

## 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;

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- (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—

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- (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—

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*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; or

- (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 (apart from the price) as they have been supplied, or are to be supplied, under the transaction; and
  - (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.

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**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)—

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- (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—

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- (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—

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- (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

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- (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—

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- (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—

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- (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.

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**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.

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(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.
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