

To the Chairperson of the Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Bill 2022 (the Bill)

Dear Sir/ Madam,

We refer to the Bill which is scheduled for consideration by your Bills Committee on 20 Jan 2023.

Definitions used in the Bill are adopted in this email unless otherwise stated.

We understand the Bill is intended to attract and retain families to undertake substantive investment activities in Hong Kong. The Bill aims to provide certainty to these families such that as long as certain criteria set out in the Bill are fulfilled, profits earned by their **FIHV** and **FSPE** would be subject to a concessionary profits tax treatment in Hong Kong, which is 0% for the year of assessment commencing 1 Apr 2022. This is great news for our clients and the wealth management industry in Hong Kong.

While the Bill is very detailed and comprehensive, based on our experience in providing legal advice to high net worth families on their wealth management structures (see further details on the profile of Withers* at the end of this email), in particular trust structures, we would like to suggest certain finetuning to the wording of the Bill to facilitate its practical application and to enhance certainty.

We attach an updated version of the Bill in word (with the proposed finetuning highlighted in yellow) together with a compare version showing the changes made for your consideration. The key areas of suggested changes and our rationale is set out below:

1. Reference to the safe harbor rule and FOMP in sections 2 and 3 of Schedule 16 E:
 - a. Our reading is that fees for *'family office management'* (section 3(5) of the Schedule) is intended to cover fees for provision of different types of services to the 'specified persons' of the family, not just for services relating to *'investment activities'*. Thus we suggest adding the wording to that subsection for clarity.
 - b. In addition, we recommend that the *safe harbour* rule makes reference to the "income" received by the ESF Office rather than "profits". ie the total family office management income (**FOMI**) receive by the ESFO from serving the family should be 75% or more of its total income (**I**). This would facilitate and simplify the practical application of this requirement, removing for example any potential difficulty or dispute on what type of expense incurred by the

ESF Office may be deducted (or apportioned for deduction) to arrive at the 'FOMP' calculation. In reality most of the income received by the ESF Office is likely to be paid to its employees who would be subject to Salaries Tax in Hong Kong.

2. Changes to subsection 7 (1)(c), removing the wording of '*otherwise than through the trustee of the trust*' since a person would only benefit (as a beneficiary) from a trust by the exercise of distribution powers by the trustee.
3. Section 8 – some changes to better cater for common trust holding structures, and the recognition of interest of family members in such structures:
 - a. It is our experience that some FIHVs are held exclusively or substantively by a charitable trust set up by the patriarch of the family. As such we suggest:
 - i. the addition of charitable trust as a type of specified trust which may be an *interposed entity* between the family members and the FIHV or ESF Office; and
 - ii. If such charitable trust is established by the patriarch or controlled by members of the family, it should also be treated as a form of '*specified trust related to the family*', and the family members should taken to hold 100% of beneficial interest in such charitable trust. (see additional wording in subsections 8(4) and 8(6))
 - b. Some FIHVs may be 100% owned not just by one specified trust, but by several specified trusts related to a family (eg co- owned by discretionary trusts established by different branches of the family, or co- owned by a charitable trust as well as a family discretionary trust). We have thus included additional wording in subsections 8 (4) to (7) to cater for that type of structure and set out how the aggregate interest of the family members in the FIHV or ESF Office through such trusts may be recognised
 - c. Further, the specified beneficiaries of a specified trust (commonly referred to as the 'master family trust') may not be the family members or '*eligible entities*' owned by the family members, but rather entities held by other specified trusts (commonly referred to as 'baby trusts' established by different branches of the family; each of which has family members of a particular branch as specified beneficiaries). To cater for this type of arrangement, we also suggest

- i. the additional wording to the definition for '*qualified beneficiary*' in subsection 8 (9) and
 - ii. additional wording to '*qualified entity*' in subsection 8 (13)
 - d. Please note that all our suggested finetuning to this section 8 above would still require the FIHV or ESF Office to be ultimately held (at least 95%) by the family members through the specified trust (s).
- 4. Sections 10 and 11 (Specified NAV and substance requirement)
 - a. There has been quite a bit of confusion regarding whether these requirements refer to the ESF Office, the subject FIHVs only, or the structure as a whole (including the '*relevant FIHVs*' managed by the same subject ESF Office) .
 - b. We suggest making these changes to enhance certainty
 - i. to clarify that the *Specified NAV Rule* should refer to that of the *subject FIHVs*, plus that of other *relevant FIHVs* managed by same *subject ESF Office*
 - ii. to clarify the minimum number of qualified employees requirement be applicable to the *subject FIHV*, *relevant FIHVs* and the *subject ESF Office* as a whole, though the ultimate number of employees should still be *adequate in the opinion of the Commissioner*. It is common that such employees would be employed by the ESF Office rather than the FIHVs; and if there are say 50 FIHVs in the structure, it should not mean that the minimum employees in the structure should be 100. A clarification in the wording of the Bill (rather than relying on FAQs or DIPN) on this requirement would be most helpful.
 - iii. to clarify that the minimum operating expenditure should refer to the expenditure that of the *subject FIHV* as well as the *relevant FIHVs* in total.
- 5. Sections 9 and 16 – to clarify that passive income derived from the qualifying assets held by the FIHV or FSPE should be subject to the exemption
 - a. We understand that some FIHVs or FSPE may not be actively trading their underlying investments. but would be holding on to such investments for long term. One of their main source of annual income would therefore be passive income, including dividends or interest derive from such investments.

- b. While the wording of the currently sections 9 and 16 would provide concessionary treatment to the profits for the transaction (ie mainly on disposal) of these investments, the wording does not seem to cover passive income from the holding of such investments.
 - c. Although we note that
 - i. such income may be treatment as profits from *'incidental transactions'*, this is subject to the 5 % limit which is not satisfactory; and
 - ii. by clause 3 of the Bill it is stated that sections 9 and 16 of Schedule 16 E would be included as a *'concession provisions'* (such that *'dividends, interest or disposal gains that accrues to entities* [which should include FIHV and FSPE] *the assessable profits of which are chargeable to tax at a rate specified in a "concession provisions'* would be carved out from the definition of *'specified foreign source income'* in the new Section s15 H of the Inland Revenue Ordinance (IRO), this does not cover such income which is Hong Kong sourced. Further it seems that interest income on loans provided by the FIHV or FSPE to the 'relevant companies' may still be subject to tax under other provisions of the IRO (eg subsections 14 D or 15 (1) of the IRO).
 - d. Therefore our recommendation is to include the additional wording in subsections 9(2) and 16 (2) to clarify that passive income derived from all qualifying assets received by an FIHV or FSPE would also be subject to the concessionary treatment for certainty. This would be attractive to many families holding long term investments.
6. Generally changing the reference of *'trust estate'* to *'trust'* or *'trust fund'* as appropriate: assets held by a trust is referred to the *'trust fund'* rather than a *'trust estate'*, a person benefits *'under a trust'* rather than *'under a trust fund/ trust estate'*. This terminology is standard in the trust industry globally.

We would be grateful if you may consider our above suggestion and contact Tim George ([REDACTED] or tel: [REDACTED]) or Deirdre Fu ([REDACTED] or tel: [REDACTED]) if you have any queries on our suggestions

***About Withers and our expertise in trust and wealth planning**

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For and on behalf of

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Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Bill 2022

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Part 6E

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C3105

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A BILL

To

Amend the Inland Revenue Ordinance to give profits tax concessions to certain family-owned investment holding vehicles and related entities; and to provide for related matters.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Ordinance 2022.

2. Inland Revenue Ordinance amended

The Inland Revenue Ordinance (Cap. 112) is amended as set out in sections 3 to 7.

3. Section 19CA amended (treatment of unabsorbed losses under sections 19CAB and 19CAC: interpretation)

(1) Section 19CA, definition of *concession provision*, paragraph (gc)—

Repeal

“; or”

Substitute a semicolon.

- (2) Section 19CA, definition of *concession provision*, paragraph (h)—

Repeal the semicolon

Substitute

“; or”.

- (3) Section 19CA, definition of *concession provision*, after paragraph (h)—

Add

“(i) section 9 or 16 of Schedule 16E;”.

4. Part 6E added

After Part 6D—

Add

“Part 6E

Tax Treatment of Family-owned Investment Holding Vehicle and Family-owned Special Purpose Entity

40AV. Schedule 16E: tax treatment of family-owned investment holding vehicle and family-owned special purpose entity

- (1) Schedule 16E contains provisions about—
- (a) the tax treatment of a family-owned investment holding vehicle within the meaning of that Schedule; and
 - (b) the tax treatment of a family-owned special purpose entity within the meaning of that Schedule.

- (2) Schedules 16F, 16G, 16H, 16I and 16J contain provisions supplementary to Schedule 16E.
- (3) Schedules 16E, 16F, 16G, 16H, 16I and 16J apply in respect of a year of assessment commencing on or after 1 April 2022.

40AW. Power to amend Schedule 16E

- (1) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend—
 - (a) the number specified in section 10(1)(b)(ii) of Schedule 16E;
 - (b) the amounts specified in sections 10(1)(c)(ii) and 11(2), (4) and (6) of Schedule 16E; and
 - (c) the rates specified in sections 24(2) and 25(2) of Schedule 16E.
- (2) A notice published under subsection (1) may contain any incidental, supplemental, evidential, consequential, savings and transitional provisions that are necessary and expedient in consequence of the amendments made under that subsection.”.

5. Section 80 amended (penalties for failure to make returns, making incorrect returns, etc.)

Before section 80(3)—

Add

“(2Y) A person who, without reasonable excuse, fails to comply with a Schedule 16E provision commits an offence and is liable on conviction to a fine at level 3.

(2Z) For the purposes of subsection (2Y)—

Schedule 16E provision (附表 16E 條文) means any of the following provisions of Schedule 16E—

- (a) section 28(2);
- (b) section 28(3);
- (c) section 28(4);
- (d) section 28(5);
- (e) section 28(6);
- (f) section 29(2);
- (g) section 29(3);
- (h) section 29(4);
- (i) section 29(5);
- (j) section 29(6);
- (k) section 29(7);
- (l) section 29(8);
- (m) section 29(9).

(2ZA) If a person is convicted of an offence under subsection (2Y) for failing to do an act, the court may order the person to do the act within a time specified in the order.

(2ZB) A person who fails to comply with an order of the court under subsection (2ZA) commits an offence and is liable on conviction to a fine at level 4.”.

6. Schedule 16C amended (classes of assets specified for transactions for purposes of sections 20AN and 20AO)

(1) Schedule 16C, heading, after “**20AO**”—

Add

“and Schedule 16E”.

(2) Schedule 16C—

Repeal

“& 17A]”

Substitute

“, 16E & 17A]”.

7. Schedules 16E to 16J added

After Schedule 16D—

Add

“Schedule 16E

[ss. 19CA, 40AV,
40AW & 80 & Schs. 16C,
16F, 16G, 16H, 16I & 16J]

**Tax Treatment of Family-owned Investment
Holding Vehicle and Family-owned Special
Purpose Entity**

Part 1

Preliminary

1. Interpretation

(1) In this Schedule—

direct beneficial interest (直接實益權益)—see section 7 of this Schedule;

entity (實體) means a body of persons (corporate or unincorporate) or a legal arrangement, and includes—

(a) a corporation;

(b) a partnership; and

(c) a trust;

ESF Office (具資格辦公室), in relation to a family—see section 2 of this Schedule;

family (家族)—see section 4 of this Schedule;

family office (家族辦公室) means a family office within the meaning of section 2 of this Schedule;

FIHV (家控工具) means a family-owned investment holding vehicle within the meaning of section 5 of this Schedule;

FSPE (家族特體) means a family-owned special purpose entity within the meaning of section 6 of this Schedule;

IFSPE (中間家族特體) means an interposed family-owned special purpose entity within the meaning of section 6 of this Schedule;

immovable property (不動產)—

(a) means—

(i) land (whether covered by water or not);

(ii) any estate, right, interest or easement in or over any land; and

(iii) things attached to land or permanently fastened to anything attached to land; and

(b) does not include infrastructure;

indirect beneficial interest (間接實益權益)—see section 7 of this Schedule;

infrastructure (基礎設施)—

(a) means any publicly or privately owned facility providing or distributing services for the benefit of the public; and

- (b) includes any water, sewage, energy, fuel, transportation or communication facility;

investee private company (獲投資私人公司)—see subsections (2) and (3);

investment activity (投資活動), in relation to an FIHV, includes—

- (a) conducting research and advising on any potential investments to be made by the FIHV;
- (b) acquiring, holding, managing or disposing of property for the FIHV; and
- (c) establishing or administering an FSPE or a relevant company (as defined in subsections 12(1)(a), 13(1)(a), 17(1)(a) and 18(1)(a) of this Schedule) for holding and administering one or more underlying investments of the FIHV;

member (成員), in relation to a family—see section 4 of this Schedule;

private company (私人公司) means a company (whether incorporated in or outside Hong Kong) that is not allowed to issue any invitations to the public to subscribe for any shares or debentures of the company;

property (財產) includes—

- (a) money, goods, choses in action and land (whether in Hong Kong or elsewhere); and
- (b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incidental to property mentioned in paragraph (a);

Schedule 16C asset (附表 16C 資產) means an asset that falls within a class specified in Schedule 16C.

- (2) An investee private company, in relation to an FIHV, is a private company any shares of which is held by an FSPE or IFSPE for the FIHV.
- (3) A reference to an FSPE or IFSPE in subsection (2) includes—
 - (a) if the FSPE or IFSPE is a partnership—a partner in the partnership; and
 - (b) if the FSPE or IFSPE is a trust—a trustee of the trust.
- (4) For the purposes of this Schedule, an FIHV is related to a family if one or more than one member of the family has or (because of section 8 of this Schedule) is taken to have at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in the FIHV.
- (5) For the purposes of this Schedule, an FIHV is managed by an ESF Office of the family to which the FIHV is related if the ESF Office carries out any investment activities.

2. Meaning of *ESF office* of family

- (1) A private company is a family office if—
 - (a) the central management and control of the company is exercised in Hong Kong; and
 - (b) the company provides services to specified persons of a family.
- (2) A family office is an eligible single family office (*ESF Office*) of a family for a year of assessment if—
 - (a) at all times during the basis period for the year of assessment, one or more than one member of the family has at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in

- the family office;
- (b) the family office satisfies the safe harbour rule in relation to the family for the year of assessment; and
 - (c) the following conditions are met in respect of the family office—
 - (i) the family office provides services to specified persons of the family during the basis period for the year of assessment; and
 - (ii) the fees for the provision of those services are chargeable to profits tax under section 14 for that year.
- (3) In this section—
- safe harbour rule* (安全港規則)—see section 3 of this Schedule;
- specified person* (指明人士), in relation to a family, means—
- (a) an FIHV that is related to the family;
 - (b) an FSPE in which an FIHV mentioned in paragraph (a) has a beneficial interest (whether direct or indirect);
 - (c) an IFSPE of an FIHV mentioned in paragraph (a); and
 - (d) a member of the family.

3. Provision supplementary to section 2 of this Schedule—safe harbour rule

- (1) For the purposes of section 2 of this Schedule, a family office satisfies the safe harbour rule in relation to a family for a year of assessment (*subject year*) if the family office—

- (a) falls within the 1-year safe harbour under subsection (2) in relation to the family for the subject year; or
 - (b) falls within the multiple-year safe harbour under subsection (3) in relation to the family for the specified years.
- (2) A family office falls within the 1-year safe harbour in relation to a family for a subject year if, for that year, the **FOMI** percentage of the family office is more than or equal to 75%.
- (3) A family office falls within the multiple-year safe harbour in relation to a family for the specified years if, for those years, the average **FOMI** percentage of the family office is more than or equal to 75%.
- (4) In this section, a reference to the specified years for a family office is—
- (a) if the family office has provided services in Hong Kong, to any person or entity, for less than 2 consecutive years of assessment immediately before the subject year—a reference to the subject year and the preceding year of assessment (*the 2 years*); and
 - (b) if the family office has provided services in Hong Kong, to any person or entity, for 2 or more consecutive years of assessment immediately before the subject year—a reference to the subject year and the preceding 2 years of assessment (*the 3 years*).
- (5) The **FOMI** percentage of a family office for a year of assessment is calculated in accordance with the following formula—

FOMI

I

where: **FOMI** means the aggregate amount of the management **income** of the family office in the basis period for the year of assessment that **is** derived from services provided to any one or more specified persons of the family, **including but not limited to income derived from the carrying on of investment activities for such specified persons;**

I means the aggregate amount of **income** accruing to the family office from all sources in Hong Kong in the basis period for the year of assessment.

- (6) The average **FOMI** percentage of a family office for the specified years is—
- (a) for the specified years within the meaning of subsection (4)(a)—the percentage arrived at by dividing the sum of the **FOMI** percentage of the family office for the 2 years by 2; and
 - (b) for the specified years within the meaning of subsection (4)(b)—the percentage arrived at by dividing the sum of the **FOMI** percentage of the family office for the 3 years by 3.
- (7) In this section—
- specified person* (指明人士) has the meaning given by section 2(3) of this Schedule.

4. Meaning of *family* and *member of family*

- (1) For the purposes of this Schedule—

-
- (a) a natural person (whether alive or deceased) (**Person A**) and all of the persons related to Person A together constitute a family; and
 - (b) each of the persons mentioned in paragraph (a) is a member of the family.
- (2) For the purposes of subsection (1)(a)—
- (a) a spouse (including a deceased spouse) of Person A (**Person B**) is a person related to Person A;
 - (b) any other natural person (whether alive or deceased) is a person related to Person A if the other natural person is—
 - (i) a lineal ancestor of Person A (**Person C**);
 - (ii) a lineal ancestor of Person B (**Person D**);
 - (iii) a lineal descendant of Person A (**Person E**);
 - (iv) a sibling of Person A, Person B, Person C or Person D (**Person F**); or
 - (v) a lineal descendant of Person F (**Person G**);and
 - (c) a spouse (including a deceased spouse) of Person E, Person F or Person G is also a person related to Person A.
- (3) For the purposes of this section—
- (a) a child of a natural person (**Child A**) is a lineal descendant of the natural person;
 - (b) a child of Child A (**Child B**), a child of Child B, and so on, is also a lineal descendant of the natural person mentioned in paragraph (a);
 - (c) a parent of a natural person (**Parent A**) is a lineal ancestor of the natural person; and

- (d) a parent of Parent A (*Parent B*), a parent of Parent B, and so on, is also a lineal ancestor of the natural person mentioned in paragraph (c).

(4) In this section—

child (子女), in relation to a natural person—

- (a) means a child of the person, or of a spouse (including a deceased spouse) or former spouse of the person, whether or not the child was born in wedlock; and
- (b) includes an adopted child or step child of either or both of the following—
 - (i) the person;
 - (ii) a spouse (including a deceased spouse) or former spouse of the person;

parent (父母), in relation to a natural person, means—

- (a) a parent of whose marriage the person is a child;
- (b) the natural father or mother of the person;
- (c) a parent by whom the person was adopted; or
- (d) a step parent of the person;

sibling (兄弟姊妹), in relation to Person A, Person B, Person C or Person D (*relevant person*), means—

- (a) a full or half blood sibling of the relevant person;
- (b) an adopted sibling of the relevant person;
- (c) a step sibling of the relevant person; or
- (d) if the relevant person is an adopted person—a natural child of an adoptive parent of the relevant person.

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- (5) If a person (other than a deceased spouse of Person A) (*Person H*) ceases to be a spouse of Person A during a year of assessment that begins on or after 1 April 2022 (*subject year*), for the subject year and the year of assessment immediately after the subject year (and not for any subsequent year), Person H is still regarded as a spouse of Person A.
- (6) If subsection (5) applies to Person H, for the subject year and the year of assessment immediately after the subject year (and not for any subsequent year)—
- (a) a sibling of Person H (*Sibling A*) and a spouse of Sibling A are respectively a sibling and a spouse of a sibling of Person B;
 - (b) a lineal descendant and a spouse of a lineal descendant of Sibling A are respectively a lineal descendant and a spouse of a lineal descendant of a sibling of Person B;
 - (c) a lineal ancestor of Person H (*Ancestor A*) is a lineal ancestor of Person B;
 - (d) a sibling and a spouse of a sibling of Ancestor A are respectively a sibling and a spouse of a sibling of a lineal ancestor of Person B; and
 - (e) a lineal descendant and a spouse of a lineal descendant of a sibling of Ancestor A are respectively a lineal descendant and a spouse of a lineal descendant of a sibling of a lineal ancestor of Person B.
- (7) If a person (other than a deceased spouse of Person E, Person F or Person G) (*Person I*) ceases to be a spouse of Person E, Person F or Person G during a year of assessment that begins on or after 1 April 2022 (*subject year*), for the subject year and the year of assessment

immediately after the subject year (and not for any subsequent year), Person I is still regarded as a spouse of Person E, Person F or Person G (as the case requires).

5. Meaning of family-owned investment holding vehicle (*FIHV*)

An entity (*Entity A*), whether established or created (however described) in or outside Hong Kong, is a family-owned investment holding vehicle for a year of assessment if—

- (a) at all times during the basis period for that year, one or more than one member of a family has at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in Entity A; and
- (b) Entity A is not a business undertaking for general commercial or industrial purposes mentioned in section 20AM(6).

6. Meaning of family-owned special purpose entity (*FSPE*) and interposed family-owned special purpose entity (*IFSPE*)

- (1) An entity (*Entity B*), whether established or created (however described) in or outside Hong Kong, is a family-owned special purpose entity (*FSPE*) if all of the conditions specified in subsection (2) are met in respect of Entity B.
- (2) The conditions are—
 - (a) an *FIHV* (*relevant FIHV*) has a beneficial interest (whether direct or indirect) in Entity B;
 - (b) Entity B is established or created (however described) solely—

- (i) for holding (whether directly or indirectly) and administering one or more investee private companies;
 - (ii) for holding (whether directly or indirectly) and administering any Schedule 16C assets; or
 - (iii) for the purposes mentioned in subparagraphs (i) and (ii);
- (c) Entity B does not carry on any trade or activity (including executing a legal document) except for either or both of the purposes mentioned in paragraph (b)(i) and (ii); and
- (d) Entity B is neither an FIHV nor an investee private company.
- (3) If an FSPE has an indirect beneficial interest in an investee private company through an entity (*interposed entity*) that is an FSPE in which the relevant FIHV has an indirect beneficial interest, the interposed entity is an interposed family-owned special purpose entity (*IFSPE*) of the relevant FIHV.
- (4) If an FSPE has an indirect beneficial interest in an investee private company through a series of 2 or more interposed entities each of which is an FSPE in which the relevant FIHV has an indirect beneficial interest, each of the interposed entities is an IFSPE of the relevant FIHV.

7. Meaning of *direct beneficial interest* and *indirect beneficial interest* in person or entity

- (1) A person or entity (*the particular person*) has a direct beneficial interest in another person or entity (*the other person*) if—

- (a) where the other person is a corporation—
 - (i) the particular person holds any of the issued share capital (however described) of the corporation; or
 - (ii) (if the corporation does not have any issued share capital) the particular person is entitled to exercise or control the exercise of any voting rights in the corporation;
- (b) where the other person is a partnership—
 - (i) the particular person, as a partner in the partnership, is entitled to any of the profits of the partnership; or
 - (ii) (if the partners in the partnership are neither entitled to the profits of the partnership nor entitled to a distribution of the assets of the partnership on its dissolution) the particular person, as a partner in the partnership, is entitled to exercise or control the exercise of any voting rights in the partnership;
- (c) where the other person is a trust—
 - (i) the particular person benefits under the trust; or
 - (ii) the particular person, not being a trustee of the trust or—
 - (A) if the trustee of the trust is a corporation—a director of the corporation;
 - (B) if the trustee of the trust is a partnership—a partner in the partnership; or

- (C) if the trustee of the trust is any other entity—a principal officer of the entity,
- is able (or might reasonably be expected to be able) to control the activities of the trust or the application of its corpus or income;
- or
- (d) where the other person is a person or entity that does not fall within any of paragraphs (a), (b) and (c)—
- (i) the particular person is entitled to any capital of the other person;
 - (ii) (if subparagraph (i) is not applicable in relation to the other person) the particular person has any of the ownership interests in the other person;
 - (iii) (if neither subparagraph (i) nor (ii) is applicable in relation to the other person) the particular person is entitled to any profits of the other person; or
 - (iv) (if none of subparagraphs (i), (ii) and (iii) is applicable in relation to the other person) the particular person is entitled to exercise or control the exercise of any voting rights in the other person.
- (2) A person or entity (*the particular person*) has an indirect beneficial interest in another person or entity (*the other person*) if—
- (a) where the other person is a corporation—
 - (i) the particular person is interested in any of the issued share capital (however described) of the corporation; or

- (ii) (if the corporation does not have any issued share capital) the particular person is entitled to exercise or control the exercise of any voting rights in the corporation;
- (b) where the other person is a partnership—
 - (i) the particular person is entitled to any of the profits of the partnership; or
 - (ii) (if the partners in the partnership are neither entitled to the profits of the partnership nor entitled to a distribution of the assets of the partnership on its dissolution) the particular person is entitled to exercise or control the exercise of any voting rights in the partnership;
- (c) where the other person is a trust—
 - (i) the particular person benefits under the trust; or
 - (ii) the particular person, not being a trustee of the trust or—
 - (A) if the trustee of the trust is a corporation—a director of the corporation;
 - (B) if the trustee of the trust is a partnership—a partner in the partnership; or
 - (C) if the trustee of the trust is any other entity—a principal officer of the entity,is able (or might reasonably be expected to be able) to control the activities of the trust or the application of its corpus or income; or

- (d) where the other person is a person or entity that does not fall within any of paragraphs (a), (b) and (c)—
 - (i) the particular person is entitled to any capital of the other person;
 - (ii) (if subparagraph (i) is not applicable in relation to the other person) the particular person has any of the ownership interests in the other person;
 - (iii) (if neither subparagraph (i) nor (ii) is applicable in relation to the other person) the particular person is entitled to any profits of the other person; or
 - (iv) (if none of subparagraphs (i), (ii) and (iii) is applicable in relation to the other person) the particular person is entitled to exercise or control the exercise of any voting rights in the other person,

through a third person that is an entity (*interposed entity*), or a series of 2 or more interposed entities, that is or are related to the particular person and the other person in the way described in subsection (3) or (4).

