

**Comparison table between provisions in relation to overseas companies
and incorporation procedures in the Companies Ordinance,
Companies (Amendment) Bill 2003, UK Companies Act 1985,
Australian Corporations Act 2001 and Singapore Companies Act**

	Hong Kong (As in the existing Companies Ordinance)	Hong Kong (As proposed in the Bill)	UK	Australia	Singapore
(1) Definition of “oversea” company or equivalent term	<p><i>[c.f. s 2 & 332]</i></p> <p>“Oversea companies” are defined as –</p> <p>(a) companies incorporated outside Hong Kong which, after the commencement of the Ordinance, establish a place of business in Hong Kong; and</p> <p>(b) companies incorporated outside Hong Kong which have, before the commencement of the Ordinance, established a place of business in Hong Kong and continue to</p>	<p><i>[Proposed s 2 & 332 in clauses 1 & 25]</i></p> <p>We propose to amend the term “oversea company” to “non-Hong Kong company”.</p>	<p><i>[c.f. s 744]</i></p> <p>“Oversea company” means –</p> <p>(a) a company incorporated elsewhere than in Great Britain which, after the commencement of this Act, establishes a place of business in Great Britain; and</p> <p>(b) a company so incorporated which has, before that commencement, established a place of business and continues to have an established place</p>	<p><i>[c.f. s 9]</i></p> <p>“Foreign company” means –</p> <p>(a) a body corporate that is incorporated in an external Territory, or outside Australia and the external Territories, and is not a corporation sole or an exempt public authority; or</p> <p>(b) an unincorporated body that –</p> <p>(i) is formed in an external Territory or outside Australia and the external Territories; and</p> <p>(ii) under the law</p>	<p><i>[c.f. s 4]</i></p> <p>“Foreign company” means –</p> <p>(a) a company, corporation, society or other body incorporated outside Singapore;</p> <p>(b) an unincorporated society, association or other body which under the law of its place of origin may sue or be sued, or hold property in the name of the secretary or other officer of the body or</p>

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	have a place of business in Hong Kong at the commencement of the Ordinance.		of business in Great Britain at that commencement.	of its place of formation, may sue or be sued, or may hold property in the name of its secretary or of an officer of the body duly appointed for that purpose; and (iii) does not have its head office or principal place of business in Australia.	association duly appointed for that purpose and which does not have its head office or principal place of business in Singapore.
(2) Definition of “place of business”	<i>[c.f. s 341]</i> “Place of business” includes a share transfer or share registration office and any place used for the manufacture or warehousing of any goods, but does not include a place not used by the company to transact any business which	<i>[Proposed s 341 in clause 42]</i> In relation to non-Hong Kong companies, a “place of business” does not include an office specified in the Twenty-fourth Schedule i.e. an office which is established or maintained with the approval of the Monetary Authority under section 346 of the	<i>[c.f. s 744]</i> “Place of business” includes a share transfer or share registration office.	<i>[c.f. s 18 & 21]</i> “Place of business” is not defined in the Corporations Act but section 21(1) provides that “a body corporate that has a place of business in Australia, or in a State or Territory, carries on business in Australia, or in that State or Territory, as the case	<i>[c.f. s 365]</i> “Place of business” is not defined in the Companies Act but section 365 provides as follows: “This Division applies to a foreign company which, before it establishes a place of business or commences to

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	creates legal obligations.”	Banking Ordinance (Cap 155) by a bank as defined in section 46(9) of that Ordinance.		<p>may be.”</p> <p>Further, section 18 states that –</p> <p>“A reference to a person carrying on business, carrying on a business or carrying on a business of a particular kind includes a reference to the person carrying on business, carrying on a business or carrying on business on that kind as the case may be:</p> <p>(a) in any case – otherwise than for profit; or</p> <p>(b) in the case of a body corporate otherwise than for the profit of the members or corporators of their body.”</p> <p>Section 21(3) lists circumstances in which a body</p>	<p>carry on business in Singapore, complies with section 368 and is registered under this Division.”</p>

