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**PROPOSED AMENDMENTS TO SCHEDULE 3 AND PART 3 OF
SCHEDULE 5 TO THE COMPANIES (AMENDMENT) BILL 2003**

DRAFTING HISTORY TABLE

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AMENDMENTS TO THE COMPANIES ORDINANCE
RELATING TO OVERSEA COMPANIES AND
INCORPORATION PROCEDURES

1. Interpretation

(1) Section 2(1) of the Companies Ordinance (Cap. 32) is amended by repealing the definition of “oversea company”.

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

““electronic record” (電子紀錄) has the meaning assigned to it by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

“founder member” (創辦成員) means a person who has signed his name on a memorandum in accordance with section 4(1);

“incorporation form” (法團成立表格) has the meaning assigned to it by section 14A(1);

“non-Hong Kong company” (非香港公司) has the meaning assigned to it by section 332;

“place of business” (營業地點), in relation to a non-Hong Kong company, has the meaning assigned to it by section 341(1);”.

(3) Section 2(10) is amended –

(a) by repealing “subscribers of the memorandum of association of a company” and substituting “founder members”;

(b) by repealing “the memorandum of association of which has only one subscriber” and substituting “that has only one founder member”.¹

2. Mode of forming incorporated company

Section 4(1) is amended by repealing “subscribing his or their name or names to” and substituting “signing his or their name or names on”.²

3. Requirements with respect to memorandum

Section 5(4) is amended—

- (a) in paragraph (b), by repealing “subscriber of the memorandum” and substituting “founder member”;
- (b) in paragraph (c), by repealing “subscriber” and substituting “founder member”.

4. Signature of memorandum

(1) Section 6 is amended by renumbering it as section 6(1).

(2) Section 6(1) is amended by repealing “subscriber” and substituting “founder member”.

¹ With the commencement of Companies (Amendment) Ordinance 2003, these amendments serve as a consequence of the introduction of the term “founder member” in Clause 1(2) of Schedule 3 of the Companies (Amendment) Bill 2003.

² With the commencement of Companies (Amendment) Ordinance 2003, this amendment is a consequence of the replacement of the term “subscriber” with the term “founder member” in Clause 1(2) of Schedule 3 of Companies (Amendment) Bill 2003.

(3) Section 6 is amended by adding—

“(2) The attestation requirement in subsection (1) shall not apply where the memorandum is delivered to the Registrar under section 15 in the form of an electronic record and each founder member has authenticated his signature in such manner as the Registrar may direct.”.

5. Articles prescribing regulations for companies

Section 9 is amended by repealing “subscribers to the memorandum” and substituting “founder members”.

6. Printing and signature of articles

(1) Section 12 is amended by renumbering it as section 12(1).

(2) Section 12(1)(c) is amended by repealing “subscriber of the memorandum of association” and substituting “founder member”.

(3) Section 12 is amended by adding—

“(2) The attestation requirement in subsection (1)(c) shall not apply where the articles are delivered to the Registrar under section 15 in the form of an electronic record and each founder member has authenticated his signature in such manner as the Registrar may direct.”.

7. Section added

The following is added immediately after section 14—

**“Application to Registrar for Formation of
Incorporated Company**

14A. Incorporation form

(1) A person who wishes to form an incorporated company shall apply to the Registrar in the specified form (in this Ordinance referred to as the “incorporation form”), which shall contain such particulars as are specified in the form.

(2) Without prejudice to the generality of subsection (1), the incorporation form shall contain—

- (a) the name of the company intended to be incorporated;
- (b) the intended address of the company’s registered office in Hong Kong;
- (c) a statement as to whether the company is to be a company limited by shares, a company limited by guarantee or an unlimited company;
- (d) if the company is to be a company limited by shares or limited by guarantee, a statement as to whether it is to be a private company;
- (e) if the company is to be a company limited by shares or an unlimited company having a share capital, the amount of share capital with which the company proposes to be

registered and the number of shares of fixed amount into which the share capital is to be divided;

(*f*) if the company is to be a company limited by guarantee, the amount that each person who is to be a member is to undertake to contribute to the assets of the company in the event of its being wound up;

(*g*) the name and address of each person who is to be a founder member of the company and, if the company is to be a company limited by shares or an unlimited company having a share capital, the number of shares that each founder member is to take, on the incorporation of the company;

(*h*) the following particulars with respect to each person who is to be a director of the company on its incorporation—

(i) in the case of an individual, his present forename and surname and any former forename or surname, any alias, his usual residential address and the number of his identity card (if any) or, in the absence of such number, the number and issuing country of any passport held by him; and

(ii) in the case of a body corporate, its corporate name and registered or principal office;

(*i*) the following particulars with respect to the person who is to

be the secretary of the company on its incorporation (or, where there are to be joint secretaries, with respect to each of them)—

- (i) in the case of an individual, his present forename and surname and any former forename or surname, any alias, his usual residential address and the number of his identity card (if any) or, in the absence of such number, the number and issuing country of any passport held by him; and
- (ii) in the case of a body corporate, its corporate name and registered or principal office,

but where all the partners in a firm are joint secretaries, the name and principal office of the firm may be substituted for the particulars mentioned in subparagraphs (i) and (ii);

- (j) the statement of compliance required by section 18(2); and
- (k) statements signed by each person who is to be a director of the company on its incorporation stating that he consents to act in that capacity and has attained the age of 18 years.

(3) The incorporation form shall be signed by any 2 founder members named in the form, or where only one founder member is named in the form, by

that founder member.³

(4) The terms and expressions used in subsection (2)(h) and (i) shall be construed in accordance with section 158(10).”.

8. Section substituted

Section 15 is repealed and the following substituted—

“15. Delivery and registration of incorporation form, memorandum and articles

(1) A duly completed incorporation form shall be delivered to the Registrar for registration together with copies of the memorandum and articles, if any, certified to be a true copy of the original by a founder member.

(2) The Registrar shall retain and register the documents delivered under this section.”.

9. Effect of registration

(1) Section 16(1) is amended by repealing “the memorandum of a company” and substituting “a company’s incorporation form and copies of its memorandum and articles, if any, certified under section 15,”.

(2) Section 16(2) is amended by repealing “subscribers of the memorandum” and substituting “founder members”.

³ The phrase is added for the sake of completeness, to cater for those cases where a company has only one founder member.

10. Conclusiveness of certificate of incorporation

Section 18(2) is repealed and the following substituted—

“(2) A statement of compliance in the incorporation form, certifying the company’s compliance with all or any of the requirements referred to in subsection (1) and signed by a founder member or a person named in the incorporation form as a director or secretary of the company, shall be produced to the Registrar and the Registrar may accept the statement as sufficient evidence of compliance.”.

11. Definition of member

Section 28(1) is amended by repealing “subscribers of the memorandum” and substituting “founder members”.

12. Approval of company required for allotment of shares by directors

Section 57B(7) is amended—

- (a) by repealing “subscribers of a company’s memorandum” and substituting “founder members of a company”;
- (b) by repealing “subscribing” and substituting “signing”.

12A. Entries of satisfaction and release of property from charge

Section 85(5)(a)(iii) is repealed and the following substituted –

“(iii) in the case of a non-Hong Kong company, a person who is registered under section 333 as a person authorized to accept service of process and notices on its behalf; or”.⁴

13. Subheading amended

The subheading immediately before section 91 is amended by repealing “Companies incorporated outside Hong Kong” and substituting “Non-Hong Kong Companies”.

14. ~~Section substituted~~

~~Section 91 is repealed and the following substituted—~~14. Section substituted⁵

Section 91 is repealed and the following substituted—

“91. Application of Part III to non-Hong Kong companies

(1) This Part extends to charges on property in Hong Kong of a⁶ non-Hong Kong company registered under Part XI that are created, and to charges on property in Hong Kong that is acquired, by the company.

⁴ With the commencement of Companies (Amendment) Ordinance 2003, this amendment is a consequence of the introduction of the term “non-Hong Kong company” in Clause 1(2) of Schedule 3 of Companies (Amendment) Bill 2003.

⁵ In response to the concern of Members and the Hong Kong Association of Banks, these amendments to the whole section 91 aim to clarify the provisions by removing the concept of “brought into Hong Kong”. We will further review the issue in the context of the overall rewrite exercise having regard to the developments in the UK.

(2) Notwithstanding subsection (1), this Part does not extend to charges on property in Hong Kong of a non-Hong Kong company registered under Part XI if the relevant property was not in Hong Kong at the time the charge was created by the company, or at the time it was acquired by the company subsequent to the creation of the charge.⁷

(3) In the application of sections 88 and 89 to a non-Hong Kong company registered under Part XI—

(a) references in those sections to the registered office of a company shall be construed as references to the principal place of business in Hong Kong of the non-Hong Kong company; and

(b) references in section 89 to charges shall be construed as references to charges of any kind mentioned in subsection (1).

