

STATEMENT 3.271**AUDITING GUIDELINE****THE AUDITOR'S RESPONSIBILITY IN RELATION TO FRAUD,
OTHER IRREGULARITIES AND ERRORS****Introduction**

1. The purpose of this guideline is to provide auditors with guidance on:
 - the extent of their responsibilities for the prevention and detection of fraud, other irregularities and errors;
 - the extent to which fraud, other irregularities and errors that have been detected should be reported to management, members and third parties.
2. The responsibilities described in this guideline are broadly applicable to all auditors. Auditors of companies in regulated industries may also have additional responsibilities under the relevant Ordinances. The relevant Auditing Guidelines should be consulted for more specific guidance, as should guidelines issued for other industries. In any event, the auditor should have regard to any statutory, constitutional or contractual requirements, in addition to his professional responsibilities.
3. Auditors should also refer to other guidance issued by the Hong Kong Society of Accountants in particular Statement 1.204B "Unlawful acts or defaults by clients of members". In addition, the ethical aspect of tax fraud is dealt with in the ethical guidance and is not addressed in this guideline.

Definitions

4. "Fraud and other irregularities" is used to refer to:
 - a. fraud, which involves the use of deception to obtain an unjust or illegal financial advantage;
 - b. intentional misstatements in, or omissions of amounts or disclosures from, an entity's accounting records or financial statements;
 - c. theft, as defined by the Theft Ordinance (see Appendix 2), whether or not accompanied by misstatements of accounting records or financial statements.

5. "Error" is used to refer to unintentional misstatements in, or omissions of amounts or disclosures from, an entity's accounting records or financial statements. Material errors are normally corrected by the auditor's client when they are identified. If a material error which has been identified is not corrected it becomes an irregularity, i.e. an unintentional act is converted into an intentional one.
6. It must be appreciated that the lawfulness of an act is usually determined following a decision by the courts. For convenience, however, this guideline uses the words "fraud and other irregularity" whereas in practice the auditor will normally be concerned with a suspected, rather than proven, fraud or irregularity.

Responsibility for prevention

Management

7. The responsibility within an entity for the prevention of fraud, other irregularities and errors rests with management. As part of its business responsibilities, management has the fiduciary role of safeguarding assets since the directors of a company (or in other entities those in a similar position) are regarded in law as acting in a stewardship capacity concerning the property under their control.
8. The following may, amongst other methods, help management discharge its responsibilities for the prevention of fraud, other irregularities and errors:
 - the installation of an effective accounting system;
 - the institution and the operation of an appropriate system of internal control (including authorisation controls and controls covering segregation of duties);
 - ensuring that employees understand relevant codes of conduct; and
 - monitoring relevant legal requirements and ensuring that operating procedures and conditions meet these requirements.

In larger entities, these methods may be supplemented by:

 - the establishment of an independent internal audit function; and
 - the appointment of an audit committee.

9. For many entities, the responsibility for management to keep proper accounting records and to prepare financial statements giving a true and fair view is set out in relevant legislation, for example, sections 121 and 123 of the Companies Ordinance. There are other statutory measures relating to management's responsibilities. For instance, consenting to and conniving at false accounting by a company is an offence under sections 19 and 20 of the Theft Ordinance, and a company's directors have a responsibility to ensure that the company does not engage in "fraudulent trading" under section 275 of the Companies Ordinance.

The auditor

10. The auditor is not responsible for preventing fraud, other irregularities or errors. Audit procedures should be designed to give the auditor a reasonable expectation of detecting any material misstatements, whether intentional or unintentional, in an entity's financial statements. He cannot, however, prevent a fraud or other irregularity from occurring; but the recurring annual audit may act as a deterrent. He should make a report to management where he identifies such matters as significant weaknesses in the structure of accounting systems and internal controls and deficiencies in their operation (see the Auditing Guideline 3.254 "Reports to management" paragraph 13). If management implements the suggested or other improvements, this should help to prevent fraud, other irregularities and errors.

Responsibility for detection

Management

11. The primary responsibility for the detection of fraud, other irregularities and errors rests with management; its role in detection is an extension of its role in prevention.