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				corporate is not regarded as carrying on business in Australia or in a State or Territory.	
(3) Incorporation Procedures – “local companies” or equivalent	<p><i>[c.f. s 4, 15 & 16]</i></p> <p>Any 2 or more persons who wish to form an incorporated company should subscribe their names to a memorandum of association. They should deliver the memorandum and articles to the Registrar and the Registrar should retain and register them. On the registration of the memorandum of a company, the Registrar shall issue</p>	<p><i>[Proposed s 14A, 15 & 16 in clauses 7, 8 & 16]</i></p> <p>A person who wishes to form an incorporated company shall apply to the Registrar in the specified form (the “incorporation form”) containing prescribed particulars such as name of the company and intended address of the registered office in Hong Kong etc.</p> <p>The duly completed incorporation form which has been signed by the 2 founder members shall be delivered to the Registrar for</p>	<p><i>[c.f. s 1, 10 & 13]</i></p> <p>Any two or more persons may, by subscribing their names to a memorandum of association, form an incorporated company, with or without limited liability.</p> <p>The company’s memorandum and articles (if any) shall be delivered to the registrar of companies together with a statement in the prescribed form containing those particulars as set out in section 10(2) and (2A). The statement shall be</p>	<p><i>[c.f. s 117 & 118]</i></p> <p>To register a company, a person must lodge an application in the prescribed form with Australian Securities and Investments Commission (“ASIC”). The particulars required on the form are set out in section 117(2). If the company is to be a public company and is to have a constitution on registration, a copy of the constitution must be lodged with the application.</p>	<p><i>[c.f. s 19]</i></p> <p>A person desiring the incorporation of a company shall –</p> <p>(a) submit to the Registrar the memorandum and articles of the proposed company and such other documents as may be prescribed;</p> <p>(b) furnish the Registrar with such information as may be prescribed; and</p> <p>(c) pay the Registrar the prescribed fee.</p> <p>Either a prescribed person engaged in the formation of the</p>

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	<p>a certificate, with his signature or his printed signature, certifying that the company is incorporated and, in the case of a limited company, that the company is limited.</p>	<p>registration together with copies of the memorandum and articles, if any, certified to be a true copy of the original by a founder member. The Registrar shall retain and register the documents.</p> <p>On the registration of a company's incorporation form and copies of its memorandum and articles (if any, certified to be true copies by a founder member), the Registrar shall issue a certificate, with his signature or his printed signature, certifying that the company is incorporated and, in the case of a limited company, that the company is limited.</p>	<p>signed by or on behalf of the subscribers of the memorandum and shall contain a consent signed by each of the persons named in it as a director, as secretary or as one of joint secretaries, to act in the relevant capacity.</p> <p>On the registration of a company's memorandum, the registrar of companies shall give a certificate that the company is incorporated and, in the case of a limited company, that it is limited. The certificate may be signed by the registrar or authenticated by his official seal.</p>	<p>An applicant must have the consents and agreements referred to in section 117(2) when the application is lodged. After the company is registered, the applicant must give the consents and agreements to the company. The company must keep the consents and agreements.</p> <p>Upon receipt of the application of a company under section 117, ASIC may give the company an ACN and register the company and issue a certificate that states the name, ACN and type of the company etc. ASIC must keep a record of the registration.</p>	<p>proposed company or a person named in the articles as a director or the secretary of the proposed company shall make a declaration to the Registrar on the compliance with registration formalities of the Act.</p> <p>Upon receipt of the documents, information, payment and declaration as mentioned above, the Registrar shall register the company by registering its memorandum and articles.</p> <p>On the registration of the memorandum, the Registrar shall issue a notice of incorporation in the prescribed form stating that the company is incorporated, and that</p>

