

LEGISLATIVE COUNCIL BRIEF
COMPANIES (AMENDMENT) BILL 2003

INTRODUCTION

At the meeting of the Executive Council on 10 June 2003, the Council ADVISED and the Chief Executive ORDERED that the Companies (Amendment) Bill 2003, at Annex A, should be introduced into the Legislative Council to improve the prospectus regime to facilitate market development, to enhance corporate governance standards by strengthening remedies for shareholders and aligning the definition of “subsidiary” for the purposes of preparing group accounts with the International Accounting Standards (IASs) and to modernise the registration regime for overseas companies.

JUSTIFICATIONS

(A) Amendments updating the prospectus regime

2. The Financial Secretary highlighted in his Budget Speech in 2002 the importance of increasing liquidity through attracting more financial product issuers to Hong Kong, as well as capital and investors from the Mainland and overseas. One of the initiatives endorsed by the Financial Secretary for increasing liquidity is to implement a three-phase approach to overhaul the existing regulatory framework for offers of shares and debentures¹. The existing regulatory framework was introduced decades ago and amendments made over the years do not adequately accommodate offering structures and other market practices prevalent in

¹ Measures under the first phase were made in response to specific requests from market participants and do not involve amendments to the Companies Ordinance (CO). They involved the issue by the Securities and Futures Commission (SFC) in February 2003 of various guidelines permitting awareness advertisements, an alternative “dual prospectus” structure, and allowing faxed copies of expert consent letters and bulk print proofs of prospectuses for the purposes of registration. They also involved the issue of two class exemptions by the SFC relating to prospectuses for offers of debentures. Measures under the second phase are the subject of the Bill. In the third phase, the SFC will conduct a comprehensive review of all local laws and procedures governing public offers of securities as well as regulatory reforms introduced in other leading jurisdictions, with a view to putting in place a framework that provides the most efficient, competitive and fair environment for issuers and investors alike. The SFC has started this review and aims to put forward proposals for public consultation by September 2004.

developed markets today. The prospectus-related amendments pursued under the Bill are proposed mainly in response to specific requests from market participants and fall under phase II of the three-phase approach. Among other things, they simplify the procedures for the registration and issue of prospectuses, thereby fostering the development of retail bonds and other financial products. Opportunities have also been taken to rationalize and clarify the application of certain prospectus-related provisions under the Companies Ordinance (CO) primarily for enhancing investor protection.

(B) Amendments enhancing shareholder remedies

3. We **propose** a number of amendments to the CO to enhance shareholder remedies. These proposals were contained in the Consultation Paper on Proposals made in Phase I of the Corporate Governance Review published by the Standing Committee on Company Law Reform (SCCLR) in July 2001, and the comments received indicated support for such proposals. The major proposals relate to statutory derivative action, unfair prejudice remedies, orders for inspection of company records, and injunction orders.

(C) Amendments improving the registration system for overseas companies and miscellaneous amendments

4. A company incorporated outside Hong Kong which establishes a place of business in Hong Kong is known an “overseas company” in the CO. The registration regime for overseas companies is provided for in Part XI of the Ordinance. The Registrar of Companies (the Registrar), with the SCCLR’s blessing, has chaired a Sub-Committee under the SCCLR to undertake a comprehensive review of Part XI of the Ordinance and all the other provisions of the Ordinance which apply to overseas companies, with a view to simplifying the filing requirements. The recommendations of the Sub-Committee have been approved by the SCCLR.

5. We have also identified a number of miscellaneous amendments, i.e. enabling electronic incorporation of a company, stating the purposes for which documents kept or maintained by the Registrar of Companies under the Ordinance are made available for public inspection, and repealing the 20-partner limit in section 345 of the Ordinance.

6. The detailed proposals in respect of overseas companies and other miscellaneous amendments are summarised at [Annex B](#).

(D) Definition of “Subsidiary” for the Purposes of Group Accounts

7. Section 124 requires a company having subsidiaries to lay before the company in general meeting, accounts dealing with the state of affairs and the profit and loss of the company itself and its subsidiaries. These accounts are known as group accounts. The definition of the term “subsidiary” in section 2(4)² which applies to accounting and other provisions in the CO is narrower than that adopted in the IASs³. We consider it necessary to amend the statutory definition for the purposes of group accounts to make it more closely align with the IASs. This would ensure that under the law, the group accounts would better reflect the financial position of the company. The definition of “subsidiary” for purposes other than the preparation of group accounts would not be affected. We have formulated our legislative proposals on the basis of the relevant provisions of the UK. These proposals would have no effect on the provisions for loss set off under section 19C(4) of the Inland Revenue Ordinance, and would not affect the operation of the provisions of the Estate Duty Ordinance. Given the time taken for the enactment of the Bill and the need to allow time for companies incorporated in Hong Kong to prepare for the new provisions, we expect the proposed definition of “subsidiary” for the purposes of group accounts will come into effect in 2005 at the earliest.

8. We note that the proposed definition of “subsidiary” for the purposes of group accounts might have an impact on the development of the financial market, for example, the asset securitisation industry. International practices and standards in this regard are evolving. In this connection, we would watch international developments, in particular, in relation to the IASs closely. Where necessary and justified, refinements will be made to the Bill before its enactment to ensure that our market

² The term “subsidiary” is defined in section 2(4), which deems the relationship between a holding company and its subsidiary to be one of the control of the composition of the board of directors of the subsidiary, control of more than half of the voting power of the subsidiary or the holding of more than half of the issued share capital of the subsidiary.

³ The Hong Kong Society of Accountants (HKSA) is responsible for issuing the Hong Kong Statements of Standard Accounting Practice (SSAPs), which govern the preparation and presentation of accounts (including group accounts). Since 1993, it has been the HKSA’s policy to harmonise SSAPs with the International Accounting Standards (IASs), which are the internationally recognised set of accounting standards. The HKSA issued SSAP 32 “Consolidated Financial Statements and Accounting for Investments in Subsidiaries” in January 2001 to apply in the preparation and presentation of group accounts for accounting periods beginning on or after 1 January 2001. SSAP 32 is based on, and generally consistent with IAS 27 “Consolidated Financial Statements and Accounting for Investments in Subsidiaries” except that SSAP 32 currently accommodates the CO’s definition of “subsidiary” for statutory reporting purposes. In both IAS27 and SSAP 32, a subsidiary is defined as “an enterprise that is controlled by another enterprise”, where the control is the power to govern the financial and operating policies of an enterprise so as to obtain benefits from its activities.

development and corporate governance needs are adequately catered for and that the disclosure regime is in line with international standards and practices.

THE BILL

9. The main provisions are as follows –

(A) Amendments updating the prospectus regime [Schedule 1 to the Bill]

- (a) to carve out from the definition of “prospectus” offering documentation in relation to specified types of offers for providing certainty as to the types of offers that can be made without triggering the prospectus regime. The types of offers specified include offers to “professional investors”, offers to not more than 50 persons, offers in respect of which the total consideration payable for the shares or debentures concerned is not more than HK\$5 million and offers in respect of which the minimum consideration payable by any person is not less than HK\$500,000. Safeguards against abuse of the exclusions are introduced (sections 1, 4 and 17 and the new Seventeenth Schedule added under section 27);
- (b) to make clear that subject to necessary investor protection safeguards, it is permissible for issuers to issue “awareness advertisements” setting out basic factual and procedural information concerning offers of shares and debentures for enhancing investors’ awareness of an offer and allowing them more time to arrange their financial and other affairs in anticipation of a public offer (sections 1, 5 and 6, and the new Nineteenth Schedule added under section 27);
- (c) to expand the existing exemption power of the Securities and Futures Commission (SFC) under sections 38A and 342A of the CO by providing the SFC with an additional ground of exemption: that the exemption would not be prejudicial to the interest of the investing public; and increasing the number of provisions in respect of which exemptions may be granted, for increasing flexibility in administering the prospectus regime. For greater transparency, the SFC is required to publish details of an exemption granted on a case basis (sections 3 and 16);

- (d) to permit a prospectus to be made up of more than one document each of which is a prospectus in its own right, which can be authorized, registered and issued separately, for facilitating the conduct of programme offers (i.e. offers made on a repeat or continuous basis or through successive tranches). Safeguards to ensure that investors are given access to all relevant information and other safeguards applicable to a standalone prospectus are included as appropriate (sections 8 and 20 and the new Twenty-first Schedule added under section 27);
- (e) to amend the prospectus civil and criminal liabilities provisions under the CO (sections 9, 10, 11, 22, 23 and 25 and the new Twenty-second Schedule added under section 27) for enhancing investor protection by-
 - (i) applying them to statements in an awareness advertisement (paragraph 9(b) above) and extract from or abridged version of a prospectus;
 - (ii) clarifying their application to misrepresentation in the form of material omissions as read with the refined general disclosure standard in paragraph 3 of the Third Schedule to the CO; and
 - (iii) clarifying that the civil remedy applies to persons who acquire shares or debentures in a public offering (whether it is an offer for subscription or offer for sale) even where an intermediary is selling to such persons as principal;
- (f) to remove the discrepancies in certain regulatory requirements applicable to offers made by companies incorporated locally and overseas for providing a level playing field (sections 12, 14, 15, 18, 19 and 22);

- (g) to empower the SFC to update certain regulatory requirements by way of subsidiary legislation for more timely response to market developments, including the detailed information required in a prospectus as specified in the Third Schedule to the CO⁴ and the new schedules mentioned in paragraphs 9(a), (b), (d) and (e) above. As a safeguard, the SFC would be obliged to consult the public before making any such subsidiary legislation (section 24);
- (h) to introduce other miscellaneous amendments, such as –
 - (i) clarifying that disclosure of information under the Third Schedule to the CO concerning a “guarantor corporation” in a debenture issue is required (sections 2, 15 and 25);
 - (ii) replacing the requirement to register “material contracts” with the Registrar of Companies with the requirement to make available such contracts for public inspection (sections 7 and 19);
 - (iii) providing a mechanism for amending a “standalone” prospectus (sections 8 and 20 and the new Twentieth Schedule added under section 27); and
 - (iv) accepting submission of certified copies of documents for the purposes of seeking authorization and registration of a prospectus (sections 8 and 20);

(B) Amendments enhancing shareholder remedies [Schedule 4 to the Bill]

- (i) in relation to shareholder remedies, section 5 provides for a statutory derivative action that may be taken on behalf of a company by a member of the company. In general, prior leave of the court is not required for the commencement of the action. Pre-action notice, unless otherwise dispensed with by the leave of the court, has to be served on the company before the commencement of the action. The court may strike out the action if it is, inter alia, not taken in the best interest of the

⁴The power to amend the Third Schedule, which sets out detailed content requirements applicable to a prospectus, is currently vested in the Chief Executive in Council. This is out of step with the trend in other international financial centres, as well as the approach adopted in the newly commenced Securities and Futures Ordinance, which allows the SFC to update technical regulatory rules in a timely manner as it is closer to the market and has the necessary expertise and experience as to how investors should be protected without stifling market development. These rules are in any case subject to negative vetting by the Legislative Council.

company or in good faith. The court is also empowered to grant orders as to the costs incurred by a member taking a derivative action provided that there is no evidence of bad faith on the part of the member and there are reasonable grounds on which to commence the action. Approval or ratification by the company of the conduct that is the subject matter of the action would not be a bar to action but could be one of the considerations to be taken into account by the court in determining whether or not the company should have redress;

- (j) section 4 amends section 168A⁵ provide that the court may award damages to the members of a company where it is found that their interests have been unfairly prejudiced, and to award such interest on the damages awarded as the court thinks fit. Past members (and their personal representatives) are also allowed to take action under this section in so far as the conduct complained of took place while they were members of the company. We also propose to expand section 168A to empower the court to make an order for the compensation of costs incurred by the members and past members undertaking the action. Section 168A is also amended to allow members of oversea companies, as well as companies incorporated in Hong Kong, to commence an action under that section;
- (k) to facilitate members of an oversea company or Hong Kong company to exercise their rights to obtain access to company records. Section 3 empowers the court, on application by a member, to make an order to allow the member or his representative to obtain access to such records;
- (l) section 6 empowers the court, on application by an affected person or the Financial Secretary, to grant an injunction restraining any person from engaging in conducts which constitute contravention of the CO or a breach in fiduciary or other duties owed to a company. The court may also order any person to do any act or thing;

⁵ Section 168A of the CO provides for a statutory remedy (short of liquidation) against unfair prejudice. Its underlying premise is that minority shareholders should be treated fairly. This section deals with rights which members have personally, unlike derivative actions where a member seeks to enforce rights of action belonging to the company. A wide range of remedies is available under this section such as providing for the purchase of the shares of the company by other members of the company or the company.

(C) Amendments improving the registration system for overseas companies, streamlining the incorporation procedures and making other miscellaneous changes [Schedule 3 to the Bill]

- (m) in relation to the registration system for overseas companies, section 1 replaces the existing term “overseas company” by “non-Hong Kong company”. The registration requirements for non-Hong Kong companies would also be streamlined. The period where a non-Hong Kong company is required to have an authorized representative after it ceases to have a place of business in Hong Kong would be shortened from three years to one year (section 26). A non-Hong Kong company would be allowed to terminate the appointment of its authorised representative for the purposes of the CO (section 27);
- (n) section 13 clarifies the circumstances under which a non-Hong Kong company is required to register charges on its properties in Hong Kong. Opportunity is also taken to provide in CO that specified forms shall be used for the filing of documents such as notice of dissolution, notice of cessation of place of business of a non-Hong Kong company for the purpose of registration under Part XI of CO (sections 7, 24, 27, 29, 33, 36 and 37); and in relation to service on a non-Hong Kong company that does not have a registered address, amend section 338(2)(b)(ii) to allow service on its place of business within the previous 12 months instead of 3 years (section 35);
- (o) sections 1 and 3 of Part 3 of Schedule 5 to the Bill provide that the certification of copies of documents required to be delivered to the Registrar of Companies as true copies may be done in Hong Kong. They also expand the categories of persons who may certify copies of such documents and the competency of the translators who produced certified translations for the purposes of the CO;
- (p) to enhance the disclosure requirements for non-Hong Kong companies, section 31 requires such companies which are obliged to publish accounts by the law in another jurisdiction or by a regulatory body to deliver annual returns together with their latest published accounts to the Registrar of Companies. Where a non-Hong Kong company is in liquidation (regardless of whether this is in the place of incorporation), the company would be required to state its name and place of incorporation

in all its advertisements (section 32). The company would also be required to deliver to the Registrar of Companies notice of commencement of its liquidation and notice of appointment of the liquidator, regardless of whether the liquidation proceedings are commenced in the place of incorporation (section 33);

- (q) other miscellaneous amendments including provisions to enable electronic incorporation of a company and streamline the incorporation procedure (sections 7, 8, 9(1), 10 and 45(1)). The existing term “subscriber” is also proposed to be replaced by “founder member” (section 1(2)). In the interest of protection of personal data in public registers, section 21(1) sets out the purposes for which documents kept or maintained by the Registrar of Companies under the CO may be made available for public inspection. Section 42 removes the upper limit (i.e. 20) on the number of partners in a partnership, which is no longer appropriate.

(D) Definition of “Subsidiary” for the Purposes of Group Accounts [Schedule 2 to the Bill]

- (r) in relation to the definition of “subsidiary” for the purposes of group accounts, section 1 and the new Twenty-third Schedule added under section 17 introduce new terms of “subsidiary undertaking”, “parent company” and “parent undertaking”. The term “undertaking” includes body corporates, partnerships and other unincorporated associations. This is an important improvement to the existing provision where a subsidiary or a holding company must be a body corporate. Without this amendment, assets and liabilities of partnerships and unincorporated associations within a group can be kept out of the group accounts, even when substantially all the risks and rewards are retained in the group. The “right to exercise a dominant influence over another undertaking” (defined as the right to give directions with respect to the operating and financial policies of that other undertaking which its directors will be obliged to comply with) would be added to the existing tests of determining the existence of a parent/subsidiary relationship;

- (s) sections 2 and 4 introduce “true and fair view override” provisions to the effect that if compliance with the requirements of the Ordinance does not result in a true and fair view⁶ of the state of affairs of the company or the group, the directors should depart from these requirements to the extent necessary to give a true and fair view. In most cases, a departure is expected to be necessitated only when required by the Hong Kong Statements of Standard Accounting Practice to the extent that these differ from the CO. Additional information in order to present a true and fair view should be given in the accounts or in a statement annexed to the accounts. Particulars of any such departure, the reasons for it and its effect should be given in the accounts or statement. The “true and fair override” provisions will cater for the evolving nature of accounting reporting requirements. They would negate attempts to find ways around the standards or the law to avoid inclusion of vehicles, such as special purpose entities and other off-balance sheet non-subsiidiaries, into the group accounts; and
- (t) sections 2 and 4 also repeal the Financial Secretary’s existing powers under sections 123(4) and 126(3) to modify the requirements of the CO as to the matters to be stated in a company’s accounts or group accounts, which would no longer be appropriate when the “true and fair override” provisions are in place.

⁶ Section 123 provides that the balance sheet and profit and loss account (“the accounts”) of a company shall give a true and fair view of the state of affairs and profit or loss of the company. So far as applicable, the accounts shall comply with the Tenth Schedule to the CO. Compliance with the Tenth Schedule is without prejudice to the requirement to give a true and fair view or any other requirements of the CO unless expressly provided. The FS may modify any requirement of the CO in relation to a particular company as to the matters to be stated in the accounts, except the requirement to give a true and fair view, for adapting them to the circumstances of the company (section 123(4)). Similarly, section 126 provides that the group accounts of a company shall give a true and fair view of the state of affairs and profit or loss of the company and the subsidiaries. So far as applicable, the group accounts shall comply with the Tenth Schedule. The FS may modify the requirements of the Tenth Schedule in relation to the company for adapting them to the circumstances of the company (section 126(3)). The CO does not contain a definition of the term “true and fair view”.

LEGISLATIVE TIMETABLE

10. The legislative timetable is as follows –
- | | |
|--|----------------|
| Publication in the Gazette | 13 June 2003 |
| First Reading and commencement of Second Reading debate | 25 June 2003 |
| Resumption of Second Reading debate, committee stage and Third Reading | to be notified |

IMPLICATIONS OF THE PROPOSAL

11. The proposals in the Bill have economic implications as set out at Annex C. They are in conformity with the Basic Law, including the provisions concerning human rights. They do not affect the current binding effect of the existing provisions of the CO. They have no financial and civil service, productivity, environmental or sustainability implications.

PUBLIC CONSULTATION

12. In February 2002 and April 2003, we consulted the Legislative Council Panel on Financial Affairs on the proposed legislative amendments. Members of the Panel did not object to the proposals.

13. As mentioned in paragraph 3 above, the proposals relating to shareholder remedies originate from the Consultation Paper on Proposals made in Phase I of the Corporate Governance Review published by the SCCLR in July 2001, and the comments received indicated support for such proposals.

14. The proposals relating to the definition of “subsidiary” have been prepared in consultation with the Hong Kong Society of Accountants. In April 2003, we invited comments from the Hong Kong General Chamber of Commerce, Chinese General Chamber of Commerce, Hong Kong Mortgage Corporation Limited, and Hong Kong Capital Markets Association. The Hong Kong General Chamber of Commerce has no objection to the proposals. The Chinese General Chamber of Commerce supports the proposals. Both the Hong Kong Mortgage Corporation Limited and Hong Kong Capital Markets Association are concerned about the possible impact of the proposals on the asset securitisation market in Hong Kong, in particular, whether we would be competitively

disadvantaged when compared with other financial centres. We appreciate their concerns and as indicated in paragraph 8 above, would keep a close watch on international developments and refine our regime when necessary.