The auditor

12. The auditor's responsibility is properly to plan, perform and evaluate his audit work so as to have a reasonable expectation of detecting material misstatements in the financial statements, whether they are caused by fraud, other irregularities or errors.

Discharging the auditor's responsibilities

Engagement letters

13. Having decided to accept an audit assignment, the auditor should normally send a letter to the client setting out the terms of the engagement. The Auditing Guideline 3.270 "Engagement letters" recommends that this letter should contain a description of the scope of the audit, the responsibilities of management and the duties of an auditor with regard to the prevention and detection of fraud and other irregularities. That guideline also recommends that the letter "should explain that the auditor will endeavour to plan his audit so that he has a reasonable expectation of detecting material misstatements in the financial statements resulting from irregularities or fraud, but that the examination should not be relied upon to disclose irregularities and frauds which may exist. If a special examination for irregularities or fraud is required by the client, then this should be specified in the engagement letter, but not in the audit section".

Planning and conduct of the audit

14. As discussed in Auditing Guideline 3.210 "Planning, controlling and recording", the auditor in planning and controlling his audit, seeks to obtain reasonable assurance that the financial statements do not contain a material misstatement. In reaching his decision as to the areas and balances to be tested and the transactions to be examined, the auditor will need to consider information available from knowledge of the client and prior experience, if applicable. More specifically, the procedures adopted by the auditor to provide a reasonable expectation of detecting material fraud, other irregularity or error will depend on his judgement as to:
 - a. the risk that such fraud, other irregularities or errors can occur and remain undetected by the entity;
 - b. the risk that a particular type of fraud, other irregularity or error could impair the true and fair view of the financial statements; and
 - c. the relative effectiveness of different audit tests.
15. The auditor should therefore consider the risk of material misstatement resulting from fraud, other irregularities or errors. Appendix 1 sets out certain factors which the auditor may wish to consider when assessing the risk of material misstatement, and provides guidance on the auditor's response to them. The auditor

should neither assume that management is dishonest nor assume unquestioned honesty when planning, performing and evaluating the results of his audit procedures. The auditor recognises that audit evidence needs to be evaluated objectively to determine whether the financial statements are free of material misstatement.

16. Because of the characteristics of fraud and other irregularities, particularly those involving forgery and collusion, a properly designed and executed audit may not detect a material fraud or other irregularity. For example, current auditing practice does not normally involve the auditor in establishing the authenticity of original documents. Also, audit procedures that will usually be effective for detecting a misstatement that is unintentional may be ineffective for a misstatement that is intentional and is concealed through collusion between client personnel and third parties or among management or employees of the client. The auditor's opinion on the financial statements is based on the concept of reasonable assurance; his report does not constitute a guarantee that the financial statements are free of misstatement. Therefore, the subsequent discovery that a material misstatement exists in the financial statements is not necessarily evidence of inadequate planning, performance, or evaluation on the part of the auditor.

Initial action to be taken by the auditor on discovery

17. If during the course of his work the auditor identifies the possible existence of a fraud, other irregularity or error the following action should be taken.
18. The auditor should endeavour to clarify whether a fraud, other irregularity or error has occurred. Where his suspicions are aroused, he should consider taking copies of any original records which give rise to his suspicions. Unless fraud by senior management is suspected, the auditor should inform senior management of his suspicions. Either management or the auditor should then perform such additional testing as is required in order to quantify the amount of the fraud, other irregularity or error, analysing and projecting the results of the tests as appropriate. Where fraud by senior management is suspected alternative action may be appropriate (see paragraph 24).
19. Where a fraud, other irregularity or error has been identified, the auditor should consider its nature, cause and likely effect on the financial statements. Full notes or minutes of any conversations or meetings with management on the subject should be made. Any adjustments to the financial statements which are necessary to ensure

that a fraud, other irregularity or error does not impair the true and fair view should be agreed with management on a timely basis. If such adjustments are not made, or if there is an uncertainty which prevents the auditor from forming an opinion, he should qualify his audit report accordingly (see paragraphs 25 to 27).