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					the company is either limited by shares, by guarantee or it is an unlimited company or a private company.
(4) Incorporation Procedures – “oversea companies” or equivalent	<p>[c.f. s 333]</p> <p>An oversea company that establishes a place of business in Hong Kong shall, within 1 month of the establishment of the place of business deliver to the Registrar for registration a certified copy of the constitution of the company, a list of the directors and secretary of the company and of the authorized representative(s), address of the principal place of business of the company in Hong Kong, the respective</p>	<p>[Proposed s 333 & 333 AA in clause 26]</p> <p>A non-Hong Kong company that establishes a place of business in Hong Kong on or after the commencement of the relevant section of the Ordinance should, within 1 month of the establishment of place of business, apply to the Registrar for registration by delivering to the Registrar a specified form containing such particulars as are specified in the form. The particulars include name of the company, place of incorporation,</p>	<p>[c.f. s 691]</p> <p>When an oversea company incorporated outside Great Britain establishes a place of business in Great Britain, it shall within 1 month of doing so, deliver to the registrar of companies for registration-</p> <p>(a) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the company’s constitution, and if the instrument is not written in English language, a</p>	<p>[c.f. s 601CE, 601CF & 601CG]</p> <p>A foreign company is required to lodge an application for registration in the prescribed form, accompanied by various documents such as a certified copy of a current certificate of its incorporation of registration in its place of origin (or a document of similar effect), a certified copy of its constitution, a list of directors containing personal details, details of charges, notice of the address of its registered office or of the company’s principal</p>	<p>[c.f. s 368]</p> <p>This section sets out the documents etc. to be lodged by a foreign company having a place of business in Singapore with the Registrar for registration. The documents include a certified copy of the certificate of its incorporation or registration in its place of incorporation or origin or a document of similar effect, a list of its directors containing their particulars and a memorandum of</p>

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	<p>addresses of the principal place of business, if any, and the registered office or equivalent of the company in the place of incorporation, certified copy of the company's certificate of incorporation and, if section 336(6) of the Ordinance does not apply, certified copies of the latest accounts of the company.</p> <p>The Registrar shall keep a register of overseas companies complying with this section and shall, upon registration of the documents required by subsection (1) to be delivered by an overseas company for registration, enter the name of the overseas company in the register and certify under his hand that</p>	<p>the date when the company establishes a place of business in Hong Kong, the name and address of the directors, secretary and authorized representative(s), principal place of business in Hong Kong and its registered office in its place of incorporation.</p> <p>The duly completed incorporation form should be delivered to the Registrar for registration together with copies of the company's constitution, certificate of incorporation, copies of its annual accounts (subject to the provisions of ss. 3(c), (d) and (e)). On the registration of the above documents under section 15, the Registrar shall issue a</p>	<p>certified translation of it;</p> <p>(b) a return in the prescribed form, containing –</p> <p>(i) a list of the company's directors and secretary, containing their particulars;</p> <p>(ii) a list of the names and addresses of the authorized representatives;</p> <p>(iii) a list of the documents delivered in compliance with paragraph (a) above; and</p> <p>(iv) a statutory declaration stating the date on which the company's place of business in Great Britain was</p>	<p>place of business in its place of origin and notice of situation of registered office in Australia.</p> <p>Upon receipt of these documents, Australian Securities and Investments Commission ("ASIC") will grant the application and register the foreign company by entering the foreign company's name in a register kept for such purposes.</p> <p>ASIC must not register a foreign company unless the foreign company has at least one local agent in relation to whom the foreign company has complied with section 601CG on how to appoint a local agent.</p>	<p>appointment or power of attorney under the seal of the foreign company stating the names and addresses of two or more authorized representatives in Singapore, notice of registered office in Singapore and statutory declaration containing details of place of incorporation and share capital etc..</p> <p>On payment of the appropriate fees and subject to this Act, the Registrar shall register the company by registration of the documents.</p>

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	such company is a company registered under Part XI of the Ordinance.	certificate, with his signature or his printed signature, certifying that the company is incorporated and, in the case of a limited company, that the company is limited. (section 16)	established.		
(5) Submission of Annual Return for “oversea companies” or equivalent	<p><i>[c.f. s 336(1)]</i></p> <p>Every oversea company shall, at least once in every calendar year, and at intervals of not more than 15 months, deliver a return to the Registrar confirming that there has been no alteration in the documents and particulars submitted under section 333 other than the alterations, if any, notified under section 335 together</p>	<p><i>[Proposed s 334 in clause 31]</i></p> <p>Every non-Hong Kong company registered under Part XI of the Ordinance shall, within 42 days, after each anniversary of the date of registration of the company under this Part, deliver a return to the Registrar for registration.</p>	<p><i>[c.f. s 692]</i></p> <p>An oversea company shall deliver to the Registrar of Companies a return, within 21 days after any alteration made in the name or address of the company’s authorized representative(s), in respect of the company’s constitution, in the names or addresses of the company’s directors or secretary or any change in the corporate name of the</p>	<p><i>[c.f. s 601CK(9)]</i></p> <p>A registered foreign company in relation to which a notice is in force under subsection (7) must, at least once in every calendar year lodge with ASIC a return in the prescribed form made up to the date of its AGM, containing particulars of the names and addresses of the directors and local agent of the company and a declaration for exemption from</p>	<p><i>[c.f. s 372]</i></p> <p>There is no requirement for the submission of an annual return but a return containing details of any change in the company’s constitution, names or addresses of the company’s directors or agents, situation of registered office address in Singapore or in its place of incorporation or</p>

