

For discussion on  
27 November 2003

Paper No. CA1-07/03

**Bills Committee on  
Companies (Amendment) Bill 2003  
Schedule 1 – Amendments to the Companies Ordinance  
relating to prospectus  
Clause-by-clause examination**

At **Annex** is a mark-up version of those provisions in Schedule 1 of the Companies (Amendment) Bill 2003 to which the Administration would like to propose amendments, having taken into account views expressed at previous meetings of the Bills Committee. These provisions are clauses 3, 4, 5, 7, 12, 16, 17, 19, 20, 21, 25, 26 and 27. The reasons for the amendments are set out in the footnotes.

Financial Services and the Treasury Bureau  
Securities and Futures Commission  
21 November 2003

SCHEDULE 1

[ss. 2 & 4 &  
Sch. 5]

AMENDMENTS TO THE COMPANIES ORDINANCE  
RELATING TO PROSPECTUSES

3. **Exemption of certain persons and  
prospectuses from compliance  
with certain requirements**

Section 38A is amended -

(a) by repealing subsections (1) and (2) and substituting -

"(1) Where it is proposed to offer any shares in or debentures of a company to the public by a prospectus or class of prospectuses issued generally, there may, on the request of the applicant, and subject to such conditions (if any) as the Commission thinks fit, be issued by the Commission a certificate of exemption from compliance with any or all of the requirements of the relevant provisions if, having regard to the circumstances, the Commission considers that -

(a) compliance with any or all of those requirements would be irrelevant or unduly burdensome; or

(b) the exemption will not prejudice the interest of the investing public.

(2) Whether or not a request referred to in subsection (1) has been made, the Commission may,

by notice published in the Gazette, and subject to such conditions (if any) as the Commission thinks fit and specified in the notice, exempt -

- (a) any class of companies; or
- (b) any class of prospectuses issued by companies,

from any or all of the requirements of the relevant provisions if, having regard to the circumstances, the Commission considers that -

- (c) compliance with any or all of those requirements would be irrelevant or unduly burdensome in the case of that class of companies or prospectuses, as the case may be; or
- (d) the exemption will not prejudice the interest of the investing public.";

(b) by adding -

"(4) In this section, "relevant provisions" (有關條文) means any of the provisions of -

- (a) section 38(1), (1A), (3) or (7),  
~~38AA(1),<sup>1</sup>38D(3), (3A)<sup>2</sup>~~ or (4),  
42(1) or (4), 44A(1), (2) or (6)  
or 44B(1) or (2); or
- (b) Part 1 of the Twentieth Schedule  
or Part 1 of the Twenty-first  
Schedule.
- (5) The Commission may, by order published  
in the Gazette, amend subsection (4).
- (6) The Commission shall publish, by means  
of an on-line medium, such particulars  
of exemptions granted, suspended or  
withdrawn under subsection (1) as it  
considers appropriate."

(7) Where the Commission proposes to issue

=

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

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

---

<sup>1</sup> Technical amendment consequential to the repeal of clause 4. See Note 4 below.

<sup>2</sup> Technical amendment consequential to amendments to clause 7. See Note 7 below.

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  
published 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 inappropriate or unnecessary  
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."<sup>3</sup>

~~4. Section added~~

~~The following is added—~~

~~"38AA. Sale, etc. of shares or debentures~~

~~—acquired pursuant to offer specified~~

~~—in Part 1 of the Seventeenth Schedule~~

~~(1) Where a person acquires any shares in or debentures of a company pursuant to an offer specified in Part 1 of the Seventeenth Schedule as read with the other Parts of that Schedule, the person shall not, by means of any document (including any document in conjunction with any other means), sell, or offer to sell, the shares or debentures to the public unless—~~

~~(a) the shares or debentures are the subject of a prospectus which complies with the provisions of this Part applicable to the prospectus; or~~

~~(b) shares or debentures of the same class are listed on a recognized stock market.~~

~~(2) The Commission may prepare and publish guidelines in relation to compliance with subsection (1).~~

~~(3) Guidelines published under subsection (2) are not~~

<sup>3</sup> Amendments in response to Members' suggestion that SFC should, similar to the public consultation arrangement provided for under the proposed sections 360(7), (8) and (9), conduct public consultation on a draft notice to be published in the Gazette to exempt any class of companies or prospectuses issued by companies, or a draft order to be published in the Gazette to amend the proposed new sections 38A(4)/342A(4) which define the "relevant provisions" of prospectus requirements. The proposed amendments are set out in Paper No. CA1-2/03 issued on 29 October 2003. Members considered the paper at the Bills Committee meeting on 13 November 2003 and did not raise any objection.

