

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 ...'

## PART XI

### AUDITS AND MEETINGS

#### 59. Audit

- (1) Every authorized institution, and its auditors, shall comply with the Companies Ordinance (Cap 32) with respect to the audit of a company's accounts, whether or not the institution is incorporated under that Ordinance.
- (2) The Monetary Authority may, after consultation with an authorized institution, by notice in writing to the institution require the institution to submit to him a report-
  - (a) subject to subsection (3), prepared by an auditor or auditors appointed by the institution;
  - (b) on such matters as the Monetary Authority may reasonably require for the exercise of his functions under this Ordinance including, but without limiting the generality of such matters, such a report-
    - (i) on the state of affairs or profit and loss, or both, of the institution based on an audit of the institution's accounts carried out in respect of the period specified in the notice requiring such a report; or
    - (ii) on whether or not the institution has in place systems of control which are adequate to enable, as much as is practicable, the affairs, business and property of the institution to be prudently managed and the institution to comply with its duties under this Ordinance; and
  - (c) within such period and prepared in such manner as the Monetary Authority may reasonably require.

- (3) The auditor or auditors appointed by an authorized institution to prepare a report required under subsection (2) shall be-
  - (a) an auditor or auditors appointed by the institution prior to the report being so required and approved by the Monetary Authority for the purpose of preparing the report;
  - (b) an auditor approved, or an auditor from amongst auditors nominated, by the Monetary Authority for the purpose of preparing the report after consultation with the institution; or
  - (c) an auditor referred to in paragraph (a) and an auditor referred to in paragraph (b), as may be required by the Monetary Authority.
- (4) (Repealed 42 of 1999 s 4)
- (5) Every director, every chief executive and every manager of an authorized institution which contravenes subsection (1), and every director, every chief executive and every manager of an authorized institution which, without reasonable excuse, contravenes subsection (2) commits an offence and is liable-
  - (a) on conviction upon indictment to a fine at tier 7 and to imprisonment for 2 years and, in the case of a continuing offence under subsection (2), to a further fine at tier 3 for every day during which the offence continues; or
  - (b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months and, in the case of a continuing offence under subsection (2), to a further fine at tier 2 for every day during which the offence continues.
- (6) In this section-
 

'adequate' (足夠), in relation to systems of control, includes operating effectively;

'systems of control' (管控制度) includes procedures.

#### [59.01] Enactment history

This section was added pursuant to s 4 of the Banking (Amendment) Ordinance 1992 (67 of 1992), commencing on 1 September 1992, and was further amended pursuant to s 3 of the Banking (Amendment) Ordinance 1990 (43 of 1990), commencing on 29 June 1990.

Subsection (2)(b)(ii) was amended pursuant to s 17 of the Banking (Amendment) Ordinance 1995 (49 of 1995), commencing on 15 November 1995.

Subsection (5) was amended pursuant to s 11 of the Banking (Amendment) Ordinance 2005 (19 of 2005), commencing on 2 December 2005.

#### [59.02] General note

For conflicts or inconsistencies with Companies Ordinance (Cap 32), see s 3(5) below; Power of the Chief Executive to give directions, see s 10 above; Exemption from subsection (1) for authorized institution incorporated outside Hong Kong, see s 60(6) below; Returns and information to be submitted to the Monetary Authority, see s 63 below; Defence of director and manager, see s 126 below; Consent of Secretary for Justice to prosecute, see s 136 below; Power to appoint includes power to suspend, dismiss, re-appoint, see s 42 of the Interpretation and General Clauses Ordinance (Cap 1); Power to relate back to date of appointment, see s 47 of the Interpretation and General Clauses Ordinance (Cap 1); Appeal to the Chief Executive in Council, see s 64 of the Interpretation and General Clauses Ordinance (Cap 1).

