

## **Part 4**

### **Share Capital**

#### **Division 1**

##### **Nature of Shares**

###### **129. Nature and transferability of shares**

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

###### **130. No nominal value**

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

**Note—**

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

###### **131. Numbering of shares**

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

- (b) all the issued shares of a particular class in a company are fully paid up and rank equally for all purposes, none of those shares is required to have a distinguishing number as long as it remains fully paid up and ranks equally for all purposes with all shares of the same class for the time being issued and fully paid up.
- (3) If new shares are issued by a company on the terms that, within a period not exceeding 12 months, they will rank equally for all purposes with all the existing shares, or with all the existing shares of a particular class, in the company, neither the new shares nor the corresponding existing shares are required to have distinguishing numbers as long as all of them are fully paid up and rank equally for all purposes.
- (4) If subsection (3) applies and the shares are not numbered, any share certificates for the new shares must be appropriately worded or en faced.

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

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

**133. Repeal of power to issue stock**

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

**Note—**

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

**134. Repeal of power to issue share warrants**

- (1) A company does not have power to issue a share warrant.

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

## **Division 2**

### **Allotment and Issue of Shares**

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

- (1) Except in accordance with section 136, the directors of a company must not exercise any power—
  - (a) to allot shares in the company; or
  - (b) to grant rights to subscribe for, or to convert any security into, shares in the company.
- (2) Subsection (1) does not apply to—
  - (a) an allotment of shares, or grant of rights, under an offer made to the members of the company in proportion to their shareholdings;

- (b) an allotment of shares, or grant of rights, on a bonus issue of shares to the members of the company in proportion to their shareholdings;
  - (c) an allotment to a founder member of a company of shares that the member, by signing the company's articles, has agreed to take; or
  - (d) an allotment of shares made in accordance with a grant of a right to subscribe for, or to convert any security into, shares if the right was granted in accordance with an approval under section 136.
- (3) For the purposes of subsection (2)(a), the offer is not required to be made to any member whose address is in a place where the offer is not permitted under the law of that place.
- (4) A director commits an offence if the director—
- (a) contravenes this section; or
  - (b) authorizes or permits, participates in, or fails to take all reasonable steps to prevent, a contravention of this section.
- (5) A director who commits an offence under subsection (4) is liable to a fine at level 5 and to imprisonment for 6 months.
- (6) Nothing in this section or section 136 affects the validity of an allotment or other transaction.

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

- (1) The directors of a company may exercise a power—
- (a) to allot shares in the company; or
  - (b) to grant rights to subscribe for, or to convert any security into, shares in the company,
- if the company gives approval in advance by resolution of the company.

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

**137. Return of allotment**

- (1) Within one month after an allotment of shares, a company must deliver to the Registrar for registration a return of the allotment that complies with subsection (2).
- (2) A return—
  - (a) must be in the specified form;
  - (b) must include a statement of capital as at the date of the allotment that complies with section 196;
  - (c) must state—
    - (i) the number of shares allotted;
    - (ii) the name and address of each allottee; and
    - (iii) if the company's issued share capital is increased as a result of the allotment, the amount of the increase;
  - (d) for any shares allotted for consideration (whether wholly or partly cash consideration or non-cash consideration)—
    - (i) must state the amount paid or regarded as paid on each share and the amount (if any) remaining unpaid or regarded as remaining unpaid on each share;
    - (ii) in the case of an allotment wholly or partly for non-cash consideration under an arrangement made under Division 2 of Part 13, must contain particulars of the order of the Court sanctioning the arrangement; and
    - (iii) in any other case of an allotment wholly or partly for non-cash consideration, must contain particulars of the contract for sale, or for services or other consideration in respect of which the shares were allotted; and

- (e) for any shares allotted credited as fully paid up (whether on or without a capitalization)—
  - (i) must state the amount regarded as paid on each share; and
  - (ii) must contain particulars of the resolution authorizing the capitalization or allotment.
- (3) If a company's issued share capital is increased as a result of an allotment, a fee prescribed by regulations made under section 897 is payable for registration of the return.
- (4) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (5) If a company fails to deliver a return that complies with subsection (2) within one month after an allotment of shares, the Court may, on application by the company or a responsible person of the company, extend the period for delivery of the return by a period determined by the Court.
- (6) The Court may extend a period under subsection (5) only if it is satisfied—
  - (a) that failure to deliver the return was accidental or due to inadvertence; or
  - (b) that it is just and equitable to extend the period.
- (7) If the Court extends the period for delivery of a return, any liability already incurred by the company or a responsible person of the company for an offence under subsection (4) is extinguished and subsection (1) has effect as if the reference to one month were a reference to the extended period.