15. As to the amendments proposed to the prospectus regime, in March 2003, we conducted a three-week joint public consultation with the SFC on the amendments proposed to the prospectus regime. A total of 16 submissions were received from industry associations, professional bodies, the Consumer Council and other interested parties. There is broad public support for the initiative to update the regulatory framework and the legislative amendment proposals covered under the Bill. These are considered to be facilitative for offers of shares and debentures. The Consumer Council welcomes the safeguards introduced for ensuring that investor protection will not be compromised by such proposals. Comments on relevant proposals under the Bill have been incorporated to the extent that investor protection will not be compromised and policy considerations have been addressed. Certain comments require more detailed consideration and will be dealt with in phase III of the three-phase approach or, where appropriate, through amending the relevant schedules to the CO by way of subsidiary legislation in the interim. Comments relating to implementation will be pursued by the SFC as appropriate

PUBLICITY

16. A press release will be issued on 12 June 2003. A spokesman will be available to handle enquiries.

SUBJECT OFFICER

17. Enquiries on this brief should be addressed to Mr Esmond Lee, Principal Assistant Secretary for Financial Services and the Treasury (telephone number : 2527 3909).

**Financial Services Branch
Financial Services and the Treasury Bureau
12 June 2003**

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A BILL

To

Amend the Companies Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Companies (Amendment) Ordinance 2003.

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

**2. Amendment of the Companies Ordinance -
(Schedules 1, 2, 3 and 4)**

The Companies Ordinance (Cap. 32) is amended as set out in Schedules 1, 2, 3 and 4.

3. Consequential and other amendments

The enactments specified in Schedule 5 are amended as set out in Parts 1, 2 and 3 of that Schedule.

**4. Power to amend Schedules 1, 2, 3,
4 and 5**

The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend any of the provisions of Schedules

1, 2, 3, 4 and 5 for the purposes of ensuring that the amendments made by those Schedules can be given effect after taking into account the order in which those amendments, and any other amendments to the principal Ordinance, will respectively commence.

SCHEDULE 1

[ss. 2 & 4 &
Sch. 5]

AMENDMENTS TO THE COMPANIES ORDINANCE
RELATING TO PROSPECTUSES

1. **Interpretation**

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

- (a) by repealing the definition of "prospectus" and substituting -

"prospectus" (招股章程) -

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

- (i) offering any shares in or debentures of a company (including a company incorporated outside Hong Kong, and whether or not it has established a place of business in Hong Kong)

to the public for
subscription or
purchase for cash or
other consideration;
or

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

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

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

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

(b) by adding -

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

"offer to sell" (售賣要約), in relation to any shares or debentures, includes -

- (a) any act or omission or other thing calculated to invite offers to purchase the shares or debentures;
- (b) any reference to offer for sale;" .

2. Specific requirements as to particulars in prospectus

Section 38 is amended -

- (a) in subsection (1A), by repealing everything after "contain" and substituting "a statement specified in Part 1 of the Eighteenth Schedule." ;

(b) in subsection (3), in the proviso -

(i) by repealing "either";

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

(iii) in paragraph (b), by repealing "public." and substituting "public; or";

(iv) by adding -

"(c) in connexion with an offer specified in Part 1 of the Seventeenth Schedule as read with the other Parts of that Schedule.";

(c) by repealing subsection (7) and substituting -

"(7) It is hereby declared that the provisions of the Third Schedule applied by this section are also applied to a guarantor corporation in relation to an offer or invitation to the public to subscribe for or purchase debentures of a company.

(8) In subsection (7), "guarantor corporation" (提供擔保的法團), in relation to an offer or invitation to the public to subscribe for or purchase debentures of a company, means a corporation that guarantees or agrees to guarantee -

- (a) the repayment of any money received or to be received by the company in response to the offer or invitation;
- (b) any other obligations of the company under or in respect of the debentures; or
- (c) in favour of the company any amount -
 - (i) to which the company is entitled; and
 - (ii) receipt of which, as stated in the prospectus concerned, is intended to enable the company to wholly or partly discharge any of its obligations under or in respect of the debentures."

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

Section 38A is amended -

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

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

- (a) compliance with any or all of those requirements would be irrelevant or unduly burdensome; or
- (b) the exemption will not prejudice the interest of the investing public.

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

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

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

(c) compliance with any or all of those requirements would be irrelevant or unduly burdensome in the case of that class of companies or prospectuses, as the case may be; or

(d) the exemption will not prejudice the interest of the investing public.”;

(b) by adding -

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

(a) section 38(1), (1A), (3) or (7), 38AA(1), 38D(3), (3A) or (4), 42(1) or (4), 44A(1), (2) or (6) or 44B(1) or (2); or

(b) Part 1 of the Twentieth Schedule or Part 1 of the Twenty-first Schedule.

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

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

4. **Section added**

The following is added -

**"38AA. Sale, etc. of shares or debentures
acquired pursuant to offer specified
in Part 1 of the Seventeenth Schedule**

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

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

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

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

(4) If any person acts in contravention of subsection (1), the person shall be liable to a fine."

5. **Advertisements concerning prospectuses**

Section 38B is amended -

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

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

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

(b) an advertisement in relation to a proposed prospectus,

whether in the English or Chinese language or in any other language in relation to shares or debentures of a company whether incorporated in or outside Hong Kong.";

(b) in subsection (2) -

(i) in paragraph (a), by repealing "form and manner of publication" and substituting "requirements";

(ii) in paragraph (c), by repealing "or" at the end;

(iii) in paragraph (d) -

(A) by repealing "form and manner of publication" and substituting "requirements";

(B) by repealing "case," and substituting "case;";

(iv) by adding -

"(e) the publication of an advertisement which -

(i) complies with the requirements of the Nineteenth Schedule applicable to the advertisement; and

(ii) contains such information as is permitted under subsection (2AA); or

(f) the publication of an advertisement -

(i) in relation to a company which is a collective investment scheme authorized under section 104(1) of the Securities and Futures Ordinance (Cap. 571);

and

(ii) which has been authorized under section 105 of the Securities and Futures Ordinance (Cap. 571),";

(c) by adding before subsection (2A) -

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

(d) in subsection (2A) -

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

6. **Section added**

The following is added -

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

(1) The Commission may prepare and publish guidelines in relation to the form and manner of, and any other matters relating to, publications falling within section 38B(2).

(2) Guidelines published under subsection (1) are not subsidiary legislation."

7. **Registration of prospectus**

Section 38D is amended -

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

(b) by adding -

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

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

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

(c) in the case of a prospectus exempted under section 38A from compliance with the requirements

of section 38(1), a copy of any contract specified for the purposes of this paragraph in any of the conditions to which the exemption is subject,

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

(c) in subsection (4) -

(i) by repealing "subsection (3)(b)(i) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus" and substituting "subsection (3A) to the copy of a contract required thereby to be available for inspection";

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

(d) by adding -

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

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

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

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

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

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

(C) such other person belonging to a class of persons specified by the Commission, by notice published

in the Gazette,
for the purposes
of this
paragraph;

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

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

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

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

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

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

(14) If any company fails to comply with subsection (11), the company and every officer of the company who is in default shall be liable to

a fine.”.

8. Sections added

The following are added -

“39A. Amendment of prospectus consisting of one document

(1) A prospectus -

(a) consisting of one document; and

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

may only be amended in accordance with the provisions of Part 1 of the Twentieth Schedule.

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

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

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

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

(6) For the avoidance of doubt, it is hereby declared that this section and Part 1 of the Twentieth Schedule do not apply to a prospectus to which section 39B applies.

39B. Prospectus may consist of more than one document, etc.

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

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

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

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

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

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

39C. Submission of certified copies

Where any document (howsoever described), other than a prospectus, is required under any of the provisions of sections 37 to 44B inclusive to be submitted to the Registrar by a company, the requirement shall be deemed to be satisfied by the submission to the Registrar of a copy of the document certified -

- (a) to be a true copy of the document; and
- (b) by -
 - (i) a director or secretary of the company or an agent of the director or secretary authorized in writing for the purpose by the director or secretary;
 - (ii) a solicitor within the meaning of section 2(1) of the Legal Practitioners Ordinance (Cap. 159) or a professional accountant within the meaning of section 2 of the Professional Accountants Ordinance (Cap. 50); or
 - (iii) a notary public within the meaning of section 2(1) of the Legal Practitioners Ordinance (Cap. 159)."

9. **Civil liability for misstatements in prospectus**

Section 40 is amended by adding -

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

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

10. **Criminal liability for misstatements in prospectus**

Section 40A is amended by adding -

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

11. **Interpretation of provisions relating to prospectuses**

Section 41A is amended -

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

(b) by adding -

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

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

Section 43(3) is amended by adding "or any allotment of shares or debentures the subject of an offer specified in Part 1 of the Seventeenth Schedule as read with the other Parts of that Schedule" after "company".

13. **Construction of references to offering shares or debentures to the public**

Section 48A is amended by adding -

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

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

Section 155C is amended -

(a) in subsection (1), by repealing "Where" and substituting "Subject to subsection (1A), where";

(b) by adding -

"(1A) Subsection (1) does not apply to a company the shares of which are listed on a recognized stock market."

15. **Dating of prospectus and particulars to be contained therein**

Section 342 is amended -

(a) in subsection (1) -

(i) by adding "or purchase" after "subscription";

(ii) by adding "(which date shall, unless the contrary is proved, be taken as the date of publication of the prospectus)" after "dated";

(b) by adding -

"(2A) Every prospectus to which subsection (1) applies must contain a statement specified in Part 2 of the Eighteenth Schedule." ;

(c) in subsection (3) -

(i) in the proviso -

(A) by repealing "either" ;

(B) in paragraph (a), by repealing "or" at the end ;

(C) in paragraph (b), by repealing "public." and substituting "public ; or" ;

(D) by adding -

"(c) in connexion with an offer specified in Part 1 of the Seventeenth Schedule as read with the other Parts of that Schedule." ;

(ii) by adding after the proviso -

"If any person acts in contravention of the provisions of this subsection, the person shall be liable to a fine." ;

(d) by adding -

"(7) It is hereby declared that the provisions of the Third Schedule applied by this section are also applied to a guarantor

corporation in relation to an offer or invitation to the public to subscribe for or purchase debentures of a company incorporated outside Hong Kong.

(8) In subsection (7), "guarantor corporation" (提供擔保的法團), in relation to an offer or invitation to the public to subscribe for or purchase debentures of a company incorporated outside Hong Kong, means a corporation that guarantees or agrees to guarantee -

- (a) the repayment of any money received or to be received by the company in response to the offer or invitation;
- (b) any other obligations of the company under or in respect of the debentures; or
- (c) in favour of the company any amount -
 - (i) to which the company is entitled; and
 - (ii) receipt of which, as stated in the prospectus concerned, is intended to enable the company to wholly or

partly discharge any of
its obligations under
or in respect of the
debentures."

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

Section 342A is amended -

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

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

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

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

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

(a) any class of companies; or

(b) any class of prospectuses issued by companies,

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

(c) compliance with any or all of those requirements would be irrelevant or unduly burdensome in the case of that class of companies or prospectuses, as the case may be; or

(d) the exemption will not prejudice the interest of the investing public." ;

(b) by adding -

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

(a) section 44A(1), (2) or (6), 44B(1)
or (2), 342(1), (2A), (3) or (7),
342AB(1) or 342C(3), (3A) or (4);
or

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

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

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

17. Section added

The following is added -

**"342AB. Sale, etc. of shares or debentures
acquired pursuant to offer specified
in Part 1 of the Seventeenth
Schedule**

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

public unless -

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

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

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

(4) If any person acts in contravention of subsection (1), the person shall be liable to a fine."

18. Provisions as to expert's consent, and allotment

Section 342B is amended -

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

19. Registration of prospectus

Section 342C is amended -

- (a) in subsection (1), by adding "or purchase" after "subscription";
- (b) in subsection (2)(a), by adding "or, where the prospectus is or is to be authorized for issue by a recognized exchange company pursuant to a transfer

order made under section 25 of the Securities and Futures Ordinance (Cap. 571), state that neither the Commission nor the recognized exchange company nor the Registrar takes any responsibility as to the contents of the prospectus" after "prospectus";

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

(d) by adding -

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

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

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

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

shall be available for inspection by the public, during normal business hours, for not less than

14 days from the date of publication of the prospectus, at -

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

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

(e) in subsection (4) -

(i) by repealing "subsection (3)(b)(i) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus" and substituting "subsection (3A) to the copy of a contract required thereby to be available for inspection";

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

(f) by adding -

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

- (a) certified by the person making the translation as a correct translation; and
- (b) deemed to be certified in the prescribed manner if the person making the translation has been certified, by the appropriate person mentioned in subparagraph (i) or (ii), as a person believed by that appropriate person to be competent to translate it into the English or Chinese language, as the case may be, that is to say -
 - (i) if the translation be made outside Hong Kong -
 - (A) a notary public in the place where the translation is made;
 - (B) such other person as may be specified by the Commission; or
 - (C) such other person belonging to a class of persons

specified by the
Commission, by
notice published
in the Gazette,
for the purposes
of this
paragraph;

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

of this
paragraph.

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

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

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

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

(12) A notice published under subsection (9)(b)(i)(C) or (ii)(D) is not subsidiary legislation.

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

20. **Sections added**

The following are added -

"342CA. Amendment of prospectus consisting of one document

- (1) A prospectus -
 - (a) consisting of one document; and
 - (b) to which the provisions of this Part are applicable,

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

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

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

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

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

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

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

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

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

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

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

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

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

342CC. Submission of certified copies

Where any document (howsoever described), other than a prospectus, is required under this Part to be submitted to the

Registrar by a company incorporated outside Hong Kong, the requirement shall be deemed to be satisfied by the submission to the Registrar of a copy of the document certified -

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

(b) by -

(i) a director or secretary of the company or an agent of the director or secretary authorized in writing for the purpose by the director or secretary;

(ii) a solicitor within the meaning of section 2(1) of the Legal Practitioners Ordinance (Cap. 159) or a professional accountant within the meaning of section 2 of the Professional Accountants Ordinance (Cap. 50); or

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

21. Penalty for contravention of sections 342 to 342C

Section 342D is amended by adding "(except section 342AB)" after "342C".

22. Civil liability for misstatements in prospectus

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

23. Interpretation of provisions as to prospectuses

Section 343 is amended -

(a) by adding -

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

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

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

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

Section 360 is amended by adding -

"(6) The Commission may, by order published in the Gazette, amend the Third, Seventeenth, Eighteenth, Nineteenth, Twentieth,

Twenty-first or Twenty-second Schedule.

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

(8) Where the Commission makes any order under subsection (6) after a draft is published under subsection (7) in relation to the order, it shall -

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

(i) the representations made on the draft;
and

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

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

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

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

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

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

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

The Third Schedule is amended -

- (a) in paragraph 3, by adding ", taking into account the nature of the shares or debentures being offered and the nature of the company, and the nature of the persons likely to consider acquiring them" after "prospectus";
- (b) in paragraph 17, by repealing "has been delivered to the Registrar for registration" and substituting "will be available for inspection in accordance with section 38D(3A) or 342C(3A), as the case requires, of this Ordinance";
- (c) in paragraph 27, by repealing "the 3 preceding years" and substituting "each of the 3 financial years immediately preceding the issue of the prospectus";
- (d) by repealing paragraph 31 and substituting -
 - "31. (1) A report by the auditors of the company with respect to -
 - (a) profits and losses and assets and liabilities of the company in accordance with sub-paragraph (2) or (3), as the case required; and

(b) the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the 3 financial years immediately preceding the issue of the prospectus, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years, and, if no accounts have been made up in respect of any part of the period of 3 years ending on a date 3 months before the issue of the prospectus, containing a statement of that fact.

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

(a) so far as regards profits and losses, deal with the profits or losses of the company in respect of each of the 3 financial years immediately preceding the issue of the prospectus; and

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

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

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

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

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

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

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

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

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

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

(e) by repealing paragraph 47.

26. Punishment of offences under this Ordinance

The Twelfth Schedule is amended by adding -

"38AA(4)	Selling, etc. shares, etc. without prospectus, etc.	Summary	level 6	-
38D(14)	Failure to provide copy of document on request	Summary	level 3	-
39A(5)	Amendment of prospectus consisting of one document not done in compliance with Part 1 of the Twentieth Schedule	Summary	level 6	-
39B(6)	Prospectus or amendment of prospectus consisting of more than one document not done in compliance with Part 1 of the Twenty-first Schedule	Summary	level 6	-
342(3)	Issuing a company prospectus that does not comply with section 342	Summary	level 6	-

342AB(4)	Selling, etc. shares, etc. without prospectus, etc.	Summary level 6	-
342C(13)	Failure to provide copy of document on request	Summary level 3	-
342CA(5)	Amendment of prospectus consisting of one document not done in compliance with Part 2 of the Twentieth Schedule	Summary level 6	-
342CB(6)	Prospectus or amendment of prospectus consisting of more than one document not done in compliance with Part 2 of the Twenty-first Schedule	Summary level 6	-".

27. Schedules added

The following are added -

"SEVENTEENTH SCHEDULE [ss. 2, 38, 38AA,
43, 48A, 342,
342AB & 360 &
18th Sch.]

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

PART 1

LIST OF OFFERS, ETC. NOT FALLING
WITHIN DEFINITION

1. An offer to professional investors within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571)(including professional investors falling within paragraph (j) of the definition of "professional investor" in that section).
2. An offer -
 - (a) to not more than 50 persons; and
 - (b) containing a statement specified in Part 3 of the Eighteenth Schedule to this Ordinance.
3. An offer -
 - (a) in respect of which the total consideration payable for the shares or debentures concerned shall not exceed the amount specified in Part 2; and

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

4. An offer -

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

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

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

7. An offer -

- (a) of shares for no consideration to any or all holders of shares in the company concerned, or an offer of fully paid-up shares of the company concerned which are of the same class as any in

issue made as an alternative to a dividend or other distribution, in cash to all holders of shares of the same class in the company concerned; and

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

8. An offer -

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

(c) by -

- (i) the company referred to in paragraph (a);
- (ii) another company which is a member of the same group of companies as the company referred to in paragraph (a); or
- (iii) the trustees -
 - (A) of a trust established by any one or more of the companies mentioned in subparagraphs (i) and (ii); and
 - (B) holding the shares or debentures the subject of the offer;

- (d) on terms that the only persons who can acquire the shares or debentures are the qualifying persons to whom they are offered or, if the terms of the offer so permit, any qualifying person; and
- (e) containing a statement specified in Part 3 of the Eighteenth Schedule to this Ordinance.

9. An offer by -

- (a) a charitable institution or trust of a public character mentioned in section 88 of the Inland Revenue Ordinance (Cap. 112); or
- (b) an educational establishment within the meaning of section 2(1) of the Sex Discrimination Ordinance (Cap. 480),

where -

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

10. An offer -

- (a) to members of a club or association -
 - (i) who can reasonably be regarded as having a common interest with each other and

with the club or association in the affairs of the club or association; and
(ii) where the proceeds of the offer are to be applied for purposes which can reasonably be regarded as concerning the affairs of the club or association; and

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

11. An offer -

(a) in respect of -

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

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

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

12. An offer -

- (a) in connection with a collective investment scheme authorized under section 104 of the Securities and Futures Ordinance (Cap. 571); and
- (b) in connection with which the issue of each advertisement, invitation or document has been authorized under section 105 of the Securities and Futures Ordinance (Cap. 571).

PART 2

AMOUNT SPECIFIED FOR THE PURPOSES OF
SECTION 3 OF PART 1

\$5,000,000

PART 3

AMOUNT SPECIFIED FOR THE PURPOSES OF
SECTION 4 OF PART 1

\$500,000

PART 4

INTERPRETATION OF PART 1

1. Any reference to an offer in Part 1 -
 - (a) includes an offer of any right, option or interest in or in relation to the shares or debentures the subject of the offer;
 - (b) does not include the offer to the extent that it is made to persons who are outside Hong Kong.

2. A prospectus, notice, circular, brochure, advertisement, or other document, still falls within Part 1 if it falls entirely within any combination of any of sections 1, 2, 5, 6, 7, 8, 9, 10, 11 or 12 of Part 1.

3. For the purposes of sections 2 and 3 of Part 1, an offer is to be taken together with any other offer of the same class of shares or debentures -
 - (a) which was made by the same person;
 - (b) which was open at any time within the period of 12 months ending with the date on which the first-mentioned offer is first made; and
 - (c) the document issued in respect of which was not a prospectus by virtue of either of those sections being satisfied.