- (3) If there is only one interposed entity—
 - (a) the particular person has a direct beneficial interest in the interposed entity; and
 - (b) the interposed entity has a direct beneficial interest in the other person.
- (4) If there is a series of 2 or more interposed entities—
 - (a) the particular person has a direct beneficial interest in the first interposed entity in the series;

-
- (b) each interposed entity (other than the last interposed entity) in the series has a direct beneficial interest in the next interposed entity in the series; and
 - (c) the last interposed entity in the series has a direct beneficial interest in the other person.
 - (5) In this section, a reference to the issued share capital of a corporation does not include the shares comprised in the issued share capital that do not entitle their holders to receive dividends (whether in cash or in kind) and a distribution of the assets of the corporation on its dissolution other than a return of capital.
 - (6) In this section, a reference to the exercise of any voting rights in the corporation is a reference to the exercise of any voting rights at a general meeting of the corporation.
 - (7) For a partnership the partners in which are not entitled to its profits but are entitled to a distribution of the assets of the partnership on its dissolution—a reference in this section to an entitlement to any of the profits of the partnership is taken to be a reference to an entitlement to a distribution of any of the assets of the partnership on its dissolution.
 - (8) A reference to the particular person in subsections (1) and (2) (other than the last reference in subsection (2)) includes—
 - (a) if the particular person is a partnership—a partner in the partnership; and
 - (b) if the particular person is a trust—a trustee of the trust.

(9) In this section—

principal officer (主要職員), in relation to an entity, means a person who exercises the managerial functions of the entity.

8. Determination of extent of family member's beneficial interest in entity for sections 2(2) and 5 of this Schedule etc.

(1) Schedule 16F applies, subject to this section, in determining the extent of the beneficial interest that a member of a family has in the entity mentioned in section 2(2) or 5 of this Schedule (*subject entity*).

(2) For a subject entity that is a specified trust related to a family, if the aggregate percentage in value of the relevant trust fund is at least 95%, the members of the family who are qualified beneficiaries of the trust, and those other members of the family who are entitled to benefit from the trust, are taken to have at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in the trust.

(3) Subsections (4), (5), (6), (7) and (8) only apply if the subject entity is not a specified trust (*particular entity*).

(4) If—

(a) one or more than one entity that is a specified trust related to a family (*Interposed Entity A*) has a direct beneficial interest in a particular entity;

(b) the extent of the beneficial interest (in aggregate) mentioned in paragraph (a) is 100%; and

(c) either—

(i) the Interposed Entity A is a charitable trust related to a family; or

- (ii) the aggregate percentage in value of the relevant trust fund of the trust is at least 95%, the members of the family in the case of (c)(i) above, or the members of the family who are qualified beneficiaries of Interposed Entity A, and those other members of the family who are entitled to benefit from the trust fund of Interposed Entity A, are taken to have at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in each Interposed Entity A.
- (5) If, because of subsection (4), any members of a family are taken to have at least 95%, in aggregate, of the beneficial interest in each of the Interposed Entity A, those members are also taken to have at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in the particular entity.
- (6) If—
- (a) one or more than one entity that is a specified trust related to a family (*Interposed Entity B*) has an indirect beneficial interest in a particular entity through one or more other entities each of which is an eligible entity;
- (b) the extent of the beneficial interest (in aggregate) mentioned in paragraph (a) is 100%; and
- (c) either—
- (i) the Interposed Entity B is a charitable trust related to a family; or
- (ii) the aggregate percentage in value of the relevant trust fund of the trust is at least 95%, the members of the family in case of (c)(i) above, or the members of the family who are qualified

beneficiaries of Interposed Entity B, and those other members of the family who are entitled to benefit from the trust **fund** of Interposed Entity B, are taken to have at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in **each** Interposed Entity B.

- (7) If, because of subsection (6), any members of a family are taken to have at least 95%, in aggregate, of the beneficial interest in **each of the** Interposed Entity B, those members are also taken to have at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in the particular entity.
- (8) Schedule 16G applies in determining the extent of the beneficial interest that Interposed Entity A or Interposed Entity B has in a particular entity.
- (9) In this section—

charitable trust (慈善信託) means a trust of public character for charitable purposes under section 88 of this Ordinance, or a trust established only for purposes regarded as charitable under the governing law of the trust for the time being;

eligible entity (具資格實體) means an entity that is not a specified trust;

qualified beneficiary (合資格受益人), in relation to a specified trust related to a family, means—

- (a) a member of the family who is a specified beneficiary under the trust;
- (b) a member of the family who has a direct beneficial interest in a specified beneficiary under the trust that is an eligible entity;
- (c) a member of the family who, through an eligible entity or a series of entities each of which is an eligible entity, has an indirect beneficial interest in a specified beneficiary under the trust that is an eligible entity; **or**

- (d) a member of the family who, through another specified trust which is related to the family and which the member of the family is a specified beneficiary, has an indirect beneficial interest in a specified beneficiary under the trust that is an eligible entity, which is 100% beneficially owned by that other specified trust.

qualified entity (合資格實體)—see subsection (13);

relevant trust fund (有關信託基金), in relation to a specified trust related to a family, means the trust fund of the trust, or each part of the trust fund of the trust, from which one or more than one member of the family is entitled to benefit or that is distributable for the benefit of one or more than one specified beneficiary under the trust who is a member of the family or a qualified entity of the family;

specified beneficiary (指明受益人)—see subsection (12);

specified trust (指明信託)—see subsection (10).

(10) For the purposes of this section, a trust created or established (however described) under a trust instrument is a specified trust if, under the trust—

- (a) there is one or more than one specified beneficiary;
- (b) there is one or more than one class of persons or entities any of the members of which is a specified beneficiary;
- (c) there is a combination of paragraphs (a) and (b); or
- (d) it qualifies as a charitable trust.

(11) For the purposes of this section, a specified trust is related to a family if—

- (a) it is a charitable trust and the settlor of such trust is Person A (as defined in subsection 4(1)(a) of this Schedule) or one or more than one member of the family is able (or might reasonably be expected to be able) to control the activities of the trust or the application of its corpus or income; or
 - (b) if one or more than one specified beneficiary under the trust is—
 - (i) a member of the family; or
 - (ii) an entity in which one or more than one member of the family has a beneficial interest (whether direct or indirect).
- (12) For the purposes of this section, a person or entity is a specified beneficiary under a trust if—
- (a) the person or entity would be able to benefit from the trust fund if the trustee of the trust exercises a discretionary power under the trust instrument in the favour of the person or entity; or
 - (b) the person or entity would be able to benefit from the trust fund if the conditions under the trust instrument that are applicable to the person or entity are met.
- (13) For the purposes of this section, an entity is a qualified entity of a family if—
- (a) the entity is an eligible entity; and
 - (b) either—
 - (i) one or more than one member of the family has 100%, in aggregate, of the beneficial interest (whether direct or indirect) in the entity; or

(ii) one or more than one member of the family has 100%, in aggregate, of the indirect beneficial interest in the entity through being a specified beneficiary of another specified trust related to the family, which holds 100% direct beneficial interest in the entity.

- (14) For the purposes of subsection (13)(b)(i), the extent of the beneficial interest that a member of the family has in the eligible entity is to be determined in accordance with Schedule 16F.

Part 2

Tax Concession for Certain Profits of Family-owned Investment Holding Vehicle

9. Profits tax concession for FIHV

- (1) This section applies to an FIHV for the basis period for a year of assessment.
- (2) Profits tax is to be charged at the rate specified in section 24(2) of this Schedule, on the FIHV's assessable profits for the basis period earned from the transactions specified in subsection (3), or derived from the holding of the Schedule 16C assets in the form of dividends, interest or other similar income, if the condition specified in subsection (4) is met at all times during the basis period.
- (3) The transactions are—
 - (a) transactions in Schedule 16C assets (*qualifying transactions*); and
 - (b) subject to subsection (5), transactions incidental to the carrying out of qualifying transactions (*incidental transactions*).

- (4) The condition referred to in subsection (2) is—
- (a) that the central management and control of the FIHV is exercised in Hong Kong; and
 - (b) that the qualifying transactions of the FIHV—
 - (i) are carried out in Hong Kong by or through an ESF Office of the family that manages the FIHV; or
 - (ii) are arranged in Hong Kong by such an office.
- (5) Subsection (2) however does not apply to assessable profits earned from incidental transactions if the percentage calculated in accordance with the following formula exceeds 5%—

$$\frac{A}{B} \times 100\%$$

where—

A = the FIHV's trading receipts from incidental transactions in the basis period;

B = the total of the FIHV's trading receipts from qualifying transactions and incidental transactions in the basis period.

- (6) This section is subject to sections 10, 12, 13 and 14 of this Schedule.

10. When does section 9 of this Schedule not apply—Exception 1 (FIHV)

- (1) Section 9 of this Schedule does not apply to an FIHV **(the subject FIHV)** for the basis period for a year of assessment (*subject year*) unless—

- (a) the subject FIHV complies with the Specified NAV Rule under section 11 of this Schedule;
 - (b) the total number of qualified employees of the subject FIHV, other relevant FIHVs and the subject ESF Office during the basis period—
 - (i) is adequate in the opinion of the Commissioner; and
 - (ii) is in any event not less than 2; and
 - (c) the total amount of operating expenditure incurred in Hong Kong by the subject FIHV and other relevant FIHVs for carrying out investment activities during the basis period—
 - (i) is adequate in the opinion of the Commissioner; and
 - (ii) is in any event not less than \$2,000,000.
- (2) For the purposes of subsection (1)(b), a person is a qualified employee in relation to an FIHV or the subject ESF Office if—
- (a) the person is a full-time employee in Hong Kong; and
 - (b) the person—
 - (i) carries out any investment activities in Hong Kong during the basis period; and
 - (ii) has the qualifications necessary for doing so.
- (3) For the purposes of this section—
- (a) the subject FIHV is a relevant FIHV; and
 - (b) any other FIHV that is related to the relevant family is also a relevant FIHV if an election has been made in relation to that other FIHV under section 14 of this Schedule.

(4) In this section—

relevant family (有關家族), means the family to which the subject FIHV is related;

relevant FIHV (有關家控工具) —see subsection (3);

subject ESF Office (標的具資格辦公室), in relation to a **relevant** FIHV for the basis period for a subject year, means a family office—

- (a) that is an ESF Office of the family to which the **relevant** FIHV is related; and
- (b) that, on the last day of the basis period, manages **that relevant** FIHV.

11. Provision supplementary to section 10 of this Schedule— Specified NAV Rule

- (1) For the purposes of section 10(1)(a) of this Schedule, **the** Specified NAV Rule in relation to an FIHV (**subject FIHV**) for the basis period for a year of assessment (**subject year**) **is complied with** if Requirement 1, Requirement 2 or Requirement 3 is met.
- (2) Requirement 1 is that—the aggregate of the amount of the NAV of the Schedule 16C assets of **the subject FIHV and other** relevant **FIHVs** managed by the subject ESF Office (**the Office**), as at the end of the basis **periods** of the relevant **FIHVs** for the subject year, is not less than \$240,000,000 (or its equivalent in a foreign currency).
- (3) Requirement 2 applies if—
 - (a) the Office is established in or before the year preceding the subject year (**1st preceding year**); and
 - (b) **Requirement 1 is not met.**

- (4) Requirement 2 is that—the aggregate of the amount of the NAV of the Schedule 16C assets of **the subject FIHV and other** relevant **FIHVs** managed by the Office, as at the end of the basis **periods** of the relevant **FIHVs** for the 1st preceding year, is not less than \$240,000,000 (or its equivalent in a foreign currency).
- (5) Requirement 3 applies if—
 - (a) the Office is established in or before the year preceding the 1st preceding year (*2nd preceding year*); and
 - (b) **neither** Requirement 1 nor Requirement 2 **is met**.
- (6) Requirement 3 is that—the aggregate of the amount of the NAV of the Schedule 16C assets of **the subject FIHV and other** relevant **FIHVs** managed by the Office, as at the end of the basis **periods** of the relevant **FIHVs** for the 2nd preceding year, is not less than \$240,000,000 (or its equivalent in a foreign currency).
- (7) For the purposes of this section, the NAV of any Schedule 16C assets is to be determined in the manner specified by the Commissioner.
- (8) For the purposes of this section, a reference to the NAV of the Schedule 16C assets of an FIHV includes the NAV of the Schedule 16C assets held by each FSPE in which the FIHV has a beneficial interest (whether direct or indirect) to the extent specified in subsection (9).
- (9) The extent mentioned in subsection (8) is the percentage equal to the percentage of the FIHV's beneficial interest (whether direct or indirect) in the FSPE.
- (10) Schedule 16H applies in determining the extent of the beneficial interest mentioned in subsection (9).

- (11) For the purposes of this section—
- (a) the subject FIHV is a relevant FIHV; and
 - (b) any other FIHV that is related to the relevant family is also a relevant FIHV if an election has been made in relation to that other FIHV under section 14 of this Schedule.
- (12) For the purposes of this section—
- (a) if an FSPE is a partnership—any Schedule 16C asset held by a partner in the partnership is regarded as held by the FSPE; and
 - (b) if an FSPE is a trust—any Schedule 16C asset held by a trustee of the trust is regarded as held by the FSPE.
- (13) In this section—
- NAV* means net asset value;
- relevant family* (有關家族) means the family to which the subject FIHV is related;
- relevant FIHV* (有關家控工具) —see subsection (11);
- subject ESF Office* (標的具資格辦公室), in relation to a **relevant** FIHV for the basis period for a **a** subject year, has the meaning given by section **10(4)** of this Schedule.

12. When does section 9 of this Schedule not apply—Exception 2 (FIHV)

- (1) This section applies if, during the basis period for a year of assessment—
- (a) an FIHV carries out transactions in shares, stocks, debentures, loan stocks, funds, bonds or notes (*specified securities*) of, or issued by, a private company (*relevant company*); and

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- (b) the relevant company holds (whether directly or indirectly)—
- (i) immovable property in Hong Kong; or
 - (ii) share capital (however described) in another private company that holds (whether directly or indirectly) immovable property in Hong Kong.
- (2) If the aggregate value of the immovable property and share capital held by the relevant company exceeds 10% of the value of the company's assets, section 9 of this Schedule does not apply to the assessable profits of the FIHV for the basis period earned from the transactions specified in section 9(3) of this Schedule (*section 9(3) transactions*).
- (3) If the aggregate value of the immovable property and share capital held by the relevant company does not exceed 10% of the value of the company's assets, section 9 of this Schedule does not apply to the assessable profits of the FIHV for the basis period earned from the section 9(3) transactions unless a condition specified in subsection (4) is met in good faith by the FIHV.
- (4) The condition is—
- (a) that the FIHV disposes of, through a transaction or a series of transactions, the specified securities not less than 2 years after they are acquired (whether or not the FIHV has control over the relevant company); or
 - (b) that the FIHV disposes of, through a transaction or a series of transactions, the specified securities less than 2 years after they are acquired and—

- (i) the FIHV does not have control over the relevant company; or
 - (ii) if the FIHV has control over the relevant company—the relevant company holds (whether directly or indirectly) short-term assets the aggregate value of which does not exceed 50% of the value of the relevant company's assets.
- (5) For the purposes of this section, an FIHV has control over a company if the FIHV has power to secure—
 - (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company; or
 - (b) by virtue of any powers conferred by the articles of association or any other document regulating the company or any other company,that the affairs of the company are conducted in accordance with the wishes of the FIHV.
- (6) For the purposes of this section, a reference to an FIHV (*reference*) in subsection (1), the second reference in subsection (3), the first reference in subsection (4)(a) and (b), and the second and last references in subsection (5) include—
 - (a) if the FIHV is a partnership—a partner in the partnership; and
 - (b) if the FIHV is a trust—a trustee of the trust.
- (7) In this section—

short-term asset (短期資產), in relation to a private company, the shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, which are being disposed of by or for an FIHV, means an asset—

- (a) that is not a Schedule 16C asset;
- (b) that is not immovable property in Hong Kong; and
- (c) that has been held by the company for less than 3 consecutive years before the date of disposal.

13. When does section 9 of this Schedule not apply—Exception 3 (FIHV)

- (1) This section applies if, during the basis period for a year of assessment—
 - (a) an FIHV carries out transactions in shares, stocks, debentures, loan stocks, funds, bonds or notes (*specified securities*) of, or issued by, a private company (*relevant company*); and
 - (b) the relevant company holds (whether directly or indirectly) neither of the following—
 - (i) immovable property in Hong Kong;
 - (ii) share capital (however described) in another private company that holds (whether directly or indirectly) immovable property in Hong Kong.
- (2) Unless a condition specified in subsection (3) is met in good faith by the FIHV, section 9 of this Schedule does not apply to the assessable profits of the FIHV for the basis period earned from the transactions specified in section 9(3) of this Schedule.
- (3) The condition is—
 - (a) that the FIHV disposes of, through a transaction or a series of transactions, the specified securities not less than 2 years after they are acquired (whether or not the FIHV has control over the relevant company); or

- (b) that the FIHV disposes of, through a transaction or a series of transactions, the specified securities less than 2 years after they are acquired and—
 - (i) the FIHV does not have control over the relevant company; or
 - (ii) if the FIHV has control over the relevant company—the relevant company holds (whether directly or indirectly) short-term assets the aggregate value of which does not exceed 50% of the value of the relevant company's assets.
- (4) For the purposes of this section, an FIHV has control over a company if the FIHV has power to secure—
 - (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company; or
 - (b) by virtue of any powers conferred by the articles of association or any other document regulating the company or any other company,that the affairs of the company are conducted in accordance with the wishes of the FIHV.
- (5) For the purposes of this section, a reference to an FIHV (*reference*) in subsection (1), the first reference in subsections (2) and (3)(a) and (b), and the second and last references in subsection (4) include—
 - (a) if the FIHV is a partnership—a partner in the partnership; and
 - (b) if the FIHV is a trust—a trustee of the trust.
- (6) In this section—

short-term asset (短期資產) has the meaning given by section 12(7) of this Schedule.

14. When does section 9 of this Schedule not apply—Exception 4 (FIHV)

- (1) Section 9 of this Schedule does not apply to an FIHV unless—
 - (a) an election is made in relation to the FIHV under this section; and
 - (b) the FIHV is managed by only one ESF Office of the family to which the FIHV is related.
- (2) Subject to subsection (3), an FIHV that is managed by an ESF Office of the family to which the FIHV is related (*eligible FIHV*) may in writing elect that section 9 of this Schedule applies to it.
- (3) For each ESF Office of the family, not more than 50 eligible FIHVs that are managed by the ESF Office may make an election under this section.
- (4) An election under this section, once made, is not revocable by the FIHV concerned.

15. Losses sustained by FIHV—where rate specified in section 24(2) of this Schedule is 0%

If, because of sections 9 and 24 of this Schedule, an FIHV is exempt from the payment of profits tax in respect of its assessable profits earned from the transactions specified in section 9(3) of this Schedule for the basis period for a year of assessment, any loss sustained by the FIHV from any of those transactions is not available for set off against any of its assessable profits for that basis period or the basis period for any subsequent year of assessment.

Part 3

Tax Concession for Certain Profits of Family-owned Special Purpose Entity

16. Profits tax concession for FSPE

- (1) This section applies to an FSPE for the basis period for a year of assessment if section 9 of this Schedule applies, for that year, to an FIHV that has a beneficial interest (whether direct or indirect) in the FSPE.
- (2) Profits tax is to be charged at the rate specified in section 25(2) of this Schedule, on the FSPE's assessable profits for the basis period earned from the transactions specified in subsection (3), or derived from the assets listed in sections 16(3)(a) to 16(3)(d) of this Schedule in the form of dividends, interest or other similar income.
- (3) The transactions are—
 - (a) transactions in shares, stocks, debentures, loan stocks, funds, bonds or notes (*specified securities*) of, or issued by, an investee private company or an IFSPE;
 - (b) transactions in rights, options or interests (whether described in units or otherwise) in, or in respect of, the specified securities mentioned in paragraph (a);
 - (c) transactions in certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, the specified securities mentioned in paragraph (a);
 - (d) transactions in Schedule 16C assets; and

- (e) qualified incidental transactions.
- (4) For the purposes of subsection (3)(e), the transactions that are incidental to the carrying out of the transactions mentioned in subsection (3)(a), (b), (c) or (d) (*incidental transactions*) are qualified incidental transactions if, in the basis period for the year of assessment, the FSPE's trading receipts from the incidental transactions do not exceed 5% of the total trading receipts from—
 - (a) the transactions mentioned in subsection (3)(a), (b), (c) and (d); and
 - (b) the incidental transactions.
- (5) The extent of assessable profits to be charged under subsection (2) is the percentage equal to the percentage of the FIHV's beneficial interest (whether direct or indirect) in the FSPE in the year of assessment.
- (6) Schedule 16H applies in determining the extent of the beneficial interest of the FIHV in the FSPE.
- (7) This section is subject to sections 17 and 18 of this Schedule.

**17. When does section 16 of this Schedule not apply—
Exception 1 (FSPE)**

- (1) This section applies if, during the basis period for a year of assessment—
 - (a) an FSPE carries out transactions in shares, stocks, debentures, loan stocks, funds, bonds or notes (*specified securities*) of, or issued by, a private company (*relevant company*); and
 - (b) the relevant company holds (whether directly or indirectly)—

-
- (i) immovable property in Hong Kong; or
 - (ii) share capital (however described) in another private company that holds (whether directly or indirectly) immovable property in Hong Kong.
 - (2) If the aggregate value of the immovable property and share capital held by the relevant company exceeds 10% of the value of the company's assets, section 16 of this Schedule does not apply to the assessable profits of the FSPE for the basis period earned from the transactions specified in section 16(3) of this Schedule (*section 16(3) transactions*).
 - (3) If the aggregate value of the immovable property and share capital held by the relevant company does not exceed 10% of the value of the company's assets, section 16 of this Schedule does not apply to the assessable profits of the FSPE for the basis period earned from the section 16(3) transactions unless a condition specified in subsection (4) is met in good faith by the FSPE.
 - (4) The condition is—
 - (a) that the FSPE disposes of, through a transaction or a series of transactions, the specified securities not less than 2 years after they are acquired (whether or not the FSPE has control over the relevant company); or
 - (b) that the FSPE disposes of, through a transaction or a series of transactions, the specified securities less than 2 years after they are acquired and—
 - (i) the FSPE does not have control over the relevant company; or

- (ii) if the FSPE has control over the relevant company—the relevant company holds (whether directly or indirectly) short-term assets the aggregate value of which does not exceed 50% of the value of the relevant company's assets.
- (5) For the purposes of this section, an FSPE has control over a company if the FSPE has power to secure—
 - (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company; or
 - (b) by virtue of any powers conferred by the articles of association or any other document regulating the company or any other company,that the affairs of the company are conducted in accordance with the wishes of the FSPE.
- (6) For the purposes of this section, a reference to an FSPE (*reference*) in subsection (1), the second reference in subsection (3), the first reference in subsection (4)(a) and (b), and the second and last references in subsection (5) include—
 - (a) if the FSPE is a partnership—a partner in the partnership; and
 - (b) if the FSPE is a trust—a trustee of the trust.
- (7) In this section—

short-term asset (短期資產), in relation to a private company, the shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, which are being disposed of by or for an FSPE, means an asset—

 - (a) that is not a Schedule 16C asset;

- (b) that is not immovable property in Hong Kong;
and
- (c) that has been held by the company for less than 3 consecutive years before the date of disposal.