**138. Registration of allotment**

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

**139. Issue of share certificate on allotment**

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

**140. Order of Court for delivery of share certificate**

- (1) If a company contravenes section 139 in relation to an allotment of shares, a person entitled to the certificates for the shares may serve a notice on the company requiring it to deliver the certificates to the person within 10 days.
- (2) If a company on which a notice has been served under subsection (1) does not deliver the certificates within 10 days after service of the notice, the person may apply to the Court for an order under subsection (3).

- (3) On an application under subsection (2), the Court may make an order directing the company and any officer of the company to deliver the certificates to the person within the period specified in the order.
- (4) The order may provide that all costs of and incidental to the application are to be borne by the company or by an officer of the company responsible for the contravention.

**141. Validation by Court of issue or allotment**

- (1) This section applies if a company purports to issue or allot shares and—
  - (a) the issue or allotment is or may be invalid for any reason; or
  - (b) the terms of the issue or allotment are inconsistent with or not authorized by—
    - (i) this Ordinance or any other Ordinance; or
    - (ii) the company's articles.
- (2) The company, a creditor of the company or a holder or mortgagee of any of the shares may apply to the Court for an order validating, or confirming the terms of, the issue or allotment.
- (3) The Court may make an order under subsection (2) if the Court is satisfied that it is just and equitable to do so.
- (4) On delivery of an office copy of the order to the Registrar, the order has effect from the time of the purported issue or allotment.

## Division 3

### Commissions and Expenses

#### 142. General prohibition of commissions, discounts and allowances

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

#### 143. Permitted commissions

- (1) If the conditions in subsection (2) are satisfied, a company may pay a commission to a person in consideration of the person—
  - (a) subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the company; or
  - (b) procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the company.
- (2) The conditions are that—

- (a) the payment of the commission is authorized by the company's articles;
  - (b) the commission paid or agreed to be paid does not exceed the lesser of—
    - (i) 10% of the price at which the shares are issued;
    - (ii) the amount or rate authorized by the articles;
  - (c) if any of the shares are offered to the public for subscription, the prospectus for the public offer discloses—
    - (i) the amount or rate of the commission; and
    - (ii) the number of shares (if any) that persons have agreed for a commission to subscribe for absolutely; and
  - (d) if the shares are not offered to the public for subscription, the company, before making the payment—
    - (i) delivers to the Registrar for registration a notice in the specified form disclosing the amount or rate of the commission and the number of shares (if any) that persons have agreed for a commission to subscribe for absolutely; and
    - (ii) discloses the amount or rate of the commission and the number of shares (if any) that persons have agreed for a commission to subscribe for absolutely in any circular or notice issued by the company inviting subscriptions for the shares.
- (3) A vendor to, promoter of, or other person who receives payment in money or shares from, a company may apply any part of the money or shares so received in payment of any commission the payment of which directly by the company would be permitted by this section.

- (4) If a company contravenes the condition referred to in subsection (2)(d)(i), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

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

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

**Division 4**

**Transfer and Transmission of Shares**

**Subdivision 1**

**Transfer of Shares**

**145. Requirement for instrument of transfer**

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

**146. Registration of transfer or refusal of registration**

- (1) The transferee or transferor of shares in a company may lodge the transfer with the company.
- (2) Within 2 months after the transfer is lodged, the company must either—
  - (a) register the transfer; or
  - (b) send the transferee and the transferor notice of refusal to register the transfer.
- (3) If a company refuses registration, the transferee or transferor may request a statement of the reasons for the refusal.
- (4) If a request is made under subsection (3), the company must, within 28 days after receiving the request—
  - (a) send the person who made the request a statement of the reasons; or
  - (b) register the transfer.
- (5) If a company contravenes subsection (2) or (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

