

**SECURITIES AND FUTURES AND COMPANIES LEGISLATION  
(STRUCTURED PRODUCTS AMENDMENT) BILL 2010**

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# A BILL

## To

Transfer the regulation of public offers of structured products in the form of shares or debentures from the prospectus regime of the Companies Ordinance to the offers of investments regime of the Securities and Futures Ordinance and to make consequential and related amendments.

Enacted by the Legislative Council.

### PART 1

#### PRELIMINARY

##### **1. Short title**

This Ordinance may be cited as the Securities and Futures and Companies Legislation (Structured Products Amendment) Bill 2010.

##### **2. Commencement**

This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

PART 2

AMENDMENTS TO SECURITIES AND FUTURES ORDINANCE

**3. Section 102 amended (Interpretation of Part IV)**

(1) Section 102(1) of the Securities and Futures Ordinance (Cap. 571) is amended, in the definition of “approved person”, in paragraph (a), by repealing “or”.

(2) Section 102(1) is amended, in the definition of “approved person”, by adding—

“(aa) in relation to a structured product, means an individual approved by the Commission under section 104A(3); or”.

(3) Section 102(1) is amended, in the English text, in the definition of “representative”, in paragraph (b)(ii), by repealing the full stop and substituting a semicolon.

(4) Section 102(1) is amended, in the Chinese text, in the definition of “獲豁免團體”, by repealing the full stop and substituting a semicolon.

(5) Section 102(1) is amended by adding—

““securities” (證券) has the same meaning as that given by the definition of “securities” in section 1 of Part 1 of Schedule 1 except that it does not include structured products that are securities only because of paragraph (g) of that definition.”.

**4. Section 103 amended (Offence to issue advertisements, invitations or documents relating to investments in certain cases)**

(1) Section 103(1)(a)(ii) is repealed and the following substituted—

“(ii) a regulated investment agreement or an agreement to acquire, dispose of, subscribe for or underwrite any other structured product; or”.

(2) Section 103(2)(a) is repealed and the following substituted—

“(a) made by or on behalf of an intermediary licensed or registered for Type 1, Type 4 or Type 6 regulated activity (whether acting as principal or agent) in respect of—

(i) listed securities; or

(ii) unlisted securities (excluding unlisted securities that are structured products);”.

- (3) Section 103(2)(*e*) is repealed and the following substituted—
- “(*e*) made by or on behalf of a corporation in respect of securities or structured products of the corporation, or of a related corporation of the corporation, to—
- (i) holders of securities of the corporation or related corporation;
  - (ii) creditors of the corporation or related corporation;
  - (iii) employees employed by the corporation or related corporation; or
  - (iv) agents acting in a professional capacity on behalf of the corporation or related corporation;”.
- (4) Section 103(2)(*f*) and (*i*) is amended by adding “or structured products” after “securities”.
- (5) Section 103(3) is amended by adding—
- “(*ea*) of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of a currency-linked instrument, an interest rate-linked instrument or a currency and interest rate-linked instrument by an authorized financial institution;”.
- (6) Section 103(3)(*j*) and (*k*) is repealed and the following substituted—
- “(*j*) of any advertisement, invitation or document made in respect of securities or structured products, or interests in any collective investment scheme, that are or are intended to be disposed of only to persons outside Hong Kong;
- (*k*) of any advertisement, invitation or document made in respect of securities or structured products, or interests in any collective investment scheme, that are or are intended to be disposed of only to professional investors.”.
- (7) Section 103(5)(*a*) is repealed and the following substituted—
- “(*a*) as or on behalf of an intermediary licensed or registered for Type 1, Type 4 or Type 6 regulated activity (whether acting as principal or agent) any advertisement, invitation or document made in respect of—
- (i) listed securities; or
  - (ii) unlisted securities (excluding unlisted securities that are structured products);”.
- (8) Section 103(6)(*a*) is repealed and the following substituted—
- “(*a*) in the case of any advertisement, invitation or document made in respect of any of the following to an intermediary licensed or registered for Type 1, Type 4 or Type 6 regulated activity, or a representative of such an intermediary that carries on such a regulated activity for the intermediary—

- (i) listed securities; or
  - (ii) unlisted securities (excluding unlisted securities that are structured products);”.
- (9) Section 103 is amended by adding—
- “(11A) Nothing in subsection (2)(i) applies to anything done by a person in respect of any structured products that—
- (a) are not authorized by the Commission under section 104A; or
  - (b) are not listed securities.”.

