline regulator has reasonable cause to believe may have failed to comply with a performance requirement; or
 - (b) a person whom the investigator has reasonable cause to believe—
 - (i) to be in possession of any record or document that contains, or that is likely to contain, information relevant to any matter under investigation; or
 - (ii) to be otherwise in possession of such information.
- (3) If a person produces a record or document in compliance with a requirement imposed under subsection (1)(a), the investigator may require the person to give an explanation or further particulars in respect of the record or document.
- (4) If a person gives any answer, response, explanation or particulars in compliance with a requirement imposed under subsection (1) or (3), the investigator may, in writing, require the person to verify within the time specified in the requirement, the answer, response, explanation or particulars by a statutory declaration.

- (5) If, for the reason that the information concerned is not within the person's knowledge or possession, a person does not give any answer, response, explanation or particulars in compliance with a requirement imposed under subsection (1) or (3), the investigator may, in writing, require the person to verify, within the time specified in the requirement, that reason and fact by a statutory declaration.
- (6) This section is subject to section 34ZZB(2).

34ZV. Investigation powers exercisable in relation to former regulated persons

- (1) If an industry regulator has reasonable cause to believe that a person who was a regulated person of which the industry regulator was formerly a frontline regulator may have failed to comply with a performance requirement at any time during the period the industry regulator was the frontline regulator of the person—
 - (a) the industry regulator may exercise the powers under section 34ZU for the purpose of investigating the failure or the question whether or not there has been such a failure; or
 - (b) the industry regulator may direct a prescribed person to investigate, with those powers, the failure or the question whether or not there has been such a failure.
- (2) This Part is to be construed accordingly.

Division 8—Disciplinary Order for Failure to Comply with Performance Requirements

34ZW. Authority may make disciplinary order

- (1) The Authority may make any disciplinary order under subsection (3), (4), (5) or (6) against a regulated person if the Authority is satisfied that the regulated person has failed to comply with a performance requirement.
- (2) The Authority may make any disciplinary order under subsection (3) or (4) against a regulated person if the regulated person is convicted of an offence under this Ordinance or any subsidiary legislation under this Ordinance.
- (3) If the regulated person is a registered intermediary—
 - (a) the Authority—
 - (i) may order that the registration of the person as such registered intermediary be revoked; and
 - (ii) may order that the person be disqualified from being registered as an intermediary for carrying on regulated activities, or as an intermediary for carrying on regulated activities for a principal intermediary to which the person is to be attached, for a period determined by the Authority; or
 - (b) the Authority may order that the registration of the person as such registered intermediary be suspended for a period determined by the Authority.
- (4) If the regulated person is a responsible officer of a principal intermediary—
 - (a) the Authority—

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- (i) may order that the approval of the individual as such responsible officer be revoked; and
 - (ii) may order that the person be disqualified from being approved as an officer with specified responsibilities in relation to a principal intermediary for a period determined by the Authority; or
 - (b) the Authority may order that the approval of the individual as such responsible officer be suspended for a period determined by the Authority.
- (5) The Authority may order that the regulated person—
- (a) be publicly reprimanded; or
 - (b) be privately reprimanded.
- (6) The Authority may order the regulated person to pay a pecuniary penalty not exceeding whichever is the greater amount of the following—
- (a) \$10,000,000;
 - (b) 3 times the amount of the profit gained or loss avoided by the regulated person as a result of the failure.
- (7) A power to make a disciplinary order against a regulated person under subsection (1) for a failure to comply with a performance requirement is only exercisable if—
- (a) the frontline regulator of the regulated person—
 - (i) has exercised the powers under section 34ZU for the purpose of investigating the failure or the question whether or not there has been such a failure; or

- (ii) has directed a person under section 34ZT(1)(b) to investigate, with those powers, the failure or the question whether or not there has been such a failure;
 - (b) in considering the matters specified in subsection (8), the Authority has regard to the information—
 - (i) obtained by the frontline regulator from the investigation; and
 - (ii) disclosed to the Authority for the purpose of assisting or enabling the Authority to consider those matters; and
 - (c) the Authority complies with section 34ZZ before making the disciplinary order.
- (8) The matters are—
- (a) whether the regulated person has failed to comply with the performance requirement; and
 - (b) what disciplinary order is to be made against the regulated person.
- (9) The Authority must pay any pecuniary penalty paid to or recovered by it under a disciplinary order into the general revenue.
- (10) In this section, a reference to a person being disqualified from registration or approval, or a registration or approval being suspended, for a period determined by the Authority includes the person being so disqualified, or the registration or approval being suspended, until the occurrence of an event determined by the Authority.

34ZX. When disciplinary order takes effect

- (1) This section applies if the Authority makes a disciplinary order against a regulated person.

- (2) If, before the expiry of the period prescribed by the regulations for making an appeal, the regulated person gives the Authority a notice in writing that the person will not appeal against the decision, the disciplinary order takes effect when the notice is given.
- (3) If the regulated person does not appeal against the decision within the period prescribed by the regulations for making an appeal, the disciplinary order takes effect when that period expires.
- (4) If the regulated person appeals against the decision—
 - (a) where the appeal is withdrawn, the disciplinary order takes effect at the time of the withdrawal;
 - (b) where the decision is upheld on appeal, the disciplinary order takes effect at the time it is upheld; or
 - (c) where the decision is varied on appeal, the disciplinary order as varied takes effect at the time of the variation.
- (5) Despite subsections (2), (3) and (4), if the Authority considers appropriate, the disciplinary order takes effect at a time determined by the Authority. The Authority must give the regulated person a notice in writing of the time so determined.
- (6) In deciding whether or not a disciplinary order should take effect at a time determined by the Authority, the Authority must have regard—
 - (a) to the maintenance of public confidence—
 - (i) in the operation of registered schemes; and
 - (ii) in the operation of the retirement schemes industry in Hong Kong; and
 - (b) to the public interest.

34ZY. Further action by Authority

- (1) If the Authority is satisfied that a regulated person has failed to comply with a performance requirement and intends to make a disciplinary order against a regulated person under section 34ZW, it may, by agreement with the regulated person, take any further action, whether in place of or in addition to any disciplinary order, in respect of the regulated person that it considers appropriate in the circumstances of the case.
- (2) A power to take further action in respect of a regulated person under subsection (1) for a failure to comply with a performance requirement is only exercisable if—
 - (a) the frontline regulator of the regulated person—
 - (i) has exercised the powers under section 34ZU for the purpose of investigating the failure or the question whether or not there has been such a failure; or
 - (ii) has directed a person under section 34ZT(1)(b) to investigate, with those powers, the failure or the question whether or not there has been such a failure;
 - (b) in considering the matters specified in subsection (3), the Authority has regard to the information—
 - (i) obtained by the frontline regulator from the investigation; and
 - (ii) disclosed to the Authority for the purpose of assisting or enabling the Authority to consider those matters;
 - (c) the Authority considers it appropriate to exercise the power, having regard to—
 - (i) the maintenance of public confidence—

- (A) in the operation of registered schemes; and
 - (B) in the operation of the retirement schemes industry in Hong Kong; and
 - (ii) the public interest; and
 - (d) subject to subsection (4), the Authority complies with section 34ZZ before taking the further action.
- (3) The matters are—
- (a) whether the regulated person has failed to comply with the performance requirement; and
 - (b) what further action is to be taken in respect of the regulated person.
- (4) The Authority is not required to comply with section 34ZZ(2)(b) for the purposes of subsection (2)(d) if the regulated person so agrees. In that case, section 34ZZ(3)(c) does not apply.

34ZZ. Procedural requirement for Authority before making disciplinary order or taking further action

- (1) This section applies if the Authority forms a preliminary view that it should make a disciplinary order against, or take further action under section 34ZY in respect of, the regulated person.
- (2) The Authority—
 - (a) must give the regulated person a notice in writing of the preliminary view and the reasons for it; and
 - (b) must give the regulated person an opportunity to make oral or written representations, or both, on the preliminary view and the reasons for it.

