

LEGISLATIVE COUNCIL BRIEF

Financial Reporting Council Ordinance
(Chapter 588)

Financial Reporting Council (Amendment) Bill 2018

INTRODUCTION

A At the meeting of the Executive Council on 24 October 2017, the Council ADVISED and the Chief Executive ORDERED that the Financial Reporting Council (Amendment) Bill 2018 (the Bill) at **Annex A** should be introduced into the Legislative Council (LegCo) to further enhance the independence of the existing regulatory regime for auditors of listed entities from the audit profession so as to enhance investor protection and ensure that the regime is benchmarked against the international standard and practice.

JUSTIFICATIONS

2. Auditors play the role of a key gatekeeper in assuring the integrity and accuracy of the financial reports of listed entities and entities seeking to be listed in Hong Kong. For years, the Hong Kong Institute of Certified Public Accountants (HKICPA) has been the statutory authority responsible for the registration, inspection, enforcement, development and professional training of the audit profession in Hong Kong under the Professional Accountants Ordinance (Chapter 50) (PAO). Since 2007, the regulatory function to conduct investigations into possible auditing and reporting irregularities of auditors of listed entities¹ has been transferred to the Financial Reporting Council (FRC), which is independent of the audit profession and established under the Financial

¹ Under section 3 of the existing FRCO, a listed entity means a listed corporation or a listed collective investment scheme. A corporation is listed if any securities issued by the corporation are listed in Hong Kong. A collective investment scheme is listed if any interests in the scheme are listed in Hong Kong.

Reporting Council Ordinance (Chapter 588) (FRCO)².

3. However, it has become the international standard and practice in recent years that regulatory regimes for auditors of public interest entities (PIEs) should be independent of the audit profession and be subject to independent oversight by bodies acting in the public interest. Hong Kong's present regulatory regime is considered by many as a self-regulatory regime, and Hong Kong has been singled out as not being on par with the prevailing international standard and practice, hampering our reputation as an international financial and capital market. Besides, Hong Kong's ineligibility to be represented on the International Forum of Independent Audit Regulators (IFIAR), which is an influential multinational organisation which only admits regulators which are independent of the audit profession, has hindered cooperation between Hong Kong and other jurisdictions in the regulation of auditors.

4. Since 2010, the International Organisation of Securities Commissions (IOSCO) has introduced new principles of securities regulation with an overriding objective of protecting investors, which include the principles that auditors should be subject to adequate levels of independent oversight and that the independent auditor oversight bodies must have an adequate charter of responsibilities and powers to perform their regulatory functions. In 2014, the International Monetary Fund (IMF) completed a review of our auditor regulatory regime against the relevant IOSCO principles in the context of its overall review of Hong Kong's securities market under the Financial Sector Assessment Programme. Its report recommended that Hong Kong should establish a "fully independent authority with responsibility for the oversight of the audit profession" and that such authority "should have jurisdictions over all auditors that audit companies listed in Hong Kong". Noting that the governance of the disciplinary committee of the HKICPA "does not ensure sufficient independence, nor foster the development of expertise, and precedents, and the range of sanctions is limited", the IMF also recommended that the independent oversight authority should be given "strong enforcement power".

² The FRC is also empowered under the FRCO to enquire into possible non-compliance with accounting requirements of listed entities in Hong Kong.

5. In light of these recent developments, it is necessary to reform Hong Kong's auditor regulatory regime to bring it in line with the international standard and practice and ensure that Hong Kong is represented on the IFIAR, and also to enhance the enforcement mechanism for better investor protection.

LEGISLATIVE PROPOSALS

6. Since the reform will entail very substantial changes to the existing auditor regulatory regime, it would be prudent for us to adopt a step-by-step approach and limit the coverage of PIEs under the new regime to corporations with issued shares or stocks listed in Hong Kong or collective investment schemes with interests listed in Hong Kong. This also accords with the IMF's recommendation on the jurisdiction of the proposed independent auditor oversight body mentioned in paragraph 4 above.

7. Since the FRC is already performing investigatory function over auditors of listed entities and it is independent of the audit profession, we propose that it should act as the independent oversight body regulating PIE auditors, and be responsible for the inspection and disciplinary functions with regard to PIE auditors under the new regulatory regime. The HKICPA will continue to perform the statutory functions of registering, and setting continuing professional development (CPD) requirements and standards on professional ethics, auditing and assurance for local PIE auditors under the new regime, subject to oversight by the FRC.

8. The key aspects of the proposed regulatory regime are set out in paragraphs 9 to 28 below.

Local and overseas PIE auditors

Local auditors as registered PIE auditors

9. The new regime will not make any material change to the existing eligibility criteria for a local auditor to be an auditor of a listed

entity³. In future, a practice unit⁴ which wishes to undertake specified engagements⁵ (PIE engagements) may apply to the HKICPA to be a registered PIE auditor. Noting that in the absence of a registration system for PIE auditors under the existing regime, a PIE is at present free to appoint any practice unit to undertake any such engagements at any time, the Bill will not require that a practice unit must have a PIE client before it can apply for registration under the new regime.

10. Having regard to the prevailing requirements of the HKICPA under the existing regime, a practice unit which applies to become a registered PIE auditor must also provide in its application the names of the following three categories of persons, who perform important roles in PIE engagements and must be CPA (referred to as “responsible persons” in the Bill) –

- (a) “engagement partners”, viz. individuals who are authorised by the practice unit to be responsible for the PIE engagements carried out by the unit;
- (b) “engagement quality control reviewers”, viz. individuals who are authorised by the unit to oversee the engagement quality control reviews in respect of the PIE engagements carried out by the unit; and
- (c) “quality control system responsible persons”, viz. individuals

³ Currently, a certified public accountant (CPA) must fulfil the following requirements for obtaining a practising certificate to become an auditor of a listed entity –

- (a) passes examinations in local law and taxation;
- (b) fulfils relevant auditing experience requirement of having a period of not less than four years of full-time approved accounting experience of which at least one year is acquired after he becomes qualified as a CPA;
- (c) is ordinarily resident in Hong Kong;
- (d) fulfils the HKICPA’s requirements for CPD; and
- (e) is not a bankrupt nor has become bankrupt nor has entered into a voluntary arrangement with his creditors within the meaning of the Bankruptcy Ordinance.

⁴ A practice unit is defined in section 2(1) of the PAO as (a) a certified public accountant (practising) practising accountancy on his own account pursuant to the PAO; (b) a firm of certified public accountants (practising) practising accountancy pursuant to the PAO; and (c) a corporate practice which is a company registered under section 28E of the PAO.

⁵ The specified engagements to be carried out by a PIE auditor, which will be prescribed in Part 1 of Schedule 1A of the Bill, include (a) preparation of auditor’s reports on annual financial statements of PIEs; (b) preparation of accountants’ reports in listing documents of PIEs or entities applying to be PIEs; and (c) preparation of accountants’ reports in circulars issued by PIEs in connection with a very substantial acquisition or a reverse takeover.

who are authorised by the unit to be responsible for the quality control system of the unit.

11. These responsible persons will be subject to a “fit and proper” test, with the Bill setting out the key factors to be considered⁶ which are modelled on the existing ‘fit and proper’ test applied by the HKICPA. The HKICPA Registrar will be the statutory registrar for PIE auditors under the new regime and will be responsible for, *inter alia*, maintaining a new register of PIE auditors (PIE auditors register) for public inspection.

Overseas auditors as recognised PIE auditors

12. An overseas corporation or overseas collective investment scheme listed in Hong Kong or seeking to be listed in Hong Kong may, same as at present, seek the approval of the Hong Kong Exchanges and Clearing Limited (HKEX) or the Securities and Futures Commission (SFC), as the case may be, to engage an overseas auditor to undertake its PIE engagements. If the requisite approval is obtained, it may apply to the FRC to recognise the overseas auditor it intends to engage as a recognised PIE auditor. The eligibility criteria to be a recognised PIE auditor are largely modelled on the prevailing requirements of the HKEX and the SFC with suitable modifications and adaptations. A new requirement is added to provide that there must be a regulatory cooperation agreement between the FRC and the corresponding overseas regulator before the FRC may recognise the overseas auditor concerned.

13. It should be noted that following the convergence of the Mainland and Hong Kong accounting and auditing standards in 2007, both sides entered into a reciprocal arrangement (Reciprocal Arrangement) in 2009 to facilitate compliance of accounting and auditing requirements by Mainland-incorporated companies listed or seeking to be listed in

⁶ The Bill stipulates that, in determining whether a responsible person is a fit and proper person to be a CPA, the HKICPA Council must have regard to the following matters—

- (a) the professional qualifications, knowledge, skill and experience of the person;
- (b) the person’s reputation, character, reliability and integrity;
- (c) the person’s financial status or solvency;
- (d) whether any disciplinary action has been taken against the person by the FRC or the HKICPA; and
- (e) whether the person has been convicted of any offence in Hong Kong or elsewhere.

Hong Kong, and vice versa. The Reciprocal Arrangement enables the Mainland-incorporated companies listed or seeking to be listed in Hong Kong to engage any one of the specified Mainland audit firms, which have been assessed as meeting specific conditions for auditing their financial statements using Mainland auditing standards. This will increase market efficiency and reduce compliance costs of the Mainland-incorporated companies by dispensing with the need to re-audit their financial statements in accordance with Hong Kong auditing standards. The Reciprocal Arrangement will also apply to Hong Kong companies and Hong Kong audit firms when there are Hong Kong companies that are listed or seeking to be listed in the Mainland, and these companies will be entitled to engage specified Hong Kong audit firms to audit their financial statements using Hong Kong auditing standards. The Reciprocal Arrangement was agreed upon by the Hong Kong SAR Government, the SFC, the HKEX, the FRC and the HKICPA from the Hong Kong side, and the Ministry of Finance, the China Securities Regulatory Commission and the Chinese Institute of Certified Public Accountants from the Mainland side, and was implemented in Hong Kong in 2010 after public consultation conducted by the HKEX. The Bill allows the FRC to recognise relevant Mainland audit firms that meet the specific conditions as PIE auditors.

14. To protect the interests of investors, PIE auditors which have been properly registered/recognised, as well as their clients, it will be an offence for any person, other than a registered PIE auditor or a recognised PIE auditor, to undertake PIE engagements or to hold the person out as a PIE auditor.

Inspection

15. The existing statutory function of the HKICPA to conduct recurring inspections of local auditors in respect of their PIE engagements will be transferred to the FRC⁷, and the Bill will confer appropriate powers on the FRC to inspect PIE auditors. The range of inspection powers will be on par with those of the other financial regulators in Hong Kong, and there will be similar safeguards to ensure proper exercise of

⁷ The HKICPA will maintain its existing statutory functions under the PAO to conduct recurring inspections of local auditors in respect of their engagements (other than PIE engagements).

the powers by the FRC.

Investigation

16. The Bill provides for additional circumstances under which the FRC may initiate investigations in relation to auditors of listed entities. The existing powers of the FRC in relation to an initiated investigation will largely remain the same. We will take the opportunity of this legislative exercise to update and modify the relevant provisions to align them with similar provisions in the legislation for other financial regulatory regimes in Hong Kong.

Disciplinary mechanism

17. As a full-fledged independent auditor oversight body, the FRC will be empowered to exercise disciplinary powers on PIE auditors and their responsible persons, including initiating disciplinary processes and imposing appropriate disciplinary sanctions for misconduct. Taking into account the IMF's comment in paragraph 4 above and for better investor protection, the FRC will be empowered to impose a range of disciplinary sanctions, including ordering a person to pay a pecuniary penalty with the maximum level capped at \$10 million or three times the amount of the profit gained or loss avoided, whichever is higher (as compared to the cap of \$500,000 penalty under the existing regime which is considered by many to be too low and ineffective). Similar to other financial regulatory regimes in Hong Kong, the Bill provides for appropriate procedural safeguards to ensure that the principles of fairness and proportionality are followed when the FRC exercises its disciplinary powers. For example, the PIE auditor or responsible person subject to a disciplinary action would be given a reasonable opportunity to make written or oral representations, and the FRC would have a statutory obligation under the Bill to issue guidelines to indicate the manner in which it exercises its power to order a PIE auditor or responsible person to pay a pecuniary penalty, and to have regard to the issued guidelines

when exercising such power⁸.

18. Besides, the FRC will put in place administrative arrangements to ensure that the executives who have participated in the investigation/inspection or disciplinary processes of a case would not take part in making a disciplinary decision of the case. In addition, there will be inputs from independent audit and legal experts in the process. The FRC will establish a panel of audit experts who are independent of the FRC. Where the application of relevant auditing standards is a key factor in considering whether the regulatee concerned has committed misconduct in a disciplinary case, the FRC will invite a member of the panel to provide expert opinions. The FRC will also establish a panel of case advisers who are legal experts and independent of the FRC. In contentious cases (i.e. where the recommended sanction of the Disciplinary Department for consideration of the FRC is not accepted by the PIE auditor or responsible person concerned), the FRC will invite a case adviser to study all relevant documents and information and give his views on whether the principles of due process and natural justice have been observed in the disciplinary process, as well as on the merits of the case including whether the recommended sanction is appropriate. The case adviser may also suggest modifications to the level of recommended sanction if he considers it appropriate to do so, and where necessary, request further information from the Disciplinary Department or PIE auditor or responsible person concerned and seek further opinion from the audit expert before finalising his views to the FRC. To ensure transparency, the PIE auditor or the responsible person concerned will be informed of the views of the case adviser and will have a further opportunity to make representations before the FRC makes a decision on the case.

⁸ The guidelines will include the factors which would be considered by the FRC when determining the level of pecuniary penalty to be imposed. They would include, for example –

- (a) the nature and seriousness of the irregularities;
- (b) the amount of profits accrued or loss avoided as a result of the irregularity;
- (c) the audit fees received by the PIE auditor; and
- (d) other circumstances of the regulated person, which would include the size and financial resources of the firm or individual and whether the penalty would have the likely effect of putting a firm or individual in financial jeopardy.

Review and appeal mechanism

19. The Bill establishes a new independent review tribunal (the Tribunal) to make determinations on any review against the respective registration or recognition decisions of the HKICPA and the FRC, and the disciplinary decisions of the FRC. The operation of the Tribunal will reduce the time and cost to be incurred by both the appellant and the HKICPA/FRC in dealing with appeal cases. The Tribunal will consist of a chairman and two other members who are drawn from a panel appointed by the Chief Executive (CE) and are not public officers. The chairman must be a former Justice of Appeal of the Court of Appeal, a former judge, a former recorder or a former deputy judge of the Court of First Instance, or a person eligible for appointment as a judge of the High Court. The sittings of the Tribunal will be held in public, unless otherwise determined by the Tribunal⁹. The Bill also provides that an aggrieved party may, after obtaining the leave of the Court of Appeal, appeal to the Court of Appeal on a question of law, fact, or mixed law and fact if the person is dissatisfied with a determination of the Tribunal.

20. The disciplinary decision of the FRC will be automatically stayed once the auditor concerned files an application for review against the decision. The FRC may only disclose the disciplinary decision to the public after the expiry of the period for lodging an application for review to the Tribunal in relation to the FRC's decision, or if such an application is lodged, after the review has been determined by the Tribunal. As mentioned in paragraph 19 above, the sittings of the Tribunal, which is independent of the FRC, will be held in public, unless otherwise determined by the Tribunal. Taken as a whole, the new regime will better protect the anonymity of an auditor undergoing disciplinary proceedings than the PAO regime under which the identity of an auditor subject to disciplinary proceedings will be disclosed when a disciplinary committee under the PAO is established.

Independent oversight of the HKICPA's regulatory functions

21. For the purpose of enabling the FRC to perform independent

⁹ The Bill provides that the Tribunal may, on its own initiative or on the application by a party to the review, determine that a sitting, or any part of the sitting, be held in private in the interest of justice.

oversight of the HKICPA's regulatory functions (viz. registration of local PIE auditors, setting CPD requirements and setting standards on professional ethics, auditing and assurance) in respect of PIE auditors, the Bill provides for a light-handed oversight model by empowering the FRC to –

- (a) request the HKICPA for reports on its regulatory activities on a regular basis;
- (b) conduct assessment on the performance of the HKICPA's regulatory activities which are subject to the FRC's oversight;
- (c) require the HKICPA to provide relevant information as necessary; and
- (d) upon being satisfied that it is in the public interest to do so, give the HKICPA written directions in relation to the latter's regulatory functions which are subject to the FRC's oversight.

The FRC will not participate in the day-to-day operations of the HKICPA but it will ensure that the HKICPA performs its regulatory functions in the public interest.

Governance of the FRC

22. To enhance the independence of the FRC, the existing provisions of the FRCO requiring the FRC to include three members to be nominated by the HKICPA, the SFC and the HKEX and also an ex-officio member representing the Financial Secretary will be repealed¹⁰. The composition of the FRC under the new regime will be modified as follows –

- (a) the FRC will comprise the following non-executive and executive directors who are to be appointed by the CE –

¹⁰ The current FRC comprises –

- (a) three members on the nomination of the SFC, the HKEX and the HKICPA respectively;
- (b) the Registrar of Companies (or her representative);
- (c) the Chief Executive Officer of the FRC; and
- (d) not fewer than four, and not more than six, other members.

The current arrangements for the SFC, the HKEX and the HKICPA to nominate individuals to be appointed as FRC members and for the Registrar of Companies to be an ex-officio member of the FRC stem from the present funding mechanism for the FRC, which is supported by contributions from the SFC, the HKEX, the HKICPA and the Companies Registry Trading Fund.

- (i) a chairman who is a non-executive director of the FRC and a non-practitioner¹¹;
 - (ii) a chief executive officer who is an executive director of the FRC; and
 - (iii) at least seven other executive or non-executive directors of the FRC;
- (b) the number of non-executive directors of the FRC must exceed the number of executive directors;
- (c) out of the members appointed by the CE, at least two persons should possess knowledge of and experience in PIE engagements so as to ensure sufficient expertise in the FRC; and
- (d) the number of members who are non-practitioners must exceed the number of members who are practitioners¹².

23. When compared with the existing composition of the FRC where the majority of the members are required to be lay persons, the modifications set out in paragraph 22 above will strengthen the independence as well as the audit expertise of the FRC, and are commensurate with the expanded regulatory functions of FRC under the new regime.

24. We will also take the opportunity of this legislative exercise to rationalise and modernise some detailed provisions of the FRCO in relation to the appointment of FRC members, procedures of meetings, declaration of interests, etc. by drawing reference to similar provisions in the legislation for other financial regulatory regimes in Hong Kong.

¹¹ A “non-practitioner” is defined in the Bill as a person who is not, or has not within the previous three years been–

- (a) a certified public accountant (practising); or
- (b) a partner, director, agent or employee of a practice unit.

This definition is modelled on the existing arrangements adopted by the European Union (EU) and will widen the pool of candidates for appointment to cover experienced personnel from the audit profession who have passed the relevant cooling-off period.

¹² This is a relaxation of the present requirement in the FRCO that the FRC should be composed by a majority of “lay persons”, i.e. non-accountants. This will allow the appointment of suitable and experienced persons to the FRC while maintaining the objective that the FRC should be independent of the audit profession and of the Government.

Funding mechanism

25. At present, the FRC is funded through an ad hoc agreement of four parties, viz. the HKICPA, the SFC, the HKEX and the Companies Registry Trading Fund (CRTF) who negotiate and sign a multi-party Memorandum of Understanding (MMoU) at 5-yearly intervals. To ensure stability of funding support, and in accordance with the principle of “user pay” and the principle that the independent auditor oversight body should be operationally and financially independent of the Government, the FRC under the new regime will be funded by introducing three new levies on securities transactions, PIEs and PIE auditors respectively. This is similar to the practices adopted by most comparable overseas jurisdictions with dedicated independent auditor oversight bodies which adopt a mechanism under which their operations are supported by levies imposed on the regulatees and/or market users.

26. Having regard to the expanded functions of the FRC after the reform, we estimate that the recurrent annual budget of the post-reform FRC is around \$90 million at 2016 price level¹³ at the time of commencement of the new regime. The annual budget of the FRC will be subject to the approval of the Financial Secretary. We propose that the contributions from sellers and purchasers in securities transactions, PIEs and PIE auditors to the funding of the post-reform FRC should be in the ratio of 50:25:25. On this basis, and having regard to the principle that the three levies should be determined at levels which would enable the FRC to sustain its operation under the new regime without subsidy from general taxpayers, the rates/amounts of the new levies¹⁴ to be specified in Schedule 7 of the Bill are as follows -

- (a) Levy on securities transactions: 0.00015% of the consideration for a securities transaction, payable by each of the seller and purchaser in the transaction ;

¹³ The current annual budget of the FRC is around \$30 million. Under the new regime, the scope of FRC’s work will be increased by more than three-folds to cover also recurring inspections, enforcement/discipline, recognition of overseas auditors, oversight of HKICPA’s regulatory functions in respect of PIE auditors, and enhanced cooperation and interface with relevant international bodies and overseas audit regulators, etc.

¹⁴ Assuming that the Bill is enacted and the new regime is brought into operation in 2019, the new levies are to be set in 2019 price level. The adjustment from 2016 price level is made by reference to the average increase in the Composite Consumer Price Index in the past three-year period from 2014 to 2016, i.e. an annual upward adjustment of 3.3%.

(b) Levy on PIEs: 4.2% of the annual listing fee paid by a PIE to the HKEX for a calendar year pursuant to the Listing Rules; and

(c) Levy on PIE auditors: \$12,310 for a calendar year in respect of every PIE client¹⁵, and a standard levy of \$2,000 for a calendar year on a PIE auditor with no PIE client.

B **Annex B** explains the calculation methods in determining the rates or amounts of the new levies. The rates or amounts may be amended in the future by CE-in-Council by way of subsidiary legislation which is subject to negative vetting by LegCo.

27. Similar to the arrangement for the SFC and the independent Insurance Authority, the Bill stipulates that once the reserve of the FRC has reached a level equivalent to 24 months of its operating expenses (after deducting depreciation and all provisions), the FRC shall review the rate/amount of the levies and consult the Financial Secretary with a view to recommending to the CE-in-Council that the levies be reduced.

Transitional arrangements

28. The Bill introduces a transitional arrangement for auditors who have undertaken engagements in the nature of PIE engagements before the commencement of the Bill. If any of the engagements is still on-going on the date of commencement of the Bill, the auditor may notify the HKICPA or the FRC (as the case may be) of its intention to continue to carry out the engagement on the commencement date. On sending such notification, the auditor will be taken to be a PIE auditor during the transitional period. The name of those who are taken to be registered or recognised PIE auditors will be put onto the PIE auditors register, and the auditors concerned will be subject to the inspection, investigation and disciplinary mechanisms under the new regime. During the transitional period, these auditors may file applications for registration or recognition as PIE auditors under the new regime.

¹⁵ It refers to a PIE for which a PIE auditor has carried out an engagement for preparing an auditor's report of the PIE's annual financial statements.

THE BILL

29. The Bill is divided into three parts and contains the following provisions –

- (a) **Part 1** sets out preliminary provisions such as the short title and provides for the commencement of the Bill;
- (b) **Part 2** contains amendments to the FRCO. The main provisions of this Part are set out as follows –
 - (i) **Clauses 4, 5 and 6** provide for the definitions of some key terms, including responsible person, PIE, non-PIE, PIE auditor, non-PIE auditor, PIE engagement and non-PIE engagement;
 - (ii) **Clause 9** amends the FRCO to provide for the composition of the FRC under the new regime;
 - (iii) **Clauses 11 and 12** amend the FRCO to provide for the new functions and powers of the FRC under the new regime, including overseeing the performance by the HKICPA of the functions in relation to PIE auditors;
 - (iv) **Clause 23** introduces new provisions in the FRCO to provide for the registration and recognition of local auditors and overseas auditors (including Mainland auditors) respectively as PIE auditors under the new regime;
 - (v) **Clause 26** introduces new provisions in the FRCO to provide for the powers of the FRC in conducting recurring inspections on PIE auditors under the new regime;
 - (vi) **Clauses 31 and 32** provide for the circumstances under which an investigation may be carried out. Clause 35 amends the FRCO to update and modify the relevant provisions in relation to the FRC's investigation powers to

align them with the legislation of other financial regulatory regimes in Hong Kong;

- (vii) **Clause 48** introduces new provisions in the FRCO to provide for –
 - (A) the powers of the FRC in imposing disciplinary sanctions against PIE auditors and their responsible persons; and
 - (B) the set-up of an independent review and appeal mechanism regarding registration, recognition and disciplinary decisions under the new regime;
 - (viii) **Clause 62** introduces new provisions in the FRCO to stipulate that new levies will be imposed on securities transactions, PIEs and PIE auditors;
 - (ix) **Clause 75** introduces new provisions in the FRCO to provide for the transitional and savings provisions in the FRCO;
 - (x) **Clause 77** introduces a new Schedule 1A to prescribe what are PIE engagements and non-PIE engagements under the new regime;
 - (xi) **Clause 80** introduces new Schedules 3A and 3B to prescribe –
 - (A) the non-delegable functions of the FRC; and
 - (B) the level of fees payable for various matters under the FRCO;
 - (xii) **Clause 82** introduces a new Schedule 4A to provide for the composition and operation of the Tribunal; and
 - (xiii) **Clause 85** introduces a new Schedule 7 to prescribe the rate or amount of the levies payable to the FRC; and
- (c) **Part 3** contains the related and consequential amendments to other relevant items of legislation, including the PAO.

LEGISLATIVE TIMETABLE

30. The legislative timetable will be –

Publication in the Gazette 19 January 2018

First Reading and commencement of 24 January 2018
Second Reading debate in LegCo

Resumption of Second Reading debate, to be notified
committee stage and Third Reading

IMPLICATIONS OF THE PROPOSAL

C 31. The economic, financial and civil service implications of the Bill are set out in **Annex C**. The Bill is in conformity with the Basic Law, including the provisions concerning human rights. It has no other sustainability implications and no productivity, environmental, family, competition or gender implications. The amendments proposed in the Bill will not affect the current binding effect of FRCO.

PUBLIC CONSULTATION

32. We conducted a three-month public consultation from June to September 2014 to solicit views on the proposals to introduce an independent oversight regime for the regulation of PIE auditors. An overwhelming majority of the respondents were supportive of the objective and direction of the reform. The profession also supported the proposal that the new regime would not make any material change to the qualification and experience requirements for registration as a PIE auditor. We published the consultation conclusions in June 2015 and also reported the consultation conclusions to the LegCo Panel on Financial Affairs in July 2015.

33. Subsequent to the issue of the consultation conclusions, we have continued our engagement with the HKICPA and the FRC on the details of the new regulatory regime. The proposals set out in

paragraphs 9 to 28 above reflect the outcome of the engagement.

PUBLICITY

34. A press release will be issued on the gazettal of the Bill. A spokesman will be made available for answering media enquiries.

BACKGROUND

35. For years, the HKICPA has been responsible for regulating the audit profession through exercising a full range of regulatory powers provided for under the PAO. Since the collapse of Enron and WorldCom in the United States in 2001-02 due to major audit failure, there has been local and international pressure for Hong Kong to ensure that its auditor regulatory regime is effective and not subject to undue influence by the audit profession so as to enhance investor protection. Hong Kong took early steps in the mid-2000s to implement some reform measures, ahead of other comparable overseas jurisdictions. The PAO was amended in 2004 to introduce independent lay persons to the governing council of the HKICPA as well as its disciplinary process to provide an element of independence in its corporate governance and disciplinary mechanism. The FRCO was enacted in 2006 to establish the FRC to take over the investigation functions and powers of the HKICPA in respect of auditing and reporting irregularities in relation to listed entities to ensure independent investigations.

36. Many overseas jurisdictions with major capital markets have already established systems for independent oversight of their auditor regulatory regimes and joined the IFIAR as members. Not being a member of the IFIAR, Hong Kong auditors are in a disadvantaged position vis-à-vis their overseas counterparts as most of the overseas jurisdictions concerned require that their listed entities can only be audited by auditors regulated by IFIAR members.

ENQUIRIES

37. Enquiries relating to this Brief can be directed to Mr Billy AU, Principal Assistant Secretary for Financial Services and the Treasury

(Financial Services) at 2528-9016.

