

LEGISLATIVE COUNCIL BRIEF

Companies Ordinance
(Chapter 32)

COMPANIES (AMENDMENT) BILL 2001

INTRODUCTION

At the meeting of the Executive Council on 22 May 2001, the Council **ADVISED** and the Chief Executive **ORDERED** that the Companies (Amendment) Bill 2001, at Annex, should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

Existing Requirement

2. A listed company incorporated in Hong Kong is required under section 129G of the Companies Ordinance (the Ordinance) to send a full set of financial documents to be laid before the company at a general meeting to every entitled person not less than 21 days before the date of that meeting.

3. The financial documents comprise a copy of the balance sheet, including every document required by law to be annexed to it (for example, the profit and loss accounts); a copy of the directors' report; and a copy of the auditors' report. These documents usually form part of the annual report of the company in question, which contains other information.

Room for Improvement

4. Whilst the information in the financial documents is of interest to sophisticated investors, the complexity of the information may discourage retail investors from reading the financial documents. The full set of documents can be more than 50 pages long, while the annual report containing such documents can run into more than 100 pages. The printing of such bulky annual reports has significant paper consumption and is not environmentally friendly.

5. To facilitate the entitled persons to better comprehend the operations of a listed company, we consider that there is merit in allowing such a company to send a summary financial report in place of the full set of documents to its entitled persons for the purposes of its general meeting. Such a summary financial report contains the basic information which is pertinent to entitled persons without going into every detail. An entitled person will continue to have the right to choose to receive the full set of documents if he so desires. This proposal is in line with practices in other jurisdictions including the United Kingdom, Australia and Singapore. In the United Kingdom, about 95% of the shareholders of listed companies with a large shareholder base elected to receive summary financial reports instead of the full set of documents.

Main Features of Legislative Proposal

(A) Sending of Summary Financial Reports

6. Under the present proposal, a listed company is not allowed to send to an entitled person a summary financial report in place of the full set of financial documents for the purposes of a general meeting of the company if –

- (a) the memorandum and articles of association of the company does not permit the company to do that;
- (b) the entitled person is a holder of debentures of the company and the instrument that constitutes or governs the debentures does

not permit the company to do that;

- (c) the court so prohibits following a conviction against the company for failing to issue the summary financial report in accordance with the statutory requirements; and
- (d) the entitled person does not agree to be sent a summary financial report in place of the full set of documents for the purposes of a general meeting.

7. As mentioned in paragraph 6(d) above, a summary financial report will be sent to an entitled person in place of the full set of documents if he so agrees. To ensure that his right of access to full corporate information will not be eroded, the person can make a request to the company for the full set of documents. If the request is made after a summary financial report has been sent to him, the company will be required to comply with the request within 14 days of its receipt unless the request is received after a year's time (i.e. when the full set of documents or summary financial report for the following year is issued).

8. The summary financial report may be sent by electronic means with the agreement of an individual entitled person. As a further step to facilitate electronic communication between a listed company and its entitled persons, the company would be allowed to fulfil the proposed legal requirement of sending summary financial reports by publishing the reports on its website and notifying the entitled persons who have agreed with this arrangement of such posting. The information thus published on the website would be kept until the next annual general meeting. This arrangement would be applicable to the sending of the full set of documents under section 129G.

9. The arrangement in paragraph 8 above notwithstanding, an entitled person would still be entitled to elect to receive a printed copy of the report if he so desires and indicates his desire to the company. He may be able to receive a printed copy in case he cannot download a copy from the website.

(B) Ascertainment of entitled persons' wishes

10. A listed company would not send a summary financial report to an entitled person in place of the full set of documents for the purposes of a general meeting unless the company has ascertained that the person agrees that the company may do so. In order to ascertain the wishes of the person, the company would send him a notice, giving him 30 days to notify the company as to his wishes.

11. The company will be considered to have sufficiently ascertained the wishes of an entitled person if the company has sent him the notice but does not receive response within 30 days, and in which case, the entitled person is treated to have agreed to receive a summary financial report instead. The option chosen by an entitled person will continue to apply in the following years, unless the company is notified otherwise.