- (3) A notice under subsection (2)(a) must also include—
- (a) particulars of the disciplinary order or further action proposed to be made or taken;
 - (b) particulars of the time at which the disciplinary order is proposed to take effect in accordance with section 34ZX; and
 - (c) a statement describing—
 - (i) the right of the regulated person to make representations; and
 - (ii) how and when the regulated person may make representations.
- (4) For the purposes of subsection (3)(a), a notice under subsection (2)(a) must include—
- (a) for a disciplinary order under section 34ZW(3)(a)(i) or (ii) or (b) or (4)(a)(i) or (ii) or (b), particulars of the duration and terms of the proposed revocation, disqualification or suspension;
 - (b) for a disciplinary order under section 34ZW(5), particulars of the terms of the proposed reprimand; or
 - (c) for a disciplinary order under section 34ZW(6), the amount of the proposed pecuniary penalty and the proposed period within which that penalty must be paid.

34ZZA. Application of disciplinary powers in relation to former regulated person

- (1) This section applies to a power that is exercisable by the Authority under section 34ZW or 34ZY in relation to a person who is a regulated person, in connection with the person's failure to comply with a performance requirement.

- (2) The power is also exercisable by the Authority in relation to the person if the person was a regulated person at the time of the failure, regardless of whether the person is a regulated person when the power is being exercised.
- (3) This Part is to be construed accordingly.

Division 9—Miscellaneous

Subdivision 1—Provisions Supplementary to Divisions 3 and 7

34ZZB. Inspection and investigation powers in relation to certain entity

- (1) An inspector has no power under section 34ZR to require an entity specified in subsection (3) to disclose any information, or to produce any record or document, relating to the affairs of a customer of the entity—
 - (a) unless the inspector is a relevant authority of the entity; or
 - (b) unless the inspector is satisfied that the disclosure or production is necessary for the purpose of ascertaining any matter specified in section 34ZQ(2) and so certifies in writing to the entity.
- (2) An investigator has no power under section 34P or 34ZU to require an entity specified in subsection (3) to disclose any information, or to produce any record or document, relating to the affairs of a customer of the entity—
 - (a) unless the investigator is a relevant authority of the entity; or
 - (b) unless—

- (i) the customer is a person whom the investigator has reasonable cause to believe may be able to give information relevant to the matter under investigation; and
 - (ii) the investigator is satisfied that the disclosure or production is necessary for the purpose of the investigation and so certifies in writing to the entity.
- (3) The entity is—
 - (a) an authorized financial institution;
 - (b) a licensed corporation as defined by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);
 - (c) an insurer authorized under the Insurance Companies Ordinance (Cap. 41);
 - (d) an appointed insurance agent as defined by section 2(1) of the Insurance Companies Ordinance (Cap. 41); or
 - (e) an authorized insurance broker as defined by section 2(1) of the Insurance Companies Ordinance (Cap. 41).
- (4) In this section—

relevant authority (有關主管當局)—

 - (a) in relation to an entity specified in subsection (3)(a), means—
 - (i) the Monetary Authority; or
 - (ii) a person directed by the Monetary Authority under section 34O(2)(b), 34ZQ(1)(b) or 34ZT(1)(b);
 - (b) in relation to an entity specified in subsection (3)(b), means—
 - (i) the Securities and Futures Commission; or

- (ii) a person directed by the Securities and Futures Commission under section 34O(2)(b), 34ZQ(1)(b) or 34ZT(1)(b); or
- (c) in relation to an entity specified in subsection (3)(c), (d) or (e), means—
 - (i) the Insurance Authority; or
 - (ii) a person directed by the Insurance Authority under section 34O(2)(b), 34ZQ(1)(b) or 34ZT(1)(b).

34ZZC. Offences relating to sections 34P, 34ZR and 34ZU

- (1) A person commits an offence if the person, without reasonable excuse, fails to comply with a specified requirement imposed on the person.
- (2) A person commits an offence if the person, with intent to defraud, fails to comply with a specified requirement imposed on the person.
- (3) A person commits an offence if—
 - (a) in purported compliance with a specified requirement imposed on the person, the person produces any record or document, or gives an answer or response, or gives any explanation or particulars, that are false or misleading in a material respect; and
 - (b) the person knows that, or is reckless as to whether, the record or document, or the answer or response, or the explanation or particulars, are false or misleading in a material respect.
- (4) A person commits an offence if, in purported compliance with a specified requirement imposed on the person, the person, with intent to defraud, produces any record or document, or gives an answer or response, or gives any explanation or particulars, that are false or misleading in a material respect.

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- (5) A person commits an offence if, being an officer or employee of a company, the person, with intent to defraud—
- (a) causes or allows the company to fail to comply with a specified requirement imposed on the company; or
 - (b) causes or allows the company, in purported compliance with a specified requirement imposed on the company, to produce any record or document, or give an answer or response, or give any explanation or particulars, that are false or misleading in a material respect.
- (6) A person is not excused from complying with a specified requirement imposed on the person only on the ground that to do so might tend to incriminate the person.
- (7) Despite anything in this Ordinance, no criminal proceedings may be instituted against a person under subsection (1), (2), (3), (4) or (5) in respect of a conduct if—
- (a) proceedings have previously been instituted against the person for the purposes of section 34ZZD(3)(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 that person for the purposes of section 34ZZD(3)(b) in respect of the same conduct.
- (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 1 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 (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.
- (10) A person who commits an offence under subsection (2), (4) or (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 at level 6 and to imprisonment for 6 months.
- (11) In this section—

specified requirement (指明要求) means a requirement imposed under section 34P, 34ZR or 34ZU.

34ZZD. Court to inquire into failure to comply with inspection or investigation requirement

- (1) A person specified in subsection (2) may, by originating summons, apply to the Court for an inquiry into any person's failure to comply with a requirement imposed under section 34P, 34ZR or 34ZU.
- (2) The person specified for the purposes of subsection (1) is—
- (a) in the case of section 34P or 34ZU, an investigator; or
 - (b) in the case of section 34ZR, an inspector.
- (3) On such application, the Court may—

- (a) on being satisfied that there is no reasonable excuse for the person not to comply with the requirement, order the person to comply with the requirement within the period specified by the Court; and
 - (b) on being satisfied that the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if the person and, if applicable, that other person had been guilty of contempt of court.
- (4) An originating summons under subsection (1) is to be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).
- (5) 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 34ZZC(1), (2), (3), (4) or (5) 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 that person under section 34ZZC(1), (2), (3), (4) or (5) in respect of the same conduct.

34ZZE. Use of incriminating evidence in proceedings

- (1) If an inspector or investigator requires a person to give an answer or response to any question, or to give an explanation or further particulars, under section 34P, 34ZR or 34ZU, the inspector or investigator must ensure that the person has first been informed or

reminded of the limitations imposed by subsection (2) on the admissibility in evidence of—

- (a) the requirement; and
- (b) the question and the answer or response, or the explanation or particulars.

(2) Despite anything in this Part, if—

- (a) an inspector or investigator requires a person to give an answer or response to any question, or to give an explanation or further particulars, under section 34P, 34ZR or 34ZU; and
- (b) the answer or response, or the explanation or particulars, might tend to incriminate the person, and the person so claims before giving the answer or response or giving the explanation or particulars,

the requirement, as well as the question and the answer or response, or the explanation or particulars, are not admissible in evidence against the person in criminal proceedings in a court of law other than those specified in subsection (3).

(3) The criminal proceedings are those in which the person is charged with an offence under section 34ZZC(1), (2), (3), (4) or (5), or under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the answer or response, or the explanation or particulars.

