

A BILL

To

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

Enacted by the Legislative Council.

Part 1

Preliminary

Division 1

Short Title and Commencement

1. Short title and commencement

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

Division 2

Interpretation of this Ordinance: General

2. Interpretation

(1) In this Ordinance—

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

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

Note—

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

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

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

body corporate (法人團體)—

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

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

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

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

company (公司) means—

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

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

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

Court means the Court of First Instance;

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

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

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

document (文件) includes—

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

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

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(a) transmitted within an information system or from one information system to another; and

(b) stored in an information system or other medium;

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

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

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

(a) the Companies Ordinance 1865 (1 of 1865);

(b) the Companies Ordinance 1911 (58 of 1911); or

(c) the predecessor Ordinance;

founder member (創辦成員)—

(a) in relation to a company formed and registered under this Ordinance, means a person who signs on the company's articles for the purposes of section 62(1)(a); or

(b) in relation to an existing company, means a person who subscribed to or signed on the company's memorandum of association;

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

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

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

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

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

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

manager (經理), in relation to a company—

- (a) means a person who performs managerial functions in relation to the company under the directors' immediate authority; but
- (b) excludes—
 - (i) a receiver or manager of the company's property; and
 - (ii) a special manager of the company's estate or business appointed under section 216 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Clause 2

share (股份)—

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

share warrant (股份權證) means a warrant—

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

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

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

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

undertaking (企業) means—

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

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

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

(2) In this Ordinance—

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

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Clause 2

- (3) In this Ordinance—
- (a) a reference to a manager of the property of a body corporate includes a manager of part of that property;
 - (b) a reference to a receiver of the property of a body corporate includes—
 - (i) a receiver of part of that property; and
 - (ii) a receiver of the income arising from that property or part of that property; and
 - (c) a reference to the appointment of a manager or receiver made under powers contained in an instrument includes—
 - (i) an appointment made under powers conferred by an Ordinance; and
 - (ii) an appointment made under powers that, by virtue of an Ordinance, are implied in and have effect as if contained in an instrument.
- (4) For the purposes of this Ordinance—
- (a) a document or information is sent or supplied in hard copy form if it is sent or supplied—
 - (i) in paper form; or
 - (ii) in a similar form capable of being read;
 - (b) a document or information is sent or supplied in electronic form if it is sent or supplied—
 - (i) by electronic means; or
 - (ii) by any other means while in electronic form; and
 - (c) a document or information is sent or supplied by electronic means if it is sent or supplied in the form of an electronic record to an information system.
- (5) In subsection (4)—

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Clause 3

- (a) a reference to sending a document—
 - (i) includes supplying, delivering, forwarding or producing the document and, in the case of a notice, giving the document; but
 - (ii) excludes serving the document; and
 - (b) a reference to supplying information includes sending, delivering, forwarding or producing the information.
- (6) A note located in the text of this Ordinance is provided for information only and has no legislative effect.

3. Responsible person

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

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Clause 4

- (3) For the purposes of the provision, a person is also a responsible person of a company or non-Hong Kong company if—
- (a) the person is an officer or shadow director of a body corporate that is an officer or shadow director of the company or non-Hong Kong company;
 - (b) the body corporate authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention or failure; and
 - (c) the person authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention or failure.

4. Certified translation

- (1) For the purposes of this Ordinance, a translation made in Hong Kong of a document is a certified translation if—
- (a) it is certified as a correct translation of the document by the translator; and
 - (b) a person specified in subsection (3) certifies that in that person's belief the translator is competent in translating the document into English or Chinese (as the case may be).
- (2) For the purposes of this Ordinance, a translation made in a place outside Hong Kong of a document is a certified translation if—
- (a) in the case of a translator specified in subsection (4), it is certified as a correct translation of the document by the translator; or
 - (b) in the case of any other translator—
 - (i) it is certified as a correct translation of the document by the translator; and

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Clause 4

- (ii) a person specified in subsection (5) certifies that in that person's belief the translator is competent in translating the document into English or Chinese (as the case may be).
- (3) The person specified for the purposes of subsection (1)(b) is—
 - (a) a notary public practising in Hong Kong;
 - (b) a solicitor practising in Hong Kong;
 - (c) a certified public accountant (practising);
 - (d) a consular officer in Hong Kong; or
 - (e) a professional company secretary practising in Hong Kong.
- (4) The translator specified for the purposes of subsection (2)(a) is a translator appointed by a court of law of the place.
- (5) The person specified for the purposes of subsection (2)(b)(ii) is—
 - (a) a notary public practising in the place;
 - (b) a lawyer practising in the place;
 - (c) a professional accountant practising in the place;
 - (d) an officer of a court of law duly authorized by the law of the place to certify documents for any judicial or other legal purpose;
 - (e) a consular officer in the place;
 - (f) a professional company secretary practising in the place; or
 - (g) any other natural person specified by the Registrar.
- (6) The Secretary may, by notice published in the Gazette, amend subsection (3), (4) or (5).