(C) Contents of Summary Financial Reports

12. A summary financial report will be derived from the company's financial documents referred to in paragraph 5 above. It must also contain a brief report by the company's directors on the company's performance in the year under review and the outlook for the coming year. The brief report includes a statement in relation to the following matters –

- (a) a fair review of the development of the business of the company and its subsidiaries, if any, during the financial year concerned and of the position at the end of the year;
- (b) particulars of all important events which have occurred since the end of the financial year concerned and affected the company and (if applicable) the group of companies to which the company belongs; and
- (c) an indication of likely future developments of the business of the company.

13. As regards corporate transparency, the summary financial report must disclose the following information –

- (a) details of directors' emoluments, pensions, etc, as required under section 161 of the Ordinance;
- (b) particulars as to loans to officers, etc, as required under sections 161A and 161B of the Ordinance; and
- (c) the list of names of directors, as required under section 129D(3)(i) of the Ordinance.

14. Other information included in a summary financial report includes –

- (a) a statement as to the name of the person who signed it on behalf of the board of the company;
- (b) a clear statement (exhibited in a prominent position in the report) of how entitled persons can obtain, free of charge, a copy of the company's full set of documents from which the report is derived, and how an entitled person may in future notify the company of his wishes regarding the sending to him a summary financial report in place of the full set of documents;
- (c) a statement which clarifies the nature of the report by indicating that the report only gives a summary of the information and particulars contained in the company's financial documents and that an entitled person may obtain free of charge the full set of documents;
- (d) an opinion from the company's auditors as to whether the summary financial report is consistent with the full set of financial documents and complies with the relevant statutory requirements;
- (e) a statement on whether the auditor's report concerned is qualified or modified and, if it is qualified or otherwise modified, set out the report in full together with any further material

needed to understand the qualification or other modification;
and

- (f) a statement on whether the auditors' report in the annual accounts contains a statement under –
 - (i) section 141(4) of the Ordinance (accounting records or returns inadequate or accounts not agreeing with the records and returns); or
 - (ii) section 141(6) of the Ordinance (failure to obtain necessary information and explanations).

(D) Penalty

15. Failure on the part of a listed company and every officer of the listed company to comply with the relevant legislative proposals should be an offence. We propose to empower the court to prohibit a defaulter upon conviction from issuing, circulating or publishing summary financial reports for such period as the court may determine.

THE BILL

16. **Clause 2** defines new terms used in the Bill. **Clause 3** adds a new provision to section 129C to clarify that the requirement of attaching certain documents to a balance sheet of a company does not apply to a copy of a balance sheet which is incorporated into a summary financial report of a listed company. **Clause 4** amends section 129G so that a listed company is not required to send the full set of documents required under section 129G to an entitled person if it has duly sent the person a summary financial report.

17. **Clause 6** adds in new sections 141CA to 141CG in relation to the sending of summary financial reports to entitled persons of listed companies. New sections 141CA and 141CB specify the circumstances in which summary financial reports may be sent to entitled persons. New section 141CC provides for the compliance of certain requests from entitled persons for the full set of documents. New section 141CD specifies the circumstances in which a listed company is not allowed to send a summary financial report to an entitled person. New section 141CE specifies the requirements in relation to the form and contents of a summary financial report. New section 141CF gives the court the power to make an order prohibiting a listed company from circulating, issuing or publishing a summary financial report where there is a conviction of an offence in the new section 141CE.

18. New section 141CG allows a listed company to publish the full set of documents or summary financial report on its website as a means to discharge its obligation to send the documents to an entitled person if he so agrees. **Clause 7** amends section 359A to empower the Chief Executive in Council to make regulations in relation to summary financial reports. **Clause 8** specifies the penalties for the offences committed under the new sections.

19. The ascertainment of entitled persons' wishes, the contents of summary financial reports and the procedures on the sending of the relevant documents to entitled persons will be provided for in the Companies (Summary Financial Reports of Listed Companies) Regulation which will

be made after the enactment of the Bill.

