

COMPANIES (AMENDMENT) ORDINANCE 2004**CONTENTS**

Section	Page
1. Short title and commencement	A1781
2. Amendment of the Companies Ordinance—(Schedules 1, 2 and 3)	A1781
3. Consequential and other amendments	A1781
4. Power to amend Schedules 1, 2, 3 and 4	A1783
Schedule 1 Amendments to the Companies Ordinance relating to prospectuses	A1783
Schedule 2 Amendments to the Companies Ordinance relating to oversea companies and incorporation procedures	A1831
Schedule 3 Amendments to the Companies Ordinance relating to shareholders' remedies	A1867
Schedule 4 Consequential and other amendments	A1885

HONG KONG SPECIAL ADMINISTRATIVE REGION**ORDINANCE NO. 30 OF 2004**L.S.

TUNG Chee-hwa
Chief Executive
22 July 2004

An Ordinance to amend the Companies Ordinance.

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Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Companies (Amendment) Ordinance 2004.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

**2. Amendment of the Companies Ordinance—
(Schedules 1, 2 and 3)**

The Companies Ordinance (Cap. 32) is amended as set out in Schedules 1, 2 and 3.

3. Consequential and other amendments

The enactments specified in Schedule 4 are amended as set out in Parts 1 and 2 of that Schedule.

4. Power to amend Schedules 1, 2, 3 and 4

The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend any of the provisions of Schedules 1, 2, 3 and 4 for the purposes of ensuring that the amendments made by those Schedules can be given effect after taking into account the order in which those amendments, and any other amendments to the principal Ordinance, will respectively commence.

SCHEDULE 1

[ss. 2 & 4 & Sch. 4]

AMENDMENTS TO THE COMPANIES ORDINANCE RELATING TO PROSPECTUSES

1. Interpretation

Section 2(1) of the Companies Ordinance (Cap. 32) is amended—

(a) by repealing the definition of “prospectus” and substituting—
““prospectus” (招股章程)—

(a) subject to paragraph (b), means any prospectus, notice, circular, brochure, advertisement, or other document—

(i) offering any shares in or debentures of a company (including a company incorporated outside Hong Kong, and whether or not it has established a place of business in Hong Kong) to the public for subscription or purchase for cash or other consideration; or

(ii) calculated to invite offers by the public to subscribe for or purchase for cash or other consideration any shares in or debentures of a company (including a company incorporated outside Hong Kong, and whether or not it has established a place of business in Hong Kong);

(b) does not include any prospectus, notice, circular, brochure, advertisement, or other document—

(i) to the extent that it is a publication falling within section 38B(2); or

(ii) to the extent that it contains or relates to an offer specified in Part 1 of the Seventeenth Schedule as read with the other Parts of that Schedule;”;

(b) by adding—

““amend” (修訂) includes delete, add to or vary and the doing of all or any of such things simultaneously;

“offer to sell” (售賣要約), in relation to any shares or debentures, includes—

(a) any act or omission or other thing calculated to invite offers to purchase the shares or debentures;

(b) any reference to offer for sale;”.

2. Specific requirements as to particulars in prospectus

Section 38 is amended—

- (a) in subsection (1A), by repealing everything after “contain” and substituting “a statement specified in Part 1 of the Eighteenth Schedule.”;
- (b) in subsection (3), in the proviso—
 - (i) by repealing “either”;
 - (ii) in paragraph (a), by repealing “or” at the end;
 - (iii) in paragraph (b), by repealing “public.” and substituting “public; or”;
 - (iv) by adding—
 - “(c) in connexion with an offer specified in Part 1 of the Seventeenth Schedule as read with the other Parts of that Schedule.”;
- (c) by repealing subsection (7) and substituting—
 - “(7) It is hereby declared that the provisions of the Third Schedule applied by this section are also applied to a guarantor corporation in relation to an offer or invitation to the public to subscribe for or purchase debentures of a company.
 - (8) In subsection (7), “guarantor corporation” (提供擔保的法團), in relation to an offer or invitation to the public to subscribe for or purchase debentures of a company, means a corporation that guarantees or agrees to guarantee—
 - (a) the repayment of any money received or to be received by the company in response to the offer or invitation;
 - (b) any other obligations of the company under or in respect of the debentures; or
 - (c) in favour of the company any amount—
 - (i) to which the company is entitled; and
 - (ii) receipt of which, as stated in the prospectus concerned, is intended to enable the company to wholly or partly discharge any of its obligations under or in respect of the debentures.”.

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 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.
 - (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 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) 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), 38D(3) 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 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 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.”.

4. 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 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)—
 - (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,”.

5. Section added

The following is added—

“38BA. Commission may publish guidelines relating to publications falling within section 38B(2)

- (1) The Commission may prepare and publish guidelines in relation to the form and manner of, and any other matters relating to, publications falling within section 38B(2).
- (2) Guidelines published under subsection (1) are not subsidiary legislation.”.

6. Registration of prospectus

Section 38D is amended—

- (a) in subsection (4), by repealing everything after “prescribed manner” and substituting “under subsection (10) to be a correct translation.”;
- (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) A notice published under subsection (10)(b)(i)(C) or (ii)(D) is not subsidiary legislation.”.

7. Sections added

The following are added—

“39A. 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 1 of the Twentieth Schedule.
- (2) The provisions of Part 1 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).
- (3) If any company contravenes subsection (1), the company and every officer of the company who is in default shall be liable to a fine.
- (4) For the avoidance of doubt, it is hereby declared that this section and Part 1 of the Twentieth Schedule do not apply to a prospectus to which section 39B applies.

39B. 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 1 of the Twenty-first Schedule.
- (2) A prospectus to which subsection (1) applies may only be amended in accordance with the provisions of Part 1 of the Twenty-first Schedule.
- (3) The provisions of Part 1 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).
- (4) If any company contravenes subsection (2), the company and every officer of the company who is in default shall be liable to a fine.

39C. Submission of certified copies

Where any document (howsoever described), other than a prospectus, is required under any of the provisions of sections 37 to 44B inclusive to be submitted to the Registrar by a company, 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;
- (ii) a solicitor within the meaning of section 2(1) of the Legal Practitioners Ordinance (Cap. 159) or a professional accountant within the meaning of section 2 of the Professional Accountants Ordinance (Cap. 50); or
- (iii) a notary public within the meaning of section 2(1) of the Legal Practitioners Ordinance (Cap. 159)."

8. Civil liability for misstatements in prospectus

Section 40 is amended by adding—

“(6) This section shall apply to a publication falling within section 38B(2) as if the publication were a prospectus.

(7) It is hereby declared that, for the purposes of this section, “persons who subscribe for any shares or debentures” (任何股份或債權證的認購人) includes persons specified in the Twenty-second Schedule.”.

9. Criminal liability for misstatements in prospectus

Section 40A is amended by adding—

“(4) This section shall apply to a publication falling within section 38B(2) as if the publication were a prospectus.”.

10. Interpretation of provisions relating to prospectuses

Section 41A is amended—

(a) by renumbering it as section 41A(1);

(b) by adding—

“(2) For the purposes of sections 40 and 40A, “untrue statement” (不真實陳述), in relation to any prospectus, includes a material omission from the prospectus.”.

