

File Ref.: CBT/17/2C

LEGISLATIVE COUNCIL BRIEF

Companies Ordinance
(Chapter 32)

COMPANIES BILL

INTRODUCTION

A At the meeting of the Executive Council on 11 January 2011, the Council **ADVISED** and the Chief Executive **ORDERED** that the Companies Bill (CB), at Annex A, should be introduced into the Legislative Council (LegCo).

JUSTIFICATIONS

2. Piecemeal amendments to the Companies Ordinance (Cap. 32) (CO) cannot meet the needs of the business community. Without a comprehensive rewrite of the CO, Hong Kong's status as a major international business and financial centre may be adversely affected.

3. The CO was last substantially reviewed and amended in 1984. Over the past two decades or so, the Standing Committee on Company Law Reform (the SCCLR) and the Government have conducted several major reviews of the CO with a view to modernising it and upgrading our corporate governance regime, resulting in recommendations to amend various sections of the CO. Some of those recommendations have been implemented by means of several amendment bills. However, the piecemeal approach to amending the CO has its limitations. A comprehensive rewrite of the CO is needed to modernise our company law to further enhance Hong Kong's status as a major international business and financial centre. In addition, many major common law jurisdictions have reformed their company law over the past two decades. Rewriting our CO allows us to leverage the developments regarding company law taking place around the world and enhance our

competitiveness. With the support of LegCo, we launched a comprehensive rewrite of the CO in mid-2006 (the Rewrite).

THE REWRITE

4. The reforms in this Rewrite aim to achieve four main purposes, as set out in paragraphs 5 to 8.

(I) Enhancing Corporate Governance

5. The SCCLR conducted an overall review of corporate governance in Hong Kong from 2000 to 2004. While many recommendations have already been implemented, some remaining recommendations that would require further legislative changes are taken forward in the Rewrite. Some notable measures for enhancing corporate governance are set out at Annex B. The major ones are (a) clarifying in statute the standard of directors' duty of care, skill and diligence with a view to clarifying the duty under the law and providing guidance to directors; (b) limiting the effect of the appointment of corporate directors by requiring every private company to have at least one natural person as director¹ so as to enhance transparency and accountability; (c) providing greater transparency and improving disclosure of company information, such as new requirements for public companies, large private companies and large guarantee companies to prepare a more analytical and forward-looking business review as part of the directors' report; and (d) fostering shareholder protection, such as introducing more effective rules to deal with directors' conflicts of interests.

(II) Ensuring Better Regulation

6. The Companies (Amendment) Ordinance 2010, which was enacted by LegCo in July 2010 and will come into operation by phases, will facilitate electronic incorporation of companies and filing of documents and expedite company name registration process. These measures will be incorporated into the CB. In addition, to ensure that the regulatory regime is effective and business-friendly, the CB will introduce a number of improvements to the registration of charges scheme and other improvements to ensure accuracy of information on the

¹ Since 1985, all public companies and private companies which are members of a group of companies of which a listed company is a member have been prohibited from appointing a body corporate as their director.

public register. We will also strengthen the enforcement regime by giving the Registrar of Companies (the Registrar) the power to obtain documents, records and information for enforcement of specified provisions in the CB and the power to compound specified offences under the CB². Some notable measures for improving regulation are set out at Annex C.

(III) Business Facilitation

7. We believe the CB should facilitate business operation and cater for the needs of SMEs. Some notable measures are set out at Annex D. The key ones are (a) facilitating SMEs to take advantage of simplified accounting and reporting requirements and thus, saving their compliance and business costs; (b) dispensing with the requirement to hold Annual General Meetings subject to unanimous members' consent; and (c) simplifying some of the procedural requirements prescribed in the CO, such as introducing a court-free procedure for reduction of capital based on the solvency test and a court-free statutory amalgamation procedure for wholly-owned intra-group companies.

(IV) Modernising the Law

8. We seek to modernise the company law to meet the needs of the business community and public expectation. We will retire antiquated concepts that no longer serve any useful purposes such as par value³ of shares. We will also modernise the language and re-arrange the sequence of some of the provisions in a more logical and user-friendly order so as to make the CB more readable and comprehensible. Some notable measures are set out at Annex E.

International Experience

9. In the Rewrite, we have made reference to and benchmarked ourselves against the company law developments in other major common law jurisdictions with internationally active business and financial sectors like the United Kingdom (UK), Australia and Singapore, to ensure that

² In other words, the Registrar may offer a person in default an opportunity to rectify the default by paying the Registrar a compounding fee, where appropriate, and by remedying the breach constituting the offence. If that person accepts and complies with the terms of the notice, no prosecution will be initiated against him for that offence.

³ Par value is the minimum price at which shares can generally be issued. Currently, companies incorporated in Hong Kong and having a share capital are required to have a par value ascribed to their shares.

our proposed regime is in line with international standards and that we will be able to benefit from precedent cases in other common law courts. At the same time, we have also taken into account the special needs and circumstances of the local market in arriving at our proposals. For example, we propose to require disinterested shareholders' approval for certain transactions involving directors or their connected entities in the case of public companies and their subsidiaries. This statutory requirement may be more stringent than that in some other common law jurisdictions but we consider it necessary for fostering shareholder protection given the large number of family-controlled public companies in Hong Kong.

THE BILL

10. The CB is divided into 21 parts: -
 - (a) **Part 1 (Preliminary)** sets out the title of the new Ordinance, its commencement date, and the definitions of various terms and expressions that are used in the CB.
 - (b) **Part 2 (Registrar of Companies and Companies Register)** deals with the general functions and powers of the Registrar. It groups the existing provisions relating to the office of the Registrar and the register maintained by the Registrar. It expressly states the functions of the Registrar. It also introduces new provisions providing the Registrar with necessary powers to maintain and safeguard the integrity of the register, having regard to the development of the Companies Registry (CR)'s information system which will enable the electronic delivery of documents to or by the Registrar. This Part introduces new provisions for non-disclosure of directors' residential addresses and full identity card/passport numbers in the CR's public register, for the sake of better protection of personal data.
 - (c) **Part 3 (Company Formation and Related Matters, and Re-registration of Company)** deals with company formation, registration and related matters. This Part also provides for new requirements for the articles of association of a company following the abolition of the memorandum of association. It also makes the keeping and use of a common seal by a company optional to facilitate business operation.

- (d) **Part 4 (Share Capital)** deals with the core concepts about “share capital” (i.e. the money paid into the company (or legally promised as being available on call) by members for shares in the company), its creation, transfer and alteration. In particular, this Part introduces a mandatory no-par regime for all companies with a share capital to modernise the regime and simplify the law.
- (e) **Part 5 (Transactions in relation to Share Capital)** contains the provisions concerning “capital maintenance”⁴ (reduction of capital and purchase of a company’s own shares) and the giving of financial assistance by a company to another party for the purpose of acquiring shares of that company or its holding company. To facilitate business operation, this Part streamlines and rationalises the existing rules by introducing new permitted exceptions based on the solvency test for reduction of capital, buy-backs and financial assistance.
- (f) **Part 6 (Distribution of Profits and Assets)** deals with the distribution of profits and assets to members. The usual form of distribution is “dividend”. While there is no fundamental change to the current rules, the Rewrite should facilitate easier understanding.
- (g) **Part 7 (Debentures)** deals with a miscellany of matters concerning debentures, for example, the register of debenture holders, rights to inspect and make copies of the register, trust deed and other documents, and meetings of debenture holders. This Part introduces new requirements for registration of the allotment of debentures and filing of a return of allotment, to align with similar requirements for shares for better disclosure.
- (h) **Part 8 (Registration of Charges)** deals with registration of charges by both Hong Kong and registered non-Hong Kong companies. It sets out the types of charges which require registration, the registration procedures and the consequences of non-compliance. It also contains provisions to regulate related matters, such as requiring companies to keep, and allowing inspection of, copies of instruments of charges and registers of

⁴ The capital maintenance rules require that the capital of a company must be kept in the company, and used for the purposes of its business only, and must not be returned to shareholders except in restricted circumstances.

charges. It introduces improvements to the current registration system, including revising the list of registrable charges and requiring a certified copy of the charge instrument to be registered and available for public inspection, for better disclosure.

- (i) **Part 9 (Accounts and Audit)** contains the accounting and auditing provisions in relation to the keeping of accounting records, the preparation and circulation of annual financial statements, directors' and auditor's reports and the appointment and rights of auditors. New provisions are introduced to facilitate SMEs to take advantage of simplified accounting and reporting requirements, to require public and large companies to include an analytical business review in directors' reports, and to enhance auditors' right to information.
- (j) **Part 10 (Directors and Company Secretaries)** deals with directors and company secretaries of a company. It mainly reorganises, with some modifications, the existing provisions of the CO relating to the appointment, removal and resignation of directors and company secretaries, and directors' liabilities. This Part also clarifies in statute the standard of directors' duty of care, skill and diligence.
- (k) **Part 11 (Fair Dealing by Directors)** covers fair dealing by directors and deals with particular situations in which a director is perceived to have a conflict of interest. It governs transactions involving directors or their connected entities which require members' approval (namely loan and similar transactions, long-term service contracts and payments for loss of office), and covers disclosure by directors of material interests in transactions, arrangements or contracts. This Part introduces new statutory provisions requiring members' approval for director's long-term employment entered into by a company. It also requires disinterested members' approval in the case of public companies and subsidiaries of public companies.
- (l) **Part 12 (Company Administration and Procedure)** governs resolutions and meetings, registers (including registers of members, directors and company secretaries), company records, registered offices and publication of company names, and

annual returns. It introduces a number of changes to enhance shareholder engagement in and improve the transparency of the decision-making process of a company. This Part also revises the provisions relating to registers, registered offices and annual returns to suit the needs of the modern economy.

- (m) **Part 13 (Arrangements, Amalgamation, and Compulsory Share Acquisition in Takeover and Share Buy-Back)** restates, with some amendments, the CO provisions concerning schemes of arrangement, reconstructions or amalgamations of a company with other companies, and compulsory acquisitions following takeover offers or share buy-back offers. This Part retains the “headcount test”⁽⁵⁾ for approving a scheme of compromise or arrangement while giving the court a new discretion to dispense with the test for members’ schemes in appropriate circumstances. It also introduces a court-free statutory amalgamation procedure for wholly-owned intra-group companies.
- (n) **Part 14 (Remedies for Protection of Companies’ or Members’ Interests)** groups the existing provisions concerning shareholder remedies under the CO. There are improvements to the scope and operation of the unfair prejudice remedy.
- (o) **Part 15 (Dissolution by Striking Off or Deregistration)** sets out provisions on striking off and deregistration of defunct companies, restoration of companies that have been struck off or deregistered, and related matters (including treatment of the property of dissolved companies). It introduces changes which aim at streamlining the existing procedures for striking-off and restoration of companies while imposing new requirements to prevent possible abuse of the deregistration procedure.
- (p) **Part 16 (Non-Hong Kong Companies)** deals with companies incorporated outside Hong Kong which have established a place of business in Hong Kong. There is no fundamental change to the current rules.
- (q) **Part 17 (Companies Not Formed, but Registrable, under this Ordinance)** deals with companies not formed under the CB

⁵ To satisfy the “headcount test”, a majority in number of those who cast votes in person or by proxy at the meeting must vote in favour of scheme of compromise or arrangement.

or a former CO but eligible to be registered under the CB. There is no fundamental change to the current rules.

- (r) **Part 18 (Communications to and by Companies)** builds on the rules governing communications by a company to another person (other than the Registrar) introduced in the Companies (Amendment) Ordinance 2010. The new rules will facilitate electronic communications by a company's members and debenture holders to the company.
- (s) **Part 19 (Investigations and Enquiries)** deals with investigations and enquiries into a company's affairs by inspectors and the Financial Secretary. It modernises the existing provisions by reference to similar mechanism in the Securities and Futures Ordinance (Cap. 571) (SFO) and Financial Reporting Council Ordinance (Cap. 588). This Part also provides a new power for the Registrar to obtain documents, records and information for the purposes of ascertaining whether any conduct that would constitute certain offences relating to giving false or misleading statement has taken place. This new power will facilitate enforcement and safeguard the integrity of the public register.
- (t) **Part 20 (Miscellaneous)** contains a number of miscellaneous provisions, including miscellaneous offences and the new power for the Registrar to compound certain offences.
- (u) **Part 21 (Consequential Amendments, and Transitional and Saving Provisions)** deals with the transitional and saving provisions as well as a small number of consequential amendments that are necessary because of the transitional and saving provisions.

11. For the bulk of consequential amendments to the current CO and other enactments, we will submit a separate Bill in 2011 to deal with them. While this arrangement is new to Hong Kong, it is a common practice in other common law jurisdictions, such as Australia and UK. This approach also enables us to take into account changes to consequential amendments arising from the Bills Committee's deliberations on policy issues, thereby reducing the number and complexity of Committee Stage Amendments.

LEGISLATIVE TIMETABLE

12. The legislative timetable will be: -

Publication in the Gazette	14 January 2011
First Reading and Commencement of Second Reading Debate	26 January 2011
Resumption of Second Reading Debate, Committee Stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

13. The proposal is in conformity with the Basic Law, including provisions concerning human rights. The proposal has economic, financial and civil service implications as set out at Annex F. There are no productivity, adverse environmental or significant sustainability implications. Clauses 740, 741 and 742 of the CB⁶ expressly apply to the Government.

F

PUBLIC CONSULTATION

14. In the course of the Rewrite, we have worked closely with the SCCLR and four Advisory Groups (comprising members nominated by the relevant professional bodies and business organisations, academics, SCCLR members and representatives from relevant Government departments) set up to advise on specific areas of the Rewrite. We conducted three topical public consultations in 2007 and 2008 to gauge views on a number of complex subjects. The proposals put forward in the consultations were generally supported by the respondents. We incorporated the proposals together with the SCCLR's other recommendations into a draft CB for further public consultation held in two phases in 2009 and 2010. We have kept the LegCo Panel on Financial Affairs informed throughout the process. On 1 November 2010, we consulted the LegCo Panel on Financial Affairs on the consultation conclusions of the two phases of public consultation on the draft CB. Members of the Panel generally supported the proposals.

⁶ Concerning the vesting of dissolved company's property in Government.

PUBLICITY

15. A press release will be issued on 14 January 2011 when the Bill is published in the Gazette. A spokesman will be available to handle press enquiries.

BACKGROUND

16. In view of the extensive nature of Rewrite, we have adopted a phased approach by tackling the provisions which affect the operation of live companies in Hong Kong in Phase I of the Rewrite (i.e. the current phase). The winding-up and insolvency-related provisions will be reviewed in Phase II. The provisions on prospectuses in the CO will be dealt with in a separate review by the Securities and Futures Commission in due course. When the CB is enacted⁷, all the provisions in the existing CO, except those provisions to be tackled in Phase II Rewrite and provisions on prospectuses, will be repealed. Upon completion of Phase II Rewrite, all the remaining provisions (excluding provisions on prospectuses which will likely be moved to the SFO) will merge with the CB to become one piece of legislation again.

17. After the CB is enacted, a number of pieces of subsidiary legislation will have to be made before it can come into operation. Moreover, the CR will have to revise the forms and upgrade its information system to cater for the changes. We estimate that the CB may commence operation in around 2014.

ENQUIRIES

18. Any enquiries on this brief may be addressed to Mr. Nick AU YEUNG, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) at 2528 6384.

Financial Services Branch
Financial Services and the Treasury Bureau
12 January 2011

⁷ It will be given a new Chapter number when enacted. The existing CO will still be Cap. 32 but will be retitled as Companies (Winding Up and Miscellaneous Provisions) Ordinance.

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A BILL

To

Reform and modernize Hong Kong company law, to restate part of the enactments relating to companies, to make other provision relating to companies, and to provide for incidental and connected matters.

Enacted by the Legislative Council.

Part 1

Preliminary

Division 1

Short Title and Commencement

1. Short title and commencement

- (1) This Ordinance may be cited as the Companies Ordinance.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

Division 2

Interpretation of this Ordinance: General

2. Interpretation

- (1) In this Ordinance—

accounting transaction (會計交易), in relation to a company, means a transaction that is required by section 369 to be entered in the company's accounting records, excluding a transaction arising from the payment of any fee that the company is required by an Ordinance to pay;

articles (章程細則), in relation to a company, means the articles of association of the company;

Note—

Please also see section 93. A condition of an existing company's memorandum of association is to be regarded as a provision of the company's articles.

associated company (有聯繫公司), in relation to a body corporate, means—

- (a) a subsidiary of the body corporate;
- (b) a holding company of the body corporate; or
- (c) a subsidiary of such a holding company;

body corporate (法人團體)—

- (a) includes—
 - (i) a company; and
 - (ii) a company incorporated outside Hong Kong; but
- (b) excludes a corporation sole;

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

commencement date (生效日期), in relation to any provision of this Ordinance, means the date on which that provision comes into operation;

Companies Register (公司登記冊) means the records kept under section 26;

company (公司) means—

- (a) a company formed and registered under this Ordinance;
or
- (b) an existing company;

company secretary (公司秘書) includes any person occupying the position of company secretary (by whatever name called);

contributory (分擔人), in relation to a company, means a person liable to contribute to the assets of the company in the event of its being wound up;

Court means the Court of First Instance;

court (法院) means a court of competent jurisdiction of the Hong Kong Special Administrative Region and includes a magistrate;

debenture (債權證), in relation to a company, includes debenture stock, bonds and any other debt securities of the company, whether or not constituting a charge on the assets of the company;

director (董事) includes any person occupying the position of director (by whatever name called);

document (文件) includes—

- (a) a summons, notice, order and any other legal process;
and
- (b) a register;

electronic record (電子紀錄) means a record generated in digital form by an information system, which can be—

- (a) transmitted within an information system or from one information system to another; and
- (b) stored in an information system or other medium;

existing company (原有公司) means a company formed and registered under a former Companies Ordinance;

financial year (財政年度)—see section 363;

former Companies Ordinance (《舊有公司條例》) means—

- (a) the Companies Ordinance 1865 (1 of 1865);
- (b) the Companies Ordinance 1911 (58 of 1911); or
- (c) the predecessor Ordinance;

founder member (創辦成員)—

- (a) in relation to a company formed and registered under this Ordinance, means a person who signs on the company's articles for the purposes of section 62(1)(a); or
- (b) in relation to an existing company, means a person who subscribed to or signed on the company's memorandum of association;

group of companies (公司集團) means any 2 or more bodies corporate one of which is the holding company of the other or others;

identity card (身分證) means an identity card issued under the Registration of Persons Ordinance (Cap. 177);

Index of Company Names (《公司名稱索引》) means the index of names kept under section 28;

information system (資訊系統) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

listed company (上市公司) means a company that has any of its shares listed on a recognized stock market;

listing rules (《上市規則》) means the rules made under section 23 of the Securities and Futures Ordinance (Cap. 571) by a recognized exchange company that govern the listing of securities on a stock market it operates;

manager (經理), in relation to a company—

- (a) means a person who performs managerial functions in relation to the company under the directors' immediate authority; but
- (b) excludes—

- (i) a receiver or manager of the company's property; and
- (ii) a special manager of the company's estate or business appointed under section 216 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

member (成員), in relation to a company, means—

- (a) a founder member of the company; or
- (b) a person who agrees to become a member of the company and whose name is entered, as a member, in the company's register of members;

non-Hong Kong company (非香港公司) means a company incorporated outside Hong Kong that—

- (a) establishes a place of business in Hong Kong on or after the commencement date of Part 16; or
- (b) has established a place of business in Hong Kong before that commencement date and continues to have a place of business in Hong Kong at that commencement date;

officer (高級人員), in relation to a body corporate, includes a director, manager or company secretary of the body corporate;

Official Receiver (破產管理署署長) means the Official Receiver appointed under the Bankruptcy Ordinance (Cap. 6);

ordinary resolution (普通決議)—see section 553;

predecessor Ordinance (《前身條例》) means the Companies Ordinance (Cap. 32) as in force from time to time before the commencement date of section 1 of Schedule 9;

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

recognized stock market (認可證券市場) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

redeemable shares (可贖回股份) means shares that are to be redeemed, or are liable to be redeemed, at the option of the company or the shareholder;

registered non-Hong Kong company (註冊非香港公司) means a non-Hong Kong company that is registered in the Companies Register as a registered non-Hong Kong company;

Registrar (處長) means the Registrar of Companies appointed under section 20(1);

reserve director (備任董事), in relation to a private company, means a person nominated as a reserve director of the company under section 446(1);

Secretary (局長) means the Secretary for Financial Services and the Treasury;

shadow director (幕後董事), in relation to a body corporate, means a person in accordance with whose directions or instructions (excluding advice given in a professional capacity) the directors, or a majority of the directors, of the body corporate are accustomed to act;

share (股份)—

- (a) means a share in a company's share capital; and
- (b) if any of the company's shares is converted into stock, includes stock;

share warrant (股份權證) means a warrant—

- (a) stating that the bearer is entitled to the shares specified in the warrant; and
- (b) enabling the shares to be transferred by delivery of the warrant;

special notice (特別通知)—see section 568;

special resolution (特別決議)—see section 554;

specified form (指明格式) means the form specified under section 22;

undertaking (企業) means—

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

unlisted company (非上市公司) means a company that does not have any of its shares listed on a recognized stock market;

written resolution (書面決議)—see section 546.

(2) In this Ordinance—

- (a) a reference to this Ordinance includes any subsidiary legislation made under this Ordinance; and
- (b) a reference to a provision of the predecessor Ordinance, except in Part 21 and Schedule 10, includes the provision, or such part of the provision, having a continuing effect under Schedule 10 or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

(3) In this Ordinance—

- (a) a reference to a manager of the property of a body corporate includes a manager of part of that property;
- (b) a reference to a receiver of the property of a body corporate includes—
 - (i) a receiver of part of that property; and
 - (ii) a receiver of the income arising from that property or part of that property; and
- (c) a reference to the appointment of a manager or receiver made under powers contained in an instrument includes—

- (i) an appointment made under powers conferred by an Ordinance; and
- (ii) an appointment made under powers that, by virtue of an Ordinance, are implied in and have effect as if contained in an instrument.

(4) For the purposes of this Ordinance—

- (a) a document or information is sent or supplied in hard copy form if it is sent or supplied—
 - (i) in paper form; or
 - (ii) in a similar form capable of being read;
- (b) a document or information is sent or supplied in electronic form if it is sent or supplied—
 - (i) by electronic means; or
 - (ii) by any other means while in electronic form; and
- (c) a document or information is sent or supplied by electronic means if it is sent or supplied in the form of an electronic record to an information system.

(5) In subsection (4)—

- (a) a reference to sending a document—
 - (i) includes supplying, delivering, forwarding or producing the document and, in the case of a notice, giving the document; but
 - (ii) excludes serving the document; and
- (b) a reference to supplying information includes sending, delivering, forwarding or producing the information.

(6) A note located in the text of this Ordinance is provided for information only and has no legislative effect.

3. Responsible person

(1) This section applies—

- (a) where a provision of this Ordinance provides that a responsible person of a company or non-Hong Kong company commits an offence if there is—
 - (i) a contravention of this Ordinance, or of a requirement, direction, condition or order; or
 - (ii) a failure to comply with a requirement, direction, condition or order; or
 - (b) where this Ordinance empowers a person to make subsidiary legislation that will contain such a provision.
- (2) For the purposes of the provision, a person is a responsible person of a company or non-Hong Kong company if the person—
- (a) is an officer or shadow director of the company or non-Hong Kong company; and
 - (b) authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention or failure.
- (3) For the purposes of the provision, a person is also a responsible person of a company or non-Hong Kong company if—
- (a) the person is an officer or shadow director of a body corporate that is an officer or shadow director of the company or non-Hong Kong company;
 - (b) the body corporate authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention or failure; and
 - (c) the person authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention or failure.

4. Certified translation

- (1) For the purposes of this Ordinance, a translation made in Hong Kong of a document is a certified translation if—

- (a) it is certified as a correct translation of the document by the translator; and
 - (b) a person specified in subsection (3) certifies that in that person's belief the translator is competent in translating the document into English or Chinese (as the case may be).
- (2) For the purposes of this Ordinance, a translation made in a place outside Hong Kong of a document is a certified translation if—
- (a) in the case of a translator specified in subsection (4), it is certified as a correct translation of the document by the translator; or
 - (b) in the case of any other translator—
 - (i) it is certified as a correct translation of the document by the translator; and
 - (ii) a person specified in subsection (5) certifies that in that person's belief the translator is competent in translating the document into English or Chinese (as the case may be).
- (3) The person specified for the purposes of subsection (1)(b) is—
- (a) a notary public practising in Hong Kong;
 - (b) a solicitor practising in Hong Kong;
 - (c) a certified public accountant (practising);
 - (d) a consular officer in Hong Kong; or
 - (e) a professional company secretary practising in Hong Kong.
- (4) The translator specified for the purposes of subsection (2)(a) is a translator appointed by a court of law of the place.
- (5) The person specified for the purposes of subsection (2)(b)(ii) is—
- (a) a notary public practising in the place;

- (b) a lawyer practising in the place;
 - (c) a professional accountant practising in the place;
 - (d) an officer of a court of law duly authorized by the law of the place to certify documents for any judicial or other legal purpose;
 - (e) a consular officer in the place;
 - (f) a professional company secretary practising in the place; or
 - (g) any other natural person specified by the Registrar.
- (6) The Secretary may, by notice published in the Gazette, amend subsection (3), (4) or (5).

5. Dormant company

- (1) If a qualified private company passes a special resolution specified in subsection (2), and the resolution is delivered to the Registrar for registration, the company is a dormant company for the purposes of Parts 9, 10 and 12 as from the date mentioned in subsection (2)(a) as declared by the resolution.
- (2) The special resolution specified for the purposes of subsection (1) is one—
- (a) declaring that the qualified private company will become dormant as from—
 - (i) the date of delivery of that resolution to the Registrar; or
 - (ii) any later date that is specified in that resolution; and
 - (b) authorizing the directors to deliver that resolution to the Registrar for registration.
- (3) If—
- (a) before the repeal of section 344A of the predecessor Ordinance by section 900, a company passed a special

resolution under subsection (1) of that section, and the resolution has not been delivered to the Registrar; and

- (b) the resolution is delivered to the Registrar for registration after the repeal,
- the company is also a dormant company for the purposes of Parts 9, 10 and 12 as from the date of delivery of the resolution to the Registrar or as from a later date as is specified in the resolution.
- (4) If, immediately before the repeal of section 344A of the predecessor Ordinance by section 900, a company was a dormant company for the purposes of that section, the company continues to be a dormant company for the purposes of Parts 9, 10 and 12 as from the commencement date of this section.
- (5) A company that is a dormant company for the purposes of Parts 9, 10 and 12 ceases to be such dormant company if—
- (a) the company passes a special resolution declaring that the company intends to enter into an accounting transaction, and the resolution is delivered to the Registrar for registration; or
 - (b) there is an accounting transaction in relation to the company.
- (6) In this section—
- qualified private company** (合資格私人公司) means a private company that is not a company specified in subsection (7).
- (7) A company specified for the purposes of the definition of **qualified private company** in subsection (6) is—
- (a) an authorized institution as defined by section 2(1) of the Banking Ordinance (Cap. 155);
 - (b) an insurer as defined by section 2(1) and (2) of the Insurance Companies Ordinance (Cap. 41);

- (c) a corporation licensed under Part V of the Securities and Futures Ordinance (Cap. 571) to carry on a business in any regulated activity as defined by section 1 of Part 1 of Schedule 1 to that Ordinance;
 - (d) an associated entity, within the meaning of Part VI of the Securities and Futures Ordinance (Cap. 571), of a corporation mentioned in paragraph (c);
 - (e) an approved trustee as defined by section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);
 - (f) a company registered as a trust company under Part VIII of the Trustee Ordinance (Cap. 29);
 - (g) a company having a subsidiary that falls within paragraph (a), (b), (c), (d), (e) or (f); or
 - (h) a company that fell within paragraph (a), (b), (c), (d), (e), (f) or (g) at any time during the 5 years immediately before the special resolution is passed.
- (8) The Financial Secretary may, by notice published in the Gazette, amend subsection (7).

Division 3

Interpretation of this Ordinance: Types of Companies

Subdivision 1

Limited Company and Unlimited Company

6. Limited company

For the purposes of this Ordinance, a company is a limited company if it is a company limited by shares or by guarantee.

7. Company limited by shares

For the purposes of this Ordinance, a company is a company limited by shares if the liability of its members is limited by the company's articles to any amount unpaid on the shares held by the members.

8. Company limited by guarantee

(1) For the purposes of this Ordinance, a company is a company limited by guarantee if—

- (a) it does not have a share capital; and
- (b) the liability of its members is limited by the company's articles to the amount that the members undertake, by those articles, to contribute to the assets of the company in the event of its being wound up.

(2) Subsection (1)(a) does not apply if the company was formed as, or became, a company limited by guarantee under a former Companies Ordinance before 13 February 2004.

9. Unlimited company

For the purposes of this Ordinance, a company is an unlimited company if there is no limit on the liability of its members.

Subdivision 2

Private Company and Public Company

10. Private company

(1) For the purposes of this Ordinance, a company is a private company if—

- (a) its articles—
 - (i) restrict a member's right to transfer shares;
 - (ii) limit the number of members to 50; and

- (iii) prohibit any invitation to the public to subscribe for any shares or debentures of the company; and
- (b) it is not a company limited by guarantee.
- (2) In subsection (1)(a)(ii)—
member (成員) excludes—
 - (a) a member who is an employee of the company; and
 - (b) a person who was a member while being an employee of the company and who continues to be a member after ceasing to be such an employee.
- (3) For the purposes of this section, 2 or more persons who hold shares in a company jointly are to be regarded as one member.

11. Public company

For the purposes of this Ordinance, a company is a public company if—

- (a) it is not a private company; and
- (b) it is not a company limited by guarantee.

Division 4

**Interpretation of this Ordinance: Holding Company and
Subsidiary, and Parent Undertaking and Subsidiary
Undertaking**

12. Holding company

- (1) For the purposes of this Ordinance, a body corporate is a holding company of another body corporate if—
 - (a) it controls the composition of that other body corporate's board of directors;
 - (b) it controls more than half of the voting rights in that other body corporate; or

- (c) it holds more than half of that other body corporate's issued share capital.
- (2) For the purposes of this Ordinance, a body corporate is also a holding company of another body corporate if it is a holding company of a body corporate that is that other body corporate's holding company.
- (3) For the purposes of subsection (1)(a), a body corporate controls the composition of another body corporate's board of directors if it has power to appoint or remove all, or a majority, of that other body corporate's directors without any other person's consent.
- (4) For the purposes of subsection (3), a body corporate has the power to make such an appointment if—
 - (a) without the exercise of the power in a person's favour by the body corporate, the person cannot be appointed as a director of that other body corporate; or
 - (b) it necessarily follows from a person being a director or other officer of the body corporate that the person is appointed as a director of that other body corporate.
- (5) In subsection (1)(c), a reference to a body corporate's issued share capital excludes any part of it that carries no right to participate beyond a specified amount in a distribution of profits or capital.

13. Provisions supplementary to section 12

- (1) For the purposes of this Division—
 - (a) if any share is held, or any power is exercisable, by a body corporate in a fiduciary capacity, the share or power is to be regarded as not being held or exercisable by the body corporate; and
 - (b) subject to subsections (2) and (3), if any share is held, or any power is exercisable, by a subsidiary of a body corporate, or by a person as nominee for a body

corporate or such a subsidiary, the share or power is to be regarded as being held or exercisable by the body corporate.

- (2) For the purposes of this Division, any share in another body corporate held, or any power in relation to another body corporate exercisable, by a person by virtue of a debenture of that other body corporate, or of a trust deed for securing an issue of such a debenture, is to be regarded as not being held or exercisable by the person.
- (3) For the purposes of this Division, any share held, or any power exercisable, by a body corporate or a subsidiary of a body corporate, or by a person as nominee for a body corporate or such a subsidiary, is to be regarded as not being held or exercisable by the body corporate or subsidiary if—
 - (a) the ordinary business of the body corporate or subsidiary includes the lending of money; and
 - (b) the share or power is held or exercisable by way of security only for the purpose of a transaction entered into in the ordinary course of that business.
- (4) In subsection (1)(b), a reference to a body corporate or subsidiary excludes a body corporate or subsidiary that is concerned only in a fiduciary capacity.

14. **Subsidiary**

For the purposes of this Ordinance, a body corporate is a subsidiary of another body corporate if that other body corporate is a holding company of it.

15. **Parent undertaking, parent company and subsidiary undertaking**

A reference in this Ordinance to a parent undertaking, parent company or subsidiary undertaking is to be construed in accordance with Schedule 1.

Division 5

Application of this Ordinance

16. **Application to existing company**

- (1) This Ordinance applies to an existing company, in the same manner as if—
 - (a) in the case of a company limited by guarantee, the company had been formed and registered under this Ordinance as a company limited by guarantee;
 - (b) in the case of a limited company other than a company limited by guarantee, the company had been formed and registered under this Ordinance as a company limited by shares; or
 - (c) in the case of a company other than a limited company, the company had been formed and registered under this Ordinance as an unlimited company.
- (2) For the purpose of applying this Ordinance to an existing company, a reference in this Ordinance to the date of registration is to be read as the date on which the company was registered under a former Companies Ordinance.

17. **Application to unlimited company registered in pursuance of former Companies Ordinance as limited company**

- (1) This Ordinance applies to an unlimited company registered as a limited company in pursuance of the predecessor Ordinance or section 58 of the Companies Ordinance 1911 (58 of 1911), in the same manner as it applies to an unlimited company registered under this Ordinance as a limited company.
- (2) For the purpose of applying this Ordinance to a company mentioned in subsection (1), a reference in this Ordinance to the date of registration is to be read as the date on which the company was registered in pursuance of the predecessor

Ordinance or section 58 of the Companies Ordinance 1911 (58 of 1911).

18. Application to company registered, but not formed, under former Companies Ordinance

- (1) This Ordinance applies to a company registered, but not formed, under a former Companies Ordinance, in the same manner as it applies to an eligible company registered under Part 17.
- (2) For the purpose of applying this Ordinance to a company mentioned in subsection (1), a reference in this Ordinance to the date of registration is to be read as the date on which the company was registered under the former Companies Ordinance.

Part 2

Registrar of Companies and Companies Register

Division 1

Preliminary

19. Interpretation

(1) In this Part—

company (公司) includes—

- (a) a non-Hong Kong company registered under section 765(1); or
- (b) a company that was, immediately before the commencement date of Part 16, registered in the register kept under section 333AA of the predecessor Ordinance;

digital signature (數碼簽署) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

document (文件) includes a document in electronic form or any other form;

electronic signature (電子簽署) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

in electronic form (電子形式) means in the form of an electronic record;

in hard copy form (印本形式) means in a paper form or similar form capable of being read.

(2) In this Part, a reference to delivering a document includes sending, supplying, forwarding or producing it.

Division 2**Registrar of Companies****20. Office of Registrar**

- (1) The Chief Executive may appoint a person to be the Registrar of Companies.
- (2) The Chief Executive may appoint other officers for the purposes of this Ordinance.
- (3) For the purpose of the registration of companies under this Ordinance, an office is to be established at a place designated by the Chief Executive.
- (4) The Chief Executive may direct a seal to be prepared for the authentication of documents required for or connected with the performance of the Registrar's functions.

21. Registrar's functions

The Registrar's functions are those conferred on the Registrar by or under this Ordinance or any other Ordinance.

22. Registrar may specify form

- (1) The Registrar may specify the form of any document required for the purposes of this Ordinance.
- (2) Subsection (1) does not apply to a document—
 - (a) the form of which is prescribed by this Ordinance; or
 - (b) the form of which is or may be prescribed by regulations made under this Ordinance.
- (3) In specifying the form of a document under subsection (1), the Registrar may specify more than one form of the document, whether as alternatives or to provide for different circumstances.

23. Registrar may issue guidelines

- (1) The Registrar may issue guidelines—
 - (a) indicating the manner in which the Registrar proposes to perform any function or exercise any power; or
 - (b) providing guidance on the operation of any provision of this Ordinance.
- (2) The Registrar—
 - (a) must publish the guidelines in a manner appropriate to bring them to the notice of persons affected by them; and
 - (b) must make copies of the guidelines available to the public (in hard copy form or electronic form).
- (3) Guidelines issued under this section are not subsidiary legislation.
- (4) The Registrar may amend or revoke any of the guidelines. Subsections (2) and (3) apply to an amendment or revocation of guidelines in the same way as they apply to the guidelines.
- (5) A person does not incur any civil or criminal liability only because the person has contravened any of the guidelines. If, in any legal proceedings, the court is satisfied that a guideline is relevant to determining a matter that is in issue—
 - (a) the guideline is admissible in evidence in the proceedings; and
 - (b) proof that the person contravened or did not contravene the guideline may be relied on by any party to the proceedings as tending to establish or negate the matter.

24. Registrar may authenticate document etc.

- (1) If a document is required by this Ordinance to be signed by the Registrar or to bear the Registrar's printed signature, the Registrar may authenticate it in any manner that the Registrar thinks fit.

- (2) If anything is authorized to be certified by the Registrar under this Ordinance or any other Ordinance, the Registrar may certify it in any manner that the Registrar thinks fit.

25. Fees payable to Registrar

- (1) The Financial Secretary may make regulations to require payment to the Registrar of fees in respect of—
- (a) the performance of any of the Registrar's functions; or
 - (b) the provision by the Registrar of services or facilities for purposes incidental to, or otherwise connected with, the performance of any of the Registrar's functions.
- (2) The regulations may—
- (a) provide for the amount of the fees to be fixed by or determined under the regulations;
 - (b) provide for different fees to be payable in respect of the same matter in different circumstances; and
 - (c) specify when and how fees are to be paid.
- (3) The Registrar—
- (a) may, subject to the approval of the Financial Secretary, determine what fees are chargeable in respect of the performance of functions or the provision of services or facilities—
 - (i) for which fees are not provided for by the regulations; or
 - (ii) in circumstances other than those for which fees are provided by the regulations; and
 - (b) may charge such fees.
- (4) Fees received by the Registrar must be paid into the general revenue, unless the fees are required by section 5 of the Trading Funds Ordinance (Cap. 430) to be paid into the Companies Registry Trading Fund.

Division 3

Companies Register

26. Registrar must keep records of companies

- (1) The Registrar must keep records of—
- (a) the information contained in every document that is delivered to the Registrar for registration and that the Registrar decides to register under this Part; and
 - (b) the information contained in every certificate that is issued by the Registrar under this Ordinance, excluding a certificate issued under section 56(1).
- (2) The Registrar must continue to keep the records that were, immediately before the commencement date of this section, kept for the purpose of a register of companies under the predecessor Ordinance.
- (3) The records kept under this section must be such that information relating to a company is associated with the company in a manner determined by the Registrar, so as to enable all the information relating to the company to be retrieved.
- (4) A record of information for the purposes of subsection (1) must be kept in such form as to enable any person to inspect the information contained in the record and to make a copy of the information.
- (5) Subject to subsections (3) and (4), a record of information for the purposes of subsection (1) may be kept in any form that the Registrar thinks fit.
- (6) For the purposes of subsections (1) and (2), the Registrar—
- (a) must record a specified address of a director or reserve director of a company as the correspondence address, and as the usual residential address, of the director or reserve director; and

- (b) must record a specified address of a company secretary of a company as the correspondence address, but not as the usual residential address, of the company secretary.
- (7) If the Registrar keeps a record of information in a form that differs from the form in which the document containing the information was delivered to, or generated by, the Registrar, the record is presumed, unless the contrary is proved, to represent the information contained in the document as delivered or generated.
- (8) If the Registrar records the information contained in a document for the purposes of subsection (1), the Registrar is to be regarded as having discharged any duty imposed by law on the Registrar to keep, file or register the document.
- (9) In this section—
- specified address* (指明地址), in relation to a director, reserve director or company secretary, means—
- (a) an address of the director, reserve director or company secretary that, immediately before the commencement date of this section, was shown on the register of companies under the predecessor Ordinance as the usual residential address of the director, reserve director or company secretary;
- (b) an address of the director, reserve director or company secretary contained, as his or her usual residential address, in—
- (i) an incorporation form delivered before the commencement date of Division 1 of Part 3 to the Registrar for registration under section 15(1) of the predecessor Ordinance and registered on or after that commencement date under section 16(1) of the predecessor Ordinance having a continuing effect under Schedule 10; or
- (ii) an application for registration delivered before the commencement date of Division 2 of Part 16 to the

- Registrar under section 333 of the predecessor Ordinance and the registration takes place under section 765(1); or
- (c) an address of the director, reserve director or company secretary that was contained, as his or her usual residential address, in—
- (i) subject to subsection (10), a notification sent before the commencement date of Subdivisions 3 and 4 of Division 2 of Part 12 to the Registrar under section 158(4), (4AA) or (4A) of the predecessor Ordinance;
- (ii) a notification sent on or after the commencement date of Subdivisions 3 and 4 of Division 2 of Part 12 to the Registrar under section 158(4), (4AA) or (4A) of the predecessor Ordinance having a continuing effect under Schedule 10;
- (iii) subject to subsection (10), a return delivered before the commencement date of Division 6 of Part 16 to the Registrar for registration under section 335(1)(c) of the predecessor Ordinance; or
- (iv) a return delivered on or after the commencement date of Division 6 of Part 16 to the Registrar for registration under section 335(1)(c) of the predecessor Ordinance having a continuing effect by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).
- (10) Paragraph (c)(i) or (iii) of the definition of *specified address* in subsection (9) does not apply to an address that falls within paragraph (a) of that definition.

27. Registrar not required to keep certain documents etc.

- (1) The Registrar may destroy or dispose of any document delivered to the Registrar for registration under an Ordinance if the information contained in the document has been

recorded by the Registrar in any other form for the purposes of section 26(1) or for the purpose of a register of companies under the predecessor Ordinance.

- (2) If a document or certificate has been kept by the Registrar for at least 7 years for the purposes of section 26(1) or for the purpose of a register of companies under the predecessor Ordinance, the Registrar may destroy or dispose of the document or certificate.
- (3) If the Registrar is required by section 46 not to make any information available for public inspection, the Registrar is not required to keep a record of the information for any longer than appears to the Registrar to be reasonably necessary for the purpose for which the information was delivered to the Registrar.

28. Registrar must keep Index of Company Names

The Registrar must keep an index of the names of every company.

Division 4

Registration of Document

Subdivision 1

Preliminary

29. Unsatisfactory document

- (1) For the purposes of this Division, a document delivered to the Registrar for registration is unsatisfactory if—
 - (a) the information contained in the document is not capable of being reproduced in legible form;
 - (b) in the case of a document that is neither in English nor in Chinese, it is not accompanied by a certified translation of it in English or Chinese;

- (c) the requirements specified in relation to the document under section 30 are not complied with;
 - (d) the document is not delivered in accordance with an agreement made under section 31, and any regulations made under section 32, in relation to it;
 - (e) the applicable requirements of the Ordinance under which the document is delivered are not complied with;
 - (f) the document is not accompanied by the fee payable for the registration;
 - (g) the document, or any signature on, or any digital or electronic signature accompanying, the document—
 - (i) is incomplete or incorrect; or
 - (ii) is altered without proper authority;
 - (h) the information contained in the document—
 - (i) is internally inconsistent; or
 - (ii) is inconsistent with other information on the Companies Register or other information contained in another document delivered to the Registrar;
 - (i) the information contained in the document derives from anything that—
 - (i) is invalid or ineffective; or
 - (ii) has been done without the company's authority; or
 - (j) the document contains matters contrary to law.
- (2) In this section—
- applicable requirements* (適用規定), in relation to a document, means the requirements as regards—
- (a) the contents of the document;
 - (b) the form of the document;
 - (c) the authentication of the document; and
 - (d) the manner of delivery of the document.

30. Registrar may specify requirements (for section 29(1))

- (1) The Registrar may, in relation to any document required or authorized to be delivered to the Registrar under an Ordinance—
 - (a) specify requirements for the purpose of enabling the Registrar to make copies or image records of the document and to keep records of the information contained in it;
 - (b) specify requirements as to the authentication of the document; and
 - (c) specify requirements as to the manner of delivery of the document.
- (2) The Registrar may, in relation to any document authorized to be delivered to the Registrar for registration under section 39(3) for the purpose of rectification of an error, specify requirements as to—
 - (a) the delivery of the document in a form and manner enabling it to be associated with the document containing the error; and
 - (b) the identification of the document containing the error.
- (3) For the purposes of subsections (1) and (2), the Registrar may specify different requirements for different documents or classes of documents, or for different circumstances.
- (4) For the purposes of subsection (1)(b), the Registrar may—
 - (a) require the document to be authenticated by a particular person or a person of a particular description;
 - (b) specify the means of authentication; and
 - (c) require the document to contain, or to be accompanied by, the name or registration number, or both, of the company to which it relates.
- (5) For the purposes of subsection (1)(c), the Registrar may—

- (a) require the document to be in hard copy form, electronic form or any other form;
 - (b) require the document to be delivered by post or any other means;
 - (c) specify requirements as to the address to which the document is to be delivered; and
 - (d) in the case of a document to be delivered by electronic means, specify requirements as to the hardware and software to be used and the technical specifications.
- (6) This section does not empower the Registrar—
- (a) to require a document to be delivered to the Registrar by electronic means; or
 - (b) to specify any requirement that is inconsistent with any requirement prescribed by an Ordinance as to—
 - (i) the authentication of the document; and
 - (ii) the manner of delivery of the document to the Registrar.
- (7) Requirements specified under this section are not subsidiary legislation.

31. Registrar may agree to delivery by electronic means (for section 29(1))

- (1) The Registrar may enter into an agreement with a company to provide that any document, or any class of document, that relates to the company, and is required or authorized to be delivered to the Registrar under an Ordinance—
 - (a) will be delivered by electronic means, except as provided for in the agreement; and
 - (b) will conform to the requirements—
 - (i) specified in the agreement; or
 - (ii) specified by the Registrar in accordance with the agreement.

- (2) An agreement with a company may also provide that any document, or any class of document, that relates to the company, and is required or authorized to be delivered by the Registrar to it under an Ordinance, will be delivered by electronic means.
- (3) The Registrar may specify a standard form for an agreement and the extent to which the form is to be used.
- (4) This section does not empower the Registrar to make any agreement that is inconsistent with regulations made under section 32.

32. Financial Secretary may make regulations requiring delivery by electronic means (for section 29(1))

- (1) The Financial Secretary may make regulations requiring any document required or authorized to be delivered to the Registrar under an Ordinance to be delivered by electronic means.
- (2) The regulations are subject to the approval of the Legislative Council.

Subdivision 2

Registrar's Powers to Refuse to Accept and to Register Document

33. Registrar may refuse to accept or register document

- (1) If the Registrar is of the opinion that a document delivered to him or her for registration under an Ordinance is unsatisfactory, the Registrar—
 - (a) may refuse to accept the document; or
 - (b) may, after having accepted the document, exercise the powers specified in subsection (2) or (3).

- (2) The Registrar may refuse to register the document and return the document to the person who delivered it for registration.
- (3) The Registrar may also advise that—
 - (a) the document be appropriately amended or completed, and be redelivered for registration with or without a supplementary document; or
 - (b) a fresh document be delivered for registration in its place.
- (4) If the Registrar—
 - (a) refuses to accept a document under subsection (1)(a);
 - (b) has not received a document; or
 - (c) refuses to register a document under subsection (2),
 the document is to be regarded as not having been delivered to the Registrar in satisfaction of the provision of the Ordinance that requires or authorizes the document to be delivered to the Registrar.

34. Registrar may withhold registration of document pending further particulars etc.

For the purpose of determining whether the powers specified in section 33(2) and (3) are exercisable in relation to a document, the Registrar may—

- (a) withhold the registration of the document pending compliance with the request under paragraph (b); and
- (b) request the person who is required or authorized to deliver the document to the Registrar for registration under the Ordinance to do any or all of the following within a period specified by the Registrar—
 - (i) to produce any other document, information or evidence that, in the Registrar's opinion, is necessary for the Registrar to determine the

- question as to whether the document is unsatisfactory;
- (ii) to appropriately amend or complete the document, and redeliver it for registration with or without a supplementary document;
 - (iii) to apply to the court for any order or direction that the Registrar thinks necessary and to conduct the application diligently;
 - (iv) to comply with other directions of the Registrar.

35. Appeal against Registrar's decision to refuse registration

- (1) If a person is aggrieved by a decision of the Registrar to refuse to register a document under section 33(2), the person may, within 42 days after the decision, appeal to the Court against the decision.
- (2) The Court may make any order that it thinks fit, including an order as to costs.
- (3) If the Court makes an order as to costs against the Registrar under subsection (2), the costs are payable out of the general revenue, and the Registrar is not personally liable for the costs.

36. Certain period to be disregarded for calculating daily penalty for failure to deliver document to Registrar

- (1) This section applies if—
 - (a) a document is delivered to the Registrar for registration under an Ordinance; and
 - (b) the Registrar refuses to register the document under section 33(2).
- (2) The Registrar may send a notice of the refusal, and the reasons for the refusal, to—
 - (a) the person who is required to deliver the document to the Registrar for registration under the Ordinance or, if there

- is more than one person who is so required, any of those persons; or
- (b) if another person delivers, on behalf of the person so required, the document to the Registrar for registration, that other person.
- (3) If a notice is sent to a person under subsection (2) with respect to a document, the period specified in subsection (4) is to be disregarded for the purpose of calculating the daily penalty under an Ordinance that makes it an offence for failing to comply with a requirement to deliver the document and that imposes a penalty for each day during which the offence continues.
- (4) The period is one beginning on the date on which the document was delivered to the Registrar and ending with the fourteenth day after the date on which the notice is sent under subsection (2).

Division 5

Registrar's Powers in relation to Keeping Companies Register

37. Registrar may require company to resolve inconsistency with Companies Register

- (1) If it appears to the Registrar that the information contained in a document registered by the Registrar is inconsistent with other information on the Companies Register, the Registrar may give notice to the company to which the document relates—
 - (a) stating in what respect the information contained in it appears to be inconsistent with other information on the Companies Register; and
 - (b) requiring the company to take steps to resolve the inconsistency.

- (2) For the purposes of subsection (1)(b), the Registrar may require the company to deliver to the Registrar within the period specified in the notice—
 - (a) information required to resolve the inconsistency; or
 - (b) evidence that proceedings have been commenced by the company in the Court for the purpose of resolving the inconsistency and that the proceedings are being conducted diligently.
- (3) If a company fails to comply with a requirement under subsection (1)(b), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

38. Registrar may require further information for updating etc.

- (1) For the purpose of ensuring that a person's information on the Companies Register is accurate or bringing the information up to date, the Registrar may send a notice to the person requiring the person to give the Registrar, within a period specified by the Registrar, any information about the person, being information of the kind that is included on the Companies Register.
- (2) If a company fails to comply with a requirement under subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (3) If any other person fails to comply with a requirement under subsection (1), the person commits an offence and is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

39. Registrar may rectify typographical or clerical error in Companies Register

- (1) The Registrar may, on his or her own initiative, rectify a typographical or clerical error contained in any information on the Companies Register.
- (2) The Registrar may, on application by a company, rectify a typographical or clerical error contained in any information relating to the company on the Companies Register.
- (3) If, in relation to an application for the purposes of subsection (2), a document showing the rectification is delivered to the Registrar for registration, the Registrar may rectify the error by registering the document.

40. Registrar must rectify information on Companies Register on order of Court

- (1) The Court may, on application by any person, by order direct the Registrar to rectify any information on the Companies Register or to remove any information from it if the Court is satisfied that—
 - (a) the information derives from anything that—
 - (i) is invalid or ineffective; or
 - (ii) has been done without the company's authority; or
 - (b) the information—
 - (i) is factually inaccurate; or
 - (ii) derives from anything that is factually inaccurate or forged.
- (2) If, in relation to an application for the purposes of subsection (1), a document showing the rectification is filed with the Court, the Court may require the Registrar to rectify the information by registering the document.
- (3) This section does not apply if the Court is specifically empowered under any other Ordinance or any other provision

- of this Ordinance to deal with the rectification of the information on or the removal of the information from the Companies Register.
- (4) The Court must not order the removal of any information from the Companies Register under subsection (1) unless it is satisfied that—
- (a) even if a document showing the rectification in question is registered, the continuing presence of the information on the Companies Register will cause material damage to the company; and
 - (b) the company's interest in removing the information outweighs the interest of other persons in the information continuing to appear on the Companies Register.
- (5) If the Court makes an order for the rectification of any information on or the removal of any information from the Companies Register under subsection (1), the Court may make any consequential order that appears to it to be just with respect to the legal effect (if any) to be accorded to the information by virtue of its having appeared on the Companies Register.
- (6) If the Court makes an order for the removal of any information from the Companies Register under subsection (1), it may direct—
- (a) that a note made under section 42(1) in relation to the information is to be removed from the Companies Register;
 - (b) that the order is not to be made available for public inspection as part of the Companies Register; and
 - (c) that—
 - (i) no note is to be made under section 42(1) as a result of the order; or

- (ii) any such note is to be restricted to providing information in relation to the matters specified by the Court.
- (7) The Court must not give a direction under subsection (6) unless it is satisfied that—
 - (a) any of the following may cause damage to the company—
 - (i) the presence on the Companies Register of the note or an unrestricted note (as the case may be);
 - (ii) the availability for public inspection of the order; and
 - (b) the company's interest in non-disclosure outweighs the interest of other persons in disclosure.
- (8) If the Court makes an order under this section, the person who made the application must deliver an office copy of the order to the Registrar for registration.

41. Registrar may appear in proceedings for rectification

- (1) In any proceedings before the Court for the purposes of section 40, the Registrar—
 - (a) is entitled to appear or be represented, and be heard; and
 - (b) must appear if so directed by the Court.
- (2) Whether or not the Registrar appears in those proceedings, the Registrar may submit to the Court a statement in writing signed by the Registrar, giving particulars of the matters relevant to the proceedings and within the Registrar's knowledge.
- (3) Unless otherwise directed by the Court, a statement submitted under subsection (2) is to be regarded as forming part of the evidence in the proceedings.

42. Registrar may annotate Companies Register

- (1) The Registrar may make a note in the Companies Register for the purpose of providing information in relation to—
 - (a) a rectification of an error contained in any information on the Companies Register under section 39;
 - (b) a rectification of any information on the Companies Register under section 40;
 - (c) a removal of any information from the Companies Register under section 40; or
 - (d) any other information on the Companies Register.
- (2) For the purposes of this Ordinance, a note made under subsection (1) is part of the Companies Register.
- (3) The Registrar may remove a note if the Registrar is satisfied that it no longer serves any useful purpose.

Division 6**Inspection of Companies Register****43. Registrar must make Companies Register available for public inspection**

- (1) The Registrar must make the Companies Register available for public inspection at all reasonable times so as to enable any member of the public—
 - (a) to ascertain whether the member of the public is dealing with—
 - (i) a company, or its directors or other officers, in matters of or connected with any act of the company;
 - (ii) a director or other officers of a company in matters of or connected with the administration of the company, or of its property;

- (iii) a person against whom a disqualification order has been made by a court;
- (iv) a person who has entered into possession of the property of a company as mortgagee;
- (v) a person who is appointed as the provisional liquidator or liquidator in the winding up of a company; or
- (vi) a person who is appointed as the receiver or manager of the property of a company; and
- (b) to ascertain the particulars of the company, its directors or other officers, or its former directors (if any), or the particulars of any person mentioned in paragraph (a)(iv), (v) or (vi).
- (2) For the purposes of subsection (1), the Registrar must, on receiving the fee payable under the regulations made under section 25, allow a person to inspect any information on the Companies Register in any form that the Registrar thinks fit.
- (3) For the purposes of subsection (1), the Registrar may, on receiving the fee payable under the regulations made under section 25, produce to a person a copy or a certified true copy of any document or information on the Companies Register, in so far as the document or information may be made available for public inspection, in any form that the Registrar thinks fit.
- (4) In this section—

disqualification order (取消資格令), in relation to a person, means an order that, for a period specified in the order beginning on the date of the order, the person must not, without the leave of the court—

- (a) be a director, or a liquidator or provisional liquidator, of any company;
- (b) be a receiver or manager of the property of any company; or

- (c) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of any company.

44. Registrar's certified true copy admissible as evidence

In any proceedings—

- (a) a document purporting to be a copy of any information produced under section 43(3), and purporting to be certified by the Registrar as a true copy of the information, is admissible in evidence on its production without further proof; and
- (b) on being admitted in evidence under paragraph (a), the document is proof of the information in the absence of evidence to the contrary.

45. Issue of process for compelling production of information on Companies Register

- (1) No process for compelling the production of any information on the Companies Register may issue from the court except with the permission of the court.
- (2) Any such process must bear on it a statement that it is issued with the permission of the court.

Division 7

Materials in Companies Register Unavailable for Public Inspection

Subdivision 1

General Protection

46. Information excluded from public inspection by law or court order

The Registrar must not make available for public inspection under section 43 any information excluded from public inspection by or under an Ordinance or by an order of the court.

47. Registrar may withhold residential address and identification number from public inspection

- (1) The Registrar may, on application made for the purposes of this subsection, withhold from public inspection under section 43(1)—
- (a) a relevant address of the applicant contained, as an address of the applicant's location, in a document to which this subsection applies; or
- (b) a number contained, as the full number of the identity card or passport of the applicant, in a document to which this subsection applies.
- (2) Subsection (1) applies to a document delivered to the Registrar for registration under any of the following Ordinances before, on or after the commencement date of this section—
- (a) this Ordinance;
- (b) the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

- (c) the predecessor Ordinance.
- (3) If a person's address is withheld from public inspection under subsection (1)(a), the Registrar may instead make available for public inspection an address contained in the person's application as the person's correspondence address.
- (4) An application for the purposes of subsection (1)(a) may be made only by a director, reserve director or company secretary, or a former director, reserve director or company secretary, of a company. An application for the purposes of subsection (1)(b) may be made by any person.
- (5) If an address is required by section 51(5) to be entered in a register of directors as the usual residential address and the correspondence address of a director within a period of 5 years specified in that section, an application must not be made for the purposes of subsection (1) in relation to the address during the period.
- (6) If an address is not prohibited by section 51(6) from being entered in a register of directors as the correspondence address of a director, or from being stated in a notice or return as the changed correspondence address of a director, during a period of 5 years specified in that section, an application must not be made for the purposes of subsection (1) in relation to the address during the period.
- (7) An application for the purposes of subsection (1) must be made in accordance with regulations made under subsection (8).
- (8) The Financial Secretary may make regulations—
- (a) prescribing the information to be contained in an application made for the purposes of subsection (1), including the correspondence address required for the purposes of subsection (3); and
 - (b) prescribing the documents and fees to accompany such an application.

- (9) The regulations may provide that the correspondence address required for the purposes of subsection (3) must be an address in Hong Kong and must not be a post office box number.
- (10) In this section—
- relevant address** (有關地址), in relation to an applicant who makes an application for the purposes of subsection (1), means an address specified by the applicant in the application as a usual residential address of the applicant as at the date of the document in which the address is contained.

Subdivision 2

Protection of Residential Address and Identification Number Contained in Certain Documents

48. Interpretation

- (1) In this Subdivision—

director (董事) includes a person nominated as a reserve director under section 446(1);

protected address (受保護地址) means, subject to subsection (2)(a), an address that falls within section 49(2)(a);

protected identification number (受保護身分識別號碼) means a number that falls within section 49(2)(b);

protected information (受保護資料) means a protected address or a protected identification number;

relevant correspondence address (有關通訊地址), in relation to a director of a company, means the address contained, as the correspondence address of the director, in whichever is the most recent of the following—

- (a) in the case of a company other than those falling within paragraph (a) or (b) of the definition of **company** in section 19(1)—

- (i) an incorporation form delivered to the Registrar for registration under section 62(1)(b) in relation to the formation of the company;
- (ii) a notice delivered to the Registrar for registration under section 636(1) or (2) in relation to the appointment of a director, or the nomination of a reserve director, of the company; or
- (iii) a notice delivered to the Registrar for registration under section 636(4) in relation to a change in the particulars contained in the register of directors of the company;
- (b) in the case of a company falling within paragraph (a) or (b) of the definition of *company* in section 19(1)—
 - (i) an application to the Registrar under section 764(2) or (3) for registration of the company;
 - (ii) a return delivered to the Registrar for registration under section 779(1) in relation to a change in the directors of the company; or
 - (iii) a return delivered to the Registrar for registration under section 779(1) in relation to a change in the particulars of the directors of the company delivered to the Registrar under Part 16.
- (2) For the purposes of this Subdivision—
 - (a) an address of a person does not cease to fall within section 49(2)(a) just because the person ceases to be a director of the company; and
 - (b) a reference to a director includes, to that extent, a former director.
- (3) Subsection (2)(b) does not apply to a reference to a director in section 50 or 51.

- 49. Registrar must not make residential address and identification number available for public inspection**
- (1) Subsection (2) applies if—
 - (a) a document—
 - (i) is delivered to the Registrar for registration in respect of a company under this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and is in a form prescribed by or under, or specified under, the relevant Ordinance; or
 - (ii) is delivered to the Registrar for registration in respect of a company under a provision of the predecessor Ordinance having a continuing effect under Schedule 10 or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1) and is in a form specified under section 902(5)(a) or (7)(a);
 - (b) any part of the document is required by the relevant Ordinance to contain, and contains—
 - (i) the usual residential address of a director of the company; or
 - (ii) the full number of the identity card or passport of any person; and
 - (c) the Registrar records the information contained in the document for the purposes of section 26(1).
 - (2) The Registrar must not make available for public inspection under section 43(1)—
 - (a) an address contained, as the usual residential address of a director of the company, in any part of the document that is required by the relevant Ordinance to contain that usual residential address; or
 - (b) a number contained, as the full number of the identity card or passport of any person, in any part of the

document that is required by the relevant Ordinance to contain that full number.

(3) In this section—

relevant Ordinance (有關條例), in relation to a document or any part of a document, means the Ordinance under which the document is delivered to the Registrar for registration.

50. Registrar may make protected address available for inspection

- (1) Despite section 49(2)(a), the Registrar may make a protected address available for public inspection in accordance with section 51 if—
 - (a) communications sent by the Registrar to the director, and requiring a response within a specified period, remain unanswered; or
 - (b) there is evidence that the service of documents by the Registrar at the relevant correspondence address of the director is not effective to bring them to the notice of the director.
- (2) The Registrar must not make a decision under subsection (1) unless the Registrar—
 - (a) has notified the director and the company that he or she proposes to make the protected address available for public inspection under subsection (1); and
 - (b) has considered any representation made within the period specified under subsection (3)(b).
- (3) A notice under subsection (2)(a)—
 - (a) must state the grounds for the proposal; and
 - (b) must specify a period within which representations may be made before the protected address is made available for public inspection under subsection (1).
- (4) A notice under subsection (2)(a) must be sent to the director—
 - (a) at the protected address; or

- (b) if it appears to the Registrar that service at the protected address may not be effective to bring it to the notice of the director, at the relevant correspondence address of the director.

51. Provision supplementary to section 50

- (1) If the Registrar is to make a protected address available for public inspection under section 50(1), he or she must proceed as if—
 - (a) a notice had been delivered to the Registrar for registration under section 636(4) stating that the correspondence address of the director is changed to the protected address; or
 - (b) a return had been delivered to the Registrar for registration under section 779 stating that the correspondence address of the director is changed to the protected address.
- (2) The Registrar must give written notice of having done so—
 - (a) to the director; and
 - (b) to the company.
- (3) A written notice must also state the decision date in relation to the protected address.
- (4) On receipt of a written notice, the company must enter the protected address in its register of directors as the correspondence address of the director.
- (5) If, within 5 years after the decision date for a protected address, the director notifies the company of another address as his or her usual residential address—
 - (a) the company must enter that other address in its register of directors as the usual residential address and the correspondence address of the director; and
 - (b) the company must proceed with the notice or return under section 636(4) or 779 as if the correspondence

- address of the director was also changed to that other address.
- (6) During the period of 5 years after the decision date for a protected address—
- (a) the company must not enter in its register of directors as the correspondence address of the director any address other than—
 - (i) the protected address; or
 - (ii) if, after the protected address is made available for public inspection under section 50(1), an address is notified by the director to the company as his or her usual residential address, the address so notified; and
 - (b) the company must not state in the notice or return under section 636(4) or 779 that the correspondence address of the director is changed to any address other than—
 - (i) the protected address; or
 - (ii) if, after the protected address is made available for public inspection under section 50(1), an address is notified by the director to the company as his or her usual residential address, the address so notified.
- (7) Subsections (4), (5)(a) and (6)(a) do not apply to—
- (a) a non-Hong Kong company registered under section 765(1); or
 - (b) a company that was, immediately before the commencement date of Part 16, registered in the register kept under section 333AA of the predecessor Ordinance.
- (8) If a company contravenes subsection (4), (5) or (6), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

- (9) In this section—
- decision date* (決定日期), in relation to a protected address, means the date on which the Registrar decides to make the protected address available for public inspection under section 50(1).

52. Registrar must not use or disclose protected information

The Registrar must not use or disclose protected information except—

- (a) as permitted by section 53; or
- (b) in accordance with section 54.

53. Permitted use or disclosure of protected information by Registrar

- (1) The Registrar may use—
 - (a) a protected address for communicating with the director in question; or
 - (b) a protected identification number for communicating with the person in question.
- (2) The Registrar may use protected information for the purpose of or in connection with the performance of the Registrar's functions.
- (3) The Registrar may, on receiving a fee prescribed by regulations made under subsection (4), disclose protected information to an entity prescribed by those regulations. A disclosure may only be made in accordance with those regulations.
- (4) The Financial Secretary may make regulations—
 - (a) prescribing the fee payable for the purposes of subsection (3);
 - (b) prescribing an entity to whom protected information may be disclosed; and

- (c) prescribing the conditions in accordance with which protected information may be disclosed to such an entity.

54. Disclosure under order of Court

- (1) The Court may make an order for the disclosure by the Registrar of a protected address—
 - (a) if—
 - (i) there is evidence that the service of documents at the relevant correspondence address of the director is not effective to bring them to the notice of the director; or
 - (ii) it is necessary or expedient for the protected address to be disclosed in connection with the enforcement of an order or decree of a court; and
 - (b) if the Court is satisfied that it is appropriate to make the order.
- (2) The Court may make an order for the disclosure by the Registrar of a protected identification number—
 - (a) if it is necessary or expedient for the number to be disclosed in connection with the enforcement of an order or decree of a court; and
 - (b) if the Court is satisfied that it is appropriate to make the order.
- (3) An order under subsection (1) or (2) may be made on the application of—
 - (a) a creditor or member of the company in respect of which the document containing the protected information is delivered to the Registrar for registration under this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); or
 - (b) any other person appearing to the Court to have a sufficient interest.

- (4) An order under subsection (1) or (2) must specify the persons to whom, and purposes for which, the disclosure is authorized.

Subdivision 3**Supplementary****55. Extent of prohibition**

If a prohibition under this Division applies by reference to information deriving from a particular description of document, the prohibition does not affect—

- (a) the availability for public inspection of the information through other means; and
- (b) the availability for public inspection of the information deriving from another description of document in relation to which the prohibition does not apply.

Division 8**Miscellaneous****56. Registrar may certify delivery or non-delivery of documents**

- (1) The Registrar may, for the purposes of any proceedings, certify that, at a particular date, a document required by a provision of this Ordinance to be delivered to the Registrar has or has not been so delivered.
- (2) The Registrar may issue a certificate on the basis of the information on the Companies Register.
- (3) The Registrar may issue a certificate on his or her own initiative or on request by any person.
- (4) A request for a certificate must be accompanied by the prescribed fee.

- (5) A certificate relating to a document is not to be regarded as a certification of the contents of the document.
- (6) In any proceedings—
 - (a) a document purporting to be a certificate issued under subsection (1) is admissible in evidence on its production without further proof; and
 - (b) on being admitted in evidence under paragraph (a), the document is proof of the matters on which the certificate is issued in the absence of evidence to the contrary.
- (7) Despite subsection (6)(b), the document is not proof of compliance or contravention of a provision of this Ordinance in those proceedings.
- (8) This section does not limit the operation of—
 - (a) section 17A, 22A or 22B or Part IV of the Evidence Ordinance (Cap. 8); or
 - (b) any provision made by virtue of that section or Part.

57. Registrar not responsible for verifying information

The Registrar is not responsible for verifying—

- (a) the truth of the information contained in a document delivered to the Registrar for registration; or
- (b) the authority under which a document is delivered to the Registrar for registration.

58. Immunity

- (1) Neither the Registrar nor any public officer incurs any civil liability, and no civil action may lie against the Registrar or any public officer, in respect of anything done, or omitted to be done, by him or her in good faith—
 - (a) in the performance, or purported performance, of functions under this Ordinance; or

- (b) in the exercise, or purported exercise, of powers under this Ordinance.
- (2) Where, for the purposes of this Ordinance, a protected person—
 - (a) provides a service by means of which information in electronic form is supplied to the public; or
 - (b) supplies information by means of magnetic tapes or any electronic mode,

the protected person is not personally liable for any loss or damage suffered by a user of the service or information by reason of an error or omission appearing in the information if the error or omission was made in good faith and in the ordinary course of the discharge of the protected person's duties.
- (3) Where, for the purposes of this Ordinance, a protected person provides a service or facility by means of which documents may be delivered to the Registrar by electronic means, the protected person is not personally liable for any loss or damage suffered by a user of the service or facility by reason of an error or omission appearing in a document delivered to the Registrar by means of the service or facility if the error or omission—
 - (a) was made in good faith and in the ordinary course of the discharge of the protected person's duties; or
 - (b) has occurred or arisen as a result of any defect or breakdown in the service or facility or in any equipment used for the service or facility.
- (4) The protection given to a protected person by subsections (2) and (3) in respect of an error or omission does not affect any liability of the Government in tort for the error or omission.
- (5) In this section—

protected person (受保障人) means a person authorized by the Registrar to supply the information or provide the service or facility.

59. Discrepancy between document and certified translation

- (1) This section applies if—
- (a) a certified translation of a document is delivered by a company to the Registrar for the purposes of section 29(1)(b) to accompany the document in a language other than English or Chinese; and
 - (b) there is a discrepancy between the document in that language and the certified translation of the document.
- (2) The company may not rely on that translation, in so far as it relates to the discrepancy, as against a third party.
- (3) A third party may not rely on that translation, in so far as it relates to the discrepancy, as against the company unless the third party—
- (a) had no knowledge of the contents of the document in that language; and
 - (b) had actually relied on that translation in so far as it relates to the discrepancy.

- (4) In this section—

third party (第三者) means a person other than the company.

60. Offence for destruction etc. of registers, books or documents

- (1) A person commits an offence if the person dishonestly, with a view to gain for the person's own self or another, or with intent to cause loss to another, destroys, removes, alters, defaces or conceals—
- (a) any register, book or document belonging to, or filed or deposited in, the office of the Registrar; or

- (b) any electronic record, microfilm, image or other record of such register, book or document.
- (2) A person who commits an offence under subsection (1) is liable to imprisonment for 7 years.
- (3) A person commits an offence if the person wilfully or maliciously destroys, removes, alters, defaces or conceals—
- (a) any register, book or document belonging to, or filed or deposited in, the office of the Registrar; or
 - (b) any electronic record, microfilm, image or other record of such register, book or document.
- (4) A person who commits an offence under subsection (3) is liable—
- (a) on conviction on indictment to a fine of \$150,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

Part 3**Company Formation and Related Matters, and Re-
registration of Company****Division 1****Company Formation****Subdivision 1****General Requirements for Formation****61. Types of companies**

Only the following companies may be formed under this Ordinance—

- (a) a public company limited by shares;
- (b) a private company limited by shares;
- (c) a public unlimited company with a share capital;
- (d) a private unlimited company with a share capital;
- (e) a company limited by guarantee without a share capital.

62. Formation of company

- (1) Any one or more persons may form a company by—
 - (a) signing the articles of the company intended to be formed;
 - (b) delivering to the Registrar for registration—
 - (i) an incorporation form in the specified form; and
 - (ii) a copy of the articles; and

- (c) paying the Registrar a fee prescribed by regulations made under section 897.

- (2) A company may only be formed for a lawful purpose.

63. Content of incorporation form

- (1) An incorporation form must—
 - (a) in relation to the company intended to be formed, contain the particulars and statements specified in section 1 of Schedule 2;
 - (b) in relation to each founder member of the company, contain the particulars specified in section 2 of Schedule 2;
 - (c) in relation to each person who is to be a director of the company on the company's formation, contain—
 - (i) the particulars specified in section 3 of Schedule 2; and
 - (ii) the statement specified in section 4 of Schedule 2;
 - (d) in relation to each person who is to be the company secretary, or one of the joint company secretaries, of the company on that formation, contain the particulars specified in section 5 of Schedule 2;
 - (e) contain the statements specified in section 7 of Schedule 2; and
 - (f) contain the statement of compliance specified in section 65(1).
- (2) If the company intended to be formed is a company limited by shares or an unlimited company, the incorporation form must also contain the statement specified in section 8 of Schedule 2.

64. Signing of incorporation form

An incorporation form must be signed by the founder member named in the form or, if 2 or more founder members are named, by any one of those members.

65. Statement of compliance to be contained in incorporation form

- (1) The statement specified for the purposes of section 63(1)(f) is a statement certifying that—
 - (a) all the requirements of this Ordinance in respect of the registration of the company intended to be formed have been complied with; and
 - (b) the information, statements and particulars contained in the incorporation form are accurate and consistent with those in the company's articles.
- (2) The Registrar may accept the statement of compliance as sufficient evidence that all the requirements of this Ordinance in respect of the registration of the company have been complied with.

Subdivision 2**Incorporation of Company****66. Issue of certificate of incorporation on registration**

- (1) On registering an incorporation form and a copy of the articles delivered under section 62(1)(b), the Registrar must issue a certificate of incorporation certifying that the company—
 - (a) is incorporated under this Ordinance; and
 - (b) is a limited company or an unlimited company.
- (2) A certificate of incorporation must be signed by the Registrar.

67. Conclusiveness of certificate of incorporation

A certificate of incorporation is conclusive evidence that—

- (a) all the requirements of this Ordinance in respect of the registration of the company have been complied with; and
- (b) the company is registered under this Ordinance.

68. Effect of incorporation

- (1) On and after the date of incorporation stated in the certificate of incorporation, the founder members, and any other persons who may from time to time become the company's members, are a body corporate with the name stated in the certificate.
- (2) On and after the date of incorporation, the body corporate is capable of exercising all the functions of an incorporated company, and has perpetual succession.
- (3) On and after the date of incorporation, the founder members, and any other persons who may from time to time become the company's members, are liable to contribute to the assets of the company in the event of the company being wound up as is mentioned in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

69. Delivery of director's written consent

- (1) Each consent given for the purposes of section 4(b)(ii) of Schedule 2 in relation to a company intended to be formed must be delivered in the specified form to the Registrar for registration not later than 14 days after the date of incorporation of the company.
- (2) If subsection (1) is contravened, the company, every responsible person of the company, and the founder member who signs the incorporation form for the purposes of section 64, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (3) In any proceedings against a founder member for an offence under this section, it is a defence to establish that the founder

member took all reasonable steps to secure compliance with subsection (1).

Division 2

Company Articles

Subdivision 1

General

70. Articles prescribing regulations for company

A company must have articles prescribing regulations for the company.

71. Language of articles

A company's articles must be printed in English or Chinese.

72. Form of articles

A company's articles must be divided into paragraphs and the paragraphs must be numbered consecutively.

Subdivision 2

Model Articles

73. Financial Secretary may prescribe model articles

- (1) The Financial Secretary may, by notice published in the Gazette, prescribe model articles for companies.
- (2) Any amendment of model articles under this section does not affect a company incorporated before the amendment takes effect.

74. Adoption of model articles

A company may adopt as its articles any or all of the provisions of the model articles prescribed for the type of company to which it belongs.

75. Application of model articles to limited company

- (1) On the incorporation of a limited company, the model articles that are prescribed for the type of company to which the company belongs and that are for the time being in force, so far as applicable, form part of the company's articles in the same manner, and to the same extent, as if those model articles had been registered as the company's articles.
- (2) Subsection (1) applies if the company's registered articles do not prescribe any regulations for the company.
- (3) If the company's registered articles prescribe any regulations for the company, subsection (1) applies in so far as the articles do not exclude or modify the model articles.

Subdivision 3

Content and Effect of Articles

76. Company name

A company's articles must state the name of the company.

77. Company's objects

- (1) If a licence is granted under section 98(2) to an association intended to be formed as a limited company or under section 98(4) to a limited company, then during the period when the licence is in force, the articles of the company must state the company's objects.
- (2) The articles of any other company may state the company's objects.

- (3) Subsections (1) and (2) do not affect any requirement relating to the articles of a company specified in any other Ordinance.

78. Members' liabilities

- (1) The articles of a limited company must state that the liability of its members is limited.
- (2) The articles of an unlimited company must state that the liability of its members is unlimited.

79. Liabilities or contributions of members of limited company

- (1) The articles of a company limited by shares must state that the liability of its members is limited to any amount unpaid on the shares held by the members.
- (2) The articles of a company limited by guarantee must state that each person who is a member of the company undertakes that if the company is wound up while the person is a member of the company, or within one year after the person ceases to be such a member, the person will contribute an amount required of the person, not exceeding a specified amount, to the company's assets—
- for the payment of the company's debts and liabilities contracted before the person ceases to be such a member;
 - for the payment of the costs, charges and expenses of winding up the company; and
 - for the adjustment, among the contributories, of their rights.

80. Capital and initial shareholdings

- (1) The articles of a company with a share capital—
- must state the information required under section 8 of Schedule 2 to be contained in the company's incorporation form; and

- (b) if the share capital of the company is divided into different classes of shares, must also state for each class the particulars specified in subsection (2).

- (2) The particulars are—

- particulars of any voting rights attached to shares in the class, including rights that arise only in certain circumstances;
 - particulars of any rights attached to shares in the class, as respects dividends, to participate in a distribution;
 - particulars of any rights attached to shares in the class, as respects capital, to participate in a distribution (including on a winding up); and
 - whether or not shares in the class are redeemable shares.
- (3) The articles of a company with a share capital may state the maximum number of shares that the company may issue.

81. Effect of articles

- (1) Subject to this Ordinance, a company's articles, once registered under this Ordinance or a former Companies Ordinance—
- have effect as a contract under seal—
 - between the company and each member; and
 - between a member and each other member; and
 - are to be regarded as containing covenants on the part of the company and of each member to observe all the provisions of the articles.
- (2) Without limiting subsection (1), the articles are enforceable—
- by the company against each member;
 - by a member against the company; and
 - by a member against each other member.

- (3) Money payable by a member to the company under the articles—
 - (a) is a debt due from the member to the company; and
 - (b) is of the nature of a specialty debt.

Subdivision 4

Alteration of Articles

82. Company may alter articles

- (1) Subject to this Ordinance, a company may alter its articles.
- (2) A company must not alter in its articles any statement mentioned in section 78 or 79(1).
- (3) Subject to section 175, a company with a share capital must not make any alteration to its articles that is inconsistent with any rights attached to shares in a class of shares in the company.
- (4) Subject to section 183, a company without a share capital must not make any alteration to its articles that is inconsistent with any rights of a class of members of the company.
- (5) A company limited by guarantee must not alter in its articles the information required under section 79(2) other than to increase the specified amount.

83. Alteration by special resolution or ordinary resolution

- (1) Subject to this Ordinance, this section applies to the alteration of a company's articles.
- (2) Subject to subsection (3) and any other provisions of this Ordinance, a company may only alter its articles by special resolution.
- (3) An alteration in articles to the maximum number of shares that the company may issue may be made by ordinary resolution.

- (4) Subject to this Ordinance, an alteration made in accordance with this section is as valid as if the alteration were originally contained in the articles.
- (5) Within 14 days after the date on which an alteration takes effect, the company must deliver to the Registrar for registration—
 - (a) a notice of the alteration in the specified form; and
 - (b) a copy, certified by an officer of the company as correct, of the articles as altered.
- (6) If a company contravenes subsection (5), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

84. Alteration of company's objects

- (1) This section applies to an alteration of the objects of a company as stated in the company's articles.
- (2) The company may, by special resolution of which notice has been given to all the members of the company (including members who are not entitled to such notice under the company's articles), alter the objects by—
 - (a) abandoning or restricting any of the objects; or
 - (b) adopting any new object that could lawfully have been contained—
 - (i) in the case of a company formed and registered under this Ordinance, in the company's articles when the articles were registered; or
 - (ii) in the case of an existing company, in the company's memorandum of association when the memorandum was registered.
- (3) If a relevant company passes such a resolution, a notice of the resolution must also be given to all holders of the relevant

debentures of the company, and the notice must be the same as the notice mentioned in subsection (2).

- (4) For the purposes of subsection (3), if there is no provision regulating the giving of notice to the holders of the relevant debentures, the provisions of the company's articles regulating the giving of notice to members are to apply.
- (5) If a relevant company passes a special resolution altering its objects, an application to cancel the alteration may be made to the Court in accordance with section 86, and if an application is made, the alteration does not have effect except in so far as it is confirmed by the Court.
- (6) After passing a special resolution altering its objects—
 - (a) in the case of a relevant company, if no application is made under subsection (5), the company must, within 14 days after the end of the application period, deliver to the Registrar for registration the documents specified in subsection (7);
 - (b) in the case of a relevant company, if an application is made under subsection (5), the company—
 - (i) must immediately give notice of that fact to the Registrar; and
 - (ii) within 14 days after the date of any Court order cancelling or confirming the alteration or, if an extension of time is granted under subsection (8), within the extended period, must deliver to the Registrar for registration an office copy of the order and, in the case of an order confirming the alteration, the documents specified in subsection (7); or
 - (c) in the case of a company other than a relevant company, the company must, within 14 days after the date of passing the resolution, deliver to the Registrar for registration the documents specified in subsection (7).

- (7) The documents are—
 - (a) a notice of the alteration in the specified form; and
 - (b) a copy, certified by an officer of the company as correct, of the company's articles as altered.
- (8) The Court may at any time by order extend the period for delivery of any documents under subsection (6)(b).
- (9) If a company contravenes subsection (6), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

- (10) In this section—

relevant company (有關公司) means—

- (a) a private company; or
- (b) a company limited by guarantee that, immediately before the commencement date of this Division, was a private company as defined by section 2(1) of the predecessor Ordinance in force at that time;

relevant debentures (有關債權證) means any debentures, secured by a floating charge, that were issued or first issued before 15 February 1963 or that form part of the same series as any debentures so issued.

85. Alteration of certain articles by existing company

- (1) Subject to subsection (2), this section applies to an alteration of any provision of the articles of an existing company if the provision—
 - (a) was, immediately before the commencement date of this Division, contained in the company's memorandum of association (whether registered before, on or after 31 August 1984); and

- (b) could lawfully have been contained in the company's articles instead of in the memorandum of association when the memorandum was registered.
- (2) This section does not apply if any provision of the articles of an existing company—
- (a) was, immediately before the commencement date of this Part, contained in the company's memorandum of association (whether registered before, on or after 31 August 1984); and
- (b) provides for or prohibits the alteration of any provision mentioned in subsection (1).
- (3) An existing company may by special resolution alter any provision mentioned in subsection (1).
- (4) If a relevant company passes such a resolution, an application to cancel the alteration may be made to the Court in accordance with section 86, and if an application is made, the alteration does not have effect except in so far as it is confirmed by the Court.
- (5) After passing a resolution under subsection (3)—
- (a) in the case of a relevant company, if no application is made under subsection (4), the company must, within 14 days after the end of the application period, deliver to the Registrar for registration the documents specified in subsection (6);
- (b) in the case of a relevant company, if an application is made under subsection (4), the company—
- (i) must immediately give notice of that fact to the Registrar; and
- (ii) within 14 days after the date of any Court order cancelling or confirming the alteration or, if an extension of time is granted under subsection (7), within the extended period, must deliver to the Registrar for registration an office copy of the

- order and, in the case of an order confirming the alteration, the documents specified in subsection (6); or
- (c) in the case of a company other than a relevant company, the company must, within 14 days after the date of passing the resolution, deliver to the Registrar for registration the documents specified in subsection (6).
- (6) The documents are—
- (a) a notice of the alteration in the specified form; and
- (b) a copy, certified by an officer of the company as correct, of the company's articles as altered.
- (7) The Court may at any time by order extend the period for delivery of any documents under subsection (5)(b).
- (8) If a company contravenes subsection (5), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (9) This section does not authorize any variation or abrogation of the special rights of any class of members.
- (10) In this section—
- relevant company** (有關公司) means—
- (a) a private company; or
- (b) a company limited by guarantee that, immediately before the commencement date of this Division, was a private company as defined by section 2(1) of the predecessor Ordinance in force at that time.
- 86. Application to Court to cancel alteration**
- (1) An application under section 84(5) to cancel an alteration of the objects of a company may be made—

- (a) by the holders of at least 5% in aggregate of the number of the issued shares in the company or any class of the company's issued share capital or, if the company is not limited by shares, by at least 5% of the company's members; or
 - (b) by the holders of at least 5% in value of the company's debentures that are mentioned in the definition of *relevant debentures* in section 84(10).
- (2) An application under section 84(5) may be made on behalf of the persons mentioned in subsection (1)(a) or (b) by any one or more of them appointed in writing by all of them for the purpose.
 - (3) An application under section 85(4) to cancel an alteration of a provision of the articles of an existing company may be made by the holders of at least 5% in aggregate of the number of the issued shares in the company or any class of the company's issued share capital or, if the company is not limited by shares, by at least 5% of the company's members.
 - (4) An application under section 85(4) may be made on behalf of the persons mentioned in subsection (3) by any one or more of them appointed in writing by all of them for the purpose.
 - (5) An application under section 84(5) or 85(4) may only be made within 28 days after the date of passing the relevant special resolution.
 - (6) On an application under section 84(5) or 85(4), the Court—
 - (a) may cancel or confirm the alteration (either wholly or in part), on any terms and conditions it thinks fit;
 - (b) may adjourn the proceedings so that an arrangement may be made to its satisfaction for the purchase of the interests of dissentient members; and
 - (c) may give any directions and make any order that it thinks expedient for facilitating or carrying into effect any such arrangement.

87. Certain alterations not binding on members

- (1) Despite any provision in a company's articles, a person who is a member of the company is not bound by any alteration of the articles that takes effect after the date on which the person became a member, if and so far as the alteration—
 - (a) requires the person to take or subscribe for more shares than the number of shares held by the person on the date on which the alteration takes effect;
 - (b) in any way increases the person's liability as at that date to contribute to the company's share capital; or
 - (c) in any way increases the person's liability as at that date to pay money to the company.
- (2) Subsection (1) does not apply if the person agrees in writing before, on or after the alteration taking effect to be bound by the alteration.

88. Company must incorporate alteration into articles

- (1) If an alteration is made to a company's articles, the company must incorporate the alteration in every copy of the articles issued on or after the date on which the alteration takes effect.
- (2) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.

89. Alteration affecting status of private company

- (1) If a private company alters its articles so that the articles no longer comply with section 10(1)(a), the company ceases to be a private company on the date on which the alteration takes effect.
- (2) In addition to the documents required under section 83(5), the company must, within 14 days after the date on which the alteration takes effect, deliver to the Registrar for registration—

- (a) a notice of the change of the company's status in the specified form; and
- (b) a copy (certified by an officer of the company to be true) of the company's annual financial statements that are—
 - (i) prepared in accordance with section 375; and
 - (ii) prepared for the financial year immediately before the financial year in which the alteration takes effect.
- (3) If a company contravenes subsection (2)(a), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (4) If a company contravenes subsection (2)(b), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

90. Alteration affecting status of public company

- (1) If a public company alters its articles so that the articles comply with section 10(1)(a), the company ceases to be a public company on the date on which the alteration takes effect.
- (2) In addition to the documents required under section 83(5), the company must, within 14 days after the date on which the alteration takes effect, deliver to the Registrar for registration a notice of the change of the company's status in the specified form.
- (3) If a company contravenes subsection (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

91. Notifying Registrar of alteration by order of Court

- (1) If any provision of a company's articles, or the effect of any provision of a company's articles, is altered by an order of the Court, the company must, within 14 days after the date on which the alteration takes effect, deliver to the Registrar for registration a notice of the alteration in the specified form.
- (2) A notice of alteration must be accompanied by—
 - (a) an office copy of the order; and
 - (b) a copy of the articles as altered by the order.
- (3) Subsection (2)(a) does not apply if the company is required to deliver an office copy of the order to the Registrar under another provision of this Ordinance.
- (4) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

92. Notifying Registrar of alteration by Ordinance

- (1) If any provision of a company's articles, or the effect of any provision of a company's articles, is altered by any other Ordinance, the company must, within 14 days after the date on which the alteration takes effect, deliver to the Registrar for registration a notice of the alteration in the specified form.
- (2) A notice of alteration must be accompanied by a copy of the articles as altered by that other Ordinance.
- (3) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

Subdivision 5**Miscellaneous****93. Conditions of memorandum of association of existing company to be regarded as provisions of articles**

- (1) A condition that immediately before the commencement date of this Division was contained in the memorandum of association of an existing company and was in force is, for all purposes, to be regarded as a provision of the company's articles.
- (2) If a memorandum of association is registered on or after the commencement date of this Division under the provisions having a continuing effect under Schedule 10, a condition contained in that memorandum is, for all purposes, to be regarded as a provision of the company's articles registered under the predecessor Ordinance.
- (3) If, before the commencement date of this Division, a special resolution altering a condition of the memorandum of association of an existing company was passed under section 8(1) or 25A(1) of the predecessor Ordinance and the alteration takes effect on or after that date, then the altered condition is, for all purposes, to be regarded as a provision of the company's articles registered under the predecessor Ordinance.
- (4) Despite subsections (1), (2) and (3), if a condition mentioned in subsection (1) or (2), or an altered condition mentioned in subsection (3), states—
 - (a) the amount of share capital with which the existing company proposes to be registered or is registered; or
 - (b) the division of the share capital of the company into shares of a fixed amount,

the condition is, to the extent that it relates to the matter mentioned in paragraph (a) or (b), for all purposes, to be

regarded as deleted and not to be regarded as a provision of the company's articles.

- (5) In any Ordinance in force immediately before the commencement date of this Division, or in any other document made before that date—
 - (a) a reference to the memorandum of association of an existing company is a reference to the company's articles; and
 - (b) a reference to a condition of the memorandum of association of an existing company is a reference to a provision of the company's articles.

94. Articles of company limited by guarantee

- (1) This section applies to a company limited by guarantee registered under a former Companies Ordinance on or after 1 January 1912 that does not have a share capital.
- (2) A provision in the company's articles, or in any resolution of the company, purporting to give a person a right to participate in the company's divisible profits otherwise than as a member is void.
- (3) For the purposes of a provision of this Ordinance relating to the articles of a company limited by guarantee, a provision in the company's articles, or in any resolution of the company, purporting to divide the company's undertaking into shares or interests, is to be regarded as a provision for a share capital.

Division 3**Company Name****Subdivision 1****Restriction on Company Name****95. Company must not be registered by certain names**

- (1) A company must not be registered by—
 - (a) a name that is the same as a name appearing in the Index of Company Names;
 - (b) a name that is the same as a name of a body corporate incorporated or established under an Ordinance;
 - (c) a name the use of which by the company would, in the Registrar's opinion, constitute a criminal offence; or
 - (d) a name that, in the Registrar's opinion, is offensive or otherwise contrary to the public interest.
- (2) Except with the Registrar's prior approval, a company must not be registered by—
 - (a) a name that, in the Registrar's opinion, would be likely to give the impression that the company is connected in any way with—
 - (i) the Central People's Government;
 - (ii) the Government; or
 - (iii) any department or agency of the Central People's Government or the Government;
 - (b) a name that contains any word or expression for the time being specified in an order under section 96; or
 - (c) a name that is the same as a name for which a direction has been given under—

- (i) section 103 or 104; or
- (ii) section 22 or 22A of the predecessor Ordinance on or after the commencement date of the Companies (Amendment) Ordinance 2010 (12 of 2010).

96. Financial Secretary may specify word or expression for section 95(2)(b)

The Financial Secretary may, by order published in the Gazette, specify any word or expression for the purposes of section 95(2)(b).

Subdivision 2**Limited Company Name with "Limited" as Last Word etc.****97. Limited company must not be registered without "Limited" as last word of name etc.**

A limited company must not be registered by—

- (a) if the company has an English name only, a name without "Limited" as the last word of the name;
- (b) if the company has a Chinese name only, a name without "有限公司" as the last 4 characters of the name; or
- (c) if the company has both an English name and a Chinese name—
 - (i) an English name without "Limited" as the last word of the name; and
 - (ii) a Chinese name without "有限公司" as the last 4 characters of the name.

98. Registrar's licence to dispense with "Limited" etc.

- (1) The Registrar may exercise the power under subsection (2) in respect of an association intended to be formed as a limited company, if it is proved to the Registrar's satisfaction that—

- (a) the company is to be formed for promoting commerce, art, science, religion or charity or any other useful objects;
 - (b) the association intends to apply the company's profits or other income in promoting its objects; and
 - (c) the association intends to prohibit the payment of dividends to the company's members.
- (2) The Registrar may, by licence, permit the association to be registered as a limited company by—
- (a) if the company has an English name only, a name without "Limited" as the last word of the name;
 - (b) if the company has a Chinese name only, a name without "有限公司" as the last 4 characters of the name; or
 - (c) if the company has both an English name and a Chinese name—
 - (i) an English name without "Limited" as the last word of the name; and
 - (ii) a Chinese name without "有限公司" as the last 4 characters of the name.
- (3) The Registrar may exercise the power under subsection (4) in respect of a limited company, if it is proved to the Registrar's satisfaction that—
- (a) the objects of the company are restricted to—
 - (i) promoting commerce, art, science, religion or charity or any other useful objects; and
 - (ii) objects incidental or conducive to the objects mentioned in subparagraph (i);
 - (b) the company is required by its articles to apply its profits or other income in promoting its objects; and
 - (c) the company is prohibited by its articles from paying dividends to its members.

- (4) The Registrar may, by licence, permit the limited company to—
- (a) if the company has an English name only, change the name to delete from it the word "Limited";
 - (b) if the company has a Chinese name only, change the name to delete from it the characters "有限公司"; or
 - (c) if the company has both an English name and a Chinese name—
 - (i) change the English name to delete from it the word "Limited"; and
 - (ii) change the Chinese name to delete from it the characters "有限公司".
- (5) A change of company name under a licence mentioned in subsection (4) may only be made by special resolution, and section 102(2), (3), (4), (5) and (6) applies to such a change as it applies to a change of company name under section 102.
- (6) To avoid doubt, a company registered by a name under a licence granted under this section—
- (a) has the privileges of a limited company; and
 - (b) subject to section 100(1), has the obligations of a limited company.

99. Terms and conditions of licence

- (1) A licence under section 98 may be granted on any terms and conditions the Registrar thinks fit.
- (2) The terms and conditions—
 - (a) are binding on the company; and
 - (b) are to be incorporated in the articles of the company if the Registrar so directs.

100. Effect of licence

- (1) The company to which a licence under section 98 relates is exempt from—
 - (a) section 97;
 - (b) regulations made under section 650 in relation to the publication of a company name; and
 - (c) section 653 in relation to the delivery of particulars relating to members to the Registrar.
- (2) While a licence under section 98 remains in force, the company must not alter its articles except under a direction given under this section or section 99(2)(b) or with the Registrar's prior written approval.
- (3) On granting an approval under subsection (2), the Registrar may vary the licence by making it subject to any terms and conditions he or she thinks fit, in addition to or in place of the terms or conditions to which the licence was subject immediately before the variation.
- (4) The terms and conditions imposed under subsection (3)—
 - (a) are binding on the company; and
 - (b) are to be incorporated in the articles of the company if the Registrar so directs.

101. Revocation of licence

- (1) The Registrar may at any time revoke a licence granted under section 98 on being satisfied that—
 - (a) the company has failed to comply with any of the terms or conditions to which the licence is subject; or
 - (b) any one or more of the requirements specified in section 98(1) or (3) (as the case may be) are no longer met.
- (2) Before revoking a licence, the Registrar—
 - (a) must notify the company in writing of the Registrar's intention to do so; and

- (b) must give the company an opportunity to be heard.
- (3) If a licence is revoked, the Registrar must give the company a notice in writing of the revocation.
- (4) On the revocation of a licence, the company ceases to be entitled to the exemptions mentioned in section 100(1).
- (5) Within the period specified in the notice of revocation, the company must change its name by special resolution to—
 - (a) if the company has an English name only, add "Limited" as the last word of the name;
 - (b) if the company has a Chinese name only, add "有限公司" as the last 4 characters of the name; and
 - (c) if the company has both an English name and a Chinese name—
 - (i) add "Limited" as the last word of the English name; and
 - (ii) add "有限公司" as the last 4 characters of the Chinese name.
- (6) Section 102(2), (3), (4), (5) and (6) applies to a change of company name under subsection (5) as it applies to a change of company name under section 102.
- (7) If the company fails to comply with subsection (5), the Registrar must in the Companies Register—
 - (a) if the company has an English name only, add "Limited" as the last word of the name;
 - (b) if the company has a Chinese name only, add "有限公司" as the last 4 characters of the name; and
 - (c) if the company has both an English name and a Chinese name—
 - (i) add "Limited" as the last word of the English name; and

- (ii) add “有限公司” as the last 4 characters of the Chinese name.

Subdivision 3

Change of Company Name

102. Company may change name by special resolution

- (1) A company may change a company name by special resolution.
- (2) Within 14 days after the date of passing the special resolution, the company must deliver to the Registrar for registration a notice in the specified form of the change of company name.
- (3) After receipt of a notice under subsection (2), the Registrar must, unless the new name is a name by which the company must not be registered under section 95—
 - (a) enter the new name in the Companies Register in place of the former name; and
 - (b) issue to the company a certificate of change of name.
- (4) The change of the name has effect from the date on which the certificate of change of name is issued.
- (5) A change of name under this section does not affect any rights or obligations of the company or render defective any legal proceedings by or against it. Any legal proceedings that could have been commenced or continued by or against it by its former name may be commenced or continued by or against it by its new name.
- (6) If a company contravenes subsection (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

103. Registrar may direct company to change same or similar name etc.

- (1) The Registrar may by notice in writing direct a company to change, within the period specified in the notice, a name by which the company is registered under this Ordinance or the predecessor Ordinance if—
 - (a) the name is, as at the time of the registration, the same as or in the Registrar’s opinion too like a name that appeared or should have appeared in the index of names kept under section 22C of the predecessor Ordinance or in the Index of Company Names;
 - (b) the name is, as at the time of the registration, the same as or in the Registrar’s opinion too like a name of a body corporate incorporated or established under an Ordinance;
 - (c) it appears to the Registrar that misleading information has been given for the company’s registration by the name;
 - (d) it appears to the Registrar that any undertaking or assurance given for the registration by the name has not been fulfilled; or
 - (e) the name is a name by which, as at the time of the registration, the company must not be registered because of section 95(2)(a) or (b).
- (2) The Registrar may by notice in writing direct a company to change, within the period specified in the notice, a name by which the company is registered under this Ordinance or any former Companies Ordinance if, after the company is registered by the name—
 - (a) a court makes an order restraining the company from using the name or any part of the name; and

- (b) the Registrar receives from a person in whose favour the order is made an office copy of the order and a notice in the specified form.
- (3) A direction may only be given—
 - (a) in the case of subsection (1)(a) or (b), within 12 months after the date of registration by the name;
 - (b) in the case of subsection (1)(c) or (d), within 5 years after the date of registration by the name; and
 - (c) in the case of subsection (1)(e), within 3 months after the date of registration by the name.
- (4) The Registrar may, before the end of the period specified in a notice given under subsection (1) or (2), by notice in writing extend the period.
- (5) If a company fails to comply with a direction within the period specified in the notice or, if the period is extended under subsection (4), within the extended period, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.

104. Registrar may direct company to change misleading or offensive name etc.

- (1) The Registrar may by notice in writing direct a company to change a name by which the company is registered under this Ordinance or any former Companies Ordinance if—
 - (a) the Registrar is of the opinion that the name gives so misleading an indication of the nature of the company's activities as to be likely to cause harm to the public; or
 - (b) the name is a name by which, as at the time of the registration, the company must not be registered because of section 95(1)(c) or (d).

- (2) The company must comply with a direction within the period of 6 weeks after the date of the direction or, if the period is extended under subsection (4), within the extended period.
- (3) A company may, within 3 weeks after the date of a direction, appeal to the Administrative Appeals Board against the direction.
- (4) The Registrar may, before the end of the period of 6 weeks after the date of the direction, by notice in writing extend the period.
- (5) If a company contravenes subsection (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.

105. Registrar may change company name in case of failure to comply with direction

- (1) This section applies if—
 - (a) the Registrar directs a company to change a name under section 103(1) or (2) or 104(1) or, on or after the commencement date of the Companies (Amendment) Ordinance 2010 (12 of 2010) under section 22 or 22A of the predecessor Ordinance; and
 - (b) the company fails to comply with the direction—
 - (i) in the case of a direction under section 103(1) or (2), within the period specified in the notice or, if the period is extended under section 103(4), within the extended period;
 - (ii) in the case of a direction under section 104(1), within the relevant period specified in section 104(2);
 - (iii) in the case of a direction under section 22(2), (3A), (3B) or (4) of the predecessor Ordinance, within

- the period specified by the Registrar or, if the period is extended under section 22(5) of that Ordinance, within the extended period; or
- (iv) in the case of a direction under section 22A(1) or (1A) of the predecessor Ordinance, within the period specified in section 22A(2) of that Ordinance or, if a period is specified by the court under section 22A(3) of that Ordinance for the direction, within the period specified by the court.
- (2) Without limiting section 103(5) or 104(5), or section 22(6) or 22A(4) of the predecessor Ordinance (as the case may be), the Registrar may change the name to—
- (a) in the case of an English name, a name that consists of the words “Company Registration Number” as its prefix, followed by the registration number of the company as stated in the certificate of incorporation;
- (b) in the case of a Chinese name, a name that consists of the characters “公司註冊編號” as its prefix, followed by the registration number of the company as stated in the certificate of incorporation; or
- (c) in the case of a name consisting of both an English name and a Chinese name—
- (i) an English name that consists of the words “Company Registration Number” as its prefix, followed by the registration number of the company as stated in the certificate of incorporation; and
- (ii) a Chinese name that consists of the characters “公司註冊編號” as its prefix, followed by the registration number of the company as stated in the certificate of incorporation.
- (3) The Registrar must enter the new name in the Companies Register in place of the former name.

- (4) The change of name has effect from the date on which the new name is entered in the Companies Register.
- (5) Within 30 days after the date of entering the new name in the Companies Register, the Registrar—
- (a) must by notice in writing notify the company of—
- (i) the fact that a name of the company has been changed;
- (ii) the new name; and
- (iii) the date on which the change takes effect under subsection (4); and
- (b) must by notice in the Gazette notify that fact, the new name and that date.
- (6) A change of name under this section does not affect any rights or obligations of the company or render defective any legal proceedings by or against it. Any legal proceedings that could have been commenced or continued by or against it by its former name may be commenced or continued by or against it by its new name.

Subdivision 4

Supplementary Provision

- 106. Determining whether name is same as or similar to another name**
- (1) This section applies in determining—
- (a) whether a name is the same as another name for the purposes of section 95(1)(a) or (b) or (2)(c) or 103(1)(a) or (b); or
- (b) whether a name is too like another name for the purposes of section 103(1)(a) or (b).

- (2) If the definite article is the first word of the name, the definite article must be disregarded.
- (3) If any of the words, expressions or characters specified in subsection (4), or an abbreviation of any of them, appears at the end of the name, the word, expression, character or abbreviation must be disregarded.
- (4) The words, expressions or characters are—
 - (a) “company”;
 - (b) “and company”;
 - (c) “company limited”;
 - (d) “and company limited”;
 - (e) “limited”;
 - (f) “unlimited”;
 - (g) “public limited company”;
 - (h) “公司”;
 - (i) “有限公司”;
 - (j) “無限公司”;
 - (k) “公眾有限公司”.
- (5) The following must be disregarded—
 - (a) type or case of letters;
 - (b) spaces between letters;
 - (c) accent marks;
 - (d) punctuation marks.
- (6) The following expressions are to be regarded as the same—
 - (a) “and” and “&”;
 - (b) “Hong Kong”, “Hongkong” and “HK”;
 - (c) “Far East” and “FE”.
- (7) A Chinese character is to be regarded as the same as another Chinese character if the Registrar is satisfied, having regard to

the usage of the 2 characters in Hong Kong, that the 2 characters can reasonably be used interchangeably.

Division 4

Membership

107. Members of company

- (1) A founder member of a company is to be regarded as having agreed to become a member of the company.
- (2) On the registration of a company, a founder member of the company must be entered, as a member, in the company’s register of members.
- (3) Any other person who agrees to become a member of a company and whose name is entered, as a member, in the company’s register of members is a member of the company.

108. Members of holding company

- (1) Subject to this section—
 - (a) a body corporate cannot be a member of a company of which the body corporate is a subsidiary; and
 - (b) any allotment or transfer of shares in a company to a body corporate that is a subsidiary of the company is void.
- (2) Subsection (1) does not apply if—
 - (a) the body corporate is a member of the company as a personal representative; or
 - (b) the body corporate is a member of the company as a trustee, and the holding company or any of its subsidiaries is not beneficially interested under the trust.
- (3) For the purposes of subsection (2)(b), a company or subsidiary is not beneficially interested under a trust if it is interested under the trust only by way of security for the

- purpose of a transaction entered into by it in the ordinary course of a business (including the lending of money).
- (4) Subsection (1) does not prevent a body corporate that was, on 31 August 1984, already a member of a holding company of the body corporate from continuing to be such a member.
 - (5) Subsection (1) does not prevent a company that on the date it becomes a subsidiary of another company is a member of that other company, from continuing to be such a member.
 - (6) Subsection (1) does not prevent a body corporate from becoming a member of a holding company of the body corporate, or prevent an allotment to a body corporate of shares in a holding company of the body corporate, by virtue of the exercise by the body corporate of any rights of conversion—
 - (a) attached to any shares in the holding company held by the body corporate on 31 August 1984; or
 - (b) under any debentures of the holding company held by the body corporate on 31 August 1984.
 - (7) If a body corporate is a member of a holding company of the body corporate, subsection (1) does not prevent the body corporate from accepting or holding further shares in the holding company if those shares are allotted to the body corporate as fully paid up as a consequence of a capitalization of reserves or profits by the holding company.
 - (8) If a company makes an offer of shares to its members, the company—
 - (a) may sell, on behalf of any of its subsidiaries, any such shares that the subsidiary could, but for this section, have taken by virtue of shares in the company that are already held by the subsidiary; and
 - (b) may pay to the subsidiary the proceeds of the sale.
 - (9) Even though a body corporate is a member of a holding company of the body corporate, it has no right to vote at—

- (a) meetings of the holding company; or
 - (b) meetings of any class of members of the holding company.
- (10) Subsection (9) does not apply if the body corporate is such a member in the circumstances described in subsection (2).
 - (11) In this section, a reference to a body corporate includes a nominee for the body corporate.
 - (12) In this section, a reference to shares, in relation to a holding company that is a company limited by guarantee or an unlimited company, includes the interest of the company's members, whatever the form of the interest and whether or not the company has a share capital.
- 109. Notifying Registrar of increase in number of members of company limited by guarantee**
- (1) If a company limited by guarantee increases the number of its members beyond the registered number, the company must, within 14 days after the increase is resolved by the company or takes place (whichever is the earlier), deliver to the Registrar for registration a notice of the increase in the specified form.
 - (2) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
 - (3) In this section—

registered number (註冊人數) means—

 - (a) the number of members with which the company proposes to register, whether contained in the incorporation form for the purposes of section 1(e) of Schedule 2 or stated in the articles under section 10(2) of the predecessor Ordinance; or

- (b) the increased number of the company's members last notified to the Registrar under subsection (1).

Division 5

Capacity and Powers of Company

110. Company's capacity etc.

- (1) A company has the capacity, rights, powers and privileges of a natural person of full age.
- (2) Without limiting subsection (1), a company—
 - (a) may do any act that it is permitted or required to do by its articles or any Ordinance or rule of law; and
 - (b) has power to acquire, hold and dispose of land.
- (3) In this section—

land (土地) includes any estate or interest in land, buildings, messuages and tenements of any nature or kind.

111. Company's exercise of powers limited by articles

- (1) If the objects of a company are stated in its articles, the company must not do any act that it is not authorized to do by its articles.
- (2) If any power of a company is expressly modified or excluded by its articles, the company must not exercise the power contrary to that modification or exclusion.
- (3) A member of a company may bring proceedings to restrain the company from doing any act in contravention of subsection (1) or (2).
- (4) Proceedings must not be brought under subsection (3) in respect of any act to be done in fulfilment of a legal obligation arising from a previous act of the company.

- (5) An act by a company (including a transfer of property to or by the company) is not invalid only because the company does the act in contravention of subsection (1) or (2).

112. Transaction or act binds company despite limitation in articles etc.

- (1) Subject to section 114, in favour of a person dealing with a company in good faith, the power of the company's directors to bind the company, or authorize others to do so, is to be regarded as free of any limitation under any relevant document of the company.
- (2) For the purposes of subsection (1)—
 - (a) a person deals with a company if the person is a party to any transaction or any other act to which the company is a party;
 - (b) a person dealing with a company is presumed, unless the contrary is proved, to have acted in good faith;
 - (c) a person dealing with a company is not to be regarded as acting in bad faith by reason only of the person's knowing that an act is beyond the directors' powers under any relevant document of the company; and
 - (d) a person dealing with a company is not required to inquire as to the limitations on the power of the company's directors to bind the company or authorize others to do so.
- (3) This section does not affect any right of a member of the company to bring proceedings to restrain the doing of an act that is beyond the directors' powers.
- (4) Proceedings must not be brought under subsection (3) in respect of any act to be done in fulfilment of a legal obligation arising from a previous act of the company.

- (5) This section does not affect any liability incurred by the directors, or any other person, by reason of the directors' exceeding their powers.
- (6) In this section—
- relevant document** (有關文件), in relation to a company, means—
- the company's articles;
 - any resolutions of the company or of any class of members of the company; or
 - any agreements between the members, or members of any class of members, of the company.

113. Transaction or act involving directors or their associates is voidable

- (1) This section applies if—
- a company enters into a transaction; and
 - the transaction binds the company because the power of the directors to bind the company, or authorize others to do so, is to be regarded under section 112 as free of any limitation under any relevant document of the company.
- (2) The transaction is voidable at the instance of the company if the parties to the transaction include—
- a director of the company or of a holding company of the company; or
 - an entity connected with such a director.
- (3) The transaction ceases to be voidable if—
- restitution of any money or other asset that was the subject matter of the transaction is no longer possible;
 - the company is indemnified for any loss or damage resulting from the transaction;
 - a person who is not a party to the transaction has acquired rights in good faith and for value, and without

- actual notice of the directors' exceeding their powers, and those rights would be affected by the avoidance of the transaction; or
- (d) the transaction is affirmed by the company.
- (4) Whether or not the transaction is avoided under subsection (2), any party to the transaction falling within subsection (2)(a) or (b) is liable, and any director of the company who has authorized the transaction is liable, to—
- account to the company for any gain that the party or director has directly or indirectly made from the transaction; and
 - indemnify the company against any loss or damage resulting from the transaction.
- (5) A person who is not a director of the company is not liable under subsection (4) if the person shows that, at the time of the transaction, the person did not know that the directors were exceeding their powers.
- (6) Subject to subsection (7), this section does not affect the rights of any party to the transaction not falling within subsection (2)(a) or (b).
- (7) The Court may, on application by the company or a party covered by subsection (6), affirm, sever or set aside the transaction on any terms it thinks just.
- (8) This section does not exclude the operation of any other Ordinance or rule of law by which the transaction may be called in question or any liability to the company may arise.
- (9) In subsection (2)(b), the reference to an entity connected with a director has the meaning given by Part 11 (see section 477).
- (10) In this section—
- transaction** (交易) includes any act.

114. Section 112 not to apply to certain cases

- (1) Section 112 does not apply to any act of an exempted company except in favour of a person who—
- (a) does not know at the time of the act that the company is an exempted company; or
 - (b) gives full consideration for the act and does not know—
 - (i) that the act is not permitted by any relevant document of the company; or
 - (ii) that the act is beyond the powers of the directors.
- (2) If an exempted company purports to transfer or grant an interest in property, the fact that—
- (a) the act was not permitted by any relevant document of the company; or
 - (b) the directors exceeded any limitation on their powers under any relevant document of the company,
- does not affect the title of a person who subsequently acquires the property or any interest in it for full consideration without actual notice of any of the circumstances set out in paragraph (a) or (b).
- (3) In any civil proceedings arising out of subsection (1) or (2), the burden of proving that—
- (a) a person knew that the company was an exempted company;
 - (b) a person knew that the act was not permitted by any relevant document of the company; or
 - (c) a person knew that the act was beyond the powers of the directors,
- lies on the person who asserts that fact.
- (4) In this section—
- exempted company* (獲豁免公司) means the company to which a licence under section 98 relates;

relevant document (有關文件), in relation to a company, means—

- (a) the company's articles;
- (b) any resolutions of the company or of any class of members of the company; or
- (c) any agreements between the members, or members of any class of members, of the company.

115. No constructive notice of matters disclosed in articles etc.

A person is not to be regarded as having notice of any matter merely because the matter is disclosed in—

- (a) the articles of a company kept by the Registrar; or
- (b) a return or resolution kept by the Registrar.

Division 6**Contracts of Company****116. Contracts made by or on behalf of company**

- (1) This section applies to—
- (a) a contract that would be required by law to be in writing and under seal if made between natural persons;
 - (b) a contract that would be required by law to be in writing, and to be signed by the parties to the contract, if made between natural persons; and
 - (c) a contract that, though made orally and not in writing, would by law be valid if made between natural persons.
- (2) A contract specified in subsection (1)(a) may be made by a company—
- (a) in writing under the company's common seal (if any); or
 - (b) in writing executed in accordance with section 122(2) and expressed (in whatever words) to be executed by the company.

- (3) A contract specified in subsection (1)(b) may be made on behalf of a company in writing signed by any person acting with the company's authority (whether express or implied).
- (4) A contract specified in subsection (1)(c) may be made on behalf of a company orally by any person acting with the company's authority (whether express or implied).
- (5) A contract made in accordance with this section—
 - (a) is effective in law; and
 - (b) binds the company and its successors and all other parties to the contract.
- (6) A contract made in accordance with this section may be varied or discharged in the same manner in which it is authorized by this section to be made.

117. Contracts made before company's incorporation

- (1) This section applies if a contract purports to have been made in the name or on behalf of a company before the company was incorporated.
- (2) Subject to any express agreement to the contrary—
 - (a) the contract has effect as a contract entered into by the person purporting to act for the company or as an agent for the company; and
 - (b) the person is personally liable on the contract and is entitled to enforce the contract.
- (3) After incorporation, the company may ratify the contract to the same extent as if—
 - (a) the company had already been incorporated when the contract was entered into; and
 - (b) the contract had been entered into on the company's behalf by an agent acting without the company's authority.

- (4) Despite subsection (2)(b), if the contract is ratified by the company, then on and after the ratification, the liability of the person mentioned in that subsection is not greater than the liability that the person would have incurred if the person had entered into the contract after the company's incorporation as an agent acting without the company's authority.

118. Bills of exchange and promissory notes

If a bill of exchange or promissory note is made, accepted or endorsed in the name of, or by or on behalf or on account of, a company by a person acting with the company's authority, the bill or note is to be regarded as having been made, accepted or endorsed on the company's behalf.

Division 7**Execution of Documents****Subdivision 1****Company Seal****119. Company may have common seal etc.**

- (1) A company may have a common seal.
- (2) A company's common seal must be a metallic seal having the company's name engraved on it in legible form.
- (3) If subsection (2) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.
- (4) If an officer of a company or a person on behalf of a company uses, or authorizes the use of, a seal that purports to be the company's common seal and that contravenes subsection (2), the officer or person commits an offence and is liable to a fine at level 3.

120. Official seal for use abroad

- (1) A company with a common seal may have an official seal for use outside Hong Kong.
- (2) Such an official seal must be a replica of the company's common seal, but have engraved on it in legible form the name of every place where it is to be used.
- (3) A company with an official seal for use in a place may, by writing under its common seal, authorize any person appointed for the purpose to affix, in that place, the official seal to any deed or any other document to which the company is a party.
- (4) As between a company and any person dealing with an executing agent of the company, the authority of the agent continues—
 - (a) if the authorization mentions a period during which the authority is to continue, until the end of the period; or
 - (b) if the authorization does not mention such a period, until a notice of revocation or termination of the agent's authority has been given to the person.
- (5) An executing agent affixing an official seal must, on the deed or other document to which the seal is affixed, certify in writing the date on which, and the place at which, the seal is so affixed.
- (6) A deed or other document to which an official seal is affixed binds the company as if it had been executed under the company's common seal.
- (7) In this section—
executing agent (簽立代理人), in relation to a company, means a person authorized by the company under subsection (3).

121. Official seal for sealing share certificates etc.

- (1) A company with a common seal may have an official seal—

- (a) for sealing securities issued by the company; or
- (b) for sealing documents creating or evidencing securities issued by the company.
- (2) Such an official seal must be a replica of the company's common seal, but have engraved on it in legible form the word "securities" or the characters "證券" or both such word and characters.
- (3) A company that was incorporated before 31 August 1984 and that has such an official seal may use the seal for sealing any securities or documents mentioned in subsection (1), despite anything in—
 - (a) any instrument constituting or regulating the company; or
 - (b) any instrument, made before that date, relating to securities or documents sealed with the seal.

Subdivision 2**Execution Requirements****122. Execution of documents by company**

- (1) A company may execute a document under its common seal.
- (2) A company may also execute a document—
 - (a) in the case of a company with only one director, by having it signed by the director on the company's behalf; or
 - (b) in the case of a company with 2 or more directors, by having it signed on the company's behalf by—
 - (i) the 2 directors or any 2 of the directors; or
 - (ii) any of the directors and the company secretary of the company.

- (3) For the purposes of subsection (2), if a person is to sign a document on behalf of 2 or more companies, the person must sign the document separately in each capacity.
- (4) A document signed in accordance with subsection (2) and expressed (in whatever words) to be executed by the company has effect as if the document had been executed under the company's common seal.
- (5) In favour of a person specified in subsection (6), a document is to be regarded as having been executed by a company if the document purports to have been signed in accordance with subsection (2).
- (6) The person is a purchaser in good faith for valuable consideration and includes—
 - (a) a lessee;
 - (b) a mortgagee; or
 - (c) any other person who for valuable consideration acquires the property.
- (7) This section also applies to a document that is executed, or purports to be executed, by a company in the name of or on behalf of another person whether or not that other person is also a company.

123. Execution of deeds by company

- (1) A company may execute a document as a deed by—
 - (a) executing it in accordance with section 122;
 - (b) having it expressed (in whatever words) to be executed by the company as a deed; and
 - (c) delivering it as a deed.
- (2) For the purposes of subsection (1)(c), a document is presumed, unless the contrary is proved, to be delivered as a deed on its being executed in accordance with section 122.

- (3) If there is any conflict or inconsistency between this section and the provisions of any other Ordinance, this section prevails over those provisions to the extent of the conflict or inconsistency.

124. Execution of deeds or other documents by attorney for company

- (1) A company may, either generally or in respect of any specific matter, by an instrument executed as a deed, empower any person as its attorney to execute a deed or any other document on its behalf in Hong Kong or elsewhere.
- (2) A deed or any other document executed by an attorney on behalf of the company binds the company and has effect as if it were executed by the company.
- (3) This section does not affect the operation of any other Ordinance as to the execution of powers of attorney.

Division 8**Re-registration of Unlimited Company as Company Limited by Shares****125. Unlimited company may apply for re-registration as company limited by shares**

- (1) A company registered as an unlimited company on or after 31 August 1984 may be re-registered as a company limited by shares if the company—
 - (a) passes a special resolution specified in subsection (2); and
 - (b) delivers to the Registrar for registration an application in accordance with section 126.
- (2) The special resolution—

- (a) must resolve that the company is to be re-registered as a company limited by shares;
 - (b) must state the manner in which the liability of the members is to be limited on the re-registration;
 - (c) must provide for the alterations to the company's articles that are necessary to bring the articles into conformity with the requirements of this Ordinance in respect of the articles of a company to be formed under this Ordinance as a company limited by shares;
 - (d) must contain a statement specified in subsection (3); and
 - (e) may state the maximum number of shares that the company may issue.
- (3) The statement—
- (a) must state the total number of shares in the company issued before the re-registration, and the total number of shares that the company proposes to issue on the re-registration;
 - (b) must state the total amount of share capital subscribed by its members before the re-registration, and the total amount of share capital to be subscribed by its members on the re-registration;
 - (c) must state the amount to be paid up or to be regarded as paid up, and the amount to remain unpaid or to be regarded as remaining unpaid, on the total number of shares issued before the re-registration, and on the total number of shares that the company proposes to issue on the re-registration;
 - (d) if the share capital is to be divided into different classes of shares on the re-registration, must also state the classes and, for each class—
 - (i) the particulars specified in subsection (5);
 - (ii) the total number of shares in that class issued before the re-registration, and the total number of

- shares in that class that the company proposes to issue on the re-registration;
 - (iii) the total amount of share capital in that class subscribed by its members before the re-registration, and the total amount of share capital in that class to be subscribed by its members on the re-registration; and
 - (iv) the amount to be paid up or to be regarded as paid up, and the amount to remain unpaid or to be regarded as remaining unpaid, on the total number of shares in that class issued before the re-registration, and on the total number of shares in that class that the company proposes to issue on the re-registration; and
- (e) must state, in respect of each member—
- (i) the number of shares that the company issued to the member before the re-registration, and the number of shares that the company proposes to issue to the member on the re-registration; and
 - (ii) the total amount of share capital subscribed by the member before the re-registration, and the total amount of share capital to be subscribed by the member on the re-registration.
- (4) If the shares proposed to be issued to a member on the re-registration belong to 2 or more classes, the information required under subsection (3)(e) must be stated in respect of each class.
- (5) The particulars for the purposes of subsection (3)(d) are—
- (a) particulars of any voting rights attached to shares in the class, including rights that arise only in certain circumstances;
 - (b) particulars of any rights attached to shares in the class, as respects dividends, to participate in a distribution;

- (c) particulars of any rights attached to shares in the class, as respects capital, to participate in a distribution (including on a winding up); and
- (d) whether or not shares in the class are redeemable shares.

126. Application for re-registration

- (1) An application under section 125(1)—
 - (a) must be in the specified form;
 - (b) must be accompanied by a fee prescribed by regulations made under section 897; and
 - (c) must be accompanied by a copy of the company's articles as proposed to be altered by the special resolution.
- (2) Such an application may only be delivered to the Registrar on or after the date on which the Registrar receives a copy of the special resolution delivered under section 612.

127. Issue of fresh certificate of incorporation

- (1) On registering an application and a copy of the articles delivered under section 126(1), the Registrar must issue a fresh certificate of incorporation certifying that the company is a company limited by shares.
- (2) The certificate must be signed by the Registrar.
- (3) On the issue of the certificate—
 - (a) the company becomes a company limited by shares; and
 - (b) the alterations to the company's articles as provided for in the special resolution for re-registration under section 125(2)(c) take effect despite anything in this Ordinance.
- (4) A certificate of incorporation issued under subsection (1) is conclusive evidence that—

- (a) all the requirements of this Ordinance in respect of re-registration of the company have been complied with; and
- (b) the company is re-registered as a company limited by shares under this Ordinance.

128. Winding up of company re-registered as company limited by shares

- (1) This section applies if—
 - (a) a company is re-registered as a company limited by shares under this Division or section 19 of the predecessor Ordinance; and
 - (b) the company is wound up.
- (2) Despite section 170(1)(a) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), a person who is not a member of the company but was a member at the time of the re-registration is liable to contribute to the assets of the company in respect of debts and liabilities of the company contracted before the re-registration if the winding up commences within 3 years beginning on the day of the re-registration.
- (3) Despite section 170(1)(c) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), a person who was a member or a past member of the company at the time of the re-registration is liable to contribute to the assets of the company in respect of debts and liabilities of the company contracted before the re-registration if every person who was a member of the company at that time is no longer a member of the company.
- (4) Subsection (3) applies even though the existing members of the company have satisfied the contribution required to be made by them under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

- (5) Despite section 170(1)(d) and (e) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), there is no limit on the amount that a person is liable to contribute under subsection (2) or (3).
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Part 4
Share Capital
Division 1
Nature of Shares

129. Nature and transferability of shares

- (1) A share or other interest of a member in a company is personal property.
- (2) A share or other interest of a member in a company is transferable in accordance with the company's articles.

130. No nominal value

- (1) Shares in a company have no nominal value.
- (2) This section applies to shares issued before the commencement date of this section as well as shares issued on or after that date.

Note—

Division 2 of Part 4 of Schedule 10 contains transitional provisions relating to the introduction of shares having no nominal value.

131. Numbering of shares

- (1) Each share in a company must be distinguished by an appropriate number, except as provided by subsection (2) or (3).
- (2) If, at any time—
 - (a) all the issued shares in a company are fully paid up and rank equally for all purposes; or
 - (b) all the issued shares of a particular class in a company are fully paid up and rank equally for all purposes,

none of those shares is required to have a distinguishing number as long as it remains fully paid up and ranks equally for all purposes with all shares of the same class for the time being issued and fully paid up.

- (3) If new shares are issued by a company on the terms that, within a period not exceeding 12 months, they will rank equally for all purposes with all the existing shares, or with all the existing shares of a particular class, in the company, neither the new shares nor the corresponding existing shares are required to have distinguishing numbers as long as all of them are fully paid up and rank equally for all purposes.
- (4) If subsection (3) applies and the shares are not numbered, any share certificates for the new shares must be appropriately worded or enfaced.

132. Share certificate to be proof of title in the absence of contrary evidence

In the absence of evidence to the contrary, a certificate issued by a company specifying any shares held by a member in the company is proof of the member's title to the shares.

133. Repeal of power to issue stock

A company does not have power to convert its shares into stock.

Note—

Sections 169 and 170 contain provisions for the reconversion of stock into shares.

134. Repeal of power to issue share warrants

- (1) A company does not have power to issue a share warrant.
- (2) The bearer of a share warrant issued before the commencement date of this section is entitled, on surrendering it for cancellation, to have the bearer's name entered in the register of members of the company.

- (3) If the company enters the bearer's name in the register of its members without the share warrant being surrendered and cancelled, the company is liable for any loss suffered by a person as a result of the bearer's name being entered in the register.
- (4) The company must enter the date of surrender of a share warrant in the register of its members.
- (5) If a company's articles so provide, the bearer of a share warrant may be regarded as a member of the company, either to the full extent or for any purposes specified in the articles.

Division 2

Allotment and Issue of Shares

135. Exercise by directors of power to allot shares or grant rights

- (1) Except in accordance with section 136, the directors of a company must not exercise any power—
 - (a) to allot shares in the company; or
 - (b) to grant rights to subscribe for, or to convert any security into, shares in the company.
- (2) Subsection (1) does not apply to—
 - (a) an allotment of shares, or grant of rights, under an offer made to the members of the company in proportion to their shareholdings;
 - (b) an allotment of shares, or grant of rights, on a bonus issue of shares to the members of the company in proportion to their shareholdings;
 - (c) an allotment to a founder member of a company of shares that the member, by signing the company's articles, has agreed to take; or
 - (d) an allotment of shares made in accordance with a grant of a right to subscribe for, or to convert any security

into, shares if the right was granted in accordance with an approval under section 136.

