

within 7 business days after the change, together with a full description of the change.

- (2) If the information has been provided in connection with an application under this Part and the application has been refused or withdrawn, this section no longer applies in relation to the information.
- (3) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

53ZRV. Notification of intended cessation of business etc.

- (1) A licensed person who intends to cease to provide any VA service for which it is licensed must notify the Commission, in writing, as soon as reasonably practicable and in any event not later than 7 business days before the intended cessation.
- (2) A licensed provider must notify the Commission, in writing, at least 7 business days in advance if it intends to change the address at which it proposes to provide any VA service.
- (3) If a person becomes or ceases to be a director of a licensed provider, both the person and the licensed provider must, within 7 business days after the change, notify the Commission, by written notice, of the name and address of the person and of the nature of the position the person occupies or ceases to occupy.
- (4) A person who, without reasonable excuse, contravenes subsection (1), (2) or (3) commits an offence and is liable on conviction to a fine at level 5.

53ZRW. Associated entities: notification and restriction on business

- (1) An associated entity of a licensed provider must within 7 business days after it becomes, or ceases to be, such an

associated entity, notify the Commission, in writing, of that fact and other particulars specified in Schedule 3D.

- (2) If there is any change in the particulars required to be provided by an associated entity of a licensed provider under subsection (1), the associated entity must within 7 business days after the change notify the Commission, by written notice, of that fact and provide in the notice particulars of the change.
- (3) Unless otherwise authorized in writing by the Commission, an associated entity of a licensed provider must not, at any time after becoming such an entity, conduct any business other than that of receiving or holding client assets of the licensed provider.
- (4) If an associated entity of a licensed provider, without reasonable excuse, contravenes subsection (1), (2) or (3), the associated entity commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (5) If an associated entity of a licensed provider, with intent to defraud, contravenes subsection (1), (2) or (3), the associated entity commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
 - (b) on summary conviction to a fine of \$500,000 and to imprisonment for 1 year.
- (6) If an associated entity of a licensed provider becomes aware that it does not comply with subsection (1), (2) or (3), it must within 1 business day after becoming aware of that fact notify

the Commission, by written notice, of that fact and of the surrounding circumstances.

- (7) If an associated entity of a licensed provider contravenes subsection (6), the associated entity commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (8) An associated entity of a licensed provider is not excused from complying with subsection (6) only on the ground that to do so might tend to incriminate it.
- (9) If a person is required under subsection (6) to notify the Commission of any matter, and the notification might tend to incriminate the person, then the notification is not admissible in evidence against the person in criminal proceedings in a court of law other than the proceedings in which—
 - (a) the person is charged with an offence under subsection (7) in respect of the notification; or
 - (b) the person is charged with an offence under Part V of the Crimes Ordinance (Cap. 200) in respect of the notification.

53ZRX. Licensed representative ceasing to act for principal: consequences and notification

- (1) A licensed representative accredited to a licensed provider ceases to be so accredited on the licensed representative ceasing to act for or on behalf of the licensed provider as a licensed representative.
- (2) If a licensed representative accredited to a licensed provider ceases to act for or on behalf of the licensed provider as a

licensed representative, the licensed provider must, within 7 business days after the cessation, notify the Commission of the cessation.

- (3) If an individual who is a licensed representative—
 - (a) ceases to be accredited to a licensed provider; and
 - (b) has not applied for transfer of the individual's accreditation to another licensed provider under this Part within 180 days after the cessation,the licence granted to the individual to be a licensed representative is deemed to have been revoked on the cessation.
- (4) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 6.

53ZRY. Annual fee and annual return

- (1) A licensed person must pay to the Commission a prescribed fee—
 - (a) within 1 month after each anniversary of the date of grant of the licence; or
 - (b) by another date approved by the Commission by written notice.
- (2) In default of full payment of the prescribed fee as required under subsection (1), the person must pay to the Commission an additional sum calculated as follows—
 - (a) 10% of the fee or such part of the fee that remains unpaid for the first month after the due date for its payment;
 - (b) 20% of the fee or such part of the fee for each subsequent month when it remains unpaid.

- (3) In calculating the additional sum for the purposes of subsection (2), any fraction of a month is treated as a month.
- (4) A licensed person must—
 - (a) submit an annual return to the Commission—
 - (i) within 1 month after each anniversary of the date of grant of the licence; or
 - (ii) by another date approved by the Commission by written notice; and
 - (b) include in the return the information specified in Schedule 3E.

Division 8—Licensed Provider and its Associated Entities Required to Submit Audited Accounts etc.

53ZRZ. Interpretation of Division 8

In this Division—

auditable entity (須予審計實體) means—

- (a) a licensed provider; or
- (b) an associated entity of a licensed provider;

prescribed auditor (訂明核數師), in relation to an auditable entity, means an auditor appointed under section 53ZS(1) or (3) or 53ZSG by the auditable entity;

section 53ZSH auditor (第53ZSH條核數師)—see section 53ZSH.

53ZS. Auditable entity to appoint prescribed auditor

- (1) A licensed provider must, within 1 month after it becomes licensed, appoint an eligible auditor to perform the functions required of an auditor of the licensed provider under or pursuant to the provisions of this or any other Ordinance.

- (2) A licensed provider must, within 7 business days after making an appointment under subsection (1), notify the Commission, by written notice, of the name and address of the auditor.
- (3) An associated entity of a licensed provider must, within 1 month after the associated entity becomes such an associated entity, appoint an eligible auditor to perform the functions required of an auditor of the associated entity under or pursuant to the provisions of this or any other Ordinance.
- (4) An associated entity of a licensed provider must, within 7 business days after making an appointment under subsection (3), notify the Commission, by written notice, of the name and address of the auditor.
- (5) A person who contravenes subsection (1) or (3) commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (6) A person who contravenes subsection (2) or (4) commits an offence and is liable on conviction to a fine at level 5.
- (7) A reference in subsection (1) or (3) to an eligible auditor is to be construed in accordance with section 53ZSA.

53ZSA. Eligibility of auditor for appointment

- (1) A person is not eligible for appointment as an auditor of a licensed provider or any of its associated entities if the person—
 - (a) is an officer or employee of the licensed provider or any of its associated entities;
 - (b) is in the employment of an officer or employee described in paragraph (a); or

- (c) belongs to a class of persons prescribed by rules.
- (2) Subject to subsection (1), a person is eligible for appointment as an auditor of a licensed provider or any of its associated entities, even if the person is, apart from that appointment, already an auditor appointed by the licensed provider or the associated entity the accounts of which are to be audited, whether for the purposes of the Companies Ordinance (Cap. 622) or otherwise.