~~subsidiary legislation.~~

~~“(4) If any person acts in contravention of subsection (1), the person shall be liable to a fine.”<sup>4</sup>~~

**5. Advertisements concerning prospectuses**

Section 38B is amended -

(a) by repealing subsection (1) and substituting -

“(1) Subject to subsection (2), it shall not be lawful for any person to publish or cause to be published -

(a) by way of advertisement any extract from or abridged version of a prospectus; or

(b) an advertisement in relation to a prospectus or<sup>5</sup> proposed prospectus, whether in the English or Chinese language or in any other language in relation to shares or debentures of a company whether incorporated in or outside Hong Kong.”;

(b) in subsection (2) -

---

<sup>4</sup> Amendments in response to Members' concerns. The Administration and SFC have re-examined in detail the necessity for a resale restriction in respect of the safe harbours provided in Part I of the proposed Seventeenth Schedule. After careful re-examination and in light of Members' concerns, we believe the intended policy objective (i.e. preventing abuse of the exemption) of the proposed sections 38AA and 342AB would have been achieved by existing provisions in the Companies Ordinance and the Securities and Futures Ordinance, or other proposed safeguards in the Bill, and hence may be dropped. The reasons are set out in Paper No. CA1-4/03 issued on 6 November 2003. Members considered the paper at the Bills Committee meeting on 13 November 2003 and did not raise any objection.

<sup>5</sup> Technical amendment for greater clarity as an advertisement could be issued upon or after the registration of a prospectus, in which case the advertisement will be in relation to “a prospectus” instead of “a proposed prospectus”.



- (i) in paragraph (a), by repealing "form and manner of publication" and substituting "requirements";
- (ii) in paragraph (c), by repealing "or" at the end;
- (iii) in paragraph (d) -
  - (A) by repealing "form and manner of publication" and substituting "requirements";
  - (B) by repealing "case," and substituting "case;";
- (iv) by adding -
  - "(e) the publication of an advertisement which -
    - (i) complies with the requirements of the Nineteenth Schedule applicable to the advertisement; and
    - (ii) contains such information as is permitted under subsection (2AA); or
- (f) the publication of an advertisement -
  - (i) in relation to a company which is a collective investment scheme authorized under section 104(1) of the Securities and Futures Ordinance (Cap. 571); and
  - (ii) which has been authorized under section 105 of the Securities and Futures Ordinance (Cap. 571),";
- (c) by adding before subsection (2A) -

"(2AA) For the purposes of subsection (2) (e) (ii), the Commission may, on the request of the applicant, and in accordance with the guidelines published under section 38BA, permit an advertisement to contain such information as is specified in the permission and subject to such conditions as are specified in the permission.";

(d) in subsection (2A) -

(i) in paragraph (a), by repealing "the form and manner of" and substituting "requirements applicable to the form and manner of, and any other matters relating to,";

(ii) in paragraph (b), by repealing "authorize the form and manner of" and substituting "specify requirements applicable to and authorize the form and manner of, and any other matters relating to,".

## 7. Registration of prospectus

Section 38D is amended -

(a) ~~by repealing subsection (3) (b) (i) and (ii);~~

~~-(b) by adding-~~

~~"(3A) In the case of a prospectus mentioned in subsection (3) (b) -~~

~~(a) a copy of any contract required by paragraph 17 of the Third Schedule to be stated in the prospectus;~~

~~(b) in the case of a contract not  
reduced into writing, a memorandum  
giving full particulars thereof,  
or~~

~~(c) in the case of a prospectus  
exempted under section 38A from  
compliance with the requirements  
of section 38(1), a copy of any  
contract specified for the  
purposes of this paragraph in any  
of the conditions to which the  
exemption is subject,~~

~~shall be available for inspection by the public,  
during normal business hours, for not less than  
14 days from the date of publication of the  
prospectus, at the company's registered office in  
Hong Kong."~~

~~(c) in subsection (4) -~~

~~———— (i) by repealing "subsection (3) (b) (i) to the  
copy of a contract required thereby to be  
endorsed on or attached to a copy of the  
prospectus" and substituting "subsection (3A)  
to the copy of a contract required thereby  
to be available for inspection",<sup>6</sup>~~

---

<sup>6</sup> See Note 7 below.

