

## **Part 3**

# **Company Formation and Related Matters, and Re-registration of Company**

## **Division 1**

### **Company Formation**

#### **Subdivision 1**

#### **General Requirements for Formation**

#### **61. Types of companies**

Only the following companies may be formed under this Ordinance—

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

#### **62. Formation of company**

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

- (c) paying the Registrar a fee prescribed by regulations made under section 897.
- (2) A company may only be formed for a lawful purpose.

**63. Content of incorporation form**

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

**64. Signing of incorporation form**

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

**65. Statement of compliance to be contained in incorporation form**

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

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

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

**67. Conclusiveness of certificate of incorporation**

A certificate of incorporation is conclusive evidence that—

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

**68. Effect of incorporation**

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

**69. Delivery of director's written consent**

- (1) Each consent given for the purposes of section 4(b)(ii) of Schedule 2 in relation to a company intended to be formed must be delivered in the specified form to the Registrar for registration not later than 14 days after the date of incorporation of the company.
- (2) If subsection (1) is contravened, the company, every responsible person of the company, and the founder member who signs the incorporation form for the purposes

of section 64, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

- (3) In any proceedings against a founder member for an offence under this section, it is a defence to establish that the founder member took all reasonable steps to secure compliance with subsection (1).

## **Division 2**

### **Company Articles**

#### **Subdivision 1**

##### **General**

**70. Articles prescribing regulations for company**

A company must have articles prescribing regulations for the company.

**71. Language of articles**

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

**72. Form of articles**

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

## **Subdivision 2**

### **Model Articles**

#### **73. Financial Secretary may prescribe model articles**

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

#### **74. Adoption of model articles**

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

#### **75. Application of model articles to limited company**

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

**Subdivision 3****Content and Effect of Articles****76. Company name**

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

**77. Company's objects**

- (1) If a licence is granted under section 98(2) to an association intended to be formed as a limited company or under section 98(4) to a limited company, then during the period when the licence is in force, the articles of the company must state the company's objects.
- (2) The articles of any other company may state the company's objects.
- (3) Subsections (1) and (2) do not affect any requirement relating to the articles of a company specified in any other Ordinance.

**78. Members' liabilities**

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

**79. Liabilities or contributions of members of limited company**

- (1) The articles of a company limited by shares must state that the liability of its members is limited to any amount unpaid on the shares held by the members.
- (2) The articles of a company limited by guarantee must state that each person who is a member of the company undertakes that if the company is wound up while the

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person is a member of the company, or within one year after the person ceases to be such a member, the person will contribute an amount required of the person, not exceeding a specified amount, to the company's assets—

- (a) for the payment of the company's debts and liabilities contracted before the person ceases to be such a member;
- (b) for the payment of the costs, charges and expenses of winding up the company; and
- (c) for the adjustment, among the contributories, of their rights.

**80. Capital and initial shareholdings**

- (1) The articles of a company with a share capital—
  - (a) must state the information required under section 8 of Schedule 2 to be contained in the company's incorporation form; and
  - (b) if the share capital of the company is divided into different classes of shares, must also state for each class the particulars specified in subsection (2).
- (2) The particulars are—
  - (a) particulars of any voting rights attached to shares in the class, including rights that arise only in certain circumstances;
  - (b) particulars of any rights attached to shares in the class, as respects dividends, to participate in a distribution;
  - (c) particulars of any rights attached to shares in the class, as respects capital, to participate in a distribution (including on a winding up); and
  - (d) whether or not shares in the class are redeemable shares.

- (3) The articles of a company with a share capital may state the maximum number of shares that the company may issue.

### **81. Effect of articles**

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

## **Subdivision 4**

### **Alteration of Articles**

### **82. Company may alter articles**

- (1) Subject to this Ordinance, a company may alter its articles.

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

**83. Alteration by special resolution or ordinary resolution**

- (1) Subject to this Ordinance, this section applies to the alteration of a company's articles.
- (2) Subject to subsection (3) and any other provisions of this Ordinance, a company may only alter its articles by special resolution.
- (3) An alteration in articles to the maximum number of shares that the company may issue may be made by ordinary resolution.
- (4) Subject to this Ordinance, an alteration made in accordance with this section is as valid as if the alteration were originally contained in the articles.
- (5) Within 14 days after the date on which an alteration takes effect, the company must deliver to the Registrar for registration—
  - (a) a notice of the alteration in the specified form; and
  - (b) a copy, certified by an officer of the company as correct, of the articles as altered.