20. When the auditor has determined that a fraud or other irregularity has or may have occurred, he should reconsider the reliability of any audit evidence which he may have obtained on that or any other matter. The action taken by the auditor will depend on the nature of the fraud or other irregularity, e.g. fraud by senior management would cast doubt on representations previously received from those suspected of having been involved.
21. When the auditor suspects that a fraud or irregularity may have occurred which has or may have material financial implications, he should first consider whether the entity's lawyers have given advice. Where it would not be appropriate to approach the entity's lawyers, he should consider taking his own legal advice as to whether in fact a breach of the law is involved, the possible legal consequences and what further action, if any, he should take.

The auditor's responsibility for reporting

To management

22. The auditor should normally report to senior management of an entity all fraud, other irregularities or material errors brought to light by the audit. The auditor may also make recommendations of good practice in order to assist in the prevention of further occurrences. Such recommendations could be included in a report by the auditor to management (see the Auditing Guideline 3.254 "Reports to management").
23. In the case of errors, provided material errors are corrected and reported to management, no further reporting action is normally needed unless there is a specific requirement under the terms of the auditor's engagement or applicable legislation (see paragraph 25).
24. In the case of fraud and other irregularities where the auditor suspects that management may be involved in, or is condoning, fraud or other irregularities, it is particularly important that he reports promptly to senior management within the entity (provided the managers to whom he would report are not suspected of being involved). Legal advice may be required if the auditor believes that senior management, including members of the board of directors, is

involved, or if he believes that his report may not be acted upon, or if he is unsure as to the person to whom he should report. Also there may be exceptional occasions when it is necessary for the auditor to report direct to a third party without the knowledge or consent of management (see paragraphs 30 to 40).

To members or owners

Errors

25. Material errors will normally be corrected in the financial statements so that the auditor will not need to report such errors to members or owners of the entity. However, the auditor should consider whether the incidence or significance of such errors suggests that proper accounting records have not been kept, and if he concludes that they have not been so kept, he should state this fact in his audit report. Where material errors are not corrected, the audit report should be qualified.

Fraud and other irregularities

26. Where an auditor concludes that, as a result of a fraud or other irregularity, the financial statements do not give a true and fair view, he should qualify his opinion on the financial statements. If, despite the occurrence of the fraud or other irregularity, the financial statements do give a true and fair view, he does not need to qualify his opinion on these grounds.
27. There may, however, be other grounds for qualifying the audit report. For example, in the case of a company:
 - a. the auditor must state in his report whether in his opinion the financial statements have been properly prepared in accordance with the Companies Ordinance;
 - b. there is also a requirement for the auditor to qualify his report if he considers that proper accounting records have not been kept or if he considers that the financial statements are not in agreement with the accounting records. A qualification on either of these grounds may be appropriate where the auditor has evidence of fraud or other irregularities;
 - c. the auditor must also state in his report if he has not obtained all the information and explanations he considers necessary for the purpose of his audit. (In such circumstances, it will also often be the case that the scope of his audit has been restricted and he should qualify his report accordingly.) Where the auditor

suspects that fraud or other irregularities have been perpetrated by senior management or others responsible for preparing the financial statements, the obtaining of satisfactory information and explanations is particularly important.

28. In extreme circumstances, for example, where the entity refuses to issue its financial statements, the auditor should resign. In addition, he should consider resigning where he has considerable doubts about management's integrity and there is no immediate occasion for reporting to members.
29. Certain provisions of section 140A of the Companies Ordinance are relevant where the auditor of a company ceases to hold office for any reason. When an auditor ceases to hold office for any reason, he has to deposit at the company's registered office a statement of any circumstances connected with his ceasing to hold office which he considers should be brought to the attention of members or creditors of the company, or a statement that there are no such circumstances. If the auditor states that there are circumstances and no application is made by the company to the court to have the statement set aside, the company must send a copy of the statement to every person who is entitled to be sent copies of the financial statements and must send a copy to the Registrar of Companies for all companies except for private companies. Auditors may wish to take legal advice on the wording of any such statement. They should also consider their response to their successors in relation to giving professional clearance in accordance with Statement 1.207 "Changes in a professional appointment".