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	<p>with certified copies of its accounts as at the end of its last financial year except where, pursuant to section 366(6), the company –</p> <p>(a) if it were incorporated under this Ordinance would be a private company within the meaning of section 29, or</p> <p>(b) in the opinion of the Registrar has substantially the same general characteristic of such a private company, and which is not required by the law of the place of its incorporation or origin to publish its account or to deliver copies to any person in whose office they may be inspected as of right by members of the public.</p>		company.	requirements to lodge financial statements (if applicable).	origin, name of the foreign company, authorized share capital or increase in the number of its members beyond the registered number or any change in the director's powers shall be filed within 1 month or such further period as the Registrar may allow.

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(6) Submission of Annual Accounts for “oversea companies” or equivalent	<p>[c.f. s 336]</p> <p>See item (5) above.</p>	<p>[Proposed s 336 in clause 33]</p> <p>In cases:</p> <p>(i) where the law of the place of incorporation of a non-Hong Kong company registered under this Part requires the company to publish its accounts, or</p> <p>(ii) where the law of the place of incorporation does not impose a requirement to file accounts but the laws of any other jurisdictions where the company is registered as a company or the rules of any Stock Exchange or similar regulatory bodies in those jurisdictions impose such a requirement,</p>	<p>[c.f. s 242, 700 & 702]</p> <p>An oversea company shall in respect of each financial year of the company prepare the like accounts and directors’ report, and cause to be prepared such an auditors’ report, as would be required if the company were formed and registered under this Act and deliver to the registrar copies of the accounts and reports prepared in accordance with section 700 which specifies the details of the preparation of accounts and reports by oversea companies. The period allowed for delivering accounts and reports is 13 months after the end of the relevant accounting reference period.</p> <p>Note: Section 242</p>	<p>[c.f. s 601CK(1)]</p> <p>Every registered foreign company must, at least once in every calendar year and at intervals of not more than 15 months, lodge –</p> <p>(a) a copy of its balance sheet made up to the end of its last financial year;</p> <p>(b) a copy of its cash flow statement for its financial year; and</p> <p>(c) a copy of its profit and loss statement for its last financial year</p> <p>in such form and containing such particulars and including copies of such documents as the company is required to prepare by the law for the time being</p>	<p>[c.f. s 373]</p> <p>A foreign company shall, within two months of its annual general meeting, lodge with the Registrar a copy of its balance-sheet made up to the end of its last financial year. The balance sheet should be in such form and containing such particulars and accompanied by copies of such documents as the company is required to annex, attach or send with its balance-sheet by the law for the time being applicable to that company in the place of its incorporation or</p>

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		the company shall within 42 days after each anniversary of the date of registration of the company deliver to the Registrar for registration together with the return under section 334 a certified copy of the latest published accounts of the company that comply with that law.	requires the directors of a company in respect of each financial year to deliver to the registrar a copy of its audited accounts and directors' report.	applicable to that company in its place of origin, together with a statement in writing in the prescribed form verifying that the copies are true copies of the documents so required.	origin, together with a declaration in the prescribed form verifying that the copies are true copies of the documents so required.
(7) Cessation of Business “oversea companies” or equivalent	<i>[c.f. s 339]</i> If any oversea company ceases to have a place of business in Hong Kong it shall forthwith give notice of the fact to the Registrar and as from the date on which notice is so given, the obligation of the company to deliver	<i>[Proposed s 339 in clause 38]</i> If a non-Hong Kong company that is registered under Part XI of the Ordinance ceases to have a place of business in Hong Kong, it shall, within 7 days after ceasing to have the place of business, send to the Registrar a notice of that fact in the	<i>[c.f. s 696(4)]</i> If an oversea company (to which section 691 applies) ceases to have a place of business in either part of Great Britain, it shall forthwith give notice of such fact to the registrar of companies for that part. As from the date on which the notice is given to the registrar,	<i>[c.f. s 601CL]</i> A registered foreign company must lodge written notice of its cessation within 7 days after ceasing to carry on business in the jurisdiction. Where ASIC receives notice from a local agent of a registered foreign company that the foreign company has	<i>[c.f. s 377]</i> If a foreign company cease to have a place of business or to carry out business in Singapore, it shall, within 7 days after so ceasing, lodge with the Registrar notice of that fact, and as from the day on which the notice is so lodged its obligation