## 5. Section 104A added

The following is added—

### “104A. Commission may authorize structured products

(1) On an application by any person, the Commission may authorize a structured product, subject to the condition specified in subsection (2) and to any other conditions it considers appropriate.

(2) It is a condition of authorization of a structured product that, at any time when the product is authorized—

- (a) there is an individual approved by the Commission under subsection (3) as an approved person for the purpose of being served by the Commission with notices and decisions for the product; and
- (b) the Commission is informed—
  - (i) subject to subparagraph (ii), of the current contact details of the approved person, including, as applicable, the address, telephone and facsimile numbers, and electronic mail address of the approved person;
  - (ii) if there is any change in those contact details, of the change within 14 days after the change takes place.

(3) For the purposes of subsection (2)(a), on an application by any person, the Commission may approve an individual nominated in the application in respect of a structured product as an approved person for the purpose of being served by the Commission with notices and decisions for the product.

(4) The Commission may at any time, by notice in writing served on the approved person for a structured product—

(a) amend or revoke any of the conditions (other than the condition specified in subsection (2)) imposed, or impose new conditions, in respect of the authorization of the product; or

(b) withdraw the person's approval under subsection (3).

(5) Without limiting any other ground on which the Commission may refuse to authorize a structured product under subsection (1), the Commission may refuse to do so if it is not satisfied that the authorization is in the interest of the investing public.

(6) An application made under subsection (1) or (3) must be accompanied by any information and documents that the Commission requires.

(7) If the Commission refuses to authorize a structured product, or to approve an individual as an approved person, the Commission must notify the applicant in writing of the refusal and the reasons for it.

(8) The Commission may publish, in any manner it considers appropriate, particulars of a structured product authorized under subsection (1).

(9) Particulars published under subsection (8) are not subsidiary legislation.”.

## **6. Section 106 amended (Withdrawal of authorization under section 104 or 105, etc.)**

(1) Section 106 is amended, in the heading, by adding “, 104A” after “104”.

(2) Section 106(1) is amended by adding “an authorization of a structured product under section 104A,” after “scheme under section 104,”.

(3) Section 106(1)(a) is amended by adding “, 104A(6)” after “104(6)”.

(4) Section 106(1)(b) and (c) is amended by adding “, 104A” after “104”.

(5) Section 106(2) is repealed and the following substituted—

“(2) Subject to subsection (3), the Commission must withdraw the authorization of a collective investment scheme, a structured product or the issue of an advertisement, invitation or document on a request in writing made by the approved person for the scheme, product or issue (as the case may be).”.

(6) Section 106(3) is amended by adding “or structured product” before “or of”.

(7) Section 106(3)(a) is amended by adding “or structured product” after “investment scheme”.



(8) Section 106(3)(a) is amended by adding “or product” after “the scheme”.

(9) Section 106(5) is amended by adding “or structured product” after “investment scheme” wherever it appears.

(10) Section 106(5) is amended by adding “, the product” after “the scheme”.

(11) Section 106(6) is amended by adding “or structured product” after “investment scheme” wherever it appears.

(12) Section 106(6) is amended by adding “, the product” after “the scheme”.

**7. Section 107 amended (Offence to fraudulently or recklessly induce others to invest money)**

Section 107(1)(a)(ii) is repealed and the following substituted—

“(ii) a regulated investment agreement or an agreement to acquire, dispose of, subscribe for or underwrite any other structured product; or”.

**8. Section 108 amended (Civil liability for inducing others to invest money in certain cases)**

Section 108(1)(a)(ii) is repealed and the following substituted—

“(ii) a regulated investment agreement or an agreement to acquire, dispose of, subscribe for or underwrite any other structured product; or”.

**9. Section 111 amended (Service of notices, etc. on approved persons)**

Section 111(1)(b) is amended by adding “, 104A(2)(b)” after “section 104(2)(b)”.

**10. Section 182 amended (Investigations)**

(1) Section 182(1)(b)(iii) is amended by adding “structured product,” after “any”.

(2) Section 182(1)(b)(iv) is amended by adding “, structured product” after “any securities” where it twice appears.

(3) Section 182(1)(f) is amended by adding “, 104A” after “section 104”.

#### **11. Section 213 amended (Injunctions and other orders)**

Section 213(2)(e) is amended by adding “, structured product” after “securities” where it twice appears.