34ZZF. Magistrate's warrant

(1) If a magistrate is satisfied on information on oath laid by a person specified in subsection (2) 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 section 34P, 34ZR or 34ZU, the magistrate may issue a warrant authorizing a person

- set out in the warrant, and such other person as may be necessary to assist in the execution of the warrant—
- (a) to enter the premises, if necessary by force, at any time within the period of 7 days beginning on the date of the warrant; and
 - (b) to search for, seize and remove any record or document that the person so set out has reasonable cause to believe may be required to be produced under section 34P, 34ZR or 34ZU, as the case may be.
- (2) The person specified for the purposes of subsection (1) is—
- (a) in the case of section 34P or 34ZU, an investigator; or
 - (b) in the case of section 34ZR, an inspector.
- (3) Before the Authority, or a person directed by the Authority under section 34O(1)(a)(ii), lays information for the purpose of any record or document that may be required to be produced under section 34P by another person who is a Type A or Type B regulatee of an industry regulator, the Authority or the person so directed must consult the industry regulator.
- (4) Before an industry regulator, or a person directed by an industry regulator under section 34O(2)(b), lays information for the purpose of any record or document that may be required to be produced under section 34P by another person who is a Type A or Type B regulatee of another industry regulator, the industry regulator or the person so directed must consult that other industry regulator.
- (5) Before a frontline regulator, or a person directed by a frontline regulator under section 34ZQ(1)(b) or 34ZT(1)(b), lays information for the purpose of any record or document that may be required to be

produced under section 34ZR or 34ZU by another person who is a Type A or Type B regulatee of an industry regulator that is not the frontline regulator, the frontline regulator or the person so directed must consult the industry regulator.

- (6) If an authorized person has reasonable cause 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—
 - (a) that is in the possession of that other person; and
 - (b) that the authorized person has reasonable cause to believe may be required to be produced under section 34P, 34ZR or 34ZU, as the case may be.
- (7) An authorized person may, in relation to any record or document required to be produced under subsection (6)—
 - (a) prohibit any person found on the premises from—
 - (i) removing the record or document from the premises;
 - (ii) erasing anything from, adding anything to or otherwise altering anything in, the record or document; or
 - (iii) otherwise interfering in any manner with, or causing or permitting any other person to interfere with, the record or document; or
 - (b) take any other step that appears to the authorized person to be necessary for—
 - (i) preserving the record or document; or
 - (ii) preventing interference with the record or document.

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- (8) Any record or document removed under this section may be retained for—
- (a) a period not exceeding 6 months beginning on the day of its removal; or
 - (b) if the record or document is or may be required for any criminal proceedings or for any other proceedings under this Part, such longer period as may be necessary for the purpose of those proceedings.
- (9) If an authorized person removes any record or document under this section, the authorized person—
- (a) must as soon as practicable after the removal give a receipt for the record or document; and
 - (b) may permit any person who would be entitled to inspect the record or document but for the removal—
 - (i) to inspect it; and
 - (ii) to make copies or otherwise record details of it at all reasonable times.
- (10) 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 investigator or inspector, as it applies to property that has come into the possession of the police.
- (11) A person commits an offence if the person—
- (a) without reasonable excuse, fails to comply with a requirement or prohibition under subsection (6) or (7); or
 - (b) obstructs an authorized person in the exercise of any power conferred by subsection (6) or (7).
- (12) A person who commits an offence under subsection (11) 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.
- (13) 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 mentioned in paragraphs (a) and (b) of that subsection.

Subdivision 2—Other Miscellaneous Provisions

34ZZG. Registration or approval revocable on request

The Authority may revoke the registration of a person as a principal intermediary or subsidiary intermediary, or the approval of the attachment of a person to a principal intermediary, or the approval of an individual as a responsible officer of a principal intermediary, at the request of the person or individual.

34ZZH. Notice of revocation, suspension, etc.

- (1) This section applies if the Authority—
- (a) suspends or revokes the registration of a person as a registered intermediary under Division 5 or 6;
 - (b) revokes the approval of a person as a responsible officer of a principal intermediary under section 34ZK; or
 - (c) makes a disciplinary order against a person under section 34ZW.
- (2) The Authority must give the person a notice in writing of—
- (a) the suspension or revocation, or the disciplinary order; and

- (b) a statement of reasons for the suspension or revocation, or for the disciplinary order.

34ZZI. Effect of revocation and suspension

- (1) A revocation or suspension under this Part of the registration of a person as a registered intermediary does not affect any agreement, transaction or arrangement entered into by the person as such registered intermediary.
- (2) A revocation or suspension under this Part of the approval of the attachment of a person to a principal intermediary does not affect any agreement, transaction or arrangement entered into by the person as a subsidiary intermediary attached to the principal intermediary.

34ZZJ. Fees sharing

- (1) The Authority may pay to an industry regulator an amount that in the Authority's opinion represents the expenditure or cost incurred, or likely to be incurred, by the industry regulator in providing the services or performing the functions under this Part.
- (2) A payment under subsection (1) is to be paid from the MPFA Administration Account.

34ZZK. Transitional and saving provisions

Schedule 5B has effect.”.

14. Section 35 amended (Appeal Board)

- (1) After section 35(3)—

Add

- “(3A) A person appointed under subsection (2) to be the Chairman of the Appeal Board must be—

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- (a) a person who is eligible for appointment as a judge of the High Court under section 9 of the High Court Ordinance (Cap. 4);
- (b) a former Justice of Appeal of the Court of Appeal; or
- (c) a former judge or a former deputy judge of the Court of First Instance.”.
- (2) Section 35(4)—
- Repeal**
- “shall be”
- Substitute**
- “to be the Deputy Chairman, or one of the Deputy Chairmen, of the Appeal Board must be”.
- (3) Section 35(5)—
- Repeal**
- “not being public officers”.
- (4) After section 35(5)—
- Add**
- “(5A) The panel of persons appointed under subsection (5)—
- (a) must not include any public officer; and
- (b) must include—
- (i) at least 1 but not more than 2 persons who, in the Chief Executive’s opinion, represent the interests of both Type A regulatees and Type B regulatees within the meaning of Part IVA; and
- (ii) at least 1 but not more than 2 persons who, in the Chief Executive’s opinion, represent the interests of relevant employees.”.

15. Sections 42AA and 42AB added

After section 42—

Add

“42AA. Authority or specified entity may disclose information obtained under Part IVA despite section 41

- (1) Section 41 does not prevent the Authority or an entity specified in subsection (4) from disclosing the information to each other for the purpose of enabling or assisting the recipient of the information to perform functions under or for the purposes of Part IVA.
- (2) Section 41 does not prevent an entity specified in subsection (4) from doing any of the following with respect to information obtained by it under Part IVA—
 - (a) disclose the information as a summary compiled from information provided by persons in accordance with Part IVA but only if the summary is compiled so as to prevent the identities and businesses of those persons from being ascertained from the summary;
 - (b) disclose the information for the purpose of any criminal proceedings in Hong Kong or an investigation conducted with a view to bringing any such proceedings;
 - (c) disclose the information in connection with any civil proceedings to which the entity is a party or with a view to bringing any such proceedings;
 - (d) disclose the information in such form as the entity considers appropriate but only if the information has been made available to members of the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by section 41;

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- (e) subject to subsection (3), disclose the information to the Chief Executive, the Financial Secretary, the Commissioner of Inland Revenue, the Registrar of Occupational Retirement Schemes, the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (Cap. 588), the Official Receiver appointed under the Bankruptcy Ordinance (Cap. 6), a liquidator appointed under the Companies Ordinance (Cap. 32), the Authority or another entity specified in subsection (4), but only if the entity disclosing the information reasonably believes that the disclosure—
- (i) is in the interests of the scheme members concerned;
 - (ii) is in the public interest; or
 - (iii) is necessary to enable the exercise or performance of a function imposed or conferred by law;
- (f) disclose the 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.
- (3) An entity specified in subsection (4) may disclose information under subsection (1) to the Commissioner of Inland Revenue only if the entity is satisfied that the information is required in order to assist the Commissioner in determining a matter that the Commissioner is required or empowered to determine under the Inland Revenue Ordinance (Cap. 112).
- (4) The entity specified for the purposes of this section is—
- (a) the Securities and Futures Commission;

- (b) the Insurance Authority; or
- (c) the Monetary Authority.

