CO Rewrite
重寫《公司條例》

Companies Bill

Consultation Draft

Parts 1, 2, 10-12 & 14-18

December 2009

Financial Services and the Treasury Bureau
www.fstb.gov.hk

ABOUT THIS DOCUMENT

This document should be read together with the Consultation Paper on Draft Companies Bill (First Phase Consultation) issued in December 2009 (available at http://www.fstb.gov.hk/fsb/co_rewrite). Explanatory Notes on the various Parts are contained in that Consultation Paper.

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PART 1

PRELIMINARY

Division 1 – Short Title and Commencement

1.1 Short title and commencement

(1) This Ordinance may be cited as the Companies Ordinance.

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

Division 2 – Interpretation of this Ordinance: General

1.2 Interpretation

(1) In this Ordinance –

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

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

(*a*) a subsidiary of the body corporate;

(*b*) a holding company of the body corporate; or

(*c*) a subsidiary of such a holding company;

"body corporate" (法人團體) –

(*a*) includes –

(i) a company; and

(ii) a company incorporated outside Hong Kong; and

(*b*) excludes a corporation sole;

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

"company" (公司) means –

(*a*) a company formed and registered under this Ordinance; or

(*b*) an existing company;

"constitution" (章程) –

(*a*) in relation to a company formed and registered under this Ordinance, means the company's articles; or

(*b*) in relation to an existing company, means the company's memorandum and articles;

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

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

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

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

"document" (文件) includes –

(*a*) a summons, notice, order and any other legal process; and

(*b*) a register;

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

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

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

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

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

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

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

(*c*) the predecessor Ordinance;

"founder member" (創辦成員) –

(*a*) in relation to a company formed and registered under this Ordinance, means a person who signs on the company's articles for the purposes of section 3.1(1)(*a*);[1] or

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

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

"incorporation form" (法團成立表格), in relation to a company formed and registered under this Ordinance, means the application form on which an application under section 3.1(1) is made;

"Index of Company Names" (《公司名稱索引》) means the index of names kept under section 2.10;

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

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

"manager" (經理), in relation to a company –

(*a*) means a person who performs managerial functions in relation to the company under the directors' immediate authority; and

(*b*) excludes –

[1] A consultation draft of Part 3 will be published later.

(i) a receiver or manager of the company's property; and

(ii) a special manager of the company's estate or business appointed under section 216 of the Companies (Winding Up Provisions) Ordinance (Cap. 32);[2]

"member" (成員), in relation to a company, means –

(*a*) a founder member of the company; or

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

"memorandum" (章程大綱), in relation to an existing company, means the memorandum of association of the company;

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

(*a*) establishes a place of business in Hong Kong on or after the commencement of Part 16; or

(*b*) has established a place of business in Hong Kong before that commencement and continues to have a place of business in Hong Kong at that commencement;

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

"ordinary resolution" (普通決議) – see section 12.18;

"predecessor Ordinance" (《前身條例》) means the Companies Ordinance (Cap. 32) as in force from time to time before [*the date on which Cap. 32, other than the winding-up provisions, is repealed*];

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

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

"Register" (登記冊) means the records kept under section 2.8;

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

"Registrar" (處長) means the person who is appointed to be the Registrar of Companies under section 2.2(1);

"reserve director" (備任董事), in relation to a private company, means a person nominated as a reserve director of the company under section 10.3(1);

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

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

"share" (股份) –

(*a*) means a share in a company's share capital; and

(*b*) if any of the company's shares is converted into stock, includes stock;

"special resolution" (特別決議) – see section 12.19;

"specified form" (指明格式) means the form specified under section 2.5;

"undertaking" (企業) means –

(*a*) a body corporate;

(*b*) a partnership; or

(*c*) an unincorporated association carrying on a trade or business, whether for profit or not;

"written resolution" (書面決議) – see section 12.10.

(2) In this Ordinance –

(*a*) a reference to a company being registered by a name, or to registration of a company under this Ordinance, includes the company being restored to the Register under Part 15; and

(*b*) a reference to this Ordinance includes any subsidiary legislation made under this Ordinance.

(3) For the purposes of this Ordinance –

(*a*) a document or information is sent or supplied in hard copy form if it is sent or supplied –

(i) in paper copy form; or

(ii) in a similar form capable of being read;

(*b*) a document or information is sent or supplied in electronic form if it is sent or supplied –

(i) by electronic means; or

(ii) by any other means while in electronic form; and

(*c*) a document or information is sent or supplied by electronic means if it is sent or supplied in the form of an electronic record to an information system.

1.3 Responsible person

(1) This section applies –

(*a*) where a provision of this Ordinance provides that a responsible person of a company or non-Hong Kong company commits an offence if there is –

(i) a contravention of this Ordinance, or of a requirement, direction, condition or order; or

(ii) a failure to comply with a requirement, direction, condition or order; or

(*b*) where this Ordinance empowers a person to make subsidiary legislation that will contain such a provision.

(2) For the purposes of the provision, a person is a responsible person of a company or non-Hong Kong company if the person –

(*a*) is an officer or shadow director of the company or non-Hong Kong company; and

(*b*) authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention or failure.

(3) For the purposes of the provision, a person is also a responsible person of a company or non-Hong Kong company if –

(*a*) the person is an officer or shadow director of a body corporate that is an officer or shadow director of the company or non-Hong Kong company;

(*b*) the body corporate authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention or failure; and

(*c*) the person authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention or failure.

1.4 Certified translation

(1) For the purposes of this Ordinance, a translation made in Hong Kong of a document is a certified translation if –

(*a*) it is certified as a correct translation of the document by the translator; and

(*b*) a person specified in subsection (3) certifies that in that person's belief the translator is competent in translating the document into English or Chinese (as the case may be).

(2) For the purposes of this Ordinance, a translation made in a place outside Hong Kong of a document is a certified translation if –

(*a*) in the case of a translator specified in subsection (4), it is certified as a correct translation of the document by the translator; or

(*b*) in the case of any other translator –

(i) it is certified as a correct translation of the document by the translator; and

(ii) a person specified in subsection (5) certifies that in that person's belief the translator is competent in translating the document into English or Chinese (as the case may be).

(3) The person specified for the purposes of subsection (1)(*b*) is –

(*a*) a notary public practising in Hong Kong;

(*b*) a solicitor practising in Hong Kong;

(*c*) a certified public accountant (practising);

(*d*) a consular officer in Hong Kong; or

(*e*) a professional company secretary practising in Hong Kong.

(4) The translator specified for the purposes of subsection (2)(*a*) is a translator appointed by a court of law of the place.

(5) The person specified for the purposes of subsection (2)(*b*)(ii) is –

(*a*) a notary public practising in the place;

(*b*) a lawyer practising in the place;

(*c*) a professional accountant practising in the place;

(*d*) an officer of a court of law duly authorized by the law of the place to certify documents for any judicial or other legal purpose;

(*e*) a consular officer in the place;

(*f*) a professional company secretary practising in the place; or

(*g*) any other natural person specified by the Registrar.

(6) The Secretary may, by order published in the Gazette, amend subsections (3), (4) and (5).

1.5 Dormant company

(1) For the purposes of Parts 9[3] and 12, if a qualified private company passes a special resolution specified in subsection (2), and the resolution is delivered to the Registrar, the company is a dormant company as from the date mentioned in subsection (2)(*a*) as declared by the resolution.

(2) The special resolution is one –

(*a*) declaring that the qualified private company will become dormant as from –

(i) the date of delivery of that resolution to the Registrar; or

(ii) a later date specified in that resolution; and

(*b*) authorizing the directors to deliver that resolution to the Registrar.

(3) For the purposes of subsection (2)(*a*), a qualified private company is regarded as dormant during any period in which there is no accounting transaction in relation to the company.

(4) For the purposes of Parts 9 and 12, a qualified private company ceases to be a dormant company if it passes a special resolution declaring that the company intends to enter into an accounting transaction, and the resolution is delivered to the Registrar.

(5) In this section –

"accounting transaction" (會計交易), in relation to a qualified private company, means a transaction that is required by Part 9 to be entered in the company's accounting records, excluding a transaction arising from the payment of any fee that the company is required by an Ordinance to pay;

[3] A consultation draft of Part 9 will be published later.

"qualified private company" (合資格私人公司) means a private company that is not a company specified in subsection (6).

(6) A company specified for the purposes of the definition of "qualified private company" in subsection (5) is –

(*a*) an authorized institution as defined by section 2(1) of the Banking Ordinance (Cap. 155);

(*b*) an insurer as defined by section 2(1) and (2) of the Insurance Companies Ordinance (Cap. 41);

(*c*) a corporation licensed under Part V of the Securities and Futures Ordinance (Cap. 571) to carry on a business in any regulated activity as defined by section 1 of Part 1 of Schedule 1 to that Ordinance;

(*d*) an associated entity, within the meaning of Part VI of the Securities and Futures Ordinance (Cap. 571), of a corporation mentioned in paragraph (*c*);

(*e*) an approved trustee as defined by section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);

(*f*) a company registered as a trust company under Part VIII of the Trustee Ordinance (Cap. 29);

(*g*) a company having a subsidiary that falls within paragraph (*a*), (*b*), (*c*), (*d*), (*e*) or (*f*); or

(*h*) a company that fell within paragraph (*a*), (*b*), (*c*), (*d*), (*e*), (*f*) or (*g*) at any time during the 5 years immediately before the special resolution is passed.

(7) The Financial Secretary may, by order published in the Gazette, amend subsection (6).

Division 3 – Interpretation of this Ordinance: Types of Companies

Subdivision 1 – Limited Company and Unlimited Company

1.6 Limited company

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

1.7 Company limited by shares

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

1.8 Company limited by guarantee

(1) For the purposes of this Ordinance, a company is a company limited by guarantee if –

(*a*) it does not have a share capital; and

(*b*) the liability of its members is limited by the company's constitution to the amount that the members undertake, by that constitution, to contribute to the assets of the company in the event of its being wound up.

(2) Subsection (1)(*a*) does not apply if the company was formed as, or became, a company limited by guarantee under a former Companies Ordinance before 13 February 2004.

1.9 Unlimited company

For the purposes of this Ordinance, a company is an unlimited company if –

(*a*) it has a share capital; and

(*b*) there is no limit on the liability of its members.

Subdivision 2 – Private Company and Public Company

1.10 Private company

(1) For the purposes of this Ordinance, a company is a private company if –

(*a*) it has a share capital; and

(*b*) its articles –

(i) restrict a member's right to transfer shares;

(ii) limit the number of members to 50; and

(iii) prohibit any invitation to the public to subscribe for any shares or debentures of the company.

(2) In subsection (1)(*b*)(ii) –

"member" (成員) excludes –

(*a*) a member who is an employee of the company; and

(*b*) a person who was a member while being an employee of the company and who continues to be a member after ceasing to be such an employee.

(3) For the purposes of this section, 2 or more persons who hold shares in a company jointly are regarded as one member.

1.11 Public company

(1) For the purposes of this Ordinance, a company is a public company if –

(*a*) it has a share capital;

(*b*) its articles do not –

(i) restrict a member's right to transfer shares;

(ii) limit the number of members to 50; or

(iii) prohibit any invitation to the public to subscribe for any shares or debentures of the company; and

(*c*) it is not a company limited by guarantee.

(2) In subsection (1)(*b*)(ii) –

"member" (成員) excludes –

(*a*) a member who is an employee of the company; and

(*b*) a person who was a member while being an employee of the company and who continues to be a member after ceasing to be such an employee.

(3) For the purposes of this section, 2 or more persons who hold shares in a company jointly are regarded as one member.

Division 4 – Interpretation of this Ordinance: Holding Company and Subsidiary

1.12 Holding company

(1) For the purposes of this Ordinance, a body corporate is a holding company of another body corporate if –

(*a*) it controls the composition of that other body corporate's board of directors;

(*b*) it controls more than half of the voting rights in that other body corporate; or

(*c*) it holds more than half of that other body corporate's issued share capital.

(2) For the purposes of this Ordinance, a body corporate is also a holding company of another body corporate if it is a holding company of a body corporate that is that other body corporate's holding company.

(3) For the purposes of subsection (1)(*a*), a body corporate controls the composition of another body corporate's board of directors if it has power to appoint or remove all, or a majority, of that other body corporate's directors without any other person's consent.

(4) For the purposes of subsection (3), a body corporate has the power to make such an appointment if –

(*a*) without the exercise of the power in a person's favour by the body corporate, the person cannot be appointed as a director of that other body corporate; or

(*b*) it necessarily follows from a person being a director or other officer of the body corporate that the person is appointed as a director of that other body corporate.

(5) In subsection (1)(*c*), a reference to a body corporate's issued share capital excludes any part of it that carries no right to participate beyond a specified amount in a distribution of profits or capital.

1.13 Provisions supplementary to section 1.12

(1) For the purposes of this Division –

(*a*) if any share is held, or any power is exercisable, by a body corporate in a fiduciary capacity, the share or power is regarded as not being held or exercisable by the body corporate; and

(*b*) subject to subsections (2) and (3), if any share is held, or any power is exercisable, by a subsidiary of a body corporate, or by a person as nominee for a body corporate or such a subsidiary, the share or power is regarded as being held or exercisable by the body corporate.

(2) For the purposes of this Division, any share in another body corporate held, or any power in relation to another body corporate exercisable, by a person by virtue of a debenture of that other body corporate, or of a trust deed for securing an issue of such a debenture, is regarded as not being held or exercisable by the person.

(3) For the purposes of this Division, any share held, or any power exercisable, by a body corporate or a subsidiary of a body corporate, or by a person as nominee for a body corporate or such a subsidiary, is regarded as not being held or exercisable by the body corporate or subsidiary if –

(*a*) the ordinary business of the body corporate or subsidiary includes the lending of money; and

(*b*) the share or power is held or exercisable by way of security only for the purpose of a transaction entered into in the ordinary course of that business.