- (3) For the purposes of subsection (2)(a), the offer is not required to be made to any member whose address is in a place where the offer is not permitted under the law of that place.
- (4) A director commits an offence if the director—
 - (a) contravenes this section; or
 - (b) authorizes or permits, participates in, or fails to take all reasonable steps to prevent, a contravention of this section.
- (5) A director who commits an offence under subsection (4) is liable to a fine at level 5 and to imprisonment for 6 months.
- (6) Nothing in this section or section 136 affects the validity of an allotment or other transaction.

136. Allotment of shares or grant of rights with company approval

- (1) The directors of a company may exercise a power—
 - (a) to allot shares in the company; or
 - (b) to grant rights to subscribe for, or to convert any security into, shares in the company,
 if the company gives approval in advance by resolution of the company.
- (2) Approval may be given for a particular exercise of the power or for its exercise generally, and may be unconditional or subject to conditions.
- (3) Subject to subsections (4) and (5), an approval expires—
 - (a) if the company is required to hold an annual general meeting, on the earlier of—
 - (i) the conclusion of the annual general meeting held next after the approval was given;

- (ii) the expiry of the period within which the next annual general meeting after the approval was given is required to be held;
 - (b) if the company is not required to hold an annual general meeting because of section 602(1), on the date on which the requirements of that section are satisfied; or
 - (c) if the company is not required to hold an annual general meeting for any other reason, on the date specified in the approval, which must not be more than 12 months after the approval was given.
- (4) An approval may be revoked or varied at any time by resolution of the company.
 - (5) The directors may allot shares or grant rights after an approval has expired if—
 - (a) the shares are allotted, or the rights are granted, under an offer, agreement or option made or granted by the company before the approval expired; and
 - (b) the approval allowed the company to make or grant an offer, agreement or option that would or might require shares to be allotted, or rights to be granted, after the approval had expired.

137. Return of allotment

- (1) Within one month after an allotment of shares, a company must deliver to the Registrar for registration a return of the allotment that complies with subsection (2).
- (2) A return—
 - (a) must be in the specified form;
 - (b) must include a statement of capital as at the date of the allotment that complies with section 196;
 - (c) must state—
 - (i) the number of shares allotted;

- (ii) the name and address of each allottee; and
- (iii) if the company's issued share capital is increased as a result of the allotment, the amount of the increase;
- (d) for any shares allotted for consideration (whether wholly or partly cash consideration or non-cash consideration)—
 - (i) must state the amount paid or regarded as paid on each share and the amount (if any) remaining unpaid or regarded as remaining unpaid on each share;
 - (ii) in the case of an allotment wholly or partly for non-cash consideration under an arrangement made under Division 2 of Part 13, must contain particulars of the order of the Court sanctioning the arrangement; and
 - (iii) in any other case of an allotment wholly or partly for non-cash consideration, must contain particulars of the contract for sale, or for services or other consideration in respect of which the shares were allotted; and
- (e) for any shares allotted credited as fully paid up (whether on or without a capitalization)—
 - (i) must state the amount regarded as paid on each share; and
 - (ii) must contain particulars of the resolution authorizing the capitalization or allotment.
- (3) If a company's issued share capital is increased as a result of an allotment, a fee prescribed by regulations made under section 897 is payable for registration of the return.
- (4) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a

- continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (5) If a company fails to deliver a return that complies with subsection (2) within one month after an allotment of shares, the Court may, on application by the company or a responsible person of the company, extend the period for delivery of the return by a period determined by the Court.
 - (6) The Court may extend a period under subsection (5) only if it is satisfied—
 - (a) that failure to deliver the return was accidental or due to inadvertence; or
 - (b) that it is just and equitable to extend the period.
 - (7) If the Court extends the period for delivery of a return, any liability already incurred by the company or a responsible person of the company for an offence under subsection (4) is extinguished and subsection (1) has effect as if the reference to one month were a reference to the extended period.

138. Registration of allotment

- (1) A company must register an allotment of shares as soon as practicable and in any event within 2 months after the date of the allotment, by entering in the register of its members the information referred to in section 617(2) and (3).
- (2) If a company fails to register an allotment of shares within 2 months after the date of the allotment, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

139. Issue of share certificate on allotment

- (1) Within 2 months after an allotment of shares, a company must complete the certificates for the shares and have the certificates ready for delivery.

- (2) Subsection (1) does not apply if the conditions of issue of the shares provide otherwise.
- (3) If a company contravenes this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

140. Order of Court for delivery of share certificate

- (1) If a company contravenes section 139 in relation to an allotment of shares, a person entitled to the certificates for the shares may serve a notice on the company requiring it to deliver the certificates to the person within 10 days.
- (2) If a company on which a notice has been served under subsection (1) does not deliver the certificates within 10 days after service of the notice, the person may apply to the Court for an order under subsection (3).
- (3) On an application under subsection (2), the Court may make an order directing the company and any officer of the company to deliver the certificates to the person within the period specified in the order.
- (4) The order may provide that all costs of and incidental to the application are to be borne by the company or by an officer of the company responsible for the contravention.

141. Validation by Court of issue or allotment

- (1) This section applies if a company purports to issue or allot shares and—
 - (a) the issue or allotment is or may be invalid for any reason; or
 - (b) the terms of the issue or allotment are inconsistent with or not authorized by—
 - (i) this Ordinance or any other Ordinance; or

- (ii) the company's articles.
- (2) The company, a creditor of the company or a holder or mortgagee of any of the shares may apply to the Court for an order validating, or confirming the terms of, the issue or allotment.
- (3) The Court may make an order under subsection (2) if the Court is satisfied that it is just and equitable to do so.
- (4) On delivery of an office copy of the order to the Registrar, the order has effect from the time of the purported issue or allotment.

Division 3**Commissions and Expenses****142. General prohibition of commissions, discounts and allowances**

- (1) Except as permitted by section 143, a company must not apply any of its shares or share capital, either directly or indirectly, in payment of any commission, discount or allowance to a person in consideration of the person—
 - (a) subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the company; or
 - (b) procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the company.
- (2) It is immaterial how the shares or share capital are applied, whether by being added to the purchase money of property acquired by the company or to the contract price of work to be executed for the company, or being paid out of the nominal purchase money or contract price, or otherwise.
- (3) Nothing in this section affects the payment of brokerage by a company.

143. Permitted commissions

- (1) If the conditions in subsection (2) are satisfied, a company may pay a commission to a person in consideration of the person—
 - (a) subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the company; or
 - (b) procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the company.
- (2) The conditions are that—
 - (a) the payment of the commission is authorized by the company's articles;
 - (b) the commission paid or agreed to be paid does not exceed the lesser of—
 - (i) 10% of the price at which the shares are issued;
 - (ii) the amount or rate authorized by the articles;
 - (c) if any of the shares are offered to the public for subscription, the prospectus for the public offer discloses—
 - (i) the amount or rate of the commission; and
 - (ii) the number of shares (if any) that persons have agreed for a commission to subscribe for absolutely; and
 - (d) if the shares are not offered to the public for subscription, the company, before making the payment—
 - (i) delivers to the Registrar for registration a notice in the specified form disclosing the amount or rate of the commission and the number of shares (if any) that persons have agreed for a commission to subscribe for absolutely; and
 - (ii) discloses the amount or rate of the commission and the number of shares (if any) that persons have

agreed for a commission to subscribe for absolutely in any circular or notice issued by the company inviting subscriptions for the shares.

- (3) A vendor to, promoter of, or other person who receives payment in money or shares from, a company may apply any part of the money or shares so received in payment of any commission the payment of which directly by the company would be permitted by this section.
- (4) If a company contravenes the condition referred to in subsection (2)(d)(i), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

144. Capital may be applied in writing off certain expenses and commission

- (1) A company may apply its share capital in writing off—
 - (a) the preliminary expenses of the company;
 - (b) any commission paid under section 143 or under section 46 of the predecessor Ordinance; or
 - (c) any other expenses of any issue of shares in the company.
- (2) For the purposes of subsection (1)(c), the expenses of any issue of shares in a company include the portion attributable to the shares issued of any fee paid by or in respect of the company under section 62(1)(c) or 137(3).

Division 4**Transfer and Transmission of Shares****Subdivision 1****Transfer of Shares****145. Requirement for instrument of transfer**

- (1) A company must not register a transfer of shares in the company unless a proper instrument of transfer has been delivered to the company.
- (2) Subsection (1) does not affect any power of a company to register as a member a person to whom the right to shares has been transmitted by operation of law.

146. Registration of transfer or refusal of registration

- (1) The transferee or transferor of shares in a company may lodge the transfer with the company.
- (2) Within 2 months after the transfer is lodged, the company must either—
 - (a) register the transfer; or
 - (b) send the transferee and the transferor notice of refusal to register the transfer.
- (3) If a company refuses registration, the transferee or transferor may request a statement of the reasons for the refusal.
- (4) If a request is made under subsection (3), the company must, within 28 days after receiving the request—
 - (a) send the person who made the request a statement of the reasons; or
 - (b) register the transfer.

- (5) If a company contravenes subsection (2) or (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

147. Order of Court for registration

- (1) If a company refuses to register a transfer, the transferee or the transferor may apply to the Court for an order under this section.
- (2) On an application under subsection (1), the Court may order the company to register the transfer, if the Court is satisfied that the application is well-founded.

148. Transfer by personal representative

A transfer of a share or other interest of a deceased member of a company by his or her personal representative is as valid as if the personal representative had been the registered holder of that share or interest at the time of execution of the instrument of transfer.

149. Certification of transfer

- (1) The certification by a company of an instrument of transfer of shares in the company—
 - (a) is a representation by the company to any person acting on the faith of the certification that documents have been produced to the company that evidence title to the shares in the transferor named in the instrument; and
 - (b) is not a representation that the transferor has any title to the shares.
- (2) If a person acts on the faith of a false certification by a company made negligently, the company is under the same liability to the person as if the certification had been made fraudulently.

- (3) For the purposes of this section, an instrument of transfer is certified by a company if it bears—
 - (a) the words “certificate lodged”, or words to the same effect, in English or Chinese; and
 - (b) under or adjacent to those words, the signature or initials of a person having the actual or apparent authority to certify transfers on behalf of the company.
- (4) Unless the contrary is proved, a signature or initials appearing on an instrument of transfer as referred to in subsection (3)(b) must be regarded—
 - (a) as the signature or initials of the person whose signature or initials they purport to be; and
 - (b) as having been placed on the instrument by that person or by another person who has the actual or apparent authority to use the signature or initials for the purpose of certifying transfers on behalf of the company.

150. Issue of share certificate on transfer

- (1) Within the period specified in subsection (2), a company must complete the certificates for any of its shares that are transferred and have the certificates ready for delivery.
- (2) The period is—
 - (a) for a private company, 2 months after the day on which the transfer is lodged with the company;
 - (b) for any other company, 10 business days after the day on which the transfer is lodged with the company.
- (3) Subsection (1) does not apply to a transfer if—
 - (a) the conditions of issue of the shares provide otherwise;
 - (b) stamp duty has not been paid in respect of the transfer;
 - (c) the transfer is invalid; or
 - (d) the company, being entitled to do so, refuses to register the transfer.

- (4) If a company contravenes this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (5) In this section—

business day (營業日) means a day on which a recognized stock market is open for the business of dealing in securities.

151. Order of Court for delivery of share certificate

- (1) If a company contravenes section 150 in relation to a transfer of shares, a person entitled to the certificates for the shares may serve a notice on the company requiring it to deliver the certificates to the person within 10 days.
- (2) If a company on which a notice has been served under subsection (1) does not deliver the certificates within 10 days after service of the notice, the person may apply to the Court for an order under subsection (3).
- (3) On an application under subsection (2), the Court may make an order directing the company and any officer of the company to deliver the certificates to the person within the period specified in the order.
- (4) The order may provide that all costs of and incidental to the application are to be borne by the company or by an officer of the company responsible for the contravention.

152. Compensation regarding forged share transfers

- (1) A company may—
 - (a) pay compensation to a person for loss arising from a transfer of shares in the company under a forged transfer or a transfer under a forged power of attorney;

- (b) provide, by insurance, reservation of capital or accumulation of income, a fund to meet claims for compensation;
 - (c) borrow on the security of its property for the purpose of paying compensation; and
 - (d) impose any reasonable restrictions on the transfer of its shares or with respect to powers of attorney for the transfer of its shares that the company considers necessary to guard against losses arising from forgery.
- (2) A company that pays compensation to a person under this section has the same rights and remedies against the person liable for the loss as the person compensated would have had.
- (3) If the shares in a company have, by amalgamation or otherwise, become shares in another company, the other company has the same powers under this section as the first company would have had if it had continued.

Subdivision 2

Transmission of Shares by Operation of Law

153. Registration or refusal of registration

- (1) This section applies if the right to shares is transmitted to a person by operation of law and the person notifies the company in writing that the person wishes to be registered as a member of the company in respect of the shares.
- (2) Within 2 months after receiving the notification, the company must either—
 - (a) register the person as a member of the company in respect of the shares; or
 - (b) send the person notice of refusal of registration.
- (3) If a company refuses registration, the person may request a statement of the reasons for the refusal.

- (4) If a person makes a request under subsection (3), the company must, within 28 days after receiving the request—
 - (a) send the person a statement of the reasons; or
 - (b) register the person as a member of the company in respect of the shares.
- (5) If a company contravenes subsection (2) or (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

154. Order of Court for registration

- (1) If a company refuses registration under section 153, the person to whom the right to the shares was transmitted may apply to the Court for an order under this section.
- (2) On an application under subsection (1), the Court may order the company to register the person as a member of the company in respect of the shares, if the Court is satisfied that the application is well-founded.

155. Pre-emption rights in relation to transmission by law

- (1) This section applies if a company's articles give a member or class of members of the company a right of pre-emption or right to purchase shares in the company on the occurrence of an event that constitutes a transmission of the right to the shares by operation of law.

Note—

For example, transmission of the right to shares on the death or bankruptcy of a shareholder.

- (2) If this section applies, the registration as a member of the company of the person to whom the right to the shares is transmitted is subject to the right of pre-emption or right to purchase shares contained in the articles and that right may be enforced against the person.

Subdivision 3**General****156. Evidence of grant of probate etc.**

For the purposes of a transfer of shares or transmission of the right to shares, a company must accept as sufficient evidence of the grant of probate of the will or letters of administration of a deceased person the production to the company of a document that is by law sufficient evidence of that grant.

Division 5**Replacement of Listed Companies' Lost Share Certificates****157. Interpretation**

In this Division—

eligible person (合資格人士), in relation to shares in a listed company, means—

- (a) a registered holder of the shares; or
- (b) a person who claims to be entitled to have the person's name entered in the register of members of the company in respect of the shares;

genuine purchaser (真正購買者), in relation to shares, means—

- (a) a person (other than a person to whom a new certificate for the shares is issued under this Division) who purchases the shares in good faith for value and without notice of any defect in the title of the seller; or
- (b) a person who becomes entitled to the shares at any time after the purchase of them by a person referred to in paragraph (a);

new certificate (新股份證明書) means a share certificate that replaces a share certificate that has been lost;

original certificate (原有股份證明書) means a share certificate that has been lost;

registered holder (登記持有人), in relation to shares in a listed company, means a person whose name is entered in the register of members of the company in respect of the shares.

158. Application for new certificate

- (1) If a share certificate for shares in a listed company has been lost, an eligible person may apply to the company for a new certificate.
- (2) The application—
 - (a) must be in the specified form; and
 - (b) must be accompanied by a statutory declaration by the eligible person stating the following—
 - (i) that the original certificate has been lost;
 - (ii) when the original certificate was last in the person's possession and how the person ceased to have possession of it;
 - (iii) whether the person has executed any transfer in respect of the shares, in blank or otherwise;
 - (iv) that no other person is entitled to have their name entered in the register of members of the company in respect of the shares; and
 - (v) any other matters that are necessary to verify the grounds on which the application is made.

159. Publication requirements

- (1) A listed company that intends to issue a new certificate on an application under section 158 must publish a notice in the specified form in accordance with this section.
- (2) The notice must be published—
 - (a) on the company's website; and

- (b) in the Gazette if—
 - (i) the eligible person making the application is not the registered holder of the shares or does not have the registered holder's consent to make the application; or
 - (ii) the latest value of the shares exceeds \$200,000.
- (3) The notice must be published in the Gazette under subsection (2)(b) within one month after it is first published on the company's website under subsection (2)(a).
- (4) Before publishing a notice under this section, the company must—
 - (a) deliver a copy of the notice to the recognized stock market concerned; and
 - (b) obtain a certificate from an authorized officer of that stock market that the copy is being exhibited in accordance with subsection (5).
- (5) A recognized stock market must exhibit a copy of a notice received under subsection (4)(a) in a conspicuous place on the premises on which the stock market operates for a period of at least—
 - (a) one month, for a notice published under subsection (2)(a); or
 - (b) 3 months, for a notice published under subsection (2)(b).
- (6) If the application was made by an eligible person who is not the registered holder of the shares and does not have the registered holder's consent to make the application, the company—
 - (a) must serve a copy of the notice under this section on the registered holder by sending it by registered post to the registered holder's last address appearing in the register of members of the company; and

- (b) must not publish the notice under this section until at least 3 months after the day on which the copy was served.
- (7) In this section—
 - latest value* (最新價值) of shares means the value of the shares calculated at the last recorded price paid for shares of the same class in the company at the recognized stock market prior to the making of the application for the new certificate;
 - website* (網站), in relation to a company, means the website on which the company is required, by the listing rules applicable to the recognized stock market concerned, to publish announcements, notices or other documents.

160. Issue of new certificate

- (1) A listed company may issue a new certificate on an application under section 158 if—
 - (a) the company has published a notice under section 159 and—
 - (i) if the notice is published under section 159(2)(a), the notice has been made available on the company's website throughout a period of at least one month; or
 - (ii) if the notice is published under section 159(2)(b), the notice has been made available on the company's website throughout a period of at least 3 months and published in the Gazette in accordance with section 159(3);
 - (b) the company has not received notice of any other claim in respect of the shares; and
 - (c) in the case of an application by an eligible person who is not the registered holder of the shares—

- (i) an instrument of transfer in respect of the shares has been delivered to the company under section 145; or
 - (ii) if the application was made without the registered holder's consent, the company has caused an instrument of transfer to be executed on behalf of the registered holder by a person appointed by the company and executed by the applicant on the applicant's own behalf.
- (2) An instrument of transfer referred to in subsection (1)(c)(ii) is to be regarded as an instrument of transfer duly delivered to the company under section 145.
- (3) A listed company that issues a new certificate must without delay—
- (a) cancel the original certificate; and
 - (b) record the issue of the new certificate and cancellation of the original certificate in the register of its members.
- (4) For the purposes of subsection (1)(a), a failure to make a notice available on a company's website throughout a period mentioned in that subsection is to be disregarded if—
- (a) the notice is made available on the website for part of that period; and
 - (b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.
- (5) In this section—
website (網站), in relation to a company, has the meaning given by section 159(7).

161. Public notice of issue of new certificate

- (1) A listed company that issues a new certificate must, within 14 days after the date of issue—

- (a) publish in the Gazette a notice in the specified form of the issue of the new certificate and cancellation of the original certificate; and
 - (b) deliver a copy of the notice to the recognized stock market concerned.
- (2) If a listed company contravenes this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

162. Orders of Court for rectification of the register

- (1) Subject to this section, if a listed company issues a new certificate in respect of shares, nothing in this Division affects the power of the Court to make an order under section 624 in favour of a person claiming to be entitled to the shares as against—
- (a) the person to whom the new certificate is issued; or
 - (b) a person whose name is subsequently entered in the register of members of the company in respect of the shares.
- (2) The Court must not make an order under section 624 as against a person referred to in subsection (1)(b) if that person is a genuine purchaser of the shares.
- (3) If the Court makes an order under section 624 as against the person to whom the new certificate is issued or a person whose name is subsequently entered in the register of members of the company in respect of the shares—
- (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 the issue of the new certificate or cancellation

of the original certificate in accordance with this Division.

Note—

Section 624 gives the Court power to make an order for rectification of the register of members of a company.

163. Liability if rectification cannot be ordered

- (1) This section applies if an order cannot be made under section 624 because of section 162(2).
- (2) The company is not liable for any damage suffered by the claimant because of the issue of the new certificate or cancellation of the original certificate, unless the company has acted deceitfully.
- (3) If the genuine purchaser purchased the shares from the person to whom the new certificate is issued, the person to whom the new certificate is issued is liable to the claimant for the value of the shares as at the date of purchase.
- (4) If the genuine purchaser purchased the shares from a person whose name was subsequently entered in the register of members of the company in respect of the shares, the person to whom the new certificate is issued and any person whose name was subsequently entered in the register in respect of the shares (other than a genuine purchaser) are jointly and severally liable to the claimant for the value of the shares as at the date the shares were purchased by the genuine purchaser.
- (5) In this section—
claimant (申索人) means the person in whose favour an order could have been made under section 624 but for section 162(2).

164. Applicant to pay expenses

- (1) An applicant for a new certificate must pay all expenses relating to the application.

- (2) A listed company may refuse to deal, or to deal further, with an application until it is satisfied that the applicant has made reasonable provision for payment of the expenses relating to the application.

Division 6**Alteration of Share Capital****165. Permitted alteration of share capital**

- (1) A company may alter its share capital in any one or more of the ways set out in subsection (2).
- (2) The company may—
 - (a) increase its share capital by allotting and issuing new shares in accordance with this Part;
 - (b) increase its share capital without allotting and issuing new shares, if the funds or other assets for the increase are provided by the members of the company;
 - (c) capitalize its profits, with or without allotting and issuing new shares;
 - (d) allot and issue bonus shares with or without increasing its share capital;
 - (e) convert all or any of its shares into a larger or smaller number of shares;
 - (f) cancel shares—
 - (i) that, at the date the resolution for cancellation is passed, have not been taken or agreed to be taken by any person; or
 - (ii) that have been forfeited.
- (3) A company may alter its share capital as referred to in subsection (2)(e) or (f) only by resolution of the company.

Note—

A resolution of the company may also be required for an allotment of shares referred to in subsection (2)(a), (c) or (d)—see sections 135 and 136.

- (4) A resolution referred to in subsection (3) may authorize the company to exercise the power—
 - (a) on more than one occasion;
 - (b) at a specified time or in specified circumstances.
- (5) Any amount remaining unpaid on shares being converted under subsection (2)(e) is to be divided equally among the replacement shares.
- (6) If shares are cancelled under subsection (2)(f), the company must reduce its share capital by the amount of the shares cancelled.
- (7) For the purposes of Part 5, a cancellation of shares under this section is not a reduction of share capital.
- (8) A company's articles may exclude or restrict the exercise of a power conferred by this section.

166. Notice of alteration of share capital

- (1) Within one month after altering its share capital under section 165, a company must deliver a notice to the Registrar for registration in relation to the alteration of share capital.
- (2) The notice—
 - (a) must be in the specified form;
 - (b) if the company's issued share capital is increased by the alteration, must state the amount of the increase; and
 - (c) must include a statement of capital as at the date of the alteration that complies with section 196.
- (3) If the company's issued share capital is increased by the alteration, a fee prescribed by regulations made under section 897 is payable for registration of the notice.

- (4) A company is not required to deliver a notice under this section in relation to an alteration of share capital involving an allotment of shares.

Note—

For an allotment of shares, section 137 requires a company to deliver a return of the allotment to the Registrar.

- (5) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

167. Redenomination of share capital

- (1) A company may, by resolution of the company, convert its share capital or any class of shares from one currency to another currency. This is known as a redenomination.
- (2) A resolution under this section may authorize a company to redenominate its share capital—
 - (a) on more than one occasion;
 - (b) at a specified time or in specified circumstances.
- (3) A redenomination does not affect any rights or obligations of members under the company's articles, or any restrictions affecting members under the company's articles.
- (4) In particular, it does not affect any entitlement to dividends (including entitlement to dividends in a particular currency), voting rights or liability in respect of amounts remaining unpaid on shares (including liability in a particular currency).
- (5) For this purpose, the company's articles include the terms on which any shares in the company are allotted or held.
- (6) A company's articles may exclude or restrict the exercise of a power conferred by this section.

168. Notice of redenomination

- (1) Within one month after passing a resolution under section 167, a company must deliver a notice in the specified form to the Registrar for registration in relation to the redenomination.
- (2) The notice must include a statement of capital as at the date of the redenomination that complies with section 196.
- (3) If a company contravenes this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

169. Reconversion of stock into shares

- (1) A company that has converted paid up shares into stock (before the repeal by this Ordinance of the power to do so) may, by resolution of the company, reconvert that stock into paid up shares.

Note—

Section 133 repeals the power of a company to convert its shares into stock.

- (2) A resolution under this section may authorize a company to exercise the power to reconvert stock—
 - (a) on more than one occasion;
 - (b) at a specified time or in specified circumstances.

170. Notice of reconversion

- (1) Within one month after passing a resolution under section 169, a company must deliver a notice in the specified form to the Registrar for registration in relation to the reconversion of stock.
- (2) The notice must include a statement of capital as at the date of the reconversion that complies with section 196.
- (3) If a company contravenes this section, the company, and every responsible person of the company, commit an offence,

and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

Division 7**Classes of Shares and Class Rights****Subdivision 1****Companies having a Share Capital****171. Application of Subdivision**

This Subdivision applies to a company that has a share capital.

172. Rights attached to shares

In this Ordinance, a reference to the rights attached to a share in a class of shares in a company is a reference to the rights of the holder of that share as a member of the company.

173. Classes of shares

- (1) For the purposes of this Ordinance, shares are in one class if the rights attached to them are in all respects uniform.
- (2) The rights attached to shares are not to be regarded as different from those attached to other shares only because they do not carry the same rights to dividends in the 12 months immediately following their allotment.

174. Description of shares of different classes

- (1) A share certificate issued by a company that has different classes of shares must contain in a prominent position a statement—
 - (a) stating that the company's share capital is divided into different classes of shares; and

- (b) specifying the voting rights attached to shares in each class.
- (2) If a company has a class of shares the holders of which are not entitled to vote at general meetings of the company—
 - (a) the descriptive title of shares in the class must include the words “non voting” or the Chinese characters “無表決權”; and
 - (b) the company must ensure that those words appear legibly on any share certificate, prospectus or directors’ report issued by the company.
- (3) Subsection (2) does not apply to shares that are described as preference shares or preferred shares.
- (4) If a company contravenes this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

175. Varying class rights

- (1) Rights attached to shares in a class of shares in a company may be varied only—
 - (a) in accordance with provisions in the company’s articles for the variation of those rights; or
 - (b) if there are no such provisions, with the consent of holders of shares in that class given in accordance with this section.
- (2) Subsection (1) is without prejudice to any other restrictions on the variation of the rights.

Note—

For example, a company could make an agreement with the holders of shares in a class that imposes greater restrictions on the variation of class rights than those in the company’s articles or in this section.

- (3) The consent required for the purposes of this section is—

- (a) written consent of holders representing at least 75% of the total voting rights of holders of shares in the class; or
- (b) a special resolution passed at a separate general meeting of holders of shares in the class sanctioning the variation.
- (4) A variation takes effect—
 - (a) if no application is made under section 177 for it to be disallowed, at the end of the period in which applications may be made under that section; or
 - (b) if an application is made within that period, at the time the application is withdrawn or finally determined (unless the variation is disallowed).
- (5) Any amendment of a provision in a company’s articles for the variation of the rights attached to shares in a class, or the insertion of any such provision into the articles, is itself to be regarded as a variation of those rights.
- (6) Nothing in this section affects the Court’s powers under sections 664, 665 and 714.

176. Notifying class members of variation

- (1) If the rights attached to shares in any class of shares in a company are varied, the company must give written notice of the variation to each holder of shares in that class within 14 days after the date on which the variation is made.
- (2) If a company contravenes this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

177. Disallowance or confirmation of variation by Court

- (1) If the rights attached to shares in any class of shares in a company are varied, holders representing at least 10% of the

total voting rights of holders of shares in the class may apply to the Court to have the variation disallowed.

- (2) An application must be made within 28 days after the date on which the variation is made.
- (3) An application may be made on behalf of the members entitled to apply by any one or more of them appointed in writing by all of them.
- (4) The following persons are entitled to be heard on an application—
 - (a) the applicant;
 - (b) any other person who appears to the Court to be interested in the application.
- (5) The Court may, by order, disallow the variation if it is satisfied that the variation would unfairly prejudice the members represented by the applicant.
- (6) If the Court is not so satisfied, it must, by order, confirm the variation.
- (7) Nothing in this section affects—
 - (a) the right of a member to petition the Court under section 713; or
 - (b) the Court's powers under section 714.

178. Delivery of order of Court to Registrar

- (1) If the Court makes an order under section 177 in relation to a company, the company must deliver a copy of the order to the Registrar within 14 days after it is made.
- (2) If a company contravenes this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

179. Notifying Registrar of variation

- (1) If the rights attached to shares in any class of shares in a company are varied, the company must deliver to the Registrar, within one month after the date on which the variation takes effect—
 - (a) a copy of the resolution or other document that authorized the variation; and
 - (b) a notice in the specified form including a statement of capital, as at the date on which the variation takes effect, that complies with section 196.
- (2) Subsection (1)(a) does not apply if the company is required to deliver a copy of the resolution or other document to the Registrar under another provision of this Ordinance.
- (3) If a company contravenes this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

Subdivision 2

Companies without a Share Capital

180. Application of Subdivision

This subdivision applies to a company that does not have a share capital.

181. Rights of members

In this Ordinance, a reference to the rights of a class of members of a company that does not have a share capital is a reference to the rights of the members in that class in their capacity as members of the company.

182. Classes of members

For the purposes of this Ordinance, members of a company that does not have a share capital are in one class if the rights of the members are in all respects uniform.

183. Varying class rights

- (1) Rights of a class of members of a company that does not have a share capital may be varied only—
 - (a) in accordance with provisions in the company's articles for the variation of those rights; or
 - (b) if there are no such provisions, with the consent of the members of that class given in accordance with this section.
- (2) Subsection (1) is without prejudice to any other restrictions on the variation of the rights.

Note—

For example, a company could make an agreement with the members of a class that imposes greater restrictions on the variation of class rights than those in the company's articles or in this section.

- (3) The consent required for the purposes of this section is—
 - (a) written consent of at least 75% of the members in the class; or
 - (b) a special resolution passed at a separate general meeting of the members in the class sanctioning the variation.
- (4) A variation takes effect—
 - (a) if no application is made under section 185 for it to be disallowed, at the end of the period in which applications may be made under that section; or
 - (b) if an application is made within that period, at the time the application is withdrawn or finally determined (unless the variation is disallowed).

- (5) Any amendment of a provision in a company's articles for the variation of the rights of a class of members, or the insertion of any such provision into the articles, is itself to be regarded as a variation of those rights.
- (6) Nothing in this section affects the Court's powers under sections 664, 665 and 714.

184. Notifying class members of variation

- (1) If the rights of any class of members of a company that does not have a share capital are varied, the company must give written notice of the variation to each member in that class within 14 days after the date on which the variation is made.
- (2) If a company contravenes this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

185. Disallowance or confirmation of variation by Court

- (1) If the rights of any class of members of a company that does not have a share capital are varied, members representing at least 10% of the members in the class may apply to the Court to have the variation disallowed.
- (2) An application must be made within 28 days after the date on which the variation is made.
- (3) An application may be made on behalf of the members entitled to apply by any one or more of them appointed in writing by all of them.
- (4) The following persons are entitled to be heard on an application—
 - (a) the applicant;
 - (b) any other person who appears to the Court to be interested in the application.

- (5) The Court may, by order, disallow the variation if it is satisfied that the variation would unfairly prejudice the members represented by the applicant.
- (6) If the Court is not so satisfied, it must, by order, confirm the variation.
- (7) Nothing in this section affects—
 - (a) the right of a member to petition the Court under section 713; or
 - (b) the Court's powers under section 714.

186. Delivery of order of Court to Registrar

- (1) If the Court makes an order under section 185 in relation to a company, the company must deliver a copy of the order to the Registrar within 14 days after it is made.
- (2) If a company contravenes this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

187. Notifying Registrar of variation

- (1) If the rights of any class of members of a company that does not have a share capital are varied, the company must deliver to the Registrar, within one month after the date on which the variation takes effect—
 - (a) a copy of the resolution or other document that authorized the variation; and
 - (b) a notice in the specified form.
- (2) Subsection (1)(a) does not apply if the company is required to deliver a copy of the resolution or other document to the Registrar under another provision of this Ordinance.
- (3) If a company contravenes this section, the company, and every responsible person of the company, commit an offence,

and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

Subdivision 3**General****188. Variation includes abrogation**

In this Division and (unless the context otherwise requires) in any provision in a company's articles for the variation of class rights, a reference to a variation of those rights includes an abrogation of those rights.

Division 8**Supplementary and Miscellaneous****Subdivision 1****Relief from Share Capital Requirements****189. Interpretation**

- (1) In this Division—

arrangement (安排) means any agreement, scheme or arrangement;

company (公司), except in reference to an issuing company, includes any body corporate;

equity share capital (權益股本) means a company's issued share capital excluding any part of that capital that, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution;

equity shares (權益股份) means shares comprised in a company's equity share capital;

issuing company (發行公司) means a company that issues shares;
non-equity shares (非權益股份) means shares in a company other than equity shares;

transfer (轉讓) of shares includes transfer of a right to be included in the company's register of members in respect of the shares.

(2) In this Division—

- (a) a reference to the acquisition by a company of shares includes the acquisition of shares by a nominee of the company;
- (b) a reference to the issue or transfer of shares to a company includes the issue or transfer of shares to a nominee of the company;
- (c) a reference to the transfer of shares by a company includes the transfer of shares by a nominee of the company.

190. Group reconstruction relief

- (1) This section applies if an issuing company—
 - (a) is a wholly owned subsidiary of another company (*the holding company*); and
 - (b) issues shares—
 - (i) to the holding company; or
 - (ii) to another wholly owned subsidiary of the holding company,
 in consideration for the transfer to the issuing company of non-cash assets of a company (*the transferor company*) that is a member of the group of companies that comprises the holding company and all its wholly owned subsidiaries.
- (2) Any excess of the value of the assets transferred over their net base value may be disregarded when recording as share capital of the issuing company the amount of consideration for

the issue by the issuing company of its shares. Consequently, the minimum amount of consideration required to be recorded as share capital of the issuing company in respect of the shares issued for the transfer is the net base value of the assets transferred.

- (3) The net base value of the assets transferred is the amount by which the base value of the assets transferred exceeds the base value of any liabilities of the transferor company assumed by the issuing company as consideration for the assets transferred.
- (4) For the purposes of this section—
 - (a) the base value of assets transferred is the lesser of—
 - (i) the cost of those assets to the transferor company;
 - (ii) the amount at which those assets are stated in the transferor company's accounting records immediately before the transfer;
 - (b) the base value of liabilities assumed is the amount at which they are stated in the transferor company's accounting records immediately before the transfer.

191. Merger relief

- (1) This section applies if an issuing company has secured at least a 90% equity holding in another company under an arrangement providing for the issue of equity shares in the issuing company on terms that the consideration for the shares issued is to be provided—
 - (a) by the issue or transfer to the issuing company of equity shares in the other company; or
 - (b) by the cancellation of any equity shares in the other company not held by the issuing company.
- (2) Any excess of the value of the equity shares acquired or cancelled under the arrangement over the subscribed capital of the other company attributable to those shares may be

disregarded when recording as share capital of the issuing company the amount of consideration for the issue by the issuing company of its shares. Consequently, the minimum amount of consideration required to be recorded as share capital of the issuing company in respect of the shares issued under the arrangement is the subscribed capital of the other company attributable to the equity shares acquired or cancelled.

- (3) If the arrangement also provides for the issue of any shares in the issuing company on terms that the consideration for those shares is to be provided—
- (a) by the issue or transfer to the issuing company of non-equity shares in the other company; or
 - (b) by the cancellation of any non-equity shares in the other company not held by the issuing company,

any excess of the value of the non-equity shares acquired or cancelled under the arrangement over the subscribed capital of the other company attributable to those shares may be disregarded when recording as share capital of the issuing company the amount of consideration for the issue by the issuing company of its shares.

- (4) This section does not apply in a case falling within section 190.

192. Merger relief: meaning of 90% equity holding

- (1) This section has effect in determining, for the purposes of section 191, whether a company (*company A*) has secured at least a 90% equity holding in another company (*company B*) under an arrangement mentioned in section 191(1).
- (2) Company A has secured at least a 90% equity holding in company B if, in consequence of an acquisition or cancellation of equity shares in company B under that arrangement, company A holds in aggregate 90% or more of the equity shares in company B (whether or not all or any of

the equity shares in company B held by company A were acquired under that arrangement).

- (3) If the equity shares in company B are divided into different classes of shares, company A is not regarded as having secured at least a 90% equity holding in company B unless the requirements of subsection (2) are met in relation to each of those classes of shares taken separately.
- (4) For the purposes of this section, the following shares are regarded as held by company A—
 - (a) shares held by a company that is company A's holding company or subsidiary;
 - (b) shares held by a subsidiary of company A's holding company; and
 - (c) shares held by nominees of company A or of a company referred to in paragraph (a) or (b).

193. Relief may be reflected in company's statement of financial position

An amount corresponding to the amount that, because of this Subdivision, is not required to be recorded as a company's share capital may also be disregarded in determining the amount at which any shares or other consideration provided for the shares issued is to be included in the company's statement of financial position.

194. Regulations

- (1) The Financial Secretary may make regulations for restricting or otherwise modifying the relief provided by this Subdivision.
- (2) Regulations made under this section are subject to the approval of the Legislative Council.

Subdivision 2**Miscellaneous****195. Provision for different amounts to be paid on shares**

If authorized by its articles to do so, a company may—

- (a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;
- (b) accept from any member the whole or part of the amount remaining unpaid on any shares held by the member, although no part of that amount has been called up; and
- (c) pay a dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

196. Statement of capital

- (1) This section applies if a provision of this Part or Part 5 requires a statement of capital to be included in a return or notice delivered to the Registrar.
- (2) A statement of capital must state—
 - (a) the total number of issued shares in the company;
 - (b) the amount paid up or regarded as paid up and the amount (if any) remaining unpaid or regarded as remaining unpaid on the total number of issued shares in the company;
 - (c) the total amount of the company's issued share capital; and
 - (d) for each class of shares—
 - (i) the particulars specified in subsection (3);
 - (ii) the total number of issued shares in the class;

- (iii) the amount paid up or regarded as paid up and the amount (if any) remaining unpaid or regarded as remaining unpaid on the total number of issued shares in the class; and
- (iv) the total amount of issued share capital of the class.

(3) The particulars are—

- (a) particulars of any voting rights attached to shares in the class, including rights that arise only in certain circumstances;
- (b) particulars of any rights attached to shares in the class, as respects dividends, to participate in a distribution;
- (c) particulars of any rights attached to shares in the class, as respects capital, to participate in a distribution (including on a winding up); and
- (d) whether or not shares in the class are redeemable shares.

197. Notice of paid up capital

- (1) An official document of a company that states the company's issued capital must also state no less prominently the company's paid up capital.
- (2) If a company issues, circulates or distributes an official document in Hong Kong that does not comply with subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.
- (3) In this section—
official document (正式文件) of a company, means a notice, circular, advertisement or other official publication of the company.

Part 5**Transactions in relation to Share Capital****Division 1****Preliminary****198. Interpretation**

(1) In this Part—

Commission (監察機關) means—

- (a) subject to paragraphs (b) and (c), the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap. 571);
- (b) if any relevant transfer order made under section 25 of that Ordinance is in force, the recognized exchange company concerned or both the Securities and Futures Commission and the recognized exchange company concerned, in accordance with the provisions of that order; or
- (c) if any relevant transfer order made under section 68 of that Ordinance is in force, the recognized exchange controller concerned or both the Securities and Futures Commission and the recognized exchange controller concerned, in accordance with the provisions of that order;

contingent buy-back contract (待確定回購合約) means a contract entered into by a company relating to any of its shares—

- (a) that is not a contract to buy back those shares; but
- (b) under which the company may (subject to any conditions) become entitled or obliged to buy back those shares;

distributable profits (可分派利潤), in relation to the making of a payment by a company, means those profits out of which the company could lawfully make a distribution equal in value to the payment;

Note—

Division 2 of Part 6 contains prohibitions and restrictions on a company in making distributions.

recognized exchange controller (認可控制人) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

specified Chinese language newspaper (指明中文報章) means a Chinese language newspaper that is specified under subsection (2);

specified English language newspaper (指明英文報章) means an English language newspaper that is specified under subsection (2).

- (2) The Chief Secretary for Administration may specify Chinese language newspapers and English language newspapers for the purposes of this Part and must publish a list of the specified newspapers in the Gazette.

Division 2**Solvency Test****199. Application of Division**

This Division has effect for the following transactions—

- (a) a reduction of share capital by special resolution supported by a solvency statement under Subdivision 2 of Division 3;
- (b) a payment out of capital in respect of a share redemption or buy-back under Division 4;

- (c) the giving of financial assistance by a company under Subdivision 4 of Division 5.

200. Solvency test

A company satisfies the solvency test in relation to a transaction if—

- (a) immediately after the transaction there will be no ground on which the company could be found to be unable to pay its debts; and
- (b) either—
 - (i) if it is intended to commence the winding up of the company within 12 months after the date of the transaction, the company will be able to pay its debts in full within 12 months after the commencement of the winding up; or
 - (ii) in any other case, the company will be able to pay its debts as they become due during the period of 12 months immediately following the date of the transaction.

201. Solvency statement

- (1) A solvency statement in relation to a transaction is a statement that each of the directors making it has formed the opinion that the company satisfies the solvency test in relation to the transaction.
- (2) In forming an opinion for the purpose of making a solvency statement, a director must—
 - (a) inquire into the company's state of affairs and prospects; and
 - (b) take into account all the liabilities of the company (including contingent and prospective liabilities).
- (3) A solvency statement—
 - (a) must be in the specified form;

- (b) must state—
 - (i) the date on which it is made; and
 - (ii) the name of each director making it; and
- (c) must be signed by each director making it.
- (4) Subsection (3)(a) does not apply to a solvency statement made for the purposes of the giving of financial assistance by a company under Subdivision 4 of Division 5.

202. Offences regarding solvency statement

A director who makes a solvency statement without having reasonable grounds for the opinion expressed in it commits an offence and is liable—

- (a) on conviction on indictment to a fine of \$150,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

203. Power to modify solvency test by regulation

- (1) The Chief Executive in Council may make regulations—
 - (a) modifying the solvency test or its application to any transaction or class of transactions; or
 - (b) modifying the matters that a director is required to take into account in forming an opinion for the purpose of making a solvency statement.
- (2) Regulations made under this section are subject to the approval of the Legislative Council.

Division 3**Reduction of Share Capital****Subdivision 1****General Provisions****204. Application of Division**

This Division applies to—

- (a) a company limited by shares; and
- (b) a company limited by guarantee having a share capital that was formed as, or became, such a company under a former Companies Ordinance before 13 February 2004.

205. Permitted reductions of share capital

- (1) A company may, in accordance with the procedure specified in section 206, reduce its share capital under this Division in any way.

Note—

For example—

1. A company may extinguish or reduce the liability on any of its shares in respect of share capital not paid up.
2. A company may, either with or without extinguishing or reducing liability on any of its shares—
 - (a) cancel any paid-up share capital that is lost or unrepresented by available assets; or
 - (b) repay any paid-up share capital in excess of the company's wants.
- (2) However, a company must not reduce its share capital if, as a result of the reduction, there would no longer be any member of the company holding shares other than redeemable shares.

- (3) This Division is subject to any provision of a company's articles that prohibits or restricts the reduction of the company's share capital.

206. Procedure for a company to reduce its share capital

The procedure for a company to reduce its share capital under this Division is—

- (a) by special resolution supported by a solvency statement under Subdivision 2; or
- (b) by special resolution confirmed by the Court under Subdivision 3.

207. Offence if share capital is reduced in contravention of Division

- (1) If a company reduces its share capital in contravention of this Division, the company, and every responsible person of the company, commit an offence and each is liable—
 - (a) on conviction on indictment to a fine of \$1,250,000 and to imprisonment for 5 years; or
 - (b) on summary conviction to a fine of \$150,000 and to imprisonment for 12 months.
- (2) An offence is not committed under this section in relation to a reduction of share capital by a company only because one or more directors of the company commit an offence under section 202 in making a solvency statement for the purposes of the reduction of share capital.
- (3) An offence is not committed under this section if the reduction of share capital occurs as a result of a share redemption or buy-back in accordance with Division 4 or as otherwise provided in this Ordinance.

Note—

For example, a reduction of share capital could occur as a result of an order of the Court under Part 13.

208. Liability of members following reduction of share capital

- (1) If a company's share capital is reduced under this Division, a past or present member of the company is not liable in respect of a share to a call or contribution exceeding in amount the difference (if any) between—
 - (a) the issue price of the share; and
 - (b) the aggregate of the amount paid up on the share (if any) and the amount reduced on the share.
- (2) Subsection (1) is subject to section 227.
- (3) Nothing in this section affects the rights of the contributories among themselves.

209. Reserves arising from reductions of share capital

- (1) If a company reduces its share capital in accordance with this Division, a reserve arising from the reduction is to be regarded for the purposes of Part 6 as realized profit.
- (2) Subsection (1) is subject to anything to the contrary in—
 - (a) an order of, or undertaking given to, the Court;
 - (b) the resolution for, or any other resolution relevant to, the reduction of share capital; or
 - (c) the company's articles.

Subdivision 2**Reduction of Share Capital by Special Resolution Supported by Solvency Statement****210. Special resolution for reduction of share capital**

- (1) A company may reduce its share capital by special resolution in accordance with this Subdivision.

- (2) The special resolution and the reduction of share capital take effect when the return under section 219 or 220 in relation to the reduction is registered by the Registrar.

211. Solvency statement for reduction of share capital

- (1) All directors of the company must make a solvency statement that complies with Division 2 in relation to the reduction of share capital.
- (2) The special resolution for reduction of share capital must be passed within 15 days after the date of the solvency statement.
- (3) If the special resolution is proposed as a written resolution, a copy of the solvency statement must be sent to every member of the company at or before the time when the proposed resolution is sent to them.
- (4) If the special resolution is proposed at a meeting, a copy of the solvency statement must be made available for inspection by members at the meeting.
- (5) The special resolution is not effective if subsection (3) or (4) (as applicable) is not complied with.

212. Special resolution: exercise of voting rights

- (1) If the special resolution for reduction of share capital is proposed as a written resolution, a member of the company holding shares to which the resolution relates is not an eligible member for the purposes of Subdivision 2 of Division 1 of Part 12 (written resolution) in respect of those shares.
- (2) If the special resolution is proposed at a meeting, the resolution is not effective if—
 - (a) any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares; and
 - (b) the resolution would not have been passed if the member had not done so.

- (3) For the purposes of subsection (2)—
- (a) a member holding shares to which the resolution relates is to be regarded as exercising the voting rights carried by those shares not only if the member votes in respect of them on a poll on the question whether the resolution should be passed but also if the member votes on the resolution otherwise than on a poll;
 - (b) any member of the company may demand a poll on that question; and
 - (c) a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.
- (4) The special resolution is not effective if a demand for a poll referred to in subsection (3)(b) is refused.
- (5) This section does not apply in the case of a reduction of share capital that applies equally to all issued shares in the company.

213. Public notice of reduction of share capital

- (1) Before the end of the week after the week in which the special resolution for reduction of share capital is passed, the company must publish a notice in the Gazette—
- (a) stating that the company has approved a reduction of share capital;
 - (b) specifying the amount of share capital to be reduced and the date of the special resolution;
 - (c) stating where the special resolution and solvency statement are available for inspection; and
 - (d) stating that a member of the company who did not consent to or vote in favour of the special resolution or a creditor of the company may, within 5 weeks after the date of the special resolution, apply to the Court under section 215 for cancellation of the special resolution.

- (2) Before the end of the week after the week in which the special resolution for reduction of share capital is passed, the company must also—
- (a) publish a notice to the same effect as the notice under subsection (1) in at least one specified Chinese language newspaper and at least one specified English language newspaper; or
 - (b) give written notice to that effect to each of its creditors.
- (3) If the company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (4) The company must deliver to the Registrar for registration a copy of the solvency statement no later than the day on which the company—
- (a) publishes the notice under subsection (1); or
 - (b) if earlier, first publishes the notice or gives notice to creditors under subsection (2).
- (5) If the company contravenes subsection (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

214. Inspection of special resolution and solvency statement

- (1) The company must ensure that the special resolution for reduction of share capital and the solvency statement made in relation to it are kept at its registered office or at a place prescribed by regulations made under section 648 for the period—
- (a) beginning on the day on which the company—
 - (i) publishes the notice under section 213(1); or

- (ii) if earlier, first publishes the notice or gives notice to creditors under section 213(2); and
- (b) ending 5 weeks after the date of the special resolution.
- (2) The company must permit a member or creditor of the company to inspect the special resolution and solvency statement without charge during business hours in that period.
- (3) If the company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (4) If the company contravenes subsection (2), the Court may by order require the company to permit an immediate inspection.

215. Application to Court by members or creditors

- (1) Subject to subsection (2), a member or creditor of the company may apply to the Court, within 5 weeks after the date of the special resolution for reduction of share capital, for cancellation of the resolution.
- (2) A member who consented to or voted in favour of the special resolution is not entitled to apply.
- (3) An application may be made on behalf of the persons entitled to apply by any one or more of them appointed in writing by all of them.
- (4) If an application is made under this section—
 - (a) the applicant must, as soon as possible, serve the application on the company; and
 - (b) the company must give the Registrar notice in the specified form of the application within 7 days after the day on which the application is served on the company.
- (5) If the company contravenes subsection (4)(b), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case

of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

216. Power of Court to adjourn proceedings

- (1) The Court may adjourn proceedings on an application under section 215 so that an arrangement may be made to its satisfaction for the protection of the interests of dissentient members or dissentient creditors.
- (2) The Court may give any directions and make any orders it thinks expedient for facilitating or carrying into effect any such arrangement.

217. Power of Court to confirm or cancel special resolution

- (1) On an application under section 215, the Court must make an order confirming or cancelling the special resolution for reduction of share capital, and may do so on any terms and conditions it thinks fit.
- (2) If the Court confirms the special resolution, it may by order alter or extend any date or period of time specified—
 - (a) in the special resolution; or
 - (b) in any provision of this Division applying to the special resolution or the reduction of share capital.
- (3) If the Court thinks fit, the order may—
 - (a) provide for the company to buy back the shares of any of its members and for the reduction accordingly of the company's share capital;
 - (b) provide for the protection of the interests of members or creditors of the company;
 - (c) make any alteration to the company's articles that may be required as a consequence;
 - (d) require the company not to make any, or any specified, alteration to its articles.

- (4) If the order of the Court requires the company not to make any, or any specified, alteration to its articles, the company does not have power to make any such alteration without leave of the Court.
- (5) The powers of the Court under this section do not limit its powers under section 216.

218. Company to deliver copy of order of Court to Registrar

- (1) Within 14 days after the making of an order by the Court under section 217, or within any longer period ordered by the Court, the company must deliver an office copy of the order to the Registrar for registration.

Note—

If the order of the Court makes an alteration to the company's articles, the company is also required to notify the Registrar of the alteration under section 91.

- (2) If the company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

219. Registration of return if no application to Court

- (1) If—
 - (a) no application is made under section 215 in respect of the special resolution for reduction of share capital; and
 - (b) the company delivers a return that complies with subsection (2) to the Registrar no earlier than 5 weeks and no later than 7 weeks after the date of the special resolution,

the Registrar must register the return.

Notes—

1. The special resolution and the reduction of share capital take effect when the return is registered by the Registrar (see section 210(2)).

2. The company is also required to deliver a copy of the special resolution to the Registrar within 14 days after it is passed (see section 612).
 3. If the company's articles are altered by the special resolution, the company is also required to notify the Registrar of the alteration within 14 days after it takes effect (see section 83).
- (2) The return—
 - (a) must be in the specified form;
 - (b) must contain particulars of the reduction of share capital; and
 - (c) must include a statement of capital, as at the time immediately after the reduction of share capital, that complies with section 196.

220. Registration of return if application to Court

- (1) If—
 - (a) an application is made under section 215 in respect of the special resolution for reduction of share capital;
 - (b) either—
 - (i) the Court makes an order under section 217 confirming the special resolution; or
 - (ii) the proceedings on the application are ended without determination by the Court (for example, by the withdrawal of the application); and
 - (c) the company delivers to the Registrar a return that complies with subsection (2)—
 - (i) within 14 days after the making of the order, or within any longer period ordered by the Court; or
 - (ii) within 14 days after the proceedings are ended without determination by the Court or, if there are more than one such proceedings, the last of them are so ended,

the Registrar must register the return.

Notes—

1. The special resolution and the reduction of share capital take effect when the return is registered by the Registrar (see section 210(2)).
2. The company is also required to deliver a copy of the special resolution to the Registrar within 14 days after it is passed (see section 612) and deliver an office copy of the order of the Court to the Registrar within 14 days after the making of the order, or within any longer period ordered by the Court (see section 218).

(2) The return—

- (a) must be in the specified form;
- (b) must contain particulars of the reduction of share capital; and
- (c) must include a statement of capital, as at the time immediately after the reduction of share capital, that complies with section 196.

Subdivision 3**Reduction of Share Capital Confirmed by Court****221. Special resolution and application to Court for confirmation of reduction of share capital**

- (1) A company may pass a special resolution for reduction of share capital under this Subdivision and apply by petition to the Court for an order confirming the reduction.
- (2) Unless the Court directs otherwise, section 222 (creditors entitled to object to reduction of share capital) applies if the proposed reduction of share capital involves either—
 - (a) the diminution of liability in respect of unpaid share capital; or
 - (b) the payment to a shareholder of any paid-up share capital.

- (3) The Court may direct that section 222 is not to apply to any class or classes of creditors if the Court thinks it proper to do so, having regard to any special circumstances of the case.
- (4) The Court may direct that section 222 is to apply in any other case.

222. Creditors entitled to object to reduction of share capital

- (1) If this section applies (see section 221(2) and (4)), a creditor of the company is entitled to object to the reduction of share capital if the creditor is entitled, at the date fixed by the Court, to any debt or claim that would be admissible in proof against the company if the company were to commence being wound up on that date.
- (2) The Court must settle a list of creditors entitled to object.
- (3) For that purpose, the Court—
 - (a) must ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims; and
 - (b) may publish a notice fixing a period within which, or a date by which, creditors not on the list are to claim to be entered on the list or are to be excluded from the right of objecting.
- (4) If a creditor on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of the creditor on the company securing payment of the debt or claim.
- (5) For that purpose, the debt or claim must be secured by appropriating (as the Court directs) the following amount—
 - (a) if the company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it, the full amount of the debt or claim; or

- (b) if the company does not admit, and is not willing to provide for, the full amount of the debt or claim, or if the amount is contingent or not ascertained, an amount fixed by the Court after an inquiry and adjudication as if the company were being wound up by the Court.

223. Offence in connection with creditors list

- (1) An officer of a company—
 - (a) must not intentionally or recklessly—
 - (i) conceal the name of a creditor entitled to object to the reduction of share capital; or
 - (ii) misrepresent the nature or amount of the debt or claim of a creditor; or
 - (b) must not be knowingly concerned in any such concealment or misrepresentation.
- (2) A person who contravenes subsection (1) commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$150,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

224. Order of Court confirming reduction of share capital

- (1) On an application by petition under section 221, the Court may make an order confirming the reduction of share capital on any terms and conditions it thinks fit.
- (2) The Court must not confirm the reduction of share capital unless it is satisfied, with respect to every creditor of the company who is entitled to object to the reduction of share capital under section 222, that—
 - (a) the creditor's consent has been obtained; or

- (b) the creditor's debt or claim has been discharged, has determined or has been secured.

225. Registration of order, minute and return

- (1) If—
 - (a) the Court makes an order under section 224 confirming the reduction of share capital; and
 - (b) within 14 days after the making of the order, or within any longer period ordered by the Court, the company delivers to the Registrar—
 - (i) an office copy of the order;
 - (ii) a minute that complies with subsection (2) and that is approved by the Court; and
 - (iii) a return that complies with subsection (3),
 the Registrar must register the order, minute and return.

Note—

If the order of the Court makes an alteration to the company's articles, the company is also required to notify the Registrar of the alteration under section 91.

- (2) The minute must state, with respect to the company's share capital as altered by the order—
 - (a) the amount of the share capital;
 - (b) the total number of issued shares in the company;
 - (c) the amount of each share; and
 - (d) the amount paid up and the amount (if any) remaining unpaid on each share.
- (3) The return—
 - (a) must be in the specified form;
 - (b) must contain particulars of the reduction of share capital (by reference to the order or minute, or otherwise); and

- (c) must include a statement of capital, as at the time immediately after the reduction of share capital, that complies with section 196.
- (4) The special resolution, as confirmed by the order, takes effect on registration of the order, minute and return by the Registrar.
- (5) Notice of the registration must be published in the manner directed by the Court.

226. Certification of registration

- (1) The Registrar must certify the registration of an order, minute and return under section 225.
- (2) The certificate must be signed by the Registrar or bear the Registrar's printed signature.
- (3) The certificate is conclusive evidence—
 - (a) that the requirements of this Ordinance for the reduction of share capital have been complied with; and
 - (b) that the company's share capital is as stated in the minute.

227. Liability to creditors omitted from list of creditors

- (1) This section applies to a reduction of share capital confirmed by the Court under section 224 if—
 - (a) a creditor entitled to object to the reduction of share capital was not entered on the list of creditors because the creditor was not aware—
 - (i) of the proceedings for reduction of share capital; or
 - (ii) of their nature or effect with respect to the creditor's debt or claim; and
 - (b) after the reduction of share capital the company is unable to pay the debt or claim.

- (2) A person who was a member of the company on the date of registration of the order confirming the special resolution for the reduction is liable to contribute for the payment of the debt or claim an amount not exceeding the amount that the person would have been liable to contribute if the company had commenced to be wound up on the day before that date.
- (3) If the company is wound up, the Court, on application by the creditor and proof of the creditor's lack of awareness referred to in subsection (1)(a), may, if it thinks fit—
 - (a) settle a list of persons liable to contribute under this section; and
 - (b) make and enforce calls and orders on them as if they were ordinary contributors in a winding up.
- (4) Nothing in this section affects the rights of the contributories among themselves.

Division 4**Share Redemptions and Buy-backs****Subdivision 1****Preliminary****228. Application of Division**

This Division applies to—

- (a) a company limited by shares; and
- (b) a company limited by guarantee having a share capital that was formed as, or became, such a company under a former Companies Ordinance before 13 February 2004.

Subdivision 2**Redeemable Shares****229. Issue of redeemable shares**

- (1) Subject to subsections (2) and (3), a company may issue redeemable shares.
- (2) A company's articles may prohibit or restrict the issue of redeemable shares.
- (3) A company must not issue redeemable shares at a time when there are no issued shares in the company other than redeemable shares.

230. Terms, conditions and manner of redemption

- (1) The directors of a company may determine the terms, conditions and manner of redemption of shares if they are authorized to do so—
 - (a) by the company's articles; or
 - (b) by resolution of the company.
- (2) A resolution under subsection (1)(b) may be an ordinary resolution even if it amends the company's articles.
- (3) If the directors are authorized under subsection (1) to determine the terms, conditions and manner of redemption of shares—
 - (a) they must do so before the shares are allotted; and
 - (b) any obligation of the company to state in a statement of capital the rights attached to the shares extends to the terms, conditions and manner of redemption.
- (4) If the directors are not authorized under subsection (1), the terms, conditions and manner of redemption of shares must be stated in the company's articles.

Subdivision 3**Share Buy-backs****231. General power of company to buy back its own shares**

- (1) Subject to subsections (2) and (3) and Subdivision 6, a company may buy back its own shares in accordance with—
 - (a) for a listed company, Subdivision 4;
 - (b) for an unlisted company, Subdivision 5.
- (2) A company's articles may prohibit or restrict a buy-back by the company of its own shares.
- (3) A company must not buy back its own shares if, as a result of the buy-back, there would no longer be any member of the company holding shares other than redeemable shares.

Note—

Section 262(5) provides that a buy-back that contravenes subsection (3) is void.

232. Retention and inspection of share buy-back contracts

- (1) This section applies to—
 - (a) a listed company that enters into a contract for the buy-back of its own shares that is authorized under section 235; and
 - (b) an unlisted company that—
 - (i) under an authorization under section 239, enters into a contract for the buy-back of its own shares;
 - (ii) under an authorization under section 242, agrees to a variation of a contract for the buy-back of its own shares;
 - (iii) under an authorization under section 246, agrees to release its rights under a contract for the buy-back of its own shares; or

- (iv) under an authorization under section 249, agrees to a variation of an agreement to release its rights under a contract for the buy-back of its own shares.
- (2) The company must keep at its registered office or at a place prescribed by regulations made under section 648—
 - (a) a copy of the contract or agreement if it is in writing; and
 - (b) if not, a memorandum of its terms.
- (3) The copy or memorandum must be kept from the conclusion of the contract or agreement until the end of the period of 10 years beginning on the day on which the buy-back of all the shares under the contract is completed or the day on which the contract otherwise terminates.
- (4) Subject to subsection (5), the company must make the copy or memorandum available during business hours for inspection without charge by—
 - (a) a member of the company; and
 - (b) any other person, in the case of a listed company.
- (5) The company may, by resolution, impose reasonable restrictions on the making available of the copy or memorandum for inspection, as long as not less than 2 hours per day are allowed for inspection.
- (6) If a company contravenes subsection (2) or (3), or if an inspection required under subsection (4) is refused, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (7) In the case of a refusal of an inspection required under subsection (4), the Court may by order require the company to permit an immediate inspection.
- (8) In this section—

contract (合約) includes a contingent buy-back contract.

Subdivision 4

Share Buy-backs: Listed Companies

233. Share buy-back under general offer

- (1) A listed company may buy back its own shares under a general offer that is authorized in advance by resolution of the company.
- (2) The company must include with the notice of the proposed resolution—
 - (a) a copy of the document containing the proposed general offer; and
 - (b) a statement, signed by the directors of the company, containing information that would enable a reasonable person to form a valid and justifiable opinion as to the merits of the offer.
- (3) If, under the proposed general offer, a member of the company may be compelled to dispose of the member's shares under Division 5 of Part 13 (compulsory acquisition after general offer for share buy-back)—
 - (a) the company must appoint an independent investment adviser to advise members who may be affected by the compulsory disposal on the merits of the offer; and
 - (b) the resolution authorizing the offer must be a special resolution on which no non-tendering member votes.
- (4) A person is eligible for appointment as an investment adviser under subsection (3)(a) only if—
 - (a) the person is a corporation licensed to carry on, or an authorized financial institution registered for carrying on, a business in advising on securities or advising on corporate finance under Part V of the Securities and Futures Ordinance (Cap. 571); and
 - (b) the person is not—

- (i) a member, officer, shadow director or employee of the company making the general offer or of an associated company of that company; or
 - (ii) an associated company of the company making the general offer.
- (5) For the purposes of a special resolution referred to in subsection (3)(b)—
- (a) a non-tendering member is to be regarded as voting not only if the non-tendering member votes on a poll on the question whether the resolution should be passed but also if the non-tendering member votes on the resolution otherwise than on a poll;
 - (b) any member of the company may demand a poll on that question; and
 - (c) a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.
- (6) In this section—
general offer (公開要約) has the meaning given by section 696;
non-tendering member (不售股成員) has the meaning given by section 694.

234. Share buy-back on recognized stock market or approved stock exchange

- (1) A listed company may buy back its own shares on a recognized stock market or on an approved stock exchange if the buy-back is authorized in advance by resolution of the company.
- (2) The company must include a memorandum of the terms of the proposed buy-back with the notice of the proposed resolution.
- (3) A resolution authorizing a buy-back under this section is valid for the period expiring on the date of the next annual general meeting of the company, and that period may be extended by

- the company at that annual general meeting until the date of the following annual general meeting.
- (4) In this section—
approved stock exchange (核准證券交易所) means a stock exchange approved for the purposes of this section by notice published in the Gazette by—
- (a) the Commission; and
 - (b) the recognized exchange company that operates the recognized stock market on which the shares concerned are listed.

235. Share buy-back otherwise than under section 233 or 234

- (1) A listed company may buy back its own shares otherwise than under section 233 or 234 if the contract for buy-back of the shares is authorized in advance by special resolution.
- (2) A contract may take the form of a contingent buy-back contract.
- (3) The company must include with the notice of the proposed special resolution—
 - (a) a copy of the proposed contract or, if it is not in writing, a memorandum of its terms; and
 - (b) a statement, signed by the directors of the company, after having made due and diligent inquiry of the members of the company holding the shares to which the proposed contract relates, containing information that would enable a reasonable person to form a valid and justifiable opinion as to the merits of the contract.
- (4) A special resolution under this section is not effective if—
 - (a) any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares; and

- (b) the resolution would not have been passed if the member had not done so.
- (5) For the purposes of subsection (4)—
 - (a) a member holding shares to which the resolution relates is to be regarded as exercising the voting rights carried by those shares not only if the member votes in respect of them on a poll on the question whether the resolution should be passed but also if the member votes on the resolution otherwise than on a poll;
 - (b) any member of the company may demand a poll on that question; and
 - (c) a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.
- (6) A special resolution under this section is not effective if a demand for a poll referred to in subsection (5)(b) is refused.

236. Exemptions

- (1) The Commission may exempt any listed company from any of the provisions of section 233, 234 or 235, subject to any conditions it thinks fit.
- (2) The Commission may—
 - (a) suspend or withdraw an exemption granted under subsection (1) on the ground that the conditions subject to which the exemption was granted have not been complied with or on any other ground the Commission thinks fit; or
 - (b) vary any condition imposed under subsection (1).

237. No assignment of right to buy back own shares

The following rights of a listed company are not capable of being assigned—

- (a) rights under a general offer authorized under section 233;
- (b) rights under a buy-back on a recognized stock market or on an approved stock exchange authorized under section 234;
- (c) rights under a contract authorized under section 235.

Note—

A contract authorized under section 235 includes a contingent buy-back contract authorized under that section (see section 235(2)).

238. Release of right to buy back own shares

- (1) An agreement by a listed company to release its rights under a contract authorized under section 235 or under a general offer authorized under section 233 is void unless the terms of the release agreement are authorized in advance by special resolution.
- (2) Section 235(3), (4), (5) and (6) applies to the authorization for a proposed release agreement as it applies to the authorization for a proposed contract under section 235.

Subdivision 5**Share Buy-backs: Unlisted Companies****239. Share buy-back under contract**

- (1) An unlisted company may buy back its own shares under a contract that is authorized in advance by special resolution.
- (2) A contract may take the form of a contingent buy-back contract.
- (3) The authorization for a contract may be varied, revoked or from time to time renewed by special resolution.

- (4) A special resolution conferring, varying, revoking or renewing the authorization for a contract is subject to sections 240 and 241.

240. Resolution authorizing contract: disclosure of contract details

- (1) This section applies in relation to a special resolution to confer, vary, revoke or renew the authorization for a contract under section 239.
- (2) A copy of the proposed contract (if it is in writing) or a memorandum setting out its terms (if it is not) must be made available to members—
- (a) in the case of a written resolution, by being sent to every member of the company at or before the time when the proposed resolution is sent to them; or
 - (b) in the case of a resolution proposed at a meeting, by being made available for inspection by members of the company—
 - (i) at the company's registered office or at a place prescribed by regulations made under section 648, for a period of not less than 15 days ending on the date of the meeting; and
 - (ii) at the meeting.
- (3) A memorandum referred to in subsection (2) must include the names of members holding shares to which the proposed contract relates.
- (4) A copy of a proposed contract made available under subsection (2) must have annexed to it a memorandum specifying any of those names that do not appear in the proposed contract.
- (5) The special resolution is not effective if the requirements of this section are not complied with.

241. Resolution authorizing contract: exercise of voting rights

- (1) This section applies to a special resolution to confer, vary, revoke or renew the authorization for a contract under section 239.
- (2) If the special resolution is proposed as a written resolution, a member holding shares to which the resolution relates is not an eligible member for the purposes of Subdivision 2 of Division 1 of Part 12 (written resolution) in respect of those shares.
- (3) If the special resolution is proposed at a meeting, the resolution is not effective if—
- (a) any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares; and
 - (b) the resolution would not have been passed if the member had not done so.
- (4) For the purposes of subsection (3)—
- (a) a member holding shares to which the resolution relates is to be regarded as exercising the voting rights carried by those shares not only if the member votes in respect of them on a poll on the question whether the resolution should be passed but also if the member votes on the resolution otherwise than on a poll;
 - (b) any member of the company may demand a poll on that question; and
 - (c) a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.
- (5) The special resolution is not effective if a demand for a poll referred to in subsection (4)(b) is refused.

242. Variation of authorized contract

- (1) An unlisted company may agree to a variation of a contract authorized under section 239 if the variation agreement is authorized in advance by special resolution.
- (2) The authorization for a variation agreement may be varied, revoked or from time to time renewed by special resolution.
- (3) A special resolution conferring, varying, revoking or renewing the authorization for a variation agreement is subject to sections 243 and 244.

243. Resolution authorizing variation: disclosure of details of variation

- (1) This section applies in relation to a special resolution to confer, vary, revoke or renew the authorization for a variation agreement under section 242.
- (2) A copy of the proposed variation agreement (if it is in writing) or a memorandum giving details of the proposed variation agreement (if it is not) must be made available to members—
 - (a) in the case of a written resolution, by being sent to every member of the company at or before the time when the proposed resolution is sent to them; or
 - (b) in the case of a resolution proposed at a meeting, by being made available for inspection by members of the company—
 - (i) at the company's registered office or at a place prescribed by regulations made under section 648, for a period of not less than 15 days ending on the date of the meeting; and
 - (ii) at the meeting.
- (3) There must also be made available to members in accordance with subsection (2) a copy of the original contract or memorandum, together with any variations previously made.

- (4) A memorandum referred to in subsection (2) must include the names of members holding shares to which the proposed variation agreement relates.
- (5) A copy of a proposed variation agreement made available under subsection (2) must have annexed to it a memorandum specifying any of those names that do not appear in the proposed variation agreement.
- (6) The special resolution is not effective if the requirements of this section are not complied with.

244. Resolution authorizing variation: exercise of voting rights

- (1) This section applies to a special resolution to confer, vary, revoke or renew the authorization for a variation agreement under section 242.
- (2) If the special resolution is proposed as a written resolution, a member holding shares to which the resolution relates is not an eligible member for the purposes of Subdivision 2 of Division 1 of Part 12 (written resolution) in respect of those shares.
- (3) If the special resolution is proposed at a meeting, the resolution is not effective if—
 - (a) any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares; and
 - (b) the resolution would not have been passed if the member had not done so.
- (4) For the purposes of subsection (3)—
 - (a) a member holding shares to which the resolution relates is to be regarded as exercising the voting rights carried by those shares not only if the member votes in respect of them on a poll on the question whether the resolution should be passed but also if the member votes on the resolution otherwise than on a poll;

- (b) any member of the company may demand a poll on that question; and
 - (c) a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.
- (5) The special resolution is not effective if a demand for a poll referred to in subsection (4)(b) is refused.

245. No assignment of right to buy back own shares

The rights of an unlisted company under a contract authorized under section 239 (as varied from time to time under section 242) are not capable of being assigned.

246. Release of right to buy back own shares

- (1) An agreement by an unlisted company to release its rights under a contract authorized under section 239 (as varied from time to time under section 242) is void unless the terms of the release agreement are authorized in advance by special resolution.
- (2) The authorization for a release agreement may be varied, revoked or from time to time renewed by special resolution.
- (3) A special resolution conferring, varying, revoking or renewing the authorization for a release agreement is subject to sections 247 and 248.

247. Resolution authorizing release: disclosure of details of release

- (1) This section applies in relation to a special resolution to confer, vary, revoke or renew the authorization for a release agreement under section 246.
- (2) A copy of the proposed release agreement (if it is in writing) or a memorandum giving details of the proposed release agreement (if it is not) must be made available to members—

- (a) in the case of a written resolution, by being sent to every member of the company at or before the time when the proposed resolution is sent to them; or
 - (b) in the case of a resolution proposed at a meeting, by being made available for inspection by members of the company—
 - (i) at the company's registered office or at a place prescribed by regulations made under section 648, for a period of not less than 15 days ending on the date of the meeting; and
 - (ii) at the meeting.
- (3) There must also be made available to members in accordance with subsection (2) a copy of the original contract or memorandum, together with any variations previously made.
- (4) A memorandum referred to in subsection (2) must include the names of members holding shares to which the proposed release agreement relates.
- (5) A copy of a proposed release agreement made available under subsection (2) must have annexed to it a memorandum specifying any of those names that do not appear in the proposed release agreement.
- (6) The special resolution is not effective if the requirements of this section are not complied with.

248. Resolution authorizing release: exercise of voting rights

- (1) This section applies to a special resolution to confer, vary, revoke or renew the authorization for a release agreement under section 246.
- (2) If the special resolution is proposed as a written resolution, a member holding shares to which the resolution relates is not an eligible member for the purposes of Subdivision 2 of Division 1 of Part 12 (written resolution) in respect of those shares.

- (3) If the special resolution is proposed at a meeting, the resolution is not effective if—
 - (a) any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares; and
 - (b) the resolution would not have been passed if the member had not done so.
- (4) For the purposes of subsection (3)—
 - (a) a member holding shares to which the resolution relates is to be regarded as exercising the voting rights carried by those shares not only if the member votes in respect of them on a poll on the question whether the resolution should be passed but also if the member votes on the resolution otherwise than on a poll;
 - (b) any member of the company may demand a poll on that question; and
 - (c) a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.
- (5) The special resolution is not effective if a demand for a poll referred to in subsection (4)(b) is refused.

249. Variation of release of right to buy back own shares

- (1) An unlisted company may agree to a variation of a release agreement authorized under section 246 if the variation agreement is authorized in advance by special resolution.
- (2) The authorization for a variation agreement may be varied, revoked or from time to time renewed by special resolution.
- (3) A special resolution conferring, varying, revoking or renewing the authorization for a variation agreement is subject to sections 250 and 251.

250. Resolution authorizing variation of release: disclosure of details of variation

- (1) This section applies in relation to a special resolution to confer, vary, revoke or renew the authorization for a variation agreement under section 249.
- (2) A copy of the proposed variation agreement (if it is in writing) or a memorandum giving details of the proposed variation agreement (if it is not) must be made available to members—
 - (a) in the case of a written resolution, by being sent to every member of the company at or before the time when the proposed resolution is sent to them; or
 - (b) in the case of a resolution proposed at a meeting, by being made available for inspection by members of the company—
 - (i) at the company's registered office or at a place prescribed by regulations made under section 648, for a period of not less than 15 days ending on the date of the meeting; and
 - (ii) at the meeting.
- (3) There must also be made available to members in accordance with subsection (2) a copy of the original release agreement or memorandum, together with any variations previously made.
- (4) A memorandum referred to in subsection (2) must include the names of members holding shares to which the proposed variation agreement relates.
- (5) A copy of a proposed variation agreement made available under subsection (2) must have annexed to it a memorandum specifying any of those names that do not appear in the proposed variation agreement.
- (6) The special resolution is not effective if the requirements of this section are not complied with.

251. Resolution authorizing variation of release: exercise of voting rights

- (1) This section applies to a special resolution to confer, vary, revoke or renew the authorization for a variation agreement under section 249.
- (2) If the special resolution is proposed as a written resolution, a member holding shares to which the resolution relates is not an eligible member for the purposes of Subdivision 2 of Division 1 of Part 12 (written resolution) in respect of those shares.
- (3) If the special resolution is proposed at a meeting, the resolution is not effective if—
 - (a) any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares; and
 - (b) the resolution would not have been passed if the member had not done so.
- (4) For the purposes of subsection (3)—
 - (a) a member holding shares to which the resolution relates is to be regarded as exercising the voting rights carried by those shares not only if the member votes in respect of them on a poll on the question whether the resolution should be passed but also if the member votes on the resolution otherwise than on a poll;
 - (b) any member of the company may demand a poll on that question; and
 - (c) a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.
- (5) The special resolution is not effective if a demand for a poll referred to in subsection (4)(b) is refused.

Subdivision 6**Payment for Share Redemptions and Buy-backs****252. Payment for redemption or buy-back**

- (1) If a company redeems or buys back its own shares, the shares must be paid for on redemption or buy-back.
- (2) Subject to subsections (3) and (4), a company may make a payment in respect of a redemption or buy-back of its own shares—
 - (a) out of the company's distributable profits;
 - (b) out of the proceeds of a fresh issue of shares made for the purpose of the redemption or buy-back; or
 - (c) out of capital in accordance with this Subdivision.
- (3) A listed company must not make a payment out of capital in respect of a buy-back of its own shares on a recognized stock market or on an approved stock exchange under section 234.
- (4) Subject to subsection (3), a payment referred to in subsection (5) may be made by a company only—
 - (a) out of the company's distributable profits; or
 - (b) out of capital in accordance with this Subdivision.
- (5) Subsection (4) applies to a payment by a company in consideration of any of the following—
 - (a) the company acquiring any right with respect to the buy-back of its own shares under Subdivision 4 or 5;
 - (b) the variation of a contract authorized under Subdivision 5; or
 - (c) the release, or variation of the release, of any of the company's obligations with respect to the buy-back of any of its own shares under Subdivision 4 or 5.

253. Special resolution for payment out of capital

- (1) Subject to section 252(3), a company may make a payment out of capital in respect of the redemption or buy-back of its own shares by special resolution in accordance with this Subdivision.
- (2) Subject to section 258, the payment out of capital and the redemption or buy-back must be made no earlier than 5 weeks and no later than 7 weeks after the date of the special resolution.

Note—

The Court has power to alter or extend this period (see section 260).

254. Solvency statement for payment out of capital

- (1) All directors of the company must make a solvency statement that complies with Division 2 in relation to the payment out of capital.
- (2) The special resolution for payment out of capital must be passed within 15 days after the date of the solvency statement.
- (3) If the special resolution is proposed as a written resolution, a copy of the solvency statement must be sent to every member of the company at or before the time when the proposed resolution is sent to them.
- (4) If the special resolution is proposed at a meeting, a copy of the solvency statement must be made available for inspection by members at the meeting.
- (5) The special resolution is not effective if subsection (3) or (4) (as applicable) is not complied with.

255. Special resolution: exercise of voting rights

- (1) If the special resolution for payment out of capital is proposed as a written resolution, a member of the company holding shares to which the resolution relates is not an eligible

member for the purposes of Subdivision 2 of Division 1 of Part 12 (written resolution) in respect of those shares.

- (2) If the special resolution for payment out of capital is proposed at a meeting, the resolution is not effective if—
 - (a) any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares; and
 - (b) the resolution would not have been passed if the member had not done so.
- (3) For the purposes of subsection (2)—
 - (a) a member holding shares to which the resolution relates is to be regarded as exercising the voting rights carried by those shares not only if the member votes in respect of them on a poll on the question whether the resolution should be passed but also if the member votes on the resolution otherwise than on a poll;
 - (b) any member of the company may demand a poll on that question; and
 - (c) a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.
- (4) The special resolution is not effective if a demand for a poll referred to in subsection (3)(b) is refused.
- (5) This section does not apply to a buy-back by a listed company under a general offer in accordance with section 233.

256. Public notice of payment out of capital

- (1) Before the end of the week after the week in which the special resolution for payment out of capital is passed, the company must publish a notice in the Gazette—
 - (a) stating that the company has approved a payment out of capital;

- (b) specifying the amount of the payment out of capital and the date of the special resolution;
 - (c) stating where the special resolution and solvency statement are available for inspection; and
 - (d) stating that a member of the company who did not consent to or vote in favour of the special resolution or a creditor of the company may, within 5 weeks after the date of the special resolution, apply to the Court under section 258 for cancellation of the special resolution.
- (2) Before the end of the week after the week in which the special resolution for payment out of capital is passed, the company must also—
- (a) publish a notice to the same effect as the notice under subsection (1) in at least one specified Chinese language newspaper and at least one specified English language newspaper; or
 - (b) give written notice to that effect to each of its creditors.
- (3) If the company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (4) The company must deliver to the Registrar for registration a copy of the solvency statement no later than the day on which the company—
- (a) publishes the notice under subsection (1); or
 - (b) if earlier, first publishes the notice or gives notice to creditors under subsection (2).
- (5) If the company contravenes subsection (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

257. Inspection of special resolution and solvency statement

- (1) The company must ensure that the special resolution for payment out of capital and the solvency statement made in relation to it are kept at its registered office or at a place prescribed by regulations made under section 648 for the period—
- (a) beginning on the day on which the company—
 - (i) publishes the notice under section 256(1); or
 - (ii) if earlier, first publishes the notice or gives notice to creditors under section 256(2); and
 - (b) ending 5 weeks after the date of the special resolution.
- (2) The company must permit a member or creditor of the company to inspect the special resolution and solvency statement without charge during business hours in that period.
- (3) If the company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (4) If the company contravenes subsection (2), the Court may by order require the company to permit an immediate inspection.

258. Application to Court by members or creditors

- (1) Subject to subsection (2), a member or creditor of the company may apply to the Court, within 5 weeks after the date of the special resolution for payment out of capital, for cancellation of the resolution.
- (2) A member who consented to or voted in favour of the special resolution is not entitled to apply.
- (3) An application may be made on behalf of the persons entitled to apply by any one or more of them appointed in writing by all of them.

- (4) If an application is made under this section—
- (a) the applicant must, as soon as possible, serve the application on the company; and
 - (b) the company must give the Registrar notice in the specified form of the application within 7 days after the day on which the application is served on the company.
- (5) If the company contravenes subsection (4)(b), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

259. Power of Court to adjourn proceedings

- (1) The Court may adjourn proceedings on an application under section 258 so that an arrangement may be made to its satisfaction for the protection of the interests of dissentient members or dissentient creditors.
- (2) The Court may give any directions and make any orders it thinks expedient for facilitating or carrying into effect any such arrangement.

260. Power of Court to confirm or cancel special resolution

- (1) On an application under section 258, the Court must make an order confirming or cancelling the special resolution for payment out of capital, and may do so on any terms and conditions it thinks fit.
- (2) If the Court confirms the special resolution, it may by order alter or extend any date or period of time specified—
 - (a) in the special resolution; or
 - (b) in any provision of this Division applying to the special resolution, the payment out of capital or the redemption or buy-back.
- (3) If the Court thinks fit, the order may—

- (a) provide for the company to buy back the shares of any of its members and for the reduction accordingly of the company's share capital;
 - (b) provide for the protection of the interests of members or creditors of the company;
 - (c) make any alteration to the company's articles that may be required as a consequence;
 - (d) require the company not to make any, or any specified, alteration to its articles.
- (4) If the order of the Court requires the company not to make any, or any specified, alteration to its articles, the company does not have power to make any such alteration without leave of the Court.
- (5) The powers of the Court under this section do not limit its powers under section 259.

261. Company to deliver copy of order of Court to Registrar

- (1) Within 14 days after the making of an order by the Court under section 260, or within any longer period ordered by the Court, the company must deliver an office copy of the order to the Registrar for registration.

Note—

If the order of the Court makes an alteration to the company's articles, the company is also required to notify the Registrar of the alteration under section 91.

- (2) If the company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

Subdivision 7**General Provisions****262. General prohibition on acquisition of own shares**

- (1) Except as provided by this Ordinance, a company must not acquire its own shares, whether by redemption, buy-back, subscription or otherwise.
- (2) If a company contravenes subsection (1), an offence is committed by—
 - (a) the company;
 - (b) every responsible person of the company; and
 - (c) every non-tendering member of the company (as defined by section 694) who knowingly permits the contravention.
- (3) A person who commits an offence under subsection (2) is liable—
 - (a) on conviction on indictment to a fine of \$1,250,000 and to imprisonment for 5 years; or
 - (b) on summary conviction to a fine of \$150,000 and to imprisonment for 12 months.
- (4) Subject to subsection (5) and Division 2 of Part 14 (remedies for unfair prejudice to members' interests), a redemption or buy-back of shares by a company under this Division is not void only because of a failure to comply with this Division.
- (5) A buy-back that contravenes section 231(3) is void.

263. No redemption or buy-back of unpaid or partly-paid shares

A company must not redeem or buy back its own shares unless they are fully paid.

264. Effect of redemption or buy-back

- (1) Shares redeemed or bought back under this Division are to be regarded as cancelled on redemption or buy-back.
- (2) On redemption or buy-back of its own shares, a company must—
 - (a) reduce the amount of its share capital if the shares were redeemed or bought back out of capital;
 - (b) reduce the amount of its profits if the shares were redeemed or bought back out of profits; or
 - (c) reduce the amount of its share capital and profits proportionately if the shares were redeemed or bought back out of both capital and profits,
 by the total amount of the price paid by the company for the shares.

265. Fresh issue of shares before redemption or buy-back

- (1) If a company is about to redeem or buy back its own shares, the company may issue shares up to the value of the shares to be redeemed or bought back as if those shares had never been issued.
- (2) If the shares to be redeemed or bought back are redeemed or bought back within one month after new shares are issued under subsection (1), no fee is payable by the company under section 137(3) on a return of allotment of the new shares.

266. Return of share redemption or buy-back

- (1) A company that redeems or buys back any shares under this Division must, within 14 days after the date on which the shares are delivered to the company, deliver a return to the Registrar for registration.
- (2) The return—
 - (a) must be in the specified form;

- (b) must state, for the shares of each class redeemed or bought back—
 - (i) the number of shares; and
 - (ii) the date on which they were delivered to the company;
- (c) must include a statement of capital, as at the time immediately after the redemption or buy-back, that complies with section 196;
- (d) in the case of a listed company, must also state, for the shares of each class redeemed or bought back—
 - (i) the maximum and minimum prices paid in respect of the shares; and
 - (ii) the aggregate amount paid by the company for the shares; and
- (e) in the case of a redemption or buy-back financed by a payment out of capital, must also state particulars of the payment including the date and amount of the payment.

Note—

If the redemption or buy-back results in an alteration of the company's articles, the company is also required to notify the Registrar of the alteration within 14 days after it takes effect (see section 83).

- (3) Details of shares delivered to the company on different dates and under different contracts may be included in a single return. If this is done, the amount required to be stated under subsection (2)(d)(ii) is the aggregate amount paid by the company for all the shares to which the return relates.
- (4) If the company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.

267. Effect of company's failure to redeem or buy back

- (1) This section applies if, under this Division, a company—
 - (a) issues redeemable shares; or
 - (b) agrees to buy back any of its own shares.
- (2) The company is not liable in damages for any failure on its part to redeem or buy back any of the shares.
- (3) Subsection (2) is without prejudice to any right of the holder of the shares other than the right to sue the company for damages for the failure.
- (4) A court must not grant an order for specific performance of the terms of the redemption or buy-back if the company shows that it is unable to make a payment in respect of the redemption or buy-back out of distributable profits.

268. Effect on winding up of company's failure to redeem or buy back

- (1) This section applies if—
 - (a) a company—
 - (i) issues redeemable shares under this Division; or
 - (ii) agrees to buy back any of its own shares under this Division;
 - (b) the company is wound up; and
 - (c) at the commencement of the winding up any of those shares have not been redeemed or bought back.
- (2) The terms of the redemption or buy-back may be enforced against the company.
- (3) Subsection (2) does not apply if—
 - (a) the terms of the redemption or buy-back provided for the redemption or buy-back to take place at a date later than that of the commencement of the winding up; or
 - (b) during the period—

- (i) beginning on the day on which the redemption or buy-back was to have taken place; and
 - (ii) ending on the commencement of the winding up, the company could not at any time have lawfully made a payment in respect of the redemption or buy-back out of distributable profits.
- (4) Shares are to be regarded as cancelled when they are redeemed or bought back under subsection (2).
- (5) The following must be paid in priority to any amount that the company is liable under subsection (2) to pay in respect of any shares—
- (a) all other debts and liabilities of the company (other than any due to members in their capacity as such); and
 - (b) if other shares carry rights (whether as to capital or income) that are preferred to the rights as to capital attaching to those shares, any amount due in satisfaction of those preferred rights.
- (6) Subject to subsection (5), any amount payable under subsection (2) must be paid in priority to any amounts due to members in satisfaction of their rights (whether as to capital or income) as members.
- (7) If, under section 264A of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), a creditor of a company is entitled to payment of any interest only after payment of all other debts of the company, the company's debts and liabilities for the purposes of subsection (5) include the liability to pay that interest.

269. Power to modify by regulation

- (1) The Chief Executive in Council may make regulations modifying any of the provisions of this Division with respect to—

- (a) the authorization required for a company to buy back its own shares;
 - (b) the authorization required for the release by a company of its rights under a contract for the buy-back of its own shares, including a contingent buy-back contract; and
 - (c) the information to be included in a return by a company to the Registrar in relation to a share redemption or buy-back.
- (2) Regulations made under this section are subject to the approval of the Legislative Council.

Division 5

Financial Assistance for Acquisition of Own Shares

Subdivision 1

Preliminary

270. Interpretation

- (1) In this Division—

financial assistance (資助) means—

- (a) financial assistance given by way of gift;
- (b) financial assistance given—
 - (i) by way of guarantee, security or indemnity (other than an indemnity in respect of the indemnifier's own neglect or default); or
 - (ii) by way of release or waiver;
- (c) financial assistance given—
 - (i) by way of a loan or any other agreement under which any of the obligations of the person giving the assistance are to be fulfilled at a time when in

accordance with the agreement any obligation of another party to the agreement remains unfulfilled; or

- (ii) by way of the novation of, or the assignment of rights arising under, a loan or other agreement referred to in subparagraph (i); or
- (d) any other financial assistance given by a company if—
 - (i) the net assets of the company are reduced to a material extent by the giving of the assistance; or
 - (ii) the company has no net assets;

liabilities (負債) includes any amount retained as reasonably necessary for the purpose of providing for any liability or loss that is—

- (a) likely to be incurred; or
- (b) certain to be incurred but uncertain as to the amount or as to the date on which it will arise;

net assets (淨資產) of a company that gives any financial assistance under this Division, means the amount by which the aggregate of the company's assets exceeds the aggregate of its liabilities (taking the amount of both assets and liabilities to be as stated in the company's accounting records immediately before the financial assistance is given).

- (2) In this Division—
 - (a) a reference to a person incurring a liability includes the person changing their financial position by making an agreement or arrangement (whether enforceable or unenforceable, and whether made on the person's own account or with any other person) or by any other means; and
 - (b) a reference to a company giving financial assistance for the purpose of reducing or discharging a liability incurred by a person for the purpose of the acquisition of shares includes the company giving financial assistance

for the purpose of wholly or partly restoring the person's financial position to what it was before the acquisition took place.

Subdivision 2

General Prohibition on Financial Assistance for Acquisition of Own Shares

271. Prohibition on financial assistance for acquisition of shares or for reducing or discharging liability for acquisition

- (1) If a person is acquiring or proposing to acquire shares in a company or its holding company, the company must not give financial assistance directly or indirectly for the purpose of the acquisition before or at the same time as the acquisition takes place, except as provided by this Division.
- (2) If—
 - (a) a person has acquired shares in a company or its holding company; and
 - (b) any person has incurred a liability for the purpose of the acquisition,

the company must not give financial assistance directly or indirectly for the purpose of reducing or discharging the liability, except as provided by this Division.

- (3) This section does not apply to the giving of financial assistance by a company for the purpose of the acquisition of a share in its holding company or for the purpose of reducing or discharging a liability incurred for such an acquisition if the holding company is a company incorporated outside Hong Kong.
- (4) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine of \$150,000 and to imprisonment for 12 months.

272. Consequences of failing to comply with Division

If a company gives financial assistance in contravention of this Division, the validity of the financial assistance and of any contract or transaction connected with it is not affected only because of the contravention.

Note—

Offences may be committed by the company and a responsible person of the company for contravention of certain provisions of this Division (see for example section 271(4)).

Subdivision 3**Exceptions from Prohibition****273. General exceptions**

This Division does not prohibit any of the following transactions—

- (a) the distribution of a company's assets—
 - (i) by way of dividend lawfully made; or
 - (ii) in the course of winding up the company;
- (b) the allotment of bonus shares;
- (c) the reduction of a company's share capital in accordance with Division 3;
- (d) the redemption or buy-back of a company's own shares in accordance with Division 4;
- (e) anything done in accordance with a court order under Division 2 of Part 13 (arrangements and compromises);
- (f) anything done under an arrangement made under section 237 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (power of liquidator to accept shares, etc., as consideration for sale of property of company);

- (g) anything done under an arrangement made between a company and its creditors that is binding on the creditors because of section 254 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (arrangement, when binding on creditors).

274. Principal purpose exception

This Division does not prohibit a company from giving financial assistance for the purpose of the acquisition of a share in the company or its holding company or for the purpose of reducing or discharging a liability incurred for such an acquisition if—

- (a) either—
 - (i) the company's principal purpose in giving the assistance is not to give it for the purpose of the acquisition of a share in the company or its holding company or for the purpose of reducing or discharging a liability incurred for such an acquisition; or
 - (ii) the giving of the assistance for the purpose of the acquisition of a share in the company or its holding company or for the purpose of reducing or discharging a liability incurred for such an acquisition is only an incidental part of some larger purpose of the company; and
- (b) the assistance is given in good faith in the interests of the company.

275. Exception for money lending businesses

Subject to section 278, this Division does not prohibit the lending of money by a company in the ordinary course of business if the lending of money is part of the ordinary business of the company.

276. Exception for employee share schemes

- (1) Subject to section 278, this Division does not prohibit—

- (a) the giving by a company, in good faith in the interests of the company, of financial assistance for the purposes of an employee share scheme; or
- (b) the giving of financial assistance by a company for the purposes of, or in connection with, anything done by the company or another company in the same group of companies for the purposes of enabling or facilitating transactions in shares in the company or its holding company between, and involving the acquisition of beneficial ownership of those shares by—
 - (i) persons employed or formerly employed in good faith by that company or another company in the same group of companies; or
 - (ii) spouses, widows, widowers, or minor children of persons referred to in subparagraph (i).

(2) In this section—

children (子女) includes step-children and illegitimate children;

employee share scheme (僱員參股計劃) means a scheme for encouraging or facilitating the holding of shares in a company by or for the benefit of—

- (a) persons employed or formerly employed in good faith by that company or another company in the same group of companies; or
- (b) spouses, widows, widowers, or minor children of persons referred to in paragraph (a);

minor children (未成年子女) means children who are under 18 years of age.

277. Exception for loans to employees

- (1) Subject to section 278, this Division does not prohibit the making by a company of loans to its eligible employees for the purpose of enabling them to acquire fully paid shares in

the company or its holding company to be held by them by way of beneficial ownership.

(2) In this section—

child (子女) includes step-child and illegitimate child;

eligible employees (合資格的僱員), in relation to a company, means persons employed in good faith by the company, other than—

- (a) a director of the company;
- (b) a director's spouse;
- (c) a director's child who is under 18 years of age;
- (d) a trustee of a trust (other than an employee share scheme as defined by section 276(2) or a pension scheme)—
 - (i) the beneficiaries of which include a person referred to in paragraph (a), (b) or (c); or
 - (ii) the terms of which confer a power on the trustees that may be exercised for the benefit of a person referred to in paragraph (a), (b) or (c); or
- (e) a partner of a person referred to in paragraph (a), (b) or (c) or of a trustee referred to in paragraph (d).

278. Special restriction for listed companies

Section 275, 276 or 277 applies to a listed company only if—

- (a) the company has net assets that are not reduced by the giving of the financial assistance; or
- (b) to the extent that those assets are reduced, the assistance is provided by a payment out of distributable profits.

Subdivision 4**Authorization for Giving Financial Assistance****279. Financial assistance not exceeding 5% of shareholders funds**

- (1) A company may give financial assistance for the purpose of the acquisition of a share in the company or its holding company or for the purpose of reducing or discharging a liability incurred for such an acquisition if—
- (a) the directors resolve, before the assistance is given, that—
 - (i) the company should give the assistance;
 - (ii) giving the assistance is in the best interests of the company; and
 - (iii) the terms and conditions under which the assistance is to be given are fair and reasonable to the company;
 - (b) on the same day that the directors pass the resolution, the directors who vote in favour of it make a solvency statement that complies with Division 2 in relation to the giving of the assistance;
 - (c) the aggregate amount of the assistance and any other financial assistance given under this section that has not been repaid does not exceed 5% of the aggregate amount received by the company in respect of the issue of shares and the reserves of the company (as that aggregate amount is disclosed in the most recent audited financial statements of the company);
 - (d) the company receives fair value in connection with the giving of the assistance; and
 - (e) the assistance is given not more than 12 months after the day on which the solvency statement is made under paragraph (b).

- (2) The resolution of the directors under subsection (1)(a) must set out in full the grounds for their conclusions as to the matters referred to in subsection (1)(a)(i), (ii) and (iii).
- (3) A reference in subsection (1)(c) to any other financial assistance given under this section that has not been repaid includes the amount of any financial assistance given in the form of a guarantee or security for which the company remains liable at the time the financial assistance in question is given.
- (4) Within 15 days after giving financial assistance under this section, the company must send to each member of the company a copy of the solvency statement made under subsection (1)(b) and a notice containing the following information—
 - (a) the class and number of shares in respect of which the assistance was given;
 - (b) the consideration paid or payable for those shares;
 - (c) the name of the person receiving the assistance and, if a different person, the name of the beneficial owner of those shares;
 - (d) the nature, the terms and, if quantifiable, the amount of the assistance.
- (5) If the company contravenes subsection (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

Note—

If the giving of financial assistance by a company would result in a reduction in the company's share capital, the company must also comply with Division 3.

280. Financial assistance with approval of all members

- (1) A company may give financial assistance for the purpose of the acquisition of a share in the company or its holding company or for the purpose of reducing or discharging a liability incurred for such an acquisition if—
- (a) the directors resolve, before the assistance is given, that—
 - (i) the company should give the assistance;
 - (ii) giving the assistance is in the best interests of the company; and
 - (iii) the terms and conditions under which the assistance is to be given are fair and reasonable to the company;
 - (b) on the same day that the directors pass the resolution, the directors who vote in favour of it make a solvency statement that complies with Division 2 in relation to the giving of the assistance;
 - (c) the giving of the assistance is approved by written resolution of all members of the company before the assistance is given; and
 - (d) the assistance is given not more than 12 months after the day on which the solvency statement is made under paragraph (b).
- (2) The resolution of the directors under subsection (1)(a) must set out in full the grounds for their conclusions as to the matters referred to in subsection (1)(a)(i), (ii) and (iii).

Note—

If the giving of financial assistance by a company would result in a reduction in the company's share capital, the company must also comply with Division 3.

281. Financial assistance by ordinary resolution

- (1) A company may give financial assistance for the purpose of the acquisition of a share in the company or its holding company or for the purpose of reducing or discharging a liability incurred for such an acquisition if—
- (a) the directors resolve, before the assistance is given, that—
 - (i) the company should give the assistance;
 - (ii) giving the assistance is in the best interests of the company and is of benefit to those members of the company not receiving the assistance; and
 - (iii) the terms and conditions under which the assistance is to be given are fair and reasonable to the company and to those members not receiving the assistance;
 - (b) on the same day that the directors pass the resolution, the directors who vote in favour of it make a solvency statement that complies with Division 2 in relation to the giving of the assistance;
 - (c) the company sends to each member of the company a copy of the solvency statement made under paragraph (b) and a notice containing the following information—
 - (i) the nature and terms of the assistance and the name of the person to whom it will be given;
 - (ii) if it will be given to a nominee for another person, the name of that other person;
 - (iii) the text of the resolution of the directors;
 - (iv) any further information and explanation that would be necessary for a reasonable member to understand the nature of the assistance and the implications of giving it for the company and the members;

- (d) the giving of the assistance is approved by resolution of the company before the assistance is given; and
- (e) the assistance is given—
 - (i) not less than 28 days after the day on which the resolution is passed under paragraph (d); and
 - (ii) not more than 12 months after the day on which the solvency statement is made under paragraph (b).
- (2) The notice and copy of the solvency statement must be sent to each member under subsection (1)(c) at least 14 days before the day on which the resolution under subsection (1)(d) is proposed and may accompany notice of the meeting at which the resolution will be proposed.
- (3) Despite subsection (1)(e)(i), if an application is made to the Court under section 282 in relation to the giving of financial assistance under this section, the financial assistance must not be given until the application is finally determined, unless the Court orders otherwise.
- (4) The resolution of the directors under subsection (1)(a) must set out in full the grounds for their conclusions as to the matters referred to in subsection (1)(a)(i), (ii) and (iii).

Note—

If the giving of financial assistance by a company would result in a reduction in the company's share capital, the company must also comply with Division 3.

282. Application to Court for restraining order

- (1) Within 28 days after the day on which a resolution for the giving of financial assistance is passed under section 281(1)(d), an application to the Court for an order restraining the giving of financial assistance may be made—
 - (a) if the company is limited by shares, by members representing at least 10% of the total voting rights of holders of shares in the company; or

- (b) in any other case, by members representing at least 10% of the members of the company.
- (2) Despite subsection (1), a member who consented to or voted in favour of the resolution is not entitled to apply.
- (3) An application may be made on behalf of the members entitled to apply by any one or more of them appointed in writing by all of them.
- (4) An application under this section may be made only on the ground that—
 - (a) the giving of the assistance is not—
 - (i) in the best interests of the company; or
 - (ii) of benefit to those members of the company not receiving the assistance; or
 - (b) the terms and conditions under which the assistance is to be given are not fair and reasonable to—
 - (i) the company; or
 - (ii) those members not receiving the assistance.
- (5) If an application is made under this section—
 - (a) the applicant must, as soon as possible, serve the application on the company; and
 - (b) the company must give the Registrar notice in the specified form of the application within 7 days after the day on which the application is served on the company.
- (6) If the company contravenes subsection (5)(b), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

283. Power of Court to adjourn application

- (1) The Court may adjourn proceedings on an application under section 282 so that an arrangement may be made to its

satisfaction for the protection of the interests of dissentient members.

- (2) The Court may give any directions and make any orders it thinks expedient for facilitating or carrying into effect any such arrangement.

284. Power of Court to confirm or restrain giving of financial assistance

- (1) On an application under section 282, the Court must make an order confirming or restraining the giving of financial assistance, and may do so on any terms and conditions it thinks fit.
- (2) If the Court confirms the giving of financial assistance, it may by order alter or extend any date or period of time specified—
 - (a) in the directors' resolution under section 281(1)(a) or the resolution of the company under section 281(1)(d); or
 - (b) in any provision of this Division applying to the giving of financial assistance.
- (3) If the Court thinks fit, the order may—
 - (a) provide for the company to buy back the shares of any of its members and for the reduction accordingly of the company's share capital;
 - (b) make any alteration to the company's articles that may be required as a consequence;
 - (c) require the company not to make any, or any specified, alteration to its articles.
- (4) If the order of the Court requires the company not to make any, or any specified, alteration to its articles, the company does not have power to make any such alteration without leave of the Court.
- (5) The powers of the Court under this section do not limit its powers under section 283.

285. Company to deliver copy of order of Court to Registrar

- (1) Within 14 days after the making of an order by the Court under section 284, or within any longer period ordered by the Court, the company must deliver an office copy of the order to the Registrar for registration.

Note—

If the order of the Court makes an alteration to the company's articles, the company is also required to notify the Registrar of the alteration under section 91.

- (2) If the company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

Part 6**Distribution of Profits and Assets****Division 1****Preliminary****286. Interpretation**

(1) In this Part—

called up share capital (已催繳股本), in relation to a company, means so much of its share capital as equals the aggregate amount of the calls made on its shares (whether or not those calls have been paid), together with—

- (a) any share capital paid up without being called; and
- (b) any share capital to be paid on a specified future date under the articles, the terms of allotment of the relevant shares, or any other arrangements for payment of those shares,

and *uncalled share capital* (未催繳股本) is to be read accordingly;

capitalization (資本化), in relation to a company's profits, means any of the following operations (whenever carried out)—

- (a) applying the profits in wholly or partly paying up unissued shares in the company to be allotted to members of the company as fully or partly paid bonus shares;
- (b) transferring the profits to share capital;

distribution (分派) means every description of distribution of a company's assets to its members, whether in cash or otherwise, except distribution by way of—

- (a) an issue of shares as fully or partly paid bonus shares;
- (b) a redemption or buy-back of any shares in the company out of capital (including the proceeds of any fresh issue of shares), or out of unrealized profits, in accordance with Division 4 of Part 5;
- (c) a reduction of share capital by extinguishing or reducing any member's liability on any of the company's shares in respect of share capital not paid up, or by repaying paid up share capital;
- (d) a distribution of assets to the members on the company's winding up; or
- (e) financial assistance given by the company to a member under section 279, 280 or 281;

financial assistance (資助) has the meaning given by section 270(1);

financial items (財務項目) means all of the following—

- (a) profits, losses, assets and liabilities;
- (b) provisions;
- (c) share capital and reserves (including undistributable reserves);

net assets (淨資產), in relation to a company, means the aggregate of the company's assets less the aggregate of its liabilities;

undistributable reserves (不可分派的儲備), in relation to a company, means—

- (a) subject to subsection (2), the amount by which the company's accumulated, unrealized profits, so far as not previously utilized by capitalization, exceeds its accumulated, unrealized losses, so far as not previously written off in a reduction or reorganization of capital; or
- (b) any other reserve that the company is prohibited from distributing by an Ordinance (other than this Part) or by its articles.

- (2) In paragraph (a) of the definition of *undistributable reserves* in subsection (1), a reference to capitalization excludes a transfer of profits of the company to its capital redemption reserve on or after 1 September 1991.
- (3) In this Part—
 - (a) a reference to profits of any particular description is a reference to profits of that description made at any time; and
 - (b) a reference to losses of any particular description is a reference to losses of that description made at any time.
- (4) For the purposes of this Part, any financial statements are referential financial statements if the distribution in question is made pursuant to determinations made by reference to financial items as stated in the financial statements under section 298.

287. Realized profits and losses

- (1) In this Part, a reference to realized profits or realized losses of a company is a reference to those profits or losses of the company that are regarded as realized profits or realized losses for the purpose of any financial statements prepared by the directors in accordance with principles generally accepted, at the time when the financial statements are prepared, with respect to the determination for accounting purposes of realized profits or realized losses.
- (2) Subsection (1) does not affect any specific provision (whether in an Ordinance or otherwise) under which profits or losses of any description are regarded as realized.
- (3) If, after making all reasonable enquiries, a company's directors are unable to determine whether or not a particular profit or loss made before 1 September 1991 is realized, they may treat the profit as realized, and the loss as unrealized, for the purposes of this Part.

288. Certain amount to be regarded as realized profit or loss

- (1) For the purposes of this Part, a provision other than an amount specified in subsection (2) is to be regarded as a realized loss.
- (2) The amount is one written off or retained by way of providing for a diminution in value of a fixed asset appearing on a revaluation of—
 - (a) all of the company's fixed assets; or
 - (b) all of the company's fixed assets other than goodwill.
- (3) For the purposes of subsection (2), any consideration by the directors of the value at a particular time of a fixed asset is to be regarded as a revaluation of the asset if—
 - (a) in the case of a listed company, the conditions specified in subsection (4)(a) and (b) are satisfied; or
 - (b) in the case of any other company—
 - (i) where the referential financial statements are the financial statements specified in section 300, the conditions specified in subsection (4)(a) and (b) are satisfied; or
 - (ii) where the referential financial statements are the financial statements specified in section 301 or 302, the condition specified in subsection (4)(a) is satisfied.
- (4) The conditions are—
 - (a) that the directors are satisfied that the aggregate value at that time of the company's fixed assets is not less than the aggregate amount at which they are for the time being stated in the financial statements; and
 - (b) that it is stated in a note to the referential financial statements that—
 - (i) the directors have considered the value of the company's fixed assets without actually revaluing them;

- (ii) the directors are satisfied that the aggregate value at the time of consideration of those assets is or was not less than the aggregate amount at which they are or were for the time being stated in the financial statements; and
 - (iii) accordingly, by virtue of this subsection, amounts are stated in the referential financial statements on the basis that a revaluation of the company's fixed assets is to be regarded as having taken place at that time.
- (5) For the purposes of this Part, if—
- (a) on the revaluation of a fixed asset, an unrealized profit is shown to have been made; and
 - (b) on or after the revaluation, a sum is written off or retained for depreciation of the fixed asset over a period, the amount by which the sum exceeds the projected sum in relation to the depreciation of that asset over the period is to be regarded as a realized profit made over the period.
- (6) In determining whether a company has made a profit or loss on an asset for the purposes of subsection (5), the value given to the asset in the earliest available record of its value made on or after its acquisition by the company is to be regarded as the cost of the asset if—
- (a) there is no record of the original cost of the asset; or
 - (b) a record of the original cost of the asset cannot be obtained without unreasonable expense or delay.
- (7) In subsection (5)—
- projected sum** (預計款項), in relation to a depreciation of a fixed asset, means a sum that would have been written off or retained for depreciation if the revaluation of the asset had not been made.
- (8) For the purposes of this section, an asset of a company is to be regarded as a fixed asset if it is intended for use in the

company's activities, or otherwise to be held for the purpose of the company's activities, on a continuing basis.

- 289. Certain amount relating to insurance company with long term business to be regarded as realized profit or loss**
- (1) This section applies to a company that is an insurer and carries on long term business.
 - (2) For the purposes of this Part—
 - (a) an amount properly transferred to the statement of comprehensive income of the company from a surplus in the fund maintained by it in respect of the long term business is to be regarded as a realized profit; and
 - (b) a deficit in that fund is to be regarded as a realized loss.
 - (3) Subject to subsection (2), any profit or loss arising in the company's long term business is to be disregarded for the purposes of this Part.
 - (4) In this section—
 - (a) a reference to a surplus in a fund maintained by a company is a reference to an excess of the assets representing the fund over the company's liabilities attributable to its long term business, as shown by an actuarial investigation; and
 - (b) a reference to a deficit in such a fund is a reference to an excess of those liabilities over those assets, as shown by an actuarial investigation.
 - (5) In this section—

actuarial investigation (精算調查) means an investigation—

 - (a) made under section 18 of the Insurance Companies Ordinance (Cap. 41); or
 - (b) made pursuant to a requirement imposed under section 32 of that Ordinance;

insurer (保險人) has the meaning given by section 2(1) and (2) of the Insurance Companies Ordinance (Cap. 41);

long term business (長期業務) has the meaning given by section 2(1) of the Insurance Companies Ordinance (Cap. 41).

290. Distribution in kind: certain amount to be regarded as realized profit

If a company makes a distribution consisting of or including a non-cash asset, and any part of the amount at which the asset is stated in the referential financial statements represents an unrealized profit, that part of that amount is to be regarded as a realized profit for the purpose of determining, before or after the distribution, the lawfulness of the distribution in accordance with this Part.

291. Application of Part

- (1) This Part applies in relation to a distribution made on or after the commencement date of this Part, except a distribution specified in subsection (2).
- (2) The excepted distribution is a distribution the amount of which would, had this Part applied in relation to the distribution, be determined under section 298 by reference to the financial items as stated in any financial statements for a financial year or period beginning before the commencement date of this Part.

292. Saving for other restraints on distribution

This Part does not affect any Ordinance or rule of law, or any provision of a company's articles, restricting the sums out of which, or the cases in which, a distribution may be made.

Division 2

Prohibitions and Restrictions

293. Prohibition on certain distributions

- (1) A company may only make a distribution out of profits available for distribution.
- (2) For the purposes of this section, a company's profits available for distribution are its accumulated, realized profits, so far as not previously utilized by distribution or capitalization, less its accumulated, realized losses, so far as not previously written off in a reduction or reorganization of capital.

294. Listed company may only make certain distributions

- (1) A listed company may only make a distribution—
 - (a) if the amount of its net assets is not less than the aggregate of its called up share capital and undistributable reserves; and
 - (b) if, and to the extent that, the distribution does not reduce the amount of those assets to an amount less than that aggregate.
- (2) A listed company must not include any uncalled share capital as an asset for the purpose of determining the amount of its net assets under this section.

295. Restriction on application of unrealized profits

A company must not apply an unrealized profit in paying up debentures or in paying up any amount unpaid on its issued shares.

296. Financial Secretary may modify or exempt provisions in relation to investment company

- (1) On application by an investment company, the Financial Secretary may—

- (a) modify, in relation to the company, any of the prohibitions or restrictions in section 293, 294 or 295; or
 - (b) exempt the company from any of such prohibitions or restrictions.
- (2) The Financial Secretary may make a modification or exemption under subsection (1) subject to any terms and conditions that the Financial Secretary thinks fit.
- (3) In this section—
- investment company** (投資公司) means a listed company whose principal business consists of investing its funds in securities, land or other assets with the aim of—
- (a) spreading investment risk; and
 - (b) giving its members the benefit of the results of the management of the assets.

297. Consequences of unlawful distribution

- (1) This section applies if—
- (a) a company makes a distribution, or part of a distribution, to one of its members in contravention of—
 - (i) section 293, 294 or 295; or
 - (ii) a prohibition or restriction in that section as modified under section 296; and
 - (b) at the time of the distribution, the member knows or has reasonable grounds for believing that the distribution, or that part of the distribution (as the case may be) is made in contravention of that section or modified prohibition or restriction.
- (2) If the distribution is made in cash, the member is liable to repay the distribution, or that part of the distribution (as the case may be) to the company.
- (3) If the distribution is made otherwise than in cash, the member is liable to pay to the company a sum equal to the value of the

- distribution or that part of the distribution (as the case may be) at the time of the distribution.
- (4) This section does not affect any obligation otherwise imposed on a member of a company to repay a distribution unlawfully made to the member.
- (5) This section does not apply in relation to—
- (a) any payment made by a company in respect of the redemption or buy-back by the company of shares in itself; or
 - (b) any financial assistance given by a company in contravention of section 271.

Division 3**Provisions Supplementary to Division 2****298. Justification of distribution by reference to financial statements**

The amount of a distribution that may be made without contravening section 293, 294 or 295, or a prohibition or restriction in that section as modified under section 296, is to be determined by reference to the financial items as stated in the financial statements specified in Division 4.

299. Successive distributions

- (1) This section applies if—
- (a) a company proposes to make a distribution pursuant to determinations made by reference to financial items as stated in any financial statements; and
 - (b) the company—
 - (i) has made one or more prior distributions pursuant to determinations made by reference to financial items as stated in the financial statements; or

- (ii) since the financial statements were prepared, has given financial assistance specified in subsection (3) or has made a payment specified in subsection (4).
- (2) Section 298 applies for the purpose of determining the amount of the proposed distribution that may be made without contravening section 293, 294 or 295, or a prohibition or restriction in that section as modified under section 296, as if the amount of the proposed distribution were increased by the amount of the prior distributions, financial assistance and other payments.
- (3) The financial assistance is—
 - (a) financial assistance that is given by the company out of its distributable profits; or
 - (b) financial assistance—
 - (i) that is given by the company in contravention of Division 5 of Part 5; and
 - (ii) the giving of which reduces the company's net assets or increases its net liabilities.
- (4) The payment is—
 - (a) a payment made by the company in respect of the buy-back by the company of shares in itself (except a payment lawfully made otherwise than out of distributable profits); or
 - (b) a payment made by the company of any description specified in section 252(5) (except a payment lawfully made otherwise than out of distributable profits).

Division 4**Specified Financial Statements**

- 300. Last annual financial statements specified for purposes of section 298**
- (1) Subject to sections 301 and 302, the financial statements specified for the purposes of section 298 are the financial statements prepared by the directors for the previous financial year, in relation to which subsections (2), (3), (4), (5) and (6) are complied with.
 - (2) The financial statements must—
 - (a) have been laid before the company in general meeting under section 420(1); or
 - (b) have been sent to every member under section 421(3).
 - (3) The financial statements must—
 - (a) have been properly prepared in accordance with Subdivision 3 of Division 4 of Part 9; or
 - (b) have been properly prepared in accordance with Subdivision 3 of Division 4 of Part 9, except only in relation to the matters that are not material for the purpose specified in subsection (8).
 - (4) The company's auditor must have prepared a report on the financial statements under section 396.
 - (5) If, in the auditor's report, the auditor has not given an unqualified opinion to the effect that the financial statements have been properly prepared in compliance with this Ordinance, the auditor must have given a written statement as to whether, in the auditor's opinion, the matter in respect of which the report is qualified is material for the purpose specified in subsection (8).
 - (6) A written statement under subsection (5)—

- (a) may be made at the time of the report or subsequently; and
 - (b) must be laid before the company in general meeting or sent to every member to whom the auditor's report is sent under section 421(3).
- (7) A written statement under subsection (5) is sufficient for the purpose of a distribution to which it relates and that has been proposed. If such a written statement relates to distributions of any particular description, the statement is also sufficient for the purpose of a distribution included in those distributions, even though the distribution has not been proposed at the time of the statement.
- (8) The purpose specified for subsections (3) and (5) is the purpose of determining, by reference to the financial items as stated in the financial statements, whether the distribution would be made in contravention of section 293, 294 or 295, or a prohibition or restriction in that section as modified under section 296.

301. Interim financial statements specified for purposes of section 298

- (1) This section applies where the distribution would be made in contravention of section 293, 294 or 295, or a prohibition or restriction in that section as modified under section 296, if the amount of distribution that may be made were determined by reference to the financial items as stated in the financial statements specified in section 300.
- (2) The financial statements specified for the purposes of section 298 are the company's financial statements—
- (a) in the case of a listed company—
 - (i) that is necessary to enable a reasonable judgement to be made as to the amounts of the financial items; and

- (ii) in relation to which subsections (3), (5) and (6) are complied with; or
 - (b) in the case of any other company, that is necessary to enable a reasonable judgement to be made as to the amounts of the financial items.
- (3) Subject to subsection (4), the financial statements must—
- (a) have been properly prepared in accordance with Subdivision 3 of Division 4 of Part 9; or
 - (b) have been properly prepared in accordance with Subdivision 3 of Division 4 of Part 9, except only in relation to the matters that are not material for the purpose of determining, by reference to the financial items as stated in the financial statements, whether the distribution would be made in contravention of section 293, 294 or 295, or a prohibition or restriction in that section as modified under section 296.
- (4) The requirement under subsection (3) for any financial statements to be properly prepared in accordance with Subdivision 3 of Division 4 of Part 9 has effect subject to any modification that is necessary for applying that requirement to the financial statements prepared otherwise than for a financial year.
- (5) A statement of financial position that forms part of the financial statements—
- (a) must be approved by the directors; and
 - (b) must be signed by 2 directors on the directors' behalf.
- (6) A copy of the financial statements must have been delivered to the Registrar. If the financial statements are not in English or Chinese, the copy must have been accompanied by a certified translation of the financial statements in either of those languages.

302. Initial financial statements specified for purposes of section 298

- (1) If the distribution is proposed to be declared before any financial statements are laid before the company in general meeting under section 420(1) or sent to every member under section 421(3), the financial statements specified for the purposes of section 298 are the company's financial statements—
 - (a) in the case of a listed company—
 - (i) that are necessary to enable a reasonable judgement to be made as to the amounts of the financial items; and
 - (ii) in relation to which subsections (2), (4), (5), (6) and (7) are complied with; or
 - (b) in the case of any other company, that are necessary to enable a reasonable judgement to be made as to the amounts of the financial items.
- (2) Subject to subsection (3), the financial statements must—
 - (a) have been properly prepared in accordance with Subdivision 3 of Division 4 of Part 9; or
 - (b) have been properly prepared in accordance with Subdivision 3 of Division 4 of Part 9, except only in relation to the matters that are not material for the purpose specified in subsection (8).
- (3) The requirement under subsection (2) for any financial statements to be properly prepared in accordance with Subdivision 3 of Division 4 of Part 9 has effect subject to any modification that is necessary for applying that requirement to any financial statements prepared otherwise than for a financial year.
- (4) A statement of financial position that forms part of the financial statements—
 - (a) must be approved by the directors; and

- (b) must be signed by 2 directors on the directors' behalf.
- (5) The company's auditor must have prepared a report on the financial statements stating whether, in the auditor's opinion, the financial statements satisfy subsection (2)(a).
- (6) If, in the auditor's report, the auditor has not given an unqualified opinion to the effect that the financial statements satisfy subsection (2)(a), the auditor must have given a written statement as to whether, in the auditor's opinion, the matter in respect of which the report is qualified is material for the purpose specified in subsection (8).
- (7) A copy of the financial statements, of the auditor's report of the financial statements, and of any written statement under subsection (6), must have been delivered to the Registrar. If the financial statements, report or written statement is not in English or Chinese, the copy must have been accompanied by a certified translation of the financial statements, report or written statement in either of those languages.
- (8) The purpose specified for subsections (2) and (6) is the purpose of determining, by reference to the financial items as stated in the financial statements, whether the distribution would be made in contravention of section 293, 294 or 295, or a prohibition or restriction in that section as modified under section 296.

Part 7
Debentures
Division 1
Preliminary

303. Interpretation

(1) In this Part—

branch register (登記支冊) means a branch register kept under section 309;

debenture (債權證), in relation to a company—

- (a) includes bonds and any other debt securities of the company, whether or not constituting a charge on the assets of the company; and
- (b) except in sections 304, 308(2)(a), 309 and 328(1)(a) and Divisions 3 and 4, includes debenture stock;

register of debenture holders (債權證持有人登記冊) means a register kept under section 304.

(2) For the purposes of this Part, a register of holders of debentures kept under section 74A of the predecessor Ordinance is to be regarded as a register of debenture holders kept under section 304.

Division 2
Register of Debenture Holders

304. Register of debenture holders

- (1) If a company issues a series of debentures, or any debenture stock, that are not transferable by delivery, the company must keep in the English or Chinese language a register of the holders of the debentures or debenture stock.
- (2) A company must enter in the register of debenture holders—
 - (a) the name and address of each holder of debentures or debenture stock;
 - (b) the amount of debentures or debenture stock held by each holder;
 - (c) the date on which each person is entered in the register as a holder of debentures or debenture stock; and
 - (d) the date on which any person ceases to be a holder of debentures or debenture stock.
- (3) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

305. Place where register must be kept available for inspection

- (1) A company must keep its register of debenture holders available for inspection at—
 - (a) the company's registered office; or
 - (b) a place prescribed by regulations made under section 648.
- (2) A company must notify the Registrar of the place at which the register of debenture holders is kept. The notice must be in the

specified form and delivered to the Registrar for registration within 14 days after the register is first kept at that place.

- (3) A company must notify the Registrar of any change (other than a change of the address of the company's registered office) in the place at which the register of debenture holders is kept. The notice must be in the specified form and delivered to the Registrar for registration within 14 days after the change.
- (4) Subsection (2) does not apply in relation to a register of debenture holders that, since it came into existence on or after the commencement date of this Division, has been kept at the company's registered office at all times.
- (5) If a company contravenes subsection (1), (2) or (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

306. Right to inspect and request copy

- (1) Except when the register of debenture holders of a company is closed under section 308, the register must be open to inspection—
 - (a) by any person who is registered in the register as a debenture holder of the company, without charge;
 - (b) by any member of the company, without charge; and
 - (c) by any other person, on payment of a prescribed fee.
- (2) A person is entitled, on request and on payment of a prescribed fee, to be provided with a copy of—
 - (a) the register of debenture holders of a company; or
 - (b) any part of the register.
- (3) A debenture holder of a company or the trustee for all debenture holders of a company is entitled, on request and on payment of a prescribed fee, to be provided with a copy of any

trust deed or any other document securing the issue of the debentures.

- (4) If a person makes a request under subsection (2) or (3), the company must provide the copy to the person within the prescribed period after it receives the request and prescribed fee.
- (5) When a person inspects the register, or the company provides a person with a copy of the register or any part of it, the company must inform the person of the most recent date (if any) on which alterations were made to the register.
- (6) If a company contravenes subsection (4) or (5), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (7) If a company contravenes subsection (4), the Court may by order direct that the copy be provided to the person requesting it.
- (8) The Court must not make an order under subsection (7) if it is satisfied that the rights given by subsection (2) or (3) (as the case may be) are being abused.
- (9) In this section—

prescribed (訂明) means prescribed by regulations made under section 648.

307. Consequences of contravening requirements as to register owing to other person's default

If a company's register of debenture holders is kept at the office of a person other than the company, and by reason of any default of that other person, the company contravenes section 306(4), then the power of the Court under section 306(7) extends to the making of an order against that other person and that other person's officers and other employees (if any).

308. Power to close register of debenture holders

- (1) A company may, on giving notice in accordance with subsection (2), close its register of debenture holders, or any part of it, for any period or periods not exceeding in the whole 30 days in each year.
- (2) A notice for the purposes of subsection (1)—
 - (a) in the case of a company having any of the debentures or debenture stock mentioned in section 304(1) listed on a recognized stock market, must be given—
 - (i) in accordance with the listing rules applicable to the stock market; or
 - (ii) by advertisement in a newspaper circulating generally in Hong Kong; and
 - (b) in the case of any other company, must be given by advertisement in a newspaper circulating generally in Hong Kong.
- (3) The period of 30 days mentioned in subsection (1) may be extended in respect of any year by a resolution passed in that year by a majority in value of the debenture holders present in person or, if proxies are permitted, by proxy at a meeting summoned for the purpose or otherwise in accordance with the trust deed or any other document securing the issue of the debentures.
- (4) The period of 30 days mentioned in subsection (1) must not be extended for a further period or periods exceeding 30 days in the whole in any year.
- (5) A company must, on demand, provide any person seeking to inspect a register or part of a register that is closed under this section with a certificate signed by the company secretary of the company stating the period for which, and by whose authority, it is closed.

- (6) If a company contravenes subsection (5), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.

309. Branch register of debenture holders

- (1) If a company issues in a place outside Hong Kong a series of debentures, or any debenture stock, that are not transferable by delivery, the company may, if it is authorized to do so by its articles, cause to be kept there a branch register of the holders of the debentures or debenture stock who are resident there.
- (2) A company that begins to keep a branch register must deliver to the Registrar for registration a notice in the specified form within 14 days after doing so, stating the address where the branch register is kept.
- (3) A company that keeps a branch register must deliver to the Registrar for registration a notice in the specified form of any change in the address where the branch register is kept, within 14 days after the change.
- (4) If a company contravenes subsection (2) or (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

310. Keeping of branch register

- (1) A branch register must be kept in the same manner in which the company's register of debenture holders (in this section called *the principal register*) is by this Ordinance required to be kept.
- (2) A company that keeps a branch register may close it in the same manner in which the principal register may be closed under section 308 except that the advertisement mentioned in

that section must be inserted in a newspaper circulating generally in the place in which the branch register is kept.

- (3) A company that keeps a branch register—
- (a) must transmit to its registered office a copy of every entry made in the branch register as soon as possible after it is made; and
 - (b) must cause to be kept at the place where the company's principal register is kept a duplicate of the branch register entered up from time to time.
- (4) A duplicate of a branch register is to be regarded for all the purposes of this Ordinance as part of the principal register.
- (5) Subject to the provisions of this Ordinance, a company may by its articles make any provision that it thinks fit respecting the keeping of branch registers.
- (6) If a company contravenes subsection (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

311. Transactions in debentures registered in branch register

- (1) The debentures registered in a branch register of a company must be distinguished from those registered in the company's register of debenture holders.
- (2) No transaction with respect to any debentures registered in a branch register may, during the continuance of that registration, be registered in any other register.