11. 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.”.

12. Construction of references to offering shares or debentures to the public

Section 48A is amended by adding—

“(3) For the avoidance of doubt, it is hereby declared that the provisions of the Seventeenth Schedule shall not be construed to prejudice the generality of this section.”.

13. Directors' duty to shareholders regarding prospectus or statement in lieu

Section 155C is amended—

- (a) in subsection (1), by repealing “Where” and substituting “Subject to subsection (1A), where”;
- (b) by adding—
 - “(1A) Subsection (1) does not apply to a company the shares of which are listed on a recognized stock market.”.

14. Dating of prospectus and particulars to be contained therein

Section 342 is amended—

- (a) in subsection (1)—
 - (i) by adding “or purchase” after “subscription”;
 - (ii) by adding “(which date shall, unless the contrary is proved, be taken as the date of publication of the prospectus)” after “dated”;
- (b) by adding—
 - “(2A) Every prospectus to which subsection (1) applies must contain a statement specified in Part 2 of the Eighteenth Schedule.”;
- (c) in subsection (3), in the proviso—
 - (i) by repealing “either”;
 - (ii) in paragraph (a), by repealing “or” at the end;
 - (iii) in paragraph (b), by repealing “public.” and substituting “public; or”;
 - (iv) by adding—
 - “(c) in connexion with an offer specified in Part 1 of the Seventeenth Schedule as read with the other Parts of that Schedule.”;
- (d) by adding—
 - “(7) It is hereby declared that the provisions of the Third Schedule applied by this section are also applied to a guarantor corporation in relation to an offer or invitation to the public to subscribe for or purchase debentures of a company incorporated outside Hong Kong.
 - (8) In subsection (7), “guarantor corporation” (提供擔保的法團), in relation to an offer or invitation to the public to subscribe for or purchase debentures of a company incorporated outside Hong Kong, means a corporation that guarantees or agrees to guarantee—
 - (a) the repayment of any money received or to be received by the company in response to the offer or invitation;
 - (b) any other obligations of the company under or in respect of the debentures; or
 - (c) in favour of the company any amount—
 - (i) to which the company is entitled; and
 - (ii) receipt of which, as stated in the prospectus concerned, is intended to enable the company to wholly or partly discharge any of its obligations under or in respect of the debentures.”.

15. 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 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.

(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 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) 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) or 342C(3) 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 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 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.”.

16. Provisions as to expert’s consent, and allotment

Section 342B is amended—

- (a) in subsection (1), by adding “or purchase” after “subscription”;
- (b) by repealing subsection (1A).

17. Registration of prospectus

Section 342C is amended—

- (a) in subsection (1), by adding “or purchase” after “subscription”;
- (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) in subsection (4), by repealing everything after “prescribed manner” and substituting “under subsection (9) to be a correct translation.”;
- (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) A notice published under subsection (9)(b)(i)(C) or (ii)(D) is not subsidiary legislation.”.

18. 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 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).

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

(4) 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 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).

(4) If any company contravenes subsection (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 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 of the secretary of the company, authorized in writing for the purpose by the member or secretary;
(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 section 2 of the Professional Accountants Ordinance (Cap. 50); or
(v) a notary public within the meaning of section 2(1) of the Legal Practitioners Ordinance (Cap. 159).”.

19. Civil liability for misstatements in prospectus

Section 342E is amended by repealing “shares in or debentures of a company incorporated outside Hong Kong” and substituting “or purchase shares in or debentures of a company incorporated outside Hong Kong which is issued, circulated or distributed in Hong Kong”.

20. Interpretation of provisions as to prospectuses

Section 343 is amended—

- (a) by adding—

“(2A) For the purposes of sections 342E and 342F, “untrue statement” (不真實陳述), in relation to a prospectus, includes a material omission from the prospectus.

(2B) For the purposes of the provisions of this Part, a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included.”;

(b) in subsection (3), by repealing ““prospectus” (招股章程),”.

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

Section 360 is amended by adding—

“(6) The Commission may, by order published in the Gazette, amend the Third, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-first or Twenty-second Schedule.

(7) Where the Commission proposes to make an order under subsection (6), it shall publish a draft of the proposed order, in such manner as it considers appropriate, for the purpose of inviting representations on the proposed order by the public.

(8) Where the Commission makes any order under subsection (6) after a draft is published under subsection (7) in relation to the 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 order is made with modifications which in the opinion of the Commission result in the 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.”.

22. 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 27, by repealing “the 3 preceding years” and substituting “each of the 3 financial years immediately preceding the issue of the prospectus”;

(c) by repealing paragraph 31 and substituting—

“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 sub-paragraph (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.”;
- (d) by repealing paragraph 47.

23. Punishment of offences under this Ordinance

The Twelfth Schedule is amended by adding—

“39A(3)	Amendment of prospectus consisting of one document not done in compliance with Part 1 of the Twentieth Schedule	Summary	level 6	—
39B(4)	Amendment of prospectus consisting of more than one document not done in compliance with Part 1 of the Twenty-first Schedule	Summary	level 6	—
342CA(3)	Amendment of prospectus consisting of one document not done in compliance with Part 2 of the Twentieth Schedule	Summary	level 6	—
342CB(4)	Amendment of prospectus consisting of more than one document not done in compliance with Part 2 of the Twenty-first Schedule	Summary	level 6	—”.

24. Schedules added

The following are added—

“SEVENTEENTH SCHEDULE

[ss. 2, 38, 43, 48A,
342 & 360 &
18th Sch.]

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).
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; 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; and
 - (b) containing a statement specified in Part 3 of the Eighteenth Schedule to this Ordinance.
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 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 alternative to a dividend or other distribution, 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.
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 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.
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) in 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).

PART 2

AMOUNT SPECIFIED FOR THE PURPOSES OF
SECTION 3 OF PART 1

\$5,000,000

PART 3

AMOUNT SPECIFIED FOR THE PURPOSES OF
SECTION 4 OF PART 1

\$500,000

PART 4

INTERPRETATION OF PART 1

1. Any reference to an offer in Part 1—
 - (a) includes an offer of any right, option or interest in or in relation to the shares or debentures the subject of the offer;
 - (b) does not include the offer to the extent that it is made to persons who are outside Hong Kong.
2. A prospectus, notice, circular, brochure, advertisement, or other document, still falls within Part 1 if it falls entirely within any combination of any of sections 1, 2, 5, 6, 7, 8, 9, 10, 11 or 12 of Part 1.
3. For the purposes of sections 2 and 3 of Part 1, an offer is to be taken together with any other offer of the same class of shares or debentures—
 - (a) which was made by the same person;
 - (b) which was open at any time within the period of 12 months ending with the date on which the first-mentioned offer is first made; and
 - (c) the document issued in respect of which was not a prospectus by virtue of either of those sections being satisfied.
4. For the purposes of section 2 of Part 1—
 - (a) the making of an offer of shares or debentures to trustees or members of a partnership or unincorporated association in their capacity as such; or
 - (b) the making of such an offer to any other 2 or more persons jointly,is to be treated as the making of an offer to a single person.
5. For the purposes of section 7 of Part 1, a holder of shares in a company, in relation to an offer mentioned in that section, means a person who, at the close of business on a date—
 - (a) specified in the offer; or
 - (b) falling within the period of 60 days ending with the date on which the offer is first made,is a holder of shares in the company.
6. For the purposes of this section and section 8 of Part 1—
 - (a) “qualifying person” (合資格的人), in relation to a company—
 - (i) means—
 - (A) a bona fide director, employee, officer, consultant, former director, former employee, former officer or former consultant of the company;
 - (B) a bona fide dependent of any person mentioned in sub-subparagraph (A);

