
Securities and Futures and Companies Legislation (Amendment) Bill 2021

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Part 5

**Repeal of Uncommenced Provisions of Securities and Futures and Companies
Legislation (Uncertificated Securities Market Amendment) Ordinance 2015
(5 of 2015)**

90. Uncommenced provisions of Securities and Futures and
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Amendment) Ordinance 2015 repealed C731

A BILL

To

Amend the Securities and Futures Ordinance, the Companies Ordinance and other enactments to facilitate the establishment and implementation of an uncertificated securities market regime in Hong Kong; to provide for a regulatory regime for persons providing securities registrar services; to refine the scope of certain regulated activities relating to over-the-counter derivative transactions; to make minor miscellaneous amendments; and to provide for related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Securities and Futures and Companies Legislation (Amendment) Ordinance 2021.
- (2) Subject to subsections (3) and (4), this Ordinance comes into operation on the day on which it is published in the Gazette.

- (3) Part 2 (except section 9(2)) and Part 5 come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.
- (4) Division 4 of Part 4 comes into operation on the day on which section 53(3) of the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) comes into operation.

2. Enactments amended

The enactments specified in Parts 2 to 5 are amended as set out in those Parts.

Part 2

Amendments relating to Uncertificated Securities Market Regime

Division 1—Amendments to Securities and Futures Ordinance (Cap. 571)

- 3. Section 38 amended (duties of recognized clearing house)**
Section 38(4), after “clearing participants”—
Add
“and registrar participants”.
- 4. Section 40 amended (rules by recognized clearing houses)**
Section 40(1)(b), after “clearing participants”—
Add
“and registrar participants”.
- 5. Section 91 amended (supply of information)**
Section 91(1)(b) and (2)(b), after “clearing participants”—
Add
“or registrar participants”.
- 6. Section 92 amended (additional powers of Commission—
restriction notices)**
(1) Section 92(13)(c)—
Repeal

“or”.

(2) Section 92(13)(d)—

Repeal

“participant,”

Substitute

“participant; or”.

(3) After section 92(13)(d)—

Add

“(e) a registrar participant,”.

7. Part IIIAA added

After Part III—

Add

“Part IIIAA

Uncertificated Securities Market

Division 1—Preliminary

101AA. What are prescribed securities

(1) Prescribed securities are securities that—

(a) fall within a class or description of securities specified in Schedule 3A; and

(b) are listed, or to be listed, on a recognized stock market.

(2) The Commission may, after consultation with the Financial Secretary, by notice published in the Gazette, amend Schedule 3A.

101AAB. What is UNSRT system

An uncertificated securities registration and transfer system (*UNSRT system*), in relation to any prescribed securities, is a computer-based system, together with procedures and other facilities, that—

- (a) enables title to the securities to be evidenced and transferred without an instrument; and
- (b) facilitates supplementary and incidental matters.

Division 2—General Principles

101AAC. Evidence and transfer of title to prescribed securities without instrument

- (1) Title to prescribed securities may be evidenced without an instrument in the manner provided by the Part IIIAA rules.
- (2) Title to prescribed securities may be transferred without an instrument only if the title—
 - (a) is transferred by or through a UNSRT system operated by the approved securities registrar in respect of the securities; and
 - (b) is transferred in accordance with the Part IIIAA rules.

101AAD. Conflict or inconsistency between section 101AAC and certain provisions and terms of corporations

- (1) For any prescribed securities that are shares in a corporation, if there is a conflict or inconsistency between the specified enactments and the following provisions and terms, the specified enactments prevail to the extent of the conflict or inconsistency—

- (a) the provisions of the constitution of the corporation; and
 - (b) the terms of issue of the shares.
- (2) For any other prescribed securities, if there is a conflict or inconsistency between the specified enactments and the terms of issue of the securities, the specified enactments prevail to the extent of the conflict or inconsistency.
- (3) In this section—
- specified enactments* (指明成文法則) means—
- (a) section 101AAC; and
 - (b) the Part IIIAA rules;
- terms of issue* (發行條款), in relation to any prescribed securities, includes the terms of issue of the securities in relation to—
- (a) the holding of the securities; or
 - (b) the transfer of title to the securities.

101AAE. Conflict or inconsistency between section 101AAC or 101AAD and laws of places outside Hong Kong

- (1) Subsection (2) applies to any prescribed securities that are shares in or debentures of a body corporate incorporated in a place outside Hong Kong.
- (2) The specified enactments apply to the prescribed securities to the extent to which the application is neither prohibited under nor in conflict or inconsistent with—
 - (a) the law of the place in which the body corporate is incorporated (*place of incorporation*); or

- (b) if the securities are constituted under the law of a place other than Hong Kong and the place of incorporation—the law under which the securities are constituted.
- (3) Subsection (4) applies to any prescribed securities, other than those to which subsection (2) applies, that are constituted under the law of a place outside Hong Kong.
- (4) The specified enactments apply to the prescribed securities to the extent to which the application is neither prohibited under nor in conflict or inconsistent with the law under which the securities are constituted.
- (5) In this section—
specified enactments (指明成文法則) means—
 - (a) section 101AAC;
 - (b) section 101AAD; and
 - (c) the Part IIIAA rules.

Division 3—Approved Securities Registrars

101AAF. Prohibition on providing securities registrar services other than by approved securities registrars etc.

- (1) A person must not provide, or offer to provide, any securities registrar service unless—
 - (a) the person is an approved securities registrar; or
 - (b) the person is an employee or agent of an approved securities registrar, and is acting in that capacity for, or on behalf of, the registrar.
- (2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence.

- (3) A person who commits an offence under subsection (2) is liable—
 - (a) on summary conviction—to a fine of \$500,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or
 - (b) on conviction on indictment—to a fine of \$5,000,000 and to imprisonment for 7 years and, in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues.

101AAG. Approval for providing securities registrar services

- (1) A person specified in subsection (2) may apply to the Commission for approval to provide securities registrar services.
- (2) The person is—
 - (a) a company; or
 - (b) a registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap. 622).
- (3) An application—
 - (a) must be made in the manner specified by the Commission;
 - (b) must be accompanied by the information specified in subsection (4); and
 - (c) must be accompanied by an application fee prescribed by rules made under section 395 for the purposes of this section.

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- (4) The information is—
- (a) any information that the Commission reasonably requires regarding—
 - (i) the securities registrar services that the applicant proposes to provide;
 - (ii) the services and facilities that the applicant will hold itself out as being able to provide if an approval is granted;
 - (iii) the officers and senior employees whom the applicant proposes to appoint or employ and the persons with whom the applicant intends to be associated in the course of providing securities registrar services;
 - (iv) any other business that the applicant is carrying on, the officers and senior employees it appoints or employs and the persons with whom the applicant is associated in the course of carrying on the business; and
 - (v) the applicant’s directors and substantial shareholders and, if any of its substantial shareholders is a corporation, the directors and substantial shareholders of the corporation; and
 - (b) any other information that the Commission reasonably requires.
- (5) In considering an application under subsection (1), the Commission may have regard to any information in its possession, whether provided by the applicant or not.

- (6) The Commission may, by notice in writing served on an applicant, approve the applicant to provide securities registrar services on being satisfied that—
 - (a) the applicant is a fit and proper person to provide securities registrar services; and
 - (b) it is appropriate to grant the approval in the interest of the investing public or in the public interest.
- (7) The approval takes effect on the date specified in the notice.
- (8) In subsection (4)—

senior employee (高級僱員), in relation to an applicant, means a person employed by the applicant who performs supervisory or managerial functions in respect of the applicant.

101AAH. Provisions supplementary to section 101AAG

- (1) If a person is granted an approval under section 101AAG(6), the Commission must publish a notice of that fact in the Gazette.
- (2) Before making a decision not to grant an approval to a person under section 101AAG(6), the Commission must give the person a reasonable opportunity of being heard.
- (3) If the Commission refuses to grant an approval to a person under section 101AAG(6), the Commission must, by notice in writing served on the person, inform the person of the refusal and the reasons for the refusal.

101AAI. Conditions of approval

- (1) On granting an approval under section 101AAG(6), the Commission may impose any condition that it considers appropriate.
- (2) A condition imposed under subsection (1) must be specified in the notice of the approval granted under section 101AAG(6).
- (3) A condition imposed under subsection (1) takes effect at whichever is the later of the following times—
 - (a) the time at which the notice is served on the approved securities registrar;
 - (b) the time specified in the notice.
- (4) The Commission may, by notice in writing served on an approved securities registrar—
 - (a) amend or revoke a condition; or
 - (b) impose new conditions.
- (5) An amendment or revocation of a condition, or a new condition imposed, under subsection (4) takes effect at whichever is the later of the following times—
 - (a) the time at which the notice is served on the approved securities registrar;
 - (b) the time specified in the notice.
- (6) Without limiting subsections (1) and (4), the Commission may impose on an approved securities registrar all or any of the following requirements as a condition of approval—
 - (a) the registrar may only provide the securities registrar services that are specified in the notice;

- (b) the registrar must ensure that the securities in respect of which the registrar provides the securities registrar services, belong to a class or description of securities specified by the Commission;
 - (c) the registrar must notify the Commission of any changes to the information provided under section 101AAG(3)(b).
- (7) Before making a decision to impose, amend or revoke a condition, the Commission must give the approved securities registrar a reasonable opportunity of being heard.

101AAJ. Determination of fit and proper

- (1) In determining whether a person is a fit and proper person for the purposes of section 101AAG(6)(a), the Commission must, in addition to any other matter that it considers relevant, have regard to—
- (a) the person's financial status or solvency;
 - (b) the person's experience having regard to the nature and range of the securities registrar services that the person proposes to provide;
 - (c) the person's ability to provide securities registrar services competently, honestly and fairly;
 - (d) the reputation, reliability and financial integrity of the person and of any officer of the person; and
 - (e) the integrity, capacity and capability of the systems and facilities to be used by the person to provide securities registrar services, including for the purpose of meeting contingencies or emergencies.

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- (2) Without limiting subsection (1), the Commission may, in determining whether a person is a fit and proper person to provide securities registrar services for the purposes of this Ordinance, take into account—
- (a) a decision made in respect of the person by any other authority or regulatory organization, whether in Hong Kong or elsewhere, which, in the Commission's opinion, performs a function similar to the functions of the Commission;
 - (b) information in the Commission's possession, whether provided by the person or not, relating to—
 - (i) any other person who is or is to be appointed or employed by, associated with or acting for or on behalf of the person in connection with the person's provision of securities registrar services;
 - (ii) any other corporation in the same group of companies as the person; or
 - (iii) any substantial shareholder or officer of the person;
 - (c) whether the person has established effective internal control procedures and risk management systems to ensure—
 - (i) that the risks associated with the person's business and operations are managed prudently;
 - (ii) that the activities, instructions and other things that must or may be carried out, executed or processed by or through any UNSRT system operated by the person are

- dealt with properly and as expeditiously as is appropriate in the circumstances; and
- (iii) compliance with all applicable regulatory requirements under any of the relevant provisions;
 - (d) any failure on the part of the person to comply with the provisions set out in any codes or guidelines published under section 399 that apply to the person; and
 - (e) the state of affairs of any other business that the person is carrying on or proposes to carry on.

101AAK. Matters to be reported by approved securities registrars

- (1) An approved securities registrar must notify the Commission in accordance with subsection (3) if it intends—
 - (a) to cease to provide any securities registrar service; or
 - (b) to change the address of—
 - (i) the premises at which it provides securities registrar services; or
 - (ii) the premises at which information or data relating to its securities registrar services is processed or stored.
- (2) An approved securities registrar must also notify the Commission in accordance with subsection (3) of any other matter specified in the Part IIIAA rules.
- (3) The approved securities registrar must notify the Commission in writing of the matter specified in subsection (1) or (2)—

- (a) for subsection (1)(a)—as soon as practicable and in any event not later than 3 months before the cessation;
 - (b) for subsection (1)(b)—at least 7 business days before the change;
 - (c) for subsection (2)—within the time specified in the Part IIIAA rules.
- (4) A person who, without reasonable excuse, contravenes subsection (1) or (2) commits an offence.
 - (5) A person who commits an offence under subsection (4) is liable on conviction to a fine at level 5.

101AAL. Commission to maintain register of approved securities registrars

- (1) The Commission must maintain a register of approved securities registrars (*register*) in any form that it considers appropriate so long as the information contained in it is capable of being reproduced in a legible form.
- (2) The register must contain in relation to each approved securities registrar—
 - (a) the name and business address of the registrar;
 - (b) any condition of the approval imposed under section 101AAI that the Commission considers appropriate to be contained in the register; and
 - (c) any particulars prescribed by rules made under section 397 for the purposes of this section.
- (3) At all reasonable times, the register must be made available to the public for the purpose of enabling a person who is a member of the public—

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- (a) to ascertain whether the person is dealing with an approved securities registrar; and
 - (b) to ascertain the particulars of the approval of an approved securities registrar that the person is dealing with.
- (4) At all reasonable times, a member of the public may—
- (a) inspect the register or, if it is maintained otherwise than in a documentary form, a reproduction of the information or the relevant part of it in a legible form; and
 - (b) on payment of a fee prescribed by rules made under section 395, obtain a copy of—
 - (i) an entry in the register; or
 - (ii) an extract of the register.
- (5) A document—
- (a) purporting to be a copy of an entry in or extract of the register; and
 - (b) purporting to be certified by an authorized officer of the Commission as a true copy of the entry or extract,
- is admissible as evidence of its contents in any legal proceedings.
- (6) The Commission must also make the register available for inspection by the public in the form of an online record.