53ZSB. Auditable entity to notify financial year

- (1) A licensed provider must, within 1 month after it becomes licensed, notify the Commission, by written notice, of the date on which its financial year ends.
- (2) An associated entity of a licensed provider must, within 1 month after it becomes such an associated entity, notify the Commission, by written notice, of the date on which the associated entity's financial year ends.
- (3) Except with the approval in writing of the Commission under subsection (5)(a)(i) and subject to any conditions imposed under subsection (5)(b)—
 - (a) a licensed provider must not alter the date on which its financial year ends; and
 - (b) an associated entity of a licensed provider must not alter the date on which the associated entity's financial year ends.
- (4) Except with the approval in writing of the Commission under subsection (5)(a)(ii) and subject to any conditions imposed under subsection (5)(b)—
 - (a) a licensed provider must not adopt a period that exceeds 12 months as its financial year; and

- (b) an associated entity of a licensed provider must not adopt a period that exceeds 12 months as the associated entity's financial year.
- (5) On an application in writing by an auditable entity, the Commission—
 - (a) may grant approval in writing in respect of—
 - (i) an alteration of the date on which financial year of the auditable entity ends; or
 - (ii) the adoption of a period exceeding 12 months as the financial year of the auditable entity; and
 - (b) may impose any conditions that the Commission considers appropriate on the approval.
- (6) A person who contravenes subsection (1), (2), (3) or (4), or a condition imposed pursuant to subsection (5), commits an offence and is liable on conviction to a fine at level 5.
- (7) Nothing in this section affects the operation of section 429 of the Companies Ordinance (Cap. 622).

53ZSC. Auditable entity to submit audited accounts etc.

- (1) An auditable entity must—
 - (a) prepare prescribed financial statements and other prescribed documents for prescribed periods; and
 - (b) submit the financial statements and other documents, together with a report of the prescribed auditor, to the Commission not later than 4 months after the end of the financial year to which they relate.
- (2) A licensed provider that, in prescribed circumstances, ceases to provide the VA service for which it is licensed to provide, and an associated entity of a licensed provider that ceases to be such an associated entity, must—

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- (a) prepare prescribed financial statements and other prescribed documents, which must be made up to (and including) the date of the cessation; and
 - (b) submit the financial statements and other documents, together with a report of the prescribed auditor, to the Commission not later than 4 months after the date of the cessation.
 - (3) Without limiting subsections (1) and (2), the requirements under those subsections relating to the prescribed financial statements and other prescribed documents, and the report of the prescribed auditor, referred to in those subsections include the requirements that—
 - (a) the prescribed financial statements and other prescribed documents are to relate to prescribed matters and contain prescribed particulars;
 - (b) the report of the prescribed auditor is to contain prescribed particulars, including a prescribed statement of opinion;
 - (c) the prescribed financial statements and other prescribed documents, and the report of the prescribed auditor, are to be prepared in accordance with prescribed principles or prescribed bases; and
 - (d) without limiting section 387 of the Companies Ordinance (Cap. 622), the prescribed financial statements and other prescribed documents are to be signed by a prescribed person.
 - (4) On an application in writing by the auditable entity by which any prescribed financial statements and other prescribed documents, and any report of the prescribed auditor, are required under subsection (1) or (2) to be submitted, the Commission may, if it is satisfied that there are special reasons for so doing, extend the period within which the

financial statements and other documents, and the report of the prescribed auditor, are required to be submitted, for the period and subject to the conditions that the Commission considers appropriate.

- (5) On the Commission granting the extension, subsection (1) or (2) (as the case requires) applies subject to the extension accordingly.
- (6) A person who, without reasonable excuse, contravenes subsection (1) or (2), or a condition imposed pursuant to subsection (4), commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (7) A person who, with intent to defraud, contravenes subsection (1) or (2), or a condition imposed pursuant to subsection (4), commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
 - (b) on summary conviction to a fine of \$500,000 and to imprisonment for 1 year.
- (8) A reference in any provision of this section to prescribed (except for a reference to prescribed auditor) means specified in Schedule 3F.

53ZSD. Prescribed auditor of auditable entity to report on reportable matter etc.

- (1) This section applies if a person in the course of performing the person's functions as an auditable entity's prescribed auditor—
 - (a) becomes aware of a reportable matter; or

- (b) proposes to include any qualification or adverse statement in any report prepared by the person on the prescribed financial statements or other prescribed documents of the auditable entity that are required to be submitted to the Commission under section 53ZSC.
- (2) In the circumstances specified in subsection (1)(a), the person must, as soon as reasonably practicable after the person becomes aware of the reportable matter, lodge with the Commission a written report on the reportable matter.
- (3) In the circumstances specified in subsection (1)(b), the person must, as soon as reasonably practicable after the person first proposes the inclusion of the qualification or adverse statement, lodge with the Commission a written report on the qualification or adverse statement.
- (4) In this section—

reportable matter (須報告事項)—

- (a) in relation to a person acting as the prescribed auditor of a licensed provider, means a matter that, in the person's opinion—
 - (i) constitutes, on the part of the licensed provider or any of its associated entities, a failure to comply with any of the requirements specified by the Commission for this purpose in the codes or guidelines published under section 53ZTK; or
 - (ii) adversely affects to a material extent the financial position of the licensed provider or any of its associated entities; or
- (b) in relation to a person acting as the prescribed auditor of an associated entity of a licensed provider, means a matter that, in the person's opinion—

- (i) constitutes, on the part of the associated entity, a failure to comply with any of the requirements specified by the Commission for this purpose in the codes or guidelines published under section 53ZTK; or
- (ii) adversely affects to a material extent the financial position of the associated entity.

53ZSE. Auditable entity to notify proposed change of prescribed auditor

- (1) An auditable entity must notify the Commission in accordance with subsection (2), within the specified period, if any of the following circumstances (each a *notifiable circumstance*) occurs in relation to a person who is its prescribed auditor (*incumbent*)—
 - (a) the auditable entity gives notice to its members of a motion, to be moved at its general meeting—
 - (i) to remove the incumbent as its prescribed auditor before the expiry of the incumbent's term of office; or
 - (ii) to replace the incumbent with another person as its prescribed auditor on the expiry of the incumbent's term of office or not to reappoint the incumbent on the expiry;
 - (b) the incumbent ceases to be the auditable entity's prescribed auditor before the expiry of the incumbent's term of office, otherwise than in consequence of a motion referred to in paragraph (a).
- (2) The notification must be given by written notice and must state the particulars of the notifiable circumstance.
- (3) The specified period mentioned in subsection (1) is 1 business day after the notifiable circumstance occurs

- (4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

53ZSF. Prescribed auditor to notify resignation

- (1) A person appointed as an auditable entity's prescribed auditor must, within the specified period, notify the Commission by written notice, giving the specified information, if any of the following circumstances (each a *specified change*) occurs—
- (a) the person resigns as such auditor before the expiry of the person's term of office as such auditor;
 - (b) the person does not seek reappointment as such auditor at the expiry of the person's term of office as such auditor;
 - (c) the person otherwise ceases to be such auditor.
- (2) In relation to a specified change—
- (a) the specified period is 1 business day after the change occurs; and
 - (b) the specified information is—
 - (i) the fact of the change and the reasons for the change; and
 - (ii) particulars of any connected circumstances that the person considers should be brought to the attention of the Commission or, where no such circumstances exist, a statement to that effect.

53ZSG. Vacant office of prescribed auditor must be filled

- (1) An auditable entity must appoint an eligible auditor to be its prescribed auditor, within the specified period, if the office of its prescribed auditor becomes vacant.