#### **12. Section 379 amended (Avoidance of conflict of interests)**

(1) Section 379(1) is amended by adding “, structured product” after “securities” where it twice appears.

(2) Section 379(2) is amended by adding “or a structured product” after “holder of securities”.

(3) Section 379(2)(a) is repealed and the following substituted—

“(a) to exchange the securities or structured product or to convert the securities or structured product to another form of securities or structured product;”.

(4) Section 379(2)(c) is amended by adding “or another structured product” after “securities” where it twice appears.

(5) Section 379(2)(d), (e) and (f) is amended by adding “or structured product” after “securities”.

(6) Section 379(3)(a) is amended by repealing “regulated investment agreement” where it twice appears and substituting “structured product”.

(7) Section 379(3)(a)(iii)(A) is amended by repealing “or” at the end.

(8) Section 379(3)(a)(iii) is amended by adding—

“(C) in the case of a structured product, is interests, rights or property based on a structured product of or issued by the same issuer, and of the same class, as that in which he has an interest; or”.

#### **13. Section 392 substituted**

Section 392 is repealed and the following substituted—

**“392. Financial Secretary to prescribe interests,  
etc. as securities, etc.**

(1) For the purposes of this Ordinance, the Financial Secretary may, by notice published in the Gazette, prescribe, either generally or in a particular case, that—

- (a) any interests, rights or property, whether in the form of an instrument or otherwise, or any class or description of any such interests, rights or property, are to be regarded as—
  - (i) currency-linked instruments;
  - (ii) currency and interest rate-linked instruments;
  - (iii) futures contracts;
  - (iv) interest rate-linked instruments;
  - (v) securities; or
  - (vi) structured products; or
- (b) any interests, rights or property, whether in the form of an instrument or otherwise, or any class or description of any such interests, rights or property, are not to be regarded as—
  - (i) currency-linked instruments;
  - (ii) currency and interest rate-linked instruments;
  - (iii) futures contracts;
  - (iv) interest rate-linked instruments;
  - (v) securities; or
  - (vi) structured products.

(2) Without limiting subsection (1), a notice under that subsection may prescribe the circumstances under which or the purposes for which any interests, rights or property, or any class or description of any interests, rights or property, referred to in the notice are to be regarded, or not to be regarded, as—

- (a) currency-linked instruments;
- (b) currency and interest rate-linked instruments;
- (c) futures contracts;
- (d) interest rate-linked instruments;
- (e) securities; or
- (f) structured products.”.

**14. Section 407 amended (Savings, transitional,  
consequential and related provisions, etc.)**

Section 407 is amended by adding—

“(3) Part 3 of Schedule 10 provides for the savings and transitional arrangements that apply on, or relate to, the commencement of the Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance 2010 ( of 2010).”.

**15. Schedule 1 amended (Interpretation and general provisions)**

(1) Schedule 1 is amended by repealing “[ss. 2, 19, 66, 164, 171, 174, 175, 202 & 406 & Sch. 9]” and substituting “[ss. 2, 19, 66, 102, 164, 171, 174, 175, 202 & 406 & Schs. 9 & 10]”.

(2) Schedule 1 is amended, in section 1 of Part 1, in the definition of “debenture”, by repealing “securities” and substituting “debt securities”.

(3) Schedule 1 is amended, in section 1 of Part 1, in the definition of “financial product”, by adding—

“(e) any structured product;”.

(4) Schedule 1 is amended, in section 1 of Part 1, in the definition of “securities”, in paragraph (f), by repealing “notice,” and substituting “notice;”.

(5) Schedule 1 is amended, in section 1 of Part 1, in the definition of “securities”, by adding—

“(g) a structured product that does not come within any of paragraphs (a) to (f) but in respect of which the issue of any advertisement, invitation or document that is or contains an invitation to the public to do any act referred to in section 103(1)(a) of this Ordinance is authorized, or required to be authorized, under section 105(1) of this Ordinance.”.

(6) Schedule 1 is amended, in section 1 of Part 1, in the definition of “securities”, in paragraph (vi), by adding “(excluding a debenture that is a structured product)” after “transferable”.