(4) In subsection (1)(*b*), a reference to a body corporate or subsidiary excludes a body corporate or subsidiary that is concerned only in a fiduciary capacity.

1.14 Subsidiary

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

Division 5 – Interpretation of this Ordinance: Parent Undertakings and Subsidiary Undertakings

1.15 Interpretation

In this Division –

"shares" (股份) –

(*a*) in relation to an undertaking having a share capital, means the allotted shares;

(*b*) in relation to an undertaking having capital in a form other than share capital, means the right to share in the capital of the undertaking; or

(*c*) in relation to an undertaking not having a capital, means –

(i) the interest giving a right to share in the profits, or liability to contribute to the losses, of the undertaking; or

(ii) the interest giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of its being wound up.

1.16 Parent undertaking

(1) For the purposes of this Ordinance, an undertaking is a parent undertaking of another undertaking if –

(*a*) in the case where both undertakings are bodies corporate, it is a holding company of that other undertaking; or

(*b*) in any other case –

(i) it holds a majority of the voting rights in that other undertaking;

(ii) it is a member of that other undertaking and has the right to appoint or remove a majority of that other undertaking's board of directors; or

(iii) it is a member of that other undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in that other undertaking.

(2) For the purposes of this Ordinance, an undertaking is also a parent undertaking of another undertaking if it has the right to exercise a dominant influence over that other undertaking by virtue of –

(*a*) the provisions contained in the constitution, or an equivalent constitutional document, of that other undertaking; or

(*b*) a contract in writing that –

(i) is of a kind authorized by the constitution, or an equivalent constitutional document, of that other undertaking; and

(ii) is permitted by the law under which that other undertaking is established.

(3) In subsection (1)(*b*), a reference to the voting rights in an undertaking is –

(*a*) in the case of an undertaking having a share capital, a reference to the rights given to the members in respect of their shares; or

(*b*) in the case of an undertaking not having a share capital –

(i) if the undertaking is required to hold general meetings at which matters are decided by the exercise of voting rights, a reference to the rights given to the members to vote at the general meetings on all matters or on substantially all matters; or

(ii) if the undertaking is not required to hold such general meetings, a reference to the rights under the undertaking's constitution to direct the undertaking's overall policy or to alter the terms of that constitution.

(4) For the purposes of subsection (1)(*b*), an undertaking is a member of another undertaking if –

(*a*) a person acting on behalf of it, or of any of its subsidiary undertakings, holds shares in that other undertaking; or

(*b*) any of its subsidiary undertakings is a member of that other undertaking.

(5) For the purposes of subsection (1)(*b*)(ii), a reference to the right to appoint or remove a majority of a board of directors is a reference to the right to appoint or remove directors holding a majority of the voting rights at meetings of the directors on all matters or on substantially all matters.

(6) For the purposes of subsection (5) –

(*a*) in determining whether an undertaking has the right to appoint or remove a director, a right that is exercisable only with another person's consent is to be disregarded unless only the undertaking has the right; and

(*b*) an undertaking has the right to appoint a director if –

(i) it necessarily follows from a person's appointment as a director of the undertaking that the person is appointed to the board; or

(ii) the directorship is held by the undertaking itself.

(7) For the purposes of subsection (2), an undertaking does not have any right to exercise a dominant influence over another undertaking unless –

(*a*) it has a right to give directions with respect to the operating and financial policies of that other undertaking; and

(*b*) that other undertaking's directors are, or a majority of them is, obliged to comply with the directions, whether or not the directions are for that other undertaking's benefit.

1.17 Provisions supplementary to section 1.16

(1) For the purposes of this Division, a right held by a subsidiary undertaking of another undertaking is regarded as being held by that other undertaking.

(2) For the purposes of this Division –

(*a*) without limiting paragraph (*b*), a right that is exercisable only in certain circumstances is taken into account –

(i) only when the circumstances have arisen and for so long as they continue to exist; or

(ii) only when the circumstances are within the control of the person having the right; and

(*b*) a right that is normally exercisable but is temporarily incapable of being exercised continues to be taken into account.

(3) For the purposes of this Division –

(*a*) a right held by a person in a fiduciary capacity is regarded as not being held by the person; and

(*b*) a right held by a person as nominee for another is regarded as being held by that other.

(4) For the purposes of this Division, a right is regarded as being held by a person as nominee for another if it is exercisable only on the instructions, or with the consent, of that other.

(5) For the purposes of this Division, a right attached to shares held by way of security is regarded as being held by the person providing the security –

(*a*) if, except where the right is exercised for the purpose of preserving the value of the security or of realizing the security, it is exercisable only in accordance with that person's instructions; or

(*b*) if –

(i) the shares are held in connection with the granting of loans as part of normal business activities; and

(ii) except where the right is exercised for the purpose of preserving the value of the security or of realizing the security, it is exercisable only in that person's interests.

(6) Subsections (3) and (5) do not require a right held by a parent undertaking to be regarded as being held by any of its subsidiary undertakings.

(7) For the purposes of subsection (5), a right is regarded as being exercisable in accordance with the instructions, or in the interests, of an undertaking if it is exercisable in accordance with the instructions, or in the interests, as the case may be, of any group undertaking of the undertaking.

(8) In this section, an undertaking is a group undertaking of another undertaking if –

(*a*) it is a parent or subsidiary undertaking of that other undertaking; or

(*b*) it is a subsidiary undertaking of any parent undertaking of that other undertaking.

1.18 Parent company

For the purposes of this Ordinance, a parent company is a parent undertaking that is a company.

1.19 Subsidiary undertaking

(1) For the purposes of this Ordinance, an undertaking is a subsidiary undertaking of another undertaking if that other undertaking is a parent undertaking of it.

(2) For the purposes of this Ordinance, an undertaking is also a subsidiary undertaking of another undertaking if a parent undertaking of it is a subsidiary undertaking of that other undertaking.

1.20 Financial Secretary may amend this Division

The Financial Secretary may, by order published in the Gazette, amend this Division.

Division 6 – Application of this Ordinance

1.21 Application to existing company

(1) This Ordinance applies to an existing company, in the same manner as if –

(*a*) in the case of a company limited by guarantee, the company had been formed and registered under this Ordinance as a company limited by guarantee;

(*b*) in the case of a limited company other than a company limited by guarantee, the company had been formed and registered under this Ordinance as a company limited by shares; or

(*c*) in the case of a company other than a limited company, the company had been formed and registered under this Ordinance as an unlimited company.

(2) In such application, a reference in this Ordinance to the date of registration is to be read as the date on which the company was registered under a former Companies Ordinance.

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

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

(2) In such application, a reference in this Ordinance to the date of registration is to be read as the date on which the company was registered in pursuance of the predecessor Ordinance or section 58 of the Companies Ordinance 1911 (58 of 1911).

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

(1) This Ordinance applies to a company registered, but not formed, under a former Companies Ordinance, in the same manner as it applies to an eligible company registered under Part 17.

(2) In such application, a reference in this Ordinance to the date of registration is to be read as the date on which the company was registered under the former Companies Ordinance.

PART 2

REGISTRAR OF COMPANIES AND REGISTER

Division 1 – Preliminary

2.1 Interpretation

(1) In this Part –

"company" (公司) includes –

(*a*) a non-Hong Kong company registered under section 16.4(1); or

(*b*) a company that was, immediately before the commencement of Part 16, registered in the register kept under section 333AA of the predecessor Ordinance;

"digital signature" (數碼簽署) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

"document" (文件) includes a document in electronic form or any other form;

"electronic signature" (電子簽署) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553).

(2) In this Part, a reference to delivering a document includes sending, supplying, forwarding or producing it.

Division 2 – Registrar of Companies

2.2 Office of Registrar

(1) The Chief Executive may appoint a person to be the Registrar of Companies.

(2) A person holding or acting in the office of Registrar of Companies immediately before the commencement of this section continues to hold or act in that office, as the case may be, as if the person were appointed under subsection (1).

(3) The Chief Executive may appoint other officers for the purposes of this Ordinance.

(4) For the purpose of the registration of companies under this Ordinance, an office is to be established at a place designated by the Chief Executive.

(5) The Chief Executive may direct a seal to be prepared for the authentication of documents required for or connected with the performance of the Registrar's functions.

(6) The last seals that were directed under section 303(4) of the predecessor Ordinance to be prepared are to be regarded as seals that have been directed under subsection (5) to be prepared.

2.3 Registrar's functions

The Registrar's functions are those conferred on the Registrar by or under this Ordinance or any other Ordinance.

2.4 Registrar may charge fee

(1) The Registrar may charge, for a matter specified in column 2 of the Schedule,[4] the fee specified in column 3 of the Schedule opposite the matter.

(2) The Registrar may determine and charge a fee for a service –

(*a*) that is provided by the Registrar under this Ordinance otherwise than in pursuance of an obligation imposed on the Registrar under this Ordinance; and

(*b*) for which no fee is specified under this Ordinance.

(3) A fee determined under subsection (2) for a service must be fixed at a level that provides for the recovery of the cost and expenditure incurred or likely to be incurred by the Registrar in providing the service.

(4) A fee charged under subsection (1) or (2) and received by the Registrar must be paid into the general revenue, unless it is required by section 5

[4] There will be a Schedule for fees in the Bill.

of the Trading Funds Ordinance (Cap. 430) to be paid into the Companies Registry Trading Fund.

(5) The Financial Secretary may, by notice published in the Gazette, amend the Schedule.

2.5 Registrar may specify form

(1) The Registrar may specify the form of any document required for the purposes of this Ordinance.

(2) Subsection (1) does not apply to a document –

(*a*) the form of which is prescribed by this Ordinance; or

(*b*) the form of which is or may be prescribed by regulations made under this Ordinance.

(3) In specifying the form of a document under subsection (1), the Registrar may specify more than one form of the document, whether as alternatives or to provide for different circumstances.

2.6 Registrar may issue guidelines

(1) The Registrar may issue guidelines –

(*a*) indicating the manner in which the Registrar proposes to perform any function or exercise any power; or

(*b*) providing guidance on the operation of any provision of this Ordinance.

(2) The Registrar must –

(*a*) publish the guidelines in a manner appropriate to bring them to the notice of persons affected by them; and

(*b*) make copies of the guidelines available to the public (in hard copy form or electronic form).

(3) Guidelines issued under this section are not subsidiary legislation.

(4) The Registrar may amend or revoke any of the guidelines. Subsections (2) and (3) apply to an amendment or revocation of guidelines in the same way as they apply to the guidelines.

(5) A person does not incur any civil or criminal liability only because the person has contravened any of the guidelines. If, in any legal proceedings, the court is satisfied that a guideline is relevant to determining a matter that is in issue –

(*a*) the guideline is admissible in evidence in the proceedings; and

(*b*) proof that the person contravened or did not contravene the guideline may be relied on by any party to the proceedings as tending to establish or negate the matter.

2.7 Registrar may authenticate document etc.

(1) If a document is required by this Ordinance to be signed by the Registrar or to bear the Registrar's printed signature, the Registrar may authenticate it in any manner that the Registrar thinks fit.

(2) If anything is authorized to be certified by the Registrar under this Ordinance or any other Ordinance, the Registrar may certify it in any manner that the Registrar thinks fit.

Division 3 – Register

2.8 Registrar must keep records of companies

(1) The Registrar must keep records of –

(*a*) the information contained in every document that is delivered to the Registrar for registration and that the Registrar decides to register under this Part; and

(*b*) the information contained in every certificate that is issued by the Registrar under this Ordinance, excluding a certificate issued under section 2.31(1).

(2) The Registrar must continue to keep the records that were, immediately before the commencement of this section, kept for the purpose of a register of companies under the predecessor Ordinance.

(3) The records kept under this section must be such that information relating to a company is associated with the company in a manner determined by the Registrar, so as to enable all the information relating to the company to be retrieved.

(4) A record of information for the purposes of subsection (1) must be kept in such form as to enable any person to inspect the information contained in the record and to make a copy of the information.

(5) Subject to subsections (3) and (4), a record of information for the purposes of subsection (1) may be kept in any form that the Registrar thinks fit.

(6) If the Registrar keeps a record of information in a form that differs from the form in which the document containing the information was delivered to, or generated by, the Registrar, the record is presumed, unless the contrary is proved, to represent the information contained in the document as delivered or generated.

(7) If the Registrar records the information contained in a document for the purposes of subsection (1), the Registrar is to be regarded as having discharged any duty imposed by law on the Registrar to keep, file or register the document.

2.9 Registrar not required to keep certain documents etc.

(1) The Registrar may destroy or dispose of any document delivered to the Registrar for registration under an Ordinance if the information contained in the document has been recorded by the Registrar in any other form for the purposes of section 2.8(1) or for the purpose of a register of companies under the predecessor Ordinance.

(2) If a document or certificate has been kept by the Registrar for at least 7 years for the purposes of section 2.8(1) or for the purpose of a register of companies under the predecessor Ordinance, the Registrar may destroy or dispose of the document or certificate.

(3) If the Registrar is not required under section 2.28(2) to make any information available for public inspection, the Registrar is not required to keep the record of the information for longer than a period that appears to the Registrar to be reasonably necessary for the purpose for which the information was delivered to the Registrar.

2.10 Registrar must keep Index of Company Names

The Registrar must keep an index of the names of every company.

Division 4 – Registration of Document

Subdivision 1 – Preliminary

2.11 Proper delivery of document to Registrar

(1) For the purposes of this Division, a document is not properly delivered to the Registrar unless –

(*a*) the information contained in the document is capable of being reproduced in legible form;

(*b*) if the document is not in English or Chinese, it is accompanied by a certified translation of it in English or Chinese;

(*c*) the requirements specified in relation to the document under sections 2.12 and 2.13 are complied with;

(*d*) the document is delivered in accordance with an agreement made under section 2.14, and any regulations made under section 2.15, in relation to it;

(*e*) the applicable requirements of the Ordinance under which the document is delivered are complied with;

(*f*) the document is accompanied by the fee charged under section 2.4; and

(*g*) the document, and any signature on, or any digital or electronic signature accompanying, the document are complete.