312. Discontinuance of branch register

- (1) A company may discontinue a branch register.
- (2) If a company discontinues a branch register, all the entries in that register must be transferred to—

- (a) some other branch register kept in the same place outside Hong Kong by the company; or
 - (b) the company's register of debenture holders.
- (3) If a company discontinues a branch register, it must, within 14 days after the discontinuance, deliver to the Registrar for registration a notice in the specified form informing the Registrar of—
- (a) the discontinuance; and
 - (b) the register to which the entries have been transferred.
- (4) If a company contravenes subsection (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

Division 3

Allotment of Debentures or Debenture Stock

313. Return of allotment

- (1) Within one month after an allotment of debentures or debenture stock, a company must deliver to the Registrar for registration a return of the allotment that complies with subsection (2).
- (2) A return—
 - (a) must be in the specified form; and
 - (b) must state—
 - (i) the amount of debentures or debenture stock allotted;
 - (ii) the name and address of each allottee;
 - (iii) the date of allotment of debentures or debenture stock; and

- (iv) the date of redemption of debentures or debenture stock.
- (3) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (4) If a company fails to deliver a return that complies with subsection (2) within one month after an allotment of debentures or debenture stock, the Court may, on application by the company or a responsible person of the company, extend the period for delivery of the return by a period determined by the Court.
- (5) The Court may extend a period under subsection (4) only if it is satisfied—
- that failure to deliver the return was accidental or due to inadvertence; or
 - that it is just and equitable to extend the period.
- (6) If the Court extends the period for delivery of a return, any liability already incurred by the company or a responsible person of the company for an offence under subsection (3) is extinguished and subsection (1) has effect as if the reference to one month were a reference to the extended period.

314. Registration of allotment

- A company must register an allotment of debentures or debenture stock as soon as practicable and in any event within 2 months after the date of the allotment, by entering in its register of debenture holders the information mentioned in section 304(2).
- If a company fails to register an allotment of debentures or debenture stock within 2 months after the date of the allotment, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at

level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

315. Issue of debenture or certificate for debenture stock on allotment

- Within 2 months after an allotment of debentures or debenture stock, a company must—
 - in the case of an allotment of debentures, complete the debentures and have them ready for delivery; or
 - in the case of an allotment of debenture stock, complete the certificates for the debenture stock and have them ready for delivery.
- Subsection (1) does not apply if the conditions of allotment of the debentures or debenture stock provide otherwise.
- If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

316. Court order for delivery of debenture or certificate for debenture stock

- If a company contravenes section 315 in relation to an allotment of debentures or debenture stock, a person entitled to the debentures or certificates for the debenture stock may serve a notice on the company requiring it to deliver the debentures or certificates to the person within 10 days.
- If a company on which a notice has been served under subsection (1) does not deliver the debentures or certificates within 10 days after service of the notice, the person may apply to the Court for an order under subsection (3).
- On an application under subsection (2), the Court may make an order directing the company and any officer of the

company to deliver the debentures or certificates to the person within the period specified in the order.

- (4) The order may provide that all costs of and incidental to the application are to be borne by the company or by an officer of the company responsible for the contravention.

Division 4

Transfer of Debentures or Debenture Stock

317. Requirement for instrument of transfer

- (1) A company must not register a transfer of debentures or debenture stock of the company unless a proper instrument of transfer has been delivered to the company.
- (2) Subsection (1) does not affect any power of a company to register as a debenture holder a person to whom the right to debentures or debenture stock has been transmitted by operation of law.

318. Registration of transfer or refusal of registration

- (1) The transferee or transferor of debentures or debenture stock of a company may lodge the transfer with the company.
- (2) Within 2 months after the transfer is lodged, the company must either—
- register the transfer; or
 - send the transferee and the transferor notice of refusal to register the transfer.
- (3) If a company contravenes subsection (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

319. Certification of transfer

- (1) The certification by a company of an instrument of transfer of any debentures or debenture stock of the company—
- is a representation by the company to any person acting on the faith of the certification that documents have been produced to the company that evidence title to the debentures or debenture stock in the transferor named in the instrument; and
 - is not a representation that the transferor has any title to the debentures or debenture stock.
- (2) If a person acts on the faith of a false certification by a company made negligently, the company is under the same liability to the person as if the certification had been made fraudulently.
- (3) For the purposes of this section, an instrument of transfer is certified by a company if it bears—
- the words “certificate lodged”, or words to the same effect, in English or Chinese; and
 - under or adjacent to those words, the signature or initials of a person having the actual or apparent authority to certify transfers on behalf of the company.
- (4) Unless the contrary is proved, a signature or initials appearing on an instrument of transfer as mentioned in subsection (3)(b) must be regarded—
- as the signature or initials of the person whose signature or initials they purport to be; and
 - as having been placed on the instrument by that person or by another person who has the actual or apparent authority to use the signature or initials for the purpose of certifying transfers on behalf of the company.

320. Issue of debenture or certificate for debenture stock on transfer

- (1) Within the period specified in subsection (2), a company must—
 - (a) in the case of a transfer of debentures, complete the debentures and have them ready for delivery; or
 - (b) in the case of a transfer of debenture stock, complete the certificates for the debenture stock and have them ready for delivery.
- (2) The period is—
 - (a) for a private company, 2 months after the day on which the transfer is lodged with the company;
 - (b) for any other company, 10 business days after the day on which the transfer is lodged with the company.
- (3) Subsection (1) does not apply to a transfer if—
 - (a) the conditions of issue of the debentures or debenture stock provide otherwise;
 - (b) stamp duty has not been paid in respect of the transfer;
 - (c) the transfer is invalid; or
 - (d) the company, being entitled to do so, refuses to register the transfer.
- (4) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (5) In this section—

business day (營業日) means a day on which a recognized stock market is open for the business of dealing in securities.

321. Court order for delivery of debenture or certificate for debenture stock

- (1) If a company contravenes section 320 in relation to a transfer of debentures or debenture stock, a person entitled to the debentures or certificates for the debenture stock may serve a notice on the company requiring it to deliver the debentures or certificates to the person within 10 days.
- (2) If a company on which a notice has been served under subsection (1) does not deliver the debentures or certificates within 10 days after service of the notice, the person may apply to the Court for an order under subsection (3).
- (3) On an application under subsection (2), the Court may make an order directing the company and any officer of the company to deliver the debentures or certificates to the person within the period specified in the order.
- (4) The order may provide that all costs of and incidental to the application are to be borne by the company or by an officer of the company responsible for the contravention.

Division 5**Miscellaneous Provisions****322. Evidence of grant of probate etc.**

For the purposes of a transfer of debentures or transmission of the right to debentures, a company must accept as sufficient evidence of the grant of probate of the will or letters of administration of a deceased person the production to the company of a document that is by law sufficient evidence of that grant.

323. Form of register of holders of debentures kept under instrument made by company

- (1) This section applies to a register of holders of debentures that is required to be kept under an instrument made by a company.
- (2) If a provision of the instrument requires the register to be kept in a legible form, the provision is to be construed as requiring the register to be kept either—
 - (a) in a legible form; or
 - (b) in a non-legible form capable of being reproduced in a legible form.

324. Perpetual debentures

- (1) Despite any rule of equity to the contrary, a condition contained in any debentures, or in a deed securing the issue of any debentures, is not invalid only because the debentures are, by the condition, made—
 - (a) irredeemable;
 - (b) redeemable only on the happening of a contingency (however remote); or
 - (c) redeemable only on the expiration of a period of time (however long).
- (2) Subsection (1) applies to debentures whenever issued and to deeds whenever executed.

325. Power to reissue redeemed debentures

- (1) This section applies if a company has, whether before, on or after the commencement date of this section, redeemed any debentures previously issued.
- (2) A company has, and is to be regarded as always having had, the power to reissue redeemed debentures, either by reissuing the same debentures or by issuing new debentures in their place, unless—

- (a) a provision to the contrary (express or implied) is contained in the company's articles or any contract made by the company; or
 - (b) the company has, by passing a resolution to that effect or by any other act, manifested its intention that the debentures are to be cancelled.
- (3) On a reissue of any redeemed debentures, a person entitled to the debentures has, and is to be regarded as always having had, the same priorities as if the debentures had never been redeemed.
 - (4) A reissue of redeemed debentures, whether before, on or after the commencement date of this section—
 - (a) is to be regarded as an issue of new debentures for the purposes of stamp duty; and
 - (b) is not to be regarded as an issue of new debentures for the purposes of any provision limiting the amount or number of debentures to be issued.
 - (5) A person lending money on the security of any debentures reissued under this section that appear to be stamped may give the debentures in evidence in any proceedings for enforcing the person's security.
 - (6) Subsection (5) does not apply if the person had notice or, but for the person's negligence, might have discovered that the debentures were not stamped.
 - (7) The stamp duty and penalty payable under the Stamp Duty Ordinance (Cap. 117) in respect of any debentures reissued under this section are to be paid by the company.
 - (8) If any debentures redeemed before 1 July 1933 are reissued on or after that date, the reissue does not prejudice, and is to be regarded as never having prejudiced, any right or priority that a person would have had under or by virtue of any mortgage or charge created before that date.

326. Deposit of debentures to secure advances

If a company has, whether before, on or after the commencement date of this section, deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures are not to be regarded as having been redeemed only because the account of the company has ceased to be in debit while the debentures remained so deposited.

327. Specific performance of contracts to subscribe for debentures

A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

328. Court may order meeting of debenture holders

- (1) This section applies to any person who holds—
 - (a) any debentures that form part of a series issued by a company and rank equally with the other debentures of that series; or
 - (b) any debenture stock of a company.
- (2) If a person to whom this section applies, either alone or jointly with any other such person, holds at least the specified percentage of the value of the company's debentures, the person may apply to the Court for a meeting of the company's debenture holders to be held to give directions to the trustee for the debenture holders.
- (3) Subsection (2) may be excluded by the debentures, or the trust deeds or other documents securing the issue of the debentures.
- (4) In this section—

specified percentage (指明百分比) means—

- (a) 10%; or
- (b) the higher percentage that may be provided for in the debentures, or the trust deeds or other documents securing the issue of the debentures.

329. Liability of trustees for debenture holders

- (1) A provision contained in—
 - (a) a trust deed securing an issue of debentures; or
 - (b) a contract with the holders of debentures secured by a trust deed,
 is void to the extent that it would exempt a trustee of the trust deed from, or indemnify the trustee against, liability for breach of trust for the trustee's failure to show the degree of care and diligence required of the trustee as a trustee, having regard to the provisions of the trust deed conferring on the trustee any powers, authorities or discretions.
- (2) Subsection (1) does not—
 - (a) invalidate a release otherwise validly given in respect of anything done, or omitted to be done, by a trustee before the giving of the release;
 - (b) invalidate any provision enabling such a release to be given—
 - (i) on being agreed to by a majority of at least 75% in value of the debenture holders present and voting in person or, if proxies are permitted, by proxy at a meeting summoned for the purpose; and
 - (ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act;
 - (c) invalidate any provision in force on 31 August 1984 so long as any person who is then entitled to the benefit of the provision, or who is afterwards given the benefit of the provision under subsection (3), remains a trustee of the trust deed; or
 - (d) deprive any person of any exemption or right to be indemnified in respect of anything done, or omitted to be done, by the person while any provision mentioned in paragraph (c) was in force.

- (3) While a trustee of a trust deed remains entitled to the benefit of a provision saved by subsection (2)(c) or (d), the benefit may be given, in accordance with subsection (4), to—
- (a) all present and future trustees of the trust deed; or
 - (b) any named trustees or proposed trustees of the trust deed.
- (4) The benefit is to be given by a resolution passed by a majority of at least 75% in value of the debenture holders present in person or, if proxies are permitted, by proxy at a meeting summoned for the purpose—
- (a) in accordance with the provisions of the trust deed; or
 - (b) if the trust deed makes no provision for summoning meetings, in a manner approved by the Court.

330. Immunity of trustees for debenture holders

A trustee for a debenture holder is not liable for anything done, or omitted to be done, in accordance with any direction given to the trustee at a meeting held under section 328.

Part 8

Registration of Charges

Division 1

Preliminary

331. Interpretation

- (1) In this Part—
charge (押記) includes mortgage;
manager (經理人) excludes a special manager of the estate or business of a company or registered non-Hong Kong company appointed under section 216 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).
- (2) For the purposes of this Part—
- (a) if a ship or aircraft of a registered non-Hong Kong company is registered in Hong Kong, it is to be regarded as property in Hong Kong of the company even though it is physically located outside Hong Kong; and
 - (b) if a ship or aircraft of a registered non-Hong Kong company is registered in a place outside Hong Kong, it is to be regarded as property outside Hong Kong of the company even though it is physically located in Hong Kong.
- (3) In Divisions 2 and 4, a reference to a person interested in a charge excludes the company or registered non-Hong Kong company creating the charge.
- (4) For the purposes of Divisions 2 and 3, a copy of an instrument in relation to a charge delivered for registration is a certified copy if it is certified as a true copy—

- (a) by—
 - (i) a director or company secretary of the company or registered non-Hong Kong company delivering the copy for registration; or
 - (ii) a person authorized by that company or non-Hong Kong company for the purpose; or
 - (b) by—
 - (i) any other person interested in the charge; or
 - (ii) in the case of—
 - (A) an interested person who is a natural person, a person authorized by the interested person for the purpose; or
 - (B) an interested person that is a body corporate, a person authorized by the interested person for the purpose, or a director or company secretary of the interested person.
- (5) In Division 6, a reference to the charged property of a registered non-Hong Kong company is a reference to—
- (a) the property in Hong Kong of the company and subject to a charge created by the company, except property that was not in Hong Kong when the charge was created; or
 - (b) the property in Hong Kong of the company and subject to a charge that subsisted when the property was acquired by the company, except property that was not in Hong Kong when it was so acquired.

332. Application of Part

This Part does not apply to a registered non-Hong Kong company—

- (a) that delivers a notice to the Registrar under section 782(1) of the fact that it has ceased to have a place of business in Hong Kong; or

- (b) in relation to which the Registrar enters in the Companies Register a statement of dissolution under section 783(2).

Division 2**Obligation to Register Specified Charges after Creation****333. Specified charge**

- (1) In this Division, a reference to a specified charge is a reference to any of the following charges created on or after the commencement date of this section—
- (a) a charge on uncalled share capital of the company;
 - (b) a charge created or evidenced by an instrument that, if executed by a natural person, would require registration as a bill of sale;
 - (c) a charge on land (wherever situate) or any interest in land, except a charge for any rent or other periodical sum issuing out of land;
 - (d) a charge on book debts of the company;
 - (e) a charge on calls made but not paid;
 - (f) a charge on instalments due, but not paid, on the issue price of shares;
 - (g) a charge on a ship or any share in a ship;
 - (h) a charge on an aircraft or any share in an aircraft;
 - (i) a charge on—
 - (i) goodwill;
 - (ii) a patent or a licence under a patent;
 - (iii) a trademark; or
 - (iv) a copyright or a licence under a copyright;

- (j) a floating charge on the company's undertaking or property.
- (2) For the purposes of subsection (1)(c), the holding of debentures entitling the holder to a charge on land is not to be regarded as an interest in the land.
- (3) For the purposes of subsection (1)(d)—
 - (a) the deposit by way of security of a negotiable instrument given to secure the payment of book debts is not to be regarded as a charge on those book debts; and
 - (b) if a company maintains a deposit of money with another person (whether the money is deposited by the company or by any other person for the company's benefit), a charge on the company's right to repayment of the money is not to be regarded as a charge on book debts of the company.
- (4) For the purposes of subsection (1)(d) and (j), if a company charters a ship from a shipowner, the shipowner's lien on the subfreights for amounts due under the charter is not to be regarded as a charge on book debts of the company or as a floating charge on the company's undertaking or property.

334. Company must register specified charge created by it

- (1) A company must deliver a statement of the particulars of every specified charge created by the company, together with a certified copy of the instrument (if any) creating or evidencing the charge, to the Registrar for registration within the registration period specified in subsection (5)(a).
- (2) Where—
 - (a) a specified charge created by a company—
 - (i) is given in a debenture forming part of a series by reference to any other instrument containing the charge (whether or not also contained in the debenture); or

- (ii) is contained in a debenture forming part of a series (but not given in the debenture by reference to any other instrument); and
- (b) every holder of the debentures of the series is entitled equally to the benefit of the charge,

the company is to be regarded as having complied with subsection (1) in relation to the specified charge if the company delivers a statement of the particulars of the charge, together with a certified copy of an instrument specified in subsection (4), to the Registrar for registration within the registration period specified in subsection (5)(b).
- (3) A person interested in a specified charge—
 - (a) may deliver a statement of the particulars of the charge, together with a certified copy of the instrument (if any) creating or evidencing the charge, to the Registrar for registration within the registration period specified in subsection (5)(a); or
 - (b) may, in the case of subsection (2), deliver a statement of the particulars of the charge, together with a certified copy of an instrument specified in subsection (4), to the Registrar for registration within the registration period specified in subsection (5)(b).
- (4) The instrument is—
 - (a) for the purposes of subsection (2)(a)(i), the instrument by reference to which the specified charge is given; or
 - (b) for the purposes of subsection (2)(a)(ii), any one debenture of the series.
- (5) The registration period is—
 - (a) for the purposes of subsection (1) or (3)(a)—
 - (i) one month after the date on which the specified charge is created; or

- (ii) where the specified charge is created outside Hong Kong and comprising property situate outside Hong Kong, one month after the date on which a certified copy of the instrument creating or evidencing that charge could, if despatched with due diligence, have been received in Hong Kong in due course of post; and
- (b) for the purposes of subsection (2) or (3)(b)—
 - (i) one month after the execution of the instrument by reference to which the specified charge is given or if there is no such instrument, one month after the execution of the first debenture of the series; or
 - (ii) where the specified charge is created outside Hong Kong and comprising property situate outside Hong Kong, one month after the date on which a certified copy of the specified instrument could, if despatched with due diligence, have been received in Hong Kong in due course of post.
- (6) A statement of the particulars of a specified charge—
 - (a) must be in the specified form; and
 - (b) must be accompanied by the prescribed fee.
- (7) If a person interested in a specified charge pays to the Registrar any prescribed fee for the registration of a statement of the particulars of the charge, the fee is recoverable from the company creating the charge.
- (8) If a specified charge is created in Hong Kong and comprises property situate outside Hong Kong, a certified copy of the instrument creating or purporting to create the charge may be delivered to the Registrar for registration under subsection (1), (2) or (3) even though further proceedings may be necessary to make that charge valid or effectual according to the law of the place in which the property is situate.

- 335. Registered non-Hong Kong company must register specified charge created by it**
- (1) A registered non-Hong Kong company must deliver a statement of the particulars of every specified charge created by the company on property in Hong Kong of the company, together with a certified copy of the instrument (if any) creating or evidencing the charge, to the Registrar for registration within the registration period specified in subsection (6)(a).
 - (2) Where—
 - (a) a specified charge created by a registered non-Hong Kong company on property in Hong Kong of the company—
 - (i) is given in a debenture forming part of a series by reference to any other instrument containing the charge (whether or not also contained in the debenture); or
 - (ii) is contained in a debenture forming part of a series (but not given in the debenture by reference to any other instrument); and
 - (b) every holder of the debentures of the series is entitled equally to the benefit of the charge,
 the company is to be regarded as having complied with subsection (1) in relation to the specified charge if the company delivers a statement of the particulars of the charge, together with a certified copy of an instrument specified in subsection (4), to the Registrar for registration within the registration period specified in subsection (6)(b).
 - (3) A person interested in a specified charge—
 - (a) may deliver a statement of the particulars of the charge, together with a certified copy of the instrument (if any) creating or evidencing the charge, to the Registrar for

- registration within the registration period specified in subsection (6)(a); or
- (b) may, in the case of subsection (2), deliver a statement of the particulars of the charge, together with a certified copy of an instrument specified in subsection (4), to the Registrar for registration within the registration period specified in subsection (6)(b).
- (4) The instrument is—
- (a) for the purposes of subsection (2)(a)(i), the instrument by reference to which the specified charge is given; or
- (b) for the purposes of subsection (2)(a)(ii), any one debenture of the series.
- (5) Subsections (1) and (2) do not apply to a charge on property if the property was not in Hong Kong when the charge was created by the registered non-Hong Kong company.
- (6) The registration period is—
- (a) for the purposes of subsection (1) or (3)(a), one month after the date on which the specified charge is created; and
- (b) for the purposes of subsection (2) or (3)(b)—
- (i) one month after the execution of the instrument by reference to which the specified charge is given; or
- (ii) if there is no such instrument, one month after the execution of the first debenture of the series.
- (7) A statement of the particulars of a specified charge—
- (a) must be in the specified form; and
- (b) must be accompanied by the prescribed fee.
- (8) If a person interested in a specified charge pays to the Registrar any prescribed fee for the registration of a statement of the particulars of the charge, the fee is recoverable from the registered non-Hong Kong company creating the charge.

336. Consequences of contravention of section 334 or 335

- (1) This section applies if—
- (a) a company contravenes section 334(1) in relation to a specified charge, and a person interested in the charge has not registered the charge under section 334(3); or
- (b) a registered non-Hong Kong company contravenes section 335(1) in relation to a specified charge, and a person interested in the charge has not registered the charge under section 335(3).
- (2) Subject to section 345, the company or registered non-Hong Kong company, and every responsible person of the company or non-Hong Kong company, commit an offence.
- (3) A person who commits an offence under subsection (2) is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (4) Subject to section 345, the specified charge is void against any liquidator and creditor of the company or registered non-Hong Kong company so far as any security on its undertaking or property is conferred by the charge.
- (5) Subsection (4) does not prejudice any contract or obligation for repayment of the money secured by the specified charge.
- (6) At the lender's option, the money secured by a specified charge becomes immediately payable when the charge becomes void under subsection (4).

Division 3**Obligation to Register Existing Charges****337. Company must register charge existing on property acquired**

- (1) This section applies if—
- (a) a company acquires property subject to a charge; and

- (b) the charge is of a kind that a statement of its particulars would have been required by section 334(1) to be delivered for registration had it been created by the company after the acquisition.
- (2) The company must deliver a statement of the particulars of the charge, together with a certified copy of the instrument (if any) creating or evidencing the charge, to the Registrar for registration within the registration period specified in subsection (3).
- (3) The registration period is—
 - (a) one month after the date on which the acquisition is completed; or
 - (b) where the property is situate, and the charge was created, outside Hong Kong, one month after the date on which a certified copy of the instrument creating or evidencing the charge could, if despatched with due diligence, have been received in Hong Kong in due course of post.
- (4) A statement of the particulars of a charge—
 - (a) must be in the specified form; and
 - (b) must be accompanied by the prescribed fee.
- (5) Subject to section 345, if a company contravenes subsection (2), the company, and every responsible person of the company, commit an offence.
- (6) A person who commits an offence under subsection (5) is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

338. Registered non-Hong Kong company must register charge existing on property acquired

- (1) This section applies if—
 - (a) a registered non-Hong Kong company acquires property in Hong Kong subject to a charge; and

- (b) the charge is of a kind that a statement of its particulars would have been required by section 335(1) to be delivered for registration had it been created by the registered non-Hong Kong company after the acquisition.
- (2) Subsection (1)(a) does not apply to a charge on property if the property was not in Hong Kong when the property was acquired by the registered non-Hong Kong company.
- (3) The registered non-Hong Kong company must deliver a statement of the particulars of the charge, together with a certified copy of the instrument (if any) creating or evidencing the charge, to the Registrar for registration within the registration period specified in subsection (4).
- (4) The registration period is one month after the date on which the acquisition is completed.
- (5) A statement of the particulars of a charge—
 - (a) must be in the specified form; and
 - (b) must be accompanied by the prescribed fee.
- (6) Subject to section 345, if a registered non-Hong Kong company contravenes subsection (3), the company, and every responsible person of the company, commit an offence.
- (7) A person who commits an offence under subsection (6) is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

339. Registered non-Hong Kong company must register charge existing on property on date of company's registration under Part 16

- (1) This section applies if—
 - (a) a registered non-Hong Kong company has, on the date of its registration under Part 16, property in Hong Kong subject to—

- (i) a charge created by the company; or
 - (ii) a charge that subsisted when the property was acquired; and
- (b) the charge is of a kind that a statement of its particulars would have been required by section 335(1) or 338(3) to be delivered for registration had the charge been created by the company, or had the property been acquired by the company, after the company has been registered under Part 16.
- (2) The registered non-Hong Kong company must deliver a statement of the particulars of the charge, together with a certified copy of the instrument (if any) creating or evidencing the charge, to the Registrar for registration within the registration period specified in subsection (5).
- (3) If, in the case of subsection (1)(a)(i)—
- (a) the charge—
 - (i) is given in a debenture forming part of a series by reference to any other instrument containing the charge (whether or not also contained in the debenture); or
 - (ii) is contained in a debenture forming part of a series (but not given in the debenture by reference to any other instrument); and
 - (b) every holder of the debentures of the series is entitled equally to the benefit of the charge,
- the registered non-Hong Kong company is to be regarded as having complied with subsection (2) in relation to the charge if that company delivers a statement of the particulars of the charge, together with a certified copy of an instrument specified in subsection (4), to the Registrar for registration within the registration period specified in subsection (5).
- (4) The instrument is—

- (a) for the purposes of subsection (3)(a)(i), the instrument by reference to which the charge is given; or
 - (b) for the purposes of subsection (3)(a)(ii), any one debenture of the series.
- (5) The registration period is one month after the date on which the registered non-Hong Kong company is registered under Part 16.
- (6) A statement of the particulars of a charge—
- (a) must be in the specified form; and
 - (b) must be accompanied by the prescribed fee.
- (7) Subject to section 345, if a registered non-Hong Kong company contravenes subsection (2), the company, and every responsible person of the company, commit an offence.
- (8) A person who commits an offence under subsection (7) is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

Division 4

Obligation to Register Other Particulars of Debentures

340. Company or registered non-Hong Kong company must register particulars of issue of debentures

- (1) This section applies if—
- (a) a debenture forming part of a series—
 - (i) contains a charge created by a company or registered non-Hong Kong company; or
 - (ii) gives a charge created by a company or registered non-Hong Kong company, by reference to any other instrument containing the charge;

- (b) every holder of the debentures of the series is entitled equally to the benefit of the charge; and
 - (c) a statement of the particulars of the charge is delivered for registration under section 334(2), 335(2) or 339(3).
- (2) The company or registered non-Hong Kong company must deliver a statement of the particulars of every issue of the debentures of the series to the Registrar for registration within the registration period specified in subsection (4).
- (3) A person interested in the charge may deliver a statement of the particulars of an issue of debentures to the Registrar for registration within the registration period specified in subsection (4).
- (4) The registration period is—
- (a) if a statement of the particulars of the charge is delivered for registration under section 334(2) or 335(2)—
 - (i) in the case of an issue of debentures made at the time of the creation of the charge, the registration period specified in relation to the registration of the charge in section 334(5)(b) or 335(6)(b); or
 - (ii) in the case of any subsequent issue of debentures, one month after the date of the issue; or
 - (b) if a statement of the particulars of the charge is delivered for registration under section 339(3)—
 - (i) in the case of an issue of debentures made on or before the registration under Part 16, the registration period specified in relation to the registration of the charge in section 339(5); or
 - (ii) in the case of any subsequent issue of debentures, one month after the date of the issue.
- (5) A statement of the particulars of an issue of debentures—
- (a) must be in the specified form; and
 - (b) must be accompanied by the prescribed fee.

- (6) Without limiting section 22, a statement of the particulars of an issue of debentures must contain the date and the amount of the issue.
- (7) If a person interested in a charge pays to the Registrar any prescribed fee for the registration of a statement of the particulars of an issue of debentures, the fee is recoverable from the company or registered non-Hong Kong company creating the charge.
- (8) Subject to section 345, if subsection (2) is contravened, and a person interested in the charge has not delivered a statement of the particulars of the issue of debentures for registration under subsection (3), the company or registered non-Hong Kong company, and every responsible person of the company or non-Hong Kong company, commit an offence.
- (9) A person who commits an offence under subsection (8) is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (10) A contravention of subsection (2) does not affect the validity of the debentures issued.
- (11) In this section, a reference to the time of the creation of a charge is a reference to the time of execution of—
 - (a) the instrument by reference to which the charge is given; or
 - (b) if there is no such instrument, the first debenture of the series.

341. Company or registered non-Hong Kong company must register particulars of commission etc. in relation to debentures

- (1) This section applies if—
- (a) any commission, allowance or discount has been paid or made, directly or indirectly, by a company or registered

- non-Hong Kong company to any person in consideration of the person—
- (i) subscribing or agreeing to subscribe, absolutely or conditionally, for any debenture of the company or registered non-Hong Kong company; or
 - (ii) procuring or agreeing to procure absolute or conditional subscriptions for any debenture of the company or registered non-Hong Kong company;
- (b) the debenture—
- (i) creates or evidences a charge; or
 - (ii) forms part of a series of debentures, and either contains a charge or gives a charge by reference to any other instrument containing a charge;
- (c) the charge is created by the company or registered non-Hong Kong company; and
- (d) a statement of the particulars of the charge is required to be delivered for registration under—
- (i) section 334(1);
 - (ii) section 335(1); or
 - (iii) section 339(2).
- (2) The company or registered non-Hong Kong company must deliver a statement of the particulars of the commission, allowance or discount to the Registrar for registration within the registration period specified in subsection (6)(a).
- (3) Where—
- (a) in the case of subsection (1)(d)(i), a statement of the particulars of the charge is delivered for registration under section 334(2); or
 - (b) in the case of subsection (1)(d)(ii), a statement of the particulars of the charge is delivered for registration under section 335(2),

- the company or registered non-Hong Kong company is to be regarded as having complied with subsection (2) if it delivers a statement of the particulars of the commission, allowance or discount to the Registrar for registration within the registration period specified in subsection (6)(b).
- (4) Where, in the case of subsection (1)(d)(iii), a statement of the particulars of the charge is delivered for registration under section 339(3), the registered non-Hong Kong company is to be regarded as having complied with subsection (2) if it delivers a statement of the particulars of the commission, allowance or discount to the Registrar for registration within the registration period specified in subsection (6)(c).
- (5) A person interested in the charge—
- (a) may deliver a statement of the particulars of the commission, allowance or discount to the Registrar for registration within the registration period specified in subsection (6)(a); or
 - (b) may, in the case of subsection (3), deliver a statement of the particulars of the commission, allowance or discount to the Registrar for registration within the registration period specified in subsection (6)(b).
- (6) The registration period is—
- (a) for the purposes of subsection (2) or (5)(a)—
 - (i) in the case of subsection (1)(d)(i), the registration period specified in relation to the registration of the charge in section 334(5)(a);
 - (ii) in the case of subsection (1)(d)(ii), the registration period specified in relation to the registration of the charge in section 335(6)(a); or
 - (iii) in the case of subsection (1)(d)(iii), the registration period specified in relation to the registration of the charge in section 339(5);
 - (b) for the purposes of subsection (3) or (5)(b)—

- (i) in the case of an issue of debentures made at the time of the creation of the charge, the registration period specified in relation to the registration of that charge in section 334(5)(b) or 335(6)(b); or
- (ii) in the case of any subsequent issue of debentures, one month after the date of the issue; or
- (c) for the purposes of subsection (4)—
 - (i) in the case of an issue of debentures made on or before the registration under Part 16, the registration period specified in relation to the registration of that charge in section 339(5); or
 - (ii) in the case of any subsequent issue of debentures, one month after the date of the issue.
- (7) A statement of the particulars of any commission, allowance or discount—
 - (a) must be in the specified form; and
 - (b) must be accompanied by the prescribed fee.
- (8) If a person interested in the charge pays to the Registrar any prescribed fee for the registration of a statement of the particulars of the commission, allowance or discount, the fee is recoverable from the company or registered non-Hong Kong company creating the charge.
- (9) For the purposes of this section, the deposit of any debenture as security for any debt of a company or registered non-Hong Kong company is not to be regarded as an issue of debentures at a discount.
- (10) In this section, a reference to the time of the creation of a charge is a reference to the time of execution of—
 - (a) the instrument by reference to which the charge is given; or
 - (b) if there is no such instrument, the first debenture of the series.

342. Consequences of contravention of section 341

- (1) Subject to section 345, if section 341(2) is contravened, and a person interested in the charge has not delivered a statement of the particulars of the commission, allowance or discount (as the case may be) for registration under section 341(5), the company or registered non-Hong Kong company, and every responsible person of the company or non-Hong Kong company, commit an offence.
- (2) A person who commits an offence under subsection (1) is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (3) A contravention of section 341(2) does not affect the validity of the debentures issued.

Division 5**Provisions Supplementary to Divisions 2, 3 and 4****343. Certificate of registration**

- (1) This section applies if a statement of the particulars of a charge, and the requisite accompanying instrument, are delivered by a company or registered non-Hong Kong company, or by a person interested in the charge, to the Registrar for registration under Division 2 or 3.
- (2) After registering the statement and the requisite accompanying instrument, the Registrar must issue a certificate to the company or registered non-Hong Kong company, or to the interested person, certifying registration of the charge under Division 2 or 3.
- (3) A certificate of registration must be signed by the Registrar.
- (4) A certificate of registration is conclusive evidence that the requirements of this Part as to registration have been satisfied.

344. Notification to Registrar of payment of debt, release, etc.

- (1) This section applies if—
 - (a) the debt secured by a registered charge has been paid or satisfied in whole or in part; or
 - (b) the whole or any part of the property or undertaking subject to a registered charge—
 - (i) has been released from the charge; or
 - (ii) has ceased to form part of the company's or registered non-Hong Kong company's property or undertaking.
- (2) The company or registered non-Hong Kong company, or the mortgagee or person entitled to the charge, may notify the Registrar of the payment, satisfaction, release or cessation.
- (3) A notification—
 - (a) must be in the specified form;
 - (b) must be accompanied by the prescribed fee; and
 - (c) must be accompanied by a certified copy of any instrument required by the Registrar for the purpose of evidencing the payment, satisfaction, release or cessation.
- (4) If the Registrar is satisfied from the instrument accompanying a notification that the payment, satisfaction, release or cessation did take place, the Registrar must process the notification, and the accompanying instrument, in the same way as if they were delivered to the Registrar for registration.
- (5) For the purposes of this section, a copy of an instrument is a certified copy if it is certified as a true copy by—
 - (a) the mortgagee or the person entitled to the charge; or
 - (b) in the case of—

- (i) a mortgagee or entitled person who is a natural person, a person authorized by the mortgagee or entitled person for the purpose; or
 - (ii) a mortgagee or entitled person that is a body corporate—
 - (A) a person authorized by the mortgagee or entitled person for the purpose; or
 - (B) a director or company secretary of the mortgagee or entitled person.
- (6) For the purposes of this section, a charge is a registered charge—
- (a) if—
 - (i) a statement of the particulars of the charge, and the requisite accompanying instrument, have been delivered to the Registrar for registration under Division 2 or 3; and
 - (ii) the Registrar has recorded the information contained in the statement, and in that instrument, for the purposes of section 26(1); or
 - (b) if—
 - (i) immediately before the commencement date of this Division, the charge was registered under Part III of the predecessor Ordinance; or
 - (ii) on or after the commencement date of this Division, the charge has been registered under Part III of the predecessor Ordinance having a continuing effect under Schedule 10.

345. Extension of time for registration

- (1) The Court may, on application by the company or registered non-Hong Kong company or by a person interested in the charge, order that—

- (a) the registration period specified in section 334(5), 335(6), 337(3), 338(4), 339(5), 340(4) or 341(6) be extended;
 - (b) the time required for registration by section 80 or 82 of the predecessor Ordinance, or that section as extended by section 91 of that Ordinance, having a continuing effect under Schedule 10 be extended; or
 - (c) the time required for registration by section 91(5) of the predecessor Ordinance having a continuing effect under Schedule 10 be extended.
- (2) The Court may make an order under subsection (1) on any terms and conditions that the Court thinks just and expedient.
- (3) The Court must not make an order unless the Court is satisfied that—
- (a) the failure specified in subsection (6)—
 - (i) was accidental;
 - (ii) was due to inadvertence or to some other sufficient cause; or
 - (iii) is not of a nature to prejudice the position of creditors or members of the company or registered non-Hong Kong company; or
 - (b) it is just and equitable to grant the relief on other grounds.
- (4) If—
- (a) the Court makes an order under subsection (1) in relation to a charge or debenture; and
 - (b) the failure specified in subsection (6) is rectified within the extended period or time,
- any liability already incurred for an offence under the offence provision specified in subsection (7) in relation to the registration of the charge or debenture is extinguished.

- (5) Subsection (4) does not apply if the Court makes a direction to that effect.
- (6) The failure is—
- (a) in the case of subsection (1)(a), a failure to deliver a statement as required under Division 2, 3 or 4, or any accompanying instrument, within that registration period;
 - (b) in the case of subsection (1)(b), a failure to deliver—
 - (i) the particulars as required under section 80 or 82 of the predecessor Ordinance having a continuing effect under section 64(2), 65(2), 66(2) or 67(2) of Schedule 10 within that time; or
 - (ii) a statement as required under section 80 or 82 of the predecessor Ordinance having a continuing effect under section 64(4)(a), 65(4)(a), 66(4) or 67(4) of Schedule 10, or any accompanying instrument, within that time; or
 - (c) in the case of subsection (1)(c), a failure to deliver—
 - (i) the particulars as required under section 91(5) of the predecessor Ordinance having a continuing effect under section 68(2) of Schedule 10 within that time; or
 - (ii) a statement as required under section 91(5) of the predecessor Ordinance having a continuing effect under section 68(4) of Schedule 10, or any accompanying instrument, within that time.
- (7) The offence provision is—
- (a) in the case of subsection (1)(a), section 336(2), 337(5), 338(6), 339(7), 340(8) or 342(1);
 - (b) in the case of subsection (1)(b), section 81 or 82 of the predecessor Ordinance having a continuing effect under Schedule 10; or

- (c) in the case of subsection (1)(c), section 91(6) of the predecessor Ordinance having a continuing effect under Schedule 10.

346. Rectification of registered particulars

- (1) The Court may, on application by the company or registered non-Hong Kong company or by a person interested in the charge, order that—
- (a) an omission or misstatement of any particular in any of the following be rectified—
- (i) a statement of the particulars of a charge, or any accompanying instrument, delivered for registration under—
- (A) Division 2 or 3;
- (B) section 80 or 82 of the predecessor Ordinance, or that section by virtue of section 91 of that Ordinance, having a continuing effect under section 64(4)(a), 65(4)(a), 66(4) or 67(4) of Schedule 10; or
- (C) section 91(5) of the predecessor Ordinance having a continuing effect under section 68(4) of Schedule 10;
- (ii) a statement of the particulars of an issue of debentures, or a statement of the particulars of commission, allowance or discount, delivered for registration under—
- (A) Division 4;
- (B) section 80 or 82 of the predecessor Ordinance, or that section by virtue of section 91 of that Ordinance, having a continuing effect under section 64(4)(a), 65(4)(a), 66(4) or 67(4) of Schedule 10; or

- (C) section 91(5) of the predecessor Ordinance having a continuing effect under section 68(4) of Schedule 10;
- (iii) a notification, or any accompanying instrument, under section 344;
- (iv) a memorandum under section 85 of the predecessor Ordinance; or
- (b) an omission or misstatement of any of the following be rectified—
- (i) any particular with respect to a charge delivered for registration before the commencement date of this section under section 80, 82 or 91(5) of the predecessor Ordinance;
- (ii) any particular with respect to a charge delivered for registration under section 80, 82 or 91(5) of the predecessor Ordinance having a continuing effect under section 64(2), 65(2), 66(2), 67(2) or 68(2) of Schedule 10.
- (2) The Court may make an order under subsection (1) on any terms and conditions that the Court thinks just and expedient.
- (3) The Court must not make an order unless the Court is satisfied that—
- (a) the omission or misstatement—
- (i) was accidental;
- (ii) was due to inadvertence or to some other sufficient cause; or
- (iii) is not of a nature to prejudice the position of creditors or members of the company or registered non-Hong Kong company; or
- (b) it is just and equitable to grant the relief on other grounds.

- (4) The Court may make an order to rectify an omission or misstatement of any particular in any accompanying instrument mentioned in subsection (1)(a)(i) or (iii) to the extent as permitted by common law rules and equitable principles.

Note—

Rectification may be ordered if the instrument failed accurately to record the intention of the parties.

Division 6**Notice to Registrar of Enforcement of Security****347. Notice of appointment of receiver or manager**

- (1) If a person obtains an order for the appointment of a receiver or manager of the property of a company or the charged property of a registered non-Hong Kong company, or appoints such a receiver or manager under the powers contained in an instrument, the person must, within 7 days after the date of the order or of the appointment under those powers, deliver a statement of that fact to the Registrar for registration.
- (2) A statement under subsection (1) must include—
- (a) the name and address of the person appointed as receiver or manager; and
 - (b) the number of that person's identity card, or if that person does not have an identity card, the number and issuing country of any passport held by that person.
- (3) A statement under subsection (1)—
- (a) must be in the specified form; and
 - (b) must be accompanied by the prescribed fee.
- (4) If a person contravenes subsection (1), the person commits an offence and is liable to a fine at level 3 and, in the case of a

continuing offence, to a further fine of \$300 for each day during which the offence continues.

348. Notice of mortgagee entering into possession of property

- (1) If a person enters into possession of the property of a company, or the charged property of a registered non-Hong Kong company, as mortgagee, the person must, within 7 days after the date of entering into possession, deliver a statement of that fact to the Registrar for registration.
- (2) A statement under subsection (1) must include—
- (a) if the person is a natural person—
 - (i) the person's name and address; and
 - (ii) the number of the person's identity card, or if the person does not have an identity card, the number and issuing country of any passport held by the person; or
 - (b) if the person is a body corporate, its name and the address of its registered or principal office.
- (3) A statement under subsection (1)—
- (a) must be in the specified form; and
 - (b) must be accompanied by the prescribed fee.
- (4) If a person contravenes subsection (1), the person commits an offence and is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

349. Notice of cessation of appointment of receiver or manager or mortgagee going out of possession of property, etc.

- (1) This section applies to—
- (a) a person—

- (i) whose particulars are required to be included in a statement delivered to the Registrar under section 347(1); or
 - (ii) whose particulars were, before the commencement date of section 347, required to be included in a notice delivered to the Registrar under section 87(1) of the predecessor Ordinance; and
- (b) a person—
- (i) whose particulars are required to be included in a statement delivered to the Registrar under section 348(1); or
 - (ii) whose particulars were, before the commencement date of section 348, required to be included in a notice delivered to the Registrar under section 87(2) of the predecessor Ordinance.
- (2) If the person mentioned in subsection (1)(a) ceases to act as receiver or manager, the person must, within 7 days after the date of the cessation, deliver a statement of the cessation to the Registrar for registration.
- (3) If the person mentioned in subsection (1)(b) goes out of possession of the property or charged property, the person must, within 7 days after going out of possession, deliver a statement of that fact to the Registrar for registration.
- (4) If there is any change to the particulars of the person included in the statement or notice, the person must, within 14 days after the date of the change, deliver a statement of that change to the Registrar for registration.
- (5) Subsection (4) does not apply if—
- (a) in the case of a person mentioned in subsection (1)(a)—
 - (i) the person has ceased to act as receiver or manager; and
 - (ii) the person has delivered a statement of the cessation to the Registrar under subsection (2) or

- has, before the commencement date of section 347, given notice of the cessation under section 87(4) of the predecessor Ordinance; or
 - (b) in the case of a person mentioned in subsection (1)(b)—
 - (i) the person has gone out of possession of the property or charged property; and
 - (ii) the person has delivered a statement of that fact to the Registrar under subsection (3) or has, before the commencement date of section 348, given notice of that fact under section 87(4) of the predecessor Ordinance.
- (6) A statement under subsection (2), (3) or (4) must be in the specified form.
- (7) If a person contravenes subsection (2), (3) or (4), the person commits an offence and is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

Division 7

Company's and Registered Non-Hong Kong Company's Records and Register of Charges

- 350. Obligation to keep copies of instruments creating charges**
- (1) A company must keep at its registered office, or at a place prescribed by regulations made under section 648—
 - (a) a copy of every instrument creating a charge required to be registered by the company under this Part; and
 - (b) a copy of every instrument creating a charge required to be registered by the company under Part III of the predecessor Ordinance.

- (2) A registered non-Hong Kong company must keep at its principal place of business in Hong Kong, or at a place prescribed by regulations made under section 355—
- (a) a copy of every instrument creating a charge required to be registered by the company under this Part; and
 - (b) a copy of every instrument creating a charge required to be registered by the company under Part III of the predecessor Ordinance.
- (3) Where—
- (a) a series of debentures is issued by a company or registered non-Hong Kong company;
 - (b) the debentures contain a charge required to be registered by the company or registered non-Hong Kong company under this Part or under Part III of the predecessor Ordinance; and
 - (c) the terms of the debentures are the same,
- the company or registered non-Hong Kong company is to be regarded as having complied with subsection (1) or (2) in relation to the debentures if it keeps a copy of one of the debentures in accordance with that subsection.
- (4) A company or registered non-Hong Kong company—
- (a) must, within 14 days after a copy of an instrument mentioned in subsection (1) or (2) is first kept at a place, notify the Registrar of the place; and
 - (b) must, within 14 days after there is a change in the place where a copy of such an instrument is kept, notify the Registrar of the change.
- (5) A notification under subsection (4)(a) or (b) must be in the specified form.
- (6) Subsection (4)(a) does not require a company or registered non-Hong Kong company to notify the Registrar of the place where a copy of an instrument is kept if—

- (a) the copy has been kept at the company's registered office, or the registered non-Hong Kong company's principal place of business in Hong Kong, at all times since it came into existence; or
 - (b) the copy was in existence on 31 August 1984 and has been kept at that registered office or principal place of business at all times since then.
- (7) If subsection (1), (2) or (4) is contravened, the company or registered non-Hong Kong company, and every responsible person of the company or non-Hong Kong company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

351. Obligation of company to keep register of charges

- (1) A company must keep a register of charges—
- (a) at the company's registered office; or
 - (b) at a place prescribed by regulations made under section 648.
- (2) A company—
- (a) must enter in its register of charges—
 - (i) every charge specifically affecting property of the company; and
 - (ii) every floating charge on the whole or part of the company's property or undertaking; and
 - (b) must enter in its register of charges the following particulars in respect of every charge specified in paragraph (a)(i) and (ii)—
 - (i) the amount secured by the charge;
 - (ii) a description of the property charged;
 - (iii) except in the case of securities to bearer, the names of the persons entitled to the charge.

- (3) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (4) If an officer of the company knowingly and wilfully authorizes or permits the omission of an entry required to be made under subsection (2), the officer commits an offence and is liable to a fine at level 5.

352. Obligation of registered non-Hong Kong company to keep register of charges

- (1) A registered non-Hong Kong company must keep a register of charges—
 - (a) at the company's principal place of business in Hong Kong; or
 - (b) at a place prescribed by regulations made under section 355.
- (2) A registered non-Hong Kong company—
 - (a) must enter in its register of charges—
 - (i) every charge created by the company on property in Hong Kong of the company; and
 - (ii) every charge on property in Hong Kong that is acquired by the company; and
 - (b) must enter in its register of charges the following particulars in respect of every charge specified in paragraph (a)(i) and (ii)—
 - (i) the amount secured by the charge;
 - (ii) a description of the property charged;
 - (iii) except in the case of securities to bearer, the names of the persons entitled to the charge.

- (3) Subsection (2) does not apply to a charge on property if the property was not in Hong Kong when the charge was created by, or the property was acquired by, the registered non-Hong Kong company.
- (4) If a registered non-Hong Kong company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (5) If an officer of the registered non-Hong Kong company knowingly and wilfully authorizes or permits the omission of an entry required to be made under subsection (2), the officer commits an offence and is liable to a fine at level 5.

353. Notification of place where register of charges is kept

- (1) A company or registered non-Hong Kong company—
 - (a) must, within 14 days after a register of charges is first kept at a place, notify the Registrar of the place; and
 - (b) must, within 14 days after there is a change in the place where the register is kept, notify the Registrar of the change.
- (2) A notification under subsection (1)(a) or (b) must be in the specified form.
- (3) Subsection (1)(a) does not require a company or registered non-Hong Kong company to notify the Registrar of the place where the register of charges is kept if—
 - (a) the register has been kept at the company's registered office, or the registered non-Hong Kong company's principal place of business in Hong Kong, at all times since it came into existence; or

- (b) the register was in existence on 31 August 1984 and has been kept at that registered office or principal place of business at all times since then.
- (4) If subsection (1) is contravened, the company or registered non-Hong Kong company, and every responsible person of the company or non-Hong Kong company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

354. Instruments and register open to public inspection

- (1) A member or creditor of a company may inspect, without charge—
 - (a) the copies kept by the company under section 350(1); and
 - (b) the register of charges kept by the company under section 351(1).
- (2) A member or creditor of a registered non-Hong Kong company may inspect, without charge—
 - (a) the copies kept by the company under section 350(2); and
 - (b) the register of charges kept by the company under section 352(1).
- (3) Any other person may inspect, on payment of a fee prescribed by regulations made under section 355 or 648—
 - (a) the copies kept by a company or registered non-Hong Kong company under section 350(1)(a) or (2)(a); and
 - (b) the register of charges kept by a company or registered non-Hong Kong company under section 351(1) or 352(1).

355. Financial Secretary may make regulations for purposes of this Division

- (1) The Financial Secretary may make regulations—
 - (a) prescribing a place at which—
 - (i) copies of instruments creating charges are to be kept by a registered non-Hong Kong company under section 350; or
 - (ii) a register of charges is to be kept by a registered non-Hong Kong company under section 352;
 - (b) providing for the obligations of a registered non-Hong Kong company to keep the copies and the register available for inspection under section 354(2);
 - (c) prescribing the fees for the purposes of section 354(3); and
 - (d) prescribing any other thing that is required or permitted to be prescribed under this Division in respect of those copies and that register.
- (2) Regulations made under subsection (1)(a) may—
 - (a) prescribe a place other than the registered non-Hong Kong company's principal place of business in Hong Kong;
 - (b) prescribe a place—
 - (i) by reference to the place at which the registered non-Hong Kong company keeps any other records; or
 - (ii) in any other way;
 - (c) provide that section 350 or 352 is not complied with by keeping the copies, or the register of charges, at a place prescribed in the regulations unless conditions prescribed in the regulations are met;
 - (d) prescribe more than one place for the purpose specified in subsection (1)(a)(i) or (ii); and

- (e) provide that section 350 or 352 is not complied with by keeping the copies, or the register of charges, at a place prescribed in the regulations unless both the copies and the register of charges of a registered non-Hong Kong company are kept there.
- (3) Regulations made under subsection (1)(b) may—
 - (a) make provision as to the time, duration and manner of inspection; and
 - (b) define what may be required of the registered non-Hong Kong company as regards the nature, extent and manner of extracting or presenting any information for the purposes of inspection.
- (4) Regulations made under subsection (1) may provide that—
 - (a) if a registered non-Hong Kong company contravenes any of the regulations, an offence is committed by—
 - (i) the company; and
 - (ii) every responsible person of the company;
 - (b) a person who commits an offence mentioned in paragraph (a) is liable to a fine not exceeding level 5 and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for each day during which the offence continues;
 - (c) the Court may, in prescribed circumstances, by order compel an immediate inspection of the copies and the register of charges;
 - (d) if the copies, or the register of charges, are kept at the office of a person other than the registered non-Hong Kong company concerned, an order mentioned in paragraph (c) may be made against that other person and that other person's officers and other employees; and
 - (e) the Court must not make an order mentioned in paragraph (c) if it is satisfied that the rights of inspecting the copies, or the register of charges, are being abused.

- (5) Nothing in any provision of this Ordinance or in the regulations made under this section is to be construed as preventing a registered non-Hong Kong company—
 - (a) from providing more extensive facilities than are required by the regulations; or
 - (b) if a fee may be charged, from charging a lesser fee than that prescribed or none at all.
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Part 9
Accounts and Audit
Division 1
Preliminary

356. Interpretation

(1) In this Part—

annual consolidated financial statements (周年綜合財務報表) means the consolidated statements required to be prepared under section 375(2);

annual financial statements (周年財務報表) means the statements required to be prepared under section 375(1);

auditor's report (核數師報告) means the report required to be prepared under section 396;

directors' report (董事報告) means—

- (a) the report required to be prepared under section 380(1); or
- (b) the consolidated report required to be prepared under section 380(2);

financial statements (財務報表) means annual financial statements or annual consolidated financial statements;

Regulation (《規例》) means the regulations made under sections 442 and 443;

summary financial report (財務摘要報告) means a financial report prepared under section 430.

(2) In this Part, a reference to the reporting documents for a financial year is a reference to all of the following—

- (a) the financial statements for the financial year;
 - (b) the directors' report for the financial year;
 - (c) the auditor's report on those financial statements.
- (3) For the purposes of this Part, a body corporate is a wholly owned subsidiary of another body corporate if it has only the following as members—
- (a) that other body corporate;
 - (b) a wholly owned subsidiary of that other body corporate;
 - (c) a nominee of that other body corporate or such a wholly owned subsidiary.

357. Application in relation to financial year beginning on or after commencement date of relevant provision etc.

- (1) Each of the following sections applies in relation to a financial year beginning on or after the commencement date of that section—
- (a) section 358;
 - (b) section 375;
 - (c) section 380;
 - (d) section 420;
 - (e) section 421;
 - (f) section 430.
- (2) Each of the following sections applies in relation to accounting records for a financial year beginning on or after the commencement date of that section—
- (a) section 369;
 - (b) section 370;
 - (c) section 372;
 - (d) section 373.

- (3) Each of the following sections applies in relation to financial statements for a financial year beginning on or after the commencement date of that section—
 - (a) section 376;
 - (b) section 377;
 - (c) section 378;
 - (d) section 427;
 - (e) section 440.
- (4) Section 379 applies in relation to a statement of financial position for a financial year beginning on or after the commencement date of that section.
- (5) Each of the following sections applies in relation to a directors' report for a financial year beginning on or after the commencement date of that section—
 - (a) section 381;
 - (b) section 382.
- (6) Each of the following sections applies in relation to an appointment of an auditor for a financial year beginning on or after the commencement date of that section—
 - (a) section 385;
 - (b) section 386;
 - (c) section 387;
 - (d) section 389;
 - (e) section 390.
- (7) Each of the following sections applies in relation to a person appointed as auditor for a financial year beginning on or after the commencement date of that section—
 - (a) section 393;
 - (b) section 394;
 - (c) section 395.

- (8) Section 402 applies in relation to a general meeting of which notice is given on or after the commencement date of that section.
- (9) Each of the following sections applies in relation to a person who is appointed, or is deemed to be reappointed, as auditor for a financial year beginning on or after the commencement date of that section—
 - (a) section 403;
 - (b) section 407;
 - (c) section 408;
 - (d) section 409;
 - (e) section 410.
- (10) Section 406 applies to a provision made on or after the commencement date of that section.
- (11) Section 426 applies in relation to—
 - (a) any financial statements and directors' report for a financial year beginning on or after the commencement date of that section; and
 - (b) any auditor's report on those financial statements.
- (12) Section 431 applies in relation to a summary financial report for a financial year beginning on or after the commencement date of that section.
- (13) Schedule 4 applies in relation to financial statements for a financial year beginning on or after the commencement date of that Schedule.

Division 2**Reporting Exemption****358. Company falling within reporting exemption**

- (1) For the purposes of this Part, a company falls within the reporting exemption for a financial year if—
 - (a) it is qualified as a small private company or small guarantee company for the financial year; and
 - (b) it is not a company specified in subsection (4) at any time during the financial year.
- (2) For the purposes of this Part, a company also falls within the reporting exemption for a financial year if—
 - (a) it is a private company at all times, and is not a company specified in subsection (4) at any time, during the financial year;
 - (b) it is the holding company of a group of companies, of which no member is a company specified in subsection (4) at any time during the financial year; and
 - (c) the group of companies is qualified as a group of small private companies for the financial year.
- (3) For the purposes of this Part, a company also falls within the reporting exemption for a financial year if—
 - (a) it is a company limited by guarantee at all times, and is not a company specified in subsection (4) at any time, during the financial year;
 - (b) it is the holding company of a group of companies, of which no member is a company specified in subsection (4) at any time during the financial year; and
 - (c) the group of companies is qualified as a group of small guarantee companies for the financial year.

- (4) The company specified for the purposes of subsections (1), (2) and (3) is—
 - (a) one that carries on any banking business and holds a valid banking licence granted under the Banking Ordinance (Cap. 155);
 - (b) one that is a corporation licensed under Part V of the Securities and Futures Ordinance (Cap. 571) to carry on a business in any regulated activity within the meaning of that Ordinance; or
 - (c) one that—
 - (i) carries on any insurance business otherwise than solely as an agent; or
 - (ii) accepts, by way of trade or business (other than banking business), loans of money at interest or repayable at a premium, otherwise than on terms involving the issue of debentures or other securities.

359. Small private company

- (1) For the purposes of this Part, if a company is a private company formed and registered under this Ordinance, and any 2 of the conditions specified in section 1(1) of Schedule 3 are satisfied in its first financial year, the company is qualified as a small private company for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4).
- (2) For the purposes of this Part, if a company is an existing private company, and any 2 of the conditions specified in section 1(1) of Schedule 3 are satisfied—
 - (a) in its first financial year after the coming into operation of this section; or

- (b) in the financial year of the company for the purposes of the predecessor Ordinance that immediately precedes that first financial year,

the company is qualified as a small private company for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4).

- (3) For the purposes of this Part, if—

- (a) a company is a private company; and
(b) after its first financial year after the coming into operation of this section, any 2 of the conditions specified in section 1(1) of Schedule 3 are satisfied for 2 consecutive financial years,

the company is also qualified as a small private company for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is disqualified under subsection (4).

- (4) For the purposes of this Part, if, after a company is qualified as a small private company under subsection (1), (2) or (3), any 2 of the conditions specified in section 1(2) of Schedule 3 are not satisfied for 2 consecutive financial years, the company is disqualified as a small private company for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is qualified again under subsection (3).

360. Small guarantee company

- (1) For the purposes of this Part, if a company is a company limited by guarantee formed and registered under this Ordinance, and the condition specified in section 1(3) of Schedule 3 is satisfied in its first financial year, the company is qualified as a small guarantee company for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4).

- (2) For the purposes of this Part, if a company is an existing company limited by guarantee, and the condition specified in section 1(3) of Schedule 3 is satisfied—

- (a) in its first financial year after the coming into operation of this section; or
(b) in the financial year of the company for the purposes of the predecessor Ordinance that immediately precedes that first financial year,

the company is qualified as a small guarantee company for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4).

- (3) For the purposes of this Part, if—

- (a) a company is a company limited by guarantee; and
(b) after its first financial year after the coming into operation of this section, the condition specified in section 1(3) of Schedule 3 is satisfied for 2 consecutive financial years,

the company is also qualified as a small guarantee company for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is disqualified under subsection (4).

- (4) For the purposes of this Part, if, after a company is qualified as a small guarantee company under subsection (1), (2) or (3), the condition specified in section 1(4) of Schedule 3 is not satisfied for 2 consecutive financial years, the company is disqualified as a small guarantee company for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is qualified again under subsection (3).

361. Group of small private companies

- (1) For the purposes of this Part, if—

- (a) the holding company of a group of companies is formed and registered under this Ordinance; and
- (b) the condition specified in section 1(5) of Schedule 3, and any 2 of the conditions specified in section 1(6) of that Schedule, are satisfied in the holding company's first financial year,

the group is qualified as a group of small private companies for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4) or (5).

- (2) For the purposes of this Part, if—

- (a) the holding company of a group of companies is an existing company; and
- (b) the condition specified in section 1(5) of Schedule 3, and any 2 of the conditions specified in section 1(6) of that Schedule, are satisfied—
 - (i) in the holding company's first financial year after the coming into operation of this section; or
 - (ii) in the holding company's financial year for the purposes of the predecessor Ordinance that immediately precedes that first financial year,

the group is qualified as a group of small private companies for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4) or (5).

- (3) For the purposes of this Part, if, after the first financial year of the holding company of a group of companies after the coming into operation of this section, the condition specified in section 1(5) of Schedule 3, and any 2 of the conditions specified in section 1(6) of that Schedule, are satisfied for 2 consecutive financial years of the holding company, the group is also qualified as a group of small private companies for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is disqualified under subsection (4) or (5).

- (4) For the purposes of this Part, if, after a group of companies is qualified as a group of small private companies under subsection (1), (2) or (3), another company becomes a new member of the group in a financial year of the holding company such that either the condition specified in section 1(5) of Schedule 3 is not satisfied, or any 2 of the conditions specified in section 1(7) of that Schedule are not satisfied, for the financial year, the group is disqualified as a group of small private companies for the financial year, and every subsequent financial year, until it is qualified again under subsection (3).
- (5) For the purposes of this Part, if, after a group of companies is qualified as a group of small private companies under subsection (1), (2) or (3), either the condition specified in section 1(5) of Schedule 3 is not satisfied, or any 2 of the conditions specified in section 1(7) of that Schedule are not satisfied, for 2 consecutive financial years of the holding company, the group is also disqualified as a group of small private companies for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is qualified again under subsection (3).

362. Group of small guarantee companies

- (1) For the purposes of this Part, if—
 - (a) the holding company of a group of companies is formed and registered under this Ordinance; and
 - (b) the conditions specified in section 1(8) of Schedule 3 are satisfied in the holding company's first financial year,

the group is qualified as a group of small guarantee companies for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4) or (5).
- (2) For the purposes of this Part, if—
 - (a) the holding company of a group of companies is an existing company; and

- (b) the conditions specified in section 1(8) of Schedule 3 are satisfied—
- (i) in the holding company's first financial year after the coming into operation of this section; or
 - (ii) in the holding company's financial year for the purposes of the predecessor Ordinance that immediately precedes that first financial year,

the group is qualified as a group of small guarantee companies for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4) or (5).

- (3) For the purposes of this Part, if, after the first financial year of the holding company of a group of companies after the coming into operation of this section, the conditions specified in section 1(8) of Schedule 3 are satisfied for 2 consecutive financial years of the holding company, the group is also qualified as a group of small guarantee companies for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is disqualified under subsection (4) or (5).
- (4) For the purposes of this Part, if, after a group of companies is qualified as a group of small guarantee companies under subsection (1), (2) or (3), another company becomes a new member of the group in a financial year of the holding company such that the conditions specified in section 1(9) of Schedule 3 are not satisfied for the financial year, the group is disqualified as a group of small guarantee companies for the financial year, and every subsequent financial year, until it is qualified again under subsection (3).
- (5) For the purposes of this Part, if, after a group of companies is qualified as a group of small guarantee companies under subsection (1), (2) or (3), the conditions specified in section 1(9) of Schedule 3 are not satisfied for 2 consecutive financial years of the holding company, the group is also disqualified as a group of small guarantee companies for the financial year

immediately following those 2 financial years, and every subsequent financial year, until it is qualified again under subsection (3).

Division 3

A Company's Financial Year

363. Financial year

- (1) A company's first financial year after the coming into operation of this section begins on the first day of its first accounting reference period and ends on the last day of that period or on any other date, not more than 7 days before or after that last day, that the directors think fit.
- (2) Every subsequent financial year of a company begins on the date immediately following the end of the previous financial year and ends on the last day of the accounting reference period immediately following the one by reference to which the previous financial year is determined, or on any other date, not more than 7 days before or after that last day, that the directors think fit.
- (3) If an undertaking is not a company, a reference in this Ordinance to its financial year is a reference to a period in respect of which a profit and loss account of the undertaking is required, by its constitution or by the law under which it is established, to be made up, whether or not the period is a year.
- (4) A company's directors must secure that the financial year of each of its subsidiary undertakings coincides with the company's financial year unless, in the directors' opinion, there are good reasons against those financial years coinciding with each other.

364. Accounting reference period

- (1) For an existing company formed and registered before the commencement date of Division 1 of Part 3, the first accounting reference period begins on the date immediately following its primary accounting reference date and ends on the first anniversary of its primary accounting reference date.
- (2) For—
 - (a) a company formed and registered under this Ordinance; and
 - (b) a company formed and registered under a provision of the predecessor Ordinance having a continuing effect under Schedule 10 or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1),
 the first accounting reference period begins on the date of its incorporation and ends on its primary accounting reference date.
- (3) Every subsequent accounting reference period of a company is the period of 12 months beginning immediately after the end of the previous accounting reference period and ending on its accounting reference date, unless the accounting reference period is shortened or extended, as stated in a directors' resolution under section 367(3).

365. Primary accounting reference date

- (1) For an existing company formed and registered before the commencement date of Division 1 of Part 3, the primary account reference date is—
 - (a) the date up to which the company's accounts are made up to if, on or after the commencement date of this section, the company's accounts—
 - (i) have been laid before the company in general meeting under section 122 of the predecessor

- Ordinance having a continuing effect under Schedule 10; or
 - (ii) have been provided to the members under section 111(6) of the predecessor Ordinance having a continuing effect under Schedule 10; or
 - (b) the date by which the company's accounts is required by section 122 to be laid before the company in general meeting if, on or after the commencement date of this section, the company's accounts have not been laid or provided as mentioned in paragraph (a)(i) or (ii).
- (2) Subsection (1) does not apply if those accounts are made up to a date falling more than one day before the commencement date of this section.
 - (3) Subsection (1)(a)(i) does not apply unless the general meeting is held—
 - (a) in the case of the company's first general meeting, within 18 months of the company's incorporation; or
 - (b) in any other case, within 15 months, and in the year, after the company's last annual general meeting.
 - (4) For a company formed and registered under this Ordinance or under a provision of the predecessor Ordinance having a continuing effect under Schedule 10 or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), the primary accounting reference date is—
 - (a) a date specified by the directors before the relevant date for the purposes of this paragraph; or
 - (b) in the absence of such a specified date, the relevant date.
 - (5) A date specified for the purposes of subsection (4)(a) must fall within 18 months after the date of the company's incorporation.
 - (6) In this section—

relevant anniversary (有關周年日), in relation to a company's incorporation, means the anniversary of the company's incorporation that first occurs after this section comes into operation;

relevant date (有關日期) means the last day of the month in which the relevant anniversary of the company's incorporation falls.

366. Accounting reference date

Subject to section 367, a company's accounting reference date is the anniversary of its primary accounting reference date.

367. Alteration of accounting reference date

- (1) The directors of a company may specify a new accounting reference date in relation to—
 - (a) the company's current accounting reference period and every subsequent accounting reference period; or
 - (b) the company's previous accounting reference period and every subsequent accounting reference period.
- (2) If the directors of a public company or a company limited by guarantee specify a new accounting reference date under subsection (1), the company must, within 14 days after the date of the directors' resolution specifying the new accounting reference date, deliver a notice, in the specified form, of that new date to the Registrar for registration.
- (3) A directors' resolution by which a new accounting reference date is specified, and a notice of that new date delivered to the Registrar, must state—
 - (a) whether the current or previous accounting reference period concerned is to be shortened, so as to end on the first occasion on which the new accounting reference date falls or fell after the beginning of that period; or
 - (b) whether the current or previous accounting reference period concerned is to be extended, so as to end on the

second occasion on which the new accounting reference date falls or fell after the beginning of that period.

- (4) The directors of a company must not specify a new accounting reference date in relation to the previous accounting reference period if—
 - (a) the period for laying before the company in general meeting under section 420 a copy of the reporting documents for the financial year determined by reference to that accounting reference period has expired; or
 - (b) the period for sending a copy of the reporting documents for the financial year to the members under section 421(3) has expired.
- (5) The directors of a company must not specify a new accounting reference date in relation to an accounting reference period so as to extend the period to longer than 18 months.
- (6) The directors of a company must not specify a new accounting reference date in relation to the current or previous accounting reference period so as to extend that period if—
 - (a) those directors have specified a new accounting reference date in relation to an earlier accounting reference period so as to extend that earlier period; and
 - (b) the earlier accounting reference period ended within 5 years before the new accounting reference date is specified.
- (7) Subsection (6) does not apply if—
 - (a) the new accounting reference date to be specified by the directors coincides with the accounting reference date of a holding company of the company; or
 - (b) the specification is approved by a members' resolution.
- (8) If a company contravenes subsection (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a

continuing offence, to a further fine of \$300 for each day during which the offence continues.

(9) In this section—

previous accounting reference period (對上的會計參照期), in relation to a company, means the accounting reference period of the company immediately preceding the company's current accounting reference period.

Division 4

Preparation of Financial Statements and Directors' Reports

Subdivision 1

Preliminary

368. Interpretation

In this Division—

in electronic form (電子形式) means in the form of an electronic record;

in hard copy form (印本形式) means in a paper form or similar form capable of being read.

Subdivision 2

Accounting Records

369. Company must keep accounting records

- (1) A company must keep accounting records that comply with subsections (2) and (3).
- (2) The accounting records must be sufficient—
 - (a) to show and explain the company's transactions;

- (b) to disclose with reasonable accuracy, at any time, the company's financial position and financial performance; and
 - (c) to enable the directors to ensure that the financial statements comply with this Ordinance.
- (3) In particular, the accounting records must contain—
- (a) daily entries of all sums of money received and expended by the company, and the matters in respect of which the receipt and expenditure takes place; and
 - (b) a record of the company's assets and liabilities.
- (4) If subsection (1) does not apply in relation to a subsidiary undertaking of a company, the company must take all reasonable steps to secure that the subsidiary undertaking keeps accounting records that are sufficient to enable the company's directors to ensure that any financial statements required to be prepared under Subdivision 3 of Division 4 comply with this Ordinance.
- (5) If a company contravenes subsection (1) or (4), every responsible person of the company commits an offence, and each is liable to a fine of \$300,000 and to imprisonment for 12 months.
- (6) If a person is charged with an offence under subsection (5), it is a defence to establish that—
- (a) the person acted honestly; and
 - (b) in the circumstances in which the company's business was carried on, it was excusable for the person to authorize or permit, participate in, or fail to take all reasonable steps to prevent, the company's contravention (as the case may be).

370. Where accounting records to be kept

- (1) A company's accounting records—

- (a) must be kept at its registered office or any other place that the directors think fit; and
 - (b) must be open to inspection by the directors at all times without charge.
- (2) If a company's accounting records are kept at a place outside Hong Kong, the accounts and returns with respect to the business dealt with in those records—
- (a) must be sent to, and kept at, a place in Hong Kong; and
 - (b) must be open to inspection by the directors at all times without charge.
- (3) Those accounts and returns—
- (a) must disclose with reasonable accuracy the financial position of the business in question at intervals of not more than 6 months; and
 - (b) must be sufficient to enable the directors to ensure that any financial statements required to be prepared under Subdivision 3 of Division 4 comply with this Ordinance.
- (4) If subsection (1), (2) or (3) is contravened, every responsible person of the company commits an offence, and each is liable to a fine of \$300,000 and to imprisonment for 12 months.
- (5) If a person is charged with an offence under subsection (4), it is a defence to establish that—
- (a) the person acted honestly; and
 - (b) in the circumstances in which the company's business was carried on, it was excusable for the person to authorize or permit, participate in, or fail to take all reasonable steps to prevent, the company's contravention (as the case may be).

371. Director may obtain copies of accounting records during inspection

- (1) A company must allow a director of the company to make a copy of its accounting records in the course of inspection.
- (2) A company must provide a director of the company with a copy of its accounting records without charge if so requested by the director.
- (3) For the purposes of subsection (2)—
 - (a) if the director requests a copy of the company's accounting records in hard copy form, the company must provide the copy in hard copy form; and
 - (b) if the director requests a copy of the company's accounting records in electronic form, the company must provide the copy in any electronic form that the company thinks fit.
- (4) Subsections (2) and (3) do not require a company to provide a director of the company with a copy of its accounting records in electronic form if it keeps its accounting records by recording the information in hard copy form only.
- (5) If any accounting records are kept by a company by recording the information in electronic form, a requirement under this Subdivision for the accounting records to be open to inspection is to be regarded as a requirement for a reproduction of the recording in hard copy form to be open to inspection.
- (6) If a company contravenes subsection (1) or (2), every responsible person of the company commits an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (7) If a person is charged with an offence under subsection (6), it is a defence to establish that—
 - (a) the person acted honestly; and

- (b) in the circumstances in which the company's business was carried on, it was excusable for the person to authorize or permit, participate in, or fail to take all reasonable steps to prevent, the company's contravention (as the case may be).

372. Form of accounting records

- (1) The information contained in a company's accounting records must be adequately recorded such that they are available for future reference.
- (2) Subject to subsection (1), a company's accounting records may be—
 - (a) kept in hard copy form or electronic form; and
 - (b) arranged in the manner that the directors think fit.
- (3) If a company's accounting records are kept in electronic form, the company must ensure that those records are capable of being reproduced in hard copy form.
- (4) If any accounting records are kept by a company otherwise than by making entries in a bound book, the company—
 - (a) must take adequate precautions to guard against falsification; and
 - (b) must take adequate steps to facilitate the discovery of a falsification.
- (5) If subsection (1), (3) or (4) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

373. How long accounting records to be preserved

- (1) This section applies to any accounting records, or any accounts and returns, that are required by section 369(1) or 370(2) to be kept.

- (2) The company must preserve the records, or the accounts and returns, for 7 years after the end of the financial year to which the last entry made or matter recorded in the records, or the accounts and returns, relates.
- (3) If a company contravenes subsection (2), every responsible person of the company commits an offence, and each is liable to a fine of \$300,000 and to imprisonment for 12 months.

374. Court may order accounting records to be inspected on director's behalf

- (1) On application by a director of a company, the Court may by order authorize a person to inspect the company's accounting records on the director's behalf.
- (2) Unless the Court otherwise directs, a person so authorized may make copies of the accounting records.
- (3) The Court may make any or all of the following orders—
 - (a) an order limiting the use that a person so authorized may make of the information obtained during the inspection;
 - (b) an order limiting the right of a person so authorized to make copies in accordance with subsection (2);
 - (c) any other order that it thinks fit.

Subdivision 3**Financial Statements****375. Directors must prepare financial statements**

- (1) A company's directors must prepare for each financial year statements that comply with sections 376 and 378.
- (2) Despite subsection (1), if the company is a holding company at the end of the financial year, the directors must instead prepare for the financial year consolidated statements that comply with sections 376, 377 and 378.

- (3) Subsection (2) does not apply—
- (a) if the company is a wholly owned subsidiary of another body corporate in the financial year; or
 - (b) if—
 - (i) the company is a partially owned subsidiary of another body corporate in the financial year;
 - (ii) at least 6 months before the end of the financial year, the directors notify the members in writing of the directors' intention not to prepare consolidated statements for the financial year, and the notification does not relate to any other financial year; and
 - (iii) as at a date falling 3 months before the end of the financial year, no member has responded to the notification by giving the directors a written request for the preparation of consolidated statements for the financial year.
- (4) If, as respects any financial statements a copy of which is laid before a company in general meeting under section 420, or sent to a member under section 421 or otherwise circulated, published or issued by the company, a director of the company fails to take all reasonable steps to secure compliance with subsection (1) or (2), the director commits an offence and is liable to a fine of \$300,000.
- (5) If, as respects any financial statements a copy of which is laid before a company in general meeting under section 420, or sent to a member under section 421 or otherwise circulated, published or issued by the company, a director of the company wilfully fails to take all reasonable steps to secure compliance with subsection (1) or (2), the director commits an offence and is liable to a fine of \$300,000 and to imprisonment for 12 months.
- (6) If a person is charged with an offence under subsection (4), it is a defence to establish that the person had reasonable

grounds to believe, and did believe, that a competent and reliable person—

- (a) was charged with the duty of ensuring that subsection (1) or (2) (as the case may be) was complied with; and
- (b) was in a position to discharge that duty.

376. General requirements for financial statements

- (1) The annual financial statements for a financial year—
 - (a) must give a true and fair view of the financial position of the company as at the end of the financial year; and
 - (b) must give a true and fair view of the financial performance of the company for the financial year.
- (2) The annual consolidated financial statements for a financial year—
 - (a) must give a true and fair view of the financial position of the company, and all the subsidiary undertakings, as a whole as at the end of the financial year; and
 - (b) must give a true and fair view of the financial performance of the company, and all the subsidiary undertakings, as a whole for the financial year.
- (3) The financial statements for a financial year must comply with—
 - (a) if the company falls within the reporting exemption for the financial year, Part 1 of Schedule 4; or
 - (b) if the company does not fall within the reporting exemption for the financial year, Parts 1 and 2 of Schedule 4.
- (4) The financial statements for a financial year must also comply with—
 - (a) any other requirements of this Ordinance in relation to the financial statements; and

- (b) the accounting standards applicable to the financial statements.
- (5) If, in relation to any financial statements, compliance with subsections (3) and (4) would be insufficient to give a true and fair view under subsection (1) or (2), the financial statements must contain all additional information necessary for that purpose.
- (6) If, in relation to any financial statements, compliance with subsection (3) or (4) would be inconsistent with a requirement to give a true and fair view under subsection (1) or (2), the financial statements—
 - (a) must depart from subsection (3) or (4) (as the case may be) to the extent necessary for it to give a true and fair view; and
 - (b) must contain the reasons for, and the particulars and effect of, the departure.
- (7) Subsections (1), (2), (5) and (6) do not apply if the company falls within the reporting exemption for the financial year.
- (8) In this section—
 - (a) *accounting standards* (會計準則) means statements of standard accounting practice issued by a body prescribed by the Regulation; and
 - (b) a reference to accounting standards applicable to any financial statements is a reference to accounting standards as are, in accordance with their terms, relevant to the company's circumstances and to the financial statements.

377. Subsidiary undertakings to be included in annual consolidated financial statements

- (1) Subject to subsections (2) and (3), the annual consolidated financial statements for a financial year must include all the subsidiary undertakings of the company.

- (2) Where the company falls within the reporting exemption for the financial year, one or more subsidiary undertakings may be excluded from the annual consolidated financial statements in compliance with the accounting standards applicable to the statements.
- (3) Where the company does not fall within the reporting exemption for the financial year—
 - (a) one subsidiary undertaking may be excluded from the annual consolidated financial statements if the inclusion of the subsidiary undertaking is not material for the purpose of giving a true and fair view of the financial position, and of the financial performance, mentioned in section 376(2)(a) and (b); and
 - (b) more than one subsidiary undertaking may be excluded from the annual consolidated financial statements if the inclusion of those subsidiary undertakings taken together is not material for the purpose of giving a true and fair view of the financial position, and of the financial performance, mentioned in section 376(2)(a) and (b).

378. Notes to financial statements to contain information on directors' emoluments etc.

- (1) The financial statements for a financial year must contain, in the notes to the statements, the information prescribed by the Regulation for the purposes of this subsection about the following—
 - (a) the directors' emoluments;
 - (b) the directors' retirement benefits;
 - (c) compensation to directors for loss of office;
 - (d) loans, quasi-loans and other dealings in favour of directors.
- (2) Despite subsection (1)(d), the financial statements for a financial year are not required to contain the information

prescribed by the Regulation about loans, quasi-loans and other dealings in favour of directors if the company complies with the requirements prescribed by the Regulation for the purposes of this subsection.

- (3) The notes to any financial statements must also comply with other requirements prescribed by the Regulation.
- (4) A person who is, or has been during the preceding 5 years, a director or shadow director of a company must give notice to the company of any matter that—
 - (a) is prescribed by the Regulation;
 - (b) relates to the person; and
 - (c) is necessary for the purposes of subsection (1).
- (5) A person who contravenes subsection (4) commits an offence and is liable to a fine at level 5.

379. Statement of financial position to be approved and signed

- (1) A statement of financial position that forms part of any financial statements—
 - (a) must be approved by the directors; and
 - (b) must be signed—
 - (i) by 2 directors on the directors' behalf; or
 - (ii) in the case of a company having only one director, by the director.
- (2) If, as respects any financial statements a copy of which is circulated, published or issued by the company, subsection (1) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

Subdivision 4

Directors' Report

380. Directors must prepare directors' report

- (1) A company's directors must prepare for each financial year a report that—
 - (a) complies with section 381 and Schedule 5;
 - (b) contains the information prescribed by the Regulation; and
 - (c) complies with other requirements prescribed by the Regulation.
- (2) Despite subsection (1), if the company is a holding company in a financial year, and the directors prepare annual consolidated financial statements for the financial year, the directors must instead prepare for the financial year a consolidated report that—
 - (a) complies with section 381 and Schedule 5;
 - (b) contains the information prescribed by the Regulation; and
 - (c) complies with other requirements prescribed by the Regulation.
- (3) Subsection (1) or (2) does not require the directors' report for a financial year to comply with Schedule 5 if—
 - (a) the company falls within the reporting exemption for the financial year;
 - (b) the company is a wholly owned subsidiary of another body corporate in the financial year; or
 - (c) the company is a private company that does not fall within the reporting exemption for the financial year, and a special resolution is passed by the members to the

- effect that the company is not to prepare a business review required by that Schedule for the financial year.
- (4) A resolution for the purposes of subsection (3)(c)—
 - (a) may be passed in relation to—
 - (i) a financial year; or
 - (ii) a financial year and every subsequent financial year;
 - (b) must be passed at least 6 months before the end of the financial year to which the directors' report relates; and
 - (c) may only be revoked by a special resolution.
 - (5) A director of a company who fails to take all reasonable steps to secure compliance with subsection (1) or (2) commits an offence and is liable to a fine of \$150,000.
 - (6) A director of a company who wilfully fails to take all reasonable steps to secure compliance with subsection (1) or (2) commits an offence and is liable to a fine of \$150,000 and to imprisonment for 6 months.
 - (7) If a person is charged with an offence under subsection (5), it is a defence to establish that the person had reasonable grounds to believe, and did believe, that a competent and reliable person—
 - (a) was charged with the duty of ensuring that subsection (1) or (2) (as the case may be) was complied with; and
 - (b) was in a position to discharge that duty.

381. Contents of directors' report: general

- (1) A directors' report for a financial year must contain—
 - (a) the name of every person who was a director of the company—
 - (i) during the financial year; or

- (ii) during the period beginning with the end of the financial year and ending on the date of the report; and
 - (b) the principal activities of the company in the course of the financial year.
- (2) A directors' report must contain particulars of any other matter—
 - (a) that is material for the members' appreciation of the state of the company's affairs; and
 - (b) the disclosure of which will not, in the directors' opinion, be harmful to the business of the company.
 - (3) This section has effect in relation to a directors' report required to be prepared under section 380(2) as if a reference to the company in subsection (1) or (2) were a reference to—
 - (a) the company; and
 - (b) the subsidiary undertakings included in the annual consolidated financial statements for the financial year.

382. Directors' report to be approved and signed

- (1) A directors' report—
 - (a) must be approved by the directors; and
 - (b) must be signed on the directors' behalf by a director or by the company secretary.
- (2) Every copy of a directors' report laid before a company in general meeting under section 420, or sent to a member under section 421 or otherwise circulated, published or issued by the company, must state the name of the person who signed the report on the directors' behalf.
- (3) If subsection (1) or (2) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

Division 5**Auditor and Auditor's Report****Subdivision 1****Preliminary****383. Interpretation**

In this Division—

appointment period (委任期), in relation to a financial year, means the period of 28 days beginning on whichever is the earlier of the following—

- (a) the date on which a copy of the reporting documents for the previous financial year is sent or provided to every member of the company under section 421(3) or 602(1)(b) (as the case may be);
- (b) the last date on which a copy of the reporting documents for the previous financial year must be sent or provided to every member of the company under section 421(3) or 602(1)(b) (as the case may be);

cessation statement (停任陳述) means a statement given under section 413(1), (2) or (3) or 414(2)(a);

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

statement of circumstances (情況陳述) means a statement given under section 415(a) or 416(1)(a).

Subdivision 2**Appointment of Auditor****384. Eligibility for appointment**

- (1) Only a practice unit is eligible for appointment as auditor of a company under this Subdivision.
- (2) The following are disqualified for appointment as auditor of a company under this Subdivision—
 - (a) a person who is an officer or employee of the company;
 - (b) a person who is a partner or employee of a person mentioned in paragraph (a);
 - (c) a person who—
 - (i) is, by virtue of paragraph (a) or (b), disqualified for appointment as auditor of any other undertaking that is a subsidiary undertaking, or a parent undertaking, of the company or is a subsidiary undertaking of that parent undertaking; or
 - (ii) would be so disqualified if the undertaking were a company.
- (3) In this section, a reference to an officer or employee of a company excludes an auditor of the company.

385. Auditor must be appointed for each financial year

- (1) An auditor must be appointed for each financial year of a company.
- (2) An auditor may be appointed only under this Subdivision.

386. Appointment of first auditor by directors

- (1) This section applies to—
 - (a) a company formed and registered under this Ordinance; and

- (b) a company formed and registered under a provision of the predecessor Ordinance having a continuing effect under Schedule 10 or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).
- (2) If the company is required to hold an annual general meeting in accordance with section 600 in respect of its first financial year, the directors may appoint the auditor of the company for that first financial year at any time before the annual general meeting.
- (3) If, by virtue of section 602(1) or (2), the company is not required to hold an annual general meeting in accordance with section 600 in respect of its first financial year, the directors may appoint the auditor of the company for that first financial year at any time before the appointment period in relation to the next financial year.

387. Appointment of auditor by company members

- (1) A company must appoint the auditor of the company for a financial year by a resolution passed at the annual general meeting held in respect of the previous financial year.
- (2) Subsection (1) does not apply to a company that, by virtue of section 602(2), is not required to hold an annual general meeting in accordance with section 600 in respect of the previous financial year.
- (3) A company must appoint the auditor of the company for a financial year by a resolution passed at a general meeting if—
 - (a) by virtue of section 602(2), it is not required to hold an annual general meeting in accordance with section 600 in respect of the previous financial year; and
 - (b) no person is deemed to be reappointed as auditor of the company for the financial year under section 394.
- (4) An appointment under subsection (3) must be made before the end of the appointment period in relation to the financial year.

- (5) If, at the annual general meeting held in respect of the previous financial year, a company has not appointed the auditor of the company for a financial year, the company must make the appointment by a resolution passed at another general meeting.
- (6) A company to which section 386 applies may, by a resolution passed at a general meeting, appoint the auditor of the company for its first financial year if the directors have not done so under that section.

388. Appointment to fill casual vacancy

- (1) The directors may appoint a person to fill a casual vacancy in the office of auditor of the company.
- (2) If the directors have not done so within one month after the casual vacancy occurs, the members may, by a resolution passed at a general meeting, appoint a person to fill the casual vacancy.

389. Appointment of auditor by Court

- (1) The Court may, on application by a member of a company, appoint the auditor of the company for a financial year if—
 - (a) in the case of a company required to hold an annual general meeting in accordance with section 600 in respect of the previous financial year—
 - (i) at the annual general meeting, no person has been appointed as auditor of the company for the financial year; or
 - (ii) an annual general meeting has not been held in accordance with that section; or
 - (b) in the case of a company not required to hold an annual general meeting in accordance with section 600 in respect of the previous financial year by virtue of section 602(2)—

- (i) at the end of the appointment period in relation to the financial year, no person has been appointed as auditor of the company for the financial year; and
 - (ii) no person is deemed to be reappointed as auditor of the company for the financial year under section 394.
- (2) The Court may, on application by a member of a company to which section 386 applies, appoint the auditor of the company for its first financial year if an appointment has not been made under sections 386(2) or (3) and 387(6).
- (3) The Court may, on application by a member of a company, appoint a person to fill a casual vacancy in the office of auditor of the company if an appointment has not been made under section 388.

390. Effect of appointing a firm as auditor

If a firm is appointed, by the firm name, as auditor of a company, the appointment is to be regarded as an appointment of those persons who—

- (a) are the partners in the firm from time to time during the currency of the appointment; and
- (b) are eligible, and not disqualified, for appointment as auditor of the company under this Subdivision.

391. Special notice required for resolution for appointing auditor in some cases

- (1) Special notice is required for—
- (a) a resolution proposed for the purposes of section 387(1), (3) or (5) for appointing a person as auditor in place of a specified incumbent; and
 - (b) a resolution proposed for the purposes of section 388(2).
- (2) Special notice is also required for a resolution proposed for the purposes of section 387(1), (3) or (5) for appointing a

- specified incumbent as auditor if that incumbent holds office by virtue of an appointment by the directors to fill a casual vacancy under section 388(1).
- (3) On receipt of a special notice, the company must send a copy of it—
- (a) to the person proposed to be appointed as auditor; and
 - (b) in the case of—
 - (i) a proposed appointment under section 387(1), (3) or (5) of a person in place of a specified incumbent, to that incumbent; or
 - (ii) a proposed appointment under section 387(1), (3) or (5) of a specified incumbent who holds office by virtue of an appointment under section 388(1) or (2) to fill a casual vacancy caused by a resignation, to the person who resigned.
- (4) In this section—
- specified incumbent** (指明在任人) means—
- (a) the person who is the last auditor of the company and whose term of office as auditor has expired; or
 - (b) the person whose term of office as auditor will expire—
 - (i) at the end of the general meeting; or
 - (ii) at the end of the appointment period in relation to the financial year concerned.

392. Copies of written resolution for appointment must be sent to new and old auditors

- (1) This section applies if an appointment of an auditor specified in subsection (2) is proposed to be effected by a written resolution of the members of a company.
- (2) The appointment is—
- (a) an appointment under section 387(1), (3) or (5) of a person in place of a specified incumbent; or

- (b) an appointment under section 387(1), (3) or (5) of a specified incumbent who holds office by virtue of an appointment under section 388(1) or (2) to fill a casual vacancy caused by a resignation.
- (3) On receipt of a copy of the proposed resolution, the company must send a copy of it—
 - (a) to the person proposed to be appointed as auditor; and
 - (b) in the case of—
 - (i) subsection (2)(a), to the specified incumbent; or
 - (ii) subsection (2)(b), to the person who resigned.
- (4) If a company contravenes subsection (3), the written resolution is ineffective.
- (5) In this section—

specified incumbent (指明在任人) means—

 - (a) the person who is the last auditor of the company and whose term of office as auditor has expired; or
 - (b) the person whose term of office as auditor will expire at the end of the appointment period in relation to the financial year concerned.

393. Terms of office of auditor

- (1) A person appointed as auditor of a company holds office in accordance with the terms of the appointment.
- (2) Despite subsection (1)—
 - (a) a person appointed as auditor of a company does not take office until the previous auditor's appointment is terminated; and
 - (b) a person appointed as auditor of a company for a financial year under section 386, 387, 388 or 389 holds office until—

- (i) if the company holds an annual general meeting in accordance with section 600 in respect of the financial year, the end of the annual general meeting;
- (ii) if, by virtue of section 602(1), the company does not hold an annual general meeting in accordance with section 600 in respect of the financial year, the date of the written resolution passed for the purposes of section 602(1); or
- (iii) if, by virtue of section 602(2), the company does not hold an annual general meeting in accordance with section 600 in respect of the financial year, the end of the appointment period in relation to the next financial year.

394. Person deemed to be reappointed as auditor

- (1) If—
 - (a) by virtue of section 602(2), a company is not required to hold an annual general meeting in accordance with section 600 in respect of a financial year; and
 - (b) at the end of the appointment period in relation to the next financial year, no person has been appointed as auditor of the company for that next financial year,

the person who is the auditor of the company as at the end of that appointment period is deemed to be reappointed, at that time, as auditor of the company for that next financial year on the same terms of appointment.
- (2) Despite subsection (1), the person is not deemed to be reappointed as auditor of the company for the next financial year if—
 - (a) the person was appointed as auditor under section 386 or 388(1);
 - (b) the company's articles require an actual appointment;

- (c) before the person is deemed to be reappointed under that subsection, the members have by a resolution passed at a general meeting resolved that the person should not be reappointed as auditor for that next financial year;
 - (d) the person declines the reappointment in a written notice sent to the company at least 14 days before the end of the appointment period in relation to that next financial year; or
 - (e) members representing at least the requisite percentage of the voting rights of all the members who would be entitled to vote on a resolution that the person should not be reappointed give the company a notice complying with subsection (5).
- (3) Special notice is required for a resolution proposed for the purposes of subsection (2)(c).
 - (4) On receipt of a special notice, the company must send a copy of it to the person proposed not to be reappointed.
 - (5) A notice for the purposes of subsection (2)(e)—
 - (a) must state that the person should not be reappointed;
 - (b) must be authenticated by the member or members giving it;
 - (c) must be delivered to the company in hard copy form or electronic form; and
 - (d) must be received by the company before the end of the accounting reference period immediately preceding the time when the reappointment would have effect.
 - (6) This section does not affect the operation of Subdivision 6.
 - (7) In ascertaining the amount of any compensation or damages payable to a person on ceasing to hold office of auditor for any reason, no account is to be taken of any loss of the opportunity of being deemed to be reappointed as auditor under this section.

(8) In this section—

requisite percentage (所需百分比) means 5%, or a lower percentage specified for the purposes of this section in the company's articles.

395. Auditor's remuneration

- (1) The remuneration of an auditor of a company appointed by the members may be fixed—
 - (a) by a resolution passed at a general meeting; or
 - (b) in the manner specified in such a resolution.
- (2) The remuneration of an auditor of a company appointed by the directors—
 - (a) may be fixed by the directors when making the appointment; or
 - (b) if it has not been fixed by the directors, may be fixed—
 - (i) by a resolution passed at a general meeting; or
 - (ii) in the manner specified in such a resolution.
- (3) The remuneration of an auditor of a company appointed by the Court—
 - (a) may be fixed by the Court when making the appointment; or
 - (b) if it has not been fixed by the Court, may be fixed—
 - (i) by a resolution passed at a general meeting; or
 - (ii) in the manner specified in such a resolution.
- (4) In this section—

remuneration (酬金), in relation to an auditor of a company, includes any sum paid by the company in respect of the expenses of the auditor.

Subdivision 3**Auditor's Report****396. Auditor's duty to report**

A company's auditor must prepare a report for the members on any financial statements prepared by the directors, a copy of which is laid before the company in general meeting under section 420, or is sent to a member under section 421 or otherwise circulated, published or issued by the company, during the auditor's term of office.

397. Auditor's opinion on financial statements, directors' report, etc.

- (1) An auditor's report must state, in the auditor's opinion—
 - (a) whether the financial statements have been properly prepared in compliance with this Ordinance; and
 - (b) in particular, whether the financial statements—
 - (i) in the case of annual financial statements of a company that does not fall within the reporting exemption for the financial year, give a true and fair view of the financial position and financial performance of the company as required by section 376; or
 - (ii) in the case of annual consolidated financial statements of a company that does not fall within the reporting exemption for the financial year, give a true and fair view of the financial position and financial performance of the company and all the subsidiary undertakings as required by section 376.
- (2) If a company's auditor is of the opinion that the information in a directors' report for a financial year is not consistent with the financial statements for the financial year, the auditor—

- (a) must state that opinion in the auditor's report; and
- (b) may bring that opinion to the members' attention at a general meeting.

398. Auditor's opinion on other matters

- (1) In preparing an auditor's report, the auditor must carry out an investigation that will enable the auditor to form an opinion as to—
 - (a) whether adequate accounting records have been kept by the company; and
 - (b) whether the financial statements are in agreement with the accounting records.
- (2) A company's auditor must state the auditor's opinion in the auditor's report if the auditor is of the opinion that—
 - (a) adequate accounting records have not been kept by the company; or
 - (b) the financial statements are not in agreement with the accounting records in any material respect.
- (3) If a company's auditor fails to obtain all the information or explanations that, to the best of the auditor's knowledge and belief, are necessary and material for the purpose of the audit, the auditor must state that fact in the auditor's report.
- (4) If the financial statements do not comply with section 378(1), the auditor must include in the auditor's report, so far as the auditor is reasonably able to do so, a statement giving the particulars that are required to be, but have not been, contained in the financial statements.

399. Offences relating to contents of auditor's report

- (1) Every person specified in subsection (2) commits an offence if the person knowingly or recklessly causes a statement required to be contained in an auditor's report under section 398(2)(b) or (3) to be omitted from the report.

- (2) The persons are—
- (a) if the auditor who prepares the auditor's report is a natural person—
 - (i) the auditor; and
 - (ii) every employee and agent of the auditor who is eligible for appointment as auditor of the company;
 - (b) if the auditor who prepares the auditor's report is a firm, every partner, employee and agent of the auditor who is eligible for appointment as auditor of the company; or
 - (c) if the auditor who prepares the auditor's report is a body corporate, every officer, member, employee and agent of the auditor who is eligible for appointment as auditor of the company.
- (3) A person who commits an offence under subsection (1) is liable to a fine of \$150,000.

400. Auditor's reports to be signed

- (1) An auditor's report must be signed—
 - (a) if the auditor is a natural person, by the auditor; or
 - (b) if the auditor is a firm or body corporate, by a natural person authorized to sign the auditor's name on the auditor's behalf.
- (2) An auditor's report must state the auditor's name.
- (3) Every copy of an auditor's report laid before a company in general meeting under section 420, or sent to a member under section 421 or otherwise circulated, published or issued by the company, must state the auditor's name.
- (4) If subsection (3) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

Subdivision 4**Auditor's Rights and Privileges, etc.****401. Qualified privileges**

- (1) In the absence of malice, an auditor of a company is not liable to any action for defamation at the suit of any person in respect of any statement made by the auditor in the course of performing duties as auditor of the company.
- (2) In the absence of malice, a person is not liable to any action for defamation at the suit of any person in respect of the publication of any document—
 - (a) prepared by an auditor of a company in the course of performing duties as auditor of the company; and
 - (b) required by this Ordinance—
 - (i) to be delivered to the Registrar; or
 - (ii) to be sent to any member of the company or any other person.
- (3) This section does not limit or affect any other right, privilege or immunity that an auditor of a company, or any other person, has as defendant in an action for defamation.
- (4) In this section, a reference to performing duties as auditor of a company includes—
 - (a) making a cessation statement, giving the statement to the company, and requiring the company to comply with section 413(5) and (6) in relation to the statement; and
 - (b) making a statement of circumstances, and giving the statement to the company.

402. Rights in relation to general meeting

- (1) A person appointed as auditor of a company is entitled—
 - (a) to attend any of the company's general meetings; and

- (b) to be heard, at any of the company's general meetings, on any part of the business of the meeting that concerns the person as auditor of the company.
- (2) A person's entitlement under subsection (1)(a) or (b) is, if the person is a firm or body corporate, exercisable by a natural person authorized by the person to act as the person's representative at the meeting.

403. Rights in relation to information

- (1) An auditor of a company has a right of access to the company's accounting records.
- (2) An auditor of a company may require a person that is a related entity of the company, or was a related entity of the company at the time to which the information or explanation relates, to provide the auditor with any information or explanation that the auditor reasonably requires for the performance of the duties as auditor of the company.
- (3) If an auditor has required a person to provide any information or explanation under subsection (2), the person must provide the information or explanation as soon as practicable after being required.
- (4) If a subsidiary undertaking of a company is not a company incorporated in Hong Kong, an auditor of the company may require the company to obtain from any of the persons specified in subsection (5) any information or explanation that the auditor reasonably requires for the performance of the duties as auditor of the company.
- (5) The persons are—
- (a) the subsidiary undertaking;
 - (b) a person who—
 - (i) is an officer or auditor of the subsidiary undertaking; or

- (ii) was an officer or auditor of the subsidiary undertaking at the time to which the information or explanation relates; and
- (c) a person who—
 - (i) holds or is accountable for any of the subsidiary undertaking's accounting records; or
 - (ii) held or was accountable for the subsidiary undertaking's accounting records at the time to which the information or explanation relates.
- (6) If an auditor has required a company to obtain any information or explanation from a person under subsection (4), the company must take all reasonable steps to obtain the information or explanation as soon as practicable after being required.
- (7) A statement made by a person in response to a requirement under subsection (2) or (4) may not be used in evidence against the person in any criminal proceedings except proceedings for an offence under section 404.
- (8) This section does not compel a person to disclose information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- (9) In this section—

related entity (有關連實體), in relation to a company, means—

 - (a) an officer of the company;
 - (b) a subsidiary undertaking of the company that is a company incorporated in Hong Kong;
 - (c) an officer or auditor of such a subsidiary undertaking; or
 - (d) a person holding or accountable for any of the accounting records of the company or such a subsidiary undertaking.

404. Offences relating to section 403

- (1) A person who contravenes section 403(3) commits an offence and is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (2) If a person is charged with an offence under subsection (1), it is a defence to establish that it was not reasonably practicable for the person to provide the information or explanation.
- (3) A person commits an offence if—
 - (a) the person makes a statement to an auditor of a company that conveys or purports to convey any information or explanation that the auditor requires, or is entitled to require, under section 403(2) or (4); and
 - (b) the statement is misleading, false or deceptive in a material particular.
- (4) A person who commits an offence under subsection (3) is liable—
 - (a) on conviction on indictment to a fine of \$150,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (5) If a company contravenes section 403(6), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (6) This section does not affect an auditor's right to apply for an injunction to enforce any of the auditor's rights under section 403.

405. Auditor may provide information to incoming auditor without contravening duties

- (1) A person who is or has been an auditor of a company does not contravene any duty owed by the person as such auditor in law by reason only that the person gives work-related information to another person—
 - (a) who is an auditor of the company;
 - (b) who has been appointed as auditor of the company but whose term of office has not yet begun; or
 - (c) to whom the company has offered the position as auditor but who has not yet been appointed.
- (2) Subsection (1) does not apply unless the person who gives work-related information to another person—
 - (a) does so in good faith; and
 - (b) reasonably believes that the information is relevant to the performance of that other person's duties as auditor of the company.
- (3) In this section—

work-related information (工作資料), in relation to a person who is or has been an auditor of a company, means information of which the person became aware in the capacity of auditor.

Subdivision 5**Auditor's Liability****406. Avoidance of provisions protecting auditor from liability**

- (1) This section applies to a provision contained in a company's articles, or in a contract entered into by a company, or otherwise.
- (2) If a provision purports to exempt an auditor of the company from any liability that would otherwise attach to the auditor in

connection with any negligence, default, breach of duty or breach of trust occurring in the course of performance of the duties as auditor in relation to the company, the provision is void.

- (3) If, by a provision, the company directly or indirectly provides an indemnity for an auditor of the company, or an auditor of an associated company of the company, against any liability attaching to the auditor in connection with any negligence, default, breach of duty or breach of trust occurring in the course of performance of the duties as auditor in relation to the company or associated company (as the case may be), the provision is void.
- (4) Subsection (3) does not prevent a company from taking out and keeping in force insurance for an auditor of the company, or an auditor of an associated company of the company, against—
 - (a) any liability to any person attaching to the auditor in connection with any negligence, default, breach of duty or breach of trust (except for fraud) occurring in the course of performance of the duties of auditor in relation to the company or associated company (as the case may be); or
 - (b) any liability incurred by the auditor in defending any proceedings (whether civil or criminal) taken against the auditor for any negligence, default, breach of duty or breach of trust (including fraud) occurring in the course of performance of the duties of auditor in relation to the company or associated company (as the case may be).
- (5) Subsection (3) does not prevent a company from indemnifying an auditor of the company against any liability incurred by the auditor—
 - (a) in defending any proceedings (whether civil or criminal) in which judgment is given in the auditor's favour or the auditor is acquitted; or

- (b) in connection with an application under section 891 or 892 in which relief is granted to the auditor by the Court.
- (6) In this section, a reference to performance of the duties of auditor includes—
 - (a) making a cessation statement, giving the statement to the company, and requiring the company to comply with section 413(5) and (6) in relation to the statement; and
 - (b) making a statement of circumstances, and giving the statement to the company.

Subdivision 6

Termination of Auditor's Appointment

407. When appointment is terminated

- (1) A person's appointment as auditor of a company is terminated if—
 - (a) the term of office expires;
 - (b) the person resigns from office under section 408(1);
 - (c) the person ceases to be auditor under section 409;
 - (d) the person is removed from office under section 410(1); or
 - (e) a winding up order is made in respect of the company.
- (2) Where a firm is appointed, by the firm name, as auditor of a company, the appointment is also terminated if every person who is regarded as being appointed as auditor by virtue of section 390—
 - (a) ceases to be a partner in the firm before the term of office expires; or
 - (b) ceases to be eligible, or becomes disqualified, for appointment as auditor of the company under Subdivision 2 before the term of office expires.

- (3) Where a body corporate is appointed as auditor of a company, the appointment is also terminated if the body corporate is dissolved.
- (4) If 2 or more persons are appointed as auditor of a company, and the appointment of any of the persons is terminated, the termination does not affect the appointment of the other person.

408. Resignation of auditor

- (1) A person may resign from the office of auditor by giving the company a notice in writing that is accompanied by a statement required to be given under section 415.
- (2) Such a person's term of office expires—
 - (a) at the end of the day on which notice is given to the company under subsection (1); or
 - (b) if the notice specifies a time on a later day for the purpose, at that time.
- (3) Within 14 days beginning on the date on which a company receives a notice of resignation, the company must deliver a notification in the specified form of that fact to the Registrar for registration.
- (4) If a company contravenes subsection (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

409. Cessation of office

- (1) If, while holding office as auditor of a company, a person ceases to be eligible, or becomes disqualified, for appointment as auditor of the company under Subdivision 2, the person—
 - (a) immediately ceases to be auditor of the company; and

- (b) must notify the company of the cessation immediately.
- (2) A person who contravenes subsection (1)(b) commits an offence and is liable to a fine at level 4.
- (3) If a person is charged with an offence under subsection (2), it is a defence to establish that the person did not know, and had no reason to believe, that the person had ceased to be eligible, or had become disqualified, for appointment as auditor of the company under Subdivision 2.

410. Company may remove auditor

- (1) A company may by an ordinary resolution passed at a general meeting remove a person from the office of auditor despite—
 - (a) any agreement between the person and the company; or
 - (b) anything in the company's articles.
- (2) Special notice is required for an ordinary resolution proposed for the purposes of subsection (1).
- (3) On receipt of a special notice, the company must send a copy of it to the person proposed to be removed.
- (4) If an ordinary resolution for the removal is passed, the company must deliver a notice in the specified form of that fact to the Registrar for registration within 14 days beginning on the date on which it is passed.
- (5) If a company contravenes subsection (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

411. Removed auditor not deprived of compensation, damages, etc.

- Section 410 does not deprive a person of compensation or damages payable to the person in respect of the person ceasing—
- (a) to hold office as auditor of a company; or

- (b) to hold any appointment that is terminated with the termination of the person's appointment as auditor.

Subdivision 7

Outgoing Auditor's Right to Requisition Meeting of Company and Make Representation

412. Resigning auditor may requisition meeting

- (1) If a person gives under section 408(1) a notice of resignation that is accompanied by a statement of circumstances given under section 415(a), the person may, by another notice given to the company with the notice of resignation, require the directors to convene a general meeting of the company for receiving and considering the explanation of the circumstances connected with the resignation that the person places before the meeting.
- (2) Within 21 days beginning on the date on which the company receives that other notice, the directors must convene a general meeting for a date falling within 28 days after the date on which the notice convening the meeting is given.
- (3) If the directors of a company contravene subsection (2), every director who failed to take all reasonable steps to secure that a general meeting was convened as required by that subsection commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$150,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

413. Cessation statement in relation to, and attendance at, general meeting

- (1) If a general meeting is convened under section 412(2), the person who resigns from the office of auditor—

- (a) may give the company a statement by the person that sets out in reasonable length the circumstances surrounding the resignation;
 - (b) may require the company to comply with subsections (5) and (6) in relation to the statement; and
 - (c) is entitled—
 - (i) to be given every notice of, and every other item of communication, relating to the general meeting, that a member of the company is entitled to be given;
 - (ii) to attend the general meeting; and
 - (iii) to be heard at the general meeting on any part of the business of the meeting that concerns the person as auditor or former auditor of the company.
- (2) If special notice is given under section 391(1)(a) for a resolution for appointing a person as auditor in place of another person, that other person—
 - (a) may give the company a statement by that other person that sets out in reasonable length the circumstances surrounding the termination of the appointment as auditor;
 - (b) may require the company to comply with subsections (5) and (6) in relation to the statement; and
 - (c) is entitled—
 - (i) to be given every notice of, and every other item of communication, relating to the general meeting, that a member of the company is entitled to be given;
 - (ii) to attend the general meeting; and
 - (iii) to be heard at the general meeting on any part of the business of the meeting that concerns the person as auditor or former auditor of the company.

- (3) If special notice is given under section 410(2) for an ordinary resolution for removing a person from the office of auditor, the person—
 - (a) may give the company a statement by the person that sets out in reasonable length the circumstances surrounding the proposed removal; and
 - (b) may require the company to comply with subsections (5) and (6) in relation to the statement.
- (4) A person's entitlement under subsection (1)(c)(ii) or (iii) or (2)(c)(ii) or (iii) is, if the person is a firm or body corporate, exercisable by a natural person authorized by the person to act as the person's representative at the meeting.
- (5) Unless the company receives the statement within 2 days before the last day on which notice may be given under section 561(1) to call the general meeting, the company—
 - (a) must, in every notice of the meeting given to the members, state that the statement has been made; and
 - (b) must send a copy of the statement to every member to whom a notice of the meeting is or has been given.
- (6) The company must ensure that the statement is read out at the meeting if it has not sent a copy of the statement to every member to whom a notice of the meeting is or has been given.
- (7) Unless exempted by an order under subsection (8)(a), the company must comply with a requirement made under subsection (1)(b), (2)(b) or (3)(b).
- (8) On application by the company or by anyone who claims to be aggrieved, the Court may, if satisfied that the person who has given a statement and made a requirement under subsection (1)(a) and (b), (2)(a) and (b) or (3) has abused the right to do so, order—
 - (a) that the company is exempted from complying with the requirement; and

- (b) that the applicant's costs on the application are to be paid in whole or in part by the person even though the person is not a party to the application.
- (9) If a company contravenes subsection (7), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5.

414. Cessation statement in relation to written resolution

- (1) This section applies if a company sends a copy of a written resolution to a person under section 392(3)(b)(i).
- (2) The person may, within 14 days after receiving a copy of the written resolution from the company—
 - (a) give the company a statement by the person that sets out in reasonable length the circumstances surrounding the termination of the appointment as auditor; and
 - (b) require the company to send a copy of the statement to every member at the same time when the written resolution is circulated under section 540 or 542.
- (3) Section 543 applies to the circulation of the written resolution as if the reference to 21 days in section 543(3) were replaced by a reference to 28 days.
- (4) Unless exempted by an order under subsection (5)(a), the company must comply with a requirement made under subsection (2)(b).
- (5) On application by the company or by anyone who claims to be aggrieved, the Court may, if satisfied that the person who has given a statement and made a requirement under subsection (2) has abused the right to do so, order—
 - (a) that the company is exempted from complying with the requirement; and
 - (b) that the applicant's costs on the application are to be paid in whole or in part by the person even though the person is not a party to the application.

- (6) If a company contravenes subsection (4), the written resolution is ineffective.

Subdivision 8

Outgoing Auditor's Statement of Circumstances

415. Duty of resigning auditor to give statement

A person who resigns from office under section 408(1) must, on the resignation, give the company—

- (a) if the person considers that there are circumstances connected with the resignation that should be brought to the attention of the company's members or creditors, a statement of those circumstances; or
- (b) if the person considers that there are no such circumstances, a statement to that effect.

416. Duty of auditor who retires or is removed to give statement

- (1) Subject to subsection (3), a person whose appointment as auditor is terminated under section 407(1)(a) or (d) must, on the termination, give the company—
 - (a) if the person considers that there are circumstances connected with the termination that should be brought to the attention of the company's members or creditors, a statement of those circumstances; or
 - (b) if the person considers that there are no such circumstances, a statement to that effect.
- (2) Such a person must send a statement mentioned in subsection (1) to the company so that it will be received by the company—
 - (a) where the person's term of office expires because the person is not deemed to be reappointed as auditor under section 394(2)(d), at least 14 days before the end of the

- appointment period in relation to the next financial year; or
- (b) in any other case, within 14 days beginning on the date of termination.
- (3) Subsection (1) does not apply if—
- (a) the person's appointment is terminated under section 407(1)(a); and
 - (b) the person—
 - (i) is appointed as auditor of the company for a term immediately following the term of office that expires; or
 - (ii) is deemed by section 394 to be reappointed as auditor of the company for the next financial year.
- (4) A person who contravenes subsection (1) or (2) commits an offence and is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (5) If a person is charged with an offence under subsection (4), it is a defence to establish that the person took all reasonable steps to secure compliance with subsection (1) or (2) (as the case may be).

417. Company's and aggrieved person's responses to statement of circumstances

- (1) If a company is given a statement of circumstances, the company must, within 14 days beginning on the date on which it receives the statement—
 - (a) send a copy of the statement to every member of the company; or
 - (b) apply to the Court for an order directing that copies of the statement are not to be sent under paragraph (a).

- (2) If a company makes an application under subsection (1)(b), it must give notice of the application to the person who has given the statement of circumstances to the company.
- (3) A person who claims to be aggrieved by a statement of circumstances may, within 14 days beginning on the date on which the company receives the statement, apply to the Court for an order directing that copies of the statement are not to be sent under subsection (1)(a).
- (4) If a person makes an application under subsection (3), the person must give notice of the application to—
 - (a) the company; and
 - (b) the person who has given the statement of circumstances to the company.
- (5) If—
 - (a) a person gives a company a statement of circumstances; and
 - (b) within 21 days beginning on the date on which the company receives the statement, the person has not received notice of an application under subsection (2) or (4),
 the person must within the next 7 days deliver a copy of the statement to the Registrar for registration.
- (6) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable—
 - (a) on conviction on indictment to a fine of \$150,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (7) If a person contravenes subsection (5), the person commits an offence and is liable to a fine at level 3 and, in the case of a

- continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (8) If a person is charged with an offence under subsection (7), it is a defence to establish that the person took all reasonable steps to secure compliance with subsection (5).

418. Court may order statement of circumstances not to be sent

- (1) This section applies if an application has been made under section 417(1)(b) or (3) in relation to a statement of circumstances given by a person to a company.
- (2) If the Court is satisfied that the person has abused the use of the statement of circumstances, the Court—
 - (a) must direct that copies of the statement are not to be sent under section 417(1)(a); and
 - (b) may order the person, though not a party to the application, to pay the applicant's costs on the application in whole or in part.
- (3) If the Court gives directions under subsection (2)(a), the company must, within 14 days beginning on the date on which the directions are given—
 - (a) send a notice setting out the effect of the directions to—
 - (i) every member of the company; and
 - (ii) unless already named as a party to the proceedings, the person who has given the statement of circumstances to the company; and
 - (b) deliver a copy of the notice to the Registrar for registration.
- (4) If the Court decides not to grant the application, the company must, within 14 days beginning on the date on which the decision is made or on which the proceedings are discontinued for any reason—

- (a) give notice of the decision to the person who has given the statement of circumstances to the company; and
 - (b) send a copy of the statement of circumstances to every member of the company and to that person.
- (5) Within 7 days beginning on the date on which a person receives a notice under subsection (4)(a), the person must deliver a copy of the statement of circumstances to the Registrar for registration.

419. Offences relating to section 418

- (1) If a company contravenes section 418(3) or (4), the company, and every responsible person of the company, commit an offence, and each is liable—
- (a) on conviction on indictment to a fine of \$150,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (2) A person who contravenes section 418(5) commits an offence and is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (3) If a person is charged with an offence under subsection (2) for contravening section 418(5), it is a defence to establish that the person took all reasonable steps to secure compliance with that section.

Division 6**Laying and Publication of Financial Statements and Reports****420. Directors must lay financial statements etc. before company in general meeting**

- (1) A company's directors must, in respect of each financial year, lay before the company in annual general meeting, or in any other general meeting directed by the Court, a copy of the reporting documents for the financial year within the period specified in section 422.

Note—

See the exception in section 602(3).

- (2) If a company's directors contravene subsection (1), every person who at the end of the specified period was a director of the company commits an offence and is liable to a fine of \$300,000.
- (3) If a company's directors wilfully contravene subsection (1), every person who at the end of the specified period was a director of the company commits an offence and is liable to a fine of \$300,000 and to imprisonment for 12 months.
- (4) If a person is charged with an offence under subsection (2)—
- (a) it is a defence to establish that the person took all reasonable steps to secure compliance with subsection (1); and
 - (b) it is not a defence to establish that the financial statements or report was not in fact prepared as required by this Ordinance.

421. Company must send copies of financial statements etc. to members before general meeting

- (1) If a company is required to hold an annual general meeting in accordance with section 600 in respect of a financial year, the

- company must send a copy of the reporting documents for the financial year to every member at least 21 days before the date of the meeting at which the copy is required by section 420 to be laid.
- (2) For the purposes of subsection (1), even though a copy of the reporting documents for the financial year is sent to a member less than 21 days before the date of the meeting at which the copy is required by section 420 to be laid, the copy is to be regarded as having been sent to the member at least 21 days before that date if so agreed by all members entitled to attend and vote at that meeting.
 - (3) If, by virtue of section 602(2), a company is not required to hold an annual general meeting in accordance with section 600 in respect of a financial year, the company must send a copy of the reporting documents for the financial year to every member within the period specified in section 422.
 - (4) For the purposes of section 821(3)(c), a notification is to be sent—
 - (a) in the case of subsection (1), at least 21 days before the date of the general meeting at which a copy of the reporting documents is required by section 420 to be laid; or
 - (b) in the case of subsection (3), at least 21 days before the date on which a copy of the reporting documents is sent to every member under that subsection.
 - (5) The period specified for the purposes of section 821(3)(d)(i) is—
 - (a) in the case of subsection (1), the period beginning at least 21 days before the date of the general meeting at which a copy of the reporting documents is required by section 420 to be laid and ending on the date of that meeting; or

- (b) in the case of subsection (3), the period of 21 days after the date on which a notification under section 821(3)(c) is sent.
- (6) If a copy or copies of the reporting documents are sent under this section over a period of days, the copy or copies are to be regarded as having been sent on the last day of the period for the purpose of a reference in this Ordinance to the day on which the copy or copies are sent under this section.

422. Period for laying and publishing financial statements etc.

- (1) Subject to subsection (2), the period specified for the purposes of sections 420(1) and 421(3) is—
 - (a) where the company is a private company described in subsection (3), or a company limited by guarantee, at the end of the accounting reference period by reference to which the financial year is determined—
 - (i) subject to subparagraph (ii), the period of 9 months, or any longer period directed by the Court, after the end of that accounting reference period; or
 - (ii) if that accounting reference period is the company's first accounting reference period and is longer than 12 months, whichever of the periods set out in subsection (4)(a) and (b) expires last; or
 - (b) where the company is neither a private company described in subsection (3), nor a company limited by guarantee, at the end of that accounting reference period—
 - (i) subject to subparagraph (ii), the period of 6 months, or any longer period directed by the Court, after the end of that accounting reference period; or
 - (ii) if that accounting reference period is the company's first accounting reference period and is longer than 12 months, whichever of the periods set out in subsection (5)(a) and (b) expires last.

- (2) If, after a new accounting reference date is specified under section 367(1), the accounting reference period by reference to which the financial year is determined is shortened, the period specified for the purposes of section 420(1) and 421(3) is whichever of the following expires last—
- (a) the period specified in subsection (1);
 - (b) the period of 3 months after the date of the directors' resolution.
- (3) For the purposes of subsection (1)(a) or (b), the private company is one that is not a subsidiary of a public company at any time during the financial year.
- (4) The periods set out for the purposes of subsection (1)(a)(ii) are—
- (a) the period of 9 months, or any longer period directed by the Court, after the first anniversary of the company's incorporation; and
 - (b) the period of 3 months after the end of the accounting reference period by reference to which the financial year is determined.
- (5) The periods set out for the purposes of subsection (1)(b)(ii) are—
- (a) the period of 6 months, or any longer period directed by the Court, after the first anniversary of the company's incorporation; and
 - (b) the period of 3 months after the end of the accounting reference period by reference to which the financial year is determined.

423. Exception to section 421

- (1) Section 421 does not require a company to send a copy of any document to a member whose address is unknown to the company.

- (2) Section 421 does not require a company to send a copy of any document—
- (a) in the case of joint holders of shares none of whom is entitled to receive notices of the company's general meeting, to more than one of the holders; or
 - (b) in the case of joint holders of shares some of whom is so entitled and some not, to those who are not entitled.
- (3) Section 421 does not require a company to send a copy of any document to a member if the company has sent the member a copy of the summary financial report for the financial year under section 432, or in compliance with a request under section 435.
- (4) If a company does not have a share capital, section 421 does not require the company to send a copy of any document to a member who is not entitled to receive notice of general meeting of the company.

424. Company must send to non-voting members other documents

A company must send to every member who is not entitled to vote at a general meeting of the company—

- (a) a copy of any document issued by the company and circulated by the company with a copy of the reporting documents under section 421; and
- (b) a copy of any other document intended for the purpose of providing information about the company's affairs that is so circulated.

425. Offences relating to section 421

- (1) If a company contravenes section 421(1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5.

- (2) If a company contravenes section 421(3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine of \$300,000.
- (3) If a company wilfully contravenes section 421(3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine of \$300,000 and to imprisonment for 12 months.
- (4) If a person is charged with an offence under subsection (1) or (2), it is not a defence to establish that the financial statements or report was not in fact prepared as required by this Ordinance.

426. Company must send copies of financial statements etc. to members and others on demand

- (1) Within 7 days after a demand is made by a member or a member's personal representative, a company must send to the member or personal representative—
 - (a) one copy of the latest financial statements;
 - (b) one copy of the latest directors' report; or
 - (c) one copy of the auditor's report on those latest financial statements.
- (2) A copy of a document that a person is entitled to be sent under subsection (1) is in addition to any copy of the document that the person is entitled to be sent under section 421.
- (3) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

427. Requirement in connection with publication of financial statements etc.

- (1) This section applies if a company—

- (a) circulates, publishes or issues—
 - (i) any specified financial statements in relation to the company; or
 - (ii) any non-statutory accounts in relation to the company; or
 - (b) otherwise makes such financial statements or accounts available for public inspection in a manner calculated to invite members of the public generally, or any class of them, to read the financial statements or accounts.
- (2) The specified financial statements must be accompanied by the auditor's report on those statements.
 - (3) The non-statutory accounts must be accompanied by a statement indicating—
 - (a) that those accounts are not specified financial statements in relation to the company;
 - (b) whether the specified financial statements for the financial year with which those accounts purport to deal have been delivered to the Registrar;
 - (c) whether an auditor's report has been prepared on the specified financial statements for the financial year; and
 - (d) whether the auditor's report—
 - (i) was qualified or otherwise modified;
 - (ii) referred to any matter to which the auditor drew attention by way of emphasis without qualifying the report; or
 - (iii) contained a statement under section 397(2) or 398(2) or (3).
 - (4) The non-statutory accounts must not be accompanied by any auditor's report on the specified financial statements.
 - (5) If subsection (2), (3) or (4) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine of \$150,000.

(6) In this section—

non-statutory accounts (非法定帳目), in relation to a company, means—

- (a) any statement of financial position or statement of comprehensive income, otherwise than as part of any financial statements prepared by the directors, relating to, or purporting to deal with, a financial year of the company; or
- (b) accounts in any form, otherwise than as part of any financial statements prepared by the directors, purporting to be a statement of financial position or statement of comprehensive income for a group of companies consisting of the company and its subsidiary undertakings relating to, or purporting to deal with, a financial year of the company;

specified financial statements (指明財務報表), in relation to a company, means any financial statements prepared by the directors—

- (a) a copy of which is required by section 420(1) to be laid before the company in general meeting; or
- (b) a copy of which is required by section 421(3) to be sent to every member or is otherwise circulated, published or issued by the company.

Division 7

Summary Financial Reports

428. Interpretation

In this Division—

potential member (潛在成員), in relation to a company, means a person who is entitled, whether conditionally or unconditionally, to become a member of the company.

429. Application of Division

This Division applies to a company in relation to a financial year if the company does not fall within the reporting exemption for the financial year.

430. Directors may prepare financial report in summary form

- (1) The directors of a company may prepare for a financial year a financial report, in summary form, derived from the reporting documents for the financial year, a copy of which is required to be sent to every member of the company under section 421.
- (2) A financial report prepared under subsection (1)—
 - (a) must contain the information prescribed by the Regulation; and
 - (b) must comply with other requirements prescribed by the Regulation.
- (3) If subsection (2) is contravened—
 - (a) a director who failed to take all reasonable steps to secure compliance with that subsection commits an offence and is liable to a fine of \$300,000; and
 - (b) a director who wilfully failed to take all reasonable steps to secure compliance with that subsection commits an offence and is liable to a fine of \$300,000 and to imprisonment for 12 months.
- (4) If a person is charged with an offence under subsection (3)(a), it is a defence to establish that the person had reasonable grounds to believe, and did believe, that a competent and reliable person—
 - (a) was charged with the duty of ensuring that subsection (2) was complied with; and
 - (b) was in a position to discharge that duty.

431. Summary financial report to be approved and signed

- (1) A summary financial report—
 - (a) must be approved by the directors; and
 - (b) must be signed on the directors' behalf by a director.
- (2) Every copy of a summary financial report sent to a member under this Division or otherwise circulated, published or issued by the company must state the name of the director who signed the report on the directors' behalf.
- (3) If subsection (1) or (2) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

432. Company may send copy of summary financial report to member

- (1) If a company is required to send a copy of the reporting documents for a financial year to a member under section 421, the company may send a copy of the summary financial report for the financial year (if any) to the member instead.
- (2) If a company sends a copy of the summary financial report for a financial year to a member under subsection (1), the copy must be sent during the period within which a copy of the reporting documents for the financial year would be required to be sent to the member by the company under section 421.

433. Company may seek member's intent on receiving summary financial report

- (1) A company may notify every member or potential member to give the company a notice of intent under subsection (3).
- (2) A notification to a member or potential member—
 - (a) must be given in writing; and
 - (b) must be given in relation to a financial year.

- (3) In response to a notification, a member or potential member may give the company a notice of intent to—
 - (a) request—
 - (i) either a copy of the reporting documents or a copy of the summary financial report; or
 - (ii) none of those copies; and
 - (b) in the case of paragraph (a)(i), request the copy to be sent by the company in hard copy form, in electronic form, or by making it available on a website.
- (4) If a notice of intent is received by the company at least 28 days before the first date on which a copy of the reporting documents for the financial year is sent to a member under section 421, the notice of intent has effect in relation to that financial year, and every subsequent financial year, until it ceases to have effect by virtue of subsection (6).
- (5) If a notice of intent is received by the company less than 28 days before the first date on which a copy of the reporting documents for the financial year is sent to a member under section 421—
 - (a) the notice of intent has effect in relation to every financial year subsequent to that financial year until it ceases to have effect by virtue of subsection (6); and
 - (b) the member or potential member is to be regarded as—
 - (i) having requested a copy of the summary financial report for the financial year; and
 - (ii) having requested the summary financial report to be sent by the company in hard copy form.
- (6) A notice of intent ceases to have effect if the person who gave the notice—
 - (a) is no longer a member of the company; or
 - (b) revokes the notice by giving the company a written notice of revocation.

- (7) If a member or potential member does not give the company a notice of intent in response to a notification before the first date on which a copy of the reporting documents for the financial year is sent to a member under section 421, the member or potential member is to be regarded as—
- (a) having requested a copy of the summary financial report for the financial year and every subsequent financial year; and
 - (b) having requested the summary financial report to be sent by the company in hard copy form.
- (8) Subsection (7) ceases to have effect in relation to a person if—
- (a) the person is no longer a member of the company; or
 - (b) the person gives the company a written notice of cessation of statutory election.