#### [59.03] Subsection (1): Shall comply with the Companies Ordinance (Cap 32) with respect to the audit of a company's account

The Companies Ordinance (Cap 32) imposes various accounting requirements on companies incorporated under the Companies Ordinance (Cap 32). These regulate:

- (1) the appointment, removal, resignation and qualifications of auditors (ss 131, 132, 140, 140A and 140B of the Companies Ordinance (Cap 32));
- (2) the keeping of books of account (s 121 of the Companies Ordinance (Cap 32));
- (3) the duty of directors to lay accounts before the shareholders once in every calendar year (s 122 of the Companies Ordinance (Cap 32));
- (4) the form and contents of the accounts laid before the shareholders (ss 123, 124, 125, 126, 128, 129, 129A, 129B, 129C, 141D, 161, 161A and 161B and the Tenth Schedule of the Companies Ordinance (Cap 32));
- (5) the director's report which must be attached to the accounts (s 129D of the Companies Ordinance (Cap 32));
- (6) the auditor's obligation to make a report on the accounts examined by them and on the accounts laid before shareholders (s 141(1) of the Companies Ordinance (Cap 32));
- (7) the contents of the auditors' report (ss 141(3), 141(4) and 141(6) of the Companies Ordinance) which must be annexed to the accounts (under s 129C of the Companies Ordinance (Cap 32));
- (8) the duty of the auditors of a company, in preparing their report, to carry out such investigations as will enable them to form an opinion as to whether proper books of account have been kept by the company and proper returns adequate for their audit have been received from

branches not visited by them, and whether the company's accounts are in agreement with the books of account and returns (s 141(4) of the Companies Ordinance (Cap 32));

- (9) the duties of a holding company and subsidiary in relation to the provision of information to the auditors of a holding company (s 133(1) of the Companies Ordinance (Cap 32)).

It is not at all clear which of these provisions are the provisions 'with respect to the audit of a company's account' to which this subsection refers.

In relation to authorized institution incorporated under the Companies Ordinance (Cap 32), this may be of no practical interest as the institution will be obliged to comply with all the requirements of the Companies Ordinance (Cap 32), although the penalties for failure to comply with this subsection are substantially greater than those imposed by the Companies Ordinance (Cap 32).

#### [59.04] Whether or not the institution is incorporated under that Ordinance

The difficulties of construing this subsection are of greater importance to an authorized institution incorporated outside Hong Kong. Such institution will usually be subject to the accounting requirements under the law of their place of incorporation and these may conflict with those of the Companies Ordinance (Cap 32).

It would seem that the provision 'with respect to the audit of a company's accounts' include at least:

- (1) the obligation of the auditors of the institution to make a report complying with the Companies Ordinance (Cap 32) on every balance sheet, every profit and loss account and all group accounts laid before the shareholders of the institution (ss 141(1), 141(3) and 141(6) of the Companies Ordinance (Cap 32));
- (2) the obligation imposed on the auditors to make investigations and the rights conferred on the auditors to have access to information and to be provided with information and explanations (ss 141(4) and 141(5) of the Companies Ordinance (Cap 32));
- (3) the duties of a holding company and subsidiary in relation to the provision of information to the auditors of a holding company (s 133(1) of the Companies Ordinance (Cap 32)).

The other obligations imposed by the Companies Ordinance (Cap 32) on a company seem not to relate to the 'audit of a company's account' but to the maintenance of books and records and the preparation of accounts by the directors. Thus, it would seem that this subsection does not require an authorized institution incorporated outside Hong Kong to lay accounts before shareholders at particular intervals or to prepare its accounts in the form required by the Companies Ordinance (Cap 32). However, if the accounts did not comply with the Companies Ordinance (Cap 32), or if the institution had not maintained books and records complying with the Companies Ordinance, the auditors would have to refer to that fact in their report (ss 141(3) and 141(4) of the Companies Ordinance (Cap 32)).

It does seem that this subsection requires an authorized institution to appoint a professional accountant holding a practicing certificate under the Professional Accountants Ordinance as its auditor for this purpose. Otherwise it seems that the requirements of the Companies Ordinance (Cap 32) are not complied with in the absence of an auditor qualified to act as such under that Ordinance. This may not prevent an institution from having other auditors in order to fulfil the requirements of the laws of the place in which it is incorporated.

The inconvenience caused to an authorized institution incorporated outside Hong Kong is likely to be such that it will wish to apply to the Monetary Authority for an exemption from this subsection under s 60(6) below. As long as the required documents are lodged with the Monetary Authority under s 60(5) below, the institution may apply for exemption.

**[59.05] Power of shareholder of certain private companies to waive compliance with requirements as to account**

Under s 141D of the Companies Ordinance (Cap 32), the shareholders of certain private companies (defined under s 29 of the Companies Ordinance (Cap 32)) may agree to waive compliance with certain of the accounting provisions of the Companies Ordinance (Cap 32). However, these provisions will not be available to banks and deposit-taking companies as they do not apply to a private company (a) which carries on banking business and holds a valid banking licence or (b) which by way of trade or business, other than banking business, accepts loans of money at interest, or repayable at a premium, other than on terms involving issue of debenture or other securities (ss 141D(3)(b) and 141D(3)(e) of the Companies Ordinance (Cap 32)).