4. For the purposes of section 2 of Part 1 -

- (a) the making of an offer of shares or debentures to trustees or members of a partnership or unincorporated association in their capacity as such; or
- (b) the making of such an offer to any other 2 or more persons jointly,

is to be treated as the making of an offer to a single person.

5. For the purposes of section 7 of Part 1, a holder of shares in a company, in relation to an offer mentioned in that section, means a person who, at the close of business on a date -

- (a) specified in the offer; or
- (b) falling within the period of 60 days ending with the date on which the offer is first made,

is a holder of shares in the company.

6. For the purposes of this section and section 8 of Part 1 -

- (a) "qualifying person" (合資格的人), in relation to a company -

- (i) means -

- (A) a bona fide director, employee, officer, consultant, former director, former employee, former officer or former consultant of the company;

- (B) a bona fide dependent of any person mentioned in sub-subparagraph (A);
- (ii) includes the trustees of a trust -
 - (A) established by any one or more of the companies mentioned in section 8(c)(i) and (ii) of Part 1; and
 - (B) which can hold shares or debentures on behalf of any person referred to in subparagraph (i);
- (b) "consultant" (顧問) means a person who, pursuant to a contract for services, renders services to a company ("the relevant company") which are commonly rendered by an employee of -
 - (i) the relevant company; or
 - (ii) a company belonging to the class of companies which predominantly carry out the same kind of business as the relevant company;
- (c) "dependent" (受養人), in relation to a person, means -
 - (i) the wife, husband, widow or widower of the person; or
 - (ii) any child, or stepchild, of the person under the age of 18 years.

7. The Commission may prepare and publish guidelines in relation to the provisions of this Schedule.

8. Guidelines published under section 7 are not subsidiary legislation.

EIGHTEENTH SCHEDULE

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

WARNING, ETC. STATEMENTS TO BE CONTAINED IN
CERTAIN DOCUMENTS

PART 1

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

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

"IMPORTANT

If you are in any doubt about any of the contents of this prospectus, you should obtain independent professional advice.";

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

"重要提示

如你對此招股章程的任何內容有任何疑問，你應尋求獨立專業意見。".

PART 2

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

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

"IMPORTANT

If you are in any doubt about any of the contents of this prospectus, you should obtain independent professional advice.";

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

"重要提示

如你對此招股章程的任何內容有任何疑問，你應尋求獨立專業意見。".

PART 3

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

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

"WARNING

The contents of this document have neither been reviewed nor endorsed by any regulatory authority in Hong Kong. You are

advised to exercise caution in relation to the offer. If you are in any doubt about any of the contents of this document, you should obtain independent professional advice.”;

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

“警告

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

PART 4

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

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

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

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

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

PART 5

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

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

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

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

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

NINETEENTH SCHEDULE [ss. 38B & 360]

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

1. **Contents of advertisement**

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

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

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

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

elsewhere, a statement that the company is seeking listing of, and permission to deal in, the shares or debentures concerned on the stock exchange or stock exchanges concerned; and

(f) legends designed to clarify the legal nature of the advertisement if, but only if, the legends are consistent with -

(i) the advertisement not being a prospectus; and

(ii) guidelines published under section 38BA of this Ordinance.

2. **Language**

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

TWENTIETH SCHEDULE

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

AMENDMENT OF PROSPECTUS CONSISTING
OF ONE DOCUMENT

PART 1

COMPANIES INCORPORATED IN HONG KONG

1. **Amendments**

The information contained in -

(a) a prospectus may only be amended by -

(i) an addendum to the prospectus; or

(ii) replacing the prospectus with a new prospectus;

(b) an addendum to a prospectus may only be amended by -

(i) a further addendum to the prospectus;

(ii) replacing the addendum with a new addendum; or

(iii) replacing the addendum and prospectus with a new prospectus.

2. **Amendment made pursuant to section 1 is prospectus**

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

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

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

to the prospectus.

PART 2

COMPANIES INCORPORATED OUTSIDE HONG KONG

1. **Amendments**

The information contained in -

(a) a prospectus may only be amended by -

(i) an addendum to the prospectus; or

(ii) replacing the prospectus with a new prospectus;

(b) an addendum to a prospectus may only be amended by -

(i) a further addendum to the prospectus;

(ii) replacing the addendum with a new addendum; or

(iii) replacing the addendum and prospectus with a new prospectus.

2. **Amendment made pursuant to section 1 is prospectus**

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

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

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

TWENTY-FIRST SCHEDULE

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

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

PART 1

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

1. **Interpretation**

In this Part -

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

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

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

2. Prospectus consisting of more than one document

(1) A prospectus may consist of -

(a) a document containing such relevant information as the issuer of the document thinks fit (but excluding the price, or any formula for calculating the price, of the shares or debentures to which the prospectus relates); and

(b) a document, or series of documents, containing such relevant information as is not already contained in the document mentioned in paragraph (a).

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

3. Amendments

The information contained in -

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

- (ii) replacing the addendum and issue prospectus with a new issue prospectus.

4. Amendment made pursuant to section 3 is prospectus

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

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

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

6. Warning

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

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

7. Availability of programme prospectus, etc.

The issuer of a programme prospectus must make arrangements for -

- (a) the programme prospectus and its addenda, if any;
and
- (b) the issue prospectus concerned and its addenda, if any,

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

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

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

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

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

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

whichever is the earlier.

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

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

10. Application of section 38C of this Ordinance

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

PART 2

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

1. **Interpretation**

In this Part -

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

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

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

2. **Prospectus consisting of more than one document**

(1) A prospectus may consist of -

(a) a document containing such relevant information as the issuer of the document thinks fit (but excluding the price, or any formula for calculating the price, of the shares or debentures to which the prospectus relates); and

- (b) a document, or series of documents, containing such relevant information as is not already contained in the document mentioned in paragraph (a).

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

3. **Amendments**

The information contained in -

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

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

4. Amendment made pursuant to section 3 is prospectus

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

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

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

to the programme prospectus and the issue prospectus to which it relates and the addenda, if any, to the issue prospectus, as the case requires.

6. Warning

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

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

7. Availability of programme prospectus, etc.

The issuer of a programme prospectus must make arrangements for -

- (a) the programme prospectus and its addenda, if any;
and
- (b) the issue prospectus concerned and its addenda,
if any,

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

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

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

- (a) the publication of the next annual report and accounts of the company to which the programme prospectus relates after the publication of the programme prospectus;
- (b) the first anniversary of the date of publication of the programme prospectus; or
- (c) if there is a guarantor corporation, within the meaning of section 342(8) of this Ordinance, in relation to the offer concerned, the publication of the next annual report and accounts of the guarantor corporation after the publication of the programme prospectus,

whichever is the earlier.

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

For the purposes of a prospectus falling within this Part, the reference in section 342C(3A) of this Ordinance to "from the date of publication of the prospectus" shall be deemed to read "from the date of publication of the issue prospectus (within the meaning of Part 2 of the Twenty-first Schedule) concerned, and

also from the date of publication of each subsequent amendment to the issue prospectus".

10. Application of section 342B of this Ordinance

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

TWENTY-SECOND SCHEDULE [ss. 40 & 360]

PERSONS SPECIFIED FOR THE PURPOSES OF SECTION 40 OF THIS ORDINANCE

1. Persons who subscribe for or purchase shares or debentures pursuant to an offer in a prospectus.

2. Persons who by means of an agent acquire shares or debentures pursuant to an offer in a prospectus.

3. Persons who acquire shares or debentures pursuant to arrangements made between -

(a) the issuer or vendor of the shares or debentures;
and

(b) intermediaries appointed for the purposes of the offer."

SCHEDULE 2

[ss. 2 & 4
& Sch. 5]

AMENDMENTS TO THE COMPANIES ORDINANCE
RELATING TO GROUP ACCOUNTS

1. **Section added**

The Companies Ordinance (Cap. 32) is amended by adding -

**"2B. Construction of references to
parent company, etc.**

(1) A reference in this Ordinance to parent company, parent undertaking or subsidiary undertaking shall be construed in accordance with the Twenty-third Schedule.

(2) A reference in a provision specified under subsection

(3) for the purposes of this subsection -

(a) to a holding company shall be deemed to include a parent company;

(b) to a subsidiary shall be deemed to include a subsidiary undertaking; and

(c) to shares or an undertaking shall be construed in accordance with the Twenty-third Schedule.

(3) The provisions specified for the purposes of subsection (2) are sections 123, 124, 125, 126, 127, 128, 129A, 129D, 133, 140, 141, 161, 163B and 163D and the Second Schedule, the Third Schedule, the Fourth Schedule and the Tenth Schedule.

(4) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend subsection (3)."

2. **General provisions as to contents and form of accounts**

Section 123(4) is repealed and the following substituted -

"(4) Without affecting the generality of subsections (2) and (3), where compliance with the requirements of the Tenth Schedule and other requirements of this Ordinance as to the matters to be included in a company's balance sheet and profit and loss account or in a statement annexed to the account would not be sufficient to give a true and fair view of the state of affairs or the profit or loss of the company, additional information as may be necessary to give a true and fair view thereof shall be given in the account or statement, as the case may require.

(4A) Where compliance with any of the provisions referred to in subsections (2), (3) and (4) is inconsistent with the requirement to give a true and fair view of the state of affairs or the profit or loss of a company, the directors of the company shall depart from those provisions to the extent as may be necessary for the purposes of subsection (1) with the reasons for and particulars and effects of such departure to be given in the company's balance sheet and profit and loss account or in a statement annexed thereto."

3. **Obligation to lay group accounts before holding company**

Section 124 is amended by adding -

"(2A) Without prejudice to subsection (2) but subject to subsection (2B), a subsidiary may be excluded from the group accounts if -

- (a) severe long-term restrictions substantially hinder the exercise of the rights of the holding company over the assets or management of the subsidiary; or
- (b) the interest of the holding company is held exclusively with a view to subsequent resale and the subsidiary has not been previously included in the group accounts prepared by the holding company.

(2B) The references in subsection (2A) to the rights of the holding company and the interest of the holding company are references to, respectively, the rights and interest held by or attributed to the company for the purposes of section 2 of the Twenty-third Schedule in the absence of which the company would not be a parent company."

4. **Contents of group accounts**

Section 126 is amended -

- (a) in subsection (3), by repealing everything after "information" and substituting a full stop;
- (b) by adding -

"(4) Without affecting the generality of subsection (3), where compliance with the requirements of the Tenth Schedule and other requirements of this Ordinance as to the matters to be included in a company's group accounts or in a statement annexed to the group accounts would not be sufficient to give a true and fair view of the state of affairs or the profit or loss of the holding company and its subsidiaries, additional information as may be necessary to give a true and fair view thereof shall be given in the group accounts or statement, as the case may require.

(5) Where compliance with any of the provisions referred to in subsections (3) and (4) is inconsistent with the requirement to give a true and fair view of the state of affairs or the profit or loss of a holding company and its subsidiaries, the directors of the company shall depart from those provisions to the extent as may be necessary for the purposes of subsection (1) with the reasons for and particulars and effects of such departure to be given in a statement annexed to the company's group accounts."

5. Financial year of holding company and subsidiary

Section 127(2) is amended by adding "which is a company for the purposes of this Ordinance" after "a holding company's subsidiary".

6. Statement in holding company's accounts of identities and places of incorporation or establishment of subsidiaries, and particulars of share-holdings therein

Section 128 is amended -

(a) in subsection (1)(b), by adding "or established" after "incorporated";

(b) by repealing subsection (2)(a) and substituting -

"(a) shares of an undertaking which is a body corporate shall be treated as being held, or as not being held, by another undertaking if they would, by virtue of section 2(4), (5), (6) and (7), be treated as being held or, as the case may be, as not being held by that other undertaking for the purpose of determining whether the first-mentioned undertaking is its subsidiary; and";

(c) by repealing subsection (3) and substituting -

"(3) Subsection (1) shall not require the disclosure of information with respect to an undertaking -

(a) which is the subsidiary of another undertaking;

- (b) established under the laws of a place outside Hong Kong or carries on business outside Hong Kong;
- (c) if the disclosure would, in the opinion of the directors of that other undertaking, be harmful to the business of that other undertaking or of any of its subsidiaries; and
- (d) the Financial Secretary agrees that the information need not be disclosed."

7. **Section substituted**

Section 129A is repealed and the following substituted -

"129A. Statement in subsidiary company's accounts of name and place of incorporation or establishment of its ultimate parent undertaking

(1) Subject to subsection (2), where, at the end of its financial year, a company is the subsidiary of another undertaking, there shall be stated in, or in a note on, or statement annexed to, the company's accounts laid before it in general meeting the name of the undertaking regarded by the directors as being the company's ultimate parent undertaking and, if known to them, the country in which it is incorporated or established.

(2) Subsection (1) shall not require the disclosure by a company which carries on business outside Hong Kong of information with respect to the undertaking regarded by the directors as being its ultimate parent undertaking if the disclosure would, in their opinion, be harmful to the business of that parent undertaking or of the first-mentioned company or any other of that parent undertaking's subsidiaries and the Financial Secretary agrees that the information need not be disclosed."

8. Directors' report to be attached to balance sheet

Section 129D is amended -

(a) in subsection (3)(h), by repealing ", if" and substituting ", the company";

(b) in subsection (6) -

(i) by repealing "body corporate" and substituting "undertaking";

(ii) by repealing "body" and substituting "undertaking".

9. Disqualifications for appointment as auditor

Section 140(2)(d) is repealed and the following substituted -

"(d) a person who is, by virtue of paragraph (a) or (b), disqualified for appointment as auditor of any other undertaking which is -

(i) the subsidiary of the company;
(ii) the parent undertaking of the company; or
(iii) a subsidiary of the company's parent undertaking,
or would be so disqualified if the undertaking were a
company,".

10. Particulars in accounts of directors' emoluments, pensions, etc.

Section 161(9)(a) is amended by repealing "body corporate" where it twice appears and substituting "undertaking".

11. Duty of director or past director to disclose payment for loss of office, etc., made in connexion with transfer of shares in company

Section 163B(1)(b) is repealed and the following substituted -
"(b) an offer made by or on behalf of some other undertaking with a view to the company becoming its subsidiary or a subsidiary of its parent undertaking;".

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

Section 360(5) is amended by adding "or Twenty-third" after "Sixteenth".

13. Form of Statement in lieu of Prospectus to be delivered to Registrar by a Private Company on becoming a Public Company and Reports to be set out therein

The Second Schedule is amended -

- (a) by repealing "[s. 30]" and substituting "[ss. 2B & 30]";
- (b) in Part II, in paragraph 2 -
 - (i) in sub-paragraph (1), by repealing "shares in a body corporate" and substituting "shares in an undertaking";
 - (ii) by repealing "body corporate" wherever it appears and substituting "undertaking";
 - (iii) in sub-paragraph (3), by repealing "body corporate's" wherever it appears and substituting "undertaking's";
- (c) in Part III -
 - (i) in paragraph 4 -
 - (A) by repealing "a body corporate" and substituting "an undertaking";
 - (B) by repealing "body corporate" and substituting "undertaking";
 - (ii) in paragraph 6, by repealing "holding company or of a subsidiary of the company's holding company" and substituting "parent undertaking or of a subsidiary of the company's parent undertaking".

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

The Third Schedule is amended -

- (a) by repealing “[ss. 38 & 342]” and substituting “[ss. 2B, 38, 38D, 342, 342C & 360 & 20th & 21st Schs.]”;
- (b) in Part II, in paragraph 33, by repealing “body corporate” wherever it appears and substituting “undertaking”;
- (c) in Part III -
 - (i) in paragraph 43, by repealing “holding company or of a subsidiary of the company’s holding company” and substituting “parent undertaking or of a subsidiary of the company’s parent undertaking”;
 - (ii) in paragraph 46 -
 - (A) in sub-sub-paragraph (b), by repealing “holding company or of a subsidiary of the company’s holding company” and substituting “parent undertaking or of a subsidiary of the company’s parent undertaking”;
 - (B) in sub-sub-paragraph (c)(i), by repealing “holding company or a subsidiary of the company’s holding company” and substituting “parent undertaking or of a subsidiary of the company’s parent undertaking”.

15. **Form of Statement in lieu of Prospectus to be delivered to Registrar by a Company which does not issue a Prospectus or which does not go to Allotment on a Prospectus Issued, and Reports to be set out therein**

The Fourth Schedule is amended -

- (a) by repealing "[s. 43]" and substituting "[ss. 2B & 43]";
- (b) in Part II, in paragraph 2 -
 - (i) in sub-paragraph (1) by repealing "a body corporate" and substituting "an undertaking";
 - (ii) by repealing "body corporate" wherever it appears and substituting "undertaking";
 - (iii) in sub-paragraph (3), by repealing "body corporate's" wherever it appears and substituting "undertaking's";
- (c) in Part III -
 - (i) in paragraph 4 -
 - (A) by repealing "a body corporate" and substituting "an undertaking";
 - (B) by repealing "body corporate" and substituting "undertaking";
 - (ii) in paragraph 6, by repealing "holding company or of a subsidiary of the company's holding company" and substituting "parent undertaking or of a subsidiary of the company's parent undertaking".

16. **Accounts**

The Tenth Schedule is amended -

- (a) in the square brackets, by adding "2B," before "48B";
- (b) in Part II -
 - (i) in paragraph 18(1) and (5), by repealing "body corporate" wherever it appears and substituting "undertaking";
 - (ii) in paragraph 19 -
 - (A) by repealing "body corporate" wherever it appears and substituting "undertaking";
 - (B) by repealing "bodies corporate" where it twice appears and substituting "undertakings".

17. **Twenty-third Schedule added**

The following is added -

"TWENTY-THIRD SCHEDULE [ss. 2B, 124
& 360]

PARENT AND SUBSIDIARY UNDERTAKINGS

1. **Interpretation**

(1) For the purposes of the provisions specified under section 2B(3) of this Ordinance and this Schedule -

"parent company" (母公司) means a parent undertaking which is a company;

"parent undertaking" (母企業) shall be construed in accordance with section 2B;

"shares" (股、股份) shall be construed, for the purposes of the provisions specified under section 2B(3) of this Ordinance, as a reference to -

- (a) in relation to an undertaking with a share capital, the allotted shares;
- (b) in relation to an undertaking with capital in the form other than share capital, the rights to share in the capital of the undertaking; and
- (c) in relation to an undertaking without any capital, the interest -
 - (i) conferring any right to share in the profits or liability to contribute to the losses of the undertaking; or
 - (ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding-up;

"undertaking" (企業), in relation to the provisions specified under section 2B(3) of this Ordinance, includes -

- (a) a body corporate or corporation;
- (b) a partnership;
- (c) an unincorporated body carrying on a trade or business, whether for profit or not.

(2) In construing any references to an undertaking which is not a company for the purposes of this Ordinance, other expressions appropriate to companies shall be construed, in relation to an undertaking, as references to the corresponding persons, officers, documents or organs, as the case may be, appropriate to undertakings of that description.

2. Parent undertaking and subsidiary undertaking

(1) An undertaking is a parent undertaking ("parent undertaking") in relation to another undertaking ("subsidiary undertaking") if -

(a) the subsidiary undertaking is a body corporate and is a subsidiary of the parent undertaking by virtue of section 2(4), (5), (6) and (7) of this Ordinance;

(b) the subsidiary undertaking is not a body corporate and the parent undertaking -

(i) holds a majority of the voting rights in the subsidiary undertaking;

(ii) is a member of the subsidiary undertaking and has the right to appoint or remove a majority of its board of directors; or

(iii) is a member of the subsidiary undertaking and controls alone, pursuant to an agreement with other

shareholders or members, a majority of the voting rights in the subsidiary undertaking; or

(c) the parent undertaking has the right to exercise a dominant influence over the subsidiary undertaking by virtue of -

(i) the provisions contained in the subsidiary undertaking's memorandum or articles or equivalent constitutional documents; or

(ii) a control contract.

(2) For the purposes of subsection (1)(b), an undertaking shall be treated as a member of another undertaking ("the relevant undertaking"), if -

(a) any of its subsidiary undertakings is a member of the relevant undertaking; or

(b) any shares in the relevant undertaking are held by a person acting on behalf of the first-mentioned undertaking or any of its subsidiary undertakings.

