

**DRAFT AMENDMENTS TO
THE SECURITIES AND FUTURES ACT (SFA)**

DISCLAIMER: This version of amendments is in draft form and subject to change. It is also subject to review by the Attorney-General's Chambers.

[The provisions that have been highlighted are provisions that were consulted upon in Annex 1 of the Consultation Paper on Proposed Amendments to the SFA issued on 11 February 2015. The provisions are subject to change and review by the Attorney-General's Chambers.]

PART I PRELIMINARY

Interpretation

2.—(1) In this Act, unless the context otherwise requires —

[...]

“regulated financial institution” means a person who carries on a business, the conduct of which is regulated or authorised by the Authority or, if it is carried on in Singapore, would be regulated or authorised by the Authority;

“regulatory authority”, in relation to a foreign country or territory, means an authority of the foreign country or territory exercising any function that corresponds to a regulatory function of the Authority under this Act, the Monetary Authority of Singapore Act (Cap. 186) or any of the written laws set out in the Schedule to that Act;

[...]

[...]

PART II
MARKETS
Division 2 – Regulation of Approved Exchanges
Subdivision (4) – Powers of Authority

Additional powers of Authority in respect of auditors

~~31. (1) If an auditor of an approved exchange, in the course of the performance of his duties, becomes aware of any matter or irregularity referred to in the following paragraphs, he shall immediately send to the Authority a written report of that matter or irregularity:~~

~~(a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the approved exchange to a material extent;~~

~~(b) any matter which, in his opinion, constitutes or may constitute a breach of any provision of this Act or an offence involving fraud or dishonesty;~~

~~(c) any irregularity that has or may have a material effect upon the accounts of the approved exchange, including any irregularity that affects or jeopardises, or may affect or jeopardise, the funds or property of investors.~~

~~(2) An auditor of an approved exchange shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement made in his report under subsection (1).~~

~~(3) Subsection (2) shall not restrict or affect any right, privilege or immunity that the auditor of an approved exchange may have, apart from this section, as a defendant in an action for defamation.~~

~~(4) The Authority may impose all or any of the following duties on an auditor of an approved exchange and the auditor shall carry out the duties so imposed:~~

~~(a) a duty to submit such additional information and reports in relation to his audit as the Authority considers necessary;~~

~~(b) a duty to enlarge, extend or alter the scope of his audit of the business and affairs of the approved exchange;~~

~~(c) a duty to carry out any other examination or establish any procedure in any particular case;~~

~~(d) a duty to submit a report on any matter arising out of his audit, examination or establishment of procedure referred to in paragraph (b) or (c).~~

~~(5) The approved exchange shall remunerate the auditor in respect of the discharge by him of all or any of the duties referred to in subsection (4).~~

31. —(1) Despite the provisions of the Companies Act (Cap. 50), every approved exchange –

- (a) shall on an annual basis, appoint an auditor and obtain the approval of the Authority to such appointment of an auditor; and
- (b) where, for any reason, the auditor ceases to act for the approved exchange, as soon as practicable thereafter, appoint another auditor and obtain the approval of the Authority to such appointment.

(2) An auditor shall not be approved by the Authority as an auditor for an approved exchange unless the auditor is able to comply with such conditions in relation to the discharge of his duties as may be determined by the Authority.

(3) Despite any other provision of this Act or any other written law, the Authority may, if it is not satisfied with the performance of any duty by an auditor of an approved exchange, at any time —

- (a) direct the approved exchange to remove the auditor; and
- (b) direct the approved exchange to appoint another auditor approved by the Authority as soon as practicable after the removal,

and the approved exchange shall comply with such direction.

(4)(a) Where —

- (i) an approved exchange fails to lodge a report required to be submitted under section 19; or
- (ii) the Authority receives a report under subsection (5),

the Authority may, without prejudice to its powers under subsection (6), if it is satisfied that it is in the interests of the approved exchange, the participants of the approved exchange or the general public to do so, appoint in writing an auditor to examine and audit, either generally or in relation to any particular matter, the books of the approved exchange.

- (b) Where the Authority is of the opinion that the whole or any part of the costs and expenses of an auditor appointed by the Authority under subsection (4)(a) should be borne by the approved exchange, the Authority may, in writing, direct the approved exchange to pay a specified amount, being the whole or part of such costs and expenses, within such time and in such manner as may be specified in the direction.
- (c) Where an approved exchange fails to comply with a direction under subsection (4)(b), the amount specified in the direction may be sued for and recovered by the Authority as a civil debt.
- (d) An auditor appointed under subsection (4)(a) shall, on the conclusion of the examination and audit, submit a report to the Authority.

(5) If an auditor of an approved exchange, in the course of the performance of his duties, becomes aware of —

- (a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the approved exchange to a material extent;
- (b) any matter which, in his opinion, constitutes or may constitute a breach of any provision of this Act or an offence involving fraud or dishonesty; or
- (c) any irregularity that has or may have a material effect upon the accounts of the approved exchange, including any irregularity that affects or jeopardises, or may affect or jeopardise, the funds or property of investors in securities or futures contracts,

(6) The Authority may impose all or any of the following duties on an auditor of an approved exchange:

- (a) a duty to submit such additional information and reports in relation to his audit as the Authority considers necessary;
- (b) a duty to enlarge, extend or alter the scope of his audit of the business and affairs of the approved exchange;
- (c) a duty to carry out any other examination or establish any procedure in any particular case;
- (d) a duty to submit a report on any matter arising out of his audit, examination or establishment of procedure referred to in paragraph (b) or (c),

and the auditor shall carry out such duties.

(7) The approved exchange shall remunerate the auditor in respect of the discharge by him of all or any of the duties referred to in subsection (6).

(8) No auditor or employee of such auditor shall, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of —

- (a) any statement made orally or in writing in the discharge of his duties under this section; or
- (b) the submission of any report to the Authority under subsection (4)(d), (5) or (6).

(9) Subsection (8) shall not restrict or otherwise affect any right, privilege or immunity that, apart from this section, the auditor or his employee has as a defendant in an action for defamation.

(10) Except as may be necessary for the carrying into effect of the provisions of this Act or so far as may be required for the purposes of any legal proceedings, whether civil or criminal, an auditor appointed under subsection (4)(a) or carrying out any duty imposed under subsection (5), and any employee of such an auditor, shall not disclose any information which may come to his knowledge or possession in the course of performing his duties as such auditor or employee, as the case may be, to any person other than —

(a) the Authority; and

(b) in the case of an employee of such auditor, the auditor.

[...]

PART II MARKETS

Division 3 – Regulation of Recognised Market Operators

Approval of chairman, chief executive officer, director and key persons of recognised market operator

41A.—(1) No recognised market operator which is incorporated in Singapore shall appoint a person as its chairman, chief executive officer or director unless the recognised market operator has obtained the approval of the Authority.

(2) The Authority may, by notice in writing, require a recognised market operator which is incorporated in Singapore to obtain the approval of the Authority for the appointment of any person to any key management position or committee of the recognised market operator and the recognised market operator shall comply with the notice.

(3) An application for approval under subsection (1) or (2) shall be made in such form and manner as the Authority may prescribe.

(4) Without prejudice to the generality of section 44 and to any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1) or (2), have regard to such criteria as the Authority may prescribe or specify in directions issued by notice in writing.

(5) Subject to subsection (6), the Authority shall not refuse an application for approval under this section without giving the recognised market operator an opportunity to be heard.

(6) The Authority may refuse an application for approval on any of the following grounds without giving the recognised market operator an opportunity to be heard:

(a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;

(b) the person has been convicted, whether in Singapore or elsewhere, of an offence, committed before, on or after the date of commencement of this amendment—

(i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

(7) Where the Authority refuses an application for approval under this section, the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

(8) A recognised market operator which is incorporated in Singapore shall, as soon as practicable, give written notice to the Authority of the resignation or removal of its chairman, chief executive officer or director or of any person referred to in any notice issued by the Authority to the recognised market operator under subsection (2).

(9) The Authority may make regulations under section 44 relating to the composition and duties of the board of directors or any committee of a recognised market operator which is incorporated in Singapore.

(10) In this section, “committee” includes any committee of directors, disciplinary committee or appeals committee of a recognised market operator, or any body responsible for disciplinary action against a member of a recognised market operator.

(11) Without prejudice to sections 43A and 337(1), the Authority may, by regulations made under section 44, exempt any recognised market operator or class of recognised market operators from complying with subsection (1) or (8), subject to such conditions or restrictions as the Authority may prescribe in those regulations.

(12) Without prejudice to sections 43A and 337(3) and (4), the Authority may, by notice in writing, exempt any recognised market operator from complying with subsection (1) or (8), subject to such condition or restriction as the Authority may specify by notice in writing.

(13) It shall not be necessary to publish any exemption granted under subsection (12) in the Gazette.

(14) Any recognised market operator which contravenes subsection (1), (2) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Control of substantial shareholding in recognised market operators

41B.—(1) No person shall become a 20% controller of a recognised market operator which is incorporated in Singapore without first obtaining the approval of the Authority.

(2) In subsection (1) —

"20% controller", in relation to a recognised market operator, means a person who, alone or together with his associates —

(a) holds not less than 20% of the shares in the recognised market operator;
or

(b) is in a position to control not less than 20% of the votes in the recognised market operator.

(3) In this section —

(a) a person holds a share if —

(i) he is deemed to have an interest in that share under section 7(6) to (10) of the Companies Act (Cap. 50); or

(ii) he otherwise has a legal or an equitable interest in that share, except such interest as is to be disregarded under section 7(6) to (10) of the Companies Act;

(b) a reference to the control of a percentage of the votes in a recognised market operator shall be construed as a reference to the control, whether direct or indirect, of that percentage of the total number of votes that might be cast in a general meeting of the recognised market operator;
and

(c) a person, A, is an associate of another person, B, if —

(i) A is the spouse, a parent, remoter lineal ancestor or step-parent, a son, daughter, remoter issue, step-son or step-daughter or a brother or sister of B;

(ii) A is a corporation the directors of which are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of B or, where B is a corporation, of the directors of B;

- (iii) B is a corporation the directors of which are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of A or, where A is a corporation, of the directors of A;
- (iv) A is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of B;
- (v) B is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of A;
- (vi) A is a related corporation of B;
- (vii) A is a corporation in which B, whether alone or together with other associates of B as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 20% of the votes in A;
- (viii) B is a corporation in which A, whether alone or together with other associates of A as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 20% of the votes in B; or
- (ix) A is a person with whom B has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their votes in relation to, the recognised market operator.

(4) The Authority may grant its approval referred to in subsection (1) subject to such conditions or restrictions as the Authority may think fit.

(5) Without prejudice to subsection (12), the Authority may, for the purposes of securing compliance with subsection (1) or any condition or restriction imposed under subsection (4), by notice in writing, direct the transfer or disposal of all or any of the shares of a recognised market operator in which a 20% controller of the recognised market operator has an interest.

(6) Until a person to whom a direction has been issued under subsection (5) transfers or disposes of the shares which are the subject of the direction, and notwithstanding anything to the contrary in the Companies Act or the memorandum or articles of association or other constituent document or documents of the recognised market operator —

- (a) no voting rights shall be exercisable in respect of the shares which are the subject of the direction;
- (b) the recognised market operator shall not offer or issue any shares (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares which are the subject of the direction; and

(c) except in a liquidation of the recognised market operator, the recognised market operator shall not make any payment (whether by way of cash dividend, dividend in kind or otherwise) in respect of the shares which are the subject of the direction.

(7) Any issue of shares by a recognised market operator in contravention of subsection (6)(b) shall be deemed to be null and void, and a person to whom a direction has been issued under subsection (5) shall immediately return those shares to the recognised market operator, upon which the recognised market operator shall return to the person any payment received from the person in respect of those shares.

(8) Any payment made by a recognised market operator in contravention of subsection (6)(c) shall be deemed to be null and void, and a person to whom a direction has been issued under subsection (5) shall immediately return the payment he has received to the recognised market operator.

(9) Without prejudice to sections 45I and 337(1), the Authority may, by regulations made under section 44, exempt all or any of the following from subsection (1), subject to such conditions or restrictions as the Authority may prescribe in those regulations:

(a) any person or class of persons; or

(b) any class or description of shares or interests in shares.

(10) Without prejudice to sections 45I and 337(3) and (4), the Authority may, by notice in writing, exempt any person, shares or interests in shares from subsection (1), subject to such conditions or restrictions as the Authority may specify by notice in writing.

(11) It shall not be necessary to publish any exemption granted under subsection (10) in the Gazette.