- (6) If a company contravenes subsection (5), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

**84. Alteration of company's objects**

- (1) This section applies to an alteration of the objects of a company as stated in the company's articles.
- (2) The company may, by special resolution of which notice has been given to all the members of the company (including members who are not entitled to such notice under the company's articles), alter the objects by—
- (a) abandoning or restricting any of the objects; or
  - (b) adopting any new object that could lawfully have been contained—
    - (i) in the case of a company formed and registered under this Ordinance, in the company's articles when the articles were registered; or
    - (ii) in the case of an existing company, in the company's memorandum of association when the memorandum was registered.
- (3) If a relevant company passes such a resolution, a notice of the resolution must also be given to all holders of the relevant debentures of the company, and the notice must be the same as the notice mentioned in subsection (2).
- (4) For the purposes of subsection (3), if there is no provision regulating the giving of notice to the holders of the relevant debentures, the provisions of the company's articles regulating the giving of notice to members are to apply.

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

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- (8) The Court may at any time by order extend the period for delivery of any documents under subsection (6)(b).
- (9) If a company contravenes subsection (6), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (10) In this section—
- relevant company* (有關公司) means—
- (a) a private company; or
  - (b) a company limited by guarantee that, immediately before the commencement date of this Division, was a private company as defined by section 2(1) of the predecessor Ordinance in force at that time;
- relevant debentures* (有關債權證) means any debentures, secured by a floating charge, that were issued or first issued before 15 February 1963 or that form part of the same series as any debentures so issued.

**85. Alteration of certain articles by existing company**

- (1) Subject to subsection (2), this section applies to an alteration of any provision of the articles of an existing company if the provision—
- (a) was, immediately before the commencement date of this Division, contained in the company's memorandum of association (whether registered before, on or after 31 August 1984); and
  - (b) could lawfully have been contained in the company's articles instead of in the memorandum of association when the memorandum was registered.
- (2) This section does not apply if any provision of the articles of an existing company—

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

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

## **86. Application to Court to cancel alteration**

- (1) An application under section 84(5) to cancel an alteration of the objects of a company may be made—

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

- (c) may give any directions and make any order that it thinks expedient for facilitating or carrying into effect any such arrangement.

**87. Certain alterations not binding on members**

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

**88. Company must incorporate alteration into articles**

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

**89. Alteration affecting status of private company**

- (1) If a private company alters its articles so that the articles no longer comply with section 10(1)(a), the company ceases to be a private company on the date on which the alteration takes effect.
- (2) In addition to the documents required under section 83(5), the company must, within 14 days after the date on which the alteration takes effect, deliver to the Registrar for registration—
  - (a) a notice of the change of the company's status in the specified form; and
  - (b) a copy (certified by an officer of the company to be true) of the company's annual financial statements that are—
    - (i) prepared in accordance with section 375; and
    - (ii) prepared for the financial year immediately before the financial year in which the alteration takes effect.
- (3) If a company contravenes subsection (2)(a), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (4) If a company contravenes subsection (2)(b), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

**90. Alteration affecting status of public company**

- (1) If a public company alters its articles so that the articles comply with section 10(1)(a), the company ceases to be a public company on the date on which the alteration takes effect.

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

**91. Notifying Registrar of alteration by order of Court**

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

**92. Notifying Registrar of alteration by Ordinance**

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

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

- (1) A condition that immediately before the commencement date of this Division was contained in the memorandum of association of an existing company and was in force is, for all purposes, to be regarded as a provision of the company's articles.
- (2) If a memorandum of association is registered on or after the commencement date of this Division under the provisions having a continuing effect under Schedule 10, a condition contained in that memorandum is, for all purposes, to be regarded as a provision of the company's articles registered under the predecessor Ordinance.

- (3) If, before the commencement date of this Division, a special resolution altering a condition of the memorandum of association of an existing company was passed under section 8(1) or 25A(1) of the predecessor Ordinance and the alteration takes effect on or after that date, then the altered condition is, for all purposes, to be regarded as a provision of the company's articles registered under the predecessor Ordinance.
- (4) Despite subsections (1), (2) and (3), if a condition mentioned in subsection (1) or (2), or an altered condition mentioned in subsection (3), states—
- (a) the amount of share capital with which the existing company proposes to be registered or is registered; or
  - (b) the division of the share capital of the company into shares of a fixed amount,
- the condition is, to the extent that it relates to the matter mentioned in paragraph (a) or (b), for all purposes, to be regarded as deleted and not to be regarded as a provision of the company's articles.
- (5) In any Ordinance in force immediately before the commencement date of this Division, or in any other document made before that date—
- (a) a reference to the memorandum of association of an existing company is a reference to the company's articles; and
  - (b) a reference to a condition of the memorandum of association of an existing company is a reference to a provision of the company's articles.

#### **94. Articles of company limited by guarantee**

- (1) This section applies to a company limited by guarantee registered under a former Companies Ordinance on or after 1 January 1912 that does not have a share capital.