(3) A parent undertaking shall be treated as the parent undertaking of undertakings in relation to which any of its subsidiary undertakings are, or are to be treated as, parent undertakings; and references to its subsidiary undertakings shall be construed accordingly.

- (4) For the purposes of subsection (1)(c) -
- (a) an undertaking shall not be regarded as having the right to exercise a dominant influence over another undertaking unless it has a right to give directions with respect to the operating and financial policies of that other undertaking which the directors are, or a majority of the directors is, obliged to comply with whether or not they are for the benefit of that other undertaking; and
 - (b) a "control contract" (控制合約) means a contract in writing conferring a right which is -
 - (i) of a kind authorized by the memorandum or articles, or equivalent constitutional documents, of the undertaking in relation to which the right is exercisable; and
 - (ii) permitted by the law under which that undertaking is established.

3. Voting rights in an undertaking

(1) In this Schedule, the references to the voting rights in an undertaking are to the rights conferred on shareholders in respect of their shares or, in the case of an undertaking not having a share capital, on members, to vote at general meetings of the undertaking on all, or substantially all, matters.

(2) For the purposes of subsection (1), where an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, the references to holding a majority of the voting rights in the undertaking shall be construed as references to having the right under the constitution of the undertaking to direct the overall policy of the undertaking or to alter the terms of its constitution.

(3) The voting rights in an undertaking referred to in subsection (1) shall be reduced by any rights held by the undertaking itself.

4. Right to appoint or remove a majority of the directors

For the purposes of section 2(1)(b) -

(a) the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters;

(b) an undertaking shall be treated as having the right to appoint to a directorship if -

(i) a person's appointment to it follows necessarily from his appointment as a director of the undertaking; or

(ii) the directorship is held by the undertaking itself; and

- (c) a right to appoint or remove a directorship which is exercisable only with the consent or concurrence of another person shall be left out of account unless no other person has a right to appoint or, as the case may be, remove in relation to that directorship.

5. Rights exercisable only in certain circumstances

(1) Without prejudice to subsection (2), rights which are exercisable only in certain circumstances for the purposes of this Schedule shall be taken into account only -

- (a) when the circumstances have arisen, and for so long as they continue to obtain; or
- (b) when the circumstances are within the control of the person having the rights.

(2) Rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.

6. Rights held by one person on behalf of another

For the purposes of this Schedule -

- (a) rights held by a person in a fiduciary capacity shall be treated as not held by him;

- (b) rights held by a person as nominee for another shall be treated as held by the other; and
- (c) rights shall be treated as held as nominee for another if they are exercisable only on his instructions or with his consent or concurrence.

**7. Rights attached to shares
by way of security**

Where any rights referred to in this Schedule are attached to shares held by way of security, the rights shall be treated as held by the person providing the security, if -

- (a) apart from the right to exercise them for the purpose of preserving the value of the security, or of realizing it, the rights are exercisable only in accordance with his instructions; and
- (b) the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realizing it, the rights are exercisable only in his interests.

**8. Rights attributed to parent
undertaking**

(1) For the purposes of section 2, rights shall be treated as held by a parent undertaking if they are held by any of its subsidiary undertakings.

(2) Nothing in section 6 or 7 shall be construed as requiring rights held by a parent undertaking to be treated as held by any of its subsidiary undertakings.

(3) For the purposes of section 7, rights shall be treated as being exercisable in accordance with the instructions or in the interests of an undertaking if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of any group undertaking.

(4) In this section, "group undertaking" (企業集團), in relation to an undertaking ("relevant undertaking"), means an undertaking which is -

- (a) a parent undertaking or subsidiary undertaking of the relevant undertaking; or
- (b) a subsidiary undertaking of any parent undertaking of the relevant undertaking.

9. Supplementary

References in any provision of sections 6, 7 and 8 to rights held by a person include rights falling to be treated as held by him by virtue of any other provision of those sections but not rights which by virtue of any such provision are to be treated as not held by him."

18. Transitional provisions

(1) The amendments made by this Schedule and Part 2 of Schedule 5 to this Ordinance shall not apply to a company (including a company

which is an insurer within the meaning of section 2(1) of the Insurance Companies Ordinance (Cap. 41)) until the start of the company's first financial year beginning after the expiration of the 30 days immediately following the commencement of this section.

(2) For the avoidance of doubt, it is hereby declared that any provision of the principal Ordinance amended by this Schedule shall, as it is in force from time to time apart from that amendment, apply to and in relation to a company until subsection (1) applies to the company.

SCHEDULE 3 [ss. 2 & 4 & Sch. 5]

AMENDMENTS TO THE COMPANIES ORDINANCE
RELATING TO OVERSEA COMPANIES AND
INCORPORATION PROCEDURES

1. **Interpretation**

(1) Section 2(1) of the Companies Ordinance (Cap. 32) is amended by repealing the definition of "oversea company".

(2) Section 2(1) is amended by adding -

"“electronic record” (電子紀錄) has the meaning assigned to it by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

“founder member” (創辦成員) means a person who has signed his name on a memorandum in accordance with section 4(1);

“incorporation form” (法團成立表格) has the meaning assigned to it by section 14A(1);

"non-Hong Kong company" (非香港公司) has the meaning assigned to it by section 332;

"place of business" (營業地點), in relation to a non-Hong Kong company, has the meaning assigned to it by section 341(1);".

2. Mode of forming incorporated company

Section 4(1) is amended by repealing "subscribing their names to" and substituting "signing their names on".

3. Requirements with respect to memorandum

Section 5(4) is amended -

- (a) in paragraph (b), by repealing "subscriber of the memorandum" and substituting "founder member";
- (b) in paragraph (c), by repealing "subscriber" and substituting "founder member".

4. Signature of memorandum

(1) Section 6 is amended by renumbering it as section 6(1).

(2) Section 6(1) is amended by repealing "subscriber" and substituting "founder member".

(3) Section 6 is amended by adding -

"(2) The attestation requirement in subsection (1) shall not apply where the memorandum is delivered to the Registrar under section 15 in the form of an electronic record and each founder member has authenticated his signature in such manner as the Registrar may direct."

5. Articles prescribing regulations for companies

Section 9 is amended by repealing "subscribers to the memorandum" and substituting "founder members".

6. Printing and signature of articles

(1) Section 12 is amended by renumbering it as section 12(1).

(2) Section 12(1)(c) is amended by repealing "subscriber of the memorandum of association" and substituting "founder member".

(3) Section 12 is amended by adding -

"(2) The attestation requirement in subsection (1)(c) shall not apply where the articles are delivered to the Registrar under section 15 in the form of an electronic record and each founder member has authenticated his signature in such manner as the Registrar may direct."

7. Section added

The following is added immediately after section 14 -

"Application to Registrar for Formation of Incorporated Company

14A. Incorporation form

(1) A person who wishes to form an incorporated company shall apply to the Registrar in the specified form (in this Ordinance referred to as the "incorporation form"), which shall contain such particulars as are specified in the form.

(2) Without prejudice to the generality of subsection (1), the incorporation form shall contain -

- (a) the name of the company intended to be incorporated;
- (b) the intended address of the company's registered office in Hong Kong;
- (c) a statement as to whether the company is to be a company limited by shares, a company limited by guarantee or an unlimited company;
- (d) if the company is to be a company limited by shares or limited by guarantee, a statement as to whether it is to be a private company;
- (e) if the company is to be a company limited by shares or an unlimited company having a share capital, the amount of share capital with which the company proposes to be registered and the number of shares of fixed amount into which the share capital is to be divided;
- (f) if the company is to be a company limited by guarantee, the amount that each person who is to be a member is to undertake to contribute to the assets of the company in the event of its being wound up;
- (g) the name and address of each person who is to be a founder member of the company and, if the company is to be a company limited by shares or an unlimited

company having a share capital, the number of shares that each founder member is to take, on the incorporation of the company;

(h) the following particulars with respect to each person who is to be a director of the company on its incorporation -

(i) in the case of an individual, his present forename and surname and any former forename or surname, any alias, his usual residential address and the number of his identity card (if any) or, in the absence of such number, the number and issuing country of any passport held by him; and

(ii) in the case of a body corporate, its corporate name and registered or principal office;

(i) the following particulars with respect to the person who is to be the secretary of the company on its incorporation (or, where there are to be joint secretaries, with respect to each of them) -

(i) in the case of an individual, his present forename and surname and any former forename or surname, any alias, his usual residential address and the number of his identity card (if any) or,

in the absence of such number, the number and issuing country of any passport held by him; and

(ii) in the case of a body corporate, its corporate name and registered or principal office,

but where all the partners in a firm are joint secretaries, the name and principal office of the firm may be substituted for the particulars mentioned in subparagraphs (i) and (ii);

(j) the statement of compliance required by section 18(2); and

(k) statements signed by each person who is to be a director of the company on its incorporation stating that he consents to act in that capacity and has attained the age of 18 years.

(3) The incorporation form shall be signed by any 2 founder members named in the form.

(4) The terms and expressions used in subsection (2)(h) and (i) shall be construed in accordance with section 158(10)."

8. Section substituted

Section 15 is repealed and the following substituted -

"15. Delivery and registration of incorporation form, memorandum and articles

(1) A duly completed incorporation form shall be delivered to the Registrar for registration together with copies of the memorandum and articles, if any, certified to be a true copy of the original by a founder member.

(2) The Registrar shall retain and register the documents delivered under this section."

9. Effect of registration

(1) Section 16(1) is amended by repealing "the memorandum of a company" and substituting "a company's incorporation form and copies of its memorandum and articles, if any, certified under section 15,".

(2) Section 16(2) is amended by repealing "subscribers of the memorandum" and substituting "founder members".

10. Conclusiveness of certificate of incorporation

Section 18(2) is repealed and the following substituted -

"(2) A statement of compliance in the incorporation form, certifying the company's compliance with all or any of the requirements referred to in subsection (1) and signed by a founder member or a person named in the incorporation form as a director or secretary of the company, shall be produced to the Registrar and the Registrar may accept the statement as sufficient evidence of compliance."

11. **Definition of member**

Section 28(1) is amended by repealing "subscribers of the memorandum" and substituting "founder members".

12. **Approval of company required for allotment of shares by directors**

Section 57B(7) is amended -

- (a) by repealing "subscribers of a company's memorandum" and substituting "founder members of a company";
- (b) by repealing "subscribing" and substituting "signing".

13. **Subheading amended**

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

14. **Section substituted**

Section 91 is repealed and the following substituted -

"91. Application of Part III to non-Hong Kong companies

(1) This Part extends to charges on property in Hong Kong of a non-Hong Kong company registered under Part XI that are created, and to charges on property in Hong Kong that is acquired, by the non-Hong Kong company, irrespective of whether the property was in Hong Kong at the time when those charges were created, or at the time when the property was acquired, by the non-Hong Kong company.

(2) In the application of section 80 to charges on property in Hong Kong that are created by a non-Hong Kong company, where the property was not in Hong Kong at the time when those charges were so created -

(a) in subsection (1) of that section, the words "within 5 weeks after the date of its creation" shall be substituted by the words "within 5 weeks after the date when it is brought into Hong Kong"; and

(b) in subsection (9) of that section, in the definition of "the fixed date", everything after "means" shall be substituted by the words "the date of commencement of section 14 of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003).".

(3) In the application of section 82 to charges on property in Hong Kong that is acquired by a non-Hong Kong company after those charges have been created, where the property was not in Hong Kong at the time when the property was so acquired -

(a) in subsection (1) of that section, the words "within 5 weeks after the date on which the acquisition is completed" shall be substituted by the words "within 5 weeks after the date when it is brought into Hong Kong";

(b) the proviso to subsection (1) of that section shall not apply; and

(c) in subsection (1A) of that section, everything after "referred to in that subsection" shall be substituted by the words "shall not apply in relation to any property of an existing company brought into Hong Kong before the commencement of section 14 of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003)".

(4) Notwithstanding subsection (1) and subject to subsection (5), a non-Hong Kong company shall not be obliged to register a charge on its property in Hong Kong pursuant to this Part, and the charge shall not be void against the liquidator or any creditor of the company for want of registration, if the relevant property does not remain in Hong Kong on the expiry of 5 weeks after the following dates -

- (a) where the property was in Hong Kong at the time the charge was created by the company, the date of creation of the charge;
- (b) where the property was in Hong Kong at the time it was acquired by the company subsequent to the creation of the charge, the date on which the acquisition is completed;
- (c) where the property was not in Hong Kong at the time the charge was created, or at the time the property was acquired, by the company, the date when the property was brought into Hong Kong.

(5) Subsection (4) shall not apply if the relevant property is subsequently brought into Hong Kong after the expiry of 5 weeks after the relevant dates referred to in that subsection.

(6) In the application of sections 88 and 89 to the non-Hong Kong company referred to in subsection (1) –

(a) references in those sections to the registered office of a company shall be construed as references to the principal place of business in Hong Kong of the non-Hong Kong company; and

(b) references in section 89 to charges shall be construed as references to charges of any kind mentioned in subsection (1).

(7) Where a non-Hong Kong company that is registered under Part XI after the commencement of section 14 of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003) has, on the date of such registration, any property in Hong Kong that is subject to a charge created by the company or subsisting when the property was acquired, being a charge of any such kind as would, if it had been created by the company or the property had been acquired after the company has been so registered, have been required to be registered under this Part, the non-Hong Kong company shall, within 5 weeks after it is so registered, deliver to the Registrar for registration the particulars in the specified form (including any instrument or its copy by which the charge was created or is evidenced) that are mentioned in this Part as requiring registration in respect of a charge of that kind.

(8) Notwithstanding subsection (7) and subject to subsection (9), where the relevant property subject to a charge does not remain in Hong Kong on the expiry of 5 weeks after the non-Hong Kong company is registered under Part XI, the company shall not be obliged to comply with subsection (7) and the charge shall not be void against the liquidator or any creditor of the company for want of registration.

(9) Subsection (8) shall not apply if the relevant property is subsequently brought into Hong Kong after the expiry of 5 weeks after the non-Hong Kong company is registered under Part XI.

(10) This section does not apply to a non-Hong Kong company that is registered under Part XI if -

- (a) the company sends a notice to the Registrar under section 339 of the fact that it has ceased to have a place of business in Hong Kong;
- (b) the Registrar enters in the register of non-Hong Kong companies a statement under section 339AA that the company has been dissolved; or
- (c) the name of the company is struck off from the register of non-Hong Kong companies under section 339A.

(11) If default is made in complying with subsection (7), the non-Hong Kong company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine.

(12) In this section, a ship or aircraft that is registered in a place outside Hong Kong shall not be treated as property in Hong Kong."

15. **Section substituted**

Section 92 is repealed and the following substituted -

"92. Registered office of company

(1) A company shall have a registered office in Hong Kong to which all communications and notices may be addressed.

(2) The intended address of a company's registered office stated in the incorporation form registered in respect of the company shall be the address of its registered office with effect from the date of its incorporation until a notice of change in respect of the address is sent to the Registrar under subsection (3).

(3) If the address of a company's registered office is changed, a notice of the change in the specified form shall be sent to the Registrar within 14 days after the date of the change, who shall record the same. The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this subsection.

(4) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine."

16. Publication of name of company

Section 93(4) is repealed and the following substituted -

"(4) If a company fails to comply with subsection (1)(b), (c) or (d), (2) or (2A), the company shall be liable to a fine."

17. Power of company to keep branch register

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

18. Directors

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

"(2) For the purposes of this section, any person who is named as a director in the incorporation form registered in respect of a company shall be a director of the company until a notification of change of directors in respect of him is sent to the Registrar under section 158(4)."

(2) Section 153 is amended by adding -

"(6) A person who has been deemed to be a director of a company under section 153(2) of the pre-amended Ordinance shall, until a notification of change of directors in respect of him is sent to the Registrar under section 158(4), continue to be deemed as such as if section 18(1) of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003) had not been enacted.

(7) For the purpose of subsection (6), "pre-amended Ordinance" (修訂前的本條例) means the Companies Ordinance (Cap. 32) that was in force immediately before it was amended by section

18(1) of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003).".

19. Secretary

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

"(1AA) For the purposes of this section, a person who is named as the secretary in the incorporation form registered in respect of a company shall be the secretary of the company until a notification of change of secretary in respect of him is sent to the Registrar under section 158(4).".

20. Register of directors and secretaries

(1) Section 158(4) and (5) is repealed and the following substituted -

"(4) Where there is any change in the company's directors or secretary or in any of their particulars contained in the register, the company shall, within 14 days of the change, send to the Registrar a notification in the specified form containing the date of the change and such other matters as may be required by the form.

(5) On the appointment of a person as director of a company otherwise than by virtue of section 153(2) or (6), the company shall, within 14 days of the appointment, send to the Registrar a notification in the specified form containing the director's particulars specified in the register and a statement, signed by such person, that he has accepted the appointment and that he has

attained the age of 18 years.”.

(2) Section 158(6) is repealed.

(3) Section 158 is amended by adding -

“(9A) Where a company was registered immediately before the commencement of sections 18 and 20 of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003) and has not complied with section 158(4) and (5) of the pre-amended Ordinance in respect of a return or statement, as the case may be, concerning its first directors appointed otherwise than by virtue of section 153(2) of the pre-amended Ordinance before the expiry of the period mentioned in section 158(6)(a) of the pre-amended Ordinance, sections 153 and 158 of the pre-amended Ordinance shall continue to apply to the company as if sections 18 and 20(1) and (2) of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003) had not been enacted.”.

(4) Section 158(10) is amended by adding -

“(ab) the expression “pre-amended Ordinance” (修訂前的本條例)

means the Companies Ordinance (Cap. 32) that was in force immediately before it was amended by sections 18 and 20 of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003);”.

21. Interpretation

Section 168C(1) is amended, in the definition of “company” -

(a) in paragraph (a), by repealing “or” at the end;

(b) in paragraph (b)(iii), by adding “or” at the end;

(c) by adding -

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

22. Registrar may strike defunct company off register

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

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

23. Inspection, production and evidence of documents kept by Registrar

(1) Section 305 is amended by adding before subsection (1) -

"(1A) Any document kept or maintained by the Registrar pursuant to any requirement of this Ordinance shall be made available for public inspection at all reasonable times for the purposes of enabling any member of the public to -

(a) ascertain whether he is dealing with -

(i) a specified corporation, or its directors or other officers, in matters of or connected with any act of such specified corporation;

(ii) a director or other officers of a specified corporation in matters of or connected with the administration of the specified corporation, or of its

property; or

(iii) a former director of a specified corporation against whom a disqualification order referred to in section 168D(1) has been made by the court; and

(b) ascertain the particulars of that specified corporation, its directors or other officers, or former directors (if any), for the purposes under paragraph (a).".

(2) Section 305(1) is amended by repealing "Any" and substituting "Subject to subsection (1A), any".

(3) Section 305(1)(b) is amended -

(a) in subparagraph (i), by repealing "or" at the end;

(b) by adding -

"(ia) a certificate certifying that a non-Hong Kong company is registered under Part XI;

(ib) where a non-Hong Kong company has changed its name, a fresh certificate certifying that the company is registered under Part XI with the new name; or".

24. **Meaning of unregistered companies**

Section 326(2) is repealed and the following substituted -

"(2) For the avoidance of doubt, it is declared that in subsection (1), "unregistered company" includes a non-Hong Kong company that is registered under Part XI."

25. Application of Part XI

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

26. Section substituted

Section 333 is repealed and the following substituted -

**"333. Documents, etc. to be delivered to
Registrar by companies that
establish places of business
in Hong Kong**

(1) A non-Hong Kong company that establishes a place of business in Hong Kong on or after the commencement of section 26 of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003) shall, within 1 month of the establishment of that place of business, apply to the Registrar for registration by delivering to the Registrar a specified form containing such particulars as are specified in the form.