(4) This Part does not apply to a non-Hong Kong company registered under Part XI if—

(a) the non-Hong Kong company sends a notice to the Registrar under section 339 of the fact that it has ceased to have a place of business in Hong Kong;

⁶ The replacement of the word “the” by the word “a” is in line with the existing wording of section 91(2).

⁷ In response to the query raised by the Hong Kong Association of Banks, this amendment serves to clarify our policy intent that for the charges on property in Hong Kong of a non-Hong Kong company, if the relevant property was not in Hong Kong at the time the charge was created by

(b) the Registrar enters in the register of non-Hong Kong companies a statement under section 339AA that the company has been dissolved; or

(c) the name of the company is struck off from the register of non-Hong Kong companies under section 339A.

(5) Where a non-Hong Kong company that is registered under Part XI after the commencement of section 14 of Schedule 3 to the Companies (Amendment) Ordinance 2004 (of 2004)⁸ has, on the date of such registration, any property in Hong Kong that is subject to a charge created by the company or subsisting when the property was acquired, being a charge of any such kind as would, if it had been created by the company or the property had been acquired after the company has been so registered, have been required to be registered under this Part, the company shall, within 5 weeks after it is so registered, deliver to the Registrar for registration the particulars in the specified form (including any instrument or its copy by which the charge was created or is evidenced) that are mentioned in this Part as requiring registration in respect of a charge of that kind.

(6) If default is made in complying with subsection (5), the non-Hong Kong company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine.

the company, or at the time it was acquired by the company subsequent to the creation of the charge, the provisions of section 91 do not apply.

⁸ We assume the Bill will be enacted within this year and it will then be called “Companies (Amendment) Ordinance 2004”.

(7) ~~For the purposes of this section—~~

(a) ~~a ship or aircraft that is registered in Hong Kong shall be treated as property in Hong Kong notwithstanding that the ship or aircraft is physically located outside Hong Kong; and~~

(b) ~~a ship or aircraft that is registered in a place outside Hong Kong shall be treated as property outside Hong Kong notwithstanding that the ship or aircraft is physically located in Hong Kong.”⁹~~

~~91. Application of Part III to non-Hong Kong~~

~~companies~~

(1) ~~This Part extends to charges on property in Hong Kong of a non-Hong Kong company registered under Part XI that are created, and to charges on property in Hong Kong that is acquired, by the non-Hong Kong company, irrespective of whether the property was in Hong Kong at the time when those charges were created, or at the time when the property was acquired, by the non-Hong Kong company.~~

(2) ~~In the application of section 80 to charges on property in Hong Kong that are created by a non-Hong Kong company, where the property was not in Hong Kong at the time when those charges were so created—~~

(a) ~~in subsection (1) of that section, the words “within 5 weeks~~

~~after the date of its creation” shall be substituted by the words “within 5 weeks after the date when it is brought into Hong Kong”; and~~

~~(b) in subsection (9) of that section, in the definition of “the fixed date”, everything after “means” shall be substituted by the words “the date of commencement of section 14 of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003).”.~~

~~(3) In the application of section 82 to charges on property in Hong Kong that is acquired by a non-Hong Kong company after those charges have been created, where the property was not in Hong Kong at the time when the property was so acquired—~~

~~(a) in subsection (1) of that section, the words “within 5 weeks after the date on which the acquisition is completed” shall be substituted by the words “within 5 weeks after the date when it is brought into Hong Kong”;~~

~~(b) the proviso to subsection (1) of that section shall not apply; and~~

~~(c) in subsection (1A) of that section, everything after “referred~~

⁹ This amendment serves to clarify our policy intent on the registration of charges over ships and aircraft which are movable properties.

~~to in that subsection” shall be substituted by the words “shall not apply in relation to any property of an existing company brought into Hong Kong before the commencement of section 14 of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003).”.~~

~~(4) Notwithstanding subsection (1) and subject to subsection (5), a non-Hong Kong company shall not be obliged to register a charge on its property in Hong Kong pursuant to this Part, and the charge shall not be void against the liquidator or any creditor of the company for want of registration, if the relevant property does not remain in Hong Kong on the expiry of 5 weeks after the following dates—~~

~~(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;~~

~~(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;~~

~~(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 Kong.~~

- ~~(5) Subsection (4) shall not apply if the relevant property is subsequently brought into Hong Kong after the expiry of 5 weeks after the relevant dates referred to in that subsection.~~
- ~~(6) In the application of sections 88 and 89 to the non-Hong Kong company referred to in subsection (1) —~~
- ~~(a) references in those sections to the registered office of a company shall be construed as references to the principal place of business in Hong Kong of the non-Hong Kong company; and~~
- ~~(b) references in section 89 to charges shall be construed as references to charges of any kind mentioned in subsection (1).~~
- ~~(7) Where a non-Hong Kong company that is registered under Part XI after the commencement of section 14 of Schedule 3 to the Companies (Amendment) Ordinance 2003 (— of 2003) has, on the date of such registration, any property in Hong Kong that is subject to a charge created by the company or subsisting when the property was acquired, being a charge of any such kind as would, if it had been created by the company or the property had been acquired after the company has been so registered, have been required to be registered under this Part, the non-Hong Kong company shall, within 5 weeks after it is so registered, deliver to the Registrar for registration the~~

~~particulars in the specified form (including any instrument or its copy by which the charge was created or is evidenced) that are mentioned in this Part as requiring registration in respect of a charge of that kind.~~

~~(8) Notwithstanding subsection (7) and subject to subsection (9), where the relevant property subject to a charge does not remain in Hong Kong on the expiry of 5 weeks after the non-Hong Kong company is registered under Part XI, the company shall not be obliged to comply with subsection (7) and the charge shall not be void against the liquidator or any creditor of the company for want of registration.~~

~~(9) Subsection (8) shall not apply if the relevant property is subsequently brought into Hong Kong after the expiry of 5 weeks after the non-Hong Kong company is registered under Part XI.~~

~~(10) This section does not apply to a non-Hong Kong company that is registered under Part XI if —~~

~~(a) the company sends a notice to the Registrar under section 339 of the fact that it has ceased to have a place of business in Hong Kong;~~

~~(b) the Registrar enters in the register of non-Hong Kong companies a statement under section 339AA that the~~

~~company has been dissolved; or~~

~~(c) — the name of the company is struck off from the register of non-Hong Kong companies under section 339A.~~

~~(11) — If default is made in complying with subsection (7), the non-Hong Kong company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine.~~

~~(12) — In this section, a ship or aircraft that is registered in a place outside Hong Kong shall not be treated as property in Hong Kong.”¹⁰~~

15. Section substituted

Section 92 is repealed and the following substituted—

“92. Registered office of company

(1) A company shall have a registered office in Hong Kong to which all communications and notices may be addressed.

(2) The intended address of a company’s registered office stated in the incorporation form registered in respect of the company shall be the address of its registered office with effect from the date of its incorporation until a notice of change in respect of the address is sent to the Registrar under subsection (3).

¹⁰ See Footnote (5).

(3) If the address of a company's registered office is changed, a notice of the change in the specified form shall be sent to the Registrar within 14 days after the date of the change, who shall record the same. The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this subsection.

(4) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine.”.

16. **Publication of name of company**

Section 93(4) is repealed and the following substituted—

“(4) If a company fails to comply with subsection (1)(b), (c) or (d), (2) or (2A), the company shall be liable to a fine.”.

17. **Power of company to keep branch register**

Section 103(6) is amended by repealing “subscribed” and substituting “signed”.

18. **Directors of companies other than private companies¹¹**

(1) Section 153(2) is repealed and the following substituted—

“(2)¹² With effect from the date of incorporation of a company (not being a

¹¹ This amendment serves to specify that this provision is only applicable to those which are not private companies.

~~private company) mentioned in its certificate of incorporation, the first directors of the company are the persons named as the directors¹³ in the incorporation form submitted in respect of the company pursuant to section 14A. For the purposes of this section, any person who is named as a director in the incorporation form registered in respect of a company shall be a director of the company until a notification of change of directors in respect of him is sent to the Registrar under section 158(4).”.~~

(2) Section 153 is amended by adding—

“(6) A person who has been deemed to be a director of a company ~~(not being a private company)~~ under section 153(2) of the pre-amended Ordinance shall, until a notification ~~of change of directors in respect of him under section 158(4AA)~~¹⁴ is sent to the Registrar ~~under section 158(4)~~, continue to be deemed as such as if section 18(1) of Schedule 3 to the Companies (Amendment) Ordinance ~~2003-2004~~ (of ~~2003-2004~~)¹⁵ had not been enacted.