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	any document to the Registrar shall cease.	specified form. Upon receipt of such notice, the Registrar shall retain and register the notice and enter in the register of non-Hong Kong companies a statement that the relevant non-Hong Kong company has ceased to have a place of business in Hong Kong.	the obligation of the company to deliver any document to the registrar ceases.	been dissolved or deregistered, ASIC must remove the foreign company's name from the register. Where ASIC has reasonable cause to believe that a registered foreign company does not carry on business in the jurisdiction, ASIC may send to the foreign company in the prescribed manner a letter to that effect and stating that, if no answer showing cause to the contrary is received within one month from the date of the letter, a notice will be published in the Gazette with a view to striking the foreign company's name off the register.	to lodge any document (not being a document that ought to have been lodged before that day) with the Registrar shall cease, and the Registrar shall upon the cessation of 12 months after the lodging of the notice remove the name of that foreign company from the register.

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(8) Inspection of Register	<p><i>[c.f. s 305]</i></p> <p>Any person may on payment of the requisite fee inspect a copy of any document kept by the Registrar or the document itself if a copy is unavailable.</p>	<p><i>[Proposed s 305 in clause 23]</i></p> <p>Any document kept or maintained by the Registrar pursuant to any requirement of this Ordinance shall be made available for public inspection at all reasonable times for the purposes of enabling any member of the public to –</p> <p>(a) ascertain whether he is dealing with –</p> <p>(i) a specified corporation, or its directors, or other officers, in matters of or connected with any act of such specified corporation;</p> <p>(iii) a director or other officers of a specified corporation in</p>	<p><i>[c.f. s 709 & 723B]</i></p> <p>Any person may inspect any records kept by the registrar for the purposes of this Act and may require –</p> <p>(a) a copy, in such form as the registrar considers appropriate, of any information contained in those records, or</p> <p>(b) a certified copy of, or extract from, any such record.</p> <p>An individual may make such an application above when the following conditions are satisfied –</p> <p>(a) the individual is or proposes to become a director,</p>	<p><i>[c.f. s 173 & 177]</i></p> <p>The public has the right to inspect and get copies of the register kept under the Act upon payment of fees. However, such right is subject to section 177 on the “Use of information on registers”. A person must not –</p> <p>(a) use such information about a person obtained from a register kept under this Act to contact or send material to the person; or</p> <p>(b) disclose information of any kind knowing that the information is likely to be used to contact or send material to the person;</p>	<p><i>[c.f. s 12]</i></p> <p>Any person may, on payment of the prescribed fee –</p> <p>(a) inspect any document, or if there is a microfilm of any such document, that microfilm, filed or lodged with the Registrar; or</p> <p>(b) require a certificate of the incorporation of any company or any other certificate issued under this Act or a copy or extract from any document kept by the Registrar to be given or certified by the Registrar.</p>

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		<p>matters of or connected with the administration of the specified corporation, or of its property; or</p> <p>(iii) a former director of a specified corporation against whom a disqualification order referred to in section 168D(1) has been made by the court; and</p> <p>(b) ascertain the particulars of that specified corporation, its directors or other officers, or former directors (if any), for the purposes under paragraph (a) above.</p> <p>Note: “Specified Corporation” is</p>	<p>secretary or permanent representative of a relevant company; and</p> <p>(b) the individual considers that the availability for inspection by members of the public of particulars of his usual residential address creates, or (if an order is not made under this section) is likely to create, a serious risk that he or a person who lives with him will be subjected to violence or intimidation.</p>	<p>unless that use or disclosure of the information is:</p> <p>(c) relevant to the holding of the interests recorded in the register or the exercise of the rights attaching to them; or</p> <p>(d) approved by the company or scheme.</p>	