**18. When does section 16 of this Schedule not apply—
Exception 2 (FSPE)**

- (1) This section applies if, during the basis period for a year of assessment—
 - (a) an FSPE carries out transactions in shares, stocks, debentures, loan stocks, funds, bonds or notes (*specified securities*) of, or issued by, a private company (*relevant company*); and
 - (b) the relevant company holds (whether directly or indirectly) neither of the following—
 - (i) immovable property in Hong Kong;
 - (ii) share capital (however described) in another private company that holds (whether directly or indirectly) immovable property in Hong Kong.
- (2) Unless a condition specified in subsection (3) is met in good faith by the FSPE, section 16 of this Schedule does not apply to the assessable profits of the FSPE for the basis period earned from the transactions specified in section 16(3) of this Schedule.
- (3) The condition is—
 - (a) that the FSPE disposes of, through a transaction or a series of transactions, the specified securities not less than 2 years after they are acquired (whether or not the FSPE has control over the relevant company); or

- (b) that the FSPE disposes of, through a transaction or a series of transactions, the specified securities less than 2 years after they are acquired and—
 - (i) the FSPE does not have control over the relevant company; or
 - (ii) if the FSPE has control over the relevant company—the relevant company holds (whether directly or indirectly) short-term assets the aggregate value of which does not exceed 50% of the value of the relevant company's assets.
- (4) For the purposes of this section, an FSPE has control over a company if the FSPE has power to secure—
 - (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company; or
 - (b) by virtue of any powers conferred by the articles of association or any other document regulating the company or any other company,that the affairs of the company are conducted in accordance with the wishes of the FSPE.
- (5) For the purposes of this section, a reference to an FSPE (*reference*) in subsection (1), the first reference in subsections (2) and (3)(a) and (b), and the second and last references in subsection (4) include—
 - (a) if the FSPE is a partnership—a partner in the partnership; and
 - (b) if the FSPE is a trust—a trustee of the trust.
- (6) In this section—

short-term asset (短期資產) has the meaning given by section 17(7) of this Schedule.

19. Losses sustained by FSPE—where rate specified in section 25(2) of this Schedule is 0%

If, because of sections 16 and 25 of this Schedule, an FSPE is exempt from the payment of profits tax in respect of its assessable profits earned from the transactions specified in section 16(3) of this Schedule for the basis period for a year of assessment, any loss sustained by the FSPE from any of those transactions is not available for set off against any of its assessable profits for that basis period or the basis period for any subsequent year of assessment.

Part 4

Assessable Profits of Resident Persons

20. Meaning of *resident person*, *specified entity*, etc. in this Part

(1) In this Part—

resident person (居港者)—see subsection (2);

specified entity (指明實體)—see subsections (3), (4), (5), (6) and (7);

specified members (指明成員), in relation to an entity, means members of a family who, because of section 8 of this Schedule, are taken to have at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in the entity.

(2) In relation to a year of assessment—

(a) a corporation that is not a trustee of a trust is a resident person if the central management and control of the corporation is exercised in Hong Kong in the year of assessment;

- (b) a partnership that is not a trustee of a trust is a resident person if the central management and control of the partnership is exercised in Hong Kong in the year of assessment; and
 - (c) a trustee of a trust is a resident person if the central management and control of the trust is exercised in Hong Kong in the year of assessment.
- (3) An entity (*Entity C*) is a specified entity in relation to the family to which an FIHV is related if Condition 1 or Condition 2 is met.
- (4) Condition 1 is—
- (a) that Entity C—
 - (i) is not a business undertaking for general commercial or industrial purpose; and
 - (ii) does not carry on any trade or business;
 - (b) that at least one member of the family to which the FIHV is related has a direct or indirect beneficial interest in the entity (*relevant family member*); and
 - (c) that Entity C is the entity, or one of the entities in a series of 2 or more entities, through which any one or more than one relevant family member has an indirect beneficial interest in the FIHV.
- (5) Condition 2 is—
- (a) that Entity C—
 - (i) is not a business undertaking for general commercial or industrial purpose; and
 - (ii) does not carry on any trade or business; and

- (b) that Entity C is a qualified entity.
- (6) For the purposes of subsection (5), Entity C is a qualified entity if—
 - (a) Entity C has either—
 - (i) 100% direct beneficial interest in the FIHV mentioned in subsection (3); or
 - (ii) 100% indirect beneficial interest in that FIHV; and
 - (b) there are any specified members in relation to Entity C.
- (7) For the purposes of subsection (5), an entity is also a qualified entity if it is an entity, or one of the entities in a series of 2 or more entities, through which an entity falling within the description in subsection (6) has the beneficial interest mentioned in subsection (6)(a)(ii).
- (8) Schedule 16G applies in determining the extent of the beneficial interest of Entity C in the FIHV.

21. Meaning of associate in sections 22 and 23 of this Schedule

- (1) In sections 22(2) and (4) and 23(2) of this Schedule—*associate* (相聯者)—
 - (a) in relation to a resident person that is a corporation but is not a trustee of a trust, means—
 - (i) a person or entity who has control over the corporation;
 - (ii) if a person mentioned in subparagraph (i) is a partner in a partnership—another partner in the partnership;

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- (iii) if a person mentioned in subparagraph (i) is a natural person—a relative of the person;
 - (iv) if another partner mentioned in subparagraph (ii) is a natural person—a relative of that other partner;
 - (v) a director or principal officer of—
 - (A) the corporation; or
 - (B) an associated corporation of the corporation;
 - (vi) if a director mentioned in subparagraph (v) is a natural person—a relative of the director;
 - (vii) a relative of a principal officer mentioned in subparagraph (v);
 - (viii) if the corporation is a partner in a partnership—another partner in the partnership;
 - (ix) if another partner mentioned in subparagraph (viii) is a natural person—a relative of that other partner;
 - (x) a partnership in which the corporation is a partner; or
 - (xi) an associated corporation of the corporation;
 - (b) in relation to a resident person that is a partnership but is not a trustee of a trust, means—
 - (i) a partner in the partnership;
 - (ii) if a partner in the partnership is a natural person—a relative of the partner;

- (iii) if a partner in the partnership is another partnership—
 - (A) a partner in the other partnership (*Partner A*); or
 - (B) a partner with the other partnership in any other partnership (*Partner B*);
- (iv) if Partner A is a partnership—a partner in Partner A (*Partner C*);
- (v) if Partner B is a partnership—a partner in Partner B (*Partner D*);
- (vi) if Partner A, Partner B, Partner C or Partner D is a natural person—a relative of the partner;
- (vii) a corporation over which any of the following persons has control—
 - (A) the partnership;
 - (B) a partner in the partnership;
 - (C) if a partner in the partnership is a natural person—a relative of the partner;
 - (D) a partnership in which the partnership is a partner;
- (viii) a director or principal officer of the corporation mentioned in subparagraph (vii);
- (ix) if a director mentioned in subparagraph (viii) is a natural person—a relative of the director;
- (x) a relative of a principal officer mentioned in subparagraph (viii);

- (xi) a corporation of which a partner in the partnership is a director or principal officer; or
 - (xii) an associated partnership of the partnership; and
- (c) in relation to a resident person that is a trustee of a trust, means—
- (i) a settlor, a protector, an enforcer or a beneficiary of the trust; or
 - (ii) (if the resident person does not act in the capacity of a trustee in the course of a business or profession) a related person of the trustee.
- (2) In paragraph (c)(ii) of the definition of *associate* in subsection (1)—
- related person*** (有關連人士), in relation to a trustee of a trust—
- (a) if the trustee is a corporation, means—
 - (i) a person or entity who has control over the corporation;
 - (ii) if a person mentioned in subparagraph (i) is a partner in a partnership—another partner in the partnership;
 - (iii) if a person mentioned in subparagraph (i) is a natural person—a relative of the person;
 - (iv) if another partner mentioned in subparagraph (ii) is a natural person—a relative of that other partner;
 - (v) a director or principal officer of—
 - (A) the corporation; or

- (B) an associated corporation of the corporation;
- (vi) if a director mentioned in subparagraph (v) is a natural person—a relative of the director;
- (vii) a relative of a principal officer mentioned in subparagraph (v);
- (viii) if the corporation is a partner in a partnership—another partner in the partnership;
- (ix) if another partner mentioned in subparagraph (viii) is a natural person—a relative of that other partner;
- (x) a partnership in which the corporation is a partner; or
- (xi) an associated corporation of the corporation;
- (b) if the trustee is a partnership, means—
 - (i) a partner in the partnership;
 - (ii) if a partner in the partnership is a natural person—a relative of the partner;
 - (iii) if a partner in the partnership is another partnership—
 - (A) a partner in the other partnership (*Partner E*); or
 - (B) a partner with the other partnership in any other partnership (*Partner F*);
 - (iv) if Partner E is a partnership—a partner in Partner E (*Partner G*);

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- (v) if Partner F is a partnership—a partner in Partner F (*Partner H*);
 - (vi) if Partner E, Partner F, Partner G or Partner H is a natural person—a relative of the partner;
 - (vii) a corporation over which any of the following persons has control—
 - (A) the partnership;
 - (B) a partner in the partnership;
 - (C) if a partner in the partnership is a natural person—a relative of the partner;
 - (D) a partnership in which the partnership is a partner;
 - (viii) a director or principal officer of the corporation mentioned in subparagraph (vii);
 - (ix) if a director mentioned in subparagraph (viii) is a natural person—a relative of the director;
 - (x) a relative of a principal officer mentioned in subparagraph (viii);
 - (xi) a corporation of which a partner in the partnership is a director or principal officer; or
 - (xii) an associated partnership of the partnership; and
- (c) if the trustee is a natural person, means—
- (i) a relative of the person;

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- (ii) if the person is a partner in a partnership—another partner in the partnership;
 - (iii) if another partner mentioned in subparagraph (ii) is a natural person—a relative of that other partner;
 - (iv) a partnership in which the person is a partner;
 - (v) a corporation over which any of the following persons has control—
 - (A) the person;
 - (B) a relative of the person;
 - (C) if the person is a partner in a partnership—another partner in the partnership;
 - (D) if the person is a partner in a partnership and another partner in the partnership is a natural person—a relative of that other partner;
 - (E) a partnership in which the person is a partner; or
 - (vi) a director or principal officer of the corporation mentioned in subparagraph (v).
- (3) In the definitions of *associate* in subsection (1) and *related person* in subsection (2)—
- associated corporation* (相聯法團), in relation to a corporation, means—
- (a) another corporation over which the corporation has control;
 - (b) another corporation that has control over the corporation; or

- (c) another corporation that is under the control of the same person as is the corporation;

associated partnership (相聯合夥), in relation to a partnership, means—

- (a) another partnership over which the partnership has control;
- (b) another partnership that has control over the partnership; or
- (c) another partnership that is under the control of the same person as is the partnership;

principal officer (主要職員), in relation to a corporation, means—

- (a) a person employed by the corporation who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors of the corporation for the conduct of the business of the corporation; or
- (b) a person employed by the corporation who, under the immediate authority of a director of the corporation or a person to whom **paragraph (a)** applies, exercises managerial functions in respect of the corporation;

relative (親屬) has the meaning given by section 20AN(6).

(4) For the purposes of the definitions of *associate*, *associated corporation* and *associated partnership* in this section—

- (a) a person or entity (*particular person*) has control over a corporation if the particular person has power to secure—

(i) by means of the holding of shares or the possession of voting power in or in relation to the corporation or any other corporation; or

(ii) by virtue of any powers conferred by the articles of association or any other document regulating the corporation or any other corporation,

that the affairs of the corporation are conducted in accordance with the wishes of the particular person; and

(b) a particular person has control over a partnership if the particular person has power to secure—

(i) by means of the holding of interests or the possession of voting power in or in relation to the partnership or any other partnership; or

(ii) by virtue of any powers conferred by the partnership agreement or any other document regulating the partnership or any other partnership,

that the affairs of the partnership are conducted in accordance with the wishes of the particular person.

22. Assessable profits of FIHVs to be regarded as assessable profits of resident persons

(1) If, in respect of a year of assessment—

(a) a resident person has, during any period of time, a beneficial interest (whether direct or indirect) in an FIHV to the extent prescribed in subsection (2); and

- (b) section 9 of this Schedule applies to the FIHV, the assessable profits of the FIHV for the period of time (*subsection (1) period*) that would have been chargeable to tax under Part 4 of this Ordinance but for section 9 of this Schedule are to be regarded as the assessable profits arising in, or derived from, Hong Kong of the resident person for the year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.
- (2) The extent of a resident person's beneficial interest in an FIHV referred to in subsection (1) is that the person, either alone or jointly with any of the person's associate (whether a resident person or not)—
- (a) if the FIHV is a corporation—has not less than 30% of the beneficial interest in the corporation;
 - (b) if the FIHV is a partnership—has not less than 30% of the beneficial interest in the partnership;
 - (c) if the FIHV is a trust—has not less than 30% of the beneficial interest in the trust; and
 - (d) if the FIHV is an entity that does not fall within any of paragraphs (a), (b) and (c)—has not less than 30% of the beneficial interest in the entity.
- (3) For the purposes of subsection (2), the extent of a resident person's beneficial interest in an FIHV is to be determined in accordance with Part 3 of Schedule 16I.
- (4) If, in respect of a year of assessment—
- (a) a resident person has, during any period of time, a beneficial interest (whether direct or indirect) in an FIHV;
 - (b) section 9 of this Schedule applies to the FIHV; and

(c) the FIHV is an associate of the resident person, the assessable profits of the FIHV for the period of time (*subsection (4) period*) that would have been chargeable to tax under Part 4 of this Ordinance but for section 9 of this Schedule are to be regarded as the assessable profits arising in, or derived from, Hong Kong of the resident person for the year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.

- (5) Subsections (1) and (4) apply in relation to a resident person irrespective of whether the person has received or will receive (whether directly or indirectly) from the FIHV any money or other property representing the profits of the FIHV for the relevant year of assessment.
- (6) A resident person who has a direct or indirect beneficial interest in a trust because of the fact that the resident person is able (or might reasonably be expected to be able) to control the activities of the trust fund or the application of its corpus or income is, for the purposes of this section, to be regarded as being interested in 100% of the value of the trust fund.
- (7) The amount regarded as the assessable profits of a resident person for a year of assessment under subsection (1) or (4) is to be ascertained in accordance with Schedule 16I.
- (8) However, subsections (1) and (4) do not apply to a resident person in relation to a subsection (1) period or subsection (4) period if, at all times during the subsection (1) period or subsection (4) period, the person is—

- (a) a specified entity in relation to the family to which the FIHV is related;
 - (b) a trustee of a trust that is a specified entity mentioned in paragraph (a); or
 - (c) an ESF Office of the family that manages the FIHV.
- (9) If—
- (a) a resident person is liable to tax in respect of the profits of an FIHV by the operation of subsection (1) or (4) because the person has an indirect beneficial interest in the FIHV through a third person that is an entity (*interposed entity*) or through a series of 2 or more interposed entities; and
 - (b) the interposed entity or any of the interposed entities is a resident person who is also liable to tax in respect of the profits by the operation of subsection (1) or (4),
- the resident person mentioned in paragraph (a) is discharged from the person's liability to tax in respect of the profits.

23. Assessable profits of FSPEs to be regarded as assessable profits of resident persons

- (1) If, in respect of a year of assessment—
- (a) a resident person has, during any period of time, a beneficial interest (whether direct or indirect) in an FIHV to the extent prescribed in section 22(2) of this Schedule;
 - (b) section 9 of this Schedule applies to the FIHV;

- (c) the FIHV has, during the period of time (*subsection (1) period*), a beneficial interest (whether direct or indirect) in an FSPE; and
 - (d) section 16 of this Schedule applies to the FSPE, the assessable profits of the FSPE for the subsection (1) period that would have been chargeable to tax under Part 4 of this Ordinance but for section 16 of this Schedule are to be regarded as the assessable profits arising in, or derived from, Hong Kong of the resident person for the year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.
- (2) If, in respect of a year of assessment—
- (a) a resident person has, during any period of time, a beneficial interest (whether direct or indirect) in an FIHV;
 - (b) section 9 of this Schedule applies to the FIHV;
 - (c) the FIHV is an associate of the resident person;
 - (d) the FIHV has, during the period of time (*subsection (2) period*), a beneficial interest (whether direct or indirect) in an FSPE; and
 - (e) section 16 of this Schedule applies to the FSPE, the assessable profits of the FSPE for the subsection (2) period that would have been chargeable to tax under Part 4 of this Ordinance but for section 16 of this Schedule are to be regarded as the assessable profits arising in, or derived from, Hong Kong of the resident person for the year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.

- (3) Subsections (1) and (2) apply in relation to a resident person irrespective of whether the person has received or will receive (whether directly or indirectly) from the FSPE any money or other property representing the profits of the FSPE for the relevant year of assessment.
- (4) A resident person who has a direct or indirect beneficial interest in a trust because of the fact that the resident person is able (or might reasonably be expected to be able) to control the activities of the trust **fund** or the application of its corpus or income is, for the purposes of this section, to be regarded as being interested in 100% of the value of the trust **fund**.
- (5) The amount regarded as the assessable profits of a resident person for a year of assessment under subsection (1) or (2) is to be ascertained in accordance with Schedule 16J.
- (6) However, subsections (1) and (2) do not apply to a resident person in relation to a subsection (1) period or subsection (2) period if, at all times during the subsection (1) period or subsection (2) period, the person is—
 - (a) a specified entity in relation to the family to which the FIHV is related;
 - (b) a trustee of a trust that is a specified entity mentioned in paragraph (a); or
 - (c) an ESF Office of the family that manages the FIHV.
- (7) If—

- (a) a resident person is liable to tax in respect of the profits of an FSPE by the operation of subsection (1) or (2) because the person has an indirect beneficial interest in the FSPE through a third person that is an entity (*interposed entity*) or through a series of 2 or more interposed entities; and
- (b) the interposed entity or any of the interposed entities is a resident person who is also liable to tax in respect of the profits by the operation of subsection (1) or (2),

the resident person mentioned in paragraph (a) is discharged from the person's liability to tax in respect of the profits.

Part 5

Rate of Profits Tax for FIHV and FSPE

24. Rate of profits tax for FIHV

- (1) This section applies for the purposes of section 9(2) of this Schedule.
- (2) The rate specified for the basis period for a year of assessment commencing on or after 1 April 2022 is 0%.

25. Rate of profits tax for FSPE

- (1) This section applies for the purposes of section 16(2) of this Schedule.
- (2) The rate specified for the basis period for a year of assessment commencing on or after 1 April 2022 is 0%.

Part 6

Miscellaneous Matters

Division 1—Anti-avoidance Provisions

26. Anti-avoidance provisions relating to arrangement to obtain tax benefits—FIHV

- (1) Subsection (2) applies to an FIHV if—
 - (a) the FIHV enters into an arrangement; and
 - (b) the Commissioner is satisfied that the main purpose, or one of the main purposes, of the FIHV in entering into the arrangement is to obtain a tax benefit, whether for the FIHV or another person or entity, in relation to a liability to pay profits tax under this Ordinance.
- (2) Section 9 of this Schedule does not apply in relation to any relevant assessable profits accrued to the FIHV during a relevant basis period.
- (3) Subsection (4) applies to an FIHV if—
 - (a) any assets or businesses are transferred directly or indirectly from a person (*transferor*) carrying on a business in Hong Kong to the FIHV;
 - (b) the income of the transferor in relation to the transferred assets or businesses (as the case requires) would have been subject to tax under Part 4 of this Ordinance but for the transfer; and
 - (c) the Commissioner is satisfied that the main purpose, or one of the main purposes, of the FIHV in making the transfer is to obtain a tax benefit, whether for the FIHV or another person

or entity, in relation to a liability to pay profits tax under this Ordinance.

- (4) Section 9 of this Schedule does not apply in relation to any relevant assessable profits accrued to the FIHV during a relevant basis period unless the transfer—
 - (a) is carried out on an arm's length basis; and
 - (b) is chargeable to tax under Part 4 of this Ordinance in respect of the assessable profits arising from the transfer.
- (5) For the purposes of this section, a reference to an FIHV (*reference*) in subsection (1)(a), the first reference in subsection (1)(b), the reference in subsection (3)(a), and the first reference in subsection (3)(c) include—
 - (a) if the FIHV is a partnership—a partner in the partnership; and
 - (b) if the FIHV is a trust—a trustee of the trust.
- (6) For the purposes of this section, a basis period for a year of assessment is a relevant basis period in relation to an arrangement if, in the opinion of the Commissioner, the arrangement has effect during the basis period.
- (7) For the purposes of this section, a basis period for a year of assessment is a relevant basis period in relation to a transfer if, in the opinion of the Commissioner, the transfer has effect during the basis period.
- (8) In this section—

relevant assessable profits (有關應評稅利潤)—

 - (a) in relation to an arrangement, means the assessable profits arising from the arrangement; and

(b) in relation to a transfer, means the assessable profits arising from the transfer;

tax benefit (稅務利益) means an avoidance, postponement or reduction of a liability to pay tax.

27. Anti-avoidance provisions relating to arrangement to obtain tax benefits—FSPE

- (1) Subsection (2) applies to an FSPE if—
 - (a) the FSPE enters into an arrangement; and
 - (b) the Commissioner is satisfied that the main purpose, or one of the main purposes, of the FSPE in entering into the arrangement is to obtain a tax benefit, whether for the FSPE or another person or entity, in relation to a liability to pay profits tax under this Ordinance.
- (2) Section 16 of this Schedule does not apply in relation to any relevant assessable profits accrued to the FSPE during a relevant basis period.
- (3) Subsection (4) applies to an FSPE if—
 - (a) any assets or businesses are transferred directly or indirectly from a person (*transferor*) carrying on a business in Hong Kong to the FSPE;
 - (b) the income of the transferor in relation to the transferred assets or businesses (as the case requires) would have been subject to tax under Part 4 of this Ordinance but for the transfer; and
 - (c) the Commissioner is satisfied that the main purpose, or one of the main purposes, of the FSPE in making the transfer is to obtain a tax benefit, whether for the FSPE or another person or entity, in relation to a liability to pay profits tax under this Ordinance.

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- (4) Section 16 of this Schedule does not apply in relation to any relevant assessable profits accrued to the FSPE during a relevant basis period unless the transfer—
- (a) is carried out on an arm's length basis; and
 - (b) is chargeable to tax under Part 4 of this Ordinance in respect of the assessable profits arising from the transfer.
- (5) For the purposes of this section, a reference to an FSPE (*reference*) in subsection (1)(a), the first reference in subsection (1)(b), the reference in subsection (3)(a), and the first reference in subsection (3)(c) include—
- (a) if the FSPE is a partnership—a partner in the partnership; and
 - (b) if the FSPE is a trust—a trustee of the trust.
- (6) For the purposes of this section, a basis period for a year of assessment is a relevant basis period in relation to an arrangement if, in the opinion of the Commissioner, the arrangement has effect during the basis period.
- (7) For the purposes of this section, a basis period for a year of assessment is a relevant basis period in relation to a transfer if, in the opinion of the Commissioner, the transfer has effect during the basis period.
- (8) In this section—
- relevant assessable profits* (有關應評稅利潤) has the meaning given by section 26(8) of this Schedule;
- tax benefit* (稅務利益) has the meaning given by section 26(8) of this Schedule.

Division 2—Records of FIHV and ESF Office

28. Obligations of responsible persons to keep records relating to beneficial owners

- (1) This section applies, for the purposes of this Schedule, to and in relation to an FIHV.
- (2) A responsible person for an entity that is an FIHV must keep sufficient records to enable the identity and particulars of each beneficial owner of the FIHV to be readily ascertained.
- (3) Any record that is required under subsection (2) to be kept by a responsible person for an entity, in relation to a person or entity (*particular person*) that is a beneficial owner of the FIHV, must be kept by the responsible person throughout the period within which the particular person is such an owner.
- (4) If a particular person ceases to be a beneficial owner of an FIHV, the responsible person for the entity must retain, for at least 7 years after the date of cessation, the records required under subsections (2) and (3) to be kept in relation to the particular person.
- (5) If an entity ceases to be an FIHV but continues to exist, a responsible person for the entity must retain, for at least 7 years after the date of cessation, the records that, but for the cessation, would have been required under subsection (2), (3) or (4) to be kept or retained.
- (6) If the entity ceases to exist, a person who immediately before the cessation was a responsible person for the entity must retain, for at least 7 years after the date of cessation, the records that, but for the cessation, would have been required under subsection (2), (3), (4) or (5) to be kept or retained.