- (ii) includes the trustees of a trust—
 - (A) established by any one or more of the companies mentioned in section 8(c)(i) and (ii) of Part 1; and
 - (B) which can hold shares or debentures on behalf of any person referred to in subparagraph (i);
 - (b) “consultant” (顧問) means a person who, pursuant to a contract for services, renders services to a company (“the relevant company”) which are commonly rendered by an employee of—
 - (i) the relevant company; or
 - (ii) a company belonging to the class of companies which predominantly carry out the same kind of business as the relevant company;
 - (c) “dependent” (受養人), in relation to a person, means—
 - (i) the wife, husband, widow or widower of the person; or
 - (ii) any child, or stepchild, of the person under the age of 18 years.
7. The Commission may prepare and publish guidelines in relation to the provisions of this Schedule.
8. Guidelines published under section 7 are not subsidiary legislation.

EIGHTEENTH SCHEDULE

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

WARNING, ETC. STATEMENTS TO BE CONTAINED IN
CERTAIN DOCUMENTS

PART 1

STATEMENT TO BE CONTAINED IN PROSPECTUS TO WHICH
SECTION 38(1) OF THIS ORDINANCE APPLIES

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

“IMPORTANT

If you are in any doubt about any of the contents of this prospectus, 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—

“重要提示

如你對此招股章程的任何內容有任何疑問，你應尋求獨立專業意見。”

PART 2

STATEMENT TO BE CONTAINED IN PROSPECTUS TO WHICH
SECTION 342(1) OF THIS ORDINANCE APPLIES

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

“IMPORTANT

If you are in any doubt about any of the contents of this prospectus, 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—

“重要提示

如你對此招股章程的任何內容有任何疑問，你應尋求獨立專業意見。”。

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 not been reviewed 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。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。”。

PART 4

STATEMENT TO BE CONTAINED IN ISSUE
PROSPECTUS, ETC. MENTIONED IN
THE TWENTY-FIRST SCHEDULE

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

“Potential investors should read the issue prospectus in conjunction with the programme prospectus to which it relates in order to understand the offer to which the documents relate, in particular before making an application in response to the offer.”;

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

“潛在投資者應參閱發行章程並一併參閱與其相關的計劃章程，以明白該文件所關乎的要約，你尤其應該在應有關要約提出申請前參閱上述文件。”。

PART 5

STATEMENT TO BE CONTAINED IN AMENDMENT TO ISSUE PROSPECTUS MENTIONED IN THE TWENTY-FIRST SCHEDULE

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

“Potential investors should read this amendment in conjunction with the issue prospectus which it amends in order to understand the offer to which the documents relate, in particular before making an application in response to the offer.”;

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

“潛在投資者應參閱本修訂並一併參閱被修訂的發行章程，以明白該文件所關乎的要約，你尤其應該在應有關要約提出申請前參閱上述文件。”。

NINETEENTH SCHEDULE

[ss. 38B & 360]

CONTENTS AND PUBLICATION REQUIREMENTS OF ADVERTISEMENTS MENTIONED IN SECTION 38B(2)(e) OF THIS ORDINANCE

1. Contents of advertisement

(1) The advertisement must contain the following mandatory particulars or particulars to the like effect—

- (a) a statement that the advertisement is issued by the company to which the advertisement relates;
- (b) a warning statement that potential investors should read the prospectus for detailed information about the company and the proposed offering before deciding whether or not to invest in the shares or debentures concerned; and
- (c) a statement that the advertisement does not constitute an offer or an invitation to induce an offer by any person to acquire, subscribe for or purchase the shares or debentures concerned.

(2) The advertisement may contain the following discretionary particulars but, subject to section 38B(2AA) of this Ordinance, no other discretionary particulars—

- (a) the name of the company to which the advertisement relates and the place of incorporation of the company;
- (b) a description of the shares or debentures offered or proposed to be offered;
- (c) the dates on which, and the places at which, the prospectus to which the advertisement relates is or will be available to the public;
- (d) details of the administrative procedures relevant to investors that are likely to assist their participation in the offer;

- (e) if a listing is being applied for in Hong Kong or elsewhere, a statement that the company is seeking listing of, and permission to deal in, the shares or debentures concerned on the stock exchange or stock exchanges concerned; and
- (f) legends designed to clarify the legal nature of the advertisement if, but only if, the legends are consistent with—
 - (i) the advertisement not being a prospectus; and
 - (ii) guidelines published under section 38BA of this Ordinance.

2. Language

The advertisement may be in the English language or the Chinese language or both languages.

TWENTIETH SCHEDULE

[ss. 38A, 39A, 342A,
342CA & 360
& 12th Sch.]

AMENDMENT OF PROSPECTUS CONSISTING OF ONE DOCUMENT

PART 1

COMPANIES INCORPORATED IN HONG KONG

1. Amendments

The information contained in—

- (a) a prospectus may only be amended by—
 - (i) an addendum to the prospectus; or
 - (ii) replacing the prospectus with a new prospectus;
- (b) an addendum to a prospectus may only be amended by—
 - (i) a further addendum to the prospectus;
 - (ii) replacing the addendum with a new addendum; or
 - (iii) replacing the addendum and prospectus with a new prospectus.

2. Amendment made pursuant to section 1 is prospectus

It is hereby declared that any amendment made pursuant to section 1 is a prospectus and, subject to section 3, the provisions of this Ordinance shall apply to the amendment accordingly.

3. Certain amendments made pursuant to section 1 to be read with prospectus

Where it enables a provision of this Ordinance (including paragraph 3 of the Third Schedule to this Ordinance) to apply to an amendment made pursuant to section 1(a)(i) or (b)(i) or (ii), the amendment shall, for the purposes of that application, be read with the prospectus to which it relates and the addenda, if any, to the prospectus.

PART 2

COMPANIES INCORPORATED OUTSIDE HONG KONG

1. Amendments

The information contained in—

- (a) a prospectus may only be amended by—
 - (i) an addendum to the prospectus; or
 - (ii) replacing the prospectus with a new prospectus;
- (b) an addendum to a prospectus may only be amended by—
 - (i) a further addendum to the prospectus;
 - (ii) replacing the addendum with a new addendum; or
 - (iii) replacing the addendum and prospectus with a new prospectus.

2. Amendment made pursuant to section 1 is prospectus

It is hereby declared that any amendment made pursuant to section 1 is a prospectus and, subject to section 3, the provisions of this Ordinance shall apply to the amendment accordingly.

3. Certain amendments made pursuant to section 1 to be read with prospectus

Where it enables a provision of this Ordinance (including paragraph 3 of the Third Schedule to this Ordinance) to apply to an amendment made pursuant to section 1(a)(i) or (b)(i) or (ii), the amendment shall, for the purposes of that application, be read with the prospectus to which it relates and the addenda, if any, to the prospectus.

