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File Ref: LDT/72/00/52

DRAFTING HISTORY TABLE

Draft no.	Release date	DM version
1 st working draft	20.05.2004	#107587 v2
2 nd working draft	04.06.2004	#107587 v3
3 rd working draft	07.06.2004	#107587 v4
3 rd (revised) working draft	07.06.2004	#107587 v4A
1 st draft	09.06.2004	#107587 v5

COMPANIES (AMENDMENT) BILL 2003

COMPANIES (AMENDMENT) BILL 2003

COMMITTEE STAGE

Amendments to be moved by the Secretary for Financial Services
and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
2	(a) In the heading, by deleting "2,". (b) By deleting "2,".
3	By deleting ", 2".
4	(a) In the heading, by deleting "2,". (b) By deleting "2,".
Schedule 1, section 3	(a) In paragraph (a) - (i) in the proposed section 38A(1), by deleting everything after "considers that" and substituting - "the exemption will not prejudice the interest of the investing public and compliance with any or all of those requirements - (a) would be irrelevant or

unduly

burdensome; or

(b) is otherwise

unnecessary or

inappropriate.";

(ii) in the proposed section 38A(2), by deleting everything after "considers that" and substituting -

"the exemption will not prejudice the interest of the investing public and compliance with any or all of those requirements, in the case of that class of companies or prospectuses, as the case may be -

(c) would be

irrelevant or

unduly

burdensome; or

(d) is otherwise

unnecessary or

inappropriate.".

(b) In paragraph (b) -

(i) in the proposed section 38A(4)(a),

by deleting "38AA(1)," and ", (3A)";

- (ii) in the proposed section 38A(6), by deleting ", suspended or withdrawn";
- (iii) by adding -

- "(7) Where the Commission proposes to issue -

- (a) a notice of exemption under subsection (2);
 - or

- (b) an amendment order under subsection (5),

it shall publish a draft of the proposed notice or order, in such manner as it considers appropriate, for the purpose of inviting representations on the proposed notice or order by the public.

- (8) Where the Commission issues a notice or order mentioned in subsection (7) after a draft is published under that subsection in relation to the notice or order, it shall -

(a) publish, in such manner as it considers appropriate, an account setting out in general terms -

(i) the representations made on the draft; and

(ii) the response of the Commission to the representations; and

(b) where the notice or order is issued with modifications which in the opinion of the Commission

result in the
notice or order
being
significantly
different from
the draft,
publish, in such
manner as it
considers
appropriate,
details of the
difference.

(9) Subsections (7) and
(8) do not apply if the
Commission considers, in the
circumstances of the case,
that -

- (a) it is
unnecessary or
inappropriate
that such
subsections
should apply; or
- (b) any delay
involved in
complying with

such subsections
would not be -

- (i) in the
interest of
the
investing
public; or
- (ii) in the
public
interest."

Schedule 1 By deleting section 4.

Schedule 1,
section 5 In the proposed section 38B(1)(b), by adding
"prospectus or" before "proposed prospectus".

Schedule 1,
section 7 (a) By deleting paragraphs (a), (b) and (c)(i).
(b) In paragraph (d), by deleting the proposed
section 38D(11), (12) and (14).

Schedule 1,
section 8 (a) In the proposed section 39A, by deleting
subsections (2) and (3).
(b) In the proposed section 39B -
 (i) by deleting subsections (3) and (4);
 (ii) in subsection (6), by deleting "(1)
 or".

Schedule 1 By deleting section 12 and substituting -

**"12. Prohibition of allotment
in certain cases unless
statement in lieu of
prospectus delivered
to Registrar**

Section 43 is amended -

(a) in subsection (3), by adding
"or any allotment of shares or
debentures the subject of an
offer specified in Part 1 of
the Seventeenth Schedule as
read with the other Parts of
that Schedule" after "company";

(b) by adding -

"(6A) For the purposes
of subsection (5), "untrue
statement" (不真實陳述), in
relation to a statement in
lieu of prospectus,
includes a material
omission from the
statement."."

Schedule 1, By deleting paragraph (c)(ii).
section 15

Schedule 1, (a) In paragraph (a) -
section 16

(i) in the proposed section 342A(1), by deleting everything after "considers that" and substituting -

"the exemption will not prejudice the interest of the investing public and compliance with any or all of those requirements -

(a) would be irrelevant or unduly burdensome; or

(b) is otherwise unnecessary or inappropriate.";

(ii) in the proposed section 342A(2), by deleting everything after "considers that" and substituting -

"the exemption will not prejudice the interest of the investing public and compliance with any or all of those requirements, in the case of that class of companies or prospectuses, as the case may be -

- (c) would be
irrelevant or
unduly
burdensome; or
- (d) is otherwise
unnecessary or
inappropriate."