- (2) A provision in the company's articles, or in any resolution of the company, purporting to give a person a right to participate in the company's divisible profits otherwise than as a member is void.
- (3) For the purposes of a provision of this Ordinance relating to the articles of a company limited by guarantee, a provision in the company's articles, or in any resolution of the company, purporting to divide the company's undertaking into shares or interests, is to be regarded as a provision for a share capital.

### **Division 3**

## **Company Name**

### **Subdivision 1**

#### **Restriction on Company Name**

#### **95. Company must not be registered by certain names**

- (1) A company must not be registered by—
  - (a) a name that is the same as a name appearing in the Index of Company Names;
  - (b) a name that is the same as a name of a body corporate incorporated or established under an Ordinance;
  - (c) a name the use of which by the company would, in the Registrar's opinion, constitute a criminal offence; or
  - (d) a name that, in the Registrar's opinion, is offensive or otherwise contrary to the public interest.
- (2) Except with the Registrar's prior approval, a company must not be registered by—

- (a) a name that, in the Registrar’s opinion, would be likely to give the impression that the company is connected in any way with—
  - (i) the Central People’s Government;
  - (ii) the Government; or
  - (iii) any department or agency of the Central People’s Government or the Government;
- (b) a name that contains any word or expression for the time being specified in an order under section 96; or
- (c) a name that is the same as a name for which a direction has been given under—
  - (i) section 103 or 104; or
  - (ii) section 22 or 22A of the predecessor Ordinance on or after the commencement date of the Companies (Amendment) Ordinance 2010 (12 of 2010).

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

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

## **Subdivision 2**

### **Limited Company Name with “Limited” as Last Word etc.**

**97. Limited company must not be registered without “Limited” as last word of name etc.**

A limited company must not be registered by—

- (a) if the company has an English name only, a name without “Limited” as the last word of the name;

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

**98. Registrar’s licence to dispense with “Limited” etc.**

- (1) The Registrar may exercise the power under subsection (2) in respect of an association intended to be formed as a limited company, if it is proved to the Registrar’s satisfaction that—
  - (a) the company is to be formed for promoting commerce, art, science, religion or charity or any other useful objects;
  - (b) the association intends to apply the company’s profits or other income in promoting its objects; and
  - (c) the association intends to prohibit the payment of dividends to the company’s members.
- (2) The Registrar may, by licence, permit the association to be registered as a limited company by—
  - (a) if the company has an English name only, a name without “Limited” as the last word of the name;
  - (b) if the company has a Chinese name only, a name without “有限公司” as the last 4 characters of the name; or
  - (c) if the company has both an English name and a Chinese name—

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

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- (5) A change of company name under a licence mentioned in subsection (4) may only be made by special resolution, and section 102(2), (3), (4), (5) and (6) applies to such a change as it applies to a change of company name under section 102.
- (6) To avoid doubt, a company registered by a name under a licence granted under this section—
  - (a) has the privileges of a limited company; and
  - (b) subject to section 100(1), has the obligations of a limited company.

**99. Terms and conditions of licence**

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

**100. Effect of licence**

- (1) The company to which a licence under section 98 relates is exempt from—
  - (a) section 97;
  - (b) regulations made under section 650 in relation to the publication of a company name; and
  - (c) section 653 in relation to the delivery of particulars relating to members to the Registrar.
- (2) While a licence under section 98 remains in force, the company must not alter its articles except under a direction given under this section or section 99(2)(b) or with the Registrar's prior written approval.

- (3) On granting an approval under subsection (2), the Registrar may vary the licence by making it subject to any terms and conditions he or she thinks fit, in addition to or in place of the terms or conditions to which the licence was subject immediately before the variation.
- (4) The terms and conditions imposed under subsection (3)—
  - (a) are binding on the company; and
  - (b) are to be incorporated in the articles of the company if the Registrar so directs.

#### **101. Revocation of licence**

- (1) The Registrar may at any time revoke a licence granted under section 98 on being satisfied that—
  - (a) the company has failed to comply with any of the terms or conditions to which the licence is subject; or
  - (b) any one or more of the requirements specified in section 98(1) or (3) (as the case may be) are no longer met.
- (2) Before revoking a licence, the Registrar—
  - (a) must notify the company in writing of the Registrar's intention to do so; and
  - (b) must give the company an opportunity to be heard.
- (3) If a licence is revoked, the Registrar must give the company a notice in writing of the revocation.
- (4) On the revocation of a licence, the company ceases to be entitled to the exemptions mentioned in section 100(1).
- (5) Within the period specified in the notice of revocation, the company must change its name by special resolution to—
  - (a) if the company has an English name only, add "Limited" as the last word of the name;