**[59.06] Subsection (2): After consultation with the authorized institution**

It appears that there must have been actual consultation, presumably for a reasonable period, before the Monetary Authority can exercise his powers to require an authorized institution to submit a report under this subsection.

**[59.07] Subsection (5): Every director, every chief executive and every manager ... contravenes subsection (1) or (2) ... is liable**

It seems that this subsection creates a strict liability offence. However, person being charged under this subsection may have a defence under s 126 below if he can prove that he has taken reasonable precautions and has exercised due diligence to avoid the commission of this offence by himself or any person under his control.

**59A. Notification in respect of auditors**

- (1) An authorized institution incorporated in Hong Kong shall immediately give written notice to the Monetary Authority if-
- (a) the institution-
    - (i) proposes to give notice to its members of an

- ordinary resolution removing an auditor before the expiration of his term of office; or
  - (ii) gives notice to its members of an ordinary resolution replacing an auditor at the expiration of his term of office; or
  - (b) a person ceases to be an auditor of the institution otherwise than in consequence of such a resolution.
- (2) An auditor of an authorized institution appointed under section 131 of the Companies Ordinance (Cap 32) shall immediately give written notice to the Monetary Authority if he-
- (a) resigns before the expiration of his term of office;
  - (b) does not seek to be re-appointed; or
  - (c) decides to include in his report on the institution's accounts any qualification or adverse statement as to a matter mentioned in section 141 of the Companies Ordinance (Cap 32).
- (3) Every director, every chief executive and every manager of an authorized institution which contravenes subsection (1) commits an offence and is liable-
- (a) on conviction upon indictment to a fine at tier 7 and to imprisonment for 2 years and to a further fine at tier 3 for every day for which the institution fails to give the notice required under that subsection to the Monetary Authority; or
  - (b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months and to a further fine at tier 2 for every day for which the institution fails to give the notice required under that subsection to the Monetary Authority.

**[59A.01] Enactment history**

This section was added pursuant to s 4 of the Banking (Amendment) Ordinance 1990 (43 of 1990), commencing on 1 September 1990, and was further amended pursuant to s 25 of the Banking (Amendment) Ordinance 1992 (82 of 1992), commencing on 10 December 1992.

Subsection (1) was amended pursuant to s 18 of the Banking (Amendment) Ordinance 1995 (49 of 1995), commencing 15 November 1995.

Subsection (3) was amended pursuant to s 24 of the Banking (Amendment) Ordinance 2001 (32 of 2001), commencing on 24 May 2002.

**[59A.02] General note**

or in part and subject to any modifications the Monetary Authority thinks fit, having regard to the prevailing circumstances in Hong Kong;

- (c) may apply, adopt or incorporate by reference, with or without modifications, any document relating to disclosure issued by the Basel Committee, whether in whole or in part and whether in force at the time of issue or as in force from time to time;
  - (d) may provide for the Monetary Authority, on application made by an authorized institution aggrieved by a decision of the Monetary Authority made in relation to it under the rules, to review the decision; and
  - (e) may contain incidental, supplementary, consequential, transitional or savings provisions that may be necessary or expedient in consequence of the rules.
- (3A) Rules made under subsection (1) may provide that a decision made by the Monetary Authority under the rules is a decision to which section 101B(1) applies.

## 61. Communication by auditor with Monetary Authority

- (1) No duty which an auditor of an authorized institution may be subject to shall be regarded as contravened by reason of his communicating in good faith to the Monetary Authority, whether or not in response to a request made by the Monetary Authority, any information or opinion on a matter of which he becomes aware in his capacity as auditor and which is relevant to any function of the Monetary Authority under this Ordinance.
- (2) Subsection (1) applies to an auditor of a former authorized institution and a former auditor as it applies to an auditor of an authorized institution.
- (3) This section shall, subject to such modifications as may be necessary, apply to and in relation to an auditor of an approved money broker, an auditor of a former approved money broker and a former money broker auditor as it applies, respectively, to an auditor of an authorized institution, an auditor of a former authorized institution and a former auditor, and the other provisions of this Ordinance shall be construed accordingly.
- (4) In subsection (3)-
  - 'former approved money broker' (前核准貨幣經紀) means a person who was formerly an approved money broker;
  - 'former money broker auditor' (前貨幣經紀核數師) means a person who was formerly the auditor of an approved money broker or former approved money broker.