Division 4—Rules Made by Commission

101AAM. Commission's power to make rules

- (1) For the purposes of this Part, the Commission may make rules to provide for—
 - (a) activities and matters involving or relating to prescribed securities, including—
 - (i) the allotment, issue, holding, redemption and transfer of prescribed securities;
 - (ii) the recording, evidencing and passing of title to, or other interests in, prescribed securities;
 - (iii) the conversion of prescribed securities from certificated form to uncertificated form, and vice versa; and
 - (iv) the facilitation and promotion of the use of electronic means in respect of prescribed securities;
 - (b) activities and matters involving or relating to UNSRT systems, including the requirements, procedures, use and operation of UNSRT systems;
 - (c) the regulation of approved securities registrars; and
 - (d) any other matters for the better carrying out of the objects and purposes of this Part.
- (2) Without limiting subsection (1), rules made under that subsection may provide for—
 - (a) the circumstances and manner in which prescribed securities may be allotted, issued, held, redeemed or transferred;

- (b) the preparation and issue of certificates, confirmations, statements of account, notes, receipts, notifications or other documents relating to the allotment, issue, holding, redemption or transfer of prescribed securities;
- (c) the information for evidencing title to, or other interests in, prescribed securities in uncertificated form;
- (d) the keeping, maintaining and closure of registers of holders of prescribed securities;
- (e) the rectification of registers of holders of prescribed securities;
- (f) the inspection, and the making of copies, of all or any part of registers of holders of prescribed securities;
- (g) matters relating to proxies in respect of prescribed securities, including the appointment, the evidencing and termination of the appointment and the calculation and counting of proxies;
- (h) matters relating to communications between issuers and holders of prescribed securities;
- (i) matters relating to charges over prescribed securities, including the evidencing of such charges;
- (j) the transition to full dematerialization of prescribed securities, including the setting of timetables and deadlines for, and otherwise controlling the progress of, the dematerialization of prescribed securities;

- (k) the facilitation and promotion of the use of electronic means in activities, transactions and communications in respect of prescribed securities, including incentives (whether monetary or otherwise) for using electronic means, and disincentives (whether monetary or otherwise) for using paper documents;
- (l) the regulation of any matters relating to the carrying out, execution or processing of activities, instructions or other things in respect of prescribed securities by or through a UNSRT system;
- (m) the specification of services for the purposes of paragraph (c) of the definition of *securities registrar service* in section 1 of Part 1 of Schedule 1;
- (n) the financial resources requirements of an approved securities registrar;
- (o) the practices and standards to be complied with by an approved securities registrar in providing securities registrar services and operating and maintaining a UNSRT system;
- (p) the taking out and maintenance of insurance by an approved securities registrar in relation to its business and operations;
- (q) the keeping of accounts and records specified in the rules by approved securities registrars;
- (r) the submission to the Commission of returns and reports specified in the rules relating to the business and operations of an approved securities registrar;

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- (s) the rights, duties and liabilities, including exemption from liabilities, of any person (other than the Commission) in respect of any matter provided for under the rules;
 - (t) the imposition or collection of fees, by a person (other than the Commission) specified in the rules, in respect of any thing done, or services provided, by the person in connection with any matter specified in the rules;
 - (u) the admissibility in evidence in legal proceedings of documents specified in the rules and proof of the matters contained in those documents; and
 - (v) the reporting of any non-compliance of a requirement under the rules, and provision of information as specified in the rules, by a person who is subject to the requirement.
- (3) Without limiting subsection (1), rules made under that subsection may also provide for—
- (a) a court's functions in relation to any of the activities or matters mentioned in this section; and
 - (b) activities and matters that are related or incidental to any of the activities, matters or functions mentioned in this section.
- (4) Rules made under this section may provide that a person is not excused from complying with a requirement to produce a document or information imposed on the person under the rules only on the ground that to do so might tend to incriminate the person.

- (5) Rules made under this section may prescribe offences for contravention of the rules, punishable by a fine, imprisonment or both, and provide for defences to any such offences.
- (6) For an offence punishable on summary conviction, the maximum fine that may be prescribed is \$500,000 and the maximum imprisonment that may be prescribed is 2 years. In addition, in the case of a continuing offence, a further fine not exceeding \$10,000 for each day during which the offence continues may be prescribed.
- (7) For an offence punishable on conviction on indictment, the maximum fine that may be prescribed is \$1,000,000 and the maximum imprisonment that may be prescribed is 7 years. In addition, in the case of a continuing offence, a further fine not exceeding \$100,000 for each day during which the offence continues may be prescribed.”.

8. Section 180 amended (supervision of intermediaries and their associated entities)

- (1) Section 180, heading, after “**associated entities**”—

Add

“**and approved securities registrars**”.

- (2) Section 180(1)—

Repeal

“an intermediary or an associated entity of an intermediary”

Substitute

“a specified person”.

- (3) Section 180(1)(a)(i)—

Repeal

“in the case of”

Substitute

“for a specified person that is”.

- (4) Section 180(1)(a)(i)(B)—

Repeal

“or”.

- (5) Section 180(1)(a)(ii)—

Repeal

“in the case of”

Substitute

“for a specified person that is”.

- (6) Section 180(1)(a)(ii), after “entity;”—

Add

“or”.

- (7) After section 180(1)(a)(ii)—

Add

“(iii) for a specified person that is an approved securities registrar—

(A) the premises at which it provides securities registrar services; or

(B) the premises at which information or data relating to its securities registrar services is processed or stored;”.

- (8) Section 180(1)(b) and (c)—

Repeal

“the intermediary or the associated entity (as the case may be)” (wherever appearing)

Substitute

“the specified person”.

- (9) After section 180(2)(c)—

Add

“(ca) any of the terms and conditions of an approval granted under section 101AAG(6);”.

- (10) Section 180(3)(a)—

Repeal

“the intermediary or the associated entity (as the case may be)”

Substitute

“the specified person”.

- (11) Section 180(3)(b) and (c)—

Repeal

“the intermediary or the associated entity (as the case may be)”

Substitute

“the specified person”.

- (12) Section 180(4)—

Repeal

“the intermediary or the associated entity”

Substitute

“the specified person”.

- (13) Section 180(9)—

Repeal

“the intermediary or the associated entity in question”

Substitute

“the specified person in question”.

- (14) Section 180(9)—

Repeal

“the intermediary or the associated entity (as the case may be)”

Substitute

“the specified person”.

- (15) Section 180(17), definition of *relevant authority*, paragraph (a)(i)—

Repeal

“as referred to in subsection (1)”.

- (16) Section 180(17), definition of *relevant authority*, paragraph (a)(ii)—

Repeal

“as referred to in that subsection”.

- (17) Section 180(17), English text, definition of *relevant authority*, paragraph (b)—

Repeal the full stop

Substitute a semicolon.

- (18) Section 180(17)—

Add in alphabetical order

“*specified person* (指明人士) means—

- (a) an intermediary;

- (b) an associated entity of an intermediary; or
- (c) an approved securities registrar.”.

9. Section 182 amended (investigations by Commission)

- (1) After section 182(1)(b)(v)—

Add

“(va) the provision of securities registrar services;”.

- (2) Section 182(1)(d)—

Repeal

everything after “paragraph” and before “is not”

Substitute

“(b)”.

10. Section 193 amended (interpretation of Part IX)

- (1) Section 193(1), definition of *misconduct*, after paragraph (b)—

Add

“(ba) a contravention of any of the terms and conditions of an approval granted under section 101AAG(6);”.

- (2) Section 193(1), definition of *misconduct*, paragraph (d)—

Repeal

“public interest; or”

Substitute

“public interest;”.

- (3) Section 193(1), definition of *misconduct*, after paragraph (d)—

Add

“(da) an act or omission relating to the provision of any securities registrar service that a person is approved to provide which, in the opinion of the Commission, is or is likely to be prejudicial to the interest of the investing public or to the public interest; or”.

(4) After section 193(2)—

Add

“(2A) In this Part, if an approved securities registrar is, or was at any time, guilty of misconduct within the meaning of paragraph (a), (ba), (c) or (da) of the definition of *misconduct* in subsection (1) as a result of the commission of any conduct occurring with the consent or connivance of, or attributable to any neglect on the part of a person involved in the management of the business of the registrar, the conduct is also to be regarded as misconduct on the part of the person, and *guilty of misconduct* is also to be construed accordingly.”.

(5) Section 193(3), after “(d)”—

Add

“, (da)”.

11. Section 194 amended (disciplinary action in respect of licensed persons, etc.)

(1) Section 194(1)(a)—

Repeal

“misconduct; or”

Substitute

“misconduct;”.

- (2) Section 194(1)(b), after “a regulated person”—

Add

“(other than a person specified in paragraph (d) or (e) of the definition of *regulated person* in subsection (7))”.

- (3) Section 194(1)(b)—

Repeal the comma

Substitute a semicolon.

- (4) After section 194(1)(b)—

Add

“(c) the Commission is of the opinion that a regulated person who is an approved securities registrar is not a fit and proper person to provide any securities registrar service that the person is approved to provide; or

(d) the Commission is of the opinion that a regulated person who is a person involved in the management of the business of an approved securities registrar is not a fit and proper person to be involved in such management.”.

- (5) After section 194(1)(ii)—

Add

“(iia) where the regulated person is an approved securities registrar—

(A) revoke the approval of the person granted under section 101AAG(6) in relation to all or any, or any part of all or any, of the securities registrar services that the person is approved to provide;

(B) suspend such approval in relation to all or any, or any part of all or any, of the securities registrar services that the person is approved to

provide, for a period or until the occurrence of an event that the Commission specifies; or

- (C) prohibit the person from applying for approval under section 101AAG(1), for a period or until the occurrence of an event that the Commission specifies;”.

- (6) Section 194(1)(iv), before “prohibit”—

Add

“where the regulated person is a person specified in paragraph (a), (b) or (c) of the definition of *regulated person* in subsection (7)—”.

- (7) Section 194(2)(a)—

Repeal

“misconduct; or”

Substitute

“misconduct;”.

- (8) Section 194(2)(b), after “a regulated person”—

Add

“(other than a person specified in paragraph (d) or (e) of the definition of *regulated person* in subsection (7))”.

- (9) Section 194(2)(b)—

Repeal the comma

Substitute a semicolon.

- (10) After section 194(2)(b)—

Add

- “(c) the Commission is of the opinion that a regulated person who is an approved securities registrar is not a fit and proper person to provide any securities registrar service that the person is approved to provide; or
- (d) the Commission is of the opinion that a regulated person who is a person involved in the management of the business of an approved securities registrar is not a fit and proper person to be involved in such management,”.
- (11) Section 194(3)—
- Repeal**
- “(1)(b) or (2)(b)”
- Substitute**
- “(1)(b), (c) or (d) or (2)(b), (c) or (d)”.
- (12) Section 194(3)—
- Repeal**
- “section 129”
- Substitute**
- “section 101AAJ or 129 (as the case requires)”.
- (13) Section 194(7), definition of *regulated person*, paragraph (b)—
- Repeal**
- “or”.
- (14) Section 194(7), definition of *regulated person*, after paragraph (c)—
- Add**
- “(d) an approved securities registrar; or

(e) a person involved in the management of the business of an approved securities registrar;”.

(15) Section 194(7), definition of *relevant time*, paragraph (b)—

Repeal

“(1)(b) or (2)(b)”

Substitute

“(1)(b), (c) or (d) or (2)(b), (c) or (d)”.

(16) Section 194(7), Chinese text, definition of 受規管人士, paragraph (c)—

Repeal

“人。”

Substitute

“人；”.

12. Section 195A added

After section 195—

Add

“195A. Other circumstances for disciplinary actions in respect of approved securities registrars

(1) The Commission may, in any of the circumstances specified in subsection (2), exercise any of the following powers in relation to an approved securities registrar—

(a) revoke the approval of the registrar granted under section 101AAG(6) in relation to all or any, or any part of all or any, of the securities registrar services that the registrar is approved to provide;

- (b) suspend such approval in relation to all or any, or any part of all or any, of the securities registrar services that the registrar is approved to provide, for a period or until the occurrence of an event that the Commission specifies.
- (2) The circumstances are—
 - (a) a receiver or manager of the property or business of the registrar is appointed;
 - (b) the registrar fails to satisfy a levy of execution;
 - (c) the registrar enters into a compromise or scheme of arrangement with its creditors;
 - (d) the registrar goes into liquidation or is ordered to be wound up;
 - (e) the registrar does not provide the securities registrar service or securities registrar services, or the part of the securities registrar service or securities registrar services, to which the revocation or suspension (as the case requires) relates; and
 - (f) the registrar requests the Commission to revoke or suspend the approval.
- (3) Subsection (1) is subject to section 198.
- (4) An approved securities registrar’s approval is to be regarded as revoked if the registrar is wound up, struck off the Companies Register or otherwise dissolved.”.

13. Section 198 amended (procedural requirements in respect of exercise of powers under Division 2)

- (1) Section 198(1), after “(7),”—

Add

“195A(1) (except in so far as it relates to section 195A(2)(f)),”.

(2) Section 198(3), after “(7),”—

Add

“195A(1),”.

14. Section 200 amended (effect of suspension under Division 2 or 3)

(1) After section 200(2)—

Add

“(2A) If an approval of a person granted under section 101AAG(6) is suspended under section 194(1)(ia)(B) or 195A(1)(b), the person, during the period of the suspension—

(a) continues to be regarded for the purposes of this Ordinance, but not section 101AAF(1), to be approved to provide the securities registrar service or securities registrar services, or the part of the securities registrar service or securities registrar services, to which the suspension relates; and

(b) continues to be required to comply with the provisions of this Ordinance relating to an approved securities registrar that would apply to the person were the approval not so suspended.

(2B) Subsection (2A) is without prejudice to any provision of this Ordinance that applies in relation to the suspension.”.

(2) After section 200(5)—

Add

“(5A) An approval of a person granted under section 101AAG(6) may be revoked under section 194(1)(ia)(A) or 195A(1)(a) even though, at the time of revocation, the approval is suspended under this Ordinance, whether in relation to all or any, or any part of all or any, of the securities registrar services that the person is approved to provide.”.

15. Section 201 amended (general provisions relating to exercise of powers under Division 2 or 3)

(1) Section 201(1), after “or (7),”—

Add

“195A(1),”.

(2) Section 201(2)—

Repeal

“or registration”

Substitute

“, registration or approval”.