## Part 3—Division 3—Subdivision 3

Clause 102

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- (b) if the company has a Chinese name only, add “有限公司” as the last 4 characters of the name; and
  - (c) if the company has both an English name and a Chinese name—
    - (i) add “Limited” as the last word of the English name; and
    - (ii) add “有限公司” as the last 4 characters of the Chinese name.
- (6) Section 102(2), (3), (4), (5) and (6) applies to a change of company name under subsection (5) as it applies to a change of company name under section 102.
- (7) If the company fails to comply with subsection (5), the Registrar must in the Companies Register—
- (a) if the company has an English name only, add “Limited” as the last word of the name;
  - (b) if the company has a Chinese name only, add “有限公司” as the last 4 characters of the name; and
  - (c) if the company has both an English name and a Chinese name—
    - (i) add “Limited” as the last word of the English name; and
    - (ii) add “有限公司” as the last 4 characters of the Chinese name.

### Subdivision 3

#### Change of Company Name

#### 102. Company may change name by special resolution

- (1) A company may change a company name by special resolution.

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Clause 103

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

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

- (1) The Registrar may by notice in writing direct a company to change, within the period specified in the notice, a name by which the company is registered under this Ordinance or the predecessor Ordinance if—
  - (a) the name is, as at the time of the registration, the same as or in the Registrar's opinion too like a name that appeared or should have appeared in the index of

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Clause 103

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- names kept under section 22C of the predecessor Ordinance or in the Index of Company Names;
- (b) the name is, as at the time of the registration, the same as or in the Registrar's opinion too like a name of a body corporate incorporated or established under an Ordinance;
  - (c) it appears to the Registrar that misleading information has been given for the company's registration by the name;
  - (d) it appears to the Registrar that any undertaking or assurance given for the registration by the name has not been fulfilled; or
  - (e) the name is a name by which, as at the time of the registration, the company must not be registered because of section 95(2)(a) or (b).
- (2) The Registrar may by notice in writing direct a company to change, within the period specified in the notice, a name by which the company is registered under this Ordinance or any former Companies Ordinance if, after the company is registered by the name—
- (a) a court makes an order restraining the company from using the name or any part of the name; and
  - (b) the Registrar receives from a person in whose favour the order is made an office copy of the order and a notice in the specified form.
- (3) A direction may only be given—
- (a) in the case of subsection (1)(a) or (b), within 12 months after the date of registration by the name;
  - (b) in the case of subsection (1)(c) or (d), within 5 years after the date of registration by the name; and
  - (c) in the case of subsection (1)(e), within 3 months after the date of registration by the name.

- (4) The Registrar may, before the end of the period specified in a notice given under subsection (1) or (2), by notice in writing extend the period.
- (5) If a company fails to comply with a direction within the period specified in the notice or, if the period is extended under subsection (4), within the extended period, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.

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

- (1) The Registrar may by notice in writing direct a company to change a name by which the company is registered under this Ordinance or any former Companies Ordinance if—
  - (a) the Registrar is of the opinion that the name gives so misleading an indication of the nature of the company's activities as to be likely to cause harm to the public; or
  - (b) the name is a name by which, as at the time of the registration, the company must not be registered because of section 95(1)(c) or (d).
- (2) The company must comply with a direction within the period of 6 weeks after the date of the direction or, if the period is extended under subsection (4), within the extended period.
- (3) A company may, within 3 weeks after the date of a direction, appeal to the Administrative Appeals Board against the direction.
- (4) The Registrar may, before the end of the period of 6 weeks after the date of the direction, by notice in writing extend the period.

- (5) If a company contravenes subsection (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.

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

- (1) This section applies if—
- (a) the Registrar directs a company to change a name under section 103(1) or (2) or 104(1) or, on or after the commencement date of the Companies (Amendment) Ordinance 2010 (12 of 2010) under section 22 or 22A of the predecessor Ordinance; and
  - (b) the company fails to comply with the direction—
    - (i) in the case of a direction under section 103(1) or (2), within the period specified in the notice or, if the period is extended under section 103(4), within the extended period;
    - (ii) in the case of a direction under section 104(1), within the relevant period specified in section 104(2);
    - (iii) in the case of a direction under section 22(2), (3A), (3B) or (4) of the predecessor Ordinance, within the period specified by the Registrar or, if the period is extended under section 22(5) of that Ordinance, within the extended period; or
    - (iv) in the case of a direction under section 22A(1) or (1A) of the predecessor Ordinance, within the period specified in section 22A(2) of that Ordinance or, if a period is specified by the court under section 22A(3) of that Ordinance for the direction, within the period specified by the court.