(b) In paragraph (b) -

- (i) in the proposed section 342A(4) (a),
by deleting ", 342AB(1)" and "
(3A)";
- (ii) in the proposed section 342A(6), by
deleting ", suspended or withdrawn";
- (iii) by adding -

"(7) Where the Commission
proposes to issue -

- (a) a notice of
exemption under
subsection (2);
or
- (b) an amendment
order under
subsection (5),

it shall publish a draft of the
proposed notice or order, in
such manner as it considers

appropriate, for the purpose of inviting representations on the proposed notice or order by the public.

(8) Where the Commission issues a notice or order mentioned in subsection (7) after a draft is published under that subsection in relation to the notice or order, it shall -

(a) publish, in such manner as it considers appropriate, an account setting out in general terms -

(i) the representations made on the draft; and

(ii) the response of the

Commission
to the
representa-
tions; and

(b) where the notice
or order is
issued with
modifications
which in the
opinion of the
Commission
result in the
notice or order
being
significantly
different from
the draft,
publish, in such
manner as it
considers
appropriate,
details of the
difference.

(9) Subsections (7) and
(8) do not apply if the
Commission considers, in the

circumstances of the case,

that -

(a) it is
unnecessary or
inappropriate
that such
subsections
should apply; or

(b) any delay
involved in
complying with
such subsections
would not be -

(i) in the
interest of
the
investing
public; or

(ii) in the
public
interest.".

Schedule 1 By deleting section 17.

Schedule 1,
section 19 (a) By deleting paragraphs (c), (d) and (e)(i).
 (b) In paragraph (f), by deleting the proposed

section 342C(10), (11) and (13).

Schedule 1,
section 20

- (a) In the proposed section 342CA, by deleting subsections (2) and (3).
- (b) In the proposed section 342CB -
 - (i) by deleting subsections (3) and (4);
 - (ii) in subsection (6), by deleting "(1) or".
- (c) In the proposed section 342CC, by deleting paragraph (b)(i) and substituting -
 - "(i) a member of the governing body of the company;
 - (ia) the secretary of the company;
 - (ib) an agent of a member of the governing body or of the secretary of the company, authorized in writing for the purpose by the member or secretary;"

Schedule 1 By deleting section 21.

Schedule 1,
section 25 By deleting paragraph (b).

Schedule 1,
section 26 (a) By deleting the proposed entries relating to sections 38AA(4), 38D(14), 342(3), 342AB(4) and 342C(13).

- (b) In the proposed entries relating to sections 39B(6) and 342CB(6), by deleting "Prospectus or amendment" and substituting "Amendment".

Schedule 1,
section 27

- (a) In the proposed Seventeenth Schedule, within the square brackets, by deleting "38AA," and ", 342AB".

- (b) In the proposed Seventeenth Schedule, in Part 1 -

- (i) in section 3(a), by adding ", or its equivalent in another currency" after "Part 2";

- (ii) in section 4(a), by adding ", or its equivalent in another currency" after "Part 3";

- (iii) by deleting section 7 and substituting -

- "7. An offer of shares in a company -

- (a) made -

- (i) for no consideration, to any or all holders of shares in

the
company; or
(ii) as an
alter-
native to a
dividend or
other
distribu-
tion, to
all holders
of shares
of a
particular
class in
the
company,
provided
the offer
is of fully
paid-up
shares of
the same
class; and

(b) containing a
statement
specified in

Part 3 of the
Eighteenth
Schedule to this
Ordinance.";

- (iv) in section 9(a), by deleting everything after "述的" and substituting "屬公共性質的慈善機構或信託；或";
 - (v) in section 10(a), by adding ", or applicants for membership," after "members".
- (c) In the proposed Seventeenth Schedule, in Part 4, in section 6(b), in the Chinese text, by adding "的人" before the dash.
- (d) In the proposed Eighteenth Schedule, in Part 3 -
- (i) by deleting "neither been reviewed nor endorsed" and substituting "not been reviewed";
 - (ii) by deleting "或批署".
- (e) In the proposed Twenty-first Schedule, in Parts 1 and 2, by deleting section 9.

Schedule 2By deleting the Schedule.

Schedule 3,
section 1

By adding -

"(3) Section 2(10) is amended -

(a) in paragraph (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".

Schedule 3,
section 2

By deleting everything after "repealing" and

substituting "\"subscribing his or their name or
names to" and substituting "signing his or their
name or names on".

Schedule 3,
section 7

In the proposed section 14A(3), by adding ", or
where only one founder member is named in the form,
by that founder member" after "the form".

Schedule 3

By adding -

**"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".".

Schedule 3,
section 14

By deleting the proposed section 91 and substituting -

"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 company.

(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.

(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;
- (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) 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.

(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."

Schedule 3,
section 17

By deleting "'認購股份'" and substituting "'在章程大綱內簽署認購股份" 而代以 "簽署章程大綱"".

Schedule 3,
section 18

In the heading, by adding "**of companies other than private companies**" after "**Directors**".

Schedule 3,
section 18(1)

By deleting the proposed section 153(2) and substituting –

"(2) With effect from the date of

incorporation of a company (not being a private company) mentioned in its certificate of incorporation, the first directors of the company are the persons named as the directors in the incorporation form submitted in respect of the company pursuant to section 14A."