(3) Section 201(2)(a)—

Repeal

“or registered institution (as the case may be)”

Substitute

“, registered institution or approved securities registrar (as the case requires)”.

(4) Section 201(3), after “or (7),”—

Add

“195A(1),”.

16. Section 202 amended (requirement to transfer records upon revocation or suspension of licence or registration)

(1) Section 202, heading—

Repeal

“or registration”

Substitute

“, registration or approval”.

(2) After section 202(1)—

Add

“(1A) If an approval of a person (*specified person*) granted under section 101AAG(6) is revoked or suspended under Division 2 or 3, the Commission may, by notice in writing served on the specified person, require the specified person to transfer to, or to the order of, a client of the specified person any records relating to the client’s affairs as specified in the notice.

(1B) For the purposes of subsection (1A), the records include—

(a) any registers of holders of prescribed securities kept by the specified person on behalf of the client; and

(b) any other records kept by the specified person in respect of the holders of the prescribed securities.”.

(3) Section 202(2)—

Repeal

“him under subsection (1)”

Substitute

“the person under subsection (1) or (1A)”.

- (4) Section 202(3)—

Repeal

“(3) In this section, *client* (客戶), in relation to”

Substitute

“(3) In this section—

client (客戶)—

(a) in relation to”.

- (5) Section 202(3), definition of *client*, paragraph (a)—

Repeal the full stop

Substitute a semicolon.

- (6) Section 202(3), definition of *client*, after paragraph (a)—

Add

“(b) in relation to a specified person, means a person for whom the specified person provided, at any time when the specified person was an approved securities registrar, a service specified in paragraph (a) of the definition of *securities registrar service* in section 1 of Part 1 of Schedule 1.”.

17. Section 203AA added

Part IX, Division 3, after section 203—

Add

“203AA. Permission to carry on business operations on revocation or suspension of approval

- (1) If an approval of a person is revoked, the Commission may, by notice in writing served on the person, permit the person—
 - (a) to carry on business operations that are essential for closing down the business of the revoked service; and
 - (b) to provide any service as specified by the Commission for the purpose of—
 - (i) ceasing to provide the revoked service; or
 - (ii) protecting the interest of the investing public or the public interest.
- (2) If an approval of a person is suspended, the Commission may, by notice in writing served on the person, permit the person—
 - (a) to carry on business operations that are essential for protecting the interests of issuers and holders of prescribed securities; and
 - (b) to provide any service as specified by the Commission for the purpose of—
 - (i) ceasing to provide the suspended service; or
 - (ii) protecting the interest of the investing public or the public interest.
- (3) On granting a permission under subsection (1) or (2), the Commission may impose any condition that it considers appropriate.

- (4) When business operations are carried on or services are provided by a person in accordance with a permission granted under subsection (1), despite the revocation—
 - (a) the approval is not taken to be revoked in relation to the revoked service; and
 - (b) any provision that applies to an approved securities registrar applies accordingly to the person.
- (5) When business operations are carried on or services are provided by a person in accordance with a permission granted under subsection (2), despite the suspension—
 - (a) the approval is not taken to be suspended in relation to the suspended service; and
 - (b) any provision that applies to an approved securities registrar applies accordingly to the person.
- (6) Despite section 200(2A), if the Commission has granted a permission to a person under subsection (1) or (2), the person is not, because of the person's carrying on business operations or providing services in accordance with the permission, to be regarded as having contravened section 101AAF(1).
- (7) A permission granted under subsection (1) or (2), or a condition imposed under subsection (3), takes effect at whichever is the later of the following times—
 - (a) the time at which the notice given in respect of the permission or condition is served on the person;

(b) the time specified in the notice.

(8) In this section—

approval (核准), in relation to a person, means an approval granted to the person under section 101AAG(6) to provide securities registrar services;

revoke (撤銷), in relation to an approval of a person, means revoke the approval under Division 2 or 3, whether in relation to all or any, or any part of all or any, of the securities registrar services that the person is approved to provide;

revoked service (已撤銷的服務), in relation to a person, means any of the securities registrar services, or any part of any of the securities registrar services, in relation to which the approval of the person has been revoked;

suspend (暫時撤銷), in relation to an approval of a person, means suspend the approval under Division 2 or 3, whether in relation to all or any, or any part of all or any, of the securities registrar services that the person is approved to provide;

suspended service (已暫時撤銷的服務), in relation to a person, means any of the securities registrar services, or any part of any of the securities registrar services, in relation to which the approval of the person has been suspended.”.

18. Section 204 amended (restriction of business)

(1) Section 204(1)—

Repeal

“207”

Substitute

“207(1)”.

- (2) After section 204(2)—

Add

“(3) The Commission may, by notice in writing served on an approved securities registrar—

(a) prohibit the registrar from doing, during a period specified in the notice, any act or other thing, as specified in the notice—

(i) relating to the management, conduct or operation of its business as an approved securities registrar; or

(ii) relating to the management, conduct or operation of any services provided in respect of prescribed securities; and

(b) require the registrar to, within a period specified in the notice, take any action, as specified in the notice—

(i) relating to the management, conduct or operation of its business as an approved securities registrar; or

(ii) relating to the management, conduct or operation of any services provided in respect of prescribed securities.

(4) Subsection (3) is subject to section 207(2).”.

19. Section 205 amended (restriction on dealing with property)

Section 205(1)—

Repeal

“207”

Substitute

“207(1)”.

20. Section 206 amended (maintenance of property)

Section 206(1)—

Repeal

“207”

Substitute

“207(1)”.

21. Section 207 amended (imposition of prohibition or requirement under section 204, 205 or 206)

(1) Section 207—

Renumber the section as section 207(1).

(2) Section 207(1)—

Repeal

“204”

Substitute

“204(1)”.

(3) After section 207(1)—

Add

“(2) The Commission may impose a prohibition or requirement under section 204(3) in respect of or with reference to an approved securities registrar if it appears to the Commission that—

(a) having regard, among other matters, to the matters specified in section 101AAJ, the registrar—

- (i) is not a fit and proper person to remain an approved securities registrar; or
 - (ii) is not a fit and proper person to provide any securities registrar service that the registrar is approved to provide;
- (b) the registrar—
 - (i) has failed to comply with the requirement specified in section 180(2); or
 - (ii) in purported compliance with the requirement, has provided the Commission with information which was, when it was provided, false or misleading in a material particular;
- (c) the approval of the registrar may be revoked or suspended—
 - (i) on any of the grounds specified in section 194(1); or
 - (ii) in any of the circumstances specified in section 195A(2); or
- (d) the imposition of the prohibition or requirement is desirable in the interest of the investing public or in the public interest.”.

22. Section 209 amended (general provisions relating to sections 204, 205, 206 and 208)

Section 209(8)(a)—

Repeal

“or a clearing participant”

Substitute

“, a clearing participant or a registrar participant”.

23. Section 210 amended (cases of revocation or suspension of licensed corporations' licences)

Section 210(1)(a)(i), (2)(b), (3)(a) and (4)(a)—

Repeal

“204”

Substitute

“204(1)”.

24. Section 210A added

After section 210—

Add

“210A. Cases of revocation or suspension of approved securities registrars' approval

- (1) Without limiting section 200(2A), the revocation or suspension of the approval of an approved securities registrar does not affect the validity of—
 - (a) a prohibition or requirement imposed under section 204(3) in respect of or with reference to the registrar;
 - (b) a prohibition or requirement substituting for another prohibition or requirement under section 208(1)(b); or
 - (c) a prohibition or requirement as varied under section 208(1)(b).
- (2) However, subsection (1) applies only if the imposition, substitution or variation (as the case requires) of the prohibition or requirement takes effect at any time before the revocation or suspension takes effect.

- (3) Without limiting subsection (1), the revocation or suspension of the approval of an approved securities registrar does not affect any power exercisable by the Commission under section 208 in respect of a prohibition or requirement referred to in that subsection, at the time when, or at any time after, the revocation or suspension takes effect.
- (4) A reference in this Division to an approved securities registrar is to be construed according to subsections (1) and (3).
- (5) Subsection (6) applies if—
 - (a) the approval of an approved securities registrar is revoked or suspended under this Ordinance; and
 - (b) the Commission, whether before, on or after the revocation or suspension—
 - (i) has imposed under section 204(3) a prohibition or requirement in respect of or with reference to the registrar; or
 - (ii) has substituted or varied under section 208 a prohibition or requirement imposed in respect of or with reference to the registrar.
- (6) Despite section 200(2A), the approved securities registrar is not, because of its compliance with the prohibition or requirement in force, to be regarded as having contravened section 101AAF(1).
- (7) To avoid doubt, if the Commission has decided to revoke or suspend the approval of an approved securities registrar under this Ordinance, the Commission may, at any time before the revocation or suspension takes effect—

- (a) impose under section 204(3) a prohibition or requirement in respect of or with reference to the registrar; or
 - (b) withdraw, substitute or vary under section 208 a prohibition or requirement imposed in respect of or with reference to the registrar.
- (8) To avoid doubt, nothing in this section affects the power of the Commission—
- (a) to impose under section 204(3) a prohibition or requirement in respect of or with reference to an approved securities registrar, the approval of which has been suspended under this Ordinance; or
 - (b) to withdraw, substitute or vary under section 208 a prohibition or requirement imposed in respect of or with reference to an approved securities registrar, the approval of which has been suspended under this Ordinance.”.

25. Section 212 amended (winding-up orders and bankruptcy orders)

Section 212(3)(a)—

Repeal

“or a clearing participant”

Substitute

“, a clearing participant or a registrar participant”.

26. Section 213 amended (injunctions and other orders)

Section 213(3)(a)—

Repeal

“or a clearing participant”

Substitute

“, a clearing participant or a registrar participant”.

27. Schedule 1 amended (interpretation and general provisions)

(1) Schedule 1—

Repeal

“[ss. 2, 19, 66,”

Substitute

“[ss. 2, 19, 66, 101AAM,”.

(2) Schedule 1, Part 1, section 1—

Repeal the definition of *clearing participant*

Substitute

“*clearing participant* (結算所參與者)—

(a) means a person—

(i) who, in accordance with the rules of a recognized clearing house, may participate in one or more of the services provided by the clearing house in its capacity as a clearing house; and

(ii) whose name is entered in a list, roll or register kept by the clearing house as a person who may participate in one or more of the services provided by the clearing house; but

(b) does not include a registrar participant;”.

(3) Schedule 1, Part 1, section 1, definition of *rules*, paragraph (b)(i), after “participants”—

Add

“or registrar participants”.

(4) Schedule 1, Part 1, section 1—

Add in alphabetical order

“**approved securities registrar** (核准證券登記機構) means a person approved under section 101AAG(6) of this Ordinance to provide securities registrar services;

Part IIIAA rules (《第III AA部規則》) means rules made under section 101AAM of this Ordinance;

prescribed securities (訂明證券)—see section 101AA of this Ordinance;

registrar participant (登記機構參與者) means a person—

- (a) who, in accordance with the rules of a recognized clearing house, may send instructions to, and receive instructions from, the clearing house (or its nominee) to facilitate the transfer of legal title to prescribed securities; and
- (b) whose name is entered in a list, roll or register kept by the clearing house as a person who may send instructions to, and receive instructions from, the clearing house (or its nominee) to facilitate the transfer of legal title to prescribed securities;

securities registrar service (證券登記機構服務), in relation to any prescribed securities, means—

- (a) the maintenance in Hong Kong of a register of holders of the prescribed securities;
- (b) the provision and operation of a UNSRT system in respect of the prescribed securities; or
- (c) any other service specified in the Part IIIAA rules;

UNSR *system* (無紙證券登記及轉讓系統)—see section 101AAB of this Ordinance;”.

(5) Schedule 1, Part 1, after section 1A—

Add

“1AB. How to determine whether prescribed securities are in uncertificated form or in certificated form

For the purposes of this Ordinance, prescribed securities—

- (a) are in uncertificated form if they are recorded in accordance with the Part IIIAA rules in the register of holders concerned as being held in uncertificated form; and
- (b) are in certificated form if they are not in uncertificated form.”.

28. Schedule 3A added

After Schedule 3—

Add

“Schedule 3A

[s. 101AA]

Classes or Descriptions of Securities

1. Shares, other than shares that constitute interests in a collective investment scheme authorized by the Commission under section 104 of this Ordinance (*authorized CIS*)
2. Depositary receipts

3. Stapled securities
4. Interests in an authorized CIS which, under the terms of issue of the authorized CIS, may be withdrawn from a clearing and settlement system operated by, or on behalf of, a recognized clearing house
5. Subscription warrants issued for capital fund raising purposes that entitle the holder to subscribe for securities (whether issued or unissued) that fall within a class or description of securities specified in item 1, 2, 3 or 4
6. Rights under a rights issue to subscribe for securities that fall within a class or description of securities specified in item 1, 2, 3 or 4”.

29. Schedule 8 amended (Securities and Futures Appeals Tribunal)

- (1) Schedule 8, Part 2, Division 1, after item 4—

Add

- | | |
|---|--|
| “4AA. Section 101AAG(6) of this Ordinance | Refusal to grant an approval to a person to provide securities registrar services. |
| 4AAB. Section 101AAI(1) of this Ordinance | Imposition of any condition. |
| 4AAC. Section 101AAI(4) of this Ordinance | Amendment or revocation of any condition, or imposition of any new condition.”. |

- (2) Schedule 8, Part 2, Division 1, item 51, column 2—

Repeal

“(iii)”

Substitute

“(iiia), (iii)”.

- (3) Schedule 8, Part 2, Division 1, item 51, column 3, after “a licence”—

Add

“, the approval of an approved securities registrar”.

- (4) Schedule 8, Part 2, Division 1, after item 55—

Add

“55A.	Section 195A(1)(a) or (b) of this Ordinance	Revocation or suspension of the approval of a person to provide securities registrar services.”.
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- (5) Schedule 8, Part 2, Division 1, item 60, column 2, after “202(1)”—

Add

“or (1A)”.