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- (2) Without limiting section 103(5) or 104(5), or section 22(6) or 22A(4) of the predecessor Ordinance (as the case may be), the Registrar may change the name to—
  - (a) in the case of an English name, a name that consists of the words “Company Registration Number” as its prefix, followed by the registration number of the company as stated in the certificate of incorporation;
  - (b) in the case of a Chinese name, a name that consists of the characters “公司註冊編號” as its prefix, followed by the registration number of the company as stated in the certificate of incorporation; or
  - (c) in the case of a name consisting of both an English name and a Chinese name—
    - (i) an English name that consists of the words “Company Registration Number” as its prefix, followed by the registration number of the company as stated in the certificate of incorporation; and
    - (ii) a Chinese name that consists of the characters “公司註冊編號” as its prefix, followed by the registration number of the company as stated in the certificate of incorporation.
- (3) The Registrar must enter the new name in the Companies Register in place of the former name.
- (4) The change of name has effect from the date on which the new name is entered in the Companies Register.
- (5) Within 30 days after the date of entering the new name in the Companies Register, the Registrar—
  - (a) must by notice in writing notify the company of—
    - (i) the fact that a name of the company has been changed;
    - (ii) the new name; and

- (iii) the date on which the change takes effect under subsection (4); and
  - (b) must by notice in the Gazette notify that fact, the new name and that date.
- (6) A change of name under this section does not affect any rights or obligations of the company or render defective any legal proceedings by or against it. Any legal proceedings that could have been commenced or continued by or against it by its former name may be commenced or continued by or against it by its new name.

#### **Subdivision 4**

#### **Supplementary Provision**

#### **106. Determining whether name is same as or similar to another name**

- (1) This section applies in determining—
  - (a) whether a name is the same as another name for the purposes of section 95(1)(a) or (b) or (2)(c) or 103(1)(a) or (b); or
  - (b) whether a name is too like another name for the purposes of section 103(1)(a) or (b).
- (2) If the definite article is the first word of the name, the definite article must be disregarded.
- (3) If any of the words, expressions or characters specified in subsection (4), or an abbreviation of any of them, appears at the end of the name, the word, expression, character or abbreviation must be disregarded.
- (4) The words, expressions or characters are—
  - (a) “company”;
  - (b) “and company”;
  - (c) “company limited”;

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- (d) “and company limited”;
  - (e) “limited”;
  - (f) “unlimited”;
  - (g) “public limited company”;
  - (h) “公司”;
  - (i) “有限公司”;
  - (j) “無限公司”;
  - (k) “公眾有限公司”.
- (5) The following must be disregarded—
- (a) type or case of letters;
  - (b) spaces between letters;
  - (c) accent marks;
  - (d) punctuation marks.
- (6) The following expressions are to be regarded as the same—
- (a) “and” and “&”;
  - (b) “Hong Kong”, “Hongkong” and “HK”;
  - (c) “Far East” and “FE”.
- (7) A Chinese character is to be regarded as the same as another Chinese character if the Registrar is satisfied, having regard to the usage of the 2 characters in Hong Kong, that the 2 characters can reasonably be used interchangeably.

## **Division 4**

### **Membership**

#### **107. Members of company**

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

#### **108. Members of holding company**

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

purpose of a transaction entered into by it in the ordinary course of a business (including the lending of money).

- (4) Subsection (1) does not prevent a body corporate that was, on 31 August 1984, already a member of a holding company of the body corporate from continuing to be such a member.
- (5) Subsection (1) does not prevent a company that on the date it becomes a subsidiary of another company is a member of that other company, from continuing to be such a member.
- (6) Subsection (1) does not prevent a body corporate from becoming a member of a holding company of the body corporate, or prevent an allotment to a body corporate of shares in a holding company of the body corporate, by virtue of the exercise by the body corporate of any rights of conversion—
  - (a) attached to any shares in the holding company held by the body corporate on 31 August 1984; or
  - (b) under any debentures of the holding company held by the body corporate on 31 August 1984.
- (7) If a body corporate is a member of a holding company of the body corporate, subsection (1) does not prevent the body corporate from accepting or holding further shares in the holding company if those shares are allotted to the body corporate as fully paid up as a consequence of a capitalization of reserves or profits by the holding company.
- (8) If a company makes an offer of shares to its members, the company—
  - (a) may sell, on behalf of any of its subsidiaries, any such shares that the subsidiary could, but for this section, have taken by virtue of shares in the company that are already held by the subsidiary; and

- (b) may pay to the subsidiary the proceeds of the sale.
- (9) Even though a body corporate is a member of a holding company of the body corporate, it has no right to vote at—
  - (a) meetings of the holding company; or
  - (b) meetings of any class of members of the holding company.
- (10) Subsection (9) does not apply if the body corporate is such a member in the circumstances described in subsection (2).
- (11) In this section, a reference to a body corporate includes a nominee for the body corporate.
- (12) In this section, a reference to shares, in relation to a holding company that is a company limited by guarantee or an unlimited company, includes the interest of the company's members, whatever the form of the interest and whether or not the company has a share capital.