**147. Order of Court for registration**

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

Part 4—Division 4—Subdivision 1

Clause 148

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**148. Transfer by personal representative**

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

**149. Certification of transfer**

- (1) The certification by a company of an instrument of transfer of shares in the company—
  - (a) is a representation by the company to any person acting on the faith of the certification that documents have been produced to the company that evidence title to the shares in the transferor named in the instrument; and
  - (b) is not a representation that the transferor has any title to the shares.
- (2) If a person acts on the faith of a false certification by a company made negligently, the company is under the same liability to the person as if the certification had been made fraudulently.
- (3) For the purposes of this section, an instrument of transfer is certified by a company if it bears—
  - (a) the words “certificate lodged”, or words to the same effect, in English or Chinese; and
  - (b) under or adjacent to those words, the signature or initials of a person having the actual or apparent authority to certify transfers on behalf of the company.
- (4) Unless the contrary is proved, a signature or initials appearing on an instrument of transfer as referred to in subsection (3)(b) must be regarded—

- (a) as the signature or initials of the person whose signature or initials they purport to be; and
- (b) as having been placed on the instrument by that person or by another person who has the actual or apparent authority to use the signature or initials for the purpose of certifying transfers on behalf of the company.

**150. Issue of share certificate on transfer**

- (1) Within the period specified in subsection (2), a company must complete the certificates for any of its shares that are transferred and have the certificates ready for delivery.
- (2) The period is—
  - (a) for a private company, 2 months after the day on which the transfer is lodged with the company;
  - (b) for any other company, 10 business days after the day on which the transfer is lodged with the company.
- (3) Subsection (1) does not apply to a transfer if—
  - (a) the conditions of issue of the shares provide otherwise;
  - (b) stamp duty has not been paid in respect of the transfer;
  - (c) the transfer is invalid; or
  - (d) the company, being entitled to do so, refuses to register the transfer.
- (4) If a company contravenes this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (5) In this section—

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

**151. Order of Court for delivery of share certificate**

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

**152. Compensation regarding forged share transfers**

- (1) A company may—
  - (a) pay compensation to a person for loss arising from a transfer of shares in the company under a forged transfer or a transfer under a forged power of attorney;
  - (b) provide, by insurance, reservation of capital or accumulation of income, a fund to meet claims for compensation;
  - (c) borrow on the security of its property for the purpose of paying compensation; and

- (d) impose any reasonable restrictions on the transfer of its shares or with respect to powers of attorney for the transfer of its shares that the company considers necessary to guard against losses arising from forgery.
- (2) A company that pays compensation to a person under this section has the same rights and remedies against the person liable for the loss as the person compensated would have had.
- (3) If the shares in a company have, by amalgamation or otherwise, become shares in another company, the other company has the same powers under this section as the first company would have had if it had continued.

## **Subdivision 2**

### **Transmission of Shares by Operation of Law**

#### **153. Registration or refusal of registration**

- (1) This section applies if the right to shares is transmitted to a person by operation of law and the person notifies the company in writing that the person wishes to be registered as a member of the company in respect of the shares.
- (2) Within 2 months after receiving the notification, the company must either—
  - (a) register the person as a member of the company in respect of the shares; or
  - (b) send the person notice of refusal of registration.
- (3) If a company refuses registration, the person may request a statement of the reasons for the refusal.
- (4) If a person makes a request under subsection (3), the company must, within 28 days after receiving the request—
  - (a) send the person a statement of the reasons; or

