PART 13

ARRANGEMENTS, AMALGAMATION, AND COMPULSORY SHARE ACQUISITION IN TAKEOVER AND SHARE BUY-BACK

Division 1 – Preliminary

13.1 Interpretation

In this Part –

"offer period" (要約期), in relation to an offer, means the period within which the offer can be accepted.

13.2 Associate

(1) In this Part, a reference to an associate of an offeror or member, is –

(*a*) if the offeror or member is a natural person, a reference to –

(i) the offeror's or member's spouse;

(ii) any other person (whether of a different sex or the same sex) with whom the offeror or member lives as a couple in an enduring family relationship;

(iii) a child, step-child or adopted child of the offeror or member;

(iv) a child, step-child or adopted child of a person falling within subparagraph (ii) who –

(A) is not a child, step-child or adopted child of the offeror or member;

(B) lives with the offeror or member; and

(C) has not attained the age of 18;

(v) a parent of the offeror or member;

(vi) a body corporate in which the offeror or member is substantially interested; or

(vii) a person who is a party, or a nominee of a party, to an acquisition agreement with the offeror or member; or

(*b*) if the offeror or member is a body corporate, a reference to –

(i) a body corporate in the same group of companies as the offeror or member;

(ii) a body corporate in which the offeror or member is substantially interested; or

(iii) a person who is a party, or a nominee of a party, to an acquisition agreement with the offeror or member.

(2) For the purposes of subsection (1), an offeror or member is substantially interested in a body corporate if –

(*a*) the body corporate, or its directors or a majority of its directors, are accustomed to act in accordance with the directions or instructions of the offeror or member; or

(*b*) the offeror or member is entitled to exercise, or control the exercise of, more than 30% of the voting power at any general meeting of the body corporate.

(3) For the purposes of subsection (1), an agreement is an acquisition agreement if –

(*a*) it is an agreement for the acquisition of –

(i) the shares to which the takeover offer or general offer relates; or

(ii) an interest in those shares; and

(*b*) it includes provisions imposing obligations or restrictions on any of the parties to it with respect to the use, retention

or disposal of the party's interests in the shares acquired in pursuance of the agreement.

Division 2 – Arrangements and Compromises

13.3 Interpretation

(1) In this Division –

"arrangement" (安排) includes a reorganization of the company's share capital by the consolidation of shares of different classes, or by the division of shares into different classes, or both;

"company" (公司) means a company liable to be wound up under the Companies (Winding Up Provisions) Ordinance (Cap. 32).[1]

(2) In this Division, a reference to a company's articles, in the case of a company not having articles, is to be read as the instrument constituting or defining the constitution of the company.

13.4 Application

This Division applies if an arrangement or compromise is proposed to be entered into by a company with either or both of the following –

(*a*) the creditors, or any class of the creditors, of the company;

(*b*) the members, or any class of the members, of the company.

13.5 Court may order meeting of creditors or members to be summoned

(1) The Court of First Instance may, on application made for the purposes of this subsection, order a meeting specified in subsection (2)(*a*), or a meeting specified in subsection (2)(*b*), or both (as the case may be) to be summoned in any manner that the Court directs.

(2) The meeting is –

[1] Provisional title of Cap. 32 after it is consequentially amended by the new Companies Ordinance. It is subject to change.

(*a*) if the arrangement or compromise is proposed to be entered into –

(i) with the creditors of the company, a meeting of those creditors; or

(ii) with a class of the creditors of the company, a meeting of that class of creditors; and

(*b*) if the arrangement or compromise is proposed to be entered into –

(i) with the members of the company, a meeting of those members; or

(ii) with a class of the members of the company, a meeting of that class of members.

(3) Subject to subsection (4), an application for the purposes of subsection (1) may be made only by –

(*a*) in the case of a meeting of creditors, the company or any of the creditors;

(*b*) in the case of a meeting of a class of creditors, the company or any creditor of that class;

(*c*) in the case of a meeting of members, the company or any of the members; or

(*d*) in the case of a meeting of a class of members, the company or any member of that class.

(4) If the company is being wound up, an application for the purposes of subsection (1) may be made only by the liquidator.

(5) An application for the purposes of subsection (1) must be made in a summary way.

13.6 Explanatory statements to be issued or made available to creditors or members

(1) If a meeting is summoned under section 13.5 –

(*a*) every notice summoning the meeting that is sent to a creditor or member must be accompanied by an explanatory statement complying with subsections (3) and (4); and

(*b*) every notice summoning the meeting that is given by advertisement –

(i) must include an explanatory statement complying with subsections (3) and (4); or

(ii) must state where and how a creditor or member entitled to attend the meeting may obtain a copy of the explanatory statement.

(2) If a notice given by advertisement states that a creditor or member entitled to attend the meeting may obtain a copy of an explanatory statement, the company must provide a copy of the statement, free of charge, to a creditor or member applying in the manner specified in the notice.

(3) An explanatory statement –

(*a*) must explain the effect of the arrangement or compromise; and

(*b*) must state –

(i) any material interests of the company's directors, whether as directors or as members or as creditors of the company or otherwise, under the arrangement or compromise; and

(ii) the effect of the arrangement or compromise on those interests, in so far as the effect is different from the effect on the like interests of other persons.

(4) If the arrangement or compromise affects the rights of the company's debenture holders, an explanatory statement must give the like

explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the directors.

(5) If subsection (1) or (2) is contravened, all of the following commit an offence –

(*a*) the company;

(*b*) every responsible person of the company;

(*c*) a liquidator of the company who authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention;

(*d*) a trustee of a deed for securing the issue of the company's debentures who authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention.

(6) A person who commits an offence under subsection (5) is liable to a fine at level 5.

(7) If a person is charged with an offence under subsection (5) for a contravention of subsection (1), it is a defence to establish that the contravention was due to the refusal of another person, who was a director of the company or a trustee for debenture holders of the company, to supply the necessary particulars of that other person's interests.

13.7 Directors and trustees must notify company of interests under arrangement or compromise etc.

(1) If a meeting is summoned under section 13.5, a director of the company, or a trustee for its debenture holders, must give notice to the company of any matter relating to the director or trustee that may be necessary for the purposes of section 13.6.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 5.

13.8 Court may sanction arrangement or compromise[2]

(1) This section applies if the creditors or the class of creditors, or the members or the class of members, or both, with whom the arrangement or compromise is proposed to be entered into, agree or agrees to the arrangement or compromise.

(2) For the purposes of subsection (1) –

(*a*) the creditors agree to the arrangement or compromise if, at a meeting of the creditors summoned under section 13.5, a majority in number representing at least 75% in value of the creditors present and voting, in person or by proxy, agree to the arrangement or compromise;

(*b*) a class of creditors agrees to the arrangement or compromise if, at a meeting of the class of creditors summoned under section 13.5, a majority in number representing at least 75% in value of the class of creditors present and voting, in person or by proxy, agree to the arrangement or compromise;

(*c*) the members agree to the arrangement or compromise if, at a meeting of the members summoned under section 13.5, a majority in number representing at least 75% of the voting rights of the members present and voting, in person or by proxy, agree to the arrangement or compromise; and

(*d*) a class of members agrees to the arrangement or compromise if, at a meeting of the class of members summoned under section 13.5, a majority in number representing at least 75% of the voting rights of the class

[2] The issue of whether an arrangement or compromise has to be approved by a "majority in number" (i.e. the "headcount" test) is being considered in the light of the feedback obtained during the first phase consultation.

of members present and voting, in person or by proxy, agree to the arrangement or compromise.

(3) The Court of First Instance may, on application made for the purposes of this subsection, sanction the arrangement or compromise.

(4) Subject to subsection (5), an application for the purposes of subsection (3) may be made only by –

(*a*) in the case of an arrangement or compromise proposed to be entered into with the creditors of a company, the company or any of the creditors;

(*b*) in the case of an arrangement or compromise proposed to be entered into with a class of creditors of a company, the company or any creditor of that class;

(*c*) in the case of an arrangement or compromise proposed to be entered into with the members of a company, the company or any of the members; or

(*d*) in the case of an arrangement or compromise proposed to be entered into with a class of members of a company, the company or any member of that class.

(5) If the company is being wound up, an application for the purposes of subsection (3) may be made only by the liquidator.

(6) An arrangement or compromise sanctioned by the Court of First Instance under subsection (3) is binding –

(*a*) on the company or, if the company is being wound up, on the liquidator and contributories of the company; and

(*b*) on the creditors or the class of creditors, or the members or the class of members, or both, with whom the arrangement or compromise is proposed to be entered into.