**109. Notifying Registrar of increase in number of members of company limited by guarantee**

- (1) If a company limited by guarantee increases the number of its members beyond the registered number, the company must, within 14 days after the increase is resolved by the company or takes place (whichever is the earlier), deliver to the Registrar for registration a notice of the increase in the specified form.
- (2) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (3) In this section—

*registered number* (註冊人數) means—

- (a) the number of members with which the company proposes to register, whether contained in the incorporation form for the purposes of section 1(e) of Schedule 2 or stated in the articles under section 10(2) of the predecessor Ordinance; or
- (b) the increased number of the company's members last notified to the Registrar under subsection (1).

## **Division 5**

### **Capacity and Powers of Company**

#### **110. Company's capacity etc.**

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

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

#### **111. Company's exercise of powers limited by articles**

- (1) If the objects of a company are stated in its articles, the company must not do any act that it is not authorized to do by its articles.
- (2) If any power of a company is expressly modified or excluded by its articles, the company must not exercise the power contrary to that modification or exclusion.

- (3) A member of a company may bring proceedings to restrain the company from doing any act in contravention of subsection (1) or (2).
- (4) Proceedings must not be brought under subsection (3) in respect of any act to be done in fulfilment of a legal obligation arising from a previous act of the company.
- (5) An act by a company (including a transfer of property to or by the company) is not invalid only because the company does the act in contravention of subsection (1) or (2).

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

- (1) Subject to section 114, in favour of a person dealing with a company in good faith, the power of the company's directors to bind the company, or authorize others to do so, is to be regarded as free of any limitation under any relevant document of the company.
- (2) For the purposes of subsection (1)—
  - (a) a person deals with a company if the person is a party to any transaction or any other act to which the company is a party;
  - (b) a person dealing with a company is presumed, unless the contrary is proved, to have acted in good faith;
  - (c) a person dealing with a company is not to be regarded as acting in bad faith by reason only of the person's knowing that an act is beyond the directors' powers under any relevant document of the company; and
  - (d) a person dealing with a company is not required to inquire as to the limitations on the power of the company's directors to bind the company or authorize others to do so.

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- (3) This section does not affect any right of a member of the company to bring proceedings to restrain the doing of an act that is beyond the directors' powers.
- (4) Proceedings must not be brought under subsection (3) in respect of any act to be done in fulfilment of a legal obligation arising from a previous act of the company.
- (5) This section does not affect any liability incurred by the directors, or any other person, by reason of the directors' exceeding their powers.
- (6) In this section—  
*relevant document* (有關文件), in relation to a company, means—
  - (a) the company's articles;
  - (b) any resolutions of the company or of any class of members of the company; or
  - (c) any agreements between the members, or members of any class of members, of the company.

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

- (1) This section applies if—
  - (a) a company enters into a transaction; and
  - (b) the transaction binds the company because the power of the directors to bind the company, or authorize others to do so, is to be regarded under section 112 as free of any limitation under any relevant document of the company.
- (2) The transaction is voidable at the instance of the company if the parties to the transaction include—
  - (a) a director of the company or of a holding company of the company; or
  - (b) an entity connected with such a director.

- (3) The transaction ceases to be voidable if—
  - (a) restitution of any money or other asset that was the subject matter of the transaction is no longer possible;
  - (b) the company is indemnified for any loss or damage resulting from the transaction;
  - (c) a person who is not a party to the transaction has acquired rights in good faith and for value, and without actual notice of the directors' exceeding their powers, and those rights would be affected by the avoidance of the transaction; or
  - (d) the transaction is affirmed by the company.
- (4) Whether or not the transaction is avoided under subsection (2), any party to the transaction falling within subsection (2)(a) or (b) is liable, and any director of the company who has authorized the transaction is liable, to—
  - (a) account to the company for any gain that the party or director has directly or indirectly made from the transaction; and
  - (b) indemnify the company against any loss or damage resulting from the transaction.
- (5) A person who is not a director of the company is not liable under subsection (4) if the person shows that, at the time of the transaction, the person did not know that the directors were exceeding their powers.
- (6) Subject to subsection (7), this section does not affect the rights of any party to the transaction not falling within subsection (2)(a) or (b).
- (7) The Court may, on application by the company or a party covered by subsection (6), affirm, sever or set aside the transaction on any terms it thinks just.