- (2) The specified period in subsection (1) means 1 month after the day on which the office of the prescribed auditor of the auditable entity becomes vacant.
- (3) A person who contravenes subsection (1) commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (4) A reference in subsection (1) to an eligible auditor is to be construed in accordance with section 53ZSA.

53ZSH. Power of Commission to appoint auditor for auditable entity

- (1) The Commission may appoint an auditor (*section 53ZSH auditor*) to examine and audit, generally or in respect of any particular matters, the accounts and records of a licensed provider (*subject provider*), or any of its associated entities, and report to the Commission on any matters that the Commission directs if—
 - (a) the Commission has reasonable cause to believe that the subject provider, or any of its associated entities, has failed to comply with any specified requirement; or
 - (b) the Commission received a written report lodged under section 53ZSD by a prescribed auditor of the subject provider, or any of its associated entities, in relation to a reportable matter or a qualification or adverse statement.
- (2) A section 53ZSH auditor may examine any client assets of the subject provider received or held by the subject provider or any of its associated entities.

- (3) Subject to subsection (4), if a section 53ZSH auditor has examined and audited the accounts and records of the subject provider or any of its associated entities—
 - (a) the Commission may give, to the subject provider, a direction to pay for the costs or expenses for the examination and audit; and
 - (b) the subject provider is liable to pay, within the period and in the manner specified in the direction, the amount specified in the direction as the costs or expenses for the examination and audit.
- (4) The Commission must give the subject provider a reasonable opportunity of being heard before giving a direction to pay any costs or expenses.
- (5) The Commission may recover, from the subject provider, the amount specified in the direction as a civil debt due to it if the subject provider fails to comply with the direction.

53ZSI. Powers of section 53ZSH auditors

- (1) This section applies to a section 53ZSH auditor appointed in relation to a licensed provider (*subject provider*) or any of its associated entities to examine and audit the accounts and records of the subject provider or the associated entity.
- (2) For the purpose of carrying out the examination and audit, the section 53ZSH auditor may do any act or thing referred to in subsection (3), in addition to any other action that the section 53ZSH auditor may reasonably take for that purpose.
- (3) The section 53ZSH auditor may—
 - (a) examine on oath or otherwise—
 - (i) any officer, employee and agent of any of the following (each a *covered person*)—
 - (A) the subject provider;

- (B) an associated entity of the subject provider;
 - (C) subject to subsection (6), a specified related corporation;
 - (ii) for each covered person that is an auditable entity, a prescribed auditor of the covered person; and
 - (iii) subject to subsection (6), an auditor of a specified related corporation,
- in respect of any matter relating to a covered business or to any covered client assets and, for that purpose, administer oaths accordingly;
- (b) require any officer, employee and agent of a covered person to—
 - (i) produce any accounts and records concerning any matter relating to a covered business or to any covered client assets; and
 - (ii) explain the contents of the accounts and records so produced;
 - (c) require any prescribed auditor of a covered person who is an auditable entity, or any auditor of a covered person who is a specified related corporation, to—
 - (i) produce any accounts and records held by the prescribed auditor or auditor concerning any matter relating to a covered business or to any covered client assets; and
 - (ii) explain the contents of the accounts and records so produced;
 - (d) require any person receiving or holding covered client assets on behalf of the subject provider or any of its associated entities, or, subject to subsection (6), any person receiving or holding covered client assets on behalf of a specified related corporation to—

- (i) produce any accounts and records kept by the person, or information in the person's possession, concerning any matter relating to the covered client assets; and
 - (ii) explain the contents of the accounts and records, and the information, so produced;
 - (e) employ any person the section 53ZSH auditor considers necessary to assist the section 53ZSH auditor in carrying out the examination and audit that the section 53ZSH auditor is appointed to carry out; and
 - (f) for the purpose of carrying out the examination and audit that the section 53ZSH auditor is appointed to carry out, authorize in writing any person employed by the section 53ZSH auditor to do any act or thing referred to in paragraph (b), (c), (d) or (e).
- (4) In this section—
 - (a) ***specified related corporation*** (指明有連繫法團) means—
 - (i) a related corporation of the subject provider; or
 - (ii) a related corporation of an associated entity of the subject provider;
 - (b) ***covered business*** (受涵蓋業務)—
 - (i) means the business carried on by the subject provider or any of its associated entities;
 - (ii) subject to subsection (6), includes any other business carried on by the subject provider in conjunction with any VA service and any business of any of its associated entities; and
 - (iii) subject to subsection (6), includes any business carried on by a specified related corporation;

- (c) ***covered client assets*** (受涵蓋客戶資產) means client assets of the subject provider—
 - (i) held or received by the subject provider;
 - (ii) held or received by any of the subject provider's associated entities; or
 - (iii) subject to subsection (6), held or received by any person on behalf of a specified related corporation.
- (5) A reference to an auditor, in relation to a specified related corporation, means any auditor appointed, under this Ordinance or otherwise, by the specified related corporation.
- (6) Subsections (3)(a)(i)(C) and (iii) and (d) and (4)(b)(ii) and (iii) and (c)(iii) apply if the section 53ZSH auditor, or a person authorized under subsection (3)(f), reasonably considers the application of those provisions is necessary for the purpose of carrying out the examination and audit of the accounts and records of the subject provider or any of its associated entities.

53ZSJ. Offences for non-compliance with section 53ZSH auditor's requirement

- (1) A person commits an offence if the person, without reasonable excuse, fails to comply with any requirement imposed on the person (including the requirement to answer any question put to the person) under section 53ZSI.
- (2) A person who commits an offence under subsection (1) is liable—
 - (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (3) A person commits an offence if the person—

- (a) in purported compliance with a requirement imposed on the person (including the requirement to answer any question put to the person) under section 53ZSI, produces any accounts or records or gives an answer that is false or misleading in a material particular; and
 - (b) knows that, or is reckless as to whether, the accounts or records or the answer is false or misleading in a material particular.
- (4) A person who commits an offence under subsection (3) is liable—
 - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (5) A person commits an offence if the person, with intent to defraud—
 - (a) fails to comply with any requirement imposed on the person (including the requirement to answer any question put to the person) under section 53ZSI; or
 - (b) in purported compliance with a requirement imposed on the person (including the requirement to answer any question put to the person) under section 53ZSI, produces any accounts or records or gives an answer that is false or misleading in a material particular.
- (6) A person who commits an offence under subsection (5) is liable—
 - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
 - (b) on summary conviction to a fine of \$500,000 and to imprisonment for 1 year.

53ZSK. Section 53ZSH auditor to report to Commission

- (1) A section 53ZSH auditor appointed to examine and audit any accounts and records must—
 - (a) make to the Commission any interim reports that the Commission requires; and
 - (b) make to the Commission a final report when the examination and audit concludes.
- (2) A report referred to in subsection (1) must be made within the period and in the manner that the Commission directs.
- (3) The Commission may, if it considers appropriate, forward a copy of any report made to it under subsection (1) to the auditable entity the accounts and records of which are the subject of the examination and audit referred to in the report.