(7) An order made by the Court of First Instance under subsection (3) has no effect until an office copy of the order is registered by the Registrar under Part 2.

(8) If the order of the Court of First Instance amends the company's articles, or any resolution or agreement to which section 12.86 applies, the office copy of that order delivered to the Registrar for registration for the purposes of subsection (7) must be accompanied by those articles, or the resolution or agreement, as amended.

(9) If subsection (8) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.

13.9 Court's additional powers to facilitate reconstruction or amalgamation

(1) This section applies if –

(*a*) an application is made for the purposes of section 13.8(3) to sanction the arrangement or compromise; and

(*b*) it is shown to the Court of First Instance that –

(i) the arrangement or compromise is proposed for the purpose of, or in connection with, a scheme for the reconstruction of one or more companies, or for the amalgamation of 2 or more companies; and

(ii) under the scheme, the property or undertaking of any company concerned in the scheme, or any part of that property or undertaking, is to be transferred to another company.

(2) If the Court of First Instance sanctions the arrangement or compromise, it may, by the order or a subsequent order, make provision for any or all of the following –

(*a*) the transfer of the transferor's property, undertaking or liabilities, or any part of it or them, to the transferee;

(*b*) the allotting or appropriation by the transferee of any shares, debentures, policies, or other like interests in the

transferee which, under the arrangement or compromise, are to be allotted or appropriated by the transferee to or for any person;

(*c*) the continuation by or against the transferee of any legal proceedings pending by or against the transferor;

(*d*) the dissolution, without winding up, of the transferor;

(*e*) the provision to be made for any person, who within the time, and in the manner, that the Court directs, dissents from the arrangement or compromise;

(*f*) the transfer or allotting of any interest in property to any person concerned in the arrangement or compromise;

(*g*) any incidental, consequential and supplemental matters that are necessary to ensure that the reconstruction or amalgamation is fully and effectively carried out.

(3) If an order provides for the transfer of property under subsection (2) –

(*a*) the property is, by virtue of the order, transferred to, and vests in, the transferee; and

(*b*) where the order so directs, the property vests freed from any charge that is to cease to have effect by virtue of the arrangement or compromise.

(4) If an order provides for the transfer of liabilities under subsection (2), the liabilities are, by virtue of the order, transferred to, and become liabilities of, the transferee.

(5) If the Court of First Instance, by an order, makes provision for any matter under subsection (2), the order has no effect to the extent to which it purports to make the provision until an office copy of the order is registered by the Registrar under Part 2.

(6) If the order of the Court of First Instance amends the company's articles, or any resolution or agreement to which section 12.86 applies, the office

copy of that order delivered to the Registrar for registration for the purposes of subsection (5) must be accompanied by those articles, or the resolution or agreement, as amended.

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

(8) In this section –

"liabilities" (法律責任) includes –

(*a*) duties of a personal character and incapable of being assigned or performed vicariously under the law; and

(*b*) duties of any other description;

"property" (財產) includes –

(*a*) rights and powers of a personal character and incapable of being assigned or performed vicariously under the law; and

(*b*) rights and powers of any other description;

"transferee" (受讓人), in relation to an arrangement or compromise proposed for the purpose of a scheme of reconstruction or amalgamation, means the company to which another company's property, undertaking or liabilities, or any part of it or them, is to be transferred under the scheme;

"transferor" (出讓人), in relation to an arrangement or compromise proposed for the purpose of a scheme of reconstruction or amalgamation, means the company whose property, undertaking or liabilities, or any part of it or them, is to be transferred to another company under the scheme.

13.10 Company's articles to be accompanied by Court order

(1) Every copy of the company's articles issued by the company after an order is made for the purposes of section 13.8 or 13.9 must be accompanied by a copy of the order, unless the effect of the order, and the effect of the

arrangement or compromise to which the order relates, has been incorporated into the articles by alteration to those articles.

(2) If subsection (1) is contravened, the company, and every responsible person of the company, commits an offence, and each is liable to a fine at level 3.

Division 3 – Amalgamation of Companies within Group

13.11 Interpretation

(1) In this Division, a company is a wholly owned subsidiary of another company if it has no members except –

(*a*) that other company;

(*b*) a nominee of that other company;

(*c*) a wholly owned subsidiary of that other company; or

(*d*) a nominee of that subsidiary.

(2) A cancellation of shares under this Division is not a reduction of share capital for the purposes of Part 5.

(3) For the purposes of this Division, a resolution approving an amalgamation mentioned in section 13.13(1) or 13.14(1) is an amalgamation proposal that has been approved.

13.12 Solvency statement

(1) In this Division, a reference to a solvency statement made by the directors of an amalgamating company is a reference to a statement made before the time specified in subsection (2) that –

(*a*) in the directors' opinion –

(i) as at the date of the statement, there is no ground on which the amalgamating company could be found to be unable to pay its debts; and

(ii) the amalgamated company will be able to pay its debts as they fall due during the period of 12

months immediately after the date on which the amalgamation is to become effective; and

(*b*) as at the date of the statement, none of the following exists –

(i) any floating charge created by the amalgamating company;

(ii) any other security created by the amalgamating company over a class of assets, to any of which the security interest has not attached.

(2) The time is –

(*a*) if the amalgamation is to be approved by a resolution passed on a poll at a general meeting, the date of the meeting; or

(*b*) if the amalgamation is to be approved by a written resolution, the time when the resolution is circulated to the members.

(3) In forming an opinion for the purposes of subsection (1)(*a*)(ii), the directors must take into account all the liabilities of the amalgamated company (including contingent and prospective liabilities).

13.13 Vertical amalgamation

(1) A company ("amalgamating holding company"), and one or more of its wholly owned subsidiaries, may amalgamate, and continue, as one company if –

(*a*) the members of the amalgamating holding company approve the amalgamation on the terms specified in subsection (2); and

(*b*) the members of each of the amalgamating subsidiaries approve the amalgamation on the terms specified in subsection (2).

(2) The terms are –

(*a*) that the shares of each of the amalgamating subsidiaries will be cancelled without payment or other consideration;

(*b*) that the articles of the amalgamated company will be the same as the articles of the amalgamating holding company;

(*c*) that the directors of each amalgamating company –

(i) are satisfied that, as at the date of the solvency statement made by them, there is no ground on which the amalgamating company could be found to be unable to pay its debts; and

(ii) after taking into account all the liabilities of the amalgamated company (including contingent and prospective liabilities), are satisfied that the amalgamated company will be able to pay its debts as they fall due during the period of 12 months immediately after the date on which the amalgamation is to become effective;

(*d*) that the directors of each amalgamating company have confirmed that as at the date of the solvency statement made by them, none of the following exists –

(i) any floating charge created by the amalgamating company;

(ii) any other security created by the amalgamating company over a class of assets, to any of which the security interest has not attached;

(*e*) that the person or persons named in the resolution will be the director or directors of the amalgamated company.

(3) An approval for the purposes of subsection (1)(*a*) must be obtained by a special resolution of the company passed on a poll at a general meeting but not by a written resolution.

(4) An approval for the purposes of subsection (1)(*b*) must be obtained by a special resolution of the company.

(5) This section does not apply unless each amalgamating company is a company limited by shares.

13.14 Horizontal amalgamation

(1) Two or more of the wholly owned subsidiaries of a company may amalgamate, and continue, as one company if the members of each amalgamating company approve the amalgamation on the terms specified in subsection (2).

(2) The terms are –

(*a*) that the shares of all but one of the amalgamating companies will be cancelled without payment or other consideration;

(*b*) that the articles of the amalgamated company will be the same as the articles of the amalgamating company whose shares are not cancelled;

(*c*) that the directors of each amalgamating company –

(i) are satisfied that, as at the date of the solvency statement made by them, there is no ground on which the amalgamating company could be found to be unable to pay its debts; and

(ii) after taking into account all the liabilities of the amalgamated company (including contingent and prospective liabilities), are satisfied that the amalgamated company will be able to pay its debts as they fall due during the period of 12 months immediately after the date on which the amalgamation is to become effective;

(*d*) that the directors of each amalgamating company have confirmed that as at the date of the solvency statement made by them, none of the following exists –

(i) any floating charge created by the amalgamating company;

(ii) any other security created by the amalgamating company over a class of assets, to any of which the security interest has not attached;

(*e*) that the person named in the resolution will be the director of the amalgamated company.