434. Notice of revocation and notice of cessation of statutory election

- (1) A notice of revocation given by a person for the purposes of section 433(6)(b)—
- (a) must state the financial year to which it relates;
 - (b) must state that the notice of intent previously given by the person is revoked;
 - (c) must state that the person requests—
 - (i) either a copy of the reporting documents or a copy of the summary financial report; or
 - (ii) none of those copies; and
 - (d) in the case of paragraph (c)(i), must state that the person requests the copy to be sent by the company in hard copy form, in electronic form, or by making it available on a website.

- (2) The request stated in a notice of revocation under subsection (1)(c) must be different from the request stated in the notice of intent revoked by the notice of revocation.
- (3) A notice of cessation of statutory election given by a person for the purposes of section 433(8)(b)—
 - (a) must state the financial year to which it relates;
 - (b) must state that the person is no longer regarded as having made the requests mentioned in section 433(7);
 - (c) must state that the person requests—
 - (i) either a copy of the reporting documents or a copy of the summary financial report; or
 - (ii) none of those copies; and
 - (d) in the case of paragraph (c)(i), must state that the person requests the copy to be sent by the company in hard copy form, in electronic form, or by making it available on a website.
- (4) If a notice of revocation, or a notice of cessation of statutory election, is received by the company at least 28 days before the first date on which a copy of the reporting documents for the financial year to which the notice relates is sent to a member under section 421, the notice has effect in relation to that financial year, and every subsequent financial year.
- (5) If a notice of revocation, or a notice of cessation of statutory election, is received by the company less than 28 days before the first date on which a copy of the reporting documents for the financial year to which the notice relates is sent to a member under section 421, the notice has effect in relation to every financial year subsequent to that financial year.

435. Company must comply with member's request in notice of intent etc.

- (1) If a person requests a copy of the reporting documents, or a copy of the summary financial report, in a relevant notice, the

company must comply with the request unless it is prohibited from doing so by section 437.

- (2) The request must be complied with during the period within which a copy of the reporting documents for the relevant financial year would be required to be sent to the person by the company under section 421.
- (3) Subsection (1) does not require a company to comply with a potential member's request unless the potential member becomes a member of the company at least 28 days before the first date on which a copy of the reporting documents for the financial year is sent to a member under section 421(1) or (3).
- (4) In this section—

relevant financial year (有關財政年度) means the financial year in relation to which the relevant notice has effect under section 433 or 434;

relevant notice (有關通知) means—

- (a) a notice of intent given under section 433(3);
- (b) a notice of revocation given for the purposes of section 433(6)(b); or
- (c) a notice of cessation of statutory election given for the purposes of section 433(8)(b).

436. Additional copy of reports etc. to be sent by company

- (1) If a company has sent a copy of the summary financial report for a financial year to a person under section 432, or in compliance with a request under section 435, the company must, at the person's request, send a copy of the reporting documents for the financial year to the person at the time specified in subsection (3).
- (2) If a company has sent a copy of the reporting documents for a financial year to a person under section 421, the company must, at the person's request, send a copy of the summary financial report for the financial year to the person at the time

specified in subsection (3) unless it is prohibited from doing so by section 437.

- (3) The time specified for subsection (1) or (2) is—
 - (a) where a copy of the reporting documents for the financial year is to be laid before the company in general meeting under section 420(1), and the company receives the person's request more than 14 days before the date of that meeting, any time falling at least 7 days before the date of that meeting; or
 - (b) in any other case, any time within 14 days after the date on which the company receives the person's request.
- (4) Subsection (1) or (2) does not require a company to send a copy of the summary financial report or reporting documents for a financial year to a person if—
 - (a) where a copy of the reporting documents for the financial year is laid before the company in general meeting under section 420(1), the person's request is made at least 6 months after the date of that meeting; or
 - (b) where a copy of the reporting documents for the financial year is sent to every member under section 421(3), the person's request is made at least 6 months after the date on which the copy is sent.
- (5) Subsection (2) does not require a company to send a copy of the summary financial report for a financial year to a person unless—
 - (a) the company has prepared the summary financial report for the financial year; and
 - (b) when the company sent a copy of the reporting documents for the financial year to the person, the company gave the person a right to request a copy of the summary financial report for the financial year.
- (6) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an

offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

437. Company must not send summary financial report under some circumstances

- (1) A company must not send a copy of the summary financial report for a financial year to a member if—
 - (a) the company's articles require that a copy of the reporting documents for the financial year must be sent to each member; or
 - (b) the company's articles prohibit the company from sending a copy of the summary financial report for the financial year to a member.
- (2) A company must not send a copy of the summary financial report for a financial year to a member if—
 - (a) an auditor's report has not been prepared on the financial statements for the financial year;
 - (b) the summary financial report has not been approved by the directors;
 - (c) the summary financial report has not been signed on the directors' behalf; or
 - (d) the summary financial report does not comply with section 430(2).
- (3) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5.

Division 8

Miscellaneous

438. Exemption applicable to dormant company

- (1) The following provisions do not apply to a company that is a dormant company under section 5(1)—
 - (a) section 363(4);
 - (b) Subdivisions 3 and 4 of Division 4;
 - (c) Subdivisions 2 and 3 of Division 5;
 - (d) sections 402 and 403;
 - (e) Subdivisions 6, 7 and 8 of Division 5;
 - (f) Divisions 6 and 7.
- (2) If such a company enters into an accounting transaction—
 - (a) subsection (1) ceases to have effect on and after the date of the accounting transaction; and
 - (b) a member of the company who knew or ought to have known about the accounting transaction and every director of the company, are personally liable for any debt or liability of the company arising out of the accounting transaction.
- (3) In this section—
director (董事) includes a shadow director.

439. Liability for untrue or misleading statement in reports

- (1) This section applies to—
 - (a) a directors' report; and
 - (b) a summary financial report so far as it is derived from a directors' report.
- (2) A director of a company is liable to compensate the company for any loss suffered by the company as a result of—

- (a) any untrue or misleading statement in the report; or
 - (b) the omission from the report of anything required to be included in it.
- (3) A director is not liable unless—
- (a) in the case of subsection (2)(a), the director knew the statement to be untrue or misleading or was reckless as to whether it was untrue or misleading; or
 - (b) in the case of subsection (2)(b), the director knew the omission to be a dishonest concealment of a material fact.
- (4) A person is not subject to any liability to another person other than the company resulting from reliance, by that other person or any other person, on information contained in the report.
- (5) For the purposes of subsection (4), a person is also subject to a liability to another person if that other person is entitled against the person—
- (a) to be granted any civil remedy; or
 - (b) to rescind or repudiate an agreement.
- (6) This section does not affect liability for criminal offence.

440. Voluntary revision of financial statements etc.

- (1) If—
- (a) a copy of any financial statements prepared by the directors of a company has been sent under section 421 to a member; and
 - (b) it subsequently appears to the directors of the company that the financial statements did not comply with this Ordinance,
- the directors may cause the financial statements to be revised and make necessary consequential revisions to the summary financial report or directors' report concerned.

- (2) Such revision of the financial statements is to be confined to—
- (a) those aspects of the financial statements that did not comply with this Ordinance; and
 - (b) other necessary consequential revisions.
- (3) If—
- (a) the directors of a company decide to cause any financial statements to be revised under subsection (1); and
 - (b) a copy of the financial statements has been delivered to the Registrar in compliance with section 655(3)(b),
- the company must, within 7 days after the decision, deliver to the Registrar for registration a warning statement, in the specified form, that the financial statements will be so revised.
- (4) If a company contravenes subsection (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

441. Financial Secretary may make regulation regarding revision of financial statements etc.

- (1) The Financial Secretary may make regulations providing for the application of this Ordinance in relation to the financial statements, summary financial report or directors' report that has been revised under section 440.
- (2) The regulations may—
- (a) make different provisions according to whether the financial statements, summary financial report or directors' report has been revised by—
 - (i) supplementing the financial statements or report with another document that shows the revisions; or
 - (ii) replacing the financial statements or report;

- (b) provide for the functions of the auditors of a company in relation to the financial statements, summary financial report or directors' report that has been revised;
 - (c) where—
 - (i) the financial statements or directors' report, or a copy of the statements or report, has, before the revision, been laid before the company in general meeting under section 420, been sent to members under section 421, or been delivered to the Registrar in compliance with section 655(3)(b); or
 - (ii) a copy of a summary financial report has, before the revision, been sent to a member under section 432, or in compliance with a request under section 435 or 436(2),
 require the company or the directors of the company to take the steps specified in the regulations in relation to the financial statements or report that has been revised; and
 - (d) provide for the application of this Ordinance to the financial statements, summary financial report or directors' report that has been revised, subject to such additions, exceptions and modifications as may be specified in the regulations.
- (3) The regulations may provide that any of the following is an offence—
- (a) a failure to take all reasonable steps to secure compliance with, as respects the financial statements, summary financial report or directors' report that has been revised—
 - (i) a specified provision of the regulations; or
 - (ii) a specified provision of this Ordinance as having a continuing effect under the regulations;
 - (b) a contravention of—

- (i) a specified provision of the regulations; or
 - (ii) a specified provision of this Ordinance as having a continuing effect under the regulations.
- (4) The maximum fine that may be prescribed for an offence committed wilfully is \$300,000 and the maximum imprisonment is 12 months. The maximum fine that may be prescribed for an offence not committed wilfully is \$300,000. In addition, in the case of a continuing offence, a further fine not exceeding \$2,000 for each day during which the offence continues may be prescribed.
- (5) The regulations may provide for defences to any such offence.
- 442. Financial Secretary may make regulation regarding disclosures of certain information**
- (1) The Financial Secretary may make regulations prescribing the following requirements for the purposes of section 378(2)—
- (a) a requirement that the financial statements for the financial year are to contain a statement showing the particulars of the loans, quasi-loans and other dealings in favour of directors that are specified in the regulations;
 - (b) a requirement that the company is to enter into a register any particulars that would, but for section 378(2), be required by section 378(1)(d) to be contained in the notes to the financial statements for the financial year.
- (2) The regulations may—
- (a) provide for—
 - (i) the maintenance and inspection of such a register;
 - (ii) the keeping of particulars in the register; and
 - (iii) the supply of a copy of the register by the company to a member of the company; and
 - (b) provide that any of the following is an offence—

- (i) a failure to take all reasonable steps to secure compliance with a specified provision of the regulations; or
 - (ii) a contravention of a specified provision of the regulations.
- (3) The maximum fine that may be prescribed for an offence is level 4 and the maximum imprisonment is 6 months. In addition, in the case of a continuing offence, a further fine not exceeding \$700 for each day during which the offence continues may be prescribed.
- (4) The regulations may provide for defences to any such offence.
- (5) The regulations may provide that the Court may order—
- (a) if an offence is committed for a failure to allow inspection of a register, that the register be opened to inspection; or
 - (b) if an offence is committed for a failure to provide a copy of a register to a member, that such a copy be sent to the member.

443. Financial Secretary may make other regulations

- (1) The Financial Secretary may make regulations prescribing a body for the purposes of section 376(8)(a).
- (2) The Financial Secretary may make regulations—
- (a) prescribing information that is required to be contained in the notes to any financial statements under section 378(1); and
 - (b) prescribing other requirements for notes to any financial statements.
- (3) The Financial Secretary may make regulations—
- (a) prescribing information that is required to be contained in a directors' report under section 380(1) and (2); and
 - (b) prescribing other requirements for a directors' report.

- (4) The Financial Secretary may make regulations—
- (a) prescribing information that is required to be contained in a summary financial report under section 430(2); and
 - (b) prescribing other requirements for a summary financial report.
- (5) The Financial Secretary may make regulations—
- (a) providing for the form and contents of—
 - (i) a notification under section 433(2);
 - (ii) a notice of intent under section 433(3); or
 - (iii) any document attached to such a notification or notice; and
 - (b) providing that any such document is to be postage prepaid.
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Part 10**Directors and Company Secretaries****Division 1****Appointment, Removal and Resignation of Directors****Subdivision 1****Requirement to have Directors**

- 444. Public company and company limited by guarantee required to have at least 2 directors**
- (1) This section applies to—
 - (a) a public company; and
 - (b) a company limited by guarantee.
 - (2) The company must have at least 2 directors.
 - (3) With effect from the date of incorporation of the company, the first directors of the company are the persons named as the directors in the incorporation form delivered to the Registrar under section 62(1).
 - (4) A person who is deemed to be a director of the company under section 153(2) of the pre-amended predecessor Ordinance immediately before the commencement date of this section continues to be deemed to be a director of the company as if section 19(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004) had not been enacted, until a notice of appointment of a director is delivered to the Registrar in accordance with section 636(1).
 - (5) If a power specified in subsection (6) is exercisable by a director under the company's articles where the number of

directors is reduced below the number fixed as the necessary quorum of directors, the power is exercisable also where the number of directors is reduced below the number required by subsection (2).

- (6) The power specified for the purposes of subsection (5) is a power to act for the purpose of—
 - (a) increasing the number of directors; or
 - (b) calling a general meeting of the company, but not for any other purpose.
- (7) In subsection (4)—

pre-amended predecessor Ordinance (修訂前的《前身條例》) means the predecessor Ordinance that was in force immediately before it was amended by section 19(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004).

445. Private company required to have at least one director

- (1) A private company must have at least one director.
- (2) With effect from the date of incorporation of a private company, the first directors of the company are the persons named as the directors in the incorporation form delivered to the Registrar under section 62(1).
- (3) A person who is deemed to be a director of a private company under section 153A(2) of the pre-amended predecessor Ordinance immediately before the commencement date of this section continues to be deemed to be a director of the company as if section 20(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004) had not been enacted, until a notice of appointment of a director is delivered to the Registrar in accordance with section 636(1).
- (4) In subsection (3)—

pre-amended predecessor Ordinance (修訂前的《前身條例》) means the predecessor Ordinance that was in force

immediately before it was amended by section 20(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004).

446. **Nomination of reserve director of private company**

- (1) If a private company has only one member and that member is the sole director of the company, the company may by a resolution passed at a general meeting, despite anything in its articles, nominate a person (other than a body corporate) who has attained the age of 18 years as a reserve director of the company to act in the place of the sole director in the event of the sole director's death.
- (2) The nomination of a person as a reserve director of a private company ceases to have effect if—
 - (a) before the death of the director in respect of whom the person was nominated—
 - (i) the person resigns as reserve director in accordance with section 455; or
 - (ii) the company at a general meeting revokes the nomination; or
 - (b) the director in respect of whom the person was nominated ceases to be the sole member and sole director of the company for any reason other than the death of that director.
- (3) If the nomination of a person as a reserve director of a private company ceases to have effect under subsection (2), the company must deliver a notice to the Registrar in accordance with section 636(4).
- (4) Subject to compliance with the conditions specified in subsection (5), in the event of the death of the director in respect of whom the reserve director is nominated, the reserve director is to be regarded as a director of the company for all purposes until—

- (a) a person is appointed as a director of the company in accordance with its articles; or
- (b) the reserve director resigns from the office of director in accordance with section 455,
whichever is the earlier.
- (5) The conditions specified for the purposes of subsection (4) are—
 - (a) that the nomination of the reserve director has not ceased to have effect under subsection (2); and
 - (b) that the reserve director is not prohibited by law nor disqualified from acting as a director of the company.

447. **Restriction on body corporate being director**

- (1) This section applies to—
 - (a) a public company;
 - (b) a private company that is a member of a group of companies of which a listed company is a member; and
 - (c) a company limited by guarantee.
- (2) A body corporate must not be appointed a director of the company.
- (3) An appointment made in contravention of subsection (2) is void.
- (4) Nothing in this section affects any liability of a body corporate under any provision of this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) if it—
 - (a) purports to act as a director; or
 - (b) acts as a shadow director,
although it could not, by virtue of this section, be appointed as a director.

448. Requirement to have at least one director who is natural person

- (1) This section applies to a private company other than a private company that is a member of a group of companies of which a listed company is a member.
- (2) The company must have at least one director who is a natural person.

449. Direction requiring company to appoint director

- (1) If it appears to the Registrar that a company is in contravention of section 444(2), 445(1) or 448(2), the Registrar may direct the company to appoint a director or directors in compliance with that section.
- (2) The direction must specify—
 - (a) the statutory requirement of which the company appears to be in contravention;
 - (b) the period within which the company must comply with the direction; and
 - (c) the consequences of failing to comply with it.
- (3) The company must comply with the direction by—
 - (a) making the necessary appointment or appointments before the end of the period specified in the direction; and
 - (b) delivering a notice of the appointment or appointments to the Registrar in accordance with section 636(1).
- (4) If a company contravenes a direction under this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.

Subdivision 2**Appointment of Directors****450. Minimum age for appointment as director**

- (1) A person must not be appointed a director of a company unless at the time of appointment the person has attained the age of 18 years.
- (2) An appointment made in contravention of subsection (1) is void.
- (3) Nothing in this section affects any liability of a person under any provision of this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) if the person—
 - (a) purports to act as a director; or
 - (b) acts as a shadow director,
 although the person could not, by virtue of this section, be appointed as a director.

451. Appointment of directors to be voted on individually

- (1) This section applies to—
 - (a) a public company; and
 - (b) a company limited by guarantee.
- (2) At a general meeting of the company, a motion for the appointment of 2 or more persons as directors of the company by a single resolution must not be made, unless a resolution that it may be so made has first been passed at the meeting without any vote against it.
- (3) A resolution moved in contravention of subsection (2) is void, whether or not its being so moved was objected to at the time.
- (4) Despite the fact that the resolution is void, no provision (whether contained in a company's articles or in any contract

with the company or otherwise) for the automatic reappointment of retiring directors in default of another appointment applies.

- (5) For the purposes of this section, a motion for approving a person's appointment, or for nominating a person for appointment, is to be regarded as a motion for the appointment of the person.

452. Validity of acts of director

- (1) The acts of a person acting as a director are valid despite the fact that it is afterwards discovered—
- (a) that there was a defect in the appointment of the person as a director;
 - (b) that the person was not qualified to hold office as a director or was disqualified from holding office as a director;
 - (c) that the person had ceased to hold office as a director; or
 - (d) that the person was not entitled to vote on the matter in question.
- (2) Subsection (1) applies even if—
- (a) the appointment of the person as a director is void under section 447(3) or 450(2); or
 - (b) the resolution for the appointment of the person as a director is void under section 451(3).

Subdivision 3

Removal and Resignation of Directors

453. Resolution to remove director

- (1) A company may by an ordinary resolution passed at a general meeting remove a director before the end of the director's

term of office, despite anything in its articles or in any agreement between it and the director.

- (2) Subsection (1) does not, if the company is a private company, authorize the removal of a director holding office for life on the commencement of the Companies (Amendment) Ordinance 1984 (6 of 1984).
- (3) Subsections (4), (5), (6), (7) and (8) apply in relation to a removal of a director by resolution, irrespective of whether the removal by resolution is under subsection (1) or otherwise.
- (4) Special notice is required of a resolution—
- (a) to remove a director; or
 - (b) to appoint somebody in place of a director so removed at the meeting at which the director is removed.
- (5) A vacancy created by the removal of a director, if not filled at the meeting at which the director is removed, may be filled as a casual vacancy.
- (6) A person appointed director in place of a removed director is to be regarded, for the purpose of determining the time at which that person or any other director is to retire, as if that person had become director on the day on which the person removed was last appointed a director.
- (7) In relation to a resolution to remove a director before the end of the director's term of office, no share may, on a poll, carry a greater number of votes than it would carry in relation to the generality of matters to be voted on at a general meeting of the company.
- (8) If a share carries special voting rights (that is to say, rights different from those carried by other shares) in relation to some matters but not others, the reference in subsection (7) to the generality of matters to be voted on at a general meeting of the company is to be construed as a reference to the matters in relation to which the share carries no special voting rights.

- (9) This section is not to be regarded as depriving a person of compensation or damages payable to the person in respect of the termination of—
- (a) the person's appointment as director; or
 - (b) any appointment terminating with that as director.

454. Director's right to protest against removal

- (1) On receipt of notice of a resolution under section 453(4) to remove a director, the company must forthwith send a copy of the notice to the director concerned.
- (2) The director (whether or not a member of the company) is entitled to be heard on the resolution at the meeting at which the resolution is voted on.
- (3) If notice is given of a resolution under section 453(4) to remove a director, and the director concerned makes with respect to it representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company must, unless the representations are received by it too late for it to do so—
 - (a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and
 - (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company).
- (4) If a copy of the representations is not sent as required by subsection (3) because they were received too late or because of the company's default, the director may (without prejudice to the right to be heard orally) require that the representations be read out at the meeting.
- (5) Copies of the representations need not be sent and the representations need not be read out at the meeting if, on an

application either by the company or by any other person who claims to be aggrieved, the Court is satisfied that the rights given by this section are being abused.

- (6) The Court may order the company's costs on an application under subsection (5) to be paid in whole or in part by the director, despite the fact that the director is not a party to the application.

455. Resignation of director

- (1) A director of a company may, unless it is otherwise provided in the articles of the company or by any agreement with the company, resign as director at any time.
- (2) If a director of a company resigns, the company must deliver a notice of the resignation to the Registrar in the manner required by section 636(4).
- (3) Despite subsection (2), if the director resigning has reasonable grounds for believing that the company will not deliver the notice, the director resigning must deliver to the Registrar for registration a notice of the resignation in the specified form.
- (4) The notice required to be delivered under subsection (3) must state—
 - (a) whether the director resigning is required by the articles of the company or by any agreement with the company to give notice of resignation to the company; and
 - (b) if notice is so required, whether the notice has been given in accordance with the requirement.
- (5) If notice of the resignation of a director of a company is required to be given by the articles of the company or by any agreement with the company, the resignation does not have effect unless the director gives notice in writing of the resignation—
 - (a) in accordance with the requirement;
 - (b) by leaving it at the registered office of the company; or

- (c) by sending it to the company in hard copy form or in electronic form.
- (6) In this section—
director (董事) includes a reserve director and a person regarded as a director under section 446(4).

Division 2

Directors' Duty of Care, Skill and Diligence

456. Duty to exercise reasonable care, skill and diligence

- (1) A director of a company must exercise reasonable care, skill and diligence.
- (2) Reasonable care, skill and diligence mean the care, skill and diligence that would be exercised by a reasonably diligent person with—
 - (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company; and
 - (b) the general knowledge, skill and experience that the director has.
- (3) The duty specified in subsection (1) is owed by a director of a company to the company.
- (4) The duty specified in subsection (1) has effect in place of the common law rules and equitable principles as regards the duty to exercise reasonable care, skill and diligence, owed by a director of a company to the company.
- (5) This section applies to a shadow director as it applies to a director.
- (6) For the purposes of subsection (5), a body corporate is not to be regarded as a shadow director of any of its subsidiaries only because the directors, or a majority of the directors, of

the subsidiary are accustomed to act in accordance with its direction or instructions.

457. Civil consequences of breach of duty to exercise reasonable care, skill and diligence

Without affecting other provisions of this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the consequences of breach (or threatened breach) of the duty specified in section 456(1) are the same as would apply if the common law rules or equitable principles that section 456(1) replaces applied.

Division 3

Directors' Liabilities

458. Interpretation and application

- (1) In this Division—
permitted indemnity provision (獲准許的彌償條文), in relation to a company, means a provision that—
 - (a) provides for indemnity against liability incurred by a director of the company to a third party; and
 - (b) meets the requirements specified in section 460(2);*third party* (第三者), in relation to a company, means a person other than the company or an associated company.
- (2) Sections 459, 460 and 461 apply to any provision made on or after the commencement date of those sections.
- (3) Sections 462 and 463 apply to a permitted indemnity provision made on or after the commencement date of those sections.
- (4) Section 464 applies to conduct by a director on or after the commencement date of that section.

459. Avoidance of provisions protecting director from liability

- (1) This section applies to a provision contained in a company's articles, or in a contract entered into by a company, or otherwise.
- (2) If a provision purports to exempt a director of the company from any liability that would otherwise attach to the director in connection with any negligence, default, breach of duty or breach of trust in relation to the company, the provision is void.
- (3) If, by a provision, the company directly or indirectly provides an indemnity for a director of the company, or a director of an associated company of the company, against any liability attaching to the director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or associated company (as the case may be), the provision is void.
- (4) Subsection (3) does not prevent a company from taking out and keeping in force insurance for a director of the company, or a director of an associated company of the company, against—
 - (a) any liability to any person attaching to the director in connection with any negligence, default, breach of duty or breach of trust (except for fraud) in relation to the company or associated company (as the case may be); or
 - (b) any liability incurred by the director in defending any proceedings (whether civil or criminal) taken against the director for any negligence, default, breach of duty or breach of trust (including fraud) in relation to the company or associated company (as the case may be).

460. Permitted indemnity provision

- (1) Section 459(3) does not apply to a provision for indemnity against liability incurred by the director to a third party if the

- requirements specified in subsection (2) are met in relation to the provision.
- (2) The provision must not provide any indemnity against—
 - (a) any liability of the director to pay—
 - (i) a fine imposed in criminal proceedings; or
 - (ii) a sum payable by way of a penalty in respect of non-compliance with any requirement of a regulatory nature; or
 - (b) any liability incurred by the director—
 - (i) in defending criminal proceedings in which the director is convicted;
 - (ii) in defending civil proceedings brought by the company, or an associated company of the company, in which judgment is given against the director;
 - (iii) in defending civil proceedings brought on behalf of the company by a member of the company or of an associated company of the company, in which judgment is given against the director; or
 - (iv) in connection with an application for relief under section 358 of the predecessor Ordinance or section 891 or 892 in which the Court refuses to grant the director relief.
 - (3) A reference in subsection (2)(b) to a conviction, judgment or refusal of relief is to the final decision in the proceedings.
 - (4) For the purposes of subsection (3), a conviction, judgment or refusal of relief—
 - (a) if not appealed against, becomes final at the end of the period for bringing an appeal; or
 - (b) if appealed against, becomes final when the appeal, or any further appeal, is disposed of.

- (5) For the purposes of subsection (4)(b), an appeal is disposed of if—
- (a) it is determined, and the period for bringing any further appeal has ended; or
 - (b) it is abandoned or otherwise ceases to have effect.

461. Permitted indemnity provision to be disclosed in directors' report

- (1) If, when a directors' report prepared by the directors of a company is approved in accordance with section 382, a permitted indemnity provision (whether made by the company or otherwise) is in force for the benefit of one or more directors of the company, the report must state that the provision is in force.
- (2) If, at any time during the financial year to which a directors' report prepared by the directors of a company relates, a permitted indemnity provision (whether made by the company or otherwise) was in force for the benefit of one or more persons who were then directors of the company, the report must state that the provision was in force.
- (3) If, when a directors' report prepared by the directors of a company is approved in accordance with section 382, a permitted indemnity provision made by the company is in force for the benefit of one or more directors of an associated company of the company, the report must state that the provision is in force.
- (4) If, at any time during the financial year to which a directors' report prepared by the directors of a company relates, a permitted indemnity provision made by the company was in force for the benefit of one or more persons who were then directors of an associated company of the company, the report must state that the provision was in force.
- (5) In this section—
directors' report (董事報告) means—

- (a) the report required to be prepared under section 380(1); or
- (b) the consolidated report required to be prepared under section 380(2).

462. Place where copy of permitted indemnity provision must be kept available for inspection

- (1) This section has effect if a permitted indemnity provision is made for a director of a company, and applies—
 - (a) to that company (whether the provision is made by that company or an associated company of that company); and
 - (b) if the provision is made by an associated company, to that associated company.
- (2) A company to which this section applies must keep the following available for inspection at its registered office or at a place prescribed by regulations made under section 648—
 - (a) a copy of the permitted indemnity provision;
 - (b) if the provision is not in writing, a written memorandum setting out the terms of the provision.
- (3) The company—
 - (a) must retain the copy or memorandum for at least one year after the date of termination or expiry of the provision; and
 - (b) must keep the copy or memorandum available for inspection during that time.
- (4) If the copy or memorandum is kept available for inspection at a place other than the company's registered office, the company must notify the Registrar of the place, or any change in the place, at which the copy or memorandum is kept. The notice must be in the specified form and delivered to the Registrar for registration within 14 days after the copy or

memorandum is first kept at that place or within 14 days after the change (as the case may be).

- (5) If a company contravenes subsection (2), (3) or (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (6) In this section, a reference to a permitted indemnity provision includes a variation of the provision.

463. Right of member to inspect and request copy

- (1) A copy of a permitted indemnity provision or a written memorandum required to be kept by a company under section 462 must be open for inspection by any member of the company without charge.
- (2) A member of the company is entitled, on request and on payment of a prescribed fee, to be provided with a copy of the provision or memorandum.
- (3) If a member makes a request under subsection (2), the company must provide the copy to the member within the prescribed period after it receives the request and prescribed fee.
- (4) If a company contravenes subsection (3)—
 - (a) the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues; and
 - (b) the Court may by order direct that the copy be provided to the person requesting it.
- (5) In this section—
prescribed (訂明) means prescribed by regulations made under section 648.

- (6) In this section, a reference to a permitted indemnity provision includes a variation of the provision.

464. Ratification of conduct by director involving negligence, etc.

- (1) This section applies to the ratification by a company of conduct by a director involving negligence, default, breach of duty or breach of trust in relation to the company.
- (2) A decision of the company to ratify the conduct may only be made by resolution of the members of the company.
- (3) If such a resolution is proposed at a meeting, every vote in favour of the resolution by a member who—
 - (a) is a director in respect of whose conduct the ratification is sought;
 - (b) is an entity connected with that director; or
 - (c) holds any shares in the company in trust for that director or entity,
 is to be disregarded.
- (4) Subsection (3) does not prevent a member specified in that subsection from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.
- (5) For the purposes of this section—
 - (a) *conduct* (行為) includes acts and omissions;
 - (b) *director* (董事) includes a past director;
 - (c) a shadow director is to be regarded as a director; and
 - (d) a reference to an entity connected with a director has the meaning given by section 477.
- (6) Nothing in this section affects—
 - (a) the validity of a decision taken by unanimous consent of the members of the company; or

- (b) any power of the directors to agree not to sue, or to settle or release a claim made by them on behalf of the company.
- (7) This section does not affect—
 - (a) any other Ordinance or rule of law imposing additional requirements for valid ratification; or
 - (b) any rule of law as to acts that are incapable of being ratified by the company.

Division 4

Appointment and Resignation of Company Secretaries

465. Company required to have company secretary

- (1) A company must have a company secretary.
- (2) With effect from the date of incorporation of a company, the first company secretary of the company is the person named as the company secretary in the incorporation form delivered to the Registrar under section 62(1).
- (3) If the name of a firm is specified in the incorporation form under section 5(1)(c) of Schedule 2, all partners of the firm as at the date of the incorporation form are the first joint company secretaries of the company.
- (4) A company secretary of a company must—
 - (a) if a natural person, ordinarily reside in Hong Kong; and
 - (b) if a body corporate, have its registered office or a place of business in Hong Kong.
- (5) Anything required or authorized to be done by or to the company secretary may be done—
 - (a) if the office is vacant or there is for any other reason no company secretary capable of acting, by or to any assistant or deputy company secretary; or

- (b) if there is no assistant or deputy company secretary capable of acting, by or to any officer of the company authorized generally or specially in that behalf by the directors.

466. Circumstances under which director may not be company secretary

- (1) Subject to subsections (2) and (3), a director of a company may be a company secretary of the company.
- (2) The director of a private company having only one director must not also be a company secretary of the company.
- (3) No private company having only one director may have as company secretary of the company a body corporate the sole director of which is the sole director of the private company.

467. Direction requiring company to appoint company secretary

- (1) If it appears to the Registrar that a company is in contravention of section 465(1) or (4) or 466(2) or (3), the Registrar may direct the company to appoint a company secretary in compliance with that section.
- (2) The direction must specify—
 - (a) the statutory requirement of which the company appears to be in contravention;
 - (b) the period within which the company must comply with the direction; and
 - (c) the consequences of failing to comply with it.
- (3) The company must comply with the direction by—
 - (a) making the necessary appointment before the end of the period specified in the direction; and
 - (b) delivering a notice of the appointment to the Registrar in accordance with section 643(1).

- (4) If a company contravenes a direction under this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.

468. Resignation of company secretary

- (1) A company secretary of a company may, unless it is otherwise provided in the articles of the company or by any agreement with the company, resign as company secretary at any time.
- (2) If a company secretary of a company resigns, the company must deliver a notice of the resignation to the Registrar in the manner required by section 643(2).
- (3) Despite subsection (2), if the company secretary resigning has reasonable grounds for believing that the company will not deliver the notice, the company secretary resigning must deliver to the Registrar for registration a notice of the resignation in the specified form.
- (4) The notice required to be delivered under subsection (3) must state—
- (a) whether the company secretary resigning is required by the articles of the company or by any agreement with the company to give notice of resignation to the company; and
 - (b) if notice is so required, whether the notice has been given in accordance with the requirement.
- (5) If notice of the resignation of a company secretary of a company is required to be given by the articles of the company or by any agreement with the company, the resignation does not have effect unless the company secretary gives notice in writing of the resignation—
- (a) in accordance with the requirement;
 - (b) by leaving it at the registered office of the company; or

- (c) by sending it to the company in hard copy form or in electronic form.

Division 5

Miscellaneous Provisions Relating to Directors and Company Secretaries

469. Director vicariously liable for acts of alternate etc.

- (1) If the articles of a company authorize a director to appoint an alternate director to act in place of the director, then, unless the articles contain any provision to the contrary, whether express or implied—
- (a) an alternate director so appointed is deemed to be the agent of the director who appoints the alternate director; and
 - (b) a director who appoints an alternate director is vicariously liable for any tort committed by the alternate director while acting in the capacity of alternate director.
- (2) Nothing in subsection (1)(b) affects the personal liability of an alternate director for any act or omission.

470. Avoidance of acts done by person in dual capacity as director and company secretary

- (1) A provision requiring or authorizing a thing to be done by or to a director and a company secretary of a company is not satisfied by its being done by or to the same person acting—
- (a) both as director and company secretary; or
 - (b) both as director and in place of the company secretary.
- (2) This section applies to—
- (a) any provision of this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); and

(b) any provision in a company's articles.

471. Provisions as to undischarged bankrupt acting as director

- (1) A person who is an undischarged bankrupt must not act as director of, or directly or indirectly take part or be concerned in the management of, a company, except with the leave of the Court by which the person was adjudged bankrupt.
- (2) A person who contravenes subsection (1) commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$700,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine of \$150,000 and to imprisonment for 12 months.
- (3) The Court must not give leave for the purposes of this section unless notice of intention to apply for it has been served on the Official Receiver.
- (4) If the Official Receiver is of opinion that it is contrary to the public interest that an application under subsection (3) should be granted, the Official Receiver must attend the hearing of, and oppose the granting of, the application.
- (5) In subsection (1)—
company (公司) has the meaning given by section 168C(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

472. Minutes of directors' meetings

- (1) A company must cause minutes of all proceedings at meetings of its directors to be recorded.
- (2) A company must keep the records under subsection (1) for at least 20 years from the date of the meeting.
- (3) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case

of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

473. Minutes as evidence

- (1) Minutes recorded in accordance with section 472, if purporting to be signed by the chairperson of the meeting or by the chairperson of the next directors' meeting, are evidence of the proceedings at the meeting.
- (2) If minutes have been recorded in accordance with section 472 of the proceedings at a meeting of directors, then, until the contrary is proved—
 - (a) the meeting is to be regarded as having been duly held and convened;
 - (b) all proceedings at the meeting are to be regarded as having duly taken place; and
 - (c) all appointments at the meeting are to be regarded as valid.
- (3) Subsection (2)(c) is subject to sections 447(3) and 450(2).

474. Written record of decision of sole director of private company

- (1) If a private company has only one director and the director takes any decision that—
 - (a) may be taken in a meeting of directors; and
 - (b) has effect as if agreed in a meeting of directors,
 the director must (unless that decision is taken by way of a resolution in writing) provide the company with a written record of that decision within 7 days after the decision is made.
- (2) If the director provides the company with a written record of a decision in accordance with subsection (1), that record is sufficient evidence of the decision having been taken by the director.

- (3) A company must keep a written record provided to the company in accordance with subsection (1) for at least 20 years from the date of the decision.
 - (4) A director who contravenes subsection (1) commits an offence.
 - (5) If a company contravenes subsection (3), the company, and every responsible person of the company, commit an offence.
 - (6) A person who commits an offence under subsection (4) is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
 - (7) A person who commits an offence under subsection (5) is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
 - (8) A contravention of subsection (1) by a director does not affect the validity of any decision mentioned in that subsection.
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Part 11

Fair Dealing by Directors

Division 1

Preliminary

475. Interpretation

- (1) In this Division—
 - adopted* (領養) means adopted in any manner recognized by the law of Hong Kong;
 - child* (子女) includes a step-child and an illegitimate child;
 - director* (董事) includes a shadow director.
- (2) In this Division, a reference to a minor child or minor adopted child is a reference to a child or adopted child who is under 18 years of age.

476. Circumstances constituting contravention

In this Part, a reference to circumstances constituting a contravention includes, in the case of a transaction or arrangement that, but for any fact or circumstances, would not be prohibited because of Subdivision 3 of Division 2, the fact or circumstances.

477. Connected entity

- (1) In this Part, a reference to an entity connected with a director or former director of a company is a reference to—
 - (a) a member of the director's or former director's family;
 - (b) any other person (whether of a different sex or the same sex) with whom the director or former director lives as a couple in an enduring family relationship;

- (c) a minor child or minor adopted child of a person falling within paragraph (b) who—
 - (i) is not a child or adopted child of the director or former director; and
 - (ii) lives with the director or former director;
 - (d) a body corporate with which the director or former director is associated;
 - (e) a person acting in the capacity as trustee of a specified trust, other than a trust for the purpose of an employee share scheme or a pension scheme; or
 - (f) a person acting in the capacity as partner of—
 - (i) the director or former director;
 - (ii) the spouse of the director or former director;
 - (iii) a minor child or minor adopted child of the director or former director; or
 - (iv) another person who, by virtue of paragraph (e), is an entity connected with the director or former director.
- (2) For the purposes of subsection (1)(e), a trust is a specified trust—
- (a) if the beneficiaries of the trust include—
 - (i) the director or former director;
 - (ii) the spouse of the director or former director; or
 - (iii) a minor child or minor adopted child of the director or former director; or
 - (b) if—
 - (i) the terms of the trust give a power to the trustees that may be exercised for the benefit of—
 - (A) the director or former director;

- (B) the spouse of the director or former director; or
 - (C) a minor child or minor adopted child of the director or former director; and
- (ii) the director or former director knows that the director or former director, or the spouse, child or adopted child, is an object of the power.
- (3) In this section—
- employee share scheme** (僱員參股計劃) means a scheme for encouraging or facilitating the holding of shares in a company by or for the benefit of—
- (a) persons employed or formerly employed in good faith by that company or another company in the same group of companies; or
 - (b) the spouses, widows, widowers or minor children of persons referred to in paragraph (a);
- partner** (合夥人), in relation to another person, means a person who is a partner of that other person in a partnership within the meaning of the Partnership Ordinance (Cap. 38).

478. Family member of director or former director

In this Part, a reference to a member of a director's or former director's family is a reference to—

- (a) the spouse of the director or former director;
- (b) a child or adopted child of the director or former director; or
- (c) a parent of the director or former director.

479. Director or former director associated with, or controlling, body corporate

- (1) For the purposes of this Part, a director or former director is associated with a body corporate if—

- (a) the director or former director, or any one or more of the entities specified in subsection (4), or the director or former director together with any one or more of those specified entities, are entitled to exercise, or control the exercise of, more than 30% of the voting power at any general meeting of that body corporate; or
 - (b) the directors, or a majority of the directors, of that body corporate are accustomed to act in accordance with the directions or instructions of—
 - (i) the director or former director; or
 - (ii) an entity connected with the director or former director.
- (2) In this section, a reference to voting power the exercise of which is controlled by a director or former director, or by an entity specified in subsection (4), includes voting power the exercise of which is controlled by a body corporate controlled by the director or former director or by the specified entity.
- (3) For the purposes of this section, a director or former director, or an entity specified in subsection (4), controls a body corporate if the director or former director, or any one or more of the specified entities, or the director or former director together with any one or more of the specified entities, are entitled to exercise, or control the exercise of, more than 50% of the voting power at any general meeting of that body corporate.
- (4) The entity specified for the purposes of subsections (1), (2) and (3) is—
- (a) the spouse of the director or former director;
 - (b) a minor child or minor adopted child of the director or former director; or
 - (c) a person who, by virtue of section 477(1)(e), is an entity connected with the director or former director.

480. Company subject to more than one prohibition

- (1) If a company is prohibited by more than one provision of this Part from doing something without the approval of the members of the company, or of the members of a holding company of the company, specified in each provision, the company is prohibited from doing the thing without all those approvals.
- (2) Subsection (1) does not require a separate resolution for the purposes of each of the provisions.

481. Application to transaction or arrangement despite its governing law

For the purposes of this Part, it is immaterial whether or not the law (apart from this Ordinance) that governs a transaction or arrangement is the law of Hong Kong.

Division 2**Loan, Quasi-loan and Credit Transaction****Subdivision 1****Preliminary****482. Interpretation**

- (1) In this Division—
 - director* (董事) includes a shadow director;
 - guarantee* (擔保) includes indemnity;
 - land* (土地) includes any estate or interest in land, buildings, messuages and tenements of any nature or kind;
 - services* (服務) means anything other than goods or land;
 - specified company* (指明公司) means—

- (a) a public company; or
 - (b) a private company or company limited by guarantee that is a subsidiary of a public company.
- (2) For the purposes of this Division, a body corporate is not to be regarded as a shadow director of any of its subsidiaries by reason only that the directors, or a majority of the directors, of the subsidiary are accustomed to act in accordance with its directions or instructions.

483. Quasi-loan

- (1) For the purposes of this Division, a person makes a quasi-loan to a director or an entity connected with a director if the person—
- (a) agrees to pay, or pays otherwise than pursuant to an agreement, a sum for the director or connected entity—
 - (i) on terms that the director or connected entity (or another person on behalf of the director or connected entity) will reimburse the person; or
 - (ii) in circumstances giving rise to a liability on the director or connected entity to reimburse the person; or
 - (b) agrees to reimburse, or reimburses otherwise than pursuant to an agreement, expenditure incurred by another person for the director or connected entity—
 - (i) on terms that the director or connected entity (or another person on behalf of the director or connected entity) will reimburse the person; or
 - (ii) in circumstances giving rise to a liability on the director or connected entity to reimburse the person.
- (2) For the purposes of this Division, if a person makes a quasi-loan to a director or an entity connected with a director, the director's or connected entity's liabilities under the quasi-loan

include the liabilities of any other person who has agreed to reimburse the person on the director's or connected entity's behalf.

484. Credit transaction

- (1) For the purposes of this Division, a person enters into a credit transaction as creditor for a director or an entity connected with a director if the person—
- (a) supplies goods to the director or connected entity under a hire-purchase agreement;
 - (b) sells goods or land to the director or connected entity under a conditional sale agreement;
 - (c) leases or hires goods or leases land to the director or connected entity in return for periodical payments; or
 - (d) otherwise supplies goods or services or disposes of land to the director or connected entity on the understanding that payment (whether in a lump sum or instalments or by way of periodical payments or otherwise) is to be deferred.
- (2) In this section—

conditional sale agreement (有條件售賣協議) means an agreement for the sale of goods or land under which—

- (a) the purchase price or part of it is payable by instalments;
- (b) the property in the goods or land is to remain in the seller until the conditions regarding the payment of instalments, or other conditions, specified in the agreement are fulfilled; and
- (c) despite such reservation of property, the buyer is to be in possession of the goods or land before the fulfilment of those conditions;

hire-purchase agreement (租購協議) means an agreement for the bailment of goods under which the bailee may buy the goods,

or under which the property in the goods will or may pass to the bailee.

485. Person for whom transaction or arrangement entered into

- (1) In this Division, a reference to a director, or an entity connected with a director, for whom a transaction is entered into is—
 - (a) in the case of a loan or quasi-loan, or a guarantee or security in connection with a loan or quasi-loan, a reference to the director or connected entity to whom the loan or quasi-loan is made; or
 - (b) in the case of a credit transaction, or a guarantee or security in connection with a credit transaction, a reference to the director or connected entity to whom goods, land or services are supplied, sold, leased, hired or otherwise disposed of under the credit transaction.
- (2) For the purposes of this Division, an arrangement is entered into for a director or an entity connected with a director if—
 - (a) in the case of an arrangement mentioned in section 495(1)(a) or (2)(a), a company takes part in the arrangement under which another person enters into a transaction with the director or connected entity; or
 - (b) in the case of an arrangement mentioned in section 495(1)(b) or (2)(b), a company enters into the arrangement in relation to any rights, obligations or liabilities under a transaction entered into by another person with the director or connected entity.

486. Prescribed approval of members

- (1) In this Division, a reference to the prescribed approval of the members of a company is a reference to an approval obtained by a resolution of those members—
 - (a) that is passed before the company enters into the transaction or arrangement; and

- (b) in respect of which the requirements specified in subsection (2) are met.
- (2) The requirements specified for the purposes of subsection (1)(b) are—
 - (a) that, in the case of a written resolution, a memorandum setting out the matters specified in subsection (4) is sent to every member at or before the time at which the proposed resolution is sent to the member; or
 - (b) that, in the case of a resolution passed at a general meeting—
 - (i) a memorandum setting out the matters specified in subsection (4) is sent to every member together with the notice convening the meeting; and
 - (ii) if the company is a specified company, the resolution is passed after disregarding every vote in favour of the resolution by a member specified in subsection (5).
- (3) Subject to any provision of the company's articles, any accidental failure to send the memorandum to a member is to be disregarded for the purpose of determining whether the requirement specified in subsection (2)(a) or (b)(i) has been met.
- (4) The matters specified for the purposes of subsection (2)(a) and (b)(i) are—
 - (a) in the case of a resolution for the purposes of section 491, 492 or 493—
 - (i) the nature of the transaction to be approved by the resolution;
 - (ii) the amount of the loan or quasi-loan;
 - (iii) the purpose for which the loan or quasi-loan is required; and

- (iv) the extent of the company's liability under any transaction connected with the loan or quasi-loan;
- (b) in the case of a resolution for the purposes of section 494—
 - (i) the nature of the transaction to be approved by the resolution;
 - (ii) the amount and value of the credit transaction;
 - (iii) the purpose for which the goods, land or services supplied, sold, leased, hired or otherwise disposed of under the credit transaction are required; and
 - (iv) the extent of the company's liability under any transaction connected with the credit transaction;
- (c) in the case of a resolution for the purposes of section 495—
 - (i) the matters that would have to be disclosed if the company were seeking approval of the transaction to which the arrangement relates;
 - (ii) the nature of the arrangement to be approved by the resolution; and
 - (iii) the extent of the company's liability under the arrangement.
- (5) The member specified for the purposes of subsection (2)(b)(ii) is—
 - (a) in the case of a resolution for the purposes of section 491 or 492—
 - (i) one who is the director to whom the loan or quasi-loan is proposed to be made or was made; or
 - (ii) one who holds any shares in the company in trust for that director;
 - (b) in the case of a resolution for the purposes of section 493—

- (i) one who is the connected entity to whom the loan or quasi-loan is proposed to be made or was made;
- (ii) one who is the director with whom that entity is connected; or
- (iii) one who holds any shares in the company in trust for that connected entity or director;
- (c) in the case of a resolution for the purposes of section 494—
 - (i) one who is the director or connected entity for whom the credit transaction is proposed to be entered into or was entered into;
 - (ii) one who is the director with whom that entity is connected; or
 - (iii) one who holds any shares in the company in trust for the director specified in subparagraph (i) or (ii) or that connected entity; or
- (d) in the case of a resolution for the purposes of section 495—
 - (i) one who is the director or connected entity for whom the arrangement is proposed to be entered into or was entered into;
 - (ii) one who is the director with whom that entity is connected; or
 - (iii) one who holds any shares in the company in trust for the director specified in subparagraph (i) or (ii) or that connected entity.
- (6) Subsection (2)(b)(ii) does not prevent a member specified in subsection (5) from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.
- (7) In this section, a reference to a transaction to which an arrangement relates is—

- (a) in the case of an arrangement mentioned in section 495(1)(a) or (2)(a), a reference to the transaction entered into with a director or an entity connected with a director under the arrangement; or
 - (b) in the case of an arrangement mentioned in section 495(1)(b) or (2)(b) in relation to any rights, obligations or liabilities under a transaction, a reference to the transaction.
- (8) For the purposes of subsection (1)(a), it is irrelevant whether the resolution is passed before, on or after the commencement date of this Division.

487. Value of transaction or arrangement etc.

- (1) For the purposes of this Division—
 - (a) the value of a transaction is to be determined in accordance with subsection (2); and
 - (b) the value of any other relevant transaction or arrangement is the value of the transaction or arrangement determined in accordance with subsection (2) or (3), reduced by any amount by which the liabilities of the director, or the entity connected with a director, for whom the transaction or arrangement was entered into have been reduced.
- (2) For the purposes of subsection (1)—
 - (a) the value of a loan is the amount of its principal;
 - (b) the value of a quasi-loan is the amount, or maximum amount, that the person to whom the quasi-loan is made is liable to reimburse the person making the quasi-loan;
 - (c) the value of a credit transaction is the price that it is reasonable to expect could be obtained for goods, land or services to which the transaction relates if they had been supplied (at the time the transaction is entered into) in the ordinary course of business and on the same terms

- (d) the value of a guarantee or security is the amount guaranteed or secured.
- (3) For the purposes of subsection (1)(b)—
- (a) the value of an arrangement mentioned in section 495(1)(a) or (2)(a) is the value of the transaction entered into with a director or an entity connected with a director under the arrangement; and
 - (b) the value of an arrangement mentioned in section 495(1)(b) or (2)(b) in relation to any rights, obligations or liabilities under a transaction is the value of the transaction.

488. Relevant transaction or arrangement

- (1) A transaction or arrangement is a relevant transaction or arrangement for the purposes of an exception provision—
 - (a) if it is entered into before, or at the same time as, the transaction in question; and
 - (b) if—
 - (i) where the transaction in question is entered into for a director of the company or an entity connected with such a director, it is entered into for the director or connected entity by virtue of the exception provision by the company or a subsidiary of the company; or
 - (ii) where the transaction in question is entered into for a director of a holding company of the company, it is entered into for the director by virtue of the exception provision by the holding company or a subsidiary of the holding company.

- (2) Despite subsection (1), a transaction or arrangement is not a relevant transaction or arrangement for the purposes of an exception provision if—
- (a) it was entered into by a body corporate that, at the time it was entered into—
 - (i) was a subsidiary of the company entering into the transaction in question; or
 - (ii) was a subsidiary of a holding company of that company; and
 - (b) at the time the question arises as to whether the transaction in question falls within the exception provision, the body corporate is no longer such a subsidiary.
- (3) In this section—
- exception provision** (例外條文) means—
- (a) section 496(1); or
 - (b) section 497.

489. Total exposure amount

- (1) In sections 500 and 501—
- total exposure amount** (風險承擔總額) means—
- (a) in relation to a private company or a company limited by guarantee, the aggregate of the amounts specified in subsection (2); or
 - (b) in relation to a specified company, the aggregate of the amounts specified in subsection (3).
- (2) The amounts specified for the purposes of paragraph (a) of the definition of **total exposure amount** in subsection (1) are—
- (a) the amount of the transaction in question;
 - (b) the aggregate of the amounts outstanding at the time that transaction is entered into, in respect of the principal and

- interest or otherwise, on every loan made by the company to a director of the company or of a holding company of the company (excluding the transaction in question, and any loan made with the prescribed approval mentioned in section 491 or by virtue of section 490, 496, 497, 498, 499, 502 or 503);
- (c) the aggregate of the amounts representing the maximum liability of the company at that time under every guarantee given by the company, and in respect of every security provided by the company, in connection with any loan made by any person to a director of the company or of a holding company of the company (excluding the transaction in question, and any guarantee or security given or provided with the prescribed approval mentioned in section 491 or by virtue of section 490, 496, 497, 498, 499, 502 or 503); and
 - (d) the aggregate of the net amounts incurred or to be incurred by the company at that time under every arrangement specified in subsection (4) that is entered into by the company (excluding any arrangement entered into with the prescribed approval mentioned in section 495 or by virtue of section 490).
- (3) The amounts specified for the purposes of paragraph (b) of the definition of **total exposure amount** in subsection (1) are—
- (a) the amount of the transaction in question;
 - (b) the aggregate of the amounts outstanding at the time that transaction is entered into, in respect of the principal and interest or otherwise, on every loan and quasi-loan made by the company to, and every credit transaction entered into by the company as creditor for, a director of the company or an entity connected with such a director, or a director of a holding company of the company (excluding the transaction in question, and any loan, quasi-loan or credit transaction made or entered into with the prescribed approval mentioned in section 491,

- 492, 493 or 494 or by virtue of section 490, 496, 497, 498, 499, 502 or 503);
- (c) the aggregate of the amounts representing the maximum liability of the company at that time under every guarantee given by the company, and in respect of every security provided by the company, in connection with any loan or quasi-loan made by any person to, or any credit transaction entered into by any person as creditor for, a director of the company or an entity connected with such a director, or a director of a holding company of the company (excluding the transaction in question, and any guarantee or security given or provided with the prescribed approval mentioned in section 491, 492, 493 or 494 or by virtue of section 490, 496, 497, 498, 499, 502 or 503); and
- (d) the aggregate of the net amounts incurred or to be incurred by the company at that time under every arrangement specified in subsection (5) that is entered into by the company (excluding any arrangement entered into with the prescribed approval mentioned in section 495 or by virtue of section 490).
- (4) An arrangement specified for the purposes of subsection (2)(d) is—
- (a) an arrangement under which—
- (i) another person makes a questionable loan to a director of the company or of a holding company of the company; and
- (ii) that other person, pursuant to the arrangement, has obtained or is to obtain any benefit from the company or an associated company of the company; or
- (b) an arrangement for an assignment to the company, or assumption by the company, of any rights, obligations or liabilities under a questionable loan made by another

- person to a director of the company or of a holding company of the company.
- (5) An arrangement specified for the purposes of subsection (3)(d) is—
- (a) an arrangement under which—
- (i) another person makes a questionable loan or quasi-loan to, or enters into a questionable credit transaction as creditor for, a director of the company or an entity connected with such a director, or a director of a holding company of the company; and
- (ii) that other person, pursuant to the arrangement, has obtained or is to obtain any benefit from the company or an associated company of the company; or
- (b) an arrangement for an assignment to the company, or assumption by the company, of any rights, obligations or liabilities under—
- (i) a questionable loan or quasi-loan made by another person to a director of the company or an entity connected with such a director, or a director of a holding company of the company; or
- (ii) a questionable credit transaction entered into by another person as creditor for a director of the company or an entity connected with such a director, or a director of a holding company of the company.
- (6) In this section—
- (a) a reference to a questionable loan or quasi-loan made by a person to a director of the company, or an entity connected with such a director, under an arrangement is a reference to a loan or quasi-loan (as the case may be) that, if it had been made by the company on the date of

- the arrangement, would have been prohibited by section 491(1), 492(1) or 493 or would have been so prohibited in the absence of sections 500 and 501;
- (b) a reference to a questionable credit transaction entered into by a person as creditor for a director of the company, or an entity connected with such a director, under an arrangement is a reference to a credit transaction that, if it had been entered into by the company on the date of the arrangement, would have been prohibited by section 494(1) or would have been so prohibited in the absence of sections 500 and 501;
- (c) a reference to a questionable loan or quasi-loan made by a person to a director of a holding company of the company under an arrangement is a reference to a loan or quasi-loan (as the case may be) that, if it had been made by the company on the date of the arrangement, would have been prohibited by section 491(2) or 492(2) or would have been so prohibited in the absence of sections 500 and 501; and
- (d) a reference to a questionable credit transaction entered into by a person as creditor for a director of a holding company of the company under an arrangement is a reference to a credit transaction that, if it had been entered into by the company on the date of the arrangement, would have been prohibited by section 494(2) or would have been so prohibited in the absence of sections 500 and 501.

490. Preservation of effect of members' unanimous consent

- (1) If, under a provision of this Division, a transaction or arrangement must not be entered into without the prescribed approval of a company's members, the provision does not prohibit the transaction or arrangement from being entered into with the unanimous consent of those members given before it is entered into.

- (2) If, under a provision of this Division, a transaction or arrangement may be entered into with only the prescribed approval of a company's members, the provision does not preclude the transaction or arrangement from being entered into with the unanimous consent of those members given before it is entered into.
- (3) For the purposes of subsection (1) or (2), it is irrelevant whether the unanimous consent is given before, on or after the commencement date of this Division.

Subdivision 2**Prohibitions****491. Company must not make loan etc. to director**

- (1) Without the prescribed approval of its members, a company must not—
- (a) make a loan to a director of the company; or
- (b) give a guarantee or provide security in connection with a loan made by any person to such a director.
- (2) Without the prescribed approval of its members and the prescribed approval of the holding company's members, a company must not—
- (a) make a loan to a director of a holding company of the company; or
- (b) give a guarantee or provide security in connection with a loan made by any person to such a director.
- (3) Despite subsection (2)—
- (a) a company may enter into the transaction with only the prescribed approval of its members if the holding company is incorporated outside Hong Kong; and
- (b) a company may enter into the transaction with only the prescribed approval of the holding company's members

if it is a wholly owned subsidiary of the holding company, and the holding company is incorporated in Hong Kong.

492. Specified company must not make quasi-loan etc. to director

- (1) Without the prescribed approval of its members, a specified company must not—
 - (a) make a quasi-loan to a director of the company; or
 - (b) give a guarantee or provide security in connection with a quasi-loan made by any person to such a director.
- (2) Without the prescribed approval of its members and the prescribed approval of the holding company's members, a specified company must not—
 - (a) make a quasi-loan to a director of a holding company of the company; or
 - (b) give a guarantee or provide security in connection with a quasi-loan made by any person to such a director.
- (3) Despite subsection (2)—
 - (a) a specified company may enter into the transaction with only the prescribed approval of its members if the holding company is incorporated outside Hong Kong; and
 - (b) a specified company may enter into the transaction with only the prescribed approval of the holding company's members if it is a wholly owned subsidiary of the holding company, and the holding company is incorporated in Hong Kong.

493. Specified company must not make loan or quasi-loan etc. to connected entity

Without the prescribed approval of its members, a specified company must not—

- (a) make a loan or quasi-loan to an entity connected with a director of the company; or
- (b) give a guarantee or provide security in connection with a loan or quasi-loan made by any person to an entity connected with such a director.

494. Specified company must not enter into credit transaction etc. as creditor for director or connected entity

- (1) Without the prescribed approval of its members, a specified company must not—
 - (a) enter into a credit transaction as creditor for—
 - (i) a director of the company; or
 - (ii) an entity connected with such a director; or
 - (b) give a guarantee or provide security in connection with a credit transaction entered into by any person as creditor for such a director or an entity connected with such a director.
- (2) Without the prescribed approval of its members and the prescribed approval of the holding company's members, a specified company must not—
 - (a) enter into a credit transaction as creditor for a director of a holding company of the company; or
 - (b) give a guarantee or provide security in connection with a credit transaction entered into by any person as creditor for such a director.
- (3) Despite subsection (2)—
 - (a) a specified company may enter into the transaction with only the prescribed approval of its members if the holding company is incorporated outside Hong Kong; and
 - (b) a specified company may enter into the transaction with only the prescribed approval of the holding company's

members if it is a wholly owned subsidiary of the holding company, and the holding company is incorporated in Hong Kong.

495. Company must not take part in arrangement purporting to circumvent sections 491 to 494

- (1) Without the prescribed approval of its members, a company must not—
 - (a) take part in an arrangement under which—
 - (i) another person enters into a questionable transaction with a director of the company, or an entity connected with such a director; and
 - (ii) that other person, pursuant to the arrangement, has obtained or is to obtain any benefit from the company or an associated company of the company; or
 - (b) arrange for an assignment to the company, or assumption by the company, of any rights, obligations or liabilities under a questionable transaction entered into by another person with a director of the company, or an entity connected with such a director.
- (2) Without the prescribed approval of its members and the prescribed approval of the holding company's members, a company must not—
 - (a) take part in an arrangement under which—
 - (i) another person enters into a questionable transaction with a director of a holding company of the company; and
 - (ii) that other person, pursuant to the arrangement, has obtained or is to obtain any benefit from the company or an associated company of the company; or

- (b) arrange for an assignment to the company, or assumption by the company, of any rights, obligations or liabilities under a questionable transaction entered into by another person with a director of a holding company of the company.
- (3) Despite subsection (2)—
 - (a) a company may enter into the arrangement with only the prescribed approval of its members if the holding company is incorporated outside Hong Kong; and
 - (b) a company may enter into the arrangement with only the prescribed approval of the holding company's members if it is a wholly owned subsidiary of the holding company, and the holding company is incorporated in Hong Kong.
- (4) In this section—
 - (a) a reference to a questionable transaction entered into by a person with a director of the company, or an entity connected with such a director, under an arrangement is a reference to a transaction that, if it had been entered into by the company on the date of the arrangement, would have been prohibited by section 491(1), 492(1), 493 or 494(1) or would have been so prohibited in the absence of Subdivision 3; and
 - (b) a reference to a questionable transaction entered into by a person with a director of a holding company of the company under an arrangement is a reference to a transaction that, if it had been entered into by the company on the date of the arrangement, would have been prohibited by section 491(2), 492(2) or 494(2) or would have been so prohibited in the absence of Subdivision 3.

Subdivision 3**Exceptions to Subdivision 2****496. Exception for loan, quasi-loan and credit transaction of value not exceeding 5% of total assets or called-up share capital**

- (1) A company is not prohibited by section 491, 492, 493 or 494 from making a loan or quasi-loan, entering into a credit transaction or giving a guarantee or providing security in connection with a loan, quasi-loan or credit transaction, if the aggregate of the value of the transaction in question, and the value of any other relevant transaction or arrangement, does not exceed 5% of—
- (a) the value of the company's total assets as determined by reference to the relevant financial statements of the company; or
 - (b) if no such relevant financial statements have been prepared, the amount of the company's called-up share capital.
- (2) In this section, a reference to the relevant financial statements of a company is—
- (a) a reference to the company's annual financial statements or annual consolidated financial statements prepared under Part 9 that were most recently sent to its members under section 421; or
 - (b) if no such annual financial statements or annual consolidated financial statements have been sent since the commencement date of section 421, a reference to the company's accounts prepared under section 122 of the predecessor Ordinance that were most recently sent to its members under section 129G of that Ordinance.

497. Exception for expenditure on company business

A company is not prohibited by section 491, 492, 493 or 494 from entering into any transaction—

- (a) to provide a director of the company or an entity connected with such a director, or a director of a holding company of the company, with funds to meet expenditure incurred or to be incurred by the director or connected entity (as the case may be)—
 - (i) for the purposes of the company; or
 - (ii) for the purpose of enabling the director or connected entity (as the case may be) to properly perform duties as an officer of the company; or
- (b) to enable a director of the company or an entity connected with such a director, or a director of a holding company of the company, to avoid incurring such expenditure.

498. Exception for expenditure on defending proceedings etc.

- (1) If the condition specified in subsection (2) is satisfied, a company is not prohibited by section 491, 492, 493 or 494 from entering into any transaction—
- (a) to provide a director of the company or of a holding company of the company with funds to meet expenditure incurred or to be incurred by the director—
 - (i) in defending any criminal or civil proceedings in connection with any alleged negligence, default, breach of duty or breach of trust by the director in relation to the company or an associated company of the company; or
 - (ii) in connection with an application for relief under section 358 of the predecessor Ordinance or section 891 or 892; or

- (b) to enable such a director to avoid incurring such expenditure.
- (2) The condition is that the transaction in question is entered into on the terms—
 - (a) that the funds are to be repaid, or any liability of the company incurred in relation to that transaction is to be discharged, if—
 - (i) the director is convicted in the proceedings;
 - (ii) judgment is given against the director in the proceedings; or
 - (iii) the court refuses to grant the director relief on the application; and
 - (b) that the funds are to be so repaid, or such liability is to be so discharged, not later than the date when the conviction, judgment or refusal of relief becomes final.
- (3) For the purposes of subsection (2), a conviction, judgment or refusal of relief—
 - (a) if not appealed against, becomes final at the end of the period for bringing an appeal; or
 - (b) if appealed against, becomes final when the appeal, or any further appeal, is disposed of.
- (4) For the purposes of subsection (3)(b), an appeal is disposed of if—
 - (a) it is determined, and the period for bringing any further appeal has ended; or
 - (b) it is abandoned or otherwise ceases to have effect.

499. Exception for expenditure in connection with investigation or regulatory action

- (1) If the condition specified in subsection (2) is satisfied, a company is not prohibited by section 491, 492, 493 or 494 from entering into any transaction—

- (a) to provide a director of the company or of a holding company of the company with funds to meet expenditure incurred or to be incurred by the director in putting up a defence in an investigation, or against any action taken or proposed to be taken, by a regulatory authority in connection with any alleged misconduct by the director in relation to the company or an associated company of the company; or
- (b) to enable such a director to avoid incurring such expenditure.
- (2) The condition is that the transaction in question is entered into on the terms—
 - (a) that the funds are to be repaid, or any liability of the company incurred in relation to that transaction is to be discharged, if the director is found in the investigation or action to have committed the misconduct; and
 - (b) that the funds are to be so repaid, or such liability is to be so discharged, not later than the date when the finding becomes final.
- (3) For the purposes of subsection (2)—
 - (a) a finding subject to review—
 - (i) if no application for review has been made, becomes final at the end of the period for making an application for review; or
 - (ii) if an application for review has been made, becomes final when the review, or any further review, is disposed of;
 - (b) a finding subject to appeal—
 - (i) if not appealed against, becomes final at the end of the period for bringing an appeal; or
 - (ii) if appealed against, becomes final when the appeal, or any further appeal, is disposed of; and

- (c) a finding not subject to review or appeal becomes final when it is made.
- (4) For the purposes of subsection (3)(a)(ii) or (b)(ii), a review or appeal is disposed of if—
 - (a) it is determined, and the period for bringing any further review or appeal has ended; or
 - (b) it is abandoned or otherwise ceases to have effect.
- (5) In this section—
misconduct (不當行為) means negligence, default, breach of duty or breach of trust.

500. Exception for home loan

- (1) If the conditions specified in subsection (2) are satisfied, a company is not prohibited by section 491, 492, 493 or 494 from entering into any transaction—
 - (a) for the purpose of facilitating the purchase of any residential premises for use as the only or main residence of—
 - (i) a director of the company or of a holding company of the company; or
 - (ii) an employee of the company who is an entity connected with a director of the company;
 - (b) for the purpose of improving any residential premises so used; or
 - (c) in substitution for any transaction entered into by any other person for a purpose specified in paragraph (a) or (b).
- (2) The conditions are—
 - (a) that, at the time the transaction in question is entered into, the total exposure amount does not exceed 10% of—

- (i) the value of the company's total assets as determined by reference to the relevant financial statements of the company; or
- (ii) if no such relevant financial statements have been prepared, the amount of the company's called-up share capital;
- (b) that the company ordinarily enters into transactions for a purpose specified in subsection (3) on terms no less favourable than those on which the transaction in question is entered into;
- (c) that a valuation report on the residential premises is made and signed by a professionally qualified valuation surveyor, who is subject to the discipline of a professional body, within 3 months before the date on which the transaction in question is entered into; and
- (d) that the transaction in question is secured by a legal mortgage on the land comprising the residential premises.
- (3) The purpose specified for the purposes of subsection (2)(b) is—
 - (a) to facilitate the purchase of any residential premises for use as the only or main residence of an employee of the company;
 - (b) to improve any residential premises so used; or
 - (c) to substitute for any transaction entered into by any other person for a purpose specified in paragraph (a) or (b).
- (4) In this section—
residential premises (住用處所) means any residential premises together with any land to be occupied or enjoyed with the premises.
- (5) In this section, a reference to the relevant financial statements of a company is—

- (a) a reference to the company's annual financial statements or annual consolidated financial statements prepared under Part 9 that were most recently sent to its members under section 421; or
- (b) if no such annual financial statements or annual consolidated financial statements have been sent since the commencement date of section 421, a reference to the company's accounts prepared under section 122 of the predecessor Ordinance that were most recently sent to its members under section 129G of that Ordinance.

501. Exception for leasing goods and land etc.

- (1) If the conditions specified in subsection (2) are satisfied, a company is not prohibited by section 491, 492, 493 or 494 from leasing or hiring goods or leasing land to a director of the company or an entity connected with such a director, or a director of a holding company of the company.
- (2) The conditions are—
 - (a) that, at the time the transaction in question is entered into, the total exposure amount does not exceed 10% of—
 - (i) the value of the company's total assets as determined by reference to the relevant financial statements of the company; or
 - (ii) if no such relevant financial statements have been prepared, the amount of the company's called-up share capital; and
 - (b) that the terms of the transaction in question are not more favourable than what is reasonable to expect the company to have offered, if the goods had been leased or hired, or the land had been leased, on the open market, to a person unconnected with the company.
- (3) In this section, a reference to the relevant financial statements of a company is—

- (a) a reference to the company's annual financial statements or annual consolidated financial statements prepared under Part 9 that were most recently sent to its members under section 421; or
- (b) if no such annual financial statements or annual consolidated financial statements have been sent since the commencement date of section 421, a reference to the company's accounts prepared under section 122 of the predecessor Ordinance that were most recently sent to its members under section 129G of that Ordinance.

502. Exception for transaction entered into in ordinary course of business

- (1) A company is not prohibited by section 491, 492 or 493 from making a loan or quasi-loan, or giving a guarantee or providing security in connection with a loan or quasi-loan, if—
 - (a) the company's ordinary business includes the making of loans or quasi-loans, or the giving of guarantees or provision of securities in connection with loans or quasi-loans (as the case may be);
 - (b) the loan, quasi-loan, guarantee or security is made, given or provided by the company in the ordinary course of its business; and
 - (c) the amount of the loan or quasi-loan, guarantee or security is not greater, and the terms of it are not more favourable, than what is reasonable to expect the company to have offered to a person of the same financial standing but unconnected with the company.
- (2) A company is not prohibited by section 494 from entering into a credit transaction, or giving a guarantee or providing security in connection with a credit transaction, if—
 - (a) the company's ordinary business includes the entering into of credit transactions, or the giving of guarantees or

- provision of securities in connection with credit transactions (as the case may be);
- (b) the credit transaction, guarantee or security is entered into, given or provided by the company in the ordinary course of its business; and
 - (c) the amount of the credit transaction, guarantee or security is not greater, and the terms of it are not more favourable, than what is reasonable to expect the company to have offered to a person of the same financial standing but unconnected with the company.

503. Exception for intra-group transaction

If a company is a member of a group of companies, the company is not prohibited by section 493 or 494 from—

- (a) making a loan or quasi-loan to, or entering into a credit transaction as creditor for, a body corporate that is a member of the group; or
- (b) giving a guarantee or providing security in connection with—
 - (i) a loan or quasi-loan made by any person to such a body corporate; or
 - (ii) a credit transaction entered into by any person as creditor for such a body corporate.

Subdivision 4**Consequences of Contravention****504. Civil consequences of contravention**

- (1) If a company enters into a transaction in contravention of section 491, 492, 493 or 494, or enters into an arrangement in contravention of section 495, the transaction or arrangement is voidable at the company's instance unless—

- (a) restitution of any money or other asset that was the subject matter of the transaction or arrangement is no longer possible;
 - (b) the company has been indemnified for any loss or damage resulting from the transaction or arrangement; or
 - (c) a person who is not a party to the transaction or arrangement acquired rights in good faith, for value, and without actual notice of the contravention, and those rights would be affected by the avoidance.
- (2) Whether or not the transaction or arrangement has been avoided, each of the persons specified in subsection (3) is liable—
 - (a) to account to the company for any gain that the person has made, directly or indirectly, by the transaction or arrangement; and
 - (b) jointly and severally with any other person so liable under this section, to indemnify the company for any loss or damage resulting from the transaction or arrangement.
 - (3) The persons are—
 - (a) a director of the company, or of a holding company of the company, for whom the company entered into the transaction or arrangement;
 - (b) an entity connected with a director of the company, for whom the company entered into the transaction or arrangement;
 - (c) the director of the company, with whom such an entity is connected; and
 - (d) any other director of the company who authorized the transaction or arrangement.
 - (4) Despite subsection (2)—

- (a) the connected entity specified in subsection (3)(b) is not liable if the connected entity establishes that, at the time the transaction or arrangement was entered into, the connected entity was not aware of the circumstances constituting the contravention;
 - (b) the director specified in subsection (3)(c) is not liable if the director establishes that the director took all reasonable steps to secure the company's compliance with section 493, 494 or 495 (as the case may be); and
 - (c) a director specified in subsection (3)(d) is not liable if the director establishes that, at the time the transaction or arrangement was entered into, the director was not aware of the circumstances constituting the contravention.
- (5) This section does not exclude the operation of any other Ordinance or rule of law by virtue of which the transaction or arrangement may be called into question or any liability to the company may arise.

505. Affirmation of contravening transaction or arrangement

- (1) Despite section 504, a transaction or arrangement may no longer be avoided under that section if, within a reasonable period after it is entered into, the transaction or arrangement is affirmed.
- (2) If a transaction or arrangement contravenes Subdivision 2 because it was entered into without the prescribed approval of the company's members, the affirmation of the transaction or arrangement must be obtained by a resolution of the company's members.
- (3) If a transaction or arrangement contravenes Subdivision 2 because it was entered into without the prescribed approval of the holding company's members, the affirmation of the transaction or arrangement must be obtained by a resolution of the holding company's members.

- (4) If a transaction or arrangement contravenes Subdivision 2 because it was entered into without the prescribed approval of the company's members and the prescribed approval of the holding company's members, the affirmation of the transaction or arrangement must be obtained—
 - (a) by a resolution of the company's members; and
 - (b) by a resolution of the holding company's members.
- (5) This section does not affect the validity of a company's or holding company's decision to affirm a transaction or arrangement if it is taken by unanimous consent of the company's or holding company's members.

506. Provisions supplementary to section 505

- (1) The following requirements must be met in relation to a resolution of the members of any company under section 505—
 - (a) in the case of a written resolution, a memorandum setting out the matters specified in subsection (3) is sent to every member at or before the time at which the proposed resolution is sent to the member; or
 - (b) in the case of a resolution passed at a general meeting—
 - (i) a memorandum setting out the matters specified in subsection (3) is sent to every member together with the notice convening the meeting; and
 - (ii) if the company is a specified company, the resolution is passed after disregarding every vote in favour of the resolution by a member specified in subsection (4).
- (2) Subject to any provision of the company's articles, any accidental failure to send the memorandum to a member is to be disregarded for the purpose of determining whether the requirement specified in subsection (1)(a) or (b)(i) has been met.

- (3) The matters specified for the purposes of subsection (1)(a) and (b)(i) are—
- (a) in the case of a resolution for the purpose of a contravention of section 491, 492 or 493—
 - (i) the nature of the transaction to be affirmed by the resolution;
 - (ii) the amount of the loan or quasi-loan;
 - (iii) the purpose for which the loan or quasi-loan is required; and
 - (iv) the extent of the company's liability under any transaction connected with the loan or quasi-loan;
 - (b) in the case of a resolution for the purpose of a contravention of section 494—
 - (i) the nature of the transaction to be affirmed by the resolution;
 - (ii) the amount and value of the credit transaction;
 - (iii) the purpose for which the goods, land or services supplied, sold, leased, hired or otherwise disposed of under the credit transaction are required; and
 - (iv) the extent of the company's liability under any transaction connected with the credit transaction; or
 - (c) in the case of a resolution for the purpose of a contravention of section 495—
 - (i) the matters that would have to be disclosed if the company were seeking affirmation of the transaction to which the arrangement relates;
 - (ii) the nature of the arrangement to be affirmed by the resolution; and
 - (iii) the extent of the company's liability under the arrangement.

- (4) The member specified for the purposes of subsection (1)(b)(ii) is—
- (a) in the case of a resolution for the purpose of a contravention of section 491 or 492—
 - (i) one who is the director to whom the loan or quasi-loan is proposed to be made or was made;
 - (ii) one who is any other director of the company who authorized the loan or quasi-loan; or
 - (iii) one who holds any shares in the company in trust for the director specified in subparagraph (i) or (ii);
 - (b) in the case of a resolution for the purpose of a contravention of section 493—
 - (i) one who is the connected entity to whom the loan or quasi-loan is proposed to be made or was made;
 - (ii) one who is the director with whom that entity is connected;
 - (iii) one who is any other director of the company who authorized the loan or quasi-loan; or
 - (iv) one who holds any shares in the company in trust for the director specified in subparagraph (ii) or (iii) or that connected entity;
 - (c) in the case of a resolution for the purpose of a contravention of section 494—
 - (i) one who is the director or connected entity for whom the credit transaction is proposed to be entered into or was entered into;
 - (ii) one who is the director with whom that entity is connected;
 - (iii) one who is any other director of the company who authorized the credit transaction; or

- (iv) one who holds any shares in the company in trust for the director specified in subparagraph (i), (ii) or (iii) or that connected entity; or
- (d) in the case of a resolution for the purpose of a contravention of section 495—
 - (i) one who is the director or connected entity for whom the arrangement is proposed to be entered into or was entered into;
 - (ii) one who is the director with whom that entity is connected;
 - (iii) one who is any other director of the company who authorized the arrangement; or
 - (iv) one who holds any shares in the company in trust for the director specified in subparagraph (i), (ii) or (iii) or that connected entity.
- (5) Subsection (1)(b)(ii) does not prevent a member specified in subsection (4) from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.
- (6) In this section, a reference to a transaction to which an arrangement relates is—
 - (a) in the case of an arrangement mentioned in section 495(1)(a) or (2)(a), a reference to the transaction entered into with a director or an entity connected with a director under the arrangement; or
 - (b) in the case of an arrangement mentioned in section 495(1)(b) or (2)(b) in relation to any rights, obligations or liabilities under a transaction, a reference to the transaction.

Division 3

Payment for Loss of Office

Subdivision 1

Preliminary

507. Interpretation

(1) In this Division—

affected member (受影響成員) means—

- (a) a holder of the shares to which the takeover offer relates; or
- (b) a holder of shares of the same class as any of the shares to which the takeover offer relates;

director (董事) includes a shadow director;

takeover offer (收購要約) means a takeover offer as defined by section 678.

(2) In this Division—

- (a) a reference to payment, compensation or consideration includes benefits otherwise than in cash; and
- (b) a reference to loss of office as a director excludes loss of a person's status as a shadow director.

(3) In section 508 and Subdivisions 2 and 3, a reference to a payment to a director or former director includes—

- (a) a payment to an entity connected with the director or former director; and
- (b) a payment to a person made at the direction of, or for the benefit of—
 - (i) the director or former director; or

- (ii) an entity connected with the director or former director.
- (4) In section 508 and Subdivisions 2 and 3, a reference to a payment by a person includes a payment by another person made at the direction of, or on behalf of, the person.
- (5) For the purposes of this Division, a body corporate is not to be regarded as a shadow director of any of its subsidiaries by reason only that the directors, or a majority of the directors, of the subsidiary are accustomed to act in accordance with its directions or instructions.

508. Payment for loss of office

- (1) In this Division, a reference to a payment for loss of office made to a director or former director of a company is a reference to a payment made to the director or former director—
 - (a) by way of compensation for loss of office as director of the company;
 - (b) by way of compensation for loss, while director of the company or in connection with ceasing to be director of it, of—
 - (i) any other office or employment in connection with the management of the affairs of the company; or
 - (ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company;
 - (c) as consideration for or in connection with the retirement from the office as director of the company; or
 - (d) as consideration for or in connection with the retirement, while director of the company or in connection with ceasing to be director of it, from—
 - (i) any other office or employment in connection with the management of the affairs of the company; or

- (ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company.
- (2) If, in connection with a transfer mentioned in section 513 or 514—
 - (a) the price to be paid to a director or former director of the company specified in subsection (3) for any shares in the company exceeds the price that could at the time have been obtained by other holders of like shares; or
 - (b) any valuable consideration is given to a director or former director of the company specified in subsection (3) by a person other than the company,

the excess, or (as the case may be) the money value of the consideration, is to be regarded as a payment for loss of office for the purposes of sections 513 and 514.
- (3) The director or former director of the company is—
 - (a) one who is or was to cease to hold office in connection with the transfer; or
 - (b) one who is or was to cease to be the holder of either of the following offices in connection with the transfer—
 - (i) any other office or employment in connection with the management of the affairs of the company;
 - (ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company.
- (4) Subsection (1)(a) and (b) applies to a loss of office occurring on or after the commencement date of this Division.
- (5) Subsection (1)(c) and (d) applies to a retirement occurring on or after the commencement date of this Division.
- (6) For the purposes of subsections (4) and (5), a loss of office or retirement occurs—

- (a) in the case of a directorship, when the person ceases to be a director;
- (b) in the case of any other office, when the person ceases to hold the office; or
- (c) in the case of an employment, when the employment comes to an end.

509. Prescribed approval of members or affected members

- (1) In this Division, a reference to the prescribed approval of the members or affected members of a company is a reference to an approval obtained by a resolution of those members or affected members—
 - (a) that is passed before the payment for loss of office is made; and
 - (b) in respect of which the requirements specified in subsection (2) are met.
- (2) The requirements specified for the purposes of subsection (1)(b) are—
 - (a) that, in the case of a written resolution, a memorandum setting out the particulars of the payment is sent to every member or affected member (as the case may be) at or before the time at which the proposed resolution is sent to the member or affected member; or
 - (b) that, in the case of a resolution passed at a general meeting—
 - (i) a memorandum setting out the particulars of the payment is sent to every member or affected member (as the case may be) together with the notice convening the meeting; and
 - (ii) if the company is a public company, the resolution is passed after disregarding every vote in favour of the resolution by a member or affected member (as the case may be) specified in subsection (4) or (5).

- (3) Subject to any provision of the company's articles, any accidental failure to send the memorandum to a member or affected member (as the case may be) is to be disregarded for the purpose of determining whether the requirement specified in subsection (2)(a) or (b)(i) has been met.
- (4) In the case of a resolution for the purposes of section 512 or 513, the member specified for the purposes of subsection (2)(b)(ii) is—
 - (a) one who is the director or former director to whom the payment for loss of office is proposed to be made;
 - (b) one who is the proposed recipient of the payment for loss of office and who is not the director or former director specified in paragraph (a); or
 - (c) one who holds any shares in the company in trust for that director, former director or recipient.
- (5) In the case of a resolution for the purposes of section 514, the affected member specified for the purposes of subsection (2)(b)(ii) is—
 - (a) one who is the director or former director to whom the payment for loss of office is proposed to be made;
 - (b) one who is the proposed recipient of the payment for loss of office and who is not the director or former director specified in paragraph (a);
 - (c) one who makes the takeover offer;
 - (d) one who is an associate of the person making the takeover offer; or
 - (e) one who holds any shares in the company in trust for—
 - (i) that director, former director or recipient;
 - (ii) the maker of the takeover offer specified in paragraph (c); or
 - (iii) the associate.

- (6) Subsection (2)(b)(ii) does not prevent a member or affected member (as the case may be) specified in subsection (4) or (5) from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.
- (7) In this section—
associate (有聯繫者), in relation to a person making a takeover offer, means an associate of the person as defined by section 658.
- (8) For the purposes of subsection (1)(a), it is irrelevant whether the resolution is passed before, on or after the commencement date of this Division.

510. Preservation of effect of members' or affected members' unanimous consent

- (1) If, under a provision of this Division, a transaction must not be entered into without the prescribed approval of a company's members or affected members, the provision does not prohibit the transaction from being entered into with the unanimous consent of those members or affected members given before it is entered into.
- (2) If, under a provision of this Division, a transaction may be entered into with only the prescribed approval of a company's members or affected members, the provision does not preclude the transaction from being entered into with the unanimous consent of those members or affected members given before it is entered into.
- (3) For the purposes of subsection (1) or (2), it is irrelevant whether the unanimous consent is given before, on or after the commencement date of this Division.

511. This Division does not affect operation of other Ordinance or law

This Division does not affect the operation of any other Ordinance or rule of law requiring disclosure to be made with respect to—

- (a) any payment for loss of office mentioned in section 512, 513 or 514; or
- (b) any other like payment made or to be made to a director or former director of a company.

Subdivision 2

Prohibitions

512. Company must not make payment for loss of office to director or former director

- (1) Without the prescribed approval of its members, a company must not make a payment for loss of office to a director or former director of the company.
- (2) Without the prescribed approval of its members and the prescribed approval of the holding company's members, a company must not make a payment for loss of office to a director or former director of a holding company of the company.
- (3) Despite subsection (2)—
- (a) a company may enter into the transaction with only the prescribed approval of its members if the holding company is incorporated outside Hong Kong; and
- (b) a company may enter into the transaction with only the prescribed approval of the holding company's members if it is a wholly owned subsidiary of the holding company, and the holding company is incorporated in Hong Kong.

513. Person must not make payment for loss of office to director or former director in connection with transfer of company's undertaking or property

- (1) Without the prescribed approval of the company's members, a person must not make a payment for loss of office to a director or former director of a company in connection with a transfer of the whole or any part of the undertaking or property of the company.
- (2) Without the prescribed approval of the company's members and the prescribed approval of the subsidiary's members, a person must not make a payment for loss of office to a director or former director of a company in connection with a transfer of the whole or any part of the undertaking or property of a subsidiary of the company.
- (3) For the purposes of this section, a payment is presumed, except in so far as the contrary is shown, to be made in connection with a transfer of any undertaking or property of a company if it is made pursuant to an arrangement—
 - (a) entered into as part of the agreement for the transfer, or within one year before or 2 years after that agreement is entered into; and
 - (b) to which the company, or any person to whom the transfer is made, is privy.
- (4) Despite subsection (2), a person may enter into the transaction with only the prescribed approval of the company's members if the subsidiary is incorporated outside Hong Kong or is a wholly owned subsidiary of the company.

514. Person must not make payment for loss of office to director or former director in connection with transfer of shares resulting from takeover offer

- (1) Without the prescribed approval of the affected members, a person must not make a payment for loss of office to a director or former director of a company in connection with a

transfer of shares in the company, or in a subsidiary of the company, resulting from a takeover offer.

- (2) For the purposes of this section, a payment is presumed, except in so far as the contrary is shown, to be made in connection with a transfer of any shares in a company if it is made pursuant to an arrangement—
 - (a) entered into as part of the agreement for the transfer, or within one year before or 2 years after that agreement is entered into; and
 - (b) to which the company, or any person to whom the transfer is made, is privy.
- (3) Despite subsection (1), a person may enter into the transaction without the prescribed approval of a body corporate's affected members if the body corporate is incorporated outside Hong Kong.
- (4) For the purposes of this section, the prescribed approval of the affected members of a payment is to be regarded as being obtained if—
 - (a) a quorum is not present at a general meeting to consider the resolution in respect of which the requirement specified in section 509(2)(b)(i) is met;
 - (b) the meeting is adjourned to a later date; and
 - (c) a quorum is not present at the adjourned meeting.

Subdivision 3**Exceptions to Subdivision 2****515. Exception for payments in discharge of legal obligation etc.**

- (1) A person is not prohibited by Subdivision 2 from making a payment in good faith—
 - (a) in discharge of an existing legal obligation;

- (b) by way of damages for breach of an existing legal obligation;
 - (c) by way of settlement or compromise of any claim arising in connection with the termination of a person's office or employment; or
 - (d) by way of pension in respect of past services.
- (2) For the purposes of subsection (1), if part of a payment falls within that subsection and part of it does not, the payment is to be regarded as if those parts were separate payments.
- (3) In this section—
- existing legal obligation** (現存法律義務)—
- (a) in relation to a payment falling within section 512 and made by a company, means an obligation of the company, or an associated company of it, that was not entered into in connection with, or in consequence of, the event giving rise to the payment for loss of office; or
 - (b) in relation to a payment falling within section 513 or 514 and made by a person in connection with a transfer of any undertaking, property or shares, means an obligation of the person that was not entered into for the purpose of, in connection with, or in consequence of, the transfer;
- pension** (退休金) includes any superannuation allowance, superannuation gratuity or similar payment.
- (4) For the purposes of the definition of **existing legal obligation** in subsection (3), if a payment falls within both sections 512 and 513 or within both sections 512 and 514, it is to be regarded as falling within section 512 but not within section 513 or 514.

516. Exception for small payment

- (1) A company is not prohibited by section 512 from making a payment to a director or former director if the aggregate of the amount or value of the payment, and the amount or value of

- any other payment for loss of office made by the company or a subsidiary of the company to the director or former director in connection with the same event, does not exceed \$20,000.
- (2) A company is not prohibited by section 513 or 514 from making a payment to a director or former director in connection with a transfer of any undertaking or property of, or shares in, the company or a subsidiary of the company if the aggregate of the amount or value of the payment, and the amount or value of any other payment for loss of office made by the company or a subsidiary of the company to the director or former director in connection with the transfer, does not exceed \$20,000.
- (3) A subsidiary of a company is not prohibited by section 513 or 514 from making a payment to a director or former director in connection with a transfer of any undertaking or property of, or shares in, the company or a subsidiary of the company if the aggregate of the amount or value of the payment, and the amount or value of any other payment for loss of office made by the company, or the subsidiary making the payment, to the director or former director in connection with the transfer, does not exceed \$20,000.

Subdivision 4**Consequences of Contravention****517. Interpretation**

For the purposes of this Division—

- (a) unless the court directs otherwise, a payment is to be regarded as being made in contravention of section 513 if it is made in contravention of both sections 512 and 513; and
- (b) unless the court directs otherwise, a payment is to be regarded as being made in contravention of section 514

if it is made in contravention of both sections 512 and 514.

518. Civil consequences of contravention of section 512

If a payment is made by a company in contravention of section 512—

- (a) the payment is held by the recipient in trust for the company; and
- (b) any director of the company who authorized the payment is jointly and severally liable to indemnify the company for any loss resulting from the payment.

519. Civil consequences of contravention of section 513

- (1) This section applies if a payment is made in connection with a transfer of any undertaking or property of a company, or a subsidiary of a company, in contravention of section 513.
- (2) The payment is held by the recipient in trust for the company or subsidiary.
- (3) If the payment is made by or on behalf of the company, any director of the company who authorized the payment is jointly and severally liable to indemnify the company for any loss resulting from the payment.
- (4) If the payment is made by or on behalf of the subsidiary, any director of the subsidiary who authorized the payment is jointly and severally liable to indemnify the subsidiary for any loss resulting from the payment.

520. Civil consequences of contravention of section 514

- (1) This section applies if a payment is made in connection with a transfer of shares in a company, or a subsidiary of a company, resulting from a takeover offer in contravention of section 514.

- (2) The payment is held by the recipient in trust for those who have sold their shares as a result of the offer made.
- (3) The recipient must bear the expenses in distributing that sum amongst those who have sold their shares.
- (4) If the payment is made by or on behalf of the company, any director of the company who authorized the payment is jointly and severally liable to indemnify the company for any loss resulting from the payment.
- (5) If the payment is made by or on behalf of the subsidiary, any director of the subsidiary who authorized the payment is jointly and severally liable to indemnify the subsidiary for any loss resulting from the payment.

Division 4

Directors' Service Contract

521. Interpretation

- (1) In this Division—
director (董事) includes a shadow director.
- (2) For the purposes of this Division, a body corporate is not to be regarded as a shadow director of any of its subsidiaries by reason only that the directors, or a majority of the directors, of the subsidiary are accustomed to act in accordance with its directions or instructions.

522. Service contract

- (1) In this Division, a reference to a service contract of a director of a company—
 - (a) is a reference to a contract under which—
 - (i) the director undertakes personally to perform services, as director or otherwise, for the company or for a subsidiary of the company; or

- (ii) services that the director undertakes personally to perform, as director or otherwise, are to be made available by a third party to the company or to a subsidiary of the company; and
 - (b) includes the terms of a person's appointment as director of the company.
- (2) In this Division, a reference to a service contract of a director of a company is not restricted to a contract for the performance of services outside the scope of a director's ordinary duties as director.

523. Prescribed approval of members

- (1) In this Division, a reference to the prescribed approval of the members of a company is a reference to an approval obtained by a resolution of those members—
- (a) that is passed before the company agrees to the provision; and
 - (b) in respect of which the requirements specified in subsection (2) are met.
- (2) The requirements specified for the purposes of subsection (1)(b) are—
- (a) that, in the case of a written resolution, a memorandum setting out the proposed service contract (incorporating the provision in question) is sent to every member at or before the time at which the proposed resolution is sent to the member; or
 - (b) that, in the case of a resolution passed at a general meeting—
 - (i) a memorandum setting out the proposed service contract (incorporating the provision in question) is sent to every member together with the notice convening the meeting; and

- (ii) if the company is a public company, the resolution is passed after disregarding every vote in favour of the resolution by a member specified in subsection (4).
- (3) Subject to any provision of the company's articles, any accidental failure to send the memorandum to a member is to be disregarded for the purpose of determining whether the requirement specified in subsection (2)(a) or (b)(i) has been met.
- (4) The member specified for the purposes of subsection (2)(b)(ii) is—
- (a) one who is the director with whom the service contract is proposed to be entered into; or
 - (b) one who holds any shares in the company in trust for that director.
- (5) Subsection (2)(b)(ii) does not prevent a member specified in subsection (4) from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.
- (6) For the purposes of subsection (1)(a), it is irrelevant whether the resolution is passed before, on or after the commencement date of this Division.

524. Preservation of effect of members' unanimous consent

- (1) If, under section 525(1), any provision must not be agreed to without the prescribed approval of a company's members, that section does not prohibit the provision from being agreed to with the unanimous consent of those members given before it is agreed to.
- (2) For the purposes of subsection (1), it is irrelevant whether the unanimous consent is given before, on or after the commencement date of this Division.

525. Company must not agree to director's long-term employment

- (1) Without the prescribed approval of its members, a company must not agree to any provision under which the guaranteed term of the employment of a director of the company with the company exceeds or may exceed 3 years.
- (2) In this section—
employment (僱用) means any employment under a director's service contract.
- (3) In this section, a reference to the guaranteed term of a director's employment is—
 - (a) a reference to the period (if any) during which the employment—
 - (i) is to continue, or may be continued, otherwise than at the instance of the company (whether under the original contract or under a new contract entered into pursuant to it); and
 - (ii) cannot be terminated by the company by notice, or can be so terminated only in specified circumstances;
 - (b) in the case of employment terminable by the company by notice, a reference to the period of notice required to be given; or
 - (c) in the case of employment having a period within paragraph (a) and a period within paragraph (b), a reference to the aggregate of those periods.
- (4) For the purposes of this section, if, more than 6 months before the end of the guaranteed term of a director's employment, the company enters into a further service contract otherwise than pursuant to a right given, by or under the original contract, to the other party to it, the guaranteed term of the employment under the further contract is to be regarded as including the unexpired period of the guaranteed term of the employment under the original contract.

- (5) For the purposes of subsection (4), it is irrelevant whether the original contract is entered into before, on or after the commencement date of this Division.

526. Civil consequences of contravention of section 525

If a company agrees to a provision in contravention of section 525—

- (a) the provision is void to the extent of the contravention; and
- (b) the contract is to be regarded as containing a term entitling the company to terminate it at any time by giving reasonable notice.

Division 5**Material Interests in Transaction, Arrangement or Contract****527. Director must declare material interests**

- (1) If a director of a company is in any way, directly or indirectly, interested in a transaction, arrangement or contract, or a proposed transaction, arrangement or contract, with the company that is significant in relation to the company's business, and the director's interest is material, the director must declare the nature and extent of the director's interest to the other directors in accordance with sections 528, 529 and 530.
- (2) If an entity connected with a director of a public company is in any way, directly or indirectly, interested in a transaction, arrangement or contract, or a proposed transaction, arrangement or contract, with the company that is significant in relation to the company's business, and the connected entity's interest is material, the director must declare the nature and extent of the connected entity's interest to the other directors in accordance with sections 528, 529 and 530.

- (3) If a declaration made under subsection (1) or (2) proves to be, or becomes, inaccurate or incomplete, the director must make a further declaration in accordance with sections 528, 529 and 530.
- (4) This section does not require a director to declare an interest—
 - (a) if the director is not aware of the interest or the transaction, arrangement or contract in question; or
 - (b) if, or to the extent that, the interest concerns the terms of the director's service contract that have been or are to be considered by—
 - (i) a meeting of the directors; or
 - (ii) a committee of the directors appointed for the purpose under the company's articles.
- (5) For the purposes of subsection (4)(a), a director is to be regarded as being aware of matters of which the director ought reasonably to be aware.
- (6) This section does not affect the operation of any other Ordinance or rule of law restricting a director of a company from having any interest in a transaction, arrangement or contract with the company.

528. Declaration to directors: timing

- (1) A declaration of interest under section 527 in a transaction, arrangement or contract that has been entered into must be made as soon as reasonably practicable.
- (2) A declaration of interest under section 527 in a proposed transaction, arrangement or contract must be made before the company enters into the transaction, arrangement or contract.
- (3) Failure to comply with subsection (1) or (2) does not affect the underlying duty to make the declaration.

529. Declaration to directors: procedures

- (1) A declaration to directors under section 527 must be—
 - (a) made at a directors' meeting;
 - (b) made by notice in writing and sent by the director to the other directors; or
 - (c) made by general notice by the director to the other directors.
- (2) A notice for the purposes of subsection (1)(b)—
 - (a) must be sent—
 - (i) in hard copy form; or
 - (ii) if the recipient has agreed to receive it in electronic form, in the electronic form so agreed; and
 - (b) must be sent—
 - (i) by hand or by post; or
 - (ii) if the recipient has agreed to receive it by electronic means, by the electronic means so agreed.
- (3) If a declaration to directors under section 527 is made by notice in writing—
 - (a) the making of the declaration is to be regarded as forming part of the proceedings at the next directors' meeting after the notice is given; and
 - (b) section 472 applies as if the declaration had been made at that meeting.
- (4) A general notice by a director for the purposes of subsection (1)(c) is a notice to the effect that—
 - (a) the director—
 - (i) has an interest (as member, officer, employee or otherwise) in a body corporate or firm specified in the notice; and

- (ii) is to be regarded as interested in any transaction, arrangement or contract that may, after the effective date of the notice, be entered into with the specified body corporate or firm; or
- (b) the director—
 - (i) is connected with a person specified in the notice (other than a body corporate or firm); and
 - (ii) is to be regarded as interested in any transaction, arrangement or contract that may, after the effective date of the notice, be entered into with the specified person.
- (5) A general notice must state—
 - (a) the nature and extent of the director's interest in the specified body corporate or firm; or
 - (b) the nature of the director's connection with the specified person.
- (6) A general notice is not effective unless—
 - (a) it is given at a directors' meeting; or
 - (b) the director takes all reasonable steps to secure that it is brought up and read at the next directors' meeting after it is given.

530. Declaration to directors in case of company with sole director

- (1) If a declaration to directors under section 527 is required of a sole director of a company that is required to have more than one director—
 - (a) the declaration must be recorded in writing;
 - (b) the making of the declaration is to be regarded as forming part of the proceedings at the next directors' meeting after the notice is given; and
 - (c) section 472 applies as if the declaration had been made at that meeting.

- (2) This section does not affect the operation of section 535.

531. Application of Division to shadow director

- (1) Subject to subsections (2), (3) and (4), the provisions of this Division relating to the duty of a director to declare an interest under section 527 apply to a shadow director in the same manner as they apply to a director.
- (2) Section 529(1)(a) and (6) does not apply to a shadow director.
- (3) A general notice by a shadow director for the purposes of section 529(1)(c) is not effective unless it is given by notice in writing and sent by the shadow director to the other directors.
- (4) A notice for the purposes of subsection (3)—
 - (a) must be sent—
 - (i) in hard copy form; or
 - (ii) if the recipient has agreed to receive it in electronic form, in the electronic form so agreed; and
 - (b) must be sent—
 - (i) by hand or by post; or
 - (ii) if the recipient has agreed to receive it by electronic means, by the electronic means so agreed.

532. Offence

- (1) A director or shadow director who contravenes section 527(1), (2) or (3) commits an offence and is liable to a fine at level 6.
- (2) If a person is charged with an offence under subsection (1) for contravening section 527(2), it is a defence to establish that the person took all reasonable steps to secure compliance with that section.

Division 6**Miscellaneous****533. Disclosure of management contract**

- (1) This section applies if—
- (a) a company enters into a contract by which a person undertakes the management and administration of the whole or any substantial part of any business of the company; and
 - (b) the contract is not a contract of service with any director of the company or any person engaged in the full-time employment of the company.
- (2) The directors' report for any year in which the contract is in force must include—
- (a) a statement of the existence and duration of the contract; and
 - (b) the name of every director and shadow director interested in the contract, and the nature and extent of the interest.
- (3) The company must keep the following available for inspection at its registered office or at a place prescribed by regulations made under section 648—
- (a) a copy of the contract;
 - (b) if such a contract is not in writing, a written memorandum setting out the terms of the contract.
- (4) The company—
- (a) must retain the copy or memorandum for at least one year after the date of termination or expiry of the contract; and
 - (b) must keep the copy or memorandum available for inspection during that time.

- (5) If the copy or memorandum is kept available for inspection at a place other than the company's registered office, the company must deliver to the Registrar for registration a notice, in the specified form, of the place, or any change in the place, at which the copy or memorandum is kept. The notice must be delivered to the Registrar within 14 days after the copy or memorandum is first kept at that place or within 14 days after the change (as the case may be).
- (6) If subsection (2), (3), (4) or (5) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (7) In this section—
directors' report (董事報告) means—
 - (a) the report required to be prepared under section 380(1); or
 - (b) the consolidated report required to be prepared under section 380(2).

534. Right of member to inspect and request copy

- (1) A copy of a contract or a written memorandum required to be kept by a company under section 533 must be open to inspection by any member of the company without charge.
- Note—**
Regulations may be made under section 648 to make provision as to the time, duration and manner of inspection.
- (2) A member of the company is entitled, on request and on payment of a prescribed fee, to be provided with a copy of the contract or memorandum.
 - (3) The company must provide the member with the copy within a prescribed period after the request and the prescribed fee are received by the company.

- (4) If a company contravenes subsection (3)—
 - (a) the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues; and
 - (b) the Court may by order direct that the copy be provided to the person requesting it.
- (5) In this section, a reference to a contract includes a variation of the contract.

535. Contract with sole member who is also director

- (1) This section applies if—
 - (a) a company having only one member enters into a contract with the member;
 - (b) the member is also a director of the company; and
 - (c) the contract is not entered into in the ordinary course of the company's business.
- (2) Unless the contract is in writing, the company must ensure that the terms of the contract are set out in a written memorandum kept at the place where the books containing the minutes of the directors' meetings are kept.
- (3) If a company contravenes subsection (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (4) A contravention of subsection (2) in relation to a contract does not affect the validity of the contract.
- (5) This section does not exclude the operation of any other Ordinance or rule of law applying to contracts between a company and a director of the company.

- (6) In this section—
director (董事) includes a shadow director.
- (7) For the purposes of this section, a body corporate is not to be regarded as a shadow director of any of its subsidiaries by reason only that the directors, or a majority of the directors, of the subsidiary are accustomed to act in accordance with its directions or instructions.

536. Financial Secretary may amend certain sums or percentage figures

- (1) Subject to subsection (2), the Financial Secretary may, by notice published in the Gazette, amend any provision of Division 2 or 3—
 - (a) by substituting for any sum of money specified in the provision a sum specified in the notice; or
 - (b) by substituting for any percentage figure specified in the provision a percentage figure specified in the notice.
- (2) A notice under this section may not be made to amend the amount of a fine.
- (3) A notice under this section does not have effect in relation to anything done or not done before the notice comes into operation.
- (4) Proceedings in respect of any liability incurred before a notice under this section comes into operation may be continued or instituted as if the notice had not been made.

Part 12**Company Administration and Procedure****Division 1****Resolutions and Meetings****Subdivision 1****Preliminary****537. Interpretation**

(1) In this Division—

circulation date (傳閱日期), in relation to a written resolution or a proposed written resolution, means—

- (a) the date on which copies of the resolution are sent to eligible members in accordance with section 543; or
- (b) if copies are sent to eligible members on different days, the first of those days;

electronic address (電子地址) means any sequence or combination of letters, characters, numbers or symbols of any language or, any number, used for the purposes of sending or receiving a document or information by electronic means.

(2) For the purposes of this Division—

- (a) in relation to a proposed written resolution, the eligible members are the members who would have been entitled to vote on the resolution on the circulation date of the resolution; and
- (b) if the persons entitled to vote on the resolution change during the course of the day that is the circulation date of the resolution, the eligible members are the persons

entitled to vote on the resolution at the time that the first copy of the resolution is sent to a member for agreement.

- (3) Nothing in this Division affects the operation of any other Ordinance or rule of law as to—
 - (a) things done otherwise than by passing a resolution;
 - (b) circumstances in which a resolution is or is not to be regarded as having been passed; or
 - (c) cases in which a person is precluded from alleging that a resolution has not been duly passed.

Subdivision 2**Written Resolution****538. Written resolution**

- (1) Anything that may be done by a resolution passed at a general meeting of a company may be done, without a meeting and without any previous notice being required, by a written resolution of the members of the company.
- (2) Anything that may be done by a resolution passed at a meeting of a class of members of a company may be done, without a meeting and without any previous notice being required, by a written resolution of that class of members of the company.
- (3) If a resolution is required by any Ordinance to be passed as an ordinary resolution or a special resolution, the resolution may be passed as a written resolution; and a reference in any Ordinance to an ordinary resolution or a special resolution includes a written resolution.
- (4) A reference in any Ordinance to the date of passing of a resolution or the date of a meeting is, in relation to a written resolution, the date on which the written resolution is passed under section 546.

- (5) A written resolution of a company has effect as if passed by—
- (a) the company at a general meeting; or
 - (b) a meeting of the relevant class of members of the company,
- as the case may be, and a reference in any Ordinance to a meeting at which a resolution is passed or to members voting in favour of a resolution is to be construed accordingly.
- (6) This section does not apply to—
- (a) a resolution removing an auditor before the end of the auditor's term of office; or
 - (b) a resolution removing a director before the end of the director's term of office.

539. Power to propose written resolution

- (1) A resolution may be proposed as a written resolution by—
- (a) the directors of a company; or
 - (b) the members of a company representing not less than the requisite percentage of the total voting rights of all the members entitled to vote on the resolution.
- (2) The requisite percentage mentioned in subsection (1)(b) is 2.5% or a lower percentage specified for this purpose in the company's articles.

540. Company's duty to circulate written resolution proposed by directors

If the directors of a company have proposed a resolution as a written resolution under section 539(1)(a), the company must circulate the resolution.

541. Members' power to request circulation of written resolution

- (1) The members of a company may request the company to circulate a resolution that—

- (a) may properly be moved; and
 - (b) is proposed as a written resolution under section 539(1)(b).
- (2) If the members request a company to circulate a resolution, they may request the company to circulate with the resolution a statement of not more than 1 000 words on the subject matter of the resolution.

542. Company's duty to circulate written resolution proposed by members

- (1) A company must circulate a resolution proposed as a written resolution under section 539(1)(b) and any statement mentioned in section 541(2) if it has received requests that it do so from the members of the company representing not less than the requisite percentage of the total voting rights of all the members entitled to vote on the resolution.
- (2) The requisite percentage mentioned in subsection (1) is 2.5% or a lower percentage specified for this purpose in the company's articles.
- (3) A request—
- (a) may be sent to the company in hard copy form or in electronic form;
 - (b) must identify the resolution and any statement mentioned in section 541(2); and
 - (c) must be authenticated by the person or persons making it.

543. Circulation of written resolution

- (1) If a company is required under section 540 or 542 to circulate a resolution proposed as a written resolution, the company must send at its own expense to every eligible member and every other member (if any) who is not an eligible member—
- (a) a copy of the resolution; and

- (b) if so required under section 541(2), a copy of a statement mentioned in that section.
- (2) The company may comply with subsection (1)—
 - (a) by sending copies at the same time (so far as reasonably practicable) to all members in hard copy form or in electronic form or by making the copies available on a website;
 - (b) if it is possible to do so without undue delay, by sending the same copy to each member in turn (or different copies to each of a number of members in turn); or
 - (c) by sending copies to some members in accordance with paragraph (a) and sending a copy or copies to other members in accordance with paragraph (b).
- (3) The company must send the copies (or if copies are sent to members on different days, the first of those copies) not more than 21 days after it becomes subject to the requirement under subsection (1) to send the copies.
- (4) If the company sends a copy of a proposed written resolution or statement by making it available on a website, the copy is not validly sent for the purposes of this Subdivision unless the copy is available on the website throughout the period—
 - (a) beginning on the circulation date; and
 - (b) ending on the date on which the resolution lapses under section 548.
- (5) The company must ensure that the copy of the proposed written resolution sent to an eligible member is accompanied by guidance as to—
 - (a) how to signify agreement to the resolution under section 546; and
 - (b) the date by which the resolution must be passed if it is not to lapse under section 548.

- (6) If a company contravenes subsection (1), (3) or (5), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5.
- (7) The validity of the resolution, if passed, is not affected by a contravention of subsection (1), (3) or (5).

544. Application not to circulate accompanying statement

- (1) A company is not required to circulate a statement mentioned in section 541(2) if, on an application by the company or another person who claims to be aggrieved, the Court is satisfied that the rights given by that section are being abused.
- (2) The Court may order the members who requested the circulation of the statement to pay the whole or part of the company's costs on an application under subsection (1), even if they are not parties to the application.

545. Company's duty to notify auditor of proposed written resolution

- (1) If a company is required to send a resolution to a member of the company under section 543, it must, on or before the circulation date, send to the auditor of the company (if more than one auditor, to everyone of them)—
 - (a) a copy of the resolution; and
 - (b) a copy of any other document relating to the resolution that is required to be sent to a member of the company under that section.
- (2) The copies may be sent to the auditor or auditors of the company in hard copy form or in electronic form.
- (3) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.
- (4) The validity of the resolution, if passed, is not affected by a contravention of subsection (1).

546. Procedure for signifying agreement to proposed written resolution

- (1) A written resolution is passed when all eligible members have signified their agreement to it.
- (2) A member signifies agreement to a proposed written resolution when the company receives from the member (or from someone acting on the member's behalf) a document—
 - (a) identifying the resolution to which it relates; and
 - (b) indicating the member's agreement to the resolution.
- (3) The document—
 - (a) may be sent to the company in hard copy form or in electronic form; and
 - (b) must be authenticated by the member or by someone acting on the member's behalf.
- (4) A member's agreement to a written resolution, once signified, may not be revoked.

547. Agreement signified by eligible members who are joint holders of shares

- (1) If—
 - (a) 2 or more eligible members are joint holders of shares of a company; and
 - (b) the senior holder has signified his or her agreement to a proposed written resolution,
 then the other joint holder or holders are to be regarded as having signified their agreement to the proposed written resolution for the purposes of section 546(1).
- (2) For the purposes of this section, the senior holder of a share is determined by the order in which the names of the joint holders appear in the register of members of the company.
- (3) Subsections (1) and (2) have effect subject to any provision of the company's articles.

548. Period for agreeing to proposed written resolution

- (1) A proposed written resolution lapses if it is not passed before the end of—
 - (a) the period specified for this purpose in the company's articles; or
 - (b) if none is specified, the period of 28 days beginning on the circulation date.
- (2) The agreement of a member to a proposed written resolution is ineffective if signified after the end of that period.

549. Company's duty to notify members and auditor that written resolution has been passed

- (1) If a resolution of a company is passed as a written resolution, the company must, within 15 days after the resolution is passed, send a copy of the written resolution to—
 - (a) every member of the company; and
 - (b) the auditor of the company (if more than one auditor, to everyone of them).
- (2) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.

550. Sending document relating to written resolution by electronic means

If a company has given an electronic address in any document containing or accompanying a proposed written resolution, it is to be regarded as having agreed that any document or information relating to that resolution may be sent by electronic means to that address (subject to any conditions or limitations specified in the document).

551. Relationship between this Subdivision and provisions of company's articles

- (1) A provision of a company's articles is void in so far as it would have the effect that a resolution that is required by or otherwise provided for in an Ordinance could not be proposed and passed as a written resolution.
- (2) Nothing in this Subdivision affects any provision of a company's articles authorizing the company to pass a resolution without a meeting, otherwise than in accordance with this Subdivision.
- (3) Subsection (2) applies only if the resolution has been agreed to by all the members of the company who are entitled to vote on the resolution.

Subdivision 3**Resolutions at Meetings****552. General provisions**

- (1) A resolution of a company is validly passed at a general meeting if—
 - (a) notice of the meeting and of the resolution is given;
 - (b) the meeting is held and conducted; and
 - (c) the resolution is passed,
 in accordance with this Subdivision and Subdivisions 4, 5, 6, 7, 8 and 9 (and, if relevant, Subdivision 10) and the company's articles.
- (2) If a provision of any Ordinance—
 - (a) requires or otherwise provides for a resolution of a company, or of the members (or of a class of members) of a company; and
 - (b) does not specify what kind of resolution is required,

what is required is an ordinary resolution unless the company's articles require a higher majority (or unanimity).

553. Ordinary resolution

- (1) An ordinary resolution of the members (or of a class of members) of a company means a resolution that is passed by a simple majority.
- (2) A resolution passed at a general meeting on a show of hands is passed by a simple majority if it is passed by a simple majority of—
 - (a) the members who (being entitled to do so) vote in person on the resolution; and
 - (b) the persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.
- (3) A resolution passed on a poll taken at a general meeting is passed by a simple majority if it is passed by members representing a simple majority of the total voting rights of all the members who (being entitled to do so) vote in person or by proxy on the resolution.
- (4) Anything that may be done by an ordinary resolution may also be done by a special resolution.

554. Special resolution

- (1) A special resolution of the members (or of a class of members) of a company means a resolution that is passed by a majority of at least 75%.
- (2) A resolution passed at a general meeting on a show of hands is passed by a majority of at least 75% if it is passed by at least 75% of—
 - (a) the members who (being entitled to do so) vote in person on the resolution; and
 - (b) the persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.

- (3) A resolution passed on a poll taken at a general meeting is passed by a majority of at least 75% if it is passed by members representing at least 75% of the total voting rights of all the members who (being entitled to do so) vote in person or by proxy on the resolution.
- (4) If a resolution is passed at a general meeting—
 - (a) the resolution is not a special resolution unless the notice of the meeting included the text of the resolution and specified the intention to propose the resolution as a special resolution; and
 - (b) if the notice of the meeting so specified, the resolution may only be passed as a special resolution.
- (5) A reference to an extraordinary resolution of a company or of a meeting of any class of members of a company—
 - (a) contained in any Ordinance that was enacted or document that existed before 31 August 1984; and
 - (b) deemed, in relation to a resolution passed or to be passed on or after that date, to be a special resolution of the company or meeting under section 116(5) of the predecessor Ordinance,

continues to be deemed to be such a special resolution of the company or meeting.

Subdivision 4

Calling Meetings

555. **Directors' power to call general meeting**

The directors of a company may call a general meeting of the company.

556. **Members' power to request directors to call general meeting**

- (1) The members of a company may request the directors to call a general meeting of the company.
- (2) The directors are required to call a general meeting if the company has received requests to do so from members of the company representing at least 5% of the total voting rights of all the members having a right to vote at general meetings.
- (3) A request—
 - (a) must state the general nature of the business to be dealt with at the meeting; and
 - (b) may include the text of a resolution that may properly be moved and is intended to be moved at the meeting.
- (4) Requests may consist of several documents in like form.
- (5) A request—
 - (a) may be sent to the company in hard copy form or in electronic form; and
 - (b) must be authenticated by the person or persons making it.

557. **Directors' duty to call general meeting requested by members**

- (1) Directors required under section 556 to call a general meeting must call a meeting within 21 days after the date on which they become subject to the requirement.
- (2) A meeting called under subsection (1) must be held on a date not more than 28 days after the date of the notice convening the meeting.
- (3) If the requests received by the company identify a resolution that may properly be moved and is intended to be moved at the meeting, the notice of the meeting must include notice of the resolution.

- (4) The business that may be dealt with at the meeting includes a resolution of which notice has been included in the notice of meeting in accordance with subsection (3).
- (5) If the resolution is to be proposed as a special resolution, the directors are to be regarded as not having duly called the meeting unless the notice of the meeting includes the text of the resolution and specifies the intention to propose the resolution as a special resolution.

558. Members' power to call general meeting at company's expense

- (1) If the directors—
 - (a) are required under section 556 to call a general meeting; and
 - (b) do not do so in accordance with section 557,
 the members who requested the meeting, or any of them representing more than one half of the total voting rights of all of them, may themselves call a general meeting.
- (2) If the requests received by the company identify a resolution that may properly be moved and is intended to be moved at the meeting, the notice of the meeting must include notice of the resolution.
- (3) The meeting must be called for a date not more than 3 months after the date on which the directors become subject to the requirement to call a meeting.
- (4) The meeting must be called in the same manner, as nearly as possible, as that in which that meeting is required to be called by the directors of the company.
- (5) The business that may be dealt with at the meeting includes a resolution of which notice has been included in the notice of meeting in accordance with subsection (2).
- (6) Any reasonable expenses incurred by the members requesting the meeting by reason of the failure of the directors duly to call a meeting must be reimbursed by the company.

- (7) Any sum so reimbursed must be retained by the company out of any sum due or to become due from the company by way of fees or other remuneration in respect of the services of the directors who were in default.

559. Members' power to call general meeting when there is no director etc.

- (1) If at any time a company does not have any director or does not have sufficient directors capable of acting to form a quorum, any director, or any 2 or more members of the company representing at least 10% of the total voting rights of all the members having a right to vote at general meetings, may call a general meeting in the same manner, as nearly as possible, as that in which general meetings may be called by the directors of the company.
- (2) Subsection (1) has effect in so far as the articles of the company do not make other provision in that behalf.

560. Power of Court to order meeting

- (1) This section applies if for any reason it is impracticable—
 - (a) to call a general meeting of a company in any manner in which general meetings of that company may be called; or
 - (b) to conduct the meeting in the manner prescribed by the company's articles or this Ordinance.
- (2) The Court may, either of its own motion or on application—
 - (a) by a director of the company; or
 - (b) by a member of the company who would be entitled to vote at the meeting,
 order a general meeting of the company to be called, held and conducted in any manner the Court thinks fit.
- (3) If the order is made, the Court may give any ancillary or consequential directions that it thinks expedient.

- (4) Directions given under subsection (3) may include a direction that one member of the company present at the meeting in person or by proxy is to be regarded as constituting a quorum.
- (5) A general meeting called, held and conducted in accordance with an order under subsection (2) is to be regarded for all purposes as a general meeting of the company duly called, held and conducted.
- (6) The legal personal representative of a deceased member of a company is to be regarded in all respects, for the purposes of this section, as a member of the company having the same rights with respect to attending and voting at a meeting of the company as the deceased member would, if living, have had.

Subdivision 5

Notice of Meetings

561. Notice required of general meeting

- (1) A general meeting of a company (other than an adjourned meeting) must be called by notice of—
 - (a) in the case of an annual general meeting, at least 21 days; and
 - (b) in any other case—
 - (i) if the company is a limited company, at least 14 days; and
 - (ii) if the company is an unlimited company, at least 7 days.
- (2) If the company's articles require a longer period of notice than that specified in subsection (1), a general meeting of a company (other than an adjourned meeting) must be called by notice of that longer period.
- (3) A general meeting of a company is to be regarded, despite the fact that it is called by shorter notice than that specified in

subsection (1) or in the company's articles, as having been duly called if it is so agreed—

- (a) in the case of an annual general meeting, by all the members entitled to attend and vote at the meeting; and
- (b) in any other case, by a majority in number of the members having the right to attend and vote at the meeting, being a majority together representing at least 95% of the total voting rights at the meeting of all the members.

562. Manner in which notice to be given

- (1) Notice of a general meeting of a company must be given—
 - (a) in hard copy form or in electronic form; or
 - (b) by making the notice available on a website, or partly by one of those means and partly by another.
- (2) If a company has given an electronic address in a notice calling a meeting, it is to be regarded as having agreed that any document or information relating to proceedings at the meeting may be sent by electronic means to that address (subject to any conditions or limitations specified in the notice).

563. Publication of notice of general meeting on website

- (1) Without limiting Part 18, notice of a general meeting is not validly given by a company by making it available on a website unless it is given in accordance with this section.
- (2) When the company notifies a member of the availability of the notice on the website, the notification must—
 - (a) state that it concerns a notice of a company meeting;
 - (b) specify the place, date and time of the meeting; and
 - (c) in the case of an annual general meeting, state that it is an annual general meeting.

- (3) The notice must be available on the website throughout the period beginning on the date of that notification and ending on the conclusion of the meeting.

564. Persons entitled to receive notice of general meeting

- (1) Notice of a general meeting of a company must be given to—
- (a) every member of the company; and
 - (b) every director.
- (2) In subsection (1), the reference to a member includes any person who is entitled to a share in consequence of the death or bankruptcy of a member, if the company has been notified of that person's entitlement.
- (3) Subsections (1) and (2) have effect subject to any provision of the company's articles.
- (4) In the case of a listed company, notice of a general meeting of the company must be given to every member not entitled to vote at the meeting at the same time and in the same manner as notice of the meeting is given to members who are so entitled.
- (5) A company is only required to comply with subsection (4) if the company is required to give notice of a general meeting of the company to members who are entitled to vote at the general meeting.
- (6) Despite subsection (4), if a meeting is called at any time by shorter notice than that specified in section 561(1) or in the company's articles, subsection (4) is to be regarded as having been complied with if the notice required to be given under that subsection is given as soon as practicable after that time.

565. Duty to give notice of general meeting to auditor

- (1) If notice of a general meeting of a company or any other document relating to the general meeting is required to be given to a member, the company must give a copy of it to its

auditor (if more than one auditor, to everyone of them) at the same time as the notice or the other document is given to the member.

- (2) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.

566. Contents of notice of general meeting

- (1) A company must ensure that a notice of a general meeting of the company—
- (a) specifies the date and time of the meeting;
 - (b) specifies the place of the meeting (and if the meeting is to be held in 2 or more places, the principal place of the meeting and the other place or places of the meeting);
 - (c) states the general nature of the business to be dealt with at the meeting;
 - (d) in the case of a notice calling an annual general meeting, states that the meeting is an annual general meeting; and
 - (e) if a resolution is intended to be moved at the meeting—
 - (i) includes notice of the resolution; and
 - (ii) (where the company is not a wholly owned subsidiary) includes or is accompanied by a statement containing the information and explanation, if any, that is reasonably necessary to indicate the purpose of the resolution.
- (2) Subsection (1)(a), (b) and (c) has effect subject to any provision of the company's articles.
- (3) Subsection (1)(e) does not apply in relation to a resolution of which—
- (a) notice has been included in the notice of meeting under section 557(3) or 558(2); or
 - (b) notice has been given under section 605.

- (4) If a company contravenes subsection (1)(e), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.
- (5) The validity of a resolution, if passed at a general meeting of a company, is not affected by a contravention of subsection (1)(e).
- (6) Subsection (5) does not affect any common law rules or equitable principles, or the provisions of any other Ordinance, as regards the validity of a resolution.
- (7) In subsection (1)(e)—
wholly owned subsidiary (全資附屬公司) has the meaning given by section 356(3).

567. Explanation of improving director's emoluments to be set out in notice of general meeting

- (1) A company must not at a general meeting amend its articles so as to provide emoluments or improved emoluments for a director of the company in respect of the office as director unless—
 - (a) there is set out in the notice calling the meeting or in a document attached to the notice an adequate explanation of the provision; and
 - (b) the provision is approved by a resolution not relating also to other matters.
- (2) In this section—
emoluments (薪酬) includes—
 - (a) fees and percentages;
 - (b) any sums paid by way of expenses allowance;
 - (c) any contribution paid in respect of the director under any pension scheme; and
 - (d) any benefits received by the director otherwise than in cash in respect of the director's services as director.

568. Resolution requiring special notice

- (1) If by any provision of this Ordinance special notice is required to be given of a resolution, the resolution is not effective unless notice of the intention to move it has been given to the company at least 28 days before the meeting at which it is moved.
- (2) The company must, if practicable, give its members notice of the resolution at the same time and in the same manner as it gives notice of the meeting.
- (3) If that is not practicable, the company must give its members notice of the resolution at least 14 days before the meeting—
 - (a) by advertisement in a newspaper circulating generally in Hong Kong; or
 - (b) in any other manner allowed by the company's articles.
- (4) If, after notice of the intention to move the resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice is to be regarded as having been properly given, though not given within the time required.

569. Accidental failure to give notice of meeting or resolution

- (1) If a company gives notice of—
 - (a) a general meeting; or
 - (b) a resolution intended to be moved at a general meeting,
 any accidental failure to give notice to, or any non-receipt of notice by, any person entitled to receive notice must be disregarded for the purpose of determining whether notice of the meeting or resolution is duly given.
- (2) Except in relation to notice given under section 557, 558 or 606, subsection (1) has effect subject to any provision of the company's articles.

Subdivision 6**Members' Statements****570. Members' power to request circulation of statement**

- (1) The members of a company may request the company to circulate, to members of the company entitled to receive notice of a general meeting, a statement of not more than 1 000 words with respect to—
 - (a) a matter mentioned in a proposed resolution to be dealt with at that meeting; or
 - (b) other business to be dealt with at that meeting.
- (2) A company is required to circulate the statement if it has received requests to do so from—
 - (a) members representing at least 2.5% of the total voting rights of all the members who have a relevant right to vote; or
 - (b) at least 50 members who have a relevant right to vote and hold shares in the company on which there has been paid up an average sum, per member, of at least \$2,000.
- (3) In subsection (2)—

relevant right to vote (相關表決權利) means—

 - (a) in relation to a statement with respect to a matter mentioned in a proposed resolution, a right to vote on that resolution at the meeting to which the requests relate; and
 - (b) in relation to any other statement, a right to vote at the meeting to which the requests relate.
- (4) A request under subsection (2)—
 - (a) may be sent to the company in hard copy form or in electronic form;
 - (b) must identify the statement to be circulated;

- (c) must be authenticated by the person or persons making it; and
- (d) must be received by the company at least 7 days before the meeting to which it relates.

571. Company's duty to circulate members' statement

- (1) A company that is required under section 570 to circulate a statement must send a copy of it to each member of the company entitled to receive notice of the meeting—
 - (a) in the same manner as the notice of the meeting; and
 - (b) at the same time as, or as soon as reasonably practicable after, it gives notice of the meeting.
- (2) Subsection (1) has effect subject to sections 572(2) and 573.
- (3) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5.

572. Expenses of circulating members' statement

- (1) The expenses of the company in complying with section 571 need not be paid by the members who requested the circulation of the statement if—
 - (a) the meeting to which the request relate is an annual general meeting of the company; and
 - (b) requests sufficient to require the company to circulate the statement are received in time to enable the company to send a copy of the statement at the same time as it gives notice of the meeting.
- (2) Otherwise—
 - (a) the expenses of the company in complying with section 571 must be paid by the members who requested the circulation of the statement unless the company resolves otherwise; and

- (b) unless the company has previously so resolved, it is not bound to comply with that section unless there is deposited with or tendered to it, not later than 7 days before the meeting, a sum reasonably sufficient to meet its expenses in doing so.