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

**154. Order of Court for registration**

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

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

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

**Note—**

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

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

### Subdivision 3

#### General

#### 156. Evidence of grant of probate etc.

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

### Division 5

#### Replacement of Listed Companies' Lost Share Certificates

#### 157. Interpretation

In this Division—

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

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

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

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

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

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

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

### **158. Application for new certificate**

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

**159. Publication requirements**

- (1) A listed company that intends to issue a new certificate on an application under section 158 must publish a notice in the specified form in accordance with this section.
- (2) The notice must be published—
  - (a) on the company’s website; and
  - (b) in the Gazette if—
    - (i) the eligible person making the application is not the registered holder of the shares or does not have the registered holder’s consent to make the application; or
    - (ii) the latest value of the shares exceeds \$200,000.
- (3) The notice must be published in the Gazette under subsection (2)(b) within one month after it is first published on the company’s website under subsection (2)(a).
- (4) Before publishing a notice under this section, the company must—
  - (a) deliver a copy of the notice to the recognized stock market concerned; and
  - (b) obtain a certificate from an authorized officer of that stock market that the copy is being exhibited in accordance with subsection (5).
- (5) A recognized stock market must exhibit a copy of a notice received under subsection (4)(a) in a conspicuous place on the premises on which the stock market operates for a period of at least—
  - (a) one month, for a notice published under subsection (2)(a); or
  - (b) 3 months, for a notice published under subsection (2)(b).

- (6) If the application was made by an eligible person who is not the registered holder of the shares and does not have the registered holder's consent to make the application, the company—
- (a) must serve a copy of the notice under this section on the registered holder by sending it by registered post to the registered holder's last address appearing in the register of members of the company; and
  - (b) must not publish the notice under this section until at least 3 months after the day on which the copy was served.

- (7) In this section—

*latest value* (最新價值) of shares means the value of the shares calculated at the last recorded price paid for shares of the same class in the company at the recognized stock market prior to the making of the application for the new certificate;

*website* (網站), in relation to a company, means the website on which the company is required, by the listing rules applicable to the recognized stock market concerned, to publish announcements, notices or other documents.

## **160. Issue of new certificate**

- (1) A listed company may issue a new certificate on an application under section 158 if—
- (a) the company has published a notice under section 159 and—
    - (i) if the notice is published under section 159(2)(a), the notice has been made available on the company's website throughout a period of at least one month; or

- (ii) if the notice is published under section 159(2)(b), the notice has been made available on the company's website throughout a period of at least 3 months and published in the Gazette in accordance with section 159(3);
  - (b) the company has not received notice of any other claim in respect of the shares; and
  - (c) in the case of an application by an eligible person who is not the registered holder of the shares—
    - (i) an instrument of transfer in respect of the shares has been delivered to the company under section 145; or
    - (ii) if the application was made without the registered holder's consent, the company has caused an instrument of transfer to be executed on behalf of the registered holder by a person appointed by the company and executed by the applicant on the applicant's own behalf.
- (2) An instrument of transfer referred to in subsection (1)(c)(ii) is to be regarded as an instrument of transfer duly delivered to the company under section 145.
- (3) A listed company that issues a new certificate must without delay—
- (a) cancel the original certificate; and
  - (b) record the issue of the new certificate and cancellation of the original certificate in the register of its members.
- (4) For the purposes of subsection (1)(a), a failure to make a notice available on a company's website throughout a period mentioned in that subsection is to be disregarded if—
- (a) the notice is made available on the website for part of that period; and

(b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.

(5) In this section—

*website* (網站), in relation to a company, has the meaning given by section 159(7).

### **161. Public notice of issue of new certificate**

- (1) A listed company that issues a new certificate must, within 14 days after the date of issue—
  - (a) publish in the Gazette a notice in the specified form of the issue of the new certificate and cancellation of the original certificate; and
  - (b) deliver a copy of the notice to the recognized stock market concerned.
- (2) If a listed company contravenes this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

### **162. Orders of Court for rectification of the register**

- (1) Subject to this section, if a listed company issues a new certificate in respect of shares, nothing in this Division affects the power of the Court to make an order under section 624 in favour of a person claiming to be entitled to the shares as against—
  - (a) the person to whom the new certificate is issued; or
  - (b) a person whose name is subsequently entered in the register of members of the company in respect of the shares.

- (2) The Court must not make an order under section 624 as against a person referred to in subsection (1)(b) if that person is a genuine purchaser of the shares.
- (3) If the Court makes an order under section 624 as against the person to whom the new certificate is issued or a person whose name is subsequently entered in the register of members of the company in respect of the shares—
  - (a) the Court must not order the payment of damages by the company; and
  - (b) the company is not otherwise liable for any damage caused by the issue of the new certificate or cancellation of the original certificate in accordance with this Division.