## [61.01] Enactment history

This section was replaced pursuant to s 5 of the Banking (Amendment) Ordinance 1990 (43 of 1990), commencing on 29 June 1990.

Subsection (1) was amended pursuant to s 25 of the Banking (Amendment) Ordinance 1992 (82 of 1992), commencing on 10 December 1992.

Subsection (3) was added pursuant to s 13 of the Banking (Amendment) Ordinance 1997 (4 of 1997), commencing on 15 May 1997.

Subsection (4) was added pursuant to s 13 of the Banking (Amendment) Ordinance 1997 (4 of 1997), commencing on 15 May 1997.

## [61.02] General note

For audit, see s 59 above; Publication of audited balance sheet, see s 60 above.

This section provides that an auditor is not regarded as in breach of his duty if he is acting in good faith.

## [61.03] In his capacity as auditor

The auditor is not liable only if he is acting in his capacity as an auditor of an authorized institution.

## 62. (Repealed 43 of 1990 s 6)

### [62.01] Enactment history

This section was repealed pursuant to s 6 of the Banking (Amendment) Ordinance 1990 (43 of 1990), commencing on 29 June 1990.

## PART XII

### DISCLOSURE OF INFORMATION BY AUTHORIZED INSTITUTIONS

## 63. Returns and information to be submitted to the Monetary Authority

- (1) Every authorized institution shall submit to the Monetary Authority-
  - (a) not later than 14 days after the last day of each calendar month a return showing the assets and liabilities of its principal place of business in Hong Kong and all local branches thereof at the close of business on the last business day or last day of that month; and

- (b) not later than 14 days after the last day of each quarter ending on 31 March, 30 June, 30 September and 31 December respectively, or upon any other day which may be approved by the Monetary Authority, a return relating to its principal place of business in Hong Kong and all local branches thereof as at the close of business on the last business day or last day of the preceding quarter:

Provided that the Monetary Authority may by permission in writing allow the returns referred to in paragraphs (a) and (b) to be submitted at less frequent intervals.

- (2) The Monetary Authority may require an authorized institution to submit (including periodically submit) such further information, or require an approved money broker to submit (including periodically submit) such information, as he may reasonably require for the exercise of his functions under this Ordinance and such information shall be submitted within such period (or, where such information is required periodically, within such periods) and in such manner as the Monetary Authority may require.

(2A) The Monetary Authority may require-

- (a) any holding company of an authorized institution;  
 (b) any subsidiary of any such holding company; or  
 (c) any subsidiary of an authorized institution, to submit such information-
- (i) in any case, as he may reasonably require for the exercise of his functions under this Ordinance;  
 (ii) in the case of paragraph (a) or (b), that the Monetary Authority considers is necessary to be submitted in the interests of the depositors or potential depositors of the authorized institution concerned; and  
 (iii) within such period and in such manner as the Monetary Authority may require.
- (3) The Monetary Authority may require an authorized institution to submit to him, on or before such date as he may reasonably specify in the requirement, a report prepared by, subject to subsection (3B), an auditor or auditors appointed by the institution as to whether or not, in the opinion of the auditor or auditors, a return submitted to him pursuant to subsection (1), or information submitted to him pursuant to subsection (2), by the institution is correctly compiled, in all material respects, from the books and records of the institution and, if not so correctly compiled, the nature and extent of the incorrectness.

(3A) The Monetary Authority may require an authorized institution to submit to him, on or before such date as he may reasonably specify in the requirement and, subject to subsection (3C), in respect of the period specified in the requirement, a report prepared by, subject to subsection (3B), an auditor or auditors appointed by the institution as to all or any of the following-

- (a) whether or not, during that period, in the opinion of the auditor or auditors, the institution had in place systems of control which were adequate to enable, as much as is practicable-
- (i) the institution's returns or information to be correctly compiled, in all material respects, from the books and records of the institution;  
 (ii) the institution to comply with its duties under Parts XII, XV, XVII and XVIII;  
 (iii) if the institution is incorporated in Hong Kong, the institution to maintain adequate provision for depreciation or diminution in the value of its assets (including provision for bad and doubtful debts), for liabilities which will or may fall to be discharged by it and for losses which will or may occur,

and, if the opinion is that those systems were not adequate, the nature and extent of any inadequacies;