573. Application not to circulate members' statement

- (1) A company is not required to circulate a statement under section 571 if, on an application by the company or another person who claims to be aggrieved, the Court is satisfied that the rights given by section 570 are being abused.
- (2) The Court may order the members who requested the circulation of the statement to pay the whole or part of the company's costs on an application under subsection (1), even if they are not parties to the application.

Subdivision 7**Procedure at Meetings****574. Meeting at 2 or more places**

- (1) A company may hold a general meeting at 2 or more places using any audio-visual technology that enables the members of the company to exercise their right to speak and vote at the meeting.
- (2) Subsection (1) has effect subject to any provision of the company's articles.

575. Quorum at meeting

- (1) If a company has only one member, that member present in person or by proxy is a quorum of a general meeting of the company.

- (2) If that member of the company is a body corporate, that member present by its corporate representative is also a quorum of a general meeting of the company.
- (3) Subject to subsection (1) and the provisions of a company's articles, 2 members present in person or by proxy is a quorum of a general meeting of the company.
- (4) If a member of the company is a body corporate, that member present by its corporate representative counts towards a quorum of a general meeting of the company.
- (5) In this section—
corporate representative (法團代表) means a person authorized under section 596 to act as the representative of the body corporate.

576. Chairperson of meeting

- (1) A member may be elected to be the chairperson of a general meeting by a resolution of the company passed at the meeting.
- (2) Subsection (1) is subject to any provision of the company's articles that states who may or who may not be chairperson.

577. Resolution passed at adjourned meeting

If a resolution is passed at an adjourned meeting of a company, the resolution is for all purposes to be regarded as having been passed on the date on which it was in fact passed, and is not to be regarded as having been passed on any earlier date.

Subdivision 8**Voting at Meetings****578. General rules on votes**

- (1) On a vote on a resolution on a show of hands at a general meeting—

- (a) every member present in person has one vote; and
 - (b) every proxy present who has been duly appointed by a member entitled to vote on the resolution has one vote.
- (2) If a member appoints more than one proxy, the proxies so appointed are not entitled to vote on the resolution on a show of hands.
- (3) On a vote on a resolution on a poll taken at a general meeting—
- (a) in the case of a company having a share capital—
 - (i) every member present in person has one vote for each share held by him or her; and
 - (ii) every proxy present who has been duly appointed by a member has one vote for each share held by that member; and
 - (b) in the case of a company not having a share capital—
 - (i) every member present in person has one vote; and
 - (ii) every proxy present who has been duly appointed by a member entitled to vote on the resolution has one vote.
- (4) Subsections (1), (2) and (3) have effect subject to any provision of the company's articles.
- (5) If any shares in a company are held in trust for the company, those shares do not, for so long as they are so held, confer any right to vote at a general meeting of the company.

579. Votes of joint holders of shares

- (1) In the case of joint holders of shares of a company, only the vote of the senior holder who votes (and any proxies duly authorized by the senior holder) may be counted by the company.

- (2) For the purposes of this section, the senior holder of a share is determined by the order in which the names of the joint holders appear in the register of members of the company.
- (3) Subsections (1) and (2) have effect subject to any provision of the company's articles.

580. Declaration by chairperson on show of hands

- (1) On a vote on a resolution on a show of hands at a general meeting, a declaration by the chairperson that the resolution—
- (a) has or has not been passed; or
 - (b) passed by a particular majority,
- is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (2) An entry in respect of the declaration in minutes of the meeting recorded in accordance with section 608 is also conclusive evidence of that fact without the proof.
- (3) This section does not have effect if a poll is demanded in respect of the resolution before or on the declaration under subsection (1) (and the demand is not subsequently withdrawn).

581. Right to demand poll

- (1) A provision of a company's articles is void in so far as it would have the effect of excluding the right to demand a poll at a general meeting on any question other than—
- (a) the election of the chairperson of the meeting; or
 - (b) the adjournment of the meeting.
- (2) A provision of a company's articles is void in so far as it would have the effect of making ineffective a demand for a poll at a general meeting on any question other than those specified in subsection (1)(a) and (b), which is made—

- (a) by at least 5 members having the right to vote at the meeting;
 - (b) by a member or members representing at least 5% of the total voting rights of all the members having the right to vote at the meeting; or
 - (c) by the chairperson of the meeting.
- (3) The appointment of a proxy to vote on a matter at a general meeting of a company authorizes the proxy to demand, or join in demanding, a poll on that matter.
- (4) In applying subsection (2), a demand by a proxy counts—
- (a) for the purposes of subsection (2)(a), as a demand by the member; and
 - (b) for the purposes of subsection (2)(b), as a demand by a member representing the voting rights that the proxy is authorized to exercise.

582. Chairperson's duty to demand poll

If, before or on the declaration of the result on a show of hands at a general meeting, the chairperson of the meeting knows from the proxies received by the company that the result on a show of hands will be different from that on a poll, the chairperson must demand a poll.

583. Voting on poll

On a poll taken at a general meeting of a company, a member entitled to more than one vote need not, if the member votes—

- (a) use all the votes; or
- (b) cast all the votes the member uses in the same way.

584. Company's duty to record result of poll in minutes of general meeting

- (1) In respect of a resolution decided on a poll taken at a general meeting of a company, the company must record in the minutes of proceedings of the general meeting—
- (a) the result of the poll;
 - (b) the total number of votes that could be cast on the resolution;
 - (c) the number of votes in favour of the resolution; and
 - (d) the number of votes against the resolution.
- (2) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

585. Saving for provisions of articles as to determination of entitlement to vote

Nothing in this Subdivision affects—

- (a) any provision of a company's articles—
 - (i) requiring an objection to a person's entitlement to vote on a resolution to be made in accordance with the articles; and
 - (ii) for the determination of the objection to be final and conclusive; or
- (b) the grounds on which such a determination may be questioned in legal proceedings.

Subdivision 9**Proxies and Corporate Representatives****586. Right to appoint proxy**

- (1) Subject to subsection (2), a member of a company is entitled to appoint another person (whether a member or not) as a proxy to exercise all or any of the member's rights to attend and to speak and vote at a general meeting of the company.
- (2) In the case of a company limited by guarantee, the company's articles may require that a proxy must be a member of the company and if the company's articles so require, a member of the company may only appoint another member as a proxy.
- (3) In the case of a company having a share capital, a member of the company may appoint separate proxies to represent respectively the number of the shares held by the member that is specified in their instruments of appointment.

587. Notice of meeting to contain statement of rights etc.

- (1) A company must ensure that in a notice calling a general meeting of the company, there must appear, with reasonable prominence, a statement informing the member of—
 - (a) the rights under section 586(1) and (3); and
 - (b) the requirement under section 586(2).
- (2) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.
- (3) A contravention of subsection (1) does not affect the validity of the meeting or of anything done at the meeting.

588. Notice required of appointment of proxy etc.

- (1) This section applies to—
 - (a) the appointment of a proxy; and

- (b) any document necessary to show the validity of, or otherwise relating to, the appointment of a proxy.
- (2) A provision of the company's articles is void in so far as it would have the effect of requiring the appointment or document to be received by the company or another person earlier than the following time—
 - (a) in the case of a general meeting or adjourned general meeting, 48 hours before the time for holding the meeting or adjourned meeting;
 - (b) in the case of a poll taken more than 48 hours after it was demanded, 24 hours before the time appointed for the taking of the poll;
 - (c) in the case of a poll taken not more than 48 hours after it was demanded, the time at which it was demanded.
- (3) In calculating the periods mentioned in subsection (2), no account is to be taken of any part of a day that is a public holiday.

589. Sending documents relating to proxies in electronic form

- (1) If a company has given an electronic address in—
 - (a) an instrument of proxy issued by the company in relation to a general meeting; or
 - (b) an invitation to appoint a proxy issued by the company in relation to the meeting,
 it is to be regarded as having agreed that any document or information relating to proxies for that meeting may be sent by electronic means to that address (subject to any conditions or limitations specified in the instrument or invitation).
- (2) In subsection (1), documents relating to proxies include—
 - (a) the appointment of a proxy in relation to a general meeting;

- (b) any document necessary to show the validity of, or otherwise relating to, the appointment of a proxy; and
- (c) notice of the termination of the authority of a proxy.

590. Company-sponsored invitations to appoint proxies

- (1) A company must not, for the purposes of a general meeting of the company, issue at its expense invitations to members to appoint as proxy a specified person or a number of specified persons unless the invitations are issued to all members entitled to be sent a notice of the meeting and to vote at the meeting by proxy.
- (2) Subsection (1) is not contravened if—
 - (a) there is issued to a member at that member's request a form of appointment naming the proxy or a list of persons willing to act as proxy; and
 - (b) the form or list is available on request to all members entitled to vote at the meeting by proxy.
- (3) If a company contravenes subsection (1), every responsible person of the company, commits an offence, and each is liable to a fine at level 3.

591. Requirement as to instrument of proxy issued by company

- (1) This section applies to an instrument of proxy issued to a member of a company by the company for use by the member for appointing a proxy to attend and vote at a general meeting of the company.
- (2) The instrument of proxy must be such as to enable the member, according to the member's intention, to instruct the proxy to vote in favour of or against (or, in default of instructions, to exercise the proxy's discretion in respect of) each resolution dealing with any business to be transacted at the meeting.

592. Chairing meeting by proxy

- (1) A proxy may be elected to be the chairperson of a general meeting by a resolution of the company passed at the meeting.
- (2) Subsection (1) is subject to any provision of the company's articles that states who may or who may not be chairperson.

593. Company-sponsored proxy's duty to vote in the way specified in appointment of proxy

- (1) This section applies to a person who is named by a company as a proxy, whether the nomination is made in—
 - (a) an instrument of proxy issued by the company in relation to a general meeting; or
 - (b) an invitation to appoint a proxy issued by the company in relation to the meeting.
- (2) If the person has been duly appointed as a proxy by a member entitled to vote at the meeting, that person must, subject to section 578—
 - (a) vote as a proxy—
 - (i) on a show of hands; or
 - (ii) on a poll; and
 - (b) vote in the way specified (if any) by the member in the appointment of proxy.
- (3) If the person has been duly appointed as a proxy by 2 or more members entitled to vote at the meeting and the members specify different ways to vote in their appointment of proxy, the proxy—
 - (a) must, subject to section 578(2), vote on a show of hands in the way specified by the member or members representing a simple majority of the total voting rights that the proxy is authorized to exercise at the meeting; and
 - (b) if there is no majority, must not vote on a show of hands.

- (4) A person who knowingly and wilfully contravenes subsection (2) or (3) commits an offence and is liable to a fine at level 3.

594. Notice required of termination of proxy's authority

- (1) This section applies to notice that the authority of a person to act as proxy is terminated (in this section called *notice of termination*).
- (2) The termination of the authority of a person to act as proxy does not affect—
- whether there is a quorum at a general meeting (irrespective of whether the proxy has been counted in deciding the question);
 - the validity of anything the person does as chairperson of a general meeting; or
 - the validity of a poll demanded by the person at a general meeting,
- unless the company receives notice of the termination before the commencement of the meeting.
- (3) The termination of the authority of a person to act as proxy does not affect the validity of a vote given by that person unless the company receives notice of the termination—
- before the commencement of the meeting or adjourned meeting at which the vote is given; or
 - in the case of a poll taken more than 48 hours after it is demanded, before the time appointed for the taking of the poll.
- (4) If the company's articles require or permit members to give notice of termination to a person other than the company, the references in subsections (2) and (3) to the company receiving notice have effect as if they were—
- references to that person; or
 - references to the company or that person,

as the case requires.

- (5) Subsections (2) and (3) have effect subject to any provision of the company's articles that has the effect of requiring notice of termination to be received by the company or another person at a time earlier than that specified in those subsections.
- (6) Subsection (5) is subject to subsection (7).
- (7) A provision of the company's articles is void in so far as it would have the effect of requiring notice of termination to be received by the company or another person earlier than the following time—
- in the case of a general meeting or adjourned general meeting, 48 hours before the time for holding the meeting or adjourned meeting;
 - in the case of a poll taken more than 48 hours after it was demanded, 24 hours before the time appointed for the taking of the poll;
 - in the case of a poll taken not more than 48 hours after it was demanded, the time at which it was demanded.
- (8) In calculating the periods mentioned in subsections (3)(b) and (7), no account is to be taken of any part of a day that is a public holiday.

595. Effect of member's voting in person on proxy's authority

- (1) A proxy's authority in relation to a resolution is to be regarded as revoked if the member who has appointed the proxy—
- attends in person the general meeting at which the resolution is to be decided; and
 - exercises, in relation to that resolution—
- the voting right attached to the shares in respect of which the proxy is appointed; or

- (ii) if the company does not have a share capital, the voting right the member is entitled to exercise.
- (2) A member who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid appointment of a proxy has been delivered to the company by or on behalf of that member.

596. Representation of body corporate at meetings

- (1) A body corporate may by resolution of its directors or other governing body—
 - (a) if it is a member of a company, authorize any person it thinks fit to act as its representative at any meeting of the company; and
 - (b) if it is a creditor (including a holder of debentures) of a company, authorize any person it thinks fit to act as its representative at any meeting of any creditors of the company held under the provisions of—
 - (i) this Ordinance; or
 - (ii) any debenture or trust deed or other instrument.
- (2) A person authorized under subsection (1) is entitled to exercise the same powers on behalf of the body corporate as that body corporate could exercise if it were an individual member, creditor, or holder of debentures, of the company.

597. Representation of recognized clearing house at meetings

- (1) A recognized clearing house within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571) may, if it or its nominee is a member of a company, authorize any person or persons it thinks fit to act as its representative or representatives, at any meeting of the company.

- (2) If more than one person is authorized under subsection (1), the authorization must specify the number and class of shares in respect of which each person is so authorized.
- (3) A person authorized under subsection (1) is entitled to exercise the same powers on behalf of the recognized clearing house (or its nominee) as that clearing house (or its nominee) could exercise if it were an individual member of the company.

598. Saving for more extensive rights given by articles

Nothing in this Subdivision prevents a company's articles from giving more extensive rights to members or proxies than are given by this Subdivision.

Subdivision 10**Annual General Meetings****599. Interpretation**

In this Subdivision—

accounting reference period (會計參照期) has the meaning given by section 364.

600. Requirement to hold annual general meeting

- (1) Subject to subsections (2) and (3), a company must, in respect of each financial year of the company, hold a general meeting as its annual general meeting within the following period (in addition to any other meetings held during the period)—
 - (a) in the case of a private company or a company limited by guarantee, 9 months after the end of its accounting reference period by reference to which the financial year is to be determined; and

- (b) in the case of any other company, 6 months after the end of its accounting reference period by reference to which the financial year is to be determined.
- (2) If the accounting reference period mentioned in subsection (1) is the first accounting reference period of the company and is longer than 12 months, the company must hold a general meeting as its annual general meeting within the following period—
 - (a) in the case of a private company or a company limited by guarantee—
 - (i) 9 months after the anniversary of the company's incorporation; or
 - (ii) 3 months after the end of that accounting reference period,
whichever is the later; and
 - (b) in the case of any other company—
 - (i) 6 months after the anniversary of the company's incorporation; or
 - (ii) 3 months after the end of that accounting reference period,
whichever is the later.
- (3) If a company has by a directors' resolution under section 367 or a notice delivered to the Registrar under that section, shortened an accounting reference period, the company must hold a general meeting as its annual general meeting within the following period—
 - (a) in the case of a private company or a company limited by guarantee—
 - (i) 9 months after the end of the shortened accounting reference period; or
 - (ii) 3 months after the shortening of the accounting reference period takes effect,

- whichever is the later; and
- (b) in the case of any other company—
 - (i) 6 months after the end of the shortened accounting reference period; or
 - (ii) 3 months after the shortening of the accounting reference period takes effect,
whichever is the later.
- (4) A private company mentioned in subsections (1), (2) and (3) does not include a private company that is, at any time during the financial year, a subsidiary of a public company.
- (5) If for any reason the Court thinks fit to do so, it may, on an application made before the end of the period otherwise allowed for holding an annual general meeting in respect of a financial year of a company, by order extend that period by a further period specified in the order.
- (6) If the period otherwise allowed for holding an annual general meeting in respect of a financial year of a company has been extended under subsection (5), the company must hold a general meeting as its annual general meeting within the period as so extended.
- (7) If a company contravenes subsection (1), (2), (3) or (6), the Court may, on application by any member of the company—
 - (a) call, or direct the calling of, a general meeting of the company; and
 - (b) give any ancillary or consequential directions that the Court thinks expedient, including—
 - (i) a direction modifying or supplementing, in relation to the calling, holding and conducting of the meeting, the operation of the company's articles; and

(ii) a direction that one member of the company present in person or by proxy is to be regarded as constituting a meeting.

- (8) Subject to any directions of the Court, a general meeting held under subsection (7) is to be regarded as an annual general meeting of the company in respect of the financial year in respect of which the company has failed to hold an annual general meeting in accordance with this section.
- (9) If a company contravenes subsection (1), (2), (3) or (6), or contravenes a direction given under subsection (7), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5.

601. Exemption of dormant company from requirement to hold annual general meeting

- (1) Section 600 does not apply to a company that is a dormant company under section 5(1).
- (2) If such a company enters into an accounting transaction, subsection (1) ceases to have effect on and after the date of the accounting transaction.

602. Circumstances in which company not required to hold annual general meeting

- (1) A company is not required to hold an annual general meeting in accordance with section 600 if—
- (a) everything that is required or intended to be done at the meeting (by resolution or otherwise) is done by a written resolution; and
- (b) a copy of each document that under this Ordinance would otherwise be required to be laid before the company at the meeting or otherwise produced at the meeting is provided to each member, on or before the circulation date of the written resolution.

- (2) A company is also not required to hold an annual general meeting in accordance with section 600 if—
- (a) the company has only one member; or
- (b) the company has by resolution passed in accordance with section 603(1) dispensed with the holding of the annual general meeting and has not revoked the resolution under section 604(1), and no member of the company has required the holding of the annual general meeting under section 603(5).
- (3) If a company is not required to hold an annual general meeting under subsection (1) or (2) in respect of a financial year, the directors of the company are not required to lay a copy of the reporting documents before the company in accordance with section 420(1) in respect of that financial year.

603. Dispensation with annual general meeting

- (1) A company may, by resolution passed in accordance with subsection (3), dispense with the holding of annual general meetings in accordance with section 600.
- (2) A resolution mentioned in subsection (1) may be passed by a written resolution or at a general meeting.
- (3) Despite any other provision of this Ordinance, a resolution mentioned in subsection (1) is only to be regarded as passed if it has been passed by all members of the company who—
- (a) are entitled to vote on the resolution on the date of the resolution; or
- (b) in the case of a written resolution, are entitled to vote on the resolution on the circulation date of the resolution.
- (4) A resolution under subsection (1)—
- (a) has effect for—
- (i) the financial year in respect of which the period specified in section 600 for holding an annual

general meeting of the company has not expired;
and

(ii) subsequent financial years; and

(b) does not affect any liability already incurred by reason of default in holding an annual general meeting.

(5) If an annual general meeting would be required to be held in respect of a financial year but for this section, and the meeting has not been held, any member of the company may, by notice to the company not later than 3 months before the end of the period within which the company would be required to hold an annual general meeting in respect of that financial year but for this section, require the holding of an annual general meeting in respect of that financial year.

(6) A notice mentioned in subsection (5) must be given in hard copy form or in electronic form.

(7) If a notice mentioned in subsection (5) is given, section 600 applies in respect of the financial year to which the notice relates.

604. Revocation of resolution dispensing with annual general meeting

(1) A company may revoke a resolution mentioned in section 603(1) by passing an ordinary resolution to that effect.

(2) If a resolution mentioned in section 603(1) is revoked or otherwise ceases to have effect, the company—

(a) is required to hold an annual general meeting in accordance with section 600; but

(b) is not required to hold an annual general meeting in respect of a financial year that, but for this paragraph, would be required to be held within 3 months after the resolution ceases to have effect.

(3) Subsection (2) does not affect any obligation of the company to hold an annual general meeting in respect of a financial year in accordance with a notice given under section 603(5).

605. Members' power to request circulation of resolution for annual general meeting

(1) If a company is required to hold an annual general meeting under section 600, the members of the company may request the company to give, to members of the company entitled to receive notice of the annual general meeting, notice of a resolution that may properly be moved and is intended to be moved at that meeting.

(2) A company must give notice of a resolution if it has received requests that it do so from—

(a) the members of the company representing at least 2.5% of the total voting rights of all the members who have a right to vote on the resolution at the annual general meeting to which the requests relate; or

(b) at least 50 members who—

(i) have a right to vote on the resolution at the annual general meeting to which the requests relate; and

(ii) hold shares in the company on which there has been paid up an average sum, per member, of at least \$2,000.

(3) A request—

(a) may be sent to the company in hard copy form or in electronic form;

(b) must identify the resolution of which notice is to be given;

(c) must be authenticated by the person or persons making it; and

(d) must be received by the company not later than—

- (i) 6 weeks before the annual general meeting to which the requests relate; or
- (ii) if later, the time at which notice is given of that meeting.

606. Company's duty to circulate resolution for annual general meeting

- (1) A company that is required under section 605 to give notice of a resolution must send a copy of it at the company's own expense to each member of the company entitled to receive notice of the annual general meeting—
 - (a) in the same manner as the notice of the meeting; and
 - (b) at the same time as, or as soon as reasonably practicable after, it gives notice of the meeting.
- (2) The business that may be dealt with at an annual general meeting includes a resolution of which notice is given in accordance with subsection (1).
- (3) For the purposes of subsection (2), notice is to be regarded as having been given in accordance with subsection (1) despite the accidental omission to give notice to one or more members.
- (4) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5.

Subdivision 11

Records of Resolutions and Meetings

607. Written record where company has only one member

- (1) This section applies if a company has only one member and that member takes any decision that—
 - (a) may be taken by the company at a general meeting; and

- (b) has effect as if agreed by the company at a general meeting.
- (2) The member must, unless the decision is taken by way of a written resolution, provide the company with a written record of that decision within 7 days after the decision is made.
- (3) A person who contravenes subsection (2) commits an offence and is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (4) A contravention of subsection (2) does not affect the validity of any decision mentioned in that subsection.

608. Records of resolutions and meetings, etc.

- (1) A company must keep records comprising—
 - (a) copies of all resolutions of members passed otherwise than at general meetings;
 - (b) minutes of all proceedings of general meetings; and
 - (c) all written records provided to the company in accordance with section 607(2).
- (2) A company must keep the records under subsection (1) for at least 20 years from the date of the resolution, meeting or decision, as the case may be.
- (3) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

609. Place where records must be kept available for inspection

- (1) A company must keep the records mentioned in section 608 available for inspection at—
 - (a) the company's registered office; or

- (b) a prescribed place.
- (2) A company must notify the Registrar of the place at which the records mentioned in section 608 are kept. The notice must be in the specified form and delivered to the Registrar for registration within 14 days after the records are first kept at that place.
- (3) A company must notify the Registrar of any change (other than a change of the address of the company's registered office) in the place at which the records mentioned in section 608 are kept. The notice must be in the specified form and delivered to the Registrar for registration within 14 days after the change.
- (4) Subsection (2) does not apply in relation to records that have been kept at the registered office of the company—
- (a) at all times since they came into existence; or
- (b) if they were in existence on 31 August 1984, at all times since then.
- (5) If a company contravenes subsection (1), (2) or (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (6) In this section—

prescribed (訂明) means prescribed by regulations made under section 648.

610. Right to inspect and request copy

- (1) The records required to be kept by a company under section 608 must be open for inspection by any member of the company, without charge.
- (2) A member of the company is entitled, on request and on payment of a prescribed fee, to be provided with a copy of any of those records.

- (3) If a member makes a request under subsection (2), the company must provide the copy to the member within the prescribed period after it receives the request and prescribed fee.
- (4) If a company contravenes subsection (3)—
- (a) the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues; and
- (b) the Court may by order direct that the copy be provided to the person requesting it.
- (5) In this section—
- prescribed* (訂明) means prescribed by regulations made under section 648.

611. Records as evidence of resolutions etc.

- (1) If the record of a resolution of members passed otherwise than at a general meeting is kept under section 608(1)(a) and purports to be signed by a director of the company or company secretary of the company, then—
- (a) the record is evidence of the passing of the resolution; and
- (b) until the contrary is proved, the requirements of this Ordinance with respect to those proceedings are to be regarded as having been complied with.
- (2) The minutes of proceedings of a general meeting, if purporting to be signed by the chairperson of that meeting or by the chairperson of the next general meeting, are evidence of the proceedings.
- (3) If the record of the minutes of proceedings of a general meeting of a company is kept under section 608(1)(b), then, until the contrary is proved—

- (a) the meeting is to be regarded as having been duly held and convened;
 - (b) all proceedings at the meeting are to be regarded as having duly taken place; and
 - (c) all appointments of directors, managers or liquidators made at the meeting are to be regarded as valid.
- (4) If a company has only one member and that member provides the company with a written record of a decision in accordance with section 607(2), the record is sufficient evidence of the decision having been taken by the member.

612. Registration of and requirements relating to certain resolutions, etc.

- (1) This section applies to—
- (a) a special resolution, other than a special resolution to change the name of a company passed under section 102;
 - (b) a resolution agreed to by all the members of a company that, if not so agreed to, would not have been effective for its purpose unless passed as a special resolution;
 - (c) a resolution or agreement agreed to by all the members of a class that, if not so agreed to, would not have been effective for its purpose unless passed by some particular majority or otherwise in some particular manner;
 - (d) a resolution or agreement that effectively binds all the members of a class though not agreed to by all those members;
 - (e) a resolution requiring a company to be wound up voluntarily, passed under section 228(1)(a) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

- (f) a resolution varying any matter or provision in the articles of a company that is expressly authorized by the articles to be varied by ordinary resolution; and
 - (g) an order of the Court (which alters a company's articles) a copy of which is required to be delivered to the Registrar under section 91.
- (2) The company must deliver a copy of the resolution or agreement to the Registrar for registration within 14 days after it is passed or made.
- (3) The Registrar must keep a record of the copy of the resolution or agreement sent under subsection (2).
- (4) If the company's articles have been registered under this Ordinance or any former Companies Ordinance, the company must ensure that a copy of the resolution, agreement or order of the Court that is for the time being in force is included in or annexed to every copy of the articles issued, as the case may be—
- (a) after the passing of the resolution; or
 - (b) after the making of the agreement or the order of the Court.
- (5) If the company's articles have not been registered under this Ordinance or any former Companies Ordinance, the company must send a copy of the resolution, agreement or order of the Court that is for the time being in force to any member at that member's request, without charge.
- (6) If the resolution or agreement is not in writing, a reference to a copy of the resolution or agreement in subsections (2), (3), (4) and (5) is to be construed as a written memorandum setting out the terms of the resolution or agreement.
- (7) If a company contravenes subsection (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a

continuing offence, to a further fine of \$300 for each day during which the offence continues.

- (8) If a company contravenes subsection (4) or (5), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.
- (9) For the purposes of subsections (7) and (8), a liquidator of the company is to be regarded as an officer of the company.

Subdivision 12

Application to Class Meetings

613. Application to class meetings of companies with share capital

- (1) Subject to subsections (2) and (3), this Division (except Subdivision 10) applies, with necessary modifications, in relation to a meeting of holders of shares in a class of a company's shares as it applies in relation to a general meeting.
- (2) Sections 556, 557, 558, 560 and 565 do not apply in relation to a meeting of holders of shares in a class of a company's shares.
- (3) In addition to those sections mentioned in subsection (2), sections 575 and 581 do not apply in relation to a meeting in connection with the variation of the rights attached to shares in a class (a *variation of class rights meeting*).
- (4) The quorum for a variation of class rights meeting is—
 - (a) in the case of a meeting other than an adjourned meeting, 2 persons present in person or by proxy together holding at least one-third of the total voting rights of holders of shares in the class; and
 - (b) in the case of an adjourned meeting, one person present in person or by proxy holding any shares in the class.
- (5) For the purposes of subsection (4), if a person is present by proxy, that person is to be regarded as holding only the shares

in respect of which the proxy is authorized to exercise voting rights.

- (6) At a variation of class rights meeting, any holder of shares in the class who is present in person or by proxy may demand a poll.
- (7) For the purposes of this section—
 - (a) any amendment of a provision in a company's articles for the variation of the rights attached to shares in a class, or the insertion of such a provision into the articles, is itself to be regarded as a variation of those rights; and
 - (b) a reference to the variation of the rights attached to shares in a class includes the abrogation of those rights.

614. Application to class meetings of companies without share capital

- (1) Subject to subsections (2) and (3), this Division (except Subdivision 10) applies, with necessary modifications, in relation to a meeting of a class of members of a company without a share capital as it applies in relation to a general meeting.
- (2) Sections 556, 557, 558, 560 and 565 do not apply in relation to a meeting of a class of members.
- (3) In addition to those sections mentioned in subsection (2), sections 575 and 581 do not apply in relation to a meeting in connection with the variation of the rights of a class of members (a *variation of class rights meeting*).
- (4) The quorum for a variation of class rights meeting is—
 - (a) in the case of a meeting other than an adjourned meeting, 2 members of the class present in person or by proxy together representing at least one-third of the total voting rights of members of the class; and

- (b) in the case of an adjourned meeting, one member of the class present (in person or by proxy).
- (5) At a variation of class rights meeting, any member present in person or by proxy may demand a poll.
- (6) For the purposes of this section—
 - (a) any amendment of a provision in a company's articles for the variation of the rights of a class of members, or the insertion of such a provision into the articles, is itself to be regarded as a variation of those rights; and
 - (b) a reference to the variation of the rights of a class of members includes the abrogation of those rights.

Division 2

Registers

Subdivision 1

Preliminary

615. Interpretation

In this Division—

prescribed (訂明) means prescribed by regulations made under section 648.

Subdivision 2

Register of Members

616. Interpretation

In this Subdivision—

branch register (登記支冊) means, except in section 631, a branch register of members kept under section 627.

617. Register of members

- (1) A company must keep in the English or Chinese language a register of members.
- (2) A company must enter in the register of members—
 - (a) the names and addresses of its members;
 - (b) the date on which each person is entered in the register as a member; and
 - (c) the date on which any person ceases to be a member.
- (3) In the case of a company having a share capital, the company must enter in the register of members, with the names and addresses of the members, a statement of—
 - (a) the shares held by each member, distinguishing each share by its number so long as the share has a number; and
 - (b) the amount paid or agreed to be considered as paid on the shares of each member.
- (4) A company must enter in the register of members the particulars required under subsections (2) and (3) within 2 months after the company has received notice of the particulars concerned.
- (5) In the case of a person mentioned in subsection (2)(c), all entries in the register relating to that person on the date on which the person ceased to be a member may be destroyed after the end of a period of 20 years from that date.
- (6) A company must retain a copy of any details that were included in the register of members immediately before the commencement date of subsection (5) until—
 - (a) 20 years after the commencement date of that subsection; or
 - (b) if earlier, 20 years after the member concerned ceased to be a member.

- (7) If a company contravenes subsection (1), (4) or (6), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

618. Place where register must be kept available for inspection

- (1) A company must keep its register of members available for inspection at—
- (a) the company's registered office; or
 - (b) a prescribed place.
- (2) A company must notify the Registrar of the place at which the register of members is kept. The notice must be in the specified form and delivered to the Registrar for registration within 14 days after the register is first kept at that place.
- (3) A company must notify the Registrar of any change (other than a change of the address of the company's registered office) in the place at which the register of members is kept. The notice must be in the specified form and delivered to the Registrar for registration within 14 days after the change.
- (4) Subsection (2) does not apply in relation to a register of members that has been kept at the registered office of the company—
- (a) at all times since it came into existence; or
 - (b) if it was in existence on 31 August 1984, at all times since then.
- (5) If a company contravenes subsection (1), (2) or (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

619. Statement that company has only one member

- (1) If the number of members of a company falls to one, the company must, on the occurrence of that event, enter in its register of members—
- (a) a statement that it has only one member; and
 - (b) the date on which it became a company having only one member.
- (2) If the membership of a company increases from one to 2 or more members, the company must, on the occurrence of that event, enter in its register of members—
- (a) a statement that it has ceased to have only one member; and
 - (b) the date on which that event occurred.
- (3) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

620. Index of members

- (1) A company having more than 50 members must keep an index of the names of the members of the company, unless its register of members is in a form that constitutes in itself an index.
- (2) The company must make any necessary alteration in the index within 7 days after the date on which any alteration is made in its register of members.
- (3) The company must ensure that the index contains, in respect of each member, a sufficient indication to enable the account of that member in the register to be readily found.
- (4) The company must keep the index at the same place as its register of members at all times.

- (5) If a company contravenes subsection (1), (2), (3) or (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

621. Right to inspect and request copy

- (1) Except when the register of members of a company is closed under section 623, the register and the index of members' names must be open for inspection—
- (a) by any member of the company, without charge; and
 - (b) by any other person, on payment of a prescribed fee.
- (2) A person is entitled, on request and on payment of a prescribed fee, to be provided with a copy of—
- (a) the register of members of a company or the index of members' names; or
 - (b) any part of the register or index.
- (3) If a person makes a request under subsection (2), the company must provide the copy to the person within the prescribed period after it receives the request and prescribed fee.
- (4) When a person inspects the register, or the company provides a person with a copy of the register or any part of it, the company must inform the person of the most recent date (if any) on which alterations were made to the register.
- (5) When a person inspects the index of members' names, or the company provides a person with a copy of the index or any part of it, the company must inform the person whether there is any alteration to the register that is not reflected in the index.
- (6) If a company contravenes subsection (3), (4) or (5), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and,

- in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (7) If a company contravenes subsection (3), the Court may by order direct that the copy be provided to the person requesting it.
- (8) The Court must not make an order under subsection (7) if it is satisfied that the rights given by subsection (2) are being abused.

622. Consequences of contravening requirements as to register owing to other person's default

If a company's register of members is kept at the office of a person other than the company, and by reason of any default of that other person, the company contravenes section 621(3), then the power of the Court under section 621(7) extends to the making of an order against that other person and that other person's officers and other employees (if any).

623. Power to close register of members

- (1) A company may, on giving notice in accordance with subsection (2), close its register of members, or the part of it relating to members holding shares of any class, for any period or periods not exceeding in the whole 30 days in each year.
- (2) A notice for the purposes of subsection (1)—
- (a) if the company is a listed company, must be given—
 - (i) in accordance with the listing rules applicable to the stock market; or
 - (ii) by advertisement in a newspaper circulating generally in Hong Kong; and
 - (b) in the case of any other company, must be given by advertisement in a newspaper circulating generally in Hong Kong.

- (3) The period of 30 days mentioned in subsection (1) may be extended in respect of any year by a resolution passed in that year at a general meeting.
- (4) The period of 30 days mentioned in subsection (1) must not be extended for a further period or periods exceeding 30 days in the whole in any year.
- (5) A company must, on demand, provide any person seeking to inspect a register or part of a register that is closed under this section with a certificate signed by the company secretary of the company stating the period for which, and by whose authority, it is closed.
- (6) If a company contravenes subsection (5), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.

624. Power of Court to rectify register

- (1) If—
 - (a) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or
 - (b) default is made or unnecessary delay takes place in entering in the register the fact of any person having ceased to be a member,
 a person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register.
- (2) If an application is made under subsection (1), the Court may—
 - (a) refuse the application; or
 - (b) subject to section 163, order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

- (3) Subject to section 163, on an application under subsection (1), the Court—
 - (a) may decide any question relating to the title of any person who is a party to the application to have the person's name entered in or omitted from the register, whether the question arises—
 - (i) between members or alleged members; or
 - (ii) between members or alleged members on the one hand and the company on the other hand; and
 - (b) generally may decide any question necessary or expedient to be decided for rectification of the register.
- (4) In the case of a company required by this Ordinance to deliver particulars relating to its members to the Registrar for registration, the Court, when making an order for rectification of the register, must by its order direct notice of the rectification to be given to the Registrar.

625. Trusts not to be entered in register

No notice of any trust (whether expressed, implied or constructive) may be—

- (a) entered in the register of members of a company; or
- (b) receivable by the Registrar.

626. Register to be proof in the absence of contrary evidence

- (1) In the absence of evidence to the contrary, the register of members is proof of any matters that are by this Ordinance required or authorized to be inserted in it.
- (2) If in any proceedings under this Ordinance it is sought to challenge the accuracy of any entry in the register of members by evidence of any transaction, the evidence is not admissible for that purpose unless the transaction occurred not more than 20 years prior to the commencement of the proceedings.

627. Branch register of members

- (1) A company having a share capital may keep in a place outside Hong Kong a branch register of its members resident there if it is authorized to do so by its articles.
- (2) A company that begins to keep a branch register must deliver to the Registrar for registration a notice in the specified form within 14 days after doing so, stating the address where the branch register is kept.
- (3) A company that keeps a branch register must deliver to the Registrar for registration a notice in the specified form of any change in the address where the branch register is kept, within 14 days after the change.
- (4) If a company contravenes subsection (2) or (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

628. Keeping of branch register

- (1) A branch register must be kept in the same manner in which the company's register of members (in this section called *the principal register*) is by this Ordinance required to be kept.
- (2) A company that keeps a branch register may close it in the same manner in which the principal register may be closed under section 623 except that the advertisement mentioned in that section must be inserted in a newspaper circulating generally in the place in which the branch register is kept.
- (3) A company that keeps a branch register—
 - (a) must transmit to its registered office a copy of every entry made in the branch register as soon as possible after it is made; and

- (b) must cause to be kept at the place where the company's principal register is kept a duplicate of the branch register entered up from time to time.
- (4) A duplicate of a branch register is to be regarded for all the purposes of this Ordinance as part of the principal register.
- (5) Subject to the provisions of this Ordinance, a company may by its articles make any provision that it thinks fit respecting the keeping of branch registers.
- (6) If a company contravenes subsection (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

629. Transactions in shares registered in branch register

- (1) The shares registered in a branch register of a company must be distinguished from those registered in the company's register of members.
- (2) No transaction with respect to any shares registered in a branch register may, during the continuance of that registration, be registered in any other register.

630. Discontinuance of branch register

- (1) A company may discontinue a branch register.
- (2) If a company discontinues a branch register, all the entries in that register must be transferred to—
 - (a) some other branch register kept in the same place outside Hong Kong by the company; or
 - (b) the company's register of members.
- (3) If a company discontinues a branch register, it must within 14 days after the discontinuance deliver to the Registrar for registration a notice in the specified form informing the Registrar of—

- (a) the discontinuance; and
 - (b) the register to which all the entries have been transferred.
- (4) If a company contravenes subsection (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

631. Provisions as to branch registers of non-Hong Kong companies kept in Hong Kong

If under the law in force in any place outside Hong Kong, companies incorporated under that law have power to keep in Hong Kong branch registers of their members resident in Hong Kong, the Financial Secretary may by order direct that—

- (a) those branch registers must be kept at a place in Hong Kong as specified in the order;
- (b) sections 621 and 624, subject to any modifications and adaptations specified in the order, apply to and in relation to those branch registers kept in Hong Kong as they apply to and in relation to the registers of members.

Subdivision 3

Register of Directors

632. Register of directors

- (1) A company must keep in the English or Chinese language a register of directors.
- (2) Subject to section 51(6)(a), a company must enter in the register of directors the required particulars specified in section 634 of each person who is a director or reserve director (if any) of the company.

- (3) A company must keep the register of directors available for inspection at—
 - (a) the company's registered office; or
 - (b) a prescribed place.
- (4) A company must notify the Registrar of the place at which the register of directors is kept. The notice must be in the specified form and delivered to the Registrar for registration within 14 days after the register is first kept at that place.
- (5) A company must notify the Registrar of any change (other than a change of the address of the company's registered office) in the place at which the register of directors is kept. The notice must be in the specified form and delivered to the Registrar for registration within 14 days after the change.
- (6) Subsection (4) does not apply in relation to a register of directors that has been kept at the registered office of the company—
 - (a) at all times since it came into existence; or
 - (b) if it was in existence on 31 August 1984, at all times since then.
- (7) If a company contravenes subsection (1), (2), (3), (4) or (5), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

633. Right to inspect and request copy

- (1) The register of directors of a company must be open for inspection—
 - (a) by any member of the company, without charge; and
 - (b) by any other person, on payment of a prescribed fee.

- (2) A person is entitled, on request and on payment of a prescribed fee, to be provided with a copy of the register of directors or any part of it.
- (3) If a person makes a request under subsection (2), the company must provide the copy to the person within the prescribed period after it receives the request and prescribed fee.
- (4) When a person inspects the register, or the company provides a person with a copy of the register or any part of it, the company must inform the person of the most recent date (if any) on which alterations were made to the register.
- (5) If a company contravenes subsection (3) or (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (6) If a company contravenes subsection (3), the Court may by order direct that the copy be provided to the person requesting it.
- (7) The Court must not make an order under subsection (6) if it is satisfied that the rights given by subsection (2) are being abused.

634. Particulars of directors to be registered

- (1) If a company is a private company (other than one that is a member of a group of companies of which a listed company is a member), its register of directors must contain the following particulars with respect to each director—
 - (a) if the director is a natural person—
 - (i) the present forename and surname, former forename or surname (if any), and aliases (if any);
 - (ii) the usual residential address and a correspondence address; and

- (iii) the number of the identity card or, if the director does not have an identity card, the number and issuing country of any passport held by the director; and
 - (b) if the director is a body corporate, the corporate name and the address of its registered or principal office.
- (2) If a company is a public company, a company limited by guarantee, or a private company that is a member of a group of companies of which a listed company is a member, its register of directors must contain the following particulars with respect to each director—
 - (a) the present forename and surname, former forename or surname (if any), and aliases (if any);
 - (b) the usual residential address and a correspondence address; and
 - (c) the number of the identity card or, if the director does not have an identity card, the number and issuing country of any passport held by the director.
 - (3) If a company is a private company having only one member and that member is the sole director of the company, its register of directors must contain the following particulars with respect to the reserve director of the company (if any)—
 - (a) the present forename and surname, former forename or surname (if any), and aliases (if any);
 - (b) the usual residential address and a correspondence address; and
 - (c) the number of the identity card or, if the director does not have an identity card, the number and issuing country of any passport held by the director.
 - (4) In this section—

forename (名字) includes a Christian or given name;

residential address (住址)—

- (a) does not include an address at a hotel unless the person to whom it relates is stated, for the purposes of this section, to have no other permanent address; and
- (b) does not include a post office box number unless the number is coupled with a residential address;

surname (姓氏), for a person usually known by a title different from the person's surname, means that title.

- (5) For the purposes of subsections (1)(a)(ii), (2)(b) and (3)(b), a correspondence address must be a place in Hong Kong and must not be a post office box number.
- (6) In this section, a reference to a former forename or surname does not include—
 - (a) in relation to a person—
 - (i) a forename or surname that was changed or ceased to be used before the person attained the age of 18 years; and
 - (ii) a forename or surname that has been changed or ceased to be used for a period of at least 20 years;
 - (b) in relation to a person usually known by a title different from the person's surname, the name by which the person was known before the adoption of or succession to the title; and
 - (c) in relation to a married woman, a name or surname by which she was known before her marriage.
- (7) The Financial Secretary may, by notice published in the Gazette, amend subsection (1), (2), (3), (4), (5) or (6).

635. Protection of certain particulars from inspection

- (1) Despite sections 632(3) and 633(1), (2) and (3), a company may withhold the following particulars contained in its register of directors from a person who inspects the register or requests for a copy of it or any part of it—

- (a) an address contained in the register as the usual residential address of a director or reserve director; and
 - (b) the number of the identity card or passport of a director or reserve director.
- (2) A company may only exercise the power under subsection (1) in the prescribed manner and to the prescribed extent.

636. Duty to notify Registrar of appointment and change

- (1) If a person is appointed as director of a company otherwise than under section 444(3) or (4) or section 445(2) or (3), the company must, within 14 days after the appointment, deliver to the Registrar for registration a notice in the specified form containing—
 - (a) the director's particulars specified in its register of directors; and
 - (b) if the person is a natural person, a statement that he or she has accepted the appointment and has attained the age of 18 years.
- (2) The company must, within 14 days after the nomination of a person as a reserve director of the company, deliver to the Registrar for registration a notice in the specified form containing all the particulars with respect to that person that are required to be contained in its register of directors.
- (3) If a person is nominated as a reserve director of a private company, the company must, within 14 days after the nomination, deliver to the Registrar for registration a statement in the specified form that the person has accepted the nomination and has attained the age of 18 years.
- (4) If a person ceases to be a director or reserve director of a company or there is any change in the particulars contained in the register of directors of a company, the company must, within 14 days after the cessation or change, deliver to the Registrar for registration a notice in the specified form containing—

- (a) the particulars of cessation or change and the date on which it occurred; and
 - (b) other matters that are specified in the form.
- (5) If the company is not allowed under section 51(6)(b) to state in a notice under subsection (4) that a director's correspondence address is changed to an address other than the address specified in subparagraph (i) or (ii) of that section, subsection (4) does not apply in relation to that change.
- (6) If a company contravenes subsection (1), (2), (3) or (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

637. Duty of director to make disclosure

- (1) A director of a company must give notice to the company of matters relating to the director that are required for the purposes of sections 634 and 636.
- (2) A reserve director of a company must give notice to the company of matters relating to the reserve director that are required for the purposes of sections 634 and 636.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable to a fine at level 4.

638. Registrar to keep an index of directors

- (1) The Registrar must keep an index of every person who is a director of a company or a reserve director of a private company.
- (2) The particulars contained in the index must, in respect of each director or reserve director, include—
 - (a) the name and address of the director or reserve director;
 - (b) the latest particulars sent to the Registrar in respect of the director or reserve director; and

- (c) the name of each company of which the director or reserve director can be identified as a director or reserve director.
- (3) The index kept under this section must be open for inspection by any person on payment of a prescribed fee.
- (4) Despite subsection (3), the following particulars contained in the index must not be open for inspection under that subsection—
- (a) the usual residential address of the director or reserve director; and
 - (b) the full number of the identity card or passport of the director or reserve director.
- (5) Subsection (4) does not affect the inclusion in the index of a correspondence address of the director or reserve director, nor does it affect the inspection of the correspondence address under subsection (3), even if the correspondence address is the same as the usual residential address of the director or reserve director.

Subdivision 4**Register of Company Secretaries****639. Register of company secretaries**

- (1) A company must keep in the English or Chinese language a register of company secretaries.
- (2) A company must enter in the register of company secretaries the required particulars specified in section 641 of a person who is, or persons who are the company secretary or joint company secretaries of the company.
- (3) A company must keep the register of company secretaries available for inspection at—
 - (a) the company's registered office; or

- (b) a prescribed place.
- (4) A company must notify the Registrar of the place at which the register of company secretaries is kept. The notice must be in the specified form and delivered to the Registrar for registration within 14 days after the register is first kept at that place.
- (5) A company must notify the Registrar of any change (other than a change of the address of the company's registered office) in the place at which the register of company secretaries is kept. The notice must be in the specified form and delivered to the Registrar for registration within 14 days after the change.
- (6) Subsection (4) does not apply in relation to a register of company secretaries that has been kept at the registered office of the company—
 - (a) at all times since it came into existence; or
 - (b) if it was in existence on 31 August 1984, at all times since then.
- (7) If a company contravenes subsection (1), (2), (3), (4) or (5), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

640. Right to inspect and request copy

- (1) The register of company secretaries of a company must be open for inspection—
 - (a) by any member of the company, without charge; and
 - (b) by any other person, on payment of a prescribed fee.
- (2) A person is entitled, on request and on payment of a prescribed fee, to be provided with a copy of the register of company secretaries or any part of it.

- (3) If a person makes a request under subsection (2), the company must provide the copy to the person within the prescribed period after it receives the request and prescribed fee.
- (4) When a person inspects the register, or the company provides a person with a copy of the register or any part of it, the company must inform the person of the most recent date (if any) on which alterations were made to the register.
- (5) If a company contravenes subsection (3) or (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (6) If a company contravenes subsection (3), the Court may by order direct that the copy be provided to the person requesting it.
- (7) The Court must not make an order under subsection (6) if it is satisfied that the rights given by subsection (2) are being abused.

641. Particulars of company secretaries to be registered

- (1) The register of company secretaries of a company must contain the following particulars with respect to the company secretary or, if there are joint company secretaries, with respect to each of them—
 - (a) if the company secretary is a natural person—
 - (i) the present forename and surname, former forename or surname (if any), and aliases (if any);
 - (ii) the correspondence address; and
 - (iii) the number of the identity card or, if the company secretary does not have an identity card, the number and issuing country of any passport held by the company secretary; and

- (b) if the company secretary is a body corporate, the corporate name and the address of its registered or principal office.
- (2) If all the partners in a firm are joint company secretaries of a company, the name and principal office of the firm may be stated instead of the particulars mentioned in subsection (1)(a) or (b).
- (3) In this section—
forename (名字) includes a Christian or given name;
surname (姓氏), for a person usually known by a title different from the person's surname, means that title.
- (4) For the purposes of subsection (1)(a)(ii), a correspondence address must be a place in Hong Kong and must not be a post office box number.
- (5) In this section, a reference to a former forename or surname does not include—
- (a) in relation to a person—
 - (i) a forename or surname that was changed or ceased to be used before the person attained the age of 18 years; and
 - (ii) a forename or surname that has been changed or ceased to be used for a period of at least 20 years;
 - (b) in relation to a person usually known by a title different from the person's surname, the name by which the person was known before the adoption of or succession to the title; and
 - (c) in relation to a married woman, a name or surname by which she was known before her marriage.
- (6) The Financial Secretary may, by notice published in the Gazette, amend subsection (1), (2), (3), (4) or (5).

642. Protection of identification number from inspection

- (1) Despite sections 639(3) and 640(1), (2) and (3), a company may withhold the number of the identity card or passport of a company secretary contained in its register of company secretaries from a person who inspects the register or requests for a copy of it or any part of it.
- (2) A company may only exercise the power under subsection (1) in the prescribed manner and to the prescribed extent.

643. Duty to notify Registrar of appointment and change

- (1) If a person or persons are appointed as company secretary or joint company secretaries of a company otherwise than under section 465(2) or (3), the company must, within 14 days after the appointment, deliver to the Registrar for registration a notice in the specified form containing—
- (a) the company secretary's or joint company secretaries' particulars specified in its register of company secretaries; and
 - (b) if the person or any of the persons is a natural person, a statement, that he or she has accepted the appointment.
- (2) If a person ceases to be a company secretary of the company or there is any change in the particulars contained in the register of company secretaries of a company, the company must, within 14 days after the cessation or change, deliver to the Registrar for registration a notice in the specified form containing—
- (a) the particulars of the cessation or change and the date on which it occurred; and
 - (b) any other particulars that are specified in the form.
- (3) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case

of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

644. Duty of company secretary to make disclosure

- (1) A company secretary of a company must give notice to the company of matters relating to the company secretary that are required for the purposes of sections 641 and 643.
- (2) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 4.

Division 3

Company Records

645. Meaning of *company records*

In this Division—

company records (公司紀錄) means any register, index, agreement, memorandum, minutes or other document required by this Ordinance to be kept by a company, but does not include accounting records.

646. Form of company records

- (1) A company must adequately record for future reference the information required to be contained in any company records.
- (2) Subject to subsection (1), company records may be—
 - (a) kept in hard copy form or in electronic form; and
 - (b) arranged in the manner that the directors of the company think fit.
- (3) If the records are kept in electronic form, the company must ensure that they are capable of being reproduced in hard copy form.
- (4) If any company records required by this Ordinance to be kept by a company are kept by the company by recording the

information in question in electronic form, any duty imposed on the company under this Ordinance to allow inspection of the company records is to be regarded as a duty to allow inspection of a reproduction of—

- (a) the recording in hard copy form; or
 - (b) the relevant part of the recording in hard copy form.
- (5) If a company contravenes subsection (1) or (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

- (6) In this section—

in electronic form (電子形式) means in the form of an electronic record;

in hard copy form (印本形式) means in a paper form or similar form capable of being read.

647. Duty to take precautions against falsification

- (1) If company records are kept otherwise than by making entries in a bound book, a company—
 - (a) must take adequate precautions to guard against falsification; and
 - (b) must take adequate steps to facilitate the discovery of the falsification.
- (2) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

648. Regulations about keeping and inspection of company records and provision of copies

- (1) The Financial Secretary may make regulations to—

- (a) provide for the obligations of a company that is required by any provision of this Ordinance—
 - (i) to keep any company records;
 - (ii) to keep available for inspection any company records; or
 - (iii) to provide copies of any company records;
 - (b) prescribe the fees payable in respect of company records; and
 - (c) prescribe any other thing that is required or permitted to be prescribed under this Ordinance in respect of company records.
- (2) The regulations may—
- (a) prescribe places other than a company's registered office at which company records are required to be kept;
 - (b) make provision as to the time, duration and manner of inspection, including the circumstances in which and the extent to which the copying of information is permitted in the course of inspection;
 - (c) define what may be required of a company as regards the nature, extent and manner of extracting or presenting any information for the purposes of inspection or the provision of copies;
 - (d) make provision as to the time within which a copy of company records must be provided; and
 - (e) prescribe the manner in which and the extent to which a company may exercise the power under section 635 or 642.
- (3) Regulations made under subsection (2)(a) may, in relation to a provision of this Ordinance requiring a company to keep any company records—
- (a) prescribe a place—

- (i) by reference to the company's principal place of business or the place at which the company keeps any other records; or
 - (ii) in any other way;
- (b) provide that that provision is not complied with by keeping company records at a place prescribed in the regulations unless conditions prescribed in the regulations are met;
 - (c) prescribe more than one place in relation to that provision; and
 - (d) provide that that provision is not complied with by keeping company records at a place prescribed in the regulations unless all the company's records subject to that provision are kept there.
- (4) Regulations made under subsection (1), (2) or (3) may provide that—
- (a) if a company contravenes any of the regulations made under subsection (1), (2) or (3), an offence is committed by—
 - (i) the company; and
 - (ii) every responsible person of the company;
 - (b) a person who commits an offence mentioned in paragraph (a) is liable to a fine not exceeding level 5 and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for each day during which the offence continues;
 - (c) the Court may by order compel an immediate inspection of company records or direct that a copy of company records be sent to a person entitled to be provided with the copy;
 - (d) if company records are kept at the office of a person other than the company concerned, an order mentioned in paragraph (c) may be made against that other person

- and that other person's officers and other employees (if any); and
- (e) the Court must not make an order mentioned in paragraph (c) if it is satisfied that the rights of inspecting company records or the rights to be provided with a copy of company records are being abused.
- (5) Nothing in any provision of this Ordinance or in the regulations made under this section is to be construed as preventing a company—
- (a) from providing more extensive facilities than are required by the regulations; or
- (b) if a fee may be charged, from charging a lesser fee than that prescribed or none at all.

Division 4

Registered Office and Publication of Company Names

649. Registered office of company

- (1) A company must have a registered office in Hong Kong to which all communications and notices may be addressed.
- (2) The intended address of a company's registered office stated in the incorporation form registered in respect of the company is to be regarded as the address of its registered office with effect from the date of its incorporation until a notice of change in respect of the address is delivered to the Registrar under subsection (3).
- (3) If the address of a company's registered office is changed, the company must deliver to the Registrar for registration a notice of the change in the specified form within 14 days after the change.

- (4) The inclusion in the annual return of a company of a statement as to the address of its registered office does not satisfy the obligation imposed by subsection (3).
- (5) If a company contravenes subsection (1) or (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

650. Requirement to disclose company name, etc.

- (1) The Financial Secretary may make regulations to require companies—
- (a) to display prescribed information in prescribed locations;
- (b) to state prescribed information in prescribed descriptions of documents or communications; and
- (c) to provide prescribed information on request to those they deal with in the course of their business.
- (2) The regulations—
- (a) may in prescribed circumstances require disclosure of the name of the company; and
- (b) may make provision as to the manner in which any prescribed information is to be displayed, stated or provided.
- (3) The regulations may provide that, for the purposes of any requirement to disclose a company's name, any variation between a word or words required to be part of the name and a permitted abbreviation of that word or those words (or vice versa) is to be disregarded.

651. Criminal consequences of failure to make required disclosures

Regulations made under section 650 may provide that—

- (a) if a company contravenes any of the regulations made under that section, an offence is committed by—

- (i) the company; and
- (ii) every responsible person of the company;
- (b) if any person who is acting on behalf of the company contravenes any of the regulations made under that section, an offence is committed by that person; and
- (c) a person who commits an offence mentioned in paragraph (a) or (b) is liable to a fine not exceeding level 3 and, in the case of a continuing offence, to a further fine not exceeding \$300 for each day during which the offence continues.

652. Civil consequence of failure to make required disclosures

If an officer of a company or a person on its behalf signs or authorizes to be signed on behalf of the company, any bill of exchange, promissory note, endorsement, cheque or order for money or goods in which the company's name is not mentioned in the manner as required by regulations made under section 650, that officer or person is personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount of it (unless it is duly paid by the company).

Division 5

Annual Return

653. Requirement to deliver annual return

- (1) A private company must in respect of every year (except the year of its incorporation) deliver to the Registrar for registration an annual return specified in subsection (5) within 42 days after the company's return date.
- (2) The company's return date mentioned in subsection (1) is, in respect of a particular year, the anniversary of the date of the company's incorporation in that year.

- (3) A public company or a company limited by guarantee must in respect of every financial year deliver to the Registrar for registration an annual return specified in subsection (5) within 42 days after the company's return date.
- (4) The company's return date mentioned in subsection (3) is, in respect of a particular financial year—
 - (a) if the company is a public company, the date that is 6 months after the end of its accounting reference period; and
 - (b) if the company is a company limited by guarantee, the date that is 9 months after the end of its accounting reference period.
- (5) An annual return under this section must comply with the requirements under section 655.
- (6) If a company contravenes subsection (1) or (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (7) If a person is convicted of an offence under subsection (6), the magistrate may, in addition to any penalty that may be imposed, order that the person must, within a time specified in the order, do the act that the person has failed to do.
- (8) A person who contravenes an order under subsection (7) commits an offence and is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (9) In this section—
accounting reference period (會計參照期) has the meaning given by section 364.

654. Exemption of dormant company from requirement to deliver annual return

- (1) Section 653 does not apply to a company that is a dormant company under section 5(1).
- (2) If such a company enters into an accounting transaction, subsection (1) ceases to have effect on and after the date of the accounting transaction.

655. Contents of annual return

- (1) A company's annual return under section 653 must—
 - (a) be in the specified form; and
 - (b) contain, with respect to the company, the particulars specified in the form.
- (2) Without limiting section 22, the Registrar may, for the purposes of this section, specify different forms or particulars in relation to different types of companies.
- (3) Without limiting subsection (1), an annual return under section 653 must—
 - (a) contain the information specified in Schedule 6; and
 - (b) be accompanied by the documents specified in that Schedule.

656. Construction of reference to annual return

A reference in this Ordinance to a company's last annual return, or to an annual return delivered in accordance with section 653, is to be construed as including (so far as necessary to ensure the continuity of the law) a return made up to a date before the commencement date of that section, or forwarded to the Registrar in accordance with the predecessor Ordinance.

Part 13**Arrangements, Amalgamation, and Compulsory Share Acquisition in Takeover and Share Buy-Back****Division 1****Preliminary****657. Interpretation**

In this Part—

offer period (要約期), in relation to an offer, means the period within which the offer can be accepted.

658. Associate

- (1) In this Part, a reference to an associate of an offeror or member, is—
 - (a) if the offeror or member is a natural person, a reference to—
 - (i) the offeror's or member's spouse;
 - (ii) any other person (whether of a different sex or the same sex) with whom the offeror or member lives as a couple in an enduring family relationship;
 - (iii) a child, step-child or adopted child of the offeror or member;
 - (iv) a child, step-child or adopted child of a person falling within subparagraph (ii) who—
 - (A) is not a child, step-child or adopted child of the offeror or member;
 - (B) lives with the offeror or member; and

- (C) has not attained the age of 18;
 - (v) a parent of the offeror or member;
 - (vi) a body corporate in which the offeror or member is substantially interested; or
 - (vii) a person who is a party, or a nominee of a party, to an acquisition agreement with the offeror or member; or
- (b) if the offeror or member is a body corporate, a reference to—
- (i) a body corporate in the same group of companies as the offeror or member;
 - (ii) a body corporate in which the offeror or member is substantially interested; or
 - (iii) a person who is a party, or a nominee of a party, to an acquisition agreement with the offeror or member.
- (2) For the purposes of subsection (1), an offeror or member is substantially interested in a body corporate if—
- (a) the body corporate, or its directors or a majority of its directors, are accustomed to act in accordance with the directions or instructions of the offeror or member; or
 - (b) the offeror or member is entitled to exercise, or control the exercise of, more than 30% of the voting power at any general meeting of the body corporate.
- (3) For the purposes of subsection (1), an agreement is an acquisition agreement if—
- (a) it is an agreement for the acquisition of—
 - (i) any of the shares to which the takeover offer or general offer relates; or
 - (ii) an interest in those shares; and

- (b) it includes provisions imposing obligations or restrictions on any of the parties to it with respect to the use, retention or disposal of the party's interests in the shares acquired pursuant to the agreement.

Division 2

Arrangements and Compromises

659. Interpretation

- (1) In this Division—

arrangement (安排) includes a reorganization of the company's share capital by the consolidation of shares of different classes, or by the division of shares into different classes, or both;

company (公司), except in section 665, means a company liable to be wound up under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

- (2) In this Division, a reference to a company's articles, in the case of a company not having articles, is to be read as the instrument constituting or defining the constitution of the company.

660. Application of Division

This Division applies if an arrangement or compromise is proposed to be entered into by a company with either or both of the following—

- (a) the creditors, or any class of the creditors, of the company;
- (b) the members, or any class of the members, of the company.

661. Court may order meeting of creditors or members to be summoned

- (1) The Court may, on application made for the purposes of this subsection, order a meeting specified in subsection (2)(a), or a meeting specified in subsection (2)(b), or both (as the case may be) to be summoned in any manner that the Court directs.
- (2) The meeting is—
 - (a) if the arrangement or compromise is proposed to be entered into—
 - (i) with the creditors of the company, a meeting of those creditors; or
 - (ii) with a class of the creditors of the company, a meeting of that class of creditors; and
 - (b) if the arrangement or compromise is proposed to be entered into—
 - (i) with the members of the company, a meeting of those members; or
 - (ii) with a class of the members of the company, a meeting of that class of members.
- (3) Subject to subsection (4), an application for the purposes of subsection (1) may be made only by—
 - (a) in the case of a meeting of creditors, the company or any of the creditors;
 - (b) in the case of a meeting of a class of creditors, the company or any creditor of that class;
 - (c) in the case of a meeting of members, the company or any of the members; or
 - (d) in the case of a meeting of a class of members, the company or any member of that class.
- (4) If the company is being wound up, an application for the purposes of subsection (1) may be made only by the liquidator or provisional liquidator.

- (5) An application for the purposes of subsection (1) must be made in a summary way.

662. Explanatory statements to be issued or made available to creditors or members

- (1) If a meeting is summoned under section 661—
 - (a) every notice summoning the meeting that is sent to a creditor or member must be accompanied by an explanatory statement complying with subsections (3) and (4); and
 - (b) every notice summoning the meeting that is given by advertisement—
 - (i) must include an explanatory statement complying with subsections (3) and (4); or
 - (ii) must state where and how a creditor or member entitled to attend the meeting may obtain a copy of the explanatory statement.
- (2) If a notice given by advertisement states that a creditor or member entitled to attend the meeting may obtain a copy of an explanatory statement, the company must provide a copy of the statement, free of charge, to a creditor or member applying in the manner specified in the notice.
- (3) An explanatory statement—
 - (a) must explain the effect of the arrangement or compromise; and
 - (b) must state—
 - (i) any material interests of the company's directors, whether as directors or as members or as creditors of the company or otherwise, under the arrangement or compromise; and
 - (ii) the effect of the arrangement or compromise on those interests, in so far as the effect is different

from the effect on the like interests of other persons.

- (4) If the arrangement or compromise affects the rights of the company's debenture holders, an explanatory statement must give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the directors.
- (5) If subsection (1) or (2) is contravened, all of the following commit an offence—
- (a) the company;
 - (b) every responsible person of the company;
 - (c) a liquidator or provisional liquidator of the company who authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention;
 - (d) a trustee of a deed for securing the issue of the company's debentures who authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention.
- (6) A person who commits an offence under subsection (5) is liable to a fine at level 5.
- (7) If a person is charged with an offence under subsection (5) for a contravention of subsection (1), it is a defence to establish that the contravention was due to the refusal of another person, who was a director of the company or a trustee for debenture holders of the company, to supply the necessary particulars of that other person's interests.

663. Directors and trustees must notify company of interests under arrangement or compromise etc.

- (1) If a meeting is summoned under section 661, a director of the company, or a trustee for its debenture holders, must give notice to the company of any matter relating to the director or trustee that may be necessary for the purposes of section 662.

- (2) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 5.

664. Court may sanction arrangement or compromise

- (1) This section applies if the creditors or the class of creditors, or the members or the class of members, or both, with whom the arrangement or compromise is proposed to be entered into, agree or agrees to the arrangement or compromise.
- (2) For the purposes of subsection (1)—
- (a) the creditors agree to the arrangement or compromise if, at a meeting of the creditors summoned under section 661, a majority in number representing at least 75% in value of the creditors present and voting, in person or by proxy, agree to the arrangement or compromise;
 - (b) a class of creditors agrees to the arrangement or compromise if, at a meeting of the class of creditors summoned under section 661, a majority in number representing at least 75% in value of the class of creditors present and voting, in person or by proxy, agree to the arrangement or compromise;
 - (c) the members agree to the arrangement or compromise if, at a meeting of the members summoned under section 661—
 - (i) members representing at least 75% of the voting rights of the members present and voting, in person or by proxy, agree to the arrangement or compromise; and
 - (ii) unless the Court orders otherwise, a majority in number of the members present and voting, in person or by proxy, agree to the arrangement or compromise; and
 - (d) a class of members agrees to the arrangement or compromise if, at a meeting of the class of members summoned under section 661—

- (i) members representing at least 75% of the voting rights of the class of members present and voting, in person or by proxy, agree to the arrangement or compromise; and
 - (ii) unless the Court orders otherwise, a majority in number of the class of members present and voting, in person or by proxy, agree to the arrangement or compromise.
- (3) The Court may, on application made for the purposes of this subsection, sanction the arrangement or compromise.
- (4) Subject to subsection (5), an application for the purposes of subsection (3) may be made only by—
- (a) in the case of an arrangement or compromise proposed to be entered into with the creditors of a company, the company or any of the creditors;
 - (b) in the case of an arrangement or compromise proposed to be entered into with a class of creditors of a company, the company or any creditor of that class;
 - (c) in the case of an arrangement or compromise proposed to be entered into with the members of a company, the company or any of the members; or
 - (d) in the case of an arrangement or compromise proposed to be entered into with a class of members of a company, the company or any member of that class.
- (5) If the company is being wound up, an application for the purposes of subsection (3) may be made only by the liquidator or provisional liquidator.
- (6) An arrangement or compromise sanctioned by the Court under subsection (3) is binding—
- (a) on the company or, if the company is being wound up, on the liquidator or provisional liquidator and contributories of the company; and

- (b) on the creditors or the class of creditors, or the members or the class of members, or both, with whom the arrangement or compromise is proposed to be entered into.
- (7) An order made by the Court under subsection (3) has no effect until an office copy of the order is registered by the Registrar under Part 2.
- (8) If the order of the Court amends the company's articles, or any resolution or agreement to which section 612 applies, the office copy of that order delivered to the Registrar for registration for the purposes of subsection (7) must be accompanied by a copy of those articles, or the resolution or agreement, as amended.
- (9) If subsection (8) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.

665. Court's additional powers to facilitate reconstruction or amalgamation

- (1) This section applies if—
- (a) an application is made for the purposes of section 664(3) to sanction the arrangement or compromise; and
 - (b) it is shown to the Court that—
 - (i) the arrangement or compromise is proposed for the purpose of, or in connection with, a scheme for the reconstruction of one or more companies, or for the amalgamation of 2 or more companies; and
 - (ii) under the scheme, the property or undertaking of any company concerned in the scheme, or any part of that property or undertaking, is to be transferred to another company.

- (2) If the Court sanctions the arrangement or compromise, it may, by the order or a subsequent order, make provision for any or all of the following—
- (a) the transfer of the transferor's property, undertaking or liabilities, or any part of it or them, to the transferee;
 - (b) the allotting or appropriation by the transferee of any shares, debentures, policies, or other like interests in the transferee which, under the arrangement or compromise, are to be allotted or appropriated by the transferee to or for any person;
 - (c) the continuation by or against the transferee of any legal proceedings pending by or against the transferor;
 - (d) the dissolution, without winding up, of the transferor;
 - (e) the provision to be made for any person, who within the time, and in the manner, that the Court directs, dissents from the arrangement or compromise;
 - (f) the transfer or allotting of any interest in property to any person concerned in the arrangement or compromise;
 - (g) any incidental, consequential and supplemental matters that are necessary to ensure that the reconstruction or amalgamation is fully and effectively carried out.
- (3) If an order provides for the transfer of property under subsection (2)—
- (a) the property is, by virtue of the order, transferred to, and vests in, the transferee; and
 - (b) where the order so directs, the property vests freed from any charge that is to cease to have effect by virtue of the arrangement or compromise.
- (4) If an order provides for the transfer of liabilities under subsection (2), the liabilities are, by virtue of the order, transferred to, and become liabilities of, the transferee.

- (5) If the Court, by an order, makes provision for any matter under subsection (2), the order has no effect to the extent to which it purports to make the provision until an office copy of the order is registered by the Registrar under Part 2.
- (6) If the order of the Court amends the company's articles, or any resolution or agreement to which section 612 applies, the office copy of that order delivered to the Registrar for registration for the purposes of subsection (5) must be accompanied by a copy of those articles, or the resolution or agreement, as amended.
- (7) If subsection (6) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.
- (8) In this section—
- liabilities** (法律責任) includes—
- (a) duties of a personal character and incapable of being assigned or performed vicariously under the law; and
 - (b) duties of any other description;
- property** (財產) includes—
- (a) rights and powers of a personal character and incapable of being assigned or performed vicariously under the law; and
 - (b) rights and powers of any other description;
- transferee** (受讓人), in relation to an arrangement or compromise proposed for the purpose of a scheme of reconstruction or amalgamation, means the company to which another company's property, undertaking or liabilities, or any part of it or them, is to be transferred under the scheme;
- transferor** (出讓人), in relation to an arrangement or compromise proposed for the purpose of a scheme of reconstruction or amalgamation, means the company whose property, undertaking or liabilities, or any part of it or them, is to be transferred to another company under the scheme.

666. Company's articles to be accompanied by order of Court

- (1) Every copy of the company's articles issued by the company after an order is made for the purposes of section 664 or 665 must be accompanied by a copy of the order, unless the effect of the order, and the effect of the arrangement or compromise to which the order relates, has been incorporated into the articles by alteration to those articles.
- (2) If subsection (1) is contravened, the company, and every responsible person of the company, commits an offence, and each is liable to a fine at level 3.

Division 3**Amalgamation of Companies within Group****667. Interpretation**

- (1) In this Division, a company is a wholly owned subsidiary of another company if it has no members except—
 - (a) that other company;
 - (b) a nominee of that other company;
 - (c) a wholly owned subsidiary of that other company; or
 - (d) a nominee of that subsidiary.
- (2) A cancellation of shares under this Division is not a reduction of share capital for the purposes of Part 5.
- (3) For the purposes of this Division, a resolution approving an amalgamation mentioned in section 669(1) or 670(1) is an amalgamation proposal that has been approved.

668. Solvency statement

- (1) In this Division, a reference to a solvency statement made by the directors of an amalgamating company is a reference to a statement made before the time specified in subsection (2) that—

- (a) in the directors' opinion—
 - (i) as at the date of the statement, there is no ground on which the amalgamating company could be found to be unable to pay its debts; and
 - (ii) the amalgamated company will be able to pay its debts as they fall due during the period of 12 months immediately after the date on which the amalgamation is to become effective; and
- (b) as at the date of the statement, none of the following exists—
 - (i) any floating charge created by the amalgamating company;
 - (ii) any other security created by the amalgamating company over a class of assets, to any of which the security interest has not attached.
- (2) The time specified for the purposes of subsection (1) is—
 - (a) if the amalgamation is to be approved by a resolution passed on a poll at a general meeting, the date of the meeting; or
 - (b) if the amalgamation is to be approved by a written resolution, the time when the resolution is circulated to the members.
- (3) In forming an opinion for the purposes of subsection (1)(a)(ii), the directors must take into account all the liabilities of the amalgamated company (including contingent and prospective liabilities).

669. Vertical amalgamation

- (1) A company (*amalgamating holding company*), and one or more of its wholly owned subsidiaries, may amalgamate, and continue, as one company if—

- (a) the members of the amalgamating holding company approve the amalgamation on the terms specified in subsection (2); and
 - (b) the members of each of the amalgamating subsidiaries approve the amalgamation on the terms specified in subsection (2).
- (2) The terms are—
- (a) that the shares of each of the amalgamating subsidiaries will be cancelled without payment or other consideration;
 - (b) that the articles of the amalgamated company will be the same as the articles of the amalgamating holding company;
 - (c) that the directors of each amalgamating company—
 - (i) are satisfied that, as at the date of the solvency statement made by them, there is no ground on which the amalgamating company could be found to be unable to pay its debts; and
 - (ii) after taking into account all the liabilities of the amalgamated company (including contingent and prospective liabilities), are satisfied that the amalgamated company will be able to pay its debts as they fall due during the period of 12 months immediately after the date on which the amalgamation is to become effective;
 - (d) that the directors of each amalgamating company have confirmed that as at the date of the solvency statement made by them, none of the following exists—
 - (i) any floating charge created by the amalgamating company;
 - (ii) any other security created by the amalgamating company over a class of assets, to any of which the security interest has not attached;

- (e) that the person or persons named in the resolution will be the director or directors of the amalgamated company.
- (3) An approval for the purposes of subsection (1)(a) must be obtained by a special resolution of the company passed on a poll at a general meeting but not by a written resolution.
 - (4) An approval for the purposes of subsection (1)(b) must be obtained by a special resolution of the company passed on a poll at a general meeting or by a written resolution.
 - (5) This section does not apply unless each amalgamating company is a company limited by shares.

670. Horizontal amalgamation

- (1) Two or more of the wholly owned subsidiaries of a company may amalgamate, and continue, as one company if the members of each amalgamating company approve the amalgamation on the terms specified in subsection (2).
- (2) The terms are—
 - (a) that the shares of all but one of the amalgamating companies will be cancelled without payment or other consideration;
 - (b) that the articles of the amalgamated company will be the same as the articles of the amalgamating company whose shares are not cancelled;
 - (c) that the directors of each amalgamating company—
 - (i) are satisfied that, as at the date of the solvency statement made by them, there is no ground on which the amalgamating company could be found to be unable to pay its debts; and
 - (ii) after taking into account all the liabilities of the amalgamated company (including contingent and prospective liabilities), are satisfied that the amalgamated company will be able to pay its debts as they fall due during the period of 12 months

- immediately after the date on which the amalgamation is to become effective;
- (d) that the directors of each amalgamating company have confirmed that as at the date of the solvency statement made by them, none of the following exists—
- (i) any floating charge created by the amalgamating company;
 - (ii) any other security created by the amalgamating company over a class of assets, to any of which the security interest has not attached;
- (e) that the person or persons named in the resolution will be the director or directors of the amalgamated company.
- (3) An approval for the purposes of subsection (1) must be obtained by a special resolution of the amalgamating company passed on a poll at a general meeting or by a written resolution.
- (4) This section does not apply unless each amalgamating company is a company limited by shares.

671. Directors of amalgamating company must notify secured creditors of proposed amalgamation

- (1) The directors of each amalgamating company under section 669 or 670 must comply with subsection (2)—
- (a) if the amalgamation is to be approved by a resolution passed on a poll at a general meeting, at least 21 days before the date of the meeting; or
 - (b) if the amalgamation is to be approved by a written resolution, at the same time as the resolution is circulated to the members.
- (2) Those directors—
- (a) must give written notice of the proposed amalgamation to every secured creditor of the amalgamating company; and

- (b) must publish notice of the proposed amalgamation in an English language newspaper, and a Chinese language newspaper, circulating in Hong Kong.
- (3) If the directors of an amalgamating company contravene subsection (1), each of them commits an offence and is liable to a fine at level 3.

672. Director of amalgamating company must issue certificate on solvency statement

- (1) Every director of the amalgamating company who votes in favour of making a solvency statement must issue a certificate—
- (a) stating—
 - (i) that, in the director's opinion, the conditions specified in section 668(1)(a)(i) and (ii) are satisfied; and
 - (ii) the grounds for that opinion; and
 - (b) stating that the condition specified in section 668(1)(b) is satisfied.
- (2) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 4.
- (3) A director of the amalgamating company commits an offence if the director votes in favour of making a solvency statement, or otherwise causes a solvency statement to be made, without having reasonable grounds for the opinion and fact expressed in the statement.
- (4) A person who commits an offence under subsection (3) is liable—
- (a) on conviction on indictment to a fine of \$150,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

673. Registration of amalgamation

- (1) For the purpose of effecting an amalgamation, the following documents must be delivered to the Registrar for registration within 14 days after the approval of the amalgamation proposal—
 - (a) the amalgamation proposal that has been approved;
 - (b) every certificate required by section 672(1);
 - (c) a certificate issued by the directors of each amalgamating company stating that the amalgamation has been approved in accordance with—
 - (i) this Division; and
 - (ii) the articles of the amalgamating company;
 - (d) a notice of appointment of the directors of the amalgamated company;
 - (e) a certificate issued by the directors, or the proposed directors, of the amalgamated company stating that where the proportion of the claims of the amalgamated company's creditors in relation to the value of that company's assets is greater than the proportion of the claims of an amalgamating company's creditors in relation to the value of that company, no creditor will be prejudiced by that fact.
- (2) A document mentioned in subsection (1)(a), (b), (c), (d) or (e) must be in the specified form.
- (3) As soon as practicable after the documents mentioned in subsection (1) are registered, the Registrar must issue a certificate of amalgamation.
- (4) A certificate of amalgamation may be issued in any form that the Registrar thinks fit.

674. Effective date of amalgamation

- (1) A certificate of amalgamation issued under section 673(3) must specify a date as the effective date of the amalgamation.
- (2) If an amalgamation proposal specifies a date on which the amalgamation is intended to become effective, and that date is the same as or later than the date on which the Registrar registers the documents mentioned in section 673(1), that date must be specified in the certificate of amalgamation as the effective date of the amalgamation.
- (3) On the effective date of an amalgamation—
 - (a) the amalgamation takes effect;
 - (b) each amalgamating company ceases to exist as an entity separate from the amalgamated company; and
 - (c) the amalgamated company succeeds to all the property, rights and privileges, and all the liabilities and obligations, of each amalgamating company.
- (4) On and after the effective date of an amalgamation—
 - (a) any proceedings pending by or against an amalgamating company may be continued by or against the amalgamated company;
 - (b) any conviction, ruling, order or judgment in favour of or against an amalgamating company may be enforced by or against the amalgamated company; and
 - (c) any agreement entered into by an amalgamating company may be enforced by or against the amalgamated company unless otherwise provided in the agreement.
- (5) As soon as practicable after the effective date of an amalgamation, the Registrar must make a note of the amalgamation in the Companies Register in relation to each amalgamating company.

675. Court may intervene in amalgamation proposal in certain cases

- (1) If the Court is satisfied that giving effect to an amalgamation proposal would unfairly prejudice a member or creditor of an amalgamating company or a person to whom an amalgamating company is under an obligation, it may, on application by the member, creditor or person made before the date on which the amalgamation becomes effective, make any order it thinks fit in relation to the amalgamation proposal.
- (2) Without limiting subsection (1), the Court may make an order—
 - (a) directing that effect must not be given to the amalgamation proposal;
 - (b) modifying the amalgamation proposal in the manner specified in the order; or
 - (c) directing the amalgamating company or its directors to reconsider the amalgamation proposal or any part of that proposal.
- (3) Without limiting subsection (1), the Court may also make an order directing the amalgamated company, or any other party to the proceedings, to purchase shares of a member of an amalgamating company who would be unfairly prejudiced by the amalgamation proposal.
- (4) On making an application for the purposes of subsection (1), the applicant must deliver to the Registrar for registration a notice of the application in the specified form.
- (5) If the Registrar receives a notice under subsection (4), he or she must withhold registration of the documents mentioned in section 673(1) unless the Court otherwise directs or the application is dismissed by the Court or is withdrawn.
- (6) If an order is made under this section, every company in relation to which the order is made must deliver an office copy of the order to the Registrar for registration within 7 days after the order is made.

- (7) If a company contravenes subsection (6), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

Division 4**Compulsory Acquisition after Takeover Offer****Subdivision 1****Preliminary****676. Interpretation**

In this Division—

nominee (代名人), in relation to a company that is a member of a group of companies, includes a nominee on behalf of another company that is a member of the group.

677. Application of Division to convertible securities and debentures

- (1) This Division applies in relation to debentures of a company that are convertible into shares in the company, or to securities of a company that are convertible into, or entitle the holder to subscribe for, shares in the company, as if those debentures or securities were shares of a separate class of the company. A reference to a holder of shares, and to shares being allotted, is to be read accordingly.
- (2) In this Division, a reference to 90% in number of the shares of any class is—
 - (a) in the case of securities mentioned in subsection (1), a reference to 90% of the number of those securities; and

- (b) in the case of debentures mentioned in subsection (1), a reference to 90% of the total amount payable on those debentures.

678. Takeover offer

- (1) For the purposes of this Division, an offer to acquire shares in a company is a takeover offer if—
- (a) it is an offer to acquire all the shares, or all the shares of any class, in the company, except those that, at the date of the offer, are held by the offeror; and
 - (b) the terms of the offer are the same—
 - (i) where the offer does not relate to shares of different classes, in relation to all the shares to which the offer relates; or
 - (ii) where the offer relates to shares of different classes, in relation to all the shares of each class to which the offer relates.
- (2) In subsection (1)—
- shares* (股份) means shares that have been allotted on the date of the offer.
- (3) In subsection (1)(a), a reference to shares that are held by an offeror—
- (a) includes shares that the offeror has contracted, unconditionally or subject to conditions being satisfied, to acquire; but
 - (b) excludes shares that are the subject of a contract—
 - (i) entered into by the offeror with a holder of shares in the company in order to secure that the holder will accept the offer when it is made; and
 - (ii) entered into for no consideration and by deed, for consideration of negligible value, or for

consideration consisting of a promise by the offeror to make the offer.

- (4) For the purposes of subsection (1)(b), even though, in relation to all the shares, or all the shares of a class of shares, to which an offer relates, there is a difference in the value of consideration offered for the shares allotted earlier as against the value of consideration offered for those allotted later, the terms of the offer are to be regarded as the same in relation to all the shares concerned if—
- (a) shares carry an entitlement to a particular dividend that other shares of the same class, by reason of being allotted at a different time, do not carry;
 - (b) the difference in value of consideration merely reflects that difference in entitlement to dividend; and
 - (c) but for the difference in the value of consideration, the terms of the offer would be the same in relation to all the shares concerned.
- (5) For the purposes of subsection (1)(b), even though, in relation to all the shares, or all the shares of a class of shares, to which an offer relates, there is a difference in the form of consideration offered, the terms of the offer are to be regarded as the same in relation to all the shares concerned if—
- (a) the law of a place outside Hong Kong precludes an offer of consideration in the form specified in the terms of the offer, or precludes it except after compliance by the offeror with conditions with which the offeror is unable to comply or that the offeror regards as unduly onerous;
 - (b) consideration in another form is offered to a person to whom an offer of consideration in the specified form is so precluded;
 - (c) the person is able to receive consideration in that other form that is of substantially equivalent value; and

- (d) but for the difference in the form of consideration, the terms of the offer would be the same in relation to all the shares concerned.
- (6) Despite subsection (1), a takeover offer may include, among the shares to which it relates, shares that will be allotted after the date of the offer but before a date specified in the offer.

679. Non-communication etc. does not prevent offer from being takeover offer

- (1) Even though an offer to acquire shares is not communicated to a holder of shares, that does not prevent the offer from being a takeover offer for the purposes of this Division if—
 - (a) no Hong Kong address for the holder is registered in the company's register of members;
 - (b) the offer was not communicated to the holder in order not to contravene the law of a place outside Hong Kong; and
 - (c) either—
 - (i) the offer is published in the Gazette; or
 - (ii) the offer can be inspected, or a copy of it obtained, at a place in Hong Kong or on a website, and a notice is published in the Gazette specifying the address of that place or website.
- (2) It is not to be inferred from subsection (1) that an offer that is not communicated to a holder of shares cannot be a takeover offer for the purposes of this Division unless the conditions specified in paragraphs (a), (b) and (c) of that subsection are satisfied.
- (3) Even though it is impossible or more difficult for a person, by reason of the law of a place outside Hong Kong, to accept an offer to acquire shares, that does not prevent the offer from being a takeover offer for the purposes of this Division.

- (4) It is not to be inferred from subsection (3) that an offer that is impossible, or more difficult, for certain persons to accept cannot be a takeover offer for the purposes of this Division unless the reason for the impossibility or difficulty is the one mentioned in that subsection.

680. Shares to which takeover offer relates

- (1) For the purposes of this Division, if, after a takeover offer is made but before the end of the offer period, the offeror acquires, or contracts unconditionally to acquire, any of the shares to which the offer relates but does not do so by virtue of acceptances of the offer, those shares are not to be regarded as shares to which the offer relates. This subsection has effect subject to subsection (2).
- (2) For the purposes of this Division, those shares are to be regarded as shares to which the takeover offer relates, and the offeror is to be regarded as having acquired or contracted to acquire them by virtue of acceptances of that offer, if—
 - (a) the value of the consideration for which the shares are acquired, or contracted to be acquired, at the time of the acquisition or contract, does not exceed the value of the consideration specified in the terms of that offer; or
 - (b) those terms are subsequently revised so that when the revision is announced, the value of the consideration for which the shares are acquired, or contracted to be acquired, at the time of the acquisition or contract, no longer exceeds the value of the consideration specified in those terms.
- (3) For the purposes of this Division, shares that an associate of the offeror, or a nominee on the offeror's behalf, holds, or has contracted, unconditionally or subject to conditions being satisfied, to acquire, whether at the date of the takeover offer or subsequently, are not to be regarded as shares to which that offer relates, even if that offer extends to those shares. This subsection has effect subject to subsection (4).

- (4) For the purposes of this Division, where, after a takeover offer is made but before the end of the offer period, an associate of the offeror, or a nominee on the offeror's behalf, acquires, or contracts unconditionally to acquire, any of the shares to which the offer relates, the shares are to be regarded as shares to which the offer relates if—
- (a) the value of the consideration for which the shares are acquired, or contracted to be acquired, at the time of the acquisition or contract, does not exceed the value of the consideration specified in the terms of the offer; or
 - (b) those terms are subsequently revised so that when the revision is announced, the value of the consideration for which the shares are acquired, or contracted to be acquired, at the time of the acquisition or contract, no longer exceeds the value of the consideration specified in those terms.

681. Revised offer not to be regarded as fresh offer

For the purposes of this Division, a revision of the terms of an offer to acquire shares is not to be regarded as the making of a fresh offer if—

- (a) the terms of the offer make provision for—
 - (i) their revision; and
 - (ii) acceptances on the previous terms to be treated as acceptances on the revised terms; and
- (b) the revision is made in accordance with that provision.

Subdivision 2

“Squeeze-out”

682. Offeror may give notice to buy out minority shareholders

- (1) If, in the case of a takeover offer that does not relate to shares of different classes, the offeror has, by virtue of acceptances of the offer, acquired, or contracted unconditionally to acquire, at least 90% in number of the shares to which the offer relates, the offeror may give notice to the holder of any other shares to which the offer relates that the offeror desires to acquire those shares.
- (2) If, in the case of a takeover offer that relates to shares of different classes, the offeror has, by virtue of acceptances of the offer, acquired, or contracted unconditionally to acquire, at least 90% in number of the shares of any class to which the offer relates, the offeror may give notice to the holder of any other shares of that class to which the offer relates that the offeror desires to acquire those shares.
- (3) If, in the case of a takeover offer that does not relate to shares of different classes, the offeror has, by virtue of acceptances of the offer, acquired, or contracted unconditionally to acquire, less than 90% in number of the shares to which the offer relates, the offeror may apply to the Court for an order authorizing the offeror to give notice to the holder of any other shares to which the offer relates that the offeror desires to acquire those shares.
- (4) If, in the case of a takeover offer that relates to shares of different classes, the offeror has, by virtue of acceptances of the offer, acquired, or contracted unconditionally to acquire, less than 90% in number of the shares of any class to which the offer relates, the offeror may apply to the Court for an order authorizing the offeror to give notice to the holder of any other shares of that class to which the offer relates that the offeror desires to acquire those shares.

- (5) The Court may, on application under subsection (3) or (4), make the order if it is satisfied that—
 - (a) after reasonable enquiry, the offeror has been unable to trace one or more of the persons holding shares to which the takeover offer relates;
 - (b) had the person, or all those persons, accepted the takeover offer, the offeror would have, by virtue of acceptances of that offer, acquired, or contracted unconditionally to acquire, at least 90% in number of the shares, or the shares of any class, to which that offer relates; and
 - (c) the consideration offered is fair and reasonable.
- (6) The Court must not make the order unless it is satisfied that it is just and equitable to do so having regard to all the circumstances and, in particular, to the number of holders of shares who have been traced but who have not accepted the takeover offer.
- (7) If the Court makes an order authorizing the offeror to give notice to the holder of any shares, the offeror may give notice to that holder.

683. Notice to minority shareholders

- (1) A notice to a holder of shares under section 682—
 - (a) must be given in the specified form; and
 - (b) must be given to the holder before whichever is the earlier of the following—
 - (i) the end of the period of 3 months beginning on the day after the end of the offer period of the takeover offer;
 - (ii) the end of the period of 6 months beginning on the date of the takeover offer.
- (2) The notice must be given to the holder of shares—

- (a) by delivering it personally to that holder in Hong Kong;
 - (b) by sending it by registered post to that holder to—
 - (i) an address of that holder in Hong Kong registered in the books of the company; or
 - (ii) if there is no such address, an address in Hong Kong supplied by that holder to the company for the giving of notice to that holder; or
 - (c) in the manner directed by the Registrar on an application made under subsection (3).
- (3) An offeror may apply to the Registrar for directions regarding the manner in which the notice is to be given to a holder of shares if—
 - (a) there is no address of the holder in Hong Kong registered in the books of the company; and
 - (b) the holder has not supplied to the company an address in Hong Kong for the giving of notice to the holder.
 - (4) If the takeover offer gives the holder of shares a choice of consideration, the notice—
 - (a) must give particulars of the choices;
 - (b) must state that the holder may, within 2 months after the date of the notice, indicate the holder's choice by a letter sent to the offeror at an address specified in the notice; and
 - (c) must state which consideration specified in the offer will apply if the holder does not indicate a choice.
 - (5) Subsection (4) applies whether or not any time limit or other conditions applicable to the choices under the terms of the takeover offer can still be complied with.
 - (6) If the takeover offer provides that the holder of shares is to receive shares in or debentures of the offeror, with an option to receive some other consideration to be provided by a third

party instead, the offeror may indicate in the notice that the terms of the takeover offer include the option.

- (7) If the offeror does not indicate in the notice that the terms of the takeover offer include the option, the offeror may offer in the notice a corresponding option to receive some other consideration to be provided by the offeror.
- (8) For the purposes of subsection (6), consideration is to be regarded as being provided by a third party if it is made available to the offeror on terms that it is to be used by the offeror as consideration for the takeover offer.

684. Offeror's right to buy out minority shareholders

- (1) This section applies if a notice is given under section 682 to the holder of any shares.
- (2) Unless the Court makes an order under subsection (3), the offeror is entitled and bound to acquire the shares on the terms of the takeover offer.
- (3) The Court may, on application by the holder made within 2 months after the date on which the notice was given, order that—
 - (a) the offeror is not entitled and bound to acquire the shares; or
 - (b) the offeror is entitled and bound to acquire the shares on the terms specified in the order.
- (4) For the purposes of subsection (2)—
 - (a) if the takeover offer falls within section 683(4), the terms of the takeover offer are to be regarded as including the particulars and statements included in the notice for the purposes of that section;
 - (b) if the takeover offer falls within section 683(6), the terms of the takeover offer are to be regarded as not including the option unless the offeror indicates otherwise in the notice;

- (c) if, within 2 months after the date of the notice, the holder of the shares, by a letter sent to the offeror at an address specified in the notice, exercises the corresponding option offered under section 683(7), the terms of the takeover offer are to be regarded as including the corresponding option; and
- (d) if—
 - (i) the consideration offered to, or chosen by, the holder of the shares is not cash, and the offeror is no longer able to provide it; or
 - (ii) the consideration offered to, or chosen by, the holder of the shares was to have been provided by a third party who is no longer bound or able to provide it,

the consideration is to be regarded as consisting of an amount of cash, payable by the offeror, that, at the date of the notice, is equivalent to the consideration offered or chosen.

685. Obligations of offeror with right to buy out minority shareholders

- (1) If, by virtue of section 684(2), an offeror is entitled and bound to acquire any shares in a company, the offeror must comply with subsection (3) within 2 months after the date of the notice.
- (2) If an application for the purposes of section 684(3) is pending at the end of those 2 months, the offeror must comply with subsection (3) as soon as practicable after the application has been disposed of, unless the Court orders that the offeror is not entitled and bound to acquire the shares.
- (3) The offeror—
 - (a) must send to the company—
 - (i) a copy of the notice under section 682; and

- (ii) an instrument of transfer of the shares to which the notice relates, executed on behalf of the holder of the shares by a person appointed by the offeror; and
- (b) must pay or transfer to the company the consideration for the shares to which the notice relates.
- (4) Subsection (3)(a)(ii) does not require the offeror to send to the company an instrument of transfer of any shares for which a share warrant is for the time being outstanding.

686. Company must register offeror as shareholder

On receiving an instrument of transfer under section 685(3)(a)(ii), the company must register the offeror as the holder of the shares.

687. Company must hold consideration paid by offeror on trust

- (1) On receiving any consideration under section 685(3)(b) in respect of any shares, the company must hold the consideration on trust for the person who, before the offeror acquired the shares, was entitled to them.
- (2) If the consideration consists of any money, the company must deposit the money into a separate interest-bearing bank account.
- (3) The company must not pay out or deliver the consideration to any person claiming to be entitled to it unless the person produces to the company—
 - (a) the share certificate or other evidence of title to the shares; or
 - (b) an indemnity to the company's satisfaction.

688. Provisions supplementary to section 687

- (1) This section applies if—
 - (a) the person entitled to the consideration held on trust under section 687(1) cannot be found;

- (b) the company has made reasonable enquiries at reasonable intervals to find that person; and
- (c) 12 years have elapsed since the consideration was received, or the company is wound up.
- (2) The company, or if the company is wound up, the liquidator or provisional liquidator, must sell—
 - (a) any consideration other than cash; and
 - (b) any benefit other than cash that has accrued from the consideration.
- (3) The company, or if the company is wound up, the liquidator or provisional liquidator, must pay into court a sum representing—
 - (a) the consideration so far as it is cash;
 - (b) the proceeds of any sale under subsection (2); and
 - (c) any interest, dividend or other benefit that has accrued from the consideration.
- (4) The trust terminates on the payment being made under subsection (3).
- (5) The expenses of the following may be paid out of the consideration held on trust—
 - (a) the enquiries mentioned in subsection (1)(b);
 - (b) the sale mentioned in subsection (2);
 - (c) the proceedings relating to the payment into court mentioned in subsection (3).

Subdivision 3**“Sell-out”****689. Offeror may be required to buy out minority shareholders**

- (1) If, in the case of a takeover offer that does not relate to shares of different classes—
- (a) the offeror has, by virtue of acceptances of the offer, acquired, or contracted unconditionally to acquire, some but not all of the shares to which the offer relates; and
 - (b) at any time before the end of the offer period, the shares in the company controlled by the offeror represent at least 90% in number of the shares in the company,
- the holder of any shares to which the offer relates who has not accepted the offer before the end of that period may, by a letter addressed to the offeror, require the offeror to acquire those shares.
- (2) If, in the case of a takeover offer that relates to shares of different classes—
- (a) the offeror has, by virtue of acceptances of the offer, acquired, or contracted unconditionally to acquire, some but not all of the shares of any class to which the offer relates; and
 - (b) at any time before the end of the offer period, the shares in the company controlled by the offeror represent at least 90% in number of the shares of that class,
- the holder of any shares of that class to which the offer relates who has not accepted the offer before the end of that period may, by a letter addressed to the offeror, require the offeror to acquire those shares.
- (3) Rights given to the holder of any shares by this section to require an offeror to acquire the shares are only exercisable

within 3 months after whichever is the later of the following—

- (a) the end of the offer period;
 - (b) the date of the notice given to the holder under section 690.
- (4) If the takeover offer gives the holder of shares a choice of consideration, that holder may indicate the holder's choice in the letter requiring the offeror to acquire the shares.
- (5) In this section, a reference to shares controlled by an offeror is a reference to—
- (a) shares that are held by the offeror, by an associate of the offeror or by a nominee on the offeror's behalf;
 - (b) shares that the offeror has, by virtue of acceptances of the takeover offer, acquired or contracted unconditionally to acquire; or
 - (c) other shares that the offeror, an associate of the offeror, or a nominee on the offeror's behalf, has acquired, or has contracted, unconditionally or subject to conditions being satisfied, to acquire.

690. Offeror must notify minority shareholders of right to be bought out

- (1) If the holder of any shares is entitled under section 689 to require an offeror to acquire the shares, the offeror must give notice to the holder of—
- (a) the holder's rights under that section; and
 - (b) the period within which those rights are exercisable.
- (2) Subsection (1) does not apply if the offeror has given the holder a notice under section 682 that the offeror desires to acquire the shares.
- (3) An offeror who contravenes subsection (1) commits an offence and is liable to a fine at level 5.

691. Notice to minority shareholders

- (1) A notice to a holder of shares under section 690—
 - (a) must be given in the specified form; and
 - (b) must be given to the holder within one month after the first day on which the holder of the shares is entitled under section 689 to require the offeror to acquire those shares.
- (2) If the notice is given before the end of the offer period of the takeover offer, it must state that the offer is still open for acceptance.
- (3) The notice must be given to the holder of shares—
 - (a) by delivering it personally to that holder in Hong Kong;
 - (b) by sending it by registered post to that holder to—
 - (i) an address of that holder in Hong Kong registered in the books of the company; or
 - (ii) if there is no such address, an address in Hong Kong supplied by that holder to the company for the giving of notice to that holder; or
 - (c) in the manner directed by the Registrar on an application made under subsection (4).
- (4) An offeror may apply to the Registrar for directions regarding the manner in which the notice is to be given to a holder of shares if—
 - (a) there is no address of the holder in Hong Kong registered in the books of the company; and
 - (b) the holder has not supplied to the company an address in Hong Kong for the giving of notice to the holder.
- (5) If the takeover offer gives the holder of shares a choice of consideration, the notice—
 - (a) must give particulars of the choices;

- (b) must state that the holder may indicate the holder's choice in the letter requiring the offeror to acquire any shares under section 689; and
 - (c) must state which consideration specified in the offer will apply if the holder does not indicate a choice.
- (6) Subsection (5) applies whether or not any time limit or other conditions applicable to the choices under the terms of the takeover offer can still be complied with.
 - (7) If subsection (1), (2), (3) or (5) is contravened, the offeror commits an offence and is liable to a fine at level 4.
 - (8) If the takeover offer provides that the holder of shares is to receive shares in or debentures of the offeror, with an option to receive some other considerations to be provided by a third party instead, the offeror may indicate in the notice that the terms of the takeover offer include the option.
 - (9) If the offeror does not indicate in the notice that the terms of the takeover offer include the option, the offeror may offer in the notice a corresponding option to receive some other consideration to be provided by the offeror.
 - (10) For the purposes of subsection (8), consideration is to be regarded as being provided by a third party if it is made available to the offeror on terms that it is to be used by the offeror as consideration for the takeover offer.

692. Minority shareholders' right to be bought out by offeror

- (1) This section applies if the holder of any shares requires the offeror to acquire the shares under section 689.
- (2) Unless the Court makes an order under subsection (3), the offeror is entitled and bound to acquire the shares on the terms of the takeover offer or on other terms as agreed between that holder and the offeror.

- (3) The Court may, on application by the holder or offeror, order that the offeror is entitled and bound to acquire the shares on the terms specified in the order.
- (4) For the purposes of subsection (2)—
- (a) if the takeover offer falls within section 691(5), the terms of the takeover offer are to be regarded as including the particulars and statements included in the notice for the purposes of that section;
 - (b) if the takeover offer falls within section 691(8), the terms of the takeover offer are to be regarded as not including the option unless the offeror indicates otherwise in the notice under section 690;
 - (c) if, when requiring the offeror to acquire the shares, the holder of the shares exercises the corresponding option offered under section 691(9), the terms of the takeover offer are to be regarded as including the corresponding option; and
 - (d) if—
 - (i) the consideration offered to, or chosen by, the holder of the shares is not cash, and the offeror is no longer able to provide it; or
 - (ii) the consideration offered to, or chosen by, the holder of the shares was to have been provided by a third party who is no longer bound or able to provide it,

the consideration is to be regarded as consisting of an amount of cash, payable by the offeror, that, at the date when that holder requires the offeror to acquire the shares under section 689, is equivalent to the consideration offered or chosen.

693. Shareholder to be regarded as not having exercised right to be bought out in certain circumstances

- (1) This section applies if—
- (a) the holder of any shares exercises rights given by section 689 to require an offeror to acquire the shares;
 - (b) at the time when those rights are exercised, there are shares in the company—
 - (i) that the offeror has contracted to acquire subject to conditions being satisfied; and
 - (ii) in relation to which the contract has not become unconditional; and
 - (c) the requirement imposed by section 689(1)(b) or (2)(b) (as the case may be) would not be satisfied if those shares were not taken into account.
- (2) For the purposes of section 692, the holder of shares is to be regarded as not having exercised the rights to require the offeror to acquire the shares unless, at any time before the end of the period during which those rights are exercisable—
- (a) in the case of a takeover offer that does not relate to shares of different classes, the shares that the offeror has, by virtue of acceptances of the offer, acquired or contracted unconditionally to acquire, with or without any other shares in the company that the offeror has acquired, or has contracted unconditionally to acquire, represent at least 90% in number of the shares in the company; or
 - (b) in the case of a takeover offer that relates to shares of different classes, the shares of any class that the offeror has, by virtue of acceptances of the offer, acquired or contracted unconditionally to acquire, with or without any other shares of that class that the offeror has acquired, or has contracted unconditionally to acquire,

represent at least 90% in number of the shares of that class.

Division 5

Compulsory Acquisition after General Offer for Share Buy-back

Subdivision 1

Preliminary

694. Interpretation

(1) In this Division—

nominee (代名人), in relation to a company that is a member of a group of companies, includes a nominee on behalf of another company that is a member of the group;

non-tendering member (不售股成員), in relation to a general offer, means a member who gives notice under section 700(1) that the member will not tender any shares to be bought back by the repurchasing company under the offer;

repurchasing company (回購公司), in relation to a general offer, means the listed company that makes the offer.

- (2) In this Division, a reference to shares that are held by a non-tendering member includes—
- (a) shares that are held by an associate of the non-tendering member or by a nominee on the non-tendering member's behalf; and
 - (b) shares that the non-tendering member, an associate of the non-tendering member, or a nominee on the non-tendering member's behalf, has contracted, unconditionally or subject to conditions being satisfied, to acquire.

695. Application of Division to convertible securities and debentures

- (1) This Division applies in relation to debentures of a repurchasing company that are convertible into shares in the company, or to securities of a repurchasing company that are convertible into, or entitle the holder to subscribe for, shares in the company, as if those debentures or securities were shares of a separate class of the company. A reference to a holder of shares, and to shares being allotted, is to be read accordingly.
- (2) In this Division, a reference to 90% in number of the shares of any class is—
 - (a) in the case of securities mentioned in subsection (1), a reference to 90% of the number of those securities; and
 - (b) in the case of debentures mentioned in subsection (1), a reference to 90% of the total amount payable on those debentures.

696. General offer

- (1) For the purposes of this Division, a listed company's offer to buy back shares in the company is a general offer if—
 - (a) it is an offer to buy back all the shares, or all the shares of any class, in the company, except—
 - (i) those that, at the date of the offer, are held by a member residing in a place where such an offer is contrary to the law of the place; and
 - (ii) those that, at the date of the offer, are held by the repurchasing company; and
 - (b) the terms of the offer are the same—
 - (i) where the offer does not relate to shares of different classes, in relation to all the shares to which the offer relates; or

- (ii) where the offer relates to shares of different classes, in relation to all the shares of each class to which the offer relates.
- (2) In subsection (1)—
- shares* (股份) means shares that have been allotted on the date of the offer.
- (3) In subsection (1)(a)(ii), a reference to shares that are held by the repurchasing company—
- (a) is a reference to shares that the repurchasing company has contracted, unconditionally or subject to conditions being satisfied, to acquire; but
- (b) excludes shares that are the subject of a contract—
- (i) entered into by the repurchasing company with a holder of shares in that company in order to secure that the holder will accept the offer when it is made; and
- (ii) entered into for no consideration and by deed, for consideration of negligible value, or for consideration consisting of a promise by the repurchasing company to make the offer.
- (4) For the purposes of subsection (1)(b), even though, in relation to all the shares, or all the shares of a class of shares, to which an offer relates, there is a difference in the value of consideration offered for the shares allotted earlier as against the value of consideration offered for those allotted later, the terms of the offer are to be regarded as the same in relation to all the shares concerned if—
- (a) shares carry an entitlement to a particular dividend that other shares of the same class, by reason of being allotted at a different time, do not carry;
- (b) the difference in value of consideration merely reflects that difference in entitlement to dividend; and

- (c) but for the difference in the value of consideration, the terms of the offer would be the same in relation to all the shares concerned.
- (5) For the purposes of subsection (1)(b), even though, in relation to all the shares, or all the shares of a class of shares, to which an offer relates, there is a difference in the form of consideration offered, the terms of the offer are to be regarded as the same in relation to all the shares concerned if—
- (a) the law of a place outside Hong Kong precludes an offer of consideration in the form specified in the terms of the offer, or precludes it except after compliance by the repurchasing company with conditions with which the repurchasing company is unable to comply or that the repurchasing company regards as unduly onerous;
- (b) consideration in another form is offered to a person to whom an offer of consideration in the specified form is so precluded;
- (c) the person is able to receive consideration in that other form that is of substantially equivalent value; and
- (d) but for the difference in the form of consideration, the terms of the offer would be the same in relation to all the shares concerned.
- (6) Despite subsection (1), a general offer may include, among the shares to which it relates, shares that will be allotted after the date of the offer but before a date specified in the offer.
- 697. Non-communication etc. does not prevent offer from being general offer**
- (1) Even though an offer to buy back shares is not communicated to a holder of shares, that does not prevent the offer from being a general offer for the purposes of this Division if—
- (a) no Hong Kong address for the holder is registered in the repurchasing company's register of members;

- (b) the offer was not communicated to the holder in order not to contravene the law of a place outside Hong Kong; and
- (c) either—
 - (i) the offer is published in the Gazette; or
 - (ii) the offer can be inspected, or a copy of it obtained, at a place in Hong Kong or on a website, and a notice is published in the Gazette specifying the address of that place or website.
- (2) It is not to be inferred from subsection (1) that an offer that is not communicated to a holder of shares cannot be a general offer for the purposes of this Division unless the conditions specified in paragraphs (a), (b) and (c) of that subsection are satisfied.
- (3) Even though it is impossible or more difficult for a person, by reason of the law of a place outside Hong Kong, to accept an offer to buy back shares, that does not prevent the offer from being a general offer for the purposes of this Division.
- (4) It is not to be inferred from subsection (3) that an offer that is impossible, or more difficult, for certain persons to accept cannot be a general offer for the purposes of this Division unless the reason for the impossibility or difficulty is the one mentioned in that subsection.

698. Shares to which general offer relates

- (1) For the purposes of this Division, if, after a general offer is made but before the end of the offer period, the repurchasing company buys back, or contracts unconditionally to buy back, any of the shares to which the offer relates but does not do so by virtue of acceptances of the offer, those shares are not to be regarded as shares to which the offer relates. This subsection has effect subject to subsection (2).
- (2) For the purposes of this Division, those shares are to be regarded as shares to which the general offer relates, and the

- repurchasing company is to be regarded as having bought them back or contracted to buy them back by virtue of acceptances of that offer, if—
- (a) the value of the consideration for which the shares are bought back, or contracted to be bought back, at the time of the buy-back or contract, does not exceed the value of the consideration specified in the terms of that offer; or
 - (b) those terms are subsequently revised so that when the revision is announced, the value of the consideration for which the shares are bought back, or contracted to be bought back, at the time of the buy-back or contract, no longer exceeds the value of the consideration specified in those terms.
- (3) For the purposes of this Division, shares that an associate of the repurchasing company, or a nominee on the repurchasing company's behalf, holds, or has contracted, unconditionally or subject to conditions being satisfied, to buy back, whether at the date of the general offer or subsequently, are not to be regarded as shares to which that offer relates, even if that offer extends to those shares. This subsection has effect subject to subsection (4).
 - (4) For the purposes of this Division, where, after a general offer is made but before the end of the offer period, an associate of the repurchasing company, or a nominee on the repurchasing company's behalf, buys back, or contracts unconditionally to buy back, any of the shares to which the offer relates, the shares are to be regarded as shares to which the offer relates if—
 - (a) the value of the consideration for which the shares are bought back, or contracted to be bought back, at the time of the buy-back or contract, does not exceed the value of the consideration specified in the terms of the offer; or
 - (b) those terms are subsequently revised so that when the revision is announced, the value of the consideration for

which the shares are bought back, or contracted to be bought back, at the time of the buy-back or contract, no longer exceeds the value of the consideration specified in those terms.

- (5) For the purposes of this Division, the shares held by a non-tendering member are not to be regarded as shares to which the general offer relates, even if that offer extends to those shares.

699. Revised offer not to be regarded as fresh offer

For the purposes of this Division, a revision of the terms of an offer to buy back shares is not to be regarded as the making of a fresh offer if—

- (a) the terms of the offer make provision for—
- (i) their revision; and
 - (ii) acceptances on the previous terms to be treated as acceptances on the revised terms; and
- (b) the revision is made in accordance with that provision.

700. Member may give notice that member will not tender shares for buy-back under general offer

- (1) A member of a repurchasing company may, on or before the date on which notice of an authorizing meeting of the company is given, give notice to every other member of the company that the member will not tender any shares held by the member to be bought back by the company under the general offer.
- (2) A non-tendering member is not entitled to tender any shares held by the member to be bought back by the repurchasing company under the general offer even if that offer extends to those shares.
- (3) In this section—

authorizing meeting (授權會議), in relation to a repurchasing company, means a meeting of the company called for the purpose of authorizing a general offer that the company intends to make.

Subdivision 2

“Squeeze-out”

701. Repurchasing company may give notice to buy out minority shareholders

- (1) This section applies if a member or members of the repurchasing company has or have given notice under section 700 that the member or members will not tender any shares to be bought back by that company under a general offer.
- (2) If, in the case of a general offer that does not relate to shares of different classes, the repurchasing company has, by virtue of acceptances of the offer, bought back, or contracted unconditionally to buy back, at least 90% in number of the shares to which the offer relates, the repurchasing company may give notice to the holder of any other shares to which the offer relates that it desires to buy back those shares.
- (3) If, in the case of a general offer that relates to shares of different classes, the repurchasing company has, by virtue of acceptances of the offer, bought back, or contracted unconditionally to buy back, at least 90% in number of the shares of any class to which the offer relates, the repurchasing company may give notice to the holder of any other shares of that class to which the offer relates that it desires to buy back those shares.
- (4) If, in the case of a general offer that does not relate to shares of different classes, the repurchasing company has, by virtue of acceptances of the offer, bought back, or contracted unconditionally to buy back, less than 90% in number of the shares to which the offer relates, the repurchasing company

- may apply to the Court for an order authorizing it to give notice to the holder of any other shares to which the offer relates that it desires to buy back those shares.
- (5) If, in the case of a general offer that relates to shares of different classes, the repurchasing company has, by virtue of acceptances of the offer, bought back, or contracted unconditionally to buy back, less than 90% in number of the shares of any class to which the offer relates, the repurchasing company may apply to the Court for an order authorizing it to give notice to the holder of any other shares of that class to which the offer relates that it desires to buy back those shares.
 - (6) The Court may, on application under subsection (4) or (5), make the order if it is satisfied that—
 - (a) after reasonable enquiry, the repurchasing company has been unable to trace one or more of the persons holding shares to which the general offer relates;
 - (b) had the person, or all those persons, accepted the general offer, the repurchasing company would have, by virtue of acceptances of that offer, bought back, or contracted unconditionally to buy back, at least 90% in number of the shares, or the shares of any class, to which that offer relates; and
 - (c) the consideration offered is fair and reasonable.
 - (7) The Court must not make the order unless it is satisfied that it is just and equitable to do so having regard to all the circumstances and, in particular, to the number of holders of shares who have been traced but who have not accepted the general offer.
 - (8) If the Court makes an order authorizing the repurchasing company to give notice to the holder of any shares, the repurchasing company may give notice to that holder.

702. Notice to minority shareholders

- (1) A notice to a holder of shares under section 701—

- (a) must be given in the specified form; and
- (b) must be given to the holder before whichever is the earlier of the following—
 - (i) the end of the period of 3 months beginning on the day after the end of the offer period of the general offer;
 - (ii) the end of the period of 6 months beginning on the date of the general offer.
- (2) The notice must be given to the holder of shares—
 - (a) by delivering it personally to that holder in Hong Kong;
 - (b) by sending it by registered post to that holder to—
 - (i) an address of that holder in Hong Kong registered in the books of the company; or
 - (ii) if there is no such address, an address in Hong Kong supplied by that holder to the company for the giving of notice to that holder; or
 - (c) in the manner directed by the Registrar on an application made under subsection (3).
- (3) An offeror may apply to the Registrar for directions regarding the manner in which the notice is to be given to a holder of shares if—
 - (a) there is no address of the holder in Hong Kong registered in the books of the company; and
 - (b) the holder has not supplied to the company an address in Hong Kong for the giving of notice to the holder.
- (4) If the general offer gives the holder of shares a choice of consideration, the notice—
 - (a) must give particulars of the choices;
 - (b) must state that the holder may, within 2 months after the date of the notice, indicate the holder's choice by a letter

sent to the repurchasing company at an address specified in the notice; and

- (c) must state which consideration specified in the offer will apply if the holder does not indicate a choice.
- (5) Subsection (4) applies whether or not any time limit or other conditions applicable to the choices under the terms of the general offer can still be complied with.

703. Repurchasing company's right to buy out minority shareholders

- (1) This section applies if a notice is given under section 701 to the holder of any shares.
- (2) Unless the Court makes an order under subsection (3), the repurchasing company is entitled and bound to buy back the shares on the terms of the general offer.
- (3) The Court may, on application by the holder made within 2 months after the date on which the notice was given, order that—
- (a) the repurchasing company is not entitled and bound to buy back the shares; or
- (b) the repurchasing company is entitled and bound to buy back the shares on the terms specified in the order.
- (4) For the purposes of subsection (2)—
- (a) if the general offer falls within section 702(4), the terms of the general offer are to be regarded as including the particulars and statements included in the notice for the purposes of that section; and
- (b) if—
- (i) the consideration offered to, or chosen by, the holder of the shares is not cash, and the repurchasing company is no longer able to provide it; or

- (ii) the consideration offered to, or chosen by, the holder of the shares was to have been provided by a third party who is no longer bound or able to provide it,

the consideration is to be regarded as consisting of an amount of cash, payable by the repurchasing company, that, at the date of the notice, is equivalent to the consideration offered or chosen.

704. Obligations of repurchasing company with right to buy out minority shareholders

- (1) If, by virtue of section 703(2), a repurchasing company is entitled and bound to buy back any shares in the company, the company must comply with section 705 within 2 months after the date of the notice.
- (2) If an application for the purposes of section 703(3) is pending at the end of those 2 months, the repurchasing company must comply with section 705 as soon as practicable after the application has been disposed of.

705. Repurchasing company must pay for shares to which notice relates

- (1) The repurchasing company must pay the consideration for any shares to which the notice under section 701 relates to the holder of the shares if that holder produces to the repurchasing company—
- (a) the share certificate or other evidence of title to the shares; or
- (b) an indemnity to the repurchasing company's satisfaction.
- (2) The repurchasing company must cancel any other shares to which the notice under section 701 relates and deposit the consideration for those shares into a separate interest-bearing bank account.

- (3) The repurchasing company must hold any consideration deposited into a bank account under subsection (2) on trust for the person who, before the company bought back the shares, was entitled to them.
- (4) The repurchasing company must not pay out or deliver the consideration to any person claiming to be entitled to it unless the person produces to the repurchasing company—
 - (a) the share certificate or other evidence of title to the shares; or
 - (b) an indemnity to the repurchasing company's satisfaction.

706. Provisions supplementary to section 705

- (1) This section applies if—
 - (a) the person entitled to the consideration held on trust under section 705(3) cannot be found;
 - (b) the repurchasing company has made reasonable enquiries at reasonable intervals to find that person; and
 - (c) 12 years have elapsed since the consideration was received, or the repurchasing company is wound up.
- (2) The repurchasing company, or if the repurchasing company is wound up, the liquidator or provisional liquidator, must sell—
 - (a) any consideration other than cash; and
 - (b) any benefit other than cash that has accrued from the consideration.
- (3) The repurchasing company, or if the repurchasing company is wound up, the liquidator or provisional liquidator, must pay into court a sum representing—
 - (a) the consideration so far as it is cash;
 - (b) the proceeds of any sale under subsection (2); and
 - (c) any interest, dividend or other benefit that has accrued from the consideration.

- (4) The trust terminates on the payment being made under subsection (3).
- (5) The expenses of the following may be paid out of the consideration held on trust—
 - (a) the enquiries mentioned in subsection (1)(b);
 - (b) the sale mentioned in subsection (2);
 - (c) the proceedings relating to the payment into court mentioned in subsection (3).

Subdivision 3**“Sell-out”****707. Repurchasing company may be required to buy out minority**

- (1) This section applies if a member or members of the repurchasing company has or have given notice under section 700 that the member or members will not tender any shares to be bought back by that company under a general offer.
- (2) If, in the case of a general offer that does not relate to shares of different classes—
 - (a) the repurchasing company has, by virtue of acceptances of the offer, bought back, or contracted unconditionally to buy back, some but not all of the shares to which the offer relates; and
 - (b) at any time before the end of the offer period, the shares in the repurchasing company controlled by that company, with or without the shares in the repurchasing company held by the non-tendering member, represent at least 90% in number of the shares in the repurchasing company,

the holder of any shares to which the offer relates who has not accepted the offer before the end of that period may, by a

letter addressed to the repurchasing company, require that company to buy back those shares.

- (3) If, in the case of a general offer that relates to shares of different classes—
- (a) the repurchasing company has, by virtue of acceptances of the offer, bought back, or contracted unconditionally to buy back, some but not all of the shares of any class to which the offer relates; and
 - (b) at any time before the end of the offer period, the shares of that class controlled by the repurchasing company, with or without the shares of that class held by the non-tendering member, represent at least 90% in number of the shares of that class,
- the holder of any shares of that class to which the offer relates who has not accepted the offer before the end of that period may, by a letter addressed to the repurchasing company, require that company to buy back those shares.
- (4) Rights given to the holder of any shares by this section to require a repurchasing company to buy back the shares are only exercisable within 3 months after whichever is the later of the following—
- (a) the end of the offer period;
 - (b) the date of the notice given to the holder under section 708.
- (5) If the general offer gives the holder of shares a choice of consideration, that holder may indicate the holder's choice in the letter requiring the repurchasing company to buy back the shares.
- (6) In this section, a reference to shares controlled by a repurchasing company is a reference to—
- (a) shares that are held by an associate of the repurchasing company or by a nominee on the repurchasing company's behalf;

- (b) shares that the repurchasing company has, by virtue of acceptances of the general offer, acquired or contracted unconditionally to acquire; or
- (c) other shares that the repurchasing company, an associate of the repurchasing company, or a nominee on the repurchasing company's behalf, has acquired, or has contracted, unconditionally or subject to conditions being satisfied, to acquire.

708. Repurchasing company must notify minority shareholders of right to be bought out

- (1) If the holder of any shares is entitled under section 707 to require a repurchasing company to buy back the shares, the repurchasing company must give notice to the holder of—
 - (a) the holder's rights under that section; and
 - (b) the period within which those rights are exercisable.
- (2) Subsection (1) does not apply if the repurchasing company has given the holder a notice under section 701 that it desires to buy back the shares.
- (3) A repurchasing company that contravenes subsection (1) commits an offence and is liable to a fine at level 5.

709. Notice to minority shareholders

- (1) A notice to a holder of shares under section 708—
 - (a) must be given in the specified form; and
 - (b) must be given to the holder within one month after the first day on which the holder of the shares is entitled under section 707 to require the repurchasing company to buy back those shares.
- (2) If the notice is given before the end of the offer period of the general offer, it must state that the offer is still open for acceptance.
- (3) The notice must be given to the holder of shares—

- (a) by delivering it personally to that holder in Hong Kong;
 - (b) by sending it by registered post to that holder to—
 - (i) an address of that holder in Hong Kong registered in the books of the company; or
 - (ii) if there is no such address, an address in Hong Kong supplied by that holder to the company for the giving of notice to that holder; or
 - (c) in the manner directed by the Registrar on an application made under subsection (4).
- (4) A repurchasing company may apply to the Registrar for directions regarding the manner in which the notice is to be given to a holder of shares if—
- (a) there is no address of the holder in Hong Kong registered in the books of the company; and
 - (b) the holder has not supplied to the company an address in Hong Kong for the giving of notice to the holder.
- (5) If the general offer gives the holder of shares a choice of consideration, the notice—
- (a) must give particulars of the choices;
 - (b) must state that the holder may indicate the holder's choice in the letter requiring the repurchasing company to buy back any shares under section 707; and
 - (c) must state which consideration specified in the offer will apply if the holder does not indicate a choice.
- (6) Subsection (5) applies whether or not any time limit or other conditions applicable to the choices under the terms of the general offer can still be complied with.
- (7) If subsection (1), (2), (3) or (5) is contravened, the repurchasing company commits an offence and is liable to a fine at level 4.

710. Minority shareholders' right to be bought out by repurchasing company

- (1) This section applies if the holder of any shares requires the repurchasing company to buy back the shares under section 707.
- (2) Unless the Court makes an order under subsection (3), the repurchasing company is entitled and bound to buy back the shares on the terms of the general offer or on other terms as agreed between that holder and the repurchasing company.
- (3) The Court may, on application by the holder or repurchasing company, order that the repurchasing company is entitled and bound to buy back the shares on the terms specified in the order.
- (4) For the purposes of subsection (2)—
 - (a) if the general offer falls within section 709(5), the terms of the general offer are to be regarded as including the particulars and statements included in the notice for the purposes of that section; and
 - (b) if—
 - (i) the consideration offered to, or chosen by, the holder of the shares is not cash, and the repurchasing company is no longer able to provide it; or
 - (ii) the consideration offered to, or chosen by, the holder of the shares was to have been provided by a third party who is no longer bound or able to provide it,
 the consideration is to be regarded as consisting of an amount of cash, payable by the repurchasing company, that, at the date when that holder requires the repurchasing company to buy back the shares under section 707, is equivalent to the consideration offered or chosen.

Note—

Further provisions on share acquisition after a general offer for share buy-back are contained in Division 4 of Part 5.

Part 14**Remedies for Protection of Companies' or Members' Interests****Division 1****Preliminary****711. Interpretation**

- (1) In this Part—
company (公司) includes a non-Hong Kong company.
- (2) In this Part, a reference to a company's articles, in the case of a company not having articles, is to be read as the instrument constituting or defining the constitution of the company.

Division 2**Remedies for Unfair Prejudice to Members' Interests****712. Interpretation**

- (1) In this Division, a reference to a member of a company includes—
- (a) the personal representative of a person who, immediately before the person's death, was a member of the company; and
 - (b) a trustee of, or a person beneficially interested in, the shares of the company by virtue of the will or intestacy of another person who, immediately before that other person's death, was a member of the company.

- (2) In this Division, a reference to a past member of a company includes the personal representative of a person who, immediately before the person's death, was a past member of the company.
- (3) For the purposes of this Division, a person is not a past member of a company unless—
 - (a) the person was, but is no longer, a member of the company; and
 - (b) the person ceased to be such a member on or after 15 July 2005.

713. When Court may order remedies

- (1) The Court may exercise the power under section 714(1)(a) and (2) if, on a petition by a member of a company, it considers that—
 - (a) the company's affairs are being or have been conducted in a manner unfairly prejudicial to the interests of the members generally or of one or more members (including the member); or
 - (b) an actual or proposed act or omission of the company (including one done or made on behalf of the company) is or would be so prejudicial.
- (2) The Court may exercise the power under section 714(1)(b) and (2) if, on a petition by the Financial Secretary under section 867(3), it considers that—
 - (a) a company's affairs are being or have been conducted in a manner unfairly prejudicial to the interests of the members generally or of one or more members; or
 - (b) an actual or proposed act or omission of a company (including one done or made on behalf of the company) is or would be so prejudicial.
- (3) The Court may exercise the power under section 714(4) if, on a petition by a past member of a company, it considers that at

the time when the past member was a member of the company—

- (a) the company's affairs were conducted in a manner unfairly prejudicial to the interests of the members at that time generally or of one or more members at that time (including the past member); or
- (b) an actual act or omission of the company (including one done or made on behalf of the company) was so prejudicial.

714. Remedies that Court may order

- (1) The Court may—
 - (a) for the purposes of section 713(1), make any order that it thinks fit for giving relief in respect of the matter mentioned in section 713(1)(a) or (b); and
 - (b) for the purposes of section 713(2), make any order that it thinks fit for giving relief in respect of the matter mentioned in section 713(2)(a) or (b).
- (2) Without limiting subsection (1), the Court—
 - (a) may make any or all of the following orders—
 - (i) an order—
 - (A) restraining the continuance of the conduct of the company's affairs in the manner mentioned in section 713(1)(a) or (2)(a);
 - (B) restraining the doing of the act mentioned in section 713(1)(b) or (2)(b); or
 - (C) requiring the doing of an act that, as mentioned in section 713(1)(b) or (2)(b), the company has omitted, or has proposed to omit, to do;

- (ii) an order that proceedings that the Court thinks fit be brought in the company's name against any person, and on any terms, that the Court so orders;
- (iii) an order appointing a receiver or manager of either or both of the following—
 - (A) the company's property, or any part of the property;
 - (B) the company's business, or any part of the business;
- (iv) any other order that the Court thinks fit, whether—
 - (A) for regulating the conduct of the company's affairs in future;
 - (B) for the purchase of the shares of any member of the company by another member of the company;
 - (C) for the purchase of the shares of any member of the company by the company and the reduction accordingly of the company's capital; or
 - (D) for any other purpose; and
- (b) may order the company or any other person to pay any damages, and any interest on those damages, that the Court thinks fit to a member of the company whose interests have been unfairly prejudiced by the conduct of the company's affairs or by the act or omission.
- (3) The Court may, on making an order under subsection (2)(a)(iii), specify the powers and duties of, and fix the remuneration of, the receiver or manager.
- (4) For the purposes of section 713(3), the Court may order the company or any other person to pay any damages, and any interest on those damages, that the Court thinks fit to a member of the company at the material time whose interests

were unfairly prejudiced by the conduct of the company's affairs or by the act or omission.