PUBLIC CONSULTATION

20. We consulted the Standing Committee on Company Law Reform (SCCLR) on the proposal on 9 December 2000. The SCCLR endorsed the implementation of the proposal subject to the preservation and availability of full annual reports, the right of shareholders and the public to obtain access to these reports, and the option for a full annual report being printed explicitly at the front of the summary financial reports.

21. We consulted the Legislative Council Panel on Financial Affairs on the proposal on 7 March 2001. The Panel Members were generally supportive of the proposal. We also consulted the Hong Kong Society of Accountants (HKSA) in March 2001. The HKSA supported the proposal in principle, and raised a number of technical points, which had been addressed in the drafting of the Bill.

BASIC LAW IMPLICATIONS

22. The Department of Justice advises that the Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

23. The Department of Justice advises that the Bill is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

24. The Bill does not affect the current binding effect of the existing provisions of the Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

25. There are no financial or staffing implications for Government arising from the implementation of the proposal.

ECONOMIC IMPLICATIONS

26. Apart from saving printing cost, the rendering of a less bulky and more concise summary financial report as an expedient over the full annual report may enable smaller shareholders to more readily appreciate the business and financial situation of the listed company concerned, thereby helping their respective investment considerations.

LEGISLATIVE TIMETABLE

27. The legislative timetable is as follows –

Publication in the Gazette	25 May 2001
First Reading and commencement of Second Reading debate	6 June 2001
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

PUBLICITY

28. A press release will be issued on 24 May 2001 and a spokesman will be available to handle media enquiries.

ENQUIRIES

29. For enquiries, please call Mr L W TING, Assistant Secretary for Financial Services (Companies) at 2527 5543.

**Financial Services Bureau
(FSB C14/19(2001) Pt 4)**

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A BILL

To

Amend the Companies Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Companies (Amendment) Ordinance 2001.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Financial Services by notice published in the Gazette.

2. Interpretation

Section 2(1) of the Companies Ordinance (Cap. 32) is amended by adding -

"entitled person" (有權利的人), in relation to a listed company, means a person who under section 129G(1) as read with the proviso thereto is entitled to be sent copies of the documents mentioned in that section;

"notice of intent" (意願通知書) means a notice of intent referred to in regulations made under section 359A(2);

"relevant financial documents" (有關財務文件), in relation to a listed company, means the documents required to be sent under section 129G(1) in respect of the company;

"summary financial report" (財務摘要報告), in relation to a listed company, means a summary financial report of the company which complies with section 141CE(1);".

3. Accounts to be annexed, and auditors' report to be attached, to balance sheet

Section 129C is amended by adding -

"(4) This section does not apply to a copy of a balance sheet incorporated into a summary financial report of a listed company and issued, circulated or published as part of the report."

4. Right to receive copies of balance sheets and directors' and auditors' reports

(1) Section 129G(1) is amended, in proviso (b) -

(a) in paragraph (ii), by repealing "or" at the end;

(b) in paragraph (iii), by repealing "; and" and substituting "; or";

(c) by adding -

"(iv) subject to sections 141CA(1) and 141CD(1), to a member of a listed company, a holder of debentures of the company or any other person who is entitled to receive notices of general meetings of the company, if the company has, pursuant to a relevant notice of intent, duly sent to the member, holder or person a copy of a summary financial report in place of a copy of those documents from which the report is derived; and"

(2) Section 129G is amended by adding -

"(1A) Subject to sections 141CB(1) and 141CD(1), for the purposes of proviso (b)(iv) to subsection (1), a copy of a summary financial report of a listed company shall be treated as having been duly sent if -

(a) subject to paragraph (b), it is sent not less than 21 days before the date of the general meeting concerned;

- (b) where proviso (c) to subsection (1) applies, it is sent not less than such number of days as agreed under that proviso by the members entitled to attend and vote at the meeting."

- (3) Section 129G is amended by adding -

"(5) For the purposes of proviso (b)(iv) to subsection (1), "relevant notice of intent" (有關意願通知書), in relation to a member of a listed company, a holder of debentures of the company or any other person who is entitled to receive notices of general meetings of the company, means a notice of intent sent by the member, holder or person to the company in accordance with regulations made under section 359A(2).".

5. Resignation of auditor

Section 140A(3)(b) is amended by adding "as read with the proviso thereto" before "is entitled".