(3) An approval for the purposes of subsection (1) must be obtained by a special resolution of the amalgamating company.

(4) This section does not apply unless each amalgamating company is a company limited by shares.

13.15 Directors of amalgamating company must notify secured creditors of proposed amalgamation

(1) The directors of each amalgamating company under section 13.13 or 13.14 must comply with subsection (2) –

(*a*) if the amalgamation is to be approved by a resolution passed on a poll at a general meeting, at least 21 days before the date of the meeting; or

(*b*) if the amalgamation is to be approved by a written resolution, at the same time as the resolution is circulated to the members.

(2) Those directors –

(*a*) must give written notice of the proposed amalgamation to every secured creditor of the amalgamating company; and

(*b*) must publish notice of the proposed amalgamation in an English language newspaper, and a Chinese language newspaper, circulating in Hong Kong.

(3) If the directors of an amalgamating company contravene subsection (1), each of them commits an offence and is liable to a fine at level 3.

13.16 Director of amalgamating company must issue certificate on solvency statement

(1) Every director of the amalgamating company who votes in favour of making a solvency statement must issue a certificate –

(*a*) stating –

(i) that, in the director's opinion, the conditions specified in section 13.12(1)(*a*)(i) and (ii) are satisfied; and

(ii) the grounds for that opinion; and

(*b*) stating that the condition specified in section 13.12(1)(*b*) is satisfied.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 4.

(3) A director of the amalgamating company commits an offence if the director votes in favour of making a solvency statement, or otherwise causes a solvency statement to be made, without having reasonable grounds for the opinion and fact expressed in the statement.

(4) A person who commits an offence under subsection (3) is liable –

(*a*) on conviction on indictment to a fine of $150,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

13.17 Registration of amalgamation

(1) For the purpose of effecting an amalgamation, the following documents must be delivered to the Registrar for registration within 14 days after the approval of the amalgamation proposal –

(*a*) the amalgamation proposal that has been approved;

(*b*) every certificate required by section 13.16(1);

(*c*) a certificate issued by the directors of each amalgamating company stating that the amalgamation has been approved in accordance with –

(i) this Division; and

(ii) the articles of the amalgamating company;

(*d*) a notice of appointment of the directors of the amalgamated company;

(*e*) a certificate issued by the directors, or the proposed directors, of the amalgamated company stating that where the proportion of the claims of the amalgamated company's creditors in relation to the value of that company's assets is greater than the proportion of the claims of an amalgamating company's creditors in relation to the value of that company, no creditor will be prejudiced by that fact.

(2) A document mentioned in subsection (1)(*a*), (*b*), (*c*), (*d*) or (*e*) must be in the specified form.

(3) As soon as practicable after the documents mentioned in subsection (1) are registered, the Registrar must issue a certificate of amalgamation.

(4) A certificate of amalgamation may be issued in any form that the Registrar thinks fit.

13.18 Effective date of amalgamation

(1) A certificate of amalgamation issued under section 13.17(3) must specify a date as the effective date of the amalgamation.

(2) If an amalgamation proposal specifies a date on which the amalgamation is intended to become effective, and that date is the same as or later than the date on which the Registrar registers the documents mentioned in section 13.17(1), that date must be specified in the certificate of amalgamation as the effective date of the amalgamation.

(3) On the effective date of an amalgamation –

(*a*) the amalgamation takes effect;

(*b*) each amalgamating company ceases to exist as an entity separate from the amalgamated company; and

(*c*) the amalgamated company succeeds to all the property, rights and privileges, and all the liabilities and obligations, of each amalgamating company.

(4) On and after the effective date of an amalgamation –

(*a*) any proceedings pending by or against an amalgamating company may be continued by or against the amalgamated company;

(*b*) any conviction, ruling, order or judgment in favour of or against an amalgamating company may be enforced by or against the amalgamated company; and

(*c*) any agreement entered into by an amalgamating company may be enforced by or against the amalgamated company unless otherwise provided in the agreement.

(5) As soon as practicable after the effective date of an amalgamation, the Registrar must make a note of the amalgamation in the Register in relation to each amalgamating company.

13.19 Court may intervene in amalgamation proposal in certain cases

(1) If the Court of First Instance is satisfied that giving effect to an amalgamation proposal would unfairly prejudice a member or creditor of an amalgamating company or a person to whom an amalgamating company is under an obligation, it may, on application by the member, creditor or person made before the date on which the amalgamation becomes effective, make any order it thinks fit in relation to the amalgamation proposal.

(2) Without limiting subsection (1), the Court of First Instance may make an order –

(*a*) directing that effect must not be given to the amalgamation proposal;

(*b*) modifying the amalgamation proposal in the manner specified in the order; or

(*c*) directing the amalgamating company or its directors to reconsider the amalgamation proposal or any part of that proposal.

(3) Without limiting subsection (1), the Court of First Instance may also make an order directing the amalgamated company, or any other party to the proceedings, to purchase shares of a member of an amalgamating company who would be unfairly prejudiced by the amalgamation proposal.

(4) On making an application for the purposes of subsection (1), the applicant must deliver to the Registrar for registration a notice of the application in the specified form.

(5) If the Registrar receives a notice under subsection (4), he or she must withhold registration of the documents mentioned in section 13.17(1) unless the Court of First Instance otherwise directs or the application is dismissed by the Court or is withdrawn.

(6) If an order is made under this section, every company in relation to which the order is made must deliver an office copy of the order to the Registrar for registration within 7 days after the order is made.

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

Division 4 – Compulsory Acquisition after Takeover Offer

Subdivision 1 – Preliminary

13.20 Interpretation

In this Division –

"nominee" (代名人), in relation to a company that is a member of a group of companies, includes a nominee on behalf of another company that is a member of the group.

13.21 Application to convertible securities and debentures

(1) This Division applies in relation to debentures of a company that are convertible into shares in the company, or to securities of a company that are convertible into, or entitle the holder to subscribe for, shares in the company, as if those debentures or securities were shares of a separate class of the company. A reference to a holder of shares, and to shares being allotted, is to be read accordingly.

(2) In this Division, a reference to 90% in number of the shares of any class is –

(*a*) in the case of securities mentioned in subsection (1), a reference to 90% of the number of those securities; and

(*b*) in the case of debentures mentioned in subsection (1), a reference to 90% of the total amount payable on those debentures.

13.22 Takeover offer

(1) For the purposes of this Division, an offer to acquire shares in a company is a takeover offer if –

(*a*) it is an offer to acquire all the shares, or all the shares of any class, in the company, except those that, at the date of the offer, are held by the offeror; and

(*b*) the terms of the offer are the same –

(i) where the offer does not relate to shares of different classes, in relation to all the shares to which the offer relates; or

(ii) where the offer relates to shares of different classes, in relation to all the shares of each class to which the offer relates.

(2) In subsection (1) –

"shares" (股份) means shares that have been allotted on the date of the offer.

(3) In subsection (1)(*a*), a reference to shares that are held by an offeror –

(*a*) includes shares that the offeror has contracted, unconditionally or subject to conditions being satisfied, to acquire; and

(*b*) excludes shares that are the subject of a contract –

(i) entered into by the offeror with a holder of shares in the company in order to secure that the holder will accept the offer when it is made; and

(ii) entered into for no consideration and by deed, for consideration of negligible value, or for

consideration consisting of a promise by the offeror to make the offer.

(4) For the purposes of subsection (1)(*b*), even though, in relation to all the shares, or all the shares of a class of shares, to which an offer relates, there is a difference in the value of consideration offered for the shares allotted earlier as against the value of consideration offered for those allotted later, the terms of the offer are regarded as the same in relation to all the shares concerned if –

(*a*) shares carry an entitlement to a particular dividend that other shares of the same class, by reason of being allotted at a different time, do not carry;

(*b*) the difference in value of consideration merely reflects that difference in entitlement to dividend; and

(*c*) but for the difference in the value of consideration, the terms of the offer would be the same in relation to all the shares concerned.

(5) For the purposes of subsection (1)(*b*), even though, in relation to all the shares, or all the shares of a class of shares, to which an offer relates, there is a difference in the form of consideration offered, the terms of the offer are regarded as the same in relation to all the shares concerned if –

(*a*) the law of a place outside Hong Kong precludes an offer of consideration in the form specified in the terms of the offer, or precludes it except after compliance by the offeror with conditions with which the offeror is unable to comply or that the offeror regards as unduly onerous;

(*b*) consideration in another form is offered to a person to whom an offer of consideration in the specified form is so precluded;

(*c*) the person is able to receive consideration in that other form that is of substantially equivalent value; and

(*d*) but for the difference in the form of consideration, the terms of the offer would be the same in relation to all the shares concerned.