- (b) subject to subsection (3D), whether or not, during that period-
- (i) there appears to the auditor or auditors to be any material contravention by the institution of any of the duties referred to in paragraph (a)(ii), and, if it so appears, the nature of the contravention and the evidence therefor;  
 (ii) if the institution is incorporated in Hong Kong, it appears to the auditor or auditors that the institution has failed to maintain the adequate provision referred to in paragraph (a)(iii), and, if it so appears, the reasons or evidence therefor;  
 (iii) (Repealed 6 of 2002 s 7)

(3B) The auditor or auditors appointed by an authorized institution to prepare a report required under subsection (3) or (3A) shall be-

- (a) an auditor or auditors appointed by the institution prior to the report being so required and approved by the Monetary Authority for the purpose of preparing the report;

- (b) an auditor approved, or an auditor from amongst auditors nominated, by the Monetary Authority for the purpose of preparing the report after consultation with the institution; or
- (c) an auditor referred to in paragraph (a) and an auditor referred to in paragraph (b),  
as may be required by the Monetary Authority.
- (3C) No period specified in a requirement under subsection (3A) shall exceed 12 months unless the Monetary Authority is satisfied that a longer period is required in the interests of depositors of the authorized institution concerned or the public interest.
- (3D) No report shall be required under subsection (3A) as to a matter referred to in paragraph (b) of that subsection unless the report is also required as to a matter referred to in paragraph (a) of that subsection.
- (3E) (Repealed 6 of 2002 s 7)
- (3F) In this section—
- ‘adequate’ (足夠), in relation to systems of control, includes operating effectively;
- ‘systems of control’ (管控制度) includes procedures.
- (4) Notwithstanding section 120, the Monetary Authority may prepare and publish consolidated statements aggregating the figures in the returns furnished under subsection (1).
- (5) Every director, every chief executive and every manager of an authorized institution which, without reasonable excuse, contravenes subsection (1) or fails to comply with any requirement under subsection (3) or (3A) commits an offence and is liable on conviction upon indictment or on summary conviction to a fine at tier 5 and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues.
- (6) Every director, every chief executive and every manager of an authorized institution or approved money broker which fails without reasonable excuse to comply with any requirement under subsection (2), and every director, every chief executive and every manager of a holding company of an authorized institution, subsidiary of such holding company or subsidiary of an authorized institution which fails without reasonable excuse to comply with any requirement under subsection (2A), commits an offence and is liable—

- (a) on conviction upon indictment to a fine at tier 7 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine at tier 3 for every day during which the offence continues; or
- (b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues.
- (7) Any person who signs any document for the purposes of this section which he knows or reasonably ought to know to be false in a material particular commits an offence and is liable—
- (a) on conviction upon indictment to a fine at tier 8 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months.

#### [52.01] Enactment history

This section was amended pursuant to s 25 of the Banking (Amendment) Ordinance 1992 (82 of 1992), commencing on 10 December 1992.

Subsection (1) was amended pursuant to s 16 of the Banking (Amendment) (No 2) Ordinance 1991 (95 of 1991), commencing on 1 August 1991.

Subsection (2) was amended pursuant to s 26 of the Banking (Amendment) Ordinance 1990 (3 of 1990), commencing on 1 February 1990, and was amended pursuant to s 20 of the Banking (Amendment) Ordinance 1995 (49 of 1995), commencing on 15 November 1995, and was further amended pursuant to s 14 of the Banking (Amendment) Ordinance 1997 (4 of 1997), commencing on 15 November 1997.

Subsection (2A) was replaced pursuant to s 20 of the Banking (Amendment) Ordinance 1995 (49 of 1995), commencing on 15 November 1995.

Subsection (3) was replaced pursuant to s 5 of the Banking (Amendment) Ordinance 1992 (67 of 1992), commencing on 1 September 1992.

Subsection (3A) was added pursuant to s 5 of the Banking (Amendment) Ordinance 1992 (67 of 1992), commencing on 1 September 1992.

Subsection (3A)(b)(iii) was repealed pursuant to s 7 of the Banking (Amendment) Ordinance 2002 (6 of 2002), commencing on 1 April 2003.

Subsection (3B) was added pursuant to s 5 of the Banking (Amendment) Ordinance 1992 (67 of 1992), commencing on 1 September 1992.