(7) For the purpose of subsection (6), “pre-amended Ordinance” (修訂前的本條例) means the Companies Ordinance (Cap. 32) that was in force immediately before it was amended by section 18(1) of Schedule 3 to the

¹² This amendment aims to clarify our policy intent with the introduction of the requirement to stipulate the name(s) of a company’s first director(s) in the specified form on incorporation which will remove the necessity to retain the deeming provision.

¹³ In response to the request of Members, the term “named as the directors” is adopted.

¹⁴ This amendment is a transitional provision so that those deemed directors under the pre-amended Ordinance will continue to be deemed until a notification of change under section 158(4AA) is made.

¹⁵ See Footnote (8).

Companies (Amendment) Ordinance ~~2003-2004~~ (of ~~2003~~2004).”.

18A. Directors of private companies¹⁶

(1) Section 153A(2) is repealed and the following substituted—

“(2) ¹⁷ With effect from the date of incorporation of a private company mentioned in its certificate of incorporation, the first directors of the company are the persons named as the directors¹⁸ in the incorporation form submitted in respect of the company pursuant to section 14A.”.

(2) Section 153A is amended by adding—

“(10) A person who has been deemed to be a director of a private company under section 153A(2) of the pre-amended Ordinance shall, until a notification under section 158(4AA) is sent to the Registrar, continue to be deemed as such as if section 18A(1) of Schedule 3 to the Companies (Amendment) Ordinance 2004 (of 2004) had not been enacted.”¹⁹

(11) For the purpose of subsection (10), “pre-amended Ordinance” (修訂前的本條例) means the Companies Ordinance (Cap. 32) that was in force immediately before it was amended by section 18A(1) of Schedule 3 to the

¹⁶ This amendment serves to specify that this provision is only applicable to private companies.

¹⁷ This amendment aims to clarify our policy intent with the introduction of the requirement to stipulate the name(s) of a company’s first director(s) in the specified form on incorporation which will remove the necessity to retain the deeming provision.

¹⁸ In response to the request of Members, the term “named as the directors” is adopted.

¹⁹ A further provision is required in respect of companies registered prior to the enactment of the Companies (Amendment) Bill 2003 which have not yet sent a return to the Registrar under

Companies (Amendment) Ordinance 2004 (of 2004)²⁰.”²¹

19. Secretary

Section 154 is amended by adding before subsection (1A)—

“(1AA) ²² With effect from the date of incorporation of a company mentioned in its certificate of incorporation, the first secretary of the company is the person named as the secretary²³ of the company in the incorporation form submitted in respect of the company pursuant to section 14A.

(1AB) Where the name of a firm is contained in the incorporation form pursuant to section 14A(2)(i), all partners in the firm as at the date of the incorporation form are the first joint secretaries of the company.²⁴ For the purposes of this section, a person who is named as the secretary in the incorporation form registered in respect of a company shall be the secretary of the company until a notification of change of secretary in respect of him is sent to the Registrar under section 158(4).”.

Section 158(4) of the pre-amended Ordinance containing the required particulars in respect of the first directors of the company.

²⁰ See Footnote (8).

²¹ This amendment serves to define “pre-amended Ordinance” as a consequence of the new Section 153A(10).

²² This amendment aims to clarify our policy intent with the introduction of the requirement to stipulate the name(s) of a company’s first secretary in the specified form on incorporation.

²³ In response to the request of Members, the term “named as the secretary of the company” is adopted.

²⁴ The amendments serve to clarify our policy intent that if the name of the firm is contained in the incorporation form, the firm is not deemed to be the company secretary.

20. Register of directors and secretaries²⁵

(1) Section 158(4) is repealed and the following substituted—

“(4) Where there is any change in the company’s directors, reserve director (if any), secretary or joint secretaries (if any) or in any of their particulars contained in the register, the company shall, within 14 days from the change, send to the Registrar a notification in the specified form of the change and of the date on which it occurred, and such other matters as may be specified in the form.”²⁶

(4AA) On the appointment of a person as director of a company otherwise than by virtue of sections 153(2) or (6), 153A(2) or (10)²⁷ the company shall, within 14 days of the appointment, send to the Registrar a notification in the specified form containing the director’s particulars specified in the register and a statement, signed by such person, that he has accepted the appointment and that he has attained the age of 18 years.”.

(2) Section 158(4A) is amended by repealing “the appointment of a person as a director, secretary or joint secretary of the company or”.²⁸

(3) Section 158(4B) is repealed and the following substituted –

“(4B) Subsection (4A) does not apply to a nomination the relevant particulars of which have been stated in a notification sent to the Registrar under

²⁵ This section is revised in line with the amendments made in the Companies (Amendment) Ordinance 2003

²⁶ In response to the request of Members, the term “and such other matters as may be specified in the form” is adopted to clarify the provision.

²⁷ The amendment serves to clarify the correct references to other provisions.

²⁸ The amendment serves to clarify the provisions on “reserve directors”.

subsection (4).”.

(4) Section 158(5) is repealed.

(5) Section 158(8) is amended by repealing “(4A), (5)” and substituting “(4AA), (4A)”.

(6) Section 158 is amended by adding—

“(9A) Where a company was registered immediately before the commencement of sections 18, 18A and 20 of Schedule 3 to the Companies (Amendment) Ordinance 2004 (of 2004)²⁹ and has not complied with section 158(4)(a), (4A) and (5) of the pre-amended Ordinance in respect of a return or notification, as the case may be, and a statement concerning its first directors appointed otherwise than by virtue of section 153(2) or 153A(2) of the pre-amended Ordinance before the expiry of the periods mentioned in section 158(4)(a) and (4A) of the pre-amended Ordinance, sections 153, 153A and 158 of the pre-amended Ordinance shall continue to apply to the company as if sections 18, 18A and 20(1), (2), (3), (4) and (5) of Schedule 3 to the Companies (Amendment) Ordinance 2004 (of 2004) had not been enacted.”.

(4) Section 158(10) is amended by adding—

“(ab) the expression “pre-amended Ordinance” (修訂前的本條例) means the Companies Ordinance (Cap. 32) that was in force immediately before it was amended by sections 18 and 20 of Schedule 3 to the Companies (Amendment)

²⁹ See Footnote (8).

Ordinance 2004 (of 2004);”.

20. ~~Register of directors and secretaries~~

~~(1) Section 158(4) and (5) is repealed and the following substituted—~~

~~“(4) Where there is any change in the company’s directors or secretary or in any of their particulars contained in the register, the company shall, within 14 days of the change, send to the Registrar a notification in the specified form containing the date of the change and such other matters as may be required by the form.~~

~~(5) On the appointment of a person as director of a company otherwise than by virtue of section 153(2) or (6), the company shall, within 14 days of the appointment, send to the Registrar a notification in the specified form containing the director’s particulars specified in the register and a statement, signed by such person, that he has accepted the appointment and that he has attained the age of 18 years.”.~~

~~(2) Section 158(6) is repealed.~~

~~(3) Section 158 is amended by adding—~~

~~“(9A) Where a company was registered immediately before the commencement of sections 18 and 20 of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003) and has not complied with section 158(4) and (5) of the pre-amended Ordinance in respect of a return or statement, as the case may be, concerning its first directors appointed otherwise than by virtue of section 153(2) of the pre-amended Ordinance before the expiry of the~~

~~period mentioned in section 158(6)(a) of the pre-amended Ordinance, sections 153 and 158 of the pre-amended Ordinance shall continue to apply to the company as if sections 18 and 20(1) and (2) of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003) had not been enacted.”.~~

~~(4) — Section 158(10) is amended by adding —~~

~~“(ab) — the expression “pre-amended Ordinance” (修訂前的本條例) means the Companies Ordinance (Cap. 32) that was in force immediately before it was amended by sections 18 and 20 of Schedule 3 to the Companies (Amendment) Ordinance 2003 (— of 2003);”.~~³⁰

21. Interpretation

Section 168C(1) is amended, in the definition of “company” —

- (a) in paragraph (a), by repealing “or” at the end;
- (b) in paragraph (b)(iii), by adding “or” at the end;
- (c) by adding —
 - “(c) a non-Hong Kong company that is registered under Part XI;”.

22. Registrar may strike defunct company off register

- (1) Section 291(5) is amended by repealing “subscriber to the memorandum of

³⁰ See Footnote (25).

association” and substituting “founder member”.

(2) Section 291(8) is amended by repealing “subscribed” and substituting “signed”.