5. Dormant company

- (1) If a qualified private company passes a special resolution specified in subsection (2), and the resolution is delivered to the Registrar for registration, the company is a dormant company for the purposes of Parts 9, 10 and 12 as from the date mentioned in subsection (2)(a) as declared by the resolution.
- (2) The special resolution specified for the purposes of subsection (1) is one—
 - (a) declaring that the qualified private company will become dormant as from—
 - (i) the date of delivery of that resolution to the Registrar; or
 - (ii) any later date that is specified in that resolution; and
 - (b) authorizing the directors to deliver that resolution to the Registrar for registration.
- (3) If—
 - (a) before the repeal of section 344A of the predecessor Ordinance by section 900, a company passed a special resolution under subsection (1) of that section, and the resolution has not been delivered to the Registrar; and
 - (b) the resolution is delivered to the Registrar for registration after the repeal,the company is also a dormant company for the purposes of Parts 9, 10 and 12 as from the date of delivery of the resolution to the Registrar or as from a later date as is specified in the resolution.

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Clause 5

- (4) If, immediately before the repeal of section 344A of the predecessor Ordinance by section 900, a company was a dormant company for the purposes of that section, the company continues to be a dormant company for the purposes of Parts 9, 10 and 12 as from the commencement date of this section.
- (5) A company that is a dormant company for the purposes of Parts 9, 10 and 12 ceases to be such dormant company if—
- (a) the company passes a special resolution declaring that the company intends to enter into an accounting transaction, and the resolution is delivered to the Registrar for registration; or
 - (b) there is an accounting transaction in relation to the company.
- (6) In this section—
- qualified private company*** (合資格私人公司) means a private company that is not a company specified in subsection (7).
- (7) A company specified for the purposes of the definition of ***qualified private company*** in subsection (6) is—
- (a) an authorized institution as defined by section 2(1) of the Banking Ordinance (Cap. 155);
 - (b) an insurer as defined by section 2(1) and (2) of the Insurance Companies Ordinance (Cap. 41);
 - (c) a corporation licensed under Part V of the Securities and Futures Ordinance (Cap. 571) to carry on a business in any regulated activity as defined by section 1 of Part 1 of Schedule 1 to that Ordinance;
 - (d) an associated entity, within the meaning of Part VI of the Securities and Futures Ordinance (Cap. 571), of a corporation mentioned in paragraph (c);

- (e) an approved trustee as defined by section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);
 - (f) a company registered as a trust company under Part VIII of the Trustee Ordinance (Cap. 29);
 - (g) a company having a subsidiary that falls within paragraph (a), (b), (c), (d), (e) or (f); or
 - (h) a company that fell within paragraph (a), (b), (c), (d), (e), (f) or (g) at any time during the 5 years immediately before the special resolution is passed.
- (8) The Financial Secretary may, by notice published in the Gazette, amend subsection (7).

Division 3

Interpretation of this Ordinance: Types of Companies

Subdivision 1

Limited Company and Unlimited Company

6. Limited company

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

7. Company limited by shares

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

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Clause 10

8. Company limited by guarantee

- (1) For the purposes of this Ordinance, a company is a company limited by guarantee if—
 - (a) it does not have a share capital; and
 - (b) the liability of its members is limited by the company's articles to the amount that the members undertake, by those articles, to contribute to the assets of the company in the event of its being wound up.
- (2) Subsection (1)(a) does not apply if the company was formed as, or became, a company limited by guarantee under a former Companies Ordinance before 13 February 2004.

9. Unlimited company

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

Subdivision 2

Private Company and Public Company

10. Private company

- (1) For the purposes of this Ordinance, a company is a private company if—
 - (a) its articles—
 - (i) restrict a member's right to transfer shares;
 - (ii) limit the number of members to 50; and
 - (iii) prohibit any invitation to the public to subscribe for any shares or debentures of the company; and
 - (b) it is not a company limited by guarantee.
- (2) In subsection (1)(a)(ii)—

member (成員) excludes—

- (a) a member who is an employee of the company; and
 - (b) a person who was a member while being an employee of the company and who continues to be a member after ceasing to be such an employee.
- (3) For the purposes of this section, 2 or more persons who hold shares in a company jointly are to be regarded as one member.

11. Public company

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

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

Division 4

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

12. Holding company

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

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Clause 13

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

13. Provisions supplementary to section 12

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

to be regarded as being held or exercisable by the body corporate.

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

14. Subsidiary

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

15. Parent undertaking, parent company and subsidiary undertaking

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

Division 5

Application of this Ordinance

16. Application to existing company

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

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

- (1) This Ordinance applies to an unlimited company registered as a limited company in pursuance of the predecessor Ordinance or section 58 of the Companies Ordinance 1911 (58 of 1911), in the same manner as it applies to an unlimited company registered under this Ordinance as a limited company.

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

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

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