(2) Without prejudice to the generality of subsection (1), the specified form shall contain -

- (a) the name of the company;
- (b) the place of incorporation of the company;
- (c) the date when the company established its place of business in Hong Kong;

- (d) with respect to each director and the secretary of the company (or, where there are joint secretaries, with respect to each of them) -
- (i) his date of appointment;
 - (ii) in the case of an individual, his present forename and surname and any former forename or surname, any alias, his usual residential address and the number of his identity card (if any) or, in the absence of such number, the number and issuing country of any passport held by him; and
 - (iii) in the case of a body corporate, its corporate name, registered number in Hong Kong and the address of its registered or principal office;
- (e) the name and address in Hong Kong of at least one person resident in Hong Kong who is authorized to accept on behalf of the company service of process and any notices required to be served on the company, together with the date when each such person was so authorized, and the number of his identity card (if any) or, in the absence of such number, the number and issuing country of any passport held by him; and

(f) the address of the principal place of business of the company in Hong Kong and the respective addresses of the principal place of business (if any) and the registered office (or its equivalent) of the company in the place of its incorporation.

(3) The following documents shall be delivered to the Registrar together with the specified form under subsection (1) -

(a) a certified copy of the charter, statutes or memorandum (including articles, if any) of the company or other instrument defining the constitution of the company or, if the instrument is in a language other than English or Chinese, a certified translation of the instrument in English or Chinese;

(b) a certified copy of the company's certificate of incorporation, together with a certified translation of the certificate in English or Chinese if the certificate is in a language other than English or Chinese;

(c) where the law of the place of incorporation of the company requires the company to publish its accounts or to deliver copies of its accounts to any person in whose office they may be inspected as of right by members of the public, a certified copy of the latest published accounts of the company that comply with that law;

- (d) where the law of the place of incorporation of the company does not impose the requirement referred to in paragraph (c), but the laws of any other jurisdictions where the company is registered as a company, or the rules of any stock exchange or similar regulatory bodies in those jurisdictions impose that requirement, a certified copy of any of the latest published accounts of the company that comply with any of those laws or rules as may be chosen by the company; and
- (e) where neither the law of the place of incorporation of the company, the laws of any other jurisdictions where the company is registered as a company, nor the rules of the stock exchange or similar regulatory bodies in any of those jurisdictions impose the requirement referred to in paragraph (c), a statement in the specified form stating that fact.

(4) For the purpose of subsection (2)(d), where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be substituted for the particulars mentioned in that subsection (2)(d).

(5) For the purpose of subsection (2)(e), a body corporate or a firm shall not be authorized to accept on behalf of the company service of process and any notices required to be served on the company unless -

- (a) it is a solicitor corporation;
- (b) it is a corporate practice within the meaning of section 2 of the Professional Accountants Ordinance (Cap. 50); or
- (c) it is a firm of solicitors or professional accountants,

and where any of the above is so authorized, its name and business address in Hong Kong shall be delivered to the Registrar for registration.

(6) For the purpose of subsection (3)(b), if it is shown to the satisfaction of the Registrar that it is not the practice under the law of the place where the company claims to be incorporated to issue a certificate of incorporation, the company shall deliver to the Registrar such other evidence of incorporation as the Registrar deems sufficient.

(7) For the purposes of subsection (3)(c) and (d), if the accounts required to be provided are in a language other than English or Chinese, the company shall deliver to the Registrar a certified translation of the accounts in English or Chinese in lieu of the certified copy of the accounts in the original language.

- (8) For the purposes of subsection (3)(c) and (d), if -
 - (a) the non-Hong Kong company has been incorporated for less than 18 months prior to the date of delivery of the specified form required under subsection (1); and

- (b) the accounts that it is required to publish have not been made up,

a statement in the specified form containing that fact shall be delivered to the Registrar for registration in lieu of the certified copy of the latest published accounts of the company.

(9) This section shall apply to a non-Hong Kong company that -

- (a) at the commencement of section 26 of Schedule 3 to the Companies (Amendment) Ordinance 2003

(of 2003), has a place of business in Hong Kong established within 1 month before such commencement; and

- (b) had not complied with the provisions of section 333 of the pre-amended Ordinance,

as it applies to a non-Hong Kong company referred to in subsection (1) with the substitution for "1 month of the establishment of that place of business" in that subsection of "1 month after the commencement of section 26 of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003)".

(10) A non-Hong Kong company that had, before the commencement of section 26 of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003), complied with the provisions of section 333 of the pre-amended Ordinance shall be deemed to be a non-Hong Kong company complying with section 333 as enacted by section 26 of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003).".

27. **Section added**

The following is added before section 333A -

"333AA. Registrar to keep register of non-Hong Kong companies

(1) The Registrar shall keep a register of non-Hong Kong companies that have complied with section 333.

(2) Upon receipt of the documents required to be delivered by a non-Hong Kong company under section 333, the Registrar shall -

- (a) retain and register the documents;
- (b) enter the name of the company in the register; and
- (c) issue a certificate, with the Registrar's signature or printed signature, to the company certifying that it is a company registered under this Part.

(3) The register kept by the Registrar under section 333(3) of the pre-amended Ordinance shall be deemed to be the register kept under this section."

28. **Section substituted**

Section 333A is repealed and the following substituted -

"333A. Continuing obligation in respect of authorized representative

Any non-Hong Kong company registered under this Part shall at all times, until the expiration of a period of 1 year from the date on which it ceases to have a place of business in Hong Kong, keep registered under section 333 the name, address and, in the case of an individual, number of the identity card (if any) or,

in the absence of such number, the number and issuing country of any passport, of its authorized representative.".

29. **Section substituted**

Section 333B is repealed and the following substituted -

"333B. Termination of registration of authorized representative

(1) Where the name of a person is registered under section 333 as a person authorized to accept service of process and notices on behalf of a non-Hong Kong company -

(a) that person may terminate the authorization by sending a notice in writing stating the date of termination of the authorization to the company's registered office (or its equivalent) in its place of incorporation; and

(b) the company may terminate the authorization by sending a notice in writing stating the date of termination of the authorization to that person's address as registered under section 333.

(2) Within 14 days after the date of the notice of termination referred to in subsection (1), the person or company, as the case may be, shall send a notice to the Registrar in the specified form informing him of the date of termination of the authorization together with a copy of the notice of termination, or a certified translation of the notice of termination in English or Chinese if it is in a language other than English or Chinese.

(3) The specified form referred to in subsection (2) shall contain a statement made by the person or company, as the case may be, stating that the company or person, as the case may be, has been notified of the termination of authorization in accordance with subsection (1).

(4) The person named in the notice sent under subsection (1) shall cease to be a person authorized to accept service of process and notices on behalf of the company on the later of -

(a) the date of termination of the authorization stated in the notice; and

(b) the expiration of 21 days from the date of compliance with subsection (2)."

30. Registrar to keep an index of directors of non-Hong Kong companies

(1) Section 333C(1)(a) is repealed and the following substituted -

"(a) The Registrar shall keep and maintain an index of every person who is a director of a non-Hong Kong company registered under this Part."

(2) Section 333C is amended by adding -

"(3) The index of directors kept and maintained by the Registrar under section 333C of the pre-amended Ordinance shall be deemed to be the index under this section."

31. **Section added**

The following is added -

**"334. Annual return to be made by
non-Hong Kong company**

(1) Every non-Hong Kong company registered under this Part shall, within 42 days after each anniversary of the date of registration of the company under this Part, deliver a return to the Registrar for registration.

(2) The return in subsection (1) shall be in the specified form, which shall contain, with respect to the company, such particulars as are specified in the form.

(3) Without prejudice to the generality of subsection (2), the return in subsection (1) shall state -

- (a) the date of the return, which shall be the date of the most recent anniversary of the date of registration of the company under this Part;
- (b) the place of incorporation of the company;
- (c) the name of the company and its registered number in Hong Kong;
- (d) the date of registration of the company under this Part;
- (e) the address of the principal place of business of the company in Hong Kong;
- (f) the respective addresses of the principal place of business (if any) and the registered office (or its equivalent) of the company in the place of its incorporation;

- (g) all such particulars with respect to each person who, at the date of the return, is a director, the secretary (or, where there are joint secretaries, with respect to each of them) or an authorized representative of the company as are required by this Ordinance to be delivered to the Registrar for registration;
- (h) in the case of a company to which section 336 applies, a statement indicating that the latest published accounts of the company are delivered to the Registrar under that section together with the return;
- (i) in the case of a company to which section 336 does not apply, a statement of that fact;
- (j) where the company has been incorporated for less than 18 months prior to the date of delivery of the return under subsection (1) and the accounts of the company that are required to be published have not been made up, a statement in the specified form stating that fact;
- (k) in the case of a company having a share capital, particulars relating to the authorized share capital and issued share capital, or their equivalents, of the company; and

(1) particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges that are required to be registered with the Registrar under this Ordinance.

(4) For the purpose of subsection (3)(g), where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be substituted for the particulars mentioned in that subsection (3)(g).

(5) If there has been no alteration in the particulars required by subsections (2) and (3)(b), (e), (f), (g), (k) and (l) since the date of the last return, the company may, in lieu of the return required to be delivered under subsection (1), make a return (the "second-mentioned return") by certificate in the specified form stating -

- (a) the date at which the last return under subsection (1) was made up; and
- (b) that, as at the date of the second-mentioned return, there has been no alteration in those particulars since the date referred to in paragraph (a).

(6) Where a non-Hong Kong company registered under this Part has, within 3 months immediately before the commencement of section 31 of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003), delivered to the Registrar for registration a return under section 336(1) of the pre-amended Ordinance, the company shall not be obliged to deliver a return that it shall

otherwise be required to deliver under subsection (1) in the year of that commencement.".

32. Section substituted

Section 335 is repealed and the following substituted -

**"335. Return to be delivered to Registrar
where documents, etc. altered**

(1) Where, in the case of a non-Hong Kong company registered under this Part, any alteration is made in -

- (a) the charter, statutes or memorandum (including articles, if any) of the company or other instrument defining the constitution of the company;
- (b) the directors, secretary (or, where there are joint secretaries, each of them) or authorized representative of the company;
- (c) the particulars of the directors, secretary (or, where there are joint secretaries, each of them) or authorized representative of the company delivered to the Registrar under this Part; or
- (d) the address of the principal place of business of the company in Hong Kong or of its registered office (or its equivalent), or of its principal place of business, in the place of its incorporation,

the company shall, within 21 days after the date of the alteration, deliver to the Registrar for registration a return in the specified form containing the particulars of the alteration.

(2) If a non-Hong Kong company changes its corporate name, it shall, within 21 days after the date of the change, deliver to the Registrar for registration -

- (a) a return in the specified form containing the particulars of the change of name; and
- (b) a certified copy of the instrument effecting the change of name, together with a certified translation of the instrument in English or Chinese if that instrument is in a language other than English or Chinese.

(3) Upon receipt of the documents delivered under subsection (2), the Registrar shall register the return and issue to the company a fresh certificate of registration containing the corporate name so changed."

33. Section substituted

Section 336 is repealed and the following substituted -

"336. Accounts of non-Hong Kong companies

(1) Where the law of the place of incorporation of a non-Hong Kong company registered under this Part requires the company to publish its accounts or to deliver copies of its accounts to any person in whose office they may be inspected as of right by members of the public, the company shall, within 42 days after each

anniversary of the date of registration of the company under this Part, deliver to the Registrar for registration together with the return under section 334 a certified copy of the latest published accounts of the company that comply with that law.

(2) For the purpose of subsection (1), where the law of the place of incorporation of the company does not impose the requirement referred to in that subsection, but the laws of any other jurisdictions where the company is registered as a company, or the rules of any stock exchange or similar regulatory bodies in those jurisdictions impose that requirement, the company shall deliver to the Registrar for registration together with the return under section 334 a certified copy of any of the latest published accounts of the company that comply with any of those laws or rules as may be chosen by the company.

(3) If the accounts required to be provided under this section are in a language other than English or Chinese, the company shall deliver to the Registrar a certified translation of the accounts in English or Chinese in lieu of the certified copy of the accounts in the original language.

(4) Where a non-Hong Kong company registered under this Part has, within 3 months immediately before the commencement of section 33 of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003), complied with section 336 of the pre-amended Ordinance in delivering to the Registrar for registration copies of the documents mentioned in section 336(1)(a) and (b) or (4) of the pre-amended Ordinance relating to a financial year of the

company, the company shall not be obliged to deliver its latest published accounts that it shall otherwise be required to deliver under subsection (1) after that commencement if those latest published accounts relate to the same financial year."

34. Obligation to state name of non-Hong Kong company, whether limited and place where incorporated

(1) Section 337 is amended by renumbering it as section 337(1).

(2) Section 337(1) is amended by repealing "oversea" and substituting "non-Hong Kong".

(3) Section 337(1)(a) is amended by repealing "country" and substituting "place".

(4) Section 337(1)(b) is amended by repealing "country" and substituting "place".

(5) Section 337(1)(c) is amended -

(a) by repealing "of the country" and substituting "of the place";

(b) by repealing "in that country".

(6) Section 337(1)(ca) is amended by repealing "in the country in which it is incorporated".

(7) Section 337(1)(d) is amended by repealing "in the country in which it is incorporated".

(8) Section 337 is amended by adding -

"(2) Where a non-Hong Kong company is in liquidation before the commencement of section 34(5), (6) and (7) of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003), section

337(c), (ca) and (d) of the pre-amended Ordinance shall apply to the company as if that section 34(5), (6) and (7) had not been enacted."

35. Section substituted

Section 337A is repealed and the following substituted -

**"337A. Notice of commencement of liquidation
and of appointment of liquidator**

(1) A non-Hong Kong company registered under this Part shall, within 14 days after the date of commencement of any proceedings for the liquidation of the company, deliver to the Registrar for registration a notice in the specified form containing the following particulars -

- (a) the commencement date of the proceedings;
- (b) the country where the proceedings are commenced;
- (c) the mode of liquidation;
- (d) if a liquidator has been appointed -
 - (i) whether he is a liquidator or provisional liquidator;
 - (ii) whether he is a sole liquidator, or one of the joint, or joint and several, liquidators;
 - (iii) the date of his appointment;
 - (iv) his present forename and surname, address and the number of his identity card (if any) or, in the absence of such number, the number and issuing country

of any passport held by him.

(2) If -

- (a) any change occurs in the particulars given in the notice;
- (b) a liquidator is appointed after the notice is delivered to the Registrar for registration; or
- (c) the liquidator whose name is given in the notice has ceased to hold office as such,

the company shall, within 14 days after the date of the change of particulars, or of the appointment of the liquidator, or of his cessation to hold office as such, as the case may be, deliver to the Registrar for registration a notice in the specified form, containing the particulars of the change, the particulars under subsection (1)(d) of the liquidator who is appointed, or the date of his cessation to hold office as such, as the case may be.

(3) For the purpose of subsection (1)(c), "mode of liquidation" (清盤方式) means voluntary or compulsory liquidation, or such other modes of liquidation, commenced in Hong Kong or elsewhere, as may be specified in the notice."

**36. Regulation of use of corporate names
by non-Hong Kong companies in Hong
Kong**

(1) Section 337B is amended by repealing "an oversea" in the following provisions and substituting "a non-Hong Kong" -

- (a) subsection (1);
- (b) subsection (2);

(c) subsection (4);

(d) subsection (5).

(2) Section 337B is amended by repealing "the oversea" in the following provisions and substituting "the non-Hong Kong" -

(a) subsection (1);

(b) subsection (2A);

(c) subsection (7).

(3) Section 337B(3) is repealed and the following substituted -

"(3) A non-Hong Kong company on which a notice is served under subsection (1) may -

(a) deliver to the Registrar for registration a statement in the specified form specifying a name approved by the Registrar other than its corporate name under which it proposes to carry on business in Hong Kong; and

(b) after that name has been so registered, at any time deliver to the Registrar for registration a statement in the specified form specifying a name approved by the Registrar other than its corporate name in substitution for the name previously registered."

(4) Section 337B(4) is amended -

(a) by repealing "section 333" and substituting "section 333AA";

(b) by repealing "under that section".

(5) Section 337B(6) is amended -

(a) by repealing "An oversea" and substituting "A non-Hong Kong";

(b) by repealing "subsection (1)(b)" and substituting "subsection (1)".

(6) Section 337B is amended by adding -

"(6A) The Registrar may, at any time before or after the end of the period mentioned in subsection (5), withdraw a notice served under subsection (1).

(6B) If a notice served under subsection (1) is withdrawn, subsection (5) ceases to apply to the company on which the notice was served."

37. Service of documents on non-Hong Kong companies

(1) Section 338(1) is repealed and the following substituted -

"(1) Subject to subsection (2), any process or notice required to be served on a non-Hong Kong company shall be sufficiently served if -

(a) it is addressed to a person whose name has been delivered to the Registrar under this Part as the authorized representative of the company; and

(b) it is left at his last known address or sent to him by post."

(2) Section 338(2) is amended by repealing "oversea" and substituting "non-Hong Kong".

(3) Section 338(2)(b)(i) is amended by repealing "333(1)(c)" and substituting "333(2)(f)".

(4) Section 338(2)(b)(ii) is amended by repealing "3 years" and substituting "12 months".

38. Section substituted

Section 339 is repealed and the following substituted -

**"339. Notices to be sent when non-Hong
Kong companies cease to have places
of business in Hong Kong**

(1) If a non-Hong Kong company that is registered under this Part ceases to have a place of business in Hong Kong, it shall, within 7 days after ceasing to have the place of business, send to the Registrar a notice of that fact in the specified form.

(2) Upon receipt of the notice in subsection (1), the Registrar shall -

(a) retain and register the notice; and

(b) enter in the register of non-Hong Kong companies a statement that the relevant non-Hong Kong company has ceased to have a place of business in Hong Kong."

39. Section added

The following is added before section 339A -

**"339AA. Notices, etc. to be sent when non-Hong
Kong companies are dissolved**

(1) If a non-Hong Kong company that is registered under this Part is dissolved, an agent of the company shall, within 14 days

after the date of dissolution, send to the Registrar -

- (a) a notice of that fact in the specified form; and
- (b) a certified copy of an instrument effecting the dissolution, or a certified translation of the instrument in English or Chinese if the instrument is in a language other than English or Chinese.

(2) Upon receipt of the documents in subsection (1), the Registrar shall -

- (a) retain and register the documents; and
- (b) enter in the register of non-Hong Kong companies a statement that the relevant non-Hong Kong company has been dissolved.".

40. Removal, etc. of names of non-Hong Kong companies from register

(1) Section 339A(1) is repealed.

(2) Section 339A(2) is amended by repealing "an oversea" and substituting "a non-Hong Kong".

41. Penalties

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

42. Section substituted

Section 341 is repealed and the following substituted -

"341. Interpretation of Part XI

(1) For the purposes of this Part -

"authorized representative" (獲授權代表) means a person who is authorized to accept on behalf of the company service of process and any notices required to be served on the company and whose name is registered as such under section 333;

"certified" (核證) means certified in the manner prescribed in the Companies (Forms) Regulations (Cap. 32 sub. leg. B) to be a true copy or a correct translation, as may be appropriate;

"director" (董事) in relation to a company includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

"place of business" (營業地點) does not include an office specified in the Twenty-fourth Schedule;

"pre-amended Ordinance" (修訂前的本條例) -

(a) for the purposes of section 333(9) and (10), as enacted by section 26 of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003), means the Companies Ordinance (Cap. 32) that was in force immediately before it was amended by section 26 of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003);

(b) for the purpose of section 333AA(3), as enacted by section 27 of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003), means the Companies Ordinance (Cap. 32) that was in force

immediately before it was amended by section 27 of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003);

(c) for the purpose of section 333C(3), as enacted by section 30(2) of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003), means the Companies Ordinance (Cap. 32) that was in force immediately before it was amended by section 30(2) of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003);

(d) for the purposes of sections 334(6) and 336(4), as enacted by sections 31 and 33 respectively of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003), means the Companies Ordinance (Cap. 32) that was in force immediately before it was amended by sections 31 and 33 of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003);

(e) for the purpose of section 337(2), as enacted by section 34(8) of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003), means the Companies Ordinance (Cap. 32) that was in force immediately before it was amended by section 34(5), (6) and (7) of Schedule 3 to the Companies (Amendment) Ordinance 2003 (of 2003);

"secretary" (秘書) includes any person occupying the position of secretary by whatever name called.