Subsection (3C) was added pursuant to s 5 of the Banking (Amendment) Ordinance 1992 (67 of 1992), commencing on 1 September 1992.

Subsection (3D) was added pursuant to s 5 of the Banking (Amendment) Ordinance 1992 (67 of 1992), commencing on 1 September 1992.

Subsection (3E) was added pursuant to s 5 of the Banking (Amendment) Ordinance 1992 (67 of 1992), commencing on 1 September 1992, and was repealed pursuant to s 7 of the Banking (Amendment) Ordinance 2002 (6 of 2002), commencing on 1 April 2003.

Subsection (3F) was added pursuant to s 5 of the Banking (Amendment) Ordinance 1992 (67 of 1992), commencing on 1 September 1992.

Subsection (5) was amended pursuant to s 5 of the Banking (Amendment) Ordinance 1992 (67 of 1992), commencing on 1 September 1992, and was amended pursuant to s 27 of the Banking (Amendment) Ordinance 1997 (4 of 1997), commencing on 15 May 1997, was amended pursuant to s 24 of the Banking (Amendment) Ordinance 2001 (32 of 2001), commencing on 24 May 2002 and was further amended pursuant to s 12 of the Banking (Amendment) Ordinance 2005 (19 of 2005), commencing on 2 December 2005.

Subsection (6) was amended pursuant to s 26 of the Banking (Amendment) Ordinance 1990 (3 of 1990), commencing on 1 February 1990, was amended pursuant to s 20 of the Banking (Amendment) Ordinance 1995 (49 of 1995), commencing on 15 November 1995, and was amended pursuant to s 14 of the Banking (Amendment) Ordinance 1997 (4 of 1997), commencing on 15 May 1997, and was further amended pursuant to s 24 of the Banking (Amendment) Ordinance 2001 (32 of 2001), commencing on 24 May 2002.

Subsection (7) was amended pursuant to s 27 of the Banking (Amendment) Ordinance 1997 (4 of 1997), commencing on 15 May 1997.

#### [63.02] General note

For returns and information relating to overseas branches, see s 50(1) above; Returns and information relating to overseas representative offices, see s 50(2) above; Official secrecy, see s 120 below; Defence of director or manager prosecuted, see s 126 below; Use of English language, see s 132 below; Power of Monetary Authority to specify forms, see s 133 below; Consent of Secretary for Justice to prosecution, see s 136 below; Computation of time, see s 71 of the Interpretation and General Clauses Ordinance (Cap 1).

#### [63.03] Subsection (1)

These returns relate only to the operation of an authorized institution in Hong Kong. Authorized institutions incorporated in Hong Kong may be required to submit returns as to their overseas branches under s 50(1)(a) above. A monthly return in the same form, as required under s 63(1)(a), is in practice required from the overseas branches of an authorized institution incorporated in Hong Kong.

#### [63.04] Assets and liabilities of its principal place of business in Hong Kong and all local branches thereof

The requirement supposes a division of assets and liabilities between an authorized institution's Hong Kong and foreign operations (although

technically no return need be made of an office in Hong Kong which is not the institution's principal place of business or local branch as such).

The monthly return consists of a balance sheet and profit and loss account in a specified format. The form of return requires details of foreign currency positions, particulars of large items (deposits and borrowings from the same depositor or lender exceeding 10% of total liabilities, the institution's ten largest exposures, and any other exposures in excess of 10% of the paid-up capital and reserves to single and connected parties), a maturity analysis of assets and liabilities, and a computation of the institution's capital adequacy ratio and liquidity ratio. In addition, the form of return requires a certificate as to the relevant maximum or aggregate figures during the month for the purposes of s 81 below (financial exposure), ss 83 and 84 below (advances to directors), s 87 below (shareholding), s 88 below (interests in land), s 90 below (aggregate limitation on shareholdings, interests in land and advances to directors), and a certificate as to the institution's compliance with s 80 (advances against security of own shares), s 84(2) or 84(4) or s 85 below (prohibition of certain advances to directors and employees); and the capital adequacy ratio requirement of Part XVII.

The specified form of return, therefore, goes beyond the limits of subsection (1) as it is not restricted to just information as to assets and liabilities. However, the form of return can be justified by reference to the wider powers of the Monetary Authority to require information under subsection (2).

#### [63.05] Subsection (2)

This subsection gives the Monetary Authority very broad power to enquire into the affairs of an authorized institution. However, the powers are not unrestricted and must be reasonably required for the exercise of the functions of the Monetary Authority under this Ordinance. Apart from this subsection, the Monetary Authority may require information relating to overseas branches and representative offices under s 50 above and other information under ss 60 above, 64, 69 and 91 below.