To third parties

30. Confidentiality is an implied term of an auditor's contract. The duty of confidence, however, is not absolute. In certain exceptional circumstances the auditor is not bound by his duty of confidentiality and can disclose matters to a proper authority in the public interest (see paragraph 31) or for other specific reasons (see paragraphs 38 to 40). The auditor needs to weigh the duty of confidentiality against the public interest in disclosure to the proper authority. Determination of where the balance lies will require careful consideration. In many cases, an auditor whose suspicions have been aroused will have to make a professional judgement on whether his misgivings justify him in carrying the matter further or are too insubstantial to deserve reporting.

31. Matters which should be taken into account when considering whether disclosure is justified in the public interest may include the following:
- a. the extent of which the fraud or other irregularity is likely to result in a material gain or loss for any person or is likely to affect a large number of persons;
 - b. the extent to which the non-disclosure of the fraud or other irregularity is likely to enable it to be repeated with impunity;
 - c. the gravity of the matter;
 - d. whether there is a general management ethos within the entity of flouting the law and regulations;
 - e. the weight of evidence and the auditor's assessment of the likelihood that a fraud or other irregularity has been committed.

The auditor may need to take legal advice before making a decision on whether the matter should be reported to a proper authority in the public interest.

32. Where it is in the public interest to disclose and where information is disclosed to an appropriate body or person and there is no malice motivating the disclosure, the auditor is protected from the risk of breach of confidence or defamation.
33. The auditor retains the protection of qualified privilege only if he reports matters to one who has a proper interest to receive information (per Denning in *Initial Services v Putterill* 1968). Which body or person is the proper authority in a particular instance will depend on the nature of the fraud or other irregularity. Proper authorities could include the Independent Commission Against Corruption (ICAC), the Police, the Customs and Excise Department, The Stock Exchange of Hong Kong Limited, the Securities and Futures Commission, the Commissioner of Banking or the Commissioner of Insurance.
34. The auditor also receives the same protection even if he only has a reasonable suspicion of a fraud or other irregularity. An auditor who can demonstrate to the court that he has acted reasonably and in good faith in informing the proper authority of a breach of the law which he thinks has been committed, would not be held in breach of duty to his client even if, an investigation or prosecution having occurred, it were found that there had been no offence or breach of the law.

35. Where the auditor becomes aware of a fraud or other irregularity which in his professional judgement he considers ought to be reported to the proper authority in the public interest, he should take the following action. He should ensure that the matter is drawn to the attention of senior management, including executive and non-executive directors and, if it exists, the audit committee, requesting them to report to the proper authority within a specified time. The auditor should subsequently obtain evidence to establish that the matter has been promptly reported. In the absence of such evidence, or if senior management refuse to inform the proper authority within the specified time, the auditor should report promptly the matter direct to the proper authority.
36. In circumstances where there has been an occurrence which causes the auditor no longer to have confidence in the integrity of senior management, e.g. where he believes that a fraud or other irregularity has been committed or condoned by senior management or he has evidence of the intention of senior management to commit such a fraud or other irregularity, it may be inappropriate to discuss this matter with a more senior level of management such as the board of directors, or even non-executive directors or the audit committee. In such cases, where the auditor has decided that the matter should be disclosed in the public interest, he should report direct to the proper authority.
37. The auditor should satisfy himself that his decision as to whether to report and, if so, to whom, will stand up to examination at a future date on the basis of the following considerations:
- what he knew at the time;
 - what he should have known in the course of his audit;
 - what he should have concluded; and
 - what he should have done.

The auditor should also consider any possible consequences in the event of financial loss occasioned by fraud or other irregularity of which he is aware or should be aware but decides not to report.

38. In certain other circumstances, an auditor is not bound by his duty of confidentiality and has a legal obligation to disclose fraud or other irregularities. For example:
- The auditor may be obliged to make disclosure of the commission of a criminal offence, if ordered to do so by a court or a government officer empowered to request such information.

- He may be obliged to disclose certain information to the liquidator of a client.
- He is obliged to disclose information to inspectors appointed under sections 142 and 143 of the Companies Ordinance under the provisions of section 145.
- Where such powers are properly invoked he is obliged to disclose any relevant information or produce relevant documents to the ICAC under sections 13 and 14 of the Prevention of Bribery Ordinance or to the Financial Investigation Group of the Police and Customs and Excise under sections 20 and 21 of the Drug Trafficking (Recovery of Proceeds) Ordinance.
- The auditor is obliged under section 89 of the Securities Ordinance and section 51 of the Commodities Trading Ordinance to report to the Securities and Futures Commission contraventions of particular sections of those Ordinances or any matter which may adversely affect the financial position of a dealer to a material extent.