~~(ii)~~ by repealing everything after "prescribed manner" and substituting "under subsection (10) to be a correct translation.";

~~(d)~~ (b) by adding -

"(10) A translation mentioned in subsection (4) shall be -

(a) certified by the person making the translation as a correct translation; and

(b) deemed to be certified in the prescribed manner if the person making the translation has been certified, by the appropriate person mentioned in subparagraph (i) or (ii), as a person believed by that appropriate person to be competent to translate it into the English or Chinese language, as the case may be, that is to say -

(i) if the translation be made outside Hong Kong -

(A) a notary public in the place where the translation is made;

(B) such other person

as may be  
specified by the  
Commission; or

- (C) such other person  
belonging to a  
class of persons  
specified by the  
Commission, by  
notice published  
in the Gazette,  
for the purposes  
of this  
paragraph;

- (ii) if the translation be  
made in Hong Kong -

- (A) a notary public in  
Hong Kong;
- (B) a solicitor of the  
High Court of Hong  
Kong;
- (C) such other person  
as may be  
specified by the  
Commission; or
- (D) such other person  
belonging to a

class of persons  
specified by the  
Commission, by  
notice published  
in the Gazette,  
for the purposes  
of this  
paragraph.

~~(11) Subject to subsection (12), where a  
company is required to make a document available  
for inspection by the public in compliance with  
subsection (3A), it shall, during the period  
specified in subsection (3A), provide a copy of  
all or any part of the document—~~

- ~~(a) on the request of any person  
inspecting the document; and~~
- ~~(b) on payment of the reasonable  
expenses of the company in  
providing the copy.~~

~~(12) A company is not required to comply with  
subsection (11) in the case of any document  
available for inspection by the public—~~

- ~~(a) on the Internet on a readily  
accessible web page in a format  
which enables the document to be  
readily printed; and~~

~~(b) during the period specified in  
subsection (3A).~~

(1311) A notice published under  
subsection (10) (b) (i) (C) or (ii) (D) is not  
subsidiary legislation.

~~(14) If any company fails to comply with subsection (11), the company  
and every officer of the company who is in default shall be liable to  
a fine."~~<sup>2</sup>

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

Section 43(3) 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 other Parts of that  
Schedule" after "company" ;

(b) by adding the following —

"(6A) For the purposes of subsection (5), "untrue  
statement" 不真實陳述 ), in relation to a statement in lieu

<sup>2</sup> Amendments to revert to the current arrangement of registering material contracts with the Registrar of Companies. In response to Members' concerns raised at the Bills Committee meeting on 17 October 2003 on the proposal for replacing the existing requirement of registering material contracts with the Registrar of Companies with a new requirement of making such contracts available for public inspection for not less than 14 days at the companies, we have conducted a consultation to seek the views of relevant stakeholders specifically on this subject. In view of the comments received, we propose to take out this proposal and maintain the current arrangement.

of prospectus, includes a material omission from the  
statement."<sup>8</sup>

**16. Exemption of certain persons and  
prospectuses from compliance  
with certain requirements**

Section 342A is amended -

(a) by repealing subsections (1) and (2) and substituting -

"(1) Where it is proposed to offer any shares in or debentures of a company incorporated outside Hong Kong (whether the company has or has not established a place of business in Hong Kong) to the public by a prospectus or class of prospectuses issued generally, there may, on the request of the applicant, and subject to such conditions (if any) as the Commission thinks fit, be issued by the Commission a certificate of exemption from compliance with any or all of the requirements of the relevant provisions if, having regard to the circumstances, the Commission considers that -

(a) compliance with any or all of those requirements would be irrelevant or unduly burdensome; or

(b) the exemption will not prejudice the interest

---

<sup>8</sup> Technical amendment for greater clarity. Clause 11 (the proposed new section 41A(2)) clarifies the application of civil and criminal liabilities provision under the Companies Ordinance to misrepresentation in the form of material omissions in relation to prospectus. Such a clarification should also apply to statements in lieu of prospectuses.



of the investing public.

(2) Whether or not a request referred to in subsection (1) has been made, the Commission may, by notice published in the Gazette, and subject to such conditions (if any) as the Commission thinks fit and specified in the notice, exempt -

- (a) any class of companies; or
- (b) any class of prospectuses issued by companies,

from any or all of the requirements of the relevant provisions if, having regard to the circumstances, the Commission considers that -

- (c) compliance with any or all of those requirements would be irrelevant or unduly burdensome in the case of that class of companies or prospectuses, as the case may be; or
- (d) the exemption will not prejudice the interest of the investing public.”;

(b) by adding -

“(4) In this section, “relevant provisions” (有關條文) means any of the provisions of -

- (a) section 44A(1), (2) or (6), 44B(1) or (2), 342(1), (2A), (3) or (7), ~~342AB(1)~~<sup>9</sup> or 342C(3),

---

<sup>9</sup> Technical amendment consequential to the repeal of clause 17. See Note 4 above and Note 12 below.