(6) Despite subsection (1), a takeover offer may include, among the shares to which it relates, shares that will be allotted after the date of the offer but before a date specified in the offer.

13.23 Non-communication etc. does not prevent offer from being takeover offer

(1) Even though an offer to acquire shares is not communicated to a holder of shares, that does not prevent the offer from being a takeover offer for the purposes of this Division if –

(*a*) no Hong Kong address for the holder is registered in the company's register of members;

(*b*) the offer was not communicated to the holder in order not to contravene the law of a place outside Hong Kong; and

(*c*) either –

(i) the offer is published in the Gazette; or

(ii) the offer can be inspected, or a copy of it obtained, at a place in Hong Kong or on a website, and a notice is published in the Gazette specifying the address of that place or website.

(2) It is not to be inferred from subsection (1) that an offer that is not communicated to a holder of shares cannot be a takeover offer for the purposes of this Division unless the conditions specified in paragraphs (*a*), (*b*) and (*c*) of that subsection are satisfied.

(3) Even though it is impossible or more difficult for a person, by reason of the law of a place outside Hong Kong, to accept an offer to acquire shares, that does not prevent the offer from being a takeover offer for the purposes of this Division.

(4) It is not to be inferred from subsection (3) that an offer that is impossible, or more difficult, for certain persons to accept cannot be a takeover offer for the purposes of this Division unless the reason for the impossibility or difficulty is the one mentioned in that subsection.

13.24 Shares to which takeover offer relates

(1) For the purposes of this Division, if, after a takeover offer is made but before the end of the offer period, the offeror acquires, or contracts unconditionally to acquire, any of the shares to which the offer relates but does not do so by virtue of acceptances of the offer, those shares are not regarded as shares to which the offer relates. This subsection has effect subject to subsection (2).

(2) For the purposes of this Division, those shares are regarded as shares to which the takeover offer relates, and the offeror is regarded as having acquired or contracted to acquire them by virtue of acceptances of that offer, if –

(*a*) the value of the consideration for which the shares are acquired, or contracted to be acquired, at the time of the acquisition or contract, does not exceed the value of the consideration specified in the terms of that offer; or

(*b*) those terms are subsequently revised so that when the revision is announced, the value of the consideration for which the shares are acquired, or contracted to be acquired, at the time of the acquisition or contract, no longer exceeds the value of the consideration specified in those terms.

(3) For the purposes of this Division, shares that an associate of the offeror, or a nominee on the offeror's behalf, holds, or has contracted, unconditionally or subject to conditions being satisfied, to acquire, whether at the date of the takeover offer or subsequently, are not regarded as shares to

which that offer relates, even if that offer extends to those shares. This subsection has effect subject to subsection (4).

(4) For the purposes of this Division, where, after a takeover offer is made but before the end of the offer period, an associate of the offeror, or a nominee on the offeror's behalf, acquires, or contracts unconditionally to acquire, any of the shares to which the offer relates, the shares are regarded as shares to which the offer relates if –

(*a*) the value of the consideration for which the shares are acquired, or contracted to be acquired, at the time of the acquisition or contract, does not exceed the value of the consideration specified in the terms of the offer; or

(*b*) those terms are subsequently revised so that when the revision is announced, the value of the consideration for which the shares are acquired, or contracted to be acquired, at the time of the acquisition or contract, no longer exceeds the value of the consideration specified in those terms.

13.25 Revised offer not regarded as fresh offer

For the purposes of this Division, a revision of the terms of an offer to acquire shares is not regarded as the making of a fresh offer if –

(*a*) the terms of the offer make provision for –

(i) their revision; and

(ii) acceptances on the previous terms to be treated as acceptances on the revised terms; and

(*b*) the revision is made in accordance with that provision.

Subdivision 2 – "Squeeze-out"

13.26 Offeror may give notice to buy out minority shareholders

(1) If, in the case of a takeover offer that does not relate to shares of different classes, the offeror has, by virtue of acceptances of the offer, acquired, or contracted unconditionally to acquire, at least 90% in number of the shares to which the offer relates, the offeror may give notice to the holder of any other shares to which the offer relates that the offeror desires to acquire those shares.

(2) If, in the case of a takeover offer that relates to shares of different classes, the offeror has, by virtue of acceptances of the offer, acquired, or contracted unconditionally to acquire, at least 90% in number of the shares of any class to which the offer relates, the offeror may give notice to the holder of any other shares of that class to which the offer relates that the offeror desires to acquire those shares.

(3) If, in the case of a takeover offer that does not relate to shares of different classes, the offeror has, by virtue of acceptances of the offer, acquired, or contracted unconditionally to acquire, less than 90% in number of the shares to which the offer relates, the offeror may apply to the Court of First Instance for an order authorizing the offeror to give notice to the holder of any other shares to which the offer relates that the offeror desires to acquire those shares.

(4) If, in the case of a takeover offer that relates to shares of different classes, the offeror has, by virtue of acceptances of the offer, acquired, or contracted unconditionally to acquire, less than 90% in number of the shares of any class to which the offer relates, the offeror may apply to the Court of First Instance for an order authorizing the offeror to give notice to the holder of any other shares of that class to which the offer relates that the offeror desires to acquire those shares.

(5) The Court of First Instance may, on application under subsection (3) or (4), make the order if it is satisfied that –

(*a*) after reasonable enquiry, the offeror has been unable to trace one or more of the persons holding shares to which the takeover offer relates;

(*b*) had the person, or all those persons, accepted the takeover offer, the offeror would have, by virtue of acceptances of that offer, acquired, or contracted unconditionally to acquire, at least 90% in number of the shares, or the shares of any class, to which that offer relates; and

(*c*) the consideration offered is fair and reasonable.

(6) The Court of First Instance must not make the order unless it is satisfied that it is just and equitable to do so having regard to all the circumstances and, in particular, to the number of holders of shares who have been traced but who have not accepted the takeover offer.

(7) If the Court of First Instance makes an order authorizing the offeror to give notice to the holder of any shares, the offeror may give notice to that holder.

13.27 Notice to minority shareholders

(1) A notice to a holder of shares under section 13.26 –

(*a*) must be given in the specified form; and

(*b*) must be given to the holder before whichever is the earlier of the following –

(i) the end of a period of 3 months beginning on the day after the end of the offer period of the takeover offer;

(ii) the end of a period of 6 months beginning on the date of the takeover offer.

(2) The notice must be given to the holder of shares –

(*a*) by delivering it personally to that holder in Hong Kong;

(*b*) by sending it by registered post to that holder to –

(i) an address of that holder in Hong Kong registered in the books of the company; or

(ii) if there is no such address, an address in Hong Kong supplied by that holder to the company for the giving of notice to that holder; or

(*c*) in the manner directed by the Registrar on an application made under subsection (3).

(3) An offeror may apply to the Registrar for directions regarding the manner in which the notice is to be given to a holder of shares if –

(*a*) there is no address of the holder in Hong Kong registered in the books of the company; and

(*b*) the holder has not supplied to the company an address in Hong Kong for the giving of notice to the holder.

(4) If the takeover offer gives the holder of shares a choice of consideration, the notice –

(*a*) must give particulars of the choices;

(*b*) must state that the holder may, within 2 months after the date of the notice, indicate the holder's choice by a letter sent to the offeror at an address specified in the notice; and

(*c*) must state which consideration specified in the offer will apply if the holder does not indicate a choice.

(5) Subsection (4) applies whether or not any time limit or other conditions applicable to the choices under the terms of the takeover offer can still be complied with.

(6) If the takeover offer provides that the holder of shares is to receive shares in or debentures of the offeror, with an option to receive some other consideration to be provided by a third party instead, the offeror may indicate in the notice that the terms of the takeover offer include the option.

(7) If the offeror does not indicate in the notice that the terms of the takeover offer include the option, the offeror may offer in the notice a

corresponding option to receive some other consideration to be provided by the offeror.

(8) For the purposes of subsection (6), consideration is regarded as being provided by a third party if it is made available to the offeror on terms that it is to be used by the offeror as consideration for the takeover offer.

13.28 Offeror's right to buy out minority shareholders

(1) This section applies if a notice is given under section 13.26 to the holder of any shares.

(2) Unless the Court of First Instance makes an order under subsection (3), the offeror is entitled and bound to acquire the shares on the terms of the takeover offer.