(12) Any person who contravenes subsection (1), or any condition or restriction imposed by the Authority under subsection (4), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(13) Any person who contravenes subsection (6) (b) or (c), (7) or (8) or any direction issued by the Authority under subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Power of Authority to remove officers

43.— (1) Where the Authority is satisfied that any of the following applies to an officer of an approved exchange or a recognised market operator (such approved exchange or recognised market operator being a Singapore corporation), the Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by notice in writing direct the approved exchange or recognised market operator to remove the officer from his office or employment, and the approved exchange or recognised market operator shall comply with such notice, notwithstanding the provisions of section 152 of the Companies Act (Cap. 50) or anything in any other law or in the memorandum or articles of association or other constituent document or documents of the approved exchange or recognised market operator:—

- (a) the officer has wilfully contravened, or wilfully caused the approved exchange or recognised market operator to contravene—
 - (i) this Act;
 - (ii) where applicable, the business rules of the approved exchange or recognised market operator; or
 - (iii) where applicable, the listing rules of the approved exchange or recognised market operator;
- (b) the officer has, without reasonable excuse, failed to ensure compliance with this Act, or with the business rules, or, where applicable, the listing rules of the approved exchange or recognised market operator, by the approved exchange or recognised market operator, by a participant of the approved exchange or recognised market operator, or by a person associated with that participant;
- (c) the officer has failed to discharge the duties or functions of his office or employment;
- (d) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;
- (e) the officer has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (f) the officer has, whether in Singapore or elsewhere, made a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation; or
- (g) the officer has been convicted, whether in Singapore or elsewhere, of an offence, committed before, on or after the date of commencement of [relevant section of the Securities and Futures (Amendment) Act],

~~involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly.~~

~~(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority may, in determining whether an officer of an approved exchange or a recognised market operator has failed to discharge the duties or functions of his office or employment for the purposes of subsection (1)(c), have regard to such criteria as the Authority may prescribe or specify in directions issued by notice in writing.~~

~~(3) Subject to subsection (4), the Authority shall not direct an approved exchange or a recognised market operator to remove an officer from his office or employment without giving the approved exchange or recognised market operator an opportunity to be heard.~~

~~(4) The Authority may direct an approved exchange or a recognised market operator to remove an officer from his office or employment under subsection (1) on any of the following grounds without giving the approved exchange or recognised market operator an opportunity to be heard:~~

~~— (a) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;~~

~~— (b) the officer has been convicted, whether in Singapore or elsewhere, of an offence, committed before, on or after the date of commencement of [relevant section of the Securities and Futures (Amendment) Act],—~~

~~— (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and~~

~~— (ii) punishable with imprisonment for a term of 3 months or more.~~

~~(5) Where the Authority directs an approved exchange or a recognised market operator to remove an officer from his office or employment under subsection (1), the Authority need not give that officer an opportunity to be heard.~~

~~(6) Any approved exchange or a recognised market operator that is aggrieved by a direction of the Authority made in relation to the approved exchange or recognised market operator, as the case may be, under subsection (1) may, within 30 days after the approved exchange or recognised market operator, as the case may be, is notified of the direction, appeal to the Minister whose decision shall be final.~~

~~(7) Notwithstanding the lodging of an appeal under subsection (6), any action taken by the Authority under this section, shall continue to have effect pending the decision of the Minister.~~

~~(8) The Minister may, when deciding an appeal under subsection (6), make such modification as he considers necessary to any action taken by the~~

~~Authority under this section, and such modified action shall have effect from the date of the decision of the Minister.~~

~~(9) Subject to subsection (10), no criminal or civil liability shall be incurred by an approved exchange or a recognised market operator in respect of any thing done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.~~

~~(10) Any approved exchange or a recognised market operator which, without reasonable excuse, contravenes a written notice issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.~~

Power of Authority to remove officers of approved exchange and recognised market operator

43.—(1) Notwithstanding the provisions of any other written law, an approved exchange or a recognised market operator which is incorporated in Singapore shall not, without the prior written consent of the Authority, permit a person to act as its executive officer or director,

if the person —

- (a) has been convicted, whether in Singapore or elsewhere, of an offence—
 - (i) involving fraud or dishonesty;
 - (ii) the conviction for which involved a finding that he had acted fraudulently or dishonestly; or
 - (iii) that is specified in the Third Schedule to the Registration of Criminals Act (Cap. 268);
- (b) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (c) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (d) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (e) has had a prohibition order under section 59 of the Financial Advisers Act (Cap. 110), section 35V of the Insurance Act (Cap. 42) or section 101A made against him that remains in force; or
- (f) has been a director of, or directly concerned in the management of,

a regulated financial institution, whether in Singapore or elsewhere

—

- (i) the which is being or has been wound up by a court; or
- (ii) approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the regulatory authority in that foreign country or territory.

(2) Notwithstanding the provisions of any other written law, where the Authority is satisfied that –

- (a) a director of an approved exchange or recognised market operator; or
- (b) an executive officer of an approved exchange or recognised market operator,

is not a fit and proper person to be a director or executive officer (as the case may be), the Authority may, by notice in writing to the approved exchange or recognised market operator, direct the approved exchange or recognised market operator to remove the director or executive officer from his office or employment within such period as may be specified by the Authority in the notice, and the approved exchange or recognised market operator must comply with the notice.

(3) In assessing whether to direct an approved exchange or a recognised market operator to remove a director or executive officer from his office or employment under subsection (2), the Authority may consider any matter which it considers relevant, including (but not limited to) whether:

- (a) he has wilfully contravened or wilfully caused the approved exchange or recognised market operator to contravene —
 - (i) any provision of this Act;
 - (ii) where applicable, the business rules of the approved exchange or recognised market operator; or
 - (iii) where applicable, the listing rules of the approved exchange or recognised market operator;
- (b) he has, without reasonable excuse, failed to secure the compliance of the approved exchange or recognised market operator with this Act, or with the business rules, or, where applicable, the listing rules of the approved exchange or recognised market operator, the Monetary Authority of Singapore Act (Cap. 186) or any of the written laws set out in the Schedule to that Act;

(c) he has failed to discharge any of the duties of his office or employment; or

(d) his removal is necessary in the public interest or for the protection of the investors.

(4) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, when determining whether a director or an executive officer of an approved exchange or a recognised market operator has failed to discharge the duties of his office for the purposes of subsection (3)(c), have regard to such criteria as may be prescribed or as may be specified in written directions.

(5) The Authority shall not direct an approved exchange or a recognised market operator to remove a person from his office or employment under subsection (2) without giving the approved exchange or recognised market operator an opportunity to be heard, except in the following circumstances:

(a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;

(b) a prohibition order under section 101A has been made by the Authority, and remains in force, against the person;

(c) the person has been convicted, whether in Singapore or elsewhere, of an offence, committed before, on or after the date of commencement of this amendment —

(i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

(6) Where the Authority directs an approved exchange or a recognised market operator to remove a person from his office or employment under subsection (2), the Authority need not give that person an opportunity to be heard.

(7) Any approved exchange or a recognised market operator that is aggrieved by a direction of the Authority made in relation to the approved exchange or recognised market operator, as the case may be, under subsection (1) may, within 30 days after the approved exchange or recognised market operator, as the case may be, is notified of the direction, appeal to the Minister whose decision shall be final.

(8) Notwithstanding the lodging of an appeal under subsection (7), any action taken by the Authority under this section, shall continue to have effect pending the decision of the Minister.

(9) The Minister may, when deciding an appeal under subsection (7), make such modification as he considers necessary to any action taken by the

Authority under this section, and such modified action shall have effect from the date of the decision of the Minister.

(10) Subject to subsection (11), no criminal or civil liability shall be incurred by an approved exchange or a recognised market operator in respect of any thing done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

(11) Any approved exchange or a recognised market operator which, without reasonable excuse, contravenes a written notice issued under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

[...]

PART IIA

TRADE REPOSITORIES

Division 2 – Regulation of Licensed Trade Repositories

Subdivision (4) – Powers of Authority

[...]

Additional powers of Authority in respect of auditors

~~46X. (1) If an auditor of a licensed trade repository, in the course of the performance of his duties, becomes aware of any matter or irregularity referred to in the following paragraphs, he shall immediately send to the Authority a written report of that matter or irregularity:~~

- ~~(a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the licensed trade repository to a material extent;~~
- ~~(b) any matter which, in his opinion, constitutes or may constitute a breach of any provision of this Act or an offence involving fraud or dishonesty;~~
- ~~(c) any irregularity that has or may have a material effect upon the accounts of the licensed trade repository, including any irregularity that affects or jeopardises, or may affect or jeopardise, the funds or property of investors.~~

~~(2) An auditor of a licensed trade repository shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement made in his report under subsection (1).~~

~~(3) Subsection (2) shall not restrict or affect any right, privilege or immunity that the auditor of a licensed trade repository may have, apart from this section, as a defendant in an action for defamation.~~

~~(4) The Authority may impose all or any of the following duties on an auditor of a licensed trade repository, and the auditor shall carry out the duties so imposed:~~

- ~~(a) a duty to submit such additional information and reports in relation to his audit as the Authority considers necessary;~~
- ~~(b) a duty to enlarge, extend or alter the scope of his audit of the business and affairs of the licensed trade repository;~~
- ~~(c) a duty to carry out any other examination or establish any procedure in any particular case;~~
- ~~(d) a duty to submit a report on any matter arising out of his audit, examination or establishment of procedure referred to in paragraph (b) or (c).~~

~~(5) The licensed trade repository shall remunerate the auditor in respect of the discharge by him of all or any of the duties referred to in subsection (4).~~

46X. —(1) Despite the provisions of the Companies Act (Cap. 50), every licensed trade repository –

- (a) shall on an annual basis, appoint an auditor and obtain the approval of the Authority to such appointment; and
- (b) where, for any reason, the auditor ceases to act for the licensed trade repository, shall, as soon as practicable thereafter, appoint another auditor and obtain the approval of the Authority to such appointment.

(2) An auditor shall not be approved by the Authority as an auditor for a licensed trade repository unless the auditor is able to comply with such conditions in relation to the discharge of his duties as may be determined by the Authority.

(3) Despite any other provision of this Act or any other written law, the Authority may, if it is not satisfied with the performance of any duty by an auditor of an licensed trade repository at any time —

- (a) direct the licensed trade repository to remove the auditor; and
- (b) direct the licensed trade repository to appoint another auditor approved by the Authority, as soon as practicable after the removal,

and the licensed trade repository shall comply with such direction.

(4)(a) Where —

(i) a licensed trade repository fails to lodge a report required to be submitted under section 46M; or
(ii) the Authority receives a report under subsection (5),
the Authority may, without prejudice to its powers under subsection (6), if it is satisfied that it is in the interests of the licensed trade repository, the participants of the licensed trade repository or the general public to do so, appoint in writing an auditor to examine and audit, either generally or in relation to any particular matter, the books of the licensed trade repository.

(b) Where the Authority is of the opinion that the whole or any part of the costs and expenses of an auditor appointed by the Authority under subsection (4)(a) should be borne by the licensed trade repository, the Authority may, in writing, direct the licensed trade repository to pay a specified amount, being the whole or part of such costs and expenses, within such time and in such manner as may be specified in the direction.

(c) Where an licensed trade repository fails to comply with a direction under subsection (3)(b), the amount specified in the direction may be sued for and recovered by the Authority as a civil debt.

(d) An auditor appointed under subsection (4)(a) shall, on the conclusion of the examination and audit, submit a report to the Authority.

(5) If an auditor of a licensed trade repository, in the course of the performance of his duties, becomes aware of —

(a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the licensed trade repository to a material extent;

(b) any matter which, in his opinion, constitutes or may constitute a breach of any provision of this Act or an offence involving fraud or dishonesty;
or

(c) any irregularity that has or may have a material effect upon the accounts of the licensed trade repository, including any irregularity that affects or jeopardises, or may affect or jeopardise, the funds or property of investors in securities or futures contracts,

(d) serious deficiencies, including control weaknesses in the financial reporting process of the licensed trade repository; or

(e) there has been any other matter that is likely to be of material significance to the Authority in carrying out its functions,

the auditor shall immediately send to the Authority a written report of the matter or the irregularity.

(6) The Authority may impose all or any of the following duties on an auditor of an licensed trade repository:

- (a) a duty to submit such additional information and reports in relation to his audit as the Authority considers necessary;
- (b) a duty to enlarge, extend or alter the scope of his audit of the business and affairs of the licensed trade repository;
- (c) a duty to carry out any other examination or establish any procedure in any particular case;
- (d) a duty to submit a report on any matter arising out of his audit, examination or establishment of procedure referred to in paragraph (b) or (c),

and the auditor shall carry out such duties.

(7) The licensed trade repository shall remunerate the auditor in respect of the discharge by him of all or any of the duties referred to in subsection (6).

(8) No auditor or employee of such auditor shall, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of —

- (a) any statement made orally or in writing in the discharge of his duties under this section; or
- (b) the submission of any report to the Authority under subsection (4)(d), (5) or (6).

(9) Subsection (8) shall not restrict or otherwise affect any right, privilege or immunity that, apart from this section, the auditor or his employee has as a defendant in an action for defamation.\

(10) Except as may be necessary for the carrying into effect of the provisions of this Act or so far as may be required for the purposes of any legal proceedings, whether civil or criminal, an auditor appointed under subsection (4)(a) or carrying out any duty imposed under subsection (5), and any employee of such an auditor, shall not disclose any information which may come to his knowledge or possession in the course of performing his duties as such auditor or employee, as the case may be, to any person other than —

- (a) the Authority; and
- (b) in the case of an employee of such auditor, the auditor.

