

- (a) a statement of the reasons for which the decision is made;
 - (b) the time at which the decision is to take effect; and
 - (c) in so far as applicable, the duration and terms of the removal or suspension of particulars from the register to be imposed under the decision.
- (4A) Where the Monetary Authority has exercised his power under subsection (1) against a relevant individual, the Monetary Authority may disclose to the public details of the decision he has made under that subsection, the reasons for which the decision was made, and any material facts relating to the case.
(Added 19 of 2005 s. 10)
- (5) Without prejudice to the exercise of any powers by the Securities and Futures Commission under the Securities and Futures Ordinance (Cap. 571), the Monetary Authority may make such recommendations to the Securities and Futures Commission concerning any relevant individual in respect of the exercise of the power under section 196 or 197 of that Ordinance as he considers appropriate.
- (6) In this section—
- misconduct** (失當行為), in relation to a relevant individual, means—
- (a) a contravention of any of the relevant provisions, within the meaning of Schedule 1 to the Securities and Futures Ordinance (Cap. 571), which are applicable to the individual; *(Amended 16 of 2016 s. 34)*
 - (b) an act or omission of the individual relating to the carrying on of any regulated activity—
 - (i) by the registered institution in relation to which the individual is a relevant individual; and
 - (ii) which, in the opinion of the Monetary Authority, is or is likely to be prejudicial to the interest of the investing public or to the public interest; or *(Amended 16 of 2016 s. 34)*
 - (c) an act or omission of the individual that—
 - (i) relates to the carrying on of any activity that—
 - (A) is not a regulated activity; and
 - (B) the registered institution, in relation to which the individual is a relevant individual, may

carry on for an open-ended fund company under the Securities and Futures Ordinance (Cap. 571); and

- (ii) in the opinion of the Monetary Authority, is or is likely to be prejudicial to the interest of the investing public or to the public interest, (*Added 16 of 2016 s. 34*)

and **guilty of misconduct** (犯失當行為) shall be construed accordingly;

relevant individual (有關人士) means relevant individual within the meaning of section 20(10);

relevant particulars (有關資料), in relation to a relevant individual, means the information contained in the register maintained under section 20(1)(ea) in relation to the individual.

- (7) For the purposes of paragraphs (b) and (c) of the definition of **misconduct** in subsection (6), the Monetary Authority shall not form any opinion that any act or omission is or is likely to be prejudicial to the interest of the investing public or to the public interest, unless he has had regard to such of the provisions set out in any code of conduct published under section 169 of the Securities and Futures Ordinance (Cap. 571) or any code or guideline published under section 112ZR or 399 of that Ordinance as are in force at the time of occurrence of, and applicable in relation to, the act or omission. (*Amended 16 of 2016 s. 34*)

(*Added 6 of 2002 s. 5*)

[58A.01] Enactment history

This section was added pursuant to s 5 of the Banking (Amendment) Ordinance 2002 (6 of 2002), commencing on 1 April 2003.

Subsection (4A) was added pursuant to s 10 of the Banking (Amendment) Ordinance 2005 (19 of 2005), commencing on 2 December 2005.

Subsections (6) and (7) were amended pursuant to s 34 of the Securities and Futures (Amendment) Ordinance 2016 (16 of 2016), commencing on 30 July 2018.

[58A.02] General note

This section was added to empower the HKMA to publicly or privately reprimand an exempt authorised. To ensure a level playing field with the treatment of

Securities and Futures Commission's licensees and to provide greater transparency to investors, this section was added so that the range of sanctions available to the HKMA under the Banking Ordinance (Cap 155) would be widened to include the issue of reprimands (both publicly and privately depending on the seriousness of the misconduct) against exempt authorised institutions which have committed misconduct in their 'regulated activities'. Apart from creating the deterrent effect, this would enable investors to assess the quality of the institutions with which they are dealing.