6. Sections added

The following are added before the subheading "**Accounts of certain private companies**" -

"Summary Financial Reports of Listed Companies

141CA. Restrictions on sending of summary financial reports of listed companies

(1) A listed company shall not send to an entitled person of the company, for the purposes of its general meeting, a copy of a summary financial report in place of a copy of the relevant financial documents from which the report is derived, unless there is in force a notice of intent sent by the person to the company, notifying the company that the person agrees to be sent a copy of the summary financial report in place of a copy of

the relevant financial documents.

(2) If default is made in complying with subsection (1), the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine.

141CB. Restrictions on sending of summary financial reports, etc. of listed companies where there are "relevant dates"

(1) Where there is a relevant date in respect of a general meeting of a listed company, the company shall not send to an entitled person of the company a copy of the summary financial report in relation to the meeting until the expiry of such period as may be specified by regulations made under section 359A(2).

(2) In addition, in the case mentioned in subsection (1), the company shall not send to such a person a copy of the relevant financial documents from which the summary financial report mentioned in that subsection is derived until the expiry of such period as may be specified by regulations made under section 359A(2).

(3) If default is made in complying with subsection (1) or (2), the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine.

(4) For the purposes of this section -

"relevant date" (有關日期), in relation to a general meeting of a listed company, means the first day on which the company sends a relevant notification in respect of the meeting to an entitled person of the company;

"relevant notification" (有關通告), in relation to a general meeting of a listed company, means a notification referred to in regulations made under section 359A(2), being a notification which according to its contents, is intended to apply exclusively or first to the meeting.

141CC. Duties of listed companies to comply with certain requests made by entitled persons

(1) Subject to subsection (2), if an entitled person of a listed company who has been sent a copy of a summary financial report in relation to a general meeting of the company makes a request under this section for a copy of the relevant financial documents from which the report is derived, then the company shall, subject to the provisions of this Ordinance, comply with the request within 14 days from the date of -

- (a) its receipt; or
- (b) the first day on which copies of those documents are sent to its entitled persons,

whichever is later.

(2) A listed company is not required to comply with a request made under subsection (1) unless the request is made -

- (a) in writing; and
- (b) before the relevant date.

(3) If default is made in complying with subsection (1), the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine and, for continued default, to a daily default fine.

(4) It shall be a defence for a person charged under subsection (3) to prove that he could not, by the exercise of reasonable diligence, have prevented the commission of the offence.

(5) For the avoidance of doubt, it is declared that -

- (a) the requirement to send a copy of a listed company's relevant financial documents to an entitled person of the company in

compliance with section 129G(1) does not apply where the company sends a copy of those documents to the person in response to a request under this section; and

- (b) a request under this section does not include a notice of intent except where the notice of intent is treated as such a request under the provisions of regulations made under section 359A(2).

(6) For the purposes of subsection (2), "relevant date" (有關日期), in relation to a listed company, means -

- (a) subject to paragraph (b), the first day on which copies of the relevant financial documents required to be laid before the company in the following general meeting are sent to the entitled persons of the company;
- (b) if no copies of those documents mentioned in paragraph (a) are required to be sent to the entitled persons of the company, the first day on which copies of the summary financial report in relation to that following meeting are sent to the entitled persons of the company.

141CD. Certain circumstances in which no summary financial reports shall be sent in place of relevant financial documents

(1) A listed company shall not send any copy of a summary financial report to an entitled person of the company in place of a copy of the relevant financial documents -

- (a) if the memorandum or articles of association of the company does not permit the company to do that;
- (b) if the person is a holder of debentures of the company and the instrument that constitutes or governs the debentures does not

permit the company to do that; or

- (c) if an order under section 141CF would thereby be contravened.

(2) If default is made in complying with subsection (1), the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine.

(3) For the avoidance of doubt, it is declared that -

- (a) if there is an event mentioned in subsection (1)(a), (b) or (c), then any notice of intent sent to the company by the person concerned, which is in force immediately before the existence of that event, shall cease to have effect; and
- (b) the cessation of any event mentioned in subsection (1)(a), (b) or (c) does not revive a notice of intent ceasing to have effect pursuant to paragraph (a), and the company in such case shall be treated as not having previously sent any notification referred to in regulations made under section 359A(2) to the person concerned.