Power of Authority to remove officers of licensed trade repository

~~46Z.~~ (1) ~~Where the Authority is satisfied that any of the following applies to an officer of a licensed trade repository, the Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the~~

~~protection of investors, by notice in writing direct the licensed trade repository to remove the officer from his office or employment, and the licensed trade repository shall comply with such notice, notwithstanding the provisions of section 152 of the Companies Act (Cap. 50) or anything in any other law or in the memorandum or articles of association or other constituent document or documents of the licensed trade repository:~~

- ~~(a) the officer has wilfully contravened, or wilfully caused the licensed trade repository to contravene, this Act or the business rules of the licensed trade repository;~~
- ~~(b) the officer has, without reasonable excuse, failed to ensure compliance with this Act, or with the business rules of the licensed trade repository, by the licensed trade repository, by a participant of the licensed trade repository or by a person associated with that participant;~~
- ~~(c) the officer has failed to discharge the duties or functions of his office or employment;~~
- ~~(d) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;~~
- ~~(e) the officer has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;~~
- ~~(f) the officer has, whether in Singapore or elsewhere, made a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;~~
- ~~(g) the officer has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 6 of the Securities and Futures (Amendment) Act 2012, involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly.~~

~~(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority may, in determining whether an officer of a licensed trade repository has failed to discharge the duties or functions of his office or employment for the purposes of subsection (1)(c), have regard to such criteria as the Authority may prescribe or specify in directions issued by notice in writing.~~

~~(3) Subject to subsection (4), the Authority shall not direct a licensed trade repository to remove an officer from his office or employment without giving the licensed trade repository an opportunity to be heard.~~

~~(4) The Authority may direct a licensed trade repository to remove an officer from his office or employment under subsection (1) on any of the following grounds without giving the licensed trade repository an opportunity to be heard:~~

- ~~(a) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;~~
- ~~(b) the officer has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 6 of the Securities and Futures (Amendment) Act 2012 —
 - ~~(i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and~~
 - ~~(ii) punishable with imprisonment for a term of 3 months or more.~~~~

~~(5) Where the Authority directs a licensed trade repository to remove an officer from his office or employment under subsection (1), the Authority need not give that officer an opportunity to be heard.~~

~~(6) Any licensed trade repository that is aggrieved by a direction of the Authority made in relation to the licensed trade repository under subsection (1) may, within 30 days after the licensed trade repository is notified of the direction, appeal to the Minister, whose decision shall be final.~~

~~(7) Notwithstanding the lodging of an appeal under subsection (6), any action taken by the Authority under this section shall continue to have effect pending the decision of the Minister.~~

~~(8) The Minister may, when deciding an appeal under subsection (6), make such modification as he considers necessary to any action taken by the Authority under this section, and such modified action shall have effect from the date of the decision of the Minister.~~

~~(9) Subject to subsection (10), no criminal or civil liability shall be incurred by a licensed trade repository in respect of any thing done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.~~

~~(10) Any licensed trade repository which, without reasonable excuse, contravenes a written notice issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.~~

46Z.—(1) Notwithstanding the provisions of any other written law, a licensed trade repository shall not, without the prior written consent of the Authority, permit a person to act as its executive officer or director,

if the person —

- (a) has been convicted, whether in Singapore or elsewhere, of an offence —

- (i) involving fraud or dishonesty;
- (ii) the conviction for which involved a finding that he had acted fraudulently or dishonestly; or
- (iii) that is specified in the Third Schedule to the Registration of Criminals Act (Cap. 268);
- (b) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (c) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (d) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (e) has had a prohibition order under section 59 of the Financial Advisers Act (Cap. 110), section 35V of the Insurance Act (Cap. 42) or section 101A made against him that remains in force; or
- (f) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere

—

- (i) the which is being or has been wound up by a court; or
- (ii) approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the regulatory authority in that foreign country or territory.

(2) Notwithstanding the provisions of any other written law, where the Authority is satisfied that –

- (a) a director of a licensed trade repository; or
- (b) an executive officer of a licensed trade repository,

is not a fit and proper person to be a director or executive officer (as the case may be), the Authority may, by notice in writing to the licensed trade repository, direct the licensed trade repository to remove the director or executive officer from his office or employment within such period as may be specified by the Authority in the notice, and the licensed trade repository must comply with the notice.

(3) In assessing whether to direct a licensed trade repository to remove a director or executive officer from his office or employment under subsection (2), the Authority may consider any matter which it considers relevant, including (but not limited to) whether:

- (a) he has wilfully contravened or wilfully caused the licensed trade repository to contravene any provision of this Act;
- (b) he has, without reasonable excuse, failed to secure the compliance of the licensed trade repository with this Act, the Monetary Authority of Singapore Act (Cap. 186) or any of the written laws set out in the Schedule to that Act;
- (c) he has failed to discharge any of the duties of his office or employment; or
- (d) his removal is necessary in the public interest or for the protection of the investors.

(4) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, when determining whether a director or an executive officer of a licensed trade repository has failed to discharge the duties of his office for the purposes of subsection (3)(c), have regard to such criteria as may be prescribed or as may be specified in written directions.

(5) The Authority shall not direct a licensed trade repository to remove a person from his office or employment under subsection (2) without giving the licensed trade repository an opportunity to be heard, except in the following circumstances:

- (a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) a prohibition order under section 101A has been made by the Authority, and remains in force, against the person;
- (c) the person has been convicted, whether in Singapore or elsewhere, of an offence, committed before, on or after the date of commencement of this amendment —
 - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more.

(6) Where the Authority directs a licensed trade repository to remove a person from his office or employment under subsection (2), the Authority need not give that person an opportunity to be heard.

(7) Any licensed trade repository that is aggrieved by a direction of the Authority made in relation to the licensed trade repository, as the case may be, under subsection (1) may, within 30 days after the licensed trade repository, as the case may be, is notified of the direction, appeal to the Minister whose decision shall be final.

(8) Notwithstanding the lodging of an appeal under subsection (7), any action taken by the Authority under this section, shall continue to have effect pending the decision of the Minister.

(9) The Minister may, when deciding an appeal under subsection (7), make such modification as he considers necessary to any action taken by the Authority under this section, and such modified action shall have effect from the date of the decision of the Minister.

(10) Subject to subsection (11), no criminal or civil liability shall be incurred by a licensed trade repository in respect of any thing done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

(11) Any licensed trade repository which, without reasonable excuse, contravenes a written notice issued under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

PART IIA
TRADE REPOSITORIES
Division 3 – Regulation of Licensed Foreign Trade Repositories

[...]

Power of Authority to remove officers of licensed foreign trade repository

46ZHA.—(1) Notwithstanding the provisions of any other written law, where the Authority is satisfied that —

(a) a director of a licensed foreign trade repository; or

(b) an executive officer of a licensed foreign trade repository,

is not a fit and proper person to be a director or executive officer (as the case may be), the Authority may, by notice in writing to the licensed foreign trade repository, direct the licensed foreign trade repository to remove the director or executive officer from his office or employment within such period as may be specified by the Authority in the notice, and the licensed foreign trade repository must comply with the notice.

(2) In assessing whether to direct a licensed foreign trade repository to remove a director or executive officer from his office or employment under subsection (1), the Authority may consider any matter which it considers relevant, including (but not limited to) whether:

- (a) he has wilfully contravened or wilfully caused the licensed foreign trade repository to contravene any provision of this Act;
- (b) he has, without reasonable excuse, failed to secure the compliance of the licensed foreign trade repository with this Act, the Monetary Authority of Singapore Act (Cap. 186) or any of the written laws set out in the Schedule to that Act;
- (c) he has failed to discharge any of the duties of his office or employment; or
- (d) his removal is necessary in the public interest or for the protection of the investors.

(3) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, when determining whether a director or an executive officer of a licensed foreign trade repository has failed to discharge the duties of his office for the purposes of subsection (2)(c), have regard to such criteria as may be prescribed or as may be specified in written directions.

(4) The Authority shall not direct a licensed foreign trade repository to remove an officer from his office or employment without giving the licensed foreign trade repository an opportunity to be heard, except in the following circumstances:

- (a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) a prohibition order under section 101A has been made by the Authority, and remains in force, against the person;
- (c) the person has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of this amendment —
 - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more.

(5) Where the Authority directs a licensed foreign trade repository to remove a person from his office or employment under subsection (1A), the Authority need not give that person an opportunity to be heard.

(6) Any licensed foreign trade repository that is aggrieved by a direction of the Authority made in relation to the licensed foreign trade repository under subsection (1) may, within 30 days after the licensed trade repository is notified of the direction, appeal to the Minister, whose decision shall be final.

(7) Notwithstanding the lodging of an appeal under subsection (6), any action taken by the Authority under this section shall continue to have effect pending the decision of the Minister.

(8) The Minister may, when deciding an appeal under subsection (6), make such modification as he considers necessary to any action taken by the Authority under this section, and such modified action shall have effect from the date of the decision of the Minister.

(9) Subject to subsection (10), no criminal or civil liability shall be incurred by a licensed foreign trade repository in respect of any thing done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

(10) Any licensed foreign trade repository which, without reasonable excuse, contravenes a written notice issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

PART III
CLEARING FACILITIES
Division 2 – Regulation of Approved Clearing Houses
Subdivision (3) – Matters requiring approval of Authority

[...]

Additional powers of Authority in respect of auditors

~~73. (1) If an auditor of an approved clearing house, in the course of the performance of his duties, becomes aware of any matter or irregularity referred to in the following paragraphs, he shall immediately send to the Authority a written report of that matter or irregularity:~~

- ~~(a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the approved clearing house to a material extent;~~
- ~~(b) any matter which, in his opinion, constitutes or may constitute a breach of any provision of this Act or an offence involving fraud or dishonesty;~~
- ~~(c) any irregularity that has or may have a material effect upon the accounts of the approved clearing house, including any irregularity that affects or jeopardises, or may affect or jeopardise, the funds or property of investors.~~

~~(2) An auditor of an approved clearing house shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement made in his report under subsection (1).~~

~~(3) Subsection (2) shall not restrict or affect any right, privilege or immunity that the auditor of an approved clearing house may have, apart from this section, as a defendant in an action for defamation.~~

~~(4) The Authority may impose all or any of the following duties on an auditor of an approved clearing house, and the auditor shall carry out the duties so imposed:~~

~~(a) a duty to submit such additional information and reports in relation to his audit as the Authority considers necessary;~~

~~(b) a duty to enlarge, extend or alter the scope of his audit of the business and affairs of the approved clearing house;~~

~~(c) a duty to carry out any other examination or establish any procedure in any particular case;~~

~~(d) a duty to submit a report on any matter arising out of his audit, examination or establishment of procedure referred to in paragraph (b) or (c).~~

~~(5) The approved clearing house shall remunerate the auditor in respect of the discharge by him of all or any of the duties referred to in subsection (4).~~

73. —(1) Despite the provisions of the Companies Act (Cap. 50), every approved clearing house—

(a) shall on an annual basis, appoint an auditor and obtain the approval of the Authority to such appointment of, an auditor; and

(b) where, for any reason, the auditor ceases to act for the approved clearing house, as soon as practicable thereafter, appoint another auditor and obtain the approval of the Authority to such appointment.

(2) An auditor shall not be approved by the Authority as an auditor for an approved clearing house unless the auditor is able to comply with such conditions in relation to the discharge of his duties as may be determined by the Authority.

(3) Despite any other provision of this Act or any other written law, the Authority may, if it is not satisfied with the performance of any duty by an auditor appointed of an approved clearing house, at any time —

(a) direct the approved clearing house to remove the auditor; and

(b) direct the approved clearing house to appoint another auditor approved by the Authority, as soon as practicable after the removal,

and the approved clearing house shall comply with such direction.

(4)(a) Where —

(i) an approved clearing house fails to lodge a report required to be submitted under section 62; or

(ii) the Authority receives a report under subsection (5),

the Authority may, without prejudice to its powers under subsection (6), if it is satisfied that it is in the interests of the approved clearing house, the participants of the approved clearing house or the general public to do so, appoint in writing an auditor to examine and audit, either generally or in relation to any particular matter, the books of the approved clearing house.

(b) Where the Authority is of the opinion that the whole or any part of the costs and expenses of an auditor appointed by the Authority under subsection (4)(a) should be borne by the approved clearing house, the Authority may, in writing, direct the approved clearing house to pay a specified amount, being the whole or part of such costs and expenses, within such time and in such manner as may be specified in the direction.

(c) Where an approved clearing house fails to comply with a direction under subsection (3)(b), the amount specified in the direction may be sued for and recovered by the Authority as a civil debt.

(d) An auditor appointed under subsection (4)(a) shall, on the conclusion of the examination and audit, submit a report to the Authority.

(5) If an auditor of an approved clearing house, in the course of the performance of his duties, becomes aware of —

(a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the approved clearing house to a material extent;

(b) any matter which, in his opinion, constitutes or may constitute a breach of any provision of this Act or an offence involving fraud or dishonesty; or

(c) any irregularity that has or may have a material effect upon the accounts of the approved clearing house, including any irregularity that affects or jeopardises, or may affect or jeopardise, the funds or property of investors in securities or futures contracts,

(d) serious deficiencies, including control weaknesses in the financial reporting process of the approved clearing house; or

(e) there has been any other matter that is likely to be of material significance to the Authority in carrying out its functions,

the auditor shall immediately send to the Authority a written report of the matter or the irregularity.

(6) The Authority may impose all or any of the following duties on an auditor of an approved clearing house:

- (a) a duty to submit such additional information and reports in relation to his audit as the Authority considers necessary;
- (b) a duty to enlarge, extend or alter the scope of his audit of the business and affairs of the approved clearing house;
- (c) a duty to carry out any other examination or establish any procedure in any particular case;
- (d) a duty to submit a report on any matter arising out of his audit, examination or establishment of procedure referred to in paragraph (b) or (c),

and the auditor shall carry out such duties.

(7) The approved clearing house shall remunerate the auditor in respect of the discharge by him of all or any of the duties referred to in subsection (6).

(8) No auditor or employee of such auditor shall, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of —

- (a) any statement made orally or in writing in the discharge of his duties under this section; or
- (b) the submission of any report to the Authority under subsection (4)(d), (5) or (6).

(9) Subsection (8) shall not restrict or otherwise affect any right, privilege or immunity that, apart from this section, the auditor or his employee has as a defendant in an action for defamation.

(10) Except as may be necessary for the carrying into effect of the provisions of this Act or so far as may be required for the purposes of any legal proceedings, whether civil or criminal, an auditor appointed under subsection (4)(a) or carrying out any duty imposed under subsection (5), and any employee of such an auditor, shall not disclose any information which may come to his knowledge or possession in the course of performing his duties as such auditor or employee, as the case may be, to any person other than —

- (a) the Authority; and
- (b) in the case of an employee of such auditor, the auditor.

PART III
CLEARING FACILITIES

Division 3 – Regulation of Recognised Clearing Houses

Approval of chairman, chief executive officer, director and key persons of recognised clearing house

80A.—(1) No recognised clearing house which is incorporated in Singapore shall appoint a person as its chairman, chief executive officer or director unless the recognised clearing house has obtained the approval of the Authority.

(2) The Authority may, by notice in writing, require a recognised clearing house which is incorporated in Singapore to obtain the approval of the Authority for the appointment of any person to any key management position or committee of the recognised clearing house and the recognised clearing house shall comply with the notice.