- (6) Schedule 8, Part 2, Division 1, after item 61—

Add

“61A.	Section 203AA(3) of this Ordinance	Imposition of any condition.”.
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- (7) Schedule 8, Part 2, Division 1, item 62, column 2, after “(b)”—

Add

“or (3)(a) or (b)”.

- (8) Schedule 8, Part 2, Division 1, item 62, column 3—

Repeal

everything after “corporation”

Substitute

“or an approved securities registrar concerning business etc.”.

- (9) Schedule 8, Part 3, Division 5, after item 2—

Add

“2AA. A specified decision set out in item 4AAB of Division 1 of Part 2. Section 101AAI(3) of this Ordinance.

2AAB. A specified decision set out in item 4AAC of Division 1 of Part 2. Section 101AAI(5) of this Ordinance.”.

- (10) Schedule 8, Part 3, Division 5, after item 13—

Add

“13A. A specified decision set out in item 61A of Division 1 of Part 2. Section 203AA(7) of this Ordinance.”.

Division 2—Amendments to Companies Ordinance (Cap. 622)

30. Section 2 amended (interpretation)

- (1) Section 2(1)—

Add in alphabetical order

“*approved securities registrar* (核准證券登記機構) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

prescribed securities (訂明證券) has the meaning given by section 101AA of the Securities and Futures Ordinance (Cap. 571);

SFO-Part IIIA rules (《第571章第IIIA部規則》) means rules made under section 101AAM of the Securities and Futures Ordinance (Cap. 571);”.

(2) After section 2(3)—

Add

“(3A) For the purposes of this Ordinance, shares in a company that are prescribed securities—

- (a) are in uncertificated form if the shares are recorded in accordance with the SFO-Part IIIA rules in the company’s register of members as being held in uncertificated form; and
- (b) are in certificated form if the shares are not in uncertificated form.”.

31. Section 134 amended (nature and transferability of shares)

After section 134(2)—

Add

“(3) However, shares or other interests that are prescribed securities are transferable in accordance with the company’s articles, subject to—

- (a) Part IIIA of the Securities and Futures Ordinance (Cap. 571); and
- (b) the SFO-Part IIIA rules.”.

32. Section 144 amended (issue of share certificate on allotment)

Section 144(2)—

Repeal

everything after “apply”

Substitute

“to an allotment of shares if—

- (a) the conditions of issue of the shares provide otherwise; or
- (b) the shares are—
 - (i) prescribed securities; and
 - (ii) held by the allottee in uncertificated form immediately after the allotment.

Note—

For requirements and other matters relating to an allotment of shares that are prescribed securities and held by the allottee in uncertificated form immediately after the allotment, see the SFO-Part IIIAA rules.”.

33. Section 150 amended (requirement for instrument of transfer)

- (1) Section 150, heading—

Repeal

“instrument”

Substitute

“registration”.

- (2) Section 150(1)—

Repeal

everything after “in the company”

Substitute

“unless—

- (a) if the shares are not prescribed securities—a proper instrument of transfer has been delivered to the company; or
 - (b) if the shares are prescribed securities—either of the following as required under the SFO-Part IIIAA rules in respect of the shares has been delivered to the company in accordance with those rules—
 - (i) a proper instrument of transfer;
 - (ii) a specified request.”.
- (3) After section 150(2)—

Add

“(3) In subsection (1)—

specified request (指明請求), in relation to shares in a company, means a request that complies with the requirements set out in the SFO-Part IIIAA rules for registration of the transfer of the shares.”.

34. Section 151 amended (registration of transfer or refusal of registration)

(1) Section 151(1)—

Repeal

everything after “a company”

Substitute

“may, in respect of the transfer of the shares—

- (a) if the shares are not prescribed securities—lodge with the company the instrument of transfer; or

(b) if the shares are prescribed securities—lodge with the company either of the following as required under the SFO-Part IIIAA rules in respect of the shares—

(i) the instrument of transfer;

(ii) a specified request as defined by section 150(3).”.

(2) Section 151(2)—

Repeal

“after the transfer is lodged”

Substitute

“after the instrument or request is lodged under subsection (1)(a) or (b)”.

35. Section 153 amended (transfer by personal representative)

Section 153—

Repeal

“at the time of execution of the instrument of transfer”

Substitute

“immediately before the transfer”.

36. Section 155 amended (issue of share certificate on transfer)

(1) After section 155(2)(a)—

Add

“(ab) for a listed company, 10 business days after the day on which the transfer or specified request is lodged with the company;”.

- (2) After section 155(3)(a)—

Add

“(ab) the shares are—

- (i) prescribed securities; and
- (ii) held by the transferee in uncertificated form immediately after the transfer;”.

- (3) At the end of section 155(3)—

Add

“Note—

For requirements and other matters relating to a transfer of shares that are prescribed securities and held by the transferee in uncertificated form immediately after the transfer, see the SFO-Part IIIA rules.”.

- (4) Section 155(5), English text, definition of *business day*—

Repeal the full stop

Substitute a semicolon.

- (5) Section 155(5)—

Add in alphabetical order

“*specified request* (指明請求) has the meaning given by section 150(3).”.

37. Part 4, Division 5 heading amended (replacement of listed companies' lost share certificates)

Part 4, Division 5, heading—

Repeal

“Replacement of”.

38. Section 162 amended (interpretation)

Section 162, definition of *genuine purchaser*, paragraph (a)—

Repeal

“to whom a new certificate for the shares is issued under this Division”

Substitute

“referred to in section 167(1)(a) or (1A)(a)”.

39. Section 163 amended (application for new certificate)

(1) Section 163, heading, after “**certificate**”—

Add

“**or shares to be held in uncertificated form**”.

(2) Section 163—

Repeal subsection (1)

Substitute

“(1) If a share certificate for shares in a listed company has been lost, an eligible person may apply to the company—

(a) for a new certificate; or

(b) for the shares to be held by the person in uncertificated form.

(1A) However, an eligible person—

(a) may not make an application under subsection (1)(a) if the company no longer issues share certificates for shares in the company; and

(b) may not make an application under subsection (1)(b) if shares in the company may not be held in uncertificated form.”.

40. Section 164 amended (publication requirements)

(1) Before section 164(1)—

Add

- “(1A) This section applies to a listed company that—
- (a) on an application under section 163(1)(a)—intends to issue a new certificate; or
 - (b) on an application under section 163(1)(b)—intends to record the shares concerned in the register of its members as being held in uncertificated form.”.

- (2) Section 164(1)—

Repeal

everything before “must publish”

Substitute

“(1) The listed company”.

41. Section 165 amended (issue of new certificate)

- (1) Section 165, heading, after “**certificate**”—

Add

“or recording of shares as being held in uncertificated form”.

- (2) Before section 165(1)—

Add

“(1A) If the conditions set out in subsection (1) are met, a listed company may—

- (a) on an application under section 163(1)(a)—issue a new certificate; or
- (b) on an application under section 163(1)(b)—record the shares concerned in the register of its members as being held in uncertificated form.”.

- (3) Section 165(1)—

Repeal

“A listed company may issue a new certificate on an application under section 163 if”

Substitute

“The conditions are”.

- (4) Section 165(1)(c)(i)—

Repeal

“150”

Substitute

“150(1)(b)(i)”.

- (5) Section 165(2)—

Repeal

“150”

Substitute

“150(1)(b)(i)”.

- (6) After section 165(3)—

Add

“(3A) A listed company that records the shares in the register of its members as being held in uncertificated form must without delay—

- (a) cancel the original certificate;
- (b) record the cancellation of the original certificate in the register of its members; and
- (c) if the application under section 163(1)(b) is made by an eligible person who is not the registered holder of the shares—enter the name of the eligible person in the register of its members in respect of the shares.

Note—

For matters relating to the recording of shares in a listed company that are held in uncertificated form, see the SFO-Part IIIAA rules.”.

42. Section 166 amended (public notice of issue of new certificate)

- (1) Section 166, heading, after “**certificate**”—

Add

“**or recording of shares as being held in uncertificated form**”.

- (2) Before section 166(1)—

Add

“(1A) This section applies to a listed company that—

- (a) on an application under section 163(1)(a)— issues a new certificate; or
- (b) on an application under section 163(1)(b)— records the shares concerned in the register of its members as being held in uncertificated form.”.

- (3) Section 166—

Repeal subsection (1)

Substitute

“(1) The listed company must—

- (a) publish a notice in the specified form in accordance with this section; and
- (b) deliver a copy of the notice to the recognized exchange company that operates the stock market on which the shares concerned are listed within 14 days after the date of issue or record (as applicable).”.

- (4) Section 166(2), after “issue”—

Add

“or record (as applicable)”.

- (5) After section 166(3)—

Add

“(3A) If the listed company was required by section 164(2)(b) to publish a notice in the Gazette of its intention to record the shares in the register of its members as being held in uncertificated form, the notice under this section must also be published in the Gazette within 14 days after the date of record.”.

43. Section 167 amended (orders of Court for rectification of the register)

- (1) Section 167(1)—

Repeal

“this section”

Substitute

“subsections (2) and (3)”.

- (2) After section 167(1)—

Add

“(1A) Subject to subsections (2) and (3), if a listed company records under this Division any of its shares in the register of its members as being held in uncertificated form, nothing in this Division affects the power of the Court to make an order under section 633 in favour of a person claiming to be entitled to the shares as against—

- (a) the eligible person on whose application the shares are so recorded; or

(b) a person whose name is subsequently entered in the register in respect of the shares.”.

(3) Section 167(2), after “(1)(b)”—

Add

“or (1A)(b)”.

(4) Section 167—

Repeal subsection (3)

Substitute

“(3) If the Court makes an order under section 633 as against a person referred to in subsection (1)(a) or (b) or (1A)(a) or (b)—

(a) the Court must not order the payment of damages by the company; and

(b) the company is not otherwise liable for any damage caused by any of the following acts done in accordance with this Division—

(i) the issue of the new certificate;

(ii) the cancellation of the original certificate;

(iii) the entering of the name of a person in the register of its members in respect of the shares.”.

44. Section 168 amended (liability if rectification cannot be ordered)

(1) Section 168—

Repeal subsection (2)

Substitute

“(2) Unless the company has acted deceitfully, the company is not liable for any damage suffered by the claimant because of any of the following acts done in accordance with this Division—

- (a) the issue of the new certificate;
- (b) the cancellation of the original certificate;
- (c) the entering of the name of a person (other than the claimant) in the register of its members in respect of the shares.”.

(2) Section 168(3)—

Repeal

“the person to whom the new certificate is issued, the person to whom the new certificate is issued”

Substitute

“a specified person, the specified person”.

(3) Section 168(4)—

Repeal

“the person to whom the new certificate is issued”

Substitute

“the specified person”.

(4) Section 168(5), definition of *claimant*—

Repeal the full stop

Substitute a semicolon.

(5) Section 168(5)—

Add in alphabetical order

“*specified person* (指明人士) means a person referred to in section 167(1)(a) or (1A)(a).”.

45. Section 169 amended (applicant to pay expenses)

Section 169(1)—

Repeal

“for a new certificate”

Substitute

“under section 163(1)(a) or (b)”.

46. Section 696 amended (obligations of offeror with right to buy out minority shareholders)

(1) After section 696(3)—

Add

“(3A) However, if the shares to which the notice relates are prescribed securities, the offeror is not required to comply with subsection (3)(a)(ii) and must instead send to the company in accordance with the SFO-Part IIIAA rules either of the following as required under those rules in respect of the shares—

- (a) an instrument of transfer of the shares;
- (b) a specified request in relation to the shares.”.

(2) Section 696—

Repeal subsection (4)

Substitute

“(4) If the shares to which the notice relates are shares for which a share warrant is outstanding, the offeror is not required to comply with subsection (3)(a)(ii) or (3A).

(5) In this section—

specified request (指明請求) has the meaning given by section 150(3).”.

47. Section 697 amended (company must register offeror as shareholder)

Section 697—

Repeal

“under section 696(3)(a)(ii)”

Substitute

“or a specified request under section 696(3)(a)(ii) or (3A)”.

48. Section 908 repealed (paperless holding and transfer of shares and debentures)

Section 908—

Repeal the section.

49. Schedule 8 repealed (amendments relating to paperless holding and transfer of shares and debentures)

Schedule 8—

Repeal the Schedule.

Division 3—Related Amendments

Subdivision 1—Amendments to Insurance Ordinance (Cap. 41)

50. Section 25 amended (provisions supplementary to section 24)

(1) Section 25(3), after “of an instrument of transfer”—

Add

“or a specified request”.

(2) Section 25(3), after “as an instrument of transfer”—

Add

“or a specified request (as the case requires)”.

(3) After section 25(6)—

Add

“(7) In subsection (3)—

specified request (指明請求) has the meaning given by section 150(3) of the Companies Ordinance (Cap. 622).”.

Subdivision 2—Amendment to Control of Exemption Clauses Ordinance (Cap. 71)

51. Schedule 1 amended (scope of sections 7, 8, 9 and 12)

Schedule 1, paragraph 1(f)—

Repeal

“within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571)”

Substitute

“or a registrar participant (both as defined by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571))”.

Subdivision 3—Amendments to Stamp Duty Ordinance (Cap. 117)

52. Section 2 amended (interpretation)

(1) Section 2(1), definition of *stamp*, after paragraph (d)—

Add

“(e) an imprint on a contract note made in accordance with section 5AA(3);”.

(2) Section 2(1)—

Add in alphabetical order

“*prescribed securities* (訂明證券) has the meaning given by section 101AA of the Securities and Futures Ordinance (Cap. 571);”.

(3) After section 2(6)—

Add

“(7) For the purposes of this Ordinance—

- (a) a reference to prescribed securities in uncertificated form is to be construed in accordance with section 1AB(a) of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571); and
- (b) a reference to prescribed securities in certificated form is to be construed in accordance with section 1AB(b) of Part 1 of Schedule 1 to that Ordinance.”.