(2) In this section –

"applicable requirements" (適用規定), in relation to a document, means the requirements as regards –

(*a*) the contents of the document;

(*b*) the form of the document;

(*c*) the authentication of the document; and

(*d*) the manner of delivery of the document.

2.12 Registrar may specify requirements (for section 2.11(1))

(1) The Registrar may, in relation to any document required or authorized to be delivered to the Registrar under an Ordinance –

(*a*) specify requirements for the purpose of enabling the Registrar to make copies or image records of the document and to keep records of the information contained in it;

(*b*) specify requirements as to the authentication of the document; and

(*c*) specify requirements as to the manner of delivery of the document.

(2) The Registrar may, in relation to any document authorized to be delivered to the Registrar for registration under section 2.24(3) for the purpose of rectification of an error, specify requirements as to –

(*a*) the delivery of the document in a form and manner enabling it to be associated with the document containing the error; and

(*b*) the identification of the document containing the error.

(3) For the purposes of subsections (1) and (2), the Registrar may specify different requirements for different documents or classes of documents, or for different circumstances.

(4) For the purposes of subsection (1)(*b*), the Registrar may –

(*a*) require the document to be authenticated by a particular person or a person of a particular description;

(*b*) specify the means of authentication; and

(*c*) require the document to contain, or to be accompanied by, the name or registration number, or both, of the company to which it relates.

(5) For the purposes of subsection (1)(*c*), the Registrar may –

(*a*) require the document to be in hard copy form, electronic form or any other form;

(*b*) require the document to be delivered by post or any other means;

(*c*) specify requirements as to the address to which the document is to be delivered; and

(*d*) in the case of a document to be delivered by electronic means, specify requirements as to the hardware and software to be used and the technical specifications.

(6) This section does not empower the Registrar –

(*a*) to require a document to be delivered to the Registrar by electronic means; or

(*b*) to specify any requirement that is inconsistent with any requirement prescribed by an Ordinance as to –

(i) the authentication of the document; and

(ii) the manner of delivery of the document to the Registrar.

(7) Requirements specified under this section are not subsidiary legislation.

2.13 Registrar may specify print size requirements of prospectus (for section 2.11(1))

(1) The Registrar may specify requirements as to the print size of prospectuses.

(2) Requirements specified under this section are not subsidiary legislation.

2.14 Registrar may agree to delivery by electronic means (for section 2.11(1))

(1) The Registrar may enter into an agreement with a company to provide that any document, or any class of document, that relates to the company, and is required or authorized to be delivered to the Registrar under an Ordinance –

(*a*) will be delivered by electronic means, except as provided for in the agreement; and

(*b*) will conform to the requirements –

(i) specified in the agreement; or

(ii) specified by the Registrar in accordance with the agreement.

(2) An agreement with a company may also provide that any document, or any class of document, that relates to the company, and is required or authorized to be delivered by the Registrar to it under an Ordinance, will be delivered by electronic means.

(3) The Registrar may specify a standard form for an agreement and the extent to which the form is to be used.

(4) This section does not empower the Registrar to make any agreement that is inconsistent with regulations made under section 2.15.

2.15 Financial Secretary may make regulations requiring delivery by electronic means (for section 2.11(1))

(1) The Financial Secretary may make regulations requiring any document required or authorized to be delivered to the Registrar under an Ordinance to be delivered by electronic means.

(2) The regulations are subject to the approval of the Legislative Council.

2.16 Unsatisfactory document

(1) For the purposes of this Division, a document delivered to the Registrar for registration is unsatisfactory if –

(*a*) the document falls within subsection (2);

(*b*) there is a doubt or dispute as to whether or not the document falls within subsection (2); or

(*c*) the registration of the document would in any way jeopardize the integrity of the Register.

(2) A document falls within this subsection if –

(*a*) the document is altered or contains errors;

(*b*) any signature on, or any digital or electronic signature accompanying, the document is altered or contains errors;

(*c*) the requirements of the Ordinance under which the document is delivered (except those specified in section 2.11(1)(*e*)) are not complied with;

(*d*) the information contained in the document is –

(i) internally inconsistent; or

(ii) inconsistent with other information on the Register or other information contained in another document delivered to the Registrar;

(*e*) the information contained in the document derives from anything that –

(i) is invalid or ineffective; or

(ii) has been done without the company's authority;

(*f*) the information contained in the document –

(i) is factually inaccurate; or

(ii) derives from anything that is factually inaccurate or forged;

(*g*) the document is signed or delivered by a person without proper authority;

(*h*) the document contains matters contrary to law; or

(*i*) the document contains unnecessary material.

(3) In this section –

"unnecessary material" (不必要的資料), in relation to a document delivered to the Registrar, means any material that –

(*a*) is unnecessary in order to comply with an obligation under this Ordinance or any other Ordinance; and

(*b*) is not specifically authorized to be delivered or supplied to the Registrar.

(4) For the purposes of paragraph (*a*) of the definition of "unnecessary material" in subsection (3), an obligation to deliver a document of a particular description, or a document conforming to certain requirements, does not extend to anything that is not needed for a document of that description or for a document conforming to those requirements.

Subdivision 2 – Registrar's Powers to Refuse to Accept and to Register Document

2.17 Registrar may refuse to accept document

(1) Where the Registrar receives a document delivered to him or her for registration under an Ordinance, the Registrar may refuse to accept the document if –

(*a*) any information that must be provided in the document is not provided;

(*b*) the document is not completed in the manner specified in it;

(*c*) the document is not accompanied by the fee charged under section 2.4; or

(*d*) the document is not yet required to be delivered to the Registrar under the Ordinance.

(2) If the Registrar refuses to accept a document under subsection (1) or has not received a document, the document is to be regarded as not having been delivered to the Registrar in satisfaction of the provision of the Ordinance that requires or authorizes the document to be delivered to the Registrar.

2.18 Registrar may refuse to register document

(1) Where the Registrar accepts a document delivered for registration, the Registrar may exercise the powers specified in subsections (2) and (3) if, in the Registrar's opinion –

(*a*) the document is not properly delivered to the Registrar; or

(*b*) the document is unsatisfactory.

(2) The Registrar may –

(*a*) refuse to register the document; and

(*b*) return the document to the person who delivered it for registration.

(3) If the document is unsatisfactory, the Registrar may also advise that –

(*a*) the document be appropriately amended or completed, and be redelivered for registration with or without a supplementary document; or

(*b*) a fresh document be delivered for registration in its place.

(4) Despite subsection (1), where a document is not properly delivered to the Registrar, the Registrar may register it if, in the Registrar's opinion, the document is not unsatisfactory.

(5) If the Registrar registers a document under subsection (4), no objection may be taken to the legal consequences of the document being so registered on the ground that it was not properly delivered to the Registrar.

(6) If the Registrar refuses to register a document under subsection (2)(*a*), the document is to be regarded as not having been delivered to the Registrar in satisfaction of the provision of the Ordinance that requires or authorizes the document to be delivered to the Registrar.

2.19 Registrar may withhold registration of unsatisfactory document pending further particulars etc.

For the purpose of determining whether the powers specified in section 2.18(2) and (3) are exercisable in relation to a document on the ground that it is unsatisfactory, the Registrar may –

(*a*) withhold the registration of the document pending compliance with the request under paragraph (*b*); and

(*b*) request the person who is required or authorized to deliver the document to the Registrar for registration under the Ordinance to do any or all of the following within a period specified by the Registrar –

(i) to produce any other document, information or evidence that, in the Registrar's opinion, is necessary for the Registrar to determine the question;

(ii) to appropriately amend or complete the document, and redeliver it for registration with or without a supplementary document;

(iii) to apply to the court for an order or direction that the Registrar thinks necessary and to conduct the application diligently;

(iv) to comply with other direction of the Registrar.

2.20 Appeal against Registrar's decision to refuse registration

(1) If a person is aggrieved by a decision of the Registrar to refuse to register a document under section 2.18(2)(*a*) on the ground that it is unsatisfactory, the person may, within 42 days after the decision, appeal to the Court of First Instance against the decision.

(2) The Court of First Instance may make any order that it thinks fit, including an order as to costs.

(3) If the Court of First Instance makes an order as to costs against the Registrar under subsection (2), the costs are payable out of the general revenue, and the Registrar is not personally liable for the costs.

2.21 Certain period to be disregarded for calculating daily penalty for failure to deliver document to Registrar

(1) This section applies if –

(*a*) a document is delivered to the Registrar for registration under an Ordinance; and

(*b*) the Registrar refuses to register the document under section 2.18(2)(*a*).

(2) The Registrar may send a notice of the refusal, and the reasons for the refusal, to –

(*a*) the person who is required to deliver the document to the Registrar for registration under the Ordinance or, if there is more than one person who is so required, any of those persons; or

(*b*) if another person delivers, on behalf of the person so required, the document to the Registrar for registration, that other person.

(3) Where it is an offence under an Ordinance for failing to deliver the document in satisfaction of a provision of the Ordinance that requires the delivery, the period specified in subsection (4) is to be disregarded for the purposes of a provision of the Ordinance that imposes a penalty for each day during which the offence continues if a notice is sent under subsection (2) with respect to the document.

(4) The period is one beginning with the date on which the document was delivered to the Registrar and ending with the fourteenth day after the date on which the notice is sent under subsection (2).

Division 5 – Registrar's Powers in relation to Keeping Register

2.22 Registrar may require company to resolve inconsistency with Register

(1) If it appears to the Registrar that the information contained in a document registered by the Registrar is inconsistent with other information on the Register, the Registrar may give notice to the company to which the document relates –

(*a*) stating in what respects the information contained in it appears to be inconsistent with other information on the Register; and

(*b*) requiring the company to take steps to resolve the inconsistency.

(2) For the purposes of subsection (1)(*b*), the Registrar may require the company to deliver to the Registrar within a period specified in the notice –

(*a*) information required to resolve the inconsistency; or

(*b*) evidence that proceedings have been commenced by the company in the Court of First Instance for the purpose of

resolving the inconsistency and that the proceedings have been conducted diligently.

(3) If a company fails to comply with a requirement under subsection (1)(*b*), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of $1,000 for each day during which the offence continues.

2.23 Registrar may require further information for updating etc.

(1) For the purpose of ensuring that a person's information on the Register is accurate or bringing the information up to date, the Registrar may send a notice to the person requiring the person to give the Registrar, within a period specified by the Registrar, any information about the person, being information of the kind that is included on the Register.

(2) If a company fails to comply with a requirement under subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of $1,000 for each day during which the offence continues.

(3) If any other person fails to comply with a requirement under subsection (1), the person commits an offence and is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of $1,000 for each day during which the offence continues.

2.24 Registrar may rectify typographical or clerical error in Register

(1) The Registrar may, on his or her own initiative, rectify a typographical or clerical error contained in any information on the Register.

(2) The Registrar may, on application by a company, rectify a typographical or clerical error contained in any information relating to the company on the Register.

(3) If, in relation to an application for the purposes of subsection (2), a document showing the rectification is delivered to the Registrar for registration, the Registrar may rectify the error by registering the document.

2.25 Registrar must rectify information on Register on Court order

(1) The Court of First Instance may, on application by any person, by order direct the Registrar to rectify any information on the Register or to remove any information from it if the Court is satisfied that –

(*a*) the information derives from anything that –

(i) is invalid or ineffective; or

(ii) has been done without the company's authority; or

(*b*) the information –

(i) is factually inaccurate; or

(ii) derives from anything that is factually inaccurate or forged.

(2) If, in relation to an application for the purposes of subsection (1), a document showing the rectification is filed with the Court of First Instance, the Court order may require the Registrar to rectify the information by registering the document.

(3) This section does not apply if the Court of First Instance is specifically empowered under any other Ordinance or any other provision of this Ordinance to deal with the rectification of the information on or the removal of the information from the Register.

(4) The Court of First Instance must not order the removal of any information from the Register under subsection (1) unless it is satisfied that –

(*a*) even if a document showing the rectification in question is registered, the continuing presence of the information on

the Register will cause material damage to the company; and

(*b*) the company's interest in removing the information outweighs any interest of other persons in the information continuing to appear on the Register.

(5) If the Court of First Instance makes an order for the rectification of any information on or the removal of any information from the Register under subsection (1), it may make any consequential order that appears to it to be just with respect to the legal effect (if any) to be accorded to the information by virtue of its having appeared on the Register.

(6) If the Court of First Instance makes an order for the removal of any information from the Register under subsection (1), it may direct –

(*a*) that a note made under section 2.27(1) in relation to the information is to be removed from the Register;

(*b*) that the order is not to be made available for public inspection as part of the Register; and

(*c*) that –

(i) no note is to be made under section 2.27(1) as a result of the order; or

(ii) any such note is to be restricted to providing information in relation to the matters specified by the Court.

(7) The Court of First Instance must not give any direction under subsection (6) unless it is satisfied that –

(*a*) any of the following may cause damage to the company –

(i) the presence on the Register of the note or an unrestricted note, as the case may be;

(ii) the availability for public inspection of the order; and

(*b*) the company's interest in non-disclosure outweighs any interest of other persons in disclosure.

(8) If the Court of First Instance makes an order under this section, the person who made the application must deliver an office copy of the order to the Registrar for registration.

2.26 Registrar may appear in proceedings for rectification

(1) In any proceedings before the Court of First Instance for the purposes of section 2.25, the Registrar –

(*a*) is entitled to appear or be represented, and be heard; and

(*b*) must appear if so directed by the Court.