(3) An application for approval under subsection (1) or (2) shall be made in such form and manner as the Authority may prescribe.

(4) Without prejudice to the generality of section 81Q and to any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1) or (2), have regard to such criteria as the Authority may prescribe or specify in directions issued by notice in writing.

(5) Subject to subsection (6), the Authority shall not refuse an application for approval under this section without giving the recognised clearing house an opportunity to be heard.

(6) The Authority may refuse an application for approval on any of the following grounds without giving the recognised clearing house an opportunity to be heard:

(a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;

(b) the person has been convicted, whether in Singapore or elsewhere, of an offence, committed before, on or after the date of commencement of this amendment —

(i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

(7) Where the Authority refuses an application for approval under this section, the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

(8) A recognised clearing house which is incorporated in Singapore shall, as soon as practicable, give written notice to the Authority of the resignation or removal of its chairman, chief executive officer or director or of any person referred to in any notice issued by the Authority to the recognised clearing house under subsection (2).

(9) The Authority may make regulations under section 81Q relating to the composition and duties of the board of directors or any committee of a recognised clearing house which is incorporated in Singapore.

(10) In this section, “committee” includes any committee of directors, disciplinary committee or appeals committee of a recognised clearing house, or any body responsible for disciplinary action against a member of a recognised clearing house.

(11) Without prejudice to sections 81SB and 337(1), the Authority may, by regulations made under section 81Q, exempt any recognised clearing house or class of recognised clearing houses from complying with the requirement under subsection (1) or (8), subject to such condition or restriction as the Authority may prescribe in those regulations.

(12) Without prejudice to sections 81SB and 337(3) and (4), the Authority may, by notice in writing, exempt any recognised clearing house from complying with subsection (1) or (8), subject to such condition or restriction as the Authority may specify by notice in writing.

(13) It shall not be necessary to publish any exemption granted under subsection (12) in the Gazette.

(14) Any recognised clearing house which contravenes subsection (1), (2) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Control of substantial shareholding in recognised clearing houses

81AA.—(1) No person shall become a 20% controller of a recognised clearing house which is incorporated in Singapore without first obtaining the approval of the Authority.

(2) In subsection (1) —

"20% controller", in relation to a recognised clearing house, means a person who, alone or together with his associates —

(a) holds not less than 20% of the shares in the recognised clearing house;
or

(b) is in a position to control not less than 20% of the votes in the recognised clearing house.

(3) In this section —

(a) a person holds a share if —

(i) he is deemed to have an interest in that share under section 7(6) to (10) of the Companies Act (Cap. 50); or

(ii) he otherwise has a legal or an equitable interest in that share, except such interest as is to be disregarded under section 7(6) to (10) of the Companies Act;

(b) a reference to the control of a percentage of the votes in a recognised clearing house shall be construed as a reference to the control, whether direct or indirect, of that percentage of the total number of votes that might be cast in a general meeting of the recognised clearing house; and

(c) a person, A, is an associate of another person, B, if —

(i) A is the spouse, a parent, remoter lineal ancestor or step-parent, a son, daughter, remoter issue, step-son or step-daughter or a brother or sister of B;

(ii) A is a corporation the directors of which are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of B or, where B is a corporation, of the directors of B;

(iii) B is a corporation the directors of which are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of A or, where A is a corporation, of the directors of A;

(iv) A is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of B;

(v) B is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of A;

(vi) A is a related corporation of B;

- (vii) A is a corporation in which B, whether alone or together with other associates of B as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 20% of the votes in A;
- (viii) B is a corporation in which A, whether alone or together with other associates of A as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 20% of the votes in B; or
- (ix) A is a person with whom B has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their votes in relation to, the recognised clearing house.

(4) The Authority may grant its approval referred to in subsection (1) subject to such conditions or restrictions as the Authority may think fit.

(5) Without prejudice to subsection (12), the Authority may, for the purposes of securing compliance with subsection (1) or any condition or restriction imposed under subsection (4), by notice in writing, direct the transfer or disposal of all or any of the shares of a recognised clearing house in which a 20% controller of the recognised clearing house has an interest.

(6) Until a person to whom a direction has been issued under subsection (5) transfers or disposes of the shares which are the subject of the direction, and notwithstanding anything to the contrary in the Companies Act or the memorandum or articles of association or other constituent document or documents of the recognised clearing house —

- (a) no voting rights shall be exercisable in respect of the shares which are the subject of the direction;
- (b) the recognised clearing house shall not offer or issue any shares (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares which are the subject of the direction; and
- (c) except in a liquidation of the recognised clearing house, the recognised clearing house shall not make any payment (whether by way of cash dividend, dividend in kind or otherwise) in respect of the shares which are the subject of the direction.

(7) Any issue of shares by a recognised clearing house in contravention of subsection (6)(b) shall be deemed to be null and void, and a person to whom a direction has been issued under subsection (5) shall immediately return those shares to the recognised clearing house, upon which the recognised clearing house shall return to the person any payment received from the person in respect of those shares.

(8) Any payment made by a recognised clearing house in contravention of subsection (6)(c) shall be deemed to be null and void, and a person to whom a direction has been issued under subsection (5) shall immediately return the payment he has received to the recognised clearing house.

(9) Without prejudice to sections 45I and 337(1), the Authority may, by regulations made under section 44, exempt all or any of the following from subsection (1), subject to such conditions or restrictions as the Authority may prescribe in those regulations:

- (a) any person or class of persons; or
- (b) any class or description of shares or interests in shares.

(10) Without prejudice to sections 45I and 337(3) and (4), the Authority may, by notice in writing, exempt any person, shares or interests in shares from subsection (1), subject to such conditions or restrictions as the Authority may specify by notice in writing.

(11) It shall not be necessary to publish any exemption granted under subsection (10) in the Gazette.

(12) Any person who contravenes subsection (1), or any condition or restriction imposed by the Authority under subsection (4), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(13) Any person who contravenes subsection (6) (b) or (c), (7) or (8) or any direction issued by the Authority under subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Power of Authority to remove officers

~~**81P.** (1) Where the Authority is satisfied that any of the following applies to an officer of an approved clearing house or a recognised clearing house (such approved clearing house or recognised clearing house being a Singapore corporation), the Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by notice in writing direct the approved clearing house or recognised clearing house to remove the officer from his office or employment, and the approved clearing house or recognised clearing house shall comply with such notice, notwithstanding the provisions of section 152 of the Companies Act (Cap. 50) or anything in any other law or in the memorandum or articles of association or~~

~~other constituent document or documents of the approved clearing house or recognised clearing house:~~

- ~~(a) the officer has wilfully contravened, or wilfully caused the approved clearing house or recognised clearing house to contravene, this Act or the business rules of the approved clearing house or recognised clearing house;~~
- ~~(b) the officer has, without reasonable excuse, failed to ensure compliance with this Act, or with the business rules of the approved clearing house or recognised clearing house, by the approved clearing house or recognised clearing house, by a member of the approved clearing house or recognised clearing house or by a person associated with that member;~~
- ~~(c) the officer has failed to discharge the duties or functions of his office or employment;~~
- ~~(d) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;~~
- ~~(e) the officer has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;~~
- ~~(f) the officer has, whether in Singapore or elsewhere, made a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;~~
- ~~(g) the officer has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 7 of the Securities and Futures (Amendment) Act 2012, involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly.~~

~~(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority may, in determining whether an officer of an approved clearing house, or a recognised clearing house, has failed to discharge the duties or functions of his office or employment for the purposes of subsection (1)(c), have regard to such criteria as the Authority may prescribe or specify in directions issued by notice in writing.~~

~~(3) Subject to subsection (4), the Authority shall not direct an approved clearing house, or a recognised clearing house, to remove an officer from his office or employment without giving the approved clearing house or recognised clearing house an opportunity to be heard.~~

~~(4) The Authority may direct an approved clearing house, or a recognised clearing house, to remove an officer from his office or employment under subsection (1) on any of the following grounds without giving the approved clearing house or recognised clearing house an opportunity to be heard:~~

- ~~(a) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;~~

~~(b) the officer has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 7 of the Securities and Futures (Amendment) Act 2012 —~~

~~(i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and~~

~~(ii) punishable with imprisonment for a term of 3 months or more.~~

~~(5) Where the Authority directs an approved clearing house, or a recognised clearing house, to remove an officer from his office or employment under subsection (1), the Authority need not give that officer an opportunity to be heard.~~

~~(6) Any approved clearing house or recognised clearing house that is aggrieved by a direction of the Authority made in relation to the approved clearing house or recognised clearing house under subsection (1) may, within 30 days after the approved clearing house or recognised clearing house is notified of the direction, appeal to the Minister, whose decision shall be final.~~

~~(7) Notwithstanding the lodging of an appeal under subsection (6), any action taken by the Authority under this section shall continue to have effect pending the decision of the Minister.~~

~~(8) The Minister may, when deciding an appeal under subsection (6), make such modification as he considers necessary to any action taken by the Authority under this section, and such modified action shall have effect from the date of the decision of the Minister.~~

~~(9) Subject to subsection (10), no criminal or civil liability shall be incurred by an approved clearing house, or a recognised clearing house, in respect of any thing done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.~~

~~(10) Any approved clearing house or recognised clearing house which, without reasonable excuse, contravenes a written notice issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.~~

Power of Authority to remove officers of approved clearing house and recognised clearing house

81P.—(1) Notwithstanding the provisions of any other written law, an approved clearing house or a recognised clearing house which is incorporated in Singapore shall not, without the prior written consent of the Authority, permit a person to act as its executive officer or director,

if the person —

(a) has been convicted, whether in Singapore or elsewhere, of an

offence—

- (i) involving fraud or dishonesty;
 - (ii) the conviction for which involved a finding that he had acted fraudulently or dishonestly; or
 - (iii) that is specified in the Third Schedule to the Registration of Criminals Act (Cap. 268);
- (b) is an undischarged bankrupt, whether in Singapore or elsewhere;
 - (c) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
 - (d) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
 - (e) has had a prohibition order under section 59 of the Financial Advisers Act (Cap. 110), section 35V of the Insurance Act (Cap. 42) or section 101A made against him that remains in force; or
 - (f) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere
=
- (i) which is being or has been wound up by a court; or
 - (ii) approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the regulatory authority in that foreign country or territory.

(2) Notwithstanding the provisions of any other written law, where the Authority is satisfied that –

- (a) a director of an approved clearing house or recognised clearing house; or
- (b) an executive officer of an approved clearing house or recognised clearing house,

is not a fit and proper person to be a director or executive officer (as the case may be), the Authority may, by notice in writing to the approved clearing house or recognised clearing house, direct the approved clearing house or recognised clearing house to remove the director or executive officer from his office or employment within such period as may be specified by the Authority in the notice, and the approved clearing house or recognised clearing house must comply with the notice.

(3) In assessing whether to direct an approved clearing house or a recognised clearing house to remove a director or executive officer from his office or employment under subsection (2), the Authority may consider any matter which it considers relevant, including (but not limited to) whether:

(a) he has wilfully contravened or wilfully caused the approved clearing house or recognised clearing house to contravene any provision of this Act or the business rules of the approved clearing house or recognised clearing house; or

(b) he has, without reasonable excuse, failed to secure the compliance of the approved clearing house or recognised clearing house with this Act, or with the business rules of the approved clearing house or recognised clearing house, the Monetary Authority of Singapore Act (Cap. 186) or any of the written laws set out in the Schedule to that Act;

(c) he has failed to discharge any of the duties of his office or employment; or

(d) his removal is necessary in the public interest or for the protection of the investors.

(4) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, when determining whether a director or an executive officer of an approved clearing house or a recognised clearing house has failed to discharge the duties of his office for the purposes of subsection (3)(c), have regard to such criteria as may be prescribed or as may be specified in written directions.

(5) The Authority shall not direct an approved clearing house or a recognised clearing house to remove a person from his office or employment under subsection (2) without giving the approved clearing house or recognised clearing house an opportunity to be heard, except in the following circumstances:

(a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;

(b) a prohibition order under section 101A has been made by the Authority, and remains in force, against the person;

(c) the person has been convicted, whether in Singapore or elsewhere, of an offence, committed before, on or after the date of commencement of this amendment —

(i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

(6) Where the Authority directs an approved clearing house or a recognised clearing house to remove a person from his office or employment under subsection (2), the Authority need not give that person an opportunity to be heard.

(7) Any approved clearing house or a recognised clearing house that is aggrieved by a direction of the Authority made in relation to the approved clearing house or recognised clearing house, as the case may be, under subsection (1) may, within 30 days after the approved clearing house or recognised clearing house, as the case may be, is notified of the direction, appeal to the Minister whose decision shall be final.

(8) Notwithstanding the lodging of an appeal under subsection (7), any action taken by the Authority under this section, shall continue to have effect pending the decision of the Minister.

(9) The Minister may, when deciding an appeal under subsection (7), make such modification as he considers necessary to any action taken by the Authority under this section, and such modified action shall have effect from the date of the decision of the Minister.