The auditor may wish to consider taking legal advice in these and similar situations as to whether the particular circumstances lead him to having a legal obligation to disclose.

39. An auditor may disclose to the proper authority information concerning his client, where the auditor's own interests require disclosure of that information, for example, to enable an auditor to defend himself of a criminal charge or clear himself of suspicion, to resist proceedings for a penalty in respect of an alleged offence, or to give information to the police regarding arrangements which are known or suspected to be designed to assist a person to retain or control the proceeds of drug trafficking.
40. The duty of confidentiality is also overridden by certain legislation concerning the regulation of businesses in regulated industries, for example, section 61 of the Banking Ordinance applies to authorized institutions. Further guidance on the auditor's responsibilities in connection with these businesses is set out in the Industry Guidelines section of Volume III of the Members' Handbook.

APPENDIX 1

Assessing the risk of material misstatements

- 1.1 The nature of the business undertaken by an entity and its circumstances will affect the nature and extent of audit work performed. In carrying out an audit, the auditor needs to be aware that in certain circumstances, the risk of material misstatement occurring, as a result of fraud, other irregularities and errors, is greater. The auditor's appraisal of the risk that a material misstatement could occur should take into account problems facing the entity and the actual operations of the entity itself. This appendix outlines factors which would alert the auditor to an increased likelihood of material misstatement resulting from fraud or other irregularities both at the planning stage and during the performance of his audit. Only if there appears to be an increased likelihood of material misstatement need the auditor increase the scope of his work in areas of greater risk.

Planning

- 1.2 His assessment of this risk may include consideration of the following areas:

Business environment

- nature of the business, such as assets held in fiduciary capacity and assets readily susceptible to misappropriation;
- circumstances which may unduly influence management such as the holding of shares or options by management and performance-related bonuses;
- pressure to meet a profit forecast;
- management integrity;
- transactions with third parties that are unusual and/or not on an arms-length basis;
- transactions with related parties;
- unusual transactions with companies registered in tax havens;
- liquidity under pressure and borrowing limits almost reached.

Control environment

- management override;
- incompetent control personnel;
- lack of segregation of duties;
- weak internal controls;
- excessive authority vested in a senior officer;
- poor systems.

The auditor's planning procedures should be designed to assist him in making this judgement (see the Auditing Guideline 3.210 "Planning, controlling and recording").

- 1.3 Where there are doubts about the entity's existence as a going concern, the auditor should be aware that there is an increased risk of fraud and other irregularities (see the Auditing Guideline 3.251 "The auditor's considerations in respect of going concern").

Internal controls

- 1.4 An effective system of internal control is one of the main methods available to management for preventing fraud, other irregularities and errors. The auditor does not have a specific responsibility to rely on it, and therefore to test it, except where required by specific legislation or by agreement. However, the auditor should be aware that weaknesses in the internal controls of an entity may facilitate irregularities perpetrated by employees. He should also be aware that management can override controls and this may facilitate fraud by senior management.
- 1.5 In considering the risk of material misstatements, the auditor may wish to place emphasis on the following control aspects:
- segregation of duties;
 - authorisation (particularly of expense items, journal entries and new ledger accounts);
 - completeness and accuracy of accounting data (e.g. reconciliation procedures);
 - procedures to safeguard assets;
 - comprehensiveness of controls (e.g. including all relevant sub-systems);
 - adequacy of internal audit (where applicable).

- 1.6 Internal audit, when present and effective, is an important element of a system of internal control; it should be a deterrent to fraud and other irregularities. The auditor will need to assess the effectiveness and degree of independence of the internal audit function if he intends to place reliance on it (see the Auditing Guideline 3.281 "Reliance on internal audit").
- 1.7 If weaknesses in internal controls are identified, either from his preliminary evaluation or after compliance tests have been performed, the auditor should take into account the possible effect of those weaknesses when planning his substantive testing. Significant weaknesses in internal controls identified during the audit should be reported promptly to management (see Auditing Guideline 3.254 "Reports to management").