53ZSL. Offences to destroy, conceal, or alter accounts, records, or documents, etc.

- (1) A person commits an offence if—
 - (a) a prescribed auditor or a section 53ZSH auditor is appointed under this Division to carry out any examination and audit; and
 - (b) the person—
 - (i) deletes, destroys, mutilates, falsifies, conceals, alters or otherwise makes unavailable any accounts, records or documents related to the examination and audit, or aids or abets or conspires with another person to do so;
 - (ii) with intent to prevent, delay or obstruct the carrying out of the examination and audit—

- (A) disposes or procures the disposal, in any manner and by any means, of any property related to the examination and audit; or
 - (B) aids or abets or conspires with another person to do so; or
 - (iii) with intent to prevent, delay or obstruct the carrying out of the examination and audit, leaves, or attempts to leave, Hong Kong.
- (2) A person who commits an offence under subsection (1) is liable—
 - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
 - (b) on summary conviction to a fine of \$500,000 and to imprisonment for 1 year.
- (3) It is a defence for a person charged with an offence under subsection (1) because of paragraph (b)(i) of that subsection to establish that the person did not intend to prevent, delay or obstruct the carrying out of any examination and audit.
- (4) A person is taken to have established a matter that needs to be established for a defence under subsection (3) if—
 - (a) there is sufficient evidence to raise an issue with respect to the matter; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.

53ZSM. Immunity in respect of communication with Commission by prescribed auditor

- (1) Without affecting section 4, no duty that a person appointed as a prescribed auditor may be subject to is to be regarded as contravened because of the person's communicating in good

faith to the Commission, any information or opinion on a matter that—

- (a) the person becomes aware of in the person's capacity as such auditor (whether or not in the course of performing the person's functions as such auditor); and
 - (b) is relevant to any function of the Commission.
- (2) Subsection (1) also applies to a person whose appointment as a prescribed auditor has ceased, in which case a reference to a matter in that subsection is to be construed on the basis that subsection (1)(a) requires the matter to be one that the person becomes aware of in the person's capacity as such auditor (whether or not in the course of performing the person's functions as such auditor) before the appointment has ceased.
- (3) Subsection (1) also applies to a prescribed auditor appointed by a former auditable entity, in which case a reference to a matter in that subsection is to be construed on the basis that subsection (1)(a) requires the matter to be one that the person becomes aware of in the person's capacity as such auditor.
- (4) Subsection (1) also applies to a person whose appointment as a prescribed auditor by a former auditable entity, has ceased, in which case a reference to a matter in that subsection is to be construed on the basis that subsection (1)(a) requires the matter to be one that the person becomes aware of in the person's capacity as such auditor before the appointment has ceased.
- (5) In this section—

former auditable entity (前須予審計實體) means a corporation that was formerly—

- (a) a licensed provider; or
- (b) an associated entity of a licensed provider.

53ZSN. Operation of Companies Ordinance not affected

Nothing in section 53ZS, 53ZSA or 53ZSG affects the operation of any other requirements relating to the appointment of an auditor, whether under the Companies Ordinance (Cap. 622) or otherwise.

Division 9—Discipline, Intervention and Other Powers**Subdivision 1—Disciplinary Powers etc.****53ZSO. Interpretation of Subdivision 1**

(1) In this Subdivision—

disciplinary power (紀律處分權力) means a power that may be exercised by the Commission under section 53ZSP;

regulated person (受規管人士) means—

- (a) a licensed person;
- (b) a responsible officer of a licensed provider; or
- (c) a person involved in the management of the business of a licensed provider.

(2) In this Subdivision—

- (a) a reference to revoking or suspending a licence of a licensed person means—
 - (i) to revoke or suspend the licence; or
 - (ii) to revoke or suspend the licence in relation to any VA service, or any part of any VA service, for which the licensed person is licensed; and
- (b) a reference to revoking or suspending an approval for a person to be a responsible officer of a licensed provider means—
 - (i) to revoke or suspend the approval; or

- (ii) to revoke or suspend the approval in relation to any VA service, or any part of any VA service, for which the person is approved to be such responsible officer.

53ZSP. Disciplinary action by Commission

- (1) Subject to sections 53ZSR, 53ZSS, 53ZST, 53ZSU, 53ZSV and 53ZSW, the Commission may, on finding any of the circumstances specified in subsection (2) occurring or having occurred, exercise, in respect of the person, one or more of the powers specified in subsection (3).
- (2) The circumstances are that—
 - (a) a person is, or was at any time, a regulated person guilty of misconduct;
 - (b) the Commission forms the opinion that a person who is a regulated person is not a fit and proper person to be or to remain the same type of regulated person; and
 - (c) for a person who was formerly a regulated person, the Commission forms the opinion that, because of any matter occurring at any time while the person was a regulated person (whether or not together with any other matter), the person was not a fit and proper person to be, or to remain, the same type of regulated person.
- (3) The powers are—
 - (a) to publicly or privately reprimand the person;
 - (b) to order the person to take, by a date specified by the Commission (***compliance deadline***), any action specified by the Commission for the purpose of remedying any contravention, act or omission that led to the finding referred to in subsection (2) (***remedial action***);

- (c) to order the person to pay a pecuniary penalty not exceeding the amount that is the greater of—
 - (i) \$10,000,000; or
 - (ii) 3 times the amount of the profit gained or loss avoided by the person as a result of the person's misconduct or of the person's conduct that led to the Commission forming the opinion referred to in subsection (2)(b) or (c) (as the case requires);
 - (d) if the person is a licensed person—
 - (i) to revoke the person's licence; or
 - (ii) to suspend the person's licence for a period, or until the occurrence of an event, specified in the notice referred to in section 53ZSU;
 - (e) if the person is a responsible officer of a licensed provider—
 - (i) to revoke the approval granted under section 53ZRP; or
 - (ii) to suspend such approval for a period, or until the occurrence of an event, specified in the notice referred to in section 53ZSU; and
 - (f) to prohibit the person from doing all or any of the following in relation to any VA service for a period, or until the occurrence of an event specified in the notice referred to in section 53ZSU—
 - (i) applying to be licensed;
 - (ii) applying to be approved as a responsible officer of a licensed provider.
- (4) A person who is ordered to pay a pecuniary penalty under this section must pay the penalty to the Commission within—
- (a) 30 days; or

- (b) a longer period specified in the notice referred to in section 53ZSU,
after the order takes effect as a specified decision under section 75.
- (5) If a person fails to comply with an order to take remedial action, the Commission may further order the person to pay a daily pecuniary penalty not exceeding \$100,000 for each day on which the failure continues after the compliance deadline.
- (6) If the Commission exercises its power under subsection (3) against a person, the Commission may disclose to the public details of the decision including the reasons for it and any material facts relating to the case.
- (7) Any pecuniary penalty paid to or recovered by the Commission pursuant to an order made under subsection (3)(c) or (5) must be paid by the Commission into the general revenue.

53ZSQ. Other circumstances for revocation or suspension in respect of licensed persons etc.