(2) Whether or not the Registrar appears in those proceedings, the Registrar may submit to the Court of First Instance a statement in writing signed by the Registrar, giving particulars of the matters relevant to the proceedings and within the Registrar's knowledge.

(3) A statement submitted under subsection (2) is to be regarded as forming part of the evidence in the proceedings.

2.27 Registrar may annotate Register

(1) The Registrar may make a note in the Register for the purpose of providing information in relation to –

(*a*) a rectification of an error contained in any information on the Register under section 2.24;

(*b*) a rectification of any information on the Register under section 2.25;

(*c*) a removal of any information from the Register under section 2.25; or

(*d*) any other information on the Register.

(2) For the purposes of this Ordinance, a note is part of the Register.

(3) The Registrar may remove a note if the Registrar is satisfied that it no longer serves any useful purpose.

Division 6 – Inspection of Register

2.28 Registrar must make Register available for public inspection

(1) The Registrar must make the Register available for public inspection at all reasonable times so as to enable any member of the public –

(*a*) to ascertain whether the member of the public is dealing with –

(i) a company, or its directors or other officers, in matters of or connected with any act of the company;

(ii) a director or other officers of a company in matters of or connected with the administration of the company, or of its property;

(iii) a person against whom a disqualification order has been made by a court;

(iv) a person who has entered into possession of the property of a company as mortgagee;

(v) a person who is appointed as the provisional liquidator or liquidator in the winding up of a company; or

(vi) a person who is appointed as the receiver or manager of the property of a company; and

(*b*) to ascertain the particulars of the company, its directors or other officers, or its former directors (if any), or the particulars of any person mentioned in paragraph (*a*)(iv), (v) or (vi).

(2) The Registrar must not make available for public inspection under subsection (1) any information excluded from public inspection by or under an Ordinance or by an order of the court.

(3) If a prohibition under subsection (2) applies by reference to information deriving from a particular description of document, the prohibition does not affect –

(*a*) the availability for public inspection of the information through other means; and

(*b*) the availability for public inspection of the information deriving from another description of document in relation to which the prohibition does not apply.

(4) For the purposes of subsection (1), the Registrar must, on receiving the fee charged under section 2.4, allow the person to inspect any information on the Register in any form that the Registrar thinks fit.

(5) For the purposes of subsection (1), the Registrar may, on receiving the fee charged under section 2.4, produce to the person a copy or a certified true copy of any document or information on the Register, in any form that the Registrar thinks fit.

(6) In this section –

"disqualification order" (取消資格令), in relation to a person, means an order that, for a period specified in the order beginning with the date of the order, the person must not, without the leave of the court –

(*a*) be a director or liquidator of any company;

(*b*) be a receiver or manager of the property of any company; or

(*c*) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of any company.

2.29 Registrar's certified true copy admissible as evidence

In any proceedings –

(*a*) a document purporting to be a copy of any information produced under section 2.28(5), and purporting to be certified by the Registrar as a true copy of the information, is admissible in evidence on its production without further proof; and

(*b*) on being admitted in evidence under paragraph (*a*), the document is proof of the information in the absence of evidence to the contrary.

2.30 Issue of process for compelling production of information on Register

(1) No process for compelling the production of any information on the Register may issue from the court except with the permission of the court.

(2) Any such process must bear on it a statement that it is issued with the permission of the court.

Division 7 – Miscellaneous

2.31 Registrar may certify delivery or non-delivery of documents

(1) The Registrar may, for the purposes of any proceedings, certify that, at a particular date, a document required by a provision of this Ordinance to be delivered to the Registrar has or has not been so delivered.

(2) The Registrar may issue a certificate on the basis of the information on the Register.

(3) The Registrar may issue a certificate on his or her own initiative or on request by any person.

(4) A request for a certificate must be accompanied by the prescribed fee.

(5) A certificate relating to a document is not a certificate of the contents of the document.

(6) In any proceedings –

(*a*) a document purporting to be a certificate issued under subsection (1) on any matter is admissible in evidence on its production without further proof; and

(*b*) on being admitted in evidence under paragraph (*a*), the document is proof of the matter in the absence of evidence to the contrary.

(7) Despite subsection (6)(*b*), the document is not proof of compliance or contravention of a provision of this Ordinance in those proceedings.

(8) This section does not limit –

(*a*) section 17A, 22A or 22B or Part IV of the Evidence Ordinance (Cap. 8); or

(*b*) any provision made by virtue of that section or Part.

2.32 Registrar not responsible for verifying information

The Registrar is not responsible for verifying –

(*a*) the truth of the information contained in a document delivered to the Registrar for registration; or

(*b*) the authority under which a document is delivered to the Registrar for registration.

2.33 Immunity

(1) Neither the Registrar nor any public officer incurs any civil liability, and no civil action may lie against the Registrar or any public officer, in respect of anything done, or omitted to be done, by him or her in good faith –

(*a*) in the performance, or purported performance, of the functions under this Ordinance; or

(*b*) in the exercise, or purported exercise, of the powers under this Ordinance.

(2) Where, for the purposes of this Ordinance, a protected person –

(*a*) provides a service by virtue of which information in electronic form is supplied to the public; or

(*b*) supplies information by means of magnetic tapes or any electronic modes,

the protected person is not personally liable for any loss or damage suffered by a user of the service or information by reason of an error or omission appearing in the information if the error or omission was made in good faith and in the ordinary course of the discharge of the protected person's duties.

(3) Where, for the purposes of this Ordinance, a protected person provides a service or facility by virtue of which documents may be delivered to the Registrar by electronic means, the protected person is not personally liable for any loss or damage suffered by a user of the service or facility by reason of an error or omission appearing in a document delivered to the Registrar by virtue of the service or facility if the error or omission –

(*a*) was made in good faith and in the ordinary course of the discharge of the protected person's duties; or

(*b*) has occurred or arisen as a result of any defect or breakdown in the service or facility or in any equipment used for the service or facility.

(4) The protection given to a protected person by subsections (2) and (3) in respect of an error or omission does not affect any liability of the Government in tort for the error or omission.

(5) In this section –

"protected person" (受保障人) means a person authorized by the Registrar to supply the information or provide the service or facility.

2.34 Discrepancy between document and certified translation

(1) This section applies if –

(*a*) a certified translation of a document is delivered by a company to the Registrar for the purposes of section 2.11(1)(*b*) to accompany the document in a language other than English or Chinese; and

(*b*) there is a discrepancy between the document in that language and the certified translation of the document.

(2) The company may not rely on that translation, in so far as it relates to the discrepancy, as against a third party.

(3) A third party may not rely on that translation, in so far as it relates to the discrepancy, as against the company unless the third party –

(*a*) had no knowledge of the contents of the document in that language; and

(*b*) had actually relied on that translation in so far as it relates to the discrepancy.

(4) In this section –

"third party" (第三者) means a person other than the company.

2.35 Offence for destruction etc. of registers, books or documents

(1) A person commits an offence if the person dishonestly, with a view to gain for the person's own self or another, or with intent to cause loss to another, destroys, removes, alters, defaces or conceals –

(*a*) any register, book or document belonging to, or filed or deposited in, the office of the Registrar; or

(*b*) any electronic record, microfilm, image or other record of such register, book or document.

(2) A person who commits an offence under subsection (1) is liable to imprisonment for 7 years.

(3) A person commits an offence if the person willfully or maliciously destroys, removes, alters, defaces or conceals –

(*a*) any register, book or document belonging to, or filed or deposited in, the office of the Registrar; or

(*b*) any electronic record, microfilm, image or other record of such register, book or document.

(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 5 and to imprisonment for 6 months.

PART 10

DIRECTORS AND SECRETARIES

Division 1 – Appointment, Removal and Resignation of Directors

Subdivision 1 – Requirement to have Directors

10.1 Public company and company limited by guarantee required to have at least 2 directors

(1) This section applies to –

(*a*) a public company; and

(*b*) a company limited by guarantee.

(2) The company must have at least 2 directors.

(3) With effect from the date of incorporation of the company, the first directors of the company are the persons named as the directors in the application form submitted under section 3.1(1).[5]

(4) A person who is still deemed to be a director of the company under section 153(2) of the pre-amended predecessor Ordinance immediately before the commencement of this section continues to be deemed to be a director of the company as if section 19(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004) had not been enacted, until a notice of appointment of a director is given to the Registrar in accordance with section 12.112(1).

(5) If a power specified in subsection (6) is exercisable by a director under the company's articles where the number of directors is reduced below the number fixed as the necessary quorum of directors, the power is exercisable also where the number of directors is reduced below the number required by subsection (2).

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[5] A consultation draft of Part 3 will be published later.

(6) The power specified for the purposes of subsection (5) is a power to act for the purpose of –

(*a*) increasing the number of directors; or

(*b*) calling a general meeting of the company,

but not for any other purpose.

(7) In subsection (4) –

"pre-amended predecessor Ordinance" (修訂前的《前身條例》) means the predecessor Ordinance that was in force immediately before it was amended by section 19(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004).

10.2 Private company required to have at least one director

(1) A private company must have at least one director.

(2) With effect from the date of incorporation of a private company, the first directors of the company are the persons named as the directors in the application form submitted under section 3.1(1).

(3) A person who is still deemed to be a director of a private company under section 153A(2) of the pre-amended predecessor Ordinance immediately before the commencement of this section continues to be deemed to be a director of the company as if section 20(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004) had not been enacted, until a notice of appointment of a director is given to the Registrar in accordance with section 12.112(1).

(4) In subsection (3) –

"pre-amended predecessor Ordinance" (修訂前的《前身條例》) means the predecessor Ordinance that was in force immediately before it was amended by section 20(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004).

10.3 Nomination of reserve director of private company

(1) If a private company has only one member and that member is the sole director of the company, the company may in general meeting, despite anything in its articles, nominate a person (other than a body corporate) who has attained the age of 18 years as a reserve director of the company to act in the place of the sole director in the event of the sole director's death.

(2) The nomination of a person as a reserve director of a private company ceases to have effect if –

(*a*) before the death of the director in respect of whom the person was nominated –

(i) the person resigns as reserve director in accordance with section 10.12; or

(ii) the company in general meeting revokes the nomination; or

(*b*) the director in respect of whom the person was nominated ceases to be the sole member and sole director of the company for any reason other than the death of that director.

(3) If the nomination of a person as a reserve director of a private company ceases to have effect under subsection (2), the company must give notice to the Registrar in accordance with section 12.112(4).

(4) Subject to compliance with the conditions specified in subsection (5), in the event of the death of the director in respect of whom the reserve director is nominated, the reserve director is to be regarded as a director of the company for all purposes until –

(*a*) a person is appointed as a director of the company in accordance with its articles; or

(*b*) the reserve director resigns from the office of director in accordance with section 10.12,

whichever is the earlier.

(5) The conditions specified for the purposes of subsection (4) are –

(*a*) the nomination of the reserve director has not ceased to have effect under subsection (2); and

(*b*) the reserve director is not prohibited by law nor disqualified from acting as a director of the company.

10.4 Restriction on body corporate being director

(1) This section applies to –

(*a*) a public company;

(*b*) a private company that is a member of a group of companies of which a listed company is a member; and

(*c*) a company limited by guarantee.

(2) A body corporate must not be appointed a director of the company.

(3) An appointment made in contravention of subsection (2) is void.

(4) Nothing in this section affects any liability of a body corporate under any provision of this Ordinance if it –

(*a*) purports to act as a director; or

(*b*) acts as a shadow director,

although it could not, by virtue of this section, be appointed as a director.

10.5 Requirement to have at least one director who is natural person

(1) This section applies to a private company other than a private company that is a member of a group of companies of which a listed company is a member.

(2) The company must have at least one director who is a natural person.

(3) If on the commencement of this section –

(*a*) none of a company's directors are natural persons; and

(*b*) section 153A(1) of the predecessor Ordinance is complied with in relation to the company,

subsection (2) does not apply to the company until after the end of 6 months after the commencement of this section.

10.6 Direction requiring company to appoint director

(1) If it appears to the Registrar that a company is in contravention of section 10.1(2), 10.2(1) or 10.5(2), the Registrar may direct the company to appoint a director or directors in compliance with that section.

(2) The direction must specify –

(*a*) the statutory requirement of which the company appears to be in contravention;

(*b*) the period within which the company must comply with the direction; and

(*c*) the consequences of failing to comply with it.

(3) The company must comply with the direction by –

(*a*) making the necessary appointment or appointments before the end of the period specified in the direction; and

(*b*) giving notice of the appointment or appointments to the Registrar in accordance with section 12.112(1).

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

Subdivision 2 – Appointment of Directors

10.7 Minimum age for appointment as director

(1) A person must not be appointed a director of a company unless at the time of appointment the person has attained the age of 18 years.

(2) An appointment made in contravention of subsection (1) is void.

(3) Nothing in this section affects any liability of a person under any provision of this Ordinance if the person –

(*a*) purports to act as a director; or

(*b*) acts as a shadow director,

although the person could not, by virtue of this section, be appointed as a director.

10.8 Appointment of directors to be voted on individually

(1) This section applies to –

(*a*) a public company; and

(*b*) a company limited by guarantee.

(2) At a general meeting of the company, a motion for the appointment of 2 or more persons as directors of the company by a single resolution must not be made, unless a resolution that it should be so made has first been agreed to by the meeting without any vote being given against it.

(3) A resolution moved in contravention of subsection (2) is void, whether or not its being so moved was objected to at the time.

(4) Despite the fact that the resolution is void, no provision (whether contained in a company's articles or in any contract with the company or otherwise) for the automatic reappointment of retiring directors in default of another appointment applies.

(5) For the purposes of this section, a motion for approving a person's appointment, or for nominating a person for appointment, is regarded as a motion for the appointment of the person.