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**1. Interpretation**

In this Part—

“issue prospectus” (發行章程) means that prospectus to which the provisions of Part II of this Ordinance apply contained in the document, or series of documents, mentioned in section 2(1)(b);

“programme prospectus” (計劃章程) means that prospectus to which the provisions of Part II of this Ordinance apply contained in the document mentioned in section 2(1)(a);

“relevant information” (有關資料), in relation to a prospectus, means such information as is required by the provisions of sections 37 to 44B of, and the Third Schedule to, this Ordinance to be contained in the prospectus.

2. Prospectus consisting of more than one document

(1) A prospectus may consist of—

- (a) a document containing such relevant information as the issuer of the document thinks fit (but excluding the price, or any formula for calculating the price, of the shares or debentures to which the prospectus relates); and
- (b) a document, or series of documents, containing such relevant information as is not already contained in the document mentioned in paragraph (a).

(2) For the avoidance of doubt, it is hereby declared that an issue prospectus does not have to be issued at the same time as the programme prospectus concerned is issued.

3. Amendments

The information contained in—

- (a) a programme prospectus may only be amended by—
 - (i) an addendum to the programme prospectus;
 - (ii) replacing the programme prospectus with a new programme prospectus; or
 - (iii) the issue prospectus concerned or an addendum to the issue prospectus;
- (b) an issue prospectus may only be amended by—
 - (i) an addendum to the issue prospectus; or
 - (ii) replacing the issue prospectus with a new issue prospectus;
- (c) an addendum to a programme prospectus may only be amended by—
 - (i) a further addendum to the programme prospectus;
 - (ii) replacing the addendum with a new addendum;
 - (iii) replacing the addendum and programme prospectus with a new programme prospectus; or
 - (iv) the issue prospectus concerned or an addendum to the issue prospectus;
- (d) an addendum to an issue prospectus may only be amended by—
 - (i) replacing the addendum with a new addendum; or
 - (ii) replacing the addendum and issue prospectus with a new issue prospectus.

4. Amendment made pursuant to section 3 is prospectus

It is hereby declared that any amendment made pursuant to section 3 is a prospectus and, subject to section 5, the provisions of this Ordinance shall apply to the amendment accordingly.

5. Certain amendments made pursuant to section 3 to be read with other related documents

Where it enables a provision of this Ordinance (including paragraph 3 of the Third Schedule to this Ordinance) to apply to an amendment made pursuant to section 3, the amendment shall, for the purposes of that application, be read with all or any of the programme prospectus to which it relates and the addenda, if any, to the programme prospectus and the issue prospectus to which it relates and the addenda, if any, to the issue prospectus, as the case requires.

6. Warning

(1) Every issue prospectus (including a new issue prospectus mentioned in section 3(b)(ii) or (d)(ii)) and any form of application must contain a statement specified in Part 4 of the Eighteenth Schedule to this Ordinance.

(2) Any amendment made pursuant to section 3(b)(i) must contain a statement specified in Part 5 of the Eighteenth Schedule to this Ordinance.

7. Availability of programme prospectus, etc.

The issuer of a programme prospectus must make arrangements for—

(a) the programme prospectus and its addenda, if any; and

(b) the issue prospectus concerned and its addenda, if any,

to be readily available to investors and potential investors throughout the period during which the shares or debentures to which the issue prospectus relates are offered or sold to the public.

8. Cessation of offer to which programme prospectus, etc. relates

The shares or debentures the subject of a programme prospectus and its addenda, if any, and the issue prospectus concerned and its addenda, if any, shall cease to be offered or sold to the public on and after the date of—

(a) the publication of the next annual report and accounts of the company to which the programme prospectus relates after the publication of the programme prospectus;

(b) the first anniversary of the date of publication of the programme prospectus; or

(c) if there is a guarantor corporation, within the meaning of section 38(8) of this Ordinance, in relation to the offer concerned, the publication of the next annual report and accounts of the guarantor corporation after the publication of the programme prospectus,

whichever is the earlier.

9. Application of section 38C of this Ordinance

It is hereby declared that, where section 38C of this Ordinance has been complied with in respect of a programme prospectus which has been issued, the issue of any issue prospectus concerned does not of itself require that section to again be complied with in respect of the programme prospectus.

PART 2

PROSPECTUS TO WHICH THE PROVISIONS OF
PART XII OF THIS ORDINANCE APPLY**1. Interpretation**

In this Part—

“issue prospectus” (發行章程) means that prospectus to which the provisions of Part XII of this Ordinance apply contained in the document, or series of documents, mentioned in section 2(1)(b);

“programme prospectus” (計劃章程) means that prospectus to which the provisions of Part XII of this Ordinance apply contained in the document mentioned in section 2(1)(a);

“relevant information” (有關資料), in relation to a prospectus, means such information as is required by the provisions of Part XII of, and the Third Schedule to, this Ordinance to be contained in the prospectus.

2. Prospectus consisting of more than one document

(1) A prospectus may consist of—

- (a) a document containing such relevant information as the issuer of the document thinks fit (but excluding the price, or any formula for calculating the price, of the shares or debentures to which the prospectus relates); and
- (b) a document, or series of documents, containing such relevant information as is not already contained in the document mentioned in paragraph (a).

(2) For the avoidance of doubt, it is hereby declared that an issue prospectus does not have to be issued at the same time as the programme prospectus concerned is issued.

3. Amendments

The information contained in—

- (a) a programme prospectus may only be amended by—
 - (i) an addendum to the programme prospectus;
 - (ii) replacing the programme prospectus with a new programme prospectus; or
 - (iii) the issue prospectus concerned or an addendum to the issue prospectus;
- (b) an issue prospectus may only be amended by—
 - (i) an addendum to the issue prospectus; or
 - (ii) replacing the issue prospectus with a new issue prospectus;
- (c) an addendum to a programme prospectus may only be amended by—
 - (i) a further addendum to the programme prospectus;
 - (ii) replacing the addendum with a new addendum;
 - (iii) replacing the addendum and programme prospectus with a new programme prospectus; or
 - (iv) the issue prospectus concerned or an addendum to the issue prospectus;
- (d) an addendum to an issue prospectus may only be amended by—
 - (i) replacing the addendum with a new addendum; or
 - (ii) replacing the addendum and issue prospectus with a new issue prospectus.

4. Amendment made pursuant to section 3 is prospectus

It is hereby declared that any amendment made pursuant to section 3 is a prospectus and, subject to section 5, the provisions of this Ordinance shall apply to the amendment accordingly.

5. Certain amendments made pursuant to section 3 to be read with other related documents

Where it enables a provision of this Ordinance (including paragraph 3 of the Third Schedule to this Ordinance) to apply to an amendment made pursuant to section 3, the amendment shall, for the purposes of that application, be read with all or any of the programme prospectus to which it relates and the addenda, if any, to the programme prospectus and the issue prospectus to which it relates and the addenda, if any, to the issue prospectus, as the case requires.

6. Warning

(1) Every issue prospectus (including a new issue prospectus mentioned in section 3(b)(ii) or (d)(ii)) and any form of application must contain a statement specified in Part 4 of the Eighteenth Schedule to this Ordinance.