(7) Schedule 1 is amended, in section 1 of Part 1, by adding—

““currency and interest rate-linked instrument” (貨幣及利率掛鈎票據) means—

(a) an instrument that is a structured product only because some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to a combination of—

- (i) changes in the value or level (or a range within the value or level) of any one or more currency exchange rates or currency exchange rate indices or the occurrence or non-occurrence of any specified event or events relating to any one or more currency exchange rates or currency exchange rate indices; and
  - (ii) changes in the value or level (or a range within the value or level) of any one or more interest rates or interest rate indices or the occurrence or non-occurrence of any specified event or events relating to any one or more interest rates or interest rate indices; or
- (b) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as being regarded as currency and interest rate-linked instruments in accordance with the notice,

but does not include any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as not being regarded as currency and interest rate-linked instruments in accordance with the notice;

“currency-linked instrument” (貨幣掛鈎票據) means—

- (a) an instrument that is a structured product only because some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to one or more of—
  - (i) changes in the value or level (or a range within the value or level) of any one or more currency exchange rates or currency exchange rate indices; or
  - (ii) the occurrence or non-occurrence of any specified event or events relating to any one or more currency exchange rates or currency exchange rate indices; or
- (b) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as being regarded as currency-linked instruments in accordance with the notice,

but does not include any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as not being regarded as currency-linked instruments in accordance with the notice;

“interest rate-linked instrument” (利率掛鈎票據) means—

(a) an instrument that is a structured product only because some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to one or more of—

(i) changes in the value or level (or a range within the value or level) of any one or more interest rates or interest rate indices; or

(ii) the occurrence or non-occurrence of any specified event or events relating to any one or more interest rates or interest rate indices; or

(b) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as being regarded as interest rate-linked instruments in accordance with the notice,

but does not include any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as not being regarded as interest rate-linked instruments in accordance with the notice;

“structured product” (結構性產品) has the meaning given by section 1A of this Part;”.

(8) Schedule 1 is amended, in Part 1, by adding—

**“1A. Meaning of “structured product”**

(1) In this Ordinance, subject to subsection (2), “structured product” (結構性產品) means—

(a) an instrument under which some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to one or more of—

(i) changes in the price, value or level (or a range within the price, value or level) of any type or combination of types of securities, commodity, index, property, interest rate, currency exchange rate or futures contract;

- (ii) changes in the price, value or level (or a range within the price, value or level) of any basket of more than one type, or any combination of types, of securities, commodity, index, property, interest rate, currency exchange rate or futures contract; or
    - (iii) the occurrence or non-occurrence of any specified event or events (excluding an event or events relating only to the issuer or guarantor of the instrument or to both the issuer and the guarantor);
  - (b) a regulated investment agreement; or
  - (c) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as being regarded as structured products in accordance with the notice.
- (2) A “structured product” does not include—
- (a) a debenture issued for capital fund raising purposes that is convertible into or exchangeable for shares (whether issued or unissued) of the issuer of the debenture or of a related corporation of the issuer;
  - (b) a subscription warrant issued for capital fund raising purposes that entitles the holder to subscribe for shares (whether issued or unissued) of the issuer of the warrant or of a related corporation of the issuer;
  - (c) a collective investment scheme;
  - (d) a depositary receipt;
  - (e) a debenture that would come within subsection (1)(a) only because it has a variable interest rate that is reset periodically to equate to a money market or interbank reference interest rate that is widely quoted (whether or not subject to a predetermined maximum or minimum rate) plus or minus a specified rate (if any);
  - (f) a product that is offered by a corporation only to a person who is—
    - (i) a bona fide employee or former employee of the corporation or of another corporation in the same group of companies; or
    - (ii) a spouse, widow, widower, minor child (natural or adopted) or minor step-child of a person referred to in subparagraph (i);
  - (g) a product that may be possessed, promoted, offered, sold, printed or published only—

- (i) under a licence, permission or other authorization under the Betting Duty Ordinance (Cap. 108) or the Gambling Ordinance (Cap. 148); or
- (ii) under the Government Lotteries Ordinance (Cap. 334);
- (h) an instrument issued in relation to—
  - (i) a contest authorized by section 37 of the Broadcasting Ordinance (Cap. 562); or
  - (ii) a contest included in a service licensed under Part IIIA of the Telecommunications Ordinance (Cap. 106);
- (i) a contract of insurance in relation to any class of insurance business specified in the First Schedule to the Insurance Companies Ordinance (Cap. 41); or
- (j) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as not being regarded as structured products in accordance with the notice.”.