53. Section 4 amended (charging of, liability for, and recovery of stamp duty)

After section 4(3A)—

Add

“(3B) If the amount of the stamp duty imprinted on a contract note stamped under section 5AA(2) has not been paid to the Collector in the manner provided by the arrangement approved under section 5AAB(1), the contract note is deemed for the purposes of subsection (3) to be an instrument chargeable with the stamp duty, which is not duly stamped in respect of the stamp duty.”.

54. Sections 5AA and 5AAB added

After section 5—

Add

“5AA. Additional provision on methods of stamping—sale or purchase of Hong Kong stock

- (1) This section applies to a contract note if it is a contract note—
 - (a) to which an arrangement approved under section 5AAB(1) relates; and
 - (b) in respect of which the conditions in section 5AAB(2)(b) are satisfied.
- (2) Without derogation from section 5(1) and (2), a contract note may be stamped in accordance with subsection (3) by a person authorized by the Collector for the purposes of this subsection.
- (3) The contract note may be stamped by imprinting on it, in the manner specified by the Collector—
 - (a) the amount of the stamp duty chargeable on the contract note; and
 - (b) a note to the effect that the amount of the chargeable stamp duty has been or will be paid in the manner provided by the arrangement.
- (4) Subject to section 4(3B), a contract note stamped under subsection (2) is to be treated as duly stamped with the amount of the stamp duty imprinted on the note and within the time for stamping the note.
- (5) A person commits an offence if the person, with intent to defraud the Government—
 - (a) imprints on a contract note the matters described in subsection (3)(a) and (b) without an authorization under subsection (2); or

- (b) imprints on a contract note any matter, as a matter described in subsection (3)(a) or (b), which is false in a material particular.

5AAB. Approval of arrangement for purposes of section 5AA

- (1) For the purposes of section 5AA, the Collector may approve an arrangement for collecting any stamp duty chargeable on a contract note specified in subsection (2).
- (2) The contract note is one—
 - (a) to which the arrangement relates; and
 - (b) in respect of which the following conditions are satisfied—
 - (i) the contract note is not one to which an agreement under section 5A relates;
 - (ii) stamp duty is chargeable under head 2(1) in the First Schedule (*head 2(1)*) on the contract note; and
 - (iii) the contract note is made in respect of a sale or purchase of prescribed securities specified in subsection (3).
- (3) The prescribed securities are—
 - (a) prescribed securities held in uncertificated form immediately before the sale or purchase;
 - (b) prescribed securities held in uncertificated form immediately after the sale or purchase; or
 - (c) prescribed securities held in uncertificated form both immediately before and after the sale or purchase.

- (4) The Collector must not approve an arrangement under subsection (1) unless the arrangement provides for—
- (a) the duties of a person authorized by the Collector for the purposes of section 5AA(2) (*authorized person*), including the duty to make a declaration specified in subsection (5) in relation to a contract note if—
 - (i) the contract note is one to which the arrangement relates;
 - (ii) the contract note is made in respect of a sale or purchase of prescribed securities specified in subsection (3) by which the legal title to the prescribed securities is to be transferred; and
 - (iii) the sale or purchase in respect of which the contract note is made—
 - (A) is effected by the authorized person; or
 - (B) is effectuated through a UNSRT system operated by the authorized person;
 - (b) the payment by an authorized person to the Collector of the stamp duty chargeable on a specified contract note that will be stamped under section 5AA(2); and
 - (c) the imprinting by an authorized person, on a specified contract note, of the matters described in section 5AA(3)(a) and (b).

- (5) The declaration is a declaration as to—
 - (a) whether any stamp duty is chargeable under head 2(1) on the contract note; and
 - (b) if any stamp duty is chargeable under head 2(1) on the contract note—whether the stamp duty has been paid to the Collector.
- (6) An approval may be granted under subsection (1) subject to any conditions specified by the Collector.
- (7) For the purpose of collecting any stamp duty chargeable on a specified contract note to which an arrangement approved under subsection (1) relates, the Collector is entitled to have access to a declaration made by the authorized person under the arrangement.
- (8) If an authorized person makes, in relation to a specified contract note to which an arrangement approved under subsection (1) relates, a declaration specified in subsection (5) that is false in a material particular, the person incurs a penalty at level 2 which is recoverable by the Collector as a civil debt due to the Government.
- (9) In this section—

approved securities registrar (核准證券登記機構) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

purchase (購買)—

 - (a) means a purchase within the meaning of section 19, and includes a purchase in a transaction deemed under that section to be a sale and purchase for the purposes of this Ordinance; but

- (b) does not include a purchase the contract note of which is a contract note to which an agreement under section 5A relates;

sale (售賣)—

- (a) means a sale within the meaning of section 19, and includes a sale in a transaction deemed under that section to be a sale and purchase for the purposes of this Ordinance; but
- (b) does not include a sale the contract note of which is a contract note to which an agreement under section 5A relates;

specified contract note (指明成交單據) means a contract note specified in subsection (2);

UNSRT system (無紙證券登記及轉讓系統) has the meaning given by section 101AAB of the Securities and Futures Ordinance (Cap. 571).

(10) In this section—

- (a) a reference to a person who effects a sale—
 - (i) includes a person deemed under section 19 to be a person effecting the sale; but
 - (ii) does not include a person acting in the person's capacity as an approved securities registrar; and
- (b) a reference to a person who effects a purchase—
 - (i) includes a person deemed under section 19 to be a person effecting the purchase; but
 - (ii) does not include a person acting in the person's capacity as an approved securities registrar.”.

55. Section 19 amended (contract notes, etc. in respect of sale and purchase of Hong Kong stock)

(1) After section 19(1E)—

Add

“(1EA) Also, a transaction is deemed to be a sale and purchase of Hong Kong stock for the purposes of this Ordinance if the transaction is a transaction—

- (a) in respect of Hong Kong stock that is prescribed securities; and
- (b) by which the beneficial interest in the stock passes otherwise than on sale and purchase.

(1EB) However, subsection (1EA) does not apply to a transaction if—

- (a) subsection (1E) applies to the transaction;
- (b) the transaction is a transaction in respect of Hong Kong stock—
 - (i) that is prescribed securities held in certificated form both immediately before and after the transaction; and
 - (ii) under which the legal title to the stock is to be transferred; or
- (c) the transaction would, if it were effectuated by way of a transfer chargeable with stamp duty under head 2(3) in the First Schedule, be a transfer of the kind referred to in section 27(5).

(1EC) For the purposes of this section and head 2(1) in the First Schedule, in a transaction that is deemed to be a sale and purchase of Hong Kong stock under subsection (1EA)—

- (a) the person disposing of the stock in the transaction is deemed to be the person effecting the sale in the sale and purchase;
- (b) the person acquiring the stock in the transaction is deemed to be the person effecting the purchase in the sale and purchase; and
- (c) the value of the stock in the transaction is deemed to be the amount or value of the consideration for the sale and purchase.”.

(2) After section 19(1F)—

Add

“(1G) For the purposes of subsection (1), if—

- (a) the person who effects the sale or purchase of Hong Kong stock makes, in respect of the sale or purchase, a contract note to which section 5AA applies; and
- (b) the contract note is stamped under section 5AA(2),
the person is to be regarded as having also executed the contract note.”.

(3) Section 19(16), definition of *sale or purchase*—

Repeal

“is deemed by virtue of section 30(3), (4) or (5)”

Substitute

“, document or information is deemed by virtue of section 30(3), (4), (5) or (7)”.

56. Section 30 amended (interpretation of Part IV)

After section 30(5)—

Add

- “(6) Subsection (7) applies if—
- (a) a person gives an authority or makes a requirement as specified in subsection (3), (4) or (5) in relation to any units;
 - (b) the units are prescribed securities that—
 - (i) are held in uncertificated form at the time of giving the authority or making the requirement (*relevant time*); or
 - (ii) are held in certificated form immediately before the relevant time or immediately after the relevant time, but not both; and
 - (c) the authority is given or the requirement is made in a form other than in the form of an instrument.
- (7) For the purposes of this Ordinance—
- (a) the person is deemed to transfer the units by way of sale; and
 - (b) any document or information (in whatever form) by which the person gives the authority or makes the requirement—
 - (i) is deemed to be a transfer by way of sale; but
 - (ii) is not deemed to be a transfer falling within head 2(4) in the First Schedule.”.

57. Section 36 substituted

Section 36—

Repeal the section

Substitute

“36. Restriction on registration of transfer of units

- (1) Despite anything in the trust instrument of a unit trust scheme, the trustees or managers under the scheme must not register a transfer of units under the scheme unless—
- (a) if the units are not prescribed securities—a proper instrument of transfer has been delivered to the trustees or managers; or
 - (b) if the units are prescribed securities—either of the following as required under the SFO-Part IIIAA rules in respect of the units has been delivered to the trustees or managers in accordance with those rules—
 - (i) a proper instrument of transfer;
 - (ii) a specified request.
- (2) Nothing in this section affects any power of the trustees or managers to register as entitled to a unit any person to whom the right to that unit has been transmitted by operation of law.
- (3) In this section—

SFO-Part IIIAA rules (《第571章第III AA部規則》) means rules made under section 101AAM of the Securities and Futures Ordinance (Cap. 571);

specified request (指明請求), in relation to a unit under a unit trust scheme, means a request that complies with the requirements set out in the SFO-Part IIIAA rules for registration of the transfer of the unit.”.

58. Section 58A amended (representations may be made to Collector before certain penalties are imposed)

Section 58A(1), before “5A(4)”—

Add

“5AAB(8),”.

59. Section 58B amended (remission of certain penalties)

Section 58B, before “5A(4)”—

Add

“5AAB(8),”.

60. First Schedule amended

First Schedule—

Repeal

“[ss. 2, 4, 5,”

Substitute

“[ss. 2, 4, 5, 5AAB,”.

61. Schedule 8 amended (transactions and transfers relating to Exchange Traded Funds)

Schedule 8, Part 2, item 2, after “19(1E)(a)”—

Add

“, (1EA)”.

62. Schedule 9 amended (transactions and transfers relating to regulatory capital security)

Schedule 9, Part 2, item 2, after “19(1E)(a)”—

Add

“, (1EA)”.

**Subdivision 4—Amendments to Mental Health Ordinance
(Cap. 136)**

63. Section 17 amended (committee to execute instruments)

- (1) Section 17, heading, after “instruments”—

Add

“etc.”.

- (2) Section 17—

Repeal subsection (1)

Substitute

“(1) This section applies if—

- (a) the Court makes an order for a conveyance or instrument of transfer to be executed in respect of a disposition of the estate of a mentally incapacitated person or any part of the estate; or
- (b) the Court makes an order for any other thing to be done in respect of a disposition of any part of the estate of a mentally incapacitated person that is prescribed securities in uncertificated form.

(1A) The committee of the estate of the mentally incapacitated person must, in the name and on behalf of the person, act in accordance with an order mentioned in subsection (1).”.

- (3) After section 17(2)—

Add

“(3) In subsection (1)—

prescribed securities (訂明證券) has the meaning given by section 101AA of the Securities and Futures Ordinance (Cap. 571).

(4) In subsection (1)—

(a) a reference to prescribed securities in uncertificated form is to be construed in accordance with section 1AB(a) of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571); and

(b) a reference to a disposition of an estate or any part of an estate includes a sale or mortgage of the estate or the part of the estate.”.

Subdivision 5—Amendments to Crimes Ordinance (Cap. 200)

64. Section 84 amended (making false entry in contract for sale of shares)

(1) Section 84—

Renumber the section as section 84(1).

(2) Section 84(1)—

Repeal

“shares or stock transferable by any deed or written instrument”

Substitute

“transferable shares or stock”.

(3) After section 84(1)—

Add

“(2) In subsection (1)—

transferable shares or stock (可轉讓股份或股額) means—

- (a) shares or stock transferable by deed or other instrument; or
- (b) shares or stock transferable through a UNSRT system within the meaning of section 101AAB of the Securities and Futures Ordinance (Cap. 571).”.

Subdivision 6—Amendment to Electronic Transactions Ordinance (Cap. 553)

65. Schedule 1 amended (matters excluded from application of sections 5, 5A, 6, 7, 8 and 17 of this Ordinance under section 3 of this Ordinance)

Schedule 1, section 4—

Repeal

“other than a contract note to which an agreement under section 5A of that Ordinance relates.”

Substitute

“, other than—

- (a) a contract note to which an agreement under section 5A of that Ordinance relates; and
- (b) a contract note that is stamped under section 5AA(2) of that Ordinance.”.

**Subdivision 7—Amendments to Securities and Futures (Fees)
Rules (Cap. 571 sub. leg. AF)**

66. Section 3 amended (time for payment of fees)

(1) After section 3(1)—

Add

“(1AA) The annual fee prescribed in item 1AA of Schedule 1 is payable on or before each anniversary of the date on which the approval of the approved securities registrar concerned under section 101AAG(6) of the Ordinance is granted.”.

(2) Section 3(3), after “subsection (1)”—

Add

“, (1AA)”.

67. Schedule 1 amended (fees prescribed for purposes of section 395(1)(a)(i), (iii) and (iv) of Ordinance)

Schedule 1, after item 1—

Add

“Fees relating to Part IIIAA of Ordinance

1AA. Annual fee payable in respect of approval of an approved securities registrar under section 101AAG(6) of the Ordinance \$10,000”.

68. Schedule 3 amended (fees prescribed for purposes of section 395(1)(b) of Ordinance)

Schedule 3, after item 2—

Add

“Fees relating to Part IIIAA of Ordinance

- | | | |
|-------|--|----------------|
| 2AA. | Prescribed fee payable under section 101AAG(3)(c) of the Ordinance on an application for approval to provide securities registrar services | \$10,000 |
| 2AAB. | Prescribed fee payable under section 101AAL(4)(b) of the Ordinance for a copy of an entry in or extract of a register maintained under section 101AAL of the Ordinance | \$9 per page”. |

**Subdivision 8—Amendments to Companies Ordinance
(Cap. 622)**

69. Section 596 amended (right to appoint proxy)

After section 596(3)—

Add

- “(4) Despite subsection (3), if the company is a listed company and the member is an individual, the number of proxies so appointed by the member must not exceed 2, unless otherwise provided in the articles of the company.
- (5) Subsection (4) is subject to any provision of the SFO-Part IIIAA rules that provides for the way in which the limit specified in that subsection is to apply to a member who holds the shares in more than one form or manner as specified in those rules.
- (6) Subsection (4) does not affect the appointment of an alternate.”.