(3) The Court of First Instance may, on application by the holder made within 2 months after the date on which the notice was given, order that –

(*a*) the offeror is not entitled and bound to acquire the shares; or

(*b*) the offeror is entitled and bound to acquire the shares on the terms specified in the order.

(4) For the purposes of subsection (2) –

(*a*) if the takeover offer falls within section 13.27(4), the terms of the takeover offer are regarded as including the particulars and statements included in the notice for the purposes of that section;

(*b*) if the takeover offer falls within section 13.27(6), the terms of the takeover offer are regarded as not including the option unless the offeror indicates otherwise in the notice;

(*c*) if, within 2 months after the date of the notice, the holder of the shares, by a letter sent to the offeror at an address specified in the notice, exercises the corresponding option

offered under section 13.27(7), the terms of the takeover offer are regarded as including the corresponding option; and

(*d*) if –

(i) the consideration offered to, or chosen by, the holder of the shares is not cash, and the offeror is no longer able to provide it; or

(ii) the consideration offered to, or chosen by, the holder of the shares was to have been provided by a third party who is no longer bound or able to provide it,

the consideration is regarded as consisting of an amount of cash, payable by the offeror, that, at the date of the notice, is equivalent to the consideration offered or chosen.

13.29 Obligations of offeror with right to buy out minority shareholders

(1) If, by virtue of section 13.28(2), an offeror is entitled and bound to acquire any shares in a company, the offeror must comply with subsection (3) within 2 months after the date of the notice.

(2) If an application for the purposes of section 13.28(3) is pending at the end of those 2 months, the offeror must comply with subsection (3) as soon as practicable after the application has been disposed of, unless the Court of First Instance orders that the offeror is not entitled and bound to acquire the shares.

(3) The offeror must –

(*a*) send to the company –

(i) a copy of the notice under section 13.26; and

(ii) an instrument of transfer of the shares to which the notice relates, executed on behalf of the holder of the shares by a person appointed by the offeror; and

(*b*) pay or transfer to the company the consideration for the shares to which the notice relates.

(4) Subsection (3)(*a*)(ii) does not require the offeror to send to the company an instrument of transfer of any shares for which a share warrant is for the time being outstanding.

13.30 Company must register offeror as shareholder

On receiving an instrument of transfer under section 13.29(3)(*a*)(ii), the company must register the offeror as the holder of the shares.

13.31 Company must hold consideration paid by offeror on trust

(1) On receiving any consideration under section 13.29(3)(*b*) in respect of any shares, the company must hold the consideration on trust for the person who, before the offeror acquired the shares, was entitled to them.

(2) If the consideration consists of any money, the company must deposit the money into a separate interest-bearing bank account.

(3) The company must not pay out or deliver the consideration to any person claiming to be entitled to it unless the person produces to the company –

(*a*) the share certificate or other evidence of title to the shares; or

(*b*) an indemnity to the company's satisfaction.

13.32 Provisions supplementary to section 13.31

(1) This section applies if –

(*a*) the person entitled to the consideration held on trust under section 13.31(1) cannot be found;

(*b*) the company has made reasonable enquiries at reasonable intervals to find that person; and

(*c*) 12 years have elapsed since the consideration was received, or the company is wound up.

(2) The company, or if the company is wound up, the liquidator, must sell –

(*a*) any consideration other than cash; and

(*b*) any benefit other than cash that has accrued from the consideration.

(3) The company, or if the company is wound up, the liquidator, must pay into court a sum representing –

(*a*) the consideration so far as it is cash;

(*b*) the proceeds of any sale under subsection (2); and

(*c*) any interest, dividend or other benefit that has accrued from the consideration.

(4) The trust terminates on the payment being made under subsection (3).

(5) The expenses of the following may be paid out of the consideration held on trust –

(*a*) the enquiries mentioned in subsection (1)(*b*);

(*b*) the sale mentioned in subsection (2);

(*c*) the proceedings relating to the payment into court mentioned in subsection (3).

Subdivision 3 – "Sell-out"

13.33 Offeror may be required to buy out minority shareholders

(1) If, in the case of a takeover offer that does not relate to shares of different classes –

(*a*) the offeror has, by virtue of acceptances of the offer, acquired, or contracted unconditionally to acquire, some but not all of the shares to which the offer relates; and

(*b*) at any time before the end of the offer period, the shares in the company controlled by the offeror represent at least 90% in number of the shares in the company,

the holder of any shares to which the offer relates who has not accepted the offer before the end of that period may, by a letter addressed to the offeror, require the offeror to acquire those shares.

(2) If, in the case of a takeover offer that relates to shares of different classes –

(*a*) the offeror has, by virtue of acceptances of the offer, acquired, or contracted unconditionally to acquire, some but not all of the shares of any class to which the offer relates; and

(*b*) at any time before the end of the offer period, the shares in the company controlled by the offeror represent at least 90% in number of the shares of that class,

the holder of any shares of that class to which the offer relates who has not accepted the offer before the end of that period may, by a letter addressed to the offeror, require the offeror to acquire those shares.

(3) Rights given to the holder of any shares by this section to require an offeror to acquire the shares are only exercisable within 3 months after whichever is the later of the following –

(*a*) the end of the offer period;

(*b*) the date of the notice given to the holder under section 13.35.

(4) If the takeover offer gives the holder of shares a choice of consideration, that holder may indicate the holder's choice in the letter requiring the offeror to acquire the shares.

(5) In this section, a reference to shares controlled by an offeror is a reference to –

(*a*) shares that are held by the offeror, by an associate of the offeror or by a nominee on the offeror's behalf;

(*b*) shares that the offeror has, by virtue of acceptances of the takeover offer, acquired or contracted unconditionally to acquire; or

(*c*) other shares that the offeror, an associate of the offeror, or a nominee on the offeror's behalf, has acquired, or has contracted, unconditionally or subject to conditions being satisfied, to acquire.

13.34 Shareholder regarded as not having exercised the right to be bought out in certain circumstances

(1) This section applies if –

(*a*) the holder of any shares exercises rights given by section 13.33 to require an offeror to acquire the shares;

(*b*) at the time when those rights are exercised, there are shares in the company –

(i) that the offeror has contracted to acquire subject to conditions being satisfied; and

(ii) in relation to which the contract has not become unconditional; and

(*c*) the requirement imposed by section 13.33(1)(*b*) or (2)(*b*), (as the case may be) would not be satisfied if those shares were not taken into account.

(2) For the purposes of section 13.37, the holder of shares is regarded as not having exercised the rights to require the offeror to acquire the shares unless, at any time before the end of the period during which those rights are exercisable –

(*a*) in the case of a takeover offer that does not relate to shares of different classes, the shares that the offeror has, by

virtue of acceptances of the offer, acquired or contracted unconditionally to acquire, with or without any other shares in the company that the offeror has acquired, or has contracted unconditionally to acquire, represent at least 90% in number of the shares in the company; or

(*b*) in the case of a takeover offer that relates to shares of different classes, the shares of any class that the offeror has, by virtue of acceptances of the offer, acquired or contracted unconditionally to acquire, with or without any other shares of that class that the offeror has acquired, or has contracted unconditionally to acquire, represent at least 90% in number of the shares of that class.

13.35 Offeror must notify minority shareholders of right to be bought out

(1) If the holder of any shares is entitled under section 13.33 to require an offeror to acquire the shares, the offeror must give notice to the holder of –

(*a*) the holder's rights under that section; and

(*b*) the period within which those rights are exercisable.

(2) Subsection (1) does not apply if the offeror has given the holder a notice under section 13.26 that the offeror desires to acquire the shares.

(3) An offeror who contravenes subsection (1) commits an offence and is liable to a fine at level 5.

13.36 Notice to minority shareholders

(1) A notice to a holder of shares under section 13.35 –

(*a*) must be given in the specified form; and

(*b*) must be given to the holder within one month after the first day on which the holder of the shares is entitled under section 13.33 to require the offeror to acquire those shares.

(2) If the notice is given before the end of the offer period of the takeover offer, it must state that the offer is still open for acceptance.

(3) The notice must be given to the holder of shares –

(*a*) by delivering it personally to that holder in Hong Kong;

(*b*) by sending it by registered post to that holder to –

(i) an address of that holder in Hong Kong registered in the books of the company; or

(ii) if there is no such address, an address in Hong Kong supplied by that holder to the company for the giving of notice to that holder; or

(*c*) in the manner directed by the Registrar on an application made under subsection (4).