- (5) To avoid doubt, a member, past or present, of a company is not entitled to recover, by way of damages under subsection (2)(b) or (4), any loss that solely reflects the loss suffered by the company that only the company is entitled to recover under the common law.
- (6) In this section—
material time (關鍵時間) means the time when the past member was a member of the company.

715. Alteration of articles by order of Court

- (1) This section applies if a company's articles are altered by an order under section 714.
- (2) The alteration has the same effect, and this Ordinance applies to the articles, as if the alteration were made by a resolution of the company.
- (3) Despite anything in this Ordinance, the company has no power, without the leave of the Court, to alter the articles in a way that is inconsistent with the order.
- (4) Within 14 days after the order is made, the company must deliver an office copy of the order to the Registrar for registration.
- (5) If a company contravenes subsection (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

716. Chief Justice may make rules

- (1) Subject to the approval of the Legislative Council, the Chief Justice may make rules—
 - (a) for regulating proceedings under this Division; and

- (b) for prescribing fees payable in respect of such proceedings.
- (2) If the rules empower a person to put a question to another person, they may also provide that that other person's reply to the question may be used in evidence against that other person.
- (3) The rules may empower the Court—
 - (a) to fix any fee payable in respect of such proceedings that is not prescribed by the rules; and
 - (b) to vary the fee so fixed.
- (4) The rules may provide that a fee payable to a person in respect of such proceedings is recoverable as a debt due to the person.
- (5) A fee may be prescribed by the rules, or fixed or varied by the Court under the rules, by reference to a scale of fees and percentages.
- (6) A fee may be so prescribed, fixed or varied without reference to the amount of administrative or other costs incurred or likely to be incurred in relation to such proceedings.
- (7) A fee so prescribed, fixed or varied is not invalid by reason only of the amount of the fee.

Division 3

Remedies for Others' Conduct in relation to Companies etc.

717. Application of section 718

- (1) Section 718 applies if, in relation to a company—
 - (a) a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute—
 - (i) a contravention of this Ordinance;

- (ii) a default relating to a contravention of this Ordinance; or
- (iii) a breach specified in subsection (4); or
- (b) a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required by this Ordinance to do.
- (2) Section 718 also applies if, in relation to a company—
 - (a) a person had engaged, was engaging or was proposing to engage, before the commencement date of this section, in—
 - (i) conduct that constituted or would constitute a contravention of the predecessor Ordinance and that would also constitute a contravention of this Ordinance;
 - (ii) conduct that constituted or would constitute a default relating to a contravention of the predecessor Ordinance and that would also constitute the same default relating to a contravention of this Ordinance; or
 - (iii) conduct that constituted or would constitute a breach specified in subsection (4); and
 - (b) the engagement or proposal still subsists.
- (3) Section 718 also applies if, in relation to a company—
 - (a) a person had refused or failed, was refusing or failing, or was proposing to refuse or fail, before the commencement date of this section, to do an act or thing that the person was required by the predecessor Ordinance to do;
 - (b) the person is also required by this Ordinance to do the act or thing; and
 - (c) the refusal, failure or proposal still subsists.

- (4) The breach specified for the purposes of subsection (1)(a)(iii) or (2)(a)(iii) is—
- (a) a breach of the person's fiduciary duties owed to the company in any capacity other than as a director of the company;
 - (b) a breach of the person's fiduciary or other duties as a director of the company owed to the company; or
 - (c) a breach of the company's articles.
- (5) In this section, a reference to a default relating to a contravention of this Ordinance or the predecessor Ordinance is a reference to—
- (a) an attempt to contravene the Ordinance;
 - (b) aiding, abetting, counselling or procuring another person to contravene the Ordinance;
 - (c) inducing or attempting to induce, whether by threats, promises or otherwise, another person to contravene the Ordinance;
 - (d) being in any way, directly or indirectly, knowingly concerned in, or a party to, a contravention of the Ordinance by another person; or
 - (e) conspiring with others to contravene the Ordinance.

718. Court may order remedies

- (1) The Court may, on application by a member or creditor of the company whose interests have been, are or would be affected by the conduct or by the refusal or failure, do any or all of the following—
- (a) grant an injunction, on the terms that the Court thinks fit—
 - (i) in the case of section 717(1)(a) or (2), restraining the person from engaging in the conduct or requiring the person to do any act or thing; or

- (ii) in the case of section 717(1)(b) or (3), requiring the person to do any act or thing;
 - (b) order the person to pay damages to any other person;
 - (c) declare any contract to be void or voidable to the extent specified in the order.
- (2) The Court may, on application by the Financial Secretary under section 867(4) or (5), do any or all of the following—
- (a) grant an injunction, on the terms that the Court thinks fit—
 - (i) in the case of section 717(1)(a) or (2), restraining the person from engaging in the conduct or requiring the person to do any act or thing; or
 - (ii) in the case of section 717(1)(b) or (3), requiring the person to do any act or thing;
 - (b) order the person to pay damages to any other person;
 - (c) declare any contract to be void or voidable to the extent specified in the order.
- (3) The Court may grant an injunction under subsection (1)(a)(i) or (2)(a)(i) restraining a person from engaging in a conduct—
- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in the conduct;
 - (b) whether or not the person has previously engaged in the conduct; and
 - (c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in the conduct.
- (4) The Court may grant an injunction under subsection (1)(a) or (2)(a) requiring a person to do an act or thing—
- (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do the act or thing;

- (b) whether or not the person has previously refused or failed to do the act or thing; and
 - (c) whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do the act or thing.
- (5) To avoid doubt, a person is not entitled to recover, by way of damages under subsection (1)(b) or (2)(b), any loss that solely reflects the loss suffered by the company that only the company is entitled to recover under the common law.

719. Provisions supplementary to section 718

- (1) The Court may grant an interim injunction or interim damages, or both, on the terms and conditions that it thinks fit pending the determination of an application under section 718(1) or (2).
- (2) The Court may discharge or vary an injunction granted under subsection (1) or section 718(1) or (2).

Division 4

Derivative Action for Remedies for Misconduct against Companies etc.

720. Interpretation

In this Division—

misconduct (不當行為) means fraud, negligence, breach of duty, or default in compliance with any Ordinance or rule of law;

proceedings (法律程序) means any proceedings (other than criminal proceedings) within the jurisdiction of any court.

721. Member of company or of associated company may bring or intervene in proceedings

- (1) If misconduct is committed against a company, a member of the company or of an associated company of the company may, with the leave of the Court granted under section 722, bring proceedings in respect of the misconduct before the Court on behalf of the company.
- (2) If, because of misconduct committed against the company, a company fails to bring proceedings in respect of any matter, a member of the company or of an associated company of the company may, with the leave of the Court granted under section 722, bring proceedings in respect of the matter before the court on behalf of the company.
- (3) If, because of misconduct committed against the company, a company fails to diligently continue, discontinue or defend proceedings, a member of the company or of an associated company of the company may, with the leave of the Court granted under section 722, intervene in the proceedings before the court for the purpose of continuing, discontinuing or defending those proceedings on behalf of the company.
- (4) The cause of action in relation to the proceedings under subsection (1) or (2) is vested in the company. Any of those proceedings must be brought in the name of, and the relief (if any) must be sought on behalf of, the company.
- (5) The right to continue, discontinue or defend any proceedings intervened in under subsection (3) is vested in, and the relief (if any) must be sought on behalf of, the company.
- (6) Subject to section 725, this Division does not affect any common law right of a member of a company, or a member of an associated company of a company, to bring proceedings on behalf of the company, or intervene in any proceedings to which the company is a party.
- (7) This section does not prevent a member of a company, or of an associated company of a company, from bringing

proceedings in respect of the company, or intervening in any proceedings to which the company is a party, on the member's own behalf in respect of any personal right.

722. Leave of Court to bring or intervene in proceedings

- (1) On application by a member of a company or of an associated company of a company, the Court may grant leave for the purposes of section 721(1), (2) or (3) if it is satisfied that—
 - (a) on the face of the application, it appears to be in the company's interests that leave be granted to the member;
 - (b) in the case of—
 - (i) an application for leave to bring proceedings under section 721(1) or (2), there is a serious question to be tried and the company has not itself brought the proceedings; or
 - (ii) an application for leave to intervene in proceedings under section 721(3), the company has not diligently continued, discontinued or defended the proceedings; and
 - (c) except where leave is granted by the Court under subsection (5), the member has served a written notice on the company in accordance with subsection (3), and the notice complies with subsection (4).
- (2) The Court may refuse to grant leave if it is satisfied that—
 - (a) in the case of an application for leave to bring proceedings under section 721(1) or (2), the member has, in the exercise of any common law right, brought proceedings on behalf of the company in respect of the same cause or matter; or
 - (b) in the case of an application for leave to intervene in proceedings under section 721(3), the member has, in the exercise of any common law right, intervened in the proceedings in question to which the company is a party.

- (3) The written notice must be served on the company, at least 14 days before the member applies for leave in respect of the company—
 - (a) in the case of a company as defined by section 2(1), by leaving the notice at, or by sending the notice by post to, its registered office; or
 - (b) in the case of a non-Hong Kong company, in a manner that the notice is sufficiently served on the company by virtue of section 791.
- (4) The written notice must state—
 - (a) the member's intention to apply for leave for the purposes of section 721(1), (2) or (3) in respect of the company; and
 - (b) the reasons for that intention.
- (5) The Court may grant leave to dispense with the service of a written notice for the purposes of subsection (1)(c).

723. Approval or ratification of conduct does not bar derivative action

- (1) If a company's members approve or ratify any conduct, the approval or ratification—
 - (a) does not prevent a member of the company, or of an associated company of the company, from—
 - (i) bringing proceedings under section 721(1) or (2);
 - (ii) intervening in proceedings under section 721(3); or
 - (iii) applying for leave for the purposes of section 721(1), (2) or (3);
 - (b) is not a ground for the Court to refuse to grant leave for the purposes of section 721(1), (2) or (3); and
 - (c) is not a ground for any court to determine the proceedings brought or intervened in by the member in favour of the defendant.

- (2) Despite subsection (1), the court may, after having regard to the matters specified in subsection (3), take the approval or ratification into account in deciding what judgment or order to make in respect of—
- (a) any proceedings brought or intervened in under section 721(1), (2) or (3); or
 - (b) an application for leave for the purposes of section 721(1), (2) or (3).
- (3) The matters are—
- (a) whether the members were acting for proper purposes, having regard to the company's interests, when they approved or ratified the conduct;
 - (b) to what extent those members were connected with the conduct, when they approved or ratified the conduct; and
 - (c) how well-informed about the conduct those members were, when they decided whether or not to approve or ratify the conduct.

724. No discontinuance or settlement of proceedings without leave of Court

If proceedings are brought or intervened in under section 721(1), (2) or (3), the proceedings may only be discontinued or settled with the leave of the Court.

725. Court may dismiss derivative proceedings brought by member under common law etc.

- (1) This section applies if—
- (a) after the Court grants leave to a member of a company, or of an associated company of a company, for the purposes of section 721(1) or (2), the member, in the exercise of any common law right, brings proceedings on behalf of the company in respect of the same cause or matter; or

- (b) after the Court grants leave to a member of a company, or of an associated company of a company, for the purposes of section 721(3), the member, in the exercise of any common law right, intervenes in the proceedings in question to which the company is a party.
- (2) The Court may—
- (a) order to be amended any pleading or the indorsement of any writ in the proceedings brought under the common law, or in the intervention under the common law;
 - (b) order to be struck out such pleading or that indorsement, or anything in such pleading or that indorsement; and
 - (c) order the proceedings brought under the common law, or the intervention under the common law, to be stayed or dismissed or judgment to be entered accordingly.
- (3) This section is in addition to, and does not derogate from, any power of the Court given by the law.

726. Court's general powers to order and direct

- (1) The Court may make any order, and give any direction, that it thinks fit in respect of—
- (a) any proceedings brought or intervened in under section 721(1), (2) or (3);
 - (b) an application for leave for the purposes of section 721(1), (2) or (3);
 - (c) a refusal to grant such leave; or
 - (d) an order under section 725(2).
- (2) Without limiting subsection (1), the Court may do any or all of the following under paragraph (a) or (b) of that subsection—
- (a) make an interim order pending the determination of the proceedings or application;

- (b) give directions concerning the conduct of the proceedings or application;
 - (c) make an order directing the company, or an officer of the company—
 - (i) to provide, or not to provide, any information or assistance that the Court thinks fit for the purpose of the proceedings or application; or
 - (ii) to do, or not to do, any other act;
 - (d) make an order appointing an independent person to investigate and report to the Court on—
 - (i) the company's financial position;
 - (ii) the facts or circumstances that gave rise to the proceedings or application; or
 - (iii) the costs incurred by the parties to the proceedings or application, and by the member who brought or intervened in the proceedings or who made the application.
- (3) If the Court appoints an independent person under subsection (2)(d), it may—
- (a) order any or all of the following persons to be liable for any expenses arising out of the investigation—
 - (i) the company;
 - (ii) the parties to the proceedings or application;
 - (iii) the member who brought or intervened in the proceedings or who made the application;
 - (b) review, vary or revoke an order made under paragraph (a); and
 - (c) make any other order that it thinks fit for the purposes of that subsection.
- (4) The Court may, in relation to one or more persons who are liable for any expenses under an order made or varied under

subsection (3), determine the nature and extent of the liability of the person or each of the persons.

727. Court may order costs

- (1) The Court may make any order that it thinks fit about the costs—
 - (a) incurred or to be incurred in relation to—
 - (i) any proceedings brought or intervened in, or to be brought or intervened in, under section 721(1), (2) or (3); or
 - (ii) an application for leave for the purposes of section 721(1), (2) or (3); and
 - (b) incurred or to be incurred by the member, the company, or any other parties to the proceedings or application.
- (2) An order may require the company to indemnify, out of its assets, the member against the costs incurred or to be incurred by that member in bringing or intervening in the proceedings or in making the application.
- (3) The Court may only make an order about costs (including the requirement as to indemnification) under this section in favour of the member if it is satisfied that the member was acting in good faith in, and had reasonable grounds for, bringing or intervening in the proceedings or making the application.

Division 5

Members' Inspection of Company's Records

728. Interpretation

In this Division—

record (紀錄) includes books and paper.

729. Court may order inspection of records

- (1) On application by a required number of a company's members, the Court may make an order—
 - (a) authorizing a person who is the applicant or one of the applicants to inspect any records of the company; or
 - (b) authorizing a person who is not the applicant or one of the applicants to inspect any records of the company on behalf of the applicant or applicants.
- (2) The Court may make an order authorizing a person to inspect records if it is satisfied that—
 - (a) the application is made in good faith; and
 - (b) the inspection is for a proper purpose.
- (3) If the Court makes an order authorizing a person to inspect records, the person may, unless the Court otherwise orders, make copies of the records.
- (4) If the Court makes an order authorizing a person to inspect records, it may make any other order that it thinks fit, including—
 - (a) an order requiring the company, or an officer of the company, to produce any records to the person;
 - (b) an order specifying the records that may be inspected by the person;
 - (c) an order requiring the applicant to pay the expenses reasonably incurred by the company in the inspection; and
 - (d) an order permitting the person to disclose any information or document obtained as a result of the inspection to any other person specified in the order.
- (5) A person who complies with an order made under subsection (1) or (4) does not incur any civil liability by reason only of the compliance.

- (6) In this section, a reference to a required number of a company's members is a reference to—
 - (a) the number of members that represents at least 2.5% of the voting rights of all the members having a right to vote at the company's general meetings at the date of application;
 - (b) the number of members that holds shares in the company on which there has been paid up an aggregate sum of at least \$100,000; or
 - (c) at least 5 members of the company.

730. Preservation of secrecy

- (1) If, on application by one or more members of a company, the Court makes an order under section 729(1) authorizing a person to inspect records, the person must not, without the company's prior consent in writing, disclose any information or document obtained as a result of the inspection to another person who is not an applicant.
- (2) Despite subsection (1), the person may disclose such information or document to another person if the disclosure is—
 - (a) required with a view to the institution of, or otherwise for the purpose of, any criminal proceedings;
 - (b) permitted in accordance with an order made under section 729(1) or (4); or
 - (c) permitted in accordance with law or a requirement made under law.
- (3) If the Court makes an order under section 729(1) authorizing a person to inspect records, the person must not, unless the Court otherwise orders, use any information or document obtained as a result of the inspection for any purpose other than the purpose for which the inspection is applied for.

- (4) A person who contravenes subsection (1) or (3) commits an offence and is liable—
- (a) on conviction on indictment to a fine of \$150,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

731. Legal professional privilege

Section 729, or an order made under it, does not authorize a person to inspect any records containing information that is subject to legal professional privilege.

Part 15**Dissolution by Striking off or Deregistration****Division 1****Striking off****Subdivision 1****Registrar's Power to Strike off Name of Company not in Operation or Carrying on Business****732. Registrar may send inquiry letter to company**

- (1) If the Registrar has reasonable cause to believe that a company is not in operation or carrying on business, the Registrar may send to the company by post a letter inquiring whether the company is in operation or carrying on business.
- (2) A letter must be addressed—
 - (a) to the company at its registered office;
 - (b) if notice of the company's registered office has not been given to the Registrar, to the care of an officer of the company; or
 - (c) if there is no officer of the company whose name and address are known to the Registrar, to each founder member whose name and address are known to the Registrar.
- (3) If the Registrar is of the opinion that the address of the company's registered office cannot be ascertained or that a letter under subsection (1) is unlikely to be received by the company, the Registrar may, instead of sending a letter under that subsection, publish in the Gazette a notice that, unless

cause is shown to the contrary, the company's name will be struck off the Companies Register, and the company dissolved, at the end of 3 months after the date of the notice.

733. Registrar must follow up under certain circumstances

- (1) This section applies if, within one month after sending a letter under section 732(1)—
 - (a) the Registrar does not receive a reply to the letter; or
 - (b) the Registrar receives a reply to the letter to the effect that the company is not in operation or carrying on business.
- (2) The Registrar must, within 30 days after the end of that one month—
 - (a) subject to subsection (4), send to the company by registered post another letter—
 - (i) referring to the letter sent under section 732(1); and
 - (ii) stating that—
 - (A) no reply to it has been received; or
 - (B) the Registrar has received a reply to it to the effect that the company is not in operation or carrying on business; and
 - (b) publish in the Gazette a notice that, unless cause is shown to the contrary, the company's name will be struck off the Companies Register, and the company dissolved, at the end of 3 months after the date of the notice.
- (3) A letter must be addressed—
 - (a) to the company at its registered office;
 - (b) if notice of the company's registered office has not been given to the Registrar, to the care of an officer of the company; or

- (c) if there is no officer of the company whose name and address are known to the Registrar, to each founder member whose name and address are known to the Registrar.
- (4) The Registrar is not required to send a letter to the company under subsection (2)(a) if the Registrar is of the opinion that the address of the company's registered office cannot be ascertained or that the letter is unlikely to be received by the company.

734. Registrar may strike off company's name

- (1) After publishing a notice under section 732(3) or 733(2)(b), the Registrar may, unless cause is shown to the contrary, strike the company's name off the Companies Register at the end of 3 months after the date of the notice.
- (2) The Registrar must publish in the Gazette a notice indicating that the company's name has been struck off the Companies Register.
- (3) On publication of the notice under subsection (2), the company is dissolved.

Subdivision 2

Striking off under Other Circumstances

735. Registrar's duty to act in case of company being wound up

- (1) Subsection (2) applies if—
 - (a) a company is being wound up;
 - (b) the Registrar has reasonable cause to believe that—
 - (i) no liquidator or provisional liquidator is acting; or
 - (ii) the company's affairs are fully wound up; and

- (c) the returns required to be made by the liquidator or provisional liquidator have not been made for 6 consecutive months.
- (2) Subject to subsection (5), the Registrar must publish in the Gazette, and send to the company or the liquidator or provisional liquidator (if any), a notice that, unless cause is shown to the contrary, the company's name will be struck off the Companies Register, and the company dissolved, at the end of 3 months after the date of the notice.
- (3) A notice to be sent to a company must be addressed—
- to the company at its registered office;
 - if notice of the company's registered office has not been given to the Registrar, to the care of an officer of the company; or
 - if there is no officer of the company whose name and address are known to the Registrar, to each founder member whose name and address are known to the Registrar.
- (4) A notice to be sent to a liquidator or provisional liquidator must be addressed to the liquidator or provisional liquidator at the addressee's last known address.
- (5) The Registrar is not required to send a notice to the company or the liquidator or provisional liquidator under subsection (2) if the Registrar is of the opinion that—
- the address of the company's registered office, or the name and address of the liquidator or provisional liquidator (as the case may be) cannot be ascertained; or
 - the notice is unlikely to be received by the company or the liquidator or provisional liquidator (as the case may be).
- (6) After publishing a notice under subsection (2), the Registrar may, unless cause is shown to the contrary, strike the

- company's name off the Companies Register at the end of 3 months after the date of the notice.
- (7) The Registrar must publish in the Gazette a notice indicating that the company's name has been struck off the Companies Register.
- (8) On publication of the notice under subsection (7), the company is dissolved.
- 736. Court may strike off name of company not appropriate to be wound up**
- If, on application by the Registrar, it appears to the Court that a company should be dissolved but, having regard to the company's assets or for other reasons, it would not be appropriate to wind up the company, the Court may order that the company's name be struck off the Companies Register and the company dissolved.
 - If an order is made, the company is dissolved on the date of the order.

Division 2

Deregistration

737. Interpretation

- In this Division—

company (公司) excludes—

 - a public company; and
 - a company specified in subsection (2).
- The company is—
 - an authorized institution as defined by section 2(1) of the Banking Ordinance (Cap. 155);

- (b) an insurer as defined by section 2(1) and (2) of the Insurance Companies Ordinance (Cap. 41);
 - (c) a corporation licensed under Part V of the Securities and Futures Ordinance (Cap. 571) to carry on a business in any regulated activity as defined by section 1 of Part I of Schedule 1 to that Ordinance;
 - (d) an associated entity, within the meaning of Part VI of the Securities and Futures Ordinance (Cap. 571), of a corporation mentioned in paragraph (c);
 - (e) an approved trustee as defined by section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);
 - (f) a company registered as a trust company under Part VIII of the Trustee Ordinance (Cap. 29);
 - (g) a company having a subsidiary that falls within paragraph (a), (b), (c), (d), (e) or (f); or
 - (h) a company that fell within paragraph (a), (b), (c), (d), (e), (f) or (g) at any time during the 5 years immediately before the application under section 738 is made.
- (3) The Financial Secretary may, by notice published in the Gazette, amend subsection (2).

738. Application for deregistration

- (1) A company, or a director or member of a company, may apply to the Registrar for deregistration of the company.
- (2) An application must not be made unless, at the time of the application—
 - (a) all the members agree to the deregistration;
 - (b) the company has not commenced operation or business, or has not been in operation or carried on business during the 3 months immediately before the application;
 - (c) the company has no outstanding liabilities;

- (d) the company is not a party to any legal proceedings; and
 - (e) the company's assets do not consist of any immovable property situate in Hong Kong.
- (3) An application—
- (a) must be in the specified form;
 - (b) must be accompanied by the prescribed fee; and
 - (c) must be accompanied by a written notice from the Commissioner of Inland Revenue stating that the Commissioner has no objection to the company being deregistered.
- (4) If the applicant is a company, it must nominate in the application a natural person to be given notice of the deregistration.
- (5) The applicant must give the Registrar any further information that the Registrar may request in connection with an application.
- (6) The Registrar may assume without inquiry that any information given in connection with an application is true unless it is proved to the Registrar's satisfaction, in an objection to the deregistration or otherwise, that the information is false.
- (7) A person who, in connection with an application, knowingly or recklessly gives any information to the Registrar that is false or misleading in a material particular commits an offence and is liable—
- (a) on conviction on indictment to a fine of \$300,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

739. Registrar may deregister company

- (1) On receiving an application under section 738, the Registrar must publish in the Gazette a notice of the proposed deregistration unless the Registrar is aware of a failure to comply with subsection (2), (3), (4) or (5) of that section.
- (2) The notice must state that unless an objection to the deregistration is received within 3 months after the date of publication of the notice, the Registrar may deregister the company.
- (3) If, at the end of those 3 months, the Registrar has not received any objection to the deregistration, the Registrar may deregister the company by publishing in the Gazette another notice declaring it to be deregistered on the date of publication of that other notice.
- (4) A company is deregistered on the date of publication of the notice under subsection (3).
- (5) On the deregistration of a company, the Registrar must give notice of the deregistration to the applicant, or to the person nominated in the application to be given the notice.
- (6) A company is dissolved on deregistration.

Division 3**Property of Dissolved Company and Other Miscellaneous Matters****740. Dissolved company's property vested in Government**

- (1) If a company is dissolved under this Part or section 226A, 227, 239 or 248 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), every property and right vested in or held on trust for the company immediately before the dissolution is vested in the Government as bona vacantia.

- (2) Subsection (1) has effect subject to the possible restoration of the company to the Companies Register under—
 - (a) Division 4; or
 - (b) section 290 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).
- (3) If any property or right is vested in the Government under subsection (1), the property or right remains subject to the liabilities imposed on the property or right by law and does not have the benefit of any exemption that it might otherwise have as a property or right vested in the Government.
- (4) Despite subsection (3), the Government is only required to satisfy those liabilities out of the property or right to the extent that it is properly available to satisfy those liabilities.
- (5) In this section—
 - (a) a reference to a property or right vested in or held on trust for a company includes a leasehold property but excludes a property or right held by the company on trust for any other person; and
 - (b) a reference to a liability imposed on a property or right by law includes a liability that—
 - (i) is a charge or claim on the property or right; and
 - (ii) arises under an Ordinance that imposes rates, taxes or other charges.

741. Disclaimer of dissolved company's property

- (1) If any property or right, other than immovable property situate in Hong Kong, is vested in the Government under section 740(1), the Registrar may, on his or her own initiative or on written application by a person interested in the property or right, disclaim the Government's title to the property or right by a notice of disclaimer.
- (2) If the Registrar disclaims the Government's title to any property or right on his or her own initiative, the Registrar

must do so within 3 years after the date on which the fact that the property or right is vested in the Government under section 740(1) first came to the Registrar's notice.

- (3) If the Registrar disclaims the Government's title to any property or right on application by a person, the Registrar must do so within 3 months after the Registrar's receipt of the application.
- (4) A notice of disclaimer is of no effect if it is signed after the end of the period within which the Government's title to the property or right must be disclaimed under subsection (2) or (3).
- (5) If a notice of disclaimer contains a statement that—
 - (a) the fact that the property or right is vested in the Government under section 740(1) first came to the Registrar's notice on a date specified in the statement; or
 - (b) no application for a disclaimer with respect to the property or right was received by the Registrar before a date specified in the statement,
 the statement is sufficient evidence of the matter stated in it unless the contrary is proved.
- (6) The Registrar—
 - (a) must register a notice of disclaimer;
 - (b) must publish in the Gazette a copy of the notice; and
 - (c) must send a copy of the notice to the person who made the application for the purposes of subsection (1).
- (7) The right to disclaim under this section may be waived by or on behalf of the Government either expressly, or by taking possession or other act showing an intention to waive the right.

742. Effect of disclaimer

- (1) If the Registrar disclaims the Government's title to any property or right under section 741, the property or right is to be regarded as not having been vested in the Government under section 740(1).
- (2) A disclaimer—
 - (a) terminates, with effect from the date of the disclaimer, the company's rights, interests and liabilities in or in respect of the property or right disclaimed; and
 - (b) except so far as is necessary for the purpose of releasing the company from any liability, does not affect any other person's rights or liabilities.

743. Court may make vesting order

- (1) On application by a person who—
 - (a) claims an interest in any property or right disclaimed under section 741; or
 - (b) is subject to a liability in respect of such property or right that is not discharged by the disclaimer,
 the Court may make an order for the vesting of the property or right in, or its delivery to, a person entitled to it, or a person subject to the liability mentioned in paragraph (b), or a trustee for a person so entitled or subject.
- (2) An order may be made on the terms that the Court thinks fit.
- (3) An order for the vesting of a property or right in, or its delivery to, a person subject to a liability may only be made if it appears to the Court that it would be just to do so for the purpose of compensating the person.
- (4) On the making of an order for the vesting of a property or right in, or its delivery to, a person, the property or right is vested in the person without conveyance, assignment or transfer.

744. Liabilities of directors etc. of dissolved company continue

Even though a company is dissolved under this Part, the liability (if any) of every director, manager and member of the company continues and may be enforced as if the company had not been dissolved.

745. Registrar may act as dissolved company's or liquidator's representative

- (1) This section applies if—
 - (a) a company has been dissolved under—
 - (i) this Part;
 - (ii) section 226A, 227, 239 or 248 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); or
 - (iii) section 291, 291A or 291AA of the predecessor Ordinance; and
 - (b) it is proved to the Registrar's satisfaction that—
 - (i) the company, if still existing, would be legally or equitably bound to carry out, complete or give effect to a dealing, transaction or matter; and
 - (ii) in order to carry out, complete or give effect to the dealing, transaction or matter, a purely administrative act, that is not discretionary, should have been done by or on behalf of the company, or should be done by or on behalf of the company if still existing.
- (2) The Registrar may do the act, or cause the act to be done, as the company's or the liquidator's or provisional liquidator's representative.
- (3) The Registrar may execute or sign any relevant instrument or document, adding a memorandum stating that the Registrar has done so as the company's or the liquidator's or provisional liquidator's representative.

- (4) An instrument or document executed or signed by the Registrar under subsection (3) has the same effect as if the company, if still existing, had executed the instrument or document.

746. Former director must keep dissolved company's books and papers for 6 years

- (1) If a company is dissolved under this Part or section 226A, 227, 239 or 248 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), every person who was a director of the company immediately before the dissolution must ensure that the company's books and papers are kept for at least 6 years after the date of the dissolution.
- (2) Subsection (1) does not apply to the books and papers that are otherwise required to be kept by another person under this Ordinance or any other Ordinance.
- (3) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 3.

747. Court's power to wind up dissolved companies

- (1) The Court's powers under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) to wind up a company specified in subsection (2) is not exercisable unless the company is restored to the Companies Register under Division 4.
- (2) The company is—
 - (a) one whose name has been struck off the Companies Register under section 734 or 735 and that is dissolved under that section; or
 - (b) one that has been deregistered, and is dissolved, under section 739.

Division 4**Restoration to Companies Register****Subdivision 1****Administrative Restoration by Registrar****748. Application to Registrar for restoration of company**

- (1) This section applies to—
 - (a) a company whose name—
 - (i) has been struck off the Companies Register under section 734 or 735; or
 - (ii) has been struck off the register under section 291 of the predecessor Ordinance; and
 - (b) the company is dissolved under that section.
- (2) A person who was a director or member of the company may apply to the Registrar for the restoration of the company to the Companies Register.
- (3) An application must be made within 20 years after the date of the dissolution. For this purpose, an application is made when it is received by the Registrar.
- (4) An application must be accompanied by a statement—
 - (a) that the applicant was a director or member of the company; and
 - (b) that the conditions specified in section 749(2) are met.
- (5) The Registrar may accept the statement as sufficient evidence of the matters mentioned in subsection (4)(a) and (b).

749. Conditions for granting application

- (1) The Registrar must not grant an application made under section 748 unless all the conditions specified in subsection

- (2), and any other conditions that the Registrar thinks fit, are met.
- (2) The conditions are—
 - (a) that the company was, at the time its name was struck off the Companies Register, in operation or carrying on business;
 - (b) that, if any immovable property situate in Hong Kong previously vested in or held on trust for the company has been vested in the Government under section 740(1), the applicant has obtained, at the applicant's own costs, the Government's confirmation that it has no objection to the restoration; and
 - (c) that the applicant has delivered to the Registrar the documents relating to the company that are necessary to bring up to date the records kept by the Registrar.
- (3) For the purposes of subsection (2)(b), the costs for obtaining the Government's confirmation include the Government's costs, expenses and liabilities in dealing with the property or right during the period of dissolution, or in connection with the proceedings on the application, that may be demanded as a condition of giving the confirmation.

750. Registrar's decision on application

- (1) The Registrar must notify the applicant of the decision on an application made under section 748.
- (2) If the Registrar grants the application, the company is restored to the Companies Register on the date on which notification is given under subsection (1), and the Registrar must register the notification and publish in the Gazette a notice of the restoration.

751. Registrar may restore company deregistered by mistake

- (1) The Registrar may, on his or her own initiative, restore a company to the Companies Register if satisfied that it has

been deregistered, and is dissolved, under section 291AA of the predecessor Ordinance or section 739 as a result of a mistake of the Registrar.

- (2) In subsection (1), a reference to a mistake of the Registrar excludes a mistake that is made on the basis of wrong or false information given by the applicant in connection with the application for deregistration.
- (3) The Registrar may restore a company to the Companies Register by publishing in the Gazette a notice declaring the restoration, and the restoration takes effect on the date of publication of the notice.

752. Effect of restoration

- (1) If a company is restored to the Companies Register under this Subdivision, it is to be regarded as having continued in existence as if it had not been dissolved.
- (2) On application by any person, the Court may give directions, and make orders, as seem just for placing the company and all other persons in the same position as nearly as may be as if the company had not been dissolved.
- (3) An application for the purposes of subsection (2) must be made within 3 years after the date of the restoration.

Subdivision 2

Restoration by Order of Court

753. Application to Court for restoration

- (1) Where a company's name or a company has been struck off the register under section 291 or 291A of the predecessor Ordinance, and the company is dissolved under that section, an application to the Court for the restoration of the company to the Companies Register may be made by a person who—

- (a) was a director or member or creditor of the company; and
 - (b) feels aggrieved by the striking off.
- (2) Where a company has been deregistered, and is dissolved, under section 291AA of the predecessor Ordinance, an application to the Court for the restoration of the company to the Companies Register may be made by a person who feels aggrieved by the deregistration.
 - (3) Subsection (4) applies if—
 - (a) a company's name has been struck off the Companies Register under section 734, 735 or 736, and the company is dissolved under that section; or
 - (b) a company has been deregistered, and is dissolved, under section 739.
 - (4) An application to the Court for the restoration of the company to the Companies Register may be made—
 - (a) by a person who was a director or member or creditor of the company; or
 - (b) by any other person, including the Government, who appears to the Court to have an interest in the matter.

754. When application must be made

- (1) Subject to subsections (2) and (4)—
 - (a) an application under section 753(1) must be made within 20 years after the date on which the notice was published in the Gazette under section 291(6), or on which the order was made under section 291A(1), of the predecessor Ordinance;
 - (b) an application under section 753(2) must be made within 20 years of the deregistration; and
 - (c) an application under section 753(4) must be made within 20 years after the date of the dissolution.

- (2) An application under section 753 may be made at any time if the purpose of the application is to enable a person to bring proceedings against the company for damages for personal injury.
- (3) Subsection (4) applies if—
- a company's name has been struck off the Companies Register under section 734 or 735, and the company is dissolved under that section;
 - an application has been made under section 748 for the restoration of the company to the Companies Register; and
 - the Registrar has refused the application.
- (4) An application under section 753(4) must be made—
- within 20 years after the date of the dissolution or any further time that the Court allows on application by the applicant; or
 - if the period of 20 years has ended, within 28 days after the Registrar gives notification of the refusal under section 750(1).
- (5) In this section—
- damages for personal injury** (人身傷害損害賠償) includes—
- any sum and damages claimed by virtue of section 20(2)(b)(i) of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23);
 - damages under the Fatal Accidents Ordinance (Cap. 22); and
 - any compensation for death or incapacity under section 5, 6 or 32 of the Employees' Compensation Ordinance (Cap. 282);
- personal injury** (人身傷害) includes any disease and any impairment of a person's physical or mental condition.

755. Court's decision on application

- The Court may grant an application made under section 753(1) if satisfied that—
 - the company was, at the time the company's name or the company was struck off, in operation or carrying on business; or
 - it is otherwise just that the company be restored to the Companies Register.
- The Court may grant an application made under section 753(2) if satisfied that it is just that the company be restored to the Companies Register.
- The Court may grant an application made under section 753(4) if satisfied that—
 - in the case of a company whose name has been struck off the Companies Register—
 - the company was, at the time its name was struck off, in operation or carrying on business; or
 - it is otherwise just that the company be restored to the Companies Register; or
 - in the case of a company that has been deregistered—
 - any of the requirements specified in section 738(2)(a), (b), (c), (d) or (e) was not met; or
 - it is otherwise just that the company be restored to the Companies Register.
- The Court must not grant an application made pursuant to section 754(2) if it appears to the Court that the proceedings would fail by reason of an Ordinance limiting the time within which proceedings may be brought.
- In making a decision under subsection (4) not to grant an application, the Court must have regard to its power under section 756(2) to direct that the period between the dissolution

of the company and the making of the Court's order does not count for the purposes of the Ordinance.

- (6) If the Court grants an application made under section 753, the applicant must deliver to the Registrar for registration an office copy of the Court's order, and the restoration takes effect on the registration.
- (7) After a company is restored to the Companies Register under subsection (6), the Registrar must publish in the Gazette a notice of the restoration.

756. Effect of restoration

- (1) If a company is restored to the Companies Register under section 755, it is to be regarded as having continued in existence as if it had not been dissolved.
- (2) The Court may give directions, and make orders, as seem just for placing the company and all other persons in the same position as nearly as may be as if the company had not been dissolved.
- (3) The Court may also give directions as to—
 - (a) the delivery to the Registrar of the documents relating to the company that are necessary to bring up to date the records kept by the Registrar;
 - (b) the payment of the Registrar's costs in connection with the proceedings for the restoration of the company to the Companies Register; and
 - (c) if any property or right previously vested in or held on trust for the company has been vested in the Government under section 740(1), the payment of the Government's costs, expenses and liabilities in dealing with the property or right during the period of dissolution, or in connection with the proceedings on the application.

Subdivision 3

Supplementary Provisions

757. Company's name on restoration

If a company is restored to the Companies Register under this Division, it is restored under its former name.

758. Company must change prohibited name

- (1) Subsection (2) applies if, had the company applied on the date of the restoration to be registered by the former name, section 95 would have prohibited the company from being registered by that name.
- (2) Within 28 days after the restoration, the company—
 - (a) must by a special resolution change its name; and
 - (b) must give notice in the specified form of the change to the Registrar.
- (3) If a company gives notice of a change of name under subsection (2)(b), the Registrar must, unless the company is prohibited by section 95 from being registered by the new name—
 - (a) enter the new name on the Companies Register in place of the former name; and
 - (b) issue a certificate of change of name.
- (4) The change of name has effect from the date on which the certificate of change of name is issued.
- (5) A change of name under this section does not affect any rights or obligations of the company or render defective any legal proceedings by or against it. Any legal proceedings that could have been commenced or continued by or against it by its former name may be commenced or continued by or against it by its new name.

- (6) If the company contravenes subsection (2) the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (7) In this section—
former name (前有名稱), in relation to a company restored to the Companies Register under this Division, means the name that the company had immediately before it was dissolved.

759. Registrar may direct company to change same or similar name etc.

- (1) The Registrar may by notice in writing direct a company to change, within the period specified in the notice, a name under which the company is restored to the Companies Register under this Division if—
- (a) the name is, as at the time of the restoration, the same as or in the Registrar's opinion too like a name that appeared or should have appeared in the index of names kept under section 22C of the predecessor Ordinance or in the Index of Company Names; or
- (b) the name is, as at the time of the restoration, the same as or in the Registrar's opinion too like a name of a body corporate incorporated or established under an Ordinance.
- (2) A direction may only be given within 12 months after the restoration.
- (3) The Registrar may, before the end of the period specified in a notice given under subsection (1), by notice in writing extend the period.
- (4) If a company fails to comply with a direction within the period specified in the notice or extended under subsection (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at

level 6 and, in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.

760. Registrar may change company name in case of failure to comply with direction

- (1) This section applies if—
- (a) a company contravenes section 758(2) in relation to a name; or
- (b) the Registrar directs a company to change a name under section 759(1), and the company fails to comply with the direction within the period specified in the notice or, if the period is extended under 759(3), within the extended period.
- (2) Without limiting section 758(6) or 759(4), the Registrar may change the name to—
- (a) in the case of an English name, a name that consists of the words “Company Registration Number” as its prefix, followed by the registration number of the company as stated in the certificate of incorporation;
- (b) in the case of a Chinese name, a name that consists of the Chinese characters “公司註冊編號” as its prefix, followed by the registration number of the company as stated in the certificate of incorporation; or
- (c) in the case of a name consisting of both an English name and a Chinese name—
- (i) a new English name that consists of the words “Company Registration Number” as its prefix, followed by the registration number of the company as stated in the certificate of incorporation; and
- (ii) a new Chinese name that consists of the Chinese characters “公司註冊編號” as its prefix, followed

- by the registration number of the company as stated in the certificate of incorporation.
- (3) The Registrar must enter the new name in the Companies Register in place of the former name.
 - (4) The change of name has effect from the date on which the new name is entered in the Companies Register.
 - (5) Within 30 days after the date of entering the new name in the Companies Register, the Registrar—
 - (a) must notify the company in writing of—
 - (i) the fact that the name of the company has been changed;
 - (ii) the new name; and
 - (iii) the date on which the change takes effect under subsection (3); and
 - (b) must publish a notice of that fact, the new name and that date in the Gazette.
 - (6) A change of name under this section does not affect any rights or obligations of the company or render defective any legal proceedings by or against it. Any legal proceedings that could have been commenced or continued by or against it by its former name may be commenced or continued by or against it by its new name.

761. Effect of restoration on bona vacantia property or right

- (1) The Government may dispose of or otherwise deal with any property or right vested in it under section 740(1), or an interest in the property or right, in the same manner as it may dispose of or otherwise deal with any other property or right vested in it as bona vacantia, even though the company may be restored to the Companies Register under this Division or section 290 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

- (2) Subsections (3), (4) and (5) apply if the company is restored to the Companies Register.
- (3) The restoration does not—
 - (a) affect the disposition or dealing; or
 - (b) limit the effect of the restoration in relation to any other property or right previously vested in or held on trust for the company.
- (4) If any property, right or interest is still vested in the Government at the time of the restoration, it reverts in the company subject to any liability, interest or claim that was attached to the property, right or interest immediately before the reversion.
- (5) Subject to subsection (6), the Registrar must pay to the company—
 - (a) if the Registrar received any consideration for the property, right or interest disposed of or otherwise dealt with, an amount equal to—
 - (i) the amount of the consideration; or
 - (ii) the value of the consideration as at the date of the disposition or dealing; or
 - (b) if no consideration was received, an amount equal to the value of the property, right or interest disposed of or otherwise dealt with as at the date of the disposition or dealing.
- (6) There may be deducted from the amount payable under subsection (5) the Registrar's reasonable costs in connection with the disposition or dealing to the extent that the costs have not been paid to the Registrar as a condition of a restoration under section 750 or pursuant to a direction under section 756.

Part 16

Non-Hong Kong Companies

Division 1

Preliminary

762. Interpretation

(1) In this Part—

approved name (經批准名稱), in relation to a registered non-Hong Kong company, means—

- (a) the name entered in the Companies Register under section 770(5)(a) or 773(5)(a); or
- (b) the name by which the company was registered by virtue of section 337B(3) of the predecessor Ordinance;

authorized representative (獲授權代表), in relation to a registered non-Hong Kong company, means—

- (a) a natural person resident in Hong Kong;
- (b) a solicitor corporation as defined by section 2(1) of the Legal Practitioners Ordinance (Cap. 159);
- (c) a corporate practice as defined by section 2(1) of the Professional Accountants Ordinance (Cap. 50); or
- (d) a firm of solicitors or certified public accountants (practising),

that is authorized to accept on the company's behalf service of any process or notice required to be served on the company;

corporate name (法團名稱), in relation to a registered non-Hong Kong company, means a domestic name, or a translation of a domestic name, by which the company is registered in the Companies Register;

domestic name (本土名稱), in relation to a non-Hong Kong company, means the name or names by which the company is registered in its place of incorporation;

place of business (營業地點) includes a share transfer office and a share registration office but excludes an office specified in subsection (3);

procedural regulations (《程序規例》) means regulations made under section 793;

required details (所需細節), in relation to an authorized representative, means—

- (a) the name and address of the representative;
- (b) the date on which the representative was authorized; and
- (c) in the case of a natural person—
 - (i) the number of the representative's identity card; or
 - (ii) if the representative does not have an identity card, the number and issuing country of any passport held by the representative;

responsible officer (負責人員), in relation to a contravention by a non-Hong Kong company of a provision of this Ordinance, means an officer of the company who authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention;

solicitor (律師) means a person who is qualified to act as a solicitor under the Legal Practitioners Ordinance (Cap. 159).

(2) In this Part, a reference to a certified translation, in English or Chinese, of a domestic name is a reference to an English or Chinese translation of that name as shown in a certified translation, in English or Chinese (as the case may be), of the certificate of incorporation (or its equivalent) of the non-Hong Kong company.

(3) The office specified for the purposes of the definition of **place of business** in subsection (1) is a local representative office

established, or maintained, with the Monetary Authority's approval, under section 46 of the Banking Ordinance (Cap. 155) by a bank as defined by subsection (9) of that section.

- (4) The Financial Secretary may, by notice published in the Gazette, amend subsection (3).

763. Certified copy

- (1) For the purposes of this Part, a copy of a document is a certified copy if it is certified as a true copy of the document by a person specified in subsection (2).
- (2) The person is—
- (a) if the copy is certified in the non-Hong Kong company's place of incorporation—
- (i) an official of the government of that place to whose custody the original of the document is committed;
 - (ii) a notary public practising in that place;
 - (iii) a lawyer practising in that place;
 - (iv) a professional accountant practising in that place;
 - (v) an officer of a court of law duly authorized by the law of that place to certify documents for any judicial or other legal purpose; or
 - (vi) a professional company secretary practising in that place;
- (b) if the copy is certified in Hong Kong—
- (i) a notary public practising in Hong Kong;
 - (ii) a solicitor practising in Hong Kong;
 - (iii) a certified public accountant (practising);
 - (iv) an officer of the court in Hong Kong who is authorized by law to certify documents for any judicial or other legal purpose;

(v) a consular officer of the non-Hong Kong company's place of incorporation; or

(vi) a professional company secretary practising in Hong Kong;

(c) an officer of the non-Hong Kong company; or

(d) an authorized representative of the registered non-Hong Kong company.

- (3) The Secretary may, by notice published in the Gazette, amend subsection (2).

Division 2

Registration

764. Certain non-Hong Kong companies must apply for registration

- (1) This section applies to—
- (a) a non-Hong Kong company that establishes a place of business in Hong Kong on or after the commencement date of this Part; and
 - (b) a non-Hong Kong company that—
 - (i) at that commencement date, has a place of business in Hong Kong established before the commencement date; and
 - (ii) had not complied with section 333 of the predecessor Ordinance as in force immediately before that commencement date.
- (2) A non-Hong Kong company falling within subsection (1)(a) must, within one month after the establishment of the place of business, apply to the Registrar for registration as a registered non-Hong Kong company.
- (3) A non-Hong Kong company falling within subsection (1)(b) must, within one month after the commencement date of this

Part, apply to the Registrar for registration as a registered non-Hong Kong company.

- (4) An application under subsection (2) or (3)—
- (a) must be in the specified form;
 - (b) must contain the particulars prescribed by procedural regulations;
 - (c) must contain the required details of at least one person who is proposed to be an authorized representative on registration of the non-Hong Kong company;
 - (d) must be accompanied by the documents prescribed by procedural regulations; and
 - (e) must be delivered to the Registrar.
- (5) If none of the non-Hong Kong company's domestic names is in Roman script or in Chinese, an application under subsection (2) or (3) must also contain—
- (a) where the company has one domestic name, a certified translation of that name in English or Chinese, or both; or
 - (b) where the company has more than one domestic name, a certified translation of one of those names in English or Chinese, or both.
- (6) If a non-Hong Kong company contravenes subsection (2) or (3), the company, every responsible officer of the company, and every agent of the company who authorizes or permits the contravention, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

765. Registration of non-Hong Kong company

- (1) On receiving an application under section 764(2) or (3), the Registrar must register the non-Hong Kong company as a registered non-Hong Kong company.

- (2) If the application is not required by section 764(5) to contain a certified translation of a domestic name, the Registrar must enter in the Companies Register, as a corporate name—
- (a) the non-Hong Kong company's domestic name in Roman script, or that company's domestic name in Chinese, or both; and
 - (b) the certified translation, in English or Chinese, of a domestic name (if any) contained in the application pursuant to procedural regulations.
- (3) If the application contains a certified translation of a domestic name for the purposes of section 764(5), the Registrar must enter that translation in the Companies Register as a corporate name.
- (4) On registering a non-Hong Kong company under subsection (1), the Registrar—
- (a) must issue to the company a certificate of registration, with the Registrar's signature, certifying the registration; and
 - (b) must register the application and accompanying documents.

Division 3

Addition, Change or Cessation of Corporate Name

766. Company must notify Registrar of addition, change or cessation of name or translation of name

- (1) If, as a result of an addition of domestic name, a registered non-Hong Kong company has a new domestic name in Roman script or in Chinese, the company must, within one month after the date of the addition, deliver to the Registrar for registration a return containing the particulars of the addition.

- (2) If, as a result of a change to a domestic name, a registered non-Hong Kong company has a new domestic name, the company must, within one month after the date of the change, deliver to the Registrar for registration a return containing the particulars of the change.
- (3) If a name of a registered non-Hong Kong company ceases to be a domestic name, the company must, within one month after the date of the cessation, deliver to the Registrar for registration a return containing the particulars of the cessation.
- (4) Subsection (2) or (3) does not apply unless the registered non-Hong Kong company is registered in the Companies Register by the domestic name or a translation of it.
- (5) If—
 - (a) a registered non-Hong Kong company does not have a corporate name in Roman script, and the company adopts a certified translation, in English, of a domestic name, under which it is to carry on business in Hong Kong; or
 - (b) a registered non-Hong Kong company does not have a corporate name in Chinese, and the company adopts a certified translation, in Chinese, of a domestic name, under which it is to carry on business in Hong Kong,

the company must, within one month after the date of the adoption, deliver to the Registrar for registration a return containing the particulars of the adoption and the certified translation of the domestic name.
- (6) If a translation of a domestic name of a registered non-Hong Kong company is entered in the Companies Register as a corporate name, and the company replaces the translation with another translation of the domestic name, under which it is to carry on business in Hong Kong, the company must, within one month after the date of the replacement, deliver to the Registrar for registration a return containing the particulars of

- the replacement and the certified translation of the domestic name.
- (7) If a translation of a domestic name of a registered non-Hong Kong company is entered in the Companies Register as a corporate name, and the translation ceases to be a name under which it is to carry on business in Hong Kong, the company must, within one month after the date of the cessation, deliver to the Registrar for registration a return containing the particulars of the cessation.
 - (8) A return under subsection (1), (2), (3), (5), (6) or (7)—
 - (a) must be in the specified form; and
 - (b) must be accompanied by the documents specified by the Registrar.
 - (9) A return under subsection (2) must also contain a certified translation of the new domestic name in English or Chinese, or both, if the new domestic name is neither in Roman script nor in Chinese.
 - (10) If a registered non-Hong Kong company contravenes subsection (1), (2), (3), (5), (6) or (7), the company, every responsible officer of the company, and every agent of the company who authorizes or permits the contravention, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

767. Registration of corporate name

- (1) If the Registrar receives a return under section 766(1), (2), (3), (5), (6) or (7), the Registrar—
 - (a) must make a note in the Companies Register to the effect that there is a change of corporate name;
 - (b) must issue to the registered non-Hong Kong company a fresh certificate of registration containing the current corporate name; and

- (c) must register the return and accompanying documents.
- (2) If the Registrar receives a return under section 766(1), the Registrar must also enter in the Companies Register, as a corporate name, the registered non-Hong Kong company's new domestic name.
- (3) If the Registrar receives a return under section 766(2), and the return is not required by section 766(9) to contain a certified translation of a new domestic name, the Registrar must also enter in the Companies Register, as a corporate name—
- (a) the registered non-Hong Kong company's new domestic name; and
 - (b) the certified translation, in English or Chinese, of that domestic name (if any) contained in the return pursuant to procedural regulations.
- (4) If the Registrar receives a return under section 766(2), and the return contains a certified translation of a new domestic name for the purposes of section 766(9), the Registrar must also enter that translation in the Companies Register as a corporate name.
- (5) If the Registrar receives a return under section 766(5) or (6), the Registrar must also enter in the Companies Register, as a corporate name, the certified translation of the domestic name contained in the return.
- (6) On a note being made under subsection (1)(a), a name entered in the Companies Register as an approved name in relation to the old corporate name is no longer an approved name, and the Registrar must make another note in the Companies Register to that effect.
- (7) On an entry being made under subsection (2) or (3), a translation of a domestic name of the registered non-Hong Kong company that is entered in the Companies Register as a corporate name of the company is no longer a corporate name if it is in the same language as the new domestic name, and

the Registrar must make a note in the Companies Register to that effect.

Division 4

Regulation of Names Used by Registered Non-Hong Kong Companies to Carry on Business in Hong Kong

768. Registrar may serve notice to regulate use of corporate names or approved names

- (1) The Registrar may serve a notice on a registered non-Hong Kong company if satisfied that a corporate name or approved name of the company—
- (a) is the same as or is too like—
 - (i) a name that appears, or should have appeared, in the index of names kept under section 22C of the predecessor Ordinance or in the Index of Company Names on the material date; or
 - (ii) the name of a body corporate incorporated or established under an Ordinance before the material date; or
 - (b) gives so misleading an indication of the nature of the company's activities in Hong Kong as to be likely to cause harm to the public.
- (2) A notice must state the reasons for serving the notice.
- (3) A notice for the purposes of subsection (1)(a) must be served on a registered non-Hong Kong company within 6 months beginning on the material date.
- (4) In this section—
- material date** (關鍵日期)—
- (a) in relation to a domestic name, or a translation of a domestic name, of a registered non-Hong Kong

- company that is entered in the Companies Register under section 765 as a corporate name, means the date on which the certificate of registration was issued under that section;
- (b) in relation to a domestic name, or a translation of a domestic name, of a registered non-Hong Kong company that is entered in the Companies Register under section 767 as a corporate name, means the date on which the certificate of registration was issued under that section;
- (c) in relation to a domestic name, or a translation of a domestic name, of a registered non-Hong Kong company that is entered in the Companies Register on a restoration of the company to the Companies Register, means the date of the restoration;
- (d) in relation to a domestic name, or a translation of a domestic name, of a registered non-Hong Kong company that has already been entered in the Companies Register as at the coming into operation of this Part, means—
- (i) the date on which the company complied with section 333 of the predecessor Ordinance; or
 - (ii) if the company has delivered a return for registration under section 335 of the predecessor Ordinance, the date on which the certificate of registration was issued under that section;
- (e) in relation to a name that is entered in the Companies Register under section 770(5) or 773(5) as an approved name, means the date on which the certificate of registration was issued under that section; or
- (f) in relation to a name by which the registered non-Hong Kong company was registered by virtue of section 337B(3) of the predecessor Ordinance as an approved name, means the date of the registration.

769. Effect of notice

- (1) If a registered non-Hong Kong company is served with a notice under section 768(1) for a corporate name or approved name, the company must not, after the end of 2 months after the date of service, carry on business in Hong Kong under that name.
- (2) If a registered non-Hong Kong company contravenes subsection (1), the company, every responsible officer of the company, and every agent of the company who authorizes or permits the contravention, commit an offence.
- (3) A person who commits an offence under subsection (2) is liable to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.
- (4) This section does not invalidate any transaction entered into by the registered non-Hong Kong company.

770. Registration of approved name for carrying on business in Hong Kong

- (1) If a registered non-Hong Kong company is served with a notice under section 768(1) for a corporate name or for an approved name in relation to a corporate name, the company may apply, in writing, to the Registrar for approval of another name, in relation to the corporate name, under which the company is to carry on business in Hong Kong.
- (2) An application must be delivered to the Registrar.
- (3) On receiving an application for approval of a name, the Registrar must approve the name unless satisfied that the name—
 - (a) is the same as or is too like—
 - (i) a name that appears, or should have appeared, in the Index of Company Names; or

- (ii) the name of a body corporate incorporated or established under an Ordinance; or
 - (b) gives so misleading an indication of the nature of the registered non-Hong Kong company's activities in Hong Kong as to be likely to cause harm to the public.
- (4) If the Registrar approves a name, the registered non-Hong Kong company may deliver to the Registrar for registration a return, in the specified form, specifying the name so approved.
- (5) On receiving a return, the Registrar must, unless satisfied that the name specified in it is the same as a name that appears, or should have appeared, in the Index of Company Names—
- (a) enter that specified name in the Companies Register as the name, in relation to the corporate name, under which the registered non-Hong Kong company is to carry on business in Hong Kong;
 - (b) issue to the company a fresh certificate of registration containing the corporate name and the name so entered; and
 - (c) register the return.
- (6) On the issue of the fresh certificate of registration, the name entered in the Companies Register under subsection (5)(a) is, for all purposes of the law, the name under which the registered non-Hong Kong company is to carry on business in Hong Kong.
- (7) Subsection (6) does not affect any rights or obligations vested in the registered non-Hong Kong company under the name for which the notice is served on the company under section 768(1).
- (8) Subsection (6) does not render defective any legal proceedings by or against the registered non-Hong Kong company. If there are any legal proceedings that might have been commenced or continued by or against that company by

the name for which the notice is served on that company under section 768(1), those proceedings may be commenced or continued by or against it by the name entered in the Companies Register under subsection (5)(a) as an approved name in relation to the corporate name.

771. **Withdrawal of notice**

- (1) After a registered non-Hong Kong company is served with a notice under section 768(1) for a corporate name or for an approved name in relation to a corporate name, the Registrar may, on written application by the company, withdraw the notice.
- (2) If the notice is withdrawn, section 769(1) ceases to apply to the registered non-Hong Kong company.
- (3) If, after the notice is served, a name is entered in the Companies Register as an approved name in relation to the corporate name, the Registrar must, on withdrawing the notice—
 - (a) make a note in the Companies Register to the effect that the name is no longer an approved name; and
 - (b) issue to the registered non-Hong Kong company a fresh certificate of registration containing the name for which the notice is served.

772. **Appeal against decision to serve notice**

Within 3 weeks after being served with a notice under section 768(1)(b) for a corporate name or for an approved name in relation to a corporate name, a registered non-Hong Kong company may appeal to the Administrative Appeals Board against the decision to serve the notice.

773. **Change of approved name**

- (1) A registered non-Hong Kong company may apply, in writing, to the Registrar for change of an approved name, in relation to

- a corporate name, under which the company is to carry on business in Hong Kong.
- (2) An application must be delivered to the Registrar.
 - (3) On receiving an application for change of an approved name, the Registrar must approve the new name unless satisfied that the new name—
 - (a) is the same as or is too like—
 - (i) a name that appears, or should have appeared, in the Index of Company Names; or
 - (ii) the name of a body corporate incorporated or established under an Ordinance; or
 - (b) gives so misleading an indication of the nature of the registered non-Hong Kong company's activities in Hong Kong as to be likely to cause harm to the public.
 - (4) If the Registrar approves a new name, the registered non-Hong Kong company may deliver to the Registrar for registration a return, in the specified form, specifying the new name so approved.
 - (5) On receiving a return, the Registrar must, unless satisfied that the new name specified in it is the same as a name that appears, or should have appeared, in the Index of Company Names—
 - (a) enter the new name in the Companies Register as the name, in relation to the corporate name, under which the registered non-Hong Kong company is to carry on business in Hong Kong;
 - (b) make a note in the Companies Register to the effect that there is a change of approved name;
 - (c) issue to the company a fresh certificate of registration containing the corporate name and the new approved name; and
 - (d) register the return.

- (6) On the issue of the fresh certificate of registration, the new approved name is, for all purposes of the law, the name under which the registered non-Hong Kong company is to carry on business in Hong Kong.
- (7) Subsection (6) does not affect any rights or obligations vested in the registered non-Hong Kong company under the corporate name or the old approved name.
- (8) Subsection (6) does not render defective any legal proceedings by or against the registered non-Hong Kong company. If there are any legal proceedings that might have been commenced or continued by or against that company by the corporate name or the old approved name, those proceedings may be commenced or continued by or against it by the new approved name in relation to the corporate name.

Division 5

Authorized Representatives of Registered Non-Hong Kong Companies

- 774. Company must keep authorized representative's required details registered in Companies Register**
- (1) This section applies if—
 - (a) a person is registered in the Companies Register as an authorized representative of a registered non-Hong Kong company;
 - (b) the person ceases to be such a representative; and
 - (c) after the cessation, no person is registered in the Companies Register as an authorized representative of the company.
 - (2) Within one month after the person ceases to be an authorized representative of the registered non-Hong Kong company, that company must deliver to the Registrar for registration under

section 779(1) a return in respect of another person as an authorized representative of the company.

- (3) Subsection (2) does not apply to the registered non-Hong Kong company if, when the person ceases to be an authorized representative of that company, it has ceased to have a place of business in Hong Kong for at least 11 months.
- (4) If a registered non-Hong Kong company contravenes subsection (2), the company, every responsible officer of the company, and every agent of the company who authorizes or permits the contravention, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

775. Termination of authorization

- (1) A person registered in the Companies Register as an authorized representative of a registered non-Hong Kong company may terminate the authorization by sending to the company's registered office (or the equivalent) in its place of incorporation a written notice of termination stating the date of termination.
- (2) A registered non-Hong Kong company may terminate the authorization of a person registered in the Companies Register as an authorized representative of the company by sending to the person's address shown in the Companies Register a written notice of termination stating the date of termination.
- (3) After sending a notice of termination under subsection (1) or (2), the sender must, within one month after the date of the notice, notify the Registrar, in writing, of the date of termination.
- (4) A notification under subsection (3)—
 - (a) must be in the specified form; and
 - (b) must be accompanied by the documents prescribed by procedural regulations.

- (5) A notification under subsection (3)—
 - (a) if given by a person registered as an authorized representative of a registered non-Hong Kong company, must contain a statement by the person that the company has been notified of the termination under subsection (1); or
 - (b) if given by a registered non-Hong Kong company, must contain a statement by the company that the person registered as an authorized representative of the company has been notified of the termination under subsection (2).
- (6) If an authorization is terminated under subsection (1) or (2), the termination takes effect on whichever is the later of the following—
 - (a) the date of termination stated in the notice of termination;
 - (b) the expiration of 21 days after subsection (3) is complied with.

Division 6

Returns and Accounts of Registered Non-Hong Kong Companies

776. Company must deliver annual return for registration

- (1) Within 42 days after each anniversary of the date on which the certificate of registration was issued under section 765(4)(a) or the predecessor Ordinance, a registered non-Hong Kong company must deliver to the Registrar a return for registration.
- (2) A return—
 - (a) must be in the specified form;

- (b) must contain the particulars prescribed by procedural regulations; and
 - (c) must be accompanied by the documents prescribed by procedural regulations.
- (3) If a registered non-Hong Kong company contravenes subsection (1), the company, every responsible officer of the company, and every agent of the company who authorizes or permits the contravention, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
 - (4) If a registered non-Hong Kong company, or an officer or agent of a registered non-Hong Kong company, is convicted of an offence under subsection (3), the magistrate may, in addition to any penalty that may be imposed, order the company, or the officer or agent, to deliver to the Registrar a return for registration within a time specified in the order.
 - (5) If a registered non-Hong Kong company, or an officer or agent of a registered non-Hong Kong company, fails to comply with an order under subsection (4), the company, or the officer or agent, commits an offence and is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

777. Company must deliver accounts for registration

- (1) This section applies if a registered non-Hong Kong company is required to publish its accounts, or to deliver copies of its accounts to any person in whose office the accounts may be inspected as of right by members of the public—
 - (a) by the law of its place of incorporation; or
 - (b) by either of the following, but not by the law of its place of incorporation—

- (i) the law of any other jurisdiction where it is registered as a company;
 - (ii) the rules of any stock exchange or similar regulatory bodies in that jurisdiction.
- (2) When the registered non-Hong Kong company delivers to the Registrar a return for registration under section 776, it must also deliver to the Registrar for registration—
 - (a) in the case of subsection (1)(a), a certified copy of its latest published accounts for a period of at least 12 months that comply with the law of its place of incorporation; or
 - (b) in the case of subsection (1)(b), a certified copy of its latest published accounts for a period of at least 12 months that comply with any of the law or rules mentioned in subparagraphs (i) and (ii) of that subsection.
 - (3) If a registered non-Hong Kong company contravenes subsection (2), the company, every responsible officer of the company, and every agent of the company who authorizes or permits the contravention, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
 - (4) If a registered non-Hong Kong company, or an officer or agent of a registered non-Hong Kong company, is convicted of an offence under subsection (3), the magistrate may, in addition to any penalty that may be imposed, order the company, or the officer or agent, to deliver to the Registrar the certified copy of any accounts mentioned in subsection (2)(a) or (b) for registration within a time specified in the order.
 - (5) If a registered non-Hong Kong company, or an officer or agent of a registered non-Hong Kong company, fails to comply with an order under subsection (4), the company, or the officer or agent, commits an offence and is liable to a fine

at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

- (6) In this section, a reference to a certified copy of any accounts is, if the accounts are not in English or Chinese, a reference to a certified translation of the accounts in English or Chinese.

778. Directors may revise accounts not complying with certain requirement

- (1) If a certified copy of any accounts has been delivered to the Registrar for registration under section 336 of the predecessor Ordinance or section 777, and it appears to the directors of the registered non-Hong Kong company that the accounts did not comply with the regulatory requirement specified in subsection (2), those directors may revise the accounts.
- (2) The regulatory requirement is—
- (a) in relation to the accounts of a registered non-Hong Kong company to which section 336(1) of the predecessor Ordinance or section 777(1)(a) applies, the law of its place of incorporation; or
- (b) in relation to the accounts of a registered non-Hong Kong company to which section 336(2) of the predecessor Ordinance or section 777(1)(b) applies—
- (i) the law of any other jurisdiction where it is registered as a company; or
- (ii) the rules of any stock exchange or similar regulatory bodies in that jurisdiction.
- (3) A revision of the accounts must be confined to—
- (a) those aspects in which the accounts did not comply with the regulatory requirement specified in subsection (2); and
- (b) other necessary consequential revisions.

- (4) If the directors of a registered non-Hong Kong company decide to revise any accounts under subsection (1), the company must, within 7 days after the decision, deliver to the Registrar for registration a warning statement, in the specified form, that the accounts will be so revised.
- (5) If a registered non-Hong Kong company contravenes subsection (4), the company, every responsible officer of the company, and every agent of the company who authorizes or permits the contravention, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

779. Company must deliver return for registration in case of change of certain particulars

- (1) If there is, in relation to a registered non-Hong Kong company, a change specified in subsection (2), the company must, within one month after the date of the change, deliver to the Registrar for registration a return containing the particulars of the change.
- (2) The change is one made in—
- (a) the charter, statutes or memorandum (including articles, if any) of the registered non-Hong Kong company, or other instruments defining the company's constitution;
- (b) the directors, company secretary (or, where there are joint company secretaries, each of them) or authorized representatives of the company;
- (c) the particulars of the directors, company secretary (or, where there are joint company secretaries, each of them) or authorized representatives of the company delivered to the Registrar under this Part; or
- (d) the address of the company's principal place of business in Hong Kong or of its registered office (or the

- equivalent), or its principal place of business, in its place of incorporation.
- (3) A return—
 - (a) must be in the specified form;
 - (b) must contain the particulars prescribed by procedural regulations; and
 - (c) must be accompanied by the documents prescribed by procedural regulations.
 - (4) If the registered non-Hong Kong company is not allowed under section 51(6)(b) to state in a return under this section that a director's correspondence address is changed to an address other than the address specified in section 51(6)(b)(i) or (ii), this section does not apply in relation to that change.
 - (5) If a registered non-Hong Kong company contravenes subsection (1), the company, every responsible officer of the company, and every agent of the company who authorizes or permits the contravention, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

Division 7

Other Obligations

780. Non-Hong Kong company must state names, place of incorporation, etc.

- (1) A non-Hong Kong company must, in every prospectus inviting subscriptions for its shares or debentures in Hong Kong—
 - (a) state its place of incorporation; and
 - (b) if applicable, state in legible characters that the liability of its members is limited.

- (2) A non-Hong Kong company must, on every place where it carries on business in Hong Kong—
 - (a) conspicuously exhibit its name and its place of incorporation; and
 - (b) if applicable, conspicuously exhibit a notice of the fact that the liability of its members is limited.
- (3) A non-Hong Kong company must, in every bill-head, letter paper, notice and other official publication of the company in Hong Kong—
 - (a) state in legible characters its name and its place of incorporation; and
 - (b) if applicable, state in legible characters that the liability of its members is limited.
- (4) If a non-Hong Kong company is in liquidation, it must, in every advertisement of the company in Hong Kong—
 - (a) state in legible characters its name and its place of incorporation; and
 - (b) if applicable, state in legible characters that the liability of its members is limited.
- (5) If a non-Hong Kong company is in liquidation, it must comply with subsection (6)—
 - (a) when exhibiting its name under subsection (2); or
 - (b) when stating its name under subsection (3) or (4).
- (6) The non-Hong Kong company must—
 - (a) if its name is in a language other than Chinese, add “(in liquidation)” after the name;
 - (b) if its name is in Chinese, add “(正進行清盤)” after the name; or
 - (c) if its name is in Chinese and in a language other than Chinese—
 - (i) add “(正進行清盤)” after the name in Chinese; and

- (ii) add “(in liquidation)” after the name in that other language.
- (7) If a non-Hong Kong company contravenes subsection (1), (3), (4) or (5), the company, every responsible officer of the company, and every agent of the company who authorizes or permits the contravention, commit an offence, and each is liable to a fine at level 3.
- (8) If a non-Hong Kong company contravenes subsection (2), the company, every responsible officer of the company, and every agent of the company who authorizes or permits the contravention, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (9) In this section, a reference to a non-Hong Kong company’s name is—
- (a) in the case of a registered non-Hong Kong company, a reference to the company’s corporate name; or
 - (b) in the case of a registered non-Hong Kong company with an approved name, in relation to a corporate name, shown in the Companies Register, a reference to the company’s approved name.

781. Registered non-Hong Kong company must notify Registrar of commencement of liquidation etc.

- (1) Within 14 days after the later of the dates specified in subsection (2), a registered non-Hong Kong company must deliver to the Registrar for registration a notice, in the specified form, containing—
- (a) the particulars specified in subsection (3); and
 - (b) if a person is appointed as liquidator or provisional liquidator, the further particulars specified in subsection (4).
- (2) The dates are—

- (a) the date of commencement of any proceedings for the liquidation of the registered non-Hong Kong company; and
 - (b) the date on which the notice of commencement of such proceedings was served on the company according to the law of the place in which those proceedings are commenced.
- (3) The particulars are—
- (a) the date of commencement of the proceedings for the liquidation of the registered non-Hong Kong company;
 - (b) the country where the proceedings are commenced; and
 - (c) whether the liquidation is a voluntary or compulsory liquidation, or is in another mode of liquidation as specified in the notice under subsection (1).
- (4) The further particulars are—
- (a) whether the person is appointed as liquidator or provisional liquidator;
 - (b) whether the person is a sole liquidator, or one of the joint, or joint and several, liquidators;
 - (c) the date of the appointment; and
 - (d) the following details of the person—
 - (i) in the case of a natural person, the present forename and surname, the address, and the number of the identity card or, if the person does not have an identity card, the number and issuing country of any passport held by the person; or
 - (ii) in any other case, the name and the address.
- (5) Subsection (6) applies if—
- (a) any change occurs in the particulars contained in a notice under subsection (1);

- (b) a liquidator or provisional liquidator is appointed after such a notice is delivered to the Registrar for registration; or
 - (c) the liquidator or provisional liquidator whose name is contained in such a notice has ceased to hold office as such.
- (6) Within 14 days after the change, appointment or cessation, the registered non-Hong Kong company must deliver to the Registrar for registration a notice, in the specified form, containing the particulars of the change, the further particulars specified in subsection (4) of the liquidator or provisional liquidator appointed, or the date of the cessation to hold office as liquidator or provisional liquidator.
- (7) If a registered non-Hong Kong company contravenes subsection (1) or (6), the company, every responsible officer of the company, and every agent of the company who authorizes or permits the contravention, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (8) In this section—

forename (名字) includes a Christian or given name;

surname (姓氏), in the case of a person usually known by a title different from the person's surname, means the title.

782. Registered non-Hong Kong company must notify Registrar of cessation of place of business in Hong Kong

- (1) If a registered non-Hong Kong company ceases to have a place of business in Hong Kong, the company must, within 7 days after the cessation, deliver to the Registrar a notice, in the specified form, of that fact.
- (2) On receiving a notice, the Registrar—

- (a) must register the notice in relation to the registered non-Hong Kong company; and
 - (b) must enter in the Companies Register a statement that the company has ceased to have a place of business in Hong Kong.
- (3) If a registered non-Hong Kong company contravenes subsection (1), the company, every responsible officer of the company, and every agent of the company who authorizes or permits the contravention, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

783. Authorized representative of registered non-Hong Kong company must notify Registrar of dissolution

- (1) If a registered non-Hong Kong company is dissolved, an authorized representative of the company must, within 14 days after the date of dissolution, deliver to the Registrar—
 - (a) a notice, in the specified form, of that fact; and
 - (b) a certified copy of the instrument effecting the dissolution or, in the case of an instrument not in English or Chinese, a certified translation of the instrument in English or Chinese.
- (2) On receiving a notice and document under subsection (1), the Registrar—
 - (a) must register the notice and document in relation to the registered non-Hong Kong company; and
 - (b) must enter in the Companies Register a statement that the company has been dissolved.
- (3) If an authorized representative of a registered non-Hong Kong company contravenes subsection (1), the authorized representative commits an offence and is liable to a fine at

level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

- (4) If a person is charged with an offence under subsection (3), it is a defence to establish that the person took all reasonable steps to secure compliance with subsection (1).

Division 8

Striking off

784. Registrar may send inquiry letter to registered non-Hong Kong company

- (1) If the Registrar has reasonable cause to believe that a registered non-Hong Kong company has ceased to have a place of business in Hong Kong, the Registrar may send to the company by post a letter inquiring whether the company has ceased to have a place of business in Hong Kong.
- (2) A letter must be addressed—
- to an authorized representative of the registered non-Hong Kong company whose required details are shown in the Companies Register; or
 - if no required details of authorized representatives of the company are shown in the Companies Register, to any place of business established by the company in Hong Kong.
- (3) If the Registrar is of the opinion that a letter under subsection (1) is unlikely to be received by the registered non-Hong Kong company, the Registrar may, instead of sending a letter under that subsection, publish in the Gazette a notice that, unless cause is shown to the contrary, the company's name will be struck off the Companies Register, and the company will no longer be a registered non-Hong Kong company, at the end of 3 months after the date of the notice.

785. Registrar must follow up under certain circumstances

- (1) This section applies if, within one month after sending a letter under section 784(1)—
- the Registrar does not receive a reply to the letter; or
 - the Registrar receives a reply to the letter to the effect that the registered non-Hong Kong company is not in operation or carrying on business.
- (2) The Registrar must, within 30 days after the end of that one month—
- subject to subsection (4), send to the registered non-Hong Kong company by registered post another letter—
 - referring to the letter sent under section 784(1); and
 - stating that—
 - no reply to it has been received; or
 - the Registrar has received a reply to it to the effect that the company is not in operation or carrying on business; and
 - publish in the Gazette a notice that, unless cause is shown to the contrary, the company's name will be struck off the Companies Register, and the company will no longer be a registered non-Hong Kong company, at the end of 3 months after the date of the notice.
- (3) A letter must be addressed—
- to an authorized representative of the registered non-Hong Kong company whose required details are shown in the Companies Register; or
 - if no required details of authorized representatives of the company are shown in the Companies Register, to any place of business established by the company in Hong Kong.
- (4) The Registrar is not required to send a letter to the registered non-Hong Kong company under subsection (2)(a) if the

Registrar is of the opinion that the letter is unlikely to be received by the company.

786. Registrar may strike off registered non-Hong Kong company's name

- (1) After publishing a notice under section 784(3) or 785(2)(b), the Registrar may, unless cause is shown to the contrary, strike the registered non-Hong Kong company's name off the Companies Register at the end of 3 months after the date of the notice.
- (2) The Registrar must publish in the Gazette a notice indicating that the non-Hong Kong company's name has been struck off the Companies Register.
- (3) On publication of the notice under subsection (2), the non-Hong Kong company is no longer a registered non-Hong Kong company.
- (4) The non-Hong Kong company must not have a place of business in Hong Kong as long as it is not a registered non-Hong Kong company.
- (5) If a non-Hong Kong company contravenes subsection (4), the company, every responsible officer of the company, and every agent of the company who authorizes or permits the contravention, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

787. Application to Registrar for restoration of non-Hong Kong company

- (1) This section applies if a non-Hong Kong company's name—
 - (a) has been struck off the Companies Register under section 786; or
 - (b) has been struck off the register of companies by virtue of section 339A(2) of the predecessor Ordinance.

- (2) A person who is a director or member of the non-Hong Kong company may apply to the Registrar for the restoration of the company to the Companies Register.
- (3) An application must be made within 6 years after the date of the striking off. For this purpose, an application is made when it is received by the Registrar.
- (4) An application must be accompanied by a statement—
 - (a) that the applicant is a director or member of the non-Hong Kong company; and
 - (b) that the conditions specified in section 788(2) are met.
- (5) The Registrar may accept the statement as sufficient evidence of the matters mentioned in subsection (4)(a) and (b).

788. Conditions for granting application

- (1) The Registrar must not grant an application made under section 787 unless all the conditions specified in subsection (2), and any other conditions that the Registrar thinks fit, are met.
- (2) The conditions are—
 - (a) that the non-Hong Kong company had, at the time its name was struck off the Companies Register, a place of business in Hong Kong; and
 - (b) that the applicant has delivered to the Registrar the documents relating to the non-Hong Kong company that are necessary to bring up to date the records kept by the Registrar.

789. Registrar's decision on application

- (1) The Registrar must notify the applicant of the decision on an application made under section 787.
- (2) If the Registrar grants the application, the non-Hong Kong company is restored to the Companies Register on the date on which notification is given under subsection (1), and the

Registrar must register the notification and publish in the Gazette a notice of the restoration.

- (3) On the restoration, the striking off is to be regarded as not having taken place.

Division 9

Miscellaneous

790. Registrar to keep index of directors

- (1) The Registrar must keep an index of every person who is a director of a registered non-Hong Kong company.
- (2) The particulars contained in the index must, in respect of each director, include—
 - (a) the name and address of the director;
 - (b) the latest particulars sent to the Registrar in respect of the director;
 - (c) the name of each registered non-Hong Kong company of which the director can be identified as a director.
- (3) The index kept under this section must be open to the inspection of any person on payment of a prescribed fee.
- (4) Despite subsection (3), the following particulars contained in the index must not be open for inspection under that subsection—
 - (a) the usual residential address of the director;
 - (b) the full number of the identity card or passport of the director.
- (5) Subsection (4) does not affect the inclusion in the index of a correspondence address of the director, nor does it affect the inspection of the correspondence address under subsection (3), even if the correspondence address is the same as the usual residential address of the director.

791. Service of process or notice

- (1) Subject to subsections (3) and (4), any process or notice required to be served on a registered non-Hong Kong company is sufficiently served if—
 - (a) it is addressed to an authorized representative of the company whose required details are shown in the Companies Register; and
 - (b) it is left at, or sent by post to, the representative's last known address.
- (2) Subsections (3) and (4) apply if—
 - (a) no required details of authorized representatives of a registered non-Hong Kong company are shown in the Companies Register; or
 - (b) every one of the company's authorized representatives refuses to accept service on behalf of the company or the process or notice cannot be served on any of them.
- (3) Any process or notice required to be served on the registered non-Hong Kong company is sufficiently served if it is left at, or sent by post to, any place of business established by the company in Hong Kong.
- (4) In the case of a registered non-Hong Kong company that no longer has a place of business in Hong Kong, any process or notice required to be served on the company is sufficiently served—
 - (a) if—
 - (i) it is sent by registered post to the company's registered office (or the equivalent) in the company's place of incorporation at the address as shown in the Companies Register; and
 - (ii) a copy of it is sent by registered post to the company's principal place of business (if any) in the company's place of incorporation at the address as shown in the Companies Register; or

- (b) where no such addresses are shown in the Companies Register, if it is left at, or sent by post to, any place in Hong Kong at which the company has had a place of business within the previous 12 months.
- (5) Any process or notice required to be served on a non-Hong Kong company (other than a registered non-Hong Kong company) is sufficiently served—
 - (a) in the case of a company that has established a place of business in Hong Kong, if it is left at, or sent by post to, the place of business; or
 - (b) in the case of a company that has established, but no longer has, a place of business in Hong Kong—
 - (i) if—
 - (A) it is sent by registered post to the company's registered office (or the equivalent) in the company's place of incorporation; and
 - (B) a copy of it is sent by registered post to the company's principal place of business (if any) in the company's place of incorporation; or
 - (ii) where the address of such registered office, or principal place of business, cannot be ascertained but the company has had a place of business in Hong Kong within the previous 12 months, if it is left at, or sent by post to, the place of business in Hong Kong.

792. Financial Secretary may make regulations

- (1) The Financial Secretary may make regulations providing for the application of this Ordinance in relation to the accounts that have been revised under section 778.
- (2) The regulations may—
 - (a) make different provisions according to whether the accounts have been revised by—

- (i) supplementing the accounts with another document that shows the revisions; or
- (ii) replacing the accounts;
- (b) require a registered non-Hong Kong company to take the steps specified in the regulations in relation to the accounts that have been revised; and
- (c) apply this Ordinance to the accounts that have been revised subject to such additions, exceptions and modifications as are specified in the regulations.
- (3) The regulations may provide that any of the following is an offence, punishable by a fine or imprisonment, or both—
 - (a) a failure to take all reasonable steps to secure compliance as respects the accounts that have been revised with—
 - (i) a specified provision of the regulations; or
 - (ii) a specified provision of this Ordinance as having effect under the regulations;
 - (b) a contravention of—
 - (i) a specified provision of the regulations; or
 - (ii) a specified provision of this Ordinance as having effect under the regulations.
- (4) The maximum fine that may be prescribed for an offence committed wilfully is \$300,000 and the maximum imprisonment is 12 months. The maximum fine that may be prescribed for an offence not committed wilfully is \$300,000. In addition, in the case of a continuing offence, a further fine not exceeding \$2,000 for each day during which the offence continues may be prescribed.
- (5) The regulations may provide for defences to any such offence.

793. Financial Secretary may make regulations

- (1) The Financial Secretary may make regulations prescribing—

- (a) the particulars to be contained in an application under section 764(2) or (3);
 - (b) the documents to accompany an application under section 764(2) or (3);
 - (c) the documents to accompany a notification under section 775(3);
 - (d) the particulars to be contained in a return under section 776(1) or 779(1); and
 - (e) the documents to accompany a return under section 776(1) or 779(1).
- (2) The Financial Secretary may make regulations—
- (a) providing that an application under section 764(2) or (3), or a return under section 766(2), may contain a certified translation of a domestic name of the non-Hong Kong company; and
 - (b) providing for the procedures and requirements for the purpose.
- (3) Subsection (2) does not apply to an application or return that is required by section 764(5) or 766(9) to contain a certified translation of a domestic name.

Part 17**Companies not Formed, but Registrable, under this Ordinance****Division 1****Preliminary****794. Interpretation**

In this Part—

constitutional document (章程文件), in relation to an eligible company, means—

- (a) an Ordinance constituting or regulating the company; or
- (b) a non-statutory constitutional document of the company;

eligible company (合資格公司) means a company—

- (a) formed after 1 May 1865 in pursuance of an Ordinance other than this Ordinance or a former Companies Ordinance; or
- (b) otherwise constituted after that date according to law;

non-statutory constitutional document (不屬法定的章程文件), in relation to an eligible company, means any deed of settlement, or other instrument, constituting or regulating the company.

Division 2**Registration of Eligible Companies****795. Registrar may register eligible company**

- (1) The Registrar may, on application by an eligible company, register the company as—

- (a) an unlimited company; or
- (b) a company limited by guarantee.
- (2) An application for the purposes of subsection (1) must be in the specified form.
- (3) An application for the purposes of subsection (1) must be accompanied by—
 - (a) a copy of every constitutional document of the eligible company; and
 - (b) in the case of an application for registration as a company limited by guarantee, a copy of the resolution that complies with section 798(2).
- (4) A registration under subsection (1) is not invalid by reason only of it having taken place with a view to the eligible company being wound up.

796. General restrictions on Registrar's power to register

- (1) If the liability of the members of an eligible company is limited by an Ordinance or otherwise according to law, the Registrar must not register the company under this Part.
- (2) The Registrar must not register an eligible company under this Part as a company limited by guarantee unless—
 - (a) if the company has an English name only—
 - (i) the name by which the company is to be registered has “Limited” as the last word of that name; and
 - (ii) a Chinese equivalent of it that the company may use has “有限公司” as the last 4 Chinese characters of the equivalent;
 - (b) if the company has a Chinese name only—
 - (i) the name by which the company is to be registered has “有限公司” as the last 4 Chinese characters of that name; and

- (ii) an English equivalent of it that the company may use has “Limited” as the last word of the equivalent; or
- (c) if the company has both an English name and a Chinese name—
 - (i) the English name by which the company is to be registered has “Limited” as the last word of that name; and
 - (ii) the Chinese name by which the company is to be registered has “有限公司” as the last 4 Chinese characters of that name.

797. Registrar must not register without members' assent

- (1) The Registrar must not register an eligible company under this Part as an unlimited company unless there is assent to the registration by a majority of the members present at a general meeting of the company convened for the purpose.
- (2) The Registrar must not register an eligible company under this Part as a company limited by guarantee unless there is assent to the registration by at least 75% of the members present at a general meeting of the company convened for the purpose.
- (3) For the purposes of this section, in computing a majority, or 75%, of the members where a poll is demanded, the number of votes to which each member is entitled according to the eligible company's regulations must be taken into account.
- (4) In this section, a reference to a member present at a general meeting is—
 - (a) a reference to a member present in person; or
 - (b) if proxies are allowed by the eligible company's regulations, a reference to a member present by proxy.

798. Registrar must not register without resolution declaring amount of guarantee

- (1) The Registrar must not register an eligible company under this Part as a company limited by guarantee unless the members pass a resolution that complies with subsection (2).
- (2) The resolution must declare that each person who is a member of the eligible company undertakes that if the company is wound up while the person is such a member, or within one year after the person ceases to be such a member, the person will contribute an amount required of the person, not exceeding a specified amount, to the company's assets—
 - (a) for the payment of the company's debts and liabilities contracted before the person ceases to be such a member;
 - (b) for the payment of the costs and expenses of winding up the company; or
 - (c) for the adjustment, among the contributories, of their rights.
- (3) For the purposes of subsection (1), it is irrelevant whether the resolution is passed before, on or after the commencement date of this Division.

799. Eligible company must pay registration fee

Before the Registrar registers an eligible company under this Part, the company must pay a prescribed fee to the Registrar for the registration.

800. Registrar must issue certificate of registration

On registering an eligible company under this Part, the Registrar must issue to it a certificate of registration, with the Registrar's signature or printed signature.

Division 3**Consequences of Registration****801. Application of Division**

This Division applies if an eligible company is registered under this Part as an unlimited company or a company limited by guarantee.

802. Status, property, rights and liabilities of eligible company

- (1) On being issued with a certificate of registration under section 800, the eligible company is to be regarded as having been incorporated under this Ordinance as an unlimited company or a company limited by guarantee, whichever is applicable.
- (2) Subsection (1) does not operate to create a new legal entity for the eligible company.
- (3) The registration does not affect the eligible company's property.
- (4) The registration does not affect the eligible company's rights and liabilities in respect of—
 - (a) any debt or obligation incurred by or on behalf of, or owed to, the company before the registration; or
 - (b) any contract entered into by or on behalf of the company before the registration.

803. Continuation of existing proceedings

- (1) Subject to subsection (2), any action or other legal proceedings that are, at the time of registration, pending by or against the eligible company, or any of its officers or members, may be continued in the same manner as if the registration had not taken place.
- (2) Execution must not be issued against the effects of a member of the eligible company on any judgment, decree or order obtained in any such pending action or proceedings.

- (3) If the eligible company's property and effects are insufficient to satisfy the judgment, decree or order, an order may be obtained for winding up the company.

804. Continuation of existing constitutional document

- (1) The provisions in a constitutional document of the eligible company are to be regarded as conditions and regulations of the company in the same manner and with the same incidents as if those provisions were, had the company been formed under this Ordinance, contained in the articles with which the company would have been formed.
- (2) In subsection (1), a reference to a constitutional document of an eligible company includes, in the case of an eligible company registered as a company limited by guarantee, the resolution that complies with section 798(2).

805. Eligible company may substitute articles for non-statutory constitutional document

- (1) The eligible company may alter the form of its constitution by substituting articles for a non-statutory constitutional document of the company.
- (2) An alteration must be made by special resolution.
- (3) Subject to subsections (5) and (6), so much of sections 84 and 86 as relate to the matters specified in subsection (4) applies to an alteration (so far as applicable) if the eligible company, had it been formed under this Ordinance, would have been a private company.
- (4) The matters specified for the purposes of subsection (3) are—
- (a) matters consequential on the passing of a resolution for an alteration under section 84; and
 - (b) an application to the Court for the cancellation of an alteration of a private company's objects.

- (5) A reference in section 84(7) to a copy of the company's articles as altered is to be read as a copy of the articles substituted for a non-statutory constitutional document of the eligible company under this section.
- (6) On the delivery to the Registrar under section 84 of a copy of the company's articles substituted for a non-statutory constitutional document of the eligible company or on the date when the alteration is no longer liable to be cancelled by order of the Court, whichever is the later—
- (a) the articles apply to the company in the same manner as if it were a private company registered under this Ordinance with the articles; and
 - (b) the non-statutory constitutional document ceases to apply to the company.
- (7) An alteration may be made under subsection (1) with or without an alteration of the eligible company's objections under section 84.

806. This Ordinance applies to eligible company

- (1) Subject to section 807, this Ordinance applies to the eligible company and its officers, members, contributories and creditors in the same manner in all respects as if the company had been formed under this Ordinance.
- (2) Despite anything in a constitutional document of the eligible company, a provision of this Ordinance applies to the company if the provision relates to an unlimited company's registration as a limited company.

807. Exceptions to section 806(1)

- (1) The eligible company may not adopt as its articles any or all of the provisions of the model articles prescribed under section 73, unless those provisions are adopted by special resolution.

- (2) Subject to section 808, the eligible company does not have any power to alter a provision in an Ordinance relating to the company.
- (3) If the eligible company is wound up, a person specified in subsection (5) is a contributory—
- (a) liable to pay or contribute to the payment of—
 - (i) the company's debts and liabilities contracted before the registration;
 - (ii) any sum for the adjustment of the rights of the members among themselves in respect of those debts and liabilities; and
 - (iii) the costs and expenses of winding up the company, so far as relating to those debts and liabilities; and
 - (b) liable to contribute to the company's assets all sums due from the person in respect of the liability under paragraph (a).
- (4) In the event of the death or bankruptcy of such a contributory, the provisions of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) with respect to the personal representatives, and to the trustees of bankrupt, apply.
- (5) The person specified for the purposes of subsection (3) is a person who is liable to pay or contribute to the payment of the eligible company's debts and liabilities contracted before the registration.

808. Eligible company's power to alter constitution

This Ordinance does not derogate from any power, vested in the eligible company, by virtue of a constitutional document of the company, of altering its constitution or regulations.

Part 18

Communications to and by Companies

Division 1

Preliminary

809. Interpretation

(1) In this Part—

address (地址) includes a number, or any sequence or combination of letters, characters, numbers or symbols of any language, used for the purpose of sending or receiving a document or information by electronic means;

applicable provision (適用條文)—

- (a) in Division 3, means a provision of this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) that authorizes or requires the document or information to be sent or supplied to a company; or
- (b) in Division 4, means a provision of this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) that authorizes or requires the document or information to be sent or supplied by a company to another person;

business day (辦公日) means a day that is not—

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

document (文件), except in Division 2, excludes a document that is issued for the purpose of any legal proceedings.

(2) In this Part—

- (a) a reference to sending a document, except in Division 2—
 - (i) includes supplying, delivering, forwarding or producing the document and, in the case of a notice, giving the document; but
 - (ii) excludes serving the document; and
 - (b) a reference to supplying information includes sending, delivering, forwarding or producing the information.
- (3) For the purposes of this Part, a person sends a document, or supplies information, by post if the person posts a prepaid envelope containing the document or information.

810. Minimum period specified for purposes of sections 816(3), 819(4) and 821(6)

- (1) This section specifies the minimum period of the notice of revocation, in relation to an agreement between a company and another person, for the purposes of sections 816(3), 819(4) and 821(6).
- (2) The minimum period is whichever is the longer of the following—
 - (a) a period of 7 days;
 - (b) the period set out in subsection (3) or (4).
- (3) If that other person is not a company, the period set out for the purposes of subsection (2)(b) is—
 - (a) where that other person is a member of the company, the period specified for the purpose in the company's articles;

- (b) where that other person is a debenture holder of the company, the period specified for the purpose in the instrument creating the debenture; or
 - (c) where that other person is not such a member or holder, the period specified for the purpose in any agreement between the person and the company.
- (4) If that other person is a company, the period set out for the purposes of subsection (2)(b) is—
- (a) where that other person is a member of the company, the period specified for the purpose in the company's articles;
 - (b) where the company is a member of that other person, the period specified for the purpose in the person's articles;
 - (c) where that other person is a debenture holder of the company or where the company is a debenture holder of that other person, the period specified for the purpose in the instrument creating the debenture; or
 - (d) where neither that other person nor the company is such a member or holder, the period specified for the purpose in any agreement between the person and the company.

811. Period specified for purposes of sections 816(7)(a), 819(7)(a) and 821(11)(b)

- (1) This section specifies—
 - (a) the period, in relation to a document or information sent or supplied to a company by another person, for the purposes of section 816(7)(a); and
 - (b) the period, in relation to a document or information sent or supplied by a company to another person, for the purposes of sections 819(7)(a) and 821(11)(b).
- (2) The period is whichever is the longer of the following—
 - (a) a period of 48 hours;

- (b) the period set out in subsection (3) or (4).
- (3) If that other person is not a company, the period set out for the purposes of subsection (2)(b) is—
 - (a) where that other person is a member of the company, the period specified for the purpose in the company's articles;
 - (b) where that other person is a debenture holder of the company, the period specified for the purpose in the instrument creating the debenture; or
 - (c) where that other person is not such a member or holder, the period specified for the purpose in any agreement between the person and the company.
- (4) If that other person is a company, the period set out for the purposes of subsection (2)(b) is—
 - (a) where that other person is a member of the company, the period specified for the purpose in the company's articles;
 - (b) where the company is a member of that other person, the period specified for the purpose in the person's articles;
 - (c) where that other person is a debenture holder of the company or where the company is a debenture holder of that other person, the period specified for the purpose in the instrument creating the debenture; or
 - (d) where neither that other person nor the company is such a member or holder, the period specified for the purpose in any agreement between the person and the company.
- (5) In calculating a period of hours mentioned in subsection (2)(a), any part of a day that is not a business day is to be disregarded.

812. Time specified for purposes of sections 816(7)(b), 817(5)(a), 819(7)(b) and 820(5)(a)

- (1) This section specifies—

- (a) the time, in relation to a document or information sent or supplied to a company by another person, for the purposes of sections 816(7)(b) and 817(5)(a); and
- (b) the time, in relation to a document or information sent or supplied by a company to another person, for the purposes of sections 819(7)(b) and 820(5)(a).
- (2) The time is whichever is the later of the following—
 - (a) the time at which the document or information would be delivered in the ordinary course of post;
 - (b) the time set out in subsection (3) or (4).
- (3) If that other person is not a company, the time set out for the purposes of subsection (2)(b) is—
 - (a) where that other person is a member of the company, the time specified for the purpose in the company's articles;
 - (b) where that other person is a debenture holder of the company, the time specified for the purpose in the instrument creating the debenture; or
 - (c) where that other person is not such a member or holder, the time specified for the purpose in any agreement between the person and the company.
- (4) If that other person is a company, the time set out for the purposes of subsection (2)(b) is—
 - (a) where that other person is a member of the company, the time specified for the purpose in the company's articles;
 - (b) where the company is a member of that other person, the time specified for the purpose in the person's articles;
 - (c) where that other person is a debenture holder of the company or where the company is a debenture holder of that other person, the time specified for the purpose in the instrument creating the debenture; or

- (d) where neither that other person nor the company is such a member or holder, the time specified for the purpose in any agreement between the person and the company.

813. Address specified for purposes of sections 819(3)(b)(iii) and 820(2)(b)

- (1) This section specifies the address, in relation to a document or information sent or supplied by a company to another person, for the purposes of sections 819(3)(b)(iii) and 820(2)(b).
- (2) Subject to subsections (3) and (4), the address is—
 - (a) an address specified for the purpose by that other person generally or specifically; or
 - (b) an address to which a provision of this Ordinance authorizes or requires the document or information to be sent or supplied.
- (3) If that other person (whether or not a company) is a member, debenture holder, director or company secretary of the company, the address is—
 - (a) the address specified in subsection (2); or
 - (b) the person's address as shown in the company's register of members, register of debenture holders, register of directors or register of company secretaries.
- (4) If that other person is a company and is not a person covered by subsection (3), the address is—
 - (a) the address specified in subsection (2); or
 - (b) its registered office.
- (5) If the company is unable to obtain an address specified in subsection (2), (3) or (4), the address is that other person's address last known to the company.

814. Effect of this Part on sending documents etc. to Registrar

In its application in relation to documents or information to be sent or supplied to the Registrar, this Part has effect subject to Part 2.

Division 2

Service of Document on Company

815. Service of document

A document may be served on a company by leaving it at, or sending it by post to, the company's registered office.

Division 3

Other Communication to Company by Person who is not Company

816. Communication in electronic form

- (1) This section applies if a document or information is sent or supplied, in electronic form, to a company by a person who is not a company.
- (2) The document or information is sent or supplied to the company for the purposes of an applicable provision if—
 - (a) the company—
 - (i) has agreed, generally or specifically, that the document or information may be sent or supplied to it in electronic form and has not revoked the agreement; or
 - (ii) is to be regarded under a provision of this Ordinance as having so agreed;
 - (b) the document or information is sent or supplied—
 - (i) by electronic means to an address—

- (A) specified for the purpose by the company generally or specifically; or
- (B) regarded under a provision of this Ordinance as having been so specified for the purpose; or
- (ii) by hand or by post to an address specified in subsection (4); and
- (c) the document or information is sent or supplied in a form, and by a means, that, in the person's reasonable opinion, will enable the recipient—
 - (i) to read the document or information, or, to the extent that it consists of images, to see the document or information, with the naked eye or with the eye with suitable corrective lens; and
 - (ii) to retain a copy of the document or information.
- (3) The company has not revoked the agreement for the purposes of subsection (2)(a)(i) unless it has given the person a notice of revocation of not less than the period specified in section 810.
- (4) The address specified for the purposes of subsection (2)(b)(ii) is—
 - (a) an address specified for the purpose by the company generally or specifically;
 - (b) the company's registered office; or
 - (c) an address to which a provision of this Ordinance authorizes or requires the document or information to be sent or supplied.
- (5) For the purposes of an applicable provision that authorizes or requires the document or information to be authenticated, the document or information is sufficiently authenticated if—
 - (a) the person's identity is confirmed in a manner specified by the company; or

- (b) where no manner has been specified, the communication contains or is accompanied by a statement of the person's identity, and the company has no reason to doubt the truth of the statement.
- (6) If the document or information is sent or supplied by a person on behalf of another, subsection (5) does not affect any provision of the company's articles under which the company may require reasonable evidence of the former's authority to act on behalf of the latter.
- (7) If the document or information is sent or supplied to a company for the purposes of an applicable provision, it is to be regarded as being received by the company—
 - (a) where the document or information is sent or supplied by electronic means, at the end of the period specified in section 811 after it is sent or supplied;
 - (b) where the document or information is sent or supplied by post, at the time specified in section 812; or
 - (c) where the document or information is sent or supplied by hand, at the time when the document or information is delivered.

817. Communication in hard copy form

- (1) This section applies if a document or information is sent or supplied, in hard copy form, to a company by a person who is not a company.
- (2) The document or information is sent or supplied to the company for the purposes of an applicable provision if the document or information is sent or supplied by hand or by post to—
 - (a) an address specified for the purpose by the company generally or specifically;
 - (b) the company's registered office; or

- (c) an address to which a provision of this Ordinance authorizes or requires the document or information to be sent or supplied.
- (3) For the purposes of an applicable provision that authorizes or requires the document or information to be authenticated, the document or information is sufficiently authenticated if it is signed by the person.
- (4) If the document or information is sent or supplied by a person on behalf of another, subsection (3) does not affect any provision of the company's articles under which the company may require reasonable evidence of the former's authority to act on behalf of the latter.
- (5) If the document or information is sent or supplied to a company for the purposes of an applicable provision, it is to be regarded as being received by the company—
 - (a) where the document or information is sent or supplied by post, at the time specified in section 812; or
 - (b) where the document or information is sent or supplied by hand, at the time when the document or information is delivered.

818. Communication in other forms

- (1) This section applies if a document or information is sent or supplied, otherwise than in electronic or hard copy form, to a company by a person who is not a company.
- (2) The document or information is sent or supplied to the company for the purposes of an applicable provision if the document or information is sent or supplied in a form or manner that has been agreed by the company.

Division 4**Other Communication by Company to Another Person****819. Communication in electronic form**

- (1) Subject to subsection (2), this section applies if a document or information is sent or supplied, in electronic form, by a company to another person.
- (2) This section does not apply if the document or information is sent or supplied by the company to that other person by making it available on a website.
- (3) The document or information is sent or supplied to that other person for the purposes of an applicable provision if—
 - (a) that other person—
 - (i) where that other person is not a company, has agreed, generally or specifically, that the document or information may be sent or supplied to the person in electronic form and has not revoked the agreement; or
 - (ii) where that other person is a company, has so agreed and has not revoked the agreement, or is to be regarded under a provision of this Ordinance as having so agreed;
 - (b) the document or information is sent or supplied—
 - (i) by electronic means to an address—
 - (A) where that other person is not a company, specified for the purpose by that other person generally or specifically; or
 - (B) where that other person is a company, so specified for the purpose, or regarded under a provision of this Ordinance as having been so specified for the purpose;

- (ii) by hand to that other person; or
- (iii) by hand or by post to an address specified in section 813; and
- (c) the document or information is sent or supplied in a form, and by a means, that, in the company's reasonable opinion, will enable the recipient—
 - (i) to read the document or information, or, to the extent that it consists of images, to see the document or information, with the naked eye or with the eye with suitable corrective lens; and
 - (ii) to retain a copy of the document or information.
- (4) That other person has not revoked the agreement for the purposes of subsection (3)(a) unless the person has given the company a notice of revocation of not less than the period specified in section 810.
- (5) For the purposes of an applicable provision that authorizes or requires the document or information to be authenticated, the document or information is sufficiently authenticated if—
 - (a) the company's identity is confirmed in a manner specified by that other person; or
 - (b) where no manner has been specified, the communication contains or is accompanied by a statement of the company's identity, and that other person has no reason to doubt the truth of the statement.
- (6) If the document or information is sent or supplied by a person on behalf of the company to another company, subsection (5) does not affect any provision of that other company's articles under which that other company may require reasonable evidence of the person's authority to act on behalf of the company for which the document or information is sent or supplied.

- (7) If the document or information is sent or supplied to that other person for the purposes of an applicable provision, it is to be regarded as being received by that other person—
 - (a) where the document or information is sent or supplied by electronic means, at the end of the period specified in section 811 after it is sent or supplied;
 - (b) where the document or information is sent or supplied by post, at the time specified in section 812; or
 - (c) where the document or information is sent or supplied by hand, at the time when the document or information is delivered.
- 820. Communication in hard copy form**
- (1) This section applies if a document or information is sent or supplied, in hard copy form, by a company to another person.
 - (2) The document or information is sent or supplied to that other person for the purposes of an applicable provision if the document or information is sent or supplied—
 - (a) by hand to that other person; or
 - (b) by hand or by post to an address specified in section 813.
 - (3) For the purposes of an applicable provision that authorizes or requires the document or information to be authenticated, the document or information is sufficiently authenticated if it is signed by a director or company secretary of the company or by an officer of the company authorized for the purpose.
 - (4) If the document or information is sent or supplied by a person on behalf of the company to another company, subsection (3) does not affect any provision of that other company's articles under which that other company may require reasonable evidence of the person's authority to act on behalf of the company for which the document or information is sent or supplied.

- (5) If the document or information is sent or supplied to that other person for the purposes of an applicable provision, it is to be regarded as being received by that other person—
- (a) where the document or information is sent or supplied by post, at the time specified in section 812; or
 - (b) where the document or information is sent or supplied by hand, at the time when the document or information is delivered.

821. Communication by means of website

- (1) Subject to subsection (2), this section applies if a document or information is sent or supplied by a company to another person by making it available on a website.
- (2) This section does not apply if the document or information is sent or supplied by a member of a company to the company.
- (3) The document or information is sent or supplied to that other person for the purposes of an applicable provision if—
 - (a) that other person—
 - (i) has agreed, generally or specifically, that the document or information may be sent or supplied by the company to the person by making it available on a website, or is to be regarded under subsection (4) or (5) as having so agreed; and
 - (ii) has not revoked the agreement;
 - (b) the document or information is sent or supplied in a form, and by a means, that, in the company's reasonable opinion, will enable the recipient—
 - (i) to read the document or information, or, to the extent that it consists of images, to see the document or information, with the naked eye or with the eye with suitable corrective lens; and
 - (ii) to retain a copy of the document or information;

- (c) subject to subsection (10), the company has notified that other person of the matters specified in subsection (8); and
- (d) the company has made the document or information available on the website throughout—
 - (i) the period specified by the applicable provision; or
 - (ii) where no period is specified, the period of 28 days beginning on the date on which the notification under paragraph (c) is sent to that other person.
- (4) For the purposes of subsection (3)(a)(i), a person who is a member of the company is to be regarded as having agreed that the document or information may be sent or supplied by the company to the person by making it available on a website if—
 - (a) the company's members have resolved, or the company's articles contain a provision to the effect, that documents or information generally may be so sent or supplied by the company to its members;
 - (b) subject to subsection (10), the company has individually requested the person to agree that documents or information generally, or the document or information, may be so sent or supplied by the company to the person and has not received a response to the request within 28 days beginning on the date on which the request was sent; and
 - (c) subject to subsection (10), the request—
 - (i) stated clearly the effect of a failure to respond within those 28 days; and
 - (ii) was sent at least 12 months after any prior request made to the person for the purposes of paragraph (b) in respect of the same or a similar class of documents or information.

- (5) For the purposes of subsection (3)(a)(i), a person who is a debenture holder of the company is to be regarded as having agreed that the document or information may be sent or supplied by the company to the person by making it available on a website if—
- (a) the instrument creating the debenture contains a provision to the effect, or the equivalent debenture holders have resolved in accordance with the provisions of that instrument, that documents or information generally may be so sent or supplied by the company to those holders;
 - (b) subject to subsection (10), the company has individually requested the person to agree that documents or information generally, or the document or information, may be so sent or supplied by the company to the person and has not received a response to the request within 28 days beginning on the date on which the request was sent; and
 - (c) subject to subsection (10), the request—
 - (i) stated clearly the effect of a failure to respond within those 28 days; and
 - (ii) was sent at least 12 months after any prior request made to the person for the purposes of paragraph (b) in respect of the same or a similar class of documents or information.
- (6) That other person has not revoked the agreement for the purposes of subsection (3)(a)(ii) unless the person has given the company a notice of revocation of not less than the period specified in section 810.
- (7) For the purposes of subsection (3)(c), if the applicable provision specifies the time by which or the period within which the notification is to be sent, the notification must be sent by that time or within that period.

- (8) The matters specified for the purposes of subsection (3)(c) are—
- (a) the presence of the document or information on the website;
 - (b) if the document or information is not available on the website on the date of the notification, the date on which it will be so available;
 - (c) the address of the website;
 - (d) the place on the website where the document or information may be accessed; and
 - (e) how to access the document or information.
- (9) For the purposes of subsection (3)(d), a failure to make a document or information available on a website throughout the period mentioned in that subsection is to be disregarded if—
- (a) the document or information is made available on the website for part of that period; and
 - (b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.
- (10) Subsections (3)(c), (4)(b) and (c) and (5)(b) and (c) do not apply if—
- (a) that other person—
 - (i) where that other person is not a company—
 - (A) has not agreed that the document or information may be sent or supplied to the person in electronic form for the purposes of section 819(3)(a)(i); or
 - (B) has not specified an address to which the document or information may be sent or supplied to the person for the purposes of section 819(3)(b)(i)(A); or

- (ii) where that other person is a company, has not so agreed or specified or is not regarded under a provision of this Ordinance as having so agreed or specified; and
 - (b) any document or information has been sent or supplied, in hard copy form, by the company to that other person by post to an address specified for the purposes of section 820(2)(b), and it has been returned by the post office as undeliverable at the address.
- (11) If the document or information is sent or supplied to that other person for the purposes of an applicable provision—
- (a) it is to be regarded as being sent or supplied on whichever is the later of the following—
 - (i) the date on which the document or information is first made available on the website;
 - (ii) the date on which a notification under subsection (3)(c) is sent; and
 - (b) it is to be regarded as being received by that other person at the end of the period specified in section 811 after whichever is the later of the following—
 - (i) the time when the document or information is first made available on the website;
 - (ii) the time when that other person receives a notification under subsection (3)(c).
- (12) In this section—
- equivalent debenture holders* (相應債權證持有人), in relation to a person to whom a document or information is sent or supplied by a company, means the debenture holders of the company ranking equally for all purposes with the person.

822. Communication in other forms

- (1) This section applies if a document or information is sent or supplied by a company to another person otherwise than in

electronic or hard copy form or by making it available on a website.

- (2) The document or information is sent or supplied to that other person for the purposes of an applicable provision if the document or information is sent or supplied in a form or manner that has been agreed by that other person.

823. Joint holders of shares or debentures

- (1) This section applies if—
- (a) a provision of this Ordinance authorizes or requires a document or information to be sent or supplied by a company to the holders of its shares or debentures; and
 - (b) a document or information is required to be sent to joint holders of the shares or debentures.
- (2) Subject to anything in the company's articles, the document or information is sent or supplied to the joint holders for the purposes of the provision if the document or information is sent or supplied to—
- (a) each of the joint holders; or
 - (b) the holder whose name appears first in the company's register of members or register of debenture holders.
- (3) Subject to anything in the company's articles, anything to be agreed or specified by the holders for the purposes of this Division must be agreed or specified by all the joint holders.

824. Death or bankruptcy of holder of shares

- (1) This section applies if—
- (a) a provision of this Ordinance authorizes or requires a document or information to be sent or supplied by a company to the holders of its shares; and
 - (b) a holder of the shares is dead or bankrupt.

- (2) Subject to anything in the company's articles, the document or information is sent or supplied to that holder for the purposes of the provision if the document or information—
- (a) is sent or supplied to the persons claiming to be entitled to the shares in consequence of the death or bankruptcy by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address within Hong Kong supplied for the purpose by the persons so claiming; or
 - (b) until such an address has been so supplied, is sent or supplied in any manner in which it might have been sent or supplied if the death or bankruptcy had not occurred.

825. Member or debenture holder may require hard copy

- (1) A member or debenture holder of a company may, within 28 days after the date of receiving from the company a document or information, otherwise than in hard copy form, request the company to send or supply to the member or holder the document or information in hard copy form.
- (2) The company must send or supply to the member or holder the document or information in hard copy form, free of charge—
 - (a) within 21 days after the date of receiving the request; or
 - (b) if the document or information requires an action to be taken by the member or holder, within 7 days after the date of receiving the request.
- (3) If a company contravenes subsection (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

Part 19**Investigations and Enquiries****Division 1****Preliminary****826. Interpretation**

(1) In this Part—

agent (代理人), in relation to a company, includes—

- (a) a banker or solicitor of the company; and
- (b) a person, whether an officer of the company or not, who is engaged as an auditor of the company;

authorized institution (認可機構) has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155);

books (簿冊) includes accounts and accounting information, however compiled or stored, and whether or not recorded in a legible form;

delegate (獲轉授人)—

- (a) in relation to an inspector, means a person to whom the inspector has delegated any power under section 838(1);
- (b) in relation to the Financial Secretary, means a person to whom the Financial Secretary has delegated any power under section 858;
- (c) in relation to the Registrar, means a public officer to whom the Registrar has delegated any power under section 862;

document (文件) means—

- (a) any register, books or tape recording;

- (b) any input or output, in whatever form, into or from an information system; and
- (c) any other document or similar material (whether produced mechanically, electronically, magnetically, optically, manually or by any other means);

information (資料) includes—

- (a) data, text, images, sound codes, computer programmes, software and databases; and
- (b) any combination of the things mentioned in paragraph (a);

inspector (審查員) means—

- (a) a person appointed under section 828 or 829 to investigate a company's affairs; or
- (b) a person appointed under section 841 to continue an investigation;

officer (高級人員), in relation to a body corporate, means a director, manager or company secretary of, or any other person involved in the management of, the body corporate;

record (紀錄) means any record of information (however compiled or stored) and includes—

- (a) any books, deed, contract, agreement, voucher and receipt;
- (b) any document or other material used with or produced by an information system;
- (c) any information that is recorded otherwise than in a legible form but is capable of being reproduced in a legible form;
- (d) any document, disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of other equipment) of being reproduced; and

- (e) any film (including a microfilm), disc, tape or other device in which visual images are embodied so as to be capable (with or without the aid of other equipment) of being reproduced.
- (2) For the purposes of this Part, a body corporate is an associated body corporate of a company if—
- (a) the body corporate and the company are members of the same group of companies; or
 - (b) the body corporate and the company are substantially controlled by the same person.

Division 2

Investigation of Company's Affairs by Inspectors

Subdivision 1

Preliminary

827. Interpretation

In this Division—

company (公司)—

- (a) in section 828, includes a registered non-Hong Kong company;
- (b) in section 829, includes a non-Hong Kong company;

final report (最終報告) means the final report mentioned in section 844;

interim report (中期報告) means the interim report mentioned in section 843;

investigation (調查) means an investigation into a company's affairs under section 828 or 829.

Subdivision 2**Appointment by Financial Secretary of Inspectors to Investigate Company's Affairs****828. Appointment of inspector on application by company or members**

- (1) The Financial Secretary may, on application by a company, appoint a person to investigate the company's affairs if the company has by special resolution declared that the company's affairs ought to be so investigated.
- (2) The Financial Secretary may also appoint a person to investigate a company's affairs—
 - (a) for a company having a share capital, on application by—
 - (i) at least 100 members; or
 - (ii) members holding at least 10% of the shares issued; or
 - (b) for a company not having a share capital, on application by at least 10% in number of the persons on the company's register of members.
- (3) An application for the purposes of subsection (1) or (2) must be supported by the evidence required by the Financial Secretary to show that the applicant has good reason for requesting the investigation.
- (4) The Financial Secretary must not appoint a person under subsection (1) or (2) to investigate a company's affairs unless the Financial Secretary is satisfied that it is in the public interest to do so.
- (5) The Financial Secretary may, before making an appointment under subsection (1) or (2), require an applicant for an appointment under subsection (1) or (2) to give security for

the payment of the expenses of the investigation, in an amount specified by the Financial Secretary.

829. Appointment of inspector on Court's or Financial Secretary's initiative

- (1) The Financial Secretary must appoint a person to investigate a company's affairs if the Court by order declares that the company's affairs ought to be so investigated.
- (2) The Financial Secretary may appoint a person to investigate a company's affairs if it appears to the Financial Secretary that there are circumstances suggesting that—
 - (a) the company was formed for a fraudulent or unlawful purpose;
 - (b) the company's affairs are being or have been conducted—
 - (i) in a manner unfairly prejudicial to the interests of its members generally or of one or more members;
 - (ii) with intent to defraud its creditors or the creditors of any other person; or
 - (iii) for any other fraudulent or unlawful purpose; or
 - (c) the persons concerned with the formation of the company or the management of its affairs have, in relation to the formation or management, engaged in fraud, misfeasance or other misconduct towards it, its members or its creditors.
- (3) The Financial Secretary must not appoint a person under subsection (2) to investigate a company's affairs unless the Financial Secretary is satisfied that it is in the public interest to do so.
- (4) The Financial Secretary may appoint a person under subsection (2) to investigate a company's affairs even though the company is in the course of being wound up voluntarily.

830. Notice of appointment as inspector to be delivered to Registrar

- (1) A person who is appointed as an inspector under section 828 or 829 must deliver a notice of the appointment to the Registrar.
- (2) The notice must be delivered to the Registrar within a reasonable time after the appointment and must be in the specified form.

Subdivision 3**Financial Secretary's Powers to Give Directions to Inspectors****831. General power of Financial Secretary to give directions regarding investigation**

- (1) The Financial Secretary may give directions to an inspector regarding an investigation.
- (2) The Financial Secretary may give directions under this section—
 - (a) on the Financial Secretary's own initiative; or
 - (b) at the request of the inspector.
- (3) The Financial Secretary may vary or revoke any directions given under this section.

832. Financial Secretary may give directions regarding subject matter of investigation etc.

- (1) Without limiting section 831, the Financial Secretary may give directions to an inspector with respect to any or all of the following—
 - (a) the terms or subject matter of the investigation (whether by reference to a specified area of a company's operation, a specified transaction, a specified period of time or otherwise);

- (b) the matters the inspector must take into account or must not take into account in conducting the investigation;
- (c) the steps the inspector must take or must not take in conducting the investigation.
- (2) Without limiting section 831, the Financial Secretary may also give directions to an inspector to require that the interim report or final report of the investigation—
 - (a) is to include the inspector's opinion with respect to a specified matter;
 - (b) is not to make reference to a specified matter;
 - (c) is to be made in a specified form or manner; or
 - (d) is to be completed by a specified date.
- (3) In this section—
specified (指明) means specified in directions given under this section.

833. Financial Secretary may give directions to terminate or suspend investigation

- (1) Without limiting section 831, the Financial Secretary may, at any time before the completion of an investigation, direct the inspector—
 - (a) to terminate the investigation; or
 - (b) to suspend the investigation for a period as specified by the Financial Secretary.
- (2) If the inspector is appointed under section 829(1), the Financial Secretary must not give directions under subsection (1)(a) unless it appears to the Financial Secretary that—
 - (a) matters have come to light in the course of the investigation which suggest that a criminal offence under the laws of Hong Kong has been committed; and
 - (b) those matters have been referred to a law enforcement agency.

Subdivision 4**Inspectors' Powers****834. Inspector may require production of records and documents etc.**

- (1) An inspector appointed to investigate a company's affairs may, by notice in writing, require any of the persons specified in subsection (2) to do any or all of the following—
 - (a) produce, within the time and at the place specified in the notice, any record or document specified in the notice that—
 - (i) is or may be relevant to the investigation; and
 - (ii) is in the person's custody or power;
 - (b) take all reasonable steps to preserve the record or document before it is produced to the inspector;
 - (c) attend before the inspector at the time and place specified in the notice, and answer any question, whether on oath or otherwise, relating to any matter under investigation that the inspector may raise with the person;
 - (d) answer any question relating to any matter under investigation that is specified in the notice;
 - (e) give the inspector all other assistance in connection with the investigation that the person is reasonably able to give.
- (2) The persons are—
 - (a) the company;
 - (b) an officer or former officer of the company;
 - (c) an agent or former agent of the company;
 - (d) a person whom the inspector has reasonable grounds to believe—

- (i) to be in possession of any record or document that contains, or is likely to contain, information relevant to the investigation; or
 - (ii) otherwise to be in possession of that information.
- (3) An inspector must not require an authorized institution to produce any record or document, or disclose any information, relating to the affairs of a customer of the institution under subsection (1) unless—
 - (a) the inspector has reasonable grounds to believe that the customer may be able to provide information relevant to the investigation; and
 - (b) the inspector is satisfied that the production or disclosure is necessary for the purposes of the investigation and so certifies in writing.
- (4) In subsection (1)(b), a reference to preserving a record or document includes preventing a person from—
 - (a) removing, disposing of or destroying the record or document;
 - (b) erasing, adding to or altering in any other manner an entry or other particulars contained in the record or document; or
 - (c) interfering in any other manner with, or causing or permitting any other person to interfere with, the record or document.
- (5) An inspector may administer an oath to any person for the purposes of subsection (1)(c).

835. Inspector may require production of director's accounts

- (1) If an inspector appointed to investigate a company's affairs has reasonable grounds to believe that a director or former director of the company maintains or has maintained an account specified in subsection (2), the inspector may, by notice in writing, require the director or former director to

produce to the inspector all documents relating to the account that are in the possession, or under the control, of the director or former director.

- (2) The account is one of whatever description maintained by the director or former director (whether alone or jointly with any other person) with a bank, deposit-taking company or similar financial institution (whether in Hong Kong or elsewhere), into or out of which there has been paid—
- (a) any emolument, retirement benefit or compensation in respect of the directorship, particulars of which are not contained in the notes to the financial statements of the company for any financial year, contrary to section 378;
 - (b) any loan or quasi-loan in favour of the director or former director, or any money that has resulted from or has been used in the financing of any dealing in favour of the director or former director, particulars of which are not contained in the notes to the financial statements of the company for any financial year, contrary to section 378; or
 - (c) any money that has been in any way connected with any misconduct of the director or former director (whether fraudulent or not) towards the company or its members.

836. Provisions supplementary to sections 834 and 835: powers to require explanation etc.

- (1) If a person produces a record or document in compliance with a requirement imposed under section 834 or 835, the inspector may—
- (a) make copies, or otherwise record the details, of the record or document; and
 - (b) by notice in writing, require the person to provide any information or explanation in respect of the record or document.

- (2) If a person gives any answer or provides any information or explanation in compliance with a requirement imposed under subsection (1) or section 834, the inspector may, by notice in writing, further require the person to verify, within the time specified in that further requirement, the answer, information or explanation by a statutory declaration.
- (3) If a person does not give any answer or provide any information or explanation in compliance with a requirement imposed under subsection (1) or section 834 for the reason that the answer, information or explanation is not within the person's knowledge or in the person's possession, the inspector may, by notice in writing, further require the person to verify, within the time specified in that further requirement, that reason and fact by a statutory declaration.
- (4) A statutory declaration mentioned in subsection (2) or (3) may be taken by the inspector.

837. Inspector may exercise powers in relation to associated body corporate

If an inspector appointed to investigate a company's affairs considers it necessary for the purposes of the investigation, the inspector may also exercise any or all of the powers under sections 834, 835 and 836 in relation to an associated body corporate of the company, as if the references to a company in those sections were references to an associated body corporate.

838. Delegation of powers by inspector

- (1) An inspector appointed to investigate a company's affairs may delegate in writing any or all of the powers conferred under sections 834, 835 and 836 to another person.
- (2) An inspector may delegate powers under subsection (1) in relation to the company or an associated body corporate of the company.

- (3) If 2 or more inspectors are appointed to investigate a company's affairs, the power under subsection (1) is exercisable by each of them.

Subdivision 5

Resignation, Removal and Replacement of Inspectors

839. Resignation of inspector

An inspector may resign by notice in writing to the Financial Secretary.

840. Revocation of appointment of inspector by Financial Secretary

The Financial Secretary may revoke the appointment of an inspector by notice in writing to the inspector.

841. Appointment of replacement inspector

- (1) If an inspector dies or resigns, or an inspector's appointment is revoked, the Financial Secretary may appoint another person to continue the investigation.
- (2) For the purposes of this Division (except this section), a person appointed to continue an investigation under subsection (1)—
 - (a) is to be regarded as having been appointed under the provision of this Division under which the former inspector was appointed; and
 - (b) is subject to any direction given to the former inspector under this Division that has not been revoked.

842. Former inspector must hand over documents etc.

- (1) This section applies to—

- (a) an inspector to whom the Financial Secretary has given a direction to terminate the investigation under section 833(1)(a); or
 - (b) a person—
 - (i) who has resigned as an inspector; or
 - (ii) whose appointment as an inspector has been revoked.
- (2) The inspector or person must produce any document that the inspector or person has obtained or generated during the course of the investigation to—
- (a) the Financial Secretary; or
 - (b) if directed by the Financial Secretary—
 - (i) a person appointed to continue the investigation under section 841(1); or
 - (ii) a person referred to in section 869(2)(a) or (b).
- (3) The inspector or person must also, if directed by the Financial Secretary, inform—
- (a) the Financial Secretary;
 - (b) a person appointed to continue the investigation under section 841(1); or
 - (c) a person referred to in section 869(2)(a) or (b), of any matter that came to the inspector's or person's knowledge as a result of the investigation.
- (4) A document mentioned in subsection (2) must be produced in a form as directed by the Financial Secretary.

Subdivision 6**Reports by Inspectors****843. Interim report to be made by inspector etc.**

- (1) An inspector—
 - (a) must, if directed by the Financial Secretary, prepare an interim report on the investigation; and
 - (b) may at any time prepare an interim report on the investigation if the inspector considers it appropriate to do so.
- (2) If an inspector is directed under section 833(1)(a) to terminate an investigation, any direction previously given by the Financial Secretary referred to in subsection (1)(a) ceases to have effect.
- (3) An interim report must be delivered to the Financial Secretary within the time directed by the Financial Secretary or, in the absence of directions, within a reasonable time after it is prepared.
- (4) An inspector must, within a reasonable time after the delivery of an interim report to the Financial Secretary, deliver to the Registrar a notice of that fact in the specified form.
- (5) Irrespective of whether an interim report has been or will be prepared, an inspector—
 - (a) may, at any time in the course of the investigation, inform the Financial Secretary of any matter that comes to the inspector's knowledge as a result of the investigation; and
 - (b) must inform the Financial Secretary of any matter that comes to the inspector's knowledge as a result of the investigation, if directed to do so by the Financial Secretary.

844. Final report to be made by inspector etc.

- (1) An inspector must, on the completion of the investigation, prepare a final report on the investigation.
- (2) An inspector who is directed under section 833(1)(a) to terminate an investigation must still prepare a final report on the investigation if directed to do so—
 - (a) where the inspector is appointed under section 828(1) or (2) or 829(2), by the Financial Secretary; or
 - (b) where the inspector is appointed under section 829(1), by the Court.
- (3) A final report must be delivered to the Financial Secretary within the time directed by the Financial Secretary or, in the absence of directions, within a reasonable time after it is prepared.
- (4) An inspector must, within a reasonable time after the delivery of a final report to the Financial Secretary, deliver to the Registrar a notice of that fact in the specified form.

845. Interim report or final report may cover affairs of associated body corporate

If an inspector appointed to investigate a company's affairs or a delegate of the inspector has exercised any of the powers under section 834, 835 or 836 in relation to an associated body corporate of the company, the inspector must also report on the affairs of that body corporate in the interim report or final report, so far as the inspector considers that the affairs of that body corporate are relevant to the investigation.