(7) In this section—

beneficial owner (實益擁有人), in relation to an entity—

- (a) means a particular person who has a direct or indirect beneficial interest in the entity; and
- (b) includes any specified members;

responsible person (負責人)—

- (a) in relation to an entity that is a corporation, means the corporation; and
- (b) in relation to any other entity, means a person who is responsible for the management of the entity;

specified members (指明成員) has the meaning given by section 20(1) of this Schedule.

29. Obligations of ESF Office to keep records relating to beneficial owners

- (1) This section applies, for the purposes of this Schedule, to and in relation to an ESF Office of a family (*relevant family office*).
- (2) A relevant family office must keep sufficient records, for each FIHV managed by the family office, to enable the identity and particulars of each beneficial owner of the FIHV to be readily ascertained.
- (3) Any record that is required under subsection (2) to be kept by a relevant family office, in relation to a person or entity (*particular person*) that is a beneficial owner of the FIHV, must be kept by the family office throughout the period within which the particular person is such an owner.

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- (4) In addition, a relevant family office must keep sufficient records to enable the identity and particulars of each beneficial owner of the family office to be readily ascertained.
 - (5) Any record that is required under subsection (4) to be kept by a relevant family office, in relation to a person or entity (*specified person*) that is a beneficial owner of the family office, must be kept by the family office throughout the period within which the specified person is such an owner.
 - (6) If a particular person ceases to be a beneficial owner of an FIHV managed by a relevant family office, the family office must retain, for at least 7 years after the date of cessation, the records required under subsections (2) and (3) to be kept in relation to the particular person.
 - (7) If a specified person ceases to be a beneficial owner of a relevant family office, the family office must retain, for at least 7 years after the date of cessation, the records required under subsections (4) and (5) to be kept in relation to the specified person.
 - (8) If an entity managed by a relevant family office ceases to be an FIHV (whether or not the entity continues to exist), or ceases to be managed by a relevant family office, the family office must retain, for at least 7 years after the date of cessation, the records that, but for the cessation, would have been required under subsection (2), (3) or (6) to be kept or retained.
 - (9) If a relevant family office ceases to exist, a person who immediately before the cessation was a director of the family office must retain, for at least 7 years after the date of cessation, the records that, but for the cessation, would have been required under subsection (2), (3), (4), (5), (6), (7) or (8) to be kept or retained.

(10) In this section—

beneficial owner (實益擁有人) has the meaning given by section 28(7) of this Schedule.

Schedule 16F

[s. 40AV & Sch. 16E]

Provisions for Determining Extent of Beneficial Interest Family Member has in Particular Entity (Section 8 of Schedule 16E)

Part 1

1. In this Schedule—

direct beneficial interest (直接實益權益) has the meaning given by section 7 of Schedule 16E;

entity (實體) has the meaning given by section 1(1) of Schedule 16E;

family (家族) has the meaning given by section 4 of Schedule 16E;

indirect beneficial interest (間接實益權益) has the meaning given by section 7 of Schedule 16E;

member (成員), in relation to a family, has the meaning given by section 4 of Schedule 16E.

Part 2

2. For a member of a family having a direct beneficial interest in an entity (*Entity A*), the extent of the beneficial interest of the member in Entity A is—
 - (a) if Entity A is a corporation—
 - (i) the percentage of the issued share capital (however described) of the corporation held by the member; or
 - (ii) (if the corporation does not have any issued share capital) the percentage of the voting rights in the corporation that the member is entitled to exercise or the exercise of which the member is entitled to control;
 - (b) if Entity A is a partnership—
 - (i) the percentage of the profits of the partnership to which the member is entitled; or
 - (ii) (if the partners in the partnership are neither entitled to the profits of the partnership nor entitled to a distribution of the assets of the partnership on its dissolution) the percentage of the voting rights in the partnership that the member is entitled to exercise or the exercise of which the member is entitled to control;
 - (c) if Entity A is a trust—the percentage in value of the trust fund in which the member is interested; and
 - (d) if Entity A is an entity that does not fall within any of paragraphs (a), (b) and (c)—

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- (i) the percentage of the capital of the entity to which the member is entitled;
 - (ii) (if subparagraph (i) is not applicable in relation to the entity) the percentage of the ownership interests that the member has in the entity;
 - (iii) (if neither subparagraph (i) nor (ii) is applicable in relation to the entity) the percentage of the profits of the entity to which the member is entitled; or
 - (iv) (if none of subparagraphs (i), (ii) and (iii) is applicable in relation to the entity) the percentage of the voting rights in the entity that the member is entitled to exercise or the exercise of which the member is entitled to control.
 3. Section 7(5), (6) and (7) of Schedule 16E applies for the purposes of section 2 of this Schedule.
 4. For a member of a family having an indirect beneficial interest in an entity (*Entity B*), the extent of the beneficial interest of the member in Entity B is—
 - (a) if there is only one interposed entity—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the member in the interposed entity by the percentage representing the extent of the beneficial interest of the interposed entity in Entity B; or

-
- (b) if there is a series of 2 or more interposed entities—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the member in the first interposed entity in the series by—
- (i) the percentage representing the extent of the beneficial interest of each interposed entity (other than the last interposed entity) in the series in the next interposed entity in the series; and
 - (ii) the percentage representing the extent of the beneficial interest of the last interposed entity in the series in Entity B.
5. For the purposes of section 4 of this Schedule—
- (a) section 2 of this Schedule applies in determining the extent of the beneficial interest of a member of a family in an interposed entity as if the references to Entity A in that section were references to an interposed entity;
 - (b) section 2 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity in Entity B as if—
 - (i) the references to a member of a family in that section were references to an interposed entity; and
 - (ii) the references to Entity A in that section were references to Entity B; and
 - (c) section 2 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity (*Interposed Entity A*) in another interposed entity (*Interposed Entity B*) as if—

- (i) the references to a member of a family in that section were references to Interposed Entity A; and
- (ii) the references to Entity A in that section were references to Interposed Entity B.

Schedule 16G

[s. 40AV & Sch. 16E]

Provisions for Determining Extent of Beneficial Interest Entity has in Another Entity (Sections 8 and 20 of Schedule 16E)

Part 1

1. In this Schedule—

direct beneficial interest (直接實益權益) has the meaning given by section 7 of Schedule 16E;

entity (實體) has the meaning given by section 1(1) of Schedule 16E;

indirect beneficial interest (間接實益權益) has the meaning given by section 7 of Schedule 16E.

Part 2

2. For an entity (*Entity A*) having a direct beneficial interest in another entity (*Entity B*), the extent of the beneficial interest of Entity A in Entity B is—

-
- (a) if Entity B is a corporation—
 - (i) the percentage of the issued share capital (however described) of the corporation held by Entity A; or
 - (ii) (if the corporation does not have any issued share capital) the percentage of the voting rights in the corporation that Entity A is entitled to exercise or the exercise of which Entity A is entitled to control;
 - (b) if Entity B is a partnership—
 - (i) the percentage of the profits of the partnership to which Entity A is entitled; or
 - (ii) (if the partners in the partnership are neither entitled to the profits of the partnership nor entitled to a distribution of the assets of the partnership on its dissolution) the percentage of the voting rights in the partnership that Entity A is entitled to exercise or the exercise of which Entity A is entitled to control;
 - (c) if Entity B is a trust—the percentage in value of the trust **fund** in which Entity A is interested; and
 - (d) if Entity B is an entity that does not fall within any of paragraphs (a), (b) and (c)—
 - (i) the percentage of the capital of the entity to which Entity A is entitled;
 - (ii) (if subparagraph (i) is not applicable in relation to the entity) the percentage of the ownership interests that Entity A has in the entity;

- (iii) (if neither subparagraph (i) nor (ii) is applicable in relation to the entity) the percentage of the profits of the entity to which Entity A is entitled; or
 - (iv) (if none of subparagraphs (i), (ii) and (iii) is applicable in relation to the entity) the percentage of the voting rights in the entity that Entity A is entitled to exercise or the exercise of which Entity A is entitled to control.
3. For the purposes of section 2 of this Schedule—
- (a) section 7(5), (6) and (7) of Schedule 16E applies; and
 - (b) a reference to Entity A in section 2(a), (b), (c) and (d) of this Schedule includes—
 - (i) if Entity A is a partnership—a partner in the partnership; and
 - (ii) if Entity A is a trust—a trustee of the trust.
4. For an entity (**Entity C**) having an indirect beneficial interest in another entity (**Entity D**), the extent of the beneficial interest of Entity C in Entity D is—
- (a) if there is only one interposed entity—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of Entity C in the interposed entity by the percentage representing the extent of the beneficial interest of the interposed entity in Entity D; or

-
- (b) if there is a series of 2 or more interposed entities—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of Entity C in the first interposed entity in the series by—
- (i) the percentage representing the extent of the beneficial interest of each interposed entity (other than the last interposed entity) in the series in the next interposed entity in the series; and
 - (ii) the percentage representing the extent of the beneficial interest of the last interposed entity in the series in Entity D.
5. For the purposes of section 4 of this Schedule—
- (a) section 2 of this Schedule applies in determining the extent of the beneficial interest of Entity C in an interposed entity as if—
 - (i) the references to Entity A in that section were references to Entity C; and
 - (ii) the references to Entity B in that section were references to an interposed entity;
 - (b) section 2 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity in Entity D as if—
 - (i) the references to Entity A in that section were references to an interposed entity; and
 - (ii) the references to Entity B in that section were references to Entity D; and
 - (c) section 2 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity (*Interposed Entity A*) in another interposed entity (*Interposed Entity B*) as if—

- (i) the references to Entity A in that section were references to Interposed Entity A; and
- (ii) the references to Entity B in that section were references to Interposed Entity B.

Schedule 16H

[s. 40AV & Sch. 16E]

Provisions for Determining Extent of FIHV's Beneficial Interest in FSPE (Sections 11 and 16 of Schedule 16E)

Part 1

1. In this Schedule—

direct beneficial interest (直接實益權益) has the meaning given by section 7 of Schedule 16E;

entity (實體) has the meaning given by section 1(1) of Schedule 16E;

FIHV (家控工具) has the meaning given by section 5 of Schedule 16E;

FSPE (家族特體) has the meaning given by section 6 of Schedule 16E;

indirect beneficial interest (間接實益權益) has the meaning given by section 7 of Schedule 16E.

Part 2

2. For an FIHV having a direct beneficial interest in an FSPE, the extent of the beneficial interest of the FIHV in the FSPE is—
 - (a) if the FSPE is a corporation—
 - (i) the percentage of the issued share capital (however described) of the corporation held by the FIHV; or
 - (ii) (if the corporation does not have any issued share capital) the percentage of the voting rights in the corporation that the FIHV is entitled to exercise or the exercise of which the FIHV is entitled to control;
 - (b) if the FSPE is a partnership—
 - (i) the percentage of the profits of the partnership to which the FIHV is entitled; or
 - (ii) (if the partners in the partnership are neither entitled to the profits of the partnership nor entitled to a distribution of the assets of the partnership on its dissolution) the percentage of the voting rights in the partnership that the FIHV is entitled to exercise or the exercise of which the FIHV is entitled to control;
 - (c) if the FSPE is a trust—the percentage in value of the trust **fund** in which the FIHV is interested; and
 - (d) if the FSPE is an entity that does not fall within any of paragraphs (a), (b) and (c)—

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- (i) the percentage of the capital of the entity to which the FIHV is entitled;
 - (ii) (if subparagraph (i) is not applicable in relation to the entity) the percentage of the ownership interests that the FIHV has in the entity;
 - (iii) (if neither subparagraph (i) nor (ii) is applicable in relation to the entity) the percentage of the profits of the entity to which the FIHV is entitled; or
 - (iv) (if none of subparagraphs (i), (ii) and (iii) is applicable in relation to the entity) the percentage of the voting rights in the entity that the FIHV is entitled to exercise or the exercise of which the FIHV is entitled to control.
3. For the purposes of section 2 of this Schedule—
- (a) section 7(5), (6) and (7) of Schedule 16E applies; and
 - (b) a reference in section 2(a), (b), (c) and (d) of this Schedule to the FIHV includes—
 - (i) if the FIHV is a partnership—a partner in the partnership; and
 - (ii) if the FIHV is a trust—a trustee of the trust.
4. For an FIHV having an indirect beneficial interest in an FSPE, the extent of the beneficial interest of the FIHV in the FSPE is—

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- (a) if there is only one interposed entity—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the FIHV in the interposed entity by the percentage representing the extent of the beneficial interest of the interposed entity in the FSPE; or
 - (b) if there is a series of 2 or more interposed entities—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the FIHV in the first interposed entity in the series by—
 - (i) the percentage representing the extent of the beneficial interest of each interposed entity (other than the last interposed entity) in the series in the next interposed entity in the series; and
 - (ii) the percentage representing the extent of the beneficial interest of the last interposed entity in the series in the FSPE.
5. For the purposes of section 4 of this Schedule—
- (a) section 2 of this Schedule applies in determining the extent of the beneficial interest of an FIHV in an interposed entity as if the references to an FSPE in that section were references to an interposed entity;
 - (b) section 2 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity in an FSPE as if the references to an FIHV in that section were references to an interposed entity; and

- (c) section 2 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity (*Interposed Entity A*) in another interposed entity (*Interposed Entity B*) as if—
- (i) the references to an FIHV in that section were references to Interposed Entity A; and
 - (ii) the references to an FSPE in that section were references to Interposed Entity B.

Schedule 16I

[s. 40AV &
Schs. 16E & 16J]

Provisions for Ascertaining Amount of Assessable Profits of Resident Person under Section 22 of Schedule 16E

Part 1

1. In this Schedule—

direct beneficial interest (直接實益權益) has the meaning given by section 7 of Schedule 16E;

entity (實體) has the meaning given by section 1(1) of Schedule 16E;

FIHV (家控工具) has the meaning given by section 5 of Schedule 16E;

indirect beneficial interest (間接實益權益) has the meaning given by section 7 of Schedule 16E;

resident person (居港者) has the meaning given by section 20(2) of Schedule 16E.

Part 2

2. The amount regarded as the assessable profits of a resident person for a year of assessment is the total sum arrived at by adding up the assessable profits of the FIHV that are chargeable to tax under Part 4 of this Ordinance and in respect of which tax would have been payable but for section 9 of Schedule 16E (*concessionary profits*) for each day in the period in the year of assessment during which the resident person has a direct or indirect beneficial interest in the FIHV.
3. For the purposes of section 2 of this Schedule, the concessionary profits of an FIHV for a particular day in a year of assessment are to be ascertained in accordance with the following formula—

$$A = \frac{B \times C}{D}$$

- where:
- A means the concessionary profits of the FIHV for a particular day in a year of assessment;
 - B means the extent of the resident person's beneficial interest in the FIHV on the particular day, expressed as a percentage determined in accordance with Part 3 of this Schedule;
 - C means the concessionary profits of the FIHV for the accounting period of the FIHV in which the particular day falls;

D means the total number of days in the accounting period of the FIHV in which the particular day falls.

Part 3

4. For a resident person having a direct beneficial interest in an FIHV, the extent of the beneficial interest of the resident person in the FIHV is—
 - (a) if the FIHV is a corporation—
 - (i) the percentage of the issued share capital (however described) of the corporation held by the resident person; or
 - (ii) (if the corporation does not have any issued share capital) the percentage of the voting rights in the corporation that the resident person is entitled to exercise or the exercise of which the resident person is entitled to control;
 - (b) if the FIHV is a partnership—
 - (i) the percentage of the profits of the partnership to which the resident person is entitled; or
 - (ii) (if the partners in the partnership are neither entitled to the profits of the partnership nor entitled to a distribution of the assets of the partnership on its dissolution) the percentage of the voting rights in the partnership that the resident person is entitled to exercise or the exercise of which the resident person is entitled to control;

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- (c) if the FIHV is a trust—the percentage in value of the trust **fund** in which the resident person is interested; and
 - (d) if the FIHV is an entity that does not fall within any of paragraphs (a), (b) and (c)—
 - (i) the percentage of the capital of the entity to which the resident person is entitled;
 - (ii) (if subparagraph (i) is not applicable in relation to the entity) the percentage of the ownership interests that the resident person has in the entity;
 - (iii) (if neither subparagraph (i) nor (ii) is applicable in relation to the entity) the percentage of the profits of the entity to which the resident person is entitled; or
 - (iv) (if none of subparagraphs (i), (ii) and (iii) is applicable in relation to the entity) the percentage of the voting rights in the entity that the resident person is entitled to exercise or the exercise of which the resident person is entitled to control.
5. Section 7(5), (6) and (7) of Schedule 16E applies for the purposes of section 4 of this Schedule.
6. For a resident person having an indirect beneficial interest in an FIHV, the extent of the beneficial interest of the resident person in the FIHV is—

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- (a) if there is only one interposed entity—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the resident person in the interposed entity by the percentage representing the extent of the beneficial interest of the interposed entity in the FIHV; or
 - (b) if there is a series of 2 or more interposed entities—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the resident person in the first interposed entity in the series by—
 - (i) the percentage representing the extent of the beneficial interest of each interposed entity (other than the last interposed entity) in the series in the next interposed entity in the series; and
 - (ii) the percentage representing the extent of the beneficial interest of the last interposed entity in the series in the FIHV.
7. For the purposes of section 6 of this Schedule—
- (a) section 4 of this Schedule applies in determining the extent of the beneficial interest of a resident person in an interposed entity as if the references to an FIHV in that section were references to an interposed entity;
 - (b) section 4 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity in an FIHV as if the references to a resident person in that section were references to an interposed entity; and

- (c) section 4 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity (*Interposed Entity A*) in another interposed entity (*Interposed Entity B*) as if—
- (i) the references to a resident person in that section were references to Interposed Entity A; and
 - (ii) the references to an FIHV in that section were references to Interposed Entity B.

Schedule 16J

[s. 40AV & Sch. 16E]

Provisions for Ascertaining Amount of Assessable Profits of Resident Person under Section 23 of Schedule 16E

Part 1

1. In this Schedule—

direct beneficial interest (直接實益權益) has the meaning given by section 7 of Schedule 16E;

entity (實體) has the meaning given by section 1(1) of Schedule 16E;

FIHV (家控工具) has the meaning given by section 5 of Schedule 16E;

FSPE (家族特體) has the meaning given by section 6 of Schedule 16E;

indirect beneficial interest (間接實益權益) has the meaning given by section 7 of Schedule 16E;

resident person (居港者) has the meaning given by section 20(2) of Schedule 16E.

Part 2

2. The amount regarded as the assessable profits of a resident person for a year of assessment is the total sum arrived at by adding up the assessable profits of the FSPE that are chargeable to tax under Part 4 of this Ordinance and in respect of which tax would have been payable but for section 16 of Schedule 16E (*concessionary profits*) for each day in the period in the year of assessment during which the resident person has an indirect beneficial interest in the FSPE.
3. For the purposes of section 2 of this Schedule, the concessionary profits of an FSPE for a particular day in a year of assessment are to be ascertained in accordance with the following formula—

$$A = \frac{B1 \times B2 \times C}{D}$$

where: A means the concessionary profits of the FSPE for a particular day in a year of assessment;

B1 means the extent of the resident person's beneficial interest in the FIHV on the particular day, expressed as a percentage determined in accordance with Part 3 of Schedule 16I;

- B2 means the extent of the FIHV's beneficial interest in the FSPE on the particular day, expressed as a percentage determined in accordance with Part 3 of this Schedule;
- C means the concessionary profits of the FSPE for the accounting period of the FSPE in which the particular day falls;
- D means the total number of days in the accounting period of the FSPE in which the particular day falls.

Part 3

4. For an FIHV having a direct beneficial interest in an FSPE, the extent of the beneficial interest of the FIHV in the FSPE is—
 - (a) if the FSPE is a corporation—
 - (i) the percentage of the issued share capital (however described) of the corporation held by the FIHV; or
 - (ii) (if the corporation does not have any issued share capital) the percentage of the voting rights in the corporation that the FIHV is entitled to exercise or the exercise of which the FIHV is entitled to control;
 - (b) if the FSPE is a partnership—
 - (i) the percentage of the profits of the partnership to which the FIHV is entitled; or

- (ii) (if the partners in the partnership are neither entitled to the profits of the partnership nor entitled to a distribution of the assets of the partnership on its dissolution) the percentage of the voting rights in the partnership that the FIHV is entitled to exercise or the exercise of which the FIHV is entitled to control;
- (c) if the FSPE is a trust—the percentage in value of the trust fund in which the FIHV is interested; and
- (d) if the FSPE is an entity that does not fall within any of paragraphs (a), (b) and (c)—
 - (i) the percentage of the capital of the entity to which the FIHV is entitled;
 - (ii) (if subparagraph (i) is not applicable in relation to the entity) the percentage of the ownership interests that the FIHV has in the entity;
 - (iii) (if neither subparagraph (i) nor (ii) is applicable in relation to the entity) the percentage of the profits of the entity to which the FIHV is entitled; or
 - (iv) (if none of subparagraphs (i), (ii) and (iii) is applicable in relation to the entity) the percentage of the voting rights in the entity that the FIHV is entitled to exercise or the exercise of which the FIHV is entitled to control.

5. For the purposes of section 4 of this Schedule—

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- (a) section 7(5), (6) and (7) of Schedule 16E applies; and
 - (b) a reference in section 4(a), (b), (c) and (d) of this Schedule to the FIHV includes—
 - (i) if the FIHV is a partnership—a partner in the partnership; and
 - (ii) if the FIHV is a trust—a trustee of the trust.
6. For an FIHV having an indirect beneficial interest in an FSPE, the extent of the beneficial interest of the FIHV in the FSPE is—
- (a) if there is only one interposed entity—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the FIHV in the interposed entity by the percentage representing the extent of the beneficial interest of the interposed entity in the FSPE; or
 - (b) if there is a series of 2 or more interposed entities—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the FIHV in the first interposed entity in the series by—
 - (i) the percentage representing the extent of the beneficial interest of each interposed entity (other than the last interposed entity) in the series in the next interposed entity in the series; and
 - (ii) the percentage representing the extent of the beneficial interest of the last interposed entity in the series in the FSPE.

7. For the purposes of section 6 of this Schedule—
- (a) section 4 of this Schedule applies in determining the extent of the beneficial interest of an FIHV in an interposed entity as if the references to an FSPE in that section were references to an interposed entity;
 - (b) section 4 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity in an FSPE as if the references to an FIHV in that section were references to an interposed entity; and
 - (c) section 4 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity (*Interposed Entity A*) in another interposed entity (*Interposed Entity B*) as if—
 - (i) the references to an FIHV in that section were references to Interposed Entity A; and
 - (ii) the references to an FSPE in that section were references to Interposed Entity B.”.
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Explanatory Memorandum

1. The main purpose of this Bill is to amend the Inland Revenue Ordinance (Cap. 112) (*Cap. 112*) to give profits tax concessions to certain entities to facilitate the development of family office business in Hong Kong. These entities are known as family-owned investment holding vehicles and family-owned special purpose entities in the Bill.
2. The tax concessions provided for under the new Schedule 16E to be added to Cap. 112 apply for a year of assessment commencing on or after 1 April 2022.
3. Clause 1 sets out the short title.
4. Clause 4 adds a new Part 6E to Cap. 112 to introduce a tax concession regime for certain investment vehicles managed by a family office of a particular family and certain entities that are wholly or partially owned by such vehicles.
5. The new Part 6E also empowers the Secretary for Financial Services and the Treasury to amend, by notice published in the Gazette, the number specified in section 10(1)(b)(ii), the amounts specified in sections 10(1)(c)(ii) and 11(2), (4) and (6), and the rates specified in sections 24(2) and 25(2), of the new Schedule 16E (to be added to Cap. 112 by clause 7) and make incidental, supplemental, evidential, consequential, savings and transitional provisions that are necessary and expedient in consequence of the amendments. In addition, the new Part 6E introduces 5 other Schedules (Schedules 16F to 16J) which are to be added to Cap. 112 by that clause. New Schedules 16F to 16J contain provisions supplementary to the new Schedule 16E.