(2) In this Part -

- (a) references to solicitors are references to persons who are solicitors qualified to act as such under the Legal Practitioners Ordinance (Cap. 159);
- (b) references to professional accountants are references to persons who are registered as professional accountants and hold practising certificates under the Professional Accountants Ordinance (Cap. 50);
- (c) the expressions "forename" (名字), "identity card" (身分證), "residential address" (住址) and "surname" (姓氏) have the meanings respectively assigned to them by section 158(10);
- (d) references to a former forename or surname shall be construed in accordance with section 158(10)(f)."

43. Subheading repealed

The subheading immediately before section 345 is repealed.

44. Prohibition of partnerships with more than 20 members

Section 345 is repealed.

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

Section 360 is amended by adding -

"(10) The Financial Secretary may, by order published in the Gazette, amend the Twenty-fourth Schedule."

46. **Power of the Chief Executive in Council to order company engaging in undesirable activities to be struck off**

Section 360C(3) is amended by repealing "subscribed" and substituting "signed".

47. **First Schedule amended**

(1) The First Schedule is amended, in Table A, in Part I, in regulation 77, by repealing "subscribers of the memorandum of association" and substituting "founder members".

(2) The First Schedule is amended, in Table B -

(a) in the declaration, by repealing "subscribed, are desirous of being formed into" and substituting "given below, wish to form";

(b) by repealing "*Subscribers*" and substituting "*Signatories*";

(c) by repealing "*Subscriber*" and substituting "*Signatory*".

(3) The First Schedule is amended, in Table C, in the Form of Memorandum and Articles of Association of a Company Limited by Guarantee, and not having a Share Capital, in the Memorandum of Association -

- (a) in the declaration, by repealing "subscribed, are desirous of being formed into" and substituting "given below, wish to form";
- (b) by repealing "*Subscribers*" and substituting "*Signatories*".

(4) The First Schedule is amended, in Table C, in the Form of Memorandum and Articles of Association of a Company Limited by Guarantee, and not having a Share Capital, in the Articles of Association to Accompany preceding Memorandum of Association -

- (a) in articles 3 and 30, by repealing "subscribers to the memorandum of association" and substituting "founder members";
- (b) by repealing "*Subscribers*" and substituting "*Signatories*".

(5) The First Schedule is amended, in Table D, in the Memorandum and Articles of Association of a Company Limited by Guarantee and having a Share Capital, in the Memorandum of Association -

- (a) in the declaration, by repealing "subscribed, are desirous of being formed into" and substituting "given below, wish to form";
- (b) by repealing "*Subscribers*" and substituting "*Signatories*";
- (c) by repealing "*Subscriber*" and substituting "*Signatory*".

(6) The First Schedule is amended, in Table D, in the Memorandum and Articles of Association of a Company Limited by Guarantee and having a Share Capital, in the Articles of Association to Accompany preceding Memorandum of Association, by repealing "*Subscribers*" and substituting "*Signatories*".

(7) The First Schedule is amended, in Table E, in the Memorandum and Articles of Association of an Unlimited Company having a Share Capital, in the Memorandum of Association -

(a) in the declaration, by repealing "subscribed, are desirous of being formed into" and substituting "given below, wish to form";

(b) by repealing "*Subscribers*" and substituting "*Signatories*";

(c) by repealing "*Subscriber*" and substituting "*Signatory*".

(8) The First Schedule is amended, in Table E, in the Memorandum and Articles of Association of an Unlimited Company having a Share Capital, in the Articles of Association to Accompany the preceding Memorandum of Association, by repealing "*Subscribers*" and substituting "*Signatories*".

48. Table of Fees to be paid to the Registrar of Companies

(1) The Eighth Schedule is amended, in Part I, in paragraph (aa), by repealing "memorandum and articles" and substituting "incorporation form".

- (2) The Eighth Schedule is amended, in Part III -
- (a) in paragraph (a), by repealing "333(3)" and substituting "333AA(2)(c) or 335(3)";
 - (b) in paragraph (b), by repealing "336(1)" and substituting "334(1)".

49. Punishment of offences under this Ordinance

The Twelfth Schedule is amended -

- (a) in the entry relating to section 91(4) -
 - (i) in the first column, by repealing "91(4)" and substituting "91(11)";
 - (ii) in the second column, by repealing "Company incorporated outside Hong Kong" and substituting "Non-Hong Kong company";
- (b) in the entry relating to section 92(3), in the first column, by repealing "92(3)" and substituting "92(4)";
- (c) in the entry relating to section 337B(7), in the second column, by repealing "Overseas" and substituting "Non-Hong Kong";
- (d) in the entry relating to section 340, in the second column, by repealing "Overseas" and substituting "Non-Hong Kong";
- (e) in the entry relating to section 342F(1), in the second column, by repealing "an overseas" and substituting "a non-Hong Kong".

50. **Twenty-fourth Schedule added**

The following is added -

"TWENTY-FOURTH SCHEDULE

[ss. 341
& 360]

OFFICES NOT INCLUDED IN DEFINITION OF
"PLACE OF BUSINESS" UNDER PART XI OF
THIS ORDINANCE

1. A local representative office established or maintained with the approval of the Monetary Authority under section 46 of the Banking Ordinance (Cap. 155) by a bank as defined in section 46(9) of that Ordinance."

SCHEDULE 4

[ss. 2 & 4]

AMENDMENTS TO THE COMPANIES ORDINANCE
RELATING TO SHAREHOLDERS' REMEDIES

1. **Interpretation**

(1) Section 2(1) of the Companies Ordinance (Cap. 32) is amended by adding -

" "specified corporation" (指明法團) means a company or a non-Hong Kong company;".

(2) Section 2 is amended by adding -

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

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

Section 147(2)(b) is amended -

- (a) by adding "where the body is a specified corporation," before "that";
- (b) by repealing "body corporate" and substituting "specified corporation".

3. **Sections added**

The following is added immediately after section 152F -

**"Inspection of Specified Corporations'
Records by Members**

152FA. Order for inspection

(1) Subject to sections 152FD and 152FE, on application by a member (in this section referred to as "applicant") of a specified corporation, the court may make an order -

- (a) authorizing the applicant to inspect any records of the specified corporation; or
- (b) authorizing a person (whether or not a member of the specified corporation) other than the applicant to inspect any such records on behalf of the applicant.

(2) The court may only make an order under subsection (1) if it is satisfied that -

- (a) the application is made in good faith; and

- (b) the inspection applied for is for a proper purpose having regard to the interests of both the relevant specified corporation and the applicant.

(3) If the court makes an order under subsection (1), it shall, after taking into account the facts and circumstances of the application, consider whether it is necessary to make an order limiting the use that the following persons may make of the information or document obtained as a result of the inspection of any records pursuant to the order made under that subsection -

- (a) the applicant; and
- (b) where the court authorizes a person other than the applicant to inspect the records, the person who inspects the records,

and where the court considers it necessary to do so, it may make such an order on such terms and conditions as it thinks fit.

(4) Any person who is authorized by the court to inspect the records of a specified corporation may make copies of the records unless the court orders otherwise.

152FB. Ancillary orders

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

- (a) an order requiring the specified corporation that is subject to the order made under section 152FA or any of its officers to produce any records to

the person who is authorized to inspect the records;
and

- (b) an order specifying the records that may be inspected by that person.

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

(1) Subject to section 152FE, no information or document obtained as a result of an inspection under section 152FA shall, without the previous consent in writing of the relevant specified corporation, be disclosed to any other person, unless the disclosure is -

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

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

152FD. Saving for solicitors

Nothing in sections 152FA and 152FB, or any order made under any of those sections, shall authorize a person to inspect any records containing a privileged communication made by or to a

solicitor in that capacity.

152FE. Protection of personal data

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

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

(1) Section 168A is amended -

(a) by repealing "company" wherever it appears and substituting "specified corporation";

(b) by repealing "company's" wherever it appears and substituting "specified corporation's".

(2) Section 168A(2) is amended -

(a) by repealing "this section" and substituting "subsection (1)";

(b) by adding "(including the member who made the petition)" after "some part of the members".

(3) Section 168A is amended by adding -

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

whether or not with a view to bringing to an end the matters complained of, order payment by such person of such damages, as the court may so order, and any interest at such rate as the court may think fit on those damages, to any members (including the member who made the petition) of the specified corporation, whose interests have been unfairly prejudiced by the relevant act or conduct.

(2B) Any past member of a specified corporation who complains that the affairs of the specified corporation were, at the time when he was a member of the specified corporation, conducted in a manner unfairly prejudicial to the interests of the then members generally or of some part of the then members (including himself), may make an application to the court by petition for an order under this section.

(2C) If on any petition made by a past member under subsection (2B) the court is of opinion that the specified corporation's affairs were conducted in a manner unfairly prejudicial to the interests of the then members generally or of some part of the then members (including the past member who made the petition), whether or not such conduct consists of an isolated act or a series of acts, the court may, whether or not with a view to bringing to an end the matters complained of, order payment by such person of such damages, as the court may so order, and any interest at such rate as the court may think fit on those damages, to any then members (including the past member who made the petition) of the specified corporation, whose interests were unfairly prejudiced

by the relevant act or conduct.

(2D) If the court is satisfied -

- (a) that there is no evidence of bad faith on the part of a member of the specified corporation or the Financial Secretary, or a past member of the specified corporation, in making a petition under subsection (1) or (2B); and
- (b) that the member or the Financial Secretary, or the past member, had reasonable grounds in making such petition,

the court may make an order as to costs in favour of the member or the Financial Secretary, or the past member.".

(4) Section 168A is amended by adding -

"(5A) The personal representative of a person who, at the date of the person's death, was a past member of a specified corporation, may apply to the court under subsection (2B) for an order under this section and, accordingly, any reference in that subsection to a past member of a specified corporation shall be construed as including a reference to any such personal representative.

(5B) For the purposes of this section, a person shall not be treated as a past member of a specified corporation if he ceased to be a member of the specified corporation before the commencement of section 4 of Schedule 4 to the Companies (Amendment) Ordinance 2003 (of 2003).

(5C) For the purposes of this section, "then members" (當時成員) means the persons who were members of a specified corporation, in respect of which a petition under subsection (2B) is made, at the time when the relevant applicant was a member of the specified corporation."

5. **Part IVAA added**

The following is added immediately after section 168B -

"PART IVAA

BRINGING OR INTERVENING IN PROCEEDINGS ON
BEHALF OF SPECIFIED CORPORATION

168BA. Definition

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

168BB. Members may bring or intervene in proceedings

- (1) A member of a specified corporation may -
 - (a) without leave of the court, bring proceedings before the court on behalf of the specified corporation; or
 - (b) with the leave of the court granted under subsection (3), intervene in any proceedings before the court to which the specified corporation is a party for the purposes of

continuing, discontinuing or defending those proceedings on behalf of the specified corporation.

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

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

- (a) the intended intervention is in the best interests of the relevant specified corporation;
- (b) the member is acting in good faith in the application for leave to intervene in the proceedings; and
- (c) except where leave is granted by the court under section 168BC(4), the member has served a written notice on the specified corporation in accordance with section 168BC.

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

(5) For the avoidance of doubt, this section does not prevent a member of a specified corporation from bringing proceedings in respect of the specified corporation, or intervening in any proceedings to which the specified corporation

is a party, on his own behalf in respect of his personal right.

168BC. Service of written notice

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

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

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

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

- (a) the intention of the member to bring or apply for leave to intervene in proceedings under section 168BB in respect of the specified corporation; and
- (b) the reasons for his intention.

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

168BD. Court's power to strike out proceedings brought by members

(1) On application by any party to any proceedings brought by a member of a specified corporation under section 168BB(1), the court may, on any of the grounds mentioned in subsection (2),

at any time after the proceedings were brought -

- (a) order to be struck out or amended any pleading or the indorsement of any writ in the proceedings brought by the member, or anything in such pleading or indorsement; and
 - (b) order the proceedings brought by the member to be stayed or dismissed or judgment to be entered accordingly.
- (2) The grounds referred to in subsection (1) are -
- (a) the bringing of proceedings under section 168BB(1) is not in the best interests of the relevant specified corporation;
 - (b) the proceedings have not been brought by the relevant member of the specified corporation in good faith;
 - (c) except where leave is granted by the court under section 168BC(4), the written notice required to be served on the relevant specified corporation under section 168BC has not been served on it or has not been served in accordance with section 168BC; or
 - (d) leave granted under section 168BC(4) has been set aside by the court.

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

168BE. Effect of approval or ratification

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

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

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

168BB(3) -

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

168BF. General powers of court

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

- (a) interim orders pending the determination of the proceedings or application;
- (b) directions concerning the conduct of the proceedings or application, including requiring mediation;
- (c) an order directing the specified corporation, or an officer of the specified corporation, to do, or not to do, any act; and
- (d) an order appointing an independent person to investigate and report to the court on -

- (i) the financial position of the specified corporation;
- (ii) the facts or circumstances that gave rise to the proceedings; or
- (iii) the costs incurred by the parties to the proceedings, and by the member who brought or intervened in the proceedings, or made the application.

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

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

- (a) order any or all of the following persons to be liable for any expenses arising out of the investigation -

- (i) the specified corporation;
- (ii) the parties to the proceedings;
- (iii) the member who brought or intervened in the proceedings, or made the application; and

- (b) review, vary or revoke an order made pursuant to paragraph (a).

(4) If an order made pursuant to subsection (3)(a), or the order as varied pursuant to subsection(3)(b), makes 2 or more persons liable for the relevant expenses, the court may also

determine the nature and extent of the liability of each of those persons.

**168BG. Power of court to make orders
as to costs**

(1) The court may, at any time, make any orders it considers appropriate as to the liabilities of the following persons in relation to the costs of any proceedings brought or intervened in by a member of a specified corporation under section 168BB(1), or any proceedings on an application for leave made under section 168BB(3) -

- (a) the specified corporation;
- (b) the parties to the proceedings; and
- (c) the member who brought or intervened in the proceedings, or made the application.

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

(3) The court may only make an order as to costs under this section in favour of the member referred to in subsection (1)(c) if it is satisfied that the member was acting in good faith in, and had reasonable grounds for, bringing or intervening in the proceedings, or making the application.

168BH. Discontinuance or settlement

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

168BI. Rules of court

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

6. Section added

The following is added immediately after section 350A -

"Injunctions

350B. Injunctions

(1) Where a person ("the first-mentioned person") has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute -

- (a) a contravention of this Ordinance;
- (b) an attempt to contravene this Ordinance;
- (c) aiding, abetting, counselling or procuring another person to contravene this Ordinance;
- (d) inducing or attempting to induce, whether by threats, promises or otherwise, another person to contravene this Ordinance;

- (e) his being in any way, directly or indirectly, knowingly concerned in, or a party to, a contravention of this Ordinance by another person;
- (f) conspiring with others to contravene this Ordinance; or
- (g) a breach of his fiduciary duties or other duties owed to a company,

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

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

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

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

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

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

(5) Where the court considers appropriate, it may grant an interim injunction pending determination of an application under subsection (1) or (3).

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

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

7. Punishment of offences under this Ordinance

(1) The Twelfth Schedule is amended by adding -

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

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

- (a) by repealing "Company" and substituting "Specified corporation";
- (b) by repealing "company's" and substituting "specified corporation's".

SCHEDULE 5

[ss. 3 & 4]

CONSEQUENTIAL AND OTHER AMENDMENTS

PART 1

CONSEQUENTIAL AMENDMENTS ARISING FROM THE AMENDMENTS
TO THE COMPANIES ORDINANCE MADE BY
SCHEDULE 1 TO THIS ORDINANCE

Securities and Futures Ordinance

1. **Offence to issue advertisements,
invitations or documents relating
to investments in certain cases**

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

is amended -

(a) in subsection (2), by adding -

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

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

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

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

Section 175 is amended -

(a) in subsection (5), by adding -

“(aa) an offer -

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

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

(b) by adding -

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

3. Interpretation and general provisions

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

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

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

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

“(c) Parts II and XII of the Companies Ordinance
(Cap. 32), for the purposes only of section
213 of this Ordinance, and so far as those

Parts relate, directly or indirectly, to an advertisement mentioned in section 38B(1) of that Ordinance;”.

PART 2

CONSEQUENTIAL AMENDMENTS ARISING FROM THE AMENDMENTS
TO THE COMPANIES ORDINANCE MADE BY
SCHEDULE 2 TO THIS ORDINANCE

Insurance Companies Ordinance

1. **Accounts and Statements**

The Third Schedule to the Insurance Companies Ordinance (Cap. 41) is amended by adding -

“1A. (1) A reference in Part 1, 2, 3 or 4 of this Schedule to parent company or subsidiary undertaking shall be construed in accordance with section 2B of the Companies Ordinance (Cap. 32) as read with the Twenty-third Schedule to that Ordinance.

(2) A reference in a provision specified under subparagraph (3) for the purposes of this subparagraph -

(a) to a holding company shall be deemed to include a parent company; and

(b) to a subsidiary or subsidiary company shall be deemed to include a subsidiary undertaking.

(3) The provisions specified for the purposes of subparagraph (2) are -

**"3. Certified copies of documents
required to be delivered under
Part XI**

(1) This paragraph applies to the certified copies of documents that are required to be delivered to the Registrar under Part XI of the Ordinance.

(2) A document shall be deemed to be certified as a true copy if it is duly certified as such -

(a) in the company's place of incorporation -

(i) by an official of the government of that place to whose custody the original of the document is committed;

(ii) by a notary public practising in that place;

(iii) by a lawyer practising in that place;

(iv) by a professional accountant practising in that place;

(v) by an officer of a court of law duly authorized by the law of that place to certify documents for any judicial or other legal purpose; or

(vi) by a company secretary practising in that place;

(b) in Hong Kong -

(i) by a notary public practising in Hong Kong;

(ii) by a solicitor practising in Hong Kong;

- (iii) by a professional accountant practising in Hong Kong;
 - (iv) by an officer of the court in Hong Kong who is authorized by law to certify documents for any judicial or other legal purpose;
 - (v) by a consular officer of the place of incorporation of the company; or
 - (vi) by a company secretary practising in Hong Kong;
- (c) by an officer of the company; or
- (d) by the authorized representative of the company."

3. Paragraphs repealed

Paragraphs 4 and 5A are repealed.

4. Paragraph substituted

Paragraph 6 is repealed and the following substituted -

"6. Translations

(1) A translation of a document shall be deemed to be a certified translation in the prescribed manner for the purposes of the Ordinance if -

- (a) it is certified by the person making the translation to be a correct translation; and
- (b) the person making the translation is believed to be a person who is competent in translating a

document into the English or Chinese language, as the case may be, by and is so certified by a person referred to in subparagraph (2).

(2) A person may make a certification under subparagraph (1)(b) if he is -

(a) where the translation is made in a place outside Hong Kong -

- (i) a notary public practising in that place;
- (ii) a lawyer practising in that place;
- (iii) a professional accountant practising in that place;
- (iv) an officer of a court of law duly authorized by the law of that place to certify documents for any judicial or other legal purpose;
- (v) a consular officer in that place;
- (vi) a company secretary practising in that place; or
- (vii) such other person as may be specified by the Registrar; or

(b) where the translation is made in Hong Kong -

- (i) a notary public practising in Hong Kong;
- (ii) a solicitor practising in Hong Kong;
- (iii) a professional accountant practising in Hong Kong;

- (iv) a consular officer in Hong Kong; or
- (v) a company secretary practising in Hong Kong."

Limited Partnerships Ordinance

5. Definition and constitution of limited partnership

Section 3(2) of the Limited Partnerships Ordinance (Cap. 37) is amended by repealing "shall not consist in any case of more than 20 persons, and".

Inland Revenue Ordinance

6. Treatment of losses after 1 April 1975

Section 19C(7) of the Inland Revenue Ordinance (Cap. 112) is repealed.

7. Ascertainment of share of partnership profits or losses

Section 22A(3) is repealed.

8. Section added

The following is added -

"22C. Transitional: partnerships consisting of more than 20 members

Where a partnership, which immediately before the commencement of sections 6, 7, 8 and 9 of Part 3 of Schedule 5

to the Companies (Amendment) Ordinance 2003 (of 2003), was a person, but was not an individual, a corporation or a partnership as defined in sections 19C(7) and 22A(3) that were in force immediately before that commencement, has any losses brought forward under section 19C(4), then, notwithstanding section 22A(2) -

- (a) any such losses shall be used to set off against the assessable profits of that partnership in the subsequent years of assessment the basis periods of which are ended after that commencement until those losses are fully utilized; and
- (b) the assessable profits of that partnership for a year of assessment the basis period of which is ended after that commencement shall be reduced by the amount of loss set off mentioned in paragraph (a) before they are apportioned amongst the partners of that partnership in accordance with section 22A(1).".