10.9 Validity of acts of director

(1) The acts of a person acting as a director are valid despite the fact that it is afterwards discovered –

(*a*) that there was a defect in the appointment of the person as a director;

(*b*) that the person was not qualified to hold office as a director or was disqualified from holding office as a director;

(*c*) that the person had ceased to hold office as a director; or

(*d*) that the person was not entitled to vote on the matter in question.

(2) Subsection (1) applies even if –

(*a*) the appointment of the person as a director is void under section 10.4(3) or 10.7(2); or

(*b*) the resolution for the appointment of the person as a director is void under section 10.8(3).

(3) Subsection (1) applies to acts done on or after the commencement of this section.

(4) Section 157 of the predecessor Ordinance continues to apply to acts done before the commencement of this section.

Subdivision 3 – Removal and Resignation of Directors

10.10 Resolution to remove director

(1) A company may by ordinary resolution remove a director before the end of the director's term of office, despite anything in its constitution or in any agreement between it and the director.

(2) Subsection (1) does not, if the company is a private company, authorize the removal of a director holding office for life on the commencement of the Companies (Amendment) Ordinance 1984 (6 of 1984).

(3) Subsections (4), (5), (6), (7) and (8) apply in relation to a removal of a director by resolution, irrespective of whether the removal by resolution is under subsection (1) or otherwise.

(4) Special notice is required of a resolution –

(*a*) to remove a director; or

(*b*) to appoint somebody in place of a director so removed at the meeting at which the director is removed.

(5) A vacancy created by the removal of a director, if not filled at the meeting at which the director is removed, may be filled as a casual vacancy.

(6) A person appointed director in place of a removed director is to be regarded, for the purpose of determining the time at which that person or any other director is to retire, as if that person had become director on the day on which the person removed was last appointed a director.

(7) On a resolution to remove a director before the end of the director's term of office, no share may, on a poll, carry a greater number of votes than it would carry in relation to the generality of matters to be voted on at a general meeting of the company.

(8) If a share carries special voting rights (that is to say, rights different from those carried by other shares of the same nominal value) in relation to some matters but not others, the reference in subsection (7) to the generality of matters to be voted on at a general meeting of the company is to be construed as a reference to the matters in relation to which the share carries no special voting rights.

(9) This section is not to be regarded as depriving a person of compensation or damages payable to the person in respect of the termination of –

(*a*) the person's appointment as director; or

(*b*) any appointment terminating with that as director.

10.11 Director's right to protest against removal

(1) On receipt of notice of a resolution under section 10.10(4) to remove a director, the company must forthwith send a copy of the notice to the director concerned.

(2) The director (whether or not a member of the company) is entitled to be heard on the resolution at the meeting at which the resolution is voted on.

(3) If notice is given of a resolution under section 10.10(4) to remove a director, and the director concerned makes with respect to it representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company must, unless the representations are received by it too late for it to do so –

(*a*) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and

(*b*) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company).

(4) If a copy of the representations is not sent as required by subsection (3) because they were received too late or because of the company's default, the director may (without prejudice to the right to be heard orally) require that the representations must be read out at the meeting.

(5) Copies of the representations need not be sent and the representations need not be read out at the meeting if, on application either by the company or by any other person who claims to be aggrieved, the Court of First Instance is satisfied that the rights given by this section are being abused.

(6) The Court of First Instance may order the company's costs on an application under subsection (5) to be paid in whole or in part by the director, despite the fact that the director is not a party to the application.

(7) Subsection (5) applies if the representations are received by the company on or after the commencement of this section.

(8) Section 157B(4) of the predecessor Ordinance continues to apply if the representations are received by the company before the commencement of this section.

10.12 Resignation of director

(1) A director of a company may, unless it is otherwise provided in the articles of the company or by any agreement with the company, resign as director at any time.

(2) If a director of a company resigns, the company must give notice of the resignation to the Registrar in the manner required by section 12.112(4) for giving notice of any change in its directors.

(3) Despite subsection (2), if the director resigning has reasonable grounds for believing that the company will not give the notice, notice must be given in the specified form by the director resigning.

(4) The notice required to be given under subsection (3) must state –

(*a*) whether the director resigning is required by the articles of the company or by any agreement with the company to give notice of resignation to the company; and

(*b*) if notice is so required, whether the notice has been given in accordance with the requirement.

(5) If notice of the resignation of a director of a company is required to be given by the articles of the company or by any agreement with the company, the resignation does not have effect unless the director gives notice in writing of the resignation –

(*a*) in accordance with the requirement;

(*b*) by leaving it at the registered office of the company; or

(*c*) by sending it to the company in hard copy form or in electronic form.

(6) In this section –

"director" (董事) includes a reserve director and a person regarded as a director under section 10.3(4).

Division 2 – Directors' Duty of Care, Skill and Diligence

10.13 Duty to exercise reasonable care, skill and diligence

(1) A director of a company must exercise reasonable care, skill and diligence.

(2) Reasonable care, skill and diligence mean the care, skill and diligence that would be exercised by a reasonably diligent person with –

(*a*) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company; and

(*b*) the general knowledge, skill and experience that the director has.

(3) The duty specified in subsection (1) is owed by a director of a company to the company.

(4) The duty specified in subsection (1) has effect in place of the common law rules and equitable principles as regards the duty to exercise reasonable care, skill and diligence, owed by a director of a company to the company.

(5) This section applies to a shadow director as it applies to a director.

10.14 Civil consequences of breach of duty to exercise reasonable care, skill and diligence

Without affecting other provisions of this Ordinance, the consequences of breach (or threatened breach) of the duty specified in section 10.13(1) are the same as would apply if the common law rules or equitable principles that section 10.13(1) replaces applied.

Division 3 – Directors' Liabilities

10.15 Interpretation

In this Division –

"permitted indemnity provision" (獲准許的彌償條文), in relation to a company, means a provision that –

(*a*) provides for indemnity against liability incurred by a director of the company to a third party; and

(*b*) meets the requirements specified in section 10.18(2);

"third party" (第三者), in relation to a company, means a person other than the company or an associated company.

10.16 Avoidance of provision relieving director from liability

(1) A provision that purports to exempt a director of a company (to any extent) from any liability that would otherwise attach to the director in connection with any negligence, default, breach of duty or breach of trust in relation to the company is void.

(2) A provision by which a company directly or indirectly provides an indemnity (to any extent) for a director of the company, or of an associated company, against any liability attaching to the director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or the associated company, of which he, she or it is a director, is void.

(3) Subsection (2) is subject to sections 10.17 and 10.18.

(4) This section applies to any provision, whether contained in a company's articles or in any contract with the company or otherwise.

10.17 Provision of insurance

(1) Section 10.16(2) does not prevent a company from purchasing and maintaining for a director of the company, or of an associated company,

insurance against any liability mentioned in that subsection except liability arising from any fraudulent act or fraudulent omission of the director.

(2) Despite the exception in subsection (1), the company may purchase and maintain for the director insurance against any liability incurred by the director in defending any proceedings, whether civil or criminal, taken against the director for any negligence, default, breach of duty or breach of trust in relation to the company or the associated company, of which he, she or it is a director.

10.18 Permitted indemnity provision

(1) Section 10.16(2) does not apply to a provision for indemnity against liability incurred by the director to a third party if the requirements specified in subsection (2) are met in relation to the provision.

(2) The provision must not provide any indemnity against –

(*a*) any liability of the director to pay –

(i) a fine imposed in criminal proceedings; or

(ii) a sum payable by way of a penalty in respect of non-compliance with any requirement of a regulatory nature; or

(*b*) any liability incurred by the director –

(i) in defending criminal proceedings in which the director is convicted;

(ii) in defending civil proceedings brought by the company, or an associated company, in which judgment is given against the director; or

(iii) in connection with an application for relief under section 358 of the predecessor Ordinance or

section 20.10 or 20.11[6] in which the Court of First Instance refuses to grant the director relief.

(3) A reference in subsection (2)(*b*) to a conviction, judgment or refusal of relief is to the final decision in the proceedings.

(4) For the purposes of subsection (3), a conviction, judgment or refusal of relief –

(*a*) if not appealed against, becomes final at the end of the period for bringing an appeal; or

(*b*) if appealed against, becomes final when the appeal, or any further appeal, is disposed of.

(5) For the purposes of subsection (4)(*b*), an appeal is disposed of if –

(*a*) it is determined, and the period for bringing any further appeal has ended; or

(*b*) it is abandoned or otherwise ceases to have effect.

10.19 Permitted indemnity provision to be disclosed in directors' report

(1) If, when a directors' report of a company is approved in accordance with section 9.20,[7] a permitted indemnity provision (whether made by the company or otherwise) is in force for the benefit of one or more directors of the company, the report must state that the provision is in force.

(2) If, at any time during the financial year to which a directors' report of a company relates, a permitted indemnity provision (whether made by the company or otherwise) was in force for the benefit of one or more persons who were then directors of the company, the report must state that the provision was in force.

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6 A consultation draft of Part 20 will be published later.

7 A consultation draft of Part 9 will be published later.

(3) If, when a directors' report of a company is approved in accordance with section 9.20, a permitted indemnity provision made by the company is in force for the benefit of one or more directors of an associated company, the report of the first-mentioned company must state that the provision is in force.

(4) If, at any time during the financial year to which a directors' report of a company relates, a permitted indemnity provision made by the company was in force for the benefit of one or more persons who were then directors of an associated company, the report must state that the provision was in force.

(5) In this section –

"directors' report" (董事報告) means the report required to be prepared under section 9.16(1).

10.20 Place where copy of permitted indemnity provision must be kept available for inspection

(1) This section has effect if a permitted indemnity provision is made for a director of a company, and applies –

(*a*) to that company (whether the provision is made by that company or an associated company); and

(*b*) if the provision is made by an associated company, to that associated company.

(2) A company to which this section applies must keep the following available for inspection at its registered office or at a prescribed place –

(*a*) a copy of the permitted indemnity provision; or

(*b*) if the provision is not in writing, a written memorandum setting out the terms of the provision.

(3) The company must –

(*a*) retain the copy or memorandum for at least one year after the date of termination or expiry of the provision; and

(*b*) keep the copy or memorandum available for inspection during that time.

(4) If the copy or memorandum is kept available for inspection at a place other than the company's registered office, the company must notify the Registrar of the place, or any change in the place, at which the copy or memorandum is kept. The notice must be given to the Registrar in the specified form within 14 days after the copy or memorandum is first kept at that place or within 14 days after the change (as the case may be).

(5) If a company contravenes subsection (2), (3) or (4), 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.

(6) In this section, a reference to a permitted indemnity provision includes a variation of the provision.

10.21 Right of member to inspect and request copy

(1) A copy of a permitted indemnity provision or a written memorandum required to be kept by a company under section 10.20 must be open to inspection by any member of the company without charge.[8]

(2) A member of the company is entitled, on request and on payment of a prescribed fee, to be provided with a copy of the provision or memorandum.

(3) The company must provide the member with the copy within a prescribed period after the request and the prescribed fee are received by the company.

(4) If a company contravenes subsection (3) –

(*a*) the company, and every responsible person of the company, commit an offence, and each is liable to a fine at

[8] Regulation will be made under clause 12.125 to make provision as to the time, duration and manner of inspection.

level 3 and, in the case of a continuing offence, to a further fine of $300 for each day during which the offence continues; and

(*b*) the Court of First Instance may by order direct that the copy be provided to the person requesting it.

(5) In this section, a reference to a permitted indemnity provision includes a variation of the provision.

10.22 Ratification of conduct by director amounting to negligence, etc.

(1) This section applies to the ratification by a company of conduct by a director amounting to negligence, default, breach of duty or breach of trust in relation to the company.

(2) The decision of the company to ratify the conduct must be made by resolution of the members of the company.

(3) If the resolution is proposed at a meeting, a decision of the company to ratify the conduct is not made unless the resolution is passed after disregarding every vote in favour of the resolution by a member who –

(*a*) is a director in respect of whose conduct the ratification is sought;

(*b*) is an entity connected with that director; or

(*c*) holds any shares in the company in trust for that director or entity.

(4) Subsection (3) does not prevent a member specified in that subsection from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.

(5) For the purposes of this section –

(*a*) "conduct" (行為) includes acts and omissions;

(*b*) "director" (董事) includes a past director;

(*c*) a shadow director is regarded as a director; and

(*d*) a reference to an entity connected with a director has the meaning given by section 11.2 except that subsection (1)(*b*) of that section does not apply.

(6) Nothing in this section affects –

(*a*) the validity of a decision taken by unanimous consent of the members of the company; or

(*b*) any power of the directors to agree not to sue, or to settle or release a claim made by them on behalf of the company.

(7) This section does not affect –

(*a*) any other Ordinance or rule of law imposing additional requirements for valid ratification; or

(*b*) any rule of law as to acts that are incapable of being ratified by the company.

10.23 Application and saving

(1) Sections 10.16, 10.17, 10.18 and 10.19 apply to any provision made on or after the commencement of those sections.

(2) Section 165 of the predecessor Ordinance, so far as it relates to directors, continues to apply in relation to any provision to which it applied immediately before the commencement of sections 10.16, 10.17, 10.18 and 10.19.

(3) Sections 10.20 and 10.21 apply to a permitted indemnity provision made on or after the commencement of those sections.

(4) Section 10.22 applies to conduct by a director on or after the commencement of that section.

Division 4 – Appointment and Resignation of Secretaries

10.24 Company required to have secretary

(1) A company must have a secretary.

(2) With effect from the date of incorporation of a company, the first secretary of the company is the person named as the secretary in the application form submitted under section 3.1(1).

(3) If the name of a firm is specified in the application form under section 3.5(3)(*c*), all partners of the firm as at the date of the application form are the first joint secretaries of the company.

(4) A secretary of a company must –

(*a*) if an individual, ordinarily reside in Hong Kong;

(*b*) if a body corporate, have its registered office or a place of business in Hong Kong.