846. Inspector must send report to affected persons etc.

- (1) If, in the opinion of an inspector appointed to investigate a company's affairs, any person named in an interim report or final report on the investigation would in the event of a publication or other disclosure of the report, or any part of the report, be adversely affected by the publication or disclosure,

the inspector must, before delivering the report to the Financial Secretary—

- (a) send the draft report or that part of the draft report to the person; and
 - (b) give the person a reasonable opportunity to be heard.
- (2) Before an inspector sends a draft interim report or final report, or part of the draft report, to a person under subsection (1), the inspector may—
- (a) cause any passages in the draft report or that part of the draft report to be concealed from view or to be obliterated; and
 - (b) require the person to keep the draft report or that part of the draft report confidential.

847. Financial Secretary to file copies of inspector's report with Court

- (1) As soon as practicable after receiving an interim report or final report from an inspector appointed under section 829(1), the Financial Secretary must file a copy of the report with the Court.
- (2) The Financial Secretary may, before filing a copy of an interim report or final report with the Court under subsection (1), specify the period and manner in which access to the report is to be restricted.

848. Financial Secretary may send copies of inspector's report to applicants of investigation etc.

- (1) After receiving an interim report or final report from an inspector appointed to investigate a company's affairs, the Financial Secretary may—
 - (a) send a copy of the report to the company at its registered office; or

(b) on request and on receipt of the prescribed fee, send a copy of the report to—

- (i) a member of the company or a member of its associated body corporate the affairs of which are reported in the report under section 845;
- (ii) the auditors of the company or body corporate;
- (iii) a person whose conduct is mentioned in the report;
- (iv) the applicant for the investigation; or
- (v) any other person whose financial interest appears to the Financial Secretary to be affected by the matters dealt with in the report, whether as a creditor of the company or body corporate, or a possible investor or otherwise.

(2) Before sending a copy of an interim report or final report to any person under subsection (1), the Financial Secretary may—

- (a) cause any passage in the report to be concealed from view or to be obliterated; and
- (b) require the person to keep the copy of the report confidential.

849. Publication of inspector's report

- (1) The Financial Secretary may publish, either in whole or in part, any interim report or final report delivered to the Financial Secretary under this Division.
- (2) The Financial Secretary must deliver to the Registrar a copy of any interim report or final report, or any part of an interim report or final report, that is published under subsection (1) as soon as practicable after it is published.
- (3) In this section—
publish (發表) includes distribute, make available and disseminate.

850. Inspector's report to be evidence

In any civil proceedings before a court (including proceedings for the disqualification of a director)—

- (a) a document purporting to be a copy of an interim report or final report prepared by an inspector, or a part of such a report, and purporting to be certified by the inspector or the Financial Secretary as a true copy of the report or part, is admissible in evidence on its production without further proof; and
- (b) on being admitted in evidence under paragraph (a), the document is evidence of the facts stated in the report or that part of the report.

Subdivision 7**Miscellaneous****851. Offences for failing to comply with requirements under Subdivision 4 etc.**

- (1) A person commits an offence if the person, without reasonable excuse, fails to comply with any requirement imposed on the person under Subdivision 4.
- (2) A person commits an offence if the person, with intent to defraud, fails to comply with any requirement imposed on the person under Subdivision 4.
- (3) An officer or employee of a company or body corporate on which a requirement is imposed under Subdivision 4 commits an offence if the officer or employee, with intent to defraud, causes or allows the company or body corporate to fail to comply with the requirement.
- (4) A person commits an offence if the person—
 - (a) in purported compliance with a requirement imposed on the person under Subdivision 4—

- (i) produces any record or document that is false or misleading in a material particular;
- (ii) provides any information or explanation that is false or misleading in a material particular; or
- (iii) says or states anything that is false or misleading in a material particular; and
- (b) knows that, or is reckless as to whether or not, the record or document, the information or explanation, or the thing said or stated, is false or misleading in a material particular.
- (5) A person commits an offence if the person, with intent to defraud, in purported compliance with a requirement imposed on the person under Subdivision 4—
 - (a) produces any record or document that is false or misleading in a material particular;
 - (b) provides any information or explanation that is false or misleading in a material particular; or
 - (c) says or states anything that is false or misleading in a material particular.
- (6) An officer or employee of a company or body corporate on which a requirement is imposed under Subdivision 4 commits an offence if the officer or employee, with intent to defraud, causes or allows the company or body corporate to, in purported compliance with the requirement—
 - (a) produce any record or document that is false or misleading in a material particular;
 - (b) provide any information or explanation that is false or misleading in a material particular; or
 - (c) say or state anything that is false or misleading in a material particular.

- (7) A person is not excused from complying with a requirement imposed on the person under Subdivision 4 only on the ground that to do so might tend to incriminate the person.
- (8) Despite anything in this Ordinance, no criminal proceedings may be instituted against a person under subsection (1), (2), (3), (4), (5) or (6) in respect of any conduct if—
 - (a) proceedings have previously been instituted against the person for the purposes of section 852(2)(b) in respect of the same conduct; and
 - (b) those proceedings remain pending, or by reason of the previous institution of those proceedings, no proceedings may again be lawfully instituted against the person for the purposes of section 852(2)(b) in respect of the same conduct.
- (9) A person who commits an offence under subsection (1) is liable—
 - (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for one year; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (10) A person who commits an offence under subsection (2), (3), (5) or (6) is liable—
 - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (11) A person who commits an offence under subsection (4) is liable—
 - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

852. Inspector may apply to Court to inquire into failure to comply with requirements under Subdivision 4

- (1) If a person fails to comply with a requirement imposed on the person under Subdivision 4, the inspector may, by originating summons, apply to the Court for an inquiry into the failure.
- (2) The Court may, if it is satisfied that the person has without reasonable excuse failed to comply with the requirement, do any or all of the following—
 - (a) order the person to comply with the requirement within the period specified by the Court;
 - (b) punish the person, and any other person knowingly involved in the failure, in the same manner as if the person and, if applicable, that other person had been guilty of contempt of court.
- (3) Despite anything in this Ordinance, no proceedings may be instituted against a person for the purposes of subsection (2)(b) in respect of any conduct if—
 - (a) criminal proceedings have previously been instituted against the person under section 851(1), (2), (3), (4), (5) or (6) in respect of the same conduct; and
 - (b) those criminal proceedings remain pending, or by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against the person under section 851(1), (2), (3), (4), (5) or (6) in respect of the same conduct.

853. Use of incriminating evidence in proceedings

- (1) If an inspector or a delegate of an inspector requires a person, under Subdivision 4, to give an answer to any question or to provide any information or explanation in respect of any record or document produced, the inspector or delegate must ensure that the person has first been informed or reminded of the limitations imposed by subsection (2) on the admissibility in evidence of the inspector's or delegate's requirement and of

the answer given, or information or explanation provided, by the person.

- (2) Despite anything in this Ordinance, if the conditions specified in subsection (3) are satisfied, the inspector's or delegate's requirement and the answer given, or information or explanation provided, by the person are not admissible in evidence against the person in criminal proceedings, other than those in which the person is charged with an offence in respect of the answer, information or explanation—
 - (a) under section 851(4), (5) or (6);
 - (b) under Part V of the Crimes Ordinance (Cap. 200); or
 - (c) for perjury.
- (3) The conditions are—
 - (a) that the answer, information or explanation might tend to incriminate the person; and
 - (b) that the person so claims before giving the answer, or providing the information or explanation.

854. Expenses of investigation

- (1) The expenses of an investigation are to defrayed in the first instance out of the general revenue but the persons mentioned in subsection (2) are liable to repay the expenses to the Government to the extent mentioned in that subsection.
- (2) Those persons and the extent of their liability are as follows—
 - (a) if, on a prosecution for an offence instituted as a result of the investigation, a person is convicted of the offence by the court, the person is liable to repay the expenses to the Government to the extent ordered by the court;
 - (b) if the inspector who conducted the investigation was appointed under section 828 or 829(1), any body corporate dealt with by the interim report or final report is liable to repay the expenses to the Government to the extent directed by the Financial Secretary;

- (c) if the inspector who conducted the investigation was appointed under section 828 on application by a company or members of a company, the company or any of those members who made the application are liable to repay the expenses to the Government to the extent directed by the Financial Secretary.
- (3) When making an order or giving directions under a paragraph of subsection (2), the court or the Financial Secretary (as the case may be) may order or direct that 2 or more persons liable under that paragraph are to be jointly liable or jointly and severally liable for any of the expenses ordered or directed to be repaid to the Government.
- (4) On making an order on the extent of a person's liability under paragraph (a) of subsection (2), the court may further order that the person is also liable to indemnify another person against any liability to which that other person may be subject under paragraph (b) or (c) of that subsection.
- (5) If the inspector who conducted the investigation was appointed under section 828 or 829(1), the interim report or final report of the investigation may, if the inspector thinks fit, include a recommendation as to the extent to which the expenses of the investigation should be repaid by a person referred to in paragraph (a), (b) or (c) of subsection (2).
- (6) An inspector must include a recommendation mentioned in subsection (5) in the interim report or final report of the investigation if so directed by the Financial Secretary.
- (7) The recommendation of an inspector under subsection (5) or (6)—
 - (a) in relation to a person referred to in paragraph (a) of subsection (2)—
 - (i) must not be disclosed to the court until after the person has been convicted; and
 - (ii) does not bind the court; and

- (b) in relation to a person referred to in paragraph (b) or (c) of subsection (2), does not bind the Financial Secretary.
- (8) For the purposes of this section, the expenses of an investigation include—
 - (a) expenses incidental to the investigation; and
 - (b) such reasonable sums for general staff costs and overhead expenses of the Government, and for the cost of insurance for the inspector, as are determined by the Financial Secretary.
- (9) An amount that is repayable to the Government under subsection (2) is recoverable as a civil debt due to the Government.

Division 3

Enquiry into Company's Affairs by Financial Secretary

855. Interpretation

In this Division—

company (公司)—

- (a) in section 856(a), includes a registered non-Hong Kong company;
- (b) in section 856(b), includes a non-Hong Kong company.

856. Circumstances under which Financial Secretary may enquire into company's affairs

The Financial Secretary may enquire into a company's affairs if—

- (a) the Financial Secretary considers that doing so would assist the Financial Secretary in deciding whether to appoint an inspector under section 828(2); or
- (b) it appears to the Financial Secretary that there is a good reason for doing so.

857. Financial Secretary may require production of records and documents etc.

- (1) For the purpose of enquiring into a company's affairs under section 856, if the Financial Secretary considers that a record or document is or may be relevant to the enquiry, the Financial Secretary may, by notice in writing, require—
 - (a) the company; or
 - (b) any other person who appears to the Financial Secretary to be in possession of the record or document,
 to produce the record or document within the time and at the place specified in the notice.
- (2) If a company or a person produces a record or document in compliance with a requirement imposed under subsection (1), the Financial Secretary may—
 - (a) make copies, or otherwise record the details, of the record or document; and
 - (b) by notice in writing, require an officer or former officer of the company or the person to provide any information or explanation in respect of the record or document.
- (3) The Financial Secretary must not require an authorized institution to produce any record or document, or disclose any information, relating to the affairs of a customer of the institution under subsection (1) or (2) unless—
 - (a) the Financial Secretary has reasonable grounds to believe that the customer may be able to provide information relevant to the enquiry; and
 - (b) the Financial Secretary is satisfied that the production or disclosure is necessary for the purposes of the enquiry and so certifies in writing.
- (4) If an authorized institution produces a record or document relating to the affairs of its customer in compliance with a requirement imposed under subsection (1), the Financial Secretary may also require that customer to provide any

information or explanation in respect of the record or document.

- (5) If a company or a person does not produce a record or document in compliance with a requirement imposed under subsection (1), the Financial Secretary may, by notice in writing, require the company or person to state, to the best of the company's or person's knowledge and belief, where the record or document is.

858. Financial Secretary may delegate powers under section 857

The Financial Secretary may delegate in writing any or all of the powers conferred under section 857 to another person.

859. Offences for failing to comply with requirements under section 857 etc.

- (1) A person commits an offence if the person, without reasonable excuse, fails to comply with any requirement imposed on the person under section 857.
- (2) A person commits an offence if the person, with intent to defraud, fails to comply with any requirement imposed on the person under section 857.
- (3) An officer or employee of a company on which a requirement is imposed under section 857 commits an offence if the officer or employee, with intent to defraud, causes or allows the company to fail to comply with the requirement.
- (4) A person commits an offence if the person—
- (a) in purported compliance with a requirement imposed on the person under section 857—
- (i) produces any record or document that is false or misleading in a material particular; or
- (ii) provides any information or explanation that is false or misleading in a material particular; and

- (b) knows that, or is reckless as to whether or not, the record or document, or the information or explanation, is false or misleading in a material particular.
- (5) A person commits an offence if the person, with intent to defraud, in purported compliance with a requirement imposed on the person under section 857—
- (a) produces any record or document that is false or misleading in a material particular; or
- (b) provides any information or explanation that is false or misleading in a material particular.
- (6) An officer or employee of a company on which a requirement is imposed under section 857 commits an offence if the officer or employee, with intent to defraud, causes or allows the company to, in purported compliance with the requirement—
- (a) produce any record or document that is false or misleading in a material particular; or
- (b) provide any information or explanation that is false or misleading in a material particular.
- (7) A person is not excused from complying with a requirement imposed on the person under section 857 only on the ground that to do so might tend to incriminate the person.
- (8) A person who commits an offence under subsection (1) is liable—
- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for one year; or
- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (9) A person who commits an offence under subsection (2), (3), (5) or (6) is liable—
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(10) A person who commits an offence under subsection (4) is liable—

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

860. Use of incriminating evidence in proceedings

(1) If the Financial Secretary or a delegate of the Financial Secretary requires a person, under section 857, to provide any information or explanation in respect of any record or document produced, the Financial Secretary or delegate must ensure that the person has first been informed or reminded of the limitations imposed by subsection (2) on the admissibility in evidence of the Financial Secretary's or delegate's requirement and of the information or explanation provided by the person.

(2) Despite anything in this Ordinance, if the conditions specified in subsection (3) are satisfied, the Financial Secretary's or delegate's requirement, as well as the information or explanation provided by the person, are not admissible in evidence against the person in criminal proceedings other than those in which the person is charged with an offence in respect of the information or explanation—

(a) under section 859(4), (5) or (6);

(b) under Part V of the Crimes Ordinance (Cap. 200); or

(c) for perjury.

(3) The conditions specified for the purposes of subsection (2) are—

(a) that the information or explanation might tend to incriminate the person; and

(b) that the person so claims before providing the information or explanation.

Division 4

Enquiry by Registrar

861. Registrar may require production of records and documents etc.

(1) For the purpose of enquiring into whether any specified act has been done, if each of the conditions specified in subsection (2) is satisfied, the Registrar may, by notice in writing, require a person—

(a) to produce, within the time and at the place specified in the notice, any record or document specified in the notice; and

(b) if the record or document is produced, to provide any information or explanation in respect of the record or document.

(2) Subject to subsection (3), the conditions are—

(a) that the Registrar has reason to believe that—

(i) a specified act has been done;

(ii) the record, document, information or explanation is relevant to the enquiry; and

(iii) the person is in possession of the record or document; and

(b) that it is so certified in writing by the Registrar.

(3) Subsection (2)(a)(iii) does not apply if the person who is to be required to produce the record or document is—

(a) the body corporate to which the act relates; or

(b) an officer of that body corporate.

- (4) The Registrar must not require an authorized institution to produce any record or document, or disclose any information, relating to the affairs of a customer of the institution under subsection (1) unless—
- (a) the Registrar has reasonable grounds to believe that the customer may be able to provide information relevant to the enquiry; and
 - (b) the Registrar is satisfied that the production or disclosure is necessary for the purposes of the enquiry and so certifies in writing.
- (5) If an authorized institution produces a record or document relating to the affairs of its customer in compliance with a requirement imposed under subsection (1), the Registrar may also require that customer to provide any information or explanation in respect of the record or document.
- (6) If a person produces a record or document in compliance with a requirement imposed under subsection (1), the Registrar may make copies, or otherwise record the details, of the record or document.
- (7) The Financial Secretary may, by notice published in the Gazette, amend subsection (8).
- (8) In this section—
- specified act* (指明作為) means an act that would constitute an offence under section 738(7) or 883(1).

862. Registrar may delegate powers under section 861

The Registrar may delegate in writing any or all of the powers conferred under section 861 to any public officer.

863. Offences for failing to comply with requirements under section 861 etc.

- (1) A person commits an offence if the person, without reasonable excuse, fails to comply with any requirement imposed on the person under section 861.
- (2) A person commits an offence if the person, with intent to defraud, fails to comply with any requirement imposed on the person under section 861.
- (3) An officer or employee of a body corporate on which a requirement is imposed under section 861 commits an offence if the officer or employee, with intent to defraud, causes or allows the body corporate to fail to comply with the requirement.
- (4) A person commits an offence if the person—
 - (a) in purported compliance with a requirement imposed on the person under section 861—
 - (i) produces any record or document that is false or misleading in a material particular; or
 - (ii) provides any information or explanation that is false or misleading in a material particular; and
 - (b) knows that, or is reckless as to whether or not, the record or document, or the information or explanation, is false or misleading in a material particular.
- (5) A person commits an offence if the person, with intent to defraud, in purported compliance with a requirement imposed on the person under section 861—
 - (a) produces any record or document that is false or misleading in a material particular; or
 - (b) provides any information or explanation that is false or misleading in a material particular.
- (6) An officer or employee of a body corporate on which a requirement is imposed under section 861 commits an offence

if the officer or employee, with intent to defraud, causes or allows the body corporate to, in purported compliance with the requirement—

- (a) produce any record or document that is false or misleading in a material particular; or
 - (b) provide any information or explanation that is false or misleading in a material particular.
- (7) A person is not excused from complying with a requirement imposed on the person under section 861 only on the ground that to do so might tend to incriminate the person.
- (8) A person who commits an offence under subsection (1) is liable—
- (a) on conviction on indictment to a fine of \$150,000 and to imprisonment for one year; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (9) A person who commits an offence under subsection (2), (3), (5) or (6) is liable—
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 3 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (10) A person who commits an offence under subsection (4) is liable—
- (a) on conviction on indictment to a fine of \$300,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

864. Use of incriminating evidence in proceedings

- (1) If the Registrar or a delegate of the Registrar requires a person, under section 861, to provide any information or

explanation in respect of any record or document produced, the Registrar or delegate must ensure that the person has first been informed or reminded of the limitations imposed by subsection (2) on the admissibility in evidence of the Registrar's or delegate's requirement and of the information or explanation provided by the person.

- (2) Despite anything in this Ordinance, if the conditions specified in subsection (3) are satisfied, the Registrar's or delegate's requirement, as well as the information or explanation provided by the person, are not admissible in evidence against the person in criminal proceedings other than those in which the person is charged with an offence in respect of the information or explanation—
- (a) under section 863(4), (5) or (6);
 - (b) under Part V of the Crimes Ordinance (Cap. 200); or
 - (c) for perjury.
- (3) The conditions specified for the purposes of subsection (2) are—
- (a) that the information or explanation might tend to incriminate the person; and
 - (b) that the person so claims before providing the information or explanation.

Division 5

Supplementary Provisions to Divisions 2, 3 and 4

Subdivision 1

Supplementary Provisions Applicable to Divisions 2 and 3

865. Magistrate's warrants

- (1) If a magistrate is satisfied on information on oath laid by—

- (a) in relation to an investigation under Division 2, an inspector; or
- (b) in relation to an enquiry under Division 3, the Financial Secretary or a delegate of the Financial Secretary,

that there are reasonable grounds to suspect that there is, or is likely to be, on premises specified in the information any record or document that may be required to be produced under the Division, the magistrate may issue a warrant in respect of the premises.

- (2) A warrant issued under subsection (1) authorizes a person specified in it, and such other persons as may be necessary to assist in its execution, to—
 - (a) enter the premises, if necessary by force, at any time within the period of 7 days beginning with the date of the warrant; and
 - (b) search for, seize and remove, any record or document that the person so specified has reasonable grounds to believe may be required to be produced under Division 2 or 3 (as the case may be).
- (3) If an authorized person has reasonable grounds to believe that another person on the premises is employed or engaged to provide a service in connection with a business that is or has been conducted on the premises, the authorized person may require that other person to produce for examination any record or document that—
 - (a) is in the possession of that other person; and
 - (b) the authorized person has reasonable grounds to believe may be required to be produced under Division 2 or 3 (as the case may be).
- (4) An authorized person may, in relation to any record or document required to be produced under subsection (3)—
 - (a) prohibit any person found on the premises from—

- (i) removing the record or document from the premises;
- (ii) erasing anything from, adding anything to, or otherwise altering anything in, the record or document; or
- (iii) otherwise interfering in any manner with, or causing or permitting any other person to interfere with, the record or document; and
- (b) take any other steps that appear to the authorized person to be necessary for—
 - (i) preserving the record or document; or
 - (ii) preventing interference with the record or document.
- (5) Any record or document removed by an authorized person may be retained for—
 - (a) a period not exceeding 6 months beginning with the day of its removal; or
 - (b) if the record or document is or may be required for the purposes of any criminal proceedings, or any proceedings under this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), such longer period as may be necessary for the purposes of those proceedings.
- (6) If an authorized person removes any record or document under this section, the person—
 - (a) must as soon as practicable after the removal give a receipt for the record or document; and
 - (b) may permit any other person who, but for the removal, would be entitled to inspect the record or document, at all reasonable times—
 - (i) to inspect it; and
 - (ii) to make copies or otherwise record details of it.

- (7) Section 102 of the Criminal Procedure Ordinance (Cap. 221) applies to any property that has, by virtue of this section, come into the possession of an inspector, the Financial Secretary or a delegate of the Financial Secretary, as it applies to property that has come into the possession of the police.
- (8) A person commits an offence if the person—
- without reasonable excuse, fails to comply with a requirement or prohibition under subsection (3) or (4); or
 - obstructs an authorized person in the exercise of a power conferred by subsection (2), (3) or (4).
- (9) A person who commits an offence under subsection (8) is liable—
- on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (10) In this section—
- authorized person** (獲授權人) means a person authorized by a warrant issued under subsection (1) to carry out the acts set out in paragraphs (a) and (b) of subsection (2).

866. Officers must give assistance in prosecution instituted as a result of investigation etc.

- (1) If—
- an investigation under Division 2 or an enquiry under Division 3 has been carried out; and
 - a prosecution for an offence is instituted as a result of the investigation or enquiry,
- every officer or former officer, employee or former employee, or agent or former agent of any body corporate the affairs of which have been investigated or enquired into in that investigation or enquiry must give the Secretary for Justice all

- assistance in connection with the prosecution that the officer, employee or agent is reasonably able to give.
- (2) Subsection (1) does not require a person to give any assistance in connection with the prosecution if the person is a defendant in the proceedings.

867. Proceedings on specified materials

- If it appears to the Financial Secretary from any specified materials that it is expedient in the public interest that a body corporate which may be wound up under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) should be wound up, the Financial Secretary may present a petition for it to be wound up.
- On a petition by the Financial Secretary under subsection (1), the Court may make a winding up order if the Court thinks it just and equitable for the body corporate to be wound up.
- If it appears to the Financial Secretary from any specified materials that—
 - a company's or non-Hong Kong company's affairs are being or have been conducted in a manner unfairly prejudicial to the interests of the members generally or of one or more members; or
 - an actual or proposed act or omission of a company or non-Hong Kong company (including one done or made on its behalf) is or would be so prejudicial,
 the Financial Secretary may, whether or not a petition has been presented under subsection (1), present to the Court a petition for an order to be made under section 714(1)(b) or (2).
- If it appears to the Financial Secretary from any specified materials that, in relation to a company or non-Hong Kong company, a person—

- (a) has engaged, is engaging or is proposing to engage in any conduct specified in section 717(1)(a); or
- (b) before the commencement date of section 717, had engaged, was engaging or was proposing to engage in any conduct specified in section 717(2)(a), and the engagement or proposal still subsists,

the Financial Secretary may apply to the Court for the remedies under section 718(2).

- (5) If it appears to the Financial Secretary from any specified materials that, in relation to a company or non-Hong Kong company, a person—
 - (a) has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing specified in section 717(1)(b); or
 - (b) before the commencement date of section 717, had refused or failed, was refusing or failing, or was proposing to refuse or fail, to do an act or thing that the person was required by the predecessor Ordinance and is required by this Ordinance to do, and the refusal, failure or proposal still subsists,
 the Financial Secretary may apply to the Court for the remedies under section 718(2).
- (6) If it appears to the Financial Secretary from any specified materials that it is expedient in the public interest that a disqualification order be made under section 168J(2) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) against any person who is or has been a director or shadow director of—
 - (a) a company as defined by section 2(1); or
 - (b) a company, wherever incorporated, that—
 - (i) is carrying on business in Hong Kong, or has carried on business in Hong Kong; and

- (ii) may be wound up under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32),

the Financial Secretary may apply to the Court for such an order to be made against that person.

(7) In this section—

specified materials (指明材料) means—

- (a) any report made on, or any record, document or information obtained in, an investigation under Division 2 by an inspector or a delegate of an inspector ; or
- (b) any record, document or information obtained in an enquiry under Division 3 by the Financial Secretary or a delegate of the Financial Secretary.

868. Preservation of secrecy

- (1) Except in the performance of any function under this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), or for carrying into effect the provisions of this Ordinance or that Ordinance, a person specified in subsection (3)—
 - (a) must not permit any person to have access to any matter relating to the affairs of any person that comes to the specified person's knowledge in an investigation under Division 2 or an enquiry under Division 3, or otherwise in connection with the investigation or enquiry; and
 - (b) must not communicate any such matter to any person other than the person to whom the matter relates.
- (2) Subsection (1) has effect subject to section 869(1) and (2).
- (3) The persons specified for the purposes of subsection (1) are—
 - (a) a public officer;

- (b) an inspector or a delegate of an inspector or of the Financial Secretary, or an employee, agent, consultant or adviser of the inspector or delegate;
- (c) an employee, agent, consultant or adviser who is employed or appointed for the purposes of an investigation under Division 2 or an enquiry under Division 3;
- (d) a person who performs or has performed any function in an investigation under Division 2 or an enquiry under Division 3;
- (e) a person who has assisted any other person in the performance of any function in an investigation under Division 2 or an enquiry under Division 3; and
- (f) a person who, under section 846 or 848—
 - (i) has been sent a draft report or a part of the draft report, or a report, on an investigation; and
 - (ii) has been required to keep the draft report or that part of the draft report, or the report, confidential.

869. Permitted disclosure and restrictions

- (1) A person specified in section 868(3) may—
 - (a) disclose information that has already been made available to the public;
 - (b) disclose information for the purpose of any criminal proceedings in Hong Kong or any investigation conducted by a law enforcement agency with a view to bringing any such proceedings;
 - (c) disclose information for the purpose of seeking advice from or giving advice by counsel, a solicitor or other professional adviser, acting or proposing to act in a professional capacity in connection with any matter arising under this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

- (d) disclose information in connection with any judicial or other proceedings to which the specified person is a party; and
 - (e) disclose information in accordance with an order of a court or tribunal, or in accordance with a law or a requirement made under a law.
- (2) The Financial Secretary may—
- (a) subject to subsection (3), disclose information to—
 - (i) the Chief Executive;
 - (ii) the Secretary for Justice;
 - (iii) the Secretary for Financial Services and the Treasury;
 - (iv) the Commissioner of Police of Hong Kong;
 - (v) the Commissioner of the Independent Commission Against Corruption;
 - (vi) the Commissioner of Inland Revenue;
 - (vii) the Registrar;
 - (viii) the Official Receiver in a capacity other than that of a liquidator or provisional liquidator appointed under, or holding such office by virtue of, the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);
 - (ix) the Monetary Authority;
 - (x) the Securities and Futures Commission;
 - (xi) the Financial Reporting Council;
 - (xii) the Market Misconduct Tribunal;
 - (xiii) the Insurance Authority;
 - (xiv) the Mandatory Provident Fund Schemes Authority;
 - (xv) an inspector;
 - (xvi) a delegate of the Financial Secretary;

- (xvii) a company recognized as an exchange company under section 19(2) of the Securities and Futures Ordinance (Cap. 571);
 - (xviii) the Privacy Commissioner for Personal Data;
 - (xix) the Ombudsman; or
 - (xx) a public officer authorized by the Financial Secretary under subsection (7);
- (b) subject to subsection (3), disclose information in respect of a company whose affairs are or have been investigated under section 828 or 829, or enquired into under section 857, to—
- (i) the Official Receiver in the capacity of a liquidator or provisional liquidator of the company appointed under, or holding such office by virtue of, the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); or
 - (ii) any other person who—
 - (A) is a liquidator or provisional liquidator of the company appointed under that Ordinance; or
 - (B) acts in a similar capacity in relation to the company under any law of a place outside Hong Kong;
- (c) disclose information with the consent of—
- (i) the person from whom the information was obtained or received; and
 - (ii) if the information does not relate to such person, the person to whom it relates; and
- (d) disclose information in summary form that is so framed as to prevent particulars relating to any person from being ascertained from it.

- (3) The Financial Secretary must not disclose information under subsection (2)(a) or (b) unless the Financial Secretary is of the opinion that—
- (a) the disclosure will enable or assist the recipient of the information to perform the recipient's functions; and
 - (b) it is not contrary to the public interest that the information be so disclosed.
- (4) Subject to subsection (5), if information is disclosed under subsection (1) or (2) (other than subsection (1)(a) or (2)(d)) or section 868(1)—
- (a) the person to whom the information is so disclosed; and
 - (b) any other person who obtains or receives the information from that person,
- must not disclose the information to any other person.
- (5) Subsection (4) does not prohibit a person mentioned in paragraph (a) or (b) of that subsection from disclosing the information to any other person if—
- (a) the Financial Secretary consents to the disclosure;
 - (b) the information has already been made available to the public;
 - (c) the disclosure is for the purpose of seeking advice from or giving advice by counsel, a solicitor or other professional adviser, acting or proposing to act in a professional capacity in connection with any matter arising under this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);
 - (d) the disclosure is in connection with any judicial or other proceedings to which the person so referred to is a party; or
 - (e) the disclosure is in accordance with an order of a court or tribunal, or in accordance with a law or a requirement made under a law.

- (6) The Financial Secretary may attach such conditions as the Financial Secretary considers appropriate to—
- (a) a disclosure of information made under subsection (2); or
 - (b) a consent granted under subsection (5)(a).
- (7) The Financial Secretary may authorize any public officer as a person to whom information may be disclosed under subsection (2)(a)(xx).

870. Offences on breach of secrecy

- (1) A person who contravenes section 868(1) commits an offence.
- (2) A person commits an offence if—
 - (a) the person discloses any information in contravention of section 869(4); and
 - (b) at the time of the disclosure—
 - (i) the person knew, or ought to have known, that the information was previously disclosed to, or obtained or received by, the person as described in section 869(4)(a) or (b); and
 - (ii) the person had no reasonable grounds to believe that the person was not prohibited from disclosing the information by virtue of section 869(5).
- (3) A person who commits an offence under subsection (1) or (2) is liable—
 - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

Subdivision 2**Supplementary Provisions Applicable to Divisions 2, 3 and 4****871. Interpretation**

In this Subdivision—

specified officer (指明人員)—

- (a) in relation to an investigation under Division 2, means an inspector or a delegate of an inspector;
- (b) in relation to an enquiry under Division 3, means the Financial Secretary or a delegate of the Financial Secretary; and
- (c) in relation to an enquiry under Division 4, means the Registrar or a delegate of the Registrar.

872. Protection in relation to certain disclosures

(1) If—

- (a) a person makes a disclosure to a specified officer otherwise than in compliance with a requirement made by the officer under Division 2, 3 or 4 (as the case may be); and
- (b) the disclosure satisfies each of the conditions specified in subsection (2),

the person is not liable in any proceedings relating to a breach of duty of confidentiality by reason only of the disclosure.

(2) The conditions are—

- (a) that the disclosure is of a kind that the person could be required to make under Division 2, 3 or 4 (as the case may be);
- (b) that the person makes the disclosure in good faith and in the reasonable belief that the disclosure is capable of

- assisting the specified officer in the investigation under Division 2 or enquiry under Division 3 or 4;
- (c) that the information disclosed is not more than is reasonably necessary for the purpose of assisting the specified officer in the investigation under Division 2 or enquiry under Division 3 or 4;
 - (d) that the disclosure is not prohibited by virtue of any enactment.
- (3) Subsection (1) does not apply to a disclosure made by a person in the capacity as a banker or lawyer in respect of information to which the person owes a duty of confidentiality in that capacity.

873. Protection of informers etc.

- (1) Any information concerning the identity of a protected person is not admissible in evidence in any proceedings before a court or tribunal.
- (2) In such proceedings, a witness is not obliged—
 - (a) to disclose the name or address of a protected person who is not a witness in those proceedings; or
 - (b) to state any matter that would lead, or would tend to lead, to discovery of the name or address of a protected person who is not a witness in those proceedings.
- (3) If a book, document or paper that is in evidence, or liable to inspection, in such proceedings contains an entry—
 - (a) in which a protected person is named or described; or
 - (b) that might lead to discovery of a protected person,
 the court or tribunal (as the case may be) must cause all such entries to be concealed from view, or to be obliterated, so far as may be necessary to protect the identity of the protected person from discovery.

- (4) In such proceedings, the court or tribunal may, despite subsection (1), (2) or (3), permit inquiry, and require full disclosure, concerning a protected person if—
 - (a) it is of the opinion that justice cannot be fully done between the parties to the proceedings without disclosure of the name of the protected person; or
 - (b) it is satisfied that the protected person made a material statement that the person—
 - (i) knew or believed to be false; or
 - (ii) did not believe to be true.
- (5) This section has effect despite the preparation or publication of any interim report or final report of an investigation under Division 2.
- (6) In this section—

protected person (受保障人士) means—

 - (a) an informer who has given information to a specified officer with respect to an investigation under Division 2 or an enquiry under Division 3 or 4; or
 - (b) a person who has assisted a specified officer with respect to such an investigation or enquiry.

874. Legal professional privilege

- (1) Subject to subsection (2), this Part does not affect any claims, rights or entitlements that would, apart from this Part, arise on the ground of legal professional privilege.
- (2) Subsection (1) does not affect any requirement under Division 2, 3 or 4 to disclose the name and address of a client of a legal practitioner (whether or not the legal practitioner is qualified in Hong Kong to practise as counsel or to act as a solicitor).

875. Immunity

- (1) A person who complies with a requirement imposed by a specified officer under Subdivision 4 of Division 2 or section 857 or 861 does not incur any civil liability by reason only of that compliance.
- (2) A person does not incur any civil liability in respect of anything done, or omitted to be done, by the person in good faith in the performance, or purported performance, of any function under this Part.

876. Production of information in information systems etc.

(1) If—

- (a) a specified officer requires any record or document to be produced under Subdivision 4 of Division 2 or section 857 or 861; and
- (b) any information or matter contained in the record or document is recorded otherwise than in a legible form but is capable of being reproduced in a legible form,

the officer may require the production of a reproduction of the recording of the information or matter, or the relevant part of the recording, in a legible form.

(2) If—

- (a) a specified officer requires any record or document to be produced under Subdivision 4 of Division 2 or section 857 or 861; and
- (b) any information or matter contained in the record or document is recorded in an information system,

the officer may require the production of a reproduction of the recording of the information or matter, or the relevant part of the recording, in a form that enables the information or matter to be reproduced in a legible form.

877. Lien claimed on records or documents

If a person claims a lien on any record or document in the person's possession that is required to be produced under Subdivision 4 of Division 2 or section 857 or 861—

- (a) the lien does not affect the requirement to produce the record or document;
- (b) no fee is payable for or in respect of the production; and
- (c) the production does not affect the lien.

878. Destruction of documents

(1) A person commits an offence if—

- (a) the person destroys, falsifies, conceals or otherwise disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any record or document that is required to be produced under Subdivision 4 of Division 2 or section 857 or 861; and
- (b) the person does so with intent to conceal, from the specified officer by whom the requirement was imposed, facts or matters capable of being disclosed by the record or document.

(2) A person who commits an offence under subsection (1) is liable—

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

879. Inspection of records or documents seized etc.

- (1) This section applies if a specified officer has taken possession of any record or document under this Part.
- (2) The specified officer must, subject to any reasonable conditions the officer may impose as to security or otherwise,

permit any person who would be entitled to inspect the record or document had the officer not taken possession of it, at all reasonable times—

- (a) to inspect it; and
- (b) to make copies or otherwise record details of it.

Division 6

Investigation of Company's Affairs by Persons Appointed by Company

880. Appointment of person by company to investigate its affairs

- (1) A company may, by special resolution, appoint a person to investigate its affairs.
- (2) For the purpose of investigating the company's affairs, the appointed person may, by notice in writing, require any officer or agent of the company to do any or all of the following—
 - (a) produce to the appointed person any record or document relating to any matter under investigation that is in the officer's or agent's custody or power;
 - (b) attend before the appointed person at the time and place specified in the notice, and answer any question, whether on oath or otherwise, relating to any matter under investigation that the appointed person may raise with the officer or agent;
 - (c) answer any question relating to any matter under investigation that is specified in the notice.
- (3) The appointed person may administer an oath to any person for the purposes of subsection (2)(b).

881. Court may inquire into failure of officer or agent to attend before appointed person etc.

- (1) If an officer or agent of a company fails to comply with a requirement imposed on the officer or agent under section 880(2), the appointed person may apply to the Court for an inquiry into the failure.
- (2) The Court may, if it is satisfied that the officer or agent has without any reasonable excuse failed to comply with the requirement, punish the officer or agent (as the case may be) in the same manner as if the officer or agent had been guilty of contempt of court.

882. Report by appointed person

- (1) A person appointed to investigate a company's affairs under section 880(1) must, on the conclusion of the investigation, report on the investigation in any manner as that company in general meeting may direct.
- (2) In any proceedings before a court—
 - (a) a document purporting to be a copy of the report, and purporting to be signed by the appointed person and the company, is admissible in evidence on its production without further proof; and
 - (b) on being admitted in evidence under paragraph (a), the document is proof of any opinion of the appointed person expressed in the report.

Part 20**Miscellaneous****Division 1****Miscellaneous Offences****883. Offence for false statement**

- (1) A person commits an offence if, in any return, report, financial statements, certificate or other document, required by or for the purposes of any provision of this Ordinance, the person knowingly or recklessly makes a statement that is misleading, false or deceptive in any material particular.
- (2) A person who commits an offence under subsection (1) is liable—
 - (a) on conviction on indictment to a fine of \$300,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (3) This section does not affect the operation of—
 - (a) Part V of the Crimes Ordinance (Cap. 200); or
 - (b) section 19, 20 or 21 of the Theft Ordinance (Cap. 210).

884. Offence for improper use of “Limited” or “有限公司” etc.

- (1) A person commits an offence if the person—
 - (a) is not incorporated with limited liability; and
 - (b) uses, trades or carries on business under a name or title of which—
 - (i) the word “Limited”, or a contraction or imitation of that word, is the last word;

- (ii) the Chinese version of the word “Limited”, or of a contraction or imitation of that word, is the last word; or
 - (iii) the Chinese characters “有限公司” form part.
- (2) A person commits an offence if the person—
 - (a) is not incorporated; and
 - (b) uses, trades or carries on business under a name or title of which—
 - (i) the word “Corporation” or “Incorporated”, or a contraction or imitation of that word, is the last word;
 - (ii) the Chinese version of the word “Corporation” or “Incorporated”, or of a contraction or imitation of that word, is the last word; or
 - (iii) the Chinese characters “註冊公司” or “法人團體” form part.
 - (3) A person who commits an offence under subsection (1) or (2) is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

Division 2**Miscellaneous Provisions relating to Investigation or Enforcement Measures****885. Court may order inspection or production of documents if offence suspected**

- (1) The Court may, on application by the Secretary for Justice, make an order under subsection (2) or (3) if it is satisfied that—

- (a) there is reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the company's affairs; and
 - (b) evidence of the commission of the offence is to be found in—
 - (i) any books or papers of, or under the control of, the company; or
 - (ii) any books or papers of a person carrying on a banking business, which relate to the company's affairs.
- (2) The Court may, in the case of books or papers mentioned in subsection (1)(b)(i), make an order—
- (a) authorizing a person named in the order to inspect the books or papers, or any of them, for the purpose of investigating and obtaining evidence of the offence; or
 - (b) requiring the company secretary of the company, or any other officer of the company named in the order, to produce the books or papers, or any of them, to a person, and at a place, named in the order.
- (3) The Court may, in the case of books or papers mentioned in subsection (1)(b)(ii), make an order authorizing a person named in the order to inspect the books or papers, or any of them, for the purpose of investigating and obtaining evidence of the offence.

886. Enforcement of requirements by order of Court

- (1) This section applies if a company or an officer of a company contravenes a requirement of this Ordinance—
- (a) to send, deliver, supply, forward or produce a document to the Registrar; or
 - (b) to give notice to the Registrar of any matter.

- (2) The Registrar, or a member or creditor of the company, may serve a notice on the company or officer requiring the company or officer to comply with the requirement.
- (3) If the company or officer fails to make good the contravention within 14 days after service of the notice, the Court may, on application by the Registrar, or by a member or creditor of the company, make an order—
- (a) in the case of a contravention by the company, directing the company and any officer of the company to make good the contravention within the time specified in the order; or
 - (b) in the case of a contravention by the officer, directing the officer to make good the contravention within the time specified in the order.
- (4) An order may provide that all costs of and incidental to the application are to be borne—
- (a) in the case of a contravention by the company, by the company or by any officer of the company responsible for the contravention; or
 - (b) in the case of a contravention by the officer, by that officer.
- (5) This section does not affect the operation of any Ordinance imposing penalties on a company or any officer of a company in respect of the contravention.

887. Registrar may give notice to suspected offender about not instituting proceedings under certain conditions

- (1) If the Registrar has reason to believe that a person has committed an offence specified in Schedule 7, the Registrar may give the person a notice in writing that—
- (a) alleges that the person has committed an offence specified in the Schedule, and contains the particulars of the offence;

- (b) contains the terms of the notice by reference to subsection (5) or (6);
 - (c) specifies the period and amount for the purposes of that subsection; and
 - (d) contains any other information that the Registrar thinks fit.
- (2) A notice may be given only before the proceedings on the offence commence.
- (3) The Registrar may, by a further notice in writing, extend the period specified under subsection (1)(c). This power is exercisable within, or after the end of, that period.
- (4) A notice under subsection (1) may not be withdrawn within the period specified in the notice or that period as extended under subsection (3).
- (5) Where the offence is an offence constituted by a failure to do an act or thing—
- (a) no proceedings will be instituted against the person in respect of that offence if, within the period specified in a notice under subsection (1) or that period as extended under subsection (3), the person pays to the Registrar the amount specified in the notice and does the act or thing; or
 - (b) proceedings may be instituted against the person in respect of that offence if, within the period specified in a notice under subsection (1) or that period as extended under subsection (3), the person has not paid to the Registrar the amount specified in the notice or has not done the act or thing.
- (6) Where the offence is not an offence constituted by a failure to do an act or thing—
- (a) no proceedings will be instituted against the person in respect of that offence if, within the period specified in a notice under subsection (1) or that period as extended

- under subsection (3), the person pays to the Registrar the amount specified in the notice; or
 - (b) proceedings may be instituted against the person in respect of that offence if, within the period specified in a notice under subsection (1) or that period as extended under subsection (3), the person has not paid to the Registrar the amount specified in the notice.
- (7) The payment of an amount specified in a notice given to a person under subsection (1) is not to be regarded as an admission by the person of any liability for the offence alleged in the notice to have been committed by the person.

888. Limitation on commencement of proceedings

- (1) Despite section 26 of the Magistrates Ordinance (Cap. 227), an information or complaint relating to an offence under this Ordinance may be tried if it is laid before or made to a magistrate—
- (a) within 3 years after the commission of the offence; and
 - (b) within 12 months after the date on which the supporting evidence came to the Secretary for Justice's knowledge.
- (2) For the purposes of this section, a certificate of the Secretary for Justice as to the date on which the supporting evidence came to the Secretary for Justice's knowledge is conclusive evidence of that date.
- (3) This section does not apply to—
- (a) an indictable offence; or
 - (b) an offence triable either on indictment or summarily.
- (4) In this section—
- supporting evidence** (助控證據) means evidence sufficient, in the Secretary for Justice's opinion, to justify the proceedings.

889. Application of fines

- (1) When imposing a fine under this Ordinance, the court or magistrate may direct that the whole or any part of the fine is to be applied—
 - (a) in or towards payment of the costs of the proceedings; or
 - (b) in or towards rewarding the person on whose information, or at whose suit, the fine is recovered.
- (2) Subject to a direction under subsection (1), a fine under this Ordinance must be paid into the general revenue.
- (3) Subsection (2) has effect despite anything in any other Ordinance.
- (4) In this section—
court (法院) means the Court or the District Court.

Division 3**Miscellaneous Provisions relating to Misconduct by Officer or Auditor of Company****890. Interpretation**

In this Division—

misconduct (不當行為) means negligence, default, breach of duty or breach of trust;

specified person (指明人士) means—

- (a) an officer of a company; or
- (b) a person employed by a company as an auditor.

891. Court may grant company officer etc. relief in proceedings for misconduct

- (1) This section applies if, in any proceedings for any misconduct against a specified person, it appears to the Court that the person—
 - (a) is or may be liable for the misconduct;
 - (b) has acted honestly and reasonably; and
 - (c) ought fairly to be excused for the misconduct, having regard to all the circumstances of the case (including those connected with the person's appointment).
- (2) The Court may relieve the specified person, either wholly or partly, from the liability on any terms that the Court thinks fit.
- (3) If the case is tried by a judge with a jury, the judge may—
 - (a) withdraw the case in whole or in part from the jury; and
 - (b) direct judgment to be entered for the specified person on the terms as to costs or otherwise that the judge thinks fit.

892. Court may grant company officer etc. relief for misconduct on officer's application

- (1) A specified person may apply to the Court for relief if the person has reason to apprehend that a claim will or might be made against the person for any misconduct.
- (2) On an application, the Court may relieve the specified person, either wholly or partly, from the liability on any terms that the Court thinks fit if it appears to the Court that the person—
 - (a) is or may be liable for the misconduct;
 - (b) has acted honestly and reasonably; and
 - (c) ought fairly to be excused for the misconduct, having regard to all the circumstances of the case (including those connected with the person's appointment).

Division 4**Other Miscellaneous Provisions****893. Costs in action by company etc.**

- (1) This section applies where—
 - (a) a company is a plaintiff in an action or other legal proceedings; and
 - (b) it appears, by credible testimony, to the court having jurisdiction in the matter that there is reason to believe the company will be unable to pay the defendant's costs if the defendant succeeds in the defence.
- (2) Without limiting the powers of the court under any other Ordinance, the court may—
 - (a) require sufficient security to be given for those costs; and
 - (b) stay all proceedings until the security is given.
- (3) In this section—

company (公司) means—

 - (a) a limited company; or
 - (b) a company incorporated outside Hong Kong.

894. Saving as to private prosecution

Nothing in this Ordinance relating to the institution of criminal proceedings by the Secretary for Justice precludes any person from instituting or carrying on any such proceedings.

895. Saving for privileged communication

If proceedings are instituted under this Ordinance against any person by the Secretary for Justice, nothing in this Ordinance is to be regarded as requiring any person to disclose any information that

the person is entitled to refuse to disclose on grounds of legal professional privilege.

896. Paperless holding and transfer of shares and debentures

Schedule 8, which contains amendments relating to paperless holding and transfer of shares and debentures, has effect.

897. Power to make regulations

- (1) The Financial Secretary may make regulations for any matter required or permitted to be prescribed under this Ordinance.
- (2) Subsection (1) does not apply if the Chief Executive in Council or the Financial Secretary is empowered under another Part to make regulations for the matter.
- (3) Without limiting subsection (1), the Financial Secretary may prescribe fees for the purposes of sections 62(1)(c), 126(1)(b), 137(3) and 166(3).
- (4) A fee under subsection (3) may be prescribed by reference to the amount of the proposed share capital or an increase in a company's issued share capital.

898. Supplementary provisions for regulations made under this Ordinance

Subsidiary legislation made by the Chief Executive in Council or the Financial Secretary under this Ordinance may—

- (a) make different provision for different cases or classes of cases; and
- (b) contain any consequential, transitional, saving, incidental or supplementary provisions, that the Chief Executive in Council or the Financial Secretary (as the case may be) thinks fit.

899. Financial Secretary and Registrar may amend Schedules

- (1) The Financial Secretary may, by notice published in the Gazette, amend Schedule 1, 2, 3, 4, 5 or 7.
 - (2) The Registrar may, by notice published in the Gazette, amend Schedule 6.
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Part 21**Consequential Amendments, and Transitional and Saving Provisions****Division 1****Consequential and Related Amendments****900. Amendments to Ordinances**

The Ordinances specified in Parts 1, 2, 3, 4 and 5 of Schedule 9 are amended as set out in those Parts.

Division 2**Transitional and Saving Provisions****901. Transitional and saving provisions**

- (1) The transitional and saving provisions as set out in Schedule 10 have effect.
- (2) The Chief Executive in Council may, by notice published in the Gazette, amend Schedule 10.

902. Extended effect of saving provision

- (1) This section applies if a provision of the predecessor Ordinance is repealed by section 900 but has a continuing effect under Schedule 10, or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), or both, after the repeal.
- (2) The saving as mentioned in subsection (1) for the effect of a provision of the predecessor Ordinance extends to any other provision of the predecessor Ordinance—

- (a) that defines an expression used in the provision; or
 - (b) in accordance with which the provision is to be construed.
- (3) The saving as mentioned in subsection (1) for the effect of a provision of the predecessor Ordinance that creates an offence extends to the entry relating to that provision in the Twelfth Schedule to the predecessor Ordinance.
- (4) Subject to subsections (6) and (8), the saving as mentioned in subsection (1) for the effect of a provision of the predecessor Ordinance that refers to a prescribed or specified form, or refers to a prescribed manner, extends to the form or manner and to the power under which it is prescribed or specified.
- (5) If the provision of the predecessor Ordinance refers to a specified form, the Registrar may—
- (a) specify another form for the purpose; and
 - (b) determine a date in relation to that other form for the purposes of subsection (6)(b).
- (6) If the Registrar exercises the powers under subsection (5), the effect of the provision of the predecessor Ordinance is to be construed as—
- (a) also referring to the form specified under subsection (5)(a) before the date determined under subsection (5)(b); and
 - (b) only referring to that form on or after that date.
- (7) If the provision of the predecessor Ordinance requires a person, in relation to a particular purpose of that Ordinance, to state or furnish any matter, particulars or information to the Registrar, but does not require the matter, particulars or information to be stated or furnished in a specified form, the Registrar may—
- (a) specify a form for the purpose; and

- (b) determine a date in relation to the form for the purposes of subsection (8).
- (8) If the Registrar exercises the powers under subsection (7), the effect of the provision of the predecessor Ordinance is to be construed as requiring the matter, particulars or information to be stated or furnished in the form specified under subsection (7)(a) on or after the date determined under subsection (7)(b).

903. Offence for false statement

- (1) This section applies if—
- (a) a provision of the predecessor Ordinance is repealed by section 900 but has a continuing effect under Schedule 10, or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), or both, after the repeal; and
 - (b) after the repeal, any return, report, certificate, balance sheet or other document, is required by or for the purposes of the provision.
- (2) A person commits an offence if, in the return, report, certificate, balance sheet or document, the person wilfully makes a statement false in any material particular knowing it to be false.
- (3) A person who commits an offence under subsection (2) is liable to a fine at level 6 and to imprisonment for 6 months.
- (4) This section does not affect the operation of—
- (a) Part V of the Crimes Ordinance (Cap. 200); or
 - (b) section 19, 20 or 21 of the Theft Ordinance (Cap. 210).

904. Limitation on commencement of proceedings

- (1) This section applies if—
- (a) a provision of the predecessor Ordinance is repealed by section 900 but has a continuing effect under Schedule 10, or by virtue of section 23 of the Interpretation and

General Clauses Ordinance (Cap. 1), or both, after the repeal; and

- (b) after the repeal, an offence is committed under the provision.
- (2) Despite section 26 of the Magistrates Ordinance (Cap. 227), an information or complaint relating to the offence may be tried if it is laid or made—
 - (a) within 3 years after the commission of the offence; and
 - (b) within 12 months after the date on which the supporting evidence came to the Secretary for Justice's knowledge.
- (3) For the purposes of this section, a certificate of the Secretary for Justice as to the date on which the supporting evidence came to the Secretary for Justice's knowledge is conclusive evidence of that date.
- (4) This section does not apply to an offence committed before 1 March 1973.
- (5) In this section—

supporting evidence (助控證據) means evidence sufficient, in the Secretary for Justice's opinion, to justify the proceedings.

905. Application of fines

- (1) This section applies if—
 - (a) a provision of the predecessor Ordinance is repealed by section 900 but has a continuing effect under Schedule 10, or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), or both, after the repeal; and
 - (b) after the repeal, a fine is imposed under the provision.
- (2) When imposing the fine, the Court or magistrate may direct that the whole or any part of the fine is to be applied—
 - (a) in or towards payment of the costs of the proceedings; or

- (b) in or towards rewarding the person on whose information, or at whose suit, the fine is recovered.
- (3) Subject to a direction under subsection (2), the fine must be paid into the general revenue.
- (4) Subsection (3) has effect despite anything in any other Ordinance.

906. Saving as to private prosecution

- (1) This section applies if—
 - (a) a provision of the predecessor Ordinance is repealed by section 900 but has a continuing effect under Schedule 10, or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), or both, after the repeal; and
 - (b) the provision relates to the institution of criminal proceedings by the Secretary for Justice.
- (2) Nothing in the provision precludes any person from instituting or carrying on any criminal proceedings.

907. Saving for privileged communication

- (1) This section applies if—
 - (a) a provision of the predecessor Ordinance is repealed by section 900 but has a continuing effect under Schedule 10, or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), or both, after the repeal; and
 - (b) after the repeal, proceedings are instituted under the provision against any person by the Secretary for Justice.
- (2) Nothing in the provision is to be regarded as requiring any person who has acted as solicitor for the defendant to disclose any privileged communication made to the person in that capacity.

Division 3**Supplemental Provisions****908. This Part etc. not to derogate from section 23 of Cap. 1**

This Part, and Schedules 9 and 10, are in addition to and not in derogation of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), except as otherwise provided in this Part or those Schedules.

909. Continuity of law

- (1) This section applies if a provision of this Ordinance re-enacts (with or without modification) a provision of another Ordinance repealed by this Ordinance.
- (2) The repeal and re-enactment does not affect the continuity of the law.
- (3) Anything done (including subsidiary legislation made), or having effect as if done, under or for the purposes of the repealed provision that could have been done under or for the purposes of the corresponding provision of this Ordinance, if in force or effective immediately before the commencement date of that corresponding provision, has effect after that commencement date as if done under or for the purposes of that corresponding provision.
- (4) A reference (express or implied) in an Ordinance, instrument or document to a provision of this Ordinance is to be construed (so far as the context permits) as including, as respects times, circumstances or purposes in relation to which the corresponding repealed provision had effect, a reference to that corresponding provision.
- (5) A reference (express or implied) in an Ordinance, instrument or document to a repealed provision is to be construed (so far as the context permits), as respects times, circumstances and purposes in relation to which the corresponding provision of

this Ordinance has effect, as being or (according to the context) including a reference to the corresponding provision of this Ordinance.

- (6) This section has effect subject to any specific transitional or saving provision contained in this Ordinance.

Schedule 1

[ss. 15 & 899]

Parent Undertakings and Subsidiary Undertakings**1. Interpretation**

In this Schedule—

shares (股份)—

- (a) in relation to an undertaking having a share capital, means the allotted shares;
- (b) in relation to an undertaking having capital in a form other than share capital, means the right to share in the capital of the undertaking; or
- (c) in relation to an undertaking not having any capital, means—
 - (i) the interest giving a right to share in the profits, or liability to contribute to the losses, of the undertaking; or
 - (ii) the interest giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of its being wound up.

2. Parent undertaking

- (1) For the purposes of this Ordinance, an undertaking is a parent undertaking of another undertaking if—
 - (a) where both undertakings are bodies corporate, it is a holding company of that other undertaking; or
 - (b) in any other case—
 - (i) it holds a majority of the voting rights in that other undertaking;

- (ii) it is a member of that other undertaking and has the right to appoint or remove a majority of that other undertaking's board of directors; or
 - (iii) it is a member of that other undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in that other undertaking.
- (2) For the purposes of this Ordinance, an undertaking is also a parent undertaking of another undertaking if it has the right to exercise a dominant influence over that other undertaking by virtue of—
 - (a) the provisions contained in the constitution, or an equivalent constitutional document, of that other undertaking; or
 - (b) a contract in writing that—
 - (i) is of a kind authorized by the constitution, or an equivalent constitutional document, of that other undertaking; and
 - (ii) is permitted by the law under which that other undertaking is established.
 - (3) In subsection (1)(b), a reference to the voting rights in an undertaking is—
 - (a) in the case of an undertaking having a share capital, a reference to the rights given to the members in respect of their shares; or
 - (b) in the case of an undertaking not having a share capital—
 - (i) if the undertaking is required to hold general meetings at which matters are decided by the exercise of voting rights, a reference to the rights given to the members to vote at the general meetings on all matters or on substantially all matters; or

- (ii) if the undertaking is not required to hold such general meetings, a reference to the rights under the undertaking's constitution to direct the undertaking's overall policy or to alter the terms of that constitution.
- (4) For the purposes of subsection (1)(b), an undertaking is a member of another undertaking if—
 - (a) a person acting on behalf of it, or of any of its subsidiary undertakings, holds shares in that other undertaking; or
 - (b) any of its subsidiary undertakings is a member of that other undertaking.
- (5) For the purposes of subsection (1)(b)(ii), a reference to the right to appoint or remove a majority of a board of directors is a reference to the right to appoint or remove directors holding a majority of the voting rights at meetings of the directors on all matters or on substantially all matters.
- (6) For the purposes of subsection (5)—
 - (a) in determining whether an undertaking has the right to appoint or remove a director, a right that is exercisable only with another person's consent is to be disregarded unless no other person has the right; and
 - (b) an undertaking has the right to appoint a director if—
 - (i) it necessarily follows from a person's appointment as a director of the undertaking that the person is appointed as a director of that other undertaking; or
 - (ii) the directorship is held by the undertaking itself.
- (7) For the purposes of subsection (2), an undertaking does not have any right to exercise a dominant influence over another undertaking unless—
 - (a) it has a right to give directions with respect to the operating and financial policies of that other undertaking; and

- (b) that other undertaking's directors are, or a majority of them is, obliged to comply with the directions, whether or not the directions are for that other undertaking's benefit.

3. Provisions supplementary to section 2 of this Schedule

- (1) For the purposes of this Schedule, a right held by a subsidiary undertaking of another undertaking is to be regarded as being held by that other undertaking.
- (2) For the purposes of this Schedule—
 - (a) without limiting paragraph (b), a right that is exercisable only in certain circumstances is taken into account—
 - (i) only when the circumstances have arisen and for so long as they continue to exist; or
 - (ii) only when the circumstances are within the control of the person having the right; and
 - (b) a right that is normally exercisable but is temporarily incapable of being exercised continues to be taken into account.
- (3) For the purposes of this Schedule—
 - (a) a right held by a person in a fiduciary capacity is to be regarded as not being held by the person; and
 - (b) a right held by a person as nominee for another is to be regarded as being held by that other.
- (4) For the purposes of this Schedule, a right is to be regarded as being held by a person as nominee for another if it is exercisable only on the instructions, or with the consent, of that other.
- (5) For the purposes of this Schedule, a right attached to shares held by way of security is to be regarded as being held by the person providing the security—

- (a) if, except where the right is exercised for the purpose of preserving the value of the security or of realizing the security, it is exercisable only in accordance with that person's instructions; or
- (b) if—
 - (i) the shares are held in connection with the granting of loans as part of normal business activities; and
 - (ii) except where the right is exercised for the purpose of preserving the value of the security or of realizing the security, it is exercisable only in that person's interests.
- (6) Subsections (3) and (5) do not require a right held by a parent undertaking to be regarded as being held by any of its subsidiary undertakings.
- (7) For the purposes of subsection (5), a right is to be regarded as being exercisable in accordance with the instructions, or in the interests, of an undertaking if it is exercisable in accordance with the instructions, or in the interests (as the case may be) of any group undertaking of the undertaking.
- (8) In this section, an undertaking is a group undertaking of another undertaking if—
 - (a) it is a parent or subsidiary undertaking of that other undertaking; or
 - (b) it is a subsidiary undertaking of any parent undertaking of that other undertaking.

4. Parent company

For the purposes of this Ordinance, a parent company is a parent undertaking that is a company.

5. Subsidiary undertaking

- (1) For the purposes of this Ordinance, an undertaking is a subsidiary undertaking of another undertaking if that other undertaking is a parent undertaking of it.
- (2) For the purposes of this Ordinance, an undertaking is also a subsidiary undertaking of another undertaking if a parent undertaking of it is a subsidiary undertaking of that other undertaking.

Schedule 2

[ss. 63, 69, 80,
109 & 899]

Content of Incorporation Form

Part 1

Particulars and Statements of Company

1. Particulars and statements relating to company

The particulars and statements specified for the purposes of section 63(1)(a) are—

- (a) the proposed name of the company;
- (b) the proposed address of the company's registered office in Hong Kong;
- (c) a statement as to whether the company is to be a company limited by shares or by guarantee, or an unlimited company;
- (d) if the company is to be a company limited by shares or an unlimited company, a statement as to whether it is to be a private or public company; and
- (e) if the company is to be a company limited by guarantee, the number of members with which it proposes to register.

Part 2

Particulars of Founder member

2. Particulars of founder member

The particulars specified for the purposes of section 63(1)(b) are the name and address of the founder member.

Part 3

Particulars and Statement of Proposed Officers

3. Particulars of director

(1) The particulars specified for the purposes of section 63(1)(c)(i) are—

- (a) if the person is a natural person—
 - (i) the present forename and surname, former forename or surname (if any), and aliases (if any);
 - (ii) the usual residential address;
 - (iii) the correspondence address; and
 - (iv) the number of the identity card or, if the person does not have an identity card, the number and issuing country of any passport held by the person; or
- (b) if the person is a body corporate, the corporate name and the address of its registered or principal office.

(2) For the purposes of subsection (1)(a)(iii), a correspondence address must be a place in Hong Kong and must not be a post office box number.

4. Statement relating to director

The statement specified for the purposes of section 63(1)(c)(ii) is—

- (a) if the person is the signatory to the incorporation form, a statement by the person—
 - (i) that the person has consented to be a director of the company; and
 - (ii) if the person is a natural person, that he or she has attained the age of 18 years; or
- (b) if the person is not the signatory to the incorporation form—
 - (i) a statement by the person that he or she has consented to be a director of the company and, if the person is a natural person, that he or she has attained the age of 18 years; or
 - (ii) a statement by the signatory that the person has consented to be a director of the company and, if the person is a natural person, that he or she has attained the age of 18 years.

5. Particulars of company secretary

- (1) The particulars specified for the purposes of section 63(1)(d) are—
 - (a) if the person is a natural person and is not a person covered by paragraph (c)—
 - (i) the present forename and surname, former forename or surname (if any), and aliases (if any);
 - (ii) the correspondence address; and
 - (iii) the number of the identity card or, if the person does not have an identity card, the number and issuing country of any passport held by the person;
 - (b) if the person is a body corporate and is not a person covered by paragraph (c), the corporate name and the address of its registered or principal office; or

- (c) if the person is a partner of a firm all partners of which are to be the joint company secretaries of the company, the firm's name and the address of the firm's principal office.
- (2) For the purposes of subsection (1)(a)(ii), a correspondence address must be a place in Hong Kong and must not be a post office box number.

6. Definitions

- (1) In this Part—

forename (名字) includes a Christian or given name;

residential address (住址)—

- (a) does not include an address at a hotel unless the person to whom it relates is stated, for the purposes of this Part, to have no other permanent address; and
- (b) does not include a post office box number;

signatory (簽署人), in relation to an incorporation form, means the founder member who signs the form for the purposes of section 64;

surname (姓氏), for a person usually known by a title different from the person's surname, means that title.

- (2) In this Part, a reference to a former forename or surname does not include—
 - (a) in relation to a person—
 - (i) a forename or surname that was changed or ceased to be used before the person attained the age of 18 years; and
 - (ii) a forename or surname that has been changed or ceased to be used for a period of at least 20 years;
 - (b) in relation to a person usually known by a title different from his or her surname, the name by which the person

- was known before the adoption of or succession to the title; and
- (c) in relation to a married woman, a name or surname by which she was known before her marriage.

Part 4

Statements relating to Articles

7. Statements relating to articles

The statements specified for the purposes of section 63(1)(e) are—

- (a) a statement that the company's articles have been signed for the purposes of section 62(1)(a) by every person proposing to become a member of the company on the company's formation; and
- (b) a statement that the contents of the copy of the company's articles delivered under section 62(1)(b)(ii), with or without the part showing the signature and the date of signing as they appear on the original document, are the same as those of the articles.

Part 5

Statement of Capital and Initial Shareholdings

8. Statement of capital and initial shareholdings

- (1) The statement specified for the purposes of section 63(2) is a statement that—
- (a) states the total number of shares that the company proposes to issue on the company's formation;
- (b) states the total amount of share capital to be subscribed by the company's founder members on that formation;

- (c) states the amount to be paid up or to be regarded as paid up, and the amount to remain unpaid or to be regarded as remaining unpaid, on the total number of shares that the company proposes to issue on that formation;
- (d) if the share capital is to be divided into different classes of shares on that formation, also states the classes and, for each class—
- (i) the total number of shares in that class that the company proposes to issue on that formation;
- (ii) the total amount of share capital in that class to be subscribed by the company's founder members on that formation; and
- (iii) the amount to be paid up or to be regarded as paid up, and the amount to remain unpaid or to be regarded as remaining unpaid, on the total number of shares in that class that the company proposes to issue on that formation; and
- (e) in respect of each founder member, states the number of shares that the company proposes to issue to the member and the total amount of share capital to be subscribed by the member on that formation.
- (2) If the shares proposed to be issued to a founder member on the formation belong to 2 or more classes, the information required under subsection (1)(e) must be stated in respect of each class.

Schedule 3[ss. 359, 360,
361, 362 & 899]**Specified Qualifying Conditions for Sections 359 to 362****1. Qualifying conditions**

- (1) The conditions specified for the purposes of section 359(1), (2) and (3) are—
 - (a) that the amount of the company's total revenue for the financial year, as would be reflected in the company's annual financial statements for the financial year if the company is qualified as a small private company for the financial year, does not exceed \$50 million;
 - (b) that the amount of the company's total assets at the date of the statement of financial position for the financial year, as would be reflected in the company's annual financial statements for the financial year if the company is qualified as a small private company for the financial year, does not exceed \$50 million; and
 - (c) that the average number of the company's employees during the financial year does not exceed 50.
- (2) The conditions specified for the purposes of section 359(4) are—
 - (a) that the amount of the company's total revenue for the financial year, as reflected in the company's annual financial statements for the financial year, does not exceed \$50 million;
 - (b) that the amount of the company's total assets at the date of the statement of financial position for the financial year, as reflected in the company's annual financial statements for the financial year, does not exceed \$50 million; and

- (c) that the average number of the company's employees during the financial year does not exceed 50.
- (3) The condition specified for the purposes of section 360(1), (2) and (3) is that the amount of the company's total revenue for the financial year, as would be reflected in the company's annual financial statements for the financial year if the company is qualified as a small guarantee company for the financial year, does not exceed \$25 million.
- (4) The condition specified for the purposes of section 360(4) is that the amount of the company's total revenue for the financial year, as reflected in the company's annual financial statements for the financial year, does not exceed \$25 million.
- (5) The condition specified for the purposes of section 361(1), (2), (3), (4) and (5) is that each company in the group is qualified as a small private company for the financial year.
- (6) The conditions specified for the purposes of section 361(1), (2) and (3) are—
 - (a) that the aggregate amount of the group's total revenue for the financial year does not exceed \$50 million;
 - (b) that the aggregate amount of the group's total assets at the date of the statement of financial position for the financial year does not exceed \$50 million; and
 - (c) that the aggregate of the average number of employees of each company in the group during the financial year does not exceed 50.
- (7) The conditions specified for the purposes of section 361(4) and (5) are—
 - (a) that the aggregate amount of the group's total revenue for the financial year does not exceed \$50 million;
 - (b) that the aggregate amount of the group's total assets at the date of the statement of financial position for the financial year does not exceed \$50 million; and

- (c) that the aggregate of the average number of employees of each company in the group during the financial year does not exceed 50.
- (8) The conditions specified for the purposes of section 362(1), (2) and (3) are—
- (a) that each company in the group is qualified as a small guarantee company for the financial year; and
- (b) that the aggregate amount of the group's total revenue for the financial year does not exceed \$25 million.
- (9) The conditions specified for the purposes of section 362(4) and (5) are—
- (a) that each company in the group is qualified as a small guarantee company for the financial year; and
- (b) that the aggregate amount of the group's total revenue for the financial year does not exceed \$25 million.
- (10) In subsections (1), (3), (5), (6) and (8)—
- (a) a reference to a financial year of a company for the purposes of section 359(2), 360(2), 361(2) or 362(2) includes a financial year of the company for the purposes of the predecessor Ordinance that immediately precedes the company's first financial year after the coming into operation of this section; and
- (b) a reference to a company's annual financial statements is, in the case of a financial year of the company for the purposes of the predecessor Ordinance, a reference to the company's accounts for the financial year.

2. Provisions supplementary to section 1 of this Schedule

- (1) For the purposes of section 1(1)(a), (2)(a), (3), (4), (6)(a), (7)(a), (8)(b) and (9)(b) of this Schedule, the amount of total revenue for a financial year that is shorter or longer than 12 months is to be calculated on a pro-rata basis as if the length of the financial year were 12 months.

- (2) For the purposes of section 1(6) and (8)(b) of this Schedule, the aggregate amount of the group's total revenue or assets—
- (a) is to be calculated by aggregating the total revenue or assets (as the case may be) of each company in the group, as would be reflected in the company's annual financial statements or annual consolidated financial statements for the financial year if the group is qualified as a group of small private or guarantee companies (as the case may be); and
- (b) is to be calculated on the basis that the set-offs and other adjustments for transactions between companies in the group have been made.
- (3) For the purposes of section 1(7) and (9)(b) of this Schedule, the aggregate amount of the group's total revenue or assets—
- (a) is to be calculated by aggregating the total revenue or assets (as the case may be) of each company in the group, as reflected in the company's annual financial statements or annual consolidated financial statements for the financial year; and
- (b) is to be calculated on the basis that the set-offs and other adjustments for transactions between companies in the group have been made.
- (4) For the purposes of section 1(1)(c), (2)(c), (6)(c) and (7)(c) of this Schedule, the average number of a company's employees during a financial year is to be calculated by using the following formula—

$$\frac{M}{N}$$

where—

- M represents the aggregate of the number of the company's employees as at the end of each month during the financial year;

- N represents the number of months in the financial year.
- (5) In subsections (2)(a) and (3)(a), a reference to a company's annual financial statements or annual consolidated financial statements is, in the case of a financial year of the company for the purposes of the predecessor Ordinance mentioned in section 1(10)(a) of this Schedule, a reference to the company's accounts or group accounts for the financial year.
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Schedule 4[ss. 357, 376 &
899]**Accounting Disclosures****Part 1****Disclosures for Companies whether or not Falling
within Reporting Exemption**

1. **Aggregate amount of authorized loans**

The financial statements for a financial year must contain, under separate headings, the aggregate amount of any outstanding loans made under the authority of sections 276 and 277 during the financial year.
2. **Statement of financial position to be contained in notes to annual consolidated financial statements**
 - (1) The annual consolidated financial statements for a financial year—
 - (a) must contain, in the notes to the statements, the holding company's statement of financial position for the financial year; and
 - (b) must include a note disclosing the movement in the holding company's reserves.
 - (2) Despite section 376(4), the holding company's statement of financial position to be contained in the notes to the annual consolidated financial statements for a financial year is not required to contain any notes.
 - (3) That statement of financial position must be in the format in which that statement would have been prepared if the holding

company had not been required to prepare any annual consolidated financial statements for the financial year.

3. Subsidiary's financial statements must contain particulars of ultimate parent undertaking

- (1) This section applies if, at the end of a financial year, a company is the subsidiary of another undertaking.
- (2) The company's financial statements for the financial year must contain, in the notes to the statements—
 - (a) the name of the undertaking regarded by the directors as being the company's ultimate parent undertaking; and
 - (b) the following information relating to that undertaking as known to the directors—
 - (i) if that undertaking is a body corporate, the country in which it is incorporated;
 - (ii) if that undertaking is not a body corporate, the address of its principal place of business.

4. Compliance with applicable accounting standards

The financial statements for a financial year must state—

- (a) whether they have been prepared in accordance with the applicable accounting standards within the meaning of section 376; and
- (b) if they have not been so prepared, the particulars of, and the reasons for, any material departure from those standards.

Part 2

Disclosures for Companies not Falling within Reporting Exemption

1. Remuneration of auditor

- (1) A company's financial statements for a financial year must state, under a separate heading, the amount of the remuneration of the auditor.
- (2) In this section—

remuneration (酬金), in relation to an auditor of a company, includes any sum paid by the company in respect of the auditor's expenses.

Schedule 5 [ss. 380 & 899]**Contents of Directors' Report: Business Review**

1. A directors' report for a financial year must contain a business review that consists of—
 - (a) a fair review of the company's business;
 - (b) a description of the principal risks and uncertainties facing the company;
 - (c) particulars of important events affecting the company that have occurred since the end of the financial year; and
 - (d) an indication of likely future development in the company's business.

2. To the extent necessary for an understanding of the development, performance or position of the company's business, a business review must include—
 - (a) an analysis using financial key performance indicators;
 - (b) a discussion on—
 - (i) the company's environmental policies and performance; and
 - (ii) the company's compliance with the relevant laws and regulations that have a significant impact on the company; and
 - (c) an account of the company's key relationships with its employees, customers and suppliers and others that have a significant impact on the company and on which the company's success depends.

3. This Schedule does not require the disclosure of any information about impending developments or matters in the course of negotiation if the disclosure would, in the directors' opinion, be seriously prejudicial to the company's interests.

4. This Schedule has effect in relation to a directors' report required to be prepared under section 380(2) as if a reference to the company were a reference to—
 - (a) the company; and
 - (b) the subsidiary undertakings included in the annual consolidated financial statements for the financial year.

5. In this Schedule—
key performance indicators (關鍵表現指標) means factors by reference to which the development, performance or position of the company's business can be measured effectively.

Schedule 6 [ss. 655 & 899]

Information to be Contained in Annual Return and Documents by which Annual Return must be Accompanied

Part 1

Information to be Contained in Annual Return

1. An annual return under section 653(1) or (3) must contain the following information in respect of the company—
 - (a) the company name, its registered number and business name (if any);
 - (b) the type of company;
 - (c) the address of the registered office of the company;
 - (d) the date to which the company makes up the return;
 - (e) particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges that—
 - (i) are required to be registered with the Registrar under this Ordinance; or
 - (ii) would have been required to be so registered if created after 1 January 1912;
 - (f) in the case of a company having a share capital—
 - (i) particulars relating to members and share capital of the company; and
 - (ii) if the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the amount of stock held by each of the existing members;

- (g) in the case of a company not having a share capital, except for a company registered with an unlimited number of members, the number of members of the company;
 - (h) if any company records are kept at a place other than the company's registered office, the address of that place and the records that are kept there;
 - (i) particulars with respect to—
 - (i) any person who at the date of the return is a director or reserve director of the company; and
 - (ii) any person who at that date is a company secretary of the company,that are by this Ordinance required to be contained with respect to them in the register of directors and register of company secretaries of a company.
2. In the case of a listed company, the particulars relating to members as required under section 1(f)(i) of this Schedule are limited to those relating to members who held 5% or more of the issued shares in any class of the company's shares at any time since the return date of the last annual return.
3. If a director or reserve director is a natural person, the particulars as required under section 1(i) of this Schedule do not include—
 - (a) an address contained in the register of directors as the usual residential address of the director or reserve director; and
 - (b) the full number of the identity card or passport of the director or reserve director.
4. If a company secretary is a natural person, the particulars as required under section 1(i) of this Schedule do not include the full number of the identity card or passport of the company secretary.

5. In the case of a company that keeps a branch register of members in accordance with section 627(1), the particulars of the entries in that register need not be included in the annual return if copies of those entries have not been received at the registered office of the company. Those particulars must, so far as they relate to matters that are required to be contained in the annual return, be included in the next annual return after copies of those entries are received at the registered office of the company.

Part 2

Additional Information to be Contained in Annual Return of Private Company

6. An annual return under section 653(1) must also contain the following information in respect of the private company—
- (a) a statement that the company has not—
 - (i) since the date of the last return; or
 - (ii) in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company; and
 - (b) if the annual return discloses the fact that the number of members of the company exceeds 50, a statement that the excess consists wholly of persons who, under section 10(2), are excluded in the calculation of the number of members of the company.

Part 3

Documents by which Annual Return of Public Company or Company Limited by Guarantee must be Accompanied

7. An annual return under section 653(3) must be accompanied by—
- (a) copies of the documents required to be sent to every member of the company under section 421, certified by a director or company secretary of the company to be true copies; and
 - (b) if any of the documents mentioned in paragraph (a) is in a language other than English or Chinese, a certified translation (to be annexed to that document) in English or Chinese of the document.
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Schedule 7

[ss. 887 & 899]

**Offences in respect of which Proceedings not Instituted
under Certain Conditions**

1. An offence under section 119(3)
2. An offence under section 119(4)
3. An offence under section 653(6)
4. An offence under section 776(3)
5. An offence under section 777(3)

Schedule 8

[s. 896]

**Amendments relating to Paperless Holding and
Transfer of Shares and Debentures**

1. **This Ordinance amended**
This Ordinance is amended as set out in sections 2 to 14 of this Schedule.
2. **Section 2 amended (Interpretation)**
Section 2(1)—
Add in alphabetical order
“*prescribed securities* (訂明證券) has the meaning given by section 397(5) of the Securities and Futures Ordinance (Cap. 571);
“*Scripless Rules* (《無紙化規則》) means rules made under section 397(1A) of the Securities and Futures Ordinance (Cap. 571);”.
3. **Section 129 amended (Nature and transferability of shares)**
Section 129(2), after “articles”—
Add
“subject, for shares or other interests that are prescribed securities, to the Scripless Rules”.
4. **Section 132 amended (Share certificate to be proof of title in the absence of contrary evidence)**
(1) Section 132—
Renumber the section as section 132(1).
(2) After section 132(1)—

Add

“(2) Subsection (1) does not affect section 626.”.

5. Section 139 amended (Issue of share certificate on allotment)

Section 139—

Repeal subsection (2)**Substitute**

“(2) Subsection (1) does not apply if—

- (a) the shares are prescribed securities that are allotted in accordance with the Scripless Rules; or
- (b) the shares are not prescribed securities and the conditions of issue of the shares provide otherwise.”.

6. Section 145 amended (Requirement for instrument of transfer)

After section 145(2)—

Add

“(3) Subsection (1) does not apply to a transfer, made in accordance with the Scripless Rules, of shares that are prescribed securities.”.

7. Section 148 amended (Transfer by personal representative)

Section 148—

Repeal

“execution of the instrument of transfer”

Substitute

“the transfer”.

8. Section 150 amended (Issue of share certificate on transfer)

Section 150(3)—

Repeal paragraph (a)**Substitute**

“(a) either—

- (i) the shares are prescribed securities that are transferred in accordance with the Scripless Rules; or
- (ii) the shares are not prescribed securities and the conditions of issue of the shares provide otherwise;”.

9. Section 315 amended (Issue of debenture or certificate for debenture stock on allotment)

Section 315—

Repeal subsection (2)**Substitute**

“(2) Subsection (1) does not apply if—

- (a) the debentures or debenture stock are prescribed securities that are allotted in accordance with the Scripless Rules; or
- (b) the debentures or debenture stock are not prescribed securities and the conditions of issue of the debentures or debenture stock provide otherwise.”.

10. Section 317 amended (Requirement for instrument of transfer)

After section 317(2)—

Add

“(3) Subsection (1) does not apply to a transfer, made in accordance with the Scripless Rules, of debentures or debenture stock that are prescribed securities.”.

11. Section 320 amended (Issue of debenture or certificate for debenture stock on transfer)

Section 320(3)—

Repeal paragraph (a)

Substitute

“(a) either—

- (i) the debentures or debenture stock are prescribed securities that are transferred in accordance with the Scripless Rules; or
- (ii) the debentures or debenture stock are not prescribed securities and the conditions of issue of the debentures or debenture stock provide otherwise;”.

12. Section 617A added

After section 617—

Add

“617A. Additional register entries for prescribed securities

- (1) If a company’s share capital is divided into different classes of shares and any of those shares are prescribed securities, the company must enter in the register of its members—
 - (a) a statement that its share capital is divided into different classes of shares;
 - (b) the voting rights attached to the shares of each class;
 - (c) in relation to a class of shares the holders of which are not entitled to vote at general meetings of the company, the words “non voting” or the Chinese characters “無表決權”; and

(d) any other matters that are required by the Scripless Rules to be entered in the register.

(2) Subsection (1)(c) does not apply to shares that are described as preference shares or preferred shares.

(3) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.”.

13. Section 626 amended (Register to be proof in the absence of contrary evidence)

After section 626(1)—

Add

“(1A) Without limiting subsection (1), in the absence of evidence to the contrary, an entry in the register of members recording a person as holding any share is proof of the person’s title to the share.”.

14. Section 685 amended (Obligations of offeror with right to buy out minority shareholders)

Section 685—

Repeal subsection (4)

Substitute

“(4) Subsection (3)(a)(ii) does not require the offeror to send to the company an instrument of transfer of—

- (a) any shares for which a share warrant is for the time being outstanding; or

- (b) any shares that are prescribed securities, if the transfer of the shares is made in accordance with the Scripless Rules.”.
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Schedule 9

[ss. 900 & 908]

Consequential Amendments**Part 1****Amendments to Companies Ordinance (Cap. 32)**

1. **Section 1 amended**
Section 1—
Repeal
“Companies”
Substitute
“Companies (Winding Up and Miscellaneous Provisions)”.
2. **Sections repealed**
Sections 4, 5, 6 and 8—
Repeal the sections.
3. **Cross-heading before section 9 repealed**
Cross-heading before section 9—
Repeal the cross-heading.
4. **Sections repealed**
Sections 9, 10, 11, 12 and 13—
Repeal the sections.
5. **Cross-heading before section 14 repealed**
Cross-heading before section 14—
Repeal the cross-heading.

6. **Section 14 repealed**
Section 14—
Repeal the section.
7. **Cross-heading before section 14A repealed**
Cross-heading before section 14A—
Repeal the cross-heading.
8. **Section 14A repealed**
Section 14A—
Repeal the section.
9. **Sections repealed**
Sections 15, 16, 18 and 18A—
Repeal the sections.
10. **Section 19 amended**
Section 19—
Repeal subsections (1), (2), (3) and (4).
11. **Section 20 repealed**
Section 20—
Repeal the section.
12. **Section 21 amended**
Section 21—
Repeal subsections (1), (2) and (3).
13. **Section 22 amended**
Section 22—
Repeal subsections (1A), (1B), (5), (6), (7) and (8).

14. **Section 22A amended**
Section 22A—
Repeal subsections (2), (3) and (4).
15. **Sections repealed**
Sections 23, 24, 25A and 45—
Repeal the sections.
16. **Cross-heading before section 46 repealed**
Cross-heading before section 46—
Repeal the cross-heading.
17. **Section 46 repealed**
Section 46—
Repeal the section.
18. **Cross-headings before section 47A repealed**
Cross-headings before section 47A—
Repeal the cross-headings.
19. **Sections 47A, 47B and 47C repealed**
Sections 47A, 47B and 47C—
Repeal the sections.
20. **Cross-heading before section 47D repealed**
Cross-heading before section 47D—
Repeal the cross-heading.
21. **Section 47D repealed**
Section 47D—
Repeal the section.

22. **Cross-heading before section 47E repealed**
Cross-heading before section 47E—
Repeal the cross-heading.
23. **Sections repealed**
Sections 47E, 47F, 47G, 48 and 48E—
Repeal the sections.
24. **Cross-heading immediately before section 49 repealed**
Cross-heading immediately before section 49—
Repeal the cross-heading.
25. **Sections repealed**
Sections 49, 49A, 49B, 49BA, 49C, 49D, 49E, 49F, 49G and 49H—
Repeal the sections.
26. **Cross-heading before section 49I repealed**
Cross-heading before section 49I—
Repeal the cross-heading.
27. **Sections repealed**
Sections 49I, 49J, 49K, 49L, 49M, 49N, 49O, 49P, 49Q, 49R and 49S—
Repeal the sections.
28. **Sections repealed**
Sections 54, 55, 56, 57, 57A and 57C—
Repeal the sections.

29. **Cross-heading before section 58 repealed**
Cross-heading before section 58—
Repeal the cross-heading.
30. **Sections repealed**
Sections 58, 59, 60, 61, 61A, 62 and 63—
Repeal the sections.
31. **Cross-heading before section 63A repealed**
Cross-heading before section 63A—
Repeal the cross-heading.
32. **Sections repealed**
Sections 63A, 64, 64A, 69, 70 and 71A—
Repeal the sections.
33. **Section 74A amended**
Section 74A—
Repeal subsection (4).
34. **Sections 75 and 75A repealed**
Sections 75 and 75A—
Repeal the sections.
35. **Part IIA repealed**
Part IIA—
Repeal the Part.
36. **Sections 80, 81 and 82 repealed**
Sections 80, 81 and 82—
Repeal the sections.

- 37. Section 83 amended**
Section 83—
Repeal subsection (2).
- 38. Sections 85, 86 and 87 repealed**
Sections 85, 86 and 87—
Repeal the sections.
- 39. Cross-heading before section 91 repealed**
Cross-heading before section 91—
Repeal the cross-heading.
- 40. Sections 91, 92 and 95 repealed**
Sections 91, 92 and 95—
Repeal the sections.
- 41. Section 97 amended**
Section 97—
Repeal subsection (1).
- 42. Sections repealed**
Sections 98, 99, 102, 104, 107 and 109—
Repeal the sections.
- 43. Section 111 amended**
Section 111—
Repeal subsections (1), (5) and (6).
- 44. Sections repealed**
Sections 113, 114, 114A, 114AA, 114B, 114C, 114D, 114E, 115, 115A, 116, 116A, 116B, 116BA, 116BB, 116BC, 116C, 117, 118,

- 119, 119A, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 129A, 129B, 129C, 129D, 129E, 129F and 129G—
Repeal the sections.
- 45. Section 131 amended**
Section 131—
Repeal subsections (1), (2), (3), (4), (6), (7), (8), (9) and (10).
- 46. Sections repealed**
Sections 132, 140, 140A, 140B, 141, 141C, 141CA, 141CB, 141CC, 141CD, 141CE and 141CF—
Repeal the sections.
- 47. Cross-heading before section 141D repealed**
Cross-heading before section 141D—
Repeal the cross-heading.
- 48. Section 141D repealed**
Section 141D—
Repeal the section.
- 49. Cross-heading before section 141E repealed**
Cross-heading before section 141E—
Repeal the cross-heading.
- 50. Sections repealed**
Sections 141E, 144, 145, 145A, 145B, 146, 146A, 147, 148, 149, 150, 151 and 152—
Repeal the sections.

- 51. Cross-heading before section 152A repealed**
Cross-heading before section 152A—
Repeal the cross-heading.
- 52. Sections repealed**
Sections 152A, 152B, 152C, 152D, 152E and 152F—
Repeal the sections.
- 53. Cross-heading before section 152FA repealed**
Cross-heading before section 152FA—
Repeal the cross-heading.
- 54. Sections repealed**
Sections 152FA, 152FB, 152FC, 152FD and 152FE—
Repeal the sections.
- 55. Section 153 amended**
Section 153—
Repeal subsection (2).
- 56. Section 153A amended**
Section 153A—
Repeal subsection (2).
- 57. Section 153C repealed**
Section 153C—
Repeal the section.
- 58. Section 154 amended**
Section 154—
Repeal subsection (1AA).

- 59. Sections 155B and 157 repealed**
Sections 155B and 157—
Repeal the sections.
- 60. Section 157B amended**
Section 157B—
Repeal subsection (4).
- 61. Sections repealed**
Sections 158, 161, 161A, 161B, 162B, 163, 163A, 163B, 163C and 163D—
Repeal the sections.
- 62. Cross-heading before section 165 repealed**
Cross-heading before section 165—
Repeal the cross-heading.
- 63. Sections repealed**
Sections 165, 166, 166A and 167—
Repeal the sections.
- 64. Section 168 amended**
Section 168—
Repeal subsections (1), (2) and (3).
- 65. Cross-heading before section 168A repealed**
Cross-heading before section 168A—
Repeal the cross-heading.
- 66. Sections 168A and 168B repealed**
Sections 168A and 168B—

Repeal the sections.**67. Part IVAA repealed**

Part IVAA—

Repeal the Part.**68. Section 168J amended**

(1) Section 168J—

Repeal subsection (1).

(2) Section 168J(2)—

Repeal

“this section”

Substitute

“section 867(6) of the Companies Ordinance (of 2011)”.

69. Sections 290C and 290D repealed

Sections 290C and 290D—

Repeal the sections.**70. Section 291 amended**

Section 291—

Repeal subsections (2), (3), (6) and (7).**71. Sections 291A and 291AA repealed**

Sections 291A and 291AA—

Repeal the sections.**72. Section 291AB amended**

Section 291AB—

Repeal subsections (2), (3), (4) and (5).**73. Section 292 amended**

Section 292—

Repeal subsection (2).**74. Section 304 amended**

Section 304—

Repeal subsections (1) and (2).**75. Section 333AA amended**

Section 333AA(2)—

Repeal paragraph (c).**76. Section 333A amended**

Section 333A—

Repeal subsection (2).**77. Section 335 amended**

Section 335—

Repeal subsection (3).**78. Section 337B repealed**

Section 337B—

Repeal the section.**79. Section 339 amended**

Section 339—

Repeal subsection (2).**80. Section 339AA amended**

Section 339AA—

Repeal subsection (2).

- 81. Section 339A amended**
Section 339A—
Repeal subsection (2).
- 82. Part XIII A repealed**
Part XIII A—
Repeal the Part.
- 83. Section 348C repealed**
Section 348C—
Repeal the section.
- 84. Section 350B amended**
Section 350B(1)—
Repeal paragraphs (g) and (h).
- 85. Section 351B repealed**
Section 351B—
Repeal the section.
- 86. First Schedule amended**
First Schedule—
Repeal Tables A, B, C and D.
- 87. Eighth Schedule amended**
Eighth Schedule, Part I—
Repeal paragraphs (a), (aa), (b) and (c).
- 88. Ninth, Tenth, Eleventh and Thirteenth Schedules repealed**
Ninth, Tenth, Eleventh and Thirteenth Schedules—
Repeal the Schedules.

Part 2**Repeal of Companies (Specification of Names) Order
(Cap. 32 sub. leg. E)**

- 89. Companies (Specification of Names) Order repealed**
The Companies (Specification of Names) Order (Cap. 32 sub. leg. E)—
Repeal the Order.

Part 3**Repeal of Companies (Summary Financial Reports of
Listed Companies) Regulation (Cap. 32 sub. leg. M)**

- 90. Companies (Summary Financial Reports of Listed Companies)
Regulation repealed**
The Companies (Summary Financial Reports of Listed Companies)
Regulation (Cap. 32 sub. leg. M)—
Repeal the Regulation.

Part 4**Repeal of Companies (Revision of Accounts and
Reports) Regulation (Cap. 32 sub. leg. N)**

- 91. Companies (Revision of Accounts and Reports) Regulation
repealed**
The Companies (Revision of Accounts and Reports) Regulation
(Cap. 32 sub. leg. N)—
Repeal the Regulation.

Part 5

Amendment to Administrative Appeals Board Ordinance (Cap. 442)

92. **Schedule amended**

The Schedule—

Add

- “71. Companies Ordinance (of 2011)
- (a) A direction of the Registrar of Companies under section 104(1) to change a company name.
 - (b) A decision of the Registrar of Companies to serve a notice under section 768(1)(b).”
-

Schedule 10

[s. 901]

Transitional and Saving Provisions

Part 1

Preliminary

1. **Interpretation**

In this Schedule—

repeal (廢除) means a repeal by section 900, and *repealed* is to be construed accordingly.

Part 2

Transitional and Saving Arrangements for Part 2

2. **Office of Registrar**

- (1) A person holding or acting in the office of Registrar of Companies immediately before the commencement date of section 20 continues to hold or act in that office (as the case may be) as if the person were appointed under section 20(1).
- (2) The last seals that were directed under section 303(4) of the predecessor Ordinance to be prepared are to be regarded as seals that have been directed under section 20(4) to be prepared.

Part 3

Transitional and Saving Arrangements for Part 3

3. Application for company formation

- (1) This section applies to a pending application—
 - (a) that was made before the commencement date of Division 1 of Part 3 to the Registrar for the purposes of section 14A(1) of the predecessor Ordinance; and
 - (b) in respect of which section 15(1) of that Ordinance was complied with before that date.
- (2) Sections 4, 5, 6, 9, 10, 11, 12, 14, 14A, 15, 16, 18, 18A, 20, 23, 24 and 304(1) and (2) of the predecessor Ordinance, paragraphs (a) and (aa) of Part I of the Eighth Schedule to the predecessor Ordinance, Tables A, B, C, D and E in the First Schedule to that Ordinance, and the Companies (Specification of Names) Order (Cap. 32 sub. leg. E), as in force immediately before their repeal, continue to apply in relation to the pending application.

4. Application for Registrar's licence to dispense with "Limited" etc.

Section 21(1), (2) and (3) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a pending application delivered to the Registrar before the commencement date of Subdivision 2 of Division 3 of Part 3 for a licence under section 21(1) or (2) of the predecessor Ordinance.

5. Licence dispensing with "Limited" etc.

A licence that was granted under section 21(1) or (2) of the predecessor Ordinance and was in force immediately before the commencement date of Subdivision 2 of Division 3 of Part 3 is to be regarded as a licence granted under section 98 for the purposes of this Ordinance.

6. Alteration of company's objects

Section 8 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a special resolution passed before the commencement date of Subdivision 4 of Division 2 of Part 3 for the purposes of section 8(1) of the predecessor Ordinance.

7. Alteration of certain conditions of memorandum of association

Sections 8(2)(a), (3), (4), (7), (7A) and (8) and 25A of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a special resolution passed before the commencement date of Subdivision 4 of Division 2 of Part 3 for the purposes of section 25A(1) of the predecessor Ordinance.

8. Alteration of articles by special resolution

Section 13 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a special resolution passed before the commencement date of Subdivision 4 of Division 2 of Part 3 for the purposes of section 13(1) of the predecessor Ordinance.

9. Savings for Table A in former Companies Ordinance

This Ordinance does not affect—

- (a) Table A in the First Schedule to the Companies Ordinance 1865 (1 of 1865), as in force from time to time, so far as it applies to any existing company;
- (b) Table A in the First Schedule to the Companies Ordinance 1911 (58 of 1911), as in force from time to time, so far as it applies to any existing company; and
- (c) Table A in the First Schedule to the predecessor Ordinance, so far as it applies to any existing company.

10. Special resolution changing company name

Sections 20 and 22(1A), (1B), (7) and (8) of the predecessor Ordinance and the Companies (Specification of Names) Order (Cap. 32 sub. leg. E), as in force immediately before their repeal, continue to apply in relation to a special resolution passed before the commencement date of Subdivision 3 of Division 3 of Part 3 for the purposes of section 22(1) of the predecessor Ordinance.

11. Registrar's direction to change company name

- (1) Section 22(5) and (6) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a direction given by the Registrar before the commencement date of Subdivision 3 of Division 3 of Part 3 under section 22(2), (3A), (3B) or (4) of the predecessor Ordinance.
- (2) Sections 22(7) and (8) and 22A(2), (3) and (4) of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a direction given by the Registrar before the commencement date of Subdivision 3 of Division 3 of Part 3 under section 22A(1) or (1A) of the predecessor Ordinance.

12. Re-registration of unlimited company as limited company

- (1) This section applies to a special resolution—
 - (a) that was passed before the commencement date of Subdivision 2 of Division 2 of Part 3 for the purposes of section 19(1) of the predecessor Ordinance by an existing company registered as an unlimited company on or after 31 August 1984; and
 - (b) in respect of which no certificate of incorporation was issued before that commencement date under section 19(4) of that Ordinance.
- (2) Sections 19(1), (2), (3), (4) and (5), 117 and 304(1) and (2) of the predecessor Ordinance and the Eighth Schedule to that

Ordinance, as in force immediately before their repeal, continue to apply in relation to the special resolution.

- (3) An unlimited company re-registered as a limited company on or after the commencement date of Division 2 of Part 3 under the provisions having a continuing effect under subsection (2) is, for all purposes, to be regarded as a limited company registered under the predecessor Ordinance.

Part 4**Transitional and Saving Arrangements for Part 4****Division 1****General Transitional and Saving Provisions****13. Conversion of shares into stock**

- (1) Section 133 does not affect the conversion of shares into stock on or after the commencement date of that section in accordance with a resolution passed before that commencement date.
- (2) The reference in section 169 to the conversion of shares into stock before the repeal of the power to do so includes a conversion referred to in subsection (1).
- (3) The following provisions of the predecessor Ordinance, as in force immediately before their repeal, continue to apply to a conversion of shares into stock that took place before the commencement date of section 133 or a conversion referred to in subsection (1)—
 - (a) section 54 (so far as it relates to a conversion of shares into stock);
 - (b) paragraph (i) of the proviso to section 95(1); and
 - (c) section 95(4) (so far as it relates to that paragraph).

- (4) If any amounts of stock have been entered in the register of members of the company in accordance with paragraph (i) of the proviso to section 95(1) of the predecessor Ordinance, those amounts are to be regarded as the details required by Subdivision 2 of Division 2 of Part 12 to be entered in the register instead of the details relating to shares.

14. Share warrants

- (1) This section applies if a company has issued a share warrant before the commencement date of section 134 but has not complied with section 97(1) of the predecessor Ordinance before that commencement date.
- (2) Section 97(1) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply to the company in relation to the share warrant.
- (3) If the particulars of a share warrant have been entered in the register of members of the company in accordance with section 97(1) of the predecessor Ordinance, those particulars are to be regarded as the details required by Subdivision 2 of Division 2 of Part 12 to be entered in the register.

15. Exercise by directors of power to allot shares or grant rights

Section 135 does not apply to an allotment of shares by a company on or after the commencement date of that section in accordance with an offer, agreement or option made or granted by the company before the commencement date of the Companies (Amendment) Ordinance 1984 (6 of 1984).

Note—

The commencement date of the Companies (Amendment) Ordinance 1984 (6 of 1984) was 31 August 1984—see L.N. 247 of 1984.

16. Allotment of shares or grant of rights with company approval

An approval in force under section 57B of the predecessor Ordinance immediately before the commencement date of section

136 has effect on and after that commencement date as if given under section 136.

17. Return of allotments

- (1) Section 45 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply to shares allotted before the commencement date of section 137.
- (2) Section 304(1) and (2) of the predecessor Ordinance and paragraph (c) of Part I of the Eighth Schedule to that Ordinance, as in force immediately before their repeal, continue to apply to a return of allotments in relation to shares referred to in subsection (1).

18. Registration of allotment

Section 138 applies to shares allotted on or after the commencement date of that section.

19. Issue of share certificate on allotment

Section 70 of the predecessor Ordinance (so far as it relates to an allotment of shares), as in force immediately before its repeal, continues to apply to shares allotted before the commencement date of section 139.

20. Validation by Court of issue or allotment

Section 57C of the predecessor Ordinance, as in force immediately before its repeal, continues to apply to shares purportedly issued or allotted before the commencement date of section 141.

21. Permitted commissions

Section 46 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to an agreement made in accordance with that section before the commencement date of section 143 for a company to pay commission to a person in consideration of the person subscribing or agreeing to subscribe for

shares in the company or procuring or agreeing to procure subscriptions.

22. Registration of transfer or refusal of registration

Section 69 of the predecessor Ordinance (so far as it relates to a transfer of shares), as in force immediately before its repeal, continues to apply to a transfer lodged before the commencement date of section 146.

23. Issue of share certificate on transfer

Section 70 of the predecessor Ordinance (so far as it relates to a transfer of shares), as in force immediately before its repeal, continues to apply to a transfer lodged before the commencement date of section 150.

24. Transmission of shares by operation of law

Section 69 of the predecessor Ordinance (so far as it relates to a transmission of shares by operation of law), as in force immediately before its repeal, continues to apply to shares transmitted before the commencement date of Subdivision 2 of Division 4 of Part 4.

25. Replacement of listed companies' lost share certificates

- (1) An application may be made under section 158 for a new share certificate whether the original certificate was lost before, on or after the commencement date of that section, unless an application for a new certificate had already been made under section 71A of the predecessor Ordinance before that commencement date.
- (2) Section 71A of the predecessor Ordinance, as in force immediately before its repeal, continues to apply to an application for a new certificate made before the commencement date of section 158.

26. Notice of alteration of share capital

- (1) This section applies if a company, before the commencement date of section 166, does anything referred to in section 54(1)(a) to (f) of the predecessor Ordinance.
- (2) Section 54 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply to the company in relation to the thing done.

27. Fee exemption for existing companies that increase their issued share capital

- (1) This section applies to an existing company that, at the relevant time, has paid the required fees under paragraphs (a), (b) and (ba) (if applicable) of Part I of the Eighth Schedule to the predecessor Ordinance calculated by reference to the company's nominal share capital or increases in the company's nominal share capital.
- (2) A fee is not payable by the company under section 137(3) or 166(3) in respect of so much of an increase in its issued share capital after the relevant time that, together with any other increases in its issued share capital after the relevant time, does not exceed the difference between the company's registered share capital at the relevant time and the nominal value of its issued share capital at the relevant time.

Note—

For example, a company registered before the commencement date of this section had a registered share capital (otherwise known as its authorized share capital) of \$1,000,000 immediately before that commencement date. The nominal value of the company's issued share capital immediately before that commencement date was \$250,000. A fee is not payable by the company under section 137(3) for registration of a return of an allotment showing an increase in issued share capital, or under section 166(3) for registration of a notice of alteration of share capital showing an increase in issued share capital, in respect of so much of the increase that, together with any previous increases since that commencement date, does not exceed \$750,000 (\$1,000,000 - \$250,000). For example:

- (a) the company increases its share capital by allotting shares of \$250,000: the increase does not exceed \$750,000, and so no fee is payable under section 137(3);
- (b) the company subsequently increases its share capital by \$300,000 without allotting shares: the increase, together with that in (a), is \$550,000 (\$250,000 + \$300,000) which does not exceed \$750,000, and so no fee is payable under section 166(3);
- (c) the company subsequently increases its share capital by allotting shares of \$600,000: the increase, together with those in (a) and (b), is \$1,150,000 (\$250,000 + \$300,000 + \$600,000) which exceeds \$750,000, so a fee is payable under section 137(3) in respect of that part of the increase that exceeds \$750,000, that is, \$400,000;
- (d) fees would be payable under section 137(3) or 166(3) (as applicable) in respect of any subsequent increases in the company's issued share capital.

(3) In this section—

relevant time (有關時間) means—

- (a) for an existing company formed and registered before the commencement date of this section, the time immediately before that commencement date;
- (b) for any other existing company, the time of registration of the company.

28. Notice of increase of share capital

- (1) Section 55 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply to an increase in a company's share capital if the resolution authorizing the increase was passed before the commencement date of section 166.
- (2) Section 304(1) and (2) of the predecessor Ordinance and paragraph (b) of Part I of the Eighth Schedule to that Ordinance, as in force immediately before their repeal, continue to apply in relation to an increase of share capital referred to in subsection (1).

29. Description of shares of different classes

Section 57A of the predecessor Ordinance, as in force immediately before its repeal, continues to apply to a share certificate, prospectus or directors' report issued before the commencement date of section 174.

30. Variation of class rights: companies having a share capital

Sections 63A and 64 of the predecessor Ordinance, as in force immediately before their repeal, continue to apply to a variation or abrogation of the rights attaching to a class of shares if the resolution or written consent for the variation or abrogation was passed or given before the commencement date of section 175.

31. Notifying Registrar of variation or attachment of rights to a class of shares

Section 64A of the predecessor Ordinance, as in force immediately before its repeal, continues to apply to an attachment of rights to a class of shares before the commencement date of section 179.

32. Variation of class rights: companies without a share capital

Sections 183 to 187 apply in relation to a variation or abrogation of the rights of a class of members of a company on or after the commencement date of those sections.

33. Repeal of provision about reserve share capital

The repeal of section 56 of the predecessor Ordinance does not affect the validity of any resolution under that section that was in force immediately before the repeal.

34. Payment of interest out of capital

- (1) Section 57 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply to the payment of interest by a company if the special resolution under paragraph (a) of the proviso to that section authorizing

the payment was passed before the repeal, regardless of when the sanction of the court for the payment is obtained.

- (2) Without limiting subsection (1), the company may charge interest to capital in accordance with section 57 of the predecessor Ordinance if—
 - (a) interest was paid by a company in accordance with that section before its repeal, but not charged to capital; or
 - (b) interest is paid by a company after the repeal in accordance with a special resolution passed under paragraph (a) of the proviso to that section before the repeal, regardless of when the sanction of the court for the payment is obtained.

Note—

Paragraph (b) of the proviso to section 57 of the predecessor Ordinance requires the sanction of the court to be obtained before the payment is made.

35. Relief from share capital requirements

- (1) Subdivision 1 of Division 8 of Part 4 applies in relation to an issue of shares on or after the commencement date of that Subdivision whether the arrangement for the issue or the transfer of non-cash assets was made before, on or after that commencement date.
- (2) A reference in section 193 to an amount that, because of Subdivision 1 of Division 8 of Part 4, is not required to be recorded as a company's share capital includes an amount that, immediately before the repeal of section 48E of the predecessor Ordinance, was not included in the company's share premium account by virtue of section 48C or 48D of the predecessor Ordinance.

Division 2

Transitional Provisions relating to Abolition of Nominal Value

36. Interpretation

In this Division—

continuing provision (續用條文) means a provision of the predecessor Ordinance that has a continuing effect under this Schedule.

37. References to amount paid on shares issued before commencement date of section 130

For the purposes of the operation of this Ordinance on and after the commencement date of section 130 in relation to a share issued before that commencement date—

- (a) the amount paid on the share is the sum of all amounts paid to the company at any time for the share; and
- (b) the amount remaining unpaid on the share is the difference between the issue price of the share and the amount paid on the share.

38. Treatment of share premium account and capital redemption reserve

- (1) At the beginning of the commencement date of section 130, any amount standing to the credit of the company's share premium account and capital redemption reserve becomes part of the company's share capital.
- (2) Any amount that would be required by a continuing provision to be transferred to a company's share premium account or capital redemption reserve on or after the commencement date of section 130 becomes part of the company's share capital.

39. Use of amount standing to credit of share premium account

- (1) Despite section 38 of this Schedule, a company may, on or after the commencement date of section 130, use the amount that was standing to the credit of its share premium account immediately before that commencement date to—
 - (a) pay up, in accordance with an agreement made before that commencement date, shares that are to be issued on or after that commencement date to members of the company as fully paid bonus shares;
 - (b) write off—
 - (i) the preliminary expenses of the company incurred before that commencement date; or
 - (ii) the expenses incurred, commission paid, or discount allowed, before that commencement date, in respect of any issue of shares in the company; or
 - (c) provide for the premium payable on redemption of redeemable preference shares issued before the commencement date of the Companies (Amendment) Ordinance 1991 (77 of 1991).

Note—

The commencement date of the Companies (Amendment) Ordinance 1991 (77 of 1991) was 1 September 1991—see L.N. 283 of 1991.

- (2) Despite section 38 of this Schedule, if redeemable shares issued by a company on or after the commencement date of the Companies (Amendment) Ordinance 1991 (77 of 1991) but before the commencement date of section 130 are redeemed on or after the commencement date of section 130, any premium payable on their redemption may be paid out of the proceeds of a fresh issue of shares made for the purpose of the redemption, up to an amount equal to the lesser of—
 - (a) the aggregate of the premiums received by the company on the issue of the shares redeemed;

- (b) the amount that was standing to the credit of the company's share premium account immediately before the commencement date of section 130 less any amounts already applied under subsection (1) or this subsection.
- (3) If an amount is paid under subsection (2), the remaining amount available for the purposes of subsection (1) or (2) must be reduced by a corresponding amount.

40. Calls on partly paid shares

The liability of a shareholder for calls in respect of money remaining unpaid on shares issued before the commencement date of section 130 (whether on account of the nominal value of the shares or by way of premium) is not affected by the share ceasing to have a nominal value.

41. References in contracts and other documents to par or nominal value

- (1) This section applies for the purpose of interpreting and applying on or after the commencement date of section 130—
 - (a) a contract entered into before that commencement date (including a company's articles);
 - (b) a resolution of a company or of any of its members made before that commencement date; or
 - (c) a trust deed or other document executed before that commencement date.
- (2) A reference to the par or nominal value of a share (whether made expressly or by implication) is a reference to—
 - (a) if the share was issued before the commencement date of section 130, the nominal value of the share immediately before that commencement date;
 - (b) if the share is issued on or after the commencement date of section 130 but shares of the same class were on issue immediately before that commencement date, the

- nominal value that the share would have had if it had been issued immediately before that commencement date; or
- (c) if the share is issued on or after the commencement date of section 130 and shares of the same class were not on issue immediately before that commencement date, the nominal value determined by the directors.
- (3) A reference to share premium is a reference to any residual share capital in relation to the share.
- (4) A reference to a right to a return of capital on a share is a reference to a right to a return of capital of a value equal to the amount paid in respect of the nominal value of the share.
- (5) A reference to a distribution in a winding up in proportion to the capital paid up on a share is a reference to a distribution in a winding up in proportion to the amount paid in respect of the nominal value of the share.
- (6) A reference to the aggregate par or nominal value of the company's issued share capital is a reference to that aggregate as it existed immediately before the commencement date of section 130 and—
- (a) increased to take account of the nominal value of any shares issued on or after that commencement date; and
- (b) reduced to take account of the nominal value of any shares cancelled on or after that commencement date.
- (7) Despite subsection (2) or (6), if the nominal value of a share is altered on or after the commencement date of section 130 under a continuing provision, a reference to the par or nominal value of the share is a reference to the nominal value as so altered.

42. References in continuing provisions of the predecessor Ordinance

- (1) A reference in a continuing provision to the nominal amount or nominal value of a share is, in relation to any period on or after the commencement date of section 130, a reference to the nominal amount or nominal value of the share immediately before that commencement date, and a reference to share premium is to be construed accordingly.
- (2) A reference in a continuing provision to a company's share premium account or capital redemption reserve is, in relation to any period on or after the commencement date of section 130, a reference to the company's share premium account or capital redemption reserve immediately before that commencement date.
- (3) Despite subsection (1), if the nominal amount or nominal value of a share is altered on or after the commencement date of section 130 under a continuing provision, a reference in a continuing provision to the nominal amount or nominal value of the share is a reference to the nominal amount or nominal value as so altered.

Part 5

Transitional and Saving Arrangements for Part 5

43. Reduction of share capital confirmed by Court

- (1) Section 58 (so far as it relates to a reduction of share capital) and sections 59 to 63 of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a resolution for reducing share capital that was passed under section 58(1) of the predecessor Ordinance immediately before the commencement date of Subdivision 3 of Division 3 of Part 5.

- (2) Division 3 of Part 5 does not apply to a reduction of share capital referred to in subsection (1).

44. Share redemptions and buy-backs

- (1) Sections 49, 49A, 49B, 49BA, 49C, 49E, 49F, 49G, 49H, 49P, 49Q, 49R, 49S, 58 and 168B of, and the Thirteenth Schedule to, the predecessor Ordinance (so far as they relate to a redemption or purchase by a listed company of its own shares), as in force immediately before their repeal, continue to apply in relation to an authorization that was in force under section 49BA, 49E(2) or 49F(3) of the predecessor Ordinance immediately before the commencement date of Division 4 of Part 5.
- (2) Sections 49 to 49S and 58 of the predecessor Ordinance (so far as they relate to a redemption or purchase by an unlisted company of its own shares), as in force immediately before their repeal, continue to apply in relation to an authorization or approval that was in force under section 49D, 49E(3) or 49F(2) of the predecessor Ordinance immediately before the commencement date of Division 4 of Part 5.
- (3) Division 4 of Part 5 does not apply to a redemption or purchase by a company of its own shares under an authorization or approval referred to in subsection (1) or (2).

45. Redeemable shares issued before commencement date

Any redeemable preference shares issued before the commencement date of the Companies (Amendment) Ordinance 1991 (77 of 1991) and any redeemable shares issued on or after that date but before the commencement date of section 229 may be redeemed in accordance with this Ordinance.

Note—

The commencement date of the Companies (Amendment) Ordinance 1991 (77 of 1991) was 1 September 1991—see L.N. 283 of 1991.

46. Effect of company's failure to redeem or buy back

Sections 267 and 268 do not apply to any redeemable preference shares issued before the commencement date of the Companies (Amendment) Ordinance 1991 (77 of 1991).

Note—

The commencement date of the Companies (Amendment) Ordinance 1991 (77 of 1991) was 1 September 1991—see L.N. 283 of 1991.

47. Financial assistance by unlisted company for acquisition of its own shares

- (1) Sections 47A to 48 of the predecessor Ordinance (so far as they relate to the giving of financial assistance by an unlisted company), as in force immediately before their repeal, continue to apply to the giving of financial assistance by an unlisted company if the directors' statement under section 47E(6) of the predecessor Ordinance was made before the commencement date of Division 5 of Part 5.
- (2) Division 5 of Part 5 does not apply to the giving of financial assistance referred to in subsection (1).

48. Specified newspapers

Until the Chief Secretary for Administration publishes a list of Chinese language newspapers and English language newspapers in the Gazette under section 198(2), a Chinese language newspaper or an English language newspaper specified in the list of newspapers last published under section 71A(3)(a) of the predecessor Ordinance is taken to be a specified Chinese language newspaper or a specified English language newspaper (as the case may be) for the purposes of Part 5.

Part 6

Transitional and Saving Arrangements for Part 6

49. Saving of predecessor Ordinance for certain distribution

- (1) Subject to subsection (2), Part IIA of the predecessor Ordinance, as in force immediately before its repeal, continues to apply to a distribution specified in section 291(2), to which Part 6 does not apply.
- (2) That Part IIA applies as if—
 - (a) in section 79A(1) of the predecessor Ordinance, in the definition of *distribution*, the following had been added after paragraph (b)—
 - “(ca) the redemption or buy-back of any shares in the company out of capital (including the proceeds of any fresh issue of shares), or out of unrealized profits, in accordance with Division 4 of Part 5 of the Companies Ordinance (of 2011);
 - (cb) financial assistance given by the company to a member under section 279, 280 or 281 of the Companies Ordinance (of 2011);”;
 - (b) in section 79J(2) of the predecessor Ordinance—
 - (i) the following had been added after paragraph (a)—
 - “(ba) financial assistance—
 - (i) that is given by the company in contravention of Division 5 of Part 5 of the Companies Ordinance (of 2011); and
 - (ii) the giving of which reduces the company’s net assets or increases its net liabilities;”;

- (ii) in paragraph (e), the comma at the end had been substituted by “; and”;
- (iii) the following had been added after paragraph (e)—
 - “(f) a payment made under Division 4 of Part 5 of the Companies Ordinance (of 2011) by the company of any description specified in section 252(5) of that Ordinance (except a payment lawfully made otherwise than out of distributable profits);”;
- (c) in section 79M(2) of the predecessor Ordinance—
 - (i) in paragraph (a), the word “or” had been deleted; and
 - (ii) the following had been added after paragraph (a)—
 - “(ba) financial assistance given by a company in contravention of section 271 of the Companies Ordinance (of 2011);”;

50. Saving for certain older provisions in articles

If, immediately before 1 September 1991, a company was authorized by a provision of its articles to apply its unrealized profits in paying up, in full or in part, unissued shares to be allotted to the members as fully or partly paid bonus shares, that provision continues (subject to any alteration of the articles) as authority for those profits to be so applied after that date.

Part 7

Transitional and Saving Arrangements for Part 7

51. Notifying Registrar of place where register of debenture holders is kept

Section 74A(4) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to an

obligation to send notice to the Registrar that arose before the commencement date of section 305 under section 74A(3) of the predecessor Ordinance.

52. Right to inspect register of debenture holders

Section 75(1), (4), (5) and (6) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a request received by the company before the commencement date of section 306 for inspecting a register of debenture holders.

53. Right to obtain copy of register of debenture holders

Section 75(2), (4) and (5) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a request received by the company before the commencement date of section 306 for a copy of a register of debenture holders (or any part of it).

54. Request for copy of trust deed or other document

Section 75(3), (4) and (5) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a request received by the company before the commencement date of section 306 for a copy of any trust deed or any other document securing any issue of debentures.

55. Company to inform most recent date of alterations

- (1) When a person inspects a register of debenture holders, or is provided with a copy of a register of debenture holders (or any part of it), under the provisions having a continuing effect under this Schedule, the company must inform the person of the most recent date (if any) on which alterations were made to the register.
- (2) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a

continuing offence, to a further fine of \$700 for each day during which the offence continues.

56. Company to close register of debenture holders

Section 99 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a closure of a register of debenture holders if the notice for the purposes of section 99(1) of the predecessor Ordinance was given before the commencement date of section 308.

57. Return of allotment

Section 313 applies to debentures or debenture stock allotted on or after the commencement date of that section.

58. Registration of allotment

Section 314 applies to debentures or debenture stock allotted on or after the commencement date of that section.

59. Issue of debenture or certificate for debenture stock on allotment

Section 70 of the predecessor Ordinance (so far as it relates to an allotment of debentures or debenture stock), as in force immediately before its repeal, continues to apply in relation to debentures or debenture stock allotted before the commencement date of sections 315 and 316.

60. Registration of transfer or refusal of registration

Section 69 of the predecessor Ordinance (so far as it relates to a transfer of debentures or debenture stock), as in force immediately before its repeal, continues to apply in relation to a transfer of debentures or debenture stock lodged before the commencement date of section 318.

- 61. Issue of debenture or certificate for debenture stock on transfer**
Section 70 of the predecessor Ordinance (so far as it relates to a transfer of debentures or debenture stock), as in force immediately before its repeal, continues to apply in relation to a transfer of debentures or debenture stock lodged before the commencement date of sections 320 and 321.
- 62. Meeting of debenture holders**
Sections 75A, 113, 114B, 114C, 114D(2) and 114E of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a requisition made before the commencement date of section 328 for a meeting of debenture holders and to any relevant meeting of debenture holders.

Part 8

Transitional and Saving Arrangements for Part 8

- 63. Interpretation**
- (1) In this Part, a copy of an instrument in relation to a charge delivered for registration is a certified copy if it is certified as a true copy—
- (a) by—
- (i) a director or company secretary of the company, or of the non-Hong Kong company registered under Part XI of the predecessor Ordinance, delivering the copy for registration; or
- (ii) a person authorized by that company or non-Hong Kong company for the purpose; or
- (b) by—
- (i) any other person interested in the charge; or
- (ii) in the case of—

- (A) an interested person who is a natural person, a person authorized by the interested person for the purpose; or
- (B) an interested person that is a body corporate, a person authorized by the interested person for the purpose, or a director or company secretary of the interested person.
- (2) In this Part, a reference to the charged property of a non-Hong Kong company registered under Part XI of the predecessor Ordinance is a reference to—
- (a) the property in Hong Kong of the company and subject to a charge created by the company, except property that was not in Hong Kong when the charge was created; or
- (b) the property in Hong Kong of the company and subject to a charge that subsisted when the property was acquired by the company, except property that was not in Hong Kong when it was so acquired.
- 64. Charge created by company**
- (1) This section applies to a charge if—
- (a) before section 80 of the predecessor Ordinance was repealed, a company created the charge; and
- (b) the charge was required by that section to be registered.
- (2) Subject to subsection (4), sections 80 and 81 of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to the charge.
- (3) Subject to section 69 of this Schedule, section 83(2) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the charge.
- (4) On the expiry of the period of 8 weeks after the commencement date of Division 2 of Part 8—
- (a) that section 80 applies in relation to the charge as if—

- (i) in subsection (1) of that section, the words “the particulars of the charge (which must include those specified in subsection (1A) and be in the specified form), together with the instrument, if any, by which the charge is created or evidenced” had been substituted by the words “a statement of the particulars of the charge (in the same form as that specified for the purposes of section 334(1) of the Companies Ordinance (of 2011)), together with a certified copy of the instrument (if any) creating or evidencing the charge”;
- (ii) subsection (1A) of that section had been deleted;
- (iii) in subsection (3) of that section, the words “the delivery to and the receipt by the Registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and” had been deleted;
- (iv) in subsection (3) of that section, the words “the instrument or copy” had been substituted by the words “a certified copy of the instrument”;
- (v) in subsection (3) of that section, the words “the particulars and instrument or copy” had been substituted by the words “the statement and a certified copy of the instrument”;
- (vi) in subsection (4) of that section, the words “the instrument” had been substituted by the words “a certified copy of the instrument”;
- (vii) in subsection (7) of that section, the words after “5 weeks after the execution of the” and before the proviso had been substituted by the words “instrument by reference to which the charge is given or, if there is no such instrument, after the

- execution of the first debenture of the series, a statement of the particulars of the charge (in the same form as that specified for the purposes of section 334(2) of the Companies Ordinance (of 2011)), together with a certified copy of the instrument by reference to which the charge is given or, if there is no such instrument, any one debenture of the series:”;
 - (viii) in subsection (7) of that section, in the proviso, the words “particulars of the date and amount of each issue” had been substituted by the words “a statement of the particulars of every issue (in the same form as that specified for the purposes of section 340(2) of the Companies Ordinance (of 2011))”; and
 - (ix) in subsection (8) of that section, the words “the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent of the commission, discount, or allowance so paid or made” had been substituted by the words “a statement required to be sent for registration under this section must be accompanied by a statement of the particulars of the commission, allowance or discount (in the same form as that specified for the purposes of section 341(2) of the Companies Ordinance (of 2011))”; and
- (b) that section 81 applies in relation to the charge as if—
- (i) in subsection (1) of that section, the words “the particulars of every charge created by the company and of the issues of debentures of a series, requiring registration under section 80” had been substituted by the words “the statement, or a certified copy of the instrument or debenture, or both, as required under section 80(1), (7) or (8)”;

- (ii) in subsection (1) of that section, the words “any such charge” had been substituted by the words “any such statement or certified copy (as the case may be)”; and
- (iii) in subsection (3) of that section, the words “the particulars of any charge created by the company, or of the issues of debentures of a series, requiring registration as aforesaid” had been substituted by the words “the statement or certified copy that the company is required under subsection (1) to do so”.

65. Charge created by non-Hong Kong company

- (1) This section applies to a charge if—
 - (a) before section 80 of the predecessor Ordinance was repealed, a non-Hong Kong company registered under Part XI of the predecessor Ordinance created the charge; and
 - (b) the charge was required by that section, as extended by section 91 of the predecessor Ordinance, to be registered.
- (2) Subject to subsection (4), sections 80 and 81 of the predecessor Ordinance, as in force immediately before their repeal, continue to apply, by virtue of section 91 of the predecessor Ordinance as so in force, in relation to the charge.
- (3) Subject to section 69 of this Schedule, section 83(2) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply, by virtue of section 91 of the predecessor Ordinance as so in force, in relation to the charge.
- (4) On the expiry of the period of 8 weeks after the commencement date of Division 2 of Part 8—
 - (a) that section 80 applies in relation to the charge as if—
 - (i) in subsection (1) of that section, the words “the particulars of the charge (which must include those

- specified in subsection (1A) and be in the specified form), together with the instrument, if any, by which the charge is created or evidenced” had been substituted by the words “a statement of the particulars of the charge (in the same form as that specified for the purposes of section 335(1) of the Companies Ordinance (of 2011)), together with a certified copy of the instrument (if any) creating or evidencing the charge”;
- (ii) subsection (1A) of that section had been deleted;
- (iii) in subsection (7) of that section, the words after “5 weeks after the execution of the” and before the proviso had been substituted by the words “instrument by reference to which the charge is given or, if there is no such instrument, after the execution of the first debenture of the series, a statement of the particulars of the charge (in the same form as that specified for the purposes of section 335(2) of the Companies Ordinance (of 2011)), together with a certified copy of the instrument by reference to which the charge is given or, if there is no such instrument, any one debenture of the series:”;
- (iv) in subsection (7) of that section, in the proviso, the words “particulars of the date and amount of each issue” had been substituted by the words “a statement of the particulars of every issue (in the same form as that specified for the purposes of section 340(2) of the Companies Ordinance (of 2011))”; and
- (v) in subsection (8) of that section, the words “the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent of the commission, discount, or allowance so paid or made” had been

- substituted by the words “a statement required to be sent for registration under this section must be accompanied by a statement of the particulars of the commission, allowance or discount (in the same form as that specified for the purposes of section 341(2) of the Companies Ordinance (of 2011))”; and
- (b) that section 81 applies in relation to the charge as if—
- (i) in subsection (1) of that section, the words “the particulars of every charge created by the company and of the issues of debentures of a series, requiring registration under section 80” had been substituted by the words “the statement, or a certified copy of the instrument or debenture, or both, as required under section 80(1), (7) or (8)”;
 - (ii) in subsection (1) of that section, the words “any such charge” had been substituted by the words “any such statement or certified copy (as the case may be)”; and
 - (iii) in subsection (3) of that section, the words “the particulars of any charge created by the company, or of the issues of debentures of a series, requiring registration as aforesaid” had been substituted by the words “the statement or certified copy that the non-Hong Kong company is required under subsection (1) to do so”.

66. Charge existing on property acquired by company

- (1) This section applies to a charge if—
- (a) before section 82 of the predecessor Ordinance was repealed, a company acquired any property subject to the charge; and
 - (b) the charge was required by that section to be registered.

- (2) Subject to subsection (4), section 82 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the charge.
- (3) Subject to section 69 of this Schedule, section 83(2) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the charge.
- (4) On the expiry of the period of 8 weeks after the commencement date of Division 3 of Part 8, that section 82 applies in relation to the charge as if—
 - (a) in subsection (1) of that section, the words “the particulars of the charge (which must include those specified in section 80(1A) and be in the specified form), together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced” had been substituted by the words “a statement of the particulars of the charge (in the same form as that specified for the purposes of section 337(2) of the Companies Ordinance (of 2011)), together with a certified copy of the instrument (if any) creating or evidencing the charge”;
 - (b) in subsection (1) of that section, in the proviso, the words “which the copy” had been substituted by the words “which the certified copy”; and
 - (c) in subsection (1) of that section, in the proviso, the words “the particulars and the copy of the instrument” had been substituted by the words “the statement and certified copy”.