- (1) Subject to sections 53ZSU, 53ZSV and 53ZSW, the Commission may in any of the situations specified in subsection (2)—
 - (a) revoke a licensed person's licence; or
 - (b) suspend a licensed person's licence for a period, or until the occurrence of an event, specified in a notice referred to in section 53ZSU.
- (2) The situations are that—
 - (a) if the licensed person is an individual—
 - (i) the licensed person enters into a voluntary arrangement with creditors, or has a bankruptcy

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- order made against that person, under the Bankruptcy Ordinance (Cap. 6);
- (ii) the licensed person fails to satisfy a levy of execution; or
 - (iii) any of the following circumstances arises that in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed—
 - (A) the licensed person is convicted of an offence (other than an offence under this Ordinance) in Hong Kong or elsewhere;
 - (B) the licensed person has been found by a court to be mentally incapacitated, or is detained in a mental hospital, under the Mental Health Ordinance (Cap. 136);
- (b) if the licensed person is a corporation—
- (i) a receiver or manager of the property or business of the licensed person is appointed;
 - (ii) the licensed person fails to satisfy a levy of execution;
 - (iii) the licensed person enters into a compromise or scheme of arrangement with its creditors;
 - (iv) the licensed person has commenced, or is deemed to have commenced, winding up or has applied for deregistration under the Companies Ordinance (Cap. 622); or
 - (v) any of the following circumstances arises that in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed—

- (A) the licensed person is convicted of an offence (other than an offence under this Ordinance) in Hong Kong or elsewhere;
 - (B) any of the directors of the licensed person is convicted of an offence (other than an offence under this Ordinance) in Hong Kong or elsewhere;
 - (C) any of the directors of the licensed person has been found by a court to be mentally incapacitated, or is detained in a mental hospital, under the Mental Health Ordinance (Cap. 136);
- (c) the licensed person does not provide a VA service; and
- (d) the licensed person requests the Commission to so revoke or suspend the licence.
- (3) A licensed representative's licence is deemed to be revoked if the licensed representative dies.
- (4) A licensed provider's licence is deemed to be revoked if the licensed provider is wound up, or has been deregistered or struck off the Companies Register or is otherwise dissolved.
- (5) Subject to subsection (6), a licence of a licensed person is deemed to be suspended if—
 - (a) the licensed person fails to make full payment of—
 - (i) any annual fee payable by the licensed person under section 53ZRY(1); or
 - (ii) any additional sum payable by the licensed person under section 53ZRY(2) as a result of any default in making full payment, of the annual fee, within 3 months after the due date for payment of the annual fee under that section; or

- (b) the licensed person fails to submit an annual return, required to be submitted by the licensed person under section 53ZRY(4), within 3 months after the due date for submission of the annual return under that section.
- (6) A licence of a licensed person is not to be regarded as suspended under subsection (5) unless and until—
 - (a) in the case of a suspension under subsection (5)(a) by reference to any failure to make full payment of any annual fee or additional sum, the Commission has, by written notice given not less than 10 business days before the suspension is to take effect, informed the licensed person—
 - (i) of the requirement to make full payment of the annual fee or additional sum (as the case requires); and
 - (ii) of the consequence of the failure to comply with the requirement under this section; or
 - (b) in the case of a suspension under subsection (5)(b) by reference to any failure to submit an annual return, the Commission has, by written notice given not less than 10 business days before the suspension is to take effect, informed the licensed person—
 - (i) of the requirement to submit the annual return; and
 - (ii) of the consequence of the failure to comply with the requirement under this section.
- (7) Subject to subsection (8), the suspension under subsection (5) remains in force until the time the Commission—
 - (a) considers it appropriate that the licence should no longer be suspended; and
 - (b) informs the licensed person to that effect by written notice.

- (8) A licence is deemed to be revoked if—
 - (a) the licence is suspended under subsection (5); and
 - (b) the situation described in subsection (5)(a) or (b) (as the case requires) has not been remedied within—
 - (i) 30 days after the day on which the suspension becomes effective under subsection (5); or
 - (ii) a further period that the Commission specifies by written notice to the licensed person.
- (9) Subject to sections 53ZSU, 53ZSV and 53ZSW, if a person that is a responsible officer of a licensed provider is convicted of an offence (other than an offence under this Ordinance) in Hong Kong or elsewhere that in the opinion of the Commission impugns the fitness and properness of the person to remain such a responsible officer, the Commission may—
 - (a) revoke the approval granted under section 53ZRP in respect of the person as such a responsible officer; or
 - (b) suspend the approval for a period, or until the occurrence of an event, specified in the notice referred to in section 53ZSU.

53ZSR. Determination concerning misconduct and fit and proper person

- (1) For the purposes of section 53ZSP, a person is a regulated person guilty of misconduct if—
 - (a) the person is a regulated person; and
 - (b) either—
 - (i) the person contravenes a material requirement; or
 - (ii) the person does or omits to do an act in relation to the provision of any VA service which act or

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- omission, in the opinion of the Commission, is or is likely to be prejudicial—
- (A) to the interest of the investing public; or
 - (B) to the public interest.
- (2) For the purposes of section 53ZSP, a person was a regulated person guilty of misconduct if—
- (a) the person was a regulated person; and
 - (b) either—
 - (i) the person, while being such regulated person, contravened a material requirement; or
 - (ii) the person, while being such regulated person, did or omitted to do an act in relation to the provision of any VA service which act or omission, in the opinion of the Commission, was or was likely to be prejudicial—
 - (A) to the interest of the investing public; or
 - (B) to the public interest.
- (3) The Commission may form an opinion that a person's act or omission referred to in subsection (1)(b)(ii) or (2)(b)(ii) is or is likely to be, or was or was likely to be, prejudicial as referred to in that subsection only if the Commission has had regard to prevailing guidelines.
- (4) Prevailing guidelines, in relation to an act or omission, means any provision—
- (a) set out in any codes or guidelines published under section 7 or 53ZTK; and
 - (b) in force at the time of occurrence of, and applicable in relation to, the act or omission.
- (5) If—

- (a) a person who is, or was at any time, a licensed provider guilty of misconduct within the meaning of subsection (1) or (2) as a result of the commission of any conduct—
 - (i) occurring with the consent or connivance of another person; or
 - (ii) attributable to any neglect on the part of another person; and
- (b) such other person is, or was at the time of occurrence of the conduct, a responsible officer of or a person involved in the management of the business of the licensed provider,

such other person is or was (as the case requires) also a regulated person guilty of misconduct for the purposes of section 53ZSP.

- (6) The Commission, in determining whether a regulated person is or was a fit and proper person at any time (*material time*) for the purposes of section 53ZSP, may, among the matters specified in section 53ZRJ and any other matters, take into account the conduct of the regulated person at the material time or any past conduct as the Commission considers appropriate in the circumstances of the case.

- (7) In this section—

material requirement (重要規定) means—

- (a) any provision of this Ordinance; or
- (b) any condition of a licence or any other conditions imposed under or pursuant to any provision of this Part.