~~(3A)~~<sup>10</sup> or (4); or

(b) Part 2 of the Twentieth Schedule or Part 2 of the Twenty-first Schedule.

(5) The Commission may, by order published in the Gazette, amend subsection (4).

(6) The Commission shall publish, by means of an on-line medium, such particulars of exemptions granted, suspended or withdrawn under subsection (1) as it considers appropriate."

(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

---

<sup>10</sup> Technical amendment consequential to amendments to clause 19. See Note 7 above and Note 14 below.

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 published 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 inappropriate or unnecessary 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."<sup>11</sup>

~~17. Section added~~

~~The following is added -~~

~~"342AB. Sale, etc. of shares or debentures~~

~~——— acquired pursuant to offer specified~~

~~——— in Part 1 of the Seventeenth~~

~~——— Schedule~~

~~(1) Where a person acquires any shares in or debentures of a  
company incorporated outside Hong Kong pursuant to an offer  
specified in Part 1 of the Seventeenth Schedule as read with  
the other Parts of that Schedule, the person shall not, by  
means of any document (including any document in conjunction  
with any other means), sell, or offer to sell, the shares  
or debentures to the public unless —~~

---

<sup>11</sup> Amendments in response to Members' comments. See Note 3 above.

- ~~(a) the shares or debentures are the subject of a prospectus which complies with the provisions of this Part applicable to the prospectus; or~~
- ~~(b) shares or debentures of the same class are listed on a recognized stock market.~~

- ~~(2) The Commission may prepare and publish guidelines in relation to compliance with subsection (1).~~
- ~~(3) Guidelines published under subsection (2) are not subsidiary legislation.~~
- ~~(4) If any person acts in contravention of subsection (1), the person shall be liable to a fine."<sup>12</sup>~~

## 19. Registration of prospectus

Section 342C is amended -

- (a) in subsection (1), by adding "or purchase" after "subscription";

---

<sup>12</sup> Amendments in response to Members' comments. See Note 4 above.

(b) in subsection (2)(a), by adding "or, where the prospectus is or is to be authorized for issue by a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance (Cap. 571), state that neither the Commission nor the recognized exchange company nor the Registrar takes any responsibility as to the contents of the prospectus" after "prospectus";

(c) ~~by repealing subsection (3)(b)(i) and (ii);~~

~~(d) by adding—~~

~~"(3A) In the case of a prospectus mentioned in subsection (3)(b)—~~

~~(a) a copy of any contract required by paragraph 17 of the Third Schedule to be stated in the prospectus;~~

~~(b) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; or~~

~~(c) in the case of a prospectus exempted under section 342A from compliance with the requirements of section 342(1), a copy of any contract specified for the purposes of this paragraph in any of the conditions to which the~~

~~exemption is subject,~~  
~~shall be available for inspection by the public,~~  
~~during normal business hours, for not less than~~  
~~14 days from the date of publication of the~~  
~~prospectus, at~~

~~(d) subject to paragraph (c), the~~  
~~company's principal place of~~  
~~business in Hong Kong,~~

~~(e) if the company does not have a~~  
~~principal place of business in~~  
~~Hong Kong, such place or places in~~  
~~Hong Kong as is or are specified~~  
~~by the Commission in the~~  
~~particular case."~~

~~(e) in subsection (4) —~~

~~(i) by repealing "subsection (3) (b) (i) to the~~  
~~copy of a contract required thereby to be~~  
~~endorsed on or attached to a copy of the~~  
~~prospectus" and substituting "subsection (3A)~~  
~~to the copy of a contract required thereby~~  
~~to be available for inspection",<sup>13</sup>~~

~~(ii) by repealing everything after "prescribed~~  
~~manner" and substituting "under subsection~~  
~~(9) to be a correct translation."~~

---

<sup>13</sup> See Note 14 below.