141CE. Form and contents, etc. of summary financial reports

(1) A summary financial report in relation to a general meeting of a listed company shall be -

- (a) derived from the relevant financial documents required to be laid before the company in that meeting;
- (b) in such form and contain such information and particulars as specified in regulations made under section 359A(2); and
- (c) approved by the board of directors of the company.

(2) Nothing in subsection (1) shall be construed as prohibiting a listed

company from including in a summary financial report any other information or particulars which -

- (a) the company considers appropriate; and
- (b) is not inconsistent with the relevant financial documents from which the summary financial report is derived.

(3) If a document, purporting to be a summary financial report of a listed company, does not comply with subsection (1) and is circulated, issued or published by the company to any other person, unless there is reasonable excuse -

- (a) the company shall be guilty of an offence and liable to a fine; and
- (b) every officer of the company shall be guilty of an offence and liable to a fine and imprisonment.

**141CF. Prohibition orders against circulation, etc.
of summary financial reports**

Where there is a conviction of an offence under section 141CE(3), the court may -

- (a) by order prohibit the company concerned and any other person from circulating, issuing or publishing any of the company's summary financial report to any person for such period as the court may specify; and
- (b) in making the order impose such conditions as the court thinks appropriate.

**Relevant Financial Documents and Summary Financial
Reports on Computer Networks**

141CG. Circumstances in which listed companies may comply with section 129G by use of computer network

(1) Subject to subsection (2), for the purposes of section 129G, a listed company shall be treated as having sent a copy of the relevant financial documents or a copy of a summary financial report to an entitled person of the company in satisfaction of that section if -

- (a) the person has, pursuant to a notice of intent or other notice which is in force, agreed with the company to his having access to the documents or report, as the case may be -
 - (i) on a computer network to which the entitled person or any other entitled person may have access; and
 - (ii) instead of being sent the documents or report, as the case may be; and
- (b) the person is notified, in a manner for the time being agreed between the person and the company, of -
 - (i) the publication of the documents or report, as the case may be, on the computer network;
 - (ii) the address of the computer network; and
 - (iii) the location on that computer network where the documents or report, as the case may be, may be accessed, and how they or it may be accessed.

(2) Where a listed company's relevant financial documents or summary financial report are or is treated as being sent to an entitled person of the company by virtue of the operation of subsection (1), the documents or report, as the case may be, shall be treated as being sent to the person not less than 21 days before the date of the general meeting to which the documents or report, as the case may be, relate or relates

if and only if -

- (a) the documents or report, as the case may be, are or is published on the computer network referred to in that subsection throughout the period beginning not less than 21 days before the date of the meeting and ending on the date of the following general meeting in which relevant financial documents are required to be laid before the company; and
- (b) the notification given for the purposes of subsection (1)(b) is given not less than 21 days before the date of the first-mentioned meeting.

(3) Nothing in subsection (2) shall invalidate the proceedings of a general meeting where -

- (a) any documents or report that are or is required to be published as mentioned in subsection (2)(a) are or is published for a part, but not all, of the period mentioned in that subsection; and
- (b) the failure to publish the documents or report throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid."

7. Power to make regulations

Section 359A is amended -

- (a) by renumbering it as section 359A(1);
- (b) by adding -

"(2) Without prejudice to the power conferred under subsection (1), the Chief Executive in Council may make

regulations -

- (a) specifying the periods after which a copy of a summary financial report and a copy of the relevant financial documents of a listed company may be sent under section 141CB;
- (b) providing for any matter in relation to the determination of the effect of a notice of intent sent by an entitled person of a listed company, including providing for the circumstances under which such a notice of intent shall be treated as a request under section 141CC;
- (c) providing for the form and contents of a summary financial report of a listed company (including empowering a listed company to determine certain aspects of the form of its summary financial report);
- (d) providing for the means to ascertain the wishes of an entitled person of a listed company in relation to the sending of a copy of a summary financial report to the person in place of a copy of the relevant financial documents from which the report is derived (including providing for the sending of a notification by the

company to the person for the purposes);

- (e) providing for the form and contents of a notification referred to in paragraph (d), including -
 - (i) providing for the form and contents of any card or document attached to such a notification; and
 - (ii) providing that any of such card or document shall be postage prepaid; and
- (f) providing for any incidental, consequential and transitional provision that is necessary or expedient for the purposes of the matters provided for by this subsection."