**Financial Services and the Treasury Bureau
17 January 2018**

Financial Reporting Council (Amendment) Bill 2018

Contents

| Clause | Page |
|--|------|
| Part 1 | |
| Preliminary | |
| 1. Short title and commencement | 1 |
| 2. Enactments amended | 1 |
| Part 2 | |
| Amendments to Financial Reporting Council Ordinance (Cap. 588) | |
| 3. Long title amended | 2 |
| 4. Section 2 amended (interpretation)..... | 2 |
| 5. Section 3 amended (listed entity)..... | 13 |
| 6. Section 3A added..... | 14 |
| 3A. Meaning of various types of auditors and engagements | 14 |
| 7. Section 4 amended (relevant irregularity)..... | 16 |
| 8. Section 6 amended (establishment of Financial Reporting Council) | 21 |
| 9. Section 7 substituted | 21 |
| 7. Composition of FRC..... | 22 |
| 10. Section 8 repealed (Chief Executive Officer)..... | 23 |

| Clause | Page |
|---|------|
| 11. Section 9 amended (functions of Council)..... | 23 |
| 12. Section 10 amended (powers of Council)..... | 25 |
| 13. Section 11 amended (delegations) | 27 |
| 14. Section 12 amended (assistance, etc. to specified authorities under certain circumstances) | 28 |
| 15. Section 13 amended (Council may issue guidelines)..... | 32 |
| 16. Section 14 amended (directions of Chief Executive)..... | 33 |
| 17. Section 15 amended (Council to furnish information)..... | 33 |
| 18. Section 16 amended (exemption from taxation)..... | 34 |
| 19. Section 17 substituted | 35 |
| 17. Financial years and estimates | 35 |
| 20. Section 18 amended (accounts) | 36 |
| 21. Section 19 amended (Director of Audit as auditor)..... | 36 |
| 22. Section 20 amended (reports and statement to be laid before Legislative Council) | 38 |
| 23. Part 3 added | 38 |
| Part 3 | |
| Registration and Recognition of PIE Auditors | |
| Division 1—Interpretation | |
| 20A. Interpretation | 39 |
| Division 2—Registered PIE Auditors | |

| Clause | Page |
|--|------|
| Subdivision 1—Prohibitions and Offences | |
| 20B. Prohibition on undertaking and carrying out PIE engagement..... | 40 |
| 20C. Prohibition on holding out as registered PIE auditor..... | 40 |
| 20D. Prohibition on carrying out activity as engagement partner..... | 40 |
| 20E. Prohibition on carrying out activity as engagement quality control reviewer..... | 40 |
| 20F. Offences..... | 41 |
| Subdivision 2—Registration | |
| 20G. Application | 41 |
| 20H. Decision on application | 42 |
| 20I. Notification of decision | 42 |
| 20J. Validity of registration..... | 43 |
| Subdivision 3—Renewal | |
| 20K. Application | 44 |
| 20L. Decision on application | 44 |
| 20M. Notification of decision | 45 |
| 20N. Current registration remains in force until decision on renewal takes effect..... | 45 |

| Clause | Page |
|---|------|
| 20O. Validity of renewed registration | 46 |
| Subdivision 4—Supplementary Registration and Renewal Provisions | |
| 20P. Applicant to provide information | 46 |
| 20Q. Determination of fit and proper | 46 |
| 20R. Offences to provide false or misleading information | 47 |
| Subdivision 5—Registration Conditions, Revocation and Suspension | |
| 20S. HKICPA Council may impose or amend conditions | 48 |
| 20T. Registration may be revoked or suspended on non-disciplinary grounds | 48 |
| Subdivision 6—Obligations of Registered PIE Auditors | |
| 20U. Registered PIE auditor must have registered responsible persons..... | 50 |
| 20V. Registered PIE auditor must not authorize unregistered persons to carry out activity | 51 |
| 20W. Registered PIE auditor must provide sufficient resources etc. | 51 |
| 20X. Failure to meet certain requirements after registration..... | 51 |

| Clause | Page |
|--|------|
| 20Y. Additional registered responsible persons | 52 |
| 20Z. Registered PIE auditor to notify changes in particulars | 53 |
| 20ZA. Registered PIE auditor to notify changes in registered responsible persons, partners and directors | 54 |
| Division 3—Recognized PIE Auditors | |
| Subdivision 1—Prohibitions and Offences | |
| 20ZB. Prohibition on undertaking and carrying out PIE engagement..... | 54 |
| 20ZC. Prohibition on holding out as recognized PIE auditor..... | 55 |
| 20ZD. Offences..... | 55 |
| Subdivision 2—Recognition | |
| 20ZE. Application | 55 |
| 20ZF. Decision on application | 56 |
| 20ZG. Notification of decision | 57 |
| 20ZH. Validity of approval-in-principle..... | 57 |
| 20ZI. Overseas auditors recognized as PIE auditors on undertaking PIE engagements | 58 |
| 20ZJ. Validity of recognition..... | 59 |
| Subdivision 3—Renewal | |

| Clause | Page |
|---|------|
| 20ZK. Application | 59 |
| 20ZL. Decision on application | 60 |
| 20ZM. Notification of decision | 60 |
| 20ZN. Current recognition remains in force until decision on renewal takes effect..... | 60 |
| 20ZO. Validity of renewed recognition | 61 |
| Subdivision 4—Supplementary Recognition and Renewal Provisions | |
| 20ZP. Applicant to provide information | 61 |
| 20ZQ. Offences to provide false or misleading information | 62 |
| Subdivision 5—Recognition Conditions, Revocation and Suspension | |
| 20ZR. FRC may impose or amend conditions..... | 63 |
| 20ZS. Recognition may be revoked or suspended on non-disciplinary grounds | 63 |
| Subdivision 6—Miscellaneous | |
| 20ZT. Recognition of Mainland auditors endorsed in accordance with mutual recognition agreement | 65 |
| 20ZU. Overseas entity to notify termination of appointment of recognized PIE auditors..... | 66 |
| 20ZV. Failure to meet certain requirements after | |

| Clause | Page |
|--------|---|
| | recognition..... 66 |
| 20ZW. | Recognized PIE auditor to notify changes in particulars 67 |
| | Division 4—Register of PIE Auditors |
| 20ZX. | HKICPA Registrar to establish and maintain register of PIE auditors 68 |
| 20ZY. | Inspection of PIE auditors register etc..... 69 |
| 24. | Headings before section 21 substituted..... 71 |
| | Part 3A |
| | Inspection and Investigation in relation to PIE Auditors, Non-PIE Auditors, etc. |
| | Division 1—Preliminary |
| 25. | Section 21 substituted 72 |
| 21. | Interpretation 72 |
| 26. | Part 3A, Division 2 added..... 72 |
| | Division 2—Inspection in relation to PIE Auditors |
| | Subdivision 1—Conduct of Inspection |
| 21A. | FRC may appoint inspectors..... 72 |
| 21B. | FRC may direct inspection to be carried out for ascertaining compliance 73 |
| 21C. | Powers of inspector 73 |

| Clause | Page |
|--------|---|
| 21D. | Inspector may require answer to be verified by statutory declaration 75 |
| 21E. | FRC may require information for determining frequency of inspection etc..... 75 |
| 21F. | Offences relating to sections 21C and 21D 76 |
| | Subdivision 2—Inspection Report |
| 21G. | Inspection report..... 78 |
| 21H. | FRC’s power to take follow-up action..... 79 |
| 27. | Part 3A, Division 3 and Subdivision 1 headings added..... 80 |
| | Division 3—Investigation in relation to PIE Auditors, Non-PIE Auditors, etc. |
| | Subdivision 1—Audit Investigation Board and Investigators |
| 28. | Section 22 amended (Audit Investigation Board)..... 80 |
| 29. | Section 22A added..... 81 |
| 22A. | FRC may appoint investigators 81 |
| 30. | Part 3A, Division 3, Subdivision 2 heading added 82 |
| | Subdivision 2—Conduct of Investigation |
| 31. | Section 23 substituted 82 |
| 23. | FRC may direct investigation to be carried out in relation to PIE auditors etc. 82 |
| 32. | Sections 23A and 23B added 83 |

| Clause | Page |
|--|------|
| 23A. FRC may direct investigation to be carried out in relation to non-PIE auditors..... | 83 |
| 23B. FRC may direct investigation to be suspended..... | 83 |
| 33. Section 24 amended (Council to notify certain bodies of powers under Divisions 2 and 3 being exercisable)..... | 84 |
| 34. Heading before section 25 repealed..... | 85 |
| 35. Sections 25 and 26 substituted..... | 85 |
| 25. Powers of investigator | 86 |
| 26. Investigator may require explanation etc. to be verified by statutory declaration | 87 |
| 36. Sections 27 and 28 repealed | 87 |
| 37. Heading before section 29 repealed..... | 87 |
| 38. Section 29 amended (investigator to consult before imposing certain requirements under Division 2)..... | 88 |
| 39. Section 30 amended (use of incriminating evidence in proceedings)..... | 88 |
| 40. Section 31 amended (offences relating to requirements under Division 2)..... | 90 |
| 41. Part 3A, Division 3, Subdivision 3 added..... | 93 |
| Subdivision 3—Findings of Investigation | |
| 31A. Investigation report..... | 94 |
| 31B. Action by FRC in relation to investigation..... | 96 |

| Clause | Page |
|--|------|
| 31C. Costs and expenses of investigation | 96 |
| 42. Part 3A, Division 4 heading added..... | 97 |
| Division 4—Supplementary Provisions Relating to Inspection and Investigation | |
| 43. Section 32 amended (Court of First Instance to inquire into failure to comply with requirements under Division 2)..... | 97 |
| 44. Section 33 amended (inspection of records or documents seized, etc.)..... | 98 |
| 45. Section 34 amended (magistrate's warrants)..... | 99 |
| 46. Heading after section 34 repealed..... | 101 |
| 47. Sections 35, 36 and 37 repealed..... | 101 |
| 48. Parts 3B and 3C added..... | 101 |
| Part 3B | |
| Disciplinary Matters Regarding PIE Auditors and Registered Responsible Persons | |
| Division 1—Misconduct | |
| 37A. Misconduct by PIE auditors..... | 102 |
| 37B. Misconduct by registered responsible persons | 102 |
| 37C. Whether act or omission likely to be prejudicial to interest of investing public etc..... | 103 |
| Division 2—Sanctions | |

| Clause | Page |
|---|------|
| 37D. Sanctions for misconduct by PIE auditors..... | 104 |
| 37E. Sanctions for misconduct by registered responsible persons..... | 105 |
| 37F. Other cases..... | 106 |
| 37G. FRC to inform sanctions imposed | 108 |
| 37H. Guidelines for exercise of power to impose pecuniary penalty..... | 109 |
| Division 3—Miscellaneous | |
| 37I. FRC’s power to take action in place of or in addition to imposing sanctions with consent | 109 |
| 37J. Pecuniary penalty order | 110 |
| 37K. Disclosure of sanctions etc. | 111 |
| 37L. FRC may have regard to any information or material when making decisions..... | 112 |
| Part 3C | |
| Reviews and Appeals Regarding Decisions on PIE Auditors etc. | |
| Division 1—Preliminary | |
| 37M. Interpretation | 113 |
| Division 2—Public Interest Entities Auditors Review Tribunal | |
| 37N. Establishment of Public Interest Entities Auditors Review Tribunal | 113 |

| Clause | Page |
|--|------|
| 37O. Jurisdiction of Tribunal | 114 |
| 37P. Establishment of additional tribunals | 114 |
| Division 3—Review of Specified Decisions | |
| 37Q. Application for review of specified decision | 114 |
| 37R. Extension of time for review application..... | 115 |
| 37S. Withdrawal of review application..... | 115 |
| 37T. Determination of review | 115 |
| 37U. Powers of Tribunal | 116 |
| 37V. Sittings of Tribunal to be held in public | 119 |
| 37W. Use of incriminating evidence given for purpose of review..... | 119 |
| 37X. Contempt dealt with by Tribunal..... | 120 |
| 37Y. Costs | 120 |
| 37Z. Determination and order of Tribunal | 121 |
| 37ZA. Form and proof of determination or order of Tribunal | 122 |
| 37ZB. Registration of determination or order of Tribunal | 122 |
| 37ZC. No other right of appeal..... | 123 |
| Division 4—Taking Effect of Specified Decisions and Stay of Execution of Determinations or Orders of Tribunal | |

| Clause | Page |
|---|------|
| 37ZD. Time when specified decision takes effect | 123 |
| 37ZE. Application for stay of execution of determination or order of Tribunal | 124 |
| Division 5—Appeals to Court of Appeal | |
| 37ZF. Party may appeal against Tribunal’s determination | 124 |
| 37ZG. Application for leave to appeal | 125 |
| 37ZH. Powers of Court of Appeal | 126 |
| 37ZI. No stay of execution of Tribunal’s determination on appeal | 126 |
| Division 6—Miscellaneous | |
| 37ZJ. Power of Chief Justice to make rules | 127 |
| 49. Section 38 amended (interpretation) | 128 |
| 50. Section 39 amended (Financial Reporting Review Panel) | 128 |
| 51. Section 40 amended (initiating enquiry concerning relevant non-compliance) | 129 |
| 52. Section 42 amended (Council to notify certain bodies of powers under Division 2 being exercisable) | 130 |
| 53. Section 43 amended (powers to require production of records and documents and provision of information and explanation) | 131 |
| 54. Section 44 amended (use of incriminating evidence in | |

| Clause | Page |
|--|------|
| proceedings) | 132 |
| 55. Section 45 amended (Court of First Instance to inquire into failure to comply with requirements under section 43) | 132 |
| 56. Section 46 amended (inspection of records or documents seized, etc.) | 133 |
| 57. Section 47 amended (enquiry reports) | 134 |
| 58. Section 48 amended (Council’s powers to close case, suspend enquiry and follow up, etc.) | 136 |
| 59. Part 4, Division 4 heading amended (Council’s powers to secure removal of relevant non-compliance) | 138 |
| 60. Section 49 amended (Council to give notice to operator of listed entities to secure removal of relevant non-compliance) | 138 |
| 61. Section 50 amended (Council may apply to Court of First Instance to secure removal of relevant non-compliance) | 139 |
| 62. Part 4A added | 140 |

Part 4A**Levies**

| | |
|--|-----|
| 50A. Levies payable by sellers and purchasers of securities | 140 |
| 50B. Levies payable by PIEs | 141 |
| 50C. Levies payable by PIE auditors | 142 |
| 50D. Reduction of levies | 142 |

| Clause | Page |
|---|------|
| 50E. Levies paid not refundable..... | 143 |
| 50F. FRC may recover levy as civil debt..... | 143 |
| 50G. FRC may authorize persons to inspect accounts etc. | 143 |
| 63. Section 51 amended (preservation of secrecy) | 143 |
| 64. Section 52 amended (protection of informers) | 147 |
| 65. Section 53 amended (avoidance of conflict of interests) | 149 |
| 66. Section 54 amended (immunity)..... | 153 |
| 67. Section 55 amended (immunity in respect of communication with Council by auditors of listed entities)..... | 154 |
| 68. Section 57 amended (production of information in information systems) | 155 |
| 69. Section 58 amended (lien claimed on records or documents)..... | 155 |
| 70. Section 59 amended (destruction of documents, etc.) | 156 |
| 71. Section 59A added..... | 156 |
| 59A. Reasonable excuse..... | 156 |
| 72. Section 60 amended (service of notice, etc.) | 157 |
| 73. Sections 60A to 60D added | 159 |
| 60A. Chief Executive in Council may make regulations | 159 |
| 60B. FRC may make regulations | 160 |

| Clause | Page |
|---|------|
| 60C. FRC must publish draft regulations | 162 |
| 60D. FRC may specify forms | 163 |
| 74. Section 61 amended (amendment of Schedules) | 163 |
| 75. Part 7 added | 164 |
| Part 7 | |
| Savings and Transitional Arrangements for Financial Reporting Council (Amendment) Ordinance 2018 | |
| Division 1—Interpretation | |
| 87. Interpretation | 164 |
| Division 2—Auditors Having Undertaken but Not Yet Completed PIE Engagements before 2018 Ordinance Commencement Date etc. | |
| 88. Practice units having undertaken but not yet completed PIE engagements before 2018 Ordinance commencement date..... | 165 |
| 89. Persons performing functions as responsible persons before 2018 Ordinance commencement date | 166 |
| 90. Overseas auditors having undertaken but not yet completed PIE engagements before 2018 Ordinance commencement date..... | 166 |
| 91. Information of registered PIE auditors (provisional) etc. to be entered in PIE auditors | |

| Clause | Page |
|--|------|
| register | 167 |
| Division 3—Investigations Initiated before 2018 Ordinance Commencement Date etc. | |
| 92. Investigations initiated before 2018 Ordinance commencement date | 167 |
| 93. Investigations may be initiated in relation to audits etc. completed before 2018 Ordinance commencement date | 168 |
| 76. Schedule 1 amended (definitions of <i>relevant financial report</i> and <i>relevant requirement</i>)..... | 168 |
| 77. Schedule 1A added | 169 |
| Schedule 1A PIE Engagements and Non-PIE Engagements | 169 |
| 78. Schedule 2 substituted | 171 |
| Schedule 2 Financial Reporting Council | 171 |
| 79. Schedule 3 repealed (provisions relating to Chief Executive Officer of Council) | 182 |
| 80. Schedules 3A and 3B added | 182 |
| Schedule 3A Non-delegable Functions of FRC..... | 182 |
| Schedule 3B Fees | 184 |
| 81. Schedule 4 amended (provisions relating to Investigation Board and its members)..... | 185 |

| Clause | Page |
|---|------|
| 82. Schedule 4A added | 188 |
| Schedule 4A Provisions Relating to Tribunal..... | 189 |
| 83. Schedule 5 amended (provisions relating to Review Panel and its members)..... | 197 |
| 84. Schedule 6 amended (provisions relating to Review Committee and its members)..... | 199 |
| 85. Schedule 7 added | 203 |
| Schedule 7 Calculation of Levies | 203 |

Part 3

Related and Consequential Amendments

Division 1—Amendments to Professional Accountants Ordinance (Cap. 50)

| | |
|--|-----|
| 86. Section 32B amended (Council’s powers under this Part) | 206 |
| 87. Section 32BA added | 206 |
| 32BA. Practice reviews not to be carried out or continued in relation to PIE engagements | 206 |
| 88. Section 34 amended (disciplinary provisions)..... | 207 |
| 89. Section 42CA amended (referral of matter to FRC)..... | 207 |

Division 2—Amendment to Resolution of the Legislative Council Establishing Companies Registry Trading Fund (Cap. 430 sub. leg. B)

| | |
|--|-----|
| 90. Schedule 1 amended (services to be provided by the trading fund) | 209 |
|--|-----|

A BILL

To

Amend the Financial Reporting Council Ordinance to enhance the independence of the regulatory regime for auditors of listed entities; to regulate those auditors through registration, recognition, inspection, investigation and disciplinary sanction; to provide for a review and appeal mechanism regarding decisions made against those auditors; to provide for the new composition and functions of the Financial Reporting Council; to provide for the levies payable to the Council; and to provide for transitional and related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Financial Reporting Council (Amendment) Ordinance 2018.
- (2) This Ordinance comes into operation on 1 August 2019.

2. Enactments amended

The enactments specified in Parts 2 and 3 are amended as set out in those Parts.

Part 2

Amendments to Financial Reporting Council Ordinance (Cap. 588)

3. Long title amended

The long title—

Repeal

everything after “An Ordinance”

Substitute

“to establish a Financial Reporting Council acting in the public interest as an independent oversight body of auditors of listed entities; to regulate those auditors through registration, recognition, inspection, investigation and disciplinary sanction; to provide for a review and appeal mechanism regarding decisions made against those auditors; to provide for enquiries into non-compliances with regulatory requirements for financial reports of listed entities; to provide for the levies payable to the Council; and to provide for related matters.”.

4. Section 2 amended (interpretation)

- (1) Section 2(1), definition of *listing document*, paragraph (a), after “listed corporation”—

Add

“or a corporation seeking to be listed”.

- (2) Section 2(1), definition of *listing document*, paragraph (b), after “investment scheme”—

Add

- “or a collective investment scheme seeking to be listed”.
- (3) Section 2(1), definition of *manager*, before “listed”—
Add
“collective investment scheme or”.
- (4) Section 2(1), English text, definition of *public officer*, paragraph (b)(i)—
Repeal
“chairman”
Substitute
“chairperson”.
- (5) Section 2(1), definition of *related person*—
Repeal
“Council” (wherever appearing)
Substitute
“FRC”.
- (6) Section 2(1), definition of *relevant undertaking*, paragraphs (a)(ii)(A) and (b)(i)—
Repeal
“to be issued”
Substitute
“to have been issued”.
- (7) Section 2(1)—
Repeal the definition of responsible person
Substitute
“*responsible person* (負責人)—
(a) in relation to a collective investment scheme or listed collective investment scheme, means—

- (i) the manager of the scheme; or
(ii) the person appointed as the trustee, or custodian, of the property of the scheme; or
- (b) in relation to a practice unit or registered PIE auditor, means—
(i) an engagement partner of the unit or auditor;
(ii) an engagement quality control reviewer of the unit or auditor; or
(iii) a quality control system responsible person of the unit or auditor;”.
- (8) Section 2(1), definition of *shadow director*—
Repeal
everything after “but a person” and before “in a professional”
Substitute
“is not to be regarded as a shadow director only because the directors act on advice given by the person”.
- (9) Section 2(1), definition of *specified report*, paragraph (a), after “listed corporation”—
Add
“or a corporation seeking to be listed”.
- (10) Section 2(1), definition of *specified report*, paragraph (b)—
Repeal
“listed entity,”
Substitute
“listed corporation or listed collective investment scheme, or a corporation or collective investment scheme seeking to be listed,”.

- (11) Section 2(1), definition of *specified report*, paragraph (b)(i) and (ii)—

Repeal

“entity”

Substitute

“corporation or scheme”.

- (12) Section 2(1)—

- (a) definition of *appointed member*;
- (b) definition of *associated undertaking*;
- (c) definition of *audit working paper*;
- (d) definition of *auditor*;
- (e) definition of *Council*;
- (f) definition of *lay person*;
- (g) definition of *relevant time*;
- (h) definition of *reporting accountant*;
- (i) definition of *Secretary*—

Repeal the definitions.

- (13) Section 2(1)—

- (a) before the definition of *audit*—

Add

“*2018 Amending Ordinance* (《2018 年修訂條例》) means the Financial Reporting Council (Amendment) Ordinance 2018 (of 2018);

2018 Ordinance commencement date (《2018 年條例》生效日期) means the day on which the 2018 Amending Ordinance comes into operation;”;

- (b) **Add in alphabetical order**

“*certified public accountant* (會計師) has the meaning given by section 2(1) of the Professional Accountants Ordinance (Cap. 50);

certified public accountant (practising) (執業會計師) has the meaning given by section 2(1) of the Professional Accountants Ordinance (Cap. 50);

complete (完成)—see section 3A(3);

corporate practice (執業法團) has the meaning given by section 2(1) of the Professional Accountants Ordinance (Cap. 50);

decision authority (作決定當局)—

- (a) in relation to a decision referred to in paragraph (a) of the definition of *specified decision*—means the HKICPA Council; or
- (b) in relation to a decision referred to in paragraph (b) of the definition of *specified decision*—means the FRC;

engagement partner (項目合夥人), in relation to a practice unit or registered PIE auditor, means a partner or other person authorized by the unit or auditor to be responsible for the PIE engagements carried out by the unit or auditor;

engagement quality control review (項目質素監控審視), in relation to a practice unit or registered PIE auditor, means a process designed by the unit or auditor to provide an objective evaluation of any significant judgement made and conclusion reached in formulating the reports of the PIE engagements carried out by the unit or auditor;

engagement quality control reviewer (項目質素監控審視員), in relation to a practice unit or registered

- PIE auditor, means a person authorized by the unit or auditor to oversee the engagement quality control reviews carried out in relation to the PIE engagements carried out by the unit or auditor;
- FRC** (財匯局) means the Financial Reporting Council established by section 6(1);
- HKICPA Council** (公會理事會) means the Council of the HKICPA established by section 10(1) of the Professional Accountants Ordinance (Cap. 50);
- HKICPA Registrar** (公會註冊主任) means the Registrar appointed under section 21 of the Professional Accountants Ordinance (Cap. 50);
- inspector** (查察員) means a person appointed as an inspector under section 21A;
- investigator** (調查員) means—
- (a) the Investigation Board; or
 - (b) a person appointed as an investigator under section 22A;
- list of registered responsible persons** (註冊負責人名單), in relation to a registered PIE auditor, means the list of registered responsible persons of the auditor, as recorded in the PIE auditors register;
- listed collective investment scheme** (上市集體投資計劃)—see section 3;
- listed corporation** (上市法團)—see section 3;
- listed corporation (equity)** (上市股權法團)—see section 3;
- listed entity** (上市實體)—see section 3;
- misconduct** (失當行為)—
- (a) for a PIE auditor—see section 37A; or

- (b) for a registered responsible person of a registered PIE auditor—see section 37B;
- non-PIE** (非公眾利益實體)—see section 3;
- non-PIE auditor** (非公眾利益實體核數師)—see section 3A;
- non-PIE engagement** (非公眾利益實體項目)—see section 3A;
- non-practitioner** (非執業人士) means an individual who is not, and has not at any time within the previous 3 years been—
- (a) a certified public accountant (practising); or
 - (b) a partner, director, agent or employee of a practice unit;
- overseas entity** (境外實體) means—
- (a) a collective investment scheme constituted under the laws of any place outside Hong Kong; or
 - (b) a body corporate incorporated outside Hong Kong,
- whether or not the scheme or body is a listed entity;
- party** (一方), in relation to a review of a specified decision, means—
- (a) the person who applies for the review; or
 - (b) the decision authority that makes the decision;
- PIE**—see section 3;
- PIE auditor** (公眾利益實體核數師)—see section 3A;
- PIE auditors register** (公眾利益實體核數師註冊紀錄冊) means the register of PIE auditors established under section 20ZX;

PIE engagement (公眾利益實體項目)—see section 3A;

practice unit (執業單位) has the meaning given by section 2(1) of the Professional Accountants Ordinance (Cap. 50);

professional standard (專業標準) means—

- (a) any statement of professional ethics, or standard of accounting, auditing or assurance practices, issued or specified, or deemed to have been issued or specified, under section 18A of the Professional Accountants Ordinance (Cap. 50);
- (b) any standard on professional ethics, or accounting, auditing or assurance practices, issued or specified by—
 - (i) the International Accounting Standards Board;
 - (ii) the International Auditing and Assurance Standards Board; or
 - (iii) the International Ethics Standards Board for Accountants;
- (c) any standard on professional ethics, or accounting, auditing or assurance practices, specified in the Listing Rules; or
- (d) any standard on professional ethics, or accounting, auditing or assurance practices, comparable to that referred to in paragraph (a) or (b) which is allowed—
 - (i) by the Securities and Futures Commission pursuant to the relevant code; or

- (ii) by the HKEC pursuant to the Listing Rules;

public interest entity (公眾利益實體)—see section 3;

quality control system (質素監控制度), in relation to a practice unit or registered PIE auditor, means the policies and procedures established and maintained by the unit or auditor to ensure that a PIE engagement carried out by the unit or auditor complies with the applicable professional standards and legal and regulatory requirements;

quality control system responsible person (質素監控制度負責人), in relation to a practice unit or registered PIE auditor, means a person authorized by the unit or auditor to be responsible for the quality control system of the unit or auditor;

recognition application (認可申請) means an application made under section 20ZE;

recognized exchange company (認可交易所) means a company recognized as an exchange company under section 19(2) of the Securities and Futures Ordinance (Cap. 571);

recognized PIE auditor (認可公眾利益實體核數師)—see section 3A;

recognized PIE auditor (provisional) (臨時認可公眾利益實體核數師)—see section 3A;

recognized stock market (認可證券市場) means a stock market operated by a recognized exchange company;

registered PIE auditor (註冊公眾利益實體核數師)—see section 3A;

registered PIE auditor (provisional) (臨時註冊公眾利益實體核數師)—see section 3A;

registered responsible person (註冊負責人), in relation to a registered PIE auditor, means an individual whose name is recorded in the PIE auditors register as a responsible person of the auditor;

registration application (註冊申請) means an application made under section 20G;

renewal application (recognition) (認可續期申請) means an application made under section 20ZK;

renewal application (registration) (註冊續期申請) means an application made under section 20K;

review (覆核) means a review of a specified decision under Division 3 of Part 3C;

review application (覆核申請) means an application made under section 37Q;

specified decision (指明決定) means—

- (a) a decision by the HKICPA Council—
 - (i) to refuse a registration application under section 20H;
 - (ii) to refuse a renewal application (registration) under section 20L;
 - (iii) to impose or amend a condition in relation to the registration of a PIE auditor under section 20S;
 - (iv) to revoke or suspend the registration of a PIE auditor under section 20T or 20X; or
 - (v) to refuse to add the name of a person to the list of registered responsible persons

of a registered PIE auditor under section 20Y; or

- (b) a decision by the FRC—
 - (i) to refuse a recognition application under section 20ZF;
 - (ii) to refuse a renewal application (recognition) under section 20ZL;
 - (iii) to impose or amend a condition in relation to the recognition of a PIE auditor under section 20ZR;
 - (iv) to revoke or suspend the recognition of a PIE auditor under section 20ZS or 20ZV;
 - (v) to revoke the recognition of a Mainland auditor under section 20ZT(5); or
 - (vi) to impose a sanction under section 37D, 37E or 37F;

transitional period (過渡期) means the period—

- (a) beginning on the 2018 Ordinance commencement date; and
- (b) ending on 31 December 2019;

Tribunal (審裁處) means the Public Interest Entities Auditors Review Tribunal established under section 37N(1);

undertake (承擔)—see section 3A(2);”.

(14) After section 2(3)—

Add

“(4) For the purposes of this Ordinance, a person is given a reasonable opportunity of being heard if the person is

given an opportunity to make written or oral representations.”.

5. Section 3 amended (listed entity)

- (1) Section 3, heading—

Repeal

“Listed entity”

Substitute

“Meaning of *listed entity*, *PIE*, etc.”.

- (2) Section 3(1), definition of *listed collective investment scheme*—

Repeal

everything after “that is or”

Substitute

“was listed;”.

- (3) Section 3(1), definition of *listed corporation*—

Repeal

everything after “that is or”

Substitute

“was listed;”.

- (4) Section 3(1)—

Repeal the definition of *listed entity*

Substitute

“*listed entity* (上市實體) means—

- (a) a listed corporation; or
- (b) a listed collective investment scheme;”.

- (5) Section 3(1)—

Add in alphabetical order

“*listed corporation (equity)* (上市股權法團) means a listed corporation the listed securities of which comprise at least shares or stocks;

non-PIE (非公眾利益實體) means a listed corporation that is not a listed corporation (equity);

PIE means a public interest entity;

public interest entity (公眾利益實體) means—

- (a) a listed corporation (equity); or
- (b) a listed collective investment scheme.”.

- (6) Section 3(5), definition of *dealing*, paragraph (b)(ii)—

Repeal the semicolon

Substitute a full stop.

- (7) Section 3(5)—

Repeal the definition of *recognized stock market*.

6. Section 3A added

After section 3—

Add

“3A. Meaning of various types of auditors and engagements

- (1) In this Ordinance—

non-PIE auditor (非公眾利益實體核數師) means a practice unit that undertakes or carries out a non-PIE engagement;

non-PIE engagement (非公眾利益實體項目) means an engagement specified in Part 2 of Schedule 1A;

PIE auditor (公眾利益實體核數師) means—

- (a) a registered PIE auditor; or
- (b) a recognized PIE auditor;

PIE engagement (公眾利益實體項目) means an engagement specified in Part 1 of Schedule 1A;

recognized PIE auditor (認可公眾利益實體核數師) means—

- (a) an overseas auditor recognized under Division 3 of Part 3, including a Mainland auditor recognized under section 20ZT; or
- (b) a recognized PIE auditor (provisional);

recognized PIE auditor (provisional) (臨時認可公眾利益實體核數師) means an overseas auditor taken to be a recognized PIE auditor under section 90(3);

registered PIE auditor (註冊公眾利益實體核數師) means—

- (a) a practice unit registered under Division 2 of Part 3; or
- (b) a registered PIE auditor (provisional);

registered PIE auditor (provisional) (臨時註冊公眾利益實體核數師) means a practice unit taken to be a registered PIE auditor under section 88(3).

- (2) For the purposes of this Ordinance, a person undertakes a PIE engagement or non-PIE engagement when the person accepts the appointment for carrying out the engagement.
- (3) For the purposes of this Ordinance, a PIE engagement or non-PIE engagement is completed when—
 - (a) if the engagement is for the preparation of an auditor's report referred to in item 1(a)(i) of Part 1, or item 1(a) of Part 2, of Schedule 1A, the report is

sent under section 430 of the Companies Ordinance (Cap. 622);

- (b) if the engagement is for the preparation of an auditor's report referred to in item 1(a)(ii) or (b) of Part 1, or item 1(b) of Part 2, of Schedule 1A, the report is issued for the purposes of the relevant code or the Listing Rules, as the case requires;
- (c) if the engagement is for the preparation of a specified report referred to in item 2 of Part 1, or item 2 of Part 2, of Schedule 1A, the listing document in which the report is included is issued for the purposes of the Listing Rules; or
- (d) if the engagement is for the preparation of an accountant's report referred to in item 3 of Part 1 of Schedule 1A, the circular in which the report is included is issued for the purposes of the Listing Rules.

- (4) Nothing in this Ordinance prevents a registered PIE auditor from undertaking or carrying out a non-PIE engagement.”.

7. Section 4 amended (relevant irregularity)

- (1) Section 4, heading—

Repeal

“Relevant irregularity”

Substitute

“Practice irregularity by PIE auditors, non-PIE auditors, etc.”.

- (2) Section 4—

Repeal subsections (1) and (2).

- (3) Section 4—
Renumber subsections (3), (4), (5), (6), (7) and (8) as subsections (1), (2), (3), (4), (5) and (6) respectively.
- (4) Section 4(1)—
Repeal everything before paragraph (a)
Substitute
“(1) For the purposes of this Ordinance, a PIE auditor or non-PIE auditor has committed a practice irregularity if, in relation to a PIE engagement or non-PIE engagement completed on or after the 2018 Ordinance commencement date, the auditor—”.
- (5) Section 4(1)(b)—
Repeal
“he knew”
Substitute
“the auditor knew”.
- (6) Section 4(1)(c)—
Repeal
“his profession”
Substitute
“the auditor’s profession”.
- (7) Section 4(1)—
Repeal paragraph (e)
Substitute
“(e) did or omitted to do something that would reasonably be regarded as bringing or likely to bring discredit on the auditor, the HKICPA or the accountancy profession.”.
- (8) Section 4(2)—

Repeal everything before paragraph (a)**Substitute**

- “(2) Without prejudice to subsection (1), where the PIE auditor or non-PIE auditor is a corporate practice, the auditor has also committed a practice irregularity if, in relation to a PIE engagement or non-PIE engagement completed on or after the 2018 Ordinance commencement date—”.
- (9) Section 4(2)(a)—
Repeal
“or reporting accountant”.
- (10) Section 4(2)(a)(iii)—
Repeal
“name that then appeared in relation to the practice in the CPA register”
Substitute
“practice name”.
- (11) Section 4(2)(b)—
Repeal
“or reporting accountant” (wherever appearing).
- (12) Section 4(2)(b)(i)—
Repeal
“in Part II of the CPA register; or”
Substitute
“in—
(A) for a PIE auditor—the PIE auditors register; or
(B) for a non-PIE auditor—Part II of the CPA register; or”.