New Schedule 16E

6. The new Schedule 16E contains 6 Parts.
7. Part 1 (sections 1 to 8) of the new Schedule 16E provides for certain key concepts under the new profits tax concession regime. For example, section 7 of that Schedule seeks to explain how to determine whether a person or entity has a direct or indirect beneficial interest in another person or entity. Part 1 of the new Schedule 16E also contains definitions or interpretation provisions for certain expressions used in that Schedule. These expressions include *entity*, eligible single family office (*ESF Office*), *family*, family-owned investment holding vehicle (*FIHV*), family-owned special purpose entity (*FSPE*) and interposed family-owned special purpose entity (*IFSPE*).
8. Parts 2 and 3 (sections 9 to 19) of the new Schedule 16E mainly provide profits tax concessions for an entity that is an FIHV and an entity that is an FSPE. The concessionary rate for an FIHV and that for an FSPE for the basis period for a year of assessment are specified in sections 24(2) and 25(2) of the new Schedule 16E.
9. Parts 2 and 3 of the new Schedule 16E also provide for the circumstances under which losses sustained by an FIHV or FSPE from certain transactions are not available for set off against their assessable profits.
10. Part 4 (sections 20 to 23) of the new Schedule 16E mainly provides for the circumstances under which the assessable profits of an FIHV or FSPE are to be regarded as the assessable profits of a resident person (within the meaning of section 20(2) of that Schedule) that has a beneficial interest in the FIHV or FSPE. The new Schedules 16I and 16J, which are supplementary to the new Schedule 16E, seek to ascertain the amounts of assessable profits of such resident persons and determine the extent of beneficial interest that a person or entity has in another person or entity.

Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Bill 2022

Explanatory Memorandum
Paragraph 11

C3291

11. Part 6 (sections 26 to 29) of the new Schedule 16E provides for miscellaneous matters. That Part contains anti-avoidance provisions relating to arrangement to obtain tax benefits. That Part also contains provisions providing for the obligations of a responsible person for an FIHV or ESF Office to keep or retain records regarding the beneficial owners of the FIHV and those of the ESF Office.

New Schedules 16F to 16J

12. The new Schedule 16F contains provisions for determining the extent of beneficial interest that members of a family have in a particular entity.
13. The new Schedule 16G contains provisions for determining the extent of beneficial interest that an entity has in another entity.
14. The new Schedules 16F and 16G are added for the purposes of sections 8 and 20 of the new Schedule 16E.
15. The new Schedule 16H is for sections 11 and 16 of the new Schedule 16E. The new Schedule 16H contains provisions for determining the extent of the beneficial interest that an FIHV has in an FSPE.
16. The new Schedule 16I contains provisions for ascertaining the amount of the assessable profits of a resident person under section 22 of the new Schedule 16E. The new Schedule 16I also provides for the determination of the extent of the beneficial interest that a resident person has in an FIHV.
17. The new Schedule 16J contains provisions for ascertaining the amount of the assessable profits of a resident person under section 23 of the new Schedule 16E and provides for the determination of the extent of the beneficial interest that an FIHV has in an FSPE for the purposes of that section.

Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Bill 2022

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Part 6E

Tax Treatment of Family-owned Investment Holding Vehicle and Family-owned Special Purpose Entity

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A BILL

To

Amend the Inland Revenue Ordinance to give profits tax concessions to certain family-owned investment holding vehicles and related entities; and to provide for related matters.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Ordinance 2022.

2. Inland Revenue Ordinance amended

The Inland Revenue Ordinance (Cap. 112) is amended as set out in sections 3 to 7.

3. Section 19CA amended (treatment of unabsorbed losses under sections 19CAB and 19CAC: interpretation)

(1) Section 19CA, definition of *concession provision*, paragraph (gc)—

Repeal

“; or”

Substitute a semicolon.

- (2) Section 19CA, definition of *concession provision*, paragraph (h)—

Repeal the semicolon

Substitute

“; or”.

- (3) Section 19CA, definition of *concession provision*, after paragraph (h)—

Add

“(i) section 9 or 16 of Schedule 16E;”.

4. Part 6E added

After Part 6D—

Add

“Part 6E

Tax Treatment of Family-owned Investment Holding Vehicle and Family-owned Special Purpose Entity

40AV. Schedule 16E: tax treatment of family-owned investment holding vehicle and family-owned special purpose entity

- (1) Schedule 16E contains provisions about—

- (a) the tax treatment of a family-owned investment holding vehicle within the meaning of that Schedule; and
- (b) the tax treatment of a family-owned special purpose entity within the meaning of that Schedule.

- (2) Schedules 16F, 16G, 16H, 16I and 16J contain provisions supplementary to Schedule 16E.
- (3) Schedules 16E, 16F, 16G, 16H, 16I and 16J apply in respect of a year of assessment commencing on or after 1 April 2022.

40AW. Power to amend Schedule 16E

- (1) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend—
 - (a) the number specified in section 10(1)(b)(ii) of Schedule 16E;
 - (b) the amounts specified in sections 10(1)(c)(ii) and 11(2), (4) and (6) of Schedule 16E; and
 - (c) the rates specified in sections 24(2) and 25(2) of Schedule 16E.
- (2) A notice published under subsection (1) may contain any incidental, supplemental, evidential, consequential, savings and transitional provisions that are necessary and expedient in consequence of the amendments made under that subsection.”.

5. Section 80 amended (penalties for failure to make returns, making incorrect returns, etc.)

Before section 80(3)—

Add

“(2Y) A person who, without reasonable excuse, fails to comply with a Schedule 16E provision commits an offence and is liable on conviction to a fine at level 3.

(2Z) For the purposes of subsection (2Y)—

Schedule 16E provision (附表 16E 條文) means any of the following provisions of Schedule 16E—

- (a) section 28(2);
- (b) section 28(3);
- (c) section 28(4);
- (d) section 28(5);
- (e) section 28(6);
- (f) section 29(2);
- (g) section 29(3);
- (h) section 29(4);
- (i) section 29(5);
- (j) section 29(6);
- (k) section 29(7);
- (l) section 29(8);
- (m) section 29(9).

(2ZA) If a person is convicted of an offence under subsection (2Y) for failing to do an act, the court may order the person to do the act within a time specified in the order.

(2ZB) A person who fails to comply with an order of the court under subsection (2ZA) commits an offence and is liable on conviction to a fine at level 4.”.

6. Schedule 16C amended (classes of assets specified for transactions for purposes of sections 20AN and 20AO)

(1) Schedule 16C, heading, after “20AO”—

Add

“and Schedule 16E”.

(2) Schedule 16C—

Repeal

“& 17A]”

Substitute

“, 16E & 17A]”.

7. Schedules 16E to 16J added

After Schedule 16D—

Add

“Schedule 16E

[ss. 19CA, 40AV,
40AW & 80 & Schs. 16C,
16F, 16G, 16H, 16I & 16J]

**Tax Treatment of Family-owned Investment
Holding Vehicle and Family-owned Special
Purpose Entity**

Part 1

Preliminary

1. Interpretation

(1) In this Schedule—

direct beneficial interest (直接實益權益)—see section 7 of this Schedule;

entity (實體) means a body of persons (corporate or unincorporate) or a legal arrangement, and includes—

(a) a corporation;

(b) a partnership; and

(c) a trust;

ESF Office (具資格辦公室), in relation to a family—
see section 2 of this Schedule;

family (家族)—see section 4 of this Schedule;

family office (家族辦公室) means a family office within the
meaning of section 2 of this Schedule;

FIHV (家控工具) means a family-owned investment
holding vehicle within the meaning of section 5 of this
Schedule;

FSPE (家族特體) means a family-owned special purpose
entity within the meaning of section 6 of this Schedule;

IFSPE (中間家族特體) means an interposed family-owned
special purpose entity within the meaning of section 6
of this Schedule;

immovable property (不動產)—

(a) means—

(i) land (whether covered by water or not);

(ii) any estate, right, interest or easement in or
over any land; and

(iii) things attached to land or permanently
fastened to anything attached to land; and

(b) does not include infrastructure;

indirect beneficial interest (間接實益權益)—see section
7 of this Schedule;

infrastructure (基礎設施)—

(a) means any publicly or privately owned facility
providing or distributing services for the benefit of
the public; and

- (b) includes any water, sewage, energy, fuel, transportation or communication facility;

investee private company (獲投資私人公司)—see subsections

- (2) and (3);

investment activity (投資活動), in relation to an FIHV, includes—

- (a) conducting research and advising on any potential investments to be made by the FIHV;
- (b) acquiring, holding, managing or disposing of property for the FIHV; and
- (c) establishing or administering an FSPE or a relevant company (as defined in subsections 12(1)(a), 13(1)(a), 17(1)(a) and 18(1)(a) of this Schedule) for holding and administering one or more underlying investments of the FIHV;

member (成員), in relation to a family—see section 4 of this Schedule;

private company (私人公司) means a company (whether incorporated in or outside Hong Kong) that is not allowed to issue any invitations to the public to subscribe for any shares or debentures of the company;

property (財產) includes—

- (a) money, goods, choses in action and land (whether in Hong Kong or elsewhere); and
- (b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incidental to property mentioned in paragraph (a);

Schedule 16C asset (附表 16C 資產) means an asset that falls within a class specified in Schedule 16C.

- (2) An investee private company, in relation to an FIHV, is a private company any shares of which is held by an FSPE or IFSPE for the FIHV.
- (3) A reference to an FSPE or IFSPE in subsection (2) includes—
 - (a) if the FSPE or IFSPE is a partnership—a partner in the partnership; and
 - (b) if the FSPE or IFSPE is a trust—a trustee of the trust.
- (4) For the purposes of this Schedule, an FIHV is related to a family if one or more than one member of the family has or (because of section 8 of this Schedule) is taken to have at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in the FIHV.
- (5) For the purposes of this Schedule, an FIHV is managed by an ESF Office of the family to which the FIHV is related if the ESF Office carries out any investment activities.

2. Meaning of *ESF office* of family

- (1) A private company is a family office if—
 - (a) the central management and control of the company is exercised in Hong Kong; and
 - (b) the company provides services to specified persons of a family.
- (2) A family office is an eligible single family office (*ESF Office*) of a family for a year of assessment if—
 - (a) at all times during the basis period for the year of assessment, one or more than one member of the family has at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in

- the family office;
- (b) the family office satisfies the safe harbour rule in relation to the family for the year of assessment; and
 - (c) the following conditions are met in respect of the family office—
 - (i) the family office provides services to specified persons of the family during the basis period for the year of assessment; and
 - (ii) the fees for the provision of those services are chargeable to profits tax under section 14 for that year.
- (3) In this section—
- safe harbour rule* (安全港規則)—see section 3 of this Schedule;
- specified person* (指明人士), in relation to a family, means—
- (a) an FIHV that is related to the family;
 - (b) an FSPE in which an FIHV mentioned in paragraph (a) has a beneficial interest (whether direct or indirect);
 - (c) an IFSPE of an FIHV mentioned in paragraph (a); and
 - (d) a member of the family.

3. Provision supplementary to section 2 of this Schedule—safe harbour rule

- (1) For the purposes of section 2 of this Schedule, a family office satisfies the safe harbour rule in relation to a family for a year of assessment (*subject year*) if the family office—

- (a) falls within the 1-year safe harbour under subsection (2) in relation to the family for the subject year; or
 - (b) falls within the multiple-year safe harbour under subsection (3) in relation to the family for the specified years.
- (2) A family office falls within the 1-year safe harbour in relation to a family for a subject year if, for that year, the ~~FOMP~~FOMI percentage of the family office is more than or equal to 75%.
- (3) A family office falls within the multiple-year safe harbour in relation to a family for the specified years if, for those years, the average ~~FOMP~~FOMI percentage of the family office is more than or equal to 75%.
- (4) In this section, a reference to the specified years for a family office is—
- (a) if the family office has provided services in Hong Kong, to any person or entity, for less than 2 consecutive years of assessment immediately before the subject year—a reference to the subject year and the preceding year of assessment (*the 2 years*); and
 - (b) if the family office has provided services in Hong Kong, to any person or entity, for 2 or more consecutive years of assessment immediately before the subject year—a reference to the subject year and the preceding 2 years of assessment (*the 3 years*).
- (5) The ~~FOMP~~FOMI percentage of a family office for a year of assessment is calculated in accordance with the following formula—

$$\frac{\text{FOMI}}{\text{I}}$$

~~FOMP~~

P

where: ~~FOMP~~FOMI means the aggregate amount of the management ~~profits~~income of the family office in the basis period for the year of assessment that ~~are~~is derived from services provided to any one or more specified persons of the family, including but not limited to income derived from the carrying on of investment activities for such specified persons;

PI

means the aggregate amount of ~~profits~~income accruing to the family office from all sources in Hong Kong in the basis period for the year of assessment.

- (6) The average ~~FOMP~~FOMI percentage of a family office for the specified years is—
- (a) for the specified years within the meaning of subsection (4)(a)—the percentage arrived at by dividing the sum of the ~~FOMP~~FOMI percentage of the family office for the 2 years by 2; and
- (b) for the specified years within the meaning of subsection (4)(b)—the percentage arrived at by dividing the sum of the ~~FOMP~~FOMI percentage of the family office for the 3 years by 3.
- (7) In this section—
- specified person* (指明人士) has the meaning given by section 2(3) of this Schedule.

4. Meaning of *family* and *member of family*

- (1) For the purposes of this Schedule—

- (a) a natural person (whether alive or deceased) (*Person A*) and all of the persons related to Person A together constitute a family; and
 - (b) each of the persons mentioned in paragraph (a) is a member of the family.
- (2) For the purposes of subsection (1)(a)—
- (a) a spouse (including a deceased spouse) of Person A (*Person B*) is a person related to Person A;
 - (b) any other natural person (whether alive or deceased) is a person related to Person A if the other natural person is—
 - (i) a lineal ancestor of Person A (*Person C*);
 - (ii) a lineal ancestor of Person B (*Person D*);
 - (iii) a lineal descendant of Person A (*Person E*);
 - (iv) a sibling of Person A, Person B, Person C or Person D (*Person F*); or
 - (v) a lineal descendant of Person F (*Person G*); and
 - (c) a spouse (including a deceased spouse) of Person E, Person F or Person G is also a person related to Person A.
- (3) For the purposes of this section—
- (a) a child of a natural person (*Child A*) is a lineal descendant of the natural person;
 - (b) a child of Child A (*Child B*), a child of Child B, and so on, is also a lineal descendant of the natural person mentioned in paragraph (a);
 - (c) a parent of a natural person (*Parent A*) is a lineal ancestor of the natural person; and

- (d) a parent of Parent A (***Parent B***), a parent of Parent B, and so on, is also a lineal ancestor of the natural person mentioned in paragraph (c).

(4) In this section—

child (子女), in relation to a natural person—

- (a) means a child of the person, or of a spouse (including a deceased spouse) or former spouse of the person, whether or not the child was born in wedlock; and
- (b) includes an adopted child or step child of either or both of the following—
 - (i) the person;
 - (ii) a spouse (including a deceased spouse) or former spouse of the person;

parent (父母), in relation to a natural person, means—

- (a) a parent of whose marriage the person is a child;
- (b) the natural father or mother of the person;
- (c) a parent by whom the person was adopted; or
- (d) a step parent of the person;

sibling (兄弟姐妹), in relation to Person A, Person B, Person C or Person D (***relevant person***), means—

- (a) a full or half blood sibling of the relevant person;
- (b) an adopted sibling of the relevant person;
- (c) a step sibling of the relevant person; or
- (d) if the relevant person is an adopted person—a natural child of an adoptive parent of the relevant person.

-
- (5) If a person (other than a deceased spouse of Person A) (*Person H*) ceases to be a spouse of Person A during a year of assessment that begins on or after 1 April 2022 (*subject year*), for the subject year and the year of assessment immediately after the subject year (and not for any subsequent year), Person H is still regarded as a spouse of Person A.
- (6) If subsection (5) applies to Person H, for the subject year and the year of assessment immediately after the subject year (and not for any subsequent year)—
- (a) a sibling of Person H (*Sibling A*) and a spouse of Sibling A are respectively a sibling and a spouse of a sibling of Person B;
 - (b) a lineal descendant and a spouse of a lineal descendant of Sibling A are respectively a lineal descendant and a spouse of a lineal descendant of a sibling of Person B;
 - (c) a lineal ancestor of Person H (*Ancestor A*) is a lineal ancestor of Person B;
 - (d) a sibling and a spouse of a sibling of Ancestor A are respectively a sibling and a spouse of a sibling of a lineal ancestor of Person B; and
 - (e) a lineal descendant and a spouse of a lineal descendant of a sibling of Ancestor A are respectively a lineal descendant and a spouse of a lineal descendant of a sibling of a lineal ancestor of Person B.
- (7) If a person (other than a deceased spouse of Person E, Person F or Person G) (*Person I*) ceases to be a spouse of Person E, Person F or Person G during a year of assessment that begins on or after 1 April 2022 (*subject year*), for the subject year and the year of assessment

immediately after the subject year (and not for any subsequent year), Person I is still regarded as a spouse of Person E, Person F or Person G (as the case requires).

5. Meaning of family-owned investment holding vehicle (*FIHV*)

An entity (*Entity A*), whether established or created (however described) in or outside Hong Kong, is a family-owned investment holding vehicle for a year of assessment if—

- (a) at all times during the basis period for that year, one or more than one member of a family has at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in Entity A; and
- (b) Entity A is not a business undertaking for general commercial or industrial purposes mentioned in section 20AM(6).

6. Meaning of family-owned special purpose entity (*FSPE*) and interposed family-owned special purpose entity (*IFSPE*)

- (1) An entity (*Entity B*), whether established or created (however described) in or outside Hong Kong, is a family-owned special purpose entity (*FSPE*) if all of the conditions specified in subsection (2) are met in respect of Entity B.
- (2) The conditions are—
 - (a) an *FIHV* (*relevant FIHV*) has a beneficial interest (whether direct or indirect) in Entity B;
 - (b) Entity B is established or created (however described) solely—

- (i) for holding (whether directly or indirectly) and administering one or more investee private companies;
 - (ii) for holding (whether directly or indirectly) and administering any Schedule 16C assets; or
 - (iii) for the purposes mentioned in subparagraphs (i) and (ii);
 - (c) Entity B does not carry on any trade or activity (including executing a legal document) except for either or both of the purposes mentioned in paragraph (b)(i) and (ii); and
 - (d) Entity B is neither an FIHV nor an investee private company.
- (3) If an FSPE has an indirect beneficial interest in an investee private company through an entity (*interposed entity*) that is an FSPE in which the relevant FIHV has an indirect beneficial interest, the interposed entity is an interposed family-owned special purpose entity (*IFSPE*) of the relevant FIHV.
- (4) If an FSPE has an indirect beneficial interest in an investee private company through a series of 2 or more interposed entities each of which is an FSPE in which the relevant FIHV has an indirect beneficial interest, each of the interposed entities is an IFSPE of the relevant FIHV.

7. Meaning of *direct beneficial interest* and *indirect beneficial interest* in person or entity

- (1) A person or entity (*the particular person*) has a direct beneficial interest in another person or entity (*the other person*) if—

- (a) where the other person is a corporation—
 - (i) the particular person holds any of the issued share capital (however described) of the corporation; or
 - (ii) (if the corporation does not have any issued share capital) the particular person is entitled to exercise or control the exercise of any voting rights in the corporation;
- (b) where the other person is a partnership—
 - (i) the particular person, as a partner in the partnership, is entitled to any of the profits of the partnership; or
 - (ii) (if the partners in the partnership are neither entitled to the profits of the partnership nor entitled to a distribution of the assets of the partnership on its dissolution) the particular person, as a partner in the partnership, is entitled to exercise or control the exercise of any voting rights in the partnership;
- (c) where the other person is a trust—
 - (i) the particular person benefits under the trust ~~estate otherwise than through the trustee of the trust~~; or
 - (ii) the particular person, not being a trustee of the trust or—
 - (A) if the trustee of the trust is a corporation—a director of the corporation;
 - (B) if the trustee of the trust is a partnership—a partner in the partnership; or

- (C) if the trustee of the trust is any other entity—a principal officer of the entity, is able (or might reasonably be expected to be able) to control the activities of the trust **estate** or the application of its corpus or income, ~~otherwise than through the trustee of the trust~~; or
- (d) where the other person is a person or entity that does not fall within any of paragraphs (a), (b) and (c)—
- (i) the particular person is entitled to any capital of the other person;
 - (ii) (if subparagraph (i) is not applicable in relation to the other person) the particular person has any of the ownership interests in the other person;
 - (iii) (if neither subparagraph (i) nor (ii) is applicable in relation to the other person) the particular person is entitled to any profits of the other person; or
 - (iv) (if none of subparagraphs (i), (ii) and (iii) is applicable in relation to the other person) the particular person is entitled to exercise or control the exercise of any voting rights in the other person.
- (2) A person or entity (*the particular person*) has an indirect beneficial interest in another person or entity (*the other person*) if—
- (a) where the other person is a corporation—
 - (i) the particular person is interested in any of the issued share capital (however described) of the corporation; or

- (ii) (if the corporation does not have any issued share capital) the particular person is entitled to exercise or control the exercise of any voting rights in the corporation;
- (b) where the other person is a partnership—
 - (i) the particular person is entitled to any of the profits of the partnership; or
 - (ii) (if the partners in the partnership are neither entitled to the profits of the partnership nor entitled to a distribution of the assets of the partnership on its dissolution) the particular person is entitled to exercise or control the exercise of any voting rights in the partnership;
- (c) where the other person is a trust—
 - (i) the particular person benefits under the trust ~~estate~~; or
 - (ii) the particular person, not being a trustee of the trust or—
 - (A) if the trustee of the trust is a corporation—a director of the corporation;
 - (B) if the trustee of the trust is a partnership—a partner in the partnership; or
 - (C) if the trustee of the trust is any other entity—a principal officer of the entity,is able (or might reasonably be expected to be able) to control the activities of the trust ~~estate~~ or the application of its corpus or income; or

- (d) where the other person is a person or entity that does not fall within any of paragraphs (a), (b) and (c)—
 - (i) the particular person is entitled to any capital of the other person;
 - (ii) (if subparagraph (i) is not applicable in relation to the other person) the particular person has any of the ownership interests in the other person;
 - (iii) (if neither subparagraph (i) nor (ii) is applicable in relation to the other person) the particular person is entitled to any profits of the other person; or
 - (iv) (if none of subparagraphs (i), (ii) and (iii) is applicable in relation to the other person) the particular person is entitled to exercise or control the exercise of any voting rights in the other person,

through a third person that is an entity (*interposed entity*), or a series of 2 or more interposed entities, that is or are related to the particular person and the other person in the way described in subsection (3) or (4).

- (3) If there is only one interposed entity—
 - (a) the particular person has a direct beneficial interest in the interposed entity; and
 - (b) the interposed entity has a direct beneficial interest in the other person.
- (4) If there is a series of 2 or more interposed entities—
 - (a) the particular person has a direct beneficial interest in the first interposed entity in the series;

- (b) each interposed entity (other than the last interposed entity) in the series has a direct beneficial interest in the next interposed entity in the series; and
 - (c) the last interposed entity in the series has a direct beneficial interest in the other person.
- (5) In this section, a reference to the issued share capital of a corporation does not include the shares comprised in the issued share capital that do not entitle their holders to receive dividends (whether in cash or in kind) and a distribution of the assets of the corporation on its dissolution other than a return of capital.
- (6) In this section, a reference to the exercise of any voting rights in the corporation is a reference to the exercise of any voting rights at a general meeting of the corporation.
- (7) For a partnership the partners in which are not entitled to its profits but are entitled to a distribution of the assets of the partnership on its dissolution—a reference in this section to an entitlement to any of the profits of the partnership is taken to be a reference to an entitlement to a distribution of any of the assets of the partnership on its dissolution.
- (8) A reference to the particular person in subsections (1) and (2) (other than the last reference in subsection (2)) includes—
 - (a) if the particular person is a partnership—a partner in the partnership; and
 - (b) if the particular person is a trust—a trustee of the trust.

(9) In this section—

principal officer (主要職員), in relation to an entity, means a person who exercises the managerial functions of the entity.

8. Determination of extent of family member's beneficial interest in entity for sections 2(2) and 5 of this Schedule etc.

(1) Schedule 16F applies, subject to this section, in determining the extent of the beneficial interest that a member of a family has in the entity mentioned in section 2(2) or 5 of this Schedule (*subject entity*).

(2) For a subject entity that is a specified trust related to a family, if the aggregate percentage in value of the relevant ~~estate of the~~ trust fund is at least 95%, the members of the family who are qualified beneficiaries of the trust, and those other members of the family who are entitled to benefit from the trust ~~estate~~, are taken to have at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in the trust.

(3) Subsections (4), (5), (6), (7) and (8) only apply if the subject entity is not a specified trust (*particular entity*).