Design of tests and evidence

- 1.8 As a result of his assessment of the likelihood of the occurrence of material misstatements in the planning phase of the audit and his preliminary evaluation of the system of internal control, the auditor will design his tests to obtain relevant and reliable audit evidence sufficient to enable him to obtain reasonable assurance that material misstatements in the financial statements have not occurred.
- 1.9 The auditor draws some assurance from the absence of cause for suspicion, but he should neither assume that management is dishonest nor assume unquestioned honesty. In carrying out his procedures, the auditor may discover circumstances that could be indicative of fraud and other irregularities. Examples of such circumstances include:

Unsatisfactory records/control breakdowns

- poor accounting records in general;
- evidence of falsified documents;
- key controls not being operated.

Unsatisfactory explanations

- for figures, trends or results which do not accord with expectations;
- for unusual items or reconciliations or suspense accounts;
- for the unusual investment of funds held in a fiduciary capacity;
- for large or "unusual" transactions, particularly when close to a period end and especially with related companies or banks.

Payments

- substantial payments of fees to consultants or advisers for unspecified services;
- commissions or fees which appear either excessive or unusually low in relation to the normal payments for similar work;
- large payments in cash or by bankers' draft to or via overseas "shell" companies or numbered bank accounts;
- payments made to officials of domestic or overseas governments;
- general lack of supporting evidence.

Other

- correspondence between the client and its regulatory authority concerning problems with authorisation;
- correspondence between the client and its legal adviser, the substance of which is to advise against a particular course of action and which the client has ignored;
- investigation by government department, the police or the ICAC;
- evidence of unduly lavish life styles by officers and employees.

- 1.10 Many tests normally performed by the auditor may assist in detecting fraud and other irregularities if they are occurring. For example, substantive tests performed on the debtors ledger may be aimed at revealing overstatement of ledger balances or the existence of bad debts, but may also reveal fraud such as "teeming and lading".
- 1.11 In addition to detailed substantive tests, analytical review procedures may be used during planning, detailed testing and in the auditor's review of the financial statements, to detect account areas which merit further investigation or trends which seem unusual. For example, in some businesses, the reconciliation of purchases, sales and stock by volumes or quantities can be a useful technique.
- 1.12 Also, as part of the normal audit work performed to provide evidence to enable him to form his opinion on the financial statements, the auditor will consider the possible existence of contingent liabilities. This work may include reviewing the minutes of board meetings, correspondence with lawyers, and obtaining representations from management that all material contingent liabilities have been properly disclosed. The auditor should also consider whether this data suggests that a fraud or other irregularity has occurred.

APPENDIX 2

Examples of offences under the Theft Ordinance 1970

- 2.1 The basic definition of theft is to be found in the Theft Ordinance. Section 2 of the Ordinance provides:
- a. A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and "thief" and "steal" shall be construed accordingly.
 - b. It is immaterial whether the appropriation is made with a view to gain, or is made for the thief's own benefit.

Theft is an offence, and punishable on conviction on indictment by imprisonment for a term not exceeding ten years.

- 2.2 The Ordinance does not define dishonesty, that being a question of fact to be decided on the circumstances of each case. The Ordinance does, however, provide for certain circumstances in which the appropriation of property belonging to another is not to be treated as dishonest. These include cases in which a person appropriating property does so in the belief that he has in law the right to deprive the other of it, or in the belief that he would have had the other's consent if the other had known of the appropriation and the circumstances of it.

Obtaining property, or pecuniary advantage, by deception

- 2.3 Under section 17 of the Theft Ordinance, a person who by any deception dishonestly obtains property belonging to another with the intention of permanently depriving the other of it commits an offence. Obtaining property covers obtaining ownership, possession or control of it. "Obtain" includes obtaining for another, or enabling another to obtain or retain. "Deception" means any deception, deliberate or reckless, by words or conduct as to fact or law, including a deception as to the present intention of the person using the deception or any other person.
- 2.4 Under section 18 of the Theft Ordinance, a person who by any deception (defined as above) dishonestly obtains for himself or another any pecuniary advantage commits an offence. A pecuniary advantage within the meaning of section 18 is obtained for a person where:

- a. he is granted by a bank, restricted licence bank or deposit-taking company (or their subsidiaries if their principal business is the provision of credit) —
 - i. a credit facility or credit arrangement; or
 - ii. an improvement to, or extension of, the terms of a credit facility or credit arrangement; or
 - iii. a credit to, or a set off against, an account.