(4) An offeror may apply to the Registrar for directions regarding the manner in which the notice is to be given to a holder of shares if –

(*a*) there is no address of the holder in Hong Kong registered in the books of the company; and

(*b*) the holder has not supplied to the company an address in Hong Kong for the giving of notice to the holder.

(5) If the takeover offer gives the holder of shares a choice of consideration, the notice –

(*a*) must give particulars of the choices;

(*b*) must state that the holder may indicate the holder's choice in the letter requiring the offeror to acquire any shares under section 13.33; and

(*c*) must state which consideration specified in the offer will apply if the holder does not indicate a choice.

(6) Subsection (5) applies whether or not any time limit or other conditions applicable to the choices under the terms of the takeover offer can still be complied with.

(7) If subsection (1), (2), (3) or (5) is contravened, the offeror commits an offence and is liable to a fine at level 4.

(8) If the takeover offer provides that the holder of shares is to receive shares in or debentures of the offeror, with an option to receive some other considerations to be provided by a third party instead, the offeror may indicate in the notice that the terms of the takeover offer include the option.

(9) If the offeror does not indicate in the notice that the terms of the takeover offer include the option, the offeror may offer in the notice a corresponding option to receive some other consideration to be provided by the offeror.

(10) For the purposes of subsection (8), consideration is regarded as being provided by a third party if it is made available to the offeror on terms that it is to be used by the offeror as consideration for the takeover offer.

13.37 Minority shareholders' right to be bought out by offeror

(1) This section applies if the holder of any shares requires the offeror to acquire the shares under section 13.33.

(2) Unless the Court of First Instance makes an order under subsection (3), the offeror is entitled and bound to acquire the shares on the terms of the takeover offer or on other terms as agreed between that holder and the offeror.

(3) The Court of First Instance may, on application by the holder or offeror, order that the offeror is entitled and bound to acquire the shares on the terms specified in the order.

(4) For the purposes of subsection (2) –

(*a*) if the takeover offer falls within section 13.36(5), the terms of the takeover offer are regarded as including the particulars and statements included in the notice for the purposes of that section;

(*b*) if the takeover offer falls within section 13.36(8), the terms of the takeover offer are regarded as not including

the option unless the offeror indicates otherwise in the notice under section 13.35;

(*c*) if, when requiring the offeror to acquire the shares, the holder of the shares exercises the corresponding option offered under section 13.36(9), the terms of the takeover offer are regarded as including the corresponding option; and

(*d*) if –

(i) the consideration offered to, or chosen by, the holder of the shares is not cash, and the offeror is no longer able to provide it; or

(ii) the consideration offered to, or chosen by, the holder of the shares was to have been provided by a third party who is no longer bound or able to provide it,

the consideration is regarded as consisting of an amount of cash, payable by the offeror, that, at the date when that holder requires the offeror to acquire the shares under section 13.33, is equivalent to the consideration offered or chosen.

Division 5 – Compulsory Acquisition after General Offer for Share Buy-back

Note: Further provisions on share acquisition after a general offer for share buy-back are contained in Division 4 of Part 5.

Subdivision 1 – Preliminary

13.38 Interpretation

(1) In this Division –

"nominee" (代名人), in relation to a company that is a member of a group of companies, includes a nominee on behalf of another company that is a member of the group;

"non-tendering member" (不售股成員), in relation to a general offer, means a member who gives notice under section 13.44(1) that the member will not tender any shares to be bought back by the repurchasing company under the offer;

"repurchasing company" (回購公司), in relation to a general offer, means the listed company that makes the offer.

(2) In this Division, a reference to shares that are held by a non-tendering member includes –

(*a*) shares that are held by an associate of the non-tendering member or by a nominee on the non-tendering member's behalf; and

(*b*) shares that the non-tendering member, an associate of the non-tendering member, or a nominee on the non-tendering member's behalf, has contracted, unconditionally or subject to conditions being satisfied, to acquire.

13.39 Application to convertible securities and debentures

(1) This Division applies in relation to debentures of a repurchasing company that are convertible into shares in the company, or to securities of a repurchasing company that are convertible into, or entitle the holder to subscribe for, shares in the company, as if those debentures or securities were shares of a separate class of the company. A reference to a holder of shares, and to shares being allotted, is to be read accordingly.

(2) In this Division, a reference to 90% in number of the shares of any class is –

(*a*) in the case of securities mentioned in subsection (1), a reference to 90% of the number of those securities; and

(*b*) in the case of debentures mentioned in subsection (1), a reference to 90% of the total amount payable on those debentures.

13.40 General offer

(1) For the purposes of this Division, a listed company's offer to buy back shares in the company is a general offer if –

(*a*) it is an offer to buy back all the shares, or all the shares of any class, in the company, except –

(i) those that, at the date of the offer, are held by a member residing in a place where such an offer is contrary to the law of the place; and

(ii) those that, at the date of the offer, are held by the repurchasing company; and

(*b*) the terms of the offer are the same –

(i) where the offer does not relate to shares of different classes, in relation to all the shares to which the offer relates; or

(ii) where the offer relates to shares of different classes, in relation to all the shares of each class to which the offer relates.

(2) In subsection (1) –

"shares" (股份) means shares that have been allotted on the date of the offer.

(3) In subsection (1)(*a*)(ii), a reference to shares that are held by the repurchasing company –

(*a*) is a reference to shares that the repurchasing company has contracted, unconditionally or subject to conditions being satisfied, to acquire; and

(*b*) excludes shares that are the subject of a contract –

(i) entered into by the repurchasing company with a holder of shares in that company in order to secure that the holder will accept the offer when it is made; and

(ii) entered into for no consideration and by deed, for consideration of negligible value, or for consideration consisting of a promise by the repurchasing company to make the offer.

(4) For the purposes of subsection (1)(*b*), even though, in relation to all the shares, or all the shares of a class of shares, to which an offer relates, there is a difference in the value of consideration offered for the shares allotted earlier as against the value of consideration offered for those allotted later, the terms of the offer are regarded as the same in relation to all the shares concerned if –

(*a*) shares carry an entitlement to a particular dividend that other shares of the same class, by reason of being allotted at a different time, do not carry;

(*b*) the difference in value of consideration merely reflects that difference in entitlement to dividend; and

(*c*) but for the difference in the value of consideration, the terms of the offer would be the same in relation to all the shares concerned.

(5) For the purposes of subsection (1)(*b*), even though, in relation to all the shares, or all the shares of a class of shares, to which an offer relates, there is a difference in the form of consideration offered, the terms of the offer are regarded as the same in relation to all the shares concerned if –

(*a*) the law of a place outside Hong Kong precludes an offer of consideration in the form specified in the terms of the offer, or precludes it except after compliance by the

repurchasing company with conditions with which the repurchasing company is unable to comply or that the repurchasing company regards as unduly onerous;

(*b*) consideration in another form is offered to a person to whom an offer of consideration in the specified form is so precluded;

(*c*) the person is able to receive consideration in that other form that is of substantially equivalent value; and

(*d*) but for the difference in the form of consideration, the terms of the offer would be the same in relation to all the shares concerned.

(6) Despite subsection (1), a general offer may include, among the shares to which it relates, shares that will be allotted after the date of the offer but before a date specified in the offer.

13.41 Non-communication etc. does not prevent offer from being general offer

(1) Even though an offer to buy back shares is not communicated to a holder of shares, that does not prevent the offer from being a general offer for the purposes of this Division if –

(*a*) no Hong Kong address for the holder is registered in the repurchasing company's register of members;

(*b*) the offer was not communicated to the holder in order not to contravene the law of a place outside Hong Kong; and

(*c*) either –

(i) the offer is published in the Gazette; or

(ii) the offer can be inspected, or a copy of it obtained, at a place in Hong Kong or on a website, and a notice is published in the Gazette specifying the address of that place or website.

(2) It is not to be inferred from subsection (1) that an offer that is not communicated to a holder of shares cannot be a general offer for the purposes of this Division unless the conditions specified in paragraphs (*a*), (*b*) and (*c*) of that subsection are satisfied.

(3) Even though it is impossible or more difficult for a person, by reason of the law of a place outside Hong Kong, to accept an offer to buy back shares, that does not prevent the offer from being a general offer for the purposes of this Division.

(4) It is not to be inferred from subsection (3) that an offer that is impossible, or more difficult, for certain persons to accept cannot be a general offer for the purposes of this Division unless the reason for the impossibility or difficulty is the one mentioned in that subsection.