(5) Anything required or authorized to be done by or to the secretary may be done –

(*a*) if the office is vacant or there is for any other reason no secretary capable of acting, by or to any assistant or deputy secretary; or

(*b*) if there is no assistant or deputy secretary capable of acting, by or to any officer of the company authorized generally or specially in that behalf by the directors.

10.25 Circumstances under which director may not be secretary

(1) Subject to subsections (2) and (3), a director of a company may be a secretary of the company.

(2) The director of a private company having only one director must not also be a secretary of the company.

(3) No private company having only one director may have as secretary of the company a body corporate the sole director of which is the sole director of the private company.

10.26 Direction requiring company to appoint secretary

(1) If it appears to the Registrar that a company is in contravention of section 10.24(1) or (4) or 10.25(2) or (3), the Registrar may direct the company to appoint a secretary in compliance with that section.

(2) The direction must specify –

(*a*) the statutory requirement of which the company appears to be in contravention;

(*b*) the period within which the company must comply with the direction; and

(*c*) the consequences of failing to comply with it.

(3) The company must comply with the direction by –

(*a*) making the necessary appointment before the end of the period specified in the direction; and

(*b*) giving notice of the appointment to the Registrar in the manner required by section 12.119(1) for giving notice of any change in its secretary or joint secretaries.

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

10.27 Resignation of secretary

(1) A secretary of a company may, unless it is otherwise provided in the articles of the company or by any agreement with the company, resign as secretary at any time.

(2) If a secretary of a company resigns, the company must give notice of the resignation to the Registrar in the manner required by section 12.119(1) for giving notice of any change in its secretary or joint secretaries.

(3) Despite subsection (2), if the secretary resigning has reasonable grounds for believing that the company will not give the notice, notice must be given in the specified form by the secretary resigning.

(4) The notice required to be given under subsection (3) must state –

(*a*) whether the secretary resigning is required by the articles of the company or by any agreement with the company to give notice of resignation to the company; and

(*b*) if notice is so required, whether the notice has been given in accordance with the requirement.

(5) If notice of the resignation of a secretary of a company is required to be given by the articles of the company or by any agreement with the company, the resignation does not have effect unless the secretary gives notice in writing of the resignation –

(*a*) in accordance with the requirement;

(*b*) by leaving it at the registered office of the company; or

(*c*) by sending it to the company in hard copy form or in electronic form.

Division 5 – Miscellaneous Provisions Relating to Directors and Secretaries

10.28 Director vicariously liable for acts of alternate etc.

(1) If the articles of a company authorize a director to appoint an alternate director to act in place of the director, then, unless the articles contain any provision to the contrary, whether express or implied –

(*a*) an alternate director so appointed is to be regarded as the agent of the director who appoints the alternate director; and

(*b*) a director who appoints an alternate director is vicariously liable for any tort committed by the alternate director while acting in the capacity of alternate director.

(2) Nothing in subsection (1)(*b*) affects the personal liability of an alternate director for any act or omission.

10.29 Avoidance of acts done by person in dual capacity as director and secretary

(1) A provision requiring or authorizing a thing to be done by or to a director and a secretary of a company is not satisfied by its being done by or to the same person acting –

(*a*) both as director and secretary; or

(*b*) both as director and in place of the secretary.

(2) This section applies to any provision of this Ordinance or in a company's articles.

10.30 Provisions as to undischarged bankrupt acting as director

(1) A person who is an undischarged bankrupt must not act as director of, or directly or indirectly take part or be concerned in the management of, a company, except with the leave of the court by which the person was adjudged bankrupt.

(2) A person who contravenes subsection (1) commits an offence and is liable –

(*a*) on conviction on indictment to a fine of $700,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine of $150,000 and to imprisonment for 12 months.

(3) The court must not give leave for the purposes of this section unless notice of intention to apply for it has been served on the Official Receiver.

(4) If the Official Receiver is of opinion that it is contrary to the public interest that an application under subsection (3) should be granted, the Official Receiver must attend the hearing of, and oppose the granting of, the application.

(5) In subsection (1) –

"company" (公司) has the meaning given by section 168C(1) of the Companies (Winding Up Provisions) Ordinance (Cap. 32).[9]

10.31 Minutes of directors' meetings

(1) A company must cause minutes of all proceedings at meetings of its directors to be recorded.

(2) A company must keep the records under subsection (1) for at least 20 years from the date of the meeting.

(3) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of $1,000 for each day during which the offence continues.

10.32 Minutes as evidence

(1) Minutes recorded in accordance with section 10.31, if purporting to be signed by the chairman of the meeting or by the chairman of the next directors' meeting, are evidence of the proceedings at the meeting.

(2) If minutes have been recorded in accordance with section 10.31 of the proceedings at a meeting of directors, then, until the contrary is proved –

(*a*) the meeting is to be regarded as duly held and convened;

(*b*) all proceedings at the meeting are to be regarded to have duly taken place; and

(*c*) all appointments at the meeting are to be regarded as valid.

(3) Subsection (2)(*c*) is subject to sections 10.4(3) and 10.7(2).

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

10.33 Written record of decision of sole director of private company

(1) If a private company has only one director and the director takes any decision that –

(*a*) may be taken in a meeting of directors; and

(*b*) has effect as if agreed in a meeting of directors,

the director must (unless that decision is taken by way of a resolution in writing) provide the company with a written record of that decision within 7 days after the decision is made.

(2) If the director provides the company with a written record of a decision in accordance with subsection (1), that record is sufficient evidence of the decision having been taken by the director.

(3) A company must keep a written record provided to the company in accordance with subsection (1) for at least 20 years from the date on which the written record is so provided.

(4) A director who contravenes subsection (1) commits an offence.

(5) If a company contravenes subsection (3), the company, and every responsible person of the company, commit an offence.

(6) A person who commits an offence under subsection (4) or (5) is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of $300 for each day during which the offence continues.

(7) A contravention of subsection (1) by a director does not affect the validity of any decision mentioned in that subsection.

10.34 Application and saving

(1) Sections 10.31 and 10.32 apply to meetings of directors held on or after the commencement of those sections.

(2) Section 119 of the predecessor Ordinance continues to apply to meetings of directors held before the commencement of sections 10.31 and 10.32.

(3) Section 10.33 applies to decisions taken on or after the commencement of that section.

(4) Section 153C of the predecessor Ordinance continues to apply to decisions taken before the commencement of section 10.33.

PART 11

FAIR DEALING BY DIRECTORS

Division 1 – Preliminary

11.1 Interpretation

In this Part, a reference to circumstances constituting a contravention –

(*a*) is a reference to all the facts and other circumstances constituting the contravention; and

(*b*) includes, in the case of a transaction or arrangement that, but for any fact or circumstances, would not be prohibited because of Subdivision 3 of Division 2, the fact or circumstances.

11.2 Connected entity

(1) In this Part, a reference to an entity connected with a director or past director of a company –

(*a*) is a reference to –

(i) a member of the director's or past director's family;

(ii) a body corporate with which the director or past director is associated;

(iii) a person acting in the capacity as trustee of a trust specified in subsection (2), other than a trust for the purpose of an employees' share scheme or a pension scheme; or

(iv) a person acting in the capacity as partner of –

(A) the director or past director; or

(B) another person who, by virtue of subparagraph (i), (ii) or (iii), is an entity

connected with the director or past director; and

(*b*) excludes a person who is a director or past director, as the case may be, of the company.

(2) The trust is one –

(*a*) the beneficiaries of which include –

(i) the director or past director; or

(ii) a person who, by virtue of subsection (1)(*a*)(i) or (ii), is an entity connected with the director or past director; or

(*b*) the terms of which give a power to the trustees that may be exercised for the benefit of –

(i) the director or past director; or

(ii) a person who, by virtue of subsection (1)(*a*)(i) or (ii), is an entity connected with the director or past director.

(3) In this section –

"partner" (合夥人), in relation to another person, means a person who is a partner of that other person in a partnership within the meaning of the Partnership Ordinance (Cap. 38).

11.3 Family member of director or past director

(1) In this Part, a reference to a member of a director's or past director's family is a reference to –

(*a*) the director's or past director's spouse;

(*b*) any other person (whether of a different sex or the same sex) with whom the director or past director lives as a couple in an enduring family relationship;

(*c*) a child, step-child or adopted child of the director or past director;

(*d*) a child, step-child or adopted child of a person falling within paragraph (*b*) who –

(i) is not a child, step-child or adopted child of the director or past director;

(ii) lives with the director or past director; and

(iii) has not attained the age of 18; or

(*e*) a parent of the director or past director.

(2) In subsection (1), a reference to a child or step-child of a person includes an illegitimate child of the person.

(3) In this section –

"adopted" (領養) means adopted in any manner recognized by the law of Hong Kong.

11.4 Director or past director associated with, or controlling, body corporate

(1) For the purposes of this Part, a director or past director is associated with a body corporate if –

(*a*) the director or past director, or any one or more of the entities connected with the director or past director, or the director or past director together with any one or more of the entities connected with the director or past director, are entitled to exercise, or control the exercise of, more than 30% of the voting power at any general meeting of that body corporate; or

(*b*) the directors, or a majority of the directors, of that body corporate are accustomed to act in accordance with the directions or instructions of –

(i) the director or past director; or

(ii) an entity connected with the director or past director.

(2) In this section, a reference to voting power the exercise of which is controlled by a director or past director, or by an entity connected with a director or past director, includes voting power the exercise of which is controlled by a body corporate controlled by the director or past director or by the connected entity.

(3) For the purposes of this section, a director or past director, or an entity connected with a director or past director, controls a body corporate if the director or past director, or any one or more of the entities connected with the director or past director, or the director or past director together with any one or more of the entities connected with the director or past director, are entitled to exercise, or control the exercise of, more than 50% of the voting power at any general meeting of that body corporate.

(4) Despite section 11.2 –

(*a*) a body corporate with which a director or past director is associated is not regarded as an entity connected with the director or past director for the purposes of subsection (1)(*a*) or (3) unless it also falls within section 11.2(1)(*a*)(iii) or (iv);

(*b*) a trustee of a trust the beneficiaries of which include a body corporate with which a director or past director is associated is not, by reason only of that fact, regarded as an entity connected with the director or past director for the purposes of subsection (1)(*a*) or (3); and

(*c*) a person acting in the capacity as partner of a body corporate with which a director or past director is associated is not, by reason only of that fact, regarded as an entity connected with the director or past director for the purposes of subsection (1)(*a*) or (3).

11.5 Company subject to more than one prohibition

(1) If a company is prohibited by more than one provision of this Part from doing something without the approval of the members of the company, or of the members of a holding company of the company, specified in each provision, the company is prohibited from doing the thing without all those approvals.

(2) For the purposes of subsection (1), a company is prohibited from doing something without the approval of the members of the company, or of the members of a holding company of the company, if the company is prohibited from doing the thing unless –

(*a*) it has obtained that approval; or

(*b*) the thing is conditional on that approval being obtained.

(3) Subsection (1) does not require a separate resolution for the purposes of each of the provisions.

11.6 Application to transaction or arrangement despite its governing law

For the purposes of this Part, it is immaterial whether or not the law (apart from this Ordinance) that governs a transaction or arrangement is the law of Hong Kong.

Division 2 – Loan, Quasi-loan and Credit Transaction

Subdivision 1 – Preliminary

11.7 Interpretation

(1) In this Division –

"director" (董事) includes a shadow director;

"guarantee" (擔保) includes indemnity;

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

"services" (服務) means anything other than goods or land.

(2) For the purposes of this Division, a body corporate is not regarded as a shadow director of any of its subsidiaries only because the directors, or a majority of the directors, of the subsidiary are accustomed to act in accordance with its direction or instructions.

11.8 Quasi-loan

(1) For the purposes of this Division, a person makes a quasi-loan to a director or an entity connected with a director if the person –

(*a*) agrees to pay, or pays otherwise than in pursuance of an agreement, a sum for the director or connected entity –

(i) on terms that the director or connected entity (or another person on behalf of the director or connected entity) will reimburse the person; or

(ii) in circumstances giving rise to a liability on the director or connected entity to reimburse the person; or

(*b*) agrees to reimburse, or reimburses otherwise than in pursuance of an agreement, expenditure incurred by another person for the director or connected entity –

(i) on terms that the director or connected entity (or another person on behalf of the director or connected entity) will reimburse the person; or

(ii) in circumstances giving rise to a liability on the director or connected entity to reimburse the person.

(2) For the purposes of this Division, if a person makes a quasi-loan to a director or an entity connected with a director, the director's or connected entity's liabilities under the quasi-loan include the liabilities of any other person

who has agreed to reimburse the person on the director's or connected entity's behalf.

11.9 Credit transaction

(1) For the purposes of this Division, a person enters into a credit transaction as creditor for a director or an entity connected with a director if the person –

(*a*) supplies goods to the director or connected entity under a hire-purchase agreement;

(*b*) sells goods or land to the director or connected entity under a conditional sale agreement;

(*c*) leases or hires goods or leases land to the director or connected entity in return for periodical payments; or

(*d*) otherwise supplies goods or services or disposes of land to the director or connected entity on the understanding that payment (whether in a lump sum or instalments or by way of periodical payments or otherwise) is to be deferred.

(2) In this section –

"conditional sale agreement" (有條件售賣協議) means an agreement for the sale of goods or land under which –

(*a*) the purchase price or part of it is payable by instalments;

(*b*) the property in the goods or land is to remain in the seller until the conditions regarding the payment of instalments, or other conditions, specified in the agreement are fulfilled; and

(*c*) despite such reservation of property, the buyer is to be in possession of the goods or land prior to the fulfilment of those conditions;

"hire-purchase agreement" (租購協議) means an agreement for the bailment of goods under which the bailee may buy the goods, or under which the property in the goods will or may pass to the bailee.