(~~f~~d) by adding -

"(9) A translation mentioned in subsection

(4) shall be -

(a) certified by the person making the translation as a correct translation; and

(b) deemed to be certified in the prescribed manner if the person making the translation has been certified, by the appropriate person mentioned in subparagraph (i) or (ii), as a person believed by that appropriate person to be competent to translate it into the English or Chinese language, as the case may be, that is to say -

(i) if the translation be made outside Hong Kong -

(A) a notary public in the place where the translation is made;

(B) such other person as may be specified by the Commission; or



- (C) such other person  
belonging to a  
class of persons  
specified by the  
Commission, by  
notice published  
in the Gazette,  
for the purposes  
of this  
paragraph;
- (ii) if the translation be  
made in Hong Kong -
  - (A) a notary public in  
Hong Kong;
  - (B) a solicitor of the  
High Court of Hong  
Kong;
  - (C) such other person  
as may be  
specified by the  
Commission; or
  - (D) such other person  
belonging to a  
class of persons  
specified by the  
Commission, by

notice published  
in the Gazette,  
for the purposes  
of this  
paragraph.

~~\_(10) Subject to subsection (11), where a  
company is required to make a document available  
for inspection by the public in compliance with  
subsection (3A), it shall, during the period  
specified in subsection (3A), provide a copy of  
all or any part of the document—~~

- ~~(a) on the request of any person  
inspecting the document; and~~
- ~~(b) on payment of the reasonable  
expenses of the company in  
providing the copy.~~

~~\_(11) A company is not required to comply with  
subsection (10) in the case of any document  
available for inspection by the public—~~

- ~~(a) on the Internet on a readily  
accessible web page in a format  
which enables the document to be  
readily printed; and~~
- ~~(b) during the period specified in  
subsection (3A).~~

(1210) A notice published under

subsection (9)(b)(i)(C) or (ii)(D) is not  
subsidiary legislation.

~~(13) If any company fails to comply with subsection (10), the company  
and every officer of the company who is in default shall be liable to  
a fine."~~<sup>14</sup>

## 20. Sections added

The following are added -

### "342CA. Amendment of prospectus consisting of one document

(1) A prospectus -

(a) consisting of one document; and

(b) to which the provisions of this Part are  
applicable,

may only be amended in accordance with the provisions of Part 2  
of the Twentieth Schedule.

(2) The Commission may prepare and publish guidelines in  
relation to compliance with subsection (1).

(3) Guidelines published under subsection (2) are not  
subsidiary legislation.

(4) The provisions of Part 2 of the Twentieth Schedule may  
alter the operation of a provision of this Part in relation to  
any prospectus, or class of prospectuses, which may be amended  
under subsection (1).

(5) If any company contravenes subsection (1), the company

---

<sup>14</sup> Amendments to revert to the current arrangement of registering material contracts with the Registrar of Companies.  
See Note 7 above.

and every officer of the company who is in default shall be liable to a fine.

(6) For the avoidance of doubt, it is hereby declared that this section and Part 2 of the Twentieth Schedule do not apply to a prospectus to which section 342CB applies.

**342CB. Prospectus may consist of more than one document, etc.**

(1) A prospectus to which the provisions of this Part are applicable may consist of more than one document in accordance with the provisions of Part 2 of the Twenty-first Schedule.

(2) A prospectus to which subsection (1) applies may only be amended in accordance with the provisions of Part 2 of the Twenty-first Schedule.

(3) The Commission may prepare and publish guidelines in relation to compliance with subsection (1) or (2).

(4) Guidelines published under subsection (3) are not subsidiary legislation.

(5) The provisions of Part 2 of the Twenty-first Schedule may alter the operation of a provision of this Part in relation to any prospectus, or class of prospectuses, which falls within subsection (1) or which may be amended under subsection (2).

(6) If any company contravenes subsection (1) or (2), the company and every officer of the company who is in default shall be liable to a fine.

**342CC. Submission of certified copies**

Where any document (howsoever described), other than a prospectus, is required under this Part to be submitted to the Registrar by a company incorporated outside Hong Kong, the requirement shall be deemed to be satisfied by the submission to the Registrar of a copy of the document certified -

(a) to be a true copy of the document; and

(b) by -

- (i) ~~a director or secretary of the company~~  
~~or an agent of the director or secretary~~  
~~authorized in writing for the purpose~~  
~~by the director or secretary~~ a member of  
the governing body of the company;
- (ii) the secretary of the company;
- (iii) an agent of a member of the governing  
body or secretary of the company,  
authorized in writing for the purpose  
by the member or secretary-;<sup>15</sup>
- ~~(iii)~~ (iv) a solicitor within the meaning of  
section 2(1) of the Legal Practitioners  
Ordinance (Cap. 159) or a professional  
accountant within the meaning of the  
Professional Accountants Ordinance  
(Cap. 50); or

<sup>15</sup> Technical amendment for greater clarity and consistency in response to the comment of the Assistant Legal Advisor to the Bills Committee via her letter dated 10 September 2003. The requisite party "a director" making certified copy is changed to "a member of the governing body" so as to be consistent with the wording adopted under section 342C(3).