**16. Schedule 8 amended (Securities and Futures Appeals Tribunal)**

Schedule 8 is amended, in Division 1 of Part 2, by adding—

- |  |   |
|--|---|
| “8A. Section 104A(1) of this Ordinance   | Refusal to authorize a structured product, or imposition of any conditions.             |
| 8B. Section 104A(3) of this Ordinance    | Refusal to approve an individual nominated in respect of a structured product.          |
| 8C. Section 104A(4)(a) of this Ordinance | Amendment or revocation of any condition, or imposition of any new condition.           |
| 8D. Section 104A(4)(b) of this Ordinance | Withdrawal of approval of an individual nominated in respect of a structured product.”. |

**17. Schedule 10 amended (Savings, transitional, consequential and related provisions, etc.)**

Schedule 10 is amended by adding—



“PART 3

SAVINGS AND TRANSITIONAL PROVISIONS RELATING TO  
SECURITIES AND FUTURES AND COMPANIES  
LEGISLATION (STRUCTURED PRODUCTS  
AMENDMENT) ORDINANCE 2010

1. Section 103(1) of this Ordinance does not apply in relation to a structured product that is the subject of—
  - (a) a programme prospectus and its addenda, if any, and an issue prospectus and its addenda, if any, that, before the date of commencement of section 19 of the Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance 2010 ( of 2010), were authorized and registered under section 38D of the Companies Ordinance (Cap. 32); or
  - (b) in the case of a company incorporated outside Hong Kong, a programme prospectus and its addenda, if any, and an issue prospectus and its addenda, if any, that, before the date of commencement of section 20 of the Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance 2010 ( of 2010), were authorized and registered under section 342C of the Companies Ordinance (Cap. 32).
2. Section 1(a) ceases to have effect in relation to a structured product on the earlier of—
  - (a) the earliest of the dates specified in section 8 of Part 1 of the Twenty-first Schedule to the Companies Ordinance (Cap. 32); or
  - (b) the day after the last date of the period specified in the issue prospectus as being the period during which the structured product is offered to the public.
3. Section 1(b) ceases to have effect in relation to a structured product on the earlier of—
  - (a) the earliest of the dates specified in section 8 of Part 2 of the Twenty-first Schedule to the Companies Ordinance (Cap. 32); or
  - (b) the day after the last date of the period specified in the issue prospectus as being the period during which the structured product is offered to the public.

4. For the period of 6 months beginning on the date of commencement of section 15(5) of the Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance 2010 ( of 2010), Part V of this Ordinance does not apply in relation to the carrying on of a business in a regulated activity if—

- (a) the business was carried on immediately before that date; and
- (b) the activity is a regulated activity only because of paragraph (g) of the definition of “securities” in section 1 of Part 1 of Schedule 1 to this Ordinance (as added by section 15(5) of the Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance 2010 ( of 2010)).”.

### PART 3

#### AMENDMENTS TO COMPANIES ORDINANCE

#### **18. Section 2 amended (Interpretation)**

(1) Section 2(1) of the Companies Ordinance (Cap. 32) is amended, in the definition of “debenture”, by repealing “securities” and substituting “debt securities”.

(2) Section 2(1) is amended by adding—

““structured product” (結構性產品) has the meaning given by section 1A of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);”.

#### **19. Section 38AA added**

The following is added—

#### **“38AA. Exemption for structured products**

If it is proposed to offer any shares in or debentures of a company that are structured products, the following provisions do not apply in relation to the offer—

- (a) sections 37, 38, 38A, 38B, 38BA, 38C, 38D, 39A, 39B, 39C, 40, 40A, 40B, 41, 41A, 42, 43, 44, 44A, 44B and 48A;
- (b) the Third Schedule; and
- (c) the Seventeenth to the Twenty-second Schedules.”.

**20. Section 342AA added**

The following is added—

**“342AA. Exemption for structured products**

If it is proposed to offer any shares in or debentures of a company incorporated outside Hong Kong that are structured products, the following provisions do not apply in relation to the offer—

- (a) this Part (other than this section);
- (b) the Third Schedule; and
- (c) the Seventeenth to the Twenty-second Schedules.”.

**21. Third Schedule amended (Matters to be Specified in Prospectus and Reports to be set out therein)**

The Third Schedule is amended by repealing “[ss. 2B, 38, 38A, 38D, 42, 342, 342A, 342C & 360 & 2nd, 4th, 20th & 21st Schs.]” and substituting “[ss. 2B, 38, 38A, 38AA, 38D, 42, 342, 342A, 342AA, 342C & 360 & 2nd, 4th, 20th & 21st Schs.]”.