(10) Subject to subsection (11), no criminal or civil liability shall be incurred by an approved clearing house or a recognised clearing house in respect of any thing done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

(11) Any approved clearing house or a recognised clearing house which, without reasonable excuse, contravenes a written notice issued under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

PART IIIA
APPROVED HOLDING COMPANIES
Division 2 – Regulation of Approved Holding Companies

Additional powers of Authority in respect of auditors

~~81ZH.—(1) If an auditor of an approved holding company, in the course of the performance of his duties, becomes aware of —~~

- ~~(a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the approved holding company to a material extent;~~
- ~~(b) any matter which, in his opinion, constitutes or may constitute a breach of any provision of this Act or an offence involving fraud or dishonesty;~~
~~or~~
- ~~(c) any irregularity that has or may have a material effect upon the accounts of the approved holding company, including any irregularity that affects or jeopardises, or may affect or jeopardise, the funds or property of investors;~~

~~the auditor shall immediately send to the Authority a written report of the matter or the irregularity.~~

~~(2) An auditor shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement made in his report under subsection (1).~~

~~(3) Subsection (2) shall not restrict or affect any right, privilege or immunity that the auditor has, apart from this section, as a defendant in an action for defamation.~~

~~(4) The Authority may impose all or any of the following duties on an auditor of an approved holding company:~~

- ~~(a) a duty to submit such additional information and reports in relation to his audit as the Authority considers necessary;~~
- ~~(b) a duty to enlarge, extend or alter the scope of his audit of the business and affairs of the approved holding company;~~
- ~~(c) a duty to carry out any other examination or establish any procedure in any particular case;~~
- ~~(d) a duty to submit a report on any matter arising out of his audit, examination or establishment of procedure referred to in paragraph (b) or (c);~~

~~and the auditor shall carry out such duties.~~

~~(5) The approved holding company shall remunerate the auditor in respect of the discharge by him of all or any of the duties referred to in subsection (4).~~

81ZH.—(1) Despite the provisions of the Companies Act (Cap. 50), every approved holding company –

- (a) shall on an annual basis, appoint an auditor and obtain the approval of the Authority to such appointment; and
- (b) where, for any reason, the auditor ceases to act for the approved holding company, shall, as soon as practicable thereafter, appoint another auditor and obtain the approval of the Authority to such appointment.

(2) An auditor shall not be approved by the Authority as an auditor for an approved holding company unless the auditor is able to comply with such conditions in relation to the discharge of his duties as may be determined by the Authority.

(3) Despite any other provision of this Act or any other written law, the Authority may, if it is not satisfied with the performance of any duty by an auditor of an approved holding company —

- (a) direct the approved holding company to remove the auditor; and
- (b) direct the approved holding company to appoint another auditor approved by the Authority, as soon as practicable after the removal,

and the approved holding company shall comply with such direction.

(4)(a) Where —

- (i) an approved holding company fails to lodge a report required to be submitted under section 81ZB(1); or
- (ii) the Authority receives a report under subsection (5),

the Authority may, without prejudice to its powers under subsection (6), if it is satisfied that it is in the interests of the approved holding company or the general public to do so, appoint in writing an auditor to examine and audit, either generally or in relation to any particular matter, the books of the approved holding company.

(b) Where the Authority is of the opinion that the whole or any part of the costs and expenses of an auditor appointed by the Authority under subsection (4)(a) should be borne by the approved holding company, the Authority may, in writing, direct the approved holding company to pay a specified amount, being the whole or part of such costs and expenses, within such time and in such manner as may be specified in the direction.

(c) Where an approved holding company fails to comply with a direction under subsection (3)(b), the amount specified in the direction may be sued for and recovered by the Authority as a civil debt.

(d) An auditor appointed under subsection 4(a) shall, on the conclusion of the examination and audit, submit a report to the Authority.

(5) If an auditor of an approved holding company, in the course of the performance of his duties, becomes aware of —

- (a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the approved holding company to a material extent;
- (b) any matter which, in his opinion, constitutes or may constitute a breach of any provision of this Act or an offence involving fraud or dishonesty; or
- (c) any irregularity that has or may have a material effect upon the accounts of the approved holding company, including any irregularity that affects or jeopardises, or may affect or jeopardise, the funds or property of investors in securities or futures contracts,
- (d) serious deficiencies, including control weaknesses in the financial reporting process of the approved holding company; or
- (e) there has been any other matter that is likely to be of material significance to the Authority in carrying out its functions,

the auditor shall immediately send to the Authority a written report of the matter or the irregularity.

(6) The Authority may impose all or any of the following duties on an auditor of an approved holding company:

- (a) a duty to submit such additional information and reports in relation to his audit as the Authority considers necessary;
- (b) a duty to enlarge, extend or alter the scope of his audit of the business and affairs of the approved holding company;
- (c) a duty to carry out any other examination or establish any procedure in any particular case;
- (d) a duty to submit a report on any matter arising out of his audit, examination or establishment of procedure referred to in paragraph (b) or (c),

and the auditor shall carry out such duties.

(7) The approved holding company shall remunerate the auditor in respect of the discharge by him of all or any of the duties referred to in subsection (6).

(8) No auditor or employee of such auditor shall, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of —

- (a) any statement made orally or in writing in the discharge of his duties under this section; or
- (b) the submission of any report to the Authority under subsection (4)(d), (5) or (6).

(9) Subsection (8) shall not restrict or otherwise affect any right, privilege or immunity that, apart from this section, the auditor or his employee has as a defendant in an action for defamation. \

(10) Except as may be necessary for the carrying into effect of the provisions of this Act or so far as may be required for the purposes of any legal proceedings, whether civil or criminal, an auditor appointed under subsection (4)(a) or carrying out any duty imposed under subsection (5), and any employee of such an auditor, shall not disclose any information which may come to his knowledge or possession in the course of performing his duties as such auditor or employee, as the case may be, to any person other than —

(a) the Authority; and

(b) in the case of an employee of such auditor, the auditor.

[...]

Power of Authority to remove officers

~~81ZJ. (1) Where the Authority is satisfied that an officer of an approved holding company —~~

~~(a) has wilfully contravened or wilfully caused that approved holding company to contravene this Act;~~

~~(b) has, without reasonable excuse, failed to ensure compliance with this Act by that approved holding company;~~

~~(c) has failed to discharge the duties or functions of his office or employment;~~

~~(d) is an undischarged bankrupt, whether in Singapore or elsewhere;~~

~~(e) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;~~

~~(f) has, whether in Singapore or elsewhere, made a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation; or~~

~~(g) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly,~~

~~the Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by notice in writing direct that approved holding company to remove the officer from his office or employment and that approved holding company shall comply with such notice, notwithstanding the provisions of section 152 of the Companies Act (Cap. 50).~~

~~(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority may, in determining whether an officer of an approved holding company has failed to discharge the duties or functions of his office or employment for the purposes of subsection (1)(c), have regard to such criteria as the Authority may prescribe or specify in directions issued by notice in writing.~~

~~(3) Subject to subsection (4), the Authority shall not direct an approved holding company to remove an officer from his office or employment without giving the approved holding company an opportunity to be heard.~~

~~(4) The Authority may direct an approved holding company to remove an officer from his office or employment under subsection (1) on any of the following grounds without giving the approved holding company an opportunity to be heard:~~

~~(a) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;~~

~~(b) the officer has been convicted, whether in Singapore or elsewhere, of an offence—~~

~~(i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and~~

~~(ii) punishable with imprisonment for a term of 3 months or more.~~

~~(5) Where the Authority directs an approved holding company to remove an officer from his office or employment under subsection (1), the Authority need not give that officer an opportunity to be heard.~~

~~(6) Any approved holding company that is aggrieved by a direction of the Authority made in relation to the approved holding company under subsection (1) may, within 30 days after the approved holding company is notified of the direction, appeal to the Minister whose decision shall be final.~~

~~(7) Notwithstanding the lodging of an appeal under subsection (6), any action taken by the Authority under this section shall continue to have effect pending the decision of the Minister.~~

~~(8) The Minister may, when deciding an appeal under subsection (6), make such modification as he considers necessary to any action taken by the Authority under this section, and such modified action shall have effect from the date of the decision of the Minister.~~

~~(9) Subject to subsection (10), no criminal or civil liability shall be incurred by an approved holding company in respect of any thing done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.~~

~~(10) Any approved holding company which, without reasonable excuse, contravenes a written notice issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.~~

Power of Authority to remove officers of approved holding companies

81ZJ.—(1) Notwithstanding the provisions of any other written law, an approved holding company shall not, without the prior written consent of the Authority, permit a person to act as its executive officer or director,

if the person —

- (a) has been convicted, whether in Singapore or elsewhere, of an offence—
 - (i) involving fraud or dishonesty;
 - (ii) the conviction for which involved a finding that he had acted fraudulently or dishonestly; or
 - (iii) that is specified in the Third Schedule to the Registration of Criminals Act (Cap. 268);
- (b) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (c) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (d) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (e) has had a prohibition order under section 59 of the Financial Advisers Act (Cap. 110), section 35V of the Insurance Act (Cap. 42) or section 101A made against him that remains in force; or
- (f) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere
 -
 - (i) which is being or has been wound up by a court; or
 - (ii) approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the regulatory authority in that foreign country or territory.

(2) Notwithstanding the provisions of any other written law, where the Authority is satisfied that —

(a) a director of an approved holding company; or

(b) an executive officer of an approved holding company,

is not a fit and proper person to be a director or executive officer (as the case may be), the Authority may, by notice in writing to the approved holding company, direct the approved holding company to remove the director or executive officer from his office or employment within such period as may be specified by the Authority in the notice, and the approved holding company must comply with the notice.

(3) In assessing whether to direct an approved holding company to remove a director or executive officer from his office or employment under subsection (2), the Authority may consider any matter which it considers relevant, including (but not limited to) whether:

(a) he has wilfully contravened or wilfully caused the approved holding company to contravene any provision of this Act; or

(b) he has, without reasonable excuse, failed to secure the compliance of the approved holding company with this Act, the Monetary Authority of Singapore Act (Cap. 186) or any of the written laws set out in the Schedule to that Act;

(c) he has failed to discharge any of the duties of his office or employment; or

(d) his removal is necessary in the public interest or for the protection of the investors.

(4) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, when determining whether a director or an executive officer of an approved holding company has failed to discharge the duties of his office for the purposes of subsection (3)(c), have regard to such criteria as may be prescribed or as may be specified in written directions.

(5) The Authority shall not direct an approved holding company to remove a person from his office or employment under subsection (2) without giving the approved holding company an opportunity to be heard, except in the following circumstances:

(a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;

(b) a prohibition order under section 101A has been made by the Authority, and remains in force, against the person;

(c) the person has been convicted, whether in Singapore or elsewhere, of an offence, committed before, on or after the date of commencement of this amendment —

(i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

(6) Where the Authority directs an approved holding company to remove a person from his office or employment under subsection (2), the Authority need not give that person an opportunity to be heard.

(7) Any approved holding company that is aggrieved by a direction of the Authority made in relation to the approved holding company under subsection (1) may, within 30 days after the approved holding company is notified of the direction, appeal to the Minister whose decision shall be final.

(8) Notwithstanding the lodging of an appeal under subsection (7), any action taken by the Authority under this section, shall continue to have effect pending the decision of the Minister.

(9) The Minister may, when deciding an appeal under subsection (7), make such modification as he considers necessary to any action taken by the Authority under this section, and such modified action shall have effect from the date of the decision of the Minister.

(10) Subject to subsection (11), no criminal or civil liability shall be incurred by an approved holding company in respect of any thing done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

(11) Any approved holding company which, without reasonable excuse, contravenes a written notice issued under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

[...]

PART IV

HOLDERS OF CAPITAL MARKETS SERVICES LICENCE AND REPRESENTATIVES

Division 1 – Capital Markets Services Licence

Power of Authority to impose conditions or restrictions

88.—(1) The Authority may grant a capital markets services licence subject to such conditions or restrictions as it thinks fit.

(2) The Authority may, at any time, by notice in writing to a holder of a capital markets services licence, vary or revoke any condition or restriction or impose such further condition or restriction as it may think fit.

(3) Any person who contravenes any condition or restriction in its licence shall be guilty of an offence.

[...]

Removal of officer of holder of capital markets services licence

97.—(1) Notwithstanding the provisions of any other written law —

(a) a holder of a capital markets services licence shall not, without the prior written consent of the Authority, permit a person to act as its executive officer; and

(b) a holder of a capital markets services licence which is incorporated in Singapore shall not, without the prior written consent of the Authority, permit a person to act as its director,

if the person —

(i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 9(1)(j) of the Financial Institutions (Miscellaneous Amendments) Act 2013, being an offence —

(A) involving fraud or dishonesty;

(B) the conviction for which involved a finding that he had acted fraudulently or dishonestly; or

(C) that is specified in the Third Schedule to the Registration of Criminals Act (Cap. 268);

(ii) is an undischarged bankrupt, whether in Singapore or elsewhere;

- (iii) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (iv) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (v) has had a prohibition order under section 59 of the Financial Advisers Act (Cap. 110), section 35V of the Insurance Act (Cap. 142) or section 101A made against him that remains in force; or
- (vi) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —
 - (A) which is being or has been wound up by a court; or
 - (B) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the regulatory authority in that foreign country or territory.

(1A) Notwithstanding the provisions of any other written law, where the Authority is satisfied that a director of a holder of a capital markets services licence which is incorporated in Singapore, or an executive officer of a holder of a capital markets services licence is not a fit and proper person to be a director or executive officer (as the case may be), the Authority may, by notice in writing to the licence holder, direct the licence holder to remove the director or executive officer from his office or employment within such period as may be specified by the Authority in the notice, and the licence holder shall comply with the notice.

(1AA) In assessing whether to direct a licence holder to remove a director or executive officer from this office or employment under subsection (1A), the Authority may consider any matter which it considers relevant, including (but not limited to) whether:

- (a) he has wilfully contravened or wilfully caused the holder to contravene any provision of this Act;
- (b) he has, without reasonable excuse, failed to secure the compliance of the holder with this Act, the Monetary Authority of Singapore Act (Cap. 186) or any of the written laws set out in the Schedule to that Act; ~~or~~
- (c) he has failed to discharge any of the duties of his office or employment;
or

(d) his removal is necessary in the public interest or for the protection of the investors.
~~the Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by notice in writing to the holder, direct the holder to remove the director or executive officer, as the case may be, from his office or employment within such period as may be specified by the Authority in the notice, and the holder shall comply with the notice.~~

(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, when determining whether a director or an executive officer of a holder of a capital markets services licence has failed to discharge the duties of his office or employment for the purposes of subsection (1A)(c), have regard to such criteria as may be prescribed or as may be specified in written directions.