~~(iii)~~(v) a notary public within the meaning  
of section 2(1) of the Legal  
Practitioners Ordinance (Cap. 159).".

~~21. Penalty for contravention of sections  
342 to 342C~~

~~Section 342D is amended by adding "(except section 342AB)" after  
"342C".<sup>16</sup>~~

**25. Matters to be Specified in Prospectus  
and Reports to be set out therein**

The Third Schedule is amended -

- (a) in paragraph 3, by adding ", taking into account the nature of the shares or debentures being offered and the nature of the company, and the nature of the persons likely to consider acquiring them" after "prospectus";
- ~~(b) in paragraph 17, by repealing "has been delivered to the Registrar for registration" and substituting "will be available for inspection in accordance with section 38D(3A) or 342C(3A), as the case requires, of this Ordinance";<sup>17</sup>~~
- (eb) in paragraph 27, by repealing "the 3 preceding years" and substituting "each of the 3 financial years immediately preceding the issue of the prospectus";
- (ec) by repealing paragraph 31 and substituting -

<sup>16</sup> Technical amendment consequential to the repeal of clause 17. See Notes 4 and 12 above.

<sup>17</sup> Technical amendment consequential to amendments to clauses 7 and 19. See Notes 7 and 14 above.

"31. (1) A report by the auditors of the company with respect to -

(a) profits and losses and assets and liabilities of the company in accordance with sub-paragraph (2) or (3), as the case required; and

(b) the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the 3 financial years immediately preceding the issue of the prospectus, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years,

and, if no accounts have been made up in respect of any part of the period of 3 years ending on a date 3 months before the issue of the prospectus, containing a statement of that fact.

(2) If the company has no subsidiaries, the report shall -

(a) so far as regards profits and

losses, deal with the profits or losses of the company in respect of each of the 3 financial years immediately preceding the issue of the prospectus; and

- (b) so far as regards assets and liabilities, deal with the assets and liabilities of the company at the last date to which the accounts of the company were made up.

(3) If the company has subsidiaries, the report shall -

- (a) so far as regards profits and losses, deal separately with the company's (other than subsidiaries) profits or losses as provided by sub-paragraph (2) and, in addition, deal either -

- (i) as a whole with the combined profits or losses of its subsidiaries; or

- (ii) individually with the profits or losses of each subsidiary,

or, instead of dealing separately



with the company's profits or losses, deal as a whole with the profits or losses of the company and with the combined profits or losses of its subsidiaries; and

- (b) so far as regards assets and liabilities, deal separately with the company's (other than subsidiaries) assets and liabilities as provided by subparagraph (2) and, in addition, deal either -

- (i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the company's assets and liabilities; or

- (ii) individually with the assets and liabilities of each subsidiary,

and shall indicate as respects the profits or losses and assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.";

(ed) by repealing paragraph 47.

26. **Punishment of offences under this Ordinance**

The Twelfth Schedule is amended by adding -

"38AA(4)	Selling, etc. shares,  etc. without  prospectus, etc.	Summary level 6	<del>18</del>
----------	---	-----------------	---------------

<del>38D(14)</del>	<del>Failure to provide copy  of document on request</del>	Summary level 3	<del>18</del>
--------------------	--	-----------------	---------------

39A(5)	Amendment of prospectus  consisting of one  document not done in  compliance with Part 1  of the Twentieth  Schedule	Summary level 6	-
--------	--	-----------------	---

39B(6)	Prospectus or amendment  of prospectus  consisting of more than  one document not done  in compliance with Part	Summary level 6	-
--------	---	-----------------	---

---

<sup>18</sup> Technical amendment consequential to the repeal of clause 4. See Note 4 above.

<sup>19</sup> Technical amendment consequential to amendments to clause 7. See Note 7 above.