9. Calculation of total income

(1) Section 42(1) is amended by repealing ", subject to subsection (8),".

(2) Section 42(8) and (9) is repealed.

Money Lenders Regulations

10. Licensing and exemption forms

Schedule 2 to the Money Lenders Regulations (Cap. 163 sub. leg. A) is amended in Form 3 by repealing "an oversea" and substituting "a non-Hong Kong".

Merchant Shipping (Registration) Ordinance

11. Registrable ships

Section 11(4)(c) of the Merchant Shipping (Registration) Ordinance (Cap. 415) is amended by repealing "an oversea" and substituting "a non-Hong Kong".

12. Notice of dissolution, etc. of body corporate owner or charterer

Section 55(1)(b)(ii) is amended by repealing "an oversea" and substituting "a non-Hong Kong".

Toys and Children's Products Safety Ordinance

13. Service of notices

Section 34(1)(b)(ii) of the Toys and Children's Products Safety Ordinance (Cap. 424) is amended by repealing "an oversea" and substituting "a non-Hong Kong".

Occupational Retirement Schemes Ordinance

14. Notices

Section 81(1)(c) of the Occupational Retirement Schemes Ordinance (Cap. 426) is amended by repealing "an oversea" and substituting "a non-Hong Kong".

Consumer Goods Safety Ordinance

15. Service of notices

Section 35(1)(b)(ii) of the Consumer Goods Safety Ordinance (Cap. 456) is amended by repealing "an oversea" and substituting "a non-Hong Kong".

Mandatory Provident Fund Schemes Ordinance

16. Interpretation

(1) Section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended, in the definition of "company", in paragraph (a)(ii), by repealing "an oversea" and substituting "a non-Hong Kong".

(2) Section 2(1) is amended, in the definition of "corporation", by repealing "an oversea" and substituting "a non-Hong Kong".

(3) Section 2(1) is amended, in the definition of "oversea company", by repealing "'oversea company' (海外公司)" and substituting "'non-Hong Kong company' (非香港公司)".

17. Approval of trustees

Section 20(7)(c)(iv) is amended by repealing "an oversea" and substituting "a non-Hong Kong".

Mandatory Provident Fund Schemes (General) Regulation

18. What are assets held in Hong Kong for the purposes of this Regulation?

Section 10(g) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) is amended by repealing "an oversea" and substituting "a non-Hong Kong".

19. Approved trustee to lodge trustee's return with Authority

Section 109(7)(a) and (b) is amended by repealing "an oversea" and substituting "a non-Hong Kong".

Mandatory Provident Fund Schemes (Exemption) Regulation

20. Minimum standards applicable to trustees, etc. of schemes

Schedule 3 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg. B) is amended, in section 5(5)(a), by repealing "an oversea" and substituting "a non-Hong Kong".

**Non-local Higher and Professional Education
(Regulation) Ordinance**

21. Notices

Section 38(1)(c) of the Non-local Higher and Professional Education (Regulation) Ordinance (Cap. 493) is amended by repealing "an oversea" and substituting "a non-Hong Kong".

Merchant Shipping (Local Vessels) Ordinance

22. Ownership of local vessel

Section 12(1)(b) of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) is amended by repealing "overseas" and substituting "non-Hong Kong".

Securities and Futures Ordinance

**23. Corporations to be licensed for carrying
on regulated activities**

Section 116(2)(a)(ii) and (iii) of the Securities and Futures Ordinance (Cap. 571) is amended by repealing "an overseas" and substituting "a non-Hong Kong".

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

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

25. Restriction on receiving or holding of client assets

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

26. Interpretation of Part IX

(1) Section 193(1) is amended by repealing the definition of "register of companies".

(2) Section 193(1) is amended by adding -

" "register of companies" (公司登記冊) means the register within the meaning of section 291 of the Companies Ordinance (Cap. 32) or a register of non-Hong Kong companies kept under section 333AA of that Ordinance." .

27. Service of notices, etc.

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

28. Interpretation and general provisions

(1) Schedule 1 is amended, in Part 1, in section 1, in the definition of "associated entity", by repealing "an overseas" and substituting "a non-Hong Kong".

(2) Schedule 1 is amended, in Part 1, in section 1, by repealing the definition of "overseas company".

(3) Schedule 1 is amended, in Part 1, in section 1, by adding –
“non-Hong Kong company” (非香港公司) has the meaning assigned to
it by section 332 of the Companies Ordinance (Cap. 32);”.

**29. Savings, transitional, consequential
and related provisions, etc.**

Schedule 10 is amended, in Part 1, in section 53(1)(b) and (c),
by repealing “an overseas” and substituting “a non-Hong Kong”.

Securities and Futures (Client Securities) Rules

30. Interpretation

Section 2 of the Securities and Futures (Client Securities) Rules
(L.N. 201 of 2002) is amended, in the definition of “approved custodian”,
by repealing “overseas” and substituting “non-Hong Kong”.

**31. Approval of custodians for safe custody
of client securities and securities
collateral**

Section 11 is amended by repealing “overseas” and substituting
“non-Hong Kong”.

Securities and Futures (Price Stabilizing) Rules

32. Interpretation

Section 2(1) of the Securities and Futures (Price Stabilizing)
Rules (L.N. 218 of 2002) is amended, in the definition of “prospectus”,
in paragraph (b), by repealing “an overseas” and substituting “a

non-Hong Kong".

Royal Bank of Scotland Ordinance

33. Preamble amended

The preamble to the Royal Bank of Scotland Ordinance (Cap. 1138) is amended, in paragraphs (a) and (b), by repealing "an oversea" and substituting "a non-Hong Kong".

34. Interpretation

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

Explanatory Memorandum

This Bill amends the Companies Ordinance (Cap. 32) ("the principal Ordinance"), as set out in Schedules 1, 2, 3 and 4 to the Bill, for the 4 different purposes discussed below.

SCHEDULE 1

Amendments relating to prospectuses

2. The principal purpose of Schedule 1 is to amend Part II (applicable to companies incorporated in Hong Kong) and Part XII (applicable to companies incorporated outside Hong Kong) of the principal Ordinance to facilitate the registration and issue of prospectuses.

3. Section 1(a) amends section 2(1) of the principal Ordinance by

repealing and replacing the definition of "prospectus". Paragraph (b) of the new definition of "prospectus", as read with section 38B(2) of the principal Ordinance (as amended by section 5(b)), and the new Seventeenth Schedule at section 27, specifies the documents which will not be prospectuses for the purposes of the principal Ordinance.

4. The amendment made to section 38(1A) of the principal Ordinance by section 2(a) as read with the new section 360(6) at section 24 and the new Eighteenth Schedule at section 27 modifies the requirement for the form of warning statement to be contained in a prospectus to which section 38(1) applies. (See, also, the new section 342(2A) at section 15(b)), Part 1 of the new Seventeenth Schedule at section 27 and section 6 of Parts 1 and 2 of the new Twenty-first Schedule at section 27).

5. Section 2(c) repeals section 38(7) of the principal Ordinance and substitutes a new section 38(7) and (8). The repealed section 38(7) is superseded by the amendment to section 360 of the principal Ordinance made by section 24. (That is, the Third Schedule to the principal Ordinance may now be amended by the Commission - see the definition of "Commission" in section 2(1) of the principal Ordinance - in place of the Chief Executive in Council). The new section 38(7) applies the Third Schedule to the principal Ordinance (which relates to matters to be specified in a prospectus) to a guarantor corporation of a debenture issue in the case of a guaranteed offering of a company. (See the definition of "guarantor corporation" in the new section 38(8)). Section 25(d) and (e) makes consequential amendments to the Third Schedule to the principal Ordinance.

6. Section 3 amends section 38A of the principal Ordinance to widen

the Commission's powers to grant exemptions in respect of certain persons and certain prospectuses from compliance with the provisions of Part II of the principal Ordinance.

7. Section 4 adds a new section 38AA to impose restrictions on the sale of shares or debentures acquired pursuant to an offer specified in Part 1 of the new Seventeenth Schedule (see paragraph 3 above). The reference to "offer to sell" in the new section 38AA needs to be read with the definition of "offer to sell" at section 1(b).

8. Section 5 amends section 38B of the principal Ordinance to, inter alia, expand the range of extracts from or abridged versions of prospectuses which may be lawfully published by way of advertisement. However, it should be noted that the new section 38B(2)(e), as read with the new Nineteenth Schedule at section 27, enables the lawful publication of certain advertisements relating to proposed prospectuses. Section 6 adds a new section 38BA to empower the Commission to issue guidelines relating to publications falling within the amended section 38B(2).

9. Section 7(b) amends section 38D of the principal Ordinance to add a new section 38D(3A). The new section 38D(3A) requires, in the case of a prospectus issued generally, certain documents stated in the prospectus to be available for public inspection for not less than 14 days from the date of publication of the prospectus. New section 38D(10), (11) and (12) at section 7(d) specifies how a translation mentioned in section 38D(4) shall be certified, and requires a company to provide, on request, a copy of any document it is required to make available for public inspection under the new section 38D(3A).

10. Section 8 adds new sections 39A, 39B and 39C. The new section 39A, as read with Part 1 of the new Twentieth Schedule at section 27, specifies how a prospectus consisting of one document, and to which the provisions of Part II of the principal Ordinance are applicable, may be amended. The new section 39B, as read with Part 1 of the new Twenty-first Schedule at section 27, specifies how a prospectus to which the provisions of Part II are applicable may consist of more than one document, and how such a prospectus may be amended. The new section 39C specifies the certification requirements for copies of documents (other than prospectuses) to be submitted to the Registrar of Companies for the purposes of Part II. The new sections 39A and 39B and Part 1 of the new Twentieth Schedule and of the new Twenty-first Schedule should be read with the definition of "amend" at section 1(b).

11. Section 9 amends section 40 of the principal Ordinance (which relates to civil liability for misstatements in prospectus) to add a new section 40(6) and (7). The new section 40(6) applies section 40 to publications falling within section 38B(2) of the principal Ordinance as if the publications were prospectuses. The new section 40(7), as read with the new Twenty-second Schedule at section 27, widens the meaning of the reference in section 40 to "persons who subscribe for any shares or debentures".

12. Section 10 amends section 40A of the principal Ordinance (which relates to criminal liability for misstatements in prospectus) to add a new section 40A(4). The new section 40A(4) applies section 40A to publications falling within section 38B(2) of the principal Ordinance as if the publications were prospectuses.

13. Section 11 amends section 41A of the principal Ordinance (which relates to the interpretation of provisions relating to prospectuses) to add a new section 41A(2). The new section 41A(2) specifies that, for the purposes of sections 40 and 40A, an untrue statement, in relation to a prospectus, includes a material omission from the prospectus. Section 12 amends section 43(3) of the principal Ordinance to disapply section 43 to any allotment of shares or debentures the subject of an offer specified in Part 1 of the new Seventeenth Schedule.

14. Section 14 amends section 155C of the principal Ordinance (which relates to directors' duty to shareholders regarding prospectus or statement in lieu) to disapply section 155C(1) to a company incorporated in Hong Kong the shares of which are listed on a recognized stock market in Hong Kong.

15. Sections 15 to 23 inclusive principally make amendments to the provisions of Part XII of the principal Ordinance to parallel the provisions of Part II of the principal Ordinance as amended by sections 2 to 11 inclusive.

16. Section 24 amends section 360 of the principal Ordinance to empower the Commission to by order amend the Third Schedule of the principal Ordinance and the new Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-first and Twenty-second Schedules, and to require the Commission to in most circumstances produce a draft of the order for public consultation.

17. Section 25(a) amends paragraph 3 of the Third Schedule to the principal Ordinance to specify that the "snapshot" of a company provided by a prospectus should take into account the nature of the shares or

debentures being offered and the nature of the company, and the nature of persons likely to consider acquiring them.

18. Section 26 amends the Twelfth Schedule to the principal Ordinance to specify the new offences necessitated by the amendments proposed by Schedule 1.

19. Part 1 of Schedule 5 specifies the consequential amendments necessitated by Schedule 1.

SCHEDULE 2

Amendments relating to group accounts

20. The principal purpose of Schedule 2 is to modify the meaning of the term "subsidiary" in the principal Ordinance in order to make the meaning of the term more closely align with the meaning attached to the term in the International Accounting Standards. However, the new meaning will only apply for the purposes of the group accounts of a company. For other purposes, the present meaning of the term "subsidiary" in the principal Ordinance will apply.

21. Section 1 adds a new section 2B which, as read with the new Twenty-third Schedule at section 17, specifies the meaning to be attached to the terms "parent company", "parent undertaking" and "subsidiary undertaking" as used in the amendments made to the principal Ordinance by Schedule 2. It should be noted that new section 2B(3) specifies the provisions of the principal Ordinance to which the new terms are applicable.

22. Section 2 repeals section 123(4) of the principal Ordinance and

substitutes new section 123(4) and (4A). The new section 123(4) and (4A) permits information to be given which is additional to the requirements of the principal Ordinance, or which diverges from those requirements, for the purpose of giving a true and fair view of the state of affairs or the profit and loss of a company. Section 4 makes a similar amendment to section 126.

23. Section 3 adds new section 124(2A) to specify the basis on which a subsidiary may be excluded from the group accounts of a company.

24. Section 6 amends section 128 of the principal Ordinance to specify how the shares of an undertaking which is a body corporate shall be treated for the purposes of determining whether it is a subsidiary of a company for the purposes of section 128(1) (see new section 128(2)(a) and, also, what information need not be disclosed under section 128(1) in respect of an undertaking (see new section 128(3)).

25. Section 7 repeals and replaces section 129A of the principal Ordinance. The new section 129A(1) requires a company which is a subsidiary of another undertaking to state in the company's accounts laid before it in general meeting the name of the undertaking regarded by the directors as being the company's ultimate parent undertaking. New section 129A(2) specifies what information need not be disclosed by virtue of that requirement.

26. Section 9 amends section 140(2) of the principal Ordinance to specify certain persons who are disqualified for appointment as a company's auditor.

27. Part 2 of Schedule 5 specifies consequential amendments to the Insurance Companies Ordinance (Cap. 41) necessitated by the amendments

to the principal Ordinance made by Schedule 2.

SCHEDULE 3

**Amendments relating to overseas companies
and incorporation procedures**

28. The principal purpose of Schedule 3 is to amend the principal Ordinance to -

- (a) replace the existing term "oversea company" by "non-Hong Kong company";
- (b) simplify the registration requirements of non-Hong Kong companies;
- (c) enhance the disclosure requirements of non-Hong Kong companies; and
- (d) introduce other miscellaneous amendments to the principal Ordinance, including the following -
 - (i) enable electronic incorporation of a company and streamline the incorporation procedures;
 - (ii) replace the existing term "subscriber" by "founder member";
 - (iii) state the purposes for which documents kept or maintained by the Registrar of Companies ("the Registrar") under the principal Ordinance may be made available for public inspection; and
 - (iv) remove the upper limit on the number of partners in a partnership.

29. Section 1(2) adds the following new definitions -

- (a) "electronic record" (relating to the amendment made to, inter alia, sections 6 and 12 of the principal Ordinance);
- (b) "founder member" (replacing the existing term "subscriber of a memorandum of association");
- (c) "incorporation form" (relating to electronic incorporation of a company);
- (d) "non-Hong Kong company" (replacing the existing term "oversea company"); and
- (e) "place of business" (relating to the definition of "non-Hong Kong company").

30. Sections 4(3) and 6(3) add new sections 6(2) and 12(2) respectively to simplify the signature requirement for the memorandum and articles of association of a company incorporated electronically.

31. Section 7 adds a new section 14A to provide for the use of a specified form (in the Bill referred to as the "incorporation form") for incorporating a company. Sections 8 and 9(1), which amend sections 15 and 16(1) of the principal Ordinance respectively, are consequential amendments relating to the registration of such incorporation form. Section 10, which amends section 18(2) of the principal Ordinance, is a consequential amendment relating to the requirement of naming a person in the incorporation form as a director or secretary. Section 48(1), which amends Part I of the Eighth Schedule to the principal Ordinance, is a consequential amendment relating to the introduction of the new incorporation form.

32. Section 14 amends section 91 of the principal Ordinance to clarify the circumstances under which a non-Hong Kong company is required to register charges on its properties.

33. Section 15 amends section 92 of the principal Ordinance to provide that the intended address of the registered office of a company stated in the relevant incorporation form shall be the address of such registered office with effect from the date of incorporation of the company.

34. Section 16 amends section 93(4) of the principal Ordinance to clarify that a company that fails to comply with section 93(2A) shall be liable to a fine.

35. Sections 18(1) and 19 amend sections 153(2) and 154 of the principal Ordinance respectively to provide that any person named as a director or secretary in the incorporation form registered in respect of a company shall be the first director or secretary of the company until a notification of change of directors or secretary is sent to the Registrar under section 158(4) of the principal Ordinance. Section 20, which amends section 158, is a related consequential amendment.

36. Section 21 amends section 168C(1) of the principal Ordinance to clarify that Part IVA of the principal Ordinance (relating to disqualification of directors) applies to a non-Hong Kong company.

37. Section 23(1) adds a new section 305(1A) to state the purposes for which documents kept or maintained by the Registrar under the principal Ordinance may be made available for public inspection.

38. Section 23(2) amends section 305(1) of the principal Ordinance to allow a person to require a certificate certifying that a non-Hong

Kong company is registered under Part XI of the principal Ordinance or to require a fresh certificate where the company has changed its name.

39. Section 26 amends section 333 of the principal Ordinance to provide for -

- (a) the particulars required to be contained in a specified form to be delivered to the Registrar for the registration of non-Hong Kong companies;
- (b) the documents required to be delivered to the Registrar by non-Hong Kong companies for registration purpose.

40. Section 27 is a consequential amendment relating to section 26, which adds a new section 333AA to restate the Registrar's existing obligation under the existing section 333(3) to keep a register of non-Hong Kong companies. Section 36(4) is a consequential amendment to section 337B(4) of the principal Ordinance relating to the addition of the new section 333AA.

41. Section 28 amends section 333A of the principal Ordinance to shorten the period where a non-Hong Kong company is required to have an authorized representative after it ceases to have a place of business in Hong Kong from 3 years to 1 year.

42. Section 29 amends section 333B of the principal Ordinance -

- (a) to allow a non-Hong Kong company to terminate the appointment of its authorized representative by sending a notice in writing to him, in addition to allowing the authorized representative to do so; and
- (b) to require a notice in the specified form to be sent

to the Registrar within 14 days after the date of the notice of termination.

43. Section 30(1) amends section 333C(1)(a) of the principal Ordinance to repeal an obsolete provision.

44. Section 31 adds a new section 334 to require non-Hong Kong companies to deliver annual returns to the Registrar and provide for the use of a specified form for that purpose.

45. Section 32 amends section 335 of the principal Ordinance -

- (a) to specify that a return under that section shall be delivered to the Registrar within 21 days after the date of the relevant change;
- (b) to restate the Registrar's existing obligation to issue a fresh certificate of registration where a non-Hong Kong company has changed its name; and
- (c) to require a non-Hong Kong company that changes its name to deliver to the Registrar a certified copy of the instrument effecting the change of name.

46. Section 33 amends section 336 of the principal Ordinance to require non-Hong Kong companies to deliver to the Registrar annually certified copies of their latest published accounts that are required to publish or make available for inspection by members of the public by the laws of their places of incorporation, or the laws of any other jurisdictions where they are registered as companies, or the rules of any stock exchange or similar regulatory bodies in those jurisdictions.

47. Section 34 amends section 337 of the principal Ordinance -

- (a) to require a non-Hong Kong company to state in its

prospectuses inviting subscriptions for its shares or debentures in Hong Kong, bill-heads and letter paper, etc. the "place" of its incorporation instead of the "country" of its incorporation; and

- (b) to extend the coverage of section 337(1)(c), (ca) and (d) to include the non-Hong Kong companies that are in liquidation in places otherwise than the countries of their incorporation.