13.42 Shares to which general offer relates

(1) For the purposes of this Division, if, after a general offer is made but before the end of the offer period, the repurchasing company buys back, or contracts unconditionally to buy back, any of the shares to which the offer relates but does not do so by virtue of acceptances of the offer, those shares are not regarded as shares to which the offer relates. This subsection has effect subject to subsection (2).

(2) For the purposes of this Division, those shares are regarded as shares to which the general offer relates, and the repurchasing company is regarded as having bought them back or contracted to buy them back by virtue of acceptances of that offer, if –

(*a*) the value of the consideration for which the shares are bought back, or contracted to be bought back, at the time of the buy-back or contract, does not exceed the value of the consideration specified in the terms of that offer; or

(*b*) those terms are subsequently revised so that when the revision is announced, the value of the consideration for

which the shares are bought back, or contracted to be bought back, at the time of the buy-back or contract, no longer exceeds the value of the consideration specified in those terms.

(3) For the purposes of this Division, shares that an associate of the repurchasing company, or a nominee on the repurchasing company's behalf, holds, or has contracted, unconditionally or subject to conditions being satisfied, to buy back, whether at the date of the general offer or subsequently, are not regarded as shares to which that offer relates, even if that offer extends to those shares. This subsection has effect subject to subsection (4).

(4) For the purposes of this Division, where, after a general offer is made but before the end of the offer period, an associate of the repurchasing company, or a nominee on the repurchasing company's behalf, buys back, or contracts unconditionally to buy back, any of the shares to which the offer relates, the shares are regarded as shares to which the offer relates if –

(*a*) the value of the consideration for which the shares are bought back, or contracted to be bought back, at the time of the buy-back or contract, does not exceed the value of the consideration specified in the terms of the offer; or

(*b*) those terms are subsequently revised so that when the revision is announced, the value of the consideration for which the shares are bought back, or contracted to be bought back, at the time of the buy-back or contract, no longer exceeds the value of the consideration specified in those terms.

(5) For the purposes of this Division, the shares held by a non-tendering member are not regarded as shares to which the general offer relates, even if that offer extends to those shares.

13.43 Revised offer not regarded as fresh offer

For the purposes of this Division, a revision of the terms of an offer to buy back shares is not regarded as the making of a fresh offer if –

(*a*) the terms of the offer make provision for –

(i) their revision; and

(ii) acceptances on the previous terms to be treated as acceptances on the revised terms; and

(*b*) the revision is made in accordance with that provision.

13.44 Member may give notice that member will not tender shares for buy-back under general offer

(1) A member of a repurchasing company may, on or before the date on which notice of an authorizing meeting of the company is given, give notice to every other member of the company that the member will not tender any shares held by the member to be bought back by the company under the general offer.

(2) A non-tendering member is not entitled to tender any shares held by the member to be bought back by the repurchasing company under the general offer even if that offer extends to those shares.

(3) In this section –

"authorizing meeting" (授權會議), in relation to a repurchasing company, means a meeting of the company called for the purpose of authorizing a general offer that the company intends to make.

Subdivision 2 – "Squeeze-out"

13.45 Repurchasing company may give notice to buy out minority shareholders

(1) This section applies if a member or members of the repurchasing company has or have given notice under section 13.44 that the member or

members will not tender any shares to be bought back by that company under a general offer.

(2) If, in the case of a general offer that does not relate to shares of different classes, the repurchasing company has, by virtue of acceptances of the offer, bought back, or contracted unconditionally to buy back, at least 90% in number of the shares to which the offer relates, the repurchasing company may give notice to the holder of any other shares to which the offer relates that it desires to buy back those shares.

(3) If, in the case of a general offer that relates to shares of different classes, the repurchasing company has, by virtue of acceptances of the offer, bought back, or contracted unconditionally to buy back, at least 90% in number of the shares of any class to which the offer relates, the repurchasing company may give notice to the holder of any other shares of that class to which the offer relates that it desires to buy back those shares.

(4) If, in the case of a general offer that does not relate to shares of different classes, the repurchasing company has, by virtue of acceptances of the offer, bought back, or contracted unconditionally to buy back, less than 90% in number of the shares to which the offer relates, the repurchasing company may apply to the Court of First Instance for an order authorizing it to give notice to the holder of any other shares to which the offer relates that it desires to buy back those shares.

(5) If, in the case of a general offer that relates to shares of different classes, the repurchasing company has, by virtue of acceptances of the offer, bought back, or contracted unconditionally to buy back, less than 90% in number of the shares of any class to which the offer relates, the repurchasing company may apply to the Court of First Instance for an order authorizing it to give notice to the holder of any other shares of that class to which the offer relates that it desires to buy back those shares.

(6) The Court of First Instance may, on application under subsection (4) or (5), make the order if it is satisfied that –

(*a*) after reasonable enquiry, the repurchasing company has been unable to trace one or more of the persons holding shares to which the general offer relates;

(*b*) had the person, or all those persons, accepted the general offer, the repurchasing company would have, by virtue of acceptances of that offer, bought back, or contracted unconditionally to buy back, at least 90% in number of the shares, or the shares of any class, to which that offer relates; and

(*c*) the consideration offered is fair and reasonable.

(7) The Court of First Instance must not make the order unless it is satisfied that it is just and equitable to do so having regard to all the circumstances and, in particular, to the number of holders of shares who have been traced but who have not accepted the general offer.

(8) If the Court of First Instance makes an order authorizing the repurchasing company to give notice to the holder of any shares, the repurchasing company may give notice to that holder.

13.46 Notice to minority shareholders

(1) A notice to a holder of shares under section 13.45 –

(*a*) must be given in the specified form; and

(*b*) must be given to the holder before whichever is the earlier of the following –

(i) the end of a period of 3 months beginning on the day after the end of the offer period of the general offer;

(ii) the end of a period of 6 months beginning on the date of the general offer.

(2) The notice must be given to the holder of shares –

(*a*) by delivering it personally to that holder in Hong Kong;

(*b*) by sending it by registered post to that holder to –

(i) an address of that holder in Hong Kong registered in the books of the company; or

(ii) if there is no such address, an address in Hong Kong supplied by that holder to the company for the giving of notice to that holder; or

(*c*) in the manner directed by the Registrar on an application made under subsection (3).

(3) An offeror may apply to the Registrar for directions regarding the manner in which the notice is to be given to a holder of shares if –

(*a*) there is no address of the holder in Hong Kong registered in the books of the company; and

(*b*) the holder has not supplied to the company an address in Hong Kong for the giving of notice to the holder.

(4) If the general offer gives the holder of shares a choice of consideration, the notice –

(*a*) must give particulars of the choices;

(*b*) must state that the holder may, within 2 months after the date of the notice, indicate the holder's choice by a letter sent to the repurchasing company at an address specified in the notice; and

(*c*) must state which consideration specified in the offer will apply if the holder does not indicate a choice.

(5) Subsection (4) applies whether or not any time limit or other conditions applicable to the choices under the terms of the general offer can still be complied with.

13.47 Repurchasing company's right to buy out minority shareholders

(1) This section applies if a notice is given under section 13.45 to the holder of any shares.

(2) Unless the Court of First Instance makes an order under subsection (3), the repurchasing company is entitled and bound to buy back the shares on the terms of the general offer.

(3) The Court of First Instance may, on application by the holder made within 2 months after the date on which the notice was given, order that –

(*a*) the repurchasing company is not entitled and bound to buy back the shares; or

(*b*) the repurchasing company is entitled and bound to buy back the shares on the terms specified in the order.

(4) For the purposes of subsection (2) –

(*a*) if the general offer falls within section 13.46(4), the terms of the general offer are regarded as including the particulars and statements included in the notice for the purposes of that section; and

(*b*) if –

(i) the consideration offered to, or chosen by, the holder of the shares is not cash, and the repurchasing company is no longer able to provide it; or

(ii) the consideration offered to, or chosen by, the holder of the shares was to have been provided by a third party who is no longer bound or able to provide it,

the consideration is regarded as consisting of an amount of cash, payable by the repurchasing company, that, at the date of the notice, is equivalent to the consideration offered or chosen.

13.48 Obligations of repurchasing company with right to buy out minority shareholders

(1) If, by virtue of section 13.47(2), a repurchasing company is entitled and bound to buy back any shares in the company, the company must comply with section 13.49 within 2 months after the date of the notice.

(2) If an application for the purposes of section 13.47(3) is pending at the end of those 2 months, the repurchasing company must comply with section 13.49 as soon as practicable after the application has been disposed of.