(2) Any amendment made pursuant to section 3(b)(i) must contain a statement specified in Part 5 of the Eighteenth Schedule to this Ordinance.

7. Availability of programme prospectus, etc.

The issuer of a programme prospectus must make arrangements for—

(a) the programme prospectus and its addenda, if any; and

(b) the issue prospectus concerned and its addenda, if any,

to be readily available to investors and potential investors throughout the period during which the shares or debentures to which the issue prospectus relates are offered or sold to the public.

8. Cessation of offer to which programme prospectus, etc. relates

The shares or debentures the subject of a programme prospectus and its addenda, if any, and the issue prospectus concerned and its addenda, if any, shall cease to be offered or sold to the public on and after the date of—

(a) the publication of the next annual report and accounts of the company to which the programme prospectus relates after the publication of the programme prospectus;

(b) the first anniversary of the date of publication of the programme prospectus; or

(c) if there is a guarantor corporation, within the meaning of section 342(8) of this Ordinance, in relation to the offer concerned, the publication of the next annual report and accounts of the guarantor corporation after the publication of the programme prospectus,

whichever is the earlier.

9. Application of section 342B of this Ordinance

It is hereby declared that, where section 342B of this Ordinance has been complied with in respect of a programme prospectus which has been issued, the issue of any issue prospectus concerned does not of itself require that section to again be complied with in respect of the programme prospectus.

TWENTY-SECOND SCHEDULE

[ss. 40 & 360]

PERSONS SPECIFIED FOR THE PURPOSES OF
SECTION 40 OF THIS ORDINANCE

1. Persons who subscribe for or purchase shares or debentures pursuant to an offer in a prospectus.
2. Persons who by means of an agent acquire shares or debentures pursuant to an offer in a prospectus.
3. Persons who acquire shares or debentures pursuant to arrangements made between—
 - (a) the issuer or vendor of the shares or debentures; and
 - (b) intermediaries appointed for the purposes of the offer.”.

SCHEDULE 2

[ss. 2 & 4 & Sch. 4]

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) 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”.

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”.

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”.
- (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.
- (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”.

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”.

13. 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”.

14. Subheading amended

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

15. Section substituted

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 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 15 of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 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.”.

16. 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).

(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.”.

17. 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.”.

18. Power of company to keep branch register

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

19. Directors of companies other than private companies

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

“(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.”

(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 under section 158(4AA) is sent to the Registrar, continue to be deemed as such as if section 19(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004) 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 19(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004).”

20. 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 20(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 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 20(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004).”

21. Secretary

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

“(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.”

22. 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 19, 20 and 22 of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 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 19, 20 and 22(1), (2), (3), (4) and (5) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 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 19, 20 and 22 of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004);”.

23. 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 repealing the full stop and substituting “; or”;

(c) by adding—

“(c) a non-Hong Kong company that is registered under Part XI.”.

24. Registrar may strike defunct company off register

(1) Section 291(5) is amended by repealing “subscriber to the memorandum of association” and substituting “founder member”.

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

25. 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;

(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 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, for the purposes of 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 by adding—
- “(ii*a*) a certificate certifying that a non-Hong Kong company is registered under Part XI;
 - “(ii*b*) where a non-Hong Kong company has changed its name, a fresh certificate certifying that the company is registered under Part XI with the new name;”.
- (4) Section 305(5) is amended by repealing “subsection (1)” and substituting “this section”.

26. 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.”.

27. Application of Part XI

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

28. 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 Hong Kong on or after the commencement of section 28 of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004) 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 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 28 of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 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 28 of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004)”.
- (10) A non-Hong Kong company that had, before the commencement of section 28 of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 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 28 of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004).”.

29. 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.
- (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.”.

30. Section substituted

Section 333A is repealed and the following substituted—

“333A. Continuing obligation in respect of authorized representative

- (1) 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(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 ceases to be such representative, the company shall be deemed to comply with this section if, within 1 month after he ceases to be such representative, it delivers to the Registrar for registration a return under section 335(1)(b) in respect of some other person so authorized.”.

31. 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 1 month 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 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).”.

32. 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—

“(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.”.

33. 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 33 of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004), 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.”.

34. 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 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 1 month 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 1 month 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.”.

35. 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 35 of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004), 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.”.

36. 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—

- (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 36(5), (6) and (7) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004), section 337(c), (ca) and (d) of the pre-amended Ordinance shall apply to the company as if that section 36(5), (6) and (7) had not been enacted.”.

37. 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 which such proceedings are commenced, whichever is the later, 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
- (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.”.

38. 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 oversea” 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.”.

39. 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”.

40. 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.”.

41. 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.”.

42. 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 oversea” and substituting “a non-Hong Kong”.

43. Penalties

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

44. 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) includes a shadow director;

“place of business” (營業地點) includes a share transfer or share registration office but 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 28 of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004), means the Companies Ordinance (Cap. 32) that was in force immediately before it was amended by section 28 of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004);

- (b) for the purpose of section 333AA(3), as enacted by section 29 of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004), means the Companies Ordinance (Cap. 32) that was in force immediately before it was amended by section 29 of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004);

- (c) for the purpose of section 333C(3), as enacted by section 32(2) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004), means the Companies Ordinance (Cap. 32) that was in force immediately before it was amended by section 32(2) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004);
 - (d) for the purposes of sections 334(6) and 336(4), as enacted by sections 33 and 35 respectively of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004), means the Companies Ordinance (Cap. 32) that was in force immediately before it was amended by sections 33 and 35 of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004);
 - (e) for the purpose of section 337(2), as enacted by section 36(8) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004), means the Companies Ordinance (Cap. 32) that was in force immediately before it was amended by section 36(5), (6) and (7) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004);
- “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), “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).”.

45. Subheading repealed

The subheading immediately before section 345 is repealed.

46. Prohibition of partnerships with more than 20 members

Section 345 is repealed.

47. 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.”.

48. 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”.

49. 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*”.

50. 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)”.

51. 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(6)”;
 - (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”.

52. **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 3

[ss. 2 & 4]

AMENDMENTS TO THE COMPANIES ORDINANCE RELATING TO SHAREHOLDERS’ REMEDIES

1. **Interpretation**

(1) Section 2(1) of the Companies Ordinance (Cap. 32) is amended by adding—
““specified corporation” (指明法團) means a company or a non-Hong Kong company;”.

(2) Section 2 is amended by adding—

“(8A) In sections 152FA, 152FB and 152FD, the expression “record” (紀錄) includes book and paper.”.

2. **Proceedings on inspector’s report**

Section 147(2)(b) is amended—

(a) by adding “where the body is a specified corporation,” before “that”;

(b) by repealing “body corporate” and substituting “specified corporation”.