8. Punishment of offences under this Ordinance

The Twelfth Schedule is amended by adding -

"141CA(2)	Company sending copy of summary financial report in place of copy of relevant financial documents in contravention of section 141CA(1)	Summary	level 3	-
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141CB(3)	Company sending copy of summary financial report in contravention of section 141CB(1)	Summary	level 3	-
141CB(3)	Company sending copy of relevant financial documents in contravention of section 141CB(2)	Summary	level 3	-
141CC(3)	Company failing to comply with request for copy of relevant financial documents	Summary	level 5	\$300
141CD(2)	Company sending copy of summary financial report where there is in existence any of the events mentioned in section 141CD(1)	Summary	level 5	-
141CE(3)(a)	Company circulates, issues or publishes copy of summary financial report which does not comply with requirements referred to in section 141CE(1)	Summary	\$300,000	-
141CE(3)(b)	Officer circulates, issues or publishes copy of summary	Summary	\$300,000 and 12 months	-".

Financial report which does
not comply with
requirements referred to in
section 141CE(1)

Explanatory Memorandum

The purpose of this Bill is to amend the Companies Ordinance (Cap. 32) ("the Ordinance") to enable a listed company incorporated in Hong Kong ("listed Hong Kong company") to send a copy of summary financial report in place of a copy of the financial documents required to be laid before the company in its general meeting to a shareholder, debentures holder or any other entitled person of the company ("entitled person").

2. Clause 2 amends section 2(1) of the Ordinance to define new terms used in the Bill.
3. Clause 3 adds a new provision to section 129C of the Ordinance to make it clear that the requirement for certain documents to be attached to a balance sheet of a company does not apply to a copy of a balance sheet which is incorporated into a summary financial report of a listed Hong Kong company.
4. Clause 4 amends section 129G of the Ordinance so that a listed Hong Kong company is not required to send a copy of its financial documents to an entitled person if it has duly sent to the person a copy of its summary financial report.
5. Clause 5 amends section 140A(3)(b) of the Ordinance to improve the provision from the drafting aspect.
6. Clause 6 adds new sections to the Ordinance in relation to the sending of copies of summary financial reports to entitled persons. New sections 141CA and 141CB regulate the sending of a summary financial report of a listed Hong Kong company in certain circumstances. New section 141CC provides for the compliance of certain requests made

by entitled persons of a listed Hong Kong company for copies of the financial documents of the company. New section 141CD specifies the circumstances in which a listed Hong Kong company is not allowed to send to an entitled person a copy of a summary financial report in place of a copy of the financial documents. New section 141CE specifies the requirements in relation to the form and contents of a summary financial report of such a company. New section 141CF empowers the court to make order prohibiting a listed Hong Kong company from circulating, issuing or publishing a summary financial report where there is a conviction of an offence under new section 141CE(3). A new section (section 141CG) is also added to the Ordinance to provide that a listed Hong Kong company shall be treated in certain circumstances as having sent a copy of the company's financial documents or summary financial report to entitled persons for the purposes of section 129G if the documents or report are or is published on a computer network.

7. Clause 7 amends section 359A of the Ordinance to empower the Chief Executive in Council to make regulations providing for various matters in relation to a summary financial report of a listed Hong Kong company, including providing for the form and contents of the report, the means to ascertain the wishes of an entitled person in respect of receiving a copy of a summary financial reports in place of a copy of the financial documents for the purposes of a general meeting and such incidental, consequential and transitional provisions as are necessary or expedient for the purposes of the matters provided for under the new section 359A(2).

8. Clause 8 amends the Twelfth Schedule to the Ordinance to specify the penalties for committing offences under new sections 141CA, 141CB, 141CC, 141CD and 141CE.