Schedule 3,
section 18(2)

In the proposed section 153(6) -

- (a) by adding "(not being a private company)" after "company";
- (b) by deleting "of change of directors in respect of him" and substituting "under section 158(4AA)";
- (c) by deleting "under section 158(4)".

Schedule 3

By adding -

"18A. Directors of private companies

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

"(2) 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 directors 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.

(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 Companies (Amendment) Ordinance 2004 (of 2004).".

Schedule 3,
section 19

By deleting the proposed section 154(1AA) and substituting –

"(1AA) 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 secretary 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."

Schedule 3 By deleting section 20 and substituting -

"20. Register of directors and secretaries

(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.

(4AA) On the appointment of a person as director of a company otherwise than by virtue of section 153(2) or (6) or

section 153A(2) or (10), 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 the 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".

(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 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) and has not complied with section 158(4)(a), (4A) and (5) of the pre-amended Ordinance before the expiry of the periods mentioned in that section 158(4)(a) and (4A), then 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."

(7) Section 158(10) is amended by adding –

"(ca) 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, 18A and 20 of Schedule 3 to the Companies (Amendment) Ordinance 2004 (of 2004);".

Schedule 3, section 21(b) By deleting everything after "(b)(iii)," and

substituting "by repealing the full stop and substituting "; or";".

Schedule 3,
section 21(c)

In the proposed section 168C(1)(c), by deleting the semicolon and substituting a full stop.

Schedule 3,
section 22(2)

By deleting "subscribed" 而代以 "signed" and substituting "在章程大綱內簽署認購股份" 而代以 "簽署章程大綱".

Schedule 3,
section 23(1)

In the proposed section 305(1A) -

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

(b) in paragraph (a)(iii), by deleting "and";

(c) in paragraph (a), by adding -

"(iv) a person who has entered into possession of the 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";

- (d) in paragraph (b), by deleting "for the purposes under" and substituting "or the particulars of that mortgagee, provisional liquidator, liquidator, receiver or manager, as the case may be, for the purposes of".

Schedule 3,
section 23(3)

- (a) By deleting paragraph (a).
- (b) In paragraph (b), by renumbering the proposed section 305(1)(b)(ia) as proposed section 305(1)(b)(iia).
- (c) In paragraph (b), by renumbering the proposed section 305(1)(b)(ib) as proposed section 305(1)(b)(iib).
- (d) In paragraph (b), in the proposed section 305(1)(b)(iib), by deleting "or".

Schedule 3,
section 23

By adding -

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

Schedule 3,
section 28

By deleting the proposed section 333A and substituting -

"333A. Continuing obligation in respect of authorized representative

(1) Subject to subsection (2), a 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(2)(e) 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 at least one authorized representative of the company.

(2) Where one 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, within 1 month of the person ceasing to be such representative, register the particulars of another person in compliance with subsection (1)."

Schedule 3,
section 29

In the proposed section 333B(2), by deleting "14 days" and substituting "1 month".

Schedule 3,
section 32

In the proposed section 335(1) and (2), by deleting "21 days" and substituting "1 month".

Schedule 3,
section 35

In the proposed section 337A(1), by adding "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 which such proceedings are commenced, whichever is the later," after "the company,".

Schedule 3,
section 36(3)

In the proposed section 337B(3) -

- (a) in paragraph (a), by deleting everything after "的名稱" and substituting "(該公司建議在香港經營業務所採用的法人名稱除外)的陳述書交付處長登記；及";
- (b) in paragraph (b), by deleting everything after "准的名稱" and substituting "(該公司的法人名稱除外)的陳述書交付處長登記，以取代以往註冊的名稱。".

Schedule 3,
section 42

In the proposed section 341(1) -

- (a) by deleting the definition of "director" and substituting -
"
"director" (董事) includes a shadow
director;"
- (b) in the definition of "place of business", by adding "includes a share transfer or

share registration office but" before
"does".

Schedule 3,
section 46

By deleting ""認購股份"" and substituting ""在章程大綱
內簽署認購股份" 而代以 "簽署章程大綱"".

Schedule 3,
section
49(a)(i)

By deleting "91(11)" and substituting "91(6)".

Schedule 4 [Insert the agreed CSAs]

Schedule 5 By deleting Part 2.

Schedule 5, In the proposed paragraph 3(2)(a)(vi) and (b)(vi),
Part 3, by adding "professional" before "company".
section 2

Schedule 5, In the proposed paragraph 6(2)(a)(vi) and (b)(v),
Part 3, by adding "professional" before "company".
section 4

Schedule 5, By adding immediately after section 22 -
Part 3

**"Merchant Shipping (Local Vessels)
(Certification and Licensing)
Regulation**

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", in paragraph (c) -

- (a) by repealing "an oversea" and
substituting "a non-Hong Kong";
- (b) 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".

Schedule 5, In the Chinese text, in the heading, by deleting
Part 3, "XI" and substituting "IX".
section 26