23. Inspection, production and evidence of documents kept by Registrar

(1) Section 305 is amended by adding before subsection (1)—

“(1A) 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—

(a) ascertain whether he is dealing with—

- (i) a specified corporation, or its directors or other officers, in matters of or connected with any act of such specified corporation;
- (ii) a director or other officers of a specified corporation in matters of or connected with the administration of the specified corporation, or of its property; ~~or~~³¹
- (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;
- (iv) a person who has entered into possession of the

³¹ The word “or” is deleted as it is unnecessary in view of its numbering.

property of a specified corporation as mortgagee;

(v) a person who is appointed as the provisional liquidator or liquidator in the winding up of a specified corporation; or

(vi) a person who is appointed as the receiver or manager of the property of a specified corporation; and

(b) ascertain the particulars of that specified corporation, its directors or other officers, or former directors (if any), or the particulars of that mortgagee, provisional liquidator, liquidator, receiver or manager, as the case may be,³² for the purposes ~~under of~~³³ paragraph (a).”.

(2) Section 305(1) is amended by repealing “Any” and substituting “Subject to subsection (1A), any”.

(3) Section 305(1)(b) is amended—

~~(a) in subparagraph (i), by repealing “or” at the end;~~

~~(b) by adding—~~

“(i)a a certificate certifying that a non-Hong Kong company is registered under Part XI;

(i)b where a non-Hong Kong company has changed its

³² In response to the suggestion of Office of the Privacy Commissioner for Personal Data, Hong Kong, these amendments serve to extend the coverage of the purpose statement by including mortgagees, liquidators, provisional liquidators, receivers and managers whose personal data are kept for public inspection.

name, a fresh certificate certifying that the company is registered under Part XI with the new name;~~or~~".³⁴

(4) Section 305(5) is amended by repealing “subsection (1)” and substituting “this section”.³⁵

24. **Meaning of unregistered companies**

Section 326(2) is repealed and the following substituted—

“(2) For the avoidance of doubt, it is declared that in subsection (1), “unregistered company” includes a non-Hong Kong company that is registered under Part XI.”.

25. **Application of Part XI**

Section 332 is amended by repealing “oversea” and substituting “non-Hong Kong”.

26. **Section substituted**

Section 333 is repealed and the following substituted—

“333. Documents, etc. to be delivered to Registrar by companies that establish places of business in Hong Kong

(1) A non-Hong Kong company that establishes a place of business in

³³ This amendment serves to achieve better presentation of the provision.

³⁴ With the renumbering, we consider that the word “or” is no longer necessary.

³⁵ This serves to clarify that the definition of “document” included in Section 305(5) should apply to the whole of Section 305 (and not just Section 305(1)).

Hong Kong on or after the commencement of section 26 of Schedule 3 to the Companies (Amendment) Ordinance ~~2003-2004~~ (of ~~2003~~2004)³⁶ shall, within 1 month of the establishment of that 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.

(2) Without prejudice to the generality of subsection (1), the specified form shall contain—

- (a) the name of the company;
- (b) the place of incorporation of the company;
- (c) the date when the company established its place of business in Hong Kong;
- (d) with respect to each director and the secretary of the company (or, where there are joint secretaries, with respect to each of them)—
 - (i) his date of appointment;
 - (ii) in the case of an individual, his present forename and surname and any former forename or surname, any alias, his usual residential address and the number of his identity card (if any) or, in the absence of such number, the number and issuing country of any

³⁶ See Footnote (8).

passport held by him; and

(iii) in the case of a body corporate, its corporate name, registered number in Hong Kong and the address of its registered or principal office;

(e) the name and address in Hong Kong of at least one person resident in Hong Kong who is authorized to accept on behalf of the company service of process and any notices required to be served on the company, together with the date when each such person was so authorized, and the number of his identity card (if any) or, in the absence of such number, the number and issuing country of any passport held by him; and

(f) the address of the principal place of business of the company in Hong Kong and the respective addresses of the principal place of business (if any) and the registered office (or its equivalent) of the company in the place of its incorporation.

(3) The following documents shall be delivered to the Registrar together with the specified form under subsection (1)—

(a) a certified copy of the charter, statutes or memorandum (including articles, if any) of the company or other instrument defining the constitution of the company or, if the instrument is in a language other than English or Chinese, a certified translation of the instrument in English or Chinese;

- (b) a certified copy of the company's certificate of incorporation, together with a certified translation of the certificate in English or Chinese if the certificate is in a language other than English or Chinese;
- (c) where the law of the place of incorporation of the company requires the company to publish its accounts or to deliver copies of its accounts to any person in whose office they may be inspected as of right by members of the public, a certified copy of the latest published accounts of the company that comply with that law;
- (d) where the law of the place of incorporation of the company does not impose the requirement referred to in paragraph (c), 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 that requirement, a certified copy of any of the latest published accounts of the company that comply with any of those laws or rules as may be chosen by the company; and
- (e) where neither the law of the place of incorporation of the company, the laws of any other jurisdictions where the company is registered as a company, nor the rules of the stock exchange or similar regulatory bodies in any of those

jurisdictions impose the requirement referred to in paragraph (c), a statement in the specified form stating that fact.

(4) For the purpose of subsection (2)(d), where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be substituted for the particulars mentioned in that subsection (2)(d).

(5) For the purpose of subsection (2)(e), a body corporate or a firm shall not be authorized to accept on behalf of the company service of process and any notices required to be served on the company unless—

- (a) it is a solicitor corporation;
- (b) it is a corporate practice within the meaning of section 2 of the Professional Accountants Ordinance (Cap. 50); or
- (c) it is a firm of solicitors or professional accountants,

and where any of the above is so authorized, its name and business address in Hong Kong shall be delivered to the Registrar for registration.

(6) For the purpose of subsection (3)(b), if it is shown to the satisfaction of the Registrar that it is not the practice under the law of the place where the company claims to be incorporated to issue a certificate of incorporation, the company shall deliver to the Registrar such other evidence of incorporation as the Registrar deems sufficient.

(7) For the purposes of subsection (3)(c) and (d), if the accounts required to be provided are in a language other than English or Chinese, the company shall deliver to the Registrar a certified translation of the accounts in

English or Chinese in lieu of the certified copy of the accounts in the original language.

(8) For the purposes of subsection (3)(c) and (d), if—

- (a) the non-Hong Kong company has been incorporated for less than 18 months prior to the date of delivery of the specified form required under subsection (1); and
- (b) the accounts that it is required to publish have not been made up,

a statement in the specified form containing that fact shall be delivered to the Registrar for registration in lieu of the certified copy of the latest published accounts of the company.

(9) This section shall apply to a non-Hong Kong company that—

- (a) at the commencement of section 26 of Schedule 3 to the Companies (Amendment) Ordinance ~~2003–2004~~ (of ~~2003~~2004), has a place of business in Hong Kong established within 1 month before such commencement; and
- (b) had not complied with the provisions of section 333 of the pre-amended Ordinance,

as it applies to a non-Hong Kong company referred to in subsection (1) with the substitution for “1 month of the establishment of that place of business” in that subsection of “1 month after the commencement of section 26 of Schedule 3 to the

Companies (Amendment) Ordinance ~~2003-2004~~ (of ~~2003~~2004)".³⁷

(10) A non-Hong Kong company that had, before the commencement of section 26 of Schedule 3 to the Companies (Amendment) Ordinance ~~2003-2004~~ (of ~~2003~~2004), complied with the provisions of section 333 of the pre-amended Ordinance shall be deemed to be a non-Hong Kong company complying with section 333 as enacted by section 26 of Schedule 3 to the Companies (Amendment) Ordinance ~~2003-2004~~ (of ~~2003~~2004).".

27. Section added

The following is added before section 333A—

“333AA. Registrar to keep register of non-Hong Kong companies

(1) The Registrar shall keep a register of non-Hong Kong companies that have complied with section 333.

(2) Upon receipt of the documents required to be delivered by a non-Hong Kong company under section 333, the Registrar shall—

- (a) retain and register the documents;
- (b) enter the name of the company in the register; and
- (c) issue a certificate, with the Registrar’s signature or printed signature, to the company certifying that it is a company registered under this Part.

³⁷ See Footnote (8).

(3) The register kept by the Registrar under section 333(3) of the pre-amended Ordinance shall be deemed to be the register kept under this section.”.

28. Section substituted

Section 333A is repealed and the following substituted—

“333A. Continuing obligation in respect of authorized representative

(1) Subject to subsection (2), a~~Any~~ non-Hong Kong company registered under this Part shall at all times, until the expiration of a period of 1 year from the date on which it ceases to have a place of business in Hong Kong, keep registered under section 333 the name, address and, in the case of an individual, number of the identity card (if any) or, in the absence of such number, the number and issuing country of any passport, of its authorized representative

(2) Where one person (the first-mentioned person) only is registered as an authorized representative of a non-Hong Kong company and he at any time ceases to be the authorized representative of the company, the company shall register the particulars of another person in place of the first-mentioned person in compliance with subsection (1) within 1 month after the date on which the first-mentioned person ceases to be the authorized representative of the company.”³⁸

³⁸ In response to the concern of Members and the Hong Kong Society of Accountants, these amendments serve to clarify that when an authorized representative ceases to be the authorized representative of a non-Hong Kong company, the company can have a grace period of one month to register the particulars of a new authorized representative. In response to the concern of Members, the term “ceases to act” is replaced by the term “ceases to be the authorized

29. **Section substituted**

Section 333B is repealed and the following substituted—

“333B. Termination of registration of authorized representative

(1) Where the name of a person is registered under section 333 as a person authorized to accept service of process and notices on behalf of a non-Hong Kong company—

- (a) that person may terminate the authorization by sending a notice in writing stating the date of termination of the authorization to the company’s registered office (or its equivalent) in its place of incorporation; and
- (b) the company may terminate the authorization by sending a notice in writing stating the date of termination of the authorization to that person’s address as registered under section 333.