1 of the Twenty-first  
Schedule

342(3) Issuing a company Summary level 6 -  
prospectus that does  
not comply with section  
342

~~342AB(4) Selling, etc. shares, Summary level 6 -<sup>20</sup>  
etc. without  
prospectus, etc.~~

~~342C(13) Failure to provide copy Summary level 3 -<sup>21</sup>  
of document on request~~

342CA(5) Amendment of prospectus Summary level 6 -  
consisting of one  
document not done in  
compliance with Part 2  
of the Twentieth  
Schedule

342CB(6) Prospectus or amendment Summary level 6 -".  
of prospectus  
consisting of more than

<sup>20</sup> Technical amendment consequential to the repeal of clause 17. See Notes 4 and 12 above.

<sup>21</sup> Technical amendment consequential to amendments to clause 19. See Notes 7 and 14 above.

one document not done  
in compliance with Part  
2 of the Twenty-first  
Schedule

27. **Schedules added**

The following are added -

"SEVENTEENTH SCHEDULE [ss. 2, 38, ~~38AA~~,  
43, 48A, 342~~7~~  
~~342AB~~ & 360 &  
18th Sch.]<sup>22</sup>

OFFERS SPECIFIED FOR THE PURPOSES OF PARAGRAPH (b)(ii)  
OF THE DEFINITION OF "PROSPECTUS" IN  
SECTION 2(1) OF THIS ORDINANCE

PART 1

LIST OF OFFERS, ETC. NOT FALLING  
WITHIN DEFINITION

1. An offer to professional investors within the meaning of  
section 1 of Part 1 of Schedule 1 to the Securities and Futures  
Ordinance (Cap. 571) (including professional investors falling  
within paragraph (j) of the definition of "professional investor"  
in that section).

---

<sup>22</sup> Technical amendment consequential to the repeal of clause 4 and 17. See Notes 4 and 12 above.

2. An offer -

- (a) to not more than 50 persons; and
- (b) containing a statement specified in Part 3 of the Eighteenth Schedule to this Ordinance.

3. An offer -

- (a) in respect of which the total consideration payable for the shares or debentures concerned shall not exceed the amount specified in Part 2, or its equivalent in another currency;<sup>23</sup> and
- (b) containing a statement specified in Part 3 of the Eighteenth Schedule to this Ordinance.

4. An offer -

- (a) in respect of which the minimum denomination of, or the minimum consideration payable by any person for, the shares or, in the case of debentures, the minimum principal amount to be subscribed or purchased, is not less than the amount specified in Part 3, or its equivalent in another currency;<sup>24</sup> and
- (b) containing a statement specified in Part 3 of the Eighteenth Schedule to this Ordinance.

---

<sup>23</sup> Technical amendment for greater clarity in response to Ms Alice Chan's comments so that the monetary threshold would include its equivalent in other currencies. Members considered our response to Ms Chan's comments at the Bills Committee meeting on 30 October 2003 and did not raise any objection.

<sup>24</sup> Technical amendment for greater clarity. See Note 23 above.

5. An offer in connection with an invitation made in good faith to enter into an underwriting agreement.

6. An offer in connection with a takeover or merger or a share repurchase which is in compliance with the Codes on Takeovers and Mergers and Share Repurchases issued by the Commission as in force from time to time.

7. An offer -

- (a) of shares for no consideration to any or all holders of shares in the company concerned, or an offer of fully paid-up shares of the company concerned which are of the same class as any in issue made as an alternative to a dividend or other distribution, in cash to all holders of shares of the same class in the company concerned; and
- (b) containing a statement specified in Part 3 of the Eighteenth Schedule to this Ordinance.

8. An offer -

- (a) of shares in or debentures of a company;
- (b) to persons who are qualifying persons in respect of the company referred to in paragraph (a) or of another company which is a member of the same group of companies as the company referred to in that

paragraph;

(c) by -

(i) the company referred to in paragraph

(a);

(ii) another company which is a member of the same group of companies as the company referred to in paragraph (a); or

(iii) the trustees -

(A) of a trust established by any one or more of the companies mentioned in subparagraphs (i) and (ii); and

(B) holding the shares or debentures the subject of the offer;

(d) on terms that the only persons who can acquire the shares or debentures are the qualifying persons to whom they are offered or, if the terms of the offer so permit, any qualifying person; and

(e) containing a statement specified in Part 3 of the Eighteenth Schedule to this Ordinance.

9. An offer by -

(a) a charitable institution or trust of a public character mentioned in section 88 of the Inland Revenue Ordinance (Cap. 112); or

(b) an educational establishment within the meaning of section 2(1) of the Sex Discrimination

Ordinance (Cap. 480),

where -

- (c) the proceeds of the offer will be applied towards the objectives of the charitable institution or trust, or educational establishment, as the case may be; and
- (d) the offer contains a statement specified in Part 3 of the Eighteenth Schedule to this Ordinance.