(13) Section 4(3)—

Repeal everything before paragraph (a)

Substitute

“(3) Without prejudice to subsection (1), where the PIE auditor or non-PIE auditor is a certified public accountant (practising), the auditor has also committed a practice irregularity if, in relation to a PIE engagement or non-PIE engagement completed on or after the 2018 Ordinance commencement date, the auditor—”.

(14) Section 4(4)—

Repeal everything before paragraph (a)

Substitute

“(4) Without prejudice to subsection (1), where the PIE auditor or non-PIE auditor is a firm of certified public accountants (practising), the auditor has also committed a practice irregularity if, in relation to a PIE engagement or non-PIE engagement completed on or after the 2018 Ordinance commencement date, the auditor—”.

(15) Section 4(4)(c)—

Repeal

“name that then appeared in relation to the firm in the CPA register”

Substitute

“practice name”.

(16) Section 4—

Repeal subsections (5) and (6)

Substitute

“(5) For the purposes of this Ordinance, a registered responsible person of a registered PIE auditor has

committed a practice irregularity if, in relation to a PIE engagement completed by the auditor on or after the 2018 Ordinance commencement date, the person—

- (a) falsified or caused to be falsified a document;
- (b) made a statement, in relation to a document, that was material and that the person knew to be false or did not believe to be true;
- (c) has been negligent in the conduct of the person’s profession;
- (d) has been guilty of professional misconduct;
- (e) did or omitted to do something that would reasonably be regarded as bringing or likely to bring discredit on the person, the HKICPA or the accountancy profession;
- (f) failed or neglected to observe, maintain or otherwise apply a professional standard; or
- (g) refused or neglected to comply with the provisions of any bylaw or rule made, or any direction lawfully given, by the HKICPA Council.

(6) In this section—

CPA register (會計師註冊紀錄冊) means the register of certified public accountants kept under section 22 of the Professional Accountants Ordinance (Cap. 50);

practice name (執業名稱)—

- (a) for a PIE auditor—means the name in which the auditor is registered in the PIE auditors register; or
- (b) for a non-PIE auditor—means the name in which the auditor is registered in the CPA register;

professional indemnity insurance (專業彌償保險) has the meaning given by section 2(1) of the Professional Accountants Ordinance (Cap. 50).”.

8. Section 6 amended (establishment of Financial Reporting Council)

(1) Section 6(2)—

Repeal

“Council”

Substitute

“FRC”.

(2) Section 6(2)(b), English text—

Repeal

“shall”

Substitute

“must”.

(3) Section 6(3)—

Repeal

“Council”

Substitute

“FRC”.

9. Section 7 substituted

Section 7—

Repeal the section

Substitute

“7. Composition of FRC

(1) The FRC is to consist of the following members—

- (a) a chairperson, who is a non-executive director of the FRC and a non-practitioner;
- (b) a chief executive officer, who is an executive director of the FRC; and
- (c) at least 7 other members, who are either executive or non-executive directors of the FRC.

(2) All members of the FRC must be appointed by the Chief Executive.

(3) Among the members of the FRC—

- (a) the number of non-practitioners must exceed the number of practitioners; and
- (b) the number of non-executive directors must exceed the number of executive directors.

(4) Among the members of the FRC—

- (a) at least 2 must be appointed from among persons who appear to the Chief Executive to be suitable for appointment, because of their knowledge and experience in PIE engagements; and
- (b) the others must be appointed from among persons who appear to the Chief Executive to be suitable for appointment, because of—
 - (i) their knowledge in accounting, auditing, finance, banking, law, administration or management; or
 - (ii) their professional or occupational experience.

(5) A public officer is not eligible for appointment as a member of the FRC.

- (6) The Chief Executive must publish in the Gazette a notice of each appointment under subsection (2).
- (7) The FRC may perform any of its functions, and its proceedings are valid, despite—
- a vacancy in its membership;
 - a defect in the appointment or qualification of a person purporting to be its member;
 - a defect in its composition under subsection (3); or
 - a minor irregularity in the convening of any of its meetings.
- (8) If any requirement under this section is not complied with, the Chief Executive must as soon as practicable take the necessary action to ensure that the requirement is complied with.
- (9) Schedule 2 has effect with respect to the FRC and its members.”.

10. Section 8 repealed (Chief Executive Officer)

Section 8—

Repeal the section.**11. Section 9 amended (functions of Council)**

(1) Section 9, heading—

Repeal**“Council”****Substitute****“FRC”.**

(2) Section 9—

Repeal**“Council”** (wherever appearing)**Substitute****“FRC”.**

(3) Section 9—

Repeal paragraphs (a), (b) and (c)**Substitute**

- “(a) to regulate auditors of listed entities through a registration and recognition mechanism, and through inspection, investigation and disciplinary sanction;
- (b) to oversee the HKICPA’s performance of the following functions—
- dealing with applications and other matters relating to the registration of PIE auditors;
 - establishing and maintaining the PIE auditors register;
 - setting continuing professional development requirements for registered PIE auditors; and
 - setting standards on professional ethics, and accounting, auditing and assurance practices, for registered PIE auditors;
- (c) to monitor, through enquiries, the compliance by listed entities of regulatory requirements for financial reports;”.

(4) Section 9(d), before “investigations”—

Add**“inspections;”.**

(5) Section 9(f)—

Repeal subparagraphs (i) and (ii)

Substitute

- “(i) any misconduct by a PIE auditor or registered responsible person of a registered PIE auditor;
- (ii) the undertaking or carrying out of any PIE engagement or non-PIE engagement; or
- (iii) any relevant non-compliance in relation to a listed entity;”.

(6) Section 9(g)—

Repeal

“investigation or enquiry into, or dealing with,”

Substitute

“request for assistance in dealing with”.

(7) Section 9(g)—

Repeal subparagraphs (i) and (ii)**Substitute**

- “(i) any misconduct by a PIE auditor or registered responsible person of a registered PIE auditor;
- (ii) the undertaking or carrying out of any PIE engagement or non-PIE engagement; or
- (iii) any relevant non-compliance in relation to a listed entity; and”.

12. Section 10 amended (powers of Council)

(1) Section 10, heading—

Repeal

“Council”

Substitute

“FRC”.

(2) Section 10(1)—

Repeal

“Council”

Substitute

“FRC”.

(3) After section 10(1)—

Add

“(1A) Without prejudice to subsection (1), the FRC may, for performing its function under section 9(b)—

- (a) request the HKICPA to provide information and periodic reports on the HKICPA’s performance of a specified function;
- (b) conduct assessment on the HKICPA’s performance of a specified function; and
- (c) if satisfied that it is in the public interest to do so, give written directions to the HKICPA on the performance of a specified function.

(1B) The HKICPA must comply with any direction given under subsection (1A)(c).”.

(4) Section 10(2)—

Repeal

“the generality of subsection (1)”

Substitute

“subsections (1) and (1A)”.

(5) Section 10(2)—

Repeal

“Council” (wherever appearing)

Substitute

“FRC”.

- (6) Section 10(2)(e)—

Repeal

“Secretary”

Substitute

“Secretary for Financial Services and the Treasury”.

- (7) Section 10(2)(h), Chinese text—

Repeal

“刊登、發表”

Substitute

“發布”.

- (8) After section 10(2)—

Add

“(3) In this section—

specified function (指明職能) means a function of the HKICPA mentioned in section 9(b).”.

13. Section 11 amended (delegations)

- (1) Section 11(1)—

Repeal

“Council” (wherever appearing)

Substitute

“FRC”.

- (2) Section 11(1)(c)—

Repeal

“his name or to the office held by him”

Substitute

“the employee’s name or to the office held by the employee”.

- (3) Section 11—

Repeal subsection (2)

Substitute

“(2) The FRC must not delegate any of its functions specified in Schedule 3A.”.

- (4) Section 11(3), (4) and (5)—

Repeal

“Council”

Substitute

“FRC”.

- (5) Section 11(6), English text—

Repeal

“he”

Substitute

“the person”.

- (6) Section 11(7)—

Repeal

“Council” (wherever appearing)

Substitute

“FRC”.

14. Section 12 amended (assistance, etc. to specified authorities under certain circumstances)

- (1) Section 12(1)—

Repeal

“Council”

Substitute

“FRC”.

- (2) Section 12(1)(a)—

Repeal subparagraphs (i) and (ii)**Substitute**

- “(i) any misconduct by a PIE auditor or registered responsible person of a registered PIE auditor;
- (ii) the undertaking or carrying out of any PIE engagement or non-PIE engagement; or
- (iii) any relevant non-compliance in relation to a listed entity; and”.

- (3) Section 12(1)(b)—

Repeal

“investigation or enquiry into, or dealing with,”

Substitute

“request for assistance in dealing with”.

- (4) Section 12(1)(b)—

Repeal subparagraphs (i) and (ii)**Substitute**

- “(i) any misconduct by a PIE auditor or registered responsible person of a registered PIE auditor;
 - (ii) the undertaking or carrying out of any PIE engagement or non-PIE engagement; or
 - (iii) any relevant non-compliance in relation to a listed entity.”.
- (5) Section 12(3)—
- Repeal**

“Council shall”

Substitute

“FRC must”.

- (6) Section 12(3)(a)—

Repeal

“Council”

Substitute

“FRC”.

- (7) Section 12(4)—

Repeal

“Council shall”

Substitute

“FRC must”.

- (8) Section 12(4)(a)(i)—

Repeal

“Council”

Substitute

“FRC”.

- (9) Section 12(5)—

Repeal

“Council shall”

Substitute

“FRC must”.

- (10) Section 12(6)—

Repeal

“Council has”

Substitute

“FRC has”.

- (11) Section 12(6)—

Repeal

“Council shall”

Substitute

“FRC must”.

- (12) Section 12(7)(a)—

Repeal subparagraphs (i) and (ii)**Substitute**

“(i) to give any explanation or further particulars, or to answer a question, under section 25; or

(ii) to give any information or explanation under section 43(1); and”.

- (13) Section 12(7)(a)—

Repeal subparagraphs (iii) and (iv).

- (14) Section 12(7)(b)—

Repeal

“statement, or the answer or response,”

Substitute

“answer”.

- (15) Section 12(7)(b)—

Repeal

“or information, or making the statement, or giving the answer or response,”

Substitute

“, information or answer,”.

- (16) Section 12(7)—

Repeal

“Council shall”

Substitute

“FRC must”.

- (17) Section 12(7)—

Repeal

“, information or statement, or the question and the answer or response”

Substitute

“or information, or the question and answer”.

15. Section 13 amended (Council may issue guidelines)

- (1) Section 13, heading—

Repeal

“Council”

Substitute

“FRC”.

- (2) Section 13(1)—

Repeal

“Council”

Substitute

“FRC”.

- (3) Section 13(2)—

Repeal

“Council shall”

Substitute

“FRC must”.

- (4) Section 13(3)—

Repeal

“Council”

Substitute

“FRC”.

- (5) Section 13(4), Chinese text—

Repeal

“他”.

16. Section 14 amended (directions of Chief Executive)

- (1) Section 14—

Repeal subsection (1)

Substitute

“(1) After consultation with the chairperson of the FRC, the Chief Executive may, if satisfied that it is in the public interest to do so, give the FRC written directions the Chief Executive considers appropriate on the performance of any of the FRC’s functions.”.

- (2) Section 14(2) and (3)—

Repeal

“Council shall”

Substitute

“FRC must”.

17. Section 15 amended (Council to furnish information)

- (1) Section 15, heading—

Repeal

“Council”

Substitute

“FRC”.

- (2) Section 15—

Repeal

“Secretary, the Council shall furnish to him”

Substitute

“Secretary for Financial Services and the Treasury, the FRC must furnish to the Secretary”.

- (3) Section 15(a), English text—

Repeal

“he”

Substitute

“the Secretary”.

- (4) Section 15(a)—

Repeal

“Council is”

Substitute

“FRC is”.

- (5) Section 15(a), English text—

Repeal

“Council’s”

Substitute

“FRC’s”.

18. Section 16 amended (exemption from taxation)

Section 16—

Repeal

“Council”

Substitute

“FRC”.

19. Section 17 substituted

Section 17—

Repeal the section**Substitute****“17. Financial years and estimates**

- (1) Subject to subsection (2), the financial year of the FRC begins on 1 April of each calendar year.
- (2) The first financial year of the FRC after the commencement of the 2018 Amending Ordinance (*first financial year*)—
 - (a) begins on the 2018 Ordinance commencement date; and
 - (b) ends on 31 March 2021.
- (3) The FRC must submit, for approval by the Financial Secretary, the estimates of its income and expenditure—
 - (a) for the first financial year—as soon as practicable after the 2018 Ordinance commencement date;
 - (b) for the financial year after the first financial year—before 31 December 2020; or
 - (c) for any other financial year—before 31 December of the preceding financial year.”.

20. Section 18 amended (accounts)

- (1) Section 18(1)—

Repeal

“Council shall”

Substitute

“FRC must”.

- (2) Section 18(2)—

Repeal

everything after “each financial year of the” and before “that—”

Substitute

“FRC, the FRC must cause to be prepared for the financial year a statement of accounts of the FRC”.

- (3) Section 18(2)(a)(i) and (ii)—

Repeal

“Council”

Substitute

“FRC”.

- (4) Section 18(2)(b)—

Repeal

“Chairman, and the Chief Executive Officer, of the Council”

Substitute

“chairperson, and the chief executive officer, of the FRC”.

21. Section 19 amended (Director of Audit as auditor)

- (1) Section 19(1)—

Repeal

“shall make a report to the Council”

Substitute

“must make a report to the FRC”.

- (2) Section 19(2)—

Repeal

“his opinion”

Substitute

“the Director’s opinion”.

- (3) Section 19(3)—

Repeal

“Council” (wherever appearing)

Substitute

“FRC”.

- (4) Section 19(3)—

Repeal

“he considers necessary to perform his”

Substitute

“the Director considers necessary to perform the Director’s”.

- (5) Section 19(4)—

Repeal

“he considers necessary to perform his”

Substitute

“the Director considers necessary to perform the Director’s”.

- (6) Section 19(4)—

Repeal

“Council”

Substitute

“FRC”.

22. **Section 20 amended (reports and statement to be laid before Legislative Council)**

- (1) Section 20(1)—

Repeal

“Council, the Council shall submit to the Secretary”

Substitute

“FRC, the FRC must submit to the Financial Secretary”.

- (2) Section 20(1)(a)—

Repeal

“Council”

Substitute

“FRC”.

- (3) Section 20(2)—

Repeal

“Secretary shall cause the reports and statement received by him”

Substitute

“Financial Secretary must cause the documents received”.

23. **Part 3 added**

After Part 2—

Add

“Part 3**Registration and Recognition of PIE Auditors****Division 1—Interpretation****20A. Interpretation**

In this Part—

chief executive officer (行政總裁), in relation to a practice unit, means the person (by whatever name called) who is responsible (whether alone or jointly with others) for implementing the general strategy and general management of the business of the unit;

Mainland corporation (內地法團) means a company or body corporate incorporated in the Mainland of China;

managing board of partners (合夥人管理會), in relation to a practice unit, means a group of partners forming a board (by whatever name called) which is responsible for implementing the general strategy and general management of the business of the unit;

registered engagement partner (註冊項目合夥人), in relation to a registered PIE auditor, means an individual whose name is recorded in the PIE auditors register as an engagement partner of the auditor;

registered engagement quality control reviewer (註冊項目質素監控審視員), in relation to a registered PIE auditor, means an individual whose name is recorded in the PIE auditors register as an engagement quality control reviewer of the auditor;

registered quality control system responsible person (註冊質素監控制度負責人), in relation to a registered PIE

auditor, means an individual whose name is recorded in the PIE auditors register as a quality control system responsible person of the auditor.

Division 2—Registered PIE Auditors**Subdivision 1—Prohibitions and Offences****20B. Prohibition on undertaking and carrying out PIE engagement**

- (1) A person must not undertake or carry out any PIE engagement unless the person is a registered PIE auditor.
- (2) Subsection (1) does not apply to an overseas auditor.

20C. Prohibition on holding out as registered PIE auditor

A person must not hold the person out as a registered PIE auditor unless the person is registered as such an auditor under this Division.

20D. Prohibition on carrying out activity as engagement partner

A person must not carry out any activity as an engagement partner of a registered PIE auditor unless the person is a registered engagement partner of the auditor.

20E. Prohibition on carrying out activity as engagement quality control reviewer

A person must not carry out any activity as an engagement quality control reviewer of a registered PIE auditor unless the person is a registered engagement quality control reviewer of the auditor.

20F. Offences

A person who, without reasonable excuse, contravenes section 20B, 20C, 20D or 20E commits an offence and is liable—

- (a) on conviction on indictment—to a fine of \$1,000,000 and to imprisonment for 2 years and, for a continuing offence, to a further fine of \$20,000 for each day during which the offence continues; or
- (b) on summary conviction—to a fine at level 6 and to imprisonment for 6 months and, for a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.

Subdivision 2—Registration**20G. Application**

- (1) A practice unit may apply to the HKICPA Council to be registered as a PIE auditor.
- (2) The application must—
 - (a) be made in the form and way specified by the HKICPA Council; and
 - (b) be accompanied by the fee specified in Schedule 3B.
- (3) The application must contain—
 - (a) a list of all the applicant's responsible persons;
 - (b) if the applicant is a firm of certified public accountants (practising)—a list of all the applicant's partners; and
 - (c) if the applicant is a corporate practice—a list of all the applicant's directors.

20H. Decision on application

- (1) The HKICPA Council may grant or refuse a registration application.
- (2) The HKICPA Council must not grant a registration application unless it is satisfied that—
 - (a) the applicant is a practice unit;
 - (b) the applicant meets the requirement specified in subsection (3);
 - (c) the quality control system responsible person of the applicant is—
 - (i) the chief executive officer of the applicant; or
 - (ii) a member of the managing board of partners of the applicant; and
 - (d) each responsible person of the applicant specified in the application is a fit and proper person to be a certified public accountant.
- (3) The requirement is—
 - (a) if the applicant is a certified public accountant (practising)—the applicant is a fit and proper person to be a certified public accountant;
 - (b) if the applicant is a firm of certified public accountants (practising)—each partner of the applicant is a fit and proper person to be a certified public accountant; or
 - (c) if the applicant is a corporate practice—each director of the applicant is a fit and proper person to be a certified public accountant.

20I. Notification of decision

- (1) The HKICPA Council must—

- (a) inform the applicant for a registration application of its decision on the application by written notice; and
 - (b) issue a copy of the notice to each responsible person of the applicant listed in the application.
- (2) If the HKICPA Council refuses the application, the notice must include a statement of the reasons for the decision.

20J. Validity of registration

- (1) The registration of a practice unit as a PIE auditor—
- (a) takes effect—
 - (i) if the HKICPA Council grants the unit's registration application—on the day specified in the notice from the Council under section 20I(1); or
 - (ii) if the HKICPA Council refuses the application but the decision is reversed by a review or appeal under Part 3C—on the day when the reversal of decision takes effect; and
 - (b) subject to subsection (2), expires on 31 December of the year in which the registration takes effect.
- (2) If the registration application is made within the transitional period, the registration of the practice unit as a PIE auditor expires on whichever is the later of the following—
- (a) 31 December 2020;
 - (b) the day described in subsection (1)(b).
- (3) The registration of a practice unit as a PIE auditor is renewable annually.

Subdivision 3—Renewal**20K. Application**

- (1) A registered PIE auditor may apply to the HKICPA Council for renewal of its registration.
- (2) The application must be made no earlier than 3 months, and no later than 45 days, before the day on which the current registration expires.
- (3) The application must—
 - (a) be made in the form and way specified by the HKICPA Council; and
 - (b) be accompanied by the fee specified in Schedule 3B.

20L. Decision on application

- (1) The HKICPA Council may grant or refuse a renewal application (registration).
- (2) The HKICPA Council must not grant a renewal application (registration) unless it is satisfied that—
 - (a) the applicant continues to meet all the requirements specified in section 20H(2); and
 - (b) the applicant meets the requirement specified in subsection (3).
- (3) The requirement is—
 - (a) if the applicant was a certified public accountant (practising) when the applicant was first registered—the applicant continues to be a certified public accountant (practising);
 - (b) if the applicant was a firm of certified public accountants (practising) when the applicant was

- first registered—the applicant continues to be a firm of certified public accountants (practising); or
- (c) if the applicant was a corporate practice when the applicant was first registered—the applicant continues to be a corporate practice.

20M. Notification of decision

- (1) The HKICPA Council must—
- (a) inform the applicant for a renewal application (registration) of its decision on the application by written notice; and
- (b) issue a copy of the notice to each registered responsible person of the applicant.
- (2) If the HKICPA Council refuses the application, the notice must include a statement of the reasons for the decision.

20N. Current registration remains in force until decision on renewal takes effect

- (1) This section applies if a renewal application (registration) has been made but the application is not finally determined before the expiry of the current registration.
- (2) Despite section 20J(1) or (2), the current registration remains in force until—
- (a) if the registration is renewed—the day on which the renewal takes effect under section 20O; or
- (b) if the application is refused—the day on which the refusal takes effect under Part 3C.

20O. Validity of renewed registration

The renewal of registration of a PIE auditor—

- (a) takes effect—
- (i) if the HKICPA Council grants the auditor's renewal application (registration)—on the day specified in the notice from the Council under section 20M(1); or
- (ii) if the HKICPA Council refuses the application but the decision is reversed by a review or appeal under Part 3C—on the day when the reversal of decision takes effect; and
- (b) expires on 31 December of the year in which the renewal takes effect.

Subdivision 4—Supplementary Registration and Renewal Provisions**20P. Applicant to provide information**

- (1) An applicant for a registration application or renewal application (registration) must provide the HKICPA Council with the information that the Council reasonably requires to enable it to consider the application.
- (2) In considering the application, the HKICPA Council may have regard to any information in its possession (whether or not provided by the applicant).

20Q. Determination of fit and proper

In determining whether a person is a fit and proper person to be a certified public accountant, the HKICPA Council must have regard to the following matters—

- (a) the person's professional qualification, knowledge, skills and experience;
- (b) the person's reputation, character, reliability and integrity;
- (c) the person's financial status and solvency;
- (d) whether any disciplinary action has been taken against the person under this Ordinance or the Professional Accountants Ordinance (Cap. 50); and
- (e) whether the person has been convicted of any offence in Hong Kong or elsewhere.

20R. Offences to provide false or misleading information

- (1) A person commits an offence if the person, in connection with a registration application or renewal application (registration)—
 - (a) makes a statement that is false or misleading in a material particular; and
 - (b) knows that, or is reckless as to whether or not, the statement is false or misleading in a material particular.
- (2) A person commits an offence if the person, in connection with a registration application or renewal application (registration)—
 - (a) omits a material particular from a statement with the result that the statement is rendered false or misleading; and
 - (b) knows that, or is reckless as to whether or not, the material particular is omitted from the statement.
- (3) A person who commits an offence under subsection (1) or (2) is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

Subdivision 5—Registration Conditions, Revocation and Suspension

20S. HKICPA Council may impose or amend conditions

- (1) The HKICPA Council may impose any condition in relation to the registration of a PIE auditor that the Council considers appropriate—
 - (a) at the time when it grants the registration application or renewal application (registration); or
 - (b) at any other time when the registration is valid.
- (2) The HKICPA Council may, at any time when the registration is valid, amend an existing condition by varying or revoking the condition.
- (3) If the HKICPA Council decides to impose or amend a condition in relation to the registration of a PIE auditor, the Council must—
 - (a) inform the auditor of its decision by written notice; and
 - (b) issue a copy of the notice to each registered responsible person of the auditor.
- (4) The notice must include a statement of the reasons for the decision.

20T. Registration may be revoked or suspended on non-disciplinary grounds

- (1) The HKICPA Council must revoke the registration of a PIE auditor—
 - (a) where the auditor was a certified public accountant (practising) when the auditor was first registered—
 - (i) if the auditor dies; or

- (ii) if the auditor ceases to be a certified public accountant (practising);
- (b) where the auditor was a firm of certified public accountants (practising) when the auditor was first registered—
 - (i) if the auditor ceases to operate and the partnership is dissolved; or
 - (ii) if the auditor ceases to be a firm of certified public accountants (practising); and
- (c) where the auditor was a corporate practice when the auditor was first registered—
 - (i) if the auditor has commenced to be wound up; or
 - (ii) if the auditor ceases to be a corporate practice.
- (2) The HKICPA Council may revoke or suspend the registration of a PIE auditor if—
 - (a) the auditor requests the Council to do so; or
 - (b) the Council is satisfied that the auditor has been registered—
 - (i) by mistake; or
 - (ii) in consequence of any misleading, false or fraudulent statement, declaration or representation, whether orally or in writing.
- (3) For the purposes of subsection (2), the HKICPA Council may suspend the registration of a PIE auditor for a period of time, or until the occurrence of an event, that the Council considers appropriate.

- (4) If the HKICPA Council decides to revoke or suspend the registration of a PIE auditor under subsection (1) or (2), the Council must—
 - (a) inform the auditor of its decision by written notice; and
 - (b) issue a copy of the notice to each registered responsible person of the auditor.
- (5) The notice must include a statement of the reasons for the decision.

Subdivision 6—Obligations of Registered PIE Auditors

20U. Registered PIE auditor must have registered responsible persons

- (1) A registered PIE auditor must ensure that it has, at all times—
 - (a) at least one registered engagement partner;
 - (b) at least one registered engagement quality control reviewer; and
 - (c) at least one registered quality control system responsible person.
- (2) For the purposes of subsection (1), a person may be registered for one or more of the roles listed in that subsection.
- (3) Despite subsection (2), a registered PIE auditor must ensure that a person does not, in relation to a PIE engagement carried out by the auditor, act as both a registered engagement partner and a registered engagement quality control reviewer of the auditor.

20V. Registered PIE auditor must not authorize unregistered persons to carry out activity

A registered PIE auditor must not authorize a person, who is not a registered engagement partner, registered engagement quality control reviewer or registered quality control system responsible person of the auditor, to carry out any activity for the auditor as such a partner, reviewer or person.

20W. Registered PIE auditor must provide sufficient resources etc.

- (1) A registered PIE auditor must ensure that a registered quality control system responsible person is provided with sufficient resources and support to carry out the duties under subsection (2).
- (2) A registered quality control system responsible person must use the person's best endeavours to ensure that the registered PIE auditor—
 - (a) has established and maintains a quality control system in relation to the PIE engagements carried out by the auditor;
 - (b) has established policies and procedures for monitoring the quality control system; and
 - (c) complies with the policies and procedures.

20X. Failure to meet certain requirements after registration

- (1) This section applies if a registered PIE auditor fails to meet a requirement specified in—
 - (a) section 20H(2)(b), (c) or (d); or
 - (b) section 20U(1).

- (2) The auditor must, within 7 days after the day on which the failure begins, inform the HKICPA Council of the failure by written notice.
- (3) The auditor must, within 14 days after the day on which the written notice is issued to the HKICPA Council, take steps to ensure that the requirement is met.
- (4) If the auditor still fails to meet the requirement on the expiry of the 14-day period, the HKICPA Council may—
 - (a) revoke the registration of the auditor; or
 - (b) suspend the registration of the auditor for a period of time, or until the occurrence of an event, that the Council considers appropriate.
- (5) If the HKICPA Council decides to revoke or suspend the registration of the auditor under subsection (4), the Council must—
 - (a) inform the auditor of its decision by written notice; and
 - (b) issue a copy of the notice to each registered responsible person of the auditor.
- (6) The notice must include a statement of the reasons for the decision.
- (7) A person who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 5.

20Y. Additional registered responsible persons

- (1) This section applies if a registered PIE auditor proposes to add the name of a person to the list of registered responsible persons of the auditor.

- (2) The auditor must, by written notice in the specified form, inform the HKICPA Council of the proposed addition.
- (3) The name of the person may be added to the list of registered responsible persons of the auditor if the HKICPA Council is satisfied that—
 - (a) the person is a fit and proper person to be a certified public accountant; and
 - (b) in the case where the person is to be added to the list as a registered quality control system responsible person, the person also meets the requirement specified in section 20H(2)(c).
- (4) The HKICPA Council must—
 - (a) inform the auditor of its decision by written notice; and
 - (b) issue a copy of the notice to the person.
- (5) If the HKICPA Council refuses to add the name of the person to the list of registered responsible persons of the auditor, the notice must include a statement of the reasons for the decision.

20Z. Registered PIE auditor to notify changes in particulars

- (1) If there is a change in any of the specified particulars of a registered PIE auditor or any of its registered responsible persons, the auditor must, within 14 days after the day on which the change takes place, inform the HKICPA Council of the change by written notice.
- (2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.
- (3) In this section—

specified particulars (指明詳情) means—

- (a) full name;
- (b) business address;
- (c) telephone number; and
- (d) electronic mail address.

20ZA. Registered PIE auditor to notify changes in registered responsible persons, partners and directors

- (1) A registered PIE auditor must, within 14 days after the day on which any of the following changes takes place, inform the HKICPA Council of the change by written notice—
 - (a) a registered responsible person of the auditor ceases to be a responsible person of the auditor; or
 - (b) a person becomes or ceases to be a partner or director of the auditor.
- (2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

Division 3—Recognized PIE Auditors

Subdivision 1—Prohibitions and Offences

20ZB. Prohibition on undertaking and carrying out PIE engagement

- (1) An overseas auditor must not undertake any PIE engagement for an overseas entity unless—
 - (a) a recognition application has been made in relation to the auditor; and
 - (b) the application has been granted.

- (2) An overseas auditor must not carry out any PIE engagement for an overseas entity unless the auditor has been recognized as a PIE auditor of that entity under section 20ZI.
- (3) Subsections (1) and (2) do not prohibit a Mainland auditor recognized under section 20ZT from undertaking or carrying out a PIE engagement for a Mainland corporation.

20ZC. Prohibition on holding out as recognized PIE auditor

A person must not hold the person out as a recognized PIE auditor unless the person is recognized as such an auditor under this Division.

20ZD. Offences

A person who, without reasonable excuse, contravenes section 20ZB or 20ZC commits an offence and is liable—

- (a) on conviction on indictment—to a fine of \$1,000,000 and to imprisonment for 2 years and, for a continuing offence, to a further fine of \$20,000 for each day during which the offence continues; or
- (b) on summary conviction—to a fine at level 6 and to imprisonment for 6 months and, for a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.

Subdivision 2—Recognition**20ZE. Application**

- (1) If an overseas entity proposes to appoint an overseas auditor to carry out a PIE engagement for it, the entity

may apply to the FRC to grant an approval-in-principle recognizing the auditor as a PIE auditor of the entity.

- (2) The application must—
 - (a) be made in the form and way specified by the FRC; and
 - (b) be accompanied by the fee specified in Schedule 3B.