11.10 Person for whom transaction or arrangement entered into

(1) In this Division, a reference to a director, or an entity connected with a director, for whom a transaction is entered into is –

(*a*) in the case of a loan or quasi-loan, or a guarantee or security in connection with a loan or quasi-loan, a reference to the director or connected entity to whom the loan or quasi-loan is made; or

(*b*) in the case of a credit transaction, or a guarantee or security in connection with a credit transaction, a reference to the director or connected entity to whom goods, land or services are supplied, sold, leased, hired or otherwise disposed of under the credit transaction.

(2) For the purposes of this Division, an arrangement is entered into for a director or an entity connected with a director if –

(*a*) in the case of an arrangement mentioned in section 11.20(1)(*a*) or (2)(*a*), a company takes part in the arrangement under which another person enters into a transaction with the director or connected entity; or

(*b*) in the case of an arrangement mentioned in section 11.20(1)(*b*) or (2)(*b*), a company enters into the arrangement in relation to any rights, obligations or liabilities under a transaction entered into by another person with the director or connected entity.

11.11 Prescribed approval of members

(1) For the purposes of this Division, a reference to the prescribed approval of the members of any company is a reference to an approval obtained by a resolution of those members –

(*a*) that is passed before the company enters into the transaction or arrangement; and

(*b*) in respect of which the requirements specified in subsection (2) are met.

(2) The requirements specified for the purposes of subsection (1)(*b*) are –

(*a*) in the case of a written resolution, a memorandum setting out the matters specified in subsection (4) is sent to every member at or before the time at which the proposed resolution is sent to the member; or

(*b*) in the case of a resolution at a meeting –

(i) a memorandum setting out the matters specified in subsection (4) is sent to every member together with the notice convening the meeting; and

(ii) if the company is a public company, the resolution is passed after disregarding every vote in favour of the resolution by a member specified in subsection (5).

(3) Subject to any provision of the company's articles, any accidental failure to send the memorandum to a member is to be disregarded for the purpose of determining whether the requirement specified in subsection (2)(*a*) or (*b*)(i) has been met.

(4) The matters specified for the purposes of subsection (2)(*a*) and (*b*)(i) are –

(*a*) in the case of a resolution for the purposes of section 11.16, 11.17 or 11.18 –

(i) the nature of the transaction to be approved by the resolution;

(ii) the amount of the loan or quasi-loan;

(iii) the purpose for which the loan or quasi-loan is required; and

(iv) the extent of the company's liability under any transaction connected with the loan or quasi-loan;

(*b*) in the case of a resolution for the purposes of section 11.19 –

(i) the nature of the transaction to be approved by the resolution;

(ii) the amount and value of the credit transaction;

(iii) the purpose for which the goods, land or services supplied, sold, leased, hired or otherwise disposed of under the credit transaction are required; and

(iv) the extent of the company's liability under any transaction connected with the credit transaction; or

(*c*) in the case of a resolution for the purposes of section 11.20 –

(i) the matter that would have to be disclosed if the company were seeking approval of the transaction to which the arrangement relates;

(ii) the nature of the arrangement to be approved by the resolution; and

(iii) the extent of the company's liability under the arrangement.

(5) The member specified for the purposes of subsection (2)(*b*)(ii) is –

(*a*) in the case of a resolution for the purposes of section 11.16 or 11.17 –

(i) one who is the director to whom the loan or quasi-loan is proposed to be made or was made; or

(ii) one who holds any shares in the company in trust for that director;

(*b*) in the case of a resolution for the purposes of section 11.18 –

(i) one who is the connected entity to whom the loan or quasi-loan is proposed to be made or was made;

(ii) one who is the director with whom that entity is connected; or

(iii) one who holds any shares in the company in trust for that connected entity or director;

(*c*) in the case of a resolution for the purposes of section 11.19 –

(i) one who is the director or connected entity for whom the credit transaction is proposed to be entered into or was entered into;

(ii) one who is the director with whom that entity is connected; or

(iii) one who holds any shares in the company in trust for the director specified in subparagraph (i) or (ii) or that connected entity; or

(*d*) in the case of a resolution for the purposes of section 11.20 –

(i) one who is the director or connected entity for whom the arrangement is proposed to be entered into or was entered into;

(ii) one who is the director with whom that entity is connected; or

(iii) one who holds any shares in the company in trust for the director specified in subparagraph (i) or (ii) or that connected entity.

(6) Subsection (2)(*b*)(ii) does not prevent a member specified in subsection (5) from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.

(7) In this section, a reference to a transaction to which an arrangement relates is –

(*a*) in the case of an arrangement mentioned in section 11.20(1)(*a*) or (2)(*a*), a reference to the transaction entered into with a director or an entity connected with a director under the arrangement; or

(*b*) in the case of an arrangement mentioned in section 11.20(1)(*b*) or (2)(*b*) in relation to any rights, obligations or liabilities under a transaction, a reference to the transaction.

(8) For the purposes of subsection (1)(*a*), it is irrelevant whether the resolution is passed before, on or after the commencement of this Division.

11.12 Value of transaction or arrangement etc.

(1) For the purposes of this Division –

(*a*) the value of a transaction is determined in accordance with subsection (2); and

(*b*) the value of any other relevant transaction or arrangement is the value of the transaction or arrangement determined in accordance with subsection (2) or (3), reduced by any amount by which the liabilities of the director, or the entity connected with a director, for whom the transaction or arrangement was entered into have been reduced.

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

(*a*) the value of a loan is the amount of its principal;

(*b*) the value of a quasi-loan is the amount, or maximum amount, that the person to whom the quasi-loan is made is liable to reimburse the person making the quasi-loan;

(*c*) the value of a credit transaction is the price that it is reasonable to expect could be obtained for goods, land or services to which the transaction relates if they had been supplied (at the time the transaction is entered into) in the ordinary course of business and on the same terms (apart from the price) as they have been supplied, or are to be supplied, under the transaction; and

(*d*) the value of a guarantee or security is the amount guaranteed or secured.

(3) For the purposes of subsection (1)(*b*) –

(*a*) the value of an arrangement mentioned in section 11.20(1)(*a*) or (2)(*a*) is the value of the transaction entered into with a director or an entity connected with a director under the arrangement; and

(*b*) the value of an arrangement mentioned in section 11.20(1)(*b*) or (2)(*b*) in relation to any rights, obligations or liabilities under a transaction is the value of the transaction.

(4) For the purposes of this Division, the value of a transaction or arrangement, or any other relevant transaction or arrangement, is regarded as exceeding $750,000 if its value is not capable of being expressed as a specific sum of money –

(*a*) whether because the amount of any liability arising under the transaction or arrangement is unascertainable, or for any other reason; and

(*b*) whether or not any liability under the transaction or arrangement has been reduced.

11.13 Relevant transaction or arrangement

(1) A transaction or arrangement is a relevant transaction or arrangement for the purposes of an exception provision –

(*a*) if it is entered into before, or at the same time as, the transaction in question; and

(*b*) if –

(i) where the transaction in question is entered into for a director of the company or an entity connected with such a director, it is entered into for the director or connected entity by virtue of the exception provision by the company or a subsidiary of the company; or

(ii) where the transaction in question is entered into for a director of a holding company of the company or an entity connected with such a director, it is entered into for the director or connected entity by virtue of the exception provision by the holding company or a subsidiary of the holding company.

(2) Despite subsection (1), a transaction or arrangement is not a relevant transaction or arrangement for the purposes of an exception provision if –

(*a*) it was entered into by a body corporate that, at the time it was entered into –

(i) was a subsidiary of the company entering into the transaction in question; or

(ii) was a subsidiary of a holding company of that company; and

(*b*) at the time the question arises as to whether the transaction in question falls within the exception provision, the body corporate is no longer such a subsidiary.

(3) In this section –

"exception provision" (例外條文) means –

(*a*) section 11.21(1);

(*b*) section 11.21(2); or

(*c*) section 11.22.

11.14 Total exposure amount

(1) In sections 11.25 and 11.26 –

"total exposure amount" (風險承擔總額) –

(*a*) in relation to a private company or a company limited by guarantee, means the aggregate of the following amounts –

(i) the amount of the transaction in question;

(ii) the aggregate of the amounts outstanding at the time that transaction is entered into, in respect of the principal and interest or otherwise, on every loan made by the company to a director of the company or of a holding company of the company (excluding the transaction in question, and any loan made with the prescribed approval mentioned in section 11.16 or by virtue of section 11.15, 11.21, 11.22, 11.23, 11.24, 11.27 or 11.28);

(iii) the aggregate of the amounts representing the maximum liability of the company at that time under every guarantee given by the company, and in respect of every security provided by the

company, in connection with any loan made by any person to a director of the company or of a holding company of the company (excluding the transaction in question, and any guarantee or security given or provided with the prescribed approval mentioned in section 11.16 or by virtue of section 11.15, 11.21, 11.22, 11.23, 11.24, 11.27 or 11.28);

(iv) the aggregate of the net amounts incurred or to be incurred by the company at that time under every arrangement specified in subsection (2) that is entered into by the company (excluding any arrangement entered into with the prescribed approval mentioned in section 11.20 or by virtue of section 11.15); or

(*b*) in relation to a public company, means the aggregate of the following amounts –

(i) the amount of the transaction in question;

(ii) the aggregate of the amounts outstanding at the time that transaction is entered into, in respect of the principal and interest or otherwise, on every loan and quasi-loan made by the company to, and every credit transaction entered into by the company as creditor for, a director of the company or of a holding company of the company, or an entity connected with such a director (excluding the transaction in question, and any loan, quasi-loan or credit transaction made or entered into with the prescribed approval mentioned in section 11.16, 11.17, 11.18 or 11.19 or by virtue of

section 11.15, 11.21, 11.22, 11.23, 11.24, 11.27 or 11.28);

(iii) the aggregate of the amounts representing the maximum liability of the company at that time under every guarantee given by the company, and in respect of every security provided by the company, in connection with any loan or quasi-loan made by any person to, or any credit transaction entered into by any person as creditor for, a director of the company or of a holding company of the company, or an entity connected with such a director (excluding the transaction in question, and any guarantee or security given or provided with the prescribed approval mentioned in section 11.16, 11.17, 11.18 or 11.19 or by virtue of section 11.15, 11.21, 11.22, 11.23, 11.24, 11.27 or 11.28);

(iv) the aggregate of the net amounts incurred or to be incurred by the company at that time under every arrangement specified in subsection (3) that is entered into by the company (excluding any arrangement entered into with the prescribed approval mentioned in section 11.20 or by virtue of section 11.15).

(2) An arrangement specified for the purposes of subsection (1)(*a*)(iv) is –

(*a*) an arrangement under which –

(i) another person makes a questionable loan to a director of the company or of a holding company of the company; and

(ii) that other person, in pursuance of the arrangement, has obtained or is to obtain any benefit from the company or an associated company of the company; or

(*b*) an arrangement for an assignment to the company, or assumption by the company, of any rights, obligations or liabilities under a questionable loan made by another person to a director of the company or of a holding company of the company.

(3) An arrangement specified for the purposes of subsection (1)(*b*)(iv) is –

(*a*) an arrangement under which –

(i) another person makes a questionable loan or quasi-loan to, or enters into a questionable credit transaction as creditor for, a director of the company or of a holding company of the company, or an entity connected with such a director; and

(ii) that other person, in pursuance of the arrangement, has obtained or is to obtain any benefit from the company or an associated company of the company; or

(*b*) an arrangement for an assignment to the company, or assumption by the company, of any rights, obligations or liabilities under –

(i) a questionable loan or quasi-loan made by another person to a director of the company or of a holding company of the company, or an entity connected with such a director; or

(ii) a questionable credit transaction entered into by another person as creditor for a director of the

company or of a holding company of the company, or an entity connected with such a director.

(4) In this section –

(*a*) a reference to a questionable loan or quasi-loan made by a person to a director of the company, or an entity connected with such a director, under an arrangement is a reference to a loan or quasi-loan, as the case may be, that, if it had been made by the company on the date of the arrangement, would have been prohibited by section 11.16(1), 11.17(1) or 11.18(1) or would have been so prohibited in the absence of sections 11.25 and 11.26;

(*b*) a reference to a questionable credit transaction entered into by a person as creditor for a director of the company, or an entity connected with such a director, under an arrangement is a reference to a credit transaction that, if it had been entered into by the company on the date of the arrangement, would have been prohibited by section 11.19(1) or would have been so prohibited in the absence of sections 11.25 and 11.26;

(*c*) a reference to a questionable loan or quasi-loan made by a person to a director of a holding company of the company, or an entity connected with such a director, under an arrangement is a reference to a loan or quasi-loan, as the case may be, that, if it had been made by the company on the date of the arrangement, would have been prohibited by section 11.16(2), 11.17(2) or 11.18(2) or would have been so prohibited in the absence of sections 11.25 and 11.26; and

(*d*) a reference to a questionable credit transaction entered into by a person as creditor for a director of a holding company

of the company, or an entity connected with such a director, under an arrangement is a reference to a credit transaction that, if it had been entered into by the company on the date of the arrangement, would have been prohibited by section 11.19(2) or would have been so prohibited in the absence of sections 11.25 and 11.26.

11.15 Preservation of effect of members' unanimous consent

(1) If, under a provision of this Division, a transaction or arrangement must not be entered into without the prescribed approval of any company's members, the provision does not prohibit the transaction or arrangement from being entered into with the unanimous consent of those members that is given before it is entered into.

(2) If, under a provision of this Division, a transaction or arrangement may be entered into with only the prescribed approval of any company's members, the provision does not preclude the transaction or arrangement from being entered into with the unanimous consent of those members that is given before it is entered into.

(3) For the purposes of subsection (1) or (2), it is irrelevant whether the unanimous consent is given before, on or after the commencement of this Division.

Subdivision 2 – Prohibitions

11.16 Company must not make loan etc. to director

(1) Without the prescribed approval of its members, a company must not –

(*a*) make a loan to a director of the company; or

(*b*) give a guarantee or provide security in connection with a loan made by any person to such a director.