#### [63.06] Subsection (2A)

This subsection gives the Monetary Authority very broad power to enquire into not only the affairs of an authorized institution, but also the affairs of its holding company, its subsidiary and subsidiary of any its holding company. However, the powers under this subsection are not unrestricted. When the Monetary Authority requests for information related to an authorized institution's holding company or subsidiary of an authorized institution's holding company, the Monetary Authority must consider that it is necessary and is in the interests of the depositors or potential depositors of the authorized institution.

#### [63.07] Subsection (3)

The auditors of an authorized institution are not under a statutory duty to provide a report under this subsection. It is the directors, chief executives and managers of the institution who are liable under subsection (5) if a report is not provided when required.

**[63.08] Subsection (5): with reasonable excuse**

A defence of having reasonable excuse was introduced in Banking (Amendment) Ordinance 2005 (19 of 2005). Before this amendment, it seemed that strict liability was imposed on person being charge under this subsection, though he may have a defence under s 126 below, if he can prove that he has taken reasonable precautions and has exercised due diligence to avoid the commission of this offence by himself or any person under his control.

**[63.09] Subsection (7): Any person who signs any document ... knows or reasonably ought to know to be false ... is liable**

The defence under s 126 below is not applicable to this subsection.

**[63.10] Banking (Amendment) Bill 2011**

Section 63(3A)(a)(ii): 'XVII' will be repealed and substituted by 'XVIA' according to s 5 of the Banking (Amendment) Bill 2011.

Section 63(3A)(a)(ii): 'XVIII' will be repealed and substituted by 'XVIB' according to s 5 of the Banking (Amendment) Bill 2011.

**63A. Auditor to report to Monetary Authority any matter which adversely affects financial position of authorized institution to material extent**

- (1) Where a person in the course of performing his duties as an auditor appointed under-
  - (a) section 59(2) or 63(3) or (3A); or
  - (b) section 131 of the Companies Ordinance (Cap 32)
 becomes aware of a matter which, in his opinion, adversely affects the financial position of an authorized institution to a material extent, he shall, as soon as is reasonably practicable after he becomes aware of the matter, submit to the Monetary Authority a report in writing on the nature of the matter and the reason why he is of that opinion.
- (2) In relation to any authorized institution incorporated outside Hong Kong, subsection (1) shall only apply to its principal place of business in Hong Kong and its local branches, and shall do so as if that principal place of business and those branches were collectively a separate authorized institution.

**[63A.01] Enactment history**

This section was added pursuant to s 8 of the Banking (Amendment) Ordinance 2002 (6 of 2002), commencing on 1 April 2003.

**[63A.02] General note**

This section is added to bring the Banking Ordinance more in line with the Securities and Futures Ordinance (Cap 571) in relation to reporting and auditing requirements.

**63B. Auditors of registered institutions to submit report to Monetary Authority in certain cases**

Where a person in the course of performing his functions as an auditor-

- (a) appointed under-
  - (i) section 59(2) or 63(3) or (3A); or
  - (ii) section 131 of the Companies Ordinance (Cap 32); and
- (b) in relation to a registered institution,

becomes aware of a matter that, in the opinion of the person, is a matter that constitutes on the part of the institution a failure to comply with any prescribed requirements within the meaning of section 157 of the Securities and Futures Ordinance (Cap 571) (but excluding any requirements under section 149 of that Ordinance or of rules made under that section), then he shall, as soon as reasonably practicable after he becomes aware of the matter, submit to the Monetary Authority a report in writing on the matter.

**[63B.01] Enactment history**

This section was added pursuant to s 9 of the Banking (Amendment) Ordinance 2002 (6 of 2002), commencing on 1 April 2003.

**[63B.02] General note**

This section is added to bring the Banking Ordinance more in line with the Securities and Futures Ordinance (Cap 571) in relation to reporting and auditing requirements.

**64. Information on shareholding, etc**

- (1) Every authorized institution shall, if so required by the Monetary Authority, inform him of the name and address of, and the nature of the business carried on by, every company-
  - (a) in which the institution holds the beneficial ownership, directly or indirectly, of an aggregate of 20 per cent or more of the share capital;
  - (b) where any director or manager of that company is also a director, chief executive or manager of the institution;