(4) If—

(a) one or more than one ~~an~~ entity that is a specified trust related to a family (*Interposed Entity A*) has a direct beneficial interest in a particular entity;

(b) the extent of the beneficial interest (in aggregate) mentioned in paragraph (a) is 100%; and

(c) either—

(i) the Interposed Entity A is a charitable trust related to a family; or

[\(ii\)](#) ~~(e)~~ the aggregate percentage in value of the relevant ~~estate~~[trust fund](#) of the trust is at least 95%,

[the members of the family in the case of \(c\)\(i\) above, or](#) the members of the family who are qualified beneficiaries of Interposed Entity A, and those other members of the family who are entitled to benefit from the trust ~~estate~~[fund](#) of Interposed Entity A, are taken to have at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in [each](#) Interposed Entity A.

(5) If, because of subsection (4), any members of a family are taken to have at least 95%, in aggregate, of the beneficial interest in [each of the](#) Interposed Entity A, those members are also taken to have at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in the particular entity.

(6) If—

(a) [one or more than one](#) ~~an~~ entity that is a specified trust related to a family (*Interposed Entity B*) has an indirect beneficial interest in a particular entity through one or more other entities each of which is an eligible entity;

(b) the extent of the beneficial interest [\(in aggregate\)](#) mentioned in paragraph (a) is 100%; and

[\(c\) either—](#)

[\(i\) the Interposed Entity B is a charitable trust related to a family; or](#)

[\(ii\)](#) ~~(e)~~ the aggregate percentage in value of the relevant ~~estate~~[trust fund](#) of the trust is at least 95%,

[the members of the family in case of \(c\)\(i\) above, or](#) the members of the family who are qualified

beneficiaries of Interposed Entity B, and those other members of the family who are entitled to benefit from the trust ~~estate~~fund of Interposed Entity B, are taken to have at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in each Interposed Entity B.

- (7) If, because of subsection (6), any members of a family are taken to have at least 95%, in aggregate, of the beneficial interest in each of the Interposed Entity B, those members are also taken to have at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in the particular entity.
- (8) Schedule 16G applies in determining the extent of the beneficial interest that Interposed Entity A or Interposed Entity B has in a particular entity.
- (9) In this section—

charitable trust (慈善信託) means a trust of public character for charitable purposes under section 88 of this Ordinance, or a trust established only for purposes regarded as charitable under the governing law of the trust for the time being;

eligible entity (具資格實體) means an entity that is not a specified trust;

qualified beneficiary (合資格受益人), in relation to a specified trust related to a family, means—

- (a) a member of the family who is a specified beneficiary under the trust;
- (b) a member of the family who has a direct beneficial interest in a specified beneficiary under the trust that is an eligible entity; ~~or~~
- (c) a member of the family who, through an eligible entity or a series of entities each of which is an eligible entity, has an indirect beneficial interest in a specified beneficiary under the trust that is an eligible entity; or

(d) a member of the family who, through another specified trust which is related to the family and which the member of the family is a specified beneficiary, has an indirect beneficial interest in a specified beneficiary under the trust that is an eligible entity, which is 100% beneficially owned by that other specified trust.

qualified entity (合資格實體)—see subsection (13);

relevant ~~estate~~trust fund (有關產業信託基金), in relation to a specified trust related to a family, means the trust ~~estate~~fund of the trust, or each part of the trust ~~estate~~fund of the trust, from which one or more than one member of the family is entitled to benefit or that is distributable for the benefit of one or more than one specified beneficiary under the trust who is a member of the family or a qualified entity of the family;

specified beneficiary (指明受益人)—see subsection (12);

specified trust (指明信託)—see subsection (10).

(10) For the purposes of this section, a trust created or established (however described) under a trust instrument is a specified trust if, under the trust—

(a) there is one or more than one specified beneficiary;

(b) there is one or more than one class of persons or entities any of the members of which is a specified beneficiary; ~~or~~

(c) there is a combination of paragraphs (a) and (b); or

(d) it qualifies as a charitable trust.

(11) For the purposes of this section, a specified trust is related to a family if—

- (a) it is a charitable trust and the settlor of such trust is Person A (as defined in subsection 4(1)(a) of this Schedule) or one or more than one member of the family is able (or might reasonably be expected to be able) to control the activities of the trust or the application of its corpus or income; or
 - (b) if one or more than one specified beneficiary under the trust is—

 - (i) ~~(a)~~ a member of the family; or
 - (ii) ~~(b)~~ an entity in which one or more than one member of the family has a beneficial interest (whether direct or indirect).
- (12) For the purposes of this section, a person or entity is a specified beneficiary under a trust if—
- (a) the person or entity would be able to benefit from the trust ~~estate~~fund if the trustee of the trust exercises a discretionary power under the trust instrument in the favour of the person or entity; or
 - (b) the person or entity would be able to benefit from the trust ~~estate~~fund if the conditions under the trust instrument that are applicable to the person or entity are met.
- (13) For the purposes of this section, an entity is a qualified entity of a family if—
- (a) the entity is an eligible entity; and
 - (b) either—

 - (i) ~~(b)~~ one or more than one member of the family has 100%, in aggregate, of the beneficial interest (whether direct or indirect) in the entity; or

- (ii) one or more than one member of the family has 100%, in aggregate, of the indirect beneficial interest in the entity through being a specified beneficiary of another specified trust related to the family, which holds 100% direct beneficial interest in the entity.
- (14) For the purposes of subsection (13)(b)(i), the extent of the beneficial interest that a member of the family has in the eligible entity is to be determined in accordance with Schedule 16F.

Part 2

Tax Concession for Certain Profits of Family-owned Investment Holding Vehicle

9. Profits tax concession for FIHV

- (1) This section applies to an FIHV for the basis period for a year of assessment.
- (2) Profits tax is to be charged, at the rate specified in section 24(2) of this Schedule, on the FIHV's assessable profits for the basis period earned from the transactions specified in subsection (3), or derived from the holding of the Schedule 16C assets in the form of dividends, interest or other similar income, if the condition specified in subsection (4) is met at all times during the basis period.
- (3) The transactions are—
- transactions in Schedule 16C assets (*qualifying transactions*); and
 - subject to subsection (5), transactions incidental to the carrying out of qualifying transactions (*incidental transactions*).

- (4) The condition referred to in subsection (2) is—
- (a) that the central management and control of the FIHV is exercised in Hong Kong; and
 - (b) that the qualifying transactions of the FIHV—
 - (i) are carried out in Hong Kong by or through an ESF Office of the family that manages the FIHV; or
 - (ii) are arranged in Hong Kong by such an office.
- (5) Subsection (2) however does not apply to assessable profits earned from incidental transactions if the percentage calculated in accordance with the following formula exceeds 5%—

$$\frac{A}{100\% B} \times$$

where—

A = the FIHV's trading receipts from incidental transactions in the basis period;

B = the total of the FIHV's trading receipts from qualifying transactions and incidental transactions in the basis period.

- (6) This section is subject to sections 10, 12, 13 and 14 of this Schedule.

10. When does section 9 of this Schedule not apply—Exception 1 (FIHV)

- (1) Section 9 of this Schedule does not apply to an FIHV ([*the subject FIHV*](#)) for the basis period for a year of assessment (*subject year*) unless—

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- (a) the subject ~~ESF Office~~[FIHV](#) complies with the Specified NAV Rule under section 11 of this Schedule;
- (b) the ~~average~~[total](#) number of qualified employees [of the subject FIHV, other relevant FIHVs and the subject ESF Office](#) during the basis period—
- (i) is adequate in the opinion of the Commissioner; and
- (ii) is in any event not less than 2; and
- (c) the total amount of operating expenditure incurred in Hong Kong [by the subject FIHV and other relevant FIHVs](#) for carrying out investment activities during the basis period—
- (i) is adequate in the opinion of the Commissioner; and
- (ii) is in any event not less than \$2,000,000.
- (2) For the purposes of subsection (1)(b), a person is a qualified employee in relation to an FIHV [or the subject ESF Office](#) if—
- (a) the person is a full-time employee in Hong Kong; and
- (b) the person—
- (i) carries out any investment activities in Hong Kong during the basis period; and
- (ii) has the qualifications necessary for doing so.
- [\(3\) For the purposes of this section—](#)
- [\(a\) the subject FIHV is a relevant FIHV; and](#)
- [\(b\) any other FIHV that is related to the relevant family is also a relevant FIHV if an election has been made in relation to that other FIHV under section 14 of this Schedule.](#)

~~(3)~~ (4) In this section—

relevant family (有關家族), means the family to which the subject FIHV is related;

relevant FIHV (有關家控工具) —see subsection (3);

subject ESF Office (標的具資格辦公室), in relation to ~~an~~ a relevant FIHV for the basis period for ~~the~~ a subject year, means a family office—

- (a) that is an ESF Office of the family to which the relevant FIHV is related; and
- (b) that, on the last day of the basis period, manages ~~the~~ that relevant FIHV.

11. Provision supplementary to section 10 of this Schedule— Specified NAV Rule

- (1) For the purposes of section 10(1)(a) of this Schedule, ~~a subject ESF Office complies with~~ the Specified NAV Rule in relation to an FIHV (*subject FIHV*) for the basis period for a year of assessment (*subject year*) is complied with if Requirement 1, Requirement 2 or Requirement 3 is met.
- (2) Requirement 1 is that—the aggregate of the amount of the NAV of the Schedule 16C assets of ~~each~~ the subject FIHV and other relevant ~~FIHV~~ FIHVs managed by the subject ESF Office (*the Office*), as at the end of the basis ~~period~~ periods of the relevant ~~FIHV~~ FIHVs for the subject year, is not less than \$240,000,000 (or its equivalent in a foreign currency).
- (3) Requirement 2 applies if—
 - (a) the Office is established in or before the year preceding the subject year (*1st preceding year*); and
 - (b) ~~the Office does not meet~~ Requirement 1 is not met.

-
- (4) Requirement 2 is that—the aggregate of the amount of the NAV of the Schedule 16C assets of ~~each~~the subject FIHV and other relevant ~~FIHV~~FIHVs managed by the Office, as at the end of the basis ~~period~~periods of the relevant ~~FIHV~~FIHVs for the 1st preceding year, is not less than \$240,000,000 (or its equivalent in a foreign currency).
- (5) Requirement 3 applies if—
- (a) the Office is established in or before the year preceding the 1st preceding year (*2nd preceding year*); and
- (b) ~~the Office meets~~ neither Requirement 1 nor Requirement 2 is met.
- (6) Requirement 3 is that—the aggregate of the amount of the NAV of the Schedule 16C assets of ~~each~~the subject FIHV and other relevant ~~FIHV~~FIHVs managed by the Office, as at the end of the basis ~~period~~periods of the relevant ~~FIHV~~FIHVs for the 2nd preceding year, is not less than \$240,000,000 (or its equivalent in a foreign currency).
- (7) For the purposes of this section, the NAV of any Schedule 16C assets is to be determined in the manner specified by the Commissioner.
- (8) For the purposes of this section, a reference to the NAV of the Schedule 16C assets of an FIHV includes the NAV of the Schedule 16C assets held by each FSPE in which the FIHV has a beneficial interest (whether direct or indirect) to the extent specified in subsection (9).
- (9) The extent mentioned in subsection (8) is the percentage equal to the percentage of the FIHV's beneficial interest (whether direct or indirect) in the FSPE.
- (10) Schedule 16H applies in determining the extent of the beneficial interest mentioned in subsection (9).

- (11) For the purposes of this section—
- (a) the subject FIHV is a relevant FIHV; and
 - (b) any other FIHV that is related to the relevant family is also a relevant FIHV if an election has been made in relation to that other FIHV under section 14 of this Schedule.
- (12) For the purposes of this section—
- (a) if an FSPE is a partnership—any Schedule 16C asset held by a partner in the partnership is regarded as held by the FSPE; and
 - (b) if an FSPE is a trust—any Schedule 16C asset held by a trustee of the trust is regarded as held by the FSPE.

- (13) In this section—

NAV means net asset value;

relevant family (有關家族) means the family to which the subject FIHV is related;

relevant FIHV (有關家控工具) —see subsection (11);

subject ESF Office (標的具資格辦公室), in relation to a ~~subject~~[relevant](#) FIHV for the basis period for ~~the~~[a](#) subject year, has the meaning given by section ~~10(3)~~[10\(4\)](#) of this Schedule.

12. When does section 9 of this Schedule not apply—Exception 2 (FIHV)

- (1) This section applies if, during the basis period for a year of assessment—
- (a) an FIHV carries out transactions in shares, stocks, debentures, loan stocks, funds, bonds or notes (*specified securities*) of, or issued by, a private company (*relevant company*); and

-
- (b) the relevant company holds (whether directly or indirectly)—
- (i) immovable property in Hong Kong; or
 - (ii) share capital (however described) in another private company that holds (whether directly or indirectly) immovable property in Hong Kong.
- (2) If the aggregate value of the immovable property and share capital held by the relevant company exceeds 10% of the value of the company's assets, section 9 of this Schedule does not apply to the assessable profits of the FIHV for the basis period earned from the transactions specified in section 9(3) of this Schedule (*section 9(3) transactions*).
- (3) If the aggregate value of the immovable property and share capital held by the relevant company does not exceed 10% of the value of the company's assets, section 9 of this Schedule does not apply to the assessable profits of the FIHV for the basis period earned from the section 9(3) transactions unless a condition specified in subsection (4) is met in good faith by the FIHV.
- (4) The condition is—
- (a) that the FIHV disposes of, through a transaction or a series of transactions, the specified securities not less than 2 years after they are acquired (whether or not the FIHV has control over the relevant company); or
 - (b) that the FIHV disposes of, through a transaction or a series of transactions, the specified securities less than 2 years after they are acquired and—

-
- (i) the FIHV does not have control over the relevant company; or
- (ii) if the FIHV has control over the relevant company—the relevant company holds (whether directly or indirectly) short-term assets the aggregate value of which does not exceed 50% of the value of the relevant company’s assets.
- (5) For the purposes of this section, an FIHV has control over a company if the FIHV has power to secure—
- (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company; or
- (b) by virtue of any powers conferred by the articles of association or any other document regulating the company or any other company,
- that the affairs of the company are conducted in accordance with the wishes of the FIHV.
- (6) For the purposes of this section, a reference to an FIHV (*reference*) in subsection (1), the second reference in subsection (3), the first reference in subsection (4)(a) and (b), and the second and last references in subsection (5) include—
- (a) if the FIHV is a partnership—a partner in the partnership; and
- (b) if the FIHV is a trust—a trustee of the trust.
- (7) In this section—
- short-term asset*** (短期資產), in relation to a private company, the shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, which are being disposed of by or for an FIHV, means an asset—

-
- (a) that is not a Schedule 16C asset;
 - (b) that is not immovable property in Hong Kong; and
 - (c) that has been held by the company for less than 3 consecutive years before the date of disposal.

**13. When does section 9 of this Schedule not apply—
Exception 3 (FIHV)**

- (1) This section applies if, during the basis period for a year of assessment—
 - (a) an FIHV carries out transactions in shares, stocks, debentures, loan stocks, funds, bonds or notes (*specified securities*) of, or issued by, a private company (*relevant company*); and
 - (b) the relevant company holds (whether directly or indirectly) neither of the following—
 - (i) immovable property in Hong Kong;
 - (ii) share capital (however described) in another private company that holds (whether directly or indirectly) immovable property in Hong Kong.
- (2) Unless a condition specified in subsection (3) is met in good faith by the FIHV, section 9 of this Schedule does not apply to the assessable profits of the FIHV for the basis period earned from the transactions specified in section 9(3) of this Schedule.
- (3) The condition is—
 - (a) that the FIHV disposes of, through a transaction or a series of transactions, the specified securities not less than 2 years after they are acquired (whether or not the FIHV has control over the relevant company); or

- (b) that the FIHV disposes of, through a transaction or a series of transactions, the specified securities less than 2 years after they are acquired and—
 - (i) the FIHV does not have control over the relevant company; or
 - (ii) if the FIHV has control over the relevant company—the relevant company holds (whether directly or indirectly) short-term assets the aggregate value of which does not exceed 50% of the value of the relevant company’s assets.
- (4) For the purposes of this section, an FIHV has control over a company if the FIHV has power to secure—
 - (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company; or
 - (b) by virtue of any powers conferred by the articles of association or any other document regulating the company or any other company,that the affairs of the company are conducted in accordance with the wishes of the FIHV.
- (5) For the purposes of this section, a reference to an FIHV (*reference*) in subsection (1), the first reference in subsections (2) and (3)(a) and (b), and the second and last references in subsection (4) include—
 - (a) if the FIHV is a partnership—a partner in the partnership; and
 - (b) if the FIHV is a trust—a trustee of the trust.
- (6) In this section—

short-term asset (短期資產) has the meaning given by section 12(7) of this Schedule.

**14. When does section 9 of this Schedule not apply—
Exception 4 (FIHV)**

- (1) Section 9 of this Schedule does not apply to an FIHV unless—
 - (a) an election is made in relation to the FIHV under this section; and
 - (b) the FIHV is managed by only one ESF Office of the family to which the FIHV is related.
- (2) Subject to subsection (3), an FIHV that is managed by an ESF Office of the family to which the FIHV is related (*eligible FIHV*) may in writing elect that section 9 of this Schedule applies to it.
- (3) For each ESF Office of the family, not more than 50 eligible FIHVs that are managed by the ESF Office may make an election under this section.
- (4) An election under this section, once made, is not revocable by the FIHV concerned.

15. Losses sustained by FIHV—where rate specified in section 24(2) of this Schedule is 0%

If, because of sections 9 and 24 of this Schedule, an FIHV is exempt from the payment of profits tax in respect of its assessable profits earned from the transactions specified in section 9(3) of this Schedule for the basis period for a year of assessment, any loss sustained by the FIHV from any of those transactions is not available for set off against any of its assessable profits for that basis period or the basis period for any subsequent year of assessment.

Part 3

Tax Concession for Certain Profits of Family-owned Special Purpose Entity

16. Profits tax concession for FSPE

- (1) This section applies to an FSPE for the basis period for a year of assessment if section 9 of this Schedule applies, for that year, to an FIHV that has a beneficial interest (whether direct or indirect) in the FSPE.
- (2) Profits tax is to be charged, at the rate specified in section 25(2) of this Schedule, on the FSPE's assessable profits for the basis period earned from the transactions specified in subsection (3), or derived from the assets listed in sections 16(3)(a) to 16(3)(d) of this Schedule in the form of dividends, interest or other similar income.
- (3) The transactions are—
 - (a) transactions in shares, stocks, debentures, loan stocks, funds, bonds or notes (*specified securities*) of, or issued by, an investee private company or an IFSPE;
 - (b) transactions in rights, options or interests (whether described in units or otherwise) in, or in respect of, the specified securities mentioned in paragraph (a);
 - (c) transactions in certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, the specified securities mentioned in paragraph (a);
 - (d) transactions in Schedule 16C assets; and

- (e) qualified incidental transactions.
 - (4) For the purposes of subsection (3)(e), the transactions that are incidental to the carrying out of the transactions mentioned in subsection (3)(a), (b), (c) or (d) (*incidental transactions*) are qualified incidental transactions if, in the basis period for the year of assessment, the FSPE's trading receipts from the incidental transactions do not exceed 5% of the total trading receipts from—
 - (a) the transactions mentioned in subsection (3)(a), (b), (c) and (d); and
 - (b) the incidental transactions.
 - (5) The extent of assessable profits to be charged under subsection (2) is the percentage equal to the percentage of the FIHV's beneficial interest (whether direct or indirect) in the FSPE in the year of assessment.
 - (6) Schedule 16H applies in determining the extent of the beneficial interest of the FIHV in the FSPE.
 - (7) This section is subject to sections 17 and 18 of this Schedule.
- 17. When does section 16 of this Schedule not apply—**
Exception 1 (FSPE)
- (1) This section applies if, during the basis period for a year of assessment—
 - (a) an FSPE carries out transactions in shares, stocks, debentures, loan stocks, funds, bonds or notes (*specified securities*) of, or issued by, a private company (*relevant company*); and
 - (b) the relevant company holds (whether directly or indirectly)—

-
- (i) immovable property in Hong Kong; or
 - (ii) share capital (however described) in another private company that holds (whether directly or indirectly) immovable property in Hong Kong.
 - (2) If the aggregate value of the immovable property and share capital held by the relevant company exceeds 10% of the value of the company's assets, section 16 of this Schedule does not apply to the assessable profits of the FSPE for the basis period earned from the transactions specified in section 16(3) of this Schedule (*section 16(3) transactions*).
 - (3) If the aggregate value of the immovable property and share capital held by the relevant company does not exceed 10% of the value of the company's assets, section 16 of this Schedule does not apply to the assessable profits of the FSPE for the basis period earned from the section 16(3) transactions unless a condition specified in subsection (4) is met in good faith by the FSPE.
 - (4) The condition is—
 - (a) that the FSPE disposes of, through a transaction or a series of transactions, the specified securities not less than 2 years after they are acquired (whether or not the FSPE has control over the relevant company); or
 - (b) that the FSPE disposes of, through a transaction or a series of transactions, the specified securities less than 2 years after they are acquired and—
 - (i) the FSPE does not have control over the relevant company; or

- (ii) if the FSPE has control over the relevant company—the relevant company holds (whether directly or indirectly) short-term assets the aggregate value of which does not exceed 50% of the value of the relevant company's assets.
- (5) For the purposes of this section, an FSPE has control over a company if the FSPE has power to secure—
 - (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company; or
 - (b) by virtue of any powers conferred by the articles of association or any other document regulating the company or any other company,that the affairs of the company are conducted in accordance with the wishes of the FSPE.
- (6) For the purposes of this section, a reference to an FSPE (*reference*) in subsection (1), the second reference in subsection (3), the first reference in subsection (4)(a) and (b), and the second and last references in subsection (5) include—
 - (a) if the FSPE is a partnership—a partner in the partnership; and
 - (b) if the FSPE is a trust—a trustee of the trust.
- (7) In this section—

short-term asset (短期資產), in relation to a private company, the shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, which are being disposed of by or for an FSPE, means an asset—

 - (a) that is not a Schedule 16C asset;

- (b) that is not immovable property in Hong Kong;
and
- (c) that has been held by the company for less than 3 consecutive years before the date of disposal.

18. When does section 16 of this Schedule not apply—Exception 2 (FSPE)

- (1) This section applies if, during the basis period for a year of assessment—
 - (a) an FSPE carries out transactions in shares, stocks, debentures, loan stocks, funds, bonds or notes (*specified securities*) of, or issued by, a private company (*relevant company*); and
 - (b) the relevant company holds (whether directly or indirectly) neither of the following—
 - (i) immovable property in Hong Kong;
 - (ii) share capital (however described) in another private company that holds (whether directly or indirectly) immovable property in Hong Kong.
- (2) Unless a condition specified in subsection (3) is met in good faith by the FSPE, section 16 of this Schedule does not apply to the assessable profits of the FSPE for the basis period earned from the transactions specified in section 16(3) of this Schedule.
- (3) The condition is—
 - (a) that the FSPE disposes of, through a transaction or a series of transactions, the specified securities not less than 2 years after they are acquired (whether or not the FSPE has control over the relevant company); or

- (b) that the FSPE disposes of, through a transaction or a series of transactions, the specified securities less than 2 years after they are acquired and—
 - (i) the FSPE does not have control over the relevant company; or
 - (ii) if the FSPE has control over the relevant company—the relevant company holds (whether directly or indirectly) short-term assets the aggregate value of which does not exceed 50% of the value of the relevant company's assets.
- (4) For the purposes of this section, an FSPE has control over a company if the FSPE has power to secure—
 - (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company; or
 - (b) by virtue of any powers conferred by the articles of association or any other document regulating the company or any other company,that the affairs of the company are conducted in accordance with the wishes of the FSPE.
- (5) For the purposes of this section, a reference to an FSPE (*reference*) in subsection (1), the first reference in subsections (2) and (3)(a) and (b), and the second and last references in subsection (4) include—
 - (a) if the FSPE is a partnership—a partner in the partnership; and
 - (b) if the FSPE is a trust—a trustee of the trust.
- (6) In this section—

short-term asset (短期資產) has the meaning given by section 17(7) of this Schedule.

19. Losses sustained by FSPE—where rate specified in section 25(2) of this Schedule is 0%

If, because of sections 16 and 25 of this Schedule, an FSPE is exempt from the payment of profits tax in respect of its assessable profits earned from the transactions specified in section 16(3) of this Schedule for the basis period for a year of assessment, any loss sustained by the FSPE from any of those transactions is not available for set off against any of its assessable profits for that basis period or the basis period for any subsequent year of assessment.