70. Section 597 amended (notice of meeting to contain statement of rights etc.)

Section 597(1)—

Repeal paragraphs (a) and (b)

Substitute

- “(a) for a company that is a company limited by guarantee—
- (i) the rights under section 596(1); and
 - (ii) if applicable, the requirement under section 596(2);
- (b) for a company that is a company having a share capital (other than a listed company)—the rights under section 596(1) and (3); and
- (c) for a company that is a listed company—
- (i) the rights under section 596(1) and (3); and
 - (ii) if applicable, the requirement under section 596(4).”.

71. Section 627 amended (register of members)

At the end of section 627—

Add

“Note—

For matters relating to the register of members of a listed company, see also the SFO-Part IIIAA rules.”.

72. Section 632 amended (power to close register of members)

(1) Section 632(1)—

Repeal

everything after “periods”

Substitute

“in each year—

- (a) for a company other than a listed company—
not exceeding in the whole 30 days;
- (b) for a company that is a listed company—
 - (i) not exceeding in the whole 30 days; or
 - (ii) if a number of days is specified in the SFO-Part IIIAA rules for the purposes of this section—not exceeding in the whole that number of days.”.

- (2) Section 632(3) and (4)—

Repeal

“(1)”

Substitute

“(1)(a) or (b)(i)”.

73. Section 828 amended (communication in electronic form)

After section 828(5)—

Add

- “(5A) However, if the document or information is sent or supplied to a listed company, the document or information is not sufficiently authenticated unless any other requirements specified in the SFO-Part IIIAA rules in relation to authentication of documents or information are also complied with.”.

74. Section 831 amended (communication in electronic form)

After section 831(5)—

Add

- “(5A) However, if the document or information is sent or supplied by a listed company, the document or information is not sufficiently authenticated unless any other requirements specified in the SFO-Part IIIAA rules in relation to authentication of documents or information are also complied with.”.
-

Part 3

Amendments relating to OTC Derivative Licensing Regime

Division 1—Amendment to Securities and Futures Ordinance (Cap. 571)

75. **Schedule 5 amended (regulated activities)**

Schedule 5, Part 2, definition of *providing client clearing services for OTC derivative transactions*, in so far as it relates to paragraph (c) of the definition of *excluded services*—

Repeal

everything after “Hong Kong or”

Substitute

“elsewhere)—

- (a) as a member of the central counterparty; or
- (b) as a client of a member of the central counterparty (*direct client*), a client of a direct client (*indirect client*), a client of an indirect client, or a client, whether direct or indirect, of any of those persons;”.

Division 2—Amendments to Securities and Futures (Amendment) Ordinance 2014 (6 of 2014)

76. **Section 18 amended (section 182 amended (investigations))**

Section 18(3)—

Repeal

“After section 182(1)(b)(v)”

Substitute

“Section 182(1)(b)”.

77. Section 49 amended (section 407 amended (savings, transitional, consequential and related provisions, etc.))

Section 49, new section 407(6)—

Repeal

everything after “commencement of”

Substitute

“Part 2 of the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) or any provision in that Part.”.

78. Section 53 amended (Schedule 5 amended (regulated activities))

(1) Section 53(21), before new paragraph (xia)—

Add

“(xiaa) that is an OTC derivative dealing act carried out by a person licensed for Type 9 regulated activity who—

(A) provides a service of managing a portfolio of OTC derivative products for another person that the person is permitted to provide under that licence; and

(B) carries out the act solely for the purpose of providing that service;”.

(2) Section 53(22), new definition of *OTC derivative products management*, after paragraph (b)—

Add

- “(ba) such a service provided by a corporation, if—
- (i) the service is provided solely to any of its affiliates; and
 - (ii) the group of companies of which the corporation and affiliates are members is not a financial group;
- (bb) such a service provided by a corporation solely to—
- (i) any of its wholly owned subsidiaries;
 - (ii) its holding company that holds all its issued shares; or
 - (iii) other wholly owned subsidiaries of that holding company;
- (bc) such a service provided by—
- (i) a solicitor, if the provision of the service is wholly incidental to his or her practice as a solicitor in a Hong Kong firm or foreign firm (both as defined by section 2(1) of the Legal Practitioners Ordinance (Cap. 159));
 - (ii) counsel, if the provision of the service is wholly incidental to his or her practice as counsel;
 - (iii) a certified public accountant, if the provision of the service is wholly incidental to his or her practice as a certified public accountant in a practice unit (as defined by section 2(1) of the Professional Accountants Ordinance (Cap. 50)); or
 - (iv) a trust company registered under Part 8 of the Trustee Ordinance (Cap. 29), if the provision of the service is wholly incidental to the discharge of its duties as such a trust company;

- (bd) such a service provided by a person who—
- (i) falls within a class prescribed by rules made under section 397 of this Ordinance for the purposes of this paragraph; or
 - (ii) carries on a type or description of business so prescribed;”.
- (3) Section 53(22), new definition of *providing client clearing services for OTC derivative transactions*, except in so far as it relates to paragraph (c) of the definition of *excluded services*—

Repeal

everything after “Hong Kong or”

Substitute

“elsewhere)—

- (a) as a member of the central counterparty; or
 - (b) as a client of a member of the central counterparty (*direct client*), a client of a direct client (*indirect client*), a client of an indirect client, or a client, whether direct or indirect, of any of those persons;”.
- (4) Section 53(22)—

Add in alphabetical order

“*affiliate* (聯屬公司), in relation to a corporation, means another corporation (other than a collective investment scheme) that is in the same group of companies as the corporation;

financial group (金融集團) means a group of companies that is primarily carrying on business that (for business carried on in Hong Kong) constitutes or (for business carried on elsewhere), if carried on in Hong

Kong, would constitute one or more of the following—

- (a) a business in a regulated activity;
- (b) banking business as defined by section 2(1) of the Banking Ordinance (Cap. 155);
- (c) a business that is required to be carried on under—
 - (i) an authorization as defined by section 2(1) of the Insurance Ordinance (Cap. 41); or
 - (ii) a licence as defined by section 64F of that Ordinance;”.

- (5) Section 53(23), new Part 2A, section 1(e)(i)—

Repeal

“OTC derivative products management”

Substitute

“managing a portfolio of OTC derivative products for another person”.

- (6) Section 53(23), new Part 2A, section 1(i)(ii)—

Repeal the full stop

Substitute a semicolon.

- (7) Section 53(23), new Part 2A, after section 1(i)—

Add

- “(j) an OTC derivative advising act carried out by a corporation, if—
- (i) the giving of the advice or issuing of the analyses or reports constituting the act is solely to any of its affiliates; and

- (ii) the group of companies of which the corporation and affiliates are members is not a financial group;
- (k) an OTC derivative advising act that falls within the meaning of the definition of *providing multilateral portfolio compression services*;
- (l) an OTC derivative advising act that—
 - (i) is carried out by a person—
 - (A) who is a recognized clearing house; or
 - (B) who is—
 - (I) authorized under section 95(2) of this Ordinance to provide automated trading services; and
 - (II) acting in its capacity as a central counterparty; and
 - (ii) relates to an OTC derivative transaction to which the person is a counterparty in its capacity as a central counterparty;
- (m) an OTC derivative advising act that is—
 - (i) carried out by a person who is licensed for Type 12 regulated activity; and
 - (ii) carried out wholly incidentally to the carrying on of that regulated activity;
- (n) an OTC derivative advising act that is—
 - (i) carried out by an acceptable participant; and
 - (ii) carried out wholly incidentally to its provision of services which, but for section 4(c) of this Part, would constitute a Type 12 regulated activity.”.

(8) Section 53(23), new Part 2A, section 2(n)—

Repeal the full stop

Substitute a semicolon.

(9) Section 53(23), new Part 2A, after section 2(n)—

Add

- “(o) an OTC derivative dealing act carried out by a corporation, if—
- (i) the act constitutes—
 - (A) entering, or offering to enter, into an OTC derivative transaction with any of its affiliates; or
 - (B) inducing, or attempting to induce, any of its affiliates to enter, or offer to enter, into an OTC derivative transaction; and
 - (ii) the group of companies of which the corporation and affiliates are members is not a financial group;
- (p) an OTC derivative dealing act that falls within the meaning of the definition of *providing multilateral portfolio compression services*;
- (q) an OTC derivative dealing act that—
- (i) is carried out by a person—
 - (A) who is a recognized clearing house; or
 - (B) who is—
 - (I) authorized under section 95(2) of this Ordinance to provide automated trading services; and
 - (II) acting in its capacity as a central counterparty; and

- (ii) relates to an OTC derivative transaction to which the person is a counterparty in its capacity as a central counterparty;
- (r) an OTC derivative dealing act that is—
 - (i) carried out by an acceptable participant; and
 - (ii) carried out wholly incidentally to its provision of services which, but for section 4(c) of this Part, would constitute a Type 12 regulated activity.”.
- (10) Section 53(23), new Part 2A, section 4(c)—

Repeal

everything after “acceptable”

Substitute

“participant;”.

- (11) Section 53(23), new Part 2A, section 4—

Repeal paragraph (d).

- (12) Section 53(23), new Part 2A, at the end of section 4—

Add

- “(e) an act carried out by a person licensed for Type 9 regulated activity who—
 - (i) provides a service of managing a portfolio of OTC derivative products for another person that the person is permitted to provide under that licence; and
 - (ii) carries out the act solely for the purpose of providing that service;
- (f) an act carried out by a corporation that constitutes providing services for the clearing and settlement of OTC derivative transactions, if—

- (i) the services are provided solely to any of its affiliates; and
 - (ii) the group of companies of which the corporation and affiliates are members is not a financial group; or
- (g) an act carried out by a person who—
 - (i) falls within a class prescribed by rules made under section 397 of this Ordinance for the purposes of this paragraph; or
 - (ii) carries on a type or description of business so prescribed.”.
- (13) Section 53(23), new Part 2A, section 5—

Repeal

“In section 4”

Substitute

“In this Part”.
- (14) Section 53(23), new Part 2A, section 5, definition of *acceptable participant*—

Repeal paragraph (b)

Substitute

“(b) who—

 - (i) is a member of a central counterparty; or
 - (ii) has applied to become a member of a central counterparty and the application has not been rejected or withdrawn;”.
 - (15) Section 53(23), new Part 2A, section 5, definition of *acceptable participant*, paragraph (d)—

Repeal

“(either directly as a member of the central counterparty or indirectly through another person that is such a member)”

Substitute

“as a member of the central counterparty”.

- (16) Section 53(23), new Part 2A, section 5, definition of *comparable overseas jurisdiction*, paragraph (a)—

Repeal

“(either directly as a member of the central counterparty or indirectly through another person that is such a member)”

Substitute

“as a member of the central counterparty”.

- (17) Section 53(23), new Part 2A, section 5, definition of *comparable overseas jurisdiction*, paragraph (b)—

Repeal the full stop

Substitute a semicolon.

- (18) Section 53(23), new Part 2A, section 5—

Add in alphabetical order

“*providing multilateral portfolio compression services* (提供多邊投資組合壓縮服務) means providing services that fall within the following description—

- (a) services that are provided—
 - (i) by a person (*service provider*) for analyzing the portfolios of OTC derivative transactions of more than 2 other persons (*participants*);
 - (ii) in accordance with—

- (A) the operating rules set by the service provider for participation in the compression exercise; and
- (B) any parameters agreed between the service provider and each of the participants;
- (iii) without changing the market risk of the portfolio of OTC derivative transactions of any of the participants beyond any market risk tolerance level set by the participant concerned; and
- (iv) for the purpose of reducing counterparty credit risk or operational risk for the participants; and
- (b) services in which proposals having the effect of reducing exposures between or among the participants are put forward by the service provider as to how any or all of the OTC derivative transactions—
 - (i) may be modified;
 - (ii) may be terminated; or
 - (iii) may be terminated and replaced with one or more new OTC derivative transactions.”.

79. Section 55 amended (Schedule 11 added)

Section 55, new Schedule 11, heading, after “**for**”—

Add

“Part 2 of”.

Division 3—Amendments to Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules (Cap. 571 sub. leg. AN)

80. **Rule 10 amended (clearing obligation does not apply to transactions resulting from multilateral portfolio compression cycle)**
- (1) Rule 10, heading—
Repeal
“cycle”
Substitute
“exercise”.
 - (2) Rule 10(1)(a)(i)—
Repeal
everything after “compression”
Substitute
“exercise; and”.
 - (3) Rule 10(1)(a)(ii) and (b)—
Repeal
“cycle”
Substitute
“exercise”.
 - (4) Rule 10—
Repeal subrule (2).
 - (5) Rule 10(3), definition of *compressed transaction*—
Repeal

everything after “compression”

Substitute

“exercise, means an OTC derivative transaction that was modified, terminated, or terminated and replaced, as a result of the exercise;”.

- (6) Rule 10(3)—

Repeal the definition of *multilateral portfolio compression cycle*.