The grounds for issuing a reprimand are similar to those applicable to Securities and Futures Commission's licensees as set out in the Securities and Futures Ordinance (Cap 571). The exempt authorised institutions against which the HKMA intends to issue a reprimand will be given an opportunity of being heard and provided with the right to appeal to the Chief Executive in Council. This is in line with the existing channel for other appealable HKMA decisions in the Banking Ordinance, and the right for Securities and Futures Commission's licensees to appeal to the Securities and Futures Appeals Tribunal under the Securities and Futures Ordinance (Cap 571).

[58A.03] Subsection (1): the Monetary Authority is of the opinion that a relevant individual is ... a fit and proper person

See the Fit and Proper Guidelines issued by the SFC in October 2013 (<https://www.sfc.hk/web/EN/rules-and-standards/codes-and-guidelines/guidelines/>).

[58A.04] Subsection (1): ... after consultation with the Securities and Futures Commission ...

The HKMA is obliged to consult the Securities and Futures Commission before it exercises its power under this section.

[58A.05] Subsection (2): ... the Monetary Authority may exercise his power ... whether or not the information arises from an investigation under section 182 of the Securities and Futures Ordinance (Cap 571)

Section 182 of the Securities and Futures Ordinance (Cap 571) authorises the Securities and Futures Commission, with the consent of the Financial Secretary, to appoint persons to investigate any misconduct where the Commission has reasonable cause to believe that an offence under any of the relevant provisions or any person may have engaged in defalcation, fraud, misfeasance or other misconduct.

[58A.06] Subsection (3) ... an opportunity of being heard

See definition of 'an opportunity of being heard' under s 2 which defines it as 'a reasonable opportunity of being heard'.

[58A.07] Subsection (4A) ... may disclose to the public details of the decision he has made

The HKMA has been empowered under the Banking (Amendment) Ordinance 2002 (6 of 2002) to use the same standards and approaches adopted by the Securities and Futures Commission (SFC) in the HKMA's front-line supervision of authorised institutions' securities business. The SFC is authorised to publish its disciplinary action as well as the relevant facts and findings surrounding the case. Before the introduction of sub-s (4A), although it was supposed that the HKMA was given similar powers under ss 58A and 71C of this Ordinance, there was doubt as to whether the HKMA could publish his disciplinary action in view of the confidentiality obligations imposed on him by s 120 of this Ordinance. In order to maintain a level playing field between the authorised institutions and SFC regulated persons, this sub-s (4A) together with s 71C(7A) were introduced by the Banking (Amendment) Ordinance 2005 (19 of 2005) in order to put it beyond doubt that the HKMA may publish its disciplinary decisions in a manner similar to that followed by the SFC.

[58A.08] Subsection (5): in respect of the exercise of the power under s 196 or 197 of Securities and Futures Ordinance (Cap 571)

Section 196 of the Securities and Futures Ordinance (Cap 571) provides that:

- (1) ... the [Securities and Futures] Commission may exercise such of the following powers as it considers appropriate in the circumstances of the case-
- (i) where the regulated person is a registered institution-
 - (A) revoke its registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered; or
 - (B) suspend its registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered for such period or until the occurrence of such event as the Commission may specify;
 - (ii) publicly or privately reprimand the regulated person;
 - (iii) prohibit the regulated person from doing all or any of the following in relation to such regulated activity or regulated activities, and for such period or until the occurrence of such event, as the Commission may specify-
 - (A) applying to be licensed or registered;
 - (B) applying to be approved under section 126(1) as a responsible officer of a licensed corporation;
 - (C) applying to be given consent to act or continue to act as an executive officer of a registered institution under section 71C of the Banking Ordinance (Cap 155);
 - (D) seeking through a registered institution to have his name entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap 155) as that of a person engaged by the registered institution in respect of a regulated activity.'

Section 197 of the Securities and Futures Ordinance (Cap 571) provides that:

- (1) ... the [Securities and Futures] Commission may revoke a registered institution's registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered, or suspend a registered institution's registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered for such period or until the occurrence of such event as the Commission may specify ...'
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