(3) The Authority shall not direct a holder of a capital markets services licence to remove a person from his office or employment under subsection (1A) without giving the holder an opportunity to be heard, except in the following circumstances:

- (a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) a prohibition order under section 101A has been made by the Authority, and remains in force, against the person;
- (c) the person has been convicted, whether in Singapore or elsewhere, of an offence:
 - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more.

(4) *[Deleted by Act 10 of 2013 wef 18/04/2013]*

(5) Where the Authority directs a holder of a capital markets services licence to remove a person from his office or employment under subsection (1A), the Authority need not give that person an opportunity to be heard.

(5A) Any holder of a capital markets services licence that is aggrieved by a direction of the Authority made in relation to the holder under subsection (1A) may, within 30 days after the holder is notified of the direction, appeal to the Minister whose decision shall be final.

(5B) Notwithstanding the lodging of an appeal under subsection (5A), any action taken by the Authority under this section shall continue to have effect pending the decision of the Minister.

(5C) The Minister may, when deciding an appeal under subsection (5A), make such modification as he considers necessary to any action taken by the Authority under this section, and such modified action shall have effect from the date of the decision of the Minister.

(6) No criminal or civil liability shall be incurred by —

(a) a holder of a capital markets services licence; or

(b) any person acting on behalf of the holder of a capital markets services licence,

in respect of anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

~~(7) In this section, unless the context otherwise requires —~~

~~“regulated financial institution” means a person who carries on a business, the conduct of which is regulated or authorised by the Authority or, if it is carried on in Singapore, would be regulated or authorised by the Authority;~~

~~“regulatory authority”, in relation to a foreign country or territory, means an authority of the foreign country or territory exercising any function that corresponds to a regulatory function of the Authority under this Act, the Monetary Authority of Singapore Act or any of the written laws set out in the Schedule to that Act.”~~

Control of take-over of holder of capital markets services licence

97A.—(1) This section applies to all individuals whether resident in Singapore or not and whether citizens of Singapore or not, and to all bodies corporate or unincorporate, whether incorporated or carrying on business in Singapore or not.

~~(2) No person shall enter into any arrangement in relation to shares in the holder of a capital markets services licence that is a company by virtue of which he would, if the arrangement is carried out, obtain effective control of the holder, unless he has obtained the prior approval of the Authority to his entering into the arrangement.~~

(2) No person shall, on or after the date of commencement of [this amendment] obtain effective control of a holder of a capital markets service licence incorporated in Singapore without the prior written approval of the Authority.

(3) An application for the Authority's approval under subsection (2) shall be made in writing, and the Authority may approve the application if the Authority is satisfied that —

- (a) the applicant is a fit and proper person to have effective control of the holder of the capital markets services licence;
- (b) having regard to the applicant's likely influence, the holder of a capital markets services licence is likely to continue to conduct its business prudently and comply with the provisions of this Act and directions made thereunder; and
- (c) the applicant satisfies such other criteria as may be prescribed or as may be specified in written directions by the Authority.

(4) Any approval under subsection (3) may be granted to the applicant subject to such conditions as the Authority may determine, including any condition —

- (a) restricting his disposal or further acquisition of shares or voting power in the holder of a capital markets services licence; or
- (b) restricting his exercise of voting power in the holder of a capital markets services licence,

and the applicant shall comply with such conditions.

(4A) The Authority may at any time add to, vary or revoke any condition imposed under subsection (4).

(5) Any condition imposed under subsection (4) shall have effect notwithstanding any provision of the Companies Act (Cap. 50) or anything contained in the memorandum or articles of association of the holder of a capital markets services licence.

(6) For the purposes of this section and section 97B —

~~(a) a reference to a person entering into an arrangement in relation to shares includes —~~

~~(i) entering into an agreement or any formal or informal scheme, arrangement or understanding, to acquire those shares;~~

~~(ii) making or publishing a statement, however expressed, that expressly or impliedly invites the holder of those shares to offer to dispose of his shares to the first person;~~

~~(iii) the first person obtaining a right to acquire shares under an option, or to have shares transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on fulfilment of a condition or not; and~~

~~(iv) becoming a trustee of a trust in respect of those shares;~~

(b) a person shall be regarded as obtaining effective control of the holder of a capital markets services licence ~~by virtue of an arrangement if the person alone or acting together with any connected person would, if the arrangement is carried out —~~

(i) the person, whether alone or together with any connected person-

(A) ~~acquire or hold, directly or indirectly, 20% or more of the issued share capital of the holder; or~~

(B) ~~control, or is in a position to control, directly or indirectly, 20% or more of the voting power in the holder; and~~

(ii) the directors of the holder of a capital markets services licence are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person (whether acting alone or together with any other person, and whether with or without holding shares or controlling voting power in the holder of a capital markets service licence); or

(iii) the person (whether acting alone or together with any other person, and whether with or without holding shares or controlling voting power in the holder of a capital markets services licence) is in a position to determine the policy of the holder of a capital markets services licence; and

(b) a reference to the voting power in the holder of a capital markets services licence is a reference to the total number of votes that may be cast in a general meeting of the holder.

Objection to control of holder of capital markets services licence

97B.—(1) The Authority may serve a written notice of objection on —

(a) any person required to obtain the Authority's approval or who has obtained the approval under section 97A; or

(b) any person who, whether before, on or after the date of commencement of this section, either alone or together with any connected person, holds, directly or indirectly, 20% or more of the issued share capital of the holder of a capital markets services licence or controls, directly or indirectly, 20% or more of the voting power in the holder,

if the Authority is satisfied that —

- (i) any condition of approval imposed on the person under section 97A(4) has not been complied with;
- (ii) the person is not or ceases to be a fit and proper person to have effective control of the holder of the capital markets services licence;
- (iii) having regard to the likely influence of the person, the holder of a capital markets services licence is not able to or is no longer likely to conduct its business prudently or to comply with the provisions of this Act or any direction made thereunder;
- (iv) the person does not or ceases to satisfy such criteria as may be prescribed;
- (v) the person has furnished false or misleading information or documents in connection with an application under section 97A; or
- (vi) the Authority would not have granted its approval under section 97A had it been aware, at that time, of circumstances relevant to the person's application for such approval.

(2) The Authority shall not serve a notice of objection on any person without giving the person an opportunity to be heard, except in the following circumstances:

- (a) the person is in the course of being wound up or otherwise dissolved or, in the case of an individual, is an undischarged bankrupt whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person;
- (c) a prohibition order under section 101A has been made by the Authority, and remains in force, against the person; or
- (d) the person has been convicted, whether in Singapore or elsewhere, of any offence involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly

(3) The Authority shall, in any written notice of objection, specify a reasonable period within which the person to be served the written notice of objection shall —

- (a) take such steps as are necessary to ensure that he ~~ceases to be a party to the arrangement described in section 97A(2) or~~ ceases to have control of a holder of a capital markets services licence in the manner described in subsection (1)(b); or
- (b) comply with such other requirements as the Authority may specify in written directions.

(4) Any person served with a notice of objection under this section shall comply with the notice.

(5) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both.

[...]

Exemptions from requirement to hold capital markets services licence

99.—(1) The following persons shall be exempted in respect of the following regulated activities from the requirement to hold a capital markets services licence to carry on business in such regulated activities:

- (a) any bank licensed under the Banking Act (Cap. 19) in respect of any regulated activity;
- (b) any merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186) in respect of any regulated activity which it is approved to carry out under that Act;
- (c) any finance company licensed under the Finance Companies Act (Cap. 108) in respect of any regulated activity that is not prohibited by that Act or for which an exemption from section 25(2) of that Act has been granted;
- (d) any company or co-operative society licensed under the Insurance Act (Cap. 142) in respect of fund management for the purpose of carrying out insurance business;
- (e) [*Deleted by Act 1/2005*]
- (f) any ~~securities exchange, futures exchange approved exchange,~~ recognised market operator or approved holding company in respect of any regulated activity that is solely incidental to its operation of a

- ~~securities market or futures market~~ an organised market or to its performance as an approved holding company, as the case may be;
- (g) any approved clearing house or recognised clearing house in respect of any regulated activity that is solely incidental to its operation of a clearing facility; and
 - (h) such other person or class of persons in respect of any regulated activity as may be exempted by the Authority.

(2) [*Deleted by Act 1/2005*]

(3) [*Deleted by Act 1/2005*]

(4) The Authority may, at any time, by regulations or by notice in writing, impose, add, vary or revoke such conditions or restrictions on an exempt person or its representative in relation to the conduct of the regulated activity or any related matter as the Authority thinks fit and the exempt person or its representative, as the case may be, shall comply with such conditions or restrictions.

(5) Any exempt person or representative of an exempt person, who contravenes any condition or restriction imposed under subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(6) The Authority may withdraw an exemption granted to any person under this section —

- (a) if it contravenes any provision of this Act which is applicable to it or any condition or restriction imposed on it under subsection (4);
- (aa) if it fails to pay the annual fee referred to in section 99A;
- (b) if it contravenes any direction issued to it under section 101(1); or
- (c) if the Authority considers that it is carrying on business in a manner that is, in the opinion of the Authority, contrary to the public interest.

(7) Where the Authority withdraws an exemption granted to any person under this section, the Authority need not give the person an opportunity to be heard.

(8) A withdrawal under subsection (6) of an exemption granted to any person shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by the person, whether the agreement, transaction or arrangement was entered into before or after, the withdrawal of the exemption; or
- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

(9) A person that is aggrieved by a decision of the Authority made under subsection (6) may, within 30 days after it is notified of the decision of the Authority, appeal to the Minister whose decision shall be final.

[...]

PART IX
SUPERVISION AND INVESTIGATION
Division 1 – Supervisory Powers

[...]

Subdivision 2 Inspection Powers of Authority

Inspection by Authority

150.—(1) The Authority may inspect under conditions of secrecy, the books of an approved exchange, a recognised market operator, an exempt market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, an approved holding company, an approved trustee approved under section 289, the holder of a capital markets services licence, an exempt person or a representative.

(2) For the purpose of an inspection under this section —

- (a) a person referred to in subsection (1) or any person in possession of the books, shall produce such books to the Authority and give such information and facilities as may be required by the Authority; and
- (b) a person referred to in subsection (1) shall procure that any person who is in possession of such books produce the books to the Authority and give such information and facilities as may be required by the Authority.

(3) The Authority may —

- (a) make copies of, or take possession of, any of the books;

- (b) use, or permit the use of, any of the books for the purposes of any proceedings under this Act; and
- (c) retain possession of any of the books for so long as is necessary —
 - (i) for the purposes of exercising a power conferred by this section (other than subsection (5));
 - (ii) for a decision to be made about whether or not any proceedings under this Act to which the books concerned would be relevant should be instituted; or
 - (iii) for such proceedings to be instituted and carried on.
- (4) No person shall be entitled, as against the Authority, to claim a lien on any of the books, but such a lien is not otherwise prejudiced.
- (5) While the books are in the possession of the Authority, the Authority —
 - (a) shall permit another person to inspect at all reasonable times such of the books (if any) as the other person would be entitled to inspect if they were not in the Authority's possession; and
 - (b) may permit another person to inspect any of the books.
- (6) The Authority may require a person who produced any of the books to the Authority to explain to the best of his knowledge and belief any matter about the compilation of the books or to which the books relate.
- (7) Any person who fails, without reasonable excuse, to comply with subsection (2) or a requirement of the Authority under subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.
- (8) Sections 146 and 147 shall, with the necessary modifications, apply in relation to the production of any book or disclosure of any information to the Authority under this section.
- (9) Section 149 shall, with the necessary modifications, apply in relation to a copy of, or extract from, a book inspected under this section.

Confidentiality of inspection reports

150A.—(1) Where a written report or any part thereof (referred to in this section as the report) has been produced by the Authority upon an inspection under section 150 in respect of any approved exchange, recognised market operator, exempt market operator, licensed trade repository, licensed foreign trade repository, approved clearing house, recognised clearing house, approved holding company, an approved trustee approved under section 289, holder of a capital markets services licence, exempt person or representative (referred to in

this section as the inspected person) and is provided by the Authority to the inspected person, the report shall not be disclosed by the inspected person or, if the inspected person is a corporation, by any of its officers or auditors, to any other person except in the circumstances provided under subsection (2).

(2) Disclosure of the report referred to in subsection (1) may be made —

(a) by the inspected person to any officer or auditor of that inspected person solely in connection with the performance of the duties of the officer or auditor, as the case may be, in that inspected person;

(b) by any officer or auditor of the inspected person to any other officer or auditor of that inspected person, solely in connection with the performance of their duties in that inspected person; or

(c) to such other person as the Authority may approve in writing.

(3) In granting written approval for any disclosure under subsection (2)(c), the Authority may impose such conditions or restrictions as it thinks fit on the inspected person, any of its officers or auditors or the person to whom disclosure is approved, and that person shall comply with such conditions or restrictions.

(4) The obligation on an officer or auditor referred to in subsection (1) shall continue after the termination or cessation of his employment or appointment by the inspected person.

(5) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to him in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both, unless he proves that —

(a) the disclosure was made contrary to his desire;

(b) where the disclosure was made in any written form, he had as soon as practicable after receiving the report surrendered or taken all reasonable steps to surrender the report and all copies thereof to the Authority; and

(c) where the disclosure was made in an electronic form, he had as soon as practicable after receiving the report taken all reasonable steps to ensure that all electronic copies of the report had been deleted and that the report and all copies thereof in other forms had been surrendered to the Authority.