20ZF. Decision on application

- (1) The FRC may grant or refuse a recognition application.
- (2) The FRC must not grant a recognition application unless it is satisfied that—
 - (a) the Securities and Futures Commission or the HKEC has, or both of them have, as the case requires—
 - (i) provided a statement of no objection to the applicant for appointing an overseas auditor to carry out a PIE engagement for the applicant; and
 - (ii) not withdrawn the statement;
 - (b) the overseas auditor specified in the application—
 - (i) is a member of an accountancy body that is a member of the International Federation of Accountants; and
 - (ii) is subject to the regulation of an overseas regulatory organization recognized by the FRC;
 - (c) an agreement of mutual or reciprocal cooperation is in force between the FRC and the overseas

- regulatory organization referred to in paragraph (b)(ii); and
- (d) the overseas auditor has adequate resources and possesses the capability to carry out a PIE engagement for the applicant.
- (3) The FRC may recognize an overseas regulatory organization for the purposes of subsection (2)(b)(ii) if it is satisfied that—
- (a) the organization performs a function that is similar to a function of the FRC under this Ordinance; and
- (b) the organization is composed of a majority of persons who are independent of the accountancy profession.

20ZG. Notification of decision

- (1) The FRC must—
- (a) inform the applicant for a recognition application of its decision on the application by written notice; and
- (b) issue a copy of the notice to the overseas auditor specified in the application.
- (2) If the FRC refuses the application, the notice must include a statement of the reasons for the decision.

20ZH. Validity of approval-in-principle

- (1) If a recognition application made by an overseas entity is granted, an approval-in-principle is granted by the FRC recognizing the overseas auditor specified in the application as a PIE auditor of the entity.

- (2) The approval-in-principle granted in relation to the recognition application is valid for a 6-month period beginning on—
- (a) if the FRC grants the application—the day specified in the notice from the FRC under section 20ZG(1); or
- (b) if the FRC refuses the application but the decision is reversed by a review or appeal under Part 3C—the day when the reversal of decision takes effect.

20ZI. Overseas auditors recognized as PIE auditors on undertaking PIE engagements

- (1) Subject to subsection (4), after the approval-in-principle is granted by the FRC in relation to a recognition application, the overseas entity may appoint the overseas auditor to carry out a PIE engagement for it.
- (2) If the overseas auditor undertakes the PIE engagement, the overseas entity must, within 14 days after the date of undertaking, inform the FRC of that fact by written notice.
- (3) Subject to subsection (4), the overseas auditor is recognized as a PIE auditor of the overseas entity when the auditor undertakes the PIE engagement.
- (4) If, by the end of the 6-month period during which the approval-in-principle granted in relation to the recognition application is valid—
- (a) the overseas entity has not appointed the overseas auditor to carry out a PIE engagement for it; or
- (b) the entity has appointed the auditor to carry out a PIE engagement for it but the auditor has not undertaken the engagement,

the entity must make a fresh recognition application in relation to the auditor if the entity subsequently proposes to so appoint the auditor.

20ZJ. Validity of recognition

- (1) The recognition of an overseas auditor as a PIE auditor of an overseas entity—
 - (a) takes effect when the auditor undertakes a PIE engagement for the entity within the 6-month period during which the relevant approval-in-principle is valid under section 20ZH(2); and
 - (b) subject to subsection (2), expires on 31 December of the year in which the recognition takes effect.
- (2) If the recognition application is made within the transitional period, the recognition of the overseas auditor as a PIE auditor expires on whichever is the later of the following—
 - (a) 31 December 2020;
 - (b) the day described in subsection (1)(b).
- (3) The recognition of an overseas auditor as a PIE auditor is renewable annually.

Subdivision 3—Renewal**20ZK. Application**

- (1) An overseas entity that has appointed a recognized PIE auditor to carry out a PIE engagement for it may apply to the FRC for renewal of the recognition.
- (2) The application must be made no earlier than 3 months, and no later than 45 days, before the day on which the current recognition expires.

- (3) The application must—
 - (a) be made in the form and way specified by the FRC; and
 - (b) be accompanied by the fee specified in Schedule 3B.

20ZL. Decision on application

- (1) The FRC may grant or refuse a renewal application (recognition).
- (2) The FRC must not grant a renewal application (recognition) unless it is satisfied that all the requirements specified in section 20ZF(2) continue to be met in relation to the recognized PIE auditor.

20ZM. Notification of decision

- (1) The FRC must—
 - (a) inform the applicant for a renewal application (recognition) of its decision on the application by written notice; and
 - (b) issue a copy of the notice to the recognized PIE auditor specified in the application.
- (2) If the FRC refuses the application, the notice must include a statement of the reasons for the decision.

20ZN. Current recognition remains in force until decision on renewal takes effect

- (1) This section applies if a renewal application (recognition) has been made but the application is not finally determined before the expiry of the current recognition.

- (2) Despite section 20ZJ(1) or (2), the current recognition remains in force until—
- (a) if the recognition is renewed—the day on which the renewal takes effect under section 20ZO; or
 - (b) if the application is refused—the day on which the refusal takes effect under Part 3C.

20ZO. Validity of renewed recognition

The renewal of recognition of a PIE auditor of an overseas entity—

- (a) takes effect—
 - (i) if the FRC grants the entity's renewal application (recognition) in relation to the auditor—on the day specified in the notice from the FRC under section 20ZM(1); or
 - (ii) if the FRC refuses the application but the decision is reversed by a review or appeal under Part 3C—on the day when the reversal of decision takes effect; and
- (b) expires on 31 December of the year in which the renewal takes effect.

Subdivision 4—Supplementary Recognition and Renewal Provisions

20ZP. Applicant to provide information

- (1) An applicant for a recognition application or renewal application (recognition) must provide the FRC with the information that the FRC reasonably requires to enable it to consider the application.

- (2) In considering the application, the FRC may have regard to any information in its possession (whether or not provided by the applicant).

20ZQ. Offences to provide false or misleading information

- (1) A person commits an offence if the person, in connection with a recognition application or renewal application (recognition)—
 - (a) makes a statement that is false or misleading in a material particular; and
 - (b) knows that, or is reckless as to whether or not, the statement is false or misleading in a material particular.
- (2) A person commits an offence if the person, in connection with a recognition application or renewal application (recognition)—
 - (a) omits a material particular from a statement with the result that the statement is rendered false or misleading; and
 - (b) knows that, or is reckless as to whether or not, the material particular is omitted from the statement.
- (3) A person who commits an offence under subsection (1) or (2) is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

Subdivision 5—Recognition Conditions, Revocation and Suspension

20ZR. FRC may impose or amend conditions

- (1) The FRC may impose any condition in relation to the recognition of a PIE auditor that the FRC considers appropriate—
 - (a) at the time when it grants the recognition application or renewal application (recognition); or
 - (b) at any other time when the recognition is valid.
- (2) The FRC may, at any time when the recognition is valid, amend an existing condition by varying or revoking the condition.
- (3) If the FRC decides to impose or amend a condition in relation to the recognition of a PIE auditor, the FRC must—
 - (a) inform the overseas entity, being the applicant for the recognition application or renewal application (recognition) in relation to the auditor, of its decision by written notice; and
 - (b) issue a copy of the notice to the auditor.
- (4) The notice must include a statement of the reasons for the decision.

20ZS. Recognition may be revoked or suspended on non-disciplinary grounds

- (1) The FRC must revoke the recognition of an overseas auditor as a PIE auditor of an overseas entity if the appointment of the auditor for carrying out a PIE engagement for the entity is terminated.

- (2) The FRC may revoke or suspend the recognition of an overseas auditor as a PIE auditor of an overseas entity if—
 - (a) the entity requests the FRC to do so;
 - (b) the FRC is satisfied that the auditor has been recognized—
 - (i) by mistake; or
 - (ii) in consequence of any misleading, false or fraudulent statement, declaration or representation, whether orally or in writing; or
 - (c) the Securities and Futures Commission or the HKEC, as the case requires, has withdrawn the statement of no objection referred to in section 20ZF(2)(a).
- (3) For the purposes of subsection (2), the FRC may suspend the recognition of a PIE auditor for a period of time, or until the occurrence of an event, that the FRC considers appropriate.
- (4) If the FRC decides to revoke or suspend the recognition of an overseas auditor as a PIE auditor of an overseas entity under subsection (1) or (2), the FRC must—
 - (a) inform the entity of its decision by written notice; and
 - (b) issue a copy of the notice to the auditor.
- (5) The notice must include a statement of the reasons for the decision.

Subdivision 6—Miscellaneous**20ZT. Recognition of Mainland auditors endorsed in accordance with mutual recognition agreement**

- (1) The FRC must, without a recognition application having been made in relation to a Mainland auditor, recognize the auditor as a PIE auditor if all the conditions specified in subsection (2) are satisfied.
- (2) The conditions are—
 - (a) a mutual recognition agreement is in force;
 - (b) the auditor has been endorsed in accordance with the agreement as being qualified to act as an auditor of the Mainland corporations listed in Hong Kong; and
 - (c) the endorsement has not been withdrawn.
- (3) A Mainland auditor recognized under subsection (1)—
 - (a) may only carry out PIE engagements for the Mainland corporations listed in Hong Kong; and
 - (b) must carry them out in accordance with—
 - (i) the China Accounting Standards for Business Enterprises; or
 - (ii) the Mainland Auditing Standards.
- (4) Subdivisions 2, 3, 4 and 5, and sections 20ZU and 20ZV, do not apply to a Mainland auditor recognized under subsection (1).
- (5) The FRC must revoke the recognition of a Mainland auditor under subsection (1) if any of the conditions specified in subsection (2) is no longer satisfied in relation to the auditor.

- (6) If the FRC decides to revoke the recognition of a Mainland auditor under subsection (5), the FRC must inform the auditor of its decision by written notice.
- (7) The notice must include a statement of the reasons for the decision.
- (8) In this section—

mutual recognition agreement (相互認可協議) means an agreement between the Mainland of China and Hong Kong for mutual recognition of qualified auditors from either jurisdiction (***home jurisdiction***) to act as auditors of corporations incorporated in the home jurisdiction and listed in the other jurisdiction.

20ZU. Overseas entity to notify termination of appointment of recognized PIE auditors

- (1) This section applies if an overseas entity has appointed a recognized PIE auditor to carry out a PIE engagement for it.
- (2) If the appointment is terminated, the entity must, within 14 days after the date of termination, inform the FRC of the termination by written notice.
- (3) A person who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 5.

20ZV. Failure to meet certain requirements after recognition

- (1) This section applies if a recognized PIE auditor fails to meet a requirement specified in section 20ZF(2)(b) or (d).
- (2) The auditor must, within 7 days after the day on which the failure begins, inform the FRC of the failure by written notice.

- (3) The auditor must, within 14 days after the day on which the written notice is issued to the FRC, take steps to ensure that the requirement is met.
- (4) If the auditor still fails to meet the requirement on the expiry of the 14-day period, the FRC may—
 - (a) revoke the recognition of the auditor; or
 - (b) suspend the recognition of the auditor for a period of time, or until the occurrence of an event, that the FRC considers appropriate.
- (5) If the FRC decides to revoke or suspend the recognition of the auditor under subsection (4), the FRC must—
 - (a) inform the auditor of its decision by written notice; and
 - (b) issue a copy of the notice to the overseas entity concerned.
- (6) The notice must include a statement of the reasons for the decision.
- (7) A person who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 5.

20ZW. Recognized PIE auditor to notify changes in particulars

- (1) If there is a change in any of the specified particulars of a recognized PIE auditor, the auditor must, within 14 days after the day on which the change takes place, inform the FRC of the change by written notice.
- (2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.
- (3) In this section—

specified particulars (指明詳情) means—

- (a) full name;
- (b) business address;
- (c) telephone number; and
- (d) electronic mail address.

Division 4—Register of PIE Auditors

20ZX. HKICPA Registrar to establish and maintain register of PIE auditors

- (1) The HKICPA Registrar must establish and maintain a register of PIE auditors in a form the Registrar considers appropriate.
- (2) The register must contain, in relation to each registered PIE auditor—
 - (a) the full name of—
 - (i) the auditor; and
 - (ii) each registered responsible person of the auditor;
 - (b) the business address of the auditor;
 - (c) the conditions imposed by the HKICPA Council in relation to the registration of the auditor (including any condition relating to the registered responsible persons of the auditor), if any;
 - (d) the day on which the registration of the auditor expires;
 - (e) a record of—
 - (i) the sanctions imposed or actions taken under Division 2 or 3 of Part 3B (except a private reprimand); and

- (ii) the orders made under section 35 of the Professional Accountants Ordinance (Cap. 50),
in relation to the auditor, or any registered responsible person of the auditor, within the last 5 years, if any; and
- (f) any other particulars the Registrar considers appropriate.
- (3) The register must contain, in relation to each recognized PIE auditor—
 - (a) the full name of the auditor;
 - (b) the business address of the auditor;
 - (c) the conditions imposed by the FRC in relation to the recognition of the auditor, if any;
 - (d) the day on which the recognition of the auditor expires, if applicable;
 - (e) a record of the sanctions imposed or actions taken under Division 2 or 3 of Part 3B (except a private reprimand) in relation to the auditor within the last 5 years, if any; and
 - (f) any other particulars the Registrar considers appropriate.
- (4) The HKICPA Council and the FRC must, as far as practicable, provide the HKICPA Registrar with—
 - (a) the information to be contained in the PIE auditors register in relation to each PIE auditor; and
 - (b) any subsequent change to the information.

20ZY. Inspection of PIE auditors register etc.

- (1) A person may, at all reasonable times—

- (a) if the PIE auditors register is kept in a documentary form—inspect the register free of charge; or
- (b) if the register is kept otherwise than in a documentary form—inspect a reproduction of any information recorded in the register in a legible form free of charge.
- (2) A person may, at all reasonable times and on payment of the fee specified in Schedule 3B, obtain—
 - (a) a copy of an entry in, or an extract of, the PIE auditors register; or
 - (b) a copy of the entry or extract certified by an authorized officer of the HKICPA as a true copy of the entry or extract.
- (3) A right under subsection (1) or (2) is only exercisable for enabling a person—
 - (a) to ascertain whether the person is dealing with, in matters of or connected with a PIE engagement—
 - (i) a registered PIE auditor;
 - (ii) a registered responsible person of a registered PIE auditor; or
 - (iii) a recognized PIE auditor; or
 - (b) to ascertain the particulars of—
 - (i) a registered PIE auditor;
 - (ii) a registered responsible person of a registered PIE auditor; or
 - (iii) a recognized PIE auditor.
- (4) In any legal proceedings—
 - (a) a document purporting—

- (i) to be a copy of an entry in, or an extract of, the PIE auditors register; and
 - (ii) to be certified by an authorized officer of the HKICPA as a true copy of the entry or extract,
is admissible in evidence on its production without further proof; and
- (b) unless there is evidence to the contrary, on being admitted in evidence under paragraph (a), the document—
- (i) is presumed to be certified by an authorized officer of the HKICPA;
 - (ii) is presumed to be a true copy of the entry or extract; and
 - (iii) is proof of its contents.
- (5) The HKICPA Registrar must, as far as practicable, make the PIE auditors register available to any person for inspection free of charge on the Internet.”.

24. Headings before section 21 substituted

Headings before section 21—

Repeal the headings**Substitute****“Part 3A****Inspection and Investigation in relation to PIE Auditors, Non-PIE Auditors, etc.****Division 1—Preliminary”.****25. Section 21 substituted**

Section 21—

Repeal the section**Substitute****“21. Interpretation**

In this Part—

inspection report (查察報告) means a report prepared by an inspector under section 21G(1);*investigation report* (調查報告) means a report prepared by an investigator under section 31A(1) or (2).”.**26. Part 3A, Division 2 added**

After section 21—

Add**“Division 2—Inspection in relation to PIE Auditors****Subdivision 1—Conduct of Inspection****21A. FRC may appoint inspectors**

(1) The FRC may, in writing, appoint—

(a) an employee of the FRC; or

(b) with the consent of the Financial Secretary, any other person,
who is a certified public accountant, as an inspector for the purposes of this Ordinance.

(2) The FRC must provide the appointed inspector with a copy of the appointment.

21B. FRC may direct inspection to be carried out for ascertaining compliance

(1) The FRC may direct an inspector to carry out an inspection in relation to the PIE engagements completed by a PIE auditor on or after the 2018 Ordinance commencement date for the purpose of ascertaining whether the auditor has complied with, or is likely to be able to comply with—

- (a) a provision of this Ordinance; or
- (b) a professional standard.

(2) The FRC may, in relation to an inspection—

- (a) specify a professional standard the compliance with which is to be ascertained in the inspection; and
- (b) determine the practices and procedures to be followed for the inspection.

(3) The FRC must provide the inspector with a copy of its direction.

21C. Powers of inspector

(1) For the purposes of an inspection under this Division, an inspector may, at any reasonable time, exercise any of the following powers in relation to a PIE auditor—

- (a) enter any business premises of the auditor;

(b) inspect, and make copies or otherwise record details of, any record or document related to the PIE engagements completed by the auditor on or after the 2018 Ordinance commencement date;

(c) make inquiries of the auditor or a person specified in subsection (4)—

- (i) concerning a record or document referred to in paragraph (b); or
- (ii) concerning an activity that was carried out in the course of, or that may affect, a PIE engagement.

(2) In exercising a power under subsection (1)(b) or (c), the inspector may require the auditor or a person specified in subsection (4)—

- (a) to give the inspector access to a record or document referred to in subsection (1)(b);
- (b) to produce to the inspector, within the time and at the place specified in the requirement, a record or document referred to in subsection (1)(b); or

(c) to answer any question—

- (i) concerning a record or document referred to in subsection (1)(b); or
- (ii) concerning an activity that was carried out in the course of, or that may affect, a PIE engagement.

(3) The power under subsection (1)(c) or (2) is not exercisable in relation to a person specified in subsection (4) unless the inspector has reasonable cause to believe that the information, record or document being sought cannot be obtained by exercising the power in relation to the auditor.

- (4) The person specified for subsection (1)(c) or (2) is a person whom the inspector has reasonable cause to believe—
- (a) to have the information being sought for the inspection; or
 - (b) to be in possession of any record or document being sought for the inspection.

21D. Inspector may require answer to be verified by statutory declaration

- (1) If a person gives an answer in compliance with a requirement imposed under section 21C, the inspector may, by written notice, require the person to verify the answer by a statutory declaration within the time specified in the notice.
- (2) If a person does not give an answer in compliance with a requirement imposed under section 21C for the reason that the information concerned is not within the person's knowledge or possession, the inspector may, by written notice, require the person to verify that fact and reason by a statutory declaration within the time specified in the notice.
- (3) A statutory declaration under subsection (1) or (2) may be made before the inspector and, for that purpose, the inspector is to have full power to administer the statutory declaration.

21E. FRC may require information for determining frequency of inspection etc.

- (1) The FRC may, by written notice, require a PIE auditor to provide any information specified in subsection (2) for—

- (a) determining the frequency at which an inspection is to be carried out in relation to the auditor;
 - (b) specifying the professional standard the compliance with which is to be ascertained in an inspection; or
 - (c) determining the practices and procedures to be followed for an inspection.
- (2) The information is—
- (a) the number of PIE engagements that the PIE auditor has undertaken or carried out within a period specified by the FRC;
 - (b) the full name of the PIEs that have appointed the auditor to undertake PIE engagements; or
 - (c) any other information relating to the auditor required by the FRC.
- (3) The PIE auditor must provide the required information within the time and in the form specified in the notice.

21F. Offences relating to sections 21C and 21D

- (1) A person commits an offence if the person, without reasonable excuse, fails to comply with a specified requirement.
- (2) A person commits an offence if the person, with intent to defraud, fails to comply with a specified requirement.
- (3) A person commits an offence if—
 - (a) in purported compliance with a specified requirement, the person produces a record or document, or gives an answer, that is false or misleading in a material particular; and

- (b) the person knows that, or is reckless as to whether or not, the record, document or answer is false or misleading in a material particular.
- (4) A person commits an offence if, in purported compliance with a specified requirement, the person, with intent to defraud, produces a record or document, or gives an answer, that is false or misleading in a material particular.
- (5) A person commits an offence if the person, with intent to defraud—
 - (a) causes or allows another person to fail to comply with a specified requirement; or
 - (b) causes or allows another person, in purported compliance with a specified requirement, to produce a record or document, or give an answer, that is false or misleading in a material particular.
- (6) Despite anything in this Ordinance, no criminal proceedings may be instituted against a person under subsection (1), (2), (3), (4) or (5) in relation to a particular conduct if—
 - (a) proceedings have previously been instituted against the person under section 32(2)(b) in relation to the same conduct; and
 - (b) those proceedings remain pending, or because of the previous institution of those proceedings, no proceedings may again be lawfully instituted against the person under section 32(2)(b) in relation to the same conduct.
- (7) A person who commits an offence under subsection (1) is liable—

- (a) on conviction on indictment—to a fine of \$200,000 and to imprisonment for 1 year; or
- (b) on summary conviction—to a fine at level 5 and to imprisonment for 6 months.
- (8) A person who commits an offence under subsection (3) is liable—
 - (a) on conviction on indictment—to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction—to a fine at level 6 and to imprisonment for 6 months.
- (9) A person who commits an offence under subsection (2), (4) or (5) is liable—
 - (a) on conviction on indictment—to a fine of \$1,000,000 and to imprisonment for 7 years; or
 - (b) on summary conviction—to a fine at level 6 and to imprisonment for 6 months.
- (10) In this section—
 - specified requirement* (指明要求) means a requirement imposed under—
 - (a) section 21C(2); or
 - (b) section 21D(1) or (2).

Subdivision 2—Inspection Report

21G. Inspection report

- (1) An inspector who carries out an inspection must prepare and submit to the FRC a written report in relation to the inspection—
 - (a) at the conclusion of the inspection; and

- (b) if required by the FRC, at any other stage of the inspection.
- (2) Before submitting an inspection report to the FRC, the inspector must—
- (a) send a dated draft of the report to—
- (i) the PIE auditor concerned; and
- (ii) any other person named in the draft; and
- (b) give the auditor and the person a reasonable opportunity of being heard.
- (3) After submitting an inspection report to the FRC, the inspector must send a copy of the report to—
- (a) the PIE auditor concerned; and
- (b) any other person named in the report.
- (4) When sending a draft or copy of the inspection report under this section, the inspector must send it by registered post to—
- (a) for the PIE auditor concerned—the registered office of the auditor; or
- (b) for any other person named in the draft or report—the last known address of the person.

21H. FRC's power to take follow-up action

The FRC may, having regard to an inspection report in relation to a PIE auditor—

- (a) decide no follow-up action is required;
- (b) require the auditor or, if a registered responsible person of the auditor is named in the report, the person to take a measure or corrective action regarding compliance with—

- (i) a provision of this Ordinance; or
- (ii) a professional standard;
- (c) direct an inspector to carry out a further inspection in relation to the auditor within a specified period which must not commence earlier than 6 months after the date of the direction;
- (d) initiate an investigation in relation to the auditor or, if applicable, the registered responsible person;
- (e) impose a sanction on, or take an action in relation to, the auditor or, if applicable, the registered responsible person under Division 2 or 3 of Part 3B; or
- (f) take any other follow-up action in accordance with this Ordinance that the FRC considers appropriate.”.

27. Part 3A, Division 3 and Subdivision 1 headings added

Before section 22—

Add**“Division 3—Investigation in relation to PIE Auditors, Non-PIE Auditors, etc.****Subdivision 1—Audit Investigation Board and Investigators”.****28. Section 22 amended (Audit Investigation Board)**

- (1) Section 22(2)(a)—

Repeal

“Chief Executive Officer of the Council”

Substitute

“chief executive officer of the FRC”.

- (2) Section 22(2)(a), English text—

Repeal

“chairman”

Substitute

“chairperson”.

- (3) Section 22(2)(b)—

Repeal

“Council”

Substitute

“FRC”.

- (4) Section 22(3)—

Repeal

“Council shall”

Substitute

“FRC must”.

29. Section 22A added

After section 22—

Add**“22A. FRC may appoint investigators**

- (1) The FRC may, in writing, appoint—
- (a) an employee of the FRC; or
 - (b) with the consent of the Financial Secretary, any other person,

as an investigator for the purposes of this Ordinance.

- (2) The FRC must provide the appointed investigator with a copy of the appointment.”.

30. Part 3A, Division 3, Subdivision 2 heading added

Before section 23—

Add**“Subdivision 2—Conduct of Investigation”.****31. Section 23 substituted**

Section 23—

Repeal the section**Substitute****“23. FRC may direct investigation to be carried out in relation to PIE auditors etc.**

- (1) This section applies if the FRC—
- (a) has reasonable cause to believe that a PIE auditor has carried out a PIE engagement completed on or after the 2018 Ordinance commencement date in a way that is not in the interest of the investing public or in the public interest;
 - (b) has reasonable cause to believe that a provision of this Ordinance may have been contravened by a PIE auditor or registered responsible person of a registered PIE auditor; or
 - (c) for considering whether to impose a sanction under Division 2 of Part 3B, has reason to inquire into whether a PIE auditor or registered responsible person of a registered PIE auditor, or a person

while being such an auditor or responsible person, has or had committed a misconduct.

- (2) The FRC may direct an investigator to carry out an investigation into the way in which the PIE engagement was carried out, or into the possible contravention or misconduct.
- (3) The FRC must provide the investigator with a copy of its direction.”.

32. Sections 23A and 23B added

After section 23—

Add

“23A. FRC may direct investigation to be carried out in relation to non-PIE auditors

- (1) If the FRC has reasonable cause to believe that a non-PIE auditor has or had committed a practice irregularity within the meaning of section 4, the FRC may direct an investigator to carry out an investigation into the possible irregularity.
- (2) The FRC must provide the investigator with a copy of its direction.

23B. FRC may direct investigation to be suspended

- (1) The FRC may direct an investigator to suspend an investigation for a period of time the FRC considers appropriate.
- (2) The FRC must provide the investigator with a copy of its direction.”.

33. Section 24 amended (Council to notify certain bodies of powers under Divisions 2 and 3 being exercisable)

- (1) Section 24, heading—

Repeal

“Council to notify certain bodies of powers under Divisions 2 and 3 being exercisable”

Substitute

“FRC to inform certain bodies of investigation”.

- (2) Section 24—

Repeal subsection (1)

Substitute

“(1) This section applies if—

- (a) the FRC directs an investigator to carry out an investigation under section 23 or 23A; and
- (b) the investigation relates to a PIE engagement or non-PIE engagement completed on or after the 2018 Ordinance commencement date for a listed entity specified in subsection (2).

- (1A) The FRC must give a written notice to the specified enforcement agency referred to in subsection (3), informing it that the investigation is to be carried out.”.

- (3) Section 24(2)—

Repeal

“This section applies to a listed entity”

Substitute

“A specified listed entity is”.

- (4) Section 24(2)(a), English text, before “that—”—

Add

“a listed entity”.

- (5) Section 24(2)(a)(ii)—

Repeal

“Council’s”

Substitute

“FRC’s”.

- (6) Section 24(2)(b), (c) and (d), English text, before “that is”—

Add

“a listed entity”.

- (7) Section 24—

Repeal subsection (4)

Substitute

“(4) For the purposes of subsection (1)(b), a reference to an engagement completed for a listed entity includes an engagement completed for the entity in preparation for its listing.”.

34. Heading before section 25 repealed

Heading before section 25—

Repeal the heading.

35. Sections 25 and 26 substituted

Sections 25 and 26—

Repeal the sections

Substitute

“25. Powers of investigator

- (1) For the purposes of an investigation under this Division, an investigator may require a person specified in subsection (2)—

(a) to produce, within the time and at the place the investigator requires in writing, any record or document specified by the investigator that—

- (i) is or may be relevant to the investigation; and
(ii) is in the person’s possession;

(b) to give an explanation or further particulars in relation to a record or document produced;

(c) to attend before the investigator at the time and place the investigator requires in writing, and to answer a question relating to any matter under investigation that may be raised by the investigator;

(d) to answer in writing, within the time the investigator requires in writing, a written question relating to any matter under investigation that may be raised by the investigator; and

(e) to give the investigator all other assistance in connection with the investigation that the person is reasonably able to give.

- (2) The person specified for subsection (1) is—

(a) a person who is relevant to the matter that an investigator is directed to investigate; or

(b) a person whom an investigator has reasonable cause to believe—

- (i) to be in possession of a record or document that contains, or is likely to contain, information relevant to the investigation; or

(ii) to be otherwise in possession of the information.

26. Investigator may require explanation etc. to be verified by statutory declaration

- (1) If a person gives any explanation, further particulars or answer in compliance with a requirement imposed under section 25(1), the investigator may, by written notice, require the person to verify the explanation, particulars or answer by a statutory declaration within the time specified in the notice.
- (2) If a person does not give any explanation, further particulars or answer in compliance with a requirement imposed under section 25(1) for the reason that the information concerned is not within the person's knowledge or possession, the investigator may, by written notice, require the person to verify that fact and reason by a statutory declaration within the time specified in the notice.
- (3) A statutory declaration under subsection (1) or (2) may be made before the investigator and, for that purpose, the investigator is to have full power to administer the statutory declaration.”.

36. Sections 27 and 28 repealed

Sections 27 and 28—

Repeal the sections.

37. Heading before section 29 repealed

Heading before section 29—

Repeal the heading.

38. Section 29 amended (investigator to consult before imposing certain requirements under Division 2)

- (1) Section 29, heading—

Repeal

“Division 2”

Substitute

“sections 25 and 26”.

- (2) Section 29—

Repeal

“The investigator or an authorized officer shall”

Substitute

“An investigator must”.

- (3) Section 29—

Repeal

“section 25, 26 or 28”

Substitute

“section 25 or 26”.

- (4) Section 29(a)(ii)—

Repeal

“Council’s”

Substitute

“FRC’s”.

39. Section 30 amended (use of incriminating evidence in proceedings)

- (1) Section 30(1)—

Repeal

everything before “ensure that”

Substitute

“(1) If an investigator requires a person to give an explanation or further particulars, or to answer a question, under section 25, the investigator must”.

(2) Section 30(1)—

Repeal

“, particulars or statement, or the question and the answer or response”

Substitute

“or particulars, or the question and answer”.

(3) Section 30(2)—

Repeal paragraphs (a) and (b)

Substitute

“(a) an investigator requires a person to give an explanation or further particulars, or to answer a question, under section 25; and

(b) the explanation, particulars or answer might tend to incriminate the person, and the person claims this before giving the explanation or particulars, or answering the question.”.

(4) Section 30(2)—

Repeal

“, particulars or statement, or the question and the answer or response”

Substitute

“or particulars, or the question and answer”.

(5) Section 30(2)—

Repeal

everything after “an offence under”

Substitute

“section 31(1), (2), (5), (6) or (7), or under Part V of the Crimes Ordinance (Cap. 200), in relation to the explanation, particulars or answer.”.

40. Section 31 amended (offences relating to requirements under Division 2)

(1) Section 31, heading—

Repeal

“requirements under Division 2”

Substitute

“sections 25 and 26”.

(2) Section 31(1), English text—

Repeal

“he”

Substitute

“the person”.

(3) Section 31(1)—

Repeal

“requirement imposed on him under section 25, 26, 27 or 28”

Substitute

“specified requirement”.

(4) Section 31(2), English text—

Repeal

“he”

Substitute

“the person”.

- (5) Section 31(2)—

Repeal

“requirement imposed on him under section 25, 26, 27 or 28”

Substitute

“specified requirement”.

- (6) Section 31—

Repeal subsections (3) and (4).

- (7) Section 31(5), English text—

Repeal

“he”.

- (8) Section 31(5)(a)—

Repeal

“requirement imposed on him under section 28, produces any”

Substitute

“specified requirement, the person produces a”.