13.49 Repurchasing company must pay for shares to which notice relates

(1) The repurchasing company must pay the consideration for any shares to which the notice under section 13.45 relates to the holder of the shares if that holder produces to the repurchasing company –

(*a*) the share certificate or other evidence of title to the shares; or

(*b*) an indemnity to the repurchasing company's satisfaction.

(2) The repurchasing company must cancel any other shares to which the notice under section 13.45 relates and deposit the consideration for those shares into a separate interest-bearing bank account.

(3) The repurchasing company must hold any consideration deposited into a bank account under subsection (2) on trust for the person who, before the company bought back the shares, was entitled to them.

(4) The repurchasing company must not pay out or deliver the consideration to any person claiming to be entitled to it unless the person produces to the repurchasing company –

(*a*) the share certificate or other evidence of title to the shares; or

(*b*) an indemnity to the repurchasing company's satisfaction.

13.50 Provisions supplementary to section 13.49

(1) This section applies if –

(*a*) the person entitled to the consideration held on trust under section 13.49(3) cannot be found;

(*b*) the repurchasing company has made reasonable enquiries at reasonable intervals to find that person; and

(*c*) 12 years have elapsed since the consideration was received, or the repurchasing company is wound up.

(2) The repurchasing company, or if the repurchasing company is wound up, the liquidator, must sell –

(*a*) any consideration other than cash; and

(*b*) any benefit other than cash that has accrued from the consideration.

(3) The repurchasing company, or if the repurchasing company is wound up, the liquidator, must pay into court a sum representing –

(*a*) the consideration so far as it is cash;

(*b*) the proceeds of any sale under subsection (2); and

(*c*) any interest, dividend or other benefit that has accrued from the consideration.

(4) The trust terminates on the payment being made under subsection (3).

(5) The expenses of the following may be paid out of the consideration held on trust –

(*a*) the enquiries mentioned in subsection (1)(*b*);

(*b*) the sale mentioned in subsection (2);

(*c*) the proceedings relating to the payment into court mentioned in subsection (3).

Subdivision 3 – "Sell-out"

13.51 Repurchasing company may be required to buy out minority

(1) This section applies if a member or members of the repurchasing company has or have given notice under section 13.44 that the member or members will not tender any shares to be bought back by that company under a general offer.

(2) If, in the case of a general offer that does not relate to shares of different classes –

(*a*) the repurchasing company has, by virtue of acceptances of the offer, bought back, or contracted unconditionally to buy back, some but not all of the shares to which the offer relates; and

(*b*) at any time before the end of the offer period, the shares in the repurchasing company controlled by that company, with or without the shares in the repurchasing company held by the non-tendering member, represent at least 90% in number of the shares in the repurchasing company,

the holder of any shares to which the offer relates who has not accepted the offer before the end of that period may, by a letter addressed to the repurchasing company, require that company to buy back those shares.

(3) If, in the case of a general offer that relates to shares of different classes –

(*a*) the repurchasing company has, by virtue of acceptances of the offer, bought back, or contracted unconditionally to buy back, some but not all of the shares of any class to which the offer relates; and

(*b*) at any time before the end of the offer period, the shares of that class controlled by the repurchasing company, with or without the shares of that class held by the non-tendering

member, represent at least 90% in number of the shares of that class,

the holder of any shares of that class to which the offer relates who has not accepted the offer before the end of that period may, by a letter addressed to the repurchasing company, require that company to buy back those shares.

(4) Rights given to the holder of any shares by this section to require a repurchasing company to buy back the shares are only exercisable within 3 months after whichever is the later of the following –

(*a*) the end of the offer period;

(*b*) the date of the notice given to the holder under section 13.52.

(5) If the general offer gives the holder of shares a choice of consideration, that holder may indicate the holder's choice in the letter requiring the repurchasing company to buy back the shares.

(6) In this section, a reference to shares controlled by a repurchasing company is a reference to –

(*a*) shares that are held by an associate of the repurchasing company or by a nominee on the repurchasing company's behalf;

(*b*) shares that the repurchasing company has, by virtue of acceptances of the general offer, acquired or contracted unconditionally to acquire; or

(*c*) other shares that the repurchasing company, an associate of the repurchasing company, or a nominee on the repurchasing company's behalf, has acquired, or has contracted, unconditionally or subject to conditions being satisfied, to acquire.

13.52 Repurchasing company must notify minority shareholders of right to be bought out

(1) If the holder of any shares is entitled under section 13.51 to require a repurchasing company to buy back the shares, the repurchasing company must give notice to the holder of –

(*a*) the holder's rights under that section; and

(*b*) the period within which those rights are exercisable.

(2) Subsection (1) does not apply if the repurchasing company has given the holder a notice under section 13.45 that it desires to buy back the shares.

(3) A repurchasing company that contravenes subsection (1) commits an offence and is liable to a fine at level 5.

13.53 Notice to minority shareholders

(1) A notice to a holder of shares under section 13.52 –

(*a*) must be given in the specified form; and

(*b*) must be given to the holder within one month after the first day on which the holder of the shares is entitled under section 13.51 to require the repurchasing company to buy back those shares.

(2) If the notice is given before the end of the offer period of the general offer, it must state that the offer is still open for acceptance.

(3) The notice must be given to the holder of shares –

(*a*) by delivering it personally to that holder in Hong Kong;

(*b*) by sending it by registered post to that holder to –

(i) an address of that holder in Hong Kong registered in the books of the company; or

(ii) if there is no such address, an address in Hong Kong supplied by that holder to the company for the giving of notice to that holder; or

(*c*) in the manner directed by the Registrar on an application made under subsection (4).

(4) A repurchasing company may apply to the Registrar for directions regarding the manner in which the notice is to be given to a holder of shares if –

(*a*) there is no address of the holder in Hong Kong registered in the books of the company; and

(*b*) the holder has not supplied to the company an address in Hong Kong for the giving of notice to the holder.

(5) If the general offer gives the holder of shares a choice of consideration, the notice –

(*a*) must give particulars of the choices;

(*b*) must state that the holder may indicate the holder's choice in the letter requiring the repurchasing company to buy back any shares under section 13.51; and

(*c*) must state which consideration specified in the offer will apply if the holder does not indicate a choice.

(6) Subsection (5) applies whether or not any time limit or other conditions applicable to the choices under the terms of the general offer can still be complied with.

(7) If subsection (1), (2), (3) or (5) is contravened, the repurchasing company commits an offence and is liable to a fine at level 4.

13.54 Minority shareholders' right to be bought out by repurchasing company

(1) This section applies if the holder of any shares requires the repurchasing company to buy back the shares under section 13.51.

(2) Unless the Court of First Instance makes an order under subsection (3), the repurchasing company is entitled and bound to buy back the shares on the terms of the general offer or on other terms as agreed between that holder and the repurchasing company.

(3) The Court of First Instance may, on application by the holder or repurchasing company, order that the repurchasing company is entitled and bound to buy back the shares on the terms specified in the order.

(4) For the purposes of subsection (2) –

(*a*) if the general offer falls within section 13.53(5), the terms of the general offer are regarded as including the particulars and statements included in the notice for the purposes of that section; and

(*b*) if –

(i) the consideration offered to, or chosen by, the holder of the shares is not cash, and the repurchasing company is no longer able to provide it; or

(ii) the consideration offered to, or chosen by, the holder of the shares was to have been provided by a third party who is no longer bound or able to provide it,

the consideration is regarded as consisting of an amount of cash, payable by the repurchasing company, that, at the date when that holder requires the repurchasing company to buy back the shares under section 13.51, is equivalent to the consideration offered or chosen.

Division 6 – Miscellaneous

13.55 Transitional and saving provisions relating to Divisions 4 and 5

(1) Despite the repeal of sections 166, 166A and 167 of the predecessor Ordinance, those provisions continue to apply to an arrangement or compromise if, before the repeal, an application was made to the Court of First

Instance under section 166 of the predecessor Ordinance for the sanctioning of the arrangement or compromise.

(2) Despite the repeal of section 168(1), (2) and (3) of, and the Ninth Schedule to, the predecessor Ordinance, those provisions continue to apply to an acquisition offer –

(*a*) that was made before Division 4 comes into operation; and

(*b*) in relation to which those provisions applied immediately before the repeal.

(3) Despite the repeal of section 168B of, and the Thirteenth Schedule to, the predecessor Ordinance, those provisions continue to apply to a purchase offer –

(*a*) that was made before Division 5 comes into operation; and

(*b*) in relation to which those provisions applied immediately before the repeal.