53ZSS. Guidelines for imposing pecuniary penalty

- (1) The Commission must publish guidelines indicating the way in which the Commission proposes to exercise the

disciplinary power to impose a pecuniary penalty.

- (2) The guidelines must be—
 - (a) published before the Commission exercises a disciplinary power to impose a pecuniary penalty for the first time; and
 - (b) published in the Gazette and in any other way that the Commission considers appropriate.
- (3) In exercising the disciplinary power to impose a pecuniary penalty, the Commission must have regard to the published guidelines.
- (4) The guidelines are not subsidiary legislation.

53ZST. Registration of pecuniary penalty order

- (1) The Court of First Instance may, on application made by the Commission, register in that Court an order to pay a pecuniary penalty.
- (2) The application must be made by producing to the Registrar of the High Court a written notice, requesting that the order be registered, together with the original and a copy of the order.
- (3) On registration, the order is to be regarded for all purposes as an order of the Court of First Instance made within the civil jurisdiction of that Court for the payment of money.
- (4) In this section—

pecuniary penalty (罰款) means a pecuniary penalty ordered to be paid under section 53ZSP(3)(c) or (5).

53ZSU. Procedural requirements for exercising disciplinary powers or powers under section 53ZSQ

- (1) The Commission may exercise a power under section 53ZSP(3) or 53ZSQ(1) or (9) (except for a power under

section 53ZSQ(1) exercisable in a situation specified in section 53ZSQ(2)(d)) in respect of a person only after giving the person a reasonable opportunity to be heard.

- (2) In reaching a decision under section 53ZSP or 53ZSQ, the Commission may have regard to any information or material in its possession that is relevant to the decision, regardless of how the information or material has come into its possession.
- (3) If the Commission decides to exercise a power under section 53ZSP(3) or 53ZSQ(1) or (9) in respect of a person who is or was a regulated person, the Commission must inform the person of the decision by written notice and the notice must—
 - (a) include a statement of the reasons for the decision;
 - (b) specify the time at which the decision is to take effect;
 - (c) specify any action that the person is required to take under the decision;
 - (d) for a decision to publicly reprimand, specify the terms in which the person is to be reprimanded;
 - (e) for a decision to impose a pecuniary penalty—
 - (i) specify the amount of the penalty; and
 - (ii) if the penalty is to be paid within a period other than that referred to in section 53ZSP(4)(a), specify that other period within which it must be paid;
 - (f) for a decision to revoke or suspend a licence or to prohibit an application, specify the duration and terms of the revocation, suspension or prohibition; and
 - (g) except for a revocation or suspension in the situation specified in section 53ZSQ(2)(d), include a statement that the person may apply to the Review Tribunal for a review of the decision.

53ZSV. General provisions relating to exercise of disciplinary powers or powers under section 53ZSQ

- (1) The revocation or suspension of any licence under section 53ZSP or 53ZSQ does not operate so as to—
 - (a) avoid or affect an agreement, transaction or arrangement entered into by the licensed person whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension; or
 - (b) affect a right, obligation or liability arising under the agreement, transaction or arrangement.
- (2) If at any time the Commission is contemplating exercising any power under section 53ZSP or 53ZSQ in respect of a person who is or was a regulated person, it may, where it considers it appropriate to do so in the interest of the investing public or in the public interest, by agreement with the person—
 - (a) exercise any power the Commission may exercise in respect of the person under this Subdivision (whether or not the same as the power the exercise of which has been contemplated); and
 - (b) take any additional action that it considers appropriate in the circumstances of the case.
- (3) If the Commission exercises any power or takes any additional action in respect of a person under subsection (2)—
 - (a) it must comply with the procedural requirements under section 53ZSU, as if those requirements, in addition to applying to the exercise of any power under section 53ZSP or 53ZSQ, also apply with necessary modifications to the taking of any additional action under subsection (2); and

- (b) subject to the agreement of the person, it is not obliged to give the person a reasonable opportunity to be heard.
- (4) Subsection (2) does not apply to a revocation or suspension in the situation specified in section 53ZSQ(2)(d).
- (5) Nothing in this Subdivision affects the power of the Court of First Instance to make any order or exercise any other power under or pursuant to section 53ZTE, 53ZTF, 53ZTG or 53ZTH.

53ZSW. Licensed person or responsible officer remains subject to obligations as such, despite suspension of licence or approval

- (1) If a licence of a licensed person is suspended under section 53ZSP or 53ZSQ in relation to all or any, or any part of all or any, of the VA service provided by the licensed person, then during the period of the suspension, the licensed person—
 - (a) continues to be regarded for the purposes of the provisions of this Ordinance, but not section 53ZRD, as licensed for the VA service or VA services, or the part of the VA service or VA services, to which the suspension relates; and
 - (b) without limiting paragraph (a), continues to be required to comply with any provision of this Ordinance relating to a licensed person that would apply to the person were the licence not so suspended.
- (2) If an approval of a person as a responsible officer of a licensed provider is suspended under section 53ZSP or 53ZSQ, then during the period of the suspension, the person—
 - (a) continues to be regarded for the purposes of the provisions of this Ordinance, but not section 53ZRO, as such a responsible officer; and

- (b) without limiting paragraph (a), continues to be required to comply with any provision of this Ordinance relating to a responsible officer that would apply to the person were the approval not so suspended.
- (3) A licence of a licensed person may be revoked under section 53ZSP or 53ZSQ even if, at the time of revocation, the licence is suspended, whether in relation to all or any, or any part of all or any, of the VA service provided by the person, under any provision of this Part.
- (4) An approval of a person as a responsible officer of a licensed provider may be revoked under section 53ZSP or 53ZSQ even if, at the time of revocation, the approval is suspended under any provision of this Part.
- (5) This section does not affect the operation of any provision of this Ordinance that applies in relation to a suspension.

Subdivision 2—Intervention Powers: Restrictions on Business or Property

53ZSX. Interpretation of Subdivision 2

- (1) A reference in this Subdivision (except section 53ZTB) to a prohibition or requirement imposed under section 53ZSZ, 53ZT or 53ZTA means a prohibition or requirement imposed on a person under section 53ZSZ, 53ZT or 53ZTA, as from time to time substituted or varied under section 53ZTB (if applicable).
- (2) Section 53ZSO(2) applies to this Subdivision as that section applies to Subdivision 1.

53ZSY. Grounds for imposing prohibition or requirement under section 53ZSZ, 53ZT or 53ZTA

The Commission may impose a prohibition or requirement under

section 53ZSZ, 53ZT or 53ZTA in respect of, or with reference to, any licensed provider or any of its associated entities if it appears to the Commission that—

- (a) any of the following might be dissipated, transferred or otherwise dealt with in a manner prejudicial to the interest of any of the licensed provider's clients or creditors—
 - (i) any property of the licensed provider or any of its associated entities or its clients;
 - (ii) any property connected with the business that constitutes providing a VA service by the licensed provider;
- (b) the licensed provider is not a fit and proper person to remain licensed or is not a fit and proper person to provide any VA service for which it is licensed (having regard, among other matters, to the matters specified in section 53ZRJ);
- (c) the licensed provider or any of its associated entities—
 - (i) has failed to comply with a requirement under section 9(3); or
 - (ii) in purported compliance with a requirement under section 9(3), has furnished the Commission with information that was, at the time when it was furnished, false or misleading in a material particular;
- (d) the licence of the licensed provider may be revoked or suspended on any of the grounds specified in section 53ZSP(2) or 53ZSQ; or
- (e) the imposition of the prohibition or requirement is desirable in the interest of the investing public or in the public interest.