- (9) Section 31(5)(a)—

Repeal

“or gives an answer or response, or gives any explanation or particulars,”

Substitute

“or gives an explanation, further particulars or an answer,”.

- (10) Section 31(5)(b)—

Repeal

everything before “is false”

Substitute

“(b) the person knows that, or is reckless as to whether or not, the record, document, explanation, particulars or answer”.

- (11) Section 31—

Repeal subsections (6) and (7)**Substitute**

“(6) A person commits an offence if, in purported compliance with a specified requirement, the person, with intent to defraud, produces a record or document, or gives an explanation, further particulars or an answer, that is false or misleading in a material particular.

- (7) A person commits an offence if the person, with intent to defraud—

(a) causes or allows another person to fail to comply with a specified requirement; or

(b) causes or allows another person, in purported compliance with a specified requirement, to produce a record or document, or give an explanation, further particulars or an answer, that is false or misleading in a material particular.”.

- (12) Section 31—

Repeal subsection (8).

- (13) Section 31(9)—

Repeal

“requirement imposed on him under section 25, 26, 27 or 28”

Substitute

“specified requirement”.

- (14) Section 31(9)—

Repeal

“incriminate him”

Substitute

“incriminate the person”.

(15) Section 31(10)—

Repeal

“(3), (4), (5), (6), (7) or (8)”

Substitute

“(5), (6) or (7)”.

(16) Section 31(12)—

Repeal

“(4) or”.

(17) Section 31(13)—

Repeal

“(3), (6), (7) or (8)”

Substitute

“(6) or (7)”.

(18) After section 31(13)—

Add

“(14) In this section—

specified requirement (指明要求) means a requirement imposed under—

(a) section 25(1); or

(b) section 26(1) or (2).”.

41. Part 3A, Division 3, Subdivision 3 added

After section 31—

Add**“Subdivision 3—Findings of Investigation****31A. Investigation report**

- (1) As soon as practicable after the completion of an investigation, the investigator must prepare and submit to the FRC a written report in relation to the investigation.
- (2) The investigator—
 - (a) may prepare an interim report in relation to the investigation, if the investigator considers it appropriate to do so; and
 - (b) must prepare an interim report in relation to the investigation, if required by the FRC to do so.
- (3) Before submitting an investigation report to the FRC, the investigator must—
 - (a) send a dated draft of the report to—
 - (i) the PIE auditor, non-PIE auditor or registered responsible person concerned; and
 - (ii) any other person named in the draft; and
 - (b) give any person to whom the draft is sent under paragraph (a) a reasonable opportunity of being heard.
- (4) The FRC may—
 - (a) adopt the investigation report submitted by the investigator; and
 - (b) publish or otherwise disclose the report or any part of it.

- (5) In deciding whether to publish or otherwise disclose an investigation report or any part of it, the FRC must take into account—
- (a) whether the publication or disclosure may adversely affect any of the following proceedings that have been, or are likely to be, instituted—
 - (i) any proceedings under Part 3C;
 - (ii) any criminal proceedings before a court or magistrate;
 - (iii) any proceedings before the Market Misconduct Tribunal; or
 - (iv) any proceedings under Part V of the Professional Accountants Ordinance (Cap. 50);
 - (b) whether the publication or disclosure may adversely affect any person named in the report; and
 - (c) whether the publication or disclosure would be in the interest of the investing public or in the public interest.
- (6) A document purporting—
- (a) to be a copy of an investigation report adopted under subsection (4); and
 - (b) to be certified by the chairperson of the FRC as a true copy of such a report,
- is, on its production without further proof, admissible as evidence of the facts stated in the report in any of the proceedings specified in subsection (7).
- (7) The proceedings are—
- (a) proceedings under Part 3C;

- (b) civil proceedings before a court;
- (c) proceedings before the Market Misconduct Tribunal; or
- (d) proceedings under Part V of the Professional Accountants Ordinance (Cap. 50).

31B. Action by FRC in relation to investigation

- (1) This section applies if an investigation report is submitted to the FRC under section 31A.
- (2) The FRC may, in relation to the investigation—
 - (a) close the case without further action; or
 - (b) take any follow-up action in accordance with this Ordinance that the FRC considers appropriate.
- (3) If the investigation was carried out under section 23, the FRC may also impose a sanction on, or take an action in relation to, the PIE auditor or registered responsible person concerned under Division 2 or 3 of Part 3B.
- (4) In exercising a power under subsection (2) or (3), the FRC must have regard to the investigation report.
- (5) As soon as practicable after deciding to exercise a power under subsection (2), the FRC must issue a written notice of the decision to the PIE auditor, non-PIE auditor or registered responsible person concerned, unless the FRC is satisfied that the notification may prejudice an action by the FRC, or a specified body, relating to the investigation.

31C. Costs and expenses of investigation

- (1) If, on a prosecution instituted as a result of the findings of an investigation under this Division, a person is convicted by a court or magistrate, the court or

magistrate may order the person to pay to the FRC a sum that is the whole or a part of the costs and expenses of the investigation.

- (2) The FRC may recover the sum so ordered as a civil debt due to it.”

42. Part 3A, Division 4 heading added

Before section 32—

Add

“Division 4—Supplementary Provisions Relating to Inspection and Investigation”.

43. Section 32 amended (Court of First Instance to inquire into failure to comply with requirements under Division 2)

- (1) Section 32, heading—

Repeal

“Court of First Instance to inquire into failure to comply with requirements under Division 2”

Substitute

“Powers of Court of First Instance in relation to failure to comply with specified requirements”.

- (2) Section 32—

Repeal subsection (1)

Substitute

“(1) If a person fails to comply with a specified requirement, the inspector or investigator (as the case requires) may, by originating summons, request the Court of First Instance to exercise the powers under subsection (2).”.

- (3) Section 32(2)—

Repeal

“On such application, the”

Substitute

“The”.

- (4) Section 32(2)(b), English text—

Repeal

“if he”

Substitute

“if the person”.

- (5) Section 32(4)(a) and (b)—

Repeal

“section 31(1), (2), (3), (4), (5), (6), (7) or (8)”

Substitute

“section 21F or 31”.

- (6) After section 32(4)—

Add

“(5) In this section—

specified requirement (指明要求) means a requirement imposed under—

- (a) section 21C(2);
- (b) section 21D(1) or (2);
- (c) section 25(1); or
- (d) section 26(1) or (2).”.

44. Section 33 amended (inspection of records or documents seized, etc.)

- (1) Section 33—

Repeal

“If the investigator”

Substitute

“If an inspector or investigator”.

- (2) Section 33—

Repeal

“Division 2, the investigator shall”

Substitute

“this Part, the inspector or investigator must”.

- (3) Section 33—

Repeal

“investigator imposes”

Substitute

“inspector or investigator imposes”.

- (4) Section 33—

Repeal

“investigator not taken possession of it under that Division”

Substitute

“inspector or investigator not taken possession of it under this Part”.

45. Section 34 amended (magistrate’s warrants)

- (1) Section 34(1)—

Repeal

“on information on oath laid by the investigator”

Substitute

“by information on oath laid by an inspector or investigator”.

- (2) Section 34(1)—

Repeal

“Division 2,”

Substitute

“this Part,”.

- (3) Section 34(1)(a)—

Repeal

“the period of 7 days”

Substitute

“7 days, or any longer period specified in the warrant,”.

- (4) Section 34(1)(b) and (2)(b)—

Repeal

“Division 2.”

Substitute

“this Part.”.

- (5) Section 34(5)—

Repeal

“he”

Substitute

“the person”.

- (6) Section 34(5)(a), English text—

Repeal

“shall”

Substitute

“must”.

- (7) Section 34(5)(b)(i), after “inspect it”—

Add

“at all reasonable times”.

- (8) Section 34(6)—

Repeal

“the investigator”

Substitute

“the inspector or investigator”.

- (9) Section 34(7), English text—

Repeal

“he”

Substitute

“the person”.

46. Heading after section 34 repealed

Heading after section 34—

Repeal the heading.**47. Sections 35, 36 and 37 repealed**

Sections 35, 36 and 37—

Repeal the sections.**48. Parts 3B and 3C added**

Before Part 4—

Add**“Part 3B****Disciplinary Matters Regarding PIE Auditors and
Registered Responsible Persons****Division 1—Misconduct****37A. Misconduct by PIE auditors**

For the purposes of this Ordinance, a PIE auditor has committed a misconduct if the auditor—

- (a) has contravened a provision of this Ordinance;
- (b) has contravened a condition imposed in relation to the registration or recognition of the auditor under Part 3;
- (c) has contravened a requirement imposed under a provision of this Ordinance;
- (d) has, in relation to a PIE engagement completed on or after the 2018 Ordinance commencement date, done an act or made an omission that, in the FRC’s opinion, is or is likely to be prejudicial to the interest of the investing public or the public interest; or
- (e) has done an act or made an omission that amounts to a practice irregularity within the meaning of section 4.

37B. Misconduct by registered responsible persons

For the purposes of this Ordinance, a registered responsible person of a registered PIE auditor has committed a misconduct if the person—

- (a) has contravened a provision of this Ordinance;

- (b) has contravened a requirement imposed under a provision of this Ordinance;
- (c) has, in relation to a PIE engagement completed by the auditor on or after the 2018 Ordinance commencement date, done an act or made an omission that, in the FRC's opinion, is or is likely to be prejudicial to the interest of the investing public or the public interest; or
- (d) has done an act or made an omission that amounts to a practice irregularity within the meaning of section 4.

37C. Whether act or omission likely to be prejudicial to interest of investing public etc.

- (1) In forming an opinion for section 37A(d) or 37B(c) about whether an act or omission is or is likely to be prejudicial to the interest of the investing public or the public interest, the FRC must have regard to the provisions specified in subsection (2).
- (2) The provisions are those set out in any code or guideline relating to the act or omission, which were published—
 - (a) by the FRC under this Ordinance;
 - (b) by the Securities and Futures Commission under the Securities and Futures Ordinance (Cap. 571);
 - (c) by the HKEC under the Listing Rules; or
 - (d) by the HKICPA under the Professional Accountants Ordinance (Cap. 50).

Division 2—Sanctions

37D. Sanctions for misconduct by PIE auditors

- (1) The FRC may impose one or more of the sanctions specified in subsection (3) on a PIE auditor if the FRC is satisfied that the auditor has committed a misconduct.
- (2) The FRC may impose one or more of the sanctions specified in subsection (3)(b) on a person if the FRC is satisfied that the person committed a misconduct while being a PIE auditor.
- (3) The sanctions that may be imposed are—
 - (a) for a person who is a PIE auditor—
 - (i) to revoke the person's registration or recognition;
 - (ii) to suspend the person's registration or recognition for a period of time, or until the occurrence of an event, that the FRC considers appropriate; and
 - (iii) to impose a condition on the person's registration or recognition; and
 - (b) for a person who is or was a PIE auditor—
 - (i) to reprimand the person publicly or privately;
 - (ii) to direct the person to carry out any remedial action specified by the FRC;
 - (iii) to prohibit the person from applying to be registered or recognized as a PIE auditor for a period of time, or until the occurrence of an event, that the FRC considers appropriate; and

- (iv) subject to section 37H, to order the person to pay a pecuniary penalty, not exceeding the amount which is the greater of—
 - (A) \$10,000,000; or
 - (B) 3 times the amount of the profit gained or loss avoided by the person as a result of the misconduct.

37E. Sanctions for misconduct by registered responsible persons

- (1) The FRC may impose one or more of the sanctions specified in subsection (3) on a registered responsible person of a registered PIE auditor if the FRC is satisfied that the person has committed a misconduct.
- (2) The FRC may impose one or more of the sanctions specified in subsection (3)(b) on a person if the FRC is satisfied that the person committed a misconduct while being a registered responsible person of a registered PIE auditor.
- (3) The sanctions that may be imposed are—
 - (a) for a person who is a registered responsible person of a registered PIE auditor—to remove the person's name from the list of registered responsible persons of the auditor, either—
 - (i) permanently; or
 - (ii) for a period of time, or until the occurrence of an event, that the FRC considers appropriate; and
 - (b) for a person who is or was a registered responsible person of a registered PIE auditor—
 - (i) to reprimand the person publicly or privately;

- (ii) to direct the person to carry out any remedial action specified by the FRC; and
- (iii) subject to section 37H, to order the person to pay a pecuniary penalty, not exceeding the amount which is the greater of—
 - (A) \$10,000,000; or
 - (B) 3 times the amount of the profit gained or loss avoided by the person as a result of the misconduct.

37F. Other cases

- (1) The FRC may impose a sanction under section 37D(3)(a)(i) or (ii) in relation to a registered PIE auditor if the FRC is satisfied that—
 - (a) for a registered PIE auditor who is a certified public accountant (practising)—
 - (i) the auditor has entered into a voluntary arrangement with the auditor's creditors under the Bankruptcy Ordinance (Cap. 6);
 - (ii) a bankruptcy order has been made against the auditor under the Bankruptcy Ordinance (Cap. 6);
 - (iii) the auditor has been convicted of an offence in Hong Kong or elsewhere that, in the FRC's opinion, impugns the fitness and properness of the auditor to remain registered; or
 - (iv) the auditor has been found by a court to be mentally incapacitated, or has been detained in a mental hospital, under the Mental Health Ordinance (Cap. 136);

- (b) for a registered PIE auditor that is a firm of certified public accountants (practising)—
 - (i) a partner of the auditor has entered into a voluntary arrangement with the partner's creditors under the Bankruptcy Ordinance (Cap. 6);
 - (ii) a bankruptcy order has been made against a partner of the auditor under the Bankruptcy Ordinance (Cap. 6);
 - (iii) a partner of the auditor has been convicted of an offence in Hong Kong or elsewhere that, in the FRC's opinion, impugns the fitness and properness of the auditor to remain registered; or
 - (iv) a partner of the auditor has been found by a court to be mentally incapacitated, or has been detained in a mental hospital, under the Mental Health Ordinance (Cap. 136); or
- (c) for a registered PIE auditor that is a corporate practice—
 - (i) a receiver or manager has been appointed in relation to the property or business of the auditor;
 - (ii) the auditor has entered into a scheme of arrangement with its creditors;
 - (iii) the auditor has gone into liquidation;
 - (iv) the auditor has been convicted of an offence in Hong Kong or elsewhere that, in the FRC's opinion, impugns the fitness and properness of the auditor to remain registered;

- (v) a director of the auditor has been convicted of an offence in Hong Kong or elsewhere that, in the FRC's opinion, impugns the fitness and properness of the auditor to remain registered; or
 - (vi) a director of the auditor has been found by a court to be mentally incapacitated, or has been detained in a mental hospital, under the Mental Health Ordinance (Cap. 136).
- (2) The FRC may impose a sanction under section 37E(3)(a) in relation to a registered responsible person of a registered PIE auditor if the FRC is satisfied that—
- (a) the person has entered into a voluntary arrangement with the person's creditors under the Bankruptcy Ordinance (Cap. 6);
 - (b) a bankruptcy order has been made against the person under the Bankruptcy Ordinance (Cap. 6);
 - (c) the person has been convicted of an offence in Hong Kong or elsewhere that, in the FRC's opinion, impugns the fitness and properness of the person to remain a registered responsible person of the auditor; or
 - (d) the person has been found by a court to be mentally incapacitated, or has been detained in a mental hospital, under the Mental Health Ordinance (Cap. 136).

37G. FRC to inform sanctions imposed

- (1) The FRC must not impose a sanction on a person under this Division without first giving the person a reasonable opportunity of being heard.

- (2) If the FRC decides to impose a sanction on a person under this Division, the FRC must, by written notice, inform the person of its decision.
- (3) The notice must include—
 - (a) a statement of the reasons for the decision;
 - (b) the time when the decision is to take effect; and
 - (c) the details of the sanction imposed.

37H. Guidelines for exercise of power to impose pecuniary penalty

- (1) The FRC must not impose a pecuniary penalty under section 37D(3)(b)(iv) or 37E(3)(b)(iii) unless—
 - (a) it has published, in the Gazette and in any other manner it considers appropriate, guidelines to indicate the way in which it exercises the power to impose the penalty; and
 - (b) it has had regard to the guidelines so published in imposing the penalty.
- (2) The guidelines are not subsidiary legislation.

Division 3—Miscellaneous

37I. FRC's power to take action in place of or in addition to imposing sanctions with consent

- (1) At any time when the FRC is contemplating whether to impose a sanction on a person under section 37D, 37E or 37F, the FRC may, with the person's written consent—
 - (a) take any action referred to in section 37D(3) or 37E(3) in relation to the person; or
 - (b) take any other action in relation to the person that the FRC considers appropriate.

- (2) The FRC may take an action under subsection (1) in relation to the person in place of or in addition to imposing any sanction on the person under section 37D, 37E or 37F.
- (3) The FRC may only take an action under subsection (1) if it considers it appropriate to do so—
 - (a) in the interest of the investing public; or
 - (b) in the public interest.
- (4) Before taking any action under subsection (1) in relation to the person, the FRC must issue a written notice to the person, which must specify the action to be taken by the FRC, and the time within which the action is to be taken, as consented to by the person.

37J. Pecuniary penalty order

- (1) This section applies if the FRC has made an order, requiring a person to pay a pecuniary penalty (*pecuniary penalty order*) under—
 - (a) section 37D(3)(b)(iv);
 - (b) section 37E(3)(b)(iii); or
 - (c) section 37I(1).
- (2) The person must pay the penalty to the FRC—
 - (a) for a pecuniary penalty order under section 37D(3)(b)(iv) or 37E(3)(b)(iii)—
 - (i) within 30 days after the pecuniary penalty order has taken effect under section 37ZD; or
 - (ii) within a longer period specified in the notice issued under section 37G(2); or

- (b) for a pecuniary penalty order under section 37I(1)—within the time specified in the notice issued under section 37I(4).
- (3) The Court of First Instance may, on application by the FRC, register the pecuniary penalty order.
- (4) The application must be accompanied by a copy of the notice issued under section 37G(2) or 37I(4), as the case requires.
- (5) On registration, the pecuniary penalty order is to be regarded as an order of the Court of First Instance made within the civil jurisdiction of the Court of First Instance for the payment of money.
- (6) Any money paid to or recovered by the FRC under the pecuniary penalty order must be paid into the general revenue.

37K. Disclosure of sanctions etc.

- (1) This section applies if the FRC has, in relation to a person—
 - (a) imposed any sanction under section 37D, 37E or 37F; or
 - (b) taken any action under section 37I.
- (2) The FRC must disclose to the public—
 - (a) the material facts relating to the case;
 - (b) its decision to impose a sanction or take an action, and the reasons for the decision; and
 - (c) the sanction imposed or action taken.
- (3) The disclosure may only be made after—
 - (a) for a case where a sanction is imposed—

- (i) the expiry of the period for lodging an application for review to the Tribunal in relation to the FRC's decision; or
- (ii) if such an application is lodged, the review has been disposed of; or
- (b) for a case where an action is taken—the notice under section 37I(4) is issued to the person concerned.
- (4) The FRC must not make any disclosure under subsection (2) if—
 - (a) the disclosure relates to a private reprimand under section 37D(3)(b)(i) or 37E(3)(b)(i);
 - (b) the disclosure may adversely affect any criminal proceedings before a court or magistrate; or
 - (c) the disclosure, in the FRC's opinion, is not in the interest of the investing public or in the public interest.

37L. FRC may have regard to any information or material when making decisions

In deciding whether to exercise a power under this Part, the FRC may have regard to any information or material in its possession that is relevant to the decision, regardless of how the information or material has come into its possession.

Part 3C**Reviews and Appeals Regarding Decisions on PIE
Auditors etc.****Division 1—Preliminary****37M. Interpretation**

In this Part—

leave application (許可申請) means an application made under section 37ZG;

specified period (指明限期), in relation to a specified decision, means a period of 21 days beginning after the day on which the notice of the decision is issued by the decision authority to the person in relation to whom the decision is made.

**Division 2—Public Interest Entities Auditors Review
Tribunal****37N. Establishment of Public Interest Entities Auditors Review
Tribunal**

- (1) A tribunal is established with the name “Public Interest Entities Auditors Review Tribunal” in English and “公眾利益實體核數師覆核審裁處” in Chinese.
- (2) The Tribunal—
 - (a) consists of a chairperson and 2 other members; and
 - (b) is presided over by the chairperson.
- (3) Schedule 4A has effect with respect to the Tribunal.

37O. Jurisdiction of Tribunal

The Tribunal has jurisdiction, in accordance with this Part and Schedule 4A—

- (a) to review any specified decision; and
- (b) to hear and determine a question or issue arising out of, or in connection with, a review of a specified decision.

37P. Establishment of additional tribunals

- (1) If the Chief Executive considers it appropriate to do so, the Chief Executive may establish additional tribunals for any review over which the Tribunal has jurisdiction.
- (2) This Ordinance applies, with necessary modifications, to each of the additional tribunals as it applies to the Tribunal.

Division 3—Review of Specified Decisions**37Q. Application for review of specified decision**

- (1) Subject to section 37R, a person who is aggrieved by a specified decision made in relation to the person may, at any time within the specified period, apply to the Tribunal for a review of the decision.
- (2) The application—
 - (a) must be in writing; and
 - (b) must state the grounds for the application.
- (3) The Tribunal must, as soon as practicable after receiving the application, send a copy of the application to—
 - (a) the decision authority; and

- (b) if the decision authority is the HKICPA Council, the FRC.

37R. Extension of time for review application

- (1) The Tribunal may, on the written application within the specified period by a person aggrieved by a specified decision made in relation to the person, by order extend the time for making a review application in relation to the decision.
- (2) Before deciding whether to grant an extension of time, the Tribunal must give the person who made the application and the decision authority a reasonable opportunity of being heard.
- (3) The Tribunal may grant an extension of time if it is satisfied that there is a good cause for doing so.

37S. Withdrawal of review application

- (1) A person who has made a review application may withdraw the application by written notice to the Tribunal.
- (2) The withdrawal may be made at any time before the hearing of the review.
- (3) The Tribunal may make an order for costs in relation to a review application and its withdrawal that the Tribunal considers appropriate.

37T. Determination of review

- (1) The Tribunal may determine a review in relation to a specified decision by—
 - (a) confirming, varying or setting aside the decision; or

- (b) remitting the matter in question to the decision authority with any direction it considers appropriate.

- (2) If a specified decision is set aside, the Tribunal may make another decision it considers appropriate (*new decision*) in substitution for the specified decision.
- (3) A varied or new decision made by the Tribunal under subsection (1)(a) or (2)—
 - (a) may only be one that the decision authority had power to make in relation to the applicant for the review application, whether or not under the same provision under which the original specified decision was made; and
 - (b) may be more or less onerous than the original specified decision.
- (4) In reviewing a specified decision, the Tribunal must give the parties to the review a reasonable opportunity of being heard.
- (5) The standard of proof required to determine any question or issue before the Tribunal is the standard of proof applicable to civil proceedings in a court of law.

37U. Powers of Tribunal

- (1) Subject to Schedule 4A, the Tribunal may, for the purpose of a review, on its own initiative or on application by a party to the review—
 - (a) receive and consider any material by way of oral evidence, written statements or documents, whether or not the material would be admissible in a court of law;

- (b) determine the way in which any material mentioned in paragraph (a) is received;
- (c) by written notice signed by the chairperson of the Tribunal, require a person—
 - (i) to attend before it at any sitting and to give evidence; and
 - (ii) to produce any article, record or document in the person's possession or control relating to the subject matter of the review;
- (d) administer oaths;
- (e) examine or cause to be examined, on oath or otherwise, a person attending before it and require the person to answer truthfully any question the Tribunal considers appropriate;
- (f) order a witness to give evidence by affidavit;
- (g) order a person not to publish or otherwise disclose any material the Tribunal receives;
- (h) prohibit the publication or disclosure of any material the Tribunal receives at any sitting, or any part of a sitting, that is held in private;
- (i) stay any of the proceedings in the review on any grounds, and on any terms and conditions, that the Tribunal considers appropriate having regard to the interests of justice;
- (j) determine the procedure to be followed in the review; and
- (k) exercise any other powers or make any other orders that may be necessary for, or ancillary to, the conduct of the review or the performance of the Tribunal's functions.

- (2) A person commits an offence if the person, without reasonable excuse—
 - (a) fails to comply with an order, notice, prohibition or requirement of the Tribunal made, given or imposed under subsection (1);
 - (b) disrupts any sitting of the Tribunal or otherwise misbehaves during any sitting of the Tribunal;
 - (c) having been required by the Tribunal under subsection (1) to attend before the Tribunal, leaves the place where the person's attendance is so required without the Tribunal's permission;
 - (d) hinders or deters any person from attending before the Tribunal, giving evidence or producing any article, record or document, for the purpose of a review;
 - (e) threatens, insults or causes any loss to be suffered by a person who has attended before the Tribunal, on account of the attendance; or
 - (f) threatens, insults or causes any loss to be suffered by the chairperson, or any other member, of the Tribunal at any time, on account of the performance of the chairperson's or member's functions.
- (3) A person who commits an offence under subsection (2) is liable—
 - (a) on conviction on indictment—to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction—to a fine at level 6 and to imprisonment for 6 months.
- (4) A person is not excused from complying with an order, notice, prohibition or requirement of the Tribunal made,

given or imposed under subsection (1) only on the ground that to do so might tend to incriminate the person.

37V. Sittings of Tribunal to be held in public

- (1) Every sitting of the Tribunal for determining a review must be held in public.
- (2) Subsection (1) does not apply if the Tribunal, on its own initiative or on application by a party to the review, determines that a sitting, or any part of a sitting, must be held in private in the interests of justice.
- (3) The hearing of an application mentioned in subsection (2) must be held in private.

37W. Use of incriminating evidence given for purpose of review

- (1) This section applies if the Tribunal—
 - (a) requires a person to give evidence under section 37U(1)(c)(i);
 - (b) requires a person to answer any question under section 37U(1)(e);
 - (c) orders a person to give evidence under section 37U(1)(f); or
 - (d) otherwise requires or orders a person to provide any information under section 37U(1)(k).
- (2) A person is not excused from complying with the requirement or order of the Tribunal only on the ground that the evidence, answer or information might tend to incriminate the person.
- (3) However, subsection (4) applies if the evidence, answer or information might tend to incriminate the person.

- (4) Despite anything in this Ordinance and subject to subsection (5), neither the evidence, answer or information given or provided by the person, nor the requirement or order of the Tribunal, is admissible in evidence against the person in criminal proceedings in a court of law.
- (5) Subsection (4) does not apply to criminal proceedings in which the person is charged, in relation to the evidence, answer or information, with an offence under—
 - (a) section 37U(2)(a); or
 - (b) Part V of the Crimes Ordinance (Cap. 200).

37X. Contempt dealt with by Tribunal

- (1) The Tribunal has the same powers as the Court of First Instance to punish for contempt.
- (2) Without limiting subsection (1), the Tribunal may punish for contempt a person who, without reasonable excuse, engages in conduct falling within section 37U(2) as if the conduct were a contempt of court and the Tribunal were the Court of First Instance.
- (3) The Tribunal must, in exercising its powers to punish for contempt, adopt the standard of proof the Court of First Instance would adopt in exercising the same powers.

37Y. Costs

- (1) The Tribunal may, in relation to a review, by order award to—
 - (a) a person whose attendance, whether or not as a witness, has been necessary or required for the purpose of the review; or
 - (b) a party to the review,

a sum it considers appropriate in respect of the costs reasonably incurred by the person or party in relation to the review.

- (2) The costs awarded must be paid by, and are recoverable as a civil debt from—
- (a) if they are awarded to a person under subsection (1)(a)—a party to the review that the Tribunal considers appropriate; or
 - (b) if they are awarded to a party to the review under subsection (1)(b)—the other party to the review.
- (3) Subject to any rules made by the Chief Justice under section 37ZJ, Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A) applies to the award of costs, and to the taxation of any costs awarded, by the Tribunal under subsection (1).

37Z. Determination and order of Tribunal

- (1) The Tribunal must, as soon as practicable after determining a review, issue to each party to the review—
 - (a) its determination and the reasons for the determination; and
 - (b) any order made under section 37Y(1) for costs (*costs order*) and the reasons for the order.
- (2) If the review is made in relation to a specified decision by the HKICPA Council, the Tribunal must also issue to the FRC the determination and costs order, and the reasons for the determination and order.
- (3) If a sitting of the Tribunal, or a part of it, is held in private, the Tribunal may by order prohibit the publication or disclosure, wholly or partly, of the

determination or costs order, or the reasons for the determination or order.

- (4) A person commits an offence if the person, without reasonable excuse, fails to comply with an order of the Tribunal made under subsection (3).
- (5) A person who commits an offence under subsection (4) is liable—
 - (a) on conviction on indictment—to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction—to a fine at level 6 and to imprisonment for 6 months.

37ZA. Form and proof of determination or order of Tribunal

- (1) A determination or order made by the Tribunal must—
 - (a) be in writing; and
 - (b) be signed by the chairperson of the Tribunal.
- (2) A document purporting to be a determination or order of the Tribunal and signed by the chairperson of the Tribunal is, in the absence of evidence to the contrary, presumed to be a determination or order of the Tribunal duly made and signed—
 - (a) without proof of its making;
 - (b) without proof of the signature; and
 - (c) without proof that the person signing the determination or order was in fact the chairperson of the Tribunal.

37ZB. Registration of determination or order of Tribunal

- (1) The Court of First Instance may, on written notice given by the Tribunal in the way prescribed by rules made by

the Chief Justice under section 37ZJ, register a determination or order of the Tribunal.

- (2) A determination or order so registered is to be regarded, for its enforcement, as a determination or order of the Court of First Instance made within its jurisdiction.

37ZC. No other right of appeal

Subject to section 50 of the High Court Ordinance (Cap. 4) and section 37ZF, a determination or order of the Tribunal is final and is not subject to appeal.

Division 4—Taking Effect of Specified Decisions and Stay of Execution of Determinations or Orders of Tribunal

37ZD. Time when specified decision takes effect

- (1) Subject to subsection (2), a specified decision takes effect—
- (a) if, before the expiry of the specified period, the person in relation to whom the decision is made notifies the decision authority in writing that the person will not make a review application—on the day after the authority is notified;
 - (b) subject to paragraph (a), if the person does not make a review application within the specified period, including any extension of time granted by the Tribunal under section 37R—on the day after the period expires; or
 - (c) if the person makes a review application—
 - (i) if the decision is confirmed by the Tribunal—on the day after the decision is confirmed;

- (ii) if the decision is varied, or substituted by another decision, by the Tribunal—on the day after the decision is varied or substituted, subject to the terms of the variation or substitution; or
- (iii) if the application is withdrawn—on the day after the application is withdrawn.

- (2) The decision authority may specify any other day on which a specified decision is to take effect, if it considers it appropriate in the public interest to do so.

37ZE. Application for stay of execution of determination or order of Tribunal

- (1) A party to a review may, at any time after the review is determined by the Tribunal, apply to the Tribunal for a stay of execution of the determination, or of an order, made by the Tribunal.
- (2) On an application under subsection (1), the Tribunal may, if it considers it appropriate to do so, order a stay of execution of the determination or of the order.
- (3) The Tribunal may attach any condition it considers appropriate to an order made under subsection (2), including any condition as to costs or payment of money into the Tribunal.

Division 5—Appeals to Court of Appeal

37ZF. Party may appeal against Tribunal's determination

- (1) If a party to a review is dissatisfied with a determination of the review made by the Tribunal, the party may appeal to the Court of Appeal against the determination on—

- (a) a question of law;
 - (b) a question of fact; or
 - (c) a question of mixed law and fact.
- (2) No appeal may be made under subsection (1) unless leave to appeal has been granted by the Court of Appeal.