Part 4

Assessable Profits of Resident Persons

20. Meaning of *resident person*, *specified entity*, etc. in this Part

(1) In this Part—

resident person (居港者)—see subsection (2);

specified entity (指明實體)—see subsections (3), (4), (5), (6) and (7);

specified members (指明成員), in relation to an entity, means members of a family who, because of section 8 of this Schedule, are taken to have at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in the entity.

(2) In relation to a year of assessment—

(a) a corporation that is not a trustee of a trust is a resident person if the central management and control of the corporation is exercised in Hong Kong in the year of assessment;

- (b) a partnership that is not a trustee of a trust is a resident person if the central management and control of the partnership is exercised in Hong Kong in the year of assessment; and
 - (c) a trustee of a trust is a resident person if the central management and control of the trust is exercised in Hong Kong in the year of assessment.
- (3) An entity (***Entity C***) is a specified entity in relation to the family to which an FIHV is related if Condition 1 or Condition 2 is met.
- (4) Condition 1 is—
- (a) that Entity C—
 - (i) is not a business undertaking for general commercial or industrial purpose; and
 - (ii) does not carry on any trade or business;
 - (b) that at least one member of the family to which the FIHV is related has a direct or indirect beneficial interest in the entity (***relevant family member***); and
 - (c) that Entity C is the entity, or one of the entities in a series of 2 or more entities, through which any one or more than one relevant family member has an indirect beneficial interest in the FIHV.
- (5) Condition 2 is—
- (a) that Entity C—
 - (i) is not a business undertaking for general commercial or industrial purpose; and
 - (ii) does not carry on any trade or business; and

- (b) that Entity C is a qualified entity.
- (6) For the purposes of subsection (5), Entity C is a qualified entity if—
 - (a) Entity C has either—
 - (i) 100% direct beneficial interest in the FIHV mentioned in subsection (3); or
 - (ii) 100% indirect beneficial interest in that FIHV; and
 - (b) there are any specified members in relation to Entity C.
- (7) For the purposes of subsection (5), an entity is also a qualified entity if it is an entity, or one of the entities in a series of 2 or more entities, through which an entity falling within the description in subsection (6) has the beneficial interest mentioned in subsection (6)(a)(ii).
- (8) Schedule 16G applies in determining the extent of the beneficial interest of Entity C in the FIHV.

21. Meaning of associate in sections 22 and 23 of this Schedule

- (1) In sections 22(2) and (4) and 23(2) of this Schedule—

associate (相聯者)—

 - (a) in relation to a resident person that is a corporation but is not a trustee of a trust, means—
 - (i) a person or entity who has control over the corporation;
 - (ii) if a person mentioned in subparagraph (i) is a partner in a partnership—another partner in the partnership;

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- (iii) if a person mentioned in subparagraph (i) is a natural person—a relative of the person;
 - (iv) if another partner mentioned in subparagraph (ii) is a natural person—a relative of that other partner;
 - (v) a director or principal officer of—
 - (A) the corporation; or
 - (B) an associated corporation of the corporation;
 - (vi) if a director mentioned in subparagraph (v) is a natural person—a relative of the director;
 - (vii) a relative of a principal officer mentioned in subparagraph (v);
 - (viii) if the corporation is a partner in a partnership—another partner in the partnership;
 - (ix) if another partner mentioned in subparagraph (viii) is a natural person—a relative of that other partner;
 - (x) a partnership in which the corporation is a partner; or
 - (xi) an associated corporation of the corporation;
 - (b) in relation to a resident person that is a partnership but is not a trustee of a trust, means—
 - (i) a partner in the partnership;
 - (ii) if a partner in the partnership is a natural person—a relative of the partner;

- (iii) if a partner in the partnership is another partnership—
 - (A) a partner in the other partnership (*Partner A*); or
 - (B) a partner with the other partnership in any other partnership (*Partner B*);
- (iv) if Partner A is a partnership—a partner in Partner A (*Partner C*);
- (v) if Partner B is a partnership—a partner in Partner B (*Partner D*);
- (vi) if Partner A, Partner B, Partner C or Partner D is a natural person—a relative of the partner;
- (vii) a corporation over which any of the following persons has control—
 - (A) the partnership;
 - (B) a partner in the partnership;
 - (C) if a partner in the partnership is a natural person—a relative of the partner;
 - (D) a partnership in which the partnership is a partner;
- (viii) a director or principal officer of the corporation mentioned in subparagraph (vii);
- (ix) if a director mentioned in subparagraph (viii) is a natural person—a relative of the director;
- (x) a relative of a principal officer mentioned in subparagraph (viii);

- (xi) a corporation of which a partner in the partnership is a director or principal officer; or
 - (xii) an associated partnership of the partnership; and
- (c) in relation to a resident person that is a trustee of a trust, means—
- (i) a settlor, a protector, an enforcer or a beneficiary of the trust; or
 - (ii) (if the resident person does not act in the capacity of a trustee in the course of a business or profession) a related person of the trustee.
- (2) In paragraph (c)(ii) of the definition of *associate* in subsection (1)—
- related person* (有關連人士), in relation to a trustee of a trust—
- (a) if the trustee is a corporation, means—
 - (i) a person or entity who has control over the corporation;
 - (ii) if a person mentioned in subparagraph (i) is a partner in a partnership—another partner in the partnership;
 - (iii) if a person mentioned in subparagraph (i) is a natural person—a relative of the person;
 - (iv) if another partner mentioned in subparagraph (ii) is a natural person—a relative of that other partner;
 - (v) a director or principal officer of—
 - (A) the corporation; or

- (B) an associated corporation of the corporation;
- (vi) if a director mentioned in subparagraph (v) is a natural person—a relative of the director;
- (vii) a relative of a principal officer mentioned in subparagraph (v);
- (viii) if the corporation is a partner in a partnership—another partner in the partnership;
- (ix) if another partner mentioned in subparagraph (viii) is a natural person—a relative of that other partner;
- (x) a partnership in which the corporation is a partner; or
- (xi) an associated corporation of the corporation;
- (b) if the trustee is a partnership, means—
 - (i) a partner in the partnership;
 - (ii) if a partner in the partnership is a natural person—a relative of the partner;
 - (iii) if a partner in the partnership is another partnership—
 - (A) a partner in the other partnership (*Partner E*); or
 - (B) a partner with the other partnership in any other partnership (*Partner F*);
 - (iv) if Partner E is a partnership—a partner in Partner E (*Partner G*);

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- (v) if Partner F is a partnership—a partner in Partner F (*Partner H*);
 - (vi) if Partner E, Partner F, Partner G or Partner H is a natural person—a relative of the partner;
 - (vii) a corporation over which any of the following persons has control—
 - (A) the partnership;
 - (B) a partner in the partnership;
 - (C) if a partner in the partnership is a natural person—a relative of the partner;
 - (D) a partnership in which the partnership is a partner;
 - (viii) a director or principal officer of the corporation mentioned in subparagraph (vii);
 - (ix) if a director mentioned in subparagraph (viii) is a natural person—a relative of the director;
 - (x) a relative of a principal officer mentioned in subparagraph (viii);
 - (xi) a corporation of which a partner in the partnership is a director or principal officer;
or
 - (xii) an associated partnership of the partnership;
and
- (c) if the trustee is a natural person, means—
- (i) a relative of the person;

- (ii) if the person is a partner in a partnership—another partner in the partnership;
 - (iii) if another partner mentioned in subparagraph (ii) is a natural person—a relative of that other partner;
 - (iv) a partnership in which the person is a partner;
 - (v) a corporation over which any of the following persons has control—
 - (A) the person;
 - (B) a relative of the person;
 - (C) if the person is a partner in a partnership—another partner in the partnership;
 - (D) if the person is a partner in a partnership and another partner in the partnership is a natural person—a relative of that other partner;
 - (E) a partnership in which the person is a partner; or
 - (vi) a director or principal officer of the corporation mentioned in subparagraph (v).
- (3) In the definitions of *associate* in subsection (1) and *related person* in subsection (2)—
- associated corporation* (相聯法團), in relation to a corporation, means—
- (a) another corporation over which the corporation has control;
 - (b) another corporation that has control over the corporation; or

- (c) another corporation that is under the control of the same person as is the corporation;

associated partnership (相聯合夥), in relation to a partnership, means—

- (a) another partnership over which the partnership has control;
- (b) another partnership that has control over the partnership; or
- (c) another partnership that is under the control of the same person as is the partnership;

principal officer (主要職員), in relation to a corporation, means—

- (a) a person employed by the corporation who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors of the corporation for the conduct of the business of the corporation; or
- (b) a person employed by the corporation who, under the immediate authority of a director of the corporation or a person to whom paragraph ~~(a)~~ (a) applies, exercises managerial functions in respect of the corporation;

relative (親屬) has the meaning given by section 20AN(6).

(4) For the purposes of the definitions of ***associate***, ***associated corporation*** and ***associated partnership*** in this section—

- (a) a person or entity (***particular person***) has control over a corporation if the particular person has power to secure—

(i) by means of the holding of shares or the possession of voting power in or in relation to the corporation or any other corporation; or

(ii) by virtue of any powers conferred by the articles of association or any other document regulating the corporation or any other corporation,

that the affairs of the corporation are conducted in accordance with the wishes of the particular person; and

(b) a particular person has control over a partnership if the particular person has power to secure—

(i) by means of the holding of interests or the possession of voting power in or in relation to the partnership or any other partnership; or

(ii) by virtue of any powers conferred by the partnership agreement or any other document regulating the partnership or any other partnership,

that the affairs of the partnership are conducted in accordance with the wishes of the particular person.

22. Assessable profits of FIHVs to be regarded as assessable profits of resident persons

(1) If, in respect of a year of assessment—

(a) a resident person has, during any period of time, a beneficial interest (whether direct or indirect) in an FIHV to the extent prescribed in subsection (2); and

- (b) section 9 of this Schedule applies to the FIHV, the assessable profits of the FIHV for the period of time (*subsection (1) period*) that would have been chargeable to tax under Part 4 of this Ordinance but for section 9 of this Schedule are to be regarded as the assessable profits arising in, or derived from, Hong Kong of the resident person for the year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.
- (2) The extent of a resident person's beneficial interest in an FIHV referred to in subsection (1) is that the person, either alone or jointly with any of the person's associate (whether a resident person or not)—
- (a) if the FIHV is a corporation—has not less than 30% of the beneficial interest in the corporation;
 - (b) if the FIHV is a partnership—has not less than 30% of the beneficial interest in the partnership;
 - (c) if the FIHV is a trust—has not less than 30% of the beneficial interest in the trust; and
 - (d) if the FIHV is an entity that does not fall within any of paragraphs (a), (b) and (c)—has not less than 30% of the beneficial interest in the entity.
- (3) For the purposes of subsection (2), the extent of a resident person's beneficial interest in an FIHV is to be determined in accordance with Part 3 of Schedule 16I.
- (4) If, in respect of a year of assessment—
- (a) a resident person has, during any period of time, a beneficial interest (whether direct or indirect) in an FIHV;
 - (b) section 9 of this Schedule applies to the FIHV; and

- (c) the FIHV is an associate of the resident person, the assessable profits of the FIHV for the period of time (*subsection (4) period*) that would have been chargeable to tax under Part 4 of this Ordinance but for section 9 of this Schedule are to be regarded as the assessable profits arising in, or derived from, Hong Kong of the resident person for the year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.
- (5) Subsections (1) and (4) apply in relation to a resident person irrespective of whether the person has received or will receive (whether directly or indirectly) from the FIHV any money or other property representing the profits of the FIHV for the relevant year of assessment.
- (6) A resident person who has a direct or indirect beneficial interest in a trust because of the fact that the resident person is able (or might reasonably be expected to be able) to control the activities of the trust [estatefund](#) or the application of its corpus or income is, for the purposes of this section, to be regarded as being interested in 100% of the value of the trust [estatefund](#).
- (7) The amount regarded as the assessable profits of a resident person for a year of assessment under subsection (1) or (4) is to be ascertained in accordance with Schedule 16I.
- (8) However, subsections (1) and (4) do not apply to a resident person in relation to a subsection (1) period or subsection (4) period if, at all times during the subsection (1) period or subsection (4) period, the person is—

- (a) a specified entity in relation to the family to which the FIHV is related;
 - (b) a trustee of a trust that is a specified entity mentioned in paragraph (a); or
 - (c) an ESF Office of the family that manages the FIHV.
- (9) If—
- (a) a resident person is liable to tax in respect of the profits of an FIHV by the operation of subsection (1) or (4) because the person has an indirect beneficial interest in the FIHV through a third person that is an entity (*interposed entity*) or through a series of 2 or more interposed entities; and
 - (b) the interposed entity or any of the interposed entities is a resident person who is also liable to tax in respect of the profits by the operation of subsection (1) or (4),
- the resident person mentioned in paragraph (a) is discharged from the person's liability to tax in respect of the profits.

23. Assessable profits of FSPEs to be regarded as assessable profits of resident persons

- (1) If, in respect of a year of assessment—
- (a) a resident person has, during any period of time, a beneficial interest (whether direct or indirect) in an FIHV to the extent prescribed in section 22(2) of this Schedule;
 - (b) section 9 of this Schedule applies to the FIHV;

- (c) the FIHV has, during the period of time (*subsection (1) period*), a beneficial interest (whether direct or indirect) in an FSPE; and
 - (d) section 16 of this Schedule applies to the FSPE, the assessable profits of the FSPE for the subsection (1) period that would have been chargeable to tax under Part 4 of this Ordinance but for section 16 of this Schedule are to be regarded as the assessable profits arising in, or derived from, Hong Kong of the resident person for the year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.
- (2) If, in respect of a year of assessment—
- (a) a resident person has, during any period of time, a beneficial interest (whether direct or indirect) in an FIHV;
 - (b) section 9 of this Schedule applies to the FIHV;
 - (c) the FIHV is an associate of the resident person;
 - (d) the FIHV has, during the period of time (*subsection (2) period*), a beneficial interest (whether direct or indirect) in an FSPE; and
 - (e) section 16 of this Schedule applies to the FSPE, the assessable profits of the FSPE for the subsection (2) period that would have been chargeable to tax under Part 4 of this Ordinance but for section 16 of this Schedule are to be regarded as the assessable profits arising in, or derived from, Hong Kong of the resident person for the year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.

- (3) Subsections (1) and (2) apply in relation to a resident person irrespective of whether the person has received or will receive (whether directly or indirectly) from the FSPE any money or other property representing the profits of the FSPE for the relevant year of assessment.
- (4) A resident person who has a direct or indirect beneficial interest in a trust because of the fact that the resident person is able (or might reasonably be expected to be able) to control the activities of the trust [estatefund](#) or the application of its corpus or income is, for the purposes of this section, to be regarded as being interested in 100% of the value of the trust [estatefund](#).
- (5) The amount regarded as the assessable profits of a resident person for a year of assessment under subsection (1) or (2) is to be ascertained in accordance with Schedule 16J.
- (6) However, subsections (1) and (2) do not apply to a resident person in relation to a subsection (1) period or subsection (2) period if, at all times during the subsection (1) period or subsection (2) period, the person is—
 - (a) a specified entity in relation to the family to which the FIHV is related;
 - (b) a trustee of a trust that is a specified entity mentioned in paragraph (a); or
 - (c) an ESF Office of the family that manages the FIHV.
- (7) If—

- (a) a resident person is liable to tax in respect of the profits of an FSPE by the operation of subsection (1) or (2) because the person has an indirect beneficial interest in the FSPE through a third person that is an entity (*interposed entity*) or through a series of 2 or more interposed entities; and
 - (b) the interposed entity or any of the interposed entities is a resident person who is also liable to tax in respect of the profits by the operation of subsection (1) or (2),
- the resident person mentioned in paragraph (a) is discharged from the person's liability to tax in respect of the profits.

Part 5

Rate of Profits Tax for FIHV and FSPE

24. Rate of profits tax for FIHV

- (1) This section applies for the purposes of section 9(2) of this Schedule.
- (2) The rate specified for the basis period for a year of assessment commencing on or after 1 April 2022 is 0%.

25. Rate of profits tax for FSPE

- (1) This section applies for the purposes of section 16(2) of this Schedule.
- (2) The rate specified for the basis period for a year of assessment commencing on or after 1 April 2022 is 0%.

Part 6

Miscellaneous Matters

Division 1—Anti-avoidance Provisions

26. Anti-avoidance provisions relating to arrangement to obtain tax benefits—FIHV

- (1) Subsection (2) applies to an FIHV if—
 - (a) the FIHV enters into an arrangement; and
 - (b) the Commissioner is satisfied that the main purpose, or one of the main purposes, of the FIHV in entering into the arrangement is to obtain a tax benefit, whether for the FIHV or another person or entity, in relation to a liability to pay profits tax under this Ordinance.
- (2) Section 9 of this Schedule does not apply in relation to any relevant assessable profits accrued to the FIHV during a relevant basis period.
- (3) Subsection (4) applies to an FIHV if—
 - (a) any assets or businesses are transferred directly or indirectly from a person (*transferor*) carrying on a business in Hong Kong to the FIHV;
 - (b) the income of the transferor in relation to the transferred assets or businesses (as the case requires) would have been subject to tax under Part 4 of this Ordinance but for the transfer; and
 - (c) the Commissioner is satisfied that the main purpose, or one of the main purposes, of the FIHV in making the transfer is to obtain a tax benefit, whether for the FIHV or another person

or entity, in relation to a liability to pay profits tax under this Ordinance.

- (4) Section 9 of this Schedule does not apply in relation to any relevant assessable profits accrued to the FIHV during a relevant basis period unless the transfer—
 - (a) is carried out on an arm's length basis; and
 - (b) is chargeable to tax under Part 4 of this Ordinance in respect of the assessable profits arising from the transfer.
- (5) For the purposes of this section, a reference to an FIHV (*reference*) in subsection (1)(a), the first reference in subsection (1)(b), the reference in subsection (3)(a), and the first reference in subsection (3)(c) include—
 - (a) if the FIHV is a partnership—a partner in the partnership; and
 - (b) if the FIHV is a trust—a trustee of the trust.
- (6) For the purposes of this section, a basis period for a year of assessment is a relevant basis period in relation to an arrangement if, in the opinion of the Commissioner, the arrangement has effect during the basis period.
- (7) For the purposes of this section, a basis period for a year of assessment is a relevant basis period in relation to a transfer if, in the opinion of the Commissioner, the transfer has effect during the basis period.
- (8) In this section—

relevant assessable profits (有關應評稅利潤)—

 - (a) in relation to an arrangement, means the assessable profits arising from the arrangement; and

(b) in relation to a transfer, means the assessable profits arising from the transfer;

tax benefit (稅務利益) means an avoidance, postponement or reduction of a liability to pay tax.

27. Anti-avoidance provisions relating to arrangement to obtain tax benefits—FSPE

- (1) Subsection (2) applies to an FSPE if—
 - (a) the FSPE enters into an arrangement; and
 - (b) the Commissioner is satisfied that the main purpose, or one of the main purposes, of the FSPE in entering into the arrangement is to obtain a tax benefit, whether for the FSPE or another person or entity, in relation to a liability to pay profits tax under this Ordinance.
- (2) Section 16 of this Schedule does not apply in relation to any relevant assessable profits accrued to the FSPE during a relevant basis period.
- (3) Subsection (4) applies to an FSPE if—
 - (a) any assets or businesses are transferred directly or indirectly from a person (*transferor*) carrying on a business in Hong Kong to the FSPE;
 - (b) the income of the transferor in relation to the transferred assets or businesses (as the case requires) would have been subject to tax under Part 4 of this Ordinance but for the transfer; and
 - (c) the Commissioner is satisfied that the main purpose, or one of the main purposes, of the FSPE in making the transfer is to obtain a tax benefit, whether for the FSPE or another person or entity, in relation to a liability to pay profits tax under this Ordinance.

- (4) Section 16 of this Schedule does not apply in relation to any relevant assessable profits accrued to the FSPE during a relevant basis period unless the transfer—
- (a) is carried out on an arm's length basis; and
 - (b) is chargeable to tax under Part 4 of this Ordinance in respect of the assessable profits arising from the transfer.
- (5) For the purposes of this section, a reference to an FSPE (*reference*) in subsection (1)(a), the first reference in subsection (1)(b), the reference in subsection (3)(a), and the first reference in subsection (3)(c) include—
- (a) if the FSPE is a partnership—a partner in the partnership; and
 - (b) if the FSPE is a trust—a trustee of the trust.
- (6) For the purposes of this section, a basis period for a year of assessment is a relevant basis period in relation to an arrangement if, in the opinion of the Commissioner, the arrangement has effect during the basis period.
- (7) For the purposes of this section, a basis period for a year of assessment is a relevant basis period in relation to a transfer if, in the opinion of the Commissioner, the transfer has effect during the basis period.
- (8) In this section—
- relevant assessable profits* (有關應評稅利潤) has the meaning given by section 26(8) of this Schedule;
- tax benefit* (稅務利益) has the meaning given by section 26(8) of this Schedule.

Division 2—Records of FIHV and ESF Office

28. Obligations of responsible persons to keep records relating to beneficial owners

- (1) This section applies, for the purposes of this Schedule, to and in relation to an FIHV.
- (2) A responsible person for an entity that is an FIHV must keep sufficient records to enable the identity and particulars of each beneficial owner of the FIHV to be readily ascertained.
- (3) Any record that is required under subsection (2) to be kept by a responsible person for an entity, in relation to a person or entity (*particular person*) that is a beneficial owner of the FIHV, must be kept by the responsible person throughout the period within which the particular person is such an owner.
- (4) If a particular person ceases to be a beneficial owner of an FIHV, the responsible person for the entity must retain, for at least 7 years after the date of cessation, the records required under subsections (2) and (3) to be kept in relation to the particular person.
- (5) If an entity ceases to be an FIHV but continues to exist, a responsible person for the entity must retain, for at least 7 years after the date of cessation, the records that, but for the cessation, would have been required under subsection (2), (3) or (4) to be kept or retained.
- (6) If the entity ceases to exist, a person who immediately before the cessation was a responsible person for the entity must retain, for at least 7 years after the date of cessation, the records that, but for the cessation, would have been required under subsection (2), (3), (4) or (5) to be kept or retained.

(7) In this section—

beneficial owner (實益擁有人), in relation to an entity—

- (a) means a particular person who has a direct or indirect beneficial interest in the entity; and
- (b) includes any specified members;

responsible person (負責人)—

- (a) in relation to an entity that is a corporation, means the corporation; and
- (b) in relation to any other entity, means a person who is responsible for the management of the entity;

specified members (指明成員) has the meaning given by section 20(1) of this Schedule.

29. Obligations of ESF Office to keep records relating to beneficial owners

- (1) This section applies, for the purposes of this Schedule, to and in relation to an ESF Office of a family (***relevant family office***).
- (2) A relevant family office must keep sufficient records, for each FIHV managed by the family office, to enable the identity and particulars of each beneficial owner of the FIHV to be readily ascertained.
- (3) Any record that is required under subsection (2) to be kept by a relevant family office, in relation to a person or entity (***particular person***) that is a beneficial owner of the FIHV, must be kept by the family office throughout the period within which the particular person is such an owner.

- (4) In addition, a relevant family office must keep sufficient records to enable the identity and particulars of each beneficial owner of the family office to be readily ascertained.
- (5) Any record that is required under subsection (4) to be kept by a relevant family office, in relation to a person or entity (*specified person*) that is a beneficial owner of the family office, must be kept by the family office throughout the period within which the specified person is such an owner.
- (6) If a particular person ceases to be a beneficial owner of an FIHV managed by a relevant family office, the family office must retain, for at least 7 years after the date of cessation, the records required under subsections (2) and (3) to be kept in relation to the particular person.
- (7) If a specified person ceases to be a beneficial owner of a relevant family office, the family office must retain, for at least 7 years after the date of cessation, the records required under subsections (4) and (5) to be kept in relation to the specified person.
- (8) If an entity managed by a relevant family office ceases to be an FIHV (whether or not the entity continues to exist), or ceases to be managed by a relevant family office, the family office must retain, for at least 7 years after the date of cessation, the records that, but for the cessation, would have been required under subsection (2), (3) or (6) to be kept or retained.
- (9) If a relevant family office ceases to exist, a person who immediately before the cessation was a director of the family office must retain, for at least 7 years after the date of cessation, the records that, but for the cessation, would have been required under subsection (2), (3), (4), (5), (6), (7) or (8) to be kept or retained.

(10) In this section—

beneficial owner (實益擁有人) has the meaning given by section 28(7) of this Schedule.