- (7) Rule 10(3)—

Add in alphabetical order

“***multilateral portfolio compression exercise*** (多邊投資組合壓縮行動) means a process applied to portfolios of OTC derivative transactions of the participants in the process—

- (a) that is conducted for the purpose of reducing exposures between or among the participants;
- (b) that involves more than 2 participants, none of whom is the person (***service provider***) operating the process;
- (c) that is conducted in accordance with—
 - (i) the operating rules set by the service provider for participation in the process; and
 - (ii) any parameters agreed between the service provider and each of the participants;
- (d) that is conducted without changing the market risk of the portfolio of OTC derivative transactions of any of the participants beyond any market risk tolerance level set by the participant concerned;

-
- (e) that is conducted for the purpose of reducing counterparty credit risk or operational risk for the participants; and
 - (f) as a result of which none, any or all of the OTC derivative transactions—
 - (i) are modified;
 - (ii) are terminated; or
 - (iii) are terminated and replaced with one or more new OTC derivative transactions.”.
-

Part 4

Minor Miscellaneous Amendments

Division 1—Amendments to Chinese Text of Securities and Futures Ordinance (Cap. 571)

81. Section 38 amended (duties of recognized clearing house)

Section 38, Chinese text—

Repeal subsection (1)

Substitute

“(1) 認可結算所有責任——

- (a) 在合理地切實可行範圍內，確保透過其設施結算或交收的證券、期貨合約或場外衍生工具產品的交易，在有秩序、公平和快捷的結算及交收安排下進行；及
- (b) 確保與其業務及營運有關聯的風險，得以審慎管理。”

82. Section 43 amended (withdrawal of recognition of clearing house and direction to cease to provide facilities)

Section 43(3)(c), Chinese text—

Repeal

“已停止以結算所的形式營辦”

Substitute

“停止作為結算所的營運”。

83. Section 96 amended (application for authorization)

Section 96(2)(c), Chinese text—

Repeal

“聘用何人”

Substitute

“聘用的高級人員”。

84. Schedule 1 amended (interpretation and general provisions)

Schedule 1, Chinese text, Part 1, section 1A(2)(b)—

Repeal

“公司認股證”

Substitute

“股本權證”。

85. “預託證券” substituted for “寄存單據”

The following provisions, Chinese text—

- (a) section 245(2), definition of *衍生工具*, paragraph (d);
- (b) section 285(2), definition of *衍生工具*, paragraph (d);
- (c) section 307A(1), definition of *衍生工具*, paragraph (d);
- (d) section 308(1), definition of *股本衍生工具*, paragraph (d);
- (e) Schedule 1, Part 1, section 1A(2)(d)—

Repeal

“寄存單據” (wherever appearing)

Substitute

“預託證券”。

Division 2—Amendments to Securities and Futures Ordinance (Cap. 571)

86. Section 407 amended (savings, transitional, consequential and related provisions, etc.)

After section 407(5)—

Add

“(5A) Part 6 of Schedule 10 provides for the savings and transitional arrangements that apply on, or relate to, the commencement of Part 4 of the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) or any provision in Part 4 of that Ordinance.”.

87. Schedule 10 amended (savings, transitional, consequential and related provisions, etc.)

Schedule 10, Part 6, heading, after “**Relating to**”—

Add

“**Part 4 of**”.

Division 3—Amendments to Securities and Futures (Price Stabilizing) Rules (Cap. 571 sub. leg. W)

88. Section 2 amended (interpretation)

(1) Section 2(1), definition of *depository receipt*—

Repeal

“寄存單據”

Substitute

“預託證券”。

- (2) Section 2(1), Chinese text, definition of 有關證券, paragraph (c)—

Repeal

“寄存單據”

Substitute

“預託證券”。

- (3) Section 2(1), Chinese text, definition of 發行人, paragraph (a)—

Repeal

“寄存單據” (wherever appearing)

Substitute

“預託證券”。

- (4) Section 2(2), Chinese text—

Repeal

“寄存單據”

Substitute

“預託證券”。

**Division 4—Amendment to Securities and Futures (Fees)
Rules (Cap. 571 sub. leg. AF)**

89. Section 11 amended (waiver of fees)

After section 11(3)—

Add

“(3A) The fees set out in subsection (3B) are waived if—

- (a) a corporation or an individual—
 - (i) is, or applies to be, licensed or approved for Type 3 or Type 11 regulated activity (*relevant activity*) under section 116(1), 120(1), 126(1) or 127(1) of the Ordinance; and
 - (ii) is, or applies to be, licensed or approved for Type 7 regulated activity under section 116(1), 120(1), 126(1) or 127(1) of the Ordinance; and
- (b) the carrying on, or proposed carrying on, of Type 7 regulated activity by the corporation or individual is incidental to the carrying on, or proposed carrying on, of the relevant activity by the corporation or individual.

(3B) The fees are—

- (a) the fee prescribed in item 3, under paragraph (A), of Schedule 3 for Type 7 regulated activity;
- (b) the fee prescribed in item 6, under paragraph (A), of Schedule 3 for Type 7 regulated activity;
- (c) the fee prescribed in item 12 of Schedule 3 for Type 7 regulated activity;

-
- (d) the fee prescribed in item 13(a)(i), under paragraph (A), of Schedule 3 for Type 7 regulated activity;
 - (e) the fee prescribed in item 13(b)(i), under paragraph (A), of Schedule 3 for Type 7 regulated activity; and
 - (f) the annual fee prescribed in item 18 of Schedule 3 for Type 7 regulated activity.”.
-

Part 5

Repeal of Uncommenced Provisions of Securities and Futures and Companies Legislation (Uncertificated Securities Market Amendment) Ordinance 2015 (5 of 2015)

90. Uncommenced provisions of Securities and Futures and Companies Legislation (Uncertificated Securities Market Amendment) Ordinance 2015 repealed

The uncommenced provisions of the Securities and Futures and Companies Legislation (Uncertificated Securities Market Amendment) Ordinance 2015 (5 of 2015) are repealed.

Explanatory Memorandum

The main purposes of this Bill are to amend the Securities and Futures Ordinance (Cap. 571) (*SFO*), the Companies Ordinance (Cap. 622) (*CO*) and other enactments, including the Stamp Duty Ordinance (Cap. 117) (*SDO*)—

- (a) to facilitate the establishment and implementation of an uncertificated securities market regime (*USM regime*) in Hong Kong;
- (b) to provide for a regulatory regime for persons providing securities registrar services; and
- (c) to refine the scope of certain regulated activities relating to over-the-counter (*OTC*) derivative transactions.

Part 1—Short Title and Commencement

2. Clause 1 sets out the short title and provides for commencement.

Part 2—Amendments relating to USM Regime

3. The main framework of the USM regime is provided for in new Part IIIAA to be added to the SFO (see Division 1 of Part 2) and in the CO to be amended by Division 2 of that Part. After the enactment of new Part IIIAA, rules made under it (*Part IIIAA rules*) will regulate the uncertificated securities market environment.

4. Under the USM regime, securities that are listed or to be listed in Hong Kong and that are specified in new Schedule 3A to be added to the SFO (*prescribed securities*) may, under new Part IIIAA, be evidenced and transferred without an instrument.

Division 1—Amendments to SFO

5. Under the USM regime, title to prescribed securities may be transferred by or through an uncertificated securities registration and transfer system (*UNSRT system*) operated by the approved securities registrar (see paragraph 19) in respect of the securities.
6. A person who seeks to provide securities registrar services must obtain approval to provide such services from the Securities and Futures Commission (*SFC*) under Division 3 of new Part IIIAA. An approved securities registrar may provide services including the maintenance of registers of holders of prescribed securities and operation of UNSRT systems. A new category of participants of a recognized clearing house (*RCH*), namely registrar participants, is introduced.
7. To implement the USM regime, clause 3 amends section 38 of the SFO (duties of RCH) to require an RCH to formulate and implement appropriate procedures for ensuring that its registrar participants comply with the rules of the RCH.
8. Clause 4 amends section 40 of the SFO (rules by RCH) to empower an RCH to make rules for the proper regulation of its registrar participants.
9. Clause 5 amends section 91 of the SFO (supply of information) to provide for the supply, by an RCH, of information about the affairs of its registrar participants.

10. Clause 6 amends section 92 of the SFO (additional powers of SFC—restriction notices) so that a registrar participant would also be protected under that section, and would not incur any civil liability in respect of anything done or omitted to be done by the participant in good faith in compliance or purported compliance with a restriction notice given by the SFC under that section.
11. Clause 7 introduces a new Part IIIAA to the SFO.
12. Division 1 of new Part IIIAA contains 2 sections. New section 101AA explains the meaning of *prescribed securities*, and new section 101AAB explains the meaning of *UNSRT system*.
13. Division 2 of new Part IIIAA (sections 101AAC, 101AAD and 101AAE) provides for the general principles to be adopted for the USM regime.
14. New section 101AAC provides for the first principle. That section provides that title to prescribed securities—
 - (a) may be evidenced without an instrument in the manner provided by the Part IIIAA rules; and
 - (b) may be transferred without an instrument only if it is transferred—
 - (i) by or through a UNSRT system operated by the approved securities registrar in respect of the securities; and
 - (ii) in accordance with the Part IIIAA rules.
15. The second principle is set out in new section 101AAD.

16. New section 101AAD provides that if there is a conflict or inconsistency between new section 101AAC and the Part IIIAA rules (collectively, *specified enactments*) and—
- (a) for prescribed securities that are shares in a corporation—
 - (i) the provisions of the constitution of the corporation; and
 - (ii) the terms of issue of the shares; or
 - (b) for any other prescribed securities—the terms of issue of the securities,
- the specified enactments prevail to the extent of the conflict or inconsistency.
17. New section 101AAE provides for the third principle.
18. Under new section 101AAE, new section 101AAC, new section 101AAD and the Part IIIAA rules (collectively, *specified enactments*) apply to prescribed securities to the extent to which the application is neither prohibited under nor in conflict or inconsistent with—
- (a) for prescribed securities that are shares in or debentures of a body corporate incorporated in a place outside Hong Kong—
 - (i) the law of the place in which the body corporate is incorporated; or
 - (ii) the law under which the securities are constituted; or

- (b) for prescribed securities that are not shares in or debentures of such a body corporate but are constituted under the law of a place outside Hong Kong—the law under which the securities are constituted.
19. Division 3 of new Part IIIAA (sections 101AAF to 101AAL) provides for a regulatory regime for persons approved to provide securities registrar services (*approved securities registrars*).
 20. New section 101AAF prohibits a person from providing any securities registrar service unless the person is an approved securities registrar or an employee or agent of an approved securities registrar.
 21. New sections 101AAG and 101AAH provide for the requirements and procedures for an application for approval to provide securities registrar services.
 22. New section 101AAI empowers the SFC to impose, amend or revoke a condition with regard to an approval granted under new section 101AAG.
 23. New section 101AAJ sets out the factors for determining whether a person is a fit and proper person to provide securities registrar services, including the person's financial status, experience and integrity.
 24. New section 101AAK requires an approved securities registrar to notify the SFC if it intends to cease to provide any securities registrar service or to change the address of its business premises.

25. New section 101AAL requires the SFC to maintain a register of approved securities registrars which must be made available for public inspection.
26. Division 4 of new Part IIIAA contains section 101AAM which is the rules-making power provision and the Part IIIAA rules are to be made under that section.
27. Section 180 of the SFO (supervision of intermediaries and their associated entities) sets out certain supervision powers of the SFC. Clause 8 amends that section so that those powers may apply in relation to an approved securities registrar.
28. Clause 9 amends section 182 of the SFO (investigations by SFC) so that the SFC may investigate if the SFC has reasonable cause to believe that a person may have engaged in defalcation, fraud, misfeasance or other misconduct in connection with the provision of securities registrar services.
29. Clause 10 amends the definition of *misconduct* in section 193 of the SFO (interpretation of Part IX) to cover an act or omission of an approved securities registrar.
30. Clause 11 amends section 194 of the SFO (disciplinary action in respect of licensed persons, etc.) to provide for the disciplinary powers that the SFC may exercise if an approved securities registrar is, or was at any time, guilty of misconduct or is not a fit and proper person to provide any securities registrar services that it is approved to provide.
31. Clause 12 adds a new section 195A to the SFO to empower the SFC to take disciplinary actions in respect of an approved securities registrar in certain circumstances, including when the registrar goes into liquidation.

32. Section 198 of the SFO (procedural requirements in respect of exercise of powers under Division 2) sets out the procedural requirements that the SFC must comply with when exercising its disciplinary powers. Clause 13 amends that section so that those procedural requirements also apply when the SFC exercises its powers under new section 195A.
33. Clause 14 amends section 200 of the SFO (effect of suspension under Division 2 or 3) to provide for the effect of suspension of the approval of an approved securities registrar.
34. Clause 15 amends section 201 of the SFO (general provisions relating to exercise of powers under Division 2 or 3) so that the section also applies if the SFC decides to take disciplinary actions in respect of an approved securities registrar under new section 195A.
35. Clause 16 amends section 202 of the SFO (requirement to transfer records upon revocation or suspension of licence or registration) so that the SFC may require for the transfer of a client's records if the approval of an approved securities registrar is revoked or suspended.
36. Clause 17 adds a new section 203AA to the SFO to empower the SFC to permit an approved securities registrar whose approval is revoked or suspended to carry on the business operations, and provide any service, as specified by the SFC.
37. Clause 18 amends section 204 of the SFO (restriction of business) to enable the SFC to impose certain prohibitions or requirements on an approved securities registrar. Clause 23 amends section 210 of the SFO in consequence of the amendments made to section 204.

38. Section 207 of the SFO (imposition of prohibition or requirement under section 204, 205 or 206) sets out the circumstances under which the SFC may exercise its powers under sections 204, 205 and 206 of the SFO. Clause 21 adds a new subsection (2) to that section 207 to extend those powers in relation to an approved securities registrar. Clauses 19 and 20 consequentially amend the references to that section 207 in sections 205 and 206 of the SFO.
39. Clause 22 amends section 209 of the SFO (general provisions relating to sections 204, 205, 206 and 208) so that the SFC must inform the RCH concerned before imposing a prohibition or requirement on a registrar participant.
40. Clause 24 adds a new section 210A to the SFO to provide for general provisions relating to the exercise of the SFC's powers under sections 204 and 208 of the SFO in respect of an approved securities registrar.
41. Clause 25 amends subsection (3) of section 212 of the SFO (winding-up orders and bankruptcy orders) so that if the SFC has decided to present a petition under subsection (1) of that section for a registrar participant to be wound up, the SFC has a duty to inform the RCH concerned in accordance with that amended section 212(3).
42. Clause 26 amends subsection (3) of section 213 of the SFO (injunctions and other orders) so that if the SFC has decided to apply to the Court of First Instance (*CFI*) to make any order specified in subsection (2) of that section affecting a registrar participant, the SFC has a duty to inform the RCH concerned in accordance with that amended section 213(3).