53ZSZ. Restriction of business

- (1) Subject to section 53ZSY, the Commission may by written notice—
 - (a) prohibit a licensed provider or any of its associated entities from—
 - (i) entering into transactions of a specified description or other than of a specified description;
 - (ii) entering into transactions in specified circumstances or other than in specified circumstances;
 - (iii) entering into transactions to a specified extent or other than to a specified extent;
 - (iv) soliciting business from persons of a specified description or from persons other than of a specified description; or
 - (v) carrying on business in a specified manner or other than in a specified manner; or
 - (b) require a licensed provider or any of its associated entities to carry on business in, and only in, a specified manner.
- (2) A prohibition or requirement imposed on a licensed provider or any of its associated entities under subsection (1) may relate to either or both of the following—
 - (a) transactions entered into in connection with the carrying on, by the licensed provider, of a business of providing a VA service;
 - (b) transactions entered into in connection with any other business that is carried on by the licensed provider in connection with the carrying on, by the licensed provider, of a business of providing a VA service.

- (3) A prohibition or requirement imposed on an associated entity of a licensed provider under subsection (1) may relate to transactions entered into in connection with any client assets of the licensed provider.

53ZT. Restriction on dealing with property

- (1) Subject to section 53ZSY, the Commission may by written notice—
 - (a) prohibit a licensed provider or any of its associated entities—
 - (i) from doing any of the following—
 - (A) disposing of any relevant property;
 - (B) dealing with any relevant property in a specified manner or other than in a specified manner; and
 - (ii) from assisting, counselling or procuring another person to do any of the following—
 - (A) dispose of any relevant property;
 - (B) deal with any relevant property in a specified manner or other than in a specified manner; and
 - (b) require a licensed provider or any of its associated entities to deal with any relevant property in, and only in, a specified manner.
- (2) In this section—

relevant property (相關財產), in relation to a licensed provider or any of its associated entities, means—

- (a) any property—
 - (i) held by the licensed provider on behalf of any of the clients of the licensed provider;

- (ii) held by an associated entity of the licensed provider, on behalf of the licensed provider or any of the clients of the licensed provider; or
 - (iii) held by any other person on behalf of, or to the order of, the licensed provider, or an associated entity of the licensed provider; or
- (b) any other property that the Commission reasonably believes to be owned or controlled by the licensed provider or any of its associated entities.
- (3) A reference to licensed provider in paragraph (a) of the definition of *relevant property* in subsection (2) means the licensed provider acting within the capacity for which the licensed provider is licensed.

53ZTA. Maintenance of property

- (1) Subject to section 53ZSY, the Commission may by written notice require a licensed provider or any of its associated entities to maintain property in Hong Kong, and in any specified place outside Hong Kong, such that—
 - (a) the property maintained is of the value and of the description that appear to the Commission to be desirable with a view to ensuring that the licensed provider will be able to meet its liabilities in relation to the business that constitutes providing a VA service by the licensed provider; and
 - (b) the property is maintained in a manner that will enable the licensed provider or any of its associated entities at any time freely to transfer or otherwise dispose of the property.
- (2) The Commission may in any requirement imposed under this section direct that, for the purposes of the requirement,

property of a specified description is or is not to be taken into account.

53ZTB. Withdrawal, substitution or variation of prohibitions or requirements

- (1) An original prohibition or requirement, unless it provides otherwise, remains in force in accordance with its terms until it is—
 - (a) withdrawn by the Commission under subsection (2)(a); or
 - (b) substituted by another prohibition or requirement, or varied, by the Commission under subsection (2)(b).
- (2) The Commission may, if it considers appropriate to do so, by written notice given to the person on whom an original prohibition or requirement is imposed (*subject person*)—
 - (a) withdraw the original prohibition or requirement; or
 - (b) substitute another prohibition or requirement for, or vary, the original prohibition or requirement.
- (3) A prohibition or requirement as substituted or varied under subsection (2)(b) may only be a prohibition or requirement that the Commission may impose under section 53ZSZ, 53ZT or 53ZTA.
- (4) The Commission may exercise its power under subsection (2) of its own volition or on the request of the subject person or any other person affected by an original prohibition or requirement.
- (5) Subsections (1), (2), (3) and (4) apply, with necessary modifications, to a revised prohibition or requirement as they apply to an original prohibition or requirement.
- (6) In this section—

original prohibition or requirement (原有禁止或要求) means a prohibition or requirement imposed on a person under section 53ZSZ, 53ZT or 53ZTA;

revised prohibition or requirement (經修改禁止或要求) means—

- (a) a prohibition or requirement that substitutes under this section—
 - (i) an original prohibition or requirement; or
 - (ii) an earlier revised prohibition or requirement; or
- (b) an original prohibition or requirement, or an earlier revised prohibition or requirement, as varied under this section.

53ZTC. Exercise of Subdivision 2 power—procedural requirements and effect on agreement

- (1) In this section—
 - (a) a reference to the Commission deciding to exercise a Subdivision 2 power is a reference to—
 - (i) the Commission imposing a prohibition or requirement under section 53ZSZ, 53ZT or 53ZTA;
 - (ii) the Commission withdrawing a prohibition or requirement under section 53ZTB; or
 - (iii) the Commission substituting another prohibition or requirement for, or varying, a prohibition or requirement under section 53ZTB; and
 - (b) a reference to the Commission deciding not to exercise a Subdivision 2 power is to be construed accordingly.
- (2) If the Commission, of its own volition, decides to exercise a Subdivision 2 power in relation to a person, the Commission must inform the person of the decision by written notice and the notice must include—

- (a) a statement of the reasons for the decision; and
 - (b) (except for a withdrawal of a prohibition or requirement) a statement that the person may apply to the Review Tribunal for a review of the decision.
- (3) If a request is made by any person to the Commission pursuant to section 53ZTB(4) for the Commission to exercise its Subdivision 2 power referred to in section 53ZTB—
 - (a) if the Commission decides to exercise a Subdivision 2 power as requested, the Commission must inform the person of the decision by written notice and the notice must include a statement of the reasons for the decision; or
 - (b) if the Commission decides not to exercise a Subdivision 2 power as requested, with or without also deciding to exercise a Subdivision 2 power in another way, the Commission must inform the person of the decision or decisions by written notice and the notice must include—
 - (i) a statement of the reasons for the decision or decisions; and
 - (ii) a statement that the person may apply to the Review Tribunal for a review of the decision or decisions.
- (4) A decision to exercise a Subdivision 2 power in relation to a person takes effect at the time the person receives the notice given in respect of the decision or at the time specified in the notice, whichever is the later.
- (5) If—
 - (a) the Commission decides to exercise a Subdivision 2 power in relation to a person (*intervention subject*); and

- (b) the reasons provided in accordance with subsection (2) or (3) relate specifically to matters that—
 - (i) refer to any person (*identified person*) who is identified in the statement of the reasons for the decision but who is not the intervention subject; and
 - (ii) are, in the opinion of the Commission, prejudicial to the identified person in any respect,

the Commission must, as soon as reasonably practicable after the decision, take all reasonable steps to serve on the identified person a copy of the notice given in respect of the decision.