This applies whether the credit facility, credit arrangement or account:

- A. is in his name or another; or
- B. is legally enforceable or not; or

- b. he is allowed to borrow by way of overdraft, or to take out any policy of insurance or annuity contract, or obtains an improvement of the terms on which he is allowed to do so whether any such overdraft, policy of insurance or annuity contract —
 - i. is in his name or the name of another person; or
 - ii. is legally enforceable or not; or
- c. he is given the opportunity to earn remuneration or greater remuneration in an office or employment, or to win money by betting.

2.5 The Theft (Amendment) Ordinance 1980 created a range of offences in addition to section 18. The offences created are:

- a. dishonestly obtaining services from another by deception (section 18A);
- b. evading liability by deception. The offence is committed where a person by deception dishonestly secures the remission of a liability to make payment, or, with intent to make permanent default, dishonestly induces a creditor or person claiming payment on his behalf to wait for or forgo payment, or dishonestly obtains exemption from or abatement of liability to make payment (section 18B);
- c. dishonestly making off without payment, where it is known that payment on the spot is required or expected, and with intent to avoid payment (section 18C).

False accounting

2.6 Section 18D inserted by the Theft (Amendment) Ordinance 1986 makes it an offence to dishonestly, with a view to a gain for himself or another or with intent to cause loss to another or by deception procure the making, omission, altering, abstracting, concealing or destruction of an entry in a record of a bank, restricted licence bank or deposit-taking company or any subsidiary thereof the principal business of which is the provision of credit.

2.7 Under section 19 of the Theft Ordinance, it is an offence:

- a. dishonestly to destroy, deface, conceal or falsify any account or record or document made or required for any accounting purpose; or
- b. in furnishing information for any purpose dishonestly to produce or make use of any account or any record or document as aforesaid which, to the knowledge of the person producing or making use of it, is or may be misleading, false or deceptive in a material particular, with a view to gain for oneself or another or with intent to cause loss to another.

For this purpose, a person who makes or concurs in making an entry which is or may be misleading, false or deceptive in a material particular, or who omits or concurs in omitting a material particular, is treated as falsifying the account or document.

2.8 Under section 8(2), "gain" and "loss" are to be construed for the purposes of the Theft Ordinance as extending only to gain or loss in money or other property, but as extending to any such gain or loss whether temporary or permanent; and "gain" includes a gain by keeping what one has, as well as a gain by getting what one has not, and "loss" includes a loss by not getting what one might get, as well as a loss by parting with what one has.

Liability of company officers for certain offences by company

2.9 Under section 20 of the Theft Ordinance, where the offences of obtaining property by deception, obtaining pecuniary advantage by deception or false accounting are committed by a body corporate and are proved to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

False statements by directors, etc.

- 2.10 Under section 21 of the Theft Ordinance, where an officer of a body corporate or an unincorporated association (or person purporting to act as such), with intent to deceive members or creditors about its affairs, publishes or concurs in publishing a written statement or account which to his knowledge is or may be misleading, false or deceptive in a material particular, he commits an offence.

Suppression, etc., of documents

- 2.11 Under section 22 of the Theft Ordinance, a person who dishonestly, with a view to gain for himself or another or with intent to cause loss to another, destroys, defaces or conceals any valuable security, any will or other testamentary document or any original document of, or belonging to, or filed or deposited in, any court or any government department commits an offence. Similarly, a person who dishonestly procures execution of a valuable security commits an offence. This applies in relation to the making, acceptance, endorsement, alteration, cancellation, or destruction in whole or in part of a valuable security, and in relation to the signing or sealing or any paper or other material in order that it may be made or converted into, or used or dealt with as a valuable security, as if that were the execution of a valuable security.
- 2.12 A valuable security means any document creating, transferring, surrendering or releasing any right to, in or over property, or authorising the payment of money or delivery of any property, or evidencing the creation, transfer, surrender or release of any such right, or the payment of money or delivery of any property, or the satisfaction of any obligation.