**22. Seventeenth Schedule amended (Offers specified for the purposes of paragraph (b)(ii) of the definition of “prospectus” in section 2(1) of this Ordinance)**

The Seventeenth Schedule is amended by repealing “[ss. 2, 38, 43, 48A, 342 & 360 & 18th Sch.]” and substituting “[ss. 2, 38, 38AA, 43, 48A, 342, 342AA & 360 & 18th Sch.]”.

**23. Eighteenth Schedule amended (Warning, etc. Statements to be contained in certain documents)**

The Eighteenth Schedule is amended by repealing “[ss. 38, 342 & 360 & 17th & 21st Schs.]” and substituting “[ss. 38, 38AA, 342, 342AA & 360 & 17th & 21st Schs.]”.

**24. Nineteenth Schedule amended (Contents and publication requirements of advertisements mentioned in section 38B(2)(e) of this Ordinance)**

The Nineteenth Schedule is amended by repealing “[ss. 38B & 360]” and substituting “[ss. 38AA, 38B, 342AA & 360]”.

**25. Twentieth Schedule amended (Amendment of prospectus consisting of one document)**

The Twentieth Schedule is amended by repealing “[ss. 38A, 39A, 342A, 342CA & 360 & 12th Sch.]” and substituting “[ss. 38A, 38AA, 39A, 342A, 342AA, 342CA & 360 & 12th Sch.]”.

**26. Twenty-first Schedule amended (Provisions in accordance with which a prospectus may consist of more than one document)**

The Twenty-first Schedule is amended by repealing “[ss. 38A, 39B, 342A, 342CB & 360 & 12th & 18th Schs.]” and substituting “[ss. 38A, 38AA, 39B, 342A, 342AA, 342CB & 360 & 12th & 18th Schs.]”.

**27. Twenty-second Schedule amended (Persons specified for the purposes of section 40 of this Ordinance)**

The Twenty-second Schedule is amended by repealing “[ss. 40 & 360]” and substituting “[ss. 38AA, 40, 342AA & 360]”.

**PART 4**

**CONSEQUENTIAL AMENDMENTS**

**Inland Revenue Ordinance**

**28. Schedule 16 amended (Specified transactions)**

Schedule 16 to the Inland Revenue Ordinance (Cap. 112) is amended, in the definition of “debenture”, by repealing “securities” and substituting “debt securities”.

**Securities and Futures (Short Selling and Securities Borrowing  
and Lending (Miscellaneous)) Rules**

**29. Section 2 amended (Interpretation)**

Section 2 of the Securities and Futures (Short Selling and Securities Borrowing and Lending (Miscellaneous)) Rules (Cap. 571 sub. leg. R) is amended, in the Chinese text, in the definition of “證券莊家”, by repealing “結構式產品” and substituting “結構性產品”.

**Explanatory Memorandum**

The object of this Bill is to transfer the regulation of public offers of structured products in the form of shares or debentures from the prospectus regime of the Companies Ordinance (Cap. 32) (“Cap. 32”) to the offers of investments regime of the Securities and Futures Ordinance (Cap. 571) (“Cap. 571”) and to make consequential and related amendments.

2. Clause 1 sets out the short title of the Bill.
3. Clause 2 provides for commencement by commencement notice of the Secretary for Financial Services and the Treasury.
4. Part 2 amends Cap. 571.
5. Clause 3 amends section 102 of Cap. 571 which contains definitions for the purposes of Part IV of Cap. 571 (Offers of investments). The clause adds a new paragraph to the definition of “approved person” to include persons approved under new section 104A (see clause 5). The clause also adds a definition of “securities”. The definition is the same as the general definition of “securities” in Cap. 571, except that it does not include structured products that are securities only because of the new paragraph (g) of that definition being inserted by clause 15(5). References to structured products are added to Part IV as appropriate, by clauses 4 to 9.
6. Clause 4 amends section 103 of Cap. 571 so that the section will apply to structured products. The effect of the amendments is to prohibit the issue of advertisements, invitations or documents in relation to a public offer of structured products without authorization under section 105(1) of Cap. 571. Certain exemptions in section 103 that currently apply in relation to securities are extended to apply also to structured products.