(2) Within 14 days after the date of the notice of termination referred to in subsection (1), the person or company, as the case may be, shall send a notice to the Registrar in the specified form informing him of the date of termination of the authorization together with a copy of the notice of termination, or a certified

representative of the company”. We consider that the latter term can better reflect our policy intent as it covers the situations where an authorized representative ceases to act (as in the situations under section 333B(1)) and ceases to be able to act on behalf of the company (due to

translation of the notice of termination in English or Chinese if it is in a language other than English or Chinese.

(3) The specified form referred to in subsection (2) shall contain a statement made by the person or company, as the case may be, stating that the company or person, as the case may be, has been notified of the termination of authorization in accordance with subsection (1).

(4) The person named in the notice sent under subsection (1) shall cease to be a person authorized to accept service of process and notices on behalf of the company on the later of—

- (a) the date of termination of the authorization stated in the notice; and
- (b) the expiration of 21 days from the date of compliance with subsection (2).”.

30. Registrar to keep an index of directors of non-Hong Kong companies

(1) Section 333C(1)(a) is repealed and the following substituted—

“(a) The Registrar shall keep and maintain an index of every person who is a director of a non-Hong Kong company registered under this Part.”.

(2) Section 333C is amended by adding—

death or incapacity etc). It should now be sufficiently clear that the one-month period will start on the day when the previous authorised representative ceases to be the authorized representative.

“(3) The index of directors kept and maintained by the Registrar under section 333C of the pre-amended Ordinance shall be deemed to be the index under this section.”.

31. **Section added**

The following is added—

“334. Annual return to be made by non-Hong Kong company

(1) Every non-Hong Kong company registered under this Part 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.

(2) The return in subsection (1) shall be in the specified form, which shall contain, with respect to the company, such particulars as are specified in the form.

(3) Without prejudice to the generality of subsection (2), the return in subsection (1) shall state—

- (a) the date of the return, which shall be the date of the most recent anniversary of the date of registration of the company under this Part;
- (b) the place of incorporation of the company;
- (c) the name of the company and its registered number in Hong Kong;
- (d) the date of registration of the company under this Part;

- (e) the address of the principal place of business of the company in Hong Kong;
- (f) the respective addresses of the principal place of business (if any) and the registered office (or its equivalent) of the company in the place of its incorporation;
- (g) all such particulars with respect to each person who, at the date of the return, is a director, the secretary (or, where there are joint secretaries, with respect to each of them) or an authorized representative of the company as are required by this Ordinance to be delivered to the Registrar for registration;
- (h) in the case of a company to which section 336 applies, a statement indicating that the latest published accounts of the company are delivered to the Registrar under that section together with the return;
- (i) in the case of a company to which section 336 does not apply, a statement of that fact;
- (j) where the company has been incorporated for less than 18 months prior to the date of delivery of the return under subsection (1) and the accounts of the company that are required to be published have not been made up, a statement in the specified form stating that fact;
- (k) in the case of a company having a share capital, particulars

relating to the authorized share capital and issued share capital, or their equivalents, of the company; and

- (*l*) particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges that are required to be registered with the Registrar under this Ordinance.

(4) For the purpose of subsection (3)(*g*), where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be substituted for the particulars mentioned in that subsection (3)(*g*).

(5) If there has been no alteration in the particulars required by subsections (2) and (3)(*b*), (*e*), (*f*), (*g*), (*k*) and (*l*) since the date of the last return, the company may, in lieu of the return required to be delivered under subsection (1), make a return (the “second-mentioned return”) by certificate in the specified form stating—

- (*a*) the date at which the last return under subsection (1) was made up; and
- (*b*) that, as at the date of the second-mentioned return, there has been no alteration in those particulars since the date referred to in paragraph (*a*).

(6) Where a non-Hong Kong company registered under this Part has, within 3 months immediately before the commencement of section 31 of Schedule

3 to the Companies (Amendment) Ordinance ~~2003–2004~~ (of ~~2003~~2004)³⁹, delivered to the Registrar for registration a return under section 336(1) of the pre-amended Ordinance, the company shall not be obliged to deliver a return that it shall otherwise be required to deliver under subsection (1) in the year of that commencement.”.

32. Section substituted

Section 335 is repealed and the following substituted—

“335. Return to be delivered to Registrar where documents, etc. altered

(1) Where, in the case of a non-Hong Kong company registered under this Part, any alteration is made in—

- (a) the charter, statutes or memorandum (including articles, if any) of the company or other instrument defining the constitution of the company;
- (b) the directors, secretary (or, where there are joint secretaries, each of them) or authorized representative of the company;
- (c) the particulars of the directors, secretary (or, where there are joint secretaries, each of them) or authorized representative of the company delivered to the Registrar under this Part; or
- (d) the address of the principal place of business of the company

³⁹ See Footnote (8).

in Hong Kong or of its registered office (or its equivalent), or of its principal place of business, in the place of its incorporation,

the company shall, within 21 days after the date of the alteration, deliver to the Registrar for registration a return in the specified form containing the particulars of the alteration.

(2) If a non-Hong Kong company changes its corporate name, it shall, within 21 days after the date of the change, deliver to the Registrar for registration—

- (a) a return in the specified form containing the particulars of the change of name; and
- (b) a certified copy of the instrument effecting the change of name, together with a certified translation of the instrument in English or Chinese if that instrument is in a language other than English or Chinese.

(3) Upon receipt of the documents delivered under subsection (2), the Registrar shall register the return and issue to the company a fresh certificate of registration containing the corporate name so changed.”.

33. **Section substituted**

Section 336 is repealed and the following substituted—

“336. Accounts of non-Hong Kong companies

(1) 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 to deliver copies of its accounts to any person in whose office they may be inspected as of right by members of the public, the company shall, within 42 days after each anniversary of the date of registration of the company under this Part, 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.

(2) For the purpose of subsection (1), where the law of the place of incorporation of the company does not impose the requirement referred to in that subsection, 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 that requirement, the company shall deliver to the Registrar for registration together with the return under section 334 a certified copy of any of the latest published accounts of the company that comply with any of those laws or rules as may be chosen by the company.

(3) If the accounts required to be provided under this section are in a language other than English or Chinese, the company shall deliver to the Registrar a certified translation of the accounts in English or Chinese in lieu of the certified copy of the accounts in the original language.

(4) Where a non-Hong Kong company registered under this Part has,

within 3 months immediately before the commencement of section 33 of Schedule 3 to the Companies (Amendment) Ordinance ~~2003–2004~~ (of ~~2003~~2004)⁴⁰, complied with section 336 of the pre-amended Ordinance in delivering to the Registrar for registration copies of the documents mentioned in section 336(1)(a) and (b) or (4) of the pre-amended Ordinance relating to a financial year of the company, the company shall not be obliged to deliver its latest published accounts that it shall otherwise be required to deliver under subsection (1) after that commencement if those latest published accounts relate to the same financial year.”.

34. Obligation to state name of non-Hong Kong company, whether limited and place where incorporated

(1) Section 337 is amended by renumbering it as section 337(1).

(2) Section 337(1) is amended by repealing “oversea” and substituting “non-Hong Kong”.

(3) Section 337(1)(a) is amended by repealing “country” and substituting “place”.

(4) Section 337(1)(b) is amended by repealing “country” and substituting “place”.

(5) Section 337(1)(c) is amended—

⁴⁰ See Footnote (8).

(a) by repealing “of the country” and substituting “of the place”;

(b) by repealing “in that country”.

(6) Section 337(1)(ca) is amended by repealing “in the country in which it is incorporated”.

(7) Section 337(1)(d) is amended by repealing “in the country in which it is incorporated”.

(8) Section 337 is amended by adding—

“(2) Where a non-Hong Kong company is in liquidation before the commencement of section 34(5), (6) and (7) of Schedule 3 to the Companies (Amendment) Ordinance ~~2003-2004~~ (of ~~2003~~2004)⁴¹, section 337(c), (ca) and (d) of the pre-amended Ordinance shall apply to the company as if that section 34(5), (6) and (7) had not been enacted.”.