67. Charge existing on property acquired by non-Hong Kong company

- (1) This section applies to a charge if—
- (a) before section 82 of the predecessor Ordinance was repealed, a non-Hong Kong company registered under

- Part XI of the predecessor Ordinance acquired any property subject to the charge; and
- (b) the charge was required by that section, as extended by section 91 of the predecessor Ordinance, to be registered.
- (2) Subject to subsection (4), section 82 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply, by virtue of section 91 of the predecessor Ordinance as so in force, in relation to the charge.
- (3) Subject to section 69 of this Schedule, section 83(2) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply, by virtue of section 91 of the predecessor Ordinance as so in force, in relation to the charge.
- (4) On the expiry of the period of 8 weeks after the commencement date of Division 3 of Part 8, that section 82 applies in relation to the charge as if in subsection (1) of that section, the words “the particulars of the charge (which must include those specified in section 80(1A) and be in the specified form), together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced” had been substituted by the words “a statement of the particulars of the charge (in the same form as that specified for the purposes of section 338(3) of the Companies Ordinance (of 2011)), together with a certified copy of the instrument (if any) creating or evidencing the charge”.

68. Charge existing on property on date of non-Hong Kong company’s registration under Part XI of predecessor Ordinance

- (1) This section applies to a charge if—
- (a) before section 91(5) of the predecessor Ordinance was repealed, a non-Hong Kong company had, on the date of its registration under Part XI of the predecessor

- Ordinance, property in Hong Kong subject to the charge; and
- (b) the charge was required by that section to be registered.
- (2) Subject to subsection (4), section 91(5) and (6) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the charge.
- (3) Subject to section 69 of this Schedule, section 83(2) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the charge.
- (4) On the expiry of the period of 8 weeks after the commencement date of Division 3 of Part 8, that section 91(5) applies in relation to the charge as if the words “for registration the particulars in the specified form (including any instrument or its copy by which the charge was created or is evidenced) that are mentioned in this Part as requiring registration in respect of a charge of that kind” had been substituted by the words—
- “for registration—
- (a) either or both of the following—
- (i) a statement of the particulars of the charge (in the same form as that specified for the purposes of section 339(2) of the Companies Ordinance (of 2011)), together with a certified copy of the instrument (if any) creating or evidencing the charge;
- (ii) a statement of the particulars of the charge (in the same form as that specified for the purposes of section 339(3) of the Companies Ordinance (of 2011)), together with a certified copy of the instrument by reference to which the charge is given or, if there is no such instrument, any one debenture of the series; and

- (b) (if applicable) the statement as required under the proviso to section 80(7) or (8) having a continuing effect under section 65(4)(a)(iv) or (v) of Schedule 10 to the Companies Ordinance (of 2011)".

69. Certificates on registration of charge

Section 83(2) of the predecessor Ordinance, as in force immediately before its repeal—

- (a) continues to apply in relation to a charge to which section 64 or 66 of this Schedule applies; and
- (b) continues to apply, by virtue of section 91 of the predecessor Ordinance as so in force, in relation to a charge to which section 65, 67 or 68 of this Schedule applies,

as if the words “this Part” (wherever appearing) had been substituted by the words “this Part having a continuing effect under Schedule 10 to the Companies Ordinance (of 2011)”.

70. Entries of satisfaction and release

Section 85 of the predecessor Ordinance, as in force immediately before its repeal—

- (a) continues to apply in relation to an application made by a company, the mortgagee, or the person entitled to the charge, before the commencement date of Division 5 of Part 8 for the purposes of that section 85; and
- (b) continues to apply, by virtue of section 91 of the predecessor Ordinance as so in force, in relation to an application made by a non-Hong Kong company registered under Part XI of the predecessor Ordinance, the mortgagee, or the person entitled to the charge, before that commencement date for the purposes of that section 85.

71. Extension of time for registration and rectification of register of charges

Section 86 of the predecessor Ordinance, as in force immediately before its repeal—

- (a) continues to apply in relation to an application made by a company, or any person interested, before the commencement date of sections 345 and 346 for the purposes of that section 86; and
- (b) continues to apply, by virtue of section 91 of the predecessor Ordinance as so in force, in relation to an application made by a non-Hong Kong company registered under Part XI of the predecessor Ordinance, or any person interested, before that commencement date for the purposes of that section 86.

72. Notice to Registrar of appointment of receiver or manager etc.

(1) This section applies if, before section 87 of the predecessor Ordinance was repealed—

- (a) a person made an appointment of a receiver or manager of the property of a company, or the charged property of a non-Hong Kong company registered under Part XI of the predecessor Ordinance, to which subsection (1) of that section 87 applied;
- (b) a person obtained an order for the appointment of such a receiver or manager;
- (c) a person entered into possession of the property of a company, or the charged property of a non-Hong Kong company registered under Part XI of the predecessor Ordinance, as mortgagee;
- (d) a person who was appointed as receiver or manager of the property of a company, or the charged property of a non-Hong Kong company registered under Part XI of the predecessor Ordinance, and in respect of whom notice

- was required to be given under subsection (1) of that section 87, ceased to act as receiver or manager;
- (e) a person who is mentioned in paragraph (c), and in respect of whom notice was required to be given under subsection (2) of that section 87, went out of possession of the property; or
 - (f) any change occurred in the particulars given in a notice under subsection (1) or (2) of that section 87.
- (2) In the case of subsection (1)(a) or (b), section 87(1), (3), (6), (7) and (8) of the predecessor Ordinance, as in force immediately before its repeal—
- (a) continues to apply in relation to an appointment for a property of a company; and
 - (b) continues to apply, by virtue of section 91 of the predecessor Ordinance as so in force, in relation to an appointment for a charged property of a non-Hong Kong company registered under Part XI of the predecessor Ordinance.
- (3) In the case of subsection (1)(c), section 87(2), (3), (6) and (7) of the predecessor Ordinance, as in force immediately before its repeal—
- (a) continues to apply in relation to an entry into possession of a property of a company; and
 - (b) continues to apply, by virtue of section 91 of the predecessor Ordinance as so in force, in relation to an entry into possession of a charged property of a non-Hong Kong company registered under Part XI of the predecessor Ordinance.
- (4) In the case of subsection (1)(d), section 87(4), (6), (7) and (8) of the predecessor Ordinance, as in force immediately before its repeal—
- (a) continues to apply in relation to the ceasing to act as receiver or manager of a property of a company; and

- (b) continues to apply, by virtue of section 91 of the predecessor Ordinance as so in force, in relation to the ceasing to act as receiver or manager of a charged property of a non-Hong Kong company registered under Part XI of the predecessor Ordinance.
- (5) In the case of subsection (1)(e), section 87(4), (6) and (7) of the predecessor Ordinance, as in force immediately before its repeal—
- (a) continues to apply in relation to the going out of possession of a property of a company; and
 - (b) continues to apply, by virtue of section 91 of the predecessor Ordinance as so in force, in relation to the going out of possession of a charged property of a non-Hong Kong company registered under Part XI of the predecessor Ordinance.
- (6) In the case of subsection (1)(f), section 87(5), (6), (7) and (8) of the predecessor Ordinance, as in force immediately before its repeal—
- (a) continues to apply in relation to a change that occurred in the particulars given in connection with an appointment of a receiver or manager of, or an entry into possession as mortgagee of, a property of a company; and
 - (b) continues to apply, by virtue of section 91 of the predecessor Ordinance as so in force, in relation to a change that occurred in the particulars given in connection with an appointment of a receiver or manager of, or an entry into possession as mortgagee of, a charged property of a non-Hong Kong company registered under Part XI of the predecessor Ordinance.

Part 9**Transitional and Saving Arrangements for Part 9****73. Books of account**

Sections 121 and 348C of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to books of account for a financial year beginning before the commencement date of Subdivision 2 of Division 4 of Part 9 and ending on or after that commencement date.

74. Financial year and related matters

Sections 127 and 141D of, and the Eleventh Schedule to, the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a financial year beginning before the commencement date of Division 3 of Part 9 and ending on or after that commencement date.

75. Accounts and directors' report

- (1) Sections 122, 123, 124, 125, 126, 128, 129, 129A, 129B, 129C, 129D, 129G, 141C, 161, 161A and 161B of, and the Tenth Schedule to, the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to accounts for a financial year beginning before the commencement date of Subdivision 3 of Division 4 of Part 9 and ending on or after that commencement date.
- (2) Despite subsection (1), section 122(1B) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to accounts for a financial year beginning before the commencement date of Subdivision 3 of Division 4 of Part 9 and ending on or after that commencement date as if paragraph (b) of that section had been substituted by—

“(b) extend the period of 6 and 9 months referred to in subsection (1A) up to the company’s primary accounting reference date under section 365(1) of the Companies Ordinance (of 2011).”.

- (3) Sections 129D, 129E, 129F and 141C of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a directors’ report for a financial year beginning before the commencement date of Subdivision 4 of Division 4 of Part 9 and ending on or after that commencement date.

76. Appointment of auditor

- (1) Sections 131(1), (2), (3), (4) and (9), 132 and 140 of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to an appointment of auditor for a financial year beginning before the commencement date of Subdivision 2 of Division 5 of Part 9 and ending on or after that commencement date.
- (2) Section 131(8) of, and paragraph 15 of the Tenth Schedule to, the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a person appointed as auditor for a financial year beginning before the commencement date of Subdivision 2 of Division 5 of Part 9 and ending on or after that commencement date.

77. Auditor’s report

- (1) Sections 141(1), (2), (3), (4), (5) and (6), 161(8) and 161B(12) of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a financial year beginning before the commencement date of Subdivision 3 of Division 5 of Part 9 and ending on or after that commencement date.
- (2) Section 141(7) and (8) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a general meeting of which notice is given before

the commencement date of Subdivision 4 of Division 5 of Part 9.

78. Removal and resignation of auditor

- (1) Sections 131(6), (7) and (10) and 132 of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a removal of a person appointed as auditor for a financial year beginning before the commencement date of Subdivision 6 of Division 5 of Part 9 and ending on or after that commencement date.
- (2) Sections 140A and 140B of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a resignation of a person appointed as auditor for a financial year beginning before the commencement date of Subdivision 6 of Division 5 of Part 9 and ending on or after that commencement date.

79. Indemnity provision

Section 165 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a provision made before the commencement date of Subdivision 5 of Division 5 of Part 9.

80. Summary financial report

Sections 141CA, 141CB, 141CC, 141CD, 141CE and 141CF of the predecessor Ordinance, and the Companies (Summary Financial Reports of Listed Companies) Regulation (Cap. 32 sub. leg. M), as in force immediately before their repeal, continue to apply in relation to a summary financial report for a financial year beginning before the commencement date of Division 7 of Part 9 and ending on or after that commencement date.

81. Voluntary revision of accounts etc.

Section 141E of the predecessor Ordinance, and the Companies (Revision of Accounts and Reports) Regulation (Cap. 32 sub. leg.

N), as in force immediately before their repeal, continue to apply in relation to accounts for a financial year beginning before the commencement date of section 440 and ending on or after that commencement date.

Part 10

Transitional and Saving Arrangements for Part 10

82. First directors of companies

Section 153(2) or 153A(2) (as the case requires) of the predecessor Ordinance, as in force immediately before its repeal, applies in relation to a company formed and registered under a provision of the predecessor Ordinance having a continuing effect under this Schedule or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

83. Requirement to have at least one director who is natural person

- (1) If, on the commencement date of section 448—
 - (a) a company has at least one director; but
 - (b) that director is not a natural person and none of the company's other directors (if any) are natural persons,
 section 448(2) does not apply to the company until after the end of 6 months after that commencement date.
- (2) If, on the date of incorporation of a company formed and registered under a provision of the predecessor Ordinance having a continuing effect under this Schedule or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1)—
 - (a) the company has at least one director; but
 - (b) that director is not a natural person and none of the company's other directors (if any) are natural persons,

section 448(2) does not apply to the company until after the end of 6 months after the commencement date of section 448.

- (3) If, on the commencement date of section 448, a company is a company deemed to be a dormant company under section 344A of the predecessor Ordinance, section 448(2) does not apply in relation to the company.
- (4) If the company enters into an accounting transaction, subsection (3) ceases to have effect on and after the date of the accounting transaction.

84. Validity of acts of director

Section 157 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to acts done before the commencement date of section 452.

85. Removal of director

Section 157B(4) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply if the representations were received by the company before the commencement date of section 454.

86. Directors' liabilities

So far as it relates to directors, section 165 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to any provision to which it applied immediately before the commencement date of sections 459, 460 and 461.

87. First company secretaries

Section 154(1AA) of the predecessor Ordinance, as in force immediately before its repeal, applies in relation to a company formed and registered under a provision of the predecessor Ordinance having a continuing effect under this Schedule or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

88. Records of meetings of directors

- (1) Section 119 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply to meetings of directors held before the commencement date of sections 472 and 473.
- (2) Despite subsection (1), a company is not required to keep the minutes that have been entered in a book in accordance with section 119(1) of the predecessor Ordinance if they have been kept for at least 20 years from the date of the meeting.
- (3) Section 153C of the predecessor Ordinance, as in force immediately before its repeal, continues to apply to decisions taken before the commencement date of section 474.
- (4) Despite subsection (3), a company is not required to keep a record that has been entered into a book in accordance with section 153C(3) of the predecessor Ordinance if the record has been kept for at least 20 years from the date of the decision.

Part 11

Transitional and Saving Arrangements for Part 11

89. Loans etc. to directors or other persons

- (1) This section applies if—
 - (a) before the commencement date of Division 2 of Part 11, a company entered into a transaction specified in section 157HA(3)(a) of the predecessor Ordinance;
 - (b) the transaction was entered into on the condition specified in section 157HA(4)(b) of the predecessor Ordinance; and
 - (c) that condition has not been satisfied before that commencement date.

- (2) If the company has dispensed with the holding of an annual general meeting in accordance with section 603, the specified condition continues to apply as if it provided—
- (a) that the approval of the company is required on or before the last date on which the company would otherwise have been required to hold an annual general meeting; and
 - (b) that any liability falling on any person in connection with the transaction must be discharged within 6 months after that date if that approval is not forthcoming.

90. Loss of office or retirement

- (1) Sections 163, 163A, 163B, 163C and 163D of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a loss of office or retirement specified in those sections that occurred before the commencement date of Division 3 of Part 11.
- (2) For the purposes of this section, a loss of office or retirement occurred—
 - (a) in the case of a directorship, when the person ceased to be a director; or
 - (b) in the case of any other office, when the person ceased to hold the office.

91. Contracts with sole member who is also director

Section 162B of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a contract specified in that section and entered into before the commencement date of section 535.

Part 12

Transitional and Saving Arrangements for Part 12

92. Interpretation

- (1) For the purposes of sections 94, 95, 96, 98, 99, 100 and 103 of this Schedule, if notice of a meeting is given over more than one day, it is to be regarded as given on the first of those days.
- (2) For the purposes of sections 94, 95, 97 and 101 of this Schedule, if copies of a requisition are deposited on more than one day, the date on which the requisition is made is to be regarded as the first day on which the copies deposited are sufficient to require the company to act.

93. Written resolution

- (1) Sections 116B (except subsections (7), (8), (9) and (10)), 116BA and 116BB of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to resolutions sent or circulated to any relevant member before the commencement date of Subdivision 2 of Division 1 of Part 12.
- (2) In this section—
relevant member (有關成員) means a member whose signature is required by section 116B(1) of the predecessor Ordinance.

94. Resolutions at meetings

Section 116 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to resolutions (other than written resolutions)—

- (a) of which notice was given before the commencement date of Subdivision 3 of Division 1 of Part 12; or
- (b) that are proposed at a meeting—

- (i) of which notice was given before that commencement date; or
- (ii) that is convened in accordance with a requisition made before that commencement date under section 113 of the predecessor Ordinance.

95. Calling meetings

- (1) Section 113 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to requisitions made before the commencement date of sections 556, 557 and 558.
- (2) Section 114A(1)(b) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a meeting of which notice was given before the commencement date of section 559.

96. Notice of meetings

- (1) Sections 111(1), 114, 114A, 116A, 141(7) and 155B of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a meeting of which notice was given before the commencement date of sections 561, 564, 566 and 567.
- (2) Section 116C of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to resolutions for which special notice is required if notice of the intention to move the resolution was given to the company before the commencement date of section 568.

97. Members' statements

In so far as it relates to the circulation of any statement in relation to an annual general meeting, section 115A of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to requisitions made to a company under section

115A(1)(b) of the predecessor Ordinance before the commencement date of Subdivision 6 of Division 1 of Part 12.

98. Procedure at meetings

Sections 114A(1)(c) and (d), 114AA and 118 of the predecessor Ordinance, as in force immediately before their repeal, continue to apply to meetings of which notice was given before the commencement date of Subdivision 7 of Division 1 of Part 12.

99. Voting at meetings

Sections 114A(1)(e), 114D, 114E and 116(2) of the predecessor Ordinance, as in force immediately before their repeal, continue to apply to meetings of which notice was given before the commencement date of Subdivision 8 of Division 1 of Part 12.

100. Proxies and corporate representatives

Sections 114C and 115 of the predecessor Ordinance, as in force immediately before their repeal, continue to apply to meetings of which notice was given before the commencement date of Subdivision 9 of Division 1 of Part 12.

101. Annual general meetings

- (1) The repeal of section 115A of the predecessor Ordinance does not affect its application in relation to a requisition under section 115A(1)(a) of the predecessor Ordinance made to a company before the repeal.
- (2) If a company is required under section 75(1) of this Schedule to lay at its annual general meeting an account or a balance sheet in accordance with section 122 of the predecessor Ordinance—
 - (a) section 111(1), (5) and (6) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to an annual general meeting at which the account or balance sheet is to be laid; and

- (b) section 600 applies in relation to subsequent annual general meetings.
- (3) For the purposes of subsection (2)(a), section 111(6)(a) of the predecessor Ordinance has effect as if for the words “a resolution or resolutions in accordance with section 116B”, there were substituted the words “a written resolution or written resolutions”.
- (4) The repeal of section 111(2), (3), (4) and (5) of the predecessor Ordinance does not affect its operation in relation to a company if an application under section 111(2) of the predecessor Ordinance was made before the commencement date of section 600.
- (5) If a company has contravened section 111(1) of the predecessor Ordinance and no member of the company has made an application under section 111(2) of that Ordinance, section 600(7), (8) and (9) has effect in relation to the company as if—
- (a) for the words “subsection (1), (2), (3) or (6)” in section 600(7), there were substituted the words “section 111(1) of the predecessor Ordinance”; and
- (b) for the words “the financial year in respect of which the company has failed to hold an annual general meeting in accordance with this section” in section 600(8), there were substituted the words “the year in respect of which the company has failed to hold an annual general meeting in accordance with section 111(1) of the predecessor Ordinance”.
- (6) In so far as it relates to giving notice of a resolution in relation to an annual general meeting, section 115A of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to requisitions made to a company under section 115A(1)(a) of the predecessor Ordinance before the commencement date of sections 605 and 606.

102. Records of resolutions and meetings

- (1) Sections 116B(7), (8), (9) and (10), 116BC, 119, 119A and 120 of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to resolutions passed, meetings held or decisions taken before the commencement date of sections 607 to 611.
- (2) Despite subsection (1), a company is not required to keep a record or the minutes that have been entered into a book in accordance with section 116B(7), 116BC(3) or 119(1) of the predecessor Ordinance if the record or the minutes have been kept for at least 20 years from the date of the resolution, meeting or decision, as the case may be.
- (3) Section 117(1), (5) and (7) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to resolutions passed and agreements made, but not forwarded to the Registrar, before the commencement date of section 612 (except subsections (4) and (5)).
- (4) Section 117(2), (6) and (7) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a company’s articles issued before the commencement date of section 612(4).
- (5) Section 117(3), (6) and (7) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply if the request was received by the company before the commencement date of section 612(5).

103. Application to class meetings

- (1) Section 63A(6) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to meetings of which notice was given before the commencement date of Subdivision 12 of Division 1 of Part 12.

- (2) Section 163B(4) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to meetings—
- (a) at which a resolution for an approval for the purposes of section 514 was proposed; and
 - (b) notice of which was given before the commencement date of Subdivision 12 of Division 1 of Part 12.

104. Register of members

- (1) On or after the commencement date of section 617, a register of members kept under section 95 of the predecessor Ordinance is to be regarded as a register of members kept under and for the purposes of section 617.
- (2) Section 98(1), (3) and (4) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a request received by the company before the commencement date of section 621 for inspecting a register of members or index of members' names.
- (3) Section 98(2), (3) and (4) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a request received by the company before the commencement date of section 621 for a copy of a register of members (or any part of it).
- (4) Section 99 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a closure of a register of members if the notice for the purposes of section 99(1) of the predecessor Ordinance was given before the commencement date of section 623.
- (5) Section 104 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a register of members kept under a licence issued under section 103 of that Ordinance.

105. Inspection of register of directors and secretaries

Section 158(7), (8) and (9) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a request received by the company before the commencement date of sections 633 and 640 for inspecting a register of directors and secretaries.

106. Register of directors

On or after the commencement date of section 632, a register of directors and secretaries kept by a company under section 158(1) of the predecessor Ordinance, in so far as it relates to the company's directors or reserve directors, is to be regarded as a register of directors kept under and for the purposes of section 632.

107. Particulars to be registered

- (1) An existing company need not comply with any provision of this Ordinance requiring the company's register of directors to contain particulars additional to those required by the predecessor Ordinance until—
 - (a) the date to which the company makes up its first annual return made up to a date on or after the commencement date of section 634; or
 - (b) if the company fails to do so, the last date to which the company should have made up that return.
- (2) Unless the existing company is a company formed and registered under a provision of the predecessor Ordinance having a continuing effect under this Schedule or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), subsection (1) does not apply in relation to a director or reserve director of whom particulars are first registered on or after the commencement date of section 634 (whether the director or reserve director was appointed before, on or after that date).

- (3) Subsection (1) ceases to apply in relation to a director or reserve director whose registered particulars fall to be altered on or after the commencement date of section 634 (whether the change occurred before, on or after that date).
- (4) Subsections (1), (2) and (3) do not affect the particulars required to be included in the company's annual return.
- (5) In the case of an existing company—
 - (a) the relevant existing address of a director or reserve director is to be regarded, on or after the commencement date of section 634, as the correspondence address of the director or reserve director; and
 - (b) an entry in the company's register of directors stating the relevant existing address is to be regarded, on or after the commencement date of section 634, as complying with the requirement to state a correspondence address.
- (6) The relevant existing address is the address that immediately before the commencement date of section 634 appeared in the company's register of directors and secretaries as the usual residential address of the director or reserve director.
- (7) If the existing company is a company formed and registered under a provision of the predecessor Ordinance having a continuing effect under this Schedule or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), the relevant existing address is the address that immediately before the commencement date of section 634 appeared in the company's incorporation form as the usual residential address of the director.
- (8) A notification of a change of a relevant existing address occurring before the commencement date of section 634 that is received by the company on or after that date is to be regarded as including a notification of a change of correspondence address.

- (9) The operation of subsections (5), (6), (7) and (8) does not give rise to any duty to deliver a notice to the Registrar under section 636.

108. Supplementary provisions relating to particulars to be registered

- (1) On the commencement date of section 634, an existing company must remove from its register of directors any entry relating to a shadow director.
- (2) If, in accordance with section 158 of the predecessor Ordinance, an existing company has sent to the Registrar a notification in relation to a shadow director of the company, section 636 applies as if the shadow director had ceased to be a director on the commencement date of section 634.
- (3) The removal by an existing company from its register of directors on or after the commencement date of section 634 of particulars required by the predecessor Ordinance but not required by this Ordinance does not give rise to any duty to deliver a notice to the Registrar under section 636.
- (4) Section 158 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a change occurring before the commencement date of section 634.

109. Register of company secretaries

On or after the commencement date of section 639, a register of directors and secretaries kept by a company under section 158(1) of the predecessor Ordinance, in so far as it relates to the company secretary or joint company secretaries of the company, is to be regarded as a register of company secretaries kept under and for the purposes of section 639.

110. Particulars to be registered

- (1) An existing company need not comply with any provision of this Ordinance requiring the company's register of company secretaries to contain particulars additional to those required by the predecessor Ordinance until—
 - (a) the date to which the company makes up its first annual return made up to a date on or after the commencement date of section 641; or
 - (b) if the company fails to do so, the last date to which the company should have made up that return.
- (2) Unless the existing company is a company formed and registered under a provision of the predecessor Ordinance having a continuing effect under this Schedule or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), subsection (1) does not apply in relation to a company secretary of whom particulars are first registered on or after the commencement date of section 641 (whether the company secretary was appointed before, on or after that date).
- (3) Subsection (1) ceases to apply in relation to a company secretary whose registered particulars fall to be altered on or after the commencement date of section 641 (whether the change occurred before, on or after that date).
- (4) Subsections (1), (2) and (3) do not affect the particulars required to be included in the company's annual return.
- (5) In the case of an existing company—
 - (a) the relevant existing address of a company secretary is to be regarded, on or after the commencement date of section 641, as the correspondence address of the company secretary; and
 - (b) an entry in the company's register of company secretaries stating the relevant existing address is to be regarded, on or after the commencement date of section

641, as complying with the requirement to state a correspondence address.

- (6) The relevant existing address is the address that immediately before the commencement date of section 641 appeared in the company's register of directors and secretaries as the usual residential address of the company secretary or joint company secretary.
- (7) If the existing company is a company formed and registered under a provision of the predecessor Ordinance having a continuing effect under this Schedule or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), the relevant existing address is the address that immediately before the commencement date of section 641 appeared in the company's incorporation form as the usual residential address of the company secretary or joint company secretary.
- (8) A notification of a change of a relevant existing address occurring before the commencement date of section 641 that is received by the company on or after that date is to be regarded as being a notification of a change of correspondence address.
- (9) The operation of subsections (5), (6), (7) and (8) does not give rise to any duty to deliver a notice to the Registrar under section 643.

111. Supplementary provisions relating to particulars to be registered

- (1) The removal by an existing company from its register of company secretaries on or after the commencement date of section 641 of particulars required by the predecessor Ordinance but not required by this Ordinance does not give rise to any duty to deliver a notice to the Registrar under section 643.

- (2) Section 158 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a change occurring before the commencement date of section 641.

112. Registered office of company

Section 92 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a change occurring before the commencement date of section 649.

113. Annual return

- (1) Except where the company is a private company having a share capital, if the financial year (as defined in section 2(1) of the predecessor Ordinance) of the company begins before the commencement date of section 653 and ends on or after that date—
- (a) sections 107 and 109 of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to the company for that financial year; and
 - (b) section 653 applies in relation to the company for the first financial year that begins on or after that commencement date and all subsequent financial years.
- (2) If the company is a private company having a share capital, sections 107 and 109 of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to the company's annual returns made up to a date before the commencement date of section 653.

Part 13

Transitional and Saving Arrangements for Part 13

114. Saving of predecessor Ordinance for sanctioning arrangement or compromise

Sections 166, 166A and 167 of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to an arrangement or compromise if, before the commencement date of Division 2 of Part 13, an application was made to the Court for the purposes of section 166(1) of the predecessor Ordinance for a meeting to be summoned in relation to the arrangement or compromise.

115. Acquisition offer

Section 168(1), (2) and (3) of, and the Ninth Schedule to, the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to an acquisition offer—

- (a) that was made before the commencement date of Division 4 of Part 13; and
- (b) in relation to which those provisions applied immediately before the repeal.

Part 14

Transitional and Saving Arrangements for Part 14

116. Petition in case of unfair prejudice

- (1) Section 168A of the predecessor Ordinance, as in force immediately before its amendment by section 4 of Schedule 3 to the Companies (Amendment) Ordinance 2004 (30 of 2004), continues to apply in relation to a petition presented before 15 July 2005 for an order under that section 168A.

- (2) Section 168A of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a petition presented on or after 15 July 2005, but before the commencement date of Division 2 of Part 14, for an order under that section.

117. Application for injunction

Section 350B(1)(g) and (h) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to an application made before the commencement date of Division 3 of Part 14 for the purposes of that section.

118. Derivative action in case of misconduct against companies etc.

Part IVAA of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to—

- (a) an application made before the commencement date of Division 4 of Part 14 for leave to bring or intervene in proceedings under section 168BC of the predecessor Ordinance, as in force immediately before its repeal; and
- (b) if leave is granted to bring or intervene in proceedings, the proceedings so brought or intervened in.

119. Application for inspection of company's records

Sections 152FA, 152FB, 152FC, 152FD and 152FE of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to—

- (a) an application made before the commencement date of Division 5 of Part 14 for an order for inspection under section 152FA of the predecessor Ordinance, as in force immediately before its repeal; and
- (b) if an order for inspection is made, the inspection.

Part 15

Transitional and Saving Arrangements for Part 15

120. Disclaimer of property vested in Government under predecessor Ordinance

Sections 290C and 290D of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a disclaimer of the Government's title to any property or right (other than immovable property) vested in the Government before the commencement date of Division 3 of Part 15 under section 292 of the predecessor Ordinance.

121. Striking off

- (1) Section 291(2), (3) and (6) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the striking off the register of the name of a company and to the dissolution of the company if, before the commencement date of Subdivision 1 of Division 1 of Part 15, the Registrar has sent a letter to the company under section 291(1) of the predecessor Ordinance.
- (2) Section 291(6) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the striking off the register of the name of a company and to the dissolution of the company if, before the commencement date of Subdivision 1 of Division 1 of Part 15, the Registrar has published in the Gazette a notice in relation to the company under section 291(5) of the predecessor Ordinance.
- (3) Section 291(6) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the striking off the register of the name of a company and to the dissolution of the company if, before the commencement date of Subdivision 2 of Division 1 of Part 15, the Registrar

has published in the Gazette a notice in relation to the company under section 291(4) of the predecessor Ordinance.

- (4) Section 291A of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the striking off the register of the name of a company and to the dissolution of the company if, before the commencement date of Subdivision 2 of Division 1 of Part 15, the Registrar has made an application for the purposes of section 291A(1) of the predecessor Ordinance.
- (5) Section 291AA of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the deregistration of a company and to the dissolution of the company if, before the commencement date of Division 2 of Part 15, an application has been made under section 291AA(1) of the predecessor Ordinance.

122. Restoration

- (1) Section 291(7) or 291A(2) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to an application made before the commencement date of Subdivision 2 of Division 4 of Part 15 for the purposes of that section.
- (2) Section 291AB(2), (3), (4) and (5) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to an application made before the commencement date of Subdivision 2 of Division 4 of Part 15 for the purposes of section 291AB(2) of the predecessor Ordinance as in force immediately before the repeal.

123. Bona vacantia

Section 292(2) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to section 292(1) of the predecessor Ordinance as so in force and having a continuing effect by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

Part 16

Transitional and Saving Arrangements for Part 16

124. Application for registration

If, immediately before the commencement date of Division 2 of Part 16, there was a pending application for registration under section 333(1) of the predecessor Ordinance, the application is to be regarded as an application for registration made under section 764(2).

125. Registered particulars of authorized representative

Section 333A(2) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a non-Hong Kong company if, on or after the commencement date of Division 5 of Part 16, the company delivers to the Registrar for registration a return in respect of another authorized representative for the purposes of section 335(1)(b) of the predecessor Ordinance having a continuing effect by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

126. Registration of return

- (1) If—
 - (a) before the commencement date of Division 3 of Part 16, a return and other documents were delivered to the Registrar for registration under section 335(2) of the predecessor Ordinance; and
 - (b) as at the beginning of that commencement date, the Registrar has not registered the return and issued a fresh certificate of registration under section 335(3) of the predecessor Ordinance because the Registrar has not received all the documents mentioned in section 335(2)(b) of the predecessor Ordinance,

the return is to be regarded as a return delivered to the Registrar for registration under section 766.

- (2) If, on or after the commencement date of Division 3 of Part 16, a return and other documents are delivered to the Registrar for registration under section 335(2) of the predecessor Ordinance having a continuing effect by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), the return is to be regarded as a return delivered to the Registrar for registration under section 766.

127. Notice to regulate use of corporate names

A notice that was served under section 337B of the predecessor Ordinance, as in force immediately before its repeal, and that was in force immediately before the commencement date of Division 4 of Part 16, continues in force and has effect as if it were a notice served under section 768.

128. Notice of cessation of place of business in Hong Kong

If, on or after the commencement date of Division 7 of Part 16, a non-Hong Kong company sends a notice to the Registrar under section 339(1) of the predecessor Ordinance having a continuing effect by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), section 339(2) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the notice and the company.

129. Notice of dissolution

If, on or after the commencement date of Division 7 of Part 16, an agent of a non-Hong Kong company sends a notice and other documents to the Registrar under section 339AA(1) of the predecessor Ordinance having a continuing effect by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), section 339AA(2) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the notice and documents and the company.

130. Striking off

- (1) Section 291(2), (3) and (6) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply, by virtue of section 339A(2) of the predecessor Ordinance as so in force, in relation to the striking off the register of the name of a non-Hong Kong company if, before the commencement date of Division 8 of Part 16, the Registrar has sent a letter to the company under section 291(1) of the predecessor Ordinance.
- (2) Section 291(6) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply, by virtue of section 339A(2) of the predecessor Ordinance as so in force, in relation to the striking off the register of the name of a non-Hong Kong company if, before the commencement date of Division 8 of Part 16, the Registrar has published in the Gazette a notice in relation to the company under section 291(5) of the predecessor Ordinance.
- (3) Section 291(6) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply, by virtue of section 339A(2) of the predecessor Ordinance as so in force, in relation to the striking off the register of the name of a non-Hong Kong company if, before the commencement date of Division 8 of Part 16, the Registrar has published in the Gazette a notice in relation to the company under section 291(4) of the predecessor Ordinance.

131. Restoration

Section 291(7) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply, by virtue of section 339A(2) of the predecessor Ordinance as so in force, in relation to an application made before the commencement date of Division 8 of Part 16 for the purposes of that section 291(7) as in force immediately before the repeal.

132. Certificates previously issued

- (1) This section applies to a certificate—
 - (a) that was issued under—
 - (i) section 333(3) or (5) of the predecessor Ordinance as in force from time to time before 14 December 2007; or
 - (ii) section 333AA(2)(c) or 335(3) of the predecessor Ordinance as in force immediately before its repeal; and
 - (b) that was in force immediately before the commencement date of Part 16.
- (2) The certificate continues in force and has effect as if it were a certificate issued under section 765(4)(a) or 767(1)(b) (as the case may be).

Part 17**Transitional and Saving Arrangements for Part 17****133. Application for registration**

- (1) If, immediately before the commencement date of Part 17, there was a pending application for registration under section 310 of the predecessor Ordinance, the application is to be regarded as an application for registration made under section 795.
- (2) Despite section 799, the applicant is not required to pay any fee to the Registrar for the registration if—
 - (a) the company is not registered as a limited company; or
 - (b) the company is registered as a limited company, but the liability of the shareholders was limited by some other Ordinance before the registration.

Part 18**Transitional and Saving Arrangements for Part 19****134. Investigation by inspectors appointed under section 142 or 143 of predecessor Ordinance**

- (1) This section applies if, before the commencement date of Division 2 of Part 19—
 - (a) an inspector was appointed under section 142 or 143 of the predecessor Ordinance by the Financial Secretary to investigate the affairs of a company; and
 - (b) a final report on the investigation has not yet been published.
- (2) Sections 144, 145, 145A, 145B, 146, 146A, 150, 151, 152B, 152D and 152F(1) of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to the investigation.
- (3) In section 145B of the predecessor Ordinance, the reference to “section 161” or “section 161B” is to be construed as a reference to “section 161 or section 378 of the Companies Ordinance (of 2011)” or “section 161B or section 378 of the Companies Ordinance (of 2011)” respectively.
- (4) In section 146(3)(a)(ii) of the predecessor Ordinance, the reference to “the fee appointed under section 305 for a certified copy of a document where the copy has been prepared in the office of the Registrar” is to be construed as a reference to “the fee prescribed by the Financial Secretary for the purposes of section 848(1)(b) of the Companies Ordinance (of 2011)”.

135. Expenses of investigation by inspectors appointed under section 142 or 143 of predecessor Ordinance

If, before the commencement date of Division 2 of Part 19—

- (a) an inspector was appointed under section 142 or 143 of the predecessor Ordinance by the Financial Secretary to investigate the affairs of a company; and
- (b) the expenses of and incidental to the investigation has not yet been settled,

section 148 of that Ordinance continues to apply in relation to those expenses.

136. Report made and information obtained by inspectors appointed under section 142 or 143 of predecessor Ordinance

- (1) Section 147(1) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to any prosecution arising from—
 - (a) any report made, or any information supplied, under section 146 of that Ordinance; or
 - (b) any information or document obtained under section 152B of that Ordinance.
- (2) Sections 147(2), 168A(1) and 168J(1) of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to—
 - (a) any report made under section 146 of that Ordinance; or
 - (b) any information or document obtained under section 152B of that Ordinance.
- (3) Section 147(3) and (4) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to—
 - (a) any report made, or any information supplied, under section 146 of that Ordinance; or
 - (b) any information or document obtained under section 152B of that Ordinance.

- (4) Section 149 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to any report made under section 146(1) of that Ordinance.
- (5) Section 152C of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to any information or document obtained under section 152B of that Ordinance.

137. Requirement for production of books or papers under section 152A of predecessor Ordinance

- (1) This section applies if, before the commencement date of Division 3 of Part 19, the Financial Secretary, or a person authorized by the Financial Secretary, required a company or body corporate to produce books or papers under section 152A(1) of the predecessor Ordinance.
- (2) Sections 152A(2), (3), (4), (5) and (6), 152B, 152C, 152D, 152E and 152F of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to the requirement.
- (3) Section 147(1) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to any prosecution arising from any information or document obtained under section 152A or 152B of that Ordinance.
- (4) Sections 147(2), (3) and (4), 168A(1) and 168J(1) of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to any information or document obtained under section 152A or 152B of that Ordinance.

138. Order under section 168A(1) of predecessor Ordinance

- (1) This section applies if—
 - (a) before the commencement date of Division 2 or 3 of Part 19 (as the case may be)—

- (i) the Financial Secretary, under section 147(2)(b) of the predecessor Ordinance, presented a petition for an order under section 168A(1) of that Ordinance; and
 - (ii) the petition has not yet been determined; or
 - (b) on or after the commencement date of Division 2 or 3 of Part 19 (as the case may be), the Financial Secretary, in reliance on section 136(2) or 137(4) of this Schedule presents a petition for an order under section 168A(1) of the predecessor Ordinance.
- (2) Section 168A(2), (2C), (3), (4) and (6) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the petition.

139. Application for disqualification order under section 168J(1) of predecessor Ordinance

- (1) This section applies if—
- (a) before the commencement date of Division 2 or 3 of Part 19 (as the case may be)—
 - (i) the Financial Secretary made an application for a disqualification order under section 168J(1) of the predecessor Ordinance; and
 - (ii) the application has not yet been determined; or
 - (b) on or after the commencement date of Division 2 or 3 of Part 19 (as the case may be), the Financial Secretary, in reliance on section 136(2) or 137(4) of this Schedule, makes an application for a disqualification order under section 168J(1) of the predecessor Ordinance.
- (2) Section 168J(2) of the predecessor Ordinance, as in force immediately before its amendment by section 900, continues to apply in relation to the application.

140. Investigation by inspectors appointed under section 152(1) of predecessor Ordinance

- (1) This section applies if, before the commencement date of Division 6 of Part 19, an inspector was appointed under section 152(1) of the predecessor Ordinance by a company to investigate its affairs.
- (2) Section 152(2), (3), (4) and (5) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the investigation.
- (3) Section 152(6) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to any report of the inspector on the investigation.

Part 19

Other Transitional and Saving Arrangements

141. Inspection and production of documents if offence suspected

Section 351B of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to an application made before the commencement date of section 885 for the purposes of that section.

Explanatory Memorandum

The purpose of this Bill is to reform and modernize Hong Kong company law, to restate part of the enactments relating to companies (except those parts relating to disqualification of directors, winding up of companies, receivers and managers, prospectuses, and prevention of evasion of the Societies Ordinance), to make other provision relating to companies, and to provide for incidental and connected matters.

2. The Bill is divided into 21 Parts.

Part 1

3. Part 1 contains preliminary provisions. Clause 1 sets out the short title and provides for commencement. Division 2 defines or otherwise explains certain expressions used in the Bill. It also provides for the effect of a note to a provision. Division 3 defines the expressions used for different types of companies in the Bill. Division 4 contains the definitions of *holding company* and *subsidiary*, and also of other related expressions (by reference to Schedule 1), used in the Bill. Division 5 provides for the application of the Bill to existing companies and other types of companies.

Part 2

4. Part 2 contains provisions relating to the Registrar of Companies (*Registrar*), the Companies Register and the registration of documents by the Registrar.
5. Division 1 defines or otherwise explains certain expressions used in Part 2.
6. Division 2 provides for matters relating to the Registrar. Clause 20 provides for the appointment of the Registrar and for related matters. Clauses 21 to 24 set out the functions and the general powers of the Registrar.

7. Division 3 provides for matters relating to the Companies Register. Clause 26 sets out how the Companies Register is to be kept. Clause 27 sets out when the Registrar may destroy or dispose of a document delivered to him or her for registration. Clause 28 requires the Registrar to keep an index of names of every company and every non-Hong Kong company registered by the Registrar under Part 16 (*registered non-Hong Kong company*).
8. Division 4 deals with the registration of documents by the Registrar. Clause 29 sets out what constitutes an unsatisfactory document for the purposes of Division 4. Clauses 30 to 32 are supplementary to clause 29. Clause 33 provides for the Registrar's powers to refuse to accept, or to refuse to register, a document delivered for registration if the Registrar is of the opinion that the document is unsatisfactory. Clause 35 provides that an appeal may be made against the Registrar's decision to refuse to register a document.
9. Division 5 provides for the Registrar's powers in relation to keeping the Companies Register. They include powers to require the company concerned to resolve inconsistency between the information in a registered document and other information on the Companies Register, powers to require further information, powers to rectify, and powers to annotate.
10. Division 6 deals with the inspection of the Companies Register. Clause 43 provides for the Registrar's duties to make the Companies Register available for public inspection. For this purpose, the Registrar may produce a copy or certified true copy of any document or information on the Companies Register. Clause 44 sets out the admissibility in evidence in any proceedings of a document that purports to be such a certified true copy and the probative value of such a document so admitted.
11. Division 7 provides for the Registrar's duties and powers to make information on the Companies Register unavailable for public inspection. Clause 46 provides for the Registrar's duties regarding the information excluded from public inspection by or under an

Ordinance or by a court order. Clause 47 provides for the Registrar's powers regarding the usual residential address of a director, reserve director or company secretary, or an identification number of any person, contained in a document delivered to the Registrar for registration. It applies to a document delivered for registration before its commencement date under the Companies Ordinance (Cap. 32) and to a document delivered for registration on or after its commencement date under the Ordinance resulting from the Bill (*the resulting Ordinance*) or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32). Clause 49 provides for the Registrar's duties regarding the usual residential address of a director or reserve director, or an identification number of any person, contained in a document delivered to the Registrar for registration. It applies to a document in a prescribed or specified form and is delivered for registration under the resulting Ordinance, the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), or a saved provision of the Companies Ordinance (Cap. 32). Clause 50 allows the Registrar to make available for inspection a residential address that is protected under clause 49. Clause 52 prohibits the Registrar from using or disclosing a residential address or identification number protected under clause 49, unless the use or disclosure falls within clause 53 or 54.

12. Division 8 deals with miscellaneous matters. Clause 56 provides for the Registrar's powers to certify, for the purposes of any proceedings, the delivery of a document that is required to be delivered to the Registrar. Clause 58 contains provisions on immunity of the Registrar or a public officer.

Part 3

13. Part 3 contains provisions relating to company formation and registration, re-registration of unlimited companies as companies limited by shares and related matters.
14. Division 1 is about how companies are formed and registered. Subdivision 1 sets out the types of companies that may be formed,

and the formation procedures. Subdivision 2 provides for the issue of certificates of incorporation on registration by the Registrar and the effect of the incorporation of a company.

15. Division 2 deals with various matters relating to a company's articles of association (*articles*).
16. Subdivision 1 of Division 2 contains a requirement that every company must have articles prescribing regulations for the company. It also prescribes the formatting requirements for articles.
17. Subdivision 2 of Division 2 gives the Financial Secretary the power to prescribe different model articles for different types of companies. A company may choose to adopt any or all of the provisions of the model articles prescribed for its type. Model articles will apply by default to a limited company on its incorporation if no regulations are prescribed for the company.
18. Subdivision 3 of Division 2 sets out the required contents of the articles. It also explains the effect and enforceability of articles.
19. Subdivision 4 of Division 2 deals with an alteration of articles. It states what must not be altered by different types of companies in their articles, and how to alter different types of provisions of articles. It also provides for a mechanism under which a proposed alteration to certain provisions of the articles may be cancelled by the Court of First Instance. Clauses 89 and 90 contain provisions for an alteration of articles affecting the status of private or public companies. Companies are required under clauses 91 and 92 to notify the Registrar of alteration of articles by an order of the Court of First Instance or any other Ordinance.
20. Subdivision 5 of Division 2 deals with miscellaneous matters relating to articles. Following the abolition of memorandum of association, clause 93 provides that conditions that were contained in a company's memorandum of association are to be regarded as provisions of the company's articles from the commencement date of Division 2.
21. Division 3 regulates company names.

22. Subdivision 1 of Division 3 prohibits or restricts the registration of certain names as company names. It also empowers the Financial Secretary to specify words or expressions that may only be registered as company names with the Registrar's prior approval.
23. Subdivision 2 of Division 3 requires the name of a limited company to end with "Limited" or "有限公司". A company is exempt from this requirement if it is granted a licence by the Registrar under clause 98.
24. Subdivision 3 of Division 3 is about changes of company names. Clause 102 sets out how a company may change its name and the effect of the change. Clauses 103 and 104 empower the Registrar to direct a change of company name in certain cases. If a direction is not complied with within the specified period, the Registrar has power under clause 105 to substitute the relevant name with the company's registration number.
25. Division 4 defines who a company's members are. Clause 108 provides that unless in circumstances covered by the exception stated in that clause, a company cannot be a member of its own holding company. Clause 109 requires a company limited by guarantee to notify the Registrar if it increases the number of its members beyond the number previously registered with or notified to the Registrar.
26. Division 5 is about the capacity of companies and the power of directors to bind companies. Division 6 deals with matters relating to contracts made by or on behalf of companies.
27. Division 7 sets out the execution requirements of documents by companies. Subdivision 1 provides for the keeping and use of common seal and official seal by companies. It permits but does not require a company to have a common seal. Subdivision 2 sets out the execution requirements of deeds and other documents by companies or their attorneys.
28. Division 8 provides for the re-registration of an unlimited company as a company limited by shares.

Part 4

29. Part 4 contains provisions relating to the share capital of companies. Share capital is the money paid to a company, or legally promised as being available on call, by members for shares in the company.
30. Division 1 contains provisions concerning the nature of shares. Clause 129 confirms that shares are personal property and are transferable in accordance with the company's articles. Clause 130 effectively abolishes the concept of nominal (or par) value for shares. Clause 131 deals with the numbering of shares, and clause 132 sets out the evidentiary value of share certificates. Clause 133 repeals the power of a company to convert its shares into stock, and clause 134 repeals the power of a company to issue share warrants.
31. Division 2 contains provisions for the allotment and issue of shares. Clauses 135 and 136 provide that a company resolution is generally required for the directors to allot shares or grant rights to subscribe for, or to convert any security into, shares. Clause 137 requires a company to deliver a return of allotment to the Registrar, and clause 138 requires a company to register an allotment. Clauses 139 and 140 deal with the issuing and delivery of share certificates for allotted shares, and clause 141 empowers the Court of First Instance to validate an issue or allotment of shares.
32. Division 3 prohibits a company from applying its share capital in the payment of any commission, discount or allowance to a person in consideration of the person subscribing or procuring subscriptions for the company's shares, except that such commission may be paid if permitted by clause 143. Clause 144 permits a company to apply its share capital in writing off certain expenses and commission.
33. Division 4 deals with the transfer of shares and the transmission of shares by operation of law.
34. Subdivision 1 of Division 4 deals with the transfer of shares. Clause 145 prohibits registration of a transfer without a proper instrument

of transfer. Clauses 146 to 151 set out the procedures relating to a transfer of shares, including the registration or refusal of registration of a transfer, certification of transfer, and the issuing and delivery of share certificates on transfer. Clause 152 permits a company to compensate a person who suffers loss arising from a forged transfer.

35. Subdivision 2 of Division 4 deals with the transmission of shares by operation of law, for example transmission on the death or bankruptcy of a shareholder. The procedure in clauses 153 and 154 for registration or refusal of registration of a transmission of shares is similar to that in clauses 146 and 147 for a transfer of shares. Clause 155 preserves pre-emption rights in a company's articles in the case of a transmission of shares.
36. Subdivision 3 of Division 4 contains a general provision relating both to transfer and transmission of shares, requiring a company to accept certain documentary evidence of the grant of probate of a will or letters of administration.
37. Division 5 sets out the procedure for listed companies to replace lost share certificates. Clause 158 provides for an application to be made for a new certificate to replace a certificate which has been lost, and clause 159 requires the company to publish notice of the application. Clauses 160 and 161 provide for the issuing of the new certificate by the company and the related notification requirements. Clause 164 requires the applicant to pay all expenses relating to the application for the new certificate. The Division also contains provisions in relation to rectification of the company's register and the liability of parties if rectification cannot be ordered.
38. Division 6 contains provisions permitting a company to alter its share capital. Clause 165 sets out a number of permitted alterations, and clause 166 requires a company to notify the Registrar of an alteration of its share capital. Clause 167 permits redenomination of share capital by a company from one currency to another. Clause 168 requires a company to notify the Registrar of a redenomination. Clause 169 permits a company to reconvert any stock into shares

(this applies if shares were converted into stock before the commencement date of clause 133, as that clause repeals a company's power to convert shares into stock). Clause 170 requires a company to notify the Registrar of a reconversion of stock into shares.

39. Division 7 contains provisions related to classes of shares and class rights of shareholders and members of a company.
40. Subdivision 1 of Division 7 deals with companies having a share capital. If such a company has shares of different classes, clause 174 requires the share certificates and other documents issued by the company to contain suitable information about class rights. Clauses 175 to 179 provide the procedure for a company to vary the rights attaching to shares in any class in the company. Generally, class rights may only be varied with the consent of holders of 75% of the voting rights attaching to shares in the class (or a special resolution of shareholders of the class), or as otherwise permitted by the company's articles. Clause 177 permits holders of 10% of the voting rights attaching to shares in the class to apply to the Court of First Instance for disallowance of the variation, and the Court may confirm or disallow the variation.
41. Subdivision 2 of Division 7 deals with companies without a share capital. Clauses 183 to 187 provide a procedure for the variation of the rights of class members that is similar to the procedure in Subdivision 1 of Division 7 for variation of the rights attaching to shares in a class.
42. Subdivision 3 of Division 7 is an interpretation provision applying to Division 7, providing that a reference to a variation of class rights includes an abrogation of those rights.
43. Division 8 contains supplementary and miscellaneous provisions for the purposes of Part 4.
44. Subdivision 1 of Division 8 gives relief to companies from certain share capital requirements in the case of a group reconstruction of companies or a merger of companies. In these circumstances,

companies are relieved from the requirement to record as share capital certain amounts determined in accordance with clauses 190 and 191 respectively.

45. Subdivision 2 of Division 8 contains miscellaneous provisions. Clause 195 deals with differences between shareholders in the amounts and times of payment of calls on their shares. Clause 196 sets out the required contents of a statement of capital, which may be required to be included in a return or notice to the Registrar under Part 4 or 5. For example, clause 137 requires a statement of capital to be included in a return of allotment of shares, and clause 266 requires a statement of capital to be included in a return relating to a redemption or buy-back of shares. Clause 197 contains requirements on a company to state its paid up capital in its official documents.

Part 5

46. Part 5 contains provisions dealing with certain transactions in relation to a company's share capital. These transactions concern capital maintenance (the reduction of share capital and redemption or buy-back of a company's own shares) and related rules (financial assistance by a company for the acquisition of its own shares).
47. Division 1 defines certain expressions used in Part 5.
48. Division 2 deals with the solvency test which is used in relation to the transactions covered by Part 5. Clause 200 sets out a uniform solvency test for all such transactions. Clause 201 sets out the requirements for a solvency statement to be made by a company's directors, and clause 202 creates certain offences regarding solvency statements.
49. Division 3 contains provisions for the reduction of a company's share capital.
50. Subdivision 1 of Division 3 contains general provisions for the purposes of the Division. Clause 205 describes the ways in which a company may reduce its share capital, and clause 206 describes the

two different procedures by which a company may reduce its share capital, either by special resolution supported by a solvency statement or by special resolution confirmed by the Court of First Instance. Clause 207 creates an offence for a company to reduce its share capital in contravention of Division 3. Clause 208 details the liability of members of a company following a reduction in its share capital.

51. Subdivision 2 of Division 3 sets out the procedure for a company to reduce its share capital by special resolution supported by a solvency statement. Under clause 211, the special resolution must be passed within 15 days after the date of the solvency statement. Clause 213 requires public notice to be given of the reduction of share capital, and clauses 215 to 218 provide a procedure for the Court of First Instance to cancel the special resolution on application by a member or creditor of the company. Clauses 219 and 220 provide for the company to deliver a return of a reduction of share capital to the Registrar. The special resolution is effective on registration of the return.
52. Subdivision 3 of Division 3 sets out the procedure for a company to reduce its share capital by special resolution confirmed by the Court of First Instance. Clause 222 provides for the Court of First Instance to settle a list of creditors entitled to object to the reduction of share capital. Clause 224 empowers the Court of First Instance to make an order confirming the reduction of share capital. Clause 225 provides for the company to deliver a return of a reduction of share capital to the Registrar, together with a copy of the Court of First Instance's order and a minute approved by the Court. The special resolution is effective on registration of the return, order and minute.
53. Division 4 contains provisions for the redemption and buy-back by a company of its own shares.
54. Subdivision 1 of Division 4 is an application provision for the Division.

55. Subdivision 2 of Division 4 deals with redeemable shares. Clause 229 empowers a company to issue redeemable shares, subject to any prohibition or restriction in its articles. Clause 230 provides for the terms, conditions and manner of redemption of shares.
56. Subdivision 3 of Division 4 deals generally with share buy-backs. Clause 231 provides that a company may buy back its own shares in accordance with Subdivision 4 or 5 of Division 4, depending on whether it is a listed company or an unlisted company. This is subject to any prohibition or restriction in its articles. Clause 232 requires a company to keep certain contracts, agreements or memoranda relating to any share buy-backs and to allow inspection of them by members and, in the case of a listed company, by any other person.
57. Subdivision 4 of Division 4 contains provisions for share buy-backs by listed companies. There are three different procedures: clause 233 provides for share buy-backs under a general offer (as defined in clause 696), clause 234 provides for share buy-backs on a recognized stock market or approved stock exchange, and clause 235 provides for share buy-backs by a contract authorized by special resolution.
58. Subdivision 5 of Division 4 contains provisions for share buy-backs by unlisted companies. Unlike for listed companies, there is a single procedure: clause 239 provides for share buy-backs by a contract authorized by special resolution. Clauses 240 and 241 contain detailed provisions for disclosure of the contract details to members and for the exercise of voting rights by members on the special resolution. Clauses 242 to 251 contain similar provisions in relation to any variation of a buy-back contract, any agreement to release the company's rights under a buy-back contract and any variation of an agreement to release the company's rights under a buy-back contract.
59. Subdivision 6 of Division 4 deals with the payment by a company for share redemptions and buy-backs. Clause 252 details the permissible sources of payment. If the payment is out of capital, it

- must be done in accordance with the procedure set out in clauses 253 to 261. This procedure is similar to the procedure in Subdivision 2 of Division 3 for a reduction of share capital by special resolution supported by a solvency statement, except that a return is not required to be delivered to the Registrar in relation to the payment out of capital (but note that the company is required by clause 266 to deliver a return to the Registrar in relation to the share redemption or buy-back). Under clause 253, the payment out of capital must be made no earlier than 5 weeks and no later than 7 weeks after the date of the special resolution, but this period may be altered or extended by the Court of First Instance under clause 260.
60. Subdivision 7 of Division 4 contains general provisions applicable to share redemptions and buy-backs. Clause 262 prohibits the acquisition by a company of its own shares except as provided by the resulting Ordinance. Clause 263 prohibits the redemption or buy-back of shares unless they are fully paid. Clause 264 provides that shares are to be regarded as cancelled on their redemption or buy-back. Clause 266 requires a company to deliver a return to the Registrar in relation to a share redemption or buy-back. Clauses 267 and 268 provide for the effect of a company's failure to redeem redeemable shares or to buy back shares it has agreed to buy back, including the effect if the company is wound up.
61. Division 5 deals with financial assistance by a company for the acquisition of its own shares.
62. Subdivision 1 of Division 5 defines or otherwise explains certain expressions used in the Division.
63. Subdivision 2 of Division 5 contains a general prohibition against a company giving financial assistance to a person who is acquiring or proposing to acquire shares in the company or its holding company, or giving financial assistance for the purpose of reducing or discharging a liability incurred by a person for the purpose of acquiring shares in the company or its holding company. The giving of financial assistance is prohibited except as provided by the Division.

64. Subdivision 3 of Division 5 contains a number of exceptions to the prohibition against the giving of financial assistance. Clause 273 contains general exceptions. Clause 274 contains an exception depending on the purpose for which the assistance is given and whether it is given in good faith in the interests of the company. Clause 275 gives an exception for companies whose ordinary business includes money-lending, and clauses 276 and 277 give an exception for certain employee share schemes and loans to employees. However, clause 278 imposes restrictions on the application to listed companies of the exceptions in clauses 275 to 277.
65. Subdivision 4 of Division 5 sets out three different procedures by which a company may be authorized to give financial assistance. Clause 279 sets out a procedure for a company to give financial assistance by a directors' resolution supported by a solvency statement, if the financial assistance does not exceed 5% of shareholders funds. Clause 280 sets out a procedure for a company to give financial assistance by written resolution of all members after a directors' resolution has been passed and a solvency statement made. Clause 281 sets out a procedure for a company to give financial assistance by ordinary resolution of the company after a directors' resolution has been passed and a solvency statement made. In the last case, clause 282 permits members holding at least 10% of the total voting rights of shares in the company or 10% of the members (depending on the type of company) to apply to the Court of First Instance for an order restraining the giving of the financial assistance. Clauses 283 and 284 set out the powers of the Court of First Instance on such an application, and clause 285 requires the company to deliver a copy of the Court's order to the Registrar.

Part 6

66. Part 6 contains provisions relating to the distribution of profits and assets to members.

67. Division 1 defines or otherwise explains certain expressions used in Part 6. It also provides for the application to distributions made on or after the commencement date of Part 6.
68. Division 2 deals with the prohibitions and restrictions on distribution by a company of profits and assets to members. Clause 293 provides that a company may only make a distribution out of profits available for distribution. Clause 294 provides that a listed company may only make a distribution if the amount of its net assets is not less than the aggregate of its called up share capital and undistributable reserves. A distribution must not reduce the amount of those assets to an amount less than that aggregate. Clause 295 requires a company not to apply an unrealized profit in paying up debentures or not to pay up any amount unpaid on its issued shares. Clause 296 provides for the Financial Secretary's powers to modify any of these prohibitions or restrictions in relation to an investment company or to exempt an investment company from any of these prohibitions or restrictions. Clause 297 deals with the consequences of unlawful distribution.
69. Division 3 contains provisions supplementary to Division 2. Clause 298 provides that the amount of a distribution that may be made lawfully is to be determined by reference to certain financial items as stated in the financial statements specified in Division 4. Clause 299 deals with the application of clause 298 in the case of successive distribution.
70. Division 4 specifies the financial statements for the purposes of clause 298. Clause 300 specifies the last annual financial statements for those purposes. Clause 301 specifies the interim financial statements for those purposes where the proposed distribution cannot be justified by reference to the last annual financial statements specified under clause 300. Clause 302 specifies the initial financial statements for those purposes where it is proposed to make a distribution before any financial statements have been laid before the company in general meeting or sent to the members.

Part 7

71. Part 7 contains provisions relating to debentures.
72. Division 1 defines or otherwise explains certain expressions used in Part 7.
73. Division 2 is about the keeping and closing of registers of debenture holders. It provides for the rights to inspect a register of debenture holders and to request a copy of the register and trust deeds and other documents securing the issue of the debentures. It also contains provisions for the keeping and discontinuance of branch registers of debenture holders.
74. Division 3 is about allotment of debentures or debenture stock. Clause 313 obliges a company to register any such allotment. Clauses 314 and 315 require a company to deliver to the Registrar for registration a return of allotment and to complete and deliver the debentures or certificates for debenture stock. The Court of First Instance is empowered under clause 316 to order for delivery of the debentures or certificates for debenture stock in certain cases.
75. Division 4 deals with transfer of debentures or debenture stock. Clause 317 states that a company may only register any such transfer after receipt of a proper instrument of transfer. Clause 318 allows the parties to a transfer to lodge the transfer with the company. Clause 319 provides for the certification by a company of an instrument of transfer of debentures or debenture stock. Clause 320 requires a company to complete and deliver the debentures or certificates for debenture stock. The Court of First Instance is empowered under clause 321 to order for delivery of the debentures or certificates for debenture stock in certain cases.
76. Division 5 contains the miscellaneous provisions relating to debentures. In particular, clause 328 allows debenture holders to apply to the Court of First Instance for a meeting of the company's debenture holders to be held to give directions to the trustee for the debenture holders.

Part 8

77. Part 8 contains provisions relating to the registration of charges by a company or registered non-Hong Kong company.
78. Division 1 defines or otherwise explains certain expressions used in Part 8. It also contains an application provision. Part 8 does not apply to certain registered non-Hong Kong companies.
79. Division 2 provides for the obligations to register a charge specified in clause 333 after it is created. Clause 334 deals with the obligations of a company while clause 335 deals with the obligations of a registered non-Hong Kong company. Clause 336 provides that if clause 334 or 335 is contravened, the charge is void against any liquidator and creditor of the company or registered non-Hong Kong company.
80. Division 3 provides for the obligations to register an existing charge. Clause 337 deals with the obligations of a company in relation to a charge existing on any property acquired. Clause 338 deals with the obligations of a registered non-Hong Kong company in relation to such a charge. Clause 339 deals with the obligations of a registered non-Hong Kong company in relation to a charge existing on any property on the company's registration under Part 16.
81. Division 4 provides for the obligations of a company and of a registered non-Hong Kong company to register other particulars of debentures. Clause 340 deals with the obligations to register every issue of debentures of a series. Clause 341 deals with the obligations to register particulars of any commission, allowance or discount that has been paid or made by the company or registered non-Hong Kong company to any person in consideration of the person subscribing for, or procuring subscriptions of, any of its debentures.
82. Division 5 contains provisions supplementary to Divisions 2, 3 and 4. Clause 343 deals with the issue of a certificate of registration. Clause 344 deals with the registration by the Registrar of a

notification of debt payment or of release of any charged property. Clause 345 provides for the Court of First Instance's powers to extend the time allowed for registration of a charge or other particulars of debentures. Clause 346 provides for the Court of First Instance's powers to rectify any omission or misstatement of any registered particulars in relation to a charge or debentures.

83. Division 6 provides for the obligations of a company and of a registered non-Hong Kong company to notify the Registrar of certain actions that have been taken for enforcement of any security. Clause 347 deals with the obligations in relation to an appointment of a receiver or manager of the property of the company or registered non-Hong Kong company. Clause 348 deals with the obligations in relation to an entry into possession by a mortgagee of the property of the company or registered non-Hong Kong company. Clause 349 deals with the obligations to give notice of a cessation of the appointment or of the mortgagee going out of possession of the property. A notice is also required to be given of any change in the particulars of the receiver, manager or mortgagee that have previously been given.
84. Division 7 provides for the obligations of a company and of a registered non-Hong Kong company to keep the records of charges and a register of charges. Clause 350 deals with the obligations to keep a copy of every instrument of charge requiring registration. Clauses 351 to 353 deal with the obligations to keep a register of charges. Clause 354 provides for the requirements of the instruments and register to be open for public inspection.

Part 9

85. Part 9 contains provisions relating to the keeping of accounting records, and the preparation and publication of financial statements, directors' reports and auditor's reports. It also contains provisions relating to the appointment and rights of auditors.
86. Division 1 defines or otherwise explains certain expressions used in Part 9. It also contains an application provision. Part 9 applies in

relation to a financial year that begins on or after the commencement date of the relevant provision.

87. Division 2 deals with the concept of reporting exemption. Clause 358 sets out the conditions for a company to fall within the reporting exemption for a financial year. Clauses 359 to 362, and Schedule 3, are supplementary to clause 358.
88. Division 3 deals with the concept of financial year. Clause 363 deals with when a company's first financial year after the resulting Ordinance comes into operation, and every subsequent financial year, begins and ends. That is determined by reference to a company's accounting reference period and accounting reference date. Clauses 364 to 367 deal with these concepts.
89. Division 4 provides for the keeping of accounting records and the preparation of financial statements and directors' reports. Subdivision 2 (clauses 369 to 374) provides for the keeping of accounting records. Clause 369 provides for a company's duties to keep accounting records. Clauses 370 to 374 set out where, how and for how long accounting records are to be kept and provide for the inspection of accounting records and for copies of accounting records being made and obtained. Subdivision 3 (clauses 375 to 379) provides for the preparation of financial statements. Clause 375 provides for the directors' duties to prepare financial statements for each financial year. Clauses 376 to 379, and Schedule 4, set out the detailed requirements for financial statements. Subdivision 4 (clauses 380 to 382) provides for the preparation of directors' reports. Clause 380 provides for the directors' duties to prepare a directors' report for each financial year. Clauses 381 and 382, and Schedule 5, set out the detailed requirements for a directors' report.
90. Division 5 provides for the appointment of auditors, the preparation of auditor's reports and related matters.
91. Subdivision 1 of Division 5 defines certain expressions used in Division 5.

92. Subdivision 2 of Division 5 deals with the appointment of auditors. Clause 384 sets out who is eligible for the appointment. Clause 385 provides for the requirement of appointing an auditor for each financial year. Clauses 386 to 389 set out the different kinds of appointments that may be made in different situations. Clauses 391 and 392 deal with certain procedural requirements for making an appointment. Clause 393 deals with the terms of office. Clause 394 provides for the situations where a person is deemed to be reappointed as auditor of a company.
93. Subdivision 3 of Division 5 provides for the preparation of an auditor's report. Clause 396 provides for an auditor's duties to prepare an auditor's report. Clauses 397, 398 and 400 set out the detailed requirements for an auditor's report.
94. Subdivision 4 of Division 5 sets out an auditor's rights and privileges. Clause 401 provides for the protection from being sued in defamation that is given to an auditor in respect of any statement made in the course of performing duties as auditor and that is given to any person in respect of the publication of any document prepared by an auditor in the course of performing duties as auditor. Clauses 402, 403 and 405 set out the rights of an auditor in relation to performing duties as auditor.
95. Subdivision 5 of Division 5 provides for the avoidance of a contractual provision, or a provision in a company's articles, that exempts an auditor from any liability in connection with negligence, default, breach of duty or breach of trust occurring in the course of performance of duties as auditor or that indemnifies an auditor from such liability.
96. Subdivision 6 of Division 5 provides for the termination of an auditor's appointment. Clause 407 sets out when an auditor's appointment is terminated. Clause 408 deals with a resignation. Clause 409 deals with a cessation of office on ceasing to be eligible, or on becoming disqualified, for the appointment. Clause 410 deals with a removal by a company of an auditor.

97. Subdivision 7 of Division 5 provides for an outgoing auditor's rights to give the members a statement on the circumstances surrounding the resignation or the termination of appointment due to a retirement or removal from office.
98. Subdivision 8 of Division 5 provides for an outgoing auditor's duties to give the company a statement on the circumstances connected with the resignation or the termination of appointment due to a retirement or removal from office (clauses 415 and 416). Clause 417 provides for a company's duties to send a copy of the statement to the members or to apply to the Court of First Instance for an order directing copies of the statement not to be sent to the members. A person who claims to be aggrieved by the statement may also apply to the Court of First Instance for the order. Clause 418 provides for the Court of First Instance's powers to give the directions.
99. Division 6 provides for the laying and publication of financial statements, directors' reports and auditor's reports (*reporting documents*). Clause 420 provides for the directors' duties to lay the reporting documents before the company in general meeting. Clause 421 provides for a company's duties to send a copy of the reporting documents to the members before the general meeting is held. Clause 423 provides for the exceptions to the requirements under clause 421. Clause 426 provides for a company's duties to send a copy of any of the latest reporting documents to a member on demand. Clause 427 provides for certain requirements in connection with the publication of financial statements and other accounts.
100. Division 7 deals with the summary financial reports. Clause 429 contains an application provision. Division 7 applies to a company if it does not fall within the reporting exemption for the financial year. Clause 430 provides for the directors' discretion to prepare a summary financial report for a financial year. A summary financial report is to be derived from the reporting documents for the financial year. Clause 432 provides for a company's discretion to send a copy of the summary financial report for a financial year to

the members. Clauses 433 to 435 provide for a scheme under which a company may seek a member's intent on receiving a copy of the summary financial report or the reporting documents for a financial year and the company must comply with that intent. Clause 436 provides for a company's duties to send, on request, a copy of the summary financial report or the reporting documents for a financial year to a member who has already been sent a copy of the reporting documents or the summary financial report respectively. Clause 437 prohibits a company from sending out a copy of the summary financial report under certain circumstances.

101. Division 8 deals with miscellaneous matters. Clause 438 deals with the exemption that is applicable to a dormant company. Clause 439 provides for a director's civil liability for any untrue or misleading statement in, or any omission from, a directors' report or a summary financial report (so far as it is derived from a directors' report).

Part 10

102. Part 10 contains provisions relating to directors and company secretaries.
103. Division 1 provides for the appointment, removal and resignation of directors. Clauses 444 and 445 provide for the minimum number of directors for different types of companies. Clause 446 allows a private company to nominate a person as a reserve director if the specified conditions are satisfied. Clauses 447 and 448 restrict corporate directorship. Clause 449 provides for the Registrar's powers to give directions to a company requiring it to appoint a director or directors in compliance with the relevant statutory requirements. Clause 450 sets out the minimum age for appointment as director. Clause 451 provides that the appointment of each proposed director of a public company or a company limited by guarantee must be voted on individually unless there is unanimous agreement to a block resolution. Clause 452 provides that a director's actions are valid even if the director's appointment

is subsequently found to have been defective or void. Clauses 453 to 455 deal with the removal and resignation of a director.

104. Division 2 deals with directors' duty of care, skill and diligence. Clause 456 provides that a director must exercise reasonable care, skill and diligence. Clause 457 preserves the existing civil consequences of breach (or threatened breach) of that duty.
105. Division 3 deals with directors' liabilities. Clause 459 prohibits a company from exempting a director from, or indemnifying a director against, any liability in connection with any negligence, default, breach of duty or breach of trust in relation to the company. The prohibition against indemnification also applies to a director of the company's associated company. Clause 460 permits a company to indemnify a director against liability to a third party if the specified conditions are met. Clause 461 requires that a permitted indemnity provision must be disclosed by the company in the directors' report. Clause 462 provides for the duty to keep such a provision available for inspection. Clause 463 empowers any member of a company to inspect the provision kept by the company. Clause 464 deals with the ratification of conduct of directors.
106. Division 4 provides for the appointment and resignation of company secretaries. Clause 465 provides that a company must have a company secretary. Clause 466 specifies the circumstances under which a director may not be a company secretary. Clause 467 provides for the Registrar's power to give directions to a company requiring it to appoint a company secretary in compliance with the relevant statutory requirements. Clause 468 deals with the resignation of a company secretary.
107. Division 5 contains miscellaneous provisions concerning directors and company secretaries.
- #### Part 11
108. Part 11 contains provisions relating to fair dealing by directors. Some transactions involving a director (or a connected entity)

require members' approval because a conflict of interest is perceived. These transactions are loan transactions, payments for loss of office and long-term service contracts. This Part also deals with a director's disclosure of material interests in transactions, arrangements or contracts.

109. Division 1 defines or otherwise explains certain expressions used in Part 11. In particular, clause 477 contains the definition of *connected entity*.
110. Division 2 deals with loan transactions.
111. Subdivision 1 of Division 2 defines or otherwise explains certain expressions used in Division 2. In particular, clauses 483, 484, 487 and 488 explain "quasi-loan", "credit transaction", "value of transaction or arrangement" and "relevant transaction or arrangement".
112. Subdivision 2 of Division 2 provides for the prohibitions on a company from entering into a loan transaction, or giving a guarantee or providing security in connection with a loan transaction, without members' approval. Clause 491 deals with a loan made by a company to a director or to a director of a holding company. Clause 492 deals with a quasi-loan made by a specified company (i.e. either a public company, or one of its subsidiaries that is a private company or a company limited by guarantee) to a director or to a director of a holding company. Clause 493 deals with a loan or quasi-loan made by a specified company to an entity connected with a director. Clause 494 deals with a credit transaction entered into by a specified company for a director or an entity connected with a director, or for a director of a holding company. Clause 495 provides for the prohibition on a company from taking part in an arrangement that purports to circumvent clauses 491 to 494.
113. Subdivision 3 of Division 2 sets out the exceptions to Subdivision 2. Clause 496 provides for an exception to any of clauses 491 to 494 where the value of the transaction, plus the value of any other relevant transaction or arrangement, does not exceed 5% of the

company's total assets or called-up share capital. Clause 497 provides for an exception to any of clauses 491 to 494 where the transaction provides the director or connected entity with funds to meet expenditure on company business. Clauses 498 and 499 provide for an exception to any of clauses 491 to 494 where the transaction provides the director with funds to meet expenditure on putting up a defence in any proceedings, investigation or regulatory action. Clause 500 provides for an exception to any of clauses 491 to 494 where the transaction is entered into for the purpose of facilitating the purchase of residential premises as the director's or connected entity's only or main residence or for connected purposes. Clause 501 provides for an exception to any of clauses 491 to 494 where the transaction is a lease of goods or land to the director or connected entity. Clause 502 provides for an exception to any of clauses 491 to 494 where the transaction is entered into in the ordinary course of business of the company. Clause 503 provides for an exception to clause 493 or 494 in the case of intra-group transactions.

114. Subdivision 4 of Division 2 provides for the consequences of contravening Subdivision 2. Clause 504 provides for the validity of the transaction or arrangement and the civil liability of the director or connected entity or some other persons. Clause 505 provides for the affirmation of the transaction or arrangement.
115. Division 3 deals with payments for loss of office. Subdivision 1 defines or otherwise explains certain expressions used in Division 3. Subdivision 2 provides for the prohibitions on a company from making payment for loss of office without members' approval. Clause 512 deals with a payment to a director or former director, or to a director or former director of a holding company. Clauses 513 and 514 deal with a payment to a director or former director in connection with a transfer of company's undertaking or property or with a transfer of shares in the company resulting from a takeover offer. Subdivision 3 sets out the exceptions to Subdivision 2. Clause 515 provides for an exception where the payment is made in discharge of a legal obligation or by way of damages for breach of

an existing legal obligation. The exception also applies if the payment is made by way of settlement of any claim arising in connection with the termination of a person's office or employment or by way of pension. Clause 516 provides for an exception where the amount or value of the payment, plus the amount or value of any other relevant payment for loss of office to the director or former director, does not exceed \$20,000. Subdivision 4 provides for the civil consequences of contravening Subdivision 2.

116. Division 4 deals with service contracts of directors. Clauses 521 to 524 define or otherwise explain certain expressions used in Division 4. Clause 525 provides for the prohibition on a company from agreeing to any service contract of a director under which the guaranteed term of employment exceeds 3 years without members' approval. Clause 526 provides for the civil consequences of contravening clause 525.
117. Division 5 deals with a director's disclosure of material interests in transactions, arrangements or contracts. Clause 527 provides for the director's duties to make the disclosure. Clauses 528 to 531 are supplementary provisions.
118. Division 6 deals with miscellaneous matters. Clause 533 deals with the disclosure of management contracts in directors' reports. It also provides for a company's duties to keep available for inspection a copy of the contract (or a written memorandum of an unwritten contract). Clause 535 provides for a company's duties to keep a written memorandum of an unwritten contract entered into with a sole member (who is also a director) otherwise than in the ordinary course of the company's business.

Part 12

119. Part 12 contains provisions on company administration and procedure.
120. Division 1 governs resolutions and meetings.

121. Subdivision 1 of Division 1 defines or otherwise explains certain expressions used in Division 1.
122. Subdivision 2 of Division 1 introduces a comprehensive set of provisions for proposing and passing a written resolution.
123. Subdivision 3 of Division 1 contains provisions about resolutions at meetings. Clauses 553 and 554 respectively define an ordinary resolution and special resolution.
124. Subdivision 4 of Division 1 contains provisions about calling general meetings.
125. Subdivision 5 of Division 1 contains provisions about notice of general meetings. There are provisions dealing with the required notice period, the manner in which notice must be given, the persons entitled to receive notice and the contents of notice.
126. Subdivision 6 of Division 1 contains provisions relating to statements concerning the business to be dealt with at a general meeting. Clause 570 empowers members to request circulation of those statements. Clauses 571 to 573 deal with the company's duty and the expenses of circulating those statements.
127. Subdivision 7 of Division 1 deals with the procedures at general meetings. Clause 574 permits a company to hold a general meeting at 2 or more places using audio-visual technology. The other clauses include provisions dealing with the quorum and election of chairperson of a general meeting.
128. Subdivision 8 of Division 1 contains provisions relating to voting at general meetings. The general rules on votes of members on a show of hands or on a poll are set out in clause 578.
129. Subdivision 9 of Division 1 contains provisions relating to the appointment, rights and obligations of a proxy or corporate representative.
130. Subdivision 10 of Division 1 provides for the requirement to hold an annual general meeting. There are provisions dealing the exemption from and dispensation of the requirement.

131. Subdivision 11 of Division 1 provides for the duty to keep records of resolutions and meetings available for inspection. Clause 610 empowers any member of a company to inspect those records kept by the company.
132. Subdivision 12 of Division 1 applies Division 1 (except Subdivision 10) to class meetings with necessary modifications.
133. Division 2 contains provisions relating to the keeping of registers.
134. Subdivision 1 of Division 2 contains an interpretation clause.
135. Subdivision 2 of Division 2 contains provisions relating to registers of members. Clauses 617 and 620 provide for the duty to keep a register of members and an index of members' names available for inspection. Clause 621 provides for the right of inspection and the right to request a copy of the register or index. Clause 624 provides for the Court of First Instance's powers to order rectification of the register. Clause 625 provides that no notice of trust may be entered in the register. Clause 626 provides for the evidential value of the register. Clauses 627 to 631 contain provisions relating to a branch register of members.
136. Subdivision 3 of Division 2 contains provisions relating to registers of directors. Clause 632 provides for the duty to keep a register of directors available for inspection. Clause 633 provides for the right of inspection and the right to request a copy of the register. Clause 634 sets out the particulars of directors and reserve directors required to be contained in the register. Clause 635 enables a company to withhold certain particulars contained in its register of directors from a person who inspects the register or requests for a copy of it. Clause 636 requires a company to notify the Registrar of the appointment of a director or a reserve director and any change in the particulars contained in its register of directors. Clause 637 imposes a duty on a director and a reserve director of a company to disclose particulars for the purpose of enabling the company to comply with clauses 634 and 636. Clause 638 requires the Registrar to keep an index of directors.

137. Subdivision 4 of Division 2 contains provisions relating to registers of company secretaries. Clause 639 provides for the duty to keep a register of company secretaries available for inspection. Clause 640 provides for the right of inspection and the right to request for a copy of the register. Clause 641 sets out the particulars of company secretaries required to be contained in the register. Clause 642 enables a company to withhold certain particulars contained in its register of company secretaries from a person who inspects the register or requests for a copy of it. Clause 643 requires a company to notify the Registrar of the appointment of a company secretary and any change in the particulars contained in its register of company secretaries. Clause 644 imposes a duty on a company secretary to disclose particulars for the purpose of enabling the company to comply with clauses 641 and 643.
138. Division 3 contains provisions relating to company records. Clause 645 defines company records. Clause 646 allows company records to be kept in hard copy form or electronic form. Clause 647 requires a company to take measures that protect company records from falsification and facilitate the discovery of the falsification, if they are not kept in bound books. Clause 648 empowers the Financial Secretary to make regulations about the keeping, inspection and provision of copies of company records.
139. Division 4 contains provisions relating to a company's registered office and publication of information, including company names, relating to companies. Clause 649 provides that a company must have a registered office in Hong Kong. Clause 650 empowers the Financial Secretary to make regulations requiring a company to display, state or provide prescribed information. Clause 651 provides that the regulations may provide that it is an offence not to comply with the regulations. Clause 652 provides for the civil consequences if a person signs on behalf of a company certain documents in which the company's name is not mentioned in the prescribed manner.
140. Division 5 relates to annual returns. Clause 653 requires a company to deliver an annual return to the Registrar for registration. Clause

654 provides that the requirement does not apply to a dormant company. Clause 655 prescribes the contents of an annual return. Clause 656 deals with the construction of references to annual returns.

Part 13

141. Part 13 contains provisions relating to schemes of arrangement or compromise with creditors or members, amalgamation of a company with other companies, and compulsory acquisition of shares following a takeover offer or following a general offer for share buy-back.
142. Division 1 defines or otherwise explains certain expressions used in Part 13.
143. Division 2 provides for the schemes of arrangement or compromise with creditors or members. Clause 659 defines or otherwise explains certain expressions used in Division 2. Clause 660 sets out the situation to which Division 2 applies: an arrangement or compromise is proposed to be entered into by a company with the creditors (or any class of them) or members (or any class of them), or with the creditors (or any class of them) and members (or any class of them). Clause 661 provides for the Court of First Instance's powers to order a meeting of the creditors, the members or any class of the creditors or members (as the case requires). Clauses 662 and 663 are supplementary to clause 661. Clause 664 provides for the Court of First Instance's powers to sanction the arrangement or compromise if the creditors or the members (or the class of creditors or members) agree to the arrangement or compromise. Clause 665 provides for the Court of First Instance's additional powers in the case of an arrangement or compromise proposed for a scheme of reconstruction or amalgamation of companies.
144. Division 3 provides for the amalgamation of a company with other companies. Clauses 667 and 668 define or otherwise explain certain expressions used in Division 3. Clause 669 provides for the amalgamation of a company with one or more of its wholly owned

- subsidiaries. Clause 670 provides for the amalgamation of two or more of the wholly owned subsidiaries of a company. Clause 671 provides for the duties of the directors of an amalgamating company to give written notice of the proposed amalgamation to every secured creditor of the company and to publish such a notice in newspapers. Clause 672 provides for the duties of a director of an amalgamating company to issue a certificate on the solvency statement. Clause 673 deals with the registration of the amalgamation with the Registrar. Clause 674 deals with the effective date of the amalgamation.
145. Division 4 provides for the compulsory acquisition of shares by the offeror following a takeover offer.
146. Subdivision 1 of Division 4 defines or otherwise explains certain expressions used in Division 4. In particular, clause 678 contains the definition of *takeover offer*, and clause 680 explains what shares are those to which a takeover offer relates.
147. Subdivision 2 of Division 4 deals with the "squeeze-out" mechanism. Clause 682 provides for the powers of an offeror under a takeover offer, having acquired at least 90% in number of the shares to which the offer relates, to give notice to the holders of the remaining shares of the offeror's desires to acquire those remaining shares. It also provides for the powers of an offeror of a takeover offer, having acquired less than 90% in number of the shares to which the offer relates, to apply to the Court of First Instance for an order authorizing the offeror to give notice to the holders of the remaining shares of the offeror's desires to acquire those remaining shares. Clause 683 sets out the requirements for a notice to these holders. Clauses 684 and 685 provide for the offeror's rights and obligations to acquire those remaining shares after notice is given of the offeror's desires to acquire those shares. Clause 686 provides for the company's duties to register the offeror as a member.
148. Subdivision 3 of Division 4 deals with the "sell-out" mechanism. Clause 689 deals with the situation where, by virtue of a takeover offer, the offeror controls at least 90% in number of the relevant

shares before the end of the offer period. It provides for the powers of the holders of the remaining shares to require the offeror to acquire those remaining shares. Clause 690 provides for the offeror's duties to notify these holders of their rights under clause 689. Clause 691 sets out the requirements for a notice to these holders. Clause 692 provides for the offeror's rights and obligations to acquire those remaining shares after the offeror is required to acquire those shares.

149. Division 5 provides for the compulsory acquisition of shares of a repurchasing company following a general offer for share buy-back.
150. Subdivision 1 of Division 5 defines or otherwise explains certain expressions used in Division 5. In particular, clause 696 contains the definition of *general offer*, and clause 698 explains what shares are those to which a general offer relates. Clause 700 also explains that a member of a repurchasing company becomes a "non-tendering member" by notifying the other members that the member will not tender any shares to be bought back by the company under a general offer.
151. Subdivision 2 of Division 5 deals with the "squeeze-out" mechanism. Clause 701 provides for the powers of a repurchasing company, having bought back at least 90% in number of the shares to which a general offer relates, to give notice to the holders of the remaining shares of its desires to buy back those remaining shares. It also provides for the powers of a repurchasing company, having bought back less than 90% in number of the shares to which the general offer relates, to apply to the Court of First Instance for an order authorizing the repurchasing company to give notice to the holders of the remaining shares of its desires to buy back those remaining shares. This applies if a member of the repurchasing company has given notice that the member will not tender any shares to be bought back by that company under a general offer. Clause 702 sets out the requirements for a notice to these holders. Clauses 703 and 704 provide for the repurchasing company's rights and obligations to buy back those remaining shares after notice is

given of its desires to buy back those shares. Clause 705 provides for a repurchasing company's duties to pay for the shares bought back.

152. Subdivision 3 of Division 5 deals with the "sell-out" mechanism. Clause 707 deals with the situation where, by virtue of a general offer, a repurchasing company controls at least 90% in number of the relevant shares before the end of the offer period. It provides for the powers of the holders of the remaining shares to require the repurchasing company to buy back those remaining shares. This applies if a member of the repurchasing company has given notice that the member will not tender any shares to be bought back by that company under a general offer. Clause 708 provides for the repurchasing company's duties to notify these holders of their rights under clause 707. Clause 709 sets out the requirements for a notice to these holders. Clause 710 provides for the repurchasing company's rights and obligations to buy back those remaining shares after the repurchasing company is required to buy back those shares.

Part 14

153. Part 14 contains provisions relating to the remedies available for protection of companies' or members' interests. These include unfair prejudice remedies, an injunction order restraining conduct that constitutes contravention of the resulting Ordinance, the statutory derivative action, and a court order for inspection of company records.
154. Division 1 defines or otherwise explains certain expressions used in Part 14.
155. Division 2 deals with unfair prejudice remedies. Clause 713 sets out the situations where the Court of First Instance may order the remedies. The powers are exercisable on petition by a member or past member of the company or non-Hong Kong company or by the Financial Secretary. Clause 714 provides for the Court of First

Instance's powers to order the remedies. Clause 715 is supplementary to clause 714.

156. Division 3 deals with an injunction restraining conduct that constitutes contravention of the resulting Ordinance or that constitutes a breach of fiduciary or other duties owed to the company or non-Hong Kong company. Clause 717 sets out the situations to which clause 718 applies. Clause 718 provides for the Court of First Instance's powers to grant an injunction. The powers are exercisable on application by an affected person or the Financial Secretary. Clause 719 is supplementary to clause 718.
157. Division 4 deals with the statutory derivative action. Clause 721 sets out the situations where a member of the company or non-Hong Kong company or of an associated company may, with the leave of the Court of First Instance, bring or intervene in proceedings on behalf of the company or non-Hong Kong company. Clause 722 provides for the Court of First Instance's powers to grant leave for this purpose. Clause 724 provides that if proceedings are brought or intervened in under clause 721, the proceedings may only be discontinued with the leave of the Court of First Instance. Clauses 725 to 727 provide for the Court of First Instance's additional powers.
158. Division 5 deals with the court order for inspection of company records. Clause 729 provides for the Court of First Instance's powers to make such an order on application by certain number of members of the company or non-Hong Kong company. Clauses 730 and 731 are supplementary to clause 729.

Part 15

159. Part 15 contains provisions relating to the dissolution of companies after being struck off the Companies Register by the Registrar or the court or after being deregistered by the Registrar.
160. Division 1 deals with the mechanism of striking off. Clauses 732 to 734 provide for the Registrar's powers to strike a defunct company's name off the Companies Register. The powers also

apply to a company that does not reply to the Registrar's inquiries. Clauses 735 and 736 provide for striking off under other circumstances. A company is dissolved after its name is struck off the Companies Register.

161. Division 2 deals with the deregistration. Clause 737 contains the definition of *company* used in Division 2. Some companies are excluded. Clause 738 provides for an application to be made by a company or a director or member to the Registrar for deregistration of the company. Clause 739 provides for the Registrar's powers to deregister a company. A company is dissolved on deregistration.
162. Division 3 deals with the property of a dissolved company (including one that is wound up) and other miscellaneous matters. Clause 740 provides for the vesting in the Government as bona vacantia of the property and right vested in, or held on trust for, a company immediately before its dissolution. Clause 741 provides for the Registrar's powers to disclaim the Government's title to any property or right other than immovable property. Clause 742 deals with the effect of a disclaimer. Clauses 744 to 747 deal with other matters relating to a dissolved company.
163. Division 4 deals with the restoration to the Companies Register of a company whose name has been struck off the Companies Register or that has been deregistered. Subdivision 1 provides for the restoration by the Registrar of a company whose name has been struck off the Companies Register and for the effect of such a restoration. Subdivision 2 provides for the restoration by the Court of First Instance of a company whose name has been struck off the Companies Register or that has been deregistered. It also provides for the application procedures and the effect of such a restoration. Subdivision 3 contains provisions relating to the name under which a company is to be restored and to the effect of restoration on bona vacantia property or right.

Part 16

164. Part 16 contains provisions relating to non-Hong Kong companies, i.e. companies incorporated outside Hong Kong that have established a place of business in Hong Kong.
165. Division 1 defines or otherwise explains certain expressions used in Part 16. In particular, it contains the definitions of *approved name* and *corporate name*.
166. Division 2 provides for the registration of non-Hong Kong companies. Clause 764 provides for a non-Hong Kong company's duties to apply for registration. Clause 765 provides for the registration process.
167. Division 3 deals with the addition, change or cessation of a corporate name of a registered non-Hong Kong company. Clause 766 provides for a registered non-Hong Kong company's duties to notify the Registrar of any addition, change or cessation of a corporate name. Clause 767 provides for the Registrar's duties on being notified of such addition, change or cessation.
168. Division 4 contains regulatory provisions in relation to any name used by a registered non-Hong Kong company to carry on business in Hong Kong. Clause 768 provides for the Registrar's powers to serve a notice on a registered non-Hong Kong company if a corporate name or approved name of the company is the same as or is too like the name of another body corporate or is misleading. Clause 769 provides for the effect of such a notice. The registered non-Hong Kong company is prohibited from carrying on business in Hong Kong under the corporate name or approved name. Clause 770 provides for the registration by the registered non-Hong Kong company of another name for carrying on business in Hong Kong. Clause 773 provides for a change by the registered non-Hong Kong company of this other registered name.
169. Division 5 deals with authorized representatives of a registered non-Hong Kong company. Clause 774 provides for a registered non-Hong Kong company's duties to keep the authorized

- representative's details in the Companies Register. Clause 775 provides for the termination of the authorization of an authorized representative.
170. Division 6 provides for a registered non-Hong Kong company's duties to deliver annual return and accounts to the Registrar for registration and for related matters.
171. Division 7 provides for other obligations of a registered non-Hong Kong company.
172. Division 8 deals with the mechanism of striking off. Clauses 784 to 786 provide for the Registrar's powers to strike a defunct registered non-Hong Kong company's name off the Companies Register. The powers also apply to a registered non-Hong Kong company that does not reply to the Registrar's enquiry on its operation. Clauses 787 to 789 deal with the restoration to the Companies Register of a non-Hong Kong company whose name has been struck off the Companies Register.
173. Division 9 deals with miscellaneous matters.

Part 17

174. Part 17 contains provisions relating to companies not formed under the resulting Ordinance or a former Companies Ordinance but eligible to be registered under the resulting Ordinance.
175. Division 1 defines or otherwise explains certain expressions used in Part 17.
176. Division 2 deals with the registration of an eligible company. Clause 795 contains the Registrar's powers to register an eligible company as an unlimited company or a company limited by guarantee. Clauses 796 to 798 contain restrictions on the Registrar's powers. Clause 800 contains the Registrar's duties to issue a certificate of registration.
177. Division 3 deals with the consequences of registration. These include the status, property, rights and liabilities of the eligible

company, and also continuation of existing proceedings and existing constitutional documents.

Part 18

178. Part 18 contains provisions relating to communications in electronic or hard copy form between a company and its members, debenture holders and other persons. It also deals with communications sent by a company to its members and debenture holders by means of a website.
179. Division 1 defines or otherwise explains certain expressions used in Part 18. It also specifies the period, time and address for the purposes of certain provisions in Part 18. Clause 814 provides that in the application in relation to documents or information to be sent or supplied to the Registrar, Part 18 has effect subject to Part 2.
180. Division 2 deals with service of documents on a company.
181. Division 3 deals with other communications to a company by a person who is not a company. Clauses 816 to 818 provide for how communications in electronic form, hard copy form, or any other form are to be sent or supplied to the company for the purposes of a relevant statutory provision that authorizes or requires the document or information to be sent or supplied to the company.
182. Division 4 deals with other communications by a company to another person. Clauses 819 to 822 provide for how communications in electronic form or hard copy form, or by means of websites, or by any other form, are to be sent or supplied by the company to another person for the purposes of a relevant statutory provision that authorizes or requires the document or information to be sent or supplied by the company to that other person. Clause 823 deals with the case of joint holders of shares or debentures. Clause 824 deals with the case of a holder of shares who is dead or bankrupt.

Part 19

183. Part 19 contains provisions relating to investigations and enquiries into companies' affairs.
184. Division 1 defines or otherwise explains certain expressions used in Part 19.
185. Division 2 provides for the investigation of companies' affairs by inspectors. Clause 827 defines certain expressions used in Division 2. Clauses 828 and 829 set out the circumstances under which the Financial Secretary may or has to appoint an inspector to investigate a company's affairs. Clauses 831 to 833 provide that the Financial Secretary may give directions regarding an investigation, including its scope and termination. Clauses 834 to 837 set out the powers of an inspector which are very extensive. Clause 838 provides for the delegation of powers by an inspector. Clauses 839 to 842 deal with the resignation and revocation of appointment of an inspector, and appointment of a replacement inspector. Clauses 843 to 845 provide for the preparation of interim and final reports on an investigation. Clause 846 requires an inspector, before sending a draft report to the Financial Secretary, to send a copy of the draft to any person who would be adversely affected on the publication or disclosure of the report and give the person an opportunity of being heard. Clauses 847 to 849 provide for the filing, provision of copies and publication of reports. Clause 850 contains evidential provisions relating to a report prepared by an inspector. Clause 851 contains offence provisions, and clause 852 provides that an inspector may apply to the Court of First Instance for an inquiry into the failure to comply with an inspector's requirements. Clause 853 sets out the limitations on the use of incriminating evidence obtained in an investigation. Clause 854 provides for the payment of expenses of an investigation.
186. Division 3 provides for the enquiry into companies' affairs by the Financial Secretary. Clause 855 defines the types of companies that may be subject to an enquiry. Clauses 856 and 857 set out the circumstances under which an enquiry may be made, and the

Financial Secretary's powers in the enquiry. The powers are much more limited than those of an inspector in an investigation under Division 2. Clause 858 provides for delegation of powers by the Financial Secretary. Clause 859 contains offence provisions, and clause 860 sets out the limitations on the use of incriminating evidence obtained in an enquiry.

187. Division 4 provides for the powers of the Registrar to enquire whether acts that constitute offences under clause 738(7) or 883(1) have been done. Clause 861 sets out the circumstances under which an enquiry may be made and the powers of the Registrar in the enquiry. Clause 862 provides for delegation of powers by the Registrar. Clause 863 contains offence provisions, and clause 864 sets out the limitations on the use of incriminating evidence obtained in an enquiry.
188. Division 5 contains supplementary provisions. Clause 865 provides for the circumstances under which a magistrate may issue warrants authorizing entry into premises in connection with investigations under Division 2 or enquiries under Division 3. Clause 867 provides that the Financial Secretary may, on the basis of reports made on or materials obtained in these investigations or enquiries, initiate proceedings, such as petitions for winding up orders and disqualification orders. Clauses 868 to 870 contain confidentiality provisions relating to information obtained in these investigations or enquiries. Clauses 872 to 879 deal with miscellaneous matters relating to investigations under Division 2 and enquires under Divisions 3 and 4, such as protection of informers, legal professional privilege and immunity.
189. Division 6 provides for the investigation of companies' affairs by appointed persons. Clause 880 provides that a company may, by special resolution, appoint a person to investigate its affairs. The clause also sets out the powers of the appointed person. Clause 881 provides that the appointed person may apply to the Court of First Instance for an inquiry into a failure to comply with the appointed person's requirement. Clause 882 contains evidential provisions relating to a report prepared by the appointed person.

Part 20

190. Part 20 contains miscellaneous provisions.
191. Division 1 provides for miscellaneous offences. Clause 883 deals with the offence for false statements in any return, report, financial statements, certificate or other document. Clause 884 deals with the offence for the improper use of "Limited" or "有限公司" etc.
192. Division 2 provides for miscellaneous provisions relating to the investigation or enforcement measures. Clause 885 provides for the Court of First Instance's powers to order inspection or production of certain documents where an offence is believed to have been committed in connection with the management of a company's affairs. Clause 887 provides for the Registrar's powers to compound certain offences (as specified in Schedule 7) that he or she has reason to believe to have been committed. Clause 888 deals with limitation period of a summary offence under the resulting Ordinance. Clause 889 deals with the application of fines provided under the resulting Ordinance.
193. Division 3 provides for miscellaneous provisions relating to any misconduct by an officer or auditor of a company. Clauses 891 and 892 provide for the Court of First Instance's powers to grant relief.
194. Division 4 provides for other miscellaneous provisions. Clause 896 provides for the inclusion in Schedule 8 of amendments relating to paperless holding and transfer of shares and debentures. The purpose is to amend the resulting Ordinance to remove obstacles to the introduction of paperless holding and transfer of shares and debentures.

Part 21

195. Part 21 provides for the inclusion in Schedule 9 of consequential amendments and for the inclusion in Schedule 10 of transitional and saving provisions. Schedule 9 contains consequential amendments that are necessary because of the transitional and saving provisions in Schedule 10. Division 2 also contains provisions that deal with

the operation of a provision whose effect is saved. Division 3 contains supplemental provisions.

Schedules

196. Schedule 1 relates to Division 4 of Part 1. It contains the definitions of *parent undertaking* and *subsidiary undertaking*.
197. Schedule 2 relates to Division 1 of Part 3. It prescribes the contents of the incorporation form that must accompany an application for company formation under that Division.
198. Schedule 3 relates to Division 2 of Part 9. It sets out the qualifying conditions for a small private company, a small guarantee company, a group of small private companies and a group of small guarantee companies.
199. Schedule 4 relates to Subdivision 3 of Division 4 of Part 9. It contains provisions on accounting disclosures to be made in financial statements.
200. Schedule 5 relates to Subdivision 4 of Division 4 of Part 9. It provides for the requirements for a directors' report to contain a business review.
201. Schedule 6 relates to clause 655. It sets out the information to be contained in an annual return and the documents by which an annual return must be accompanied.
202. Schedule 7 relates to clause 887. It specifies the offences to which the Registrar's powers under clause 887 apply.
203. Schedule 8 relates to clause 896. It contains amendments relating to paperless holding and transfer of shares and debentures.
204. Schedule 9 provides for the consequential amendments.
205. Schedule 10 deals with the transitional and saving provisions.
206. The following table shows provisions defining or otherwise explaining expressions used in the Bill (other than those defining or

otherwise explaining expressions used in defining or explaining provisions).

accounting reference date	clause 366
accounting reference period	clauses 364, 599 and 653(9)
accounting standards	clause 376(8)
accounting transaction	clause 2(1)
acquisition of shares by company	clause 189(2)(a)
actuarial investigation	clause 289(5)
address	clause 809(1)
adopted	clause 475(1)
affected member	clause 507(1)
agent of company	clause 826(1)
aggregate amount of total revenue or assets of group of companies	section 2(2) and (3) of Schedule 3
agreement on sending document or supplying information by website	clause 821(4) and (5)
agreement to the proposed written resolution	clause 547(1)
amalgamating holding company	clause 669(1)
amount not required to be recorded as share capital	section 35(2) of Schedule 10
annual consolidated financial statements	clause 356(1), and section 2(5) of Schedule 3

annual financial statements	clause 356(1), and sections 1(10)(b) and 2(5) of Schedule 3
annual return	clause 656
applicable provision	clause 809(1)
applicable requirements	clause 29(2)
appointment period	clause 383
approved amalgamation proposal	clause 667(3)
approved name	clause 762(1)
approved stock exchange	clause 234(4)
arrangement	clauses 189(1) and 659(1)
articles	clauses 2(1), 167(5), 659(2), 711(2) and 805(5)
associate of offeror or member	clause 658
associated body corporate	clause 826(2)
associated company	clause 2(1)
auditor's report	clause 356(1)
authorized institution	clause 826(1)
authorized person	clause 865(10)
authorized representative	clause 762(1)
authorizing meeting	clause 700(3)
average number of company's employees	section 2(4) of Schedule 3
base value of assets transferred	clause 190(4)(a)
base value of liabilities	clause 190(4)(b)

assumed	
body corporate	clauses 2(1) and 108(11)
body corporate with which a person is associated	clause 479(1)
books	clause 826(1)
branch register of debenture holders	clause 303(1)
branch register of members	clause 616
business day	clauses 150(5), 320(5) and 809(1)
called up share capital	clause 286(1)
capital redemption reserve	section 42(2) of Schedule 10
capitalization	clause 286(1)
certified copy	clauses 331(4), 344(5) and 763
certified public accountant (practising)	clause 2(1)
certified translation	clauses 4 and 762(2)
cessation statement	clause 383
charge	clause 331(1)
charged property	clause 331(5), and section 63(2) of Schedule 10
child/children	clauses 276(2), 277(2) and 475(1)
Chinese language newspaper	section 48 of Schedule 10
circulation date of written resolution	clause 537(1)

circumstances constituting contravention	clause 476
claimant	clause 163(5)
commencement date	clause 2(1)
Commission	clause 198(1)
Companies Register	clauses 2(1) and 42(2)
company	clauses 2(1), 19(1), 189(1), 471(5), 659(1), 711(1), 737(1), 827, 855 and 893(3)
company limited by guarantee	clause 8
company limited by shares	clause 7
company records	clause 645
company secretary	clause 2(1)
conduct	clause 464(5)(a)
connected entity	clauses 113(9), 464(5)(d) and 477
consideration provided by third party	clauses 683(8) and 691(10)
constitutional document	clauses 794 and 804(2)
contingent buy-back contract	clause 198(1)
continuing provision	section 36 of Schedule 10
contract	clauses 232(8) and 534(5)
contributory	clause 2(1)
conversion of shares into stock	section 13(2) of Schedule 10
copies of requisition deposited	section 92(2) of Schedule 10

on more than one day	
corporate name	clause 762(1)
corporate representative	clause 575(5)
costs for obtaining Government's confirmation	clause 749(3)
Court	clause 2(1)
court	clauses 2(1) and 889(4)
credit transaction	clause 484
damages for personal injury	clause 754(5)
date of passing of resolution	clause 538(4)
debenture	clauses 2(1) and 303(1)
decision date	clause 51(9)
default	clause 717(5)
deficit in fund maintained by insurer in respect of long term business	clause 289(4)(b)
delegate	clause 826(1)
deliver document	clause 19(2)
digital signature	clause 19(1)
director	clauses 2(1), 48(1), 48(2)(b), 438(3), 455(6), 464(5)(b) and (c), 475(1), 482(1), 507(1), 521(1) and 535(6)
directors' report	clauses 356(1), 461(5) and 533(7)
disqualification order	clause 43(4)

distributable profits	clause 198(1)
distribution	clause 286(1)
document	clauses 2(1), 19(1), 809(1) and 826(1)
domestic name	clause 762(1)
dormant company	clause 5
electronic address	clause 537(1)
electronic form	clauses 2(4)(b), 19(1), 368 and 646(6)
electronic means	clause 2(4)(c)
electronic record	clause 2(1)
electronic signature	clause 19(1)
eligible company	clause 794
eligible employees of company	clause 277(2)
eligible members	clause 537(2)
eligible person	clause 157
emoluments	clause 567(2)
employee of company	clause 384(3)
employee share scheme	clause 276(2)
employment	clause 525(2)
English language newspaper	section 48 of Schedule 10
equity share capital	clause 189(1)
equity shares	clause 189(1)
equivalent debenture holders	clause 821(12)
exception provision	clause 488(3)

executing agent of company	clause 120(7)
exempted company	clause 114(4)
exercise “bought out” rights	clause 693
existing company	clause 2(1)
existing legal obligation	clause 515(3)
expenses of investigation	clause 854(8)
family member	clause 478
final report	clause 827
financial assistance	clauses 270(1) and 286(1)
financial assistance for reducing or discharging liability incurred for acquisition of shares	clause 270(2)(b)
financial assistance that has not been repaid	clause 279(3)
financial items	clause 286(1)
financial statements	clause 356(1)
financial year	clauses 2(1) and 363, and section 1(10)(a) of Schedule 3
forename	clauses 634(4), 641(3) and (5) and 781(8), and section 6(1) of Schedule 2
former Companies Ordinance	clause 2(1)
former forename	clause 634(6), and section 6(2) of Schedule 2
former name	clause 758(7)

former surname	clause 634(6), and section 6(2) of Schedule 2
founder member	clause 2(1)
fresh general offer	clause 699
fresh takeover offer	clause 681
general offer	clauses 233(6), 696 and 697
genuine purchaser of shares	clause 157
group of companies	clause 2(1)
group of small guarantee companies	clause 362
group of small private companies	clause 361
guarantee	clause 482(1)
guaranteed term of director's employment	clause 525(3) and (6)
hard copy form	clauses 2(4)(a), 19(1), 368 and 646(6)
holding company	clauses 12 and 190(1)(a)
identity card	clause 2(1)
Index of Company Names	clause 2(1)
information	clause 826(1)
information system	clause 2(1)
inspector	clause 826(1)
insurer	clause 289(5)
interim report	clause 827
investigation	clause 827

investment company	clause 296(3)
issue of debentures at discount	clause 341(9)
issuing company	clause 189(1)
key performance indicators	section 5 of Schedule 5
land	clauses 110(3) and 482(1)
latest value of shares	clause 159(7)
liabilities	clauses 270(1) and 665(8)
liability imposed on property or right	clause 740(5)(b)
limited company	clause 6
listed company	clause 2(1)
listing rules	clause 2(1)
long term business	clause 289(5)
loss of office	section 90(2) of Schedule 10
losses	clause 286(3)
majority or 75% of members	clause 797(3)
manager	clause 2(1)
manager of property of body corporate	clauses 2(3)(a) and (c) and 331(1)
material date	clause 768(4)
material time	clause 714(6)
matters of which directors aware	clause 527(5)
member	clauses 2(1), 560(6), 564(2) and 712(1)

member present at general meeting	clause 797(4)
members in one class	clause 182
members voting in favour of resolution	clause 538(5)
minor children	clause 276(2)
misconduct	clauses 499(5), 720 and 890
mistake of Registrar	clause 751(2)
motion for appointment	clause 451(5)
net assets	clauses 270(1) and 286(1)
net base value of assets transferred	clause 190(3)
new share certificate	clause 157
nominal amount of share	section 42(1) and (3) of Schedule 10
nominal value of share	section 42(1) and (3) of Schedule 10
nominee	clauses 676 and 694(1)
non-equity shares	clause 189(1)
non-Hong Kong company	clause 2(1)
non-statutory accounts	clause 427(6)
non-statutory constitutional document	clause 794
non-tendering member	clauses 233(6) and 694(1)
notice of meeting given on more than one day	section 92(1) of Schedule 10

offer period	clause 657
officer	clauses 2(1), 384(3), 612(9) and 826(1)
official document	clause 197(3)
Official Receiver	clause 2(1)
ordinary resolution	clauses 2(1) and 553
original share certificate	clause 157
parent company	clause 15, and section 4 of Schedule 1
parent undertaking	clause 15, and section 2 of Schedule 1
past member	clause 712(2) and (3)
payment for loss of office	clauses 497 and 517
payment for loss of office in connection with transfer of shares	clause 514(2)
payment for loss of office in connection with transfer of undertaking or property	clause 513(3)
pension	clause 515(3)
perform duties as auditor	clauses 401(4) and 406(6)
permitted indemnity provision	clauses 458(1), 462(6) and 463(6)
person dealing with company in good faith	clause 112(2)
person for whom arrangement entered into	clause 485(2)

person for whom transaction entered into	clause 485(1)
person incurring liability	clause 270(2)(a)
person interested in a charge	clause 331(3)
personal injury	clause 754(5)
place of business	clause 762(1)
potential member	clause 428
practice unit	clause 383
pre-amended predecessor Ordinance	clauses 444(7) and 445(4)
predecessor Ordinance	clause 2(1) and (2)
prescribed	clauses 306(9), 463(5), 609(6), 610(5) and 615
prescribed approval of members	clauses 486, 509, 514(4) and 523
prescribed securities	section 2 of Schedule 8 (to be incorporated into clause 2(1))
preserve record or document	clause 834(4)
previous accounting reference period	clause 367(9)
primary accounting reference date	clause 365
principal register	clause 310(1) and (4)
private company	clause 10
procedural regulations	clause 762(1)
proceedings	clause 720

profits	clause 286(3)
profits available for distribution	clause 291(2)
projected sum	clause 288(7)
property	clause 665(8)
property in Hong Kong	clause 331(2)(a)
property outside Hong Kong	clause 331(2)(b)
property vested in or held on trust for company	clause 740(5)(a)
protected address	clause 48(1) and (2)(a)
protected identification number	clause 48(1)
protected information	clause 48(1)
protected person	clauses 58(5) and 873(6)
provision for share capital in articles or resolution	clause 94(3)
public company	clause 11
publish	clause 849(3)
quasi-loan	clause 482
questionable transaction	clause 495(4)
realized losses	clauses 287, 288 and 289
realized profits	clauses 287, 288, 289 and 290
receiver of property of body corporate	clause 2(3)(b) and (c)
recognized exchange company	clause 2(1)
recognized exchange controller	clause 198(1)

recognized stock market	clause 2(1)
record	clauses 728 and 826(1)
redeemable shares	clause 2(1)
reduction of share capital	clauses 165(7) and 667(2)
referential financial statements	clause 286(4)
register of debenture holders	clause 303(1)
registered charge	clause 344(6)
registered holder of shares in listed company	clause 157
registered non-Hong Kong company	clause 2(1)
registered number	clause 109(3)
Registrar	clause 2(1)
Regulation	clause 356(1)
related entity	clause 403(9)
relevant address	clause 47(10)
relevant company	clauses 84(10) and 85(10)
relevant correspondence address	clause 48(1)
relevant debentures	clause 84(10)
relevant document of company	clauses 112(6) and 114(4)
relevant financial statements	clauses 500(5) and 501(3)
relevant financial year	clause 435(4)
relevant member	section 93(2) of Schedule 10
relevant notice	clause 435(4)

relevant Ordinance	clause 49(3)
relevant right to vote	clause 570(3)
relevant time	section 27(3) of Schedule 10
relevant transaction or arrangement	clause 488
remuneration	clause 395, and section 1(2) of Part 2 of Schedule 4
repeal/repealed	section 1 of Schedule 10
reporting documents	clause 356(2)
reporting exemption	clause 358
repurchasing company	clause 694(1)
required details	clause 762(1)
required number of members	clause 729(6)
requisite percentage	clause 394(8)
reserve director	clause 2(1)
residential address	clause 634(4), and section 6(1) of Schedule 2
residential premises	clause 500(4)
responsible officer	clause 762(1)
responsible person	clause 3
retirement	section 90(2) of Schedule 10
revocation of agreement on sending document or supplying information in electronic form	clauses 816(3) and 819(4)
revocation of agreement on sending document or	clause 821(6)

supplying information by website	
right vested in or held on trust for company	clause 740(5)(a)
rights attached to share	clause 172
rights of a class of members	clause 181
Scriptless Rules	section 2 of Schedule 8 (to be incorporated into clause 2(1))
Secretary	clause 2(1)
secure 90% equity holding	clause 192
send document	clause 809(2)(a)
send document by post	clause 809(3)
service contract	clause 522
services	clause 482(1)
shadow director	clauses 2(1), 456(6), 482(2), 507(5), 521(2) and 535(7)
share	clauses 2(1) and 108(12)
share premium account	section 42(2) of Schedule 10
share warrant	clause 2(1)
shares controlled by offeror	clause 689(5)
shares controlled by repurchasing company	clause 707(6)
shares held by non-tendering member	clause 694(2)
shares in one class	clause 173

shares to which general offer relates	clause 698
shares to which takeover offer relates	clause 680
signatory	section 6(1) of Schedule 2
small guarantee company	clause 360
small private company	clause 359
solicitor	clause 762(1)
solvency statement	clause 668
special notice	clauses 2(1) and 568
special resolution	clauses 2(1) and 554
specified	clause 832(3)
specified act	clause 861(8)
specified address	clause 26(9)
specified charge	clause 333
specified Chinese language newspaper	clause 198(1)
specified company	clause 482(1)
specified English language newspaper	clause 198(1)
specified financial statements	clause 427(6)
specified form	clause 2(1)
specified incumbent	clauses 391(4) and 392(5)
specified materials	clause 867(7)
specified officer	clause 871

specified percentage	clause 328(4)
specified person	clause 890
statement of circumstances	clause 383
subsidiary	clause 14
subsidiary undertaking	clause 15, and section 5 of Schedule 1
summary financial report	clause 356(1)
supply information	clause 809(2)(b)
supply information by post	clause 809(3)
supporting evidence	clauses 888(4) and 904(5)
surname	clauses 634(4), 641(3) and 781(8), and section 6(1) of Schedule 2
surplus in fund maintained by insurer in respect of long term business	clause 289(4)(a)
takeover offer	clauses 507(1), 678 and 679
terms of general offer	clauses 703(4) and 710(4)
terms of takeover offer	clauses 684(4) and 692(4)
third party	clauses 59(4) and 458(1)
this Ordinance	clause 2(2)
time of creation of charge	clauses 340(11) and 341(10)
total exposure amount	clause 489
transaction	clause 113(10)
transaction to which arrangement relates	clause 506(6)

transfer	clause 189(1)
transfer of shares by company	clause 189(2)(c)
transfer of shares to company	clause 189(2)(b)
transferee	clause 665(8)
transferor	clause 665(8)
transferor company	clause 190(1)(b)
uncalled share capital	clause 286(1)
undertaking	clause 2(1)
undistributable reserves	clause 286(1)
unlimited company	clause 9
unlisted company	clause 2(1)
unsatisfactory document	clause 29
value of other relevant transaction or arrangement	clause 487(1)(b)
value of transaction	clause 487(1)(a)
variation of rights attached to shares	clauses 175(5) and 613(7)
variation of rights of a class of members	clauses 183(5), 188 and 614(6)
website	clauses 159(7) and 160(5)
wholly owned subsidiary	clauses 356(3) and 566(7)
work-related information	clause 405(3)
written resolution	clauses 2(1) and 546

SOME NOTABLE MEASURES FOR ENHANCING CORPORATE GOVERNANCE IN THE COMPANIES BILL

Some notable measures for enhancing corporate governance to be introduced in the Companies Bill (CB) are highlighted below.

Strengthening Accountability of Directors

- Restricting the appointment of corporate directors by requiring every private company to have at least one natural person acting as director, so as to enhance transparency and accountability.
- Clarifying in the statute directors' duty of care, skill and diligence with a view to providing clear guidance to directors.

Enhancing Shareholder Engagement in Decision-making Process

- Introducing a comprehensive set of rules for proposing and passing a written resolution.
- Requiring a company to bear the expenses of circulating members' statements relating to business of, and proposed resolutions for, Annual General Meetings, if they are received in time for sending with the notice of the meeting.
- Reducing the threshold requirement for members to demand a poll from 10% to 5% of the total voting rights.

Improving Disclosure of Company Information

- Requiring public companies and "large" (i.e. other than those qualified for simplified reporting) private companies¹ and guarantee companies² to prepare a more comprehensive directors' report which

¹ Under the CB, a private company is regarded as small if it satisfies any two of the following conditions: (a) total annual revenue not more than HK\$50 million; (b) total assets not more than HK\$50 million; (c) no more than 50 employees.

² Under the CB, a guarantee company is regarded as small if its total annual revenue does not exceed HK\$25 million.

includes an analytical and forward-looking “business review”, whilst allowing private companies to opt out by special resolution. The business review will provide useful information for shareholders. In particular, the requirement to include information relating to environmental and employee matters that have a significant impact on the company is in line with international trends to promote corporate social responsibility.

Fostering Shareholder Protection

- Introducing more effective rules to deal with directors’ conflicts of interests, including expanding the requirement of shareholders’ approval to cover directors’ employment contracts exceeding three years.
- Requiring disinterested shareholders’ approval in the case where shareholders’ approval is required for transactions of public companies and their subsidiaries.
- Requiring ratification of conduct of directors by disinterested shareholders’ approval to prevent conflicts of interests, in particular, possible abuse of power by interested majority shareholders in ratifying unauthorised conduct of directors.
- Retaining the “headcount test” for approving a scheme of compromise or arrangement, while giving the court a new discretion to dispense with the test for members’ schemes in appropriate circumstances³.
- Extending the scope of the unfair prejudice remedy to cover “proposed acts and omissions” so that a member may bring an action for unfair prejudice even if the act or omission which would be prejudicial to the interests of members is at the proposal stage.

³ In the consultation on the draft CB, views were diverse as to whether the headcount test should be retained or abolished. The majority of the submissions, including many from listed companies, supported abolition, particularly in respect of the headcount test for members’ schemes of listed companies. On the other hand, some respondents including the Securities and Futures Commission supported the retention of the headcount test. The headcount test has been retained in other common law jurisdictions including the United Kingdom, Australia, Singapore, Bermuda and the Cayman Islands. On balance, we are inclined to believe that there are merits in retaining the headcount test for protecting minority shareholders and small creditors. Nevertheless, the court will be given a discretion to dispense with the test for members’ schemes so as to tackle the problem of share splitting by parties opposing a scheme.

Strengthening Auditors' Rights

- Empowering an auditor to require a wider range of persons, including the officers of a company's Hong Kong subsidiary undertakings and any person holding or accountable for the company or its subsidiary undertakings' accounting records, to provide information or explanation reasonably required for the performance of auditor's duties.

SOME NOTABLE MEASURES FOR IMPROVING REGULATION IN THE COMPANIES BILL

Some notable measures for improving regulation to be introduced in the Companies Bill are highlighted below.

Ensuring Accuracy of Information on the Public Register

- Clarifying and enhancing the powers of the Registrar of Companies (the Registrar) in relation to the registration of documents, such as specifying requirements as to the authentication of the documents to be delivered to the Companies Registry (CR) and manner of delivery and withholding registration of unsatisfactory documents pending further particulars.
- Clarifying and enhancing the Registrar's powers in relation to the keeping of the register, such as rectifying typographical or clerical errors, making annotations, and requiring a company to resolve any inconsistency or provide updated information.
- Introducing a new court-based procedure for removing from the register information that is inaccurate, forged or derived from anything invalid, ineffective or done without the authority of the company.
- Requiring a company to deliver to the CR a return or notification including a statement of capital whenever there is a change to its capital structure, so as to ensure that the public register contains up-to-date information on a company's share capital structure.

Improving the Registration of Charges Scheme

- Revising the list of registrable charges, such as expressly providing that a charge on an aircraft or any share in an aircraft is registrable and removing the requirement to register a charge for the purpose of securing any issue of debentures.
- Replacing the automatic acceleration of the repayment obligation with a choice given to the lender as to whether the secured amount is to become immediately payable where a charge is void for non-compliance with the registration requirements.

- Requiring a certified copy of the charge instrument (in addition to the prescribed particulars of the charge) to be registrable and available for public inspection to give more detailed information to those who search the register.
- Shortening the period for delivery to the Registrar of the charge instrument and the prescribed particulars from five weeks to one month, so as to reduce the period during which the charge is invisible on the register.
- Requiring written evidence of debt satisfaction/release of a charge to accompany a notification to the Registrar for registration of the debt satisfaction/release, thus making such documents available for public inspection.

Enhancing Regulation of Voluntary Deregistration of Companies

- Imposing two additional conditions for voluntary deregistration of defunct companies, namely that the applicant must confirm that the company is not a party to any legal proceedings and that it has no immovable property in Hong Kong, so as to minimise any potential abuse of the deregistration procedure.

Improving the Enforcement Regime

- Enhancing the investigatory powers of an inspector, for example, requiring a person under investigation to preserve records or documents and to verify statements by statutory declaration.
- Providing better safeguards for confidentiality of information obtained in investigations and enquiries and better protection of informers.
- Providing for new powers for the Registrar to obtain documents or information for ascertaining whether any conduct, that would constitute certain offences relating to giving to the Registrar any false or misleading statement, has taken place.
- Strengthening the enforcement regime in relation to liabilities of an officer of a company for the company's contravention of a provision in the Companies Bill, including lowering the threshold for a breach

or contravention and extending it to cover reckless acts/omissions, and negligent omissions in the sense of failing to take all reasonable steps to prevent the contravention, through a new definition of “responsible person”.

- Empowering the Registrar to compound specified offences so as to optimise the use of judicial resources. The compoundable offences are generally confined to those which are related to non-compliance of filing obligations and obligations for affixing or publishing a company’s name which are punishable only by a fine and triable summarily only.

SOME NOTABLE MEASURES FOR BUSINESS FACILITATION IN THE COMPANIES BILL

Some notable measures for business facilitation to be introduced in the Companies Bill are highlighted below.

Streamlining Procedures

- Allowing companies to dispense with Annual General Meetings by unanimous shareholders' consent.
- Introducing an alternative court-free procedure for reduction of capital based on a solvency test.
- Allowing all types of companies (instead of confining to private companies as in the current Companies Ordinance (CO)) to purchase their own shares out of capital, subject to a solvency test.
- Allowing all types of companies (whether listed or unlisted) to provide financial assistance for the purpose of another party acquiring the company's own shares or the shares of its holding company, subject to the satisfaction of the solvency test and certain specified procedures. Currently, under the CO, there is a broad prohibition on giving financial assistance with some exceptions provided.
- Introducing a new court-free statutory amalgamation procedure for wholly-owned intra-group companies.
- Streamlining the procedures for restoration of dissolved companies by court order.
- Introducing a new procedure of "administrative restoration" of a dissolved company by the Registrar in straightforward cases without the need for recourse to the court.

Facilitating Simplified Reporting Particularly by SMEs

- Facilitating SMEs to prepare simplified financial and directors' reports along the following lines: –

- a private company (except for a banking/deposit-taking company, an insurance company or a stock-broking company), will automatically be qualified for simplified reporting, if it is a “small private company” that satisfies certain conditions¹.
- a group of companies that qualifies as a “group of small private companies”² is also qualified for simplified reporting.
- Allowing small guarantee companies and groups of small guarantee companies which have total annual revenue of not more than \$25 million to be qualified for simplified reporting.
- Making the summary financial report provisions more user-friendly and extending their application to companies in general (instead of confining to listed companies as in the current CO).

Facilitating Business Operation

- Making the keeping and the use of a common seal optional and relaxing the requirements for a company to have an official seal for use abroad.
- Permitting a general meeting to be held at more than one location by using audio-visual technology.
- Setting out the rules governing communications to and by companies in electronic form.

¹ Satisfying any two of the following conditions:-

- Total annual revenue not more than HK\$50 million.
- Total assets not more than HK\$50 million.
- No more than 50 employees.

² Satisfying any two of the following conditions:-

- Aggregate total annual revenue not more than HK\$50 million net.
- Aggregate total assets not more than HK\$50 million net.
- No more than 50 employees.

SOME NOTABLE MEASURES TO MODERNISE THE LAW IN THE COMPANIES BILL

Some notable measures to modernise the law to be introduced in the Companies Bill are highlighted below.

Retiring the Concept of Par Value

- Adopting a mandatory system of no-par for all companies with a share capital as par value is an antiquated concept that may give rise to practical problems, such as inhibiting raising of new capital and unnecessarily complicating the accounting regime.

Removing the Power to Issue Share Warrants

- Removing the power of companies to issue share warrants to bearers. Share warrants are rarely issued nowadays and are undesirable from the perspective of anti-money laundering because of the lack of transparency in the recording of their ownership and the manner by which they are transferred.

Better Protection of Personal Data

- Introducing new provisions for withholding from public inspection of directors' residential addresses and full identity card/passport numbers in the Companies Registry's public register, for the sake of better protection of personal data.

Clarifying Rules on Indemnification of Directors against Liabilities to Third Parties

- Clarifying the rules on indemnification of directors against liabilities to third parties so as to remove uncertainty in case law.

IMPLICATIONS OF THE PROPOSAL

Economic Implications

The proposal should help enhance Hong Kong's business environment, thereby strengthening Hong Kong's position as an international financial and business centre. In particular, the proposal will enhance corporate governance, ensure better regulations, facilitate business and modernise our company law.

Financial and Civil Service Implications

2. There is no plan to revise the fees for existing services for the time being. On fees for new services endorsed by the Legislative Council (LegCo), Companies Registry (CR) will assess the fee level on a cost-recovery basis in accordance with normal procedure.

3. Depending on the form of the statutory requirements, CR will need to enhance its information system after the CB is passed. CR is assessing the scope of possible enhancements with its contractor. All the expenditure involved will be absorbed by the CR Trading Fund.

4. With the adoption of a no-par regime in the CB, it will not be possible to continue to levy the capital duty on the "nominal share capital"¹. Instead, we will collect an alternative duty on "issued share capital" in the same manner as the current capital duty while exempting existing companies to the extent of the nominal value of the company's unissued share capital upon commencement of the CB². The amount of alternative duty collected will likely be less than the current capital duty, but it is hard to predict the exact difference at the moment. The fact that

¹ Capital Duty is currently levied at a rate of \$1 for every \$1,000 or part thereof (subject to a cap at \$30,000 per case) in respect of each company on: -
(a) amount of nominal share capital on incorporation;
(b) increase in nominal share capital after incorporation; and
(c) amount of premium when shares are issued at a premium after incorporation

In the past five financial years from 2005-06 to 2009-10, capital duty of \$72.6 million was collected annually on average.

² For existing companies, since capital duty has already been levied on their nominal share capital, they will be exempted from paying alternative duty for the amount of share capital increased after the commencement of the CB, until the cumulative amount of the increase(s) exceeds the amount of the nominal value of the company's unissued share capital.

the total amount of issued share capital of all companies stands at some 66% of the total amount of nominal share capital may offer a ballpark figure.

5. The proposals in the CB will involve new functions and powers to be given to the CR, with consequential resources implications. On the other hand, with the introduction of electronic incorporation of companies and electronic filing of documents with CR, there would be some savings in CR's manpower resources, principally as regards data input and clerical work. Depending on particulars of the proposals endorsed by the LegCo, it is envisaged that the implementation of the new Bill will not have major manpower implications. Creation of additional posts, if considered required, will go through the established procedures and the costs will be absorbed by the CR Trading Fund.