37ZG. Application for leave to appeal

- (1) A party to a review may apply to the Court of Appeal for leave to appeal against a determination of the review made by the Tribunal within 30 days after the day on which the determination is issued to the party.
- (2) The Court of Appeal may, on application by a party to a review, extend the time within which a leave application may be made.
- (3) The leave to appeal may be granted—
- (a) in relation to a particular issue arising out of a determination by the Tribunal; and
 - (b) subject to any condition that the Court of Appeal considers necessary in order to secure the just, expeditious and economical disposal of the appeal.
- (4) The leave to appeal may only be granted if the Court of Appeal is satisfied that—
- (a) the appeal has a reasonable prospect of success; or
 - (b) there is some other reason in the interests of justice why the appeal should be heard.
- (5) The Court of Appeal may determine a leave application without a hearing on the basis of written submissions only.
- (6) No appeal lies from a decision of the Court of Appeal as to whether leave to appeal to it should be granted.

37ZH. Powers of Court of Appeal

- (1) The Court of Appeal may, on an appeal against a determination of the Tribunal—
- (a) allow the appeal;
 - (b) dismiss the appeal;
 - (c) vary or set aside the determination; or
 - (d) remit the matter in question to the Tribunal or to the decision authority with any direction it considers appropriate.
- (2) If a determination of the Tribunal is set aside, the Court of Appeal may make another determination it considers appropriate (*new determination*) in substitution for the determination.
- (3) A varied or new determination made by the Court of Appeal under subsection (1)(c) or (2)—
- (a) may only be one that the Tribunal had power to make in relation to the review in question; and
 - (b) may be more or less onerous than the Tribunal's original determination.
- (4) In an appeal under this section, the Court of Appeal may make any order for costs it considers appropriate.

37ZI. No stay of execution of Tribunal's determination on appeal

- (1) Without prejudice to section 37ZE, the making of an appeal under section 37ZF against a determination of the Tribunal does not by itself operate as a stay of execution of the determination.

- (2) However, a party to the appeal may apply to the Court of Appeal for a stay of execution of the determination of the Tribunal.
- (3) On an application under subsection (2), the Court of Appeal may, if it considers it appropriate to do so, order a stay of execution of the determination of the Tribunal.
- (4) The Court of Appeal may attach any condition it considers appropriate to an order made under subsection (3), including any condition as to costs or payment of money into the Court.

Division 6—Miscellaneous

37ZJ. Power of Chief Justice to make rules

The Chief Justice may make rules—

- (a) providing for the award of costs under section 37Y and the taxation of those costs;
- (b) providing for matters relating to the registration by the Court of First Instance of determinations or orders of the Tribunal under section 37ZB;
- (c) regulating—
 - (i) the procedures for the hearing of appeals under section 37ZF; and
 - (ii) the procedures for making leave applications or applications for extension of time under section 37ZG, and for the hearing of the applications;
- (d) providing for matters relating to review applications or applications for a stay of execution of the determinations or orders of the Tribunal, that are not provided for in this Part or Schedule 4A;

- (e) requiring the payment of the fees specified in the rules for matters relating to review applications or applications for a stay of execution of the determinations or orders of the Tribunal;
- (f) providing for the issue or service (however described) of any document under this Part or Schedule 4A; and
- (g) prescribing a matter that, as provided for in this Part, is to be or may be prescribed by rules made by the Chief Justice.”.

49. Section 38 amended (interpretation)

Section 38(1)—

Repeal

“Council”

Substitute

“FRC”.

50. Section 39 amended (Financial Reporting Review Panel)

(1) Section 39(1), English text—

Repeal

“Executive shall”

Substitute

“Executive must”.

(2) Section 39(1)—

Repeal

“Council”

Substitute

“FRC”.

- (3) Section 39(2) and (3), English text—

Repeal

“Executive shall”

Substitute

“Executive must”.

51. Section 40 amended (initiating enquiry concerning relevant non-compliance)

- (1) Section 40(1)—

Repeal

“Council” (wherever appearing)

Substitute

“FRC”.

- (2) Section 40(1)(b)(i), English text—

Repeal

“Chairman”

Substitute

“chairperson”.

- (3) Section 40(1)(b)(i), Chinese text—

Repeal

“他”

Substitute

“該人”.

- (4) Section 40(2)—

Repeal

“Council shall”

Substitute

“FRC must”.

- (5) Section 40(3)—

Repeal

“Council shall”

Substitute

“FRC must”.

- (6) Section 40(3), English text—

Repeal

“Committee shall”

Substitute

“Committee must”.

- (7) Section 40(4)—

Repeal

“Council shall”

Substitute

“FRC must”.

52. Section 42 amended (Council to notify certain bodies of powers under Division 2 being exercisable)

- (1) Section 42, heading—

Repeal

“Council”

Substitute

“FRC”.

- (2) Section 42(1)—

Repeal

“Council certifies”

Substitute

“FRC certifies”.

- (3) Section 42(1)—

Repeal

“Council that”

Substitute

“FRC that”.

- (4) Section 42(1)—

Repeal

“Council shall”

Substitute

“FRC must”.

- (5) Section 42(2)(a)(ii)—

Repeal

“Council’s”

Substitute

“FRC’s”.

53. Section 43 amended (powers to require production of records and documents and provision of information and explanation)

- (1) Section 43(2), English text—

Repeal

“enquirer shall”

Substitute

“enquirer must”.

- (2) Section 43(2)(a)(ii)—

Repeal

“Council’s”

Substitute

“FRC’s”.

- (3) Section 43(3)—

Repeal

“him” (wherever appearing)

Substitute

“the person”.

54. Section 44 amended (use of incriminating evidence in proceedings)

- (1) Section 44(1), English text—

Repeal

“enquirer shall”

Substitute

“enquirer must”.

- (2) Section 44(2)—

Repeal

“, or for perjury,”.

55. Section 45 amended (Court of First Instance to inquire into failure to comply with requirements under section 43)

- (1) Section 45, heading—

Repeal

“Court of First Instance to inquire into”

Substitute

“Powers of Court of First Instance in relation to”.

- (2) Section 45(1)—

Repeal

“imposed on him”

Substitute

“imposed on the person”.

- (3) Section 45(1)—

Repeal

“apply to the Court of First Instance for an inquiry into the failure”

Substitute

“request the Court of First Instance to exercise the powers under subsection (2)”.

- (4) Section 45(2)—

Repeal

“On such application, the”

Substitute

“The”.

- (5) Section 45(2)(b), English text—

Repeal

“if he”

Substitute

“if the person”.

56. Section 46 amended (inspection of records or documents seized, etc.)

Section 46, English text—

Repeal

“enquirer shall”

Substitute

“enquirer must”.

57. Section 47 amended (enquiry reports)

- (1) Section 47(1), English text—

Repeal

“enquirer shall”

Substitute

“enquirer must”.

- (2) Section 47(2), English text—

Repeal

“enquirer shall”

Substitute

“enquirer must”.

- (3) Section 47(2)—

Repeal

“Council”

Substitute

“FRC”.

- (4) Section 47(3)—

Repeal

“Council”

Substitute

“FRC”.

- (5) Section 47(4)—

Repeal

“Council’s”

Substitute

“FRC’s”.

- (6) Section 47(4), English text—

Repeal

“enquirer shall”

Substitute

“enquirer must”.

- (7) Section 47(5)—

Repeal

everything after “subsection (3),”

Substitute

“the FRC may publish or otherwise disclose the report or any part of it.”.

- (8) Section 47—

Repeal subsections (6) and (7)**Substitute**

“(6) In deciding whether to publish or otherwise disclose the report or any part of it, the FRC must take into account—

- (a) whether the publication or disclosure may adversely affect any of the following proceedings that have been, or are likely to be, instituted—
- (i) any proceedings under Part 3C;
 - (ii) any criminal proceedings before a court or magistrate;
 - (iii) any proceedings before the Market Misconduct Tribunal; or

(iv) any proceedings under Part V of the Professional Accountants Ordinance (Cap. 50);

(b) whether the publication or disclosure may adversely affect any person named in the report; and

(c) whether the publication or disclosure would be in the interest of the investing public or in the public interest.

- (7) A document purporting—

(a) to be a copy of a report adopted under subsection (3); and

(b) to be certified by the chairperson of the FRC as a true copy of such a report,

is, on its production without further proof, admissible as evidence of the facts stated in the report in any of the proceedings specified in subsection (8).

- (8) The proceedings are—

(a) proceedings under Part 3C;

(b) civil proceedings before a court;

(c) proceedings before the Market Misconduct Tribunal; or

(d) proceedings under Part V of the Professional Accountants Ordinance (Cap. 50).”.

58. Section 48 amended (Council’s powers to close case, suspend enquiry and follow up, etc.)

- (1) Section 48, heading—

Repeal

“Council’s”

- Substitute**
“FRC’s”.
- (2) Section 48(1)—
Repeal
“Council” (wherever appearing)
Substitute
“FRC”.
- (3) Section 48(2)—
Repeal
“Council shall”
Substitute
“FRC must”.
- (4) Section 48(2), English text—
Repeal
“Council has”
Substitute
“FRC has”.
- (5) Section 48(3)—
Repeal
“Council shall”
Substitute
“FRC must”.
- (6) Section 48(3)—
Repeal
“Council is”
Substitute

- “FRC is”.
- (7) Section 48(3)—
Repeal
“by the Council”
Substitute
“by the FRC”.
59. **Part 4, Division 4 heading amended (Council’s powers to secure removal of relevant non-compliance)**
Part 4, Division 4, heading—
Repeal
“Council’s”
Substitute
“FRC’s”.
60. **Section 49 amended (Council to give notice to operator of listed entities to secure removal of relevant non-compliance)**
(1) Section 49, heading—
Repeal
“Council”
Substitute
“FRC”.
- (2) Section 49(1) and (2)(a) and (b)(i) and (ii)—
Repeal
“Council” (wherever appearing)
Substitute
“FRC”.

61. Section 50 amended (Council may apply to Court of First Instance to secure removal of relevant non-compliance)

(1) Section 50, heading—

Repeal

“Council”

Substitute

“FRC”.

(2) Section 50(1)(a) and (b) and (2)—

Repeal

“Council” (wherever appearing)

Substitute

“FRC”.

(3) Section 50(4)—

Repeal

“Council shall”

Substitute

“FRC must”.

(4) Section 50(7)(b)—

Repeal

“Council”

Substitute

“FRC”.

(5) Section 50(8)(a), English text—

Repeal

“it shall”

Substitute

“it must”.

(6) Section 50(9)—

Repeal

“Council shall”

Substitute

“FRC must”.

(7) Section 50(10)—

Repeal

“any of those who shows that he”

Substitute

“a director of the corporation who shows that the director”.

62. Part 4A added

After Part 4—

Add**“Part 4A****Levies****50A. Levies payable by sellers and purchasers of securities**

- (1) A levy, calculated in accordance with section 1 of Schedule 7, is payable by the seller and purchaser in a sale and purchase of securities that is recorded on a recognized stock market or notified to a recognized exchange company under its rules.
- (2) A person who is liable to pay a levy under subsection (1) must pay the levy to the HKEC in the way and within the time specified by the HKEC.

- (3) The HKEC must pay the levy collected into a bank account specified by the FRC on—
 - (a) the 15th day of the month following the month in which the levy is collected; or
 - (b) if the 15th day is not a business day, the next business day.
- (4) The HKEC must keep—
 - (a) proper accounts of all transactions for which a levy is payable under subsection (1); and
 - (b) proper accounts relating to the collection and payment of levies.
- (5) In this section—

business day (營業日) means a day other than—

 - (a) a public holiday;
 - (b) a Saturday; or
 - (c) a gale warning day or a black rainstorm warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);

rules (規章), in relation to a recognized exchange company, has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).

50B. Levies payable by PIEs

- (1) A levy, calculated in accordance with section 2 of Schedule 7, is payable by a PIE for a calendar year.
- (2) A PIE must pay the levy to the HKEC in the way and within the time specified by the HKEC.

- (3) The HKEC must pay the levy collected into a bank account specified by the FRC within 30 days after its collection.
- (4) The HKEC must keep proper accounts relating to the collection and payment of levies.

50C. Levies payable by PIE auditors

- (1) A levy, calculated in accordance with section 3 of Schedule 7, is payable by a PIE auditor for a calendar year.
- (2) A PIE auditor must pay the levy—
 - (a) for a registered PIE auditor—to the HKICPA in the way and within the time specified by the HKICPA; or
 - (b) for a recognized PIE auditor—to the FRC in the way and within the time specified by the FRC.
- (3) The HKICPA must pay the levy collected under subsection (2)(a) into a bank account specified by the FRC within 30 days after its collection.
- (4) The HKICPA must keep proper accounts relating to the collection and payment of levies.

50D. Reduction of levies

- (1) If, during a financial year of the FRC, the conditions set out in subsection (2) are satisfied, the FRC must consult the Financial Secretary with a view to recommending to the Chief Executive in Council that the rate or amount of a levy payable under this Part be reduced.
- (2) The conditions are—
 - (a) that the reserves of the FRC, after deducting depreciation and all provisions, are more than twice

its estimated operating expenses for the financial year; and

(b) that the FRC has no outstanding debt.

- (3) The FRC may, after consulting the Financial Secretary under subsection (1), recommend to the Chief Executive in Council that the rate or amount of a levy payable under this Part be reduced.

50E. Levies paid not refundable

Levies paid under this Part are not refundable.

50F. FRC may recover levy as civil debt

The FRC may recover the amount of any levy payable under this Part as a civil debt due to it.

50G. FRC may authorize persons to inspect accounts etc.

- (1) For ascertaining whether the HKEC or HKICPA is complying with or has complied with a provision under this Part, the FRC may, in writing, authorize a person to, at reasonable times, inspect and make copies of the accounts kept by the HKEC or HKICPA under this Part.
- (2) An authorized person must, on request, produce a copy of the written authorization when performing the authorized functions.”.

63. Section 51 amended (preservation of secrecy)

- (1) Section 51(1)(a) and (b), English text—

Repeal

“shall not”

Substitute

“must not”.

- (2) Section 51(3)—

Repeal

“Council”

Substitute

“FRC”.

- (3) Section 51(3)(b)(xvii)—

Repeal

“Secretary”

Substitute

“Secretary for Financial Services and the Treasury”.

- (4) Section 51(3)(b)—

Repeal subparagraph (xviii)

Substitute

“(xviii) a recognized exchange company;”.

- (5) Section 51(3)(c)—

Repeal

“Part 3 concerning a relevant irregularity”

Substitute

“Part 3A concerning any PIE engagement or non-PIE engagement carried out for a listed corporation”.

- (6) Section 51(3)(c), English text—

Repeal

“non-compliance,”

Substitute

“non-compliance”.

- (7) Section 51(4)—

Repeal

“Council shall”

Substitute

“FRC must”.

- (8) Section 51(4)—

Repeal

“Council is”

Substitute

“FRC is”.

- (9) Section 51(4)(a), English text—

Repeal

“his”

Substitute

“the recipient’s”.

- (10) Section 51(5), English text—

Repeal

“shall not”

Substitute

“must not”.

- (11) Section 51(6)(a) and (7)—

Repeal

“Council”

Substitute

“FRC”.

- (12) Section 51(10)(a), English text—

Repeal

“he”

Substitute

“the person”.

- (13) Section 51(10)(b)(i)—

Repeal

“he”

Substitute

“the person”.

- (14) Section 51(10)(b)(i)—

Repeal

“him”

Substitute

“the person”.

- (15) Section 51(10)(b)(ii)—

Repeal

“he”

Substitute

“the person”.

- (16) Section 51(10)(b)(ii), English text—

Repeal

“him”

Substitute

“the person”.

- (17) Section 51(12)—

Repeal

“Secretary”

Substitute

“Secretary for Financial Services and the Treasury”.

- (18) Section 51(13)(a)—

Repeal

“Council; or”

Substitute

“FRC;”.

- (19) After section 51(13)(a)—

Add

“(ab) an inspector or investigator; or”.

- (20) Section 51(13)(b)(i)(A), (B) and (C)—

Repeal

“Council” (wherever appearing)

Substitute

“FRC”.

64. Section 52 amended (protection of informers)

- (1) Section 52(1)—

Repeal paragraphs (a), (b) and (c)**Substitute**

- “(a) any proceedings under Part 3C;
 (b) any civil or criminal proceedings before a court or magistrate;
 (c) any proceedings before the Market Misconduct Tribunal;
 or
 (d) any proceedings under Part V of the Professional Accountants Ordinance (Cap. 50).”.

- (2) Section 52(3), before “the court”—

Add

“the Tribunal, the Court of Appeal,”.

- (3) Section 52(3), English text—

Repeal

“shall cause”

Substitute

“must cause”.

- (4) Section 52(4), after “proceedings,”—

Add

“the Tribunal, the Court of Appeal,”.

- (5) Section 52(4)(b)—

Repeal

“he”

Substitute

“the relevant person”.

- (6) Section 52(5)—

Repeal

“sections 35”

Substitute

“sections 31A”.

- (7) Section 52(6)(a)—

Repeal

“Council,”

Substitute

“FRC, an investigator,”.

- (8) Section 52(6)(a)—

Repeal

“Part 3”

Substitute

“Part 3A”.

- (9) Section 52(6)(b)—

Repeal

“Council,”

Substitute

“FRC, an investigator.”.

65. Section 53 amended (avoidance of conflict of interests)

- (1) Section 53(1)(a)—

Repeal

“Council” (wherever appearing)

Substitute

“FRC”.

- (2) Section 53(2)—

Repeal

“he has an interest, he shall”

Substitute

“the person has an interest, the person must”.

- (3) Section 53(2)—

Repeal

“Council”

Substitute

“FRC”.

- (4) Section 53—

Repeal subsection (3)**Substitute**

- “(3) For the purposes of subsection (2), a person has an interest in a matter if the matter relates to—

- (a) a listed corporation and the person has an interest in the corporation’s securities;
- (b) a listed collective investment scheme and the person has an interest in the scheme’s interests;
- (c) another person who is, or was within the relevant period, an employer of the person;
- (d) another person of whom the person is, or was within the relevant period, a client;
- (e) another person who is, or was within the relevant period, an associate of the person; or
- (f) another person whom the person knows is, or was within the relevant period, a client of a person described in paragraph (c) or (e).”.

- (5) Section 53(4)—

Repeal

“Council shall”

Substitute

“FRC must”.

- (6) Section 53(5)—

Repeal

“he shall”

Substitute

“the person must”.

- (7) Section 53(5)—
Repeal
 “Council” (wherever appearing)
Substitute
 “FRC”.
- (8) Section 53(6)—
Repeal
 “Council” (wherever appearing)
Substitute
 “FRC”.
- (9) Section 53(6)—
Repeal
 “shall not”
Substitute
 “must not”.
- (10) Section 53(7)—
Repeal
 “Council” (wherever appearing)
Substitute
 “FRC”.
- (11) Section 53(7), English text—
Repeal
 “shall give”
Substitute
 “must give”.
- (12) Section 53(7)(a)—

- Repeal**
 everything after “with respect to”
Substitute
 “an inspection or investigation under Part 3A, or an exercise of power under Part 3B—the PIE auditor, non-PIE auditor or registered responsible person concerned, as the case requires; or”.
- (13) Section 53(7)—
Repeal paragraph (b).
- (14) Section 53(7)(c)—
Repeal
 “non-compliance,”
Substitute
 “non-compliance—”.
- (15) Section 53(9)—
Repeal
 “Council” (wherever appearing)
Substitute
 “FRC”.
- (16) Section 53(10), English text, definition of *associate*, paragraph (d)—
Repeal
 “his spouse”
Substitute
 “the person’s spouse”.
- (17) Section 53(10), definition of *associate*, paragraph (k)(ii)—
Repeal the full stop

Substitute a semicolon.

- (18) Section 53(10)—

Add in alphabetical order

“*relevant period* (有關期間), in relation to a person required to consider a matter as mentioned in subsection (2), means the period of 3 years before the day when the person is required to do so.”.

66. Section 54 amended (immunity)

- (1) Section 54(1)—

Repeal

“requirement imposed on him under section 25, 26, 27, 28, 34 or 43”

Substitute

“specified requirement”.

- (2) Section 54(2), English text—

Repeal

“by him”

Substitute

“by the person”.

- (3) Section 54(2)—

Repeal

everything after “purported performance, of”

Substitute

“any function under this Ordinance.”.

- (4) After section 54(2)—

Add

- “(3) In this section—

specified requirement (指明要求) means a requirement imposed under—

- (a) section 21C(2);
- (b) section 21D(1) or (2);
- (c) section 25(1);
- (d) section 26(1) or (2);
- (e) section 34; or
- (f) section 43.”.

67. Section 55 amended (immunity in respect of communication with Council by auditors of listed entities)

- (1) Section 55, heading—

Repeal

“Council by auditors of listed entities”

Substitute

“FRC by PIE auditors and non-PIE auditors”.

- (2) Section 55(1)—

Repeal

everything after “if a person” and before “does not incur”

Substitute

“communicates in good faith to the FRC any information or opinion on a specified matter in relation to a listed entity of which the person becomes or became aware while acting as the PIE auditor or non-PIE auditor of the entity, the person”.

- (3) Section 55—

Repeal subsection (3)**Substitute**

“(3) In this section—

specified matter (指明事宜), in relation to a listed entity, means a matter, whether occurring before, during or after the entity is or was listed, that, in the opinion of a person referred to in subsection (1), suggests that—

- (a) a practice irregularity within the meaning of section 4 has been committed in relation to a PIE engagement or non-PIE engagement carried out for the entity; or
- (b) there is a relevant non-compliance in relation to the entity.”.

68. Section 57 amended (production of information in information systems)

Section 57(1)(a) and (2)(a)—

Repeal

“Part 3”

Substitute

“Part 3A”.

69. Section 58 amended (lien claimed on records or documents)

(1) Section 58, English text—

Repeal

“his possession”

Substitute

“the person’s possession”.

(2) Section 58—

Repeal

“Part 3”

Substitute

“Part 3A”.

70. Section 59 amended (destruction of documents, etc.)

(1) Section 59(1), English text—

Repeal

“he”

Substitute

“the person”.

(2) Section 59(1)—

Repeal

“Part 3”

Substitute

“Part 3A”.

71. Section 59A added

After section 59—

Add

“59A. Reasonable excuse

- (1) This section applies if a provision of this Ordinance that creates an offence makes a reference to a reasonable excuse for an act or omission.
- (2) The reference to a reasonable excuse is to be construed as providing for a defence to a charge in relation to the act or omission.
- (3) A defendant is to be taken to have established that the defendant had a reasonable excuse for the act or omission if—

- (a) sufficient evidence is adduced to raise an issue that the defendant had such a reasonable excuse; and
- (b) the contrary is not proved by the prosecution beyond reasonable doubt.”.

72. Section 60 amended (service of notice, etc.)

- (1) Section 60—

Repeal subsection (1)**Substitute**

“(1) This section applies to a notice or other document required or permitted to be given, sent or issued (however described) under this Ordinance.”.

- (2) Section 60(2)—

Repeal

“requirement is taken to be given”

Substitute

“document is taken to be given, sent”.

- (3) Section 60(2)(a)(i)—

Repeal

“to him”

Substitute

“to the individual”.

- (4) Section 60(2)(a)(ii), (iii) and (iv)—

Repeal

“his”

Substitute

“the individual’s”.

- (5) Section 60(2)(a), Chinese text—

Repeal

“要求”

Substitute

“文件”.

- (6) Section 60(2)(b), Chinese text—

Repeal

“要求”

Substitute

“文件”.

- (7) Section 60(2)(c)(i)—

Repeal

“for the purposes of that Part at his”

Substitute

“at the person’s”.

- (8) Section 60(2)(c), Chinese text—

Repeal

“要求”

Substitute

“文件”.

- (9) Section 60(2)(d) and (e), Chinese text—

Repeal

“要求”

Substitute

“文件”.

73. Sections 60A to 60D added

After section 60—

Add**“60A. Chief Executive in Council may make regulations**

- (1) The Chief Executive in Council may, after consulting the FRC, make regulations—
 - (a) prescribing fees and providing for payment of the fees—
 - (i) for anything done by the FRC or a committee established by the FRC in performing a function under this Ordinance; and
 - (ii) for any other matter provided for by or under this Ordinance;
 - (b) prescribing fees (however described) that are required or permitted to be prescribed by regulations made under this section; and
 - (c) prescribing any other matter that, by this Ordinance, is required or permitted to be prescribed by regulations made under this section.
- (2) Fees prescribed by regulations made under this section are not to be limited by reference to the amount of the administrative or other costs incurred, or likely to be incurred, by the HKICPA or the FRC (or a committee established by the HKICPA or the FRC) in performing the functions to which the fees relate.
- (3) Regulations made under this section—
 - (a) may provide that the amount of a fee is to be fixed by reference to a scale set out in the regulations;

- (b) may provide for the payment of different fees by persons, or in relation to persons or cases, of different classes or descriptions;
 - (c) may provide that the payment of a fee is waived, either generally or in a particular case; and
 - (d) may provide for the payment of fees annually or at other intervals.
- (4) The FRC may recover the amount of any fee payable under the regulations made under this section as a civil debt due to it.

60B. FRC may make regulations

- (1) The FRC may make regulations—
 - (a) providing for the applications for registration and recognition as PIE auditors, renewal of registration and recognition, and incidental matters;
 - (b) providing for the maintenance of the PIE auditors register and the correction of errors in the register;
 - (c) providing for the admissibility in evidence in judicial or other proceedings of specified records kept by the FRC;
 - (d) providing for the form and way in which documents and information required to be lodged, filed, submitted or retained for a provision of this Ordinance—
 - (i) are to be completed, signed, executed or authenticated; or
 - (ii) are to be lodged, filed, submitted or retained;
 - (e) providing for the form and way in which a record is to be compiled for a provision of this Ordinance;

- (f) providing for the returns to be made by PIE auditors and registered responsible persons of registered PIE auditors, including the contents of the returns, and the time within which and the form and way in which the returns are to be made; and
 - (g) prescribing any other matter that, by this Ordinance, is required or permitted to be prescribed by regulations made under this subsection.
- (2) In addition to the power to make regulations under subsection (1), the FRC may, after consulting the Financial Secretary, make other regulations that are necessary for the performance of any of its functions.
- (3) Except as otherwise provided in this Ordinance, regulations made under this section—
- (a) may be of general or special application or may be made so as to apply only in specified circumstances;
 - (b) may make different provisions for different circumstances and provide for different cases or classes of cases;
 - (c) may authorize a matter or thing to be determined, applied or regulated by a specified person;
 - (d) may provide for the exercise of a discretion in specified cases; and
 - (e) may, for the better carrying out of any provision of this Ordinance, include any savings, transitional, incidental, supplemental, evidential and consequential provisions (whether or not involving the provisions of an Ordinance).

- (4) Regulations made under this section may prescribe offences for contravention of the regulations, which are punishable by a fine, imprisonment or both.
- (5) The maximum penalty that may be prescribed for an offence under subsection (4) is—
 - (a) for an offence of which a person is convicted on indictment—a fine of \$500,000 and imprisonment for 2 years; or
 - (b) for an offence of which a person is summarily convicted—a fine at level 6 and imprisonment for 6 months.

60C. FRC must publish draft regulations

- (1) If the FRC proposes to make regulations under section 60B, it must publish a draft of the proposed regulations, in the way it considers appropriate, for inviting representations on the proposed regulations by the public.
- (2) If the FRC makes regulations after a draft has been published under subsection (1), it must comply with subsections (3) and (4).
- (3) The FRC must publish, in the way it considers appropriate, an account setting out in general terms—
 - (a) the representations made on the draft; and
 - (b) the response of the FRC to the representations.
- (4) If the FRC considers the regulations made are significantly different from the draft, the FRC must publish, in the way it considers appropriate, details of the difference.
- (5) Subsections (1) and (2) do not apply if the FRC considers, in the circumstances of the case, that—

- (a) it is inappropriate or unnecessary that those subsections should apply; or
- (b) the delay involved in complying with those subsections would not be—
 - (i) in the interest of the investing public; or
 - (ii) in the public interest.

60D. FRC may specify forms

- (1) The FRC may specify—
 - (a) the form of any document required under this Ordinance to be in the specified form; and
 - (b) the form of any other document required for the purposes of this Ordinance that the FRC considers appropriate.
- (2) A form specified under this section must be—
 - (a) completed in accordance with the directions and instructions that are specified in the form;
 - (b) accompanied by the documents that are specified in the form; and
 - (c) if the completed form is required to be provided to the FRC or any other person, so provided in the way, if any, specified in the form.”.

74. Section 61 amended (amendment of Schedules)

- (1) Section 61(1)—

Repeal

“Secretary”

Substitute

“Secretary for Financial Services and the Treasury”.

- (2) Section 61(1)—

Repeal

“Schedule 1”

Substitute

“Schedule 1, 1A or 3B”.

- (3) After section 61(1)—

Add

“(1A) The Legislative Council may, by resolution, amend Schedule 3A.”.

- (4) Section 61(2)—

Repeal

“Schedule 2, 3, 4, 5 or 6”

Substitute

“Schedule 2, 4, 4A, 5, 6 or 7”.

75. Part 7 added

Before Schedule 1—

Add**“Part 7****Savings and Transitional Arrangements for
Financial Reporting Council (Amendment)
Ordinance 2018****Division 1—Interpretation****87. Interpretation**

In this Part—

pre-amended Ordinance (《原有條例》) means this Ordinance as in force immediately before the 2018 Ordinance commencement date.

Division 2—Auditors Having Undertaken but Not Yet Completed PIE Engagements before 2018 Ordinance Commencement Date etc.

88. Practice units having undertaken but not yet completed PIE engagements before 2018 Ordinance commencement date

- (1) This section applies if a practice unit has undertaken, but not yet completed, a PIE engagement before the 2018 Ordinance commencement date.
- (2) The practice unit may, by written notice in the specified form, inform the HKICPA Council that the unit intends to continue to carry out the engagement during the transitional period.
- (3) When a notice is sent under subsection (2), the practice unit is taken to be a registered PIE auditor for all purposes of this Ordinance until—
 - (a) if the unit makes a registration application no later than 45 days before the last day of the transitional period—
 - (i) the day on which the unit is registered as a PIE auditor pursuant to the application; or
 - (ii) the day on which the refusal of the application takes effect; or
 - (b) otherwise—the last day of the transitional period.

89. Persons performing functions as responsible persons before 2018 Ordinance commencement date

- (1) This section applies if a registered PIE auditor (provisional) has, before the 2018 Ordinance commencement date, authorized a person to carry out an activity as a responsible person of the auditor.
- (2) The auditor may, by written notice in the specified form, inform the HKICPA Council that the auditor intends to authorize the person to continue to carry out the activity during the transitional period.
- (3) When a notice is sent under subsection (2), the person is taken to be a registered responsible person of the auditor for all purposes of this Ordinance until the day determined in accordance with section 88(3)(a) or (b).

90. Overseas auditors having undertaken but not yet completed PIE engagements before 2018 Ordinance commencement date

- (1) This section applies if an overseas auditor has undertaken, but not yet completed, a PIE engagement for an overseas entity before the 2018 Ordinance commencement date.
- (2) The overseas auditor may, by written notice in the specified form, inform the FRC that the auditor intends to continue to carry out the engagement for the overseas entity during the transitional period.
- (3) When a notice is sent under subsection (2), the overseas auditor is taken to be a recognized PIE auditor of the overseas entity for all purposes of this Ordinance until—
 - (a) if the entity makes a recognition application in relation to the auditor no later than 45 days before the last day of the transitional period—

- (i) the day on which the auditor is recognized as a PIE auditor of the entity pursuant to the application; or
 - (ii) the day on which the refusal of the application takes effect; or
- (b) otherwise—the last day of the transitional period.