35. Section substituted

Section 337A is repealed and the following substituted—

“337A. Notice of commencement of liquidation and of appointment of liquidator

(1) A non-Hong Kong company registered under this Part shall, within 14 days after the date of commencement of any proceedings for the liquidation of the company, or within 14 days after the notice of commencement of such proceedings has been served on the company according to the law of the place in

⁴¹ See Footnote (8).

which the liquidation proceedings are commenced, whichever is the later,⁴² deliver to the Registrar for registration a notice in the specified form containing the following particulars—

- (a) the commencement date of the proceedings;
- (b) the country where the proceedings are commenced;
- (c) the mode of liquidation;
- (d) if a liquidator has been appointed—
 - (i) whether he is a liquidator or provisional liquidator;
 - (ii) whether he is a sole liquidator, or one of the joint, or joint and several, liquidators;
 - (iii) the date of his appointment;
 - (iv) his present forename and surname, address and the number of his identity card (if any) or, in the absence of such number, the number and issuing country of any passport held by him.

(2) If—

- (a) any change occurs in the particulars given in the notice;
- (b) a liquidator is appointed after the notice is delivered to the Registrar for registration; or

⁴² In response to the concern of Members, this amendment serves to allow sufficient time for a non-Hong Kong company to deliver to the Registrar the notice of commencement of its liquidation.

(c) the liquidator whose name is given in the notice has ceased to hold office as such,

the company shall, within 14 days after the date of the change of particulars, or of the appointment of the liquidator, or of his cessation to hold office as such, as the case may be, deliver to the Registrar for registration a notice in the specified form, containing the particulars of the change, the particulars under subsection (1)(d) of the liquidator who is appointed, or the date of his cessation to hold office as such, as the case may be.

(3) For the purpose of subsection (1)(c), “mode of liquidation” (清盤方式) means voluntary or compulsory liquidation, or such other modes of liquidation, commenced in Hong Kong or elsewhere, as may be specified in the notice.”.

36. Regulation of use of corporate names by non-Hong Kong companies in Hong Kong

(1) Section 337B is amended by repealing “an overseas” in the following provisions and substituting “a non-Hong Kong”—

- (a) subsection (1);
- (b) subsection (2);
- (c) subsection (4);
- (d) subsection (5).

(2) Section 337B is amended by repealing “the overseas” in the following

provisions and substituting “the non-Hong Kong”—

- (a) subsection (1);
- (b) subsection (2A);
- (c) subsection (7).

(3) Section 337B(3) is repealed and the following substituted—

“(3) A non-Hong Kong company on which a notice is served under subsection (1) may—

- (a) deliver to the Registrar for registration a statement in the specified form specifying a name approved by the Registrar other than its corporate name under which it proposes to carry on business in Hong Kong; and
- (b) after that name has been so registered, at any time deliver to the Registrar for registration a statement in the specified form specifying a name approved by the Registrar other than its corporate name in substitution for the name previously registered.”.

(4) Section 337B(4) is amended—

- (a) by repealing “section 333” and substituting “section 333AA”;
- (b) by repealing “under that section”.

(5) Section 337B(6) is amended—

- (a) by repealing “An oversea” and substituting “A non-Hong Kong”;
- (b) by repealing “subsection (1)(b)” and substituting “subsection (1)”.

(6) Section 337B is amended by adding—

“(6A) The Registrar may, at any time before or after the end of the period mentioned in subsection (5), withdraw a notice served under subsection (1).

(6B) If a notice served under subsection (1) is withdrawn, subsection (5) ceases to apply to the company on which the notice was served.”.

37. Service of documents on non-Hong Kong companies

(1) Section 338(1) is repealed and the following substituted—

“(1) Subject to subsection (2), any process or notice required to be served on a non-Hong Kong company shall be sufficiently served if—

(a) it is addressed to a person whose name has been delivered to the Registrar under this Part as the authorized representative of the company; and

(b) it is left at his last known address or sent to him by post.”.

(2) Section 338(2) is amended by repealing “oversea” and substituting “non-Hong Kong”.

(3) Section 338(2)(b)(i) is amended by repealing “333(1)(c)” and substituting “333(2)(f)”.

(4) Section 338(2)(b)(ii) is amended by repealing “3 years” and substituting “12 months”.

38. **Section substituted**

Section 339 is repealed and the following substituted—

“339. Notices to be sent when non-Hong Kong companies cease to have places of business in Hong Kong

(1) If a non-Hong Kong company that is registered under this Part 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 specified form.

(2) Upon receipt of the notice in subsection (1), the Registrar shall—

- (a) retain and register the notice; and
- (b) 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.”.

39. **Section added**

The following is added before section 339A—

“339AA. Notices, etc. to be sent when non-Hong Kong companies are dissolved

(1) If a non-Hong Kong company that is registered under this Part is dissolved, an agent of the company shall, within 14 days after the date of dissolution, send to the Registrar—

- (a) a notice of that fact in the specified form; and

- (b) a certified copy of an instrument effecting the dissolution, or a certified translation of the instrument in English or Chinese if the instrument is in a language other than English or Chinese.

(2) Upon receipt of the documents in subsection (1), the Registrar shall—

- (a) retain and register the documents; and
- (b) enter in the register of non-Hong Kong companies a statement that the relevant non-Hong Kong company has been dissolved.”.

40. Removal, etc. of names of non-Hong Kong companies from register

- (1) Section 339A(1) is repealed.
- (2) Section 339A(2) is amended by repealing “an overseas” and substituting “a non-Hong Kong”.

41. Penalties

Section 340 is amended by repealing “oversea” and substituting “non-Hong Kong”.

42. Section substituted

Section 341 is repealed and the following substituted—

“341. Interpretation of Part XI

(1) For the purposes of this Part—

“authorized representative” (獲授權代表) means a person who is authorized to accept on behalf of the company service of process and any notices required to be served on the company and whose name is registered as such under section 333;

“certified” (核證) means certified in the manner prescribed in the Companies (Forms) Regulations (Cap. 32 sub. leg. B) to be a true copy or a correct translation, as may be appropriate;

“director” (董事) ~~in relation to a company includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act~~⁴³ includes a shadow director;

“place of business” (營業地點) ~~includes a share transfer or share registration office but~~⁴⁴ does not include an office specified in the Twenty-fourth Schedule;

“pre-amended Ordinance” (修訂前的本條例)—

(a) for the purposes of section 333(9) and (10), as enacted by section 26 of Schedule 3 to the Companies (Amendment)

⁴³ This amendment is to clarify our policy intent by reinstating the definition of “director” for non-Hong Kong companies under Companies (Amendment) Ordinance 2003.

⁴⁴ In response to the suggestion of the Law Society of Hong Kong and Linklaters, this amendment serves to clarify the definition of “place of business”.

Ordinance ~~2003-2004~~ (of ~~2003~~2004), means the Companies Ordinance (Cap. 32) that was in force immediately before it was amended by section 26 of Schedule 3 to the Companies (Amendment) Ordinance ~~2003-2004~~ (of ~~2003~~2004);

- (b) for the purpose of section 333AA(3), as enacted by section 27 of Schedule 3 to the Companies (Amendment) Ordinance ~~2003-2004~~ (of ~~2003~~2004), means the Companies Ordinance (Cap. 32) that was in force immediately before it was amended by section 27 of Schedule 3 to the Companies (Amendment) Ordinance ~~2003-2004~~ (of ~~2003~~2004);⁴⁵
- (c) for the purpose of section 333C(3), as enacted by section 30(2) of Schedule 3 to the Companies (Amendment) Ordinance ~~2003-2004~~ (of ~~2003~~2004), means the Companies Ordinance (Cap. 32) that was in force immediately before it was amended by section 30(2) of Schedule 3 to the Companies (Amendment) Ordinance ~~2003-2004~~ (of ~~2003~~2004);
- (d) for the purposes of sections 334(6) and 336(4), as enacted by sections 31 and 33 respectively of Schedule 3 to the Companies (Amendment) Ordinance ~~2003-2004~~ (of ~~2003~~2004), means the Companies Ordinance (Cap. 32) that was in force immediately before it was amended by sections

31 and 33 of Schedule 3 to the Companies (Amendment) Ordinance ~~2003-2004~~ (of ~~20032004~~);

- (e) for the purpose of section 337(2), as enacted by section 34(8) of Schedule 3 to the Companies (Amendment) Ordinance ~~2003-2004~~ (of ~~20032004~~)⁴⁶, means the Companies Ordinance (Cap. 32) that was in force immediately before it was amended by section 34(5), (6) and (7) of Schedule 3 to the Companies (Amendment) Ordinance ~~2003-2004~~ (of ~~20032004~~);

“secretary” (秘書) includes any person occupying the position of secretary by whatever name called.