42AB. Person not to disclose information obtained in the course of inspection or investigation

- (1) This section applies to a person on whom a requirement under section 34P, 34ZR or 34ZU has been imposed by—
 - (a) the Authority or a person directed by the Authority under section 34O(1)(a)(ii); or
 - (b) an industry regulator or a person directed by an industry regulator under section 34O(2)(b), 34ZQ(1)(b) or 34ZT(1)(b).
- (2) The person 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 following consents to the disclosure—
 - (i) in the case of subsection (1)(a), the Authority;
 - (ii) in the case of subsection (1)(b), the industry regulator;
 - (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, a solicitor, or any other professional advisor, acting or proposing to act in a professional capacity in connection with any matter arising under a provision of Part IVA;

- (d) the disclosure is in connection with any judicial or other proceedings to which the person is a party; or
 - (e) the disclosure is in accordance with an order of a court, or in accordance with a law or a requirement made under a law.
- (3) The Authority or industry regulator may impose any conditions that it considers appropriate on a consent given for the purposes of subsection (2)(a).
- (4) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 4.”.

16. Section 42B amended (immunity)

- (1) Section 42B—

Renumber the section as section 42B(1).

- (2) After section 42B(1)—

Add

“(2) No civil liability is incurred by an entity specified in subsection (3), or a director or employee of such an entity, or a person directed by such an entity under section 34O(2)(b), 34ZQ(1)(b) or 34ZT(1)(b), in respect of anything done, or omitted to be done, by the entity, director, employee or person, as the case may be, in good faith in the performance or purported performance of any function under Part IVA.

- (3) The entity is—

- (a) the Securities and Futures Commission;
- (b) the Insurance Authority; or
- (c) the Monetary Authority.”.

17. Section 43B amended (offences by employers)

- (1) Section 43B(1C)(a), after “years”—

Add

“and, in the case of a continuing offence, to a daily penalty of \$700 for each day on which the offence is continued”.

- (2) Section 43B(1C)(b), after “years”—

Add

“and, in the case of a continuing offence, to a daily penalty of \$500 for each day on which the offence is continued”.

- (3) Section 43B(1E)(a), after “years”—

Add

“and, in the case of a continuing offence, to a daily penalty of \$700 for each day on which the offence is continued”.

- (4) Section 43B(1E)(b), after “years”—

Add

“and, in the case of a continuing offence, to a daily penalty of \$500 for each day on which the offence is continued”.

- (5) Before section 43B(4)—

Add

“(3A) If—

- (a) in proceedings brought under section 18(3), a court orders an employer to pay any arrears or contribution surcharge to the Authority; and
- (b) without reasonable excuse, the employer fails to pay to the Authority any sum payable under the order at the end of 14 days after the date by which the sum must be paid to the Authority under the order,

the employer commits an offence and is liable on conviction to a fine of \$350,000 and to imprisonment for 3 years and, in the case of a continuing offence, to a daily penalty of \$500 for each day on which the offence is continued.

- (3B) In subsection (3A), a reference to a sum payable under an order includes—
- (a) any part of a sum payable under the order; and
 - (b) in the case of a sum payable by instalments, any instalment or any part of an instalment.”.

18. Section 44 amended (liability of officers, managers and partners)

After section 44(2)—

Add

- “(3) Where an offence under section 43B(3A) is committed by a company, the offence is presumed to have been committed with the consent or connivance of, or to be attributable to the neglect on the part of, an officer or any person who was purporting to act in that capacity if it is proved that, at the time the offence was committed, the officer or person—
- (a) was concerned in the management of the company; or
 - (b) knew or ought to have known that the order in respect of which the offence was committed had been made against the company.
- (4) Where an offence under section 43B(3A) is committed by a company, the offence is presumed to have been committed with the consent or connivance of, or to be attributable to the neglect on the part of, a person (other than an officer) concerned in the management of the company or any person who was purporting to act in that capacity if it is proved that, at the time the offence was committed, the person knew or ought to have known that the order in respect of which the offence was committed had been made against the company.

- (5) Where an offence under section 43B(3A) is committed by a partner, the offence is presumed to have been committed with the consent or connivance of, or to be attributable to the neglect on the part of, another partner of the partnership if it is proved that, at the time the offence was committed, the other partner—
 - (a) was concerned in the management of the partnership; or
 - (b) knew or ought to have known that the order in respect of which the offence was committed had been made against the partner.
- (6) The presumption under subsection (3), (4) or (5) is rebutted by a person charged with an offence under section 43B(3A) by virtue of that subsection if—
 - (a) there is sufficient evidence to raise an issue that the offence was committed without the person's consent or connivance and was not attributable to the person's neglect; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.”.

19. Section 44A added

After section 44—

Add

“44A. Proof of certain matters in proceedings for offence under section 43B(3A)

- (1) In proceedings for an offence under section 43B(3A)—
 - (a) a document purporting to be a copy of a document specified in subsection (6), and purporting to be certified by or on behalf of the registrar of a court as a true copy of the specified

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- document, is admissible in evidence on its production without further proof; and
- (b) on being admitted in evidence under paragraph (a), the document, unless there is evidence to the contrary—
 - (i) is presumed to be so certified;
 - (ii) is presumed to be a true copy of the specified document; and
 - (iii) if the specified document is prepared by an officer of a court, is proof of its contents.
- (2) In proceedings for an offence under section 43B(3A)—
- (a) a document purporting to be a copy of any document relevant to any of the facts specified in subsections (7) and (8), and purporting to be certified by or on behalf of the registrar of a court as a true copy of the document so relevant, is admissible in evidence on its production without further proof; and
 - (b) on being admitted in evidence under paragraph (a), the document, unless there is evidence to the contrary—
 - (i) is presumed to be so certified;
 - (ii) is presumed to be a true copy of the document so relevant; and
 - (iii) if the document so relevant is prepared by an officer of a court, is proof of the facts to which the document is relevant.
- (3) In proceedings for an offence under section 43B(3A)—

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- (a) a certificate purporting to be issued by or on behalf of the registrar of a court, and stating any of the facts specified in subsection (7), is admissible in evidence on its production without further proof; and
 - (b) on being admitted in evidence under paragraph (a), the certificate, unless there is evidence to the contrary—
 - (i) is presumed to be so issued; and
 - (ii) is proof of the facts so stated.
- (4) In proceedings for an offence under section 43B(3A)—
- (a) a certificate purporting to be issued by or on behalf of the Registrar of the High Court or of the Court of Final Appeal, and stating any of the facts specified in subsection (8), is admissible in evidence on its production without further proof; and
 - (b) on being admitted in evidence under paragraph (a), the certificate, unless there is evidence to the contrary—
 - (i) is presumed to be so issued; and
 - (ii) is proof of the facts so stated.
- (5) In proceedings for an offence under section 43B(3A)—
- (a) a certificate purporting to be issued by the Authority, and stating either or both of the facts specified in subsection (9), is admissible in evidence on its production without further proof; and
 - (b) on being admitted in evidence under paragraph (a), the certificate, unless there is evidence to the contrary—

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- (i) is presumed to be issued by the Authority;
and
 - (ii) is proof of the facts so stated.
 - (6) The document specified for the purposes of subsection (1)(a) is—
 - (a) a claim filed with a court of competent jurisdiction in proceedings brought under section 18(3);
 - (b) an order made by a court of competent jurisdiction in those proceedings; or
 - (c) any other document relating to proceedings brought under section 18(3).
 - (7) The facts specified for the purposes of subsections (2)(a) and (3)(a) are—
 - (a) whether any payment has been made to the court in full or partial discharge of an order of the court and if so, the particulars of the payment (including the amount and date of the payment);
 - (b) whether a decision has been made in any proceedings to set aside or review an order of the court and, if so, the particulars of the decision;
 - (c) whether any proceedings are pending to set aside or review an order of the court and, if so, the particulars of the pending proceedings;
 - (d) whether any person was present—
 - (i) at the hearing of the court at which an order of the court was made; or
 - (ii) at any hearing of the claim to which the order relates; and

- (e) whether any document relating to the proceedings before the court has been served on any person and, if so, the particulars of service (including the mode, time and address of the service).
- (8) The facts specified for the purposes of subsections (2)(a) and (4)(a) are—
 - (a) whether a decision has been made in an appeal (if any) against an order of a court and, if so, the particulars of the decision; and
 - (b) whether an appeal is pending against an order of a court and, if so, the particulars of the pending appeal.
- (9) The facts specified for the purposes of subsection (5)(a) are—
 - (a) the amount and date of any payment received in satisfaction of an order of a court made in proceedings brought under section 18(3); and
 - (b) the outstanding amount under such an order.”.