7. Clause 5 adds a new section 104A to Cap. 571. The new section empowers the Securities and Futures Commission (“the Commission”) to authorize a structured product and sets out the authorization process. The new powers of the Commission are similar to its current powers in section 104 of Cap. 571 to authorize a collective investment scheme.
8. Clause 6 amends section 106 of Cap. 571 so that the current process under that section for withdrawal of authorization of a collective investment scheme or of the issue of an advertisement, invitation or document will also apply to authorization of a structured product.
9. Clause 7 amends section 107 of Cap. 571 so that the offence of making a fraudulent or reckless misrepresentation for the purpose of inducing a person to invest, which currently applies in relation to securities, regulated investment agreements and collective investment schemes, will also apply in relation to structured products.
10. Clause 8 amends section 108 of Cap. 571 so that civil liability for a fraudulent, reckless or negligent misrepresentation inducing a person to invest, which currently applies in relation to securities, regulated investment agreements and collective investment schemes, will also apply in relation to structured products.
11. Clause 9 amends section 111 of Cap. 571 so that the manner of service of documents by the Commission on an approved person for a collective investment scheme or an approved person for the issue of an advertisement, invitation or document will also apply to service of documents on an approved person for a structured product.
12. Clause 10 amends section 182 of Cap. 571 to confer investigatory powers on the Commission in relation to the offering of structured products, giving advice in relation to structured products and the conditions of authorization of structured products under section 104A (see clause 5). These powers correspond to those that the Commission currently has in relation to other types of financial product.
13. Clause 11 amends section 213(2)(e) of Cap. 571 so that the power of the Court of First Instance to make an order declaring a contract relating to any securities to be void or voidable also applies to a contract relating to any structured product. This power is exercisable by the Court in the circumstances set out in section 213(1) of Cap. 571 (for example, where a person has contravened Cap. 571).

14. Clause 12 amends section 379 of Cap. 571 by adding references to structured products to subsections (1) and (2) and substituting references in subsection (3)(a) to regulated investment agreements with references to structured products (which include regulated investment agreements). The effect of the amendments to subsections (1) and (2) is to prohibit members of the Commission or others performing official functions from conducting transactions in structured products that are connected with matters being investigated or considered by the Commission or that are the subject of proceedings under Cap. 571, subject to the exceptions set out in subsection (2). The effect of the amendment to subsection (3)(a) is to require members of the Commission or others performing official functions to inform the Commission if they are required, in the course of performing official functions, to consider any matter concerning a structured product in which they have an interest, or in certain other circumstances set out in section 379(3) of Cap. 571. These requirements correspond to those in relation to other types of financial product.

15. Clause 13 substitutes section 392 of Cap. 571. Currently, that section empowers the Financial Secretary to prescribe interests, rights or property to be regarded, or not to be regarded, as securities or as futures contracts, for the purposes of Cap. 571. The new section 392 extends this power to apply also in relation to structured products, currency-linked instruments, interest rate-linked instruments and currency and interest rate-linked instruments.

16. Clause 14 amends section 407 of Cap. 571 to provide a lead-in for new Part 3 of Schedule 10, which sets out savings and transitional provisions for Cap. 571 relating to the transfer from Cap. 32 of the regulation of shares and debentures that are structured products.

17. Clause 15 amends section 1 of Part 1 of Schedule 1 to Cap. 571 to add or amend definitions of terms that are used in Cap. 571. Subclause (2) amends the definition of “debenture” to clarify that a debenture is a debt security. A similar amendment is being made to the definition of “debenture” in Cap. 32 by clause 18(1). Subclause (3) adds structured products to the definition of “financial product” so that the regulation of structured products will come within the Commission’s objectives, functions and powers regarding the regulation of financial products (see, for example, section 4(c) of Cap. 571). Subclauses (4) and (5) amend the definition of “securities” to include as securities those structured products that would not otherwise be securities but that are structured products in respect of which an advertisement, invitation or document issued in relation to an offer of investment is authorized or required to be authorized under section 105 of Cap. 571. The effect of this is that the provisions of Cap. 571 that apply to securities will also now apply to those structured products. Subclause (6) excludes non-negotiable and non-

transferable debentures that are structured products from paragraph (vi) of the definition of “securities”. Therefore, that category of debentures will be “securities” for the purposes of Cap. 571. Subclause (7) adds definitions of “currency-linked instrument”, “interest rate-linked instrument” and “currency and interest-rate linked instrument”. Those terms are used in the new section 103(3)(*ea*) being added by clause 4(5). Subclause (7) also adds a signpost definition of “structured product”, which is defined in new section 1A of Part 1 of Schedule 1.