3. **Sections added**

The following is added immediately after section 152F—

**“Inspection of Specified Corporations’
Records by Members**

152FA. Order for inspection

- (1) Subject to sections 152FD and 152FE, on application by such number of members of a specified corporation as is specified in subsection (2) (in this section referred to as “applicant”), the court may make an order—
- (a) authorizing the applicant or any one or more of such members applying as applicant to inspect any records of the specified corporation; or
 - (b) authorizing a person (whether or not a member of the specified corporation) other than the applicant to inspect any such records on behalf of the applicant.
- (2) For the purposes of subsection (1), an application may be made by—
- (a) any number of members representing not less than one-fortieth of the total voting rights of all members having at the date of the application a right to vote at a general meeting of the specified corporation;
 - (b) any number of members holding shares in the specified corporation on which there has been paid up an aggregate sum of not less than \$100,000; or
 - (c) not less than 5 members.
- (3) The court may only make an order under subsection (1) if it is satisfied that—
- (a) the application is made in good faith; and
 - (b) the inspection applied for is for a proper purpose.
- (4) Any person who is authorized by the court to inspect the records of a specified corporation may make copies of the records unless the court orders otherwise.
- (5) A person who complies with an order made under this section or section 152FB to produce records for inspection shall not be liable for any civil liability or claim whatever to any person by reason only of that compliance.

152FB. Ancillary orders

Subject to sections 152FD and 152FE, if the court makes an order under section 152FA, it may make any other orders it considers appropriate, including—

- (a) an order requiring the specified corporation that is subject to the order made under section 152FA or any of its officers to produce any records to the person who is authorized to inspect the records;
- (b) an order specifying the records that may be inspected by that person;
- (c) an order requiring the applicant to pay the expenses reasonably incurred by the specified corporation in the inspection; and
- (d) an order permitting the applicant or the person who is authorized to inspect the records of a specified corporation under section 152FA to disclose any information or document obtained as a result of an inspection under that section to such person as is specified in the order.

152FC. Disclosure or use of information or document obtained as a result of inspection

(1) Subject to section 152FE, the applicant or the person who is authorized to inspect the records of a specified corporation under section 152FA shall not, without the previous consent in writing of the specified corporation, disclose any information or document obtained as a result of an inspection under section 152FA to any other person, except to the other members applying as applicant or to the applicant, unless the disclosure is—

- (a) required with a view to the institution of, or otherwise for the purposes of, any criminal proceedings;
- (b) permitted in accordance with an order made under section 152FA or 152FB; or
- (c) permitted in accordance with law or a requirement made under law.

(2) Subject to subsection (1) and section 152FE, the applicant or the person who is authorized to inspect the records of a specified corporation under section 152FA shall not, unless the court otherwise orders, use any information or document obtained as a result of an inspection under section 152FA for purposes other than the proper purpose referred to in section 152FA(3)(b).

(3) A person who contravenes this section shall be guilty of an offence and liable to imprisonment and a fine.

152FD. Legal professional privilege

Nothing in sections 152FA and 152FB, or any order made under any of those sections, shall authorize a person to inspect any records containing information that is subject to legal professional privilege.

152FE. Protection of personal data

Nothing in sections 152FA, 152FB and 152FC, or any order made under any of those sections, shall authorize the collection, retention or use of personal data in contravention of the Personal Data (Privacy) Ordinance (Cap. 486).”

4. Alternative remedy to winding up in cases of unfair prejudice

(1) Section 168A is amended—

- (a) by repealing “company” wherever it appears and substituting “specified corporation”;
- (b) by repealing “company’s” wherever it appears and substituting “specified corporation’s”.

(2) Section 168A(2) is repealed and the following substituted—

“(2) If on any petition under subsection (1) the court is of opinion that the specified corporation’s affairs are being or have been conducted in a manner unfairly prejudicial to the interests of the members generally or of some part of the members (including the member who presented the petition), whether or not such conduct consists of an isolated act or a series of acts—

- (a) the court may, with a view to bringing to an end the matters complained of—
 - (i) make an order restraining the commission of any such act or the continuance of such conduct;
 - (ii) order that such proceedings as the court may think fit shall be brought in the name of the specified corporation against such person and on such terms as the court may so order;
 - (iii) appoint a receiver or manager of the whole or a part of a specified corporation’s property or business and may specify the powers and duties of the receiver or manager and fix his remuneration; and

- (iv) make such other order as it thinks fit, whether for regulating the conduct of the specified corporation's affairs in future, or for the purchase of the shares of any members of the specified corporation by other members of the specified corporation or by the specified corporation and, in the case of a purchase by the specified corporation, for the reduction accordingly of the specified corporation's capital, or otherwise; and
- (b) the court may order payment by any person of such damages and interest on those damages as the court may think fit to any members (including the member who presented the petition) of the specified corporation, whose interests have been unfairly prejudiced by the act or conduct.”.
- (3) Section 168A is amended by adding—
- “(2A) Any past member of a specified corporation who complains that the affairs of the specified corporation were, at the time when he was a member of the specified corporation, conducted in a manner unfairly prejudicial to the interests of the then members generally or of some part of the then members (including himself), may make an application to the court by petition for an order under this section.
- (2B) If on any petition under subsection (2A) the court is of opinion that the specified corporation's affairs were conducted in a manner unfairly prejudicial to the interests of the then members generally or of some part of the then members (including the past member who presented the petition), whether or not such conduct consists of an isolated act or a series of acts, the court may order payment by any person of such damages and interest on those damages as the court may think fit to any then members (including the past member who presented the petition) of the specified corporation, whose interests were unfairly prejudiced by the act or conduct.
- (2C) For the avoidance of doubt, the damages that may be ordered by the court under subsections (2)(b) and (2B) does not entitle a member, past member or then member of a specified corporation to recover by way of damages any loss that is solely reflective of the loss suffered by the specified corporation which only the specified corporation is entitled to recover under the common law.”.
- (4) Section 168A is amended by adding—
- “(5A) The personal representative of a person who, at the date of the person's death, was a past member of a specified corporation, may apply to the court under subsection (2A) for an order under this section and, accordingly, any reference in that subsection to a past member of a specified corporation shall be construed as including a reference to any such personal representative.
- (5B) For the purposes of this section, a person shall not be treated as a past member of a specified corporation if he ceased to be a member of the specified corporation before the commencement of section 4 of Schedule 3 to the Companies (Amendment) Ordinance 2004 (30 of 2004).”.
- (5) Section 168A is amended by adding—
- “(7) Where before the commencement of section 4 of Schedule 3 to the Companies (Amendment) Ordinance 2004 (30 of 2004), a petition has been presented for an order under section 168A of the pre-amended Ordinance, that section of the pre-amended Ordinance shall continue to apply in relation to such a petition as if section 4 of Schedule 3 to the Companies (Amendment) Ordinance 2004 (30 of 2004) had not been enacted.
- (8) For the purpose of subsection (7), “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 4 of Schedule 3 to the Companies (Amendment) Ordinance 2004 (30 of 2004).”.

5. Part IVAA added

The following is added immediately after section 168B—

“PART IVAA

STATUTORY DERIVATIVE ACTION

168BA. Definition

In this Part, unless the context otherwise requires, “proceedings” (法律程序) means any proceedings (other than criminal proceedings) within the jurisdiction of the court.