91. Information of registered PIE auditors (provisional) etc. to be entered in PIE auditors register

- (1) The HKICPA Council must provide the HKICPA Registrar with the information in relation to each registered PIE auditor (provisional) listed in section 20ZX(2).
- (2) The FRC must provide the HKICPA Registrar with the information in relation to each recognized PIE auditor (provisional) listed in section 20ZX(3).
- (3) The HKICPA Registrar must enter the information provided under this section in the PIE auditors register.

Division 3—Investigations Initiated before 2018 Ordinance Commencement Date etc.

92. Investigations initiated before 2018 Ordinance commencement date

- (1) This section applies to an investigation that was initiated under Part 3 of the pre-amended Ordinance before the 2018 Ordinance commencement date.
- (2) The pre-amended Ordinance continues to apply in relation to the investigation as if the 2018 Amending Ordinance had not been enacted.

93. Investigations may be initiated in relation to audits etc. completed before 2018 Ordinance commencement date

- (1) An investigation may be initiated under Part 3 of the pre-amended Ordinance in relation to any audit, or the preparation of any specified report, that had been completed for a listed entity before the 2018 Ordinance commencement date, as if the 2018 Amending Ordinance had not been enacted.
- (2) The pre-amended Ordinance continues to apply in relation to an investigation initiated under subsection (1) as if the 2018 Amending Ordinance had not been enacted.
- (3) In this section—
specified report (指明報告) has the meaning given by section 2(1) of the pre-amended Ordinance.”.

76. Schedule 1 amended (definitions of *relevant financial report* and *relevant requirement*)

- (1) Schedule 1, Part 1, definition of *relevant financial report*, paragraphs (a)(i), (ii), (iii), (iv)(C) and (v) and (b)(i)(C) and (ii)—

Repeal

“at the relevant time”.

- (2) Schedule 1, Part 1, definition of *relevant requirement*, paragraphs (a)(ii) and (b)(i)—

Repeal

“to be issued”

Substitute

“to have been issued”.

- (3) Schedule 1, Part 2, definition of *relevant financial report*, paragraphs (a), (b) and (c)—

Repeal

“at the relevant time”.

77. Schedule 1A added

After Schedule 1—

Add**“Schedule 1A**

[ss. 3A & 61 & Sch.
7]

PIE Engagements and Non-PIE Engagements**Part 1****PIE Engagements**

1. The preparation of an auditor’s report in relation to the following financial statements or accounts of a PIE—
 - (a) if the PIE is a listed corporation (equity)—
 - (i) the financial statements required to be prepared under section 379 of the Companies Ordinance (Cap. 622); or
 - (ii) the annual accounts required to be prepared under the Listing Rules; or
 - (b) if the PIE is a listed collective investment scheme—the annual accounts required to be

prepared under the relevant code or the Listing Rules.

2. The preparation of a specified report required to be included in—
 - (a) a listing document of a corporation seeking to be listed for the listing of its shares or stocks;
 - (b) a listing document of a listed corporation for the listing of its shares or stocks; or
 - (c) a listing document of—
 - (i) a collective investment scheme seeking to be listed; or
 - (ii) a listed collective investment scheme.
3. The preparation of an accountant’s report required to be included in a circular issued by or on behalf of a PIE under the Listing Rules for the purpose of—
 - (a) a reverse takeover within the meaning of the Listing Rules; or
 - (b) a very substantial acquisition within the meaning of the Listing Rules.

Part 2**Non-PIE Engagements**

1. The preparation of an auditor’s report in relation to the following financial statements or accounts of a non-PIE—
 - (a) the financial statements required to be prepared under section 379 of the Companies Ordinance (Cap. 622); or

(b) the annual accounts required to be prepared under the Listing Rules.

2. The preparation of a specified report required to be included in—

(a) a listing document of a corporation seeking to be listed for the listing of its securities (other than shares and stocks); or

(b) a listing document of a listed corporation for the listing of its securities (other than shares and stocks).”.

78. Schedule 2 substituted

Schedule 2—

Repeal the Schedule

Substitute

“Schedule 2

[ss. 7 & 61 & Schs.
3A & 4]

Financial Reporting Council

Part 1

Interpretation

1. Interpretation

(1) In this Schedule—

Chairperson (主席) means the chairperson of the FRC;

Chief Executive Officer (行政總裁) means the chief executive officer of the FRC;

Deputy Chairperson (副主席) means the deputy chairperson of the FRC;

FRC member (財匯局成員) means a member of the FRC appointed under section 7.

(2) In this Schedule, a reference to a person being unable to perform the person’s functions is a reference to the person being unable to do so due to illness, absence from Hong Kong or any other reason.

Part 2

Office of FRC Members

2. Appointment of Deputy Chairperson

The Chief Executive may appoint an FRC member (other than the Chairperson or the Chief Executive Officer) who is a non-practitioner to be the Deputy Chairperson.

3. Functions of FRC members

An FRC member has the functions assigned to the member by the FRC.

4. Terms and conditions of office of FRC members

(1) The Chief Executive is to determine the terms and conditions of the office of an FRC member.

(2) The remuneration, allowances and expenses of an FRC member, as determined by the Chief Executive, are to be paid out of the funds of the FRC.

5. Resignation of FRC members

- (1) An FRC member may at any time resign from office by written notice to the Chief Executive.
- (2) Unless it is otherwise provided in the terms and conditions referred to in section 4(1) of this Schedule, a notice of resignation takes effect on—
 - (a) the day on which the notice is received by the Chief Executive; or
 - (b) if a later day is specified in the notice—that later day.

6. Removal of FRC members

- (1) The Chief Executive may remove an FRC member from office if the Chief Executive is satisfied that the member—
 - (a) has become a public officer;
 - (b) has become bankrupt;
 - (c) is convicted in Hong Kong of an offence that is punishable by imprisonment for 12 months or more, or is convicted elsewhere than in Hong Kong of an offence that, if committed in Hong Kong, would be an offence so punishable; or
 - (d) is otherwise unable or unfit to perform the functions of an FRC member.
- (2) The Chief Executive must publish in the Gazette a notice of each removal under subsection (1).

Part 3**Acting Arrangements****7. Acting Chairperson**

- (1) If the office of Chairperson is vacant or the Chairperson is unable to perform the Chairperson's functions, the Deputy Chairperson must act as Chairperson.
- (2) Whether or not the Deputy Chairperson has been appointed, the Chairperson may—
 - (a) designate an FRC member who is a non-practitioner or (if no non-practitioner is available for designation) a practitioner to act as Chairperson for any period during which both the Chairperson and the Deputy Chairperson are unable to act as Chairperson; and
 - (b) at any time revoke the designation.
- (3) Subsection (4) applies if—
 - (a) the office of Deputy Chairperson is vacant;
 - (b) the Deputy Chairperson appointed is unable to act as Chairperson;
 - (c) no designation under subsection (2)(a) is in force; or
 - (d) the FRC member designated under subsection (2)(a) is unable to act as Chairperson.
- (4) The Financial Secretary may—
 - (a) designate an FRC member who is a non-practitioner or (if no non-practitioner is available for designation) a practitioner to act as Chairperson

- for any period during which the Chairperson is unable to perform the Chairperson's functions; and
- (b) at any time revoke the designation.
- (5) A designation under subsection (4)(a) ceases to have effect when the earliest of the following events occurs—
- (a) the designation is revoked by the Financial Secretary;
- (b) the designated FRC member is unable to act as Chairperson;
- (c) if the designation is made in the circumstances mentioned in subsection (3)(a)—an appointment is made under section 2 of this Schedule;
- (d) if the designation is made in the circumstances mentioned in subsection (3)(b)—the Deputy Chairperson is able to act as Chairperson;
- (e) if the designation is made in the circumstances mentioned in subsection (3)(c)—a designation is made under subsection (2)(a);
- (f) if the designation is made in the circumstances mentioned in subsection (3)(d)—the designated FRC member is able to act as Chairperson.
- (6) An FRC member acting as Chairperson under this section is to be regarded for all purposes to be the Chairperson.
- (7) Despite subsection (6), an executive director or non-executive director of the FRC who acts as Chairperson under this section does not cease to be regarded as such a director only because the director is acting as Chairperson.

8. Acting Chief Executive Officer

- (1) The Chief Executive Officer may—
- (a) designate an executive director of the FRC to act as Chief Executive Officer for any period during which the Chief Executive Officer is unable to perform the Officer's functions; and
- (b) at any time revoke the designation.
- (2) Subsection (3) applies if—
- (a) no designation under subsection (1)(a) is in force; or
- (b) the executive director designated under subsection (1)(a) is unable to act as Chief Executive Officer.
- (3) The Financial Secretary may—
- (a) designate an executive director of the FRC to act as Chief Executive Officer for any period during which the Chief Executive Officer is unable to perform the Officer's functions; and
- (b) at any time revoke the designation.
- (4) A designation under subsection (3)(a) ceases to have effect when the earliest of the following events occurs—
- (a) the designation is revoked by the Financial Secretary;
- (b) the designated executive director is unable to act as Chief Executive Officer;
- (c) the Chief Executive Officer is able to perform the Officer's functions.
- (5) An executive director of the FRC acting as Chief Executive Officer under this section is to be regarded for all purposes to be the Chief Executive Officer.

Part 4

Meetings of FRC

9. General procedures for meetings

- (1) Meetings of the FRC are to be held as often as necessary to enable the FRC to perform its functions.
- (2) A meeting of the FRC may be convened by the Chairperson.
- (3) The Chairperson must convene a meeting of the FRC on being given a notice for that purpose by 2 or more other FRC members.
- (4) The procedures for convening meetings of the FRC and for the conduct of business at those meetings are, subject to this Ordinance, to be determined by the FRC.

10. Quorum

- (1) The quorum for a meeting of the FRC is constituted by—
 - (a) one-third of the executive directors of the FRC; and
 - (b) one-third of the non-executive directors of the FRC.
- (2) For the purposes of subsection (1)—
 - (a) if the number that is equal to one-third of the executive directors or non-executive directors of the FRC is not a whole number, that number is to be rounded up to the nearest whole number;
 - (b) an executive director of the FRC who acts as Chairperson is only counted as an executive director of the FRC; and

- (c) a non-executive director of the FRC who acts as Chairperson is only counted as a non-executive director of the FRC.
- (3) If an FRC member is required under section 53(5) or (6)—
 - (a) not to be present during any deliberation of the FRC;
 - (b) not to take part in any decision of the FRC; or
 - (c) not to take part in the making of a determination by the FRC,

the member is not to be counted for the purpose of forming a quorum at the part of the meeting of the FRC held for such deliberation, decision or determination.
- (4) An FRC member who participates in a meeting of the FRC by telephone, video conferencing or other electronic means is to be regarded as being present at the meeting if—
 - (a) that member is able to hear the other FRC members who are physically present at the meeting; and
 - (b) the FRC members who are physically present at the meeting are able to hear that member.

11. Presiding member at meetings

A meeting of the FRC is to be presided over by the first of the following persons (in descending order of priority) who is able to preside at the meeting—

- (a) the Chairperson;
- (b) the Deputy Chairperson;
- (c) the FRC member designated under section 7(2)(a) of this Schedule;

- (d) the FRC member designated under section 7(4)(a) of this Schedule; or
- (e) an FRC member who is chosen, for this purpose, by other FRC members present at the meeting.

12. Voting at meetings

- (1) Each FRC member present at a meeting of the FRC has 1 vote.
- (2) Every question to be decided at a meeting of the FRC must be determined by a majority of the votes of its members present.
- (3) If the votes on a question are equally divided, the FRC member who presides at the meeting has, subject to subsection (4), a casting vote.
- (4) The FRC member who presides at a meeting of the FRC must not exercise a casting vote on a question at the meeting until after the member has consulted the Financial Secretary on the question.

13. Circulation of papers and written resolution

- (1) The FRC may transact any of its business by circulation of papers.
- (2) A resolution that meets the requirements set out in subsection (3) is as valid as if it had been passed at a meeting of the FRC.
- (3) The requirements are—
 - (a) the resolution is in writing;
 - (b) the resolution is signed by all the FRC members who are, when the resolution is made available for signature, present in Hong Kong and capable of signing the resolution; and

- (c) the resolution is signed by—
 - (i) at least one-third of the executive directors of the FRC; and
 - (ii) at least one-third of the non-executive directors of the FRC.
- (4) For the purposes of subsection (3)—
 - (a) a resolution may be—
 - (i) in the form of one document; or
 - (ii) in the form of more than one document, each of which is in the same form; and
 - (b) if the number that is equal to one-third of the executive directors or non-executive directors of the FRC is not a whole number, that number is to be rounded up to the nearest whole number.
- (5) If a resolution is in the form of more than one document, the requirements under subsection (3)(b) and (c) are to be regarded as having been met if the documents together bear the signatures of the numbers of FRC members as specified in that subsection.
- (6) For the purposes of this section—
 - (a) a resolution is regarded as having been signed by an FRC member if a fax or electronic transmission of the resolution bears the signature of the member; and
 - (b) a resolution is regarded as made on the day on which the resolution is signed by the last person signing as an FRC member.

Part 5**Miscellaneous****14. Committees**

- (1) The FRC may establish one or more committees to assist it in a matter with which it is concerned.
- (2) The FRC—
 - (a) must appoint an FRC member to be the chairperson of a committee; and
 - (b) may, subject to subsection (3), appoint other members of a committee, whether or not any of them is also an FRC member.
- (3) Among the members of a committee, the number of FRC members must exceed the number of non-FRC members.
- (4) The FRC may refer a matter with which it is concerned to a committee for consideration, inquiry or management.
- (5) The FRC may—
 - (a) revoke an appointment under subsection (2); or
 - (b) withdraw a reference under subsection (4).
- (6) The procedures for convening meetings of a committee and for the conduct of business at those meetings are, subject to any direction of the FRC, to be determined by the committee.

15. Seal

- (1) The FRC must have a seal the affixing of which must be authenticated by—

- (a) the signature of the Chairperson or the Deputy Chairperson; or
 - (b) the signature of another FRC member authorized to sign on behalf of the FRC.
- (2) A document purporting to be a document duly executed under the seal of the FRC is to be received in evidence without further proof and is, unless the contrary is proved, to be regarded as a document so executed on being received in evidence.

16. Organization of administration etc.

The FRC must organize and regulate its administration, procedure and business in a way that it considers will, subject to the requirements of this Ordinance, best ensure the performance of its functions.”.

79. Schedule 3 repealed (provisions relating to Chief Executive Officer of Council)

Schedule 3—

Repeal the Schedule.

80. Schedules 3A and 3B added

Before Schedule 4—

Add

“Schedule 3A

[ss. 11 & 61]

Non-delegable Functions of FRC

1. The following functions of the FRC are specified for the purposes of section 11(2)—
 - (a) to make subsidiary legislation under this Ordinance or any other Ordinance;
 - (b) to borrow money under section 10(2)(e);
 - (c) to publish or otherwise make available, under section 10(2)(h), materials indicating to the public any matter relating or incidental to the performance by the FRC of any of its functions;
 - (d) to issue guidelines under section 13;
 - (e) to submit, under section 17(3), estimates of income and expenditure of the FRC for approval by the Financial Secretary;
 - (f) to cause to be prepared a statement of accounts of the FRC under section 18(2);
 - (g) to submit to the Financial Secretary under section 20(1) the documents referred to in that section;
 - (h) to appoint a person to be an inspector under section 21A(1)(b);
 - (i) to appoint a person to be an investigator under section 22A(1)(b);
 - (j) to specify, under section 37ZD(2), the day on which a specified decision is to take effect;
 - (k) to consult, under section 50D(1), the Financial Secretary with a view to recommending to the Chief Executive in Council that the rate or amount of a levy be reduced, and to recommend, under

section 50D(3), to the Chief Executive in Council that the rate or amount of a levy be reduced;

- (l) to establish a committee under section 14(1) of Schedule 2;
- (m) to appoint a person to be the chairperson or a member of a committee under section 14(2) of Schedule 2;
- (n) to refer a matter to a committee under section 14(4) of Schedule 2;
- (o) to revoke the appointment of the chairperson or a member of a committee, or to withdraw a reference from a committee, under section 14(5) of Schedule 2.

Schedule 3B

[ss. 20G, 20K, 20ZE, 20ZK, 20ZY & 61]

Fees

| Column 1 | Column 2 | Column 3 |
|----------|---|------------|
| Item | Particulars | Fees \$ |
| 1. | Application for registration as a PIE auditor under section 20G | 250 |

| Column 1 | Column 2 | Column 3 |
|----------|---|--------------|
| Item | Particulars | Fees \$ |
| 2. | Application for renewal of registration as a PIE auditor under section 20K | 200 |
| 3. | Application for grant of approval-in-principle for recognition as a PIE auditor under section 20ZE | 250 |
| 4. | Application for renewal of recognition as a PIE auditor under section 20ZK | 200 |
| 5. | Provision of a copy of an entry in, or an extract of, the PIE auditors register under section 20ZY(2)(a) | 50 per copy |
| 6. | Provision of a certified true copy of an entry in, or an extract of, the PIE auditors register under section 20ZY(2)(b) | 150 per copy |

81. Schedule 4 amended (provisions relating to Investigation Board and its members)

(1) Schedule 4, section 1(1)—

Repeal

“Council at the time of his appointment”

Substitute

“FRC at the time of the member’s appointment”.

(2) Schedule 4, English text, section 1(2)—

Repeal

“his period of appointment or reappointment, a member of the Investigation Board”

Substitute

“the period of appointment or reappointment of a member of the Investigation Board, the member”.

(3) Schedule 4, section 1(3) and (4)—

Repeal

“Council” (wherever appearing)

Substitute

“FRC”.

(4) Schedule 4, section 2(1)—

Repeal

“chairman, is unable to perform the functions of his office as member, the Council”

Substitute

“chairperson, is unable to perform the member’s functions, the FRC”.

(5) Schedule 4, section 2(1)—

Repeal

“his place during his”

Substitute

“the member’s place during the member’s”.

(6) Schedule 4, Chinese text, section 2(2)—

Repeal

“他”

Substitute

“其”.

- (7) Schedule 4, section 3(1)—
Repeal
 “Council” (wherever appearing)
Substitute
 “FRC”.
- (8) Schedule 4, section 3(1)—
Repeal paragraph (b).
- (9) Schedule 4, section 3(1)—
Repeal
 “his office as member of the Investigation Board”
Substitute
 “the member’s office”.
- (10) Schedule 4, section 3(2) and (4)—
Repeal
 “Council shall”
Substitute
 “FRC must”.
- (11) Schedule 4, English text, section 4(1)—
Repeal
 “chairman of the Investigation Board shall convene such”
Substitute
 “chairperson of the Investigation Board must convene the”.
- (12) Schedule 4, section 4(1)—
Repeal
 “as he”
Substitute

- “as the chairperson”.
- (13) Schedule 4, after section 4(1)—
Add
 “(1A) A meeting of the Investigation Board is to be presided over by the first of the following persons (in descending order of priority) who is able to preside at the meeting—
 (a) the chief executive officer of the FRC;
 (b) an executive director of the FRC designated under section 8(1)(a) of Schedule 2;
 (c) an executive director of the FRC designated under section 8(3)(a) of Schedule 2; or
 (d) a member of the Board who is chosen, for this purpose, by other members of the Board present at the meeting.”.
- (14) Schedule 4, English text, section 4(3)—
Repeal
 “he”
Substitute
 “the member”.
- (15) Schedule 4, section 4(5)—
Repeal
 “Council”
Substitute
 “FRC”.
- 82. Schedule 4A added**
 After Schedule 4—
Add

“Schedule 4A[ss. 37N, 37O, 37U,
37ZJ & 61]**Provisions Relating to Tribunal****1. Interpretation**

In this Schedule—

chairperson (主席) means the chairperson of the Tribunal;*ordinary member* (普通成員) means a member of the Tribunal other than the chairperson;*panel member* (委員) means a member of the Tribunal panel appointed under section 3 of this Schedule.**2. Appointment of chairperson**

- (1) The chairperson must be appointed by the Chief Executive.
- (2) The chairperson—
 - (a) must be—
 - (i) a former Justice of Appeal of the Court of Appeal;
 - (ii) a former judge, a former recorder or a former deputy judge of the Court of First Instance; or
 - (iii) a person who is eligible for appointment as a judge of the High Court under section 9 of the High Court Ordinance (Cap. 4); and
 - (b) must not be a public officer.

- (3) The chairperson—
 - (a) may be appointed—
 - (i) for a term not exceeding 3 years; or
 - (ii) for a specified review; and
 - (b) may be reappointed from time to time.

3. Appointment of Tribunal panel

- (1) The Chief Executive must appoint persons to a Tribunal panel comprising the number of members the Chief Executive considers appropriate.
- (2) A panel member must not be a public officer.
- (3) A panel member is appointed for a period the Chief Executive considers appropriate, and may be reappointed from time to time.

4. Resignation and removal of chairperson and panel members

- (1) The chairperson or a panel member may at any time resign from office by written notice to the Chief Executive.
- (2) A notice of resignation takes effect on—
 - (a) the day on which the notice is received by the Chief Executive; or
 - (b) if a later day is specified in the notice—that later day.
- (3) The Chief Executive may by written notice remove the chairperson or a panel member from office on the ground of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.

5. Appointment and resignation of ordinary members

- (1) For determining a review, the Secretary for Financial Services and the Treasury must, on the recommendation of the chairperson, appoint 2 panel members as ordinary members for the review.
- (2) An ordinary member appointed for a specified review may, subject to other provisions of this Ordinance, be appointed for any other review.
- (3) An ordinary member may at any time resign from office by written notice to the Secretary for Financial Services and the Treasury.
- (4) A notice of resignation takes effect on—
 - (a) the day on which the notice is received by the Secretary for Financial Services and the Treasury; or
 - (b) if a later day is specified in the notice—that later day.
- (5) If an ordinary member ceases to be a panel member, he or she ceases to be an ordinary member.

6. Chairperson and ordinary members entitled to be paid for services

- (1) The chairperson or an ordinary member is entitled to be paid, as a fee for services, an amount the Secretary for Financial Services and the Treasury considers appropriate.
- (2) An amount payable under subsection (1) is a charge on the general revenue.

7. Acting appointments

- (1) Subsection (2) applies if the chairperson is prevented by illness, absence from Hong Kong or any other reason from performing the functions of the chairperson.
- (2) The Chief Executive may appoint a person who is qualified for appointment as the chairperson under section 2(2) of this Schedule to act as chairperson, and perform all the functions of the chairperson (including acting as sole member of the Tribunal under section 12 of this Schedule), for any period during which the chairperson is prevented from performing those functions.
- (3) Subsection (4) applies if an ordinary member is prevented by illness, absence from Hong Kong or any other reason from taking part in a particular review.
- (4) The Secretary for Financial Services and the Treasury may appoint another panel member to act as ordinary member, and take part in the particular review, for any period during which the ordinary member is prevented from so taking part.

8. Further provisions relating to chairperson and ordinary members

- (1) If, on the expiry of the term of appointment of the chairperson or an acting chairperson, a review has commenced but not yet been completed, the Chief Executive may authorize the person to continue to act as chairperson or acting chairperson for the purpose of completing the review.
- (2) If, during review proceedings, there is a change in the membership of the Tribunal, then—

- (a) if all the parties to the review so consent, the proceedings may continue despite that change; or
- (b) in the absence of such a consent, the proceedings must not continue but must begin over again.

9. Sittings

- (1) The chairperson must convene the sittings of the Tribunal that are necessary to determine a review.
- (2) The chairperson may, at any time after a review application has been made, give directions to the parties to the review concerning—
 - (a) the procedural matters to be complied with by the parties; and
 - (b) the time within which the parties are required to comply with those matters.
- (3) Subject to section 12 of this Schedule, at any sitting of the Tribunal—
 - (a) the chairperson and 2 ordinary members must be present;
 - (b) the chairperson must preside;
 - (c) the order of proceedings must be determined by the Tribunal in the way most appropriate to the circumstances of the case;
 - (d) every question before the Tribunal (other than a question of law) must be determined by a majority of votes cast by the chairperson and the ordinary members; and
 - (e) a question of law before the Tribunal must be determined by the chairperson alone.

- (4) The parties to a review are, at any sitting of the Tribunal relating to the review, entitled to be heard—
 - (a) in person, or—
 - (i) for the decision authority that made the specified decision concerned or for a corporation—through an officer or employee of the authority or the corporation;
 - (ii) for a partnership—through a partner; or
 - (iii) for a sole proprietorship—through the owner; or
 - (b) through counsel or solicitor or, with the leave of the Tribunal, through any other person.
- (5) The chairperson must prepare, or cause to be prepared, a record of the proceedings at any sitting of the Tribunal, which must contain the particulars relating to the proceedings the chairperson considers appropriate.

10. Preliminary conferences

- (1) At any time after a review application has been made, the chairperson may direct that a conference, to be attended by the parties to the review or their representatives and presided over by the chairperson, is to be held for—
 - (a) enabling the parties to prepare for the conduct of the review;
 - (b) assisting the Tribunal to determine issues for the purpose of the review; and
 - (c) generally securing the just, expeditious and economical conduct of the review.

- (2) The chairperson may give a direction under subsection (1) on his or her own initiative or on application by any of the parties to the review if—
 - (a) the chairperson considers it appropriate to do so after considering any materials submitted in relation to the review by any of the parties; and
 - (b) the parties agree to the giving of the direction.
- (3) The chairperson—
 - (a) may give any direction the chairperson considers necessary or desirable for securing the just, expeditious and economical conduct of the review; and
 - (b) must endeavour to secure that the parties to the review make all agreements that they reasonably ought to make in relation to the review.
- (4) After a conference has been held as directed under subsection (1), the chairperson must report to the Tribunal on the matters relating to the conference the chairperson considers appropriate.

11. Consent orders

- (1) If, at any time after a review application has been made, the parties to the review consent to all the terms of an order that the Tribunal or chairperson may make under any provision of this Ordinance, the Tribunal or chairperson may make the order even though a requirement applicable to the making of the order has not been complied with.
- (2) An order made under subsection (1) is to be regarded for all purposes as an order made under the provision

concerned in compliance with the requirements applicable to the making of the order.

- (3) In this section—

order (命令) includes any finding, determination and any other decision.

12. Chairperson as sole member of Tribunal

- (1) The chairperson may determine a review as the sole member of the Tribunal if the condition specified in subsection (2) is satisfied.
- (2) The condition is that, at any time after a review application has been made but before any sitting of the Tribunal is held to determine the review, the parties to the review—
 - (a) have agreed that the review may be determined by the chairperson as the sole member of the Tribunal; and
 - (b) have informed the Tribunal of the agreement by written notice.
- (3) The chairperson may also determine as the sole member of the Tribunal an application under section 37R for an extension of the time within which a review application may be made.
- (4) If subsection (1) or (3) applies, the Tribunal constituted by the chairperson as the sole member of the Tribunal is to be regarded for all purposes as the Tribunal constituted by the chairperson and 2 ordinary members.
- (5) After making a determination under subsection (1) or (3), the chairperson must report to the Tribunal on the determination and the reasons for the determination, and

any other matter relating to the determination the chairperson considers appropriate.

- (6) Subsection (7) applies if there is an application under section 37R and—
- (a) the chairperson cannot determine the application due to illness, absence from Hong Kong or any other reason; or
 - (b) the chairperson considers it improper or undesirable that he or she should determine the application.
- (7) The Chief Executive may appoint a person who is qualified for appointment as the chairperson under section 2(2) of this Schedule to determine the application in question as if the person were the chairperson duly appointed under this Ordinance, and the provisions of this Ordinance are to apply to the person accordingly.

13. Privileges and immunities

Except as otherwise provided in this Ordinance, the following persons have the same privileges and immunities in relation to a review as they would have if the review were civil proceedings before the Court of First Instance—

- (a) the Tribunal, chairperson and ordinary members; and
- (b) the parties to, and any witness, counsel, solicitor or any other person involved in, the review.”.

83. Schedule 5 amended (provisions relating to Review Panel and its members)

- (1) Schedule 5, English text, section 1(2)—

Repeal

“his period of appointment or reappointment, a member of the Review Panel”

Substitute

“the period of appointment or reappointment of a member of the Review Panel, the member”.

- (2) Schedule 5, section 2(1)—

Repeal paragraph (b).

- (3) Schedule 5, section 2(1)—

Repeal

“his office as member of the Review Panel”

Substitute

“the member’s office”.

- (4) Schedule 5, English text, section 2(2)—

Repeal

“Executive shall”

Substitute

“Executive must”.

- (5) Schedule 5, section 2(2)—

Repeal

“he thinks”

Substitute

“the Chief Executive thinks”.

- (6) Schedule 5, English text, section 2(4)—

Repeal

“Executive shall”

Substitute

“Executive must”.

84. Schedule 6 amended (provisions relating to Review Committee and its members)

(1) Schedule 6—

Repeal

“[ss. 41, 60”

Substitute

“[ss. 41”.

(2) Schedule 6, English text, section 1(1)—

Repeal

“Chairman of a Review Committee shall convene such”

Substitute

“chairperson of a Review Committee must convene the”.

(3) Schedule 6, section 1(1)—

Repeal

“as he”

Substitute

“as the chairperson”.

(4) Schedule 6, English text, section 1(3)—

Repeal

“he”

Substitute

“the member”.

(5) Schedule 6, section 1(5)—

Repeal

“Council”

Substitute

“FRC”.

(6) Schedule 6, section 2(1)—

Repeal

“Council” (wherever appearing)

Substitute

“FRC”.

(7) Schedule 6, section 2(2)—

Repeal

“he ceases to be such”

Substitute

“he or she ceases to be the”.

(8) Schedule 6, section 3, heading—

Repeal

“Council”

Substitute

“FRC”.

(9) Schedule 6, section 3(1)—

Repeal

“Council”

Substitute

“FRC”.

(10) Schedule 6, English text, section 3(1)(b)—

Repeal

“Chairman”

Substitute

- “chairperson”.
- (11) Schedule 6, section 3(2)—
Repeal
“Council appoints”
Substitute
“FRC appoints”.
- (12) Schedule 6, section 3(2)—
Repeal
“Council shall”
Substitute
“FRC must”.
- (13) Schedule 6, English text, section 4, heading—
Repeal
“Chairman”
Substitute
“chairperson”.
- (14) Schedule 6, section 4(1)—
Repeal
“Chairman of a Review Committee is unable to perform the functions of his office as Chairman, the Council”
Substitute
“chairperson of a Review Committee is unable to perform the chairperson’s functions, the FRC”.
- (15) Schedule 6, English text, section 4(1)—
Repeal
“temporary Chairman”

- Substitute**
“temporary chairperson”.
- (16) Schedule 6, section 4(1)—
Repeal
“his place during his”
Substitute
“the chairperson’s place during the chairperson’s”.
- (17) Schedule 6, section 4(2)—
Repeal
“Chairman, is unable to perform the functions of his office as member, the Council”
Substitute
“chairperson, is unable to perform the member’s functions, the FRC”.
- (18) Schedule 6, section 4(2)—
Repeal
“his place during his”
Substitute
“the member’s place during the member’s”.
- (19) Schedule 6, English text, section 4(3)—
Repeal
“Chairman” (wherever appearing)
Substitute
“chairperson”.
- (20) Schedule 6, Chinese text, section 4(3)—
Repeal

“他”

Substitute

“其”.