(2) In this Part—

- (a) references to solicitors are references to persons who are solicitors qualified to act as such under the Legal Practitioners Ordinance (Cap. 159);
- (b) references to professional accountants are references to persons who are registered as professional accountants and hold practising certificates under the Professional Accountants Ordinance (Cap. 50);
- (c) the expressions “forename” (名字), “identity card” (身分證),

⁴⁵ See Footnote (8).

⁴⁶ See Footnote (8).

“residential address” (住址) and “surname” (姓氏) have the meanings respectively assigned to them by section 158(10);

(d) references to a former forename or surname shall be construed in accordance with section 158(10)(f).”.

43. Subheading repealed

The subheading immediately before section 345 is repealed.

44. Prohibition of partnerships with more than 20 members

Section 345 is repealed.

45. Power to amend requirements as to accounts, Schedules, tables, forms and fees

Section 360 is amended by adding—

“(10) The Financial Secretary may, by order published in the Gazette, amend the Twenty-fourth Schedule.”.

46. Power of the Chief Executive in Council to order company engaging in undesirable activities to be struck off

Section 360C(3) is amended by repealing “subscribed” and substituting “signed”.

47. **First Schedule amended**

(1) The First Schedule is amended, in Table A, in Part I, in regulation 77, by repealing “subscribers of the memorandum of association” and substituting “founder members”.

(2) The First Schedule is amended, in Table B—

- (a) in the declaration, by repealing “subscribed, are desirous of being formed into” and substituting “given below, wish to form”;
- (b) by repealing “*Subscribers*” and substituting “*Signatories*”;
- (c) by repealing “*Subscriber*” and substituting “*Signatory*”.

(3) The First Schedule is amended, in Table C, in the Form of Memorandum and Articles of Association of a Company Limited by Guarantee, and not having a Share Capital, in the Memorandum of Association—

- (a) in the declaration, by repealing “subscribed, are desirous of being formed into” and substituting “given below, wish to form”;
- (b) by repealing “*Subscribers*” and substituting “*Signatories*”.

(4) The First Schedule is amended, in Table C, in the Form of Memorandum and Articles of Association of a Company Limited by Guarantee, and not having a Share Capital, in the Articles of Association to Accompany preceding Memorandum of Association—

- (a) in articles 3 and 30, by repealing “subscribers to the memorandum of association” and substituting “founder members”;
- (b) by repealing “*Subscribers*” and substituting “*Signatories*”.

(5) The First Schedule is amended, in Table D, in the Memorandum and Articles of Association of a Company Limited by Guarantee and having a Share Capital, in the Memorandum of Association—

- (a) in the declaration, by repealing “subscribed, are desirous of being formed into” and substituting “given below, wish to form”;
- (b) by repealing “*Subscribers*” and substituting “*Signatories*”;
- (c) by repealing “*Subscriber*” and substituting “*Signatory*”.

(6) The First Schedule is amended, in Table D, in the Memorandum and Articles of Association of a Company Limited by Guarantee and having a Share Capital, in the Articles of Association to Accompany preceding Memorandum of Association, by repealing “*Subscribers*” and substituting “*Signatories*”.

(7) The First Schedule is amended, in Table E, in the Memorandum and Articles of Association of an Unlimited Company having a Share Capital, in the Memorandum of Association—

- (a) in the declaration, by repealing “subscribed, are desirous of being formed into” and substituting “given below, wish to form”;
- (b) by repealing “*Subscribers*” and substituting “*Signatories*”;
- (c) by repealing “*Subscriber*” and substituting “*Signatory*”.

(8) The First Schedule is amended, in Table E, in the Memorandum and Articles of Association of an Unlimited Company having a Share Capital, in the Articles of Association to Accompany the preceding Memorandum of Association, by repealing “*Subscribers*” and substituting “*Signatories*”.

48. Table of Fees to be paid to the Registrar of Companies

(1) The Eighth Schedule is amended, in Part I, in paragraph (*aa*), by repealing “memorandum and articles” and substituting “incorporation form”.

(2) The Eighth Schedule is amended, in Part III—

(a) in paragraph (*a*), by repealing “333(3)” and substituting “333AA(2)(*c*) or 335(3)”;

(b) in paragraph (*b*), by repealing “336(1)” and substituting “334(1)”.

49. Punishment of offences under this Ordinance

The Twelfth Schedule is amended—

(a) in the entry relating to section 91(4)—

(i) in the first column, by repealing “91(4)” and substituting “91(~~4~~5)”;

(ii) in the second column, by repealing “Company incorporated outside Hong Kong” and substituting “Non-Hong Kong company”;

(b) in the entry relating to section 92(3), in the first column, by repealing “92(3)” and substituting “92(4)”;

(c) in the entry relating to section 337B(7), in the second column, by repealing “Overseas” and substituting “Non-Hong Kong”;

- (d) in the entry relating to section 340, in the second column, by repealing “Overseas” and substituting “Non-Hong Kong”;
- (e) in the entry relating to section 342F(1), in the second column, by repealing “an overseas” and substituting “a non-Hong Kong”.

50. Twenty-fourth Schedule added

The following is added—

“TWENTY-FOURTH SCHEDULE [ss. 341 & 360]

OFFICES NOT INCLUDED IN DEFINITION OF
“PLACE OF BUSINESS” UNDER PART XI OF
THIS ORDINANCE

1. A local representative office established or maintained with the approval of the Monetary Authority under section 46 of the Banking Ordinance (Cap. 155) by a bank as defined in section 46(9) of that Ordinance.”.

SCHEDULE 5

[ss. 3 & 4]

CONSEQUENTIAL AND OTHER AMENDMENTS

...

PART 3

CONSEQUENTIAL AND OTHER AMENDMENTS ARISING FROM THE
AMENDMENTS TO THE COMPANIES ORDINANCE MADE BY
SCHEDULE 3 TO THIS ORDINANCE

Specification of Public Offices

1. Schedule amended

The Schedule to the Specification of Public Offices (Cap. 1 sub. leg. C) is amended by repealing—

“Financial Secretary Companies Ordinance (Chapter 32), section 337B(3).”.

Companies (Forms) Regulations

2. Paragraph substituted

Paragraph 3 of the Companies (Forms) Regulations (Cap. 32 sub. leg. B) is repealed and the following substituted—

**“3. Certified copies of documents required to be
delivered under Part XI**

(1) This paragraph applies to the certified copies of documents that are required to be delivered to the Registrar under Part XI of the Ordinance.

(2) A document shall be deemed to be certified as a true copy if it is duly certified as such—

(a) in the company's place of incorporation—

- (i) by an official of the government of that place to whose custody the original of the document is committed;
- (ii) by a notary public practising in that place;
- (iii) by a lawyer practising in that place;
- (iv) by a professional accountant practising in that place;
- (v) by an officer of a court of law duly authorized by the law of that place to certify documents for any judicial or other legal purpose; or
- (vi) by a professional⁴⁷ company secretary practising in that place;

(b) in Hong Kong—

- (i) by a notary public practising in Hong Kong;
- (ii) by a solicitor practising in Hong Kong;
- (iii) by a professional accountant practising in Hong Kong;
- (iv) by an officer of the court in Hong Kong who is authorized by law to certify documents for any judicial or other legal purpose;
- (v) by a consular officer of the place of incorporation of the company; or

⁴⁷ This amendment is in response to the suggestion of the Hong Kong Institute of Company Secretary to add the words “professionally qualified” before “company secretary”. After due consideration, we propose to use the word “professional” which already serves the purpose.

- (vi) by a professional⁴⁸ company secretary practising in Hong Kong;
- (c) by an officer of the company; or
- (d) by the authorized representative of the company.”.

3. Paragraphs repealed

Paragraphs 4 and 5A are repealed.

4. Paragraph substituted

Paragraph 6 is repealed and the following substituted—

“6. Translations

(1) A translation of a document shall be deemed to be a certified translation in the prescribed manner for the purposes of the Ordinance if—

- (a) it is certified by the person making the translation to be a correct translation; and
- (b) the person making the translation is believed to be a person who is competent in translating a document into the English or Chinese language, as the case may be, by and is so certified by a person referred to in subparagraph (2).

(2) A person may make a certification under subparagraph (1)(b) if he is—

- (a) where the translation is made in a place outside Hong Kong—
 - (i) a notary public practising in that place;
 - (ii) a lawyer practising in that place;
 - (iii) a professional accountant practising in that place;

⁴⁸ See Footnote (47).