43. Clause 27 amends Schedule 1 to the SFO (interpretation and general provisions) to define certain words and expressions used in the SFO as amended by the Bill.
44. Clause 28 adds a new Schedule 3A to the SFO for the purposes of new Part IIIAA. The power to amend the Schedule is in new section 101AA(2).
45. Clause 29 amends Schedule 8 to the SFO to add certain decisions of the SFC to the list of specified decisions which may be reviewed by the Securities and Futures Appeals Tribunal.

Division 2—Amendments to CO

46. Clause 30 amends section 2 of the CO (interpretation) to define certain words and expressions used in the CO as amended by the Bill.
47. Under section 134 of the CO (nature and transferability of shares), shares or other interests of a member in a company are transferable in accordance with the company's articles. Clause 31 amends that section so that any shares or other interests that are prescribed securities are transferable in accordance with those articles, subject to new Part IIIAA of the SFO and the Part IIIAA rules.
48. Section 144 of the CO (issue of share certificate on allotment) requires a company to complete the share certificates and have them ready for delivery within 2 months after an allotment of the shares. Clause 32 amends that section so that the requirement does not apply if the shares are prescribed securities and held by the allottee in uncertificated form immediately after the allotment.

49. Under section 150 of the CO (requirement for instrument of transfer), a company must not register a transfer of shares in the company unless a proper instrument of transfer has been delivered to the company. Clause 33 amends that section so that for a transfer of shares that are prescribed securities, a proper instrument of transfer or a request that complies with the requirements set out in the Part IIIAA rules (*specified request*) (as required under the Part IIIAA rules) has to be delivered to the company for registration of the transfer.
50. Section 151 of the CO (registration of transfer or refusal of registration) deals with the registration of a transfer of shares in a company. Clause 34 amends that section so that for a transfer of shares that are prescribed securities, an instrument of transfer or a specified request (as required under the Part IIIAA rules) may be lodged with the company for registration of the transfer.
51. Section 153 of the CO (transfer by personal representative) provides for the transfer of shares or other interests of a deceased member of a company by the member's personal representative. Clause 35 amends that section to make sure that it applies to all such transfers, including those for which no instrument of transfer is used.
52. Section 155 of the CO (issue of share certificate on transfer) requires a company to complete the share certificates for its shares that have been transferred and have them ready for delivery within the period specified in that section. Clause 36 amends that section so that it does not apply to a transfer of shares that are prescribed securities and held by the transferee in uncertificated form immediately after the transfer.

53. Sections 162 to 169 of the CO provide for replacement of listed companies' lost share certificates. Under the USM regime, if a share certificate for shares in a listed company has been lost and the shares in the listed company may be held in uncertificated form, the registered holder of the shares or a person who claims to be entitled to the shares (*eligible person*) may, instead of applying for a new share certificate, apply to the company for holding the shares in uncertificated form. Briefly—
- (a) clause 38 amends the definition of *genuine purchaser* in section 162 of the CO in consequence of the amendments made to section 163;
 - (b) clause 39 amends section 163 of the CO to provide that an eligible person may apply for the shares to be held by the person in uncertificated form if a share certificate for the shares has been lost;
 - (c) clauses 40 and 42 respectively amend sections 164 and 166 of the CO so that the existing publication requirements apply if a listed company intends to record the shares in the register of its members as being held in uncertificated form;
 - (d) clause 41 amends section 165 of the CO to provide that a listed company may record the shares in the register of its members as being held in uncertificated form if the conditions set out in section 165(1) are met;
 - (e) clauses 43 and 44 respectively amend sections 167 and 168 of the CO to clarify the powers of the CFI to rectify the register of members of a listed company; and
 - (f) clause 45 contains a consequential amendment to section 169 of the CO.

54. Clause 46 amends section 696 of the CO (obligations of offeror with right to buy out minority shareholders) so that in a case where the shares are prescribed securities, the offeror must send to the company an instrument of transfer or a specified request (as required under the Part IIIAA rules). Clause 47 amends section 697 of the CO (company must register offeror as shareholder) in consequence of the amendments made to section 696 of the CO.
55. Clause 48 provides for the repeal of section 908 of the CO (paperless holding and transfer of shares and debentures) and clause 49 provides for the repeal of Schedule 8 to the CO (amendments relating to paperless holding and transfer of shares and debentures).

Division 3—Related amendments

56. Subdivision 1 of Division 3 (clause 50) amends section 25 of the Insurance Ordinance (Cap. 41) in consequence of the amendments made to section 150 of the CO.
57. Subdivision 2 of Division 3 deals with amendments to the Control of Exemption Clauses Ordinance (Cap. 71). Clause 51 amends paragraph 1(f) of Schedule 1 to that Ordinance so that sections 7, 8 and 9 of that Ordinance do not apply to a contract so far as it relates to a person specified in that contract being a registrar participant.
58. Subdivision 3 of Division 3 (clauses 52 to 62) deals with amendments to the SDO.
59. Clause 52 amends the definition of *stamp* in section 2 of the SDO to include an imprint on a contract note made in accordance with new section 5AA(3) of the SDO.

60. Clause 53 adds a new subsection (3B) to section 4 of the SDO (charging of, liability for, and recovery of stamp duty) to provide that if the amount of the stamp duty imprinted on a contract note stamped under new section 5AA(2) has not been paid to the Collector of Stamp Revenue appointed under section 3 of the SDO (*Collector*) in the manner provided by the arrangement approved under new section 5AAB(1), the contract note is deemed to be an instrument chargeable with the stamp duty which is not duly stamped in respect of the stamp duty.
61. Clause 54 adds a new section 5AA to the SDO. The new section provides for a new stamping method for a contract note required to be made and executed under section 19(1) of the SDO. The new section applies to such a contract note only if the following conditions are satisfied—
- (a) the contract note is one to which an arrangement approved under new section 5AAB(1) relates;
 - (b) the contract note is not one to which an agreement under section 5A of the SDO relates;
 - (c) stamp duty is chargeable under head 2(1) in the First Schedule to the SDO on the contract note;
 - (d) the contract note is made in respect of a sale or purchase of—
 - (i) prescribed securities held in uncertificated form immediately before the sale or purchase;
 - (ii) prescribed securities held in uncertificated form immediately after the sale or purchase; or
 - (iii) prescribed securities held in uncertificated form both immediately before and after the sale or purchase.

62. Clause 54 also adds a new section 5AAB to the SDO for the purposes of new section 5AA. New section 5AAB empowers the Collector to approve an arrangement for collecting stamp duty chargeable on a contract note to which the arrangement relates and in respect of which the conditions mentioned in paragraph 61(b), (c) and (d) are satisfied.
63. Clause 55 amends section 19 of the SDO (contract notes, etc. in respect of sale and purchase of Hong Kong stock) by adding a new subsection (1EA) to that section. The new subsection provides that a transaction is deemed to be a sale and purchase of Hong Kong stock for the purposes of the SDO if the transaction is a transaction in respect of prescribed securities and by which the beneficial interest in the prescribed securities passes otherwise than on sale and purchase. However, the new subsection does not apply to a transaction in respect of prescribed securities held in certificated form both immediately before and after the transaction.
64. A new subsection (1G) is also added to section 19 of the SDO to provide that for the purposes of section 19(1), if—
- (a) the person who effects the sale or purchase of Hong Kong stock makes, in respect of the sale or purchase, a contract note to which new section 5AA applies; and
 - (b) the contract note is stamped under new section 5AA(2),
- the person is to be regarded as having also executed the contract note.

65. Subsections (3), (4) and (5) of section 30 of the SDO (interpretation of Part IV) apply in relation to an instrument by which certain authority or requirement is given or made to the trustees or managers under a unit trust scheme. Clause 56 amends that section to deem any document or information (in whatever form) by which the authority is given or the requirement is made a transfer by way of sale but not a transfer falling within head 2(4) in the First Schedule to the SDO.
66. Clause 57 repeals and substitutes section 36 of the SDO to clarify the requirements for the trustees or managers under a unit trust scheme to register a transfer of units under the scheme.
67. Clause 58 amends section 58A of the SDO (representations may be made to Collector before certain penalties are imposed) and clause 59 amends section 58B of the SDO (remission of certain penalties), so that the 2 sections apply also to the civil penalty imposed under new section 5AAB(8). Clause 60 amends the First Schedule to the SDO in consequence of the addition of new section 5AAB.
68. Clauses 61 and 62 respectively amend Schedules 8 and 9 to the SDO in consequence of the addition of new subsection (1EA) to section 19 of the SDO.
69. Subdivision 4 of Division 3 deals with amendments to the Mental Health Ordinance (Cap. 136). Clause 63 amends section 17 of that Ordinance (committee to execute instruments) to ensure that the provision may apply if the Court (as defined by section 2(1) of that Ordinance) makes an order for anything to be done to dispose of any part of the estate of a mentally incapacitated person that is prescribed securities in uncertificated form.

70. Subdivision 5 of Division 3 deals with amendments to the Crimes Ordinance (Cap. 200). Clause 64 amends section 84 of that Ordinance (making false entry in contract for sale of shares). The amended section 84 expands the scope of application of the existing section to cover also documents of a bank, body corporate, company or society issuing shares or stock transferable through a UNSRT system.
71. Subdivision 6 of Division 3 deals with an amendment to the Electronic Transactions Ordinance (Cap. 553) (*ETO*). Clause 65 amends section 4 of Schedule 1 to the ETO so that a contract note that is stamped under new section 5AA(2) of the SDO is not excluded from the application of sections 5, 5A, 6, 7, 8 and 17 of the ETO.
72. Subdivision 7 of Division 3 deals with amendments to the Securities and Futures (Fees) Rules (Cap. 571 sub. leg. AF). Clauses 66, 67 and 68 amend those Rules—
 - (a) to prescribe the application fee payable to the SFC for approval to provide securities registrar services and the fee payable for a copy of an entry in or extract of the register of approved securities registrars; and
 - (b) to require an approved securities registrar to pay an annual fee to the SFC for the approval, and prescribe the annual fee payable.
73. Subdivision 8 of Division 3 (clauses 69 to 74) deals with other related amendments to the CO.

74. Clause 69 amends section 596 of the CO (right to appoint proxy) to limit the number of proxies that may be appointed by an individual member of a listed company to 2, unless otherwise provided in the articles of the company and subject to the Part IIIAA rules. Clause 70 contains a consequential amendment to section 597 of the CO (notice of meeting to contain statement of rights etc.).
75. Clause 71 adds a note to section 627 of the CO (register of members) to supplement that the Part IIIAA rules should be referred to for matters relating to the register of members of a listed company.
76. Clause 72 amends section 632 of the CO (power to close register of members) to provide that a listed company may close, in each year, its register of members for any period not exceeding the number of days as may be specified in the Part IIIAA rules.
77. Clause 73 amends section 828 of the CO (communication in electronic form) to require that the requirements specified in the Part IIIAA rules in relation to authentication of documents or information must also be complied with in respect of a document or information sent or supplied to a listed company in electronic form. Clause 74 makes a similar amendment to section 831 of the CO (communication in electronic form) in respect of a document or information sent or supplied by a listed company in electronic form.

Part 3—Amendments relating to OTC Derivative Licensing Regime

78. Divisions 1 and 2 of Part 3 (clauses 75 to 79) amend the SFO and the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) (*SFAO*) to refine the scope of certain regulated

activities, including Type 3, Type 9, Type 11 and Type 12 regulated activities, so as to carve out certain acts that are not intended to be covered by the OTC derivative licensing regime. Accordingly—

- (a) the following definitions in (or to be added to) Part 2 of Schedule 5 to the SFO are amended—
 - (i) *providing client clearing services for OTC derivative transactions* (clauses 75 and 78(3));
 - (ii) *leveraged foreign exchange trading* (clause 78(1));
 - (iii) *OTC derivative products management* (clause 78(2)); and
- (b) Part 2A of Schedule 5 to be added to the SFO is amended so that the meaning of the following expressions does not include certain acts—
 - (i) *advising on OTC derivative products* (clause 78(5) and (7));
 - (ii) *dealing in OTC derivative products* (clause 78(9));
 - (iii) *providing client clearing services for OTC derivative transactions* (clause 78(12), (14), (15) and (16)).

79. Certain definitions are also added to Part 2 or 2A of Schedule 5 to the SFO (clause 78(4) and (18)), including *affiliate*, *financial group* and *providing multilateral portfolio compression services*.
80. Division 3 of Part 3 (clause 80) amends rule 10 of the Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules (Cap. 571 sub. leg. AN) in consequence of the addition of the new definition of *providing multilateral portfolio compression services*.

Part 4—Minor Miscellaneous Amendments

Division 1—Amendments to Chinese text of SFO

81. Division 1 of Part 4 (clauses 81 to 85) contains textual amendments to the Chinese text of various provisions of the SFO.

Division 2—Amendments to SFO

82. Clauses 86 and 87 clarify that Part 6 of Schedule 10 to the SFO provides for the savings and transitional arrangements that apply on, or relate to, the commencement of Part 4 of the SFAO.

Division 3—Amendments to Securities and Futures (Price Stabilizing) Rules (Cap. 571 sub. leg. W) (SFPSR)

83. Clause 88 contains textual amendments to section 2 of the SFPSR.

Division 4—Amendment to Securities and Futures (Fees) Rules (Cap. 571 sub. leg. AF) (SFFR)

84. Clause 89 amends section 11 of the SFFR (waiver of fees) to provide for waiver of payment of certain fees relating to the expansion of Type 7 regulated activity to include providing services for OTC derivative products by means of electronic facilities.

Part 5—Repeal of Uncommenced Provisions of Securities and Futures and Companies Legislation (Uncertificated Securities Market Amendment) Ordinance 2015 (5 of 2015) (*USMO*)

85. Clause 90 consequentially repeals the uncommenced provisions of the USMO.