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- (8) This section does not exclude the operation of any other Ordinance or rule of law by which the transaction may be called in question or any liability to the company may arise.
- (9) In subsection (2)(b), the reference to an entity connected with a director has the meaning given by Part 11 (see section 477).
- (10) In this section—  
*transaction* (交易) includes any act.

**114. Section 112 not to apply to certain cases**

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

- (a) a person knew that the company was an exempted company;
- (b) a person knew that the act was not permitted by any relevant document of the company; or
- (c) a person knew that the act was beyond the powers of the directors,

lies on the person who asserts that fact.

(4) In this section—

*exempted company* (獲豁免公司) means the company to which a licence under section 98 relates;

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

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

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

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

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

## **Division 6**

### **Contracts of Company**

**116. Contracts made by or on behalf of company**

(1) This section applies to—

- (a) a contract that would be required by law to be in writing and under seal if made between natural persons;
  - (b) a contract that would be required by law to be in writing, and to be signed by the parties to the contract, if made between natural persons; and
  - (c) a contract that, though made orally and not in writing, would by law be valid if made between natural persons.
- (2) A contract specified in subsection (1)(a) may be made by a company—
  - (a) in writing under the company's common seal (if any);  
or
  - (b) in writing executed in accordance with section 122(2) and expressed (in whatever words) to be executed by the company.
- (3) A contract specified in subsection (1)(b) may be made on behalf of a company in writing signed by any person acting with the company's authority (whether express or implied).
- (4) A contract specified in subsection (1)(c) may be made on behalf of a company orally by any person acting with the company's authority (whether express or implied).
- (5) A contract made in accordance with this section—
  - (a) is effective in law; and
  - (b) binds the company and its successors and all other parties to the contract.
- (6) A contract made in accordance with this section may be varied or discharged in the same manner in which it is authorized by this section to be made.

**117. Contracts made before company's incorporation**

- (1) This section applies if a contract purports to have been made in the name or on behalf of a company before the company was incorporated.
- (2) Subject to any express agreement to the contrary—
  - (a) the contract has effect as a contract entered into by the person purporting to act for the company or as an agent for the company; and
  - (b) the person is personally liable on the contract and is entitled to enforce the contract.
- (3) After incorporation, the company may ratify the contract to the same extent as if—
  - (a) the company had already been incorporated when the contract was entered into; and
  - (b) the contract had been entered into on the company's behalf by an agent acting without the company's authority.
- (4) Despite subsection (2)(b), if the contract is ratified by the company, then on and after the ratification, the liability of the person mentioned in that subsection is not greater than the liability that the person would have incurred if the person had entered into the contract after the company's incorporation as an agent acting without the company's authority.

**118. Bills of exchange and promissory notes**

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

## **Division 7**

### **Execution of Documents**

#### **Subdivision 1**

#### **Company Seal**

##### **119. Company may have common seal etc.**

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

##### **120. Official seal for use abroad**

- (1) A company with a common seal may have an official seal for use outside Hong Kong.
- (2) Such an official seal must be a replica of the company's common seal, but have engraved on it in legible form the name of every place where it is to be used.
- (3) A company with an official seal for use in a place may, by writing under its common seal, authorize any person appointed for the purpose to affix, in that place, the official seal to any deed or any other document to which the company is a party.

Part 3—Division 7—Subdivision 1  
Clause 121

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- (4) As between a company and any person dealing with an executing agent of the company, the authority of the agent continues—
  - (a) if the authorization mentions a period during which the authority is to continue, until the end of the period; or
  - (b) if the authorization does not mention such a period, until a notice of revocation or termination of the agent’s authority has been given to the person.
- (5) An executing agent affixing an official seal must, on the deed or other document to which the seal is affixed, certify in writing the date on which, and the place at which, the seal is so affixed.
- (6) A deed or other document to which an official seal is affixed binds the company as if it had been executed under the company’s common seal.
- (7) In this section—

*executing agent* (簽立代理人), in relation to a company, means a person authorized by the company under subsection (3).

**121. Official seal for sealing share certificates etc.**

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

- (a) any instrument constituting or regulating the company;  
or
- (b) any instrument, made before that date, relating to securities or documents sealed with the seal.

## **Subdivision 2**

### **Execution Requirements**

#### **122. Execution of documents by company**

- (1) A company may execute a document under its common seal.
- (2) A company may also execute a document—
  - (a) in the case of a company with only one director, by having it signed by the director on the company's behalf; or
  - (b) in the case of a company with 2 or more directors, by having it signed on the company's behalf by—
    - (i) the 2 directors or any 2 of the directors; or
    - (ii) any of the directors and the company secretary of the company.
- (3) For the purposes of subsection (2), if a person is to sign a document on behalf of 2 or more companies, the person must sign the document separately in each capacity.
- (4) A document signed in accordance with subsection (2) and expressed (in whatever words) to be executed by the company has effect as if the document had been executed under the company's common seal.
- (5) In favour of a person specified in subsection (6), a document is to be regarded as having been executed by a company if the document purports to have been signed in accordance with subsection (2).