- (iv) an officer of a court of law duly authorized by the law of that place to certify documents for any judicial or other legal purpose;
 - (v) a consular officer in that place;
 - (vi) a [professional](#)⁴⁹ company secretary practising in that place; or
 - (vii) such other person as may be specified by the Registrar; or
- (b) where the translation is made in Hong Kong—
- (i) a notary public practising in Hong Kong;
 - (ii) a solicitor practising in Hong Kong;
 - (iii) a professional accountant practising in Hong Kong;
 - (iv) a consular officer in Hong Kong; or
 - (v) a [professional](#)⁵⁰ company secretary practising in Hong Kong.”.

Limited Partnerships Ordinance

5. Definition and constitution of limited partnership

Section 3(2) of the Limited Partnerships Ordinance (Cap. 37) is amended by repealing “shall not consist in any case of more than 20 persons, and”.

Inland Revenue Ordinance

6. Treatment of losses after 1 April 1975

Section 19C(7) of the Inland Revenue Ordinance (Cap. 112) is repealed.

⁴⁹ See Footnote (47).

⁵⁰ See Footnote (47).

7. **Ascertainment of share of partnership profits or losses**

Section 22A(3) is repealed.

8. **Section added**

The following is added—

“22C. Transitional: partnerships consisting of more than 20 members

Where a partnership, which immediately before the commencement of sections 6, 7, 8 and 9 of Part 3 of Schedule 5 to the Companies (Amendment) Ordinance ~~2003-2004~~ (of ~~2003-2004~~)⁵¹, was a person, but was not an individual, a corporation or a partnership as defined in sections 19C(7) and 22A(3) that were in force immediately before that commencement, has any losses brought forward under section 19C(4), then, notwithstanding section 22A(2)—

- (a) any such losses shall be used to set off against the assessable profits of that partnership in the subsequent years of assessment the basis periods of which are ended after that commencement until those losses are fully utilized; and
- (b) the assessable profits of that partnership for a year of assessment the basis period of which is ended after that commencement shall be reduced by the amount of loss set off mentioned in paragraph (a) before they are apportioned amongst the partners of that partnership in accordance with section 22A(1).”.

9. **Calculation of total income**

⁵¹ See Footnote (8).

- (1) Section 42(1) is amended by repealing “, subject to subsection (8),”.
- (2) Section 42(8) and (9) is repealed.

Money Lenders Regulations

10. Licensing and exemption forms

Schedule 2 to the Money Lenders Regulations (Cap. 163 sub. leg. A) is amended in Form 3 by repealing “an overseas” and substituting “a non-Hong Kong”.

Merchant Shipping (Registration) Ordinance

11. Registrable ships

Section 11(4)(c) of the Merchant Shipping (Registration) Ordinance (Cap. 415) is amended by repealing “an overseas” and substituting “a non-Hong Kong”.

12. Notice of dissolution, etc. of body corporate owner or charterer

Section 55(1)(b)(ii) is amended by repealing “an overseas” and substituting “a non-Hong Kong”.

Toys and Children’s Products Safety Ordinance

13. Service of notices

Section 34(1)(b)(ii) of the Toys and Children’s Products Safety Ordinance (Cap. 424) is amended by repealing “an overseas” and substituting “a non-Hong Kong”.

Occupational Retirement Schemes Ordinance

14. Notices

Section 81(1)(c) of the Occupational Retirement Schemes Ordinance (Cap. 426) is amended by repealing “an overseas” and substituting “a non-Hong Kong”.

Consumer Goods Safety Ordinance

15. Service of notices

Section 35(1)(b)(ii) of the Consumer Goods Safety Ordinance (Cap. 456) is amended by repealing “an overseas” and substituting “a non-Hong Kong”.

Mandatory Provident Fund Schemes Ordinance

16. Interpretation

(1) Section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended, in the definition of “company”, in paragraph (a)(ii), by repealing “an overseas” and substituting “a non-Hong Kong”.

(2) Section 2(1) is amended, in the definition of “corporation”, by repealing “an overseas” and substituting “a non-Hong Kong”.

(3) Section 2(1) is amended, in the definition of “oversea company”, by repealing ““oversea company” (海外公司)” and substituting ““non-Hong Kong company” (非香港公司)”.

17. Approval of trustees

Section 20(7)(c)(iv) is amended by repealing “an overseas” and substituting “a non-Hong Kong”.

Mandatory Provident Fund Schemes (General) Regulation

18. What are assets held in Hong Kong for the purposes of this Regulation?

Section 10(g) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) is amended by repealing “an overseas” and substituting “a non-Hong Kong”.

19. **Approved trustee to lodge trustee's return
with Authority**

Section 109(7)(a) and (b) is amended by repealing “an oversea” and substituting “a non-Hong Kong”.

Mandatory Provident Fund Schemes (Exemption) Regulation

20. **Minimum standards applicable to trustees, etc.
of schemes**

Schedule 3 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg. B) is amended, in section 5(5)(a), by repealing “an oversea” and substituting “a non-Hong Kong”.

**Non-local Higher and Professional Education
(Regulation) Ordinance**

21. **Notices**

Section 38(1)(c) of the Non-local Higher and Professional Education (Regulation) Ordinance (Cap. 493) is amended by repealing “an oversea” and substituting “a non-Hong Kong”.

Merchant Shipping (Local Vessels) Ordinance

22. **Ownership of local vessel**

Section 12(1)(b) of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) is amended by repealing “overseas” and substituting “non-Hong Kong”.

Merchant Shipping (Local Vessels) (Certification and

Licensing) Regulation⁵²

22A. Interpretation

Section 2(1) of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548 sub. leg. D) is amended in the definition of “document of identification” by repealing “oversea” and substituting “non-Hong Kong”.

22B. Certificate of ownership and other documents ceasing to have effect on death or dissolution of owner, etc.

Section 24(b) is amended by repealing “overseas” and substituting “non-Hong Kong”.

22C. Notice of death or dissolution of owner, etc.

Section 25(2) is amended by repealing “overseas” and substituting “non-Hong Kong”.

Securities and Futures Ordinance

23. Corporations to be licensed for carrying on regulated activities

Section 116(2)(a)(ii) and (iii) of the Securities and Futures Ordinance (Cap. 571) is amended by repealing “an overseas” and substituting “a non-Hong Kong”.

24. Client securities and collateral held by intermediaries

⁵² These amendments are consequential to a new subsidiary legislation made under the Merchant Shipping (Local Vessels) Ordinance, namely the Merchant Shipping (Local Vessels)(Certification and Licensing) Regulation in which the term “oversea/overseas company” appears in the Regulation.

and their associated entities

Section 148(2)(d) is amended by repealing “overseas” and substituting “non-Hong Kong”.

25. Restriction on receiving or holding of client assets

Section 164(3)(c) is amended by repealing “overseas” and substituting “non-Hong Kong”.

26. Interpretation of Part IX

(1) Section 193(1) is amended by repealing the definition of “register of companies”.

(2) Section 193(1) is amended by adding—

““register of companies” (公司登記冊) means the register within the meaning of section 291 of the Companies Ordinance (Cap. 32) or a register of non-Hong Kong companies kept under section 333AA of that Ordinance.”.

27. Service of notices, etc.

Section 400(c) and (e) is amended by repealing “an overseas” and substituting “a non-Hong Kong”.

28. Interpretation and general provisions

(1) Schedule 1 is amended, in Part 1, in section 1, in the definition of “associated entity”, by repealing “an overseas” and substituting “a non-Hong Kong”.

(2) Schedule 1 is amended, in Part 1, in section 1, by repealing the definition of “overseas company”.

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

““non-Hong Kong company” (非香港公司) has the meaning assigned to it by section 332 of the Companies Ordinance (Cap. 32);”.

29. Savings, transitional, consequential and related provisions, etc.

Schedule 10 is amended, in Part 1, in section 53(1)(b) and (c), by repealing “an overseas” and substituting “a non-Hong Kong”.

Securities and Futures (Client Securities) Rules

30. Interpretation

Section 2 of the Securities and Futures (Client Securities) Rules (L.N. 201 of 2002) is amended, in the definition of “approved custodian”, by repealing “overseas” and substituting “non-Hong Kong”.

31. Approval of custodians for safe custody of client securities and securities collateral

Section 11 is amended by repealing “overseas” and substituting “non-Hong Kong”.

Securities and Futures (Price Stabilizing) Rules

32. Interpretation

Section 2(1) of the Securities and Futures (Price Stabilizing) Rules (L.N. 218 of 2002) is amended, in the definition of “prospectus”, in paragraph (b), by repealing “an overseas” and substituting “a non-Hong Kong”.

Royal Bank of Scotland Ordinance

33. Preamble amended

The preamble to the Royal Bank of Scotland Ordinance (Cap. 1138) is amended, in paragraphs (a) and (b), by repealing “an oversea” and substituting “a non-Hong Kong”.

34. **Interpretation**

Section 2(1) is amended, in the definition of “authorized representative”, by repealing “333(1)” and substituting “333(2)(e)”.