20. Section 45G amended (right to bring civil proceedings to recover financial loss)

Section 45G(1)(b), after “Ordinance”—

Add

“(except Part IVA)”.

21. Schedule 5B added

After Schedule 5A—

Add

“Schedule 5B

[s. 34ZZK]

Transitional and Saving Provisions for Part IVA

1. Interpretation

(1) In this Schedule—

List of Registered MPF Intermediaries (註冊強積金中介人名單) means the List of Registered MPF Intermediaries that, immediately before 1 November 2012, was kept by the Authority at its head office in Hong Kong;

List of Responsible Officers (負責人員名單) means the List of Responsible Officers that, immediately before 1 November 2012, was kept by the Authority at its head office in Hong Kong;

transitional period (過渡期) means the period of 2 years beginning on 1 November 2012.

(2) An expression used in this Schedule, and defined or otherwise explained in Part IVA, has the same meaning as in that Part.

2. Type A qualifying capacity

(1) For the purposes of this Schedule, a person holds a Type A qualifying capacity if the person—

(a) is authorized under section 8 of the Insurance Companies Ordinance (Cap. 41) to carry on long term business within the meaning of that Ordinance;

(b) is an authorized long term insurance broker;

(c) is an authorized financial institution; or

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- (d) is licensed under section 116 of the Securities and Futures Ordinance (Cap. 571) to carry on Type 1 or Type 4 regulated activity, or both, within the meaning of that Ordinance.
- (2) For the purposes of this Schedule, a person ceases to hold the Type A qualifying capacity mentioned in subsection (1)(c) if—
 - (a) for any authorized financial institution, the authorization is revoked under section 22 of the Banking Ordinance (Cap. 155);
 - (b) for an authorized financial institution that is registered under section 119 of the Securities and Futures Ordinance (Cap. 571) for Type 1 or Type 4 regulated activity within the meaning of that Ordinance, the registration is revoked under section 196(1)(i)(A) of that Ordinance in relation to that regulated activity; or
 - (c) for an authorized financial institution that is so registered for such Type 1 and Type 4 regulated activities, the registration is revoked under that section 196(1)(i)(A) in relation to those regulated activities.
 - (3) Subsection (2) does not limit the way in which a person ceases to hold any Type A qualifying capacity.
 - (4) For the purposes of this Schedule, a person has a Type A qualifying capacity suspended if—
 - (a) in the case of the capacity mentioned in subsection (1)(b) as an authorized long term insurance broker that is a member of a body of insurance brokers approved by the Insurance Authority under section 70 of the Insurance Companies Ordinance (Cap. 41), the membership is suspended;

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- (b) in the case of the capacity mentioned in subsection (1)(c)—
- (i) for any authorized financial institution, the authorization is suspended under section 24(1) or 25(1) of the Banking Ordinance (Cap. 155); or
 - (ii) for an authorized financial institution—
 - (A) that is registered under section 119 of the Securities and Futures Ordinance (Cap. 571) for Type 1 or Type 4 regulated activity within the meaning of that Ordinance, the registration is suspended under section 196(1)(i)(B) of that Ordinance in relation to that regulated activity; or
 - (B) that is so registered for such Type 1 and Type 4 regulated activities, the registration is suspended under that section 196(1)(i)(B) in relation to those regulated activities; or
- (c) in the case of the qualification mentioned in subsection (1)(d)—
- (i) as a person licensed to carry on Type 1 or Type 4 regulated activity, the licence is suspended under section 194(1)(i)(B) of the Securities and Futures Ordinance (Cap. 571) in relation to that regulated activity; or
 - (ii) as a person licensed to carry on Type 1 and Type 4 regulated activities, the licence is suspended under that section in relation to those regulated activities.

3. Type B qualifying capacity

- (1) For the purposes of this Schedule, a person holds a Type B qualifying capacity if the person—
 - (a) is an appointed long term insurance agent;
 - (b) is registered with the Insurance Agents Registration Board as a responsible officer of an appointed long term insurance agent;
 - (c) is registered with the Insurance Authority, the Insurance Agents Registration Board, or a relevant insurance body—
 - (i) as a technical representative of an appointed long term insurance agent; or
 - (ii) as a technical representative of an authorized long term insurance broker;
 - (d) is registered with the Insurance Authority, or a relevant insurance body, as a chief executive of an authorized long term insurance broker;
 - (e) is licensed under section 120 of the Securities and Futures Ordinance (Cap. 571) to carry on Type 1 or Type 4 regulated activity, or both, within the meaning of that Ordinance;
 - (f) is an officer or employee of a company authorized under section 8 of the Insurance Companies Ordinance (Cap. 41) to carry on long term business within the meaning of that Ordinance; or
 - (g) is an officer or employee of an authorized financial institution.
- (2) For the purposes of this Schedule—
 - (a) a person ceases to hold the Type B qualifying capacity mentioned in subsection (1)(f) if—

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- (i) for an officer or employee who is an appointed long term insurance agent, the appointment as an agent is terminated under a code of practice approved by the Insurance Authority under section 67 of the Insurance Companies Ordinance (Cap. 41); or
 - (ii) for an officer or employee who is registered with the Insurance Agents Registration Board as a responsible officer or technical representative of an appointed long term insurance agent, the registration is terminated under such a code of practice; and
- (b) a person ceases to hold the Type B qualifying capacity mentioned in subsection (1)(g) if—
- (i) for an officer or employee—
 - (A) who is a relevant individual registered under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 or Type 4 regulated activity within the meaning of the Securities and Futures Ordinance (Cap. 571), all or any of the officer's or employee's relevant particulars are removed from the register under section 58A(1)(c) of the Banking Ordinance (Cap. 155) in relation to that regulated activity; or
 - (B) who is a relevant individual so registered as engaged in respect of such Type 1 and Type 4 regulated activities, all or any of the officer's or employee's relevant particulars are removed from the register under that section 58A(1)(c) in relation to those regulated activities; or

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- (ii) for an officer or employee who, with the consent of the Monetary Authority under section 71C of the Banking Ordinance (Cap. 155), is—
- (A) an executive officer of a registered institution appointed under section 71D of that Ordinance to be responsible for directly supervising the conduct of each business conducted by the registered institution that constitutes Type 1 or Type 4 regulated activity within the meaning of the Securities and Futures Ordinance (Cap. 571), the consent is withdrawn under section 71C(4)(c) of the Banking Ordinance (Cap. 155) in relation to that regulated activity; or
 - (B) such an executive officer so appointed to be responsible for directly supervising the conduct of each business that constitutes such Type 1 and Type 4 regulated activities, the consent is withdrawn under that section 71C(4)(c) in relation to those regulated activities.
- (3) Subsection (2) does not limit the way in which a person ceases to hold any Type B qualifying capacity.
- (4) For the purposes of this Schedule, a person has a Type B qualifying capacity suspended if—
- (a) in the case of the capacity mentioned in subsection (1)(a), the appointment as an agent is suspended under a code of practice approved by the Insurance Authority under section 67 of the Insurance Companies Ordinance (Cap. 41);
 - (b) in the case of the capacity mentioned in subsection (1)(b) or (c)(i), the registration is suspended under such a code of practice;