18. Clause 15(8) adds a new section 1A to Part 1 of Schedule 1 to Cap. 571. The new section defines “structured product” for the purposes of Cap. 571. Structured products include certain types of instruments, regulated investment agreements (which are already defined in section 1 of Part 1 of Schedule 1), and any interests, rights or property prescribed under section 392 of Cap. 571 as being regarded as structured products. Subsection (2) excludes certain things from the definition, including certain debentures, collective investment schemes, gambling products, insurance contracts, and any interests, rights or property prescribed under section 392 as not being regarded as structured products.

19. Clause 16 amends Schedule 8 to Cap. 571 to provide that specified decisions of the Commission in relation to the authorization of structured products under new section 104A (see clause 5) are reviewable by the Securities and Futures Appeals Tribunal on application by an aggrieved person.

20. Clause 17 adds new Part 3 to Schedule 10 to Cap. 571. The new Part sets out savings and transitional provisions relating to the transfer from Cap. 32 of the regulation of shares and debentures that are structured products. Sections 1 to 3 provide that section 103(1) of Cap. 571 (the prohibition against issuing an unauthorized advertisement, invitation or document in relation to a public offer of structured products) does not apply to an offer of structured products that is the subject of a programme prospectus and issue prospectus authorized and registered under Cap. 32 before the commencement of the amendments. Such an offer may continue to be made in accordance with the programme prospectus and issue prospectus until the authorization for the offer would cease to have effect under the relevant provisions of Cap. 32. Section 4 provides a grace period of 6 months for obtaining a licence or registration under Part V of Cap. 571 for the carrying on of an existing business of dealing in or advising on structured products that will become securities because of the expansion of the definition of “securities” made by clause 15(5). Before commencement of the amendments, a licence or registration under Part V was not needed for dealing in or advising on structured products referred to in paragraph (g) of the definition of “securities” (as added by



clause 15(5)) but after that commencement, dealing in or advising on those structured products will become a regulated activity, and so a licence or registration under Part V of Cap. 571 will be required.

21. Part 3 amends Cap. 32.

22. Clause 18 amends section 2(1) of Cap. 32, which contains definitions of terms used in Cap. 32. Subclause (1) amends the definition of “debenture” to clarify that a debenture is a debt security. A similar amendment is being made to the definition of “debenture” in Cap. 571 by clause 15(2). Subclause (2) adds a definition of “structured product” by reference to the new definition in section 1A of Part 1 of Schedule 1 to Cap. 571 (see clause 15(8)).

23. Clause 19 adds a new section 38AA to Cap. 32. The effect of the new section is to exclude from the prospectus regime of Cap. 32 the public offering by Hong Kong companies of shares or debentures that are structured products. This is because the public offering of all structured products will be regulated by the offers of investments regime in Part IV of Cap. 571 through the amendments made by Part 2 of the Bill.

24. Clause 20 adds a new section 342AA to Cap. 32. The effect of the new section is to exclude from the prospectus regime of Cap. 32 the public offering by non-Hong Kong companies of shares or debentures that are structured products. This is because the public offering of all structured products will be regulated by the offers of investments regime in Part IV of Cap. 571 through the amendments made by Part 2 of the Bill.

25. Clauses 21 to 27 amend cross-references in various Schedules to Cap. 32 as a consequence of the amendments made by clauses 19 and 20.

26. Part 4 contains consequential amendments to the Inland Revenue Ordinance (Cap. 112) and the Securities and Futures (Short Selling and Securities Borrowing and Lending (Miscellaneous)) Rules (Cap. 571 sub. leg. R).

27. Clause 28 amends the definition of “debenture” in Schedule 16 to the Inland Revenue Ordinance (Cap. 112) to clarify that a debenture is a debt security. The amendment maintains consistency with the definitions of “debenture” in Caps. 32 and 571, which are being similarly amended by clauses 18(1) and 15(2), and consistency with the definition of “debenture” in section 2(1) of Cap. 112, which incorporates the Cap. 32 definition of the term.

28. Clause 29 makes a consequential amendment to the Securities and Futures (Short Selling and Securities Borrowing and Lending (Miscellaneous)) Rules (Cap. 571 sub. leg. R) to align the term “structured product” in the Chinese text with that in Cap. 571.