- (6) Subsections (2), (3) and (5) do not require a notice, or a copy of a notice, given in respect of a decision to exercise a Subdivision 2 power to be served on any person if the notice or copy has been served on the person under any other provision of this Part.
- (7) The Commission must publish in the Gazette, and may publish by any additional means that it considers appropriate, a notice regarding a decision to exercise a Subdivision 2 power.
- (8) A notice published under subsection (7) may, if the Commission considers appropriate, include a statement of the reasons for the decision to exercise a Subdivision 2 power to which the notice relates.
- (9) A decision to exercise a Subdivision 2 power does not operate so as to render an agreement unenforceable by a party to the agreement if the party proves that in entering into the agreement the party—
 - (a) acted in good faith; and

- (b) was unaware of any notice given, served or published under this Subdivision in respect of or regarding the decision to exercise the Subdivision 2 power.
- (10) If, because of the application of this Subdivision or of the giving, service or publication of any notice under this Subdivision, a person rescinds an agreement, the person must restore to any other party to the agreement any money or other benefit received or obtained by the person under the agreement from that party.

53ZTD. Power to impose prohibition or requirement not affected by revocation or suspension of licence

- (1) This section applies despite any other provisions of this Part, but does not affect the operation of section 53ZSW.
- (2) Subsection (3) applies if—
 - (a) in respect of, or with reference to, a licensed provider or any of its associated entities, a Subdivision 2 prohibition or requirement is imposed; and
 - (b) at any time after the imposition takes effect, the licence of the licensed provider is revoked or suspended.
- (3) The revocation or suspension—
 - (a) does not affect the validity of the imposition of the Subdivision 2 prohibition or requirement that has taken effect; and
 - (b) without limiting paragraph (a), does not affect any power exercisable by the Commission under section 53ZTB, at the time when the revocation or suspension takes effect or at any later time,and a reference in this Part to a licensed provider is to be construed accordingly.
- (4) Subsection (5) applies to a licensed provider if—

- (a) the licence of the licensed provider is revoked or suspended; and
 - (b) a Subdivision 2 prohibition or requirement imposed in respect of, or with reference to, the licensed provider or any of its associated entities (whether before or after the revocation or suspension) is in force.
- (5) The licensed provider does not contravene the prohibition in section 53ZRD(1) on carrying on a business of providing a VA service merely because it complies with the Subdivision 2 prohibition or requirement.
- (6) To avoid doubt, if the Commission has decided to revoke or suspend the licence of a licensed provider, the Commission may, at any time before the revocation or suspension takes effect, impose or withdraw a Subdivision 2 prohibition or requirement in respect of, or with reference, to the licensed provider or any of its associated entities.
- (7) To avoid doubt, this section does not affect the power of the Commission to impose or withdraw a Subdivision 2 prohibition or requirement imposed in respect of, or with reference to, a licensed provider or any of its associated entities where the licence of the licensed provider has been suspended.
- (8) In this section—
 - (a) a reference to imposing a Subdivision 2 prohibition or requirement is to be read to mean—
 - (i) imposing a prohibition or requirement under section 53ZSZ, 53ZT or 53ZTA;
 - (ii) substituting a prohibition or requirement for another prohibition or requirement under section 53ZTB; or

- (iii) varying a prohibition or requirement under section 53ZTB,
and a reference to a Subdivision 2 prohibition or requirement being imposed is to be read accordingly;
 - (b) a reference to a Subdivision 2 prohibition or requirement means a prohibition or requirement imposed, substituted or varied as mentioned in paragraph (a)(i), (ii) or (iii); and
 - (c) a reference to withdrawing a Subdivision 2 prohibition or requirement means withdrawing a prohibition or requirement under section 53ZTB.
- (9) In this section—
 - (a) a reference to a licence of a licensed provider being revoked—
 - (i) means the licence being revoked under section 53ZSP or 53ZSQ; and
 - (ii) includes the licence being deemed under section 53ZRX to be revoked; and
 - (b) a reference to a licence of a licensed provider being suspended means the licence being suspended under section 53ZSP or 53ZSQ.

53ZTE. Application to Court of First Instance relating to non-compliance with prohibition or requirement

- (1) The Commission may apply to the Court of First Instance for an order under subsection (2) if a subject person fails to comply with a Subdivision 2 prohibition or requirement.
- (2) On an application under subsection (1), the Court of First Instance may inquire into the case and may—
 - (a) if the Court is satisfied that there is no reasonable excuse for the subject person not to comply with

the Subdivision 2 prohibition or requirement—order the subject person to comply with the prohibition or requirement within the period specified by the Court; and

- (b) if the Court is satisfied that the failure was without reasonable excuse—punish the subject person, and any other person knowingly involved in the failure, in the same manner as if the subject person and, where applicable, that other person had been guilty of contempt of court.
- (3) The Commission may apply to the Court of First Instance for an order under subsection (4) if there is a reasonable likelihood that a subject person will fail to comply with a Subdivision 2 prohibition or requirement.
- (4) On an application under subsection (3), the Court of First Instance may order the following persons to take any action, or refrain from taking any action, that the Court directs—
 - (a) the subject person;
 - (b) any other person whom the Court is satisfied is able to procure the subject person to comply with the Subdivision 2 prohibition or requirement.
- (5) An application under this section must be made by originating summons or originating motion.
- (6) An originating summons under this section must be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).
- (7) In this section—

Subdivision 2 prohibition or requirement (第2次分部禁止或要求)—see section 53ZTD(8);

subject person (施加對象), in relation to a Subdivision 2 prohibition or requirement, means the person in respect of whom the prohibition or requirement is in force.

Subdivision 3—Winding Up and Other Orders

53ZTF. Winding up orders

- (1) The Commission may present a petition for a licensed provider, or an associated entity of a licensed provider, to be wound up under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) on the ground that it is just and equitable that the licensed provider or the associated entity should be so wound up if—
 - (a) the licensed provider or the associated entity is a corporation in respect of which the Court of First Instance has jurisdiction to wind up under that Ordinance; and
 - (b) it appears to the Commission that it is desirable in the public interest that the licensed provider or the associated entity should be wound up.
- (2) The Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) applies to the petition as it applies in relation to a petition presented under that Ordinance.

53ZTG. Bankruptcy orders

- (1) The Commission may present a petition for a bankruptcy order against a licensed representative in accordance with the Bankruptcy Ordinance (Cap. 6) if—
 - (a) grounds exist for the presentation of a petition for a bankruptcy order against the licensed representative by his or her creditor in accordance with that Ordinance; and