- (c) in the case of the capacity mentioned in subsection (1)(c)(ii) or (d) as a technical representative or chief executive of an authorized long term insurance broker that is a member of a body of insurance brokers approved by the Insurance Authority under section 70 of the Insurance Companies Ordinance (Cap. 41)—
 - (i) the person is suspended from acting as such technical representative or chief executive; and
 - (ii) the suspension is shown in a register of technical representatives or a register of chief executives (as the case may be) kept by the body of insurance brokers;
- (d) in the case of the capacity mentioned in subsection (1)(e)—
 - (i) as a person licensed to carry on Type 1 or Type 4 regulated activity, the licence is suspended under section 194(1)(i)(B) of the Securities and Futures Ordinance (Cap. 571) in relation to that regulated activity; or
 - (ii) as a person licensed to carry on Type 1 and Type 4 regulated activities, the licence is suspended under that section in relation to those regulated activities;
- (e) in the case of the capacity mentioned in subsection (1)(f)—
 - (i) for an officer or employee who is an appointed long term insurance agent, the appointment as an agent is suspended under a code of practice approved by the Insurance Authority under section 67 of the Insurance Companies Ordinance (Cap. 41); or

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- (ii) for an officer or employee who is registered with the Insurance Agents Registration Board as a responsible officer or technical representative of an appointed long term insurance agent, the registration is suspended under such a code of practice; or
 - (f) in the case of the capacity mentioned in subsection (1)(g)—
 - (i) for an officer or employee—
 - (A) who is a relevant individual registered under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 or Type 4 regulated activity within the meaning of the Securities and Futures Ordinance (Cap. 571), all or any of the officer's or employee's relevant particulars are suspended from the register under section 58A(1)(d) of the Banking Ordinance (Cap. 155) in relation to that regulated activity; or
 - (B) who is a relevant individual so registered as engaged in respect of such Type 1 and Type 4 regulated activities, all or any of the officer's or employee's relevant particulars are suspended from the register under that section 58A(1)(d) in relation to those regulated activities; or
 - (ii) for an officer or employee who, with the consent of the Monetary Authority under section 71C of the Banking Ordinance (Cap. 155), is—
 - (A) an executive officer of a registered institution appointed under section 71D of that Ordinance to be responsible for

directly supervising the conduct of each business conducted by the registered institution that constitutes Type 1 or Type 4 regulated activity within the meaning of the Securities and Futures Ordinance (Cap. 571), the consent is suspended under section 71C(4)(d) of the Banking Ordinance (Cap. 155) in relation to that regulated activity; or

- (B) such an executive officer so appointed to be responsible for directly supervising the conduct of each business that constitutes such Type 1 and Type 4 regulated activities, the consent is suspended under that section 71C(4)(d) in relation to those regulated activities.

4. Transitional arrangements for corporate intermediaries with Type A qualifying capacity

- (1) This section applies to a person who, immediately before 1 November 2012—
 - (a) was shown in the List of Registered MPF Intermediaries as a corporate intermediary; and
 - (b) was not an appointed long term insurance agent, or was both an appointed long term insurance agent and an authorized financial institution.
- (2) The person is to be regarded as being registered on 1 November 2012 under section 34T(4) as a principal intermediary.
- (3) The registration as a principal intermediary by virtue of subsection (2) that subsists immediately before the occurrence of an event specified in subsection (4) ceases to subsist on that occurrence.
- (4) The event is—

- (a) if the person makes an application under section 34T(1) during the transitional period, the application being granted or rejected; or
- (b) in any other case, the expiry of the transitional period.

5. Transitional arrangements for corporate intermediaries without Type A qualifying capacity

- (1) This section applies to a person who, immediately before 1 November 2012—
 - (a) was shown in the List of Registered MPF Intermediaries as a corporate intermediary; and
 - (b) was an appointed long term insurance agent, but was not an authorized financial institution.
- (2) Subject to subsection (5), the person is to be regarded as being—
 - (a) registered on 1 November 2012 under section 34U(4) as a subsidiary intermediary; and
 - (b) approved on 1 November 2012 under section 34U(7) as being attached to another person specified in the notice mentioned in subsection (5).
- (3) The registration as a subsidiary intermediary, or the approval of the attachment to that other person, by virtue of subsection (2) that subsists immediately before the occurrence of an event specified in subsection (4) ceases to subsist on that occurrence.
- (4) The event is—
 - (a) if the person makes an application under section 34U(1) during the transitional period, the application being granted or rejected; or
 - (b) in any other case, the expiry of the transitional period.

- (5) Subsection (2) does not apply unless, before 1 November 2012, the Authority was given a notice in writing that—
- (a) a person mentioned in section 4(1) of this Schedule consented to the person to which this section applies being an intermediary for carrying on regulated activities for the person so mentioned; and
 - (b) the person so mentioned is specified in the notice.

6. Transitional arrangements for individual intermediaries

- (1) This section applies to a person who, immediately before 1 November 2012, was registered in the List of Registered MPF Intermediaries as an individual intermediary sponsored by another person specified in subsection (2).
- (2) That other person is a person who, immediately before 1 November 2012—
 - (a) was shown in the List of Registered MPF Intermediaries as a corporate intermediary; and
 - (b) was not an appointed long term insurance agent, or was both an appointed long term insurance agent and an authorized financial institution.
- (3) The person is to be regarded as being—
 - (a) registered on 1 November 2012 under section 34U(4) as a subsidiary intermediary; and
 - (b) approved on 1 November 2012 under section 34U(7) as being attached to that other person.
- (4) The registration as a subsidiary intermediary, or the approval of the attachment to that other person, by virtue of subsection (3) that subsists immediately before the occurrence of an event specified in subsection (5) ceases to subsist on that occurrence.

- (5) The event is—
 - (a) if the person makes an application under section 34U(1) during the transitional period, the application being granted or rejected; or
 - (b) in any other case, the expiry of the transitional period.

7. Transitional arrangements for responsible officers

- (1) This section applies to an individual who, immediately before 1 November 2012, was shown in the List of Responsible Officers as being designated by a person specified in subsection (2) as a responsible officer of the person.
- (2) That person is one who, immediately before 1 November 2012—
 - (a) was shown in the List of Registered MPF Intermediaries as a corporate intermediary; and
 - (b) was not an appointed long term insurance agent, or was both an appointed long term insurance agent and an authorized financial institution.
- (3) The individual is to be regarded as being approved on 1 November 2012 under section 34W(3) as being a responsible officer of the person.
- (4) The approval of the individual as a responsible officer of the person by virtue of subsection (3) that subsists immediately before the occurrence of an event specified in subsection (5) ceases to subsist on that occurrence.
- (5) The event is—

- (a) if, during the transitional period, the person applies under section 34W(1) for approval of the individual as an officer with specified responsibilities in relation to the person, the application being granted or rejected; or
- (b) in any other case, the expiry of the transitional period.

8. Application to persons regarded as principal intermediary

- (1) This section applies to a person who, by virtue of section 4(2) of this Schedule, is regarded as being registered as a principal intermediary.
- (2) In its application to the person, Part IVA has effect subject to subsections (3), (4) and (5).
- (3) Section 34Z(4), (5) and (6) is to be replaced by the following—
 - “(4) The following industry regulator is to be assigned as the regulator of the person for the purposes of this Part—
 - (a) if the person holds the Type A qualifying capacity mentioned in section 2(1)(a) or (b) of Schedule 5B, the Insurance Authority;
 - (b) if the person holds the Type A qualifying capacity mentioned in section 2(1)(c) of Schedule 5B, the Monetary Authority; or
 - (c) if the person holds the Type A qualifying capacity mentioned in section 2(1)(d) of Schedule 5B, the Securities and Futures Commission.
- (5) If the person holds the Type A qualifying capacity mentioned in section 2(1)(c) of Schedule 5B, and the Type A qualifying capacity mentioned in section 2(1)(a) or (b) of Schedule 5B—