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		defined in clause 1 of Schedule 4 to the Companies (Amendment) Bill 2003 as follows:- “Specified Corporation” means a company or a non-Hong Kong company.			
(9) Registration of charges for “oversea companies” or equivalent	<i>[c.f. s 91]</i> Part III of the Ordinance (i.e. the provisions as to Registration of Charges with the Registrar of Companies) extends to charges on property in Hong Kong which are created and to charges on property in Hong Kong which is acquired by a company (whether a company within the meaning of this Ordinance or not) incorporated outside Hong Kong which has a	<i>[Proposed s 91 in clause 14]</i> The provisions of Part III of the Ordinance are extended to charges on property in Hong Kong of a non-Hong Kong company that is registered under Part XI that are created and to charges on property in Hong Kong that is acquired by the company, irrespective of whether the property was in Hong Kong at the time when those charges	<i>[c.f. s 703A to 703N (Chapter III)]</i> Where a registered overseas company – (a) creates a charge on property situated in Great Britain, or (b) acquires property which is situated in Great Britain and subject to a charge, it is the duty of the company to deliver the	<i>[c.f. s 261 to 277]</i> Section 262(1) sets out those charges which are registrable. The charge on the property of a foreign company (whether or not as trustee) in this jurisdiction is registrable under the Act. Where a foreign company creates a charge or acquires a property that is subject to a charge, it should	<i>[c.f. s 131 to 141]</i> Section 131(3) lists out the registrable charges under the Act. A foreign company is not obliged to register charges on property outside Singapore. Where a foreign company registered in Singapore creates a charge on the property in Singapore which is required to be registered under this Division of the

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	<p>place of business in Hong Kong.</p> <p>Such charges are required to be registered within 5 weeks after the date on which the company establishes its place of business in Hong Kong and deliver the required particulars to the Registrar for registration.</p>	<p>were created, or at the time when the property was acquired by the non-Hong Kong company.</p> <p>Such charges are required to be registered within 5 weeks after the date of their creation or after the date when the property is brought into Hong Kong (in the case where the property was not in Hong Kong at the time of creation of the charge or the property was not in Hong Kong when it is acquired by the non-Hong Kong company).</p> <p>A non-Hong Kong company is not obliged to register a charge on its property in Hong Kong if the relevant property does not remain in Hong</p>	<p>prescribed particulars of the charge in the prescribed form to the registrar for registration within 21 days after the date of the charge's creation or, as the case may be, the date of acquisition.</p> <p>This statutory requirement does not apply if the property subject to the charge is at the end of that period no longer situated in Great Britain.</p> <p>If the property of a registered foreign company is for a continuous period of four months situated in Great Britain and subject to a charge, it is the company's duty before the end of that period to deliver the prescribed particulars of the charge, in the</p>	<p>ensure that the relevant documents including a notice in the prescribed form and copy of instrument should be lodged with ASIC within 45 days after the creation of the charge or the acquisition of the property.</p>	<p>Act or, where a foreign company becomes registered in Singapore and has prior to such registration created a charge which if it had been created by the company while it was registered in Singapore would have been required to be registered under this Division or, where a foreign company becomes registered in Singapore and has prior to such registration acquired property which is subject to a charge of any such kind as would if it had been created by the company after the acquisition and while it was registered in Singapore have been required to be registered under this</p>

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		<p>Kong on the expiry of 5 weeks after the following dates –</p> <p>(a) where the property was in Hong Kong at the time the charge was created by the company, the date of creation of the charge;</p> <p>(b) where the property was in Hong Kong at the time it was acquired by the company subsequent to the creation of the charge, the date on which the acquisition is completed;</p> <p>(c) where the property was not in Hong Kong at the time the charge was created, or at the time the property was acquired, by the company, the date when the property was brought into Hong</p>	<p>prescribed form, to the registrar for registration.</p>		<p>Division, the foreign company shall cause a statement of the prescribed particulars to be lodged with the Registrar for registration within 30 days after the date of the creation of the charge or on which the acquisition is completed or the date of the registration of the company in Singapore, as the case may be.</p>

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		<p>Kong.</p> <p>However, the above exemption shall not apply if the relevant property is subsequently brought into Hong Kong after the expiry of the 5 weeks after the relevant dates as stated above.</p>			