48. Section 35 amends section 337A of the principal Ordinance -

- (a) to extend the coverage of that section 337A to include the non-Hong Kong companies that are in liquidation in places otherwise than the countries of their incorporation;
- (b) to require non-Hong Kong companies instead of both the companies and their officers to deliver notices to the Registrar under that section 337A;
- (c) to provide for the use of a specified form for the purposes of that section 337A;
- (d) to require more information to be provided under that section 337A; and
- (e) to provide for a new time limit for the delivery of the notice under that section 337A.

49. Section 36 amends section 337B of the principal Ordinance -

- (a) to provide that the Registrar may approve the name of a non-Hong Kong company; and
- (b) to allow the Registrar to withdraw a notice served under

section 337B(1).

50. Section 37 amends section 338 of the principal Ordinance -

- (a) to clarify that any process or notice required to be served on a non-Hong Kong company shall be sufficiently served if it is served on the authorized representative of the company; and
- (b) to reduce the period specified in section 338(2)(b)(ii) from 3 years to 12 months.

51. Section 38 amends section 339 of the principal Ordinance -

- (a) to impose a time limit of 7 days for the filing of a notice under that section 339;
- (b) to provide for the use of a specified form for that purpose; and
- (c) to require the Registrar to register the notice.

52. Section 39 adds a new section 339AA -

- (a) to impose a time limit of 14 days for the filing of a notice of the dissolution of a non-Hong Kong company;
- (b) to provide for the use of a specified form for that purpose;
- (c) to require the production of a certified copy of the instrument effecting the dissolution; and
- (d) to require the Registrar to register the notice, etc.

53. Section 42 amends section 341 of the principal Ordinance to revise the interpretation of the terms and expressions used in Part XI of the principal Ordinance.

54. Section 44 repeals section 345 of the principal Ordinance to remove

the upper limit on the number of partners in a partnership.

55. Section 45 amends section 360 of the principal Ordinance to empower the Financial Secretary to amend the new Twenty-fourth Schedule.

56. Section 50 adds a new Twenty-fourth Schedule setting out what is not included in the definition of "place of business" under Part XI of the principal Ordinance.

57. Part 3 of Schedule 5 specifies, inter alia, the consequential amendments necessitated by Schedule 3.

SCHEDULE 4

Amendments relating to shareholders' remedies

58. The principal purpose of Schedule 4 is to enhance shareholders' remedies under the principal Ordinance in relation to statutory derivative action, unfair prejudice remedies, orders for inspection of the records of companies incorporated in Hong Kong and non-Hong Kong companies ("specified corporations"), and injunction orders.

59. Section 1 amends section 2 of the principal Ordinance by adding a definition of the expression "specified corporation", and making it clear that the expression "record" includes book and paper for the purposes of new sections 152FA, 152FB and 152FD.

60. Section 2 amends section 147(2)(b) of the principal Ordinance so that it applies to the same entities under section 168A of the principal Ordinance (that is, specified corporations).

61. Section 3 adds new sections 152FA to 152FE to empower the Court of First Instance ("court"), on application by a member of a specified

corporation, to make an order to allow the member or his representative to obtain access to the corporation's records.

62. Section 4 amends section 168A of the principal Ordinance to allow members of specified corporations, to commence an action for unfair prejudice, and to make it clear that the court has the power to award damages to members in circumstances of unfair prejudice and to award interest on such damages as the court thinks fit. Past members (and their personal representatives) would be allowed to take action in so far as the conduct complained of took place while the relevant member was a member of the corporation. New section 168A(2D) allows an order for compensation of costs to be paid to the members and past members undertaking the action.

63. Section 5 adds a new Part IVAA to provide for a statutory derivative action to be taken by a member on behalf of a specified corporation. In general, prior leave of the court before commencing the action would not be required. Pre-action notice, unless otherwise dispensed with by the leave of court, has to be served before taking action. There are provisions for striking out the action if it is, inter alia, not taken in the best interests of the corporation or in good faith. The court is empowered to grant orders as to costs for a member taking a derivative action provided that there is no evidence of bad faith on the part of the member and there are reasonable grounds on which to commence the action. Ratification of the conduct that is the subject matter of the action would however not be a bar to the commencement of the action. Where there has been apparent ratification of the matters complained of, this could be one of the considerations of the

court in determining whether or not the corporation should have redress.

64. Section 6 adds a new section 350B to empower the court, on application by an affected person or the Financial Secretary, to grant an injunction order restraining a concerned person from engaging in certain conduct which constitutes a contravention of the principal Ordinance or a breach in fiduciary duties or other duties owed to a company. The court may also order a concerned person to do any act or thing that is required by the principal Ordinance.

**Amendments improving the registration system for
oversea companies and miscellaneous amendments –
Major Proposals**

(A) Amendments improving the registration system for oversea companies

The term “oversea company”

The term “oversea company” used in the CO is considered outmoded and inappropriate in Hong Kong’s present circumstances. We **propose** that the term should be replaced by “non-Hong Kong company”. Moreover, the existing definition¹ of the term “a place of business” (the establishment of which in Hong Kong is used as the test to define an oversea company) should be simplified to remove the outmoded elements of share transfer/share registration office and place used for the manufacture or warehousing of goods.

Documents delivered to Registrar

2. An oversea company is required to deliver various documents to the Registrar within one month of the establishment of its place of business in Hong Kong. However, the documents need not contain the date of establishment of the place of business. We **propose** that an oversea company should give such information to make it easier for the Registrar to check whether the company had complied with the requirement of registering under Part XI of the Ordinance within one month of the establishment of the place of business. The information is also useful to the public.

3. We also **propose** that the identity card number of an individual authorized representative of an oversea company, or in the absence of such number, the number and issuing country of any passport held by him, should be required as it will facilitate the service of process on the authorized representative. The date of appointment of the authorized representative should also be given.

¹ The term “place of business” is at present defined to include a share transfer or share registration office and any place used for the manufacture or warehousing of any goods, but does not include a place not used by the company to transact any business which creates legal obligations. The first two elements i.e. a share transfer or share registration office, and a place used for the manufacture or warehousing of goods are considered outmoded. They need not be retained in the new definition of “place of business”.

Changes in Corporate Names of Oversea Companies

4. An overseas company is required to deliver a return to the Registrar on a change in its corporate name. The Registrar shall, upon registration of such return, issue a fresh certificate containing the name of the company as so changed. We **propose** that the company should file with the return a certified copy of the instrument effecting the change and a certified translation thereof in English or Chinese if the instrument is in a language other than English or Chinese. We consider it appropriate for the general public to have access to such document to enhance disclosure.

Electronic Filing of Documents and Use of Digital Signatures

5. To facilitate the electronic filing of documents and the use of digital signatures, we **propose** amendments to certain sections of the Ordinance. For example, the reference to the Registrar certifying under his hand that a company is one registered under Part XI of the Ordinance should be amended to refer to the Registrar issuing a certificate.

Continuing Obligation in respect of Authorized Representative

6. An overseas company is required to register under the Ordinance the name and address of an authorized representative resident in Hong Kong, until the expiration of a period of three years from the date on which it ceases to have a place of business in Hong Kong. The purpose is to provide a useful record of an overseas company for a certain period after the company has ceased to have a place of business in Hong Kong in case a member of the public wishes to issue a writ against or serve notice on the company.

7. Whilst the requirement should be retained, the period of three years for keeping an authorized representative appears to be arbitrary. We **propose** to shorten the period to one year.

Termination of Registration of Authorized Representatives

8. An authorized representative of an overseas company may file with the Registrar a statutory declaration for termination of his registration under the Ordinance. Such termination will come into effect on the expiration of a period of six weeks from the date of the filing of the statutory declaration. We **propose** that the statutory declaration should be replaced by a notice in the specified form so as to facilitate electronic

filing, and to change the effective date of termination. The specified form, in which the effective date of the termination shall be stated, may be filed by either the authorized representative or the company.

9. Where an overseas company has ceased to have a place of business in Hong Kong for a period of not less than 3 years, the Registrar is required under the Ordinance to remove from the register the particulars of the company's authorized representative on the application of the company. We **propose** to delete this requirement as the purpose of the requirement is served by section 339 of the Ordinance, which is to be amended to provide that, if any overseas company ceases to have a place of business in Hong Kong, it shall give notice of the fact to the Registrar within seven days after ceasing to have such a place of business.

Return to be delivered to Registrar where documents, etc. altered

10. An overseas company is currently required to notify the Registrar of any changes to the original information filed by the company within -

- (a) 21 days after the date of making of such alterations; or
- (b) 21 days after the date on which notice thereof could, in due course of post and if dispatched with due diligence, have been received in Hong Kong.

In view of the frequent use of facsimiles and, in future, e-filing, we **propose** to delete (b) above.

Filing of Annual Return

11. An overseas company is currently required to file an annual return confirming that there has been no alteration in the original information filed by the company other than any alteration notified under the Ordinance. This arrangement makes it necessary for members of the public to search many documents relating to an overseas company in order to find out details of changes relating to the company. Moreover, an overseas company may be exempted from the requirement to file either the annual return or accounts. The exemption applies to an overseas company which if incorporated under the Ordinance would constitute a private company or which is considered to have substantially the same general characteristics as a private company, and in either case is not required by the law of its place of incorporation to publish its accounts or to make

them available to members of the public as of right.

12. In the interest of making full and more timely disclosure, we **propose** that all oversea companies should be required to file an annual return. The return should state, among other things, -

- (a) the place of incorporation of the company;
- (b) the company name and its registered number in Hong Kong;
- (c) the date of registration of the company;
- (d) the address of the company's principal place of business in Hong Kong;
- (e) the particulars with respect to the persons who, at the date of the return, are the directors, secretary and authorized representative of the company;
- (f) a statement confirming whether the company's latest published accounts² have been filed with the Registrar, or will not be filed for the reason that the company was neither required to publish and file accounts in the place of its incorporation or in any other jurisdiction nor required to deliver copies to any person in whose office they might be inspected as of right by members of the public;
- (g) particulars relating to the authorized share capital and issued share capital or their equivalents of the company; and
- (h) particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Registrar under the Ordinance.

The time limit for filing the return should be the same as that for local private companies i.e. 42 days from the anniversary date of the company's registration. An annual return in the form of a "certificate of no change" may be filed where there has been no change in the information on the company contained in the last annual return which was filed in full format, with the exception of the information contained in the accounts.

² The accounts may be required by the law in the place of the company's incorporation or under the law of any other jurisdiction or under the rules of any stock exchange or regulator.

Accounts of Oversea Companies

13. An overseas company is currently required to provide the Registrar with certified copies of various accounting records of the company unless it fulfils the exemption criteria (see paragraph 11 above).

14. We consider that there should not be any distinction between private and public companies for the purposes of filing of accounts. Hence, we **propose** to delete the existing exemption mentioned in paragraph 13 above, i.e. every overseas company, which is required by the law of the place of its incorporation or any other jurisdiction or the rules of any stock exchange or regulator to publish accounts or to make them available to members of the public as of right, should be required to deliver to the Registrar copies of the accounts. In this regard, only the latest published accounts should be required. If an overseas company is not required to publish its accounts or make them available to members of the public as of right, a statement to that effect shall be provided to the Registrar. Moreover, if an overseas company has been incorporated within a period of 18 months prior to the date of registration under the Ordinance and no accounts have yet to be published or made available, a written statement to that effect should be provided to the Registrar.

15. The Ordinance presently empowers the Registrar to require an overseas company to submit accounts in such form as he may require if he thinks that the accounts already submitted by the company do not disclose the company's financial position. There is little justification for such power which in fact has never been invoked. We therefore **propose** to remove such power.

16. We also **propose** that the accounts should be filed at the same time as the annual return mentioned in paragraph 12 above, so as to secure more updated information from an overseas company which will be available for public search.

Obligation to state Names of Oversea Companies, whether limited and Countries where incorporated

17. At present, if an overseas company is in liquidation in its place of incorporation, the company needs to state so in certain documents of the company.

18. For better disclosure, we **propose** that the requirement for stating that a company is in liquidation should apply to all overseas companies including those companies which are put into liquidation in a place other than their places of incorporation.

Notice of Commencement of Liquidation and of Appointment of Liquidator

19. Under the present provisions in the Ordinance, an overseas company and its officers in Hong Kong are required to notify the Registrar of the commencement of any proceedings for the liquidation of the company in the country in which it is incorporated and the appointment of a liquidator. Any such notice is required to be delivered within 7 days after the date on which such notice could, in due course of post and if despatched with due diligence from the country in which the company is incorporated, have been received in Hong Kong. For the same reason given in paragraph 18 above, we **propose** that these requirements should apply to all overseas companies regardless of whether the proceedings are initiated in their places of incorporation or otherwise. We also **propose** that it should be sufficient for the obligation to deliver the notice to the Registrar to be imposed on the company alone as opposed to the company and its officers. Moreover, the time limit for delivering the notice to the Registrar should be 14 days after the date of commencement of the liquidation.

20. To improve disclosure for the general public, we **propose** that detailed information regarding the liquidation and the appointment of a liquidator would include the date of commencement of the liquidation proceedings; the country in which such proceedings have been commenced; the mode of liquidation and capacity and status of the liquidator; and the date of appointment, resignation or cessation of appointment of the liquidator.

Regulation of Use of Corporate Names by Oversea Companies in Hong Kong

21. The Ordinance empowers the Registrar to serve notice on an overseas company under certain circumstances requiring the company to change its name. The company may apply to the court for such notice to be set aside, but otherwise it must specify another name, approved by the Financial Secretary. In practice, the power to approve such a name has

already been delegated to the Registrar. Prior to the submission of another name to the Registrar, the applicant would have informally checked the name with the Registrar. We **propose** to amend the law so that the power to approve should more appropriately be vested in the Registrar.

22. We also **propose** that the Registrar should be empowered to withdraw the notice mentioned in paragraph 21 above, to cater for cases in which a company having an identical name has released its name to the overseas company.

Service of Documents on Oversea Companies

23. At present, the Ordinance provides that any process or notice required to be served on an overseas company shall be sufficiently served if addressed to any person whose name has been delivered to the Registrar under Part XI of the Ordinance and left at or sent by post to his address as so delivered. This may mean that the process or notice may be sent to the directors and secretary of the company, which is not what we intend. We **propose** that the law should be made clear that the process or notice should be sent to an authorized representative of the company as notified to the Registrar.

24. If an overseas company no longer has a place of business in Hong Kong and the addresses of its registered office and principal place of business are not known, a document may be served on the company by leaving it at or sending it by post to any place in Hong Kong at which the company has had a place of business within the previous three years. We **propose** that the period should be shortened to one year, which is more reasonable.

Notices to be given when Oversea Companies cease to have a Place of Business in Hong Kong

25. The Ordinance provides that if any overseas company ceases to have a place of business in Hong Kong, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease. It would be desirable to set a clear time limit for filing the notification. We **propose** that filing should be made within seven days after the company ceases to have a place of business in Hong Kong.

Removal etc of Names of Oversea Companies from Register

26. When the Registrar receives notice from an agent of an overseas company registered under the Ordinance that the company has been dissolved, he must remove the name of the company from the register of overseas companies, and where the Registrar has reasonable cause to believe that an overseas company has ceased to have a place of business in Hong Kong, the Registrar may strike off the company. We **propose** that the notice of dissolution should be accompanied by evidence of dissolution so as to guard against false information. Moreover, as the Registrar does not, in practice, remove the name of a dissolved company from the register but instead makes an entry in the register to reflect the dissolution of the company, we **propose** that the law be amended to reflect the practice. To improve disclosure, we **propose** that there be a time limit of 14 days for the filing of notice of dissolution.

Certification and Translation of Documents delivered to Registrar

27. The Ordinance stipulates that documents constituting the constitution of an overseas company and the company's latest accounts, required to be delivered to the Registrar, shall be deemed to be certified as a true copy if, in the jurisdiction in which the company is incorporated, they are duly certified as a true copy by an official of the Government to whose custody the original is committed or by a notary public of such jurisdiction. In response to representations to the Registrar about the difficulties of complying with such certification requirements, we **propose** that the certification process may take place in Hong Kong, in addition to the company's place of incorporation; and persons such as solicitors, accountants, officers of the court, consular officers etc may be allowed to certify the documents.

28. The Ordinance requires that where translated versions of documents are delivered by an overseas company to the Registrar, the competency of the person making such translation should be certified by persons such as a notary public (if such translation is made outside Hong Kong), or a notary public or a solicitor in Hong Kong (if it is made in Hong Kong). To broaden the types of persons who could certify the competency, we **propose** to allow other persons such as accountants, officers of the court, consular officers etc. to certify.

Registration of Charges

29. Sections 91(1) and (3) of the Ordinance extend the application of Part III of the Ordinance (on registration of charges) to overseas companies. However, there is no express provision that the companies must be registered under Part XI before a charge is registrable. Such uncertainty about the application of the two sections is not satisfactory. We **propose** that the registration requirement would apply only to charges of overseas companies registered under Part XI of the Ordinance. In this regard, details of the charges to be registered with the Registrar should be sent to the Registrar within 5 weeks after the date of creation of the charge or the date on which the acquisition of the relevant property is completed or within 5 weeks after the date of registration of the company under Part XI of the Ordinance, as the case may be.

30. We also **propose** that a charge which applies to property situated outside Hong Kong at the time of creation or acquisition of the charge but which was subsequently brought into Hong Kong should be required to be registered. However, we do not intend to require every floating charge created by an overseas company to be registered in Hong Kong, as this may discourage overseas companies from doing business here. Property which is the subject of a floating charge need be registered only when such property remains in Hong Kong for a period in excess of five weeks cumulative following the date on which the company has established its place of business in Hong Kong.

31. We also **propose** that the interpretation of “property in Hong Kong” in the two sections should be qualified to the effect that ships and aircraft shall always be deemed to be situated in the jurisdictions in which they are registered. Charges on them need not be registered under the Ordinance unless they are registered in Hong Kong.

(B) Miscellaneous Amendments

32. Miscellaneous amendments include –

- (a) enabling electronic incorporation of a company. We **propose** to amend the Ordinance to introduce new procedures for the incorporation of a company. The present requirement for the witnessing of the signatures of the subscribers (to be renamed as founder members) under the Ordinance will be dispensed with if the memorandum and articles of association

of the company are submitted to the Registrar electronically. A specified form containing vital information about a company will be introduced as the application form to incorporate a company;

- (b) stating the purposes for which documents kept or maintained by the Registrar under the Ordinance are made available for public inspection. This is in the interest of protection of personal data in public registers; and
- (c) repealing the 20-partner limit in section 345 of the Ordinance. Section 345 of the Ordinance and section 3 of the Limited Partnerships Ordinance contain a restriction of the 20-partner limit. The reasons for the restriction are historical and no longer appropriate. The restriction places an unnecessary burden on business by preventing the expansion of business by the introduction of new partners. The limit has also been removed in the United Kingdom.

Economic Implications

Economic Implications

The proposals in the Bill will make our company law more business-friendly and ensure that the CO continues to provide Hong Kong with the commercial legal infrastructure commensurate with its status as a major international commercial centre.

2. Most of the prospectus-related proposals are to facilitate offers of shares in and debentures of companies incorporated in Hong Kong and overseas through easing the compliance burden and accommodating new offering structures and offering methods. They will help enhance flexibility and versatility in these issuance activities in the local capital market, yet in keeping with the regulatory perspective. Other prospectus-related proposals for enhancing investor protection, such as extending the application of the prospectus liabilities provisions under the CO, are expected to constitute little or no compliance burden on issuers.

3. Some of the other proposals (i.e. simplifying the filing requirements for overseas companies together with the use of new specified forms by the Companies Registry; enabling electronic incorporation of companies; and repealing the 20-partner limit) will help ease the compliance burden on companies. The rest of the proposals (such as enhancing the disclosure requirements for overseas companies; enhancing shareholder remedies; amending the definition of “subsidiary” for the purposes of group accounts; stating the purposes for which documents kept or maintained by the Companies Registry under the CO are made available for public inspection) are expected to constitute little or no compliance burden on companies in general.