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- (a) subject to paragraph (b), the Monetary Authority is to be assigned as the regulator of the person for the purposes of this Part; or
 - (b) where the Authority is satisfied that the person carries on the majority of its business activities as the holder of the Type A qualifying capacity mentioned in section 2(1)(a) or (b) of Schedule 5B, the Insurance Authority is to be assigned as the regulator of the person for the purposes of this Part.
- (6) If the person holds the Type A qualifying capacity mentioned in section 2(1)(a) or (b) of Schedule 5B, and the Type A qualifying capacity mentioned in section 2(1)(d) of Schedule 5B—
- (a) subject to paragraph (b), the Insurance Authority is to be assigned as the regulator of the person for the purposes of this Part; or
 - (b) where the Authority is satisfied that the person carries on the majority of its business activities as the holder of the Type A qualifying capacity mentioned in section 2(1)(d) of Schedule 5B, the Securities and Futures Commission is to be assigned as the regulator of the person for the purposes of this Part.”.
- (4) Section 34ZC is to be replaced by the following—
- “34ZC. Principal intermediary ceasing to hold Type A qualifying capacity etc.**
- (1) This section applies if—
 - (a) a person is a principal intermediary; and
 - (b) the person—

- (i) ceases to hold the relevant Type A qualifying capacity; or
 - (ii) has the relevant Type A qualifying capacity suspended.
- (2) The registration of the person as a principal intermediary—
 - (a) in the case of subsection (1)(b)(i), is revoked at the time the person ceases to hold the Type A qualifying capacity; or
 - (b) in the case of subsection (1)(b)(ii), is suspended for the period during which that suspension is in force.
- (3) In this section—

relevant Type A qualifying capacity (有關甲類合資格身分)—

 - (a) in relation to a person whose frontline regulator is the Insurance Authority, means the Type A qualifying capacity mentioned in section 2(1)(a) or (b) of Schedule 5B;
 - (b) in relation to a person whose frontline regulator is the Monetary Authority, means the Type A qualifying capacity mentioned in section 2(1)(c) of Schedule 5B; or
 - (c) in relation to a person whose frontline regulator is the Securities and Futures Commission, means the Type A qualifying capacity mentioned in section 2(1)(d) of Schedule 5B.”.

(5) Section 34ZE(1)(c) is to be replaced by the following—

“(c) a principal intermediary—

- (i) acquires any qualification as a Type A regulatee;
- (ii) ceases to hold any Type A qualifying capacity; or
- (iii) has any Type A qualifying capacity suspended.”.

9. Application to persons regarded as subsidiary intermediary

(1) This section applies to a person who, by virtue of section 5(2) or 6(3) of this Schedule, is regarded as being—

- (a) registered as a subsidiary intermediary; and
- (b) approved as being attached to another person who is regarded as being registered as a principal intermediary.

(2) In its application to the person, Part IVA has effect subject to subsections (3) and (4).

(3) Section 34ZF is to be replaced by the following—

“34ZF. Subsidiary intermediary ceasing to hold Type B qualifying capacity etc.

(1) This section applies if—

(a) a person is a subsidiary intermediary attached to a principal intermediary; and

(b) the person—

- (i) ceases to hold the relevant Type B qualifying capacity; or
- (ii) has the relevant Type B qualifying capacity suspended.

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- (2) This section also applies if—
- (a) a person is a subsidiary intermediary attached to a principal intermediary;
 - (b) the person holds any Type B qualifying capacity other than the relevant Type B qualifying capacity; and
 - (c) the person—
 - (i) ceases to hold any Type B qualifying capacity, and on the cessation no longer holds any Type B qualifying capacity; or
 - (ii) has any Type B qualifying capacity suspended, and on the suspension no longer holds any Type B qualifying capacity that is not under suspension.
- (3) For subsection (1)—
- (a) if the person is also a subsidiary intermediary attached to another principal intermediary the frontline regulator of which is not the frontline regulator of the principal intermediary mentioned in subsection (1)(a), the approval of the attachment of the person to the principal intermediary mentioned in subsection (1)(a)—
 - (i) in the case of subsection (1)(b)(i), is revoked at the time the person ceases to hold the relevant Type B qualifying capacity; or

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- (ii) in the case of subsection (1)(b)(ii), is suspended for the period during which that suspension is in force; and
 - (b) if the person is one specified in subsection (4), the registration of the person as a subsidiary intermediary and the approval of the attachment of the person to any principal intermediary—
 - (i) in the case of subsection (1)(b)(i), are revoked at the time the person ceases to hold the relevant Type B qualifying capacity; or
 - (ii) in the case of subsection (1)(b)(ii), are suspended for the period during which that suspension is in force.
 - (4) The person specified for the purposes of subsection (3)(b) is—
 - (a) a person who is also a subsidiary intermediary attached to another principal intermediary the frontline regulator of which is the frontline regulator of the principal intermediary mentioned in subsection (1)(a); or
 - (b) a person who is not approved as being attached to another principal intermediary.
 - (5) For subsection (2), the registration of the person as a subsidiary intermediary—

- (a) in the case of subsection (2)(c)(i), is revoked at the time the person ceases to hold the Type B qualifying capacity; or
- (b) in the case of subsection (2)(c)(ii), is suspended for the period during which that suspension is in force.

(6) In this section—

relevant Type B qualifying capacity (有關乙類合資格身分)—

- (a) in relation to a person whose frontline regulator is the Insurance Authority, means the Type B qualifying capacity mentioned in section 3(1)(a), (b), (c), (d) or (f) of Schedule 5B;
- (b) in relation to a person whose frontline regulator is the Monetary Authority, means the Type B qualifying capacity mentioned in section 3(1)(g) of Schedule 5B; or
- (c) in relation to a person whose frontline regulator is the Securities and Futures Commission, means the Type B qualifying capacity mentioned in section 3(1)(e) of Schedule 5B.”.

(4) Section 34ZI(1)(c) is to be replaced by the following—

“(c) a subsidiary intermediary—

- (i) acquires any qualification as a Type B regulatee; or
- (ii) ceases to hold any Type B qualifying capacity.”.

22. Schedule 6 amended (decisions which may be the subject of an appeal)

Schedule 6, after item 14—

Add

- “15. A decision of the Authority—
- (a) under section 34T(4) not to register a person as an intermediary for carrying on regulated activities;
 - (b) under section 34U(4) not to register a person as an intermediary for carrying on regulated activities for a principal intermediary to which the person is to be attached;
 - (c) under section 34V(3) not to approve a person as being attached to a principal intermediary for the purpose of carrying on regulated activities;
 - (d) under section 34W(3) not to approve an individual as an officer with specified responsibilities in relation to a principal intermediary;
 - (e) under section 34X(2) or (3) to impose a condition on a registration or approval;
 - (f) under section 34X(5) to amend such a condition; or
 - (g) under section 34ZK(2) to revoke the approval of an individual as a responsible officer of a principal intermediary.
16. A decision of the Authority under section 34ZW to make a disciplinary order.”
-

Part 3

Consequential and Related Amendments

Division 1—Amendments to Insurance Companies Ordinance (Cap. 41)

23. Section 4A amended (functions of Insurance Authority)

(1) Section 4A(2)(e)—

Repeal

“; and”

Substitute a semicolon.

(2) Section 4A(2)(f)—

Repeal

“Ordinance.”

Substitute

“Ordinance; and”.

(3) After section 4A(2)(f)—

Add

“(g) exercise functions imposed or conferred on the Insurance Authority by this or any other Ordinance.”.

(4) Section 4A(3), after “by this”—

Add

“or any other”.

Division 2—Amendments to Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A)

24. Section 153 amended (duty of approved trustee on being notified of election)

After section 153(1)—

Add

- “(1A) For the purposes of subsection (1), the completed form must be served by the transferee trustee on the transferor trustee in the form of an electronic record to an electronic system designated under section 6KA(1) of the Ordinance for use for the purposes of subsection (1) except where—
- (a) the election is an election made under section 150 or 150A; or
 - (b) the specified person of the registered scheme to which the accrued benefits are transferred, and that of the registered scheme from which the accrued benefits are transferred, are the same person.
- (1B) A fee of the amount prescribed by the regulations is payable for use of the electronic system for the purposes of subsection (1).
- (1C) Subsection (1A) does not apply if—
- (a) the electronic system is suspended under section 6KA(5) of the Ordinance from being used for the purposes of subsection (1A); and
 - (b) the suspension takes effect in relation to the transferee trustee or the transferor trustee.
- (1D) For the purposes of subsection (1A)—

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

specified person (指明人士), in relation to a registered scheme, means—

- (a) a person appointed or engaged by the approved trustee of the scheme to handle for that trustee—
 - (i) a transfer of accrued benefits of a member of another registered scheme to the scheme in accordance with an election made under this Part; or
 - (ii) a transfer of accrued benefits of a member of the scheme from the scheme, whether to another registered scheme or another account within the scheme, in accordance with an election made under this Part; or
- (b) in the absence of such an appointment or engagement, the approved trustee of the scheme.”.