10. An offer -

- (a) to members, or applicants for membership, of a club or association -
  - (i) who can reasonably be regarded as having a common interest with other members or applicants<sup>25</sup> ~~each other~~ and with the club or association in the affairs of the club or association; and
  - (ii) where the proceeds of the offer are to be applied for purposes which can reasonably be regarded as concerning the affairs of the club or association; and
- (b) containing a statement specified in Part 3 of the Eighteenth Schedule to this Ordinance.

---

<sup>25</sup> Technical amendment to better reflect the policy intent that an offer by a club or association to applicants for membership is also exempted. It is the existing practice that such kind of an offer is usually made to applicants for membership as well.



11. An offer -

(a) in respect of -

(i) an exchange of shares in the same company which does not result in an increase in the issued share capital of the company; or

(ii) an exchange of debentures of the same company which does not result in an increase in the aggregate principal amount outstanding under the debentures; and

(b) containing a statement specified in Part 3 of the Eighteenth Schedule to this Ordinance.

12. An offer -

(a) connection with a collective investment scheme authorized under section 104 of the Securities and Futures Ordinance (Cap. 571); and

(b) in connection with which the issue of each advertisement, invitation or document has been authorized under section 105 of the Securities and Futures Ordinance (Cap. 571).

---

EIGHTEENTH SCHEDULE

[ss. 38, 342 &  
360 & 17th &  
21st Schs.]

WARNING, ETC. STATEMENTS TO BE CONTAINED IN  
CERTAIN DOCUMENTS

PART 3

STATEMENT TO BE CONTAINED IN CERTAIN OFFERS  
SPECIFIED IN PART 1 OF THE  
SEVENTEENTH SCHEDULE

A statement, in a prominent position, if in the English  
language, in the following form or a form to the like effect -

"WARNING

The contents of this document have ~~neither~~not been reviewed  
~~nor endorsed~~<sup>26</sup> by any regulatory authority in Hong Kong. You  
are advised to exercise caution in relation to the offer.  
If you are in any doubt about any of the contents of this  
document, you should obtain independent professional  
advice.";

and, if in the Chinese language, a statement in the following form  
or a form to the like effect -

"警告

本文件的內容未經在香港的規管當局審核或批署<sup>27</sup>。你應就有關要約謹慎行  
事。如你對本文件的任何內容有任何疑問，你應尋求獨立專業意見。"

<sup>26</sup> Technical amendment to clarify that SFC does not endorse any document in relation to offers.

<sup>27</sup> Technical amendment consequential to amendment to Part 3 of the Eighteenth Schedule. See Note 26 above.

TWENTY-FIRST SCHEDULE

[ss. 38A, 39B,  
342A, 342CB &  
360 & 12th &  
18th Schs.]

PROVISIONS IN ACCORDANCE WITH WHICH A  
PROSPECTUS MAY CONSIST OF  
MORE THAN ONE DOCUMENT

PART 1

PROSPECTUS TO WHICH THE PROVISIONS OF  
PART II OF THIS ORDINANCE APPLY

~~9. — Alteration of operation of section  
— 38D(3A) of this Ordinance~~

~~— For the purposes of a prospectus falling within this Part,  
the reference in section 38D(3A) of this Ordinance to "from the  
date of publication of the prospectus" shall be deemed to read  
"from the date of publication of the issue prospectus (within the  
meaning of Part 1 of the Twenty first Schedule) concerned, and  
also from the date of publication of each subsequent amendment  
to the issue prospectus".<sup>28</sup>~~

PART 2

---

<sup>28</sup> Technical amendment consequential to amendments to clause 7. See Note 7 above.

PROSPECTUS TO WHICH THE PROVISIONS OF  
PART XII OF THIS ORDINANCE APPLY

~~9. Alteration of operation of section  
342C(3A) of this Ordinance~~

~~For the purposes of a prospectus falling within this Part,  
the reference in section 342C(3A) of this Ordinance to "from the  
date of publication of the prospectus" shall be deemed to read  
"from the date of publication of the issue prospectus (within the  
meaning of Part 2 of the Twenty first Schedule) concerned, and  
also from the date of publication of each subsequent amendment  
to the issue prospectus".<sup>29</sup>~~

---

<sup>29</sup> Technical amendment consequential to amendments to clause 19. See Notes 7 and 14 above.