85. **Schedule 7 added**
After Schedule 6—
Add

“Schedule 7

[ss. 50A, 50B, 50C & 61]

Calculation of Levies**1. Levies payable by sellers and purchasers of securities**

- (1) Subject to subsections (2) and (3), the levy payable for a sale and purchase of securities is—
- (a) for the seller—0.00015% of the consideration for the sale; and
 - (b) for the purchaser—0.00015% of the consideration for the purchase.
- (2) No levy is payable for a sale and purchase of a stock option.
- (3) No levy is payable for a sale and purchase of securities by an exchange participant, if the exchange participant—
- (a) holds a securities market maker permit in relation to the securities that is in force at the time of the sale or purchase; and

- (b) makes the sale or purchase in the course of making a market for the securities.

- (4) In this section—

exchange participant (交易所參與者) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

securities market maker permit (證券莊家執照) has the meaning given by section 2 of the Securities and Futures (Levy) Order (Cap. 571 sub. leg. Z).

2. Levies payable by PIEs

- (1) The levy payable by a PIE for a calendar year is 4.2% of the prepaid annual listing fee.
- (2) For the purposes of subsection (1), the prepaid annual listing fee is the annual listing fee that is payable by the PIE to the HKEC in advance in 1 instalment for the calendar year under the Listing Rules.
- (3) The levy payable by a PIE for a calendar year, as calculated in accordance with subsection (1), is not to be adjusted even if the annual listing fee payable by the PIE to the HKEC for the year is subsequently adjusted under the Listing Rules.

3. Levies payable by PIE auditors

- (1) Subject to subsection (2), the levy payable by a PIE auditor for a calendar year is—

$$\$12,310 \times N$$

where—

N = the number of PIEs for which the auditor is carrying out, as at 31 December of the preceding

calendar year, an engagement specified in item 1 of Part 1 of Schedule 1A.

- (2) However, if N is 0, the levy payable by the PIE auditor for the calendar year is \$2,000.
- (3) For the purposes of subsection (1), a PIE auditor is carrying out an engagement for a PIE on a day if—
 - (a) the auditor undertakes the engagement on that day; or
 - (b) the auditor has undertaken the engagement before that day and the engagement has not been completed by that day.”.

Part 3

Related and Consequential Amendments

Division 1—Amendments to Professional Accountants Ordinance (Cap. 50)

86. Section 32B amended (Council’s powers under this Part)

Section 32B(1)(b), before “issue directions”—

Add

“subject to section 32BA,”.

87. Section 32BA added

After section 32B—

Add

“32BA. Practice reviews not to be carried out or continued in relation to PIE engagements

- (1) The Council must not issue any direction under section 32B(1)(b) that has the effect of—
 - (a) requiring a practice review to be carried out in relation to a PIE engagement completed on or after the commencement date by a specified practice unit; or
 - (b) allowing a practice review to be carried out or continued, after the end of the 5-year period beginning on the commencement date, in relation to a PIE engagement completed before that date by a practice unit.
- (2) In this section—

commencement date (生效日期) means the day on which the Financial Reporting Council (Amendment) Ordinance 2018 (of 2018) comes into operation;

PIE engagement (公眾利益實體項目) has the meaning given by section 3A of the Financial Reporting Council Ordinance (Cap. 588);

registered PIE auditor (註冊公眾利益實體核數師) has the meaning given by section 3A of the Financial Reporting Council Ordinance (Cap. 588);

specified practice unit (指明執業單位) means a practice unit that is a registered PIE auditor.”.

88. Section 34 amended (disciplinary provisions)

(1) Section 34(1)(a)(ia)—

Repeal

“section 31”

Substitute

“section 21F or 31”.

(2) Section 34(1)(a)(ib)—

Repeal

“section 25, 26, 27 or 28”

Substitute

“section 21C(2), 21D(1) or (2), 25(1) or 26(1) or (2)”.

89. Section 42CA amended (referral of matter to FRC)

(1) Section 42CA(1)—

Repeal

everything after “circumstances” and before “even if it may”

Substitute

“suggesting that—

- (a) a practice unit that is a registered PIE auditor or non-PIE auditor; or
- (b) a certified public accountant (practising) who is a registered responsible person of a registered PIE auditor,

has committed a practice irregularity within the meaning of section 4 of the FRC Ordinance, the Council must refer the matter to the FRC and must not,”.

(2) Section 42CA(2)—

Repeal

“Financial Reporting Council Ordinance (Cap. 588)”

Substitute

“FRC Ordinance”.

(3) After section 42CA(2)—

Add

“(3) In this section—

FRC Ordinance (《財匯局條例》) means the Financial Reporting Council Ordinance (Cap. 588);

non-PIE auditor (非公眾利益實體核數師) has the meaning given by section 3A of the FRC Ordinance;

registered PIE auditor (註冊公眾利益實體核數師) has the meaning given by section 3A of the FRC Ordinance;

registered responsible person (註冊負責人) has the meaning given by section 2(1) of the FRC Ordinance.”.

**Division 2—Amendment to Resolution of the Legislative
Council Establishing Companies Registry Trading Fund
(Cap. 430 sub. leg. B)**

90. **Schedule 1 amended (services to be provided by the trading fund)**

Schedule 1—

Repeal section 6A.

Explanatory Memorandum

The main purpose of this Bill is to amend the Financial Reporting Council Ordinance (Cap. 588) (*Ordinance*) to enhance the independence of the regulatory regime for auditors of listed entities, and to provide for registration, recognition, inspection, investigation and disciplinary matters regarding those auditors.

2. The Bill comprises 3 Parts. Part 1 (clauses 1 and 2) provides for preliminary matters, including the commencement of the Bill. Part 2 (clauses 3 to 85) sets out the amendments to the Ordinance. Part 3 (clauses 86 to 90) sets out the related and consequential amendments to other enactments. The major clauses are summarized below.
3. Clause 3 amends the long title of the Ordinance to reflect the scope of the Ordinance under the new regime.

Definitions

4. Clause 4 amends and repeals some existing definitions, and adds new definitions. Some key definitions amended and added are *engagement partner, engagement quality control reviewer, HKICPA Council, non-practitioner, PIE auditors register, practice unit, professional standard, quality control system responsible person, registered responsible person* and *responsible person*.
5. Clauses 5 and 6 provide for the interpretation of some key terms used under the new regime, including *non-PIE auditor, non-PIE engagement, PIE, PIE engagement, recognized PIE auditor* and *registered PIE auditor*. In particular, a PIE means a listed collective investment scheme or a listed corporation the listed securities of which comprise at least shares or stocks. A PIE engagement means an engagement specified in Part 1 of Schedule 1A (see paragraph 56). Clause 6 also provides for the interpretation

of the undertaking and completion of PIE engagements and non-PIE engagements.

6. Clause 7 provides for the meaning of practice irregularity by PIE auditors, non-PIE auditors and registered responsible persons. The scope of the acts or omissions covered by the term is largely the same as that covered by the terms “auditing irregularity” and “reporting irregularity” under the current Ordinance.

New composition, functions, etc. of FRC

7. Clause 9 provides for the new composition of the Financial Reporting Council (*FRC*).
8. Clauses 11 and 12 respectively provide for the functions and powers of the FRC under the new regime. FRC’s new functions include regulating auditors of listed entities and overseeing the performance by the Hong Kong Institute of Certified Public Accountants (*HKICPA*) of certain functions relating to registered PIE auditors.
9. Clause 14 provides for the matters that the FRC may refer to, or for which the FRC may provide assistance to, certain authorities (including overseas authorities). Those matters include cases or complaints concerning misconduct by PIE auditors or registered responsible persons, or concerning the undertaking or carrying out of PIE engagements or non-PIE engagements.
10. Clause 19 provides that the financial year of the FRC begins on 1 April in each calendar year.

Registration and recognition of PIE auditors

11. Clause 23 adds a new Part 3 to the Ordinance to provide for a registration and recognition mechanism for PIE auditors.
12. Division 1 of the new Part 3 (new section 20A) provides for the interpretation of the terms used in that Part.

Registered PIE auditors

13. Division 2 of the new Part 3 relates to registered PIE auditors. Only practice units may apply to be registered as PIE auditors.
14. Subdivision 1 (new sections 20B to 20F) prohibits certain activities relating to the undertaking and carrying out of PIE engagements. Section 20B prohibits a person (other than an overseas auditor) from undertaking or carrying out any PIE engagement unless the person is a registered PIE auditor. Section 20C prohibits a person from holding out as a registered PIE auditor unless the person is so registered. Sections 20D and 20E prohibit a person from carrying out any activity as an engagement partner or engagement quality control reviewer respectively of a registered PIE auditor unless the person is registered as such a partner or reviewer. Section 20F provides that a contravention of any of those prohibitions is an offence that carries a maximum penalty of a fine of \$1,000,000 and imprisonment for 2 years.
15. Subdivision 2 (new sections 20G to 20J) provides for the applications for registration as PIE auditors (*registration application*). Section 20G provides that a practice unit may make a registration application to the Council of the HKICPA (*HKICPA Council*). Section 20H provides for the requirements for granting a registration application. Section 20I requires the HKICPA Council to inform an applicant of the outcome of the application by written notice. Section 20J provides for the period of validity of the registration.
16. Subdivision 3 (new sections 20K to 20O) provides for the renewal of registration. Section 20K sets out the time within which an application for renewal (*renewal application (registration)*) is to be made and section 20L provides for the requirements for granting such an application. Section 20M requires the HKICPA Council to inform an applicant of the outcome of the application by written notice. Section 20N provides that a current registration remains in

force until the determination of the renewal application (registration) takes effect. Section 20O provides for the period of validity of the renewed registration.

17. Subdivision 4 (new sections 20P to 20R) sets out supplementary provisions relating to registration applications and renewal applications (registration). In particular, section 20R provides that it is an offence for a person to make a false or misleading statement in connection with those applications.
18. Subdivision 5 (new sections 20S and 20T) provides for certain powers of the HKICPA Council in relation to the registration of PIE auditors. The Council may impose and amend conditions in relation to the registration, and revoke or suspend the registration on non-disciplinary grounds.
19. Subdivision 6 (new sections 20U to 20ZA) provides for the obligations of registered PIE auditors. Sections 20U and 20V provide that a registered PIE auditor must have certain registered responsible persons and that the auditor must not authorize a person who is not a registered responsible person to carry out any activity as such a person. Section 20W requires a registered PIE auditor to provide a registered quality control system responsible person with sufficient resources and support to carry out the person's duties. Section 20X requires a registered PIE auditor to notify the HKICPA Council if the auditor fails to meet certain requirements and to take steps to ensure that the requirements are met within a specified period. Section 20Y provides for the proposed addition of registered responsible persons by registered PIE auditors. Sections 20Z and 20ZA provide for the notification requirements regarding certain changes in relation to a registered PIE auditor.

Recognized PIE auditors

20. Division 3 of the new Part 3 relates to recognized PIE auditors. Only overseas auditors may be recognized as PIE auditors.

21. Subdivision 1 (new sections 20ZB to 20ZD) prohibits certain activities relating to the undertaking and carrying out of PIE engagements by overseas auditors. Section 20ZB prohibits an overseas auditor from undertaking or carrying out any PIE engagement unless an application for recognition as a PIE auditor (*recognition application*) has been made and granted, or the auditor has been recognized as a PIE auditor. Section 20ZC prohibits a person from holding out as a recognized PIE auditor unless the person is so recognized. Section 20ZD provides that a contravention of any of those prohibitions is an offence that carries a maximum penalty of a fine of \$1,000,000 and imprisonment for 2 years.
22. Subdivision 2 (new sections 20ZE to 20ZJ) provides for recognition applications. Section 20ZE provides that an overseas entity may apply to the FRC to grant an approval-in-principle recognizing an overseas auditor as a PIE auditor of the entity. Section 20ZF provides for the requirements for granting a recognition application. Section 20ZG requires the FRC to inform an applicant of the outcome of the application by written notice. Sections 20ZH and 20ZI provide that an approval-in-principle is valid for 6 months and the overseas auditor is recognized as a PIE auditor of the overseas entity when the auditor undertakes a PIE engagement for the entity. Section 20ZJ provides for the period of validity of the recognition.
23. Subdivision 3 (new sections 20ZK to 20ZO) provides for the renewal of recognition. Section 20ZK sets out the time within which an application for renewal (*renewal application (recognition)*) is to be made and section 20ZL provides for the requirements for granting such an application. Section 20ZM requires the FRC to inform an applicant of the outcome of the application by written notice. Section 20ZN provides that a current recognition remains in force until the determination of the renewal application (recognition) takes effect. Section 20ZO provides for the period of validity of the renewed recognition.

24. Subdivision 4 (new sections 20ZP and 20ZQ) sets out supplementary provisions relating to recognition applications and renewal applications (recognition). In particular, section 20ZQ provides that it is an offence for a person to make a false or misleading statement in connection with those applications.
25. Subdivision 5 (new sections 20ZR and 20ZS) provides for certain powers of the FRC in relation to the recognition of PIE auditors. The FRC may impose and amend conditions in relation to the recognition, and revoke or suspend the recognition on non-disciplinary grounds.
26. Subdivision 6 (new sections 20ZT to 20ZW) contains miscellaneous provisions. Section 20ZT provides that even though a recognition application has not been made, the FRC must recognize a Mainland auditor as a PIE auditor if certain conditions are satisfied. One of the conditions is that there is in force an agreement between the Mainland of China and Hong Kong for mutual recognition of qualified auditors from either jurisdiction (*home jurisdiction*) to act as auditors of corporations incorporated in the home jurisdiction and listed in the other jurisdiction. A Mainland auditor so recognized may only carry out PIE engagements, in accordance with the China Accounting Standards for Business Enterprises or the Mainland Auditing Standards, for the Mainland corporations listed in Hong Kong.
27. Section 20ZU requires an overseas entity to notify the FRC if the appointment of a recognized PIE auditor is terminated. Section 20ZV requires a recognized PIE auditor to notify the FRC if the auditor fails to meet certain requirements and to take steps to ensure that the requirements are met within a specified period. Section 20ZW provides for the notification requirements regarding certain changes in the particulars of a recognized PIE auditor.

PIE auditors register

28. Division 4 of the new Part 3 (new sections 20ZX and 20ZY) provides for the establishment of the register of PIE auditors (*PIE auditors register*). Section 20ZX provides for its contents. Section 20ZY provides for the inspection of the register and admissibility as evidence in proceedings of copies of entries in, or extracts of, the register.

Inspections and investigations

29. Clause 24 rennumbers the original Part 3 of the Ordinance as Part 3A. Part 3A of the Ordinance covers inspections and investigations in relation to PIE auditors, non-PIE auditors and registered responsible persons under the new regime.
30. Clause 25 provides for the interpretation of the terms used in Part 3A of the Ordinance.

Inspections in relation to PIE auditors

31. Clause 26 adds a new Division 2 (new sections 21A to 21H) to Part 3A of the Ordinance to provide for inspections in relation to PIE auditors. Section 21A provides for the appointment of inspectors. Section 21B provides that an inspection may be carried out in relation to PIE engagements completed by a PIE auditor to ascertain whether the auditor has complied with a provision of the Ordinance or a professional standard. Sections 21C and 21D set out the powers of inspectors. Section 21E empowers the FRC to require PIE auditors to provide information for determining various matters relating to inspections, including the frequency of inspections. Section 21F provides for the offences regarding non-compliance with inspectors' requirements. Section 21G provides for the preparation of inspection reports and section 21H provides for the powers of the FRC to take follow-up actions in relation to inspections, including initiating an investigation in relation to, or imposing a sanction on, the PIE auditor concerned.

Investigations in relation to PIE auditors, non-PIE auditors, etc.

32. The new Division 3 of Part 3A of the Ordinance deals with investigations in relation to PIE auditors, non-PIE auditors and registered responsible persons. Clause 31 substitutes the current section 23 of the Ordinance to provide for the circumstances in which an investigation may be carried out in relation to a PIE auditor or registered responsible person. Those include cases where the FRC has reasonable cause to believe that a PIE auditor has carried out a PIE engagement in a way that is not in the public interest, and where the FRC, for considering whether to impose a sanction on a PIE auditor or registered responsible person, has reason to inquire into whether the auditor or person has committed a misconduct. The new section 23A of the Ordinance provides that the FRC may direct an investigation to be carried out in relation to a non-PIE auditor if the FRC has reasonable cause to believe that the auditor has committed a practice irregularity.
33. Clause 35 substitutes the current sections 25 and 26 of the Ordinance to provide for the powers of investigators under the new regime. Clause 40 amends the offence provisions in section 31 of the Ordinance regarding non-compliance with investigators' requirements under the new regime. The new sections 31A and 31B of the Ordinance provide for the preparation of investigation reports and the powers of the FRC to take follow-up actions in relation to investigations. The new section 31C of the Ordinance provides for the circumstances in which a person may be ordered to pay the costs and expenses of an investigation.

Disciplinary matters regarding PIE auditors and registered responsible persons

34. Clause 48 adds a new Part 3B to the Ordinance to provide for disciplinary matters regarding PIE auditors and registered responsible persons.
35. Division 1 of the new Part 3B (new sections 37A to 37C) deals with misconduct. Sections 37A and 37B set out what constitutes

- misconduct by PIE auditors and registered responsible persons respectively. Misconduct, among others, includes an act or omission that, in the FRC's opinion, is or is likely to be prejudicial to the interest of the investing public or the public interest, or that amounts to a practice irregularity. Section 37C requires the FRC to have regard to certain codes or guidelines in forming an opinion about whether an act or omission is or is likely to be prejudicial to the interest of the investing public or the public interest.
36. Division 2 of the new Part 3B (new sections 37D to 37H) deals with the sanctions that may be imposed. Sections 37D and 37E provide for the sanctions that may be imposed for misconduct by PIE auditors and registered responsible persons respectively. Those sanctions include revocation or suspension of registration or recognition of a PIE auditor and imposing a pecuniary penalty on a PIE auditor or registered responsible person. Section 37F provides that the FRC may impose certain sanctions in relation to a registered PIE auditor or registered responsible person (such as revoking the registration of the auditor or removing the person's name from the list of registered responsible persons recorded in the PIE auditors register) in cases not involving misconduct. Section 37G requires the FRC to give the affected person a reasonable opportunity of being heard (before imposing any sanction) and to notify the sanction by written notice. Section 37H provides that the FRC must not impose a pecuniary penalty unless it has published the relevant guidelines in the Gazette and has had regard to the guidelines in imposing the penalty.
37. Division 3 of the new Part 3B (new sections 37I to 37L) contains miscellaneous provisions. Section 37I provides that the FRC may take certain actions (similar to sanctions that may be imposed) against a PIE auditor or registered responsible person with the consent from the auditor or person. Section 37J provides that the FRC may register an order for paying a pecuniary penalty with the Court of First Instance. Section 37K provides for the circumstances

in which the FRC may disclose to the public the sanctions imposed or actions taken against a PIE auditor or registered responsible person.

Reviews and appeals regarding decisions on PIE auditors and registered responsible persons

38. Clause 48 also adds a new Part 3C to the Ordinance to provide for a review and appeal mechanism in relation to decisions on registration and recognition of PIE auditors, and sanctions imposed on PIE auditors and registered responsible persons.
39. Division 1 of the new Part 3C (new section 37M) provides for the interpretation of the terms used in that Part.
40. Division 2 of the new Part 3C (new sections 37N to 37P) provides for a Public Interest Entities Auditors Review Tribunal (*Tribunal*). Sections 37N and 37O provide for the establishment and jurisdiction of the Tribunal respectively. Section 37P provides that additional tribunals may be established if the Chief Executive considers it appropriate to do so.
41. Division 3 of the new Part 3C (new sections 37Q to 37ZC) provides for the review of specified decisions by the Tribunal. Sections 37Q and 37R provide for the application for review (*review application*) and the extension of time for a review application respectively. Section 37S provides for the withdrawal of a review application. Section 37T provides that the Tribunal may confirm, vary or set aside a specified decision or remit the matter in question to the authority that made the decision. Section 37U provides for the Tribunal's powers for the purpose of a review and the offences for certain acts in relation to a review (such as failing to comply with a requirement of the Tribunal or disrupting a sitting of the Tribunal).
42. Section 37V provides that sittings of the Tribunal must be held in public. Section 37W provides for the use of incriminating evidence in a review and section 37X provides for the powers of the Tribunal

to deal with contempt. Section 37Y provides that the Tribunal may award costs in relation to a review. Section 37Z requires the Tribunal to issue its determination and order to parties to the review and section 37ZA provides for the form and proof of the determinations and orders of the Tribunal. Section 37ZB provides that the Court of First Instance may register a determination or order of the Tribunal and that the registered determination or order is to be regarded, for its enforcement, as a determination or order of the Court of First Instance.

43. Division 4 of the new Part 3C (new sections 37ZD and 37ZE) provides for the time when specified decisions take effect and applications for a stay of execution of determinations or orders of the Tribunal.
44. Division 5 of the new Part 3C (new sections 37ZF to 37ZI) provides for appeals against the Tribunal's determinations. Section 37ZF provides that a party to a review may, with leave, appeal to the Court of Appeal against the Tribunal's determinations. Section 37ZG provides for the application for leave to appeal. Section 37ZH provides that the Court of Appeal may allow or dismiss an appeal, vary or set aside a determination of the Tribunal or remit the matter in question to the Tribunal or the authority that made the specified decision concerned. Section 37ZI provides that a party to an appeal may apply to the Court of Appeal for a stay of execution of a determination of the Tribunal.
45. Division 6 of the new Part 3C (new section 37ZJ) provides powers for the Chief Justice to make rules regarding reviews and appeals, and applications for a stay of execution of the Tribunal's determinations or orders.

Amendments to Part 4 of Ordinance

46. Clauses 49 to 61 make minor textual amendments to various sections in Part 4 of the Ordinance. That Part deals with enquiries

initiated by the FRC into non-compliances with regulatory requirements for financial reports of listed entities.

Levies payable to FRC

47. Clause 62 adds a new Part 4A (new sections 50A to 50G) to the Ordinance to provide for the levies payable to the FRC. Section 50A provides for the levy payable by sellers and purchasers in securities transactions. Section 50B provides for the levy payable by PIEs. Section 50C provides for the levy payable by PIE auditors. Section 50D provides for the circumstances in which the FRC may make recommendations for reduction of levies. Section 50E provides that the levies paid are not refundable. Section 50F provides that the FRC may recover any levy payable to it as a civil debt. Section 50G empowers the FRC to authorize persons to inspect and make copies of the accounts kept for the purposes of the new Part 4A, including those kept by the HKICPA relating to the collection and payment of levies payable by registered PIE auditors.

Amendments to Part 5 of Ordinance

48. Clauses 63 to 70 make consequential and textual amendments to various sections in Part 5 of the Ordinance. Those sections deal with miscellaneous matters such as preservation of secrecy, avoiding conflict of interest and immunity.
49. Clause 71 adds a new section 59A to the Ordinance to provide for the interpretation of “a reasonable excuse” in an offence provision.
50. Clause 72 amends section 60 of the Ordinance to provide for the notices and other documents to which that section applies.
51. Clause 73 adds new sections 60A to 60D to the Ordinance. Sections 60A and 60B provide powers for the Chief Executive in Council and the FRC respectively to make regulations for the purposes of the Ordinance. Section 60C requires the FRC to publish draft regulations for inviting representations by the public if it proposes

to make regulations. Section 60D provides that the FRC may specify forms.

52. Clause 74 amends section 61 of the Ordinance to provide for the amendment of different Schedules by the Secretary for Financial Services and the Treasury, the Legislative Council and the Chief Executive in Council.

Savings and transitional arrangements

53. Clause 75 adds a new Part 7 (new sections 87 to 93) to the Ordinance to provide for the savings and transitional arrangements for the Bill.
54. Sections 88 and 90 provide for the circumstances in which a practice unit or an overseas auditor that has, before the commencement date of the Bill (*commencement date*), undertaken but not yet completed a PIE engagement may be taken to be a registered PIE auditor or recognized PIE auditor during the transitional period. Section 89 provides for the circumstances in which an individual who has been authorized by a practice unit to carry out an activity as a responsible person may be taken to be a registered responsible person. Section 91 provides that information relating to such practice units and overseas auditors is to be entered in the PIE auditors register.
55. Section 92 provides that the Ordinance as in force immediately before the commencement date (*pre-amended Ordinance*) continues to apply in relation to any investigation initiated under the pre-amended Ordinance before that date. Section 93 provides that investigations may be initiated under the pre-amended Ordinance in relation to certain engagements completed for listed entities before that date.

PIE engagements and non-PIE engagements

56. Clause 77 adds a new Schedule 1A to the Ordinance. Part 1 of that Schedule sets out the types of engagements that are PIE

engagements. They include the preparation of an auditor's report in relation to the financial statements or annual accounts of a PIE, the preparation of a report to be included in a listing document of a corporation (whether listed or not) for the listing of its shares or stocks, or of a collective investment scheme (whether listed or not), and the preparation of an accountant's report to be included in a circular of a PIE for a reverse takeover or very substantial acquisition.

57. Part 2 of that Schedule sets out the types of engagements that are non-PIE engagements. They include the preparation of an auditor's report in relation to the financial statements or annual accounts of a non-PIE, and the preparation of a report to be included in a listing document of a corporation (whether listed or not) for the listing of its securities (other than shares and stocks).

Office of FRC members, FRC meetings, etc.

58. Clause 78 repeals the current Schedule 2 and replaces it with a new Schedule 2 that deals with the proceedings of the FRC. That Schedule contains 5 Parts. Part 1 deals with the interpretation of the terms used in that Schedule. Part 2 deals with the office of FRC members, including their functions, terms and conditions of their office, and their resignation and removal. Part 3 deals with the acting arrangements in circumstances where the chairperson or chief executive officer of the FRC is unable to perform their respective functions. Part 4 provides for matters relating to meetings, including quorum requirements, voting and written resolution. Part 5 contains miscellaneous matters, including committees, and the use of the seal of the FRC.

Non-delegable functions of FRC and fees for various matters

59. Clause 80 adds new Schedules 3A and 3B to the Ordinance. Schedule 3A sets out the functions of the FRC that must not be delegated. Schedule 3B specifies the fees that are payable for various matters, including registration and recognition of PIE

auditors, renewal of registration and recognition, and providing copies of entries in, and extracts of, the PIE auditors register.

Amendments to Schedule 4 to Ordinance

60. Clause 81 amends Schedule 4 to the Ordinance by making minor textual amendments. That Schedule deals with matters relating to the Audit Investigation Board established by section 22(1) of the Ordinance. A new subsection (1A) is also added to section 4 of that Schedule to provide for the person who is to preside at a meeting of the Board.

Matters relating to Tribunal

61. Clause 82 adds a new Schedule 4A to the Ordinance to provide for various matters relating to the Tribunal. That Schedule contains 13 sections. Section 1 provides for the interpretation of the terms used in that Schedule. Sections 2 and 3 provide for the appointment of the chairperson and members of the Tribunal panel, and section 4 provides for their resignation and removal. Section 5 provides for the appointment and resignation of ordinary members for a review. Section 6 provides that the chairperson and ordinary members are entitled to be paid for their services. Section 7 provides for the acting arrangements in circumstances where the chairperson or an ordinary member is unable to perform their respective functions. Section 8 provides for, among others, situations involving changes in the membership of the Tribunal. Sections 9, 10 and 11 provide for various matters, including the sittings of the Tribunal, preliminary conferences and consent orders. Section 12 provides for the circumstances in which the chairperson may act as the sole member of the Tribunal and section 13 provides for the privileges and immunities regarding a review before the Tribunal.

Calculation of levies

62. Clause 85 adds a new Schedule 7 to the Ordinance to provide for the calculation of levies payable to the FRC by sellers and purchasers in securities transactions, PIEs and PIE auditors.

Related and consequential amendments to other enactments

63. Part 3 of the Bill makes related and consequential amendments to the Professional Accountants Ordinance (Cap. 50) (*PAO*) and the Resolution of the Legislative Council establishing the Companies Registry Trading Fund (Cap. 430 sub. leg. B) (*Trading Fund Resolution*). Clause 87 adds a new section 32BA to the PAO to provide that the HKICPA Council must not issue any direction that has the effect of, among others, requiring a practice review to be carried out in relation to any PIE engagement completed on or after the commencement date. Clause 88 updates the references to various provisions of the Ordinance in section 34 of the PAO.
64. Clause 89 makes consequential amendments to section 42CA of the PAO to provide for the circumstances in which the HKICPA Council must refer a matter to the FRC.
65. Clause 90 repeals section 6A of Schedule 1 to the Trading Fund Resolution as the trading fund will no longer support the operation of the FRC under the new regime.

CALCULATION METHODS OF THE LEVIES

The estimated recurrent annual budget of the post-reform FRC is around \$99 million at 2019 price level at the time of commencement of the new regime. It is proposed that the contributions from the new levies on securities transactions, PIEs and PIE auditors to the funding of the post-reform FRC should be in the ratio of 50:25:25. The rates/amounts of the new levies are calculated as follows-

(A) Levy on securities transactions

2. The contribution of the new levy on securities transactions should be \$49.5 million at the initial year of the operation of the new regime. An average daily transaction value of securities around \$60 - 80 billion is assumed. The total amount of the levy is derived by a formula (average daily transaction value x transaction days in a year (250) x 2 (sale and purchase) x levy rate). For the contribution of \$49.5 million, the projected levy rate on the securities transactions should be set between 0.00012375% (for average daily transaction value of \$80 billion) to 0.000165% (for average daily transaction value of \$60 billion). Taking into account possible fluctuations of the transaction volume of securities, a percentage around the mid-point of the projections is adopted, i.e. 0.00015% for the consideration of each sale and purchase of a securities transaction. With this levy rate, for a transaction valued at \$100,000, the seller and purchaser would each be required to pay a levy of \$0.15.

(B) Levy on PIEs

3. The contribution of the new levy on PIEs should be \$24.75 million at the initial year of the operation of the new regime. The total amount of relevant listing fee collected in 2015, viz \$589.73 million, is used as the basis of the calculation. For the contribution of \$24.75 million, a levy rate of 4.2% of the annual listing fee paid by a PIE for a calendar year should be adopted.

(C) Levy on PIE auditors

4. The contribution of the new levy on PIE auditors should be \$24.75 million at the initial year of the operation of the new regime. The number of PIEs as at the end of 2015, viz. 2 011, is used as the basis of the calculation. For the contribution of \$24.75 million, a levy of

\$12,310 for a calendar year in respect of each PIE client should be imposed on PIE auditors.

ECONOMIC, FINANCIAL AND CIVIL SERVICE IMPLICATIONS

Economic Implications

The proposal will reinforce Hong Kong's position as an international financial centre and better safeguard the interests of the investing public. While the proposed levies for funding the FRC's operations will raise the transaction costs of securities trading and operating costs of PIEs and PIE auditors, the additional cost burden should not be substantial.

Financial and Civil Service Implications

2. Under the proposal, the CRTF will no longer make annual financial contributions to the FRC. The Bill provides for the FRC to be funded from new levies to be imposed on securities transactions, PIEs and PIE auditors respectively in future. For reference, the CRTF contributed \$7.3 million to the FRC in 2016¹.
3. The proposal does not have any civil service implication on the Government as the FRC is a statutory body which employs its own staff.
4. As regards the implications on the Judiciary, in line with the usual funding arrangements between the Government and the Judiciary, the Government should provide the Judiciary with the necessary manpower and financial resources relating to this proposal should such needs arise in the future.

¹ According to the MMoU, the CRTF also provides office accommodation to the FRC at a rental value of \$1 per annum. The present provision is around 4,000 sq ft. at the Queensway Government Offices. On the other hand, the CRTF has been paying rental of the said office accommodation for FRC to the Government, which amounted to around \$3.9 million for 2016-2017.