## Part 3—Division 7—Subdivision 2

Clause 123

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- (6) The person is a purchaser in good faith for valuable consideration and includes—
  - (a) a lessee;
  - (b) a mortgagee; or
  - (c) any other person who for valuable consideration acquires the property.
- (7) This section also applies to a document that is executed, or purports to be executed, by a company in the name of or on behalf of another person whether or not that other person is also a company.

**123. Execution of deeds by company**

- (1) A company may execute a document as a deed by—
  - (a) executing it in accordance with section 122;
  - (b) having it expressed (in whatever words) to be executed by the company as a deed; and
  - (c) delivering it as a deed.
- (2) For the purposes of subsection (1)(c), a document is presumed, unless the contrary is proved, to be delivered as a deed on its being executed in accordance with section 122.
- (3) If there is any conflict or inconsistency between this section and the provisions of any other Ordinance, this section prevails over those provisions to the extent of the conflict or inconsistency.

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

- (1) A company may, either generally or in respect of any specific matter, by an instrument executed as a deed, empower any person as its attorney to execute a deed or any other document on its behalf in Hong Kong or elsewhere.

- (2) A deed or any other document executed by an attorney on behalf of the company binds the company and has effect as if it were executed by the company.
- (3) This section does not affect the operation of any other Ordinance as to the execution of powers of attorney.

## **Division 8**

### **Re-registration of Unlimited Company as Company Limited by Shares**

#### **125. Unlimited company may apply for re-registration as company limited by shares**

- (1) A company registered as an unlimited company on or after 31 August 1984 may be re-registered as a company limited by shares if the company—
  - (a) passes a special resolution specified in subsection (2); and
  - (b) delivers to the Registrar for registration an application in accordance with section 126.
- (2) The special resolution—
  - (a) must resolve that the company is to be re-registered as a company limited by shares;
  - (b) must state the manner in which the liability of the members is to be limited on the re-registration;
  - (c) must provide for the alterations to the company's articles that are necessary to bring the articles into conformity with the requirements of this Ordinance in respect of the articles of a company to be formed under this Ordinance as a company limited by shares;
  - (d) must contain a statement specified in subsection (3); and

- (e) may state the maximum number of shares that the company may issue.
- (3) The statement—
- (a) must state the total number of shares in the company issued before the re-registration, and the total number of shares that the company proposes to issue on the re-registration;
  - (b) must state the total amount of share capital subscribed by its members before the re-registration, and the total amount of share capital to be subscribed by its members on the re-registration;
  - (c) must state the amount to be paid up or to be regarded as paid up, and the amount to remain unpaid or to be regarded as remaining unpaid, on the total number of shares issued before the re-registration, and on the total number of shares that the company proposes to issue on the re-registration;
  - (d) if the share capital is to be divided into different classes of shares on the re-registration, must also state the classes and, for each class—
    - (i) the particulars specified in subsection (5);
    - (ii) the total number of shares in that class issued before the re-registration, and the total number of shares in that class that the company proposes to issue on the re-registration;
    - (iii) the total amount of share capital in that class subscribed by its members before the re-registration, and the total amount of share capital in that class to be subscribed by its members on the re-registration; and
    - (iv) the amount to be paid up or to be regarded as paid up, and the amount to remain unpaid or to be regarded as remaining unpaid, on the total

number of shares in that class issued before the re-registration, and on the total number of shares in that class that the company proposes to issue on the re-registration; and

- (e) must state, in respect of each member—
  - (i) the number of shares that the company issued to the member before the re-registration, and the number of shares that the company proposes to issue to the member on the re-registration; and
  - (ii) the total amount of share capital subscribed by the member before the re-registration, and the total amount of share capital to be subscribed by the member on the re-registration.
- (4) If the shares proposed to be issued to a member on the re-registration belong to 2 or more classes, the information required under subsection (3)(e) must be stated in respect of each class.
- (5) The particulars for the purposes of subsection (3)(d) are—
  - (a) particulars of any voting rights attached to shares in the class, including rights that arise only in certain circumstances;
  - (b) particulars of any rights attached to shares in the class, as respects dividends, to participate in a distribution;
  - (c) particulars of any rights attached to shares in the class, as respects capital, to participate in a distribution (including on a winding up); and
  - (d) whether or not shares in the class are redeemable shares.

## **126. Application for re-registration**

- (1) An application under section 125(1)—

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

**127. Issue of fresh certificate of incorporation**

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

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

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