Subdivision 3 Inspection Powers of Foreign Regulatory Authority

Inspection by foreign regulatory authority

150B.—(1) No authority of a country or territory other than Singapore may conduct an inspection in Singapore of the books of —
~~(a) the holder of a capital markets services licence; or~~
~~(b) a person exempted under section 99(1)(a), (b), (c), (d) or (h) from the requirement to hold a capital markets services licence,~~
a relevant person except a foreign regulatory authority with the prior written approval of the Authority and under conditions of secrecy.

(1A) A foreign regulatory authority may, with the prior written approval of the Authority:

- (a) in the case of a relevant person incorporated outside Singapore, request the auditors of the head office of the relevant person, or appoint any person; or
- (b) in the case of a relevant person incorporated in Singapore, request the auditors of the parent company of the relevant person, or appoint any person,

to conduct the inspection under subsection (1) and in such event, the provisions of this section (other than this subsection) shall apply to the auditors or the person, as the case may be, as if a reference to the foreign regulatory authority or any official of the foreign regulatory authority in this section includes a reference to the auditors or the person.

(1B) Subsection (1) shall not apply to a foreign regulatory authority which has obtained the prior approval of the Authority under the Banking Act (Cap. 19) to conduct an inspection in Singapore of a person exempted under section 99(1)(a) or (b).

(2) In deciding whether to grant approval to a foreign regulatory authority under subsection (1), the Authority may have regard to the following considerations:

- (a) whether the inspection, and the information obtained in the course of the inspection, is required by the foreign regulatory authority for the sole purpose of enabling the foreign regulatory authority to carry out its regulatory functions;

- (b) whether the foreign regulatory authority has regulatory oversight in its jurisdiction over the ~~holder of the capital markets services licence or the person exempted under section 99(1)(a), (b), (c), (d) or (h), as the case may be~~relevant person;
- (c) whether the foreign regulatory authority is prohibited by the laws applicable to it from disclosing information obtained by it in the course of the inspection to any other person;
- (d) whether the foreign regulatory authority has provided or is willing to provide similar assistance to the Authority; and
- (e) such other matters as the Authority may consider relevant.

(3) The Authority may at any time, whether before, on or after giving written approval for an inspection under this section, impose conditions or restrictions on the foreign regulatory authority relating to —

- (a) the classes of information to which the foreign regulatory authority shall or shall not have access in the course of the inspection;
- (b) the conduct of the inspection;
- (c) the use or disclosure of any information obtained in the course of the inspection; and
- (d) such other matters as the Authority may determine.

(4) The Authority may, in relation to an inspection by a foreign regulatory authority conducted or to be conducted under this section on the ~~holder of a capital markets services licence or a person exempted under section 99(1)(a), (b), (c), (d) or (h)~~relevant person, at any time, by notice in writing to the ~~holder or person exempted~~relevant person, impose such conditions or restrictions on the ~~holder or person exempted~~relevant person as it may think fit, and the ~~holder or person exempted~~relevant person shall comply with such conditions or restrictions.

~~(5) For the purposes of this section and section 150C, a reference to a foreign regulatory authority is a reference to an authority of a country or territory other than Singapore, exercising any function that corresponds to a regulatory function of the Authority under the Monetary Authority of Singapore Act (Cap. 186).~~

(5) For the purposes of this section and section 150C –

(a) a “relevant person” means –

- (i) the holder of a capital markets services licence;
- (ii) a person exempted from the requirement to hold a capital markets services licence under section 99(1)(a), (b), (c), (d) or (h);

- (iii) an approved exchange;
- (iv) a recognised market operator incorporated in Singapore;
- (v) a licensed trade repository;
- (vi) an approved clearing house;
- (vii) a recognised clearing house incorporated in Singapore;
- (viii) an approved holding company incorporated in Singapore; and
- (ix) an approved trustee referred to in section 289.

(b) a reference to a foreign regulatory authority is a reference to an authority of a country or territory other than Singapore, exercising any function that corresponds to a regulatory function of the Authority under the Monetary Authority of Singapore Act (Cap. 186) and the written laws set out in the Schedule to the Monetary Authority of Singapore Act; and

(c) a reference to a parent company is a reference to a financial institution which is able to exercise a significant influence over the discretion and management of, or which has a controlling interest in, a relevant person.

Confidentiality of inspection report by foreign regulatory authority

150C.—(1) Where a written report or any part thereof (referred to in this section as the report) has been produced by a foreign regulatory authority upon an inspection under section 150B in respect of any ~~holder of a capital markets services licence or person exempted under section 99(1)(a), (b), (c), (d) or (h)~~ relevant person (referred to in this section as the inspected person) and is provided by the foreign regulatory authority to the inspected person, the report shall not be disclosed by the inspected person or, if the inspected person is a corporation, by any of its officers or auditors, to any other person except in the circumstances provided under subsection (2).

(2) Disclosure of the report referred to in subsection (1) may be made —

- (a) by the inspected person to any officer or auditor of that inspected person solely in connection with the performance of the duties of the officer or auditor, as the case may be, in that inspected person;
- (b) by any officer or auditor of the inspected person to any other officer or auditor of that inspected person, solely in connection with the performance of their duties in that inspected person;
- (c) to the Authority, if requested by the Authority; or
- (d) to such other person as the Authority may approve in writing.

(3) In granting written approval for any disclosure under subsection (2)(d), the Authority may impose such conditions or restrictions as it thinks fit on the inspected person, any of its officers or auditors or the person to whom

disclosure is approved, and that person shall comply with such conditions or restrictions.

(4) The obligation on an officer or auditor referred to in subsection (1) shall continue after the termination or cessation of his employment or appointment by the inspected person.

(5) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to him in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both, unless he proves that —

- (a) the disclosure was made contrary to his desire;
- (b) where the disclosure was made in any written form, he had as soon as practicable after receiving the report surrendered or taken all reasonable steps to surrender the report and all copies thereof to the Authority; and
- (c) where the disclosure was made in an electronic form, he had as soon as practicable after receiving the report taken all reasonable steps to ensure that all electronic copies of the report had been deleted and that the report and all copies thereof in other forms had been surrendered to the Authority.

[...]

PART XIII
OFFERS OF INVESTMENTS
Division 2 – Collective Investment Schemes
Subdivision (2) - Authorisation and recognition

[...]

Approval of chief executive officer and director of an approved trustee

289A.—(1) No approved trustee shall appoint a person as its chief executive officer or director, unless the approved trustee has obtained the approval of the Authority.

(2) The Authority may, by notice in writing, require an approved trustee to obtain the approval of the Authority for the appointment of any person to any key management position or committee of the approved trustee and the approved trustee shall comply with the notice.

(3) An application for approval under subsection (1) or (2) shall be made in such form and manner as the Authority may prescribe.

(4) Where an approved trustee has obtained the approval of the Authority to appoint a person as its chief executive officer or director under subsection (1), the person may be re-appointed as its chief executive officer or director, as the case may be, of the approved trustee immediately upon the expiry of the earlier term without the approval of the Authority.

(5) Without prejudice to any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1) or (2), have regard to such requirements as the Authority may prescribe or specify in directions issued by notice in writing.

(6) The Authority shall not refuse an application for approval under subsection (1) without giving the approved trustee an opportunity to be heard, except where the person proposed to be appointed —

- (a) is an undischarged bankrupt, whether in Singapore or elsewhere; or
- (b) has been convicted, whether in Singapore or elsewhere, of an offence
 -
 - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

(7) Where the Authority refuses an application for approval under subsection (1), the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

(8) Without prejudice to the Authority's power to impose conditions or restrictions under section 289(1A), the Authority may, at any time by notice in writing to the approved trustee, impose on it a condition requiring it to notify the Authority of a change to any specified attribute (such as residence and nature of appointment) of its chief executive officer or director, and vary any such condition.

(9) Any approved trustee which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

Inspection of approved trustees

~~290.—(1) The Authority may, from time to time, inspect the books of an approved trustee.~~

~~(2) For the purpose of an inspection under this section, the approved trustee under inspection shall afford the Authority access to, and shall produce, its books and shall give such information and facilities as may be required to conduct the inspection.~~

~~(3) The Authority shall have the power to copy or take possession of the books of an approved trustee under inspection.~~

~~(4) An approved trustee which fails, without reasonable excuse, to produce any book or furnish any information or facilities in accordance with subsection (2), or otherwise obstructs the Authority in the exercise of its powers under this section, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.~~

[...]

Disqualification or removal of director or executive officer

292A.—(1) Notwithstanding the provisions of any other written law —

(a) an approved trustee shall not, without the prior written consent of the Authority, permit a person to act as its executive officer; and

(b) an approved trustee which is incorporated in Singapore shall not, without the prior written consent of the Authority, permit a person to act as its director,

if the person —

- (i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 9(1)(s) of the Financial Institutions (Miscellaneous Amendments) Act 2013, being an offence —
 - (A) involving fraud or dishonesty;
 - (B) the conviction for which involved a finding that he had acted fraudulently or dishonestly; or
 - (C) that is specified in the Third Schedule to the Registration of Criminals Act (Cap. 268);
- (ii) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (iii) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (iv) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (v) has had a prohibition order under section 59 of the Financial Advisers Act (Cap. 110), section 35V of the Insurance Act (Cap. 142) or section 101A made against him that remains in force; or
- (vi) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —
 - (A) which is being or has been wound up by a court; or
 - (B) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the regulatory authority in that foreign country or territory.

(2) Notwithstanding the provisions of any other written law, where the Authority is satisfied that a director of an approved trustee which is incorporated in Singapore, or an executive officer of an approved trustee is not a fit and proper person to be a director or executive officer (as the case may be), the Authority may, by notice in writing to the approved trustee, direct the approved trustee to remove the director or executive officer from his office or employment within such period as may be specified by the Authority in the notice, and the approved trustee shall comply with the notice.

(2A) In assessing whether to direct an approved trustee to remove a director or executive officer from his office or employment under subsection (2), the Authority may consider any matter which it considers relevant, including (but not limited to) whether:

- (a) he has wilfully contravened or wilfully caused the approved trustee to contravene any provision of this Act;
- (b) he has, without reasonable excuse, failed to secure the compliance of the approved trustee with this Act, the Monetary Authority of Singapore Act (Cap. 186) or any of the written laws set out in the Schedule to that Act;
or
- (c) he has failed to discharge any of the duties of his office, or employment;
or
- (d) his removal is necessary in the public interest or for the protection of the investors.

~~the Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by notice in writing to the approved trustee, direct the approved trustee to remove the director or executive officer, as the case may be, from his office or employment within such period as may be specified by the Authority in the notice, and the approved trustee shall comply with the notice.~~

(3) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, when determining whether a director or an executive officer of an approved trustee has failed to discharge the duties of his office for the purposes of subsection (2A)(c), have regard to such criteria as may be prescribed or as may be specified in written directions.

(4) The Authority shall not direct an approved trustee to remove a person from his office or employment under subsection (2) without giving the approved trustee an opportunity to be heard, except in the following circumstances:

(a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;

(b) the person has been convicted, whether in Singapore or elsewhere, of an offence —

(i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

(5) Where the Authority directs an approved trustee to remove a person from his office or employment under subsection (2), the Authority need not give that person an opportunity to be heard.

~~(4) Before directing an approved trustee to remove a person from his office or employment under subsection (2), the Authority shall —~~

~~— (a) give the approved trustee and the person notice in writing of its intention to do so; and~~

~~— (b) in the notice referred to in paragraph (a), call upon the approved trustee and the person to show cause, within such time as may be specified in the notice, why the person should not be removed.~~

~~(5) If the approved trustee and the person referred to in subsection (4) —~~

~~— (a) fail to show cause within the time specified under subsection (4)(b) or within such extended period of time as the Authority may allow; or~~

~~— (b) fail to show sufficient cause,~~

~~the Authority may direct the approved trustee to remove the person under subsection (2).~~

(6) Any approved trustee ~~that which, or any director or executive officer of an approved trustee who,~~ is aggrieved by a direction of the Authority made in relation to the approved trustee under subsection (2) may, within 30 days after the approved trustee is notified of receiving the direction, appeal ~~in writing~~ to the Minister, whose decision shall be final.

(6A) Notwithstanding the lodging of an appeal under subsection (6), any action taken by the Authority under this section shall continue to have effect pending the decision of the Minister.

(6B) The Minister may, when deciding an appeal under subsection (6), make such modification as he considers necessary to any action taken by the Authority under this section, and such modified action shall have effect from the date of the decision of the Minister.

(7) Any approved trustee which contravenes subsection (1) or fails to comply with a notice issued under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(8) No criminal or civil liability shall be incurred by an approved trustee, or any person acting on behalf of the approved trustee, in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of the obligations of the approved trustee under this section.

~~(9) In this section, unless the context otherwise requires —~~

~~“regulated financial institution” means a person who carries on a business, the conduct of which is regulated or authorised by the Authority or, if it is carried on in Singapore, would be regulated or authorised by the Authority;~~

~~“regulatory authority”, in relation to a foreign country or territory, means an authority of the foreign country or territory exercising any function that corresponds to a regulatory function of the Authority under this Act, the Monetary Authority of Singapore Act or any of the written laws set out in the Schedule to that Act.~~

Control of take-over of approved trustee

292AA.—(1) This section applies to all individuals whether resident in Singapore or not and whether citizens of Singapore or not, and to all bodies corporate or unincorporate, whether incorporated or carrying on business in Singapore or not.

(2) No person shall on or after the date of commencement of section x of the Securities and Futures (Amendment) Act 2016, obtain effective control of an approved trustee incorporated in Singapore without the prior written approval of the Authority.

(3) An application for the Authority’s approval under subsection (2) shall be made in writing, and the Authority may approve the application if the Authority is satisfied that —

- (a) the applicant is a fit and proper person to have effective control of the approved trustee;
- (b) having regard to the applicant’s likely influence, the approved trustee is likely to continue to conduct its business prudently and comply with the provisions of this Act and directions made thereunder; and
- (c) the applicant satisfies such other criteria as may be prescribed or as may be specified in written directions by the Authority.