168BB. Application

- (1) This Part applies to—
 - (a) the bringing of proceedings in respect of misfeasance committed against a specified corporation;
 - (b) the bringing of proceedings in respect of any matter where a specified corporation fails to bring proceedings in respect of such matter by reason of misfeasance committed against the specified corporation; and
 - (c) the intervention in proceedings in respect of any matter where a specified corporation fails to diligently continue, discontinue or defend the proceedings in respect of such matter by reason of misfeasance committed against the specified corporation,

where in relation to the proceedings brought or intervened in, the cause of action or right to continue, discontinue or defend those proceedings, as the case may be, is vested in the specified corporation and relief, if any, is sought on behalf of the specified corporation.

(2) In this section, “misfeasance” (不當行為) means fraud, negligence, default in compliance with any enactment or rule of law, or breach of duty.

168BC. Members may bring or intervene in proceedings

(1) A member of a specified corporation may, with the leave of the court granted under subsection (3)—

- (a) bring proceedings before the court on behalf of the specified corporation; or
- (b) intervene in any proceedings before the court to which the specified corporation is a party for the purposes of continuing, discontinuing or defending those proceedings on behalf of the specified corporation.

(2) Any proceedings brought under subsection (1)(a) on behalf of a specified corporation shall be brought in the name of the specified corporation.

(3) The court may, on the application of a member of a specified corporation, grant leave for the purpose of subsection (1) if the court is satisfied that—

- (a) it appears to be prima facie in the interest of the specified corporation that leave be granted to the applicant;
- (b) if the applicant is applying for leave to bring proceedings under subsection (1)(a), there is a serious question to be tried and the specified corporation has not itself brought the proceedings;
- (c) if the applicant is applying for leave to intervene in proceedings under subsection (1)(b), the specified corporation has not diligently continued, discontinued or defended those proceedings; and
- (d) except where leave is granted by the court under section 168BD(4), the member has served a written notice on the specified corporation in accordance with section 168BD.

(4) Subject to other provisions in this Part, this Part shall not affect any common law right of a member of a specified corporation to bring proceedings on behalf of the specified corporation, or intervene in any proceedings to which the specified corporation is a party.

(5) The court may dismiss an application for leave under subsection (3) if the applicant has, in the exercise of any common law right—

- (a) brought proceedings on behalf of the specified corporation in respect of the same cause or matter; or
- (b) intervened in the proceedings in question to which the specified corporation is a party.

(6) For the avoidance of doubt, this section does not prevent a member of a specified corporation from bringing proceedings in respect of the specified corporation, or intervening in any proceedings to which the specified corporation is a party, on his own behalf in respect of his personal right.

168BD. Service of written notice

(1) Subject to subsection (4), a member of a specified corporation shall serve a written notice on the specified corporation at least 14 days before he applies for leave under section 168BC(3) in respect of the specified corporation.

(2) Service of a written notice under this section shall be effected by leaving it at—

- (a) in the case of a company, its registered office;
- (b) in the case of a non-Hong Kong company, the address of its authorized representative that is registered under section 333.

(3) A written notice under this section shall state—

- (a) the intention of the member to apply for leave under section 168BC(3) in respect of the specified corporation; and
- (b) the reasons for his intention.

(4) The court may grant leave to dispense with the service of a written notice required by this section.

168BE. Court's power to strike out proceedings brought or intervention in proceedings by members under common law

(1) Where leave has been granted to a member of a specified corporation under section 168BC(3) and the member, in the exercise of any common law right, subsequently brings proceedings on behalf of the specified corporation in respect of the same cause or matter, or subsequently intervenes in the proceedings in question to which the specified corporation is a party, the court may—

- (a) order to be struck out or amended any pleading or the indorsement of any writ in the proceedings brought under the common law, or the intervention under the common law, or anything in such pleading or indorsement; and
- (b) order the proceedings brought under the common law, or the intervention under the common law, to be stayed or dismissed or judgment to be entered accordingly.

(2) This section is in addition to and does not derogate from any power of the court conferred by any enactment or rule of law.

168BF. Effect of approval or ratification

(1) The approval or ratification by the members of a specified corporation of any conduct shall not have the effect of—

- (a) preventing a member of the specified corporation from bringing or intervening in any proceedings under section 168BC(1), or from applying for leave under section 168BC(3);
- (b) requiring the court to refuse to grant leave under section 168BC(3); or
- (c) requiring the court to determine the proceedings brought or intervened in by the member in favour of the defendant.

(2) Notwithstanding subsection (1), the court may, after having regard to the following matters in respect of the members of a specified corporation who approved or ratified the relevant conduct, take into account the approval or ratification in deciding what judgment or order (including any order as to damages) to make in respect of any proceedings brought or intervened in by a member of the specified corporation under section 168BC(1), or in respect of an application for leave made under section 168BC(3)—

- (a) the extent of the members' independence of the conduct when they approved or ratified it;
- (b) how well-informed about the conduct they were when deciding whether or not to approve or ratify it; and
- (c) whether or not they were acting for proper purposes having regard to the interests of the specified corporation when they approved or ratified it.

168BG. General powers of court

(1) The court may, at any time, make any order and give any direction it considers appropriate in respect of any proceedings brought or intervened in by a member of a specified corporation under section 168BC(1), or in respect of an application for leave made under section 168BC(3), including—

- (a) interim orders pending the determination of the proceedings or application;
- (b) directions concerning the conduct of the proceedings or application;
- (c) an order directing the specified corporation, or an officer of the specified corporation, to do, or not to do, any act (including the provision by the specified corporation or the officer of such information or assistance as the court may think fit for the purpose of the proceedings or application); and
- (d) an order appointing an independent person to investigate and report to the court on—
 - (i) the financial position of the specified corporation;
 - (ii) the facts or circumstances that gave rise to the proceedings; or
 - (iii) the costs incurred by the parties to the proceedings, and by the member who brought or intervened in the proceedings, or made the application.

(2) Where the court makes an order under subsection (1)(d), it may make any other orders it considers appropriate for the purposes of that subsection.

(3) Where the court orders the appointment of an independent person under subsection (1)(d), the court may, at any time—

- (a) order any or all of the following persons to be liable for any expenses arising out of the investigation—
 - (i) the specified corporation;
 - (ii) the parties to the proceedings or application;
 - (iii) the member who brought or intervened in the proceedings, or made the application; and
- (b) review, vary or revoke an order made pursuant to paragraph (a).

(4) If an order made pursuant to subsection (3)(a), or the order as varied pursuant to subsection (3)(b), makes 2 or more persons liable for the relevant expenses, the court may also determine the nature and extent of the liability of each of those persons.

(5) The court may, at any time, make any order and give any direction it considers appropriate in relation to sections 168BC(5) and 168BE.

168BH. Protection of personal data

Nothing in section 168BG(1)(c) and (d) and (2) shall authorize the collection, retention or use of personal data in contravention of the Personal Data (Privacy) Ordinance (Cap. 486).

168BI. Power of court to make orders about costs

(1) The court may, at any time (including on granting leave under section 168BC(3)), make any order it considers appropriate about the costs incurred or to be incurred by the following persons in relation to an application for leave made under section 168BC(3) or any proceedings brought or intervened in, or to be brought or intervened in, under section 168BC(1)—

- (a) the member;
- (b) the specified corporation; and
- (c) any other parties to the application or proceedings.

(2) An order made under subsection (1) may require the specified corporation to indemnify out of its assets against the costs incurred or to be incurred by the member in making the application or in bringing or intervening in the proceedings.