Schedule 16F

[s. 40AV & Sch. 16E]

Provisions for Determining Extent of Beneficial Interest Family Member has in Particular Entity (Section 8 of Schedule 16E)

Part 1

1. In this Schedule—

direct beneficial interest (直接實益權益) has the meaning given by section 7 of Schedule 16E;

entity (實體) has the meaning given by section 1(1) of Schedule 16E;

family (家族) has the meaning given by section 4 of Schedule 16E;

indirect beneficial interest (間接實益權益) has the meaning given by section 7 of Schedule 16E;

member (成員), in relation to a family, has the meaning given by section 4 of Schedule 16E.

Part 2

2. For a member of a family having a direct beneficial interest in an entity (*Entity A*), the extent of the beneficial interest of the member in Entity A is—
 - (a) if Entity A is a corporation—
 - (i) the percentage of the issued share capital (however described) of the corporation held by the member; or
 - (ii) (if the corporation does not have any issued share capital) the percentage of the voting rights in the corporation that the member is entitled to exercise or the exercise of which the member is entitled to control;
 - (b) if Entity A is a partnership—
 - (i) the percentage of the profits of the partnership to which the member is entitled; or
 - (ii) (if the partners in the partnership are neither entitled to the profits of the partnership nor entitled to a distribution of the assets of the partnership on its dissolution) the percentage of the voting rights in the partnership that the member is entitled to exercise or the exercise of which the member is entitled to control;
 - (c) if Entity A is a trust—the percentage in value of the trust ~~estate~~[fund](#) in which the member is interested; and
 - (d) if Entity A is an entity that does not fall within any of paragraphs (a), (b) and (c)—

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- (i) the percentage of the capital of the entity to which the member is entitled;
 - (ii) (if subparagraph (i) is not applicable in relation to the entity) the percentage of the ownership interests that the member has in the entity;
 - (iii) (if neither subparagraph (i) nor (ii) is applicable in relation to the entity) the percentage of the profits of the entity to which the member is entitled; or
 - (iv) (if none of subparagraphs (i), (ii) and (iii) is applicable in relation to the entity) the percentage of the voting rights in the entity that the member is entitled to exercise or the exercise of which the member is entitled to control.
 3. Section 7(5), (6) and (7) of Schedule 16E applies for the purposes of section 2 of this Schedule.
 4. For a member of a family having an indirect beneficial interest in an entity (*Entity B*), the extent of the beneficial interest of the member in Entity B is—
 - (a) if there is only one interposed entity—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the member in the interposed entity by the percentage representing the extent of the beneficial interest of the interposed entity in Entity B; or

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- (b) if there is a series of 2 or more interposed entities—
the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the member in the first interposed entity in the series by—
- (i) the percentage representing the extent of the beneficial interest of each interposed entity (other than the last interposed entity) in the series in the next interposed entity in the series; and
 - (ii) the percentage representing the extent of the beneficial interest of the last interposed entity in the series in Entity B.
5. For the purposes of section 4 of this Schedule—
- (a) section 2 of this Schedule applies in determining the extent of the beneficial interest of a member of a family in an interposed entity as if the references to Entity A in that section were references to an interposed entity;
 - (b) section 2 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity in Entity B as if—
 - (i) the references to a member of a family in that section were references to an interposed entity; and
 - (ii) the references to Entity A in that section were references to Entity B; and
 - (c) section 2 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity (*Interposed Entity A*) in another interposed entity (*Interposed Entity B*) as if—

- (i) the references to a member of a family in that section were references to Interposed Entity A; and
- (ii) the references to Entity A in that section were references to Interposed Entity B.

Schedule 16G

[s. 40AV & Sch. 16E]

Provisions for Determining Extent of Beneficial Interest Entity has in Another Entity (Sections 8 and 20 of Schedule 16E)

Part 1

1. In this Schedule—
 - direct beneficial interest* (直接實益權益) has the meaning given by section 7 of Schedule 16E;
 - entity* (實體) has the meaning given by section 1(1) of Schedule 16E;
 - indirect beneficial interest* (間接實益權益) has the meaning given by section 7 of Schedule 16E.

Part 2

2. For an entity (*Entity A*) having a direct beneficial interest in another entity (*Entity B*), the extent of the beneficial interest of Entity A in Entity B is—

- (a) if Entity B is a corporation—
 - (i) the percentage of the issued share capital (however described) of the corporation held by Entity A; or
 - (ii) (if the corporation does not have any issued share capital) the percentage of the voting rights in the corporation that Entity A is entitled to exercise or the exercise of which Entity A is entitled to control;
- (b) if Entity B is a partnership—
 - (i) the percentage of the profits of the partnership to which Entity A is entitled; or
 - (ii) (if the partners in the partnership are neither entitled to the profits of the partnership nor entitled to a distribution of the assets of the partnership on its dissolution) the percentage of the voting rights in the partnership that Entity A is entitled to exercise or the exercise of which Entity A is entitled to control;
- (c) if Entity B is a trust—the percentage in value of the trust ~~estate~~[fund](#) in which Entity A is interested; and
- (d) if Entity B is an entity that does not fall within any of paragraphs (a), (b) and (c)—
 - (i) the percentage of the capital of the entity to which Entity A is entitled;
 - (ii) (if subparagraph (i) is not applicable in relation to the entity) the percentage of the ownership interests that Entity A has in the entity;

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Clause 7

[C3253](#)

- (iii) (if neither subparagraph (i) nor (ii) is applicable in relation to the entity) the percentage of the profits of the entity to which Entity A is entitled; or
 - (iv) (if none of subparagraphs (i), (ii) and (iii) is applicable in relation to the entity) the percentage of the voting rights in the entity that Entity A is entitled to exercise or the exercise of which Entity A is entitled to control.
- 3. For the purposes of section 2 of this Schedule—
 - (a) section 7(5), (6) and (7) of Schedule 16E applies; and
 - (b) a reference to Entity A in section 2(a), (b), (c) and (d) of this Schedule includes—
 - (i) if Entity A is a partnership—a partner in the partnership; and
 - (ii) if Entity A is a trust—a trustee of the trust.
- 4. For an entity (**Entity C**) having an indirect beneficial interest in another entity (**Entity D**), the extent of the beneficial interest of Entity C in Entity D is—
 - (a) if there is only one interposed entity—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of Entity C in the interposed entity by the percentage representing the extent of the beneficial interest of the interposed entity in Entity D; or

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- (b) if there is a series of 2 or more interposed entities—
the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of Entity C in the first interposed entity in the series by—
- (i) the percentage representing the extent of the beneficial interest of each interposed entity (other than the last interposed entity) in the series in the next interposed entity in the series; and
 - (ii) the percentage representing the extent of the beneficial interest of the last interposed entity in the series in Entity D.
5. For the purposes of section 4 of this Schedule—
- (a) section 2 of this Schedule applies in determining the extent of the beneficial interest of Entity C in an interposed entity as if—
 - (i) the references to Entity A in that section were references to Entity C; and
 - (ii) the references to Entity B in that section were references to an interposed entity;
 - (b) section 2 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity in Entity D as if—
 - (i) the references to Entity A in that section were references to an interposed entity; and
 - (ii) the references to Entity B in that section were references to Entity D; and
 - (c) section 2 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity (*Interposed Entity A*) in another interposed entity (*Interposed Entity B*) as if—

- (i) the references to Entity A in that section were references to Interposed Entity A; and
- (ii) the references to Entity B in that section were references to Interposed Entity B.

Schedule 16H

[s. 40AV & Sch. 16E]

Provisions for Determining Extent of FIHV's Beneficial Interest in FSPE (Sections 11 and 16 of Schedule 16E)

Part 1

1. In this Schedule—

direct beneficial interest (直接實益權益) has the meaning given by section 7 of Schedule 16E;

entity (實體) has the meaning given by section 1(1) of Schedule 16E;

FIHV (家控工具) has the meaning given by section 5 of Schedule 16E;

FSPE (家族特體) has the meaning given by section 6 of Schedule 16E;

indirect beneficial interest (間接實益權益) has the meaning given by section 7 of Schedule 16E.

Part 2

2. For an FIHV having a direct beneficial interest in an FSPE, the extent of the beneficial interest of the FIHV in the FSPE is—
 - (a) if the FSPE is a corporation—
 - (i) the percentage of the issued share capital (however described) of the corporation held by the FIHV; or
 - (ii) (if the corporation does not have any issued share capital) the percentage of the voting rights in the corporation that the FIHV is entitled to exercise or the exercise of which the FIHV is entitled to control;
 - (b) if the FSPE is a partnership—
 - (i) the percentage of the profits of the partnership to which the FIHV is entitled; or
 - (ii) (if the partners in the partnership are neither entitled to the profits of the partnership nor entitled to a distribution of the assets of the partnership on its dissolution) the percentage of the voting rights in the partnership that the FIHV is entitled to exercise or the exercise of which the FIHV is entitled to control;
 - (c) if the FSPE is a trust—the percentage in value of the trust [estatefund](#) in which the FIHV is interested; and
 - (d) if the FSPE is an entity that does not fall within any of paragraphs (a), (b) and (c)—

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- (i) the percentage of the capital of the entity to which the FIHV is entitled;
 - (ii) (if subparagraph (i) is not applicable in relation to the entity) the percentage of the ownership interests that the FIHV has in the entity;
 - (iii) (if neither subparagraph (i) nor (ii) is applicable in relation to the entity) the percentage of the profits of the entity to which the FIHV is entitled; or
 - (iv) (if none of subparagraphs (i), (ii) and (iii) is applicable in relation to the entity) the percentage of the voting rights in the entity that the FIHV is entitled to exercise or the exercise of which the FIHV is entitled to control.
 3. For the purposes of section 2 of this Schedule—
 - (a) section 7(5), (6) and (7) of Schedule 16E applies; and
 - (b) a reference in section 2(a), (b), (c) and (d) of this Schedule to the FIHV includes—
 - (i) if the FIHV is a partnership—a partner in the partnership; and
 - (ii) if the FIHV is a trust—a trustee of the trust.
 4. For an FIHV having an indirect beneficial interest in an FSPE, the extent of the beneficial interest of the FIHV in the FSPE is—

-
- (a) if there is only one interposed entity—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the FIHV in the interposed entity by the percentage representing the extent of the beneficial interest of the interposed entity in the FSPE; or
 - (b) if there is a series of 2 or more interposed entities—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the FIHV in the first interposed entity in the series by—
 - (i) the percentage representing the extent of the beneficial interest of each interposed entity (other than the last interposed entity) in the series in the next interposed entity in the series; and
 - (ii) the percentage representing the extent of the beneficial interest of the last interposed entity in the series in the FSPE.
5. For the purposes of section 4 of this Schedule—
- (a) section 2 of this Schedule applies in determining the extent of the beneficial interest of an FIHV in an interposed entity as if the references to an FSPE in that section were references to an interposed entity;
 - (b) section 2 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity in an FSPE as if the references to an FIHV in that section were references to an interposed entity; and

- (c) section 2 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity (*Interposed Entity A*) in another interposed entity (*Interposed Entity B*) as if—
- (i) the references to an FIHV in that section were references to Interposed Entity A; and
 - (ii) the references to an FSPE in that section were references to Interposed Entity B.

Schedule 16I

[s. 40AV &
Schs. 16E & 16J]

Provisions for Ascertaining Amount of Assessable Profits of Resident Person under Section 22 of Schedule 16E

Part 1

1. In this Schedule—

direct beneficial interest (直接實益權益) has the meaning given by section 7 of Schedule 16E;

entity (實體) has the meaning given by section 1(1) of Schedule 16E;

FIHV (家控工具) has the meaning given by section 5 of Schedule 16E;

indirect beneficial interest (間接實益權益) has the meaning given by section 7 of Schedule 16E;

resident person (居港者) has the meaning given by section 20(2) of Schedule 16E.

Part 2

2. The amount regarded as the assessable profits of a resident person for a year of assessment is the total sum arrived at by adding up the assessable profits of the FIHV that are chargeable to tax under Part 4 of this Ordinance and in respect of which tax would have been payable but for section 9 of Schedule 16E (*concessionary profits*) for each day in the period in the year of assessment during which the resident person has a direct or indirect beneficial interest in the FIHV.
3. For the purposes of section 2 of this Schedule, the concessionary profits of an FIHV for a particular day in a year of assessment are to be ascertained in accordance with the following formula—

$$A = \frac{B \times C}{D}$$

- where:
- A means the concessionary profits of the FIHV for a particular day in a year of assessment;
 - B means the extent of the resident person's beneficial interest in the FIHV on the particular day, expressed as a percentage determined in accordance with Part 3 of this Schedule;
 - C means the concessionary profits of the FIHV for the accounting period of the FIHV in which the particular day falls;

D means the total number of days in the accounting period of the FIHV in which the particular day falls.

Part 3

4. For a resident person having a direct beneficial interest in an FIHV, the extent of the beneficial interest of the resident person in the FIHV is—
 - (a) if the FIHV is a corporation—
 - (i) the percentage of the issued share capital (however described) of the corporation held by the resident person; or
 - (ii) (if the corporation does not have any issued share capital) the percentage of the voting rights in the corporation that the resident person is entitled to exercise or the exercise of which the resident person is entitled to control;
 - (b) if the FIHV is a partnership—
 - (i) the percentage of the profits of the partnership to which the resident person is entitled; or
 - (ii) (if the partners in the partnership are neither entitled to the profits of the partnership nor entitled to a distribution of the assets of the partnership on its dissolution) the percentage of the voting rights in the partnership that the resident person is entitled to exercise or the exercise of which the resident person is entitled to control;

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- (c) if the FIHV is a trust—the percentage in value of the trust ~~estate~~[fund](#) in which the resident person is interested; and
 - (d) if the FIHV is an entity that does not fall within any of paragraphs (a), (b) and (c)—
 - (i) the percentage of the capital of the entity to which the resident person is entitled;
 - (ii) (if subparagraph (i) is not applicable in relation to the entity) the percentage of the ownership interests that the resident person has in the entity;
 - (iii) (if neither subparagraph (i) nor (ii) is applicable in relation to the entity) the percentage of the profits of the entity to which the resident person is entitled; or
 - (iv) (if none of subparagraphs (i), (ii) and (iii) is applicable in relation to the entity) the percentage of the voting rights in the entity that the resident person is entitled to exercise or the exercise of which the resident person is entitled to control.
5. Section 7(5), (6) and (7) of Schedule 16E applies for the purposes of section 4 of this Schedule.
6. For a resident person having an indirect beneficial interest in an FIHV, the extent of the beneficial interest of the resident person in the FIHV is—

-
- (a) if there is only one interposed entity—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the resident person in the interposed entity by the percentage representing the extent of the beneficial interest of the interposed entity in the FIHV; or
 - (b) if there is a series of 2 or more interposed entities—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the resident person in the first interposed entity in the series by—
 - (i) the percentage representing the extent of the beneficial interest of each interposed entity (other than the last interposed entity) in the series in the next interposed entity in the series; and
 - (ii) the percentage representing the extent of the beneficial interest of the last interposed entity in the series in the FIHV.
7. For the purposes of section 6 of this Schedule—
- (a) section 4 of this Schedule applies in determining the extent of the beneficial interest of a resident person in an interposed entity as if the references to an FIHV in that section were references to an interposed entity;
 - (b) section 4 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity in an FIHV as if the references to a resident person in that section were references to an interposed entity; and

- (c) section 4 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity (*Interposed Entity A*) in another interposed entity (*Interposed Entity B*) as if—
- (i) the references to a resident person in that section were references to Interposed Entity A; and
 - (ii) the references to an FIHV in that section were references to Interposed Entity B.

Schedule 16J

[s. 40AV & Sch. 16E]

Provisions for Ascertaining Amount of Assessable Profits of Resident Person under Section 23 of Schedule 16E

Part 1

1. In this Schedule—

direct beneficial interest (直接實益權益) has the meaning given by section 7 of Schedule 16E;

entity (實體) has the meaning given by section 1(1) of Schedule 16E;

FIHV (家控工具) has the meaning given by section 5 of Schedule 16E;

FSPE (家族特體) has the meaning given by section 6 of Schedule 16E;

indirect beneficial interest (間接實益權益) has the meaning given by section 7 of Schedule 16E;

resident person (居港者) has the meaning given by section 20(2) of Schedule 16E.

Part 2

2. The amount regarded as the assessable profits of a resident person for a year of assessment is the total sum arrived at by adding up the assessable profits of the FSPE that are chargeable to tax under Part 4 of this Ordinance and in respect of which tax would have been payable but for section 16 of Schedule 16E (*concessionary profits*) for each day in the period in the year of assessment during which the resident person has an indirect beneficial interest in the FSPE.
3. For the purposes of section 2 of this Schedule, the concessionary profits of an FSPE for a particular day in a year of assessment are to be ascertained in accordance with the following formula—

$$A = \frac{B1 \times B2 \times C}{D}$$

where: A means the concessionary profits of the FSPE for a particular day in a year of assessment;

B1 means the extent of the resident person's beneficial interest in the FIHV on the particular day, expressed as a percentage determined in accordance with Part 3 of Schedule 16I;

- B2 means the extent of the FIHV's beneficial interest in the FSPE on the particular day, expressed as a percentage determined in accordance with Part 3 of this Schedule;
- C means the concessionary profits of the FSPE for the accounting period of the FSPE in which the particular day falls;
- D means the total number of days in the accounting period of the FSPE in which the particular day falls.

Part 3

4. For an FIHV having a direct beneficial interest in an FSPE, the extent of the beneficial interest of the FIHV in the FSPE is—
 - (a) if the FSPE is a corporation—
 - (i) the percentage of the issued share capital (however described) of the corporation held by the FIHV; or
 - (ii) (if the corporation does not have any issued share capital) the percentage of the voting rights in the corporation that the FIHV is entitled to exercise or the exercise of which the FIHV is entitled to control;
 - (b) if the FSPE is a partnership—
 - (i) the percentage of the profits of the partnership to which the FIHV is entitled; or

- (ii) (if the partners in the partnership are neither entitled to the profits of the partnership nor entitled to a distribution of the assets of the partnership on its dissolution) the percentage of the voting rights in the partnership that the FIHV is entitled to exercise or the exercise of which the FIHV is entitled to control;
- (c) if the FSPE is a trust—the percentage in value of the trust ~~estate~~[fund](#) in which the FIHV is interested; and
- (d) if the FSPE is an entity that does not fall within any of paragraphs (a), (b) and (c)—
 - (i) the percentage of the capital of the entity to which the FIHV is entitled;
 - (ii) (if subparagraph (i) is not applicable in relation to the entity) the percentage of the ownership interests that the FIHV has in the entity;
 - (iii) (if neither subparagraph (i) nor (ii) is applicable in relation to the entity) the percentage of the profits of the entity to which the FIHV is entitled; or
 - (iv) (if none of subparagraphs (i), (ii) and (iii) is applicable in relation to the entity) the percentage of the voting rights in the entity that the FIHV is entitled to exercise or the exercise of which the FIHV is entitled to control.

5. For the purposes of section 4 of this Schedule—

-
- (a) section 7(5), (6) and (7) of Schedule 16E applies; and
 - (b) a reference in section 4(a), (b), (c) and (d) of this Schedule to the FIHV includes—
 - (i) if the FIHV is a partnership—a partner in the partnership; and
 - (ii) if the FIHV is a trust—a trustee of the trust.
6. For an FIHV having an indirect beneficial interest in an FSPE, the extent of the beneficial interest of the FIHV in the FSPE is—
- (a) if there is only one interposed entity—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the FIHV in the interposed entity by the percentage representing the extent of the beneficial interest of the interposed entity in the FSPE; or
 - (b) if there is a series of 2 or more interposed entities—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the FIHV in the first interposed entity in the series by—
 - (i) the percentage representing the extent of the beneficial interest of each interposed entity (other than the last interposed entity) in the series in the next interposed entity in the series; and
 - (ii) the percentage representing the extent of the beneficial interest of the last interposed entity in the series in the FSPE.

7. For the purposes of section 6 of this Schedule—
- (a) section 4 of this Schedule applies in determining the extent of the beneficial interest of an FIHV in an interposed entity as if the references to an FSPE in that section were references to an interposed entity;
 - (b) section 4 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity in an FSPE as if the references to an FIHV in that section were references to an interposed entity; and
 - (c) section 4 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity (*Interposed Entity A*) in another interposed entity (*Interposed Entity B*) as if—
 - (i) the references to an FIHV in that section were references to Interposed Entity A; and
 - (ii) the references to an FSPE in that section were references to Interposed Entity B.”.
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Explanatory Memorandum

1. The main purpose of this Bill is to amend the Inland Revenue Ordinance (Cap. 112) (*Cap. 112*) to give profits tax concessions to certain entities to facilitate the development of family office business in Hong Kong. These entities are known as family-owned investment holding vehicles and family-owned special purpose entities in the Bill.
2. The tax concessions provided for under the new Schedule 16E to be added to Cap. 112 apply for a year of assessment commencing on or after 1 April 2022.
3. Clause 1 sets out the short title.
4. Clause 4 adds a new Part 6E to Cap. 112 to introduce a tax concession regime for certain investment vehicles managed by a family office of a particular family and certain entities that are wholly or partially owned by such vehicles.
5. The new Part 6E also empowers the Secretary for Financial Services and the Treasury to amend, by notice published in the Gazette, the number specified in section 10(1)(b)(ii), the amounts specified in sections 10(1)(c)(ii) and 11(2), (4) and (6), and the rates specified in sections 24(2) and 25(2), of the new Schedule 16E (to be added to Cap. 112 by clause 7) and make incidental, supplemental, evidential, consequential, savings and transitional provisions that are necessary and expedient in consequence of the amendments. In addition, the new Part 6E introduces 5 other Schedules (Schedules 16F to 16J) which are to be added to Cap. 112 by that clause. New Schedules 16F to 16J contain provisions supplementary to the new Schedule 16E.

New Schedule 16E

6. The new Schedule 16E contains 6 Parts.
7. Part 1 (sections 1 to 8) of the new Schedule 16E provides for certain key concepts under the new profits tax concession regime. For example, section 7 of that Schedule seeks to explain how to determine whether a person or entity has a direct or indirect beneficial interest in another person or entity. Part 1 of the new Schedule 16E also contains definitions or interpretation provisions for certain expressions used in that Schedule. These expressions include *entity*, eligible single family office (*ESF Office*), *family*, family-owned investment holding vehicle (*FIHV*), family-owned special purpose entity (*FSPE*) and interposed family-owned special purpose entity (*IFSPE*).
8. Parts 2 and 3 (sections 9 to 19) of the new Schedule 16E mainly provide profits tax concessions for an entity that is an FIHV and an entity that is an FSPE. The concessionary rate for an FIHV and that for an FSPE for the basis period for a year of assessment are specified in sections 24(2) and 25(2) of the new Schedule 16E.
9. Parts 2 and 3 of the new Schedule 16E also provide for the circumstances under which losses sustained by an FIHV or FSPE from certain transactions are not available for set off against their assessable profits.
10. Part 4 (sections 20 to 23) of the new Schedule 16E mainly provides for the circumstances under which the assessable profits of an FIHV or FSPE are to be regarded as the assessable profits of a resident person (within the meaning of section 20(2) of that Schedule) that has a beneficial interest in the FIHV or FSPE. The new Schedules 16I and 16J, which are supplementary to the new Schedule 16E, seek to ascertain the amounts of assessable profits of such resident persons and determine the extent of beneficial interest that a person or entity has in another person or entity.

Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Bill 2022

Explanatory Memorandum

Paragraph 11

[C329T](#)

11. Part 6 (sections 26 to 29) of the new Schedule 16E provides for miscellaneous matters. That Part contains anti-avoidance provisions relating to arrangement to obtain tax benefits. That Part also contains provisions providing for the obligations of a responsible person for an FIHV or ESF Office to keep or retain records regarding the beneficial owners of the FIHV and those of the ESF Office.

New Schedules 16F to 16J

12. The new Schedule 16F contains provisions for determining the extent of beneficial interest that members of a family have in a particular entity.
13. The new Schedule 16G contains provisions for determining the extent of beneficial interest that an entity has in another entity.
14. The new Schedules 16F and 16G are added for the purposes of sections 8 and 20 of the new Schedule 16E.
15. The new Schedule 16H is for sections 11 and 16 of the new Schedule 16E. The new Schedule 16H contains provisions for determining the extent of the beneficial interest that an FIHV has in an FSPE.
16. The new Schedule 16I contains provisions for ascertaining the amount of the assessable profits of a resident person under section 22 of the new Schedule 16E. The new Schedule 16I also provides for the determination of the extent of the beneficial interest that a resident person has in an FIHV.
17. The new Schedule 16J contains provisions for ascertaining the amount of the assessable profits of a resident person under section 23 of the new Schedule 16E and provides for the determination of the extent of the beneficial interest that an FIHV has in an FSPE for the purposes of that section.

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