**Note—**

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

**163. Liability if rectification cannot be ordered**

- (1) This section applies if an order cannot be made under section 624 because of section 162(2).
- (2) The company is not liable for any damage suffered by the claimant because of the issue of the new certificate or cancellation of the original certificate, unless the company has acted deceitfully.
- (3) If the genuine purchaser purchased the shares from the person to whom the new certificate is issued, the person to whom the new certificate is issued is liable to the claimant for the value of the shares as at the date of purchase.
- (4) If the genuine purchaser purchased the shares from a person whose name was subsequently entered in the register of members of the company in respect of the shares, the person to whom the new certificate is issued and any person whose name was subsequently entered in the register

in respect of the shares (other than a genuine purchaser) are jointly and severally liable to the claimant for the value of the shares as at the date the shares were purchased by the genuine purchaser.

(5) In this section—

*claimant* (申索人) means the person in whose favour an order could have been made under section 624 but for section 162(2).

#### **164. Applicant to pay expenses**

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

### **Division 6**

#### **Alteration of Share Capital**

#### **165. Permitted alteration of share capital**

- (1) A company may alter its share capital in any one or more of the ways set out in subsection (2).
- (2) The company may—
  - (a) increase its share capital by allotting and issuing new shares in accordance with this Part;
  - (b) increase its share capital without allotting and issuing new shares, if the funds or other assets for the increase are provided by the members of the company;
  - (c) capitalize its profits, with or without allotting and issuing new shares;

- (d) allot and issue bonus shares with or without increasing its share capital;
  - (e) convert all or any of its shares into a larger or smaller number of shares;
  - (f) cancel shares—
    - (i) that, at the date the resolution for cancellation is passed, have not been taken or agreed to be taken by any person; or
    - (ii) that have been forfeited.
- (3) A company may alter its share capital as referred to in subsection (2)(e) or (f) only by resolution of the company.

**Note—**

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

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

**166. Notice of alteration of share capital**

- (1) Within one month after altering its share capital under section 165, a company must deliver a notice to the Registrar for registration in relation to the alteration of share capital.
- (2) The notice—
  - (a) must be in the specified form;
  - (b) if the company's issued share capital is increased by the alteration, must state the amount of the increase; and
  - (c) must include a statement of capital as at the date of the alteration that complies with section 196.
- (3) If the company's issued share capital is increased by the alteration, a fee prescribed by regulations made under section 897 is payable for registration of the notice.
- (4) A company is not required to deliver a notice under this section in relation to an alteration of share capital involving an allotment of shares.

**Note—**

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

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

**167. Redenomination of share capital**

- (1) A company may, by resolution of the company, convert its share capital or any class of shares from one currency to another currency. This is known as a redenomination.

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

**168. Notice of redenomination**

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

**169. Reconversion of stock into shares**

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

**Note—**

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

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

**170. Notice of reconversion**

- (1) Within one month after passing a resolution under section 169, a company must deliver a notice in the specified form to the Registrar for registration in relation to the reconversion of stock.
- (2) The notice must include a statement of capital as at the date of the reconversion that complies with section 196.
- (3) If a company contravenes this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

## **Division 7**

### **Classes of Shares and Class Rights**

#### **Subdivision 1**

#### **Companies having a Share Capital**

**171. Application of Subdivision**

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

**172. Rights attached to shares**

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

**173. Classes of shares**

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

**174. Description of shares of different classes**

- (1) A share certificate issued by a company that has different classes of shares must contain in a prominent position a statement—
  - (a) stating that the company's share capital is divided into different classes of shares; and
  - (b) specifying the voting rights attached to shares in each class.

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

### **175. Varying class rights**

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

**Note—**

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

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

#### **176. Notifying class members of variation**

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

**177. Disallowance or confirmation of variation by Court**

- (1) If the rights attached to shares in any class of shares in a company are varied, holders representing at least 10% of the total voting rights of holders of shares in the class may apply to the Court to have the variation disallowed.
- (2) An application must be made within 28 days after the date on which the variation is made.
- (3) An application may be made on behalf of the members entitled to apply by any one or more of them appointed in writing by all of them.
- (4) The following persons are entitled to be heard on an application—
  - (a) the applicant;
  - (b) any other person who appears to the Court to be interested in the application.
- (5) The Court may, by order, disallow the variation if it is satisfied that the variation would unfairly prejudice the members represented by the applicant.
- (6) If the Court is not so satisfied, it must, by order, confirm the variation.
- (7) Nothing in this section affects—
  - (a) the right of a member to petition the Court under section 713; or
  - (b) the Court's powers under section 714.