25. Section 206A added

After section 206—

Add

“206A. How documents are to be served for purposes of section 153(1)

- (1) This section applies to a document served for the purposes of section 153(1) in the form of an electronic record to an electronic system designated under section 6KA(1) of the Ordinance for use for the purposes of section 153(1).
- (2) The document is taken to have been served if—
 - (a) the document in the form of an electronic record is accepted by the electronic system; and

- (b) the electronic system generates a record confirming the acceptance.
- (3) The document is taken to have been served at the time specified in the record mentioned in subsection (2)(b) as the time at which the document in the form of an electronic record is accepted by the electronic system.”.

26. Schedule 4 amended (financial penalties)

Schedule 4, before item 1—

Add

“1AA 6KA(3) Approved trustee 10,000 20,000 50,000”.
 to take action for
 ensuring proper
 and efficient
 operation of
 designated
 electronic system

Division 3—Amendments to Mandatory Provident Fund Schemes (Fees) Regulation (Cap. 485 sub. leg. C)

27. Schedule 1 amended (prescribed fees)

(1) Schedule 1, after item 6—

Add

“6A. 34Q (a) Fee payable for obtaining \$10 per
 a copy of an entry in or entry or
 extract of the Register extract
 (b) Fee payable for obtaining \$200 per
 a certified copy of an entry or
 entry in or extract of the extract”.
 Register

(2) At the end of Schedule 1—

Add

-
- | | | | | |
|-----|-----|-----|--|-----|
| “8. | 34T | (a) | Fee payable when an application is lodged with the Authority for registration as an intermediary for carrying on regulated activities | Nil |
| | | (b) | Fee payable when an application is lodged with the Authority for registration as an intermediary for carrying on regulated activities for a principal intermediary | Nil |
| | | (c) | Fee payable when an application is lodged with the Authority for approval of attachment to the principal applicant for the purpose of carrying on regulated activities | Nil |
| | | (d) | Fee payable when an application is lodged with the Authority for approval as an officer with specified responsibilities in relation to the principal applicant | Nil |
| 9. | 34U | (a) | Fee payable when an application is lodged with the Authority for registration as an intermediary for carrying on regulated activities for a principal intermediary | Nil |

		(b) Fee payable when an application is lodged with the Authority for approval of attachment to a principal intermediary for the purpose of carrying on regulated activities	Nil
10.	34V	Fee payable when an application is lodged with the Authority for approval of attachment to a principal intermediary for the purpose of carrying on regulated activities	Nil
11.	34W	Fee payable when an application is lodged with the Authority for approval as an officer with specified responsibilities in relation to the principal applicant	Nil
12.	34ZN	Annual fee payable by a registered intermediary	Nil”.
28.	Schedule 2 amended (prescribed fees)		
	Schedule 2, after item 2—		
	Add		
	“3.	153(1B) Fee payable for use of designated electronic system	Nil”.

Division 4—Amendment to Mandatory Provident Fund Schemes (Amendment) Ordinance 2009 (11 of 2009)

29. Section 2 amended (commencement)

Section 2—

Repeal

everything after “on”

Substitute

“1 November 2012.”.

Explanatory Memorandum

The object of this Bill is to amend the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (*Ordinance*) for the purposes set out in the long title.

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

Sale and marketing activities, and giving of advice, in relation to registered schemes

3. Clause 13 adds a new Part IVA to the Ordinance, which contains 9 Divisions.
4. Division 1 contains preliminary provisions. They define or otherwise explain certain expressions used in new Part IVA.
5. Division 2 provides for the prohibitions against a person from—
 - (a) carrying on regulated activities; or
 - (b) holding themselves out as carrying on regulated activities in the course of the person's business or for reward, or taking or using certain related titles.

The prohibition does not apply to certain persons, including a person who is registered as a principal intermediary (*PI*) or as a subsidiary intermediary (*SI*) attached to a PI.

6. Division 3 provides for the investigation by the Mandatory Provident Fund Schemes Authority (*MPFA*), or by the Securities and Futures Commission, the Monetary Authority or the Insurance Authority (at the MPFA's nomination), in relation to contraventions of the prohibitions under Division 2.
7. Division 4 provides for the registration of PIs and SIs, for the approval of the attachment to PIs, and for the approval of responsible officers (*RO*). New section 34Q requires the MPFA to establish and keep a register of PIs and SIs. New sections

- 34T, 34U, 34V, 34W and 34Y provide for the procedures and criteria for such registration and approval. New section 34X empowers the MPFA to impose conditions on any registration or approval (*registration or approval conditions*). New sections 34Z, 34ZA and 34ZB provide for the assignment of the Securities and Futures Commission, the Monetary Authority, or the Insurance Authority, as the frontline regulator of a PI, SI or RO.
8. Division 5 provides for the consequences of any change in status or circumstances to a person after being registered as a PI or SI, being approved as attached to a PI, or being approved as a RO. In some cases (e.g. ceasing to hold a certain qualification), the change leads to a revocation or suspension of the registration or approval. In other cases (e.g. change of address), the change must be notified to the MPFA.
 9. Division 6 provides for the requirements to be observed by PIs, SIs and ROs. New sections 34ZL and 34ZM set out the conduct requirements for PIs, SIs and ROs. New sections 34ZN, 34ZO and 34ZP set out the requirements to pay annual fees, to deliver annual returns, and to complete continuing training respectively.
 10. Division 7 provides for the inspection and investigation by a frontline regulator in relation to compliance by a PI, SI or RO with the conduct requirements and with the registration or approval conditions.
 11. Division 8 provides for the powers of the MPFA to make any disciplinary order against a PI, SI or RO who fails to comply with a conduct requirement or a registration or approval condition, or who is convicted of an offence under the Ordinance or any subsidiary legislation under the Ordinance. The MPFA may also take further action in respect of the PI, SI or RO (see new section 34ZY).

12. Division 9 contains miscellaneous provisions. In particular, Subdivision 1 contains provisions supplementary to the investigation and inspection under Divisions 3 and 7. This Division also provides for the transitional and saving provisions set out in new Schedule 5B (as added by clause 21).
13. Clauses 3, 4, 5, 6, 7, 9, 10, 11, 12, 15, 16, 20 and 22 contain amendments to the Ordinance that are relevant to new Part IVA.

Designation of electronic system

14. Clause 8 adds new section 6KA to the Ordinance. That new section empowers the MPFA to designate an electronic system for use for the purposes of the Ordinance.

Offences for employer's failure in relation to mandatory contributions

15. Clause 17 amends section 43B of the Ordinance—
 - (a) to create a new offence for a failure by an employer to comply with a court order made in civil proceedings for the payment of arrears of mandatory contributions and contribution surcharges; and
 - (b) to provide for a daily penalty for each day on which an offence committed by an employer for failing to make mandatory contributions for an employee continues.
16. Clauses 18 and 19 contain amendments to the Ordinance that are relevant to the amendment set out in paragraph 15(a).

Criteria for appointment of Chairman of Appeal Board etc.

17. Clause 14 amends section 35 of the Ordinance—

- (a) to revise the criteria for the appointment of the Chairman of the Mandatory Provident Fund Schemes Appeal Board; and
- (b) to revise the criteria for the appointment to the panel of persons whom the Chief Executive considers suitable for appointment as members of the Board.

Consequential and related amendments

18. Clauses 23, 24, 25, 26, 27, 28 and 29 contain consequential and related amendments.