(4) Any approval under subsection (3) may be granted to the applicant subject to such conditions as the Authority may determine, including any condition —

- (a) restricting his disposal or further acquisition of shares or voting power in the approved trustee; or
- (b) restricting his exercise of voting power in the approved trustee, and the applicant shall comply with such conditions.

(4A) The Authority may at any time add to, vary or revoke any condition imposed under subsection (4).

(5) Any condition imposed under subsection (4) shall have effect notwithstanding any provision of the Companies Act (Cap. 50) or anything contained in the memorandum or articles of association of the approved trustee.

(6) For the purposes of this section and section 292AB —

(a) a person shall be regarded as obtaining effective control of an approved trustee —

(i) the person, whether alone or together with any connected person-

(A) acquire or hold, directly or indirectly, 20% or more of the issued share capital of the holder;

(B) control, or is in a position to control, directly or indirectly, 20% or more of the voting power in the holder;

(ii) the directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person (whether acting alone or together with any other person, and whether with or without holding shares or controlling voting power in the holder of a capital markets service licence); or

(iii) the person (whether acting alone or together with any other person, and whether with or without holding shares or controlling voting power in the holder of a capital markets services licence) is in a position to determine the policy of the holder of a capital markets services licence; and

(b) a reference to the voting power in the approved trustee is a reference to the total number of votes that may be cast in a general meeting of the approved trustee.

(7) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both.

(8) Any person who contravenes subsection (4) shall be guilty of an offence.

Objection to control of approved trustee

292AB.—(1) The Authority may serve a written notice of objection on —

(a) any person required to obtain the Authority's approval or who has obtained the approval under section 292AA; or

(b) any person who, whether before, on or after the date of commencement of this section, either alone or together with any connected person, holds, directly or indirectly, 20% or more of the issued share capital of the approved trustee or controls, directly or indirectly, 20% or more of the voting power in the approved trustee,

if the Authority is satisfied that —

- (i) any condition of approval imposed on the person under section 292AA(4) has not been complied with;
- (ii) the person is not or ceases to be a fit and proper person to have effective control of the approved trustee;
- (iii) having regard to the likely influence of the person, the approved trustee is not able to or is no longer likely to conduct its business prudently or to comply with the provisions of this Act or any direction made thereunder;
- (iv) the person does not or ceases to satisfy such criteria as may be prescribed;
- (v) the person has furnished false or misleading information or documents in connection with an application under section 292AA;
or
- (vi) the Authority would not have granted its approval under section 292AA had it been aware, at that time, of circumstances relevant to the person's application for such approval.

(2) The Authority shall not serve a notice of objection on any person without giving the person an opportunity to be heard, except in the following circumstances:

- (a) the person is in the course of being wound up or otherwise dissolved or, in the case of an individual, is an undischarged bankrupt whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person;
- (c) a prohibition order under section 101A has been made by the Authority, and remains in force, against the person;
- (d) the person has been convicted, whether in Singapore or elsewhere, of any offence involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly.

(3) The Authority shall, in any written notice of objection, specify a reasonable period within which the person to be served the written notice of objection shall

—

- (a) take such steps as are necessary to ensure that he ceases to have control of an approved trustee in the manner described in subsection (1)(b); or
- (b) comply with such other requirements as the Authority may specify in written directions.

(4) Any person served with a notice of objection under this section shall comply with the notice.

(5) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both.

[...]

Service

294.—(1) Where a collective investment scheme —

(a) is authorised under section 286, any document relating to the scheme shall be sufficiently served if served on the responsible person for the scheme —

(i) by leaving it at his—the responsible person’s last known address registered office or principal place of business in an envelope addressed to the responsible person;

(ii) by delivering it to the secretary or other like officer of the responsible person at its registered office or principal place of business; or

(iii) by sending it by registered post addressed to the responsible person at its registered office or principal place of business;

(b) is recognised under section 287, any document relating to the scheme shall be sufficiently served if served on the responsible person for the scheme or the representative for the scheme —

(i) by delivering it to the person or to some adult member or employee of his family or household at his last known address place of residence;

(ii) by leaving it at his usual or last known place of residence or business in an envelope addressed to the person;

(iii) by sending it by registered post addressed to the person at his usual or last known place of residence or business; or

(iv) in the case of a body corporate, firm or body of persons —

(A) by delivering it to the secretary or other like officer of the body corporate, firm or body of persons at its registered office or principal place of business; or

(B) by sending it by registered post addressed to the body corporate, firm or body of persons at its registered office or principal place of business.

(1A) For the avoidance of doubt, a reference in subsection (1) to service of any document relating to the scheme shall include the service of any process in relation to the scheme.

(2) Any notice or direction to be given or served by the Authority on a corporation (where a collective investment scheme is constituted as a corporation), the manager for a collective investment scheme, the trustee for a collective investment scheme or the representative for a collective investment scheme shall for all purposes be regarded as duly given or served if it has been
=

(a) delivered ~~or~~ to the person or to some adult member or employee of his family or household at his last known place of residence;

(b) sent by post or facsimile transmission to such person at his last known ~~address~~ place of residence or business;

(c) left at his usual or last known place of residence or business in an envelope addressed to the person; or

(d) in the case of a body corporate, firm or body of persons —

(i) by delivering it to the secretary or other like officer of the body corporate, firm or body of persons at its registered office or principal place of business; or

(ii) by sending it by post or facsimile transmission addressed to the body corporate, firm or body of persons at its registered office or principal place of business.

(3) In the case of a ~~corporation~~ foreign company, the last known address ~~registered office~~ referred to in subsections (1) and (2) shall be —

~~(a) if it is a company incorporated in Singapore, the address of its registered office in Singapore; or~~

~~(b) if it is a foreign company,~~ the address of its registered office in Singapore or the registered address of its agent or, if it does not maintain a ~~place of business~~ registered office in Singapore, its registered office in the place of its incorporation.

(4) Any document, notice or direction sent by post to any person in accordance with subsections (1) and (2) shall be deemed to be duly served on the person at the time when the document, notice or direction, as the case may be, would in the ordinary course of post be delivered.

(5) When proving service of the document, notice or direction referred to in subsection (4), it shall be sufficient to prove that the envelope containing the document, notice or direction as the case may be, was properly addressed, stamped and posted by post.

Winding up

295.—(1) Where a collective investment scheme is to be wound up, whether under this section or otherwise, the responsible person for the scheme shall give notice in writing of the proposed winding up to the Authority at least 7 days before the winding up.

(2) Where the Authority revokes or withdraws the authorisation of a collective investment scheme under section 288, the responsible person and, where applicable, the trustee shall take the necessary steps to wind up the scheme.

(3) Where —

- (a) the responsible person for a collective investment scheme authorised under section 286 is in liquidation; or
- (b) in the opinion of the trustee for a collective investment scheme authorised under section 286 which is constituted as a unit trust, the responsible person for the scheme has ceased to carry on business or has, to the prejudice of the participants of the scheme, failed to comply with any provision of the trust deed in respect of the scheme,

the trustee shall summon a meeting of the participants for the purpose of determining an appropriate course of action.

(4) A meeting under subsection (3) shall be summoned —

- (a) by giving notice in writing of the proposed meeting at least 21 days before the proposed meeting to each participant at his last known address or, in the case of joint participants, to the participant whose name stands first in the records of the responsible person for the scheme; and
- (b) by publishing, at least 21 days before the proposed meeting, an advertisement giving notice of the meeting in at least 4 local daily newspapers, one each published in the English, Malay, Chinese and Tamil languages.

(4A) For the purposes of subsection (4)(a), notice in writing can be given —

- (a) by delivering it to the person or to some adult member or employee of his family or household at his last known place of residence;
- (b) by leaving it at his usual or last known place of residence or business in an envelope addressed to the person;
- (c) by sending it by registered post addressed to the person at his usual or last known place of residence or business; or
- (d) in the case of a body corporate, firm or body of persons —
 - (i) by delivering it to the secretary or other like officer of the body corporate, firm or body of persons at its registered office or principal place of business; or
 - (ii) by sending it by registered post addressed to the body corporate, firm or body of persons at its registered office or principal place of business.

(4B) Any notice sent by registered post to any person in accordance with subsection (4A) shall be deemed to be duly served on the person at the time when the notice would in the ordinary course of post be delivered.

(4C) When proving service of the notice referred to in subsection (4B), it shall be sufficient to prove that the envelope containing the notice was properly addressed, stamped and posted by registered post.

(5) If at any such meeting a resolution is passed by a majority in number representing three-fourths in value of the participants present and voting either

in person or by proxy at the meeting that the scheme to which the trust deed relates be wound up, the responsible person for the scheme and, where applicable, the trustee shall take the necessary steps to wind up the scheme.

(6) Any responsible person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(7) Any responsible person or, where applicable, trustee who contravenes subsection (2) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(8) Any trustee who contravenes subsection (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

PART XV MISCELLANEOUS

Duty not to furnish false information to Authority

329.—(1) Any person who furnishes the Authority with any information under this Act shall use due care to ensure that the information is not false or misleading ~~in any material particular~~.

(2) Subsection (1) shall apply only to a requirement in relation to which no other provision of this Act creates an offence in connection with the furnishing of information.

(3) Any person who —

(a) signs any document lodged with the Authority; or

(b) lodges with the Authority any document by electronic means using any identification or identifying code, password or other authentication method or procedure assigned to him by the Authority,

shall use due care to ensure that the document is not false or misleading ~~in any material particular~~.

~~(4) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.~~ Any person other than an individual which fails to take reasonable care that any information furnished to the Authority under this Act is accurate shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(4A) Any person who furnishes any information which is false or misleading in a material particular to the Authority under this Act shall be guilty of an offence and shall be liable on conviction—

(a) in the case of an individual –

- (i) who committed the offence wilfully, to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 2 years or to both;
- (ii) who did not commit the offence wilfully, to a fine not exceeding \$25,000; or

(b) in any other case, to a fine not exceeding \$50,000.

[...]

Service of documents, etc.

337A.—(1) Any notice, order or document required or authorised by this Act to be served on any person may be served —

(a) by delivering it to the person or to some adult member or employee of his family or household at his last known place of residence;

(b) by leaving it at his usual or last known place of residence or business in an envelope addressed to the person;

(c) by sending it by registered post addressed to the person at his usual or last known place of residence or business; or

(d) in the case of a body corporate, firm or body of persons —

(i) by delivering it to the secretary or other like officer of the body corporate, firm or body of persons at its registered office or principal place of business; or

(ii) by sending it by registered post addressed to the body corporate, firm or body of persons at its registered office or principal place of business.

(2) Any notice, order or document sent by registered post to any person in accordance with subsection (1) shall be deemed to be duly served on the person at the time when the notice, order or document, as the case may be, would in the ordinary course of post be delivered.

(3) When proving service of the notice, order or document referred to in subsection (2), it shall be sufficient to prove that the envelope containing the notice, order or document, as the case may be, was properly addressed, stamped and posted by registered post.

Electronic service

337B.—(1) The Authority may provide an electronic service for the service of any document that is required or authorised by this Act to be given to or served on any person.

(2) For the purposes of the electronic service, the Authority may assign to any person —

- (a) an authentication code; and
- (b) an account with the electronic service.

(3) Notwithstanding section 337A, where any person has given his consent for any document to be given to or served on him through the electronic service, the Authority may give or serve the document on that person by transmitting an electronic record of the document to that person's account with the electronic service.

(4) Where a person has given his consent for a document to be given to or served on him through the electronic service, the document shall be deemed to have been given or served at the time when an electronic record of the document enters his account with the electronic service.

(5) Notwithstanding any other written law, in any proceedings under this Act —

- (a) an electronic record of any document that was given or served through the electronic service; or
- (b) any copy or print-out of that electronic record,

shall be admissible as evidence of the facts stated or contained therein if that electronic record, copy or print-out —

- (i) is certified by the Authority to contain all or any information given or served through the electronic service in accordance with this section; and
- (ii) is duly authenticated in the manner specified in subsection (7) or is otherwise authenticated in the manner provided in the Evidence Act (Cap. 97) for the authentication of computer output.

(6) For the avoidance of doubt —

- (a) an electronic record of any document that was given or served through the electronic service; or
- (b) any copy or print-out of that electronic record,

shall not be inadmissible in evidence merely because the document was given or served without the delivery of any equivalent document or counterpart in paper form.

(7) For the purposes of this section, a certificate —

(a) giving the particulars of —

(i) any person whose authentication code was used to give or serve the document; and

(ii) any person or device involved in the production or transmission of the electronic record of the document, or the copy or print-out thereof;

(b) identifying the nature of the electronic record or copy or print-out thereof; and

(c) purporting to be signed by the Authority or by a person occupying a responsible position in relation to the operation of the electronic service at the relevant time,

shall be sufficient evidence that the electronic record, copy or print-out has been duly authenticated, unless the court, in its discretion, calls for further evidence on this issue.

(8) Where the electronic record of any document, or a copy or print-out of that electronic record, is admissible under subsection (5), it shall be presumed, until the contrary is proved, that the electronic record, copy or print-out accurately reproduces the contents of that document.

(9) The Authority may make regulations which are necessary or expedient for carrying out the purposes of this section, including regulations prescribing the procedure for the use of the electronic service, and the procedure in circumstances where there is a breakdown or interruption of the electronic service.

(10) In this section —

“account with the electronic service”, in relation to any person, means a computer account within the electronic service which is assigned by the Authority to that person for the storage and retrieval of electronic records relating to that person;

“authentication code”, in relation to any person, means an identification or identifying code, a password or any other authentication method or procedure which is assigned to that person for the purposes of identifying and authenticating the access to and use of the electronic service by that person;

“document” includes notice and order;

“electronic record” has the same meaning as in section 2 of the Electronic Transactions Act (Cap. 88).

[...]