**178. Delivery of order of Court to Registrar**

- (1) If the Court makes an order under section 177 in relation to a company, the company must deliver a copy of the order to the Registrar within 14 days after it is made.

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

### **179. Notifying Registrar of variation**

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

## **Subdivision 2**

### **Companies without a Share Capital**

#### **180. Application of Subdivision**

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

**181. Rights of members**

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

**182. Classes of members**

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

**183. Varying class rights**

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

**Note—**

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

- (3) The consent required for the purposes of this section is—
  - (a) written consent of at least 75% of the members in the class; or
  - (b) a special resolution passed at a separate general meeting of the members in the class sanctioning the variation.

- (4) A variation takes effect—
  - (a) if no application is made under section 185 for it to be disallowed, at the end of the period in which applications may be made under that section; or
  - (b) if an application is made within that period, at the time the application is withdrawn or finally determined (unless the variation is disallowed).
- (5) Any amendment of a provision in a company's articles for the variation of the rights of a class of members, or the insertion of any such provision into the articles, is itself to be regarded as a variation of those rights.
- (6) Nothing in this section affects the Court's powers under sections 664, 665 and 714.

**184. Notifying class members of variation**

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

**185. Disallowance or confirmation of variation by Court**

- (1) If the rights of any class of members of a company that does not have a share capital are varied, members representing at least 10% of the members in the class may apply to the Court to have the variation disallowed.
- (2) An application must be made within 28 days after the date on which the variation is made.

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

**186. Delivery of order of Court to Registrar**

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

**187. Notifying Registrar of variation**

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

**Subdivision 3**

**General**

**188. Variation includes abrogation**

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

## Division 8

### Supplementary and Miscellaneous

#### Subdivision 1

#### Relief from Share Capital Requirements

#### 189. Interpretation

(1) In this Division—

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

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

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

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

*issuing company* (發行公司) means a company that issues shares;

*non-equity shares* (非權益股份) means shares in a company other than equity shares;

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

(2) In this Division—

(a) a reference to the acquisition by a company of shares includes the acquisition of shares by a nominee of the company;

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

### **190. Group reconstruction relief**

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

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

### **191. Merger relief**

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

- (3) If the arrangement also provides for the issue of any shares in the issuing company on terms that the consideration for those shares is to be provided—
- (a) by the issue or transfer to the issuing company of non-equity shares in the other company; or
  - (b) by the cancellation of any non-equity shares in the other company not held by the issuing company,
- any excess of the value of the non-equity shares acquired or cancelled under the arrangement over the subscribed capital of the other company attributable to those shares may be disregarded when recording as share capital of the issuing company the amount of consideration for the issue by the issuing company of its shares.
- (4) This section does not apply in a case falling within section 190.

**192. Merger relief: meaning of 90% equity holding**

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

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

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

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

**194. Regulations**

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

## **Subdivision 2**

### **Miscellaneous**

#### **195. Provision for different amounts to be paid on shares**

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

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

#### **196. Statement of capital**

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

- (ii) the total number of issued shares in the class;
  - (iii) the amount paid up or regarded as paid up and the amount (if any) remaining unpaid or regarded as remaining unpaid on the total number of issued shares in the class; and
  - (iv) the total amount of issued share capital of the class.
- (3) The particulars are—
- (a) particulars of any voting rights attached to shares in the class, including rights that arise only in certain circumstances;
  - (b) particulars of any rights attached to shares in the class, as respects dividends, to participate in a distribution;
  - (c) particulars of any rights attached to shares in the class, as respects capital, to participate in a distribution (including on a winding up); and
  - (d) whether or not shares in the class are redeemable shares.

**197. Notice of paid up capital**

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

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(3) In this section—

*official document* (正式文件) of a company, means a notice, circular, advertisement or other official publication of the company.

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