(3) The court may only make an order about costs (including the requirement as to indemnification) under this section in favour of the member if it is satisfied that the member was acting in good faith in, and had reasonable grounds for, making the application, or bringing or intervening in the proceedings.

168BJ. Discontinuance or settlement

Proceedings brought or intervened in by a member of a specified corporation under section 168BC(1) shall not be discontinued or settled without the leave of the court.

168BK. Rules of court

The Rules Committee constituted under section 55 of the High Court Ordinance (Cap. 4) may make rules of court for giving effect to this Part as appears to the Committee to be necessary or expedient.”.

6. Section added

The following is added immediately after section 350A—

“Injunctions**350B. Injunctions**

(1) Where a person (“the first-mentioned person”) has, in relation to a specified corporation, engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute—

- (a) a contravention of this Ordinance;
- (b) an attempt to contravene this Ordinance;
- (c) aiding, abetting, counselling or procuring another person to contravene this Ordinance;
- (d) inducing or attempting to induce, whether by threats, promises or otherwise, another person to contravene this Ordinance;
- (e) his being in any way, directly or indirectly, knowingly concerned in, or a party to, a contravention of this Ordinance by another person;
- (f) conspiring with others to contravene this Ordinance;
- (g) a breach of his fiduciary duties owed to the specified corporation in any capacity other than as a director of the specified corporation; or
- (h) a breach of his fiduciary or other duties as a director of the specified corporation owed to the specified corporation,

the court may, on the application of the Financial Secretary, or of a member or creditor of the specified corporation whose interests have been, are or would be affected by the conduct, grant an injunction, on such terms as the court considers appropriate, restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the court it is desirable to do so, requiring the first-mentioned person to do any act or thing.

(2) The power of the court to grant an injunction restraining the first-mentioned person referred to in subsection (1) from engaging in the conduct mentioned in that subsection may be exercised—

- (a) whether or not it appears to the court that he intends to engage again, or to continue to engage, in that conduct;
- (b) whether or not he has previously engaged in that conduct; and
- (c) whether or not there is an imminent danger of substantial damage to any other person if he engages in that conduct.

(3) Where a person (“the first-mentioned person”) has, in relation to a specified corporation, refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the first-mentioned person is required by this Ordinance to do, the court may, on the application of the Financial Secretary, or of a member or creditor of the specified corporation whose interests have been, are or would be affected by the refusal or failure to do that act or thing, grant an injunction, on such terms as the court considers appropriate, requiring the first-mentioned person to do that act or thing.

(4) The power of the court to grant an injunction requiring the first-mentioned person referred to in subsection (1) or (3) to do an act or thing may be exercised—

- (a) whether or not it appears to the court that he intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;
- (b) whether or not he has previously refused or failed to do that act or thing; and
- (c) whether or not there is an imminent danger of substantial damage to any other person if he refuses or fails to do that act or thing.

(5) Where the court considers appropriate, it may grant an interim injunction on such terms and conditions as it thinks fit pending determination of an application under subsection (1) or (3).

(6) The court may discharge or vary an injunction granted under subsection (1), (3) or (5).

(7) The court may, either in addition to or in substitution for the grant of the injunction under subsection (1) or (3), order the first-mentioned person referred to in subsection (1) or (3) to pay damages to any other person.

(8) For the avoidance of doubt, the damages that may be ordered by the court under subsection (7) does not entitle a person to recover by way of damages any loss that is solely reflective of the loss suffered by a specified corporation which only the specified corporation is entitled to recover under the common law.”.

7. Punishment of offences under this Ordinance

(1) The Twelfth Schedule is amended by adding—

“152FC(3)	Person disclosing or using information or document obtained as a result of an inspection under section 152FA contrary to section 152FC(1) or (2)	On indictment	\$150,000 and 2 years	—
		Summary	level 5 and 6 months	—”.

(2) The Twelfth Schedule is amended, in the entry relating to section 168A(4), in the second column—

- (a) by repealing “Company” and substituting “Specified corporation”;
- (b) by repealing “company’s” and substituting “specified corporation’s”.

SCHEDULE 4

[ss. 3 & 4]

CONSEQUENTIAL AND OTHER AMENDMENTS

PART 1

CONSEQUENTIAL AMENDMENTS ARISING FROM THE AMENDMENTS
TO THE COMPANIES ORDINANCE MADE BY
SCHEDULE 1 TO THIS ORDINANCE**Securities and Futures Ordinance****1. Offence to issue advertisements, invitations or documents relating to investments in certain cases**

Section 103 of the Securities and Futures Ordinance (Cap. 571) is amended—

(a) in subsection (2), by adding—

“(ga) to the extent that the advertisement, invitation or document relates to an offer falling within paragraph (b)(ii) of the definition of “prospectus” in section 2(1) of the Companies Ordinance (Cap. 32);”;

(b) by repealing subsection (3)(a)(iii) and substituting—

“(iii) a publication falling within section 38B(2) of the Companies Ordinance (Cap. 32);”.

2. Requirements for offers by intermediaries or representatives for Type 1, Type 4 or Type 6 regulated activity

Section 175 is amended—

(a) in subsection (5), by adding—

“(aa) an offer—

(i) specified in Part 1 of the Seventeenth Schedule to the Companies Ordinance (Cap. 32) as read with the other Parts of that Schedule; and

(ii) specified by the Commission, by notice published in the Gazette, as an offer to which this section does not apply;”;

(b) by adding—

“(8A) A notice published under subsection (5)(aa)(ii) is not subsidiary legislation.”.

3. Interpretation and general provisions

Schedule 1 is amended, in Part 1, in section 1—

(a) by repealing the definition of “prospectus” and substituting—

““prospectus” (招股章程) means prospectus as defined in section 2(1) of the Companies Ordinance (Cap. 32);”;

(b) in the definition of “relevant provisions”, by adding—

“(c) Parts II and XII of the Companies Ordinance (Cap. 32), for the purposes only of section 213 of this Ordinance, and so far as those Parts relate, directly or indirectly, to an advertisement mentioned in section 38B(1) of that Ordinance;”.

PART 2

CONSEQUENTIAL AND OTHER AMENDMENTS ARISING FROM THE
AMENDMENTS TO THE COMPANIES ORDINANCE MADE BY
SCHEDULE 2 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 professional 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
 - (vi) by a professional 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;
 - (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 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 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.

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 2 of Schedule 4 to the Companies (Amendment) Ordinance 2004 (30 of 2004), 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

- (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 oversea” 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 oversea” 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 oversea” 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 oversea” 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 oversea” 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 oversea” 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 oversea” and substituting “a non-Hong Kong”.

(2) Section 2(1) is amended, in the definition of “corporation”, by repealing “an oversea” 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 oversea” 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 oversea” 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) Regulation**

23. Interpretation

Section 2(1) of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (L.N. 27 of 2004) 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”.

**24. 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”.

**25. 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

**26. 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”.

**27. Client securities and collateral held by intermediaries
and their associated entities**

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

28. Restriction on receiving or holding of client assets

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

29. 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.”.

30. Service of notices, etc.

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

31. 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);”.

32. 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**33. 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”.

34. 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**35. 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**36. 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”.

37. Interpretation

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