(2) Without the prescribed approval of its members and the prescribed approval of the holding company's members, a company must not –

(*a*) make a loan to a director of a holding company of the company; or

(*b*) give a guarantee or provide security in connection with a loan made by any person to such a director.

(3) Despite subsection (2) –

(*a*) a company may enter into the transaction with only the prescribed approval of its members if the holding company is incorporated outside Hong Kong; and

(*b*) a company may enter into the transaction with only the prescribed approval of the holding company's members if it is a wholly owned subsidiary of the holding company, and the holding company is incorporated in Hong Kong.

11.17 Public company must not make quasi-loan etc. to director

(1) Without the prescribed approval of its members, a public company must not –

(*a*) make a quasi-loan to a director of the company; or

(*b*) give a guarantee or provide security in connection with a quasi-loan made by any person to such a director.

(2) Without the prescribed approval of its members and the prescribed approval of the holding company's members, a public company must not –

(*a*) make a quasi-loan to a director of a holding company of the company; or

(*b*) give a guarantee or provide security in connection with a quasi-loan made by any person to such a director.

(3) Despite subsection (2) –

(*a*) a public company may enter into the transaction with only the prescribed approval of its members if the holding company is incorporated outside Hong Kong; and

(*b*) a public company may enter into the transaction with only the prescribed approval of the holding company's members if it is a wholly owned subsidiary of the holding company, and the holding company is incorporated in Hong Kong.

11.18 Public company must not make loan or quasi-loan etc. to connected entity

(1) Without the prescribed approval of its members, a public company must not –

(*a*) make a loan or quasi-loan to an entity connected with a director of the company; or

(*b*) give a guarantee or provide security in connection with a loan or quasi-loan made by any person to an entity connected with such a director.

(2) Without the prescribed approval of its members and the prescribed approval of the holding company's members, a public company must not –

(*a*) make a loan or quasi-loan to an entity connected with a director of a holding company of the company; or

(*b*) give a guarantee or provide security in connection with a loan or quasi-loan made by any person to an entity connected with such a director.

(3) Despite subsection (2) –

(*a*) a public company may enter into the transaction with only the prescribed approval of its members if the holding company is incorporated outside Hong Kong; and

(*b*) a public company may enter into the transaction with only the prescribed approval of the holding company's

members if it is a wholly owned subsidiary of the holding company, and the holding company is incorporated in Hong Kong.

11.19 Public company must not enter into credit transaction etc. as creditor for director or connected entity

(1) Without the prescribed approval of its members, a public company must not –

(*a*) enter into a credit transaction as creditor for –

(i) a director of the company; or

(ii) an entity connected with such a director; or

(*b*) give a guarantee or provide security in connection with a credit transaction entered into by any person as creditor for such a director or an entity connected with such a director.

(2) Without the prescribed approval of its members and the prescribed approval of the holding company's members, a public company must not –

(*a*) enter into a credit transaction as creditor for –

(i) a director of a holding company of the company; or

(ii) an entity connected with such a director; or

(*b*) give a guarantee or provide security in connection with a credit transaction entered into by any person as creditor for such a director or an entity connected with such a director.

(3) Despite subsection (2) –

(*a*) a public company may enter into the transaction with only the prescribed approval of its members if the holding company is incorporated outside Hong Kong; and

(*b*) a public company may enter into the transaction with only the prescribed approval of the holding company's members if it is a wholly owned subsidiary of the holding

company, and the holding company is incorporated in Hong Kong.

11.20 Company must not take part in arrangement purporting to circumvent sections 11.16 to 11.19

(1) Without the prescribed approval of its members, a company must not –

(*a*) take part in an arrangement under which –

(i) another person enters into a questionable transaction with a director of the company, or an entity connected with such a director; and

(ii) that other person, in pursuance of the arrangement, has obtained or is to obtain any benefit from the company or an associated company of the company; or

(*b*) arrange for an assignment to the company, or assumption by the company, of any rights, obligations or liabilities under a questionable transaction entered into by another person with a director of the company, or an entity connected with such a director.

(2) Without the prescribed approval of its members and the prescribed approval of the holding company's members, a company must not –

(*a*) take part in an arrangement under which –

(i) another person enters into a questionable transaction with a director of a holding company of the company, or an entity connected with such a director; and

(ii) that other person, in pursuance of the arrangement, has obtained or is to obtain any

benefit from the company or an associated company of the company; or

(*b*) arrange for an assignment to the company, or assumption by the company, of any rights, obligations or liabilities under a questionable transaction entered into by another person with a director of a holding company of the company, or an entity connected with such a director.

(3) Despite subsection (2) –

(*a*) a company may enter into the arrangement with only the prescribed approval of its members if the holding company is incorporated outside Hong Kong; and

(*b*) a company may enter into the arrangement with only the prescribed approval of the holding company's members if it is a wholly owned subsidiary of the holding company, and the holding company is incorporated in Hong Kong.

(4) In this section –

(*a*) a reference to a questionable transaction entered into by a person with a director of the company, or an entity connected with such a director, under an arrangement is a reference to a transaction that, if it had been entered into by the company on the date of the arrangement, would have been prohibited by section 11.16(1), 11.17(1), 11.18(1) or 11.19(1) or would have been so prohibited in the absence of Subdivision 3; and

(*b*) a reference to a questionable transaction entered into by a person with a director of a holding company of the company, or an entity connected with such a director, under an arrangement is a reference to a transaction that, if it had been entered into by the company on the date of the arrangement, would have been prohibited by section

11.16(2), 11.17(2), 11.18(2) or 11.19(2) or would have been so prohibited in the absence of Subdivision 3.

Subdivision 3 – Exceptions to Subdivision 2

11.21 Exception for small loan, quasi-loan and credit transaction

(1) A company is not prohibited by section 11.16, 11.17 or 11.18 from making a loan or quasi-loan, or giving a guarantee or providing security in connection with a loan or quasi-loan, if the aggregate of the value of the transaction in question, and the value of any other relevant transaction or arrangement, does not exceed $150,000.

(2) A company is not prohibited by section 11.19 from entering into a credit transaction, or giving a guarantee or providing security in connection with a credit transaction, if the aggregate of the value of the transaction in question, and the value of any other relevant transaction or arrangement, does not exceed $200,000.

11.22 Exception for expenditure on company business

(1) If the condition specified in subsection (2) is satisfied, a company is not prohibited by section 11.16, 11.17, 11.18 or 11.19 from entering into any transaction –

(*a*) to provide a director of the company or of a holding company of the company, or an entity connected with such a director, with funds to meet expenditure incurred or to be incurred by the director or connected entity, as the case may be –

(i) for the purposes of the company; or

(ii) for the purpose of enabling the director or connected entity, as the case may be, to properly perform duties as an officer of the company; or

(*b*) to enable such a director, or an entity connected with such a director, to avoid incurring such expenditure.

(2) The condition is that the aggregate of the value of the transaction in question, and the value of any other relevant transaction or arrangement, does not exceed $750,000.

11.23 Exception for expenditure on defending proceedings etc.

(1) If the condition specified in subsection (2) is satisfied, a company is not prohibited by section 11.16, 11.17, 11.18 or 11.19 from entering into any transaction –

(*a*) to provide a director of the company or of a holding company of the company with funds to meet expenditure incurred or to be incurred by the director –

(i) in defending any criminal or civil proceedings in connection with any alleged negligence, default, breach of duty or breach of trust by the director in relation to the company or an associated company of the company; or

(ii) in connection with an application for relief under section 358 of the predecessor Ordinance or section 20.10 or 20.11;[10] or

(*b*) to enable such a director to avoid incurring such expenditure.

(2) The condition is that the transaction in question is entered into on the terms –

(*a*) that the funds are to be repaid, or any liability of the company incurred in relation to that transaction is to be discharged, if –

[10] A consultation draft of Part 20 will be published later.

(i) the director is convicted in the proceedings;

(ii) judgment is given against the director in the proceedings; or

(iii) the court refuses to grant the director relief on the application; and

(*b*) that the funds are to be so repaid, or such liability is to be so discharged, not later than the date when the conviction, judgment or refusal of relief becomes final.

(3) For the purposes of subsection (2), a conviction, judgment or refusal of relief –

(*a*) if not appealed against, becomes final at the end of the period for bringing an appeal; or

(*b*) if appealed against, becomes final when the appeal, or any further appeal, is disposed of.

(4) For the purposes of subsection (3)(*b*), an appeal is disposed of if –

(*a*) it is determined, and the period for bringing any further appeal has ended; or

(*b*) it is abandoned or otherwise ceases to have effect.

11.24 Exception for expenditure in connection with investigation or regulatory action

(1) If the condition specified in subsection (2) is satisfied, a company is not prohibited by section 11.16, 11.17, 11.18 or 11.19 from entering into any transaction –

(*a*) to provide a director of the company or of a holding company of the company with funds to meet expenditure incurred or to be incurred by the director in putting up a defence in an investigation, or against any action taken or proposed to be taken, by a regulatory authority in connection with any alleged misconduct by the director in

relation to the company or an associated company of the company; or

(*b*) to enable such a director to avoid incurring such expenditure.

(2) The condition is that the transaction in question is entered into on the terms –

(*a*) that the funds are to be repaid, or any liability of the company incurred in relation to that transaction is to be discharged, if the director is found in the investigation or action to have committed the misconduct; and

(*b*) that the funds are to be so repaid, or such liability is to be so discharged, not later than the date when the finding becomes final.

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

(*a*) a finding subject to review –

(i) if no application for review has been made, becomes final at the end of the period for making an application for review; or

(ii) if an application for review has been made, becomes final when the review, or any further review, is disposed of;

(*b*) a finding subject to appeal –

(i) if not appealed against, becomes final at the end of the period for bringing an appeal; or

(ii) if appealed against, becomes final when the appeal, or any further appeal, is disposed of; and

(*c*) a finding not subject to review or appeal becomes final when it is made.

(4) For the purposes of subsection (3)(*a*)(ii) or (*b*)(ii), a review or appeal is disposed of if –

(*a*) it is determined, and the period for bringing any further review or appeal has ended; or

(*b*) it is abandoned or otherwise ceases to have effect.

(5) In this section –

"misconduct" (不當行為) means negligence, default, breach of duty or breach of trust.

11.25 Exception for home loan

(1) If the conditions specified in subsection (2) are satisfied, a company is not prohibited by section 11.16, 11.17, 11.18 or 11.19 from entering into any transaction –

(*a*) for the purpose of facilitating the purchase of any residential premises for use as the only or main residence of –

(i) a director of the company or of a holding company of the company; or

(ii) an employee of the company who is an entity connected with such a director;

(*b*) for the purpose of improving any residential premises so used; or

(*c*) in substitution for any transaction entered into by any other person for a purpose specified in paragraph (*a*) or (*b*).

(2) The conditions are –

(*a*) that, at the time the transaction in question is entered into, the total exposure amount does not exceed 5% of –

(i) the value of the company's net assets as determined by reference to its most recent annual financial statement prepared in accordance with Part 9;[11] or

[11] A consultation draft of Part 9 will be published later.

(ii) if no annual financial statement has been prepared, the amount of the company's called-up share capital;

(*b*) that the company ordinarily enters into transactions for a purpose specified in subsection (3) on terms no less favourable than those on which the transaction in question is entered into;

(*c*) that a valuation report on the residential premises is made and signed by a professionally qualified valuation surveyor, who is subject to the discipline of a professional body, within 3 months before the date on which the transaction in question is entered into;

(*d*) that the amount of the transaction in question does not exceed 80% of the value of the residential premises as stated in the valuation report; and

(*e*) that the transaction in question is secured by a legal mortgage on the land comprising the residential premises.

(3) The purpose specified for the purposes of subsection (2)(*b*) is –

(*a*) to facilitate the purchase of any residential premises for use as the only or main residence of an employee of the company;

(*b*) to improve any residential premises so used; or

(*c*) to substitute for any transaction entered into by any other person for a purpose specified in paragraph (*a*) or (*b*).

(4) In this section –

"residential premises" (住用處所) means any residential premises together with any land to be occupied or enjoyed with the premises.

(5) In this section, an annual financial statement is a company's most recent annual financial statement if the time for sending it out to members of the company is most recent.

11.26 Exception for leasing goods and land etc.

(1) If the conditions specified in subsection (2) are satisfied, a company is not prohibited by section 11.16, 11.17, 11.18 or 11.19 from leasing or hiring goods or leasing land to a director of the company or of a holding company of the company, or an entity connected with such a director.

(2) The conditions are –

(*a*) that, at the time the transaction in question is entered into, the total exposure amount does not exceed 5% of the amount of the company's net assets as shown in the latest balance sheet laid before the company in general meeting; and

(*b*) that the terms of the transaction in question are not more favourable than what is reasonable to expect the company to have offered, if the goods had been leased or hired, or the land has been leased, on the open market, to a person unconnected with the company.

11.27 Exception for transaction entered in ordinary course of business

(1) A company is not prohibited by section 11.16, 11.17 or 11.18 from making a loan or quasi-loan, or giving a guarantee or providing security in connection with a loan or quasi-loan, if –

(*a*) the company's ordinary business includes the making of loans or quasi-loans, or the giving of guarantees or provision of securities in connection with loans or quasi-loans, as the case may be;

(*b*) the loan, quasi-loan, guarantee or security is made, given or provided by the company in the ordinary course of its business; and

(*c*) the amount of the loan or quasi-loan, guarantee or security is not greater, and the terms of it are not more favourable,

than what is reasonable to expect the company to have offered to a person of the same financial standing but unconnected with the company.

(2) A company is not prohibited by section 11.19 from entering into a credit transaction, or giving a guarantee or providing security in connection with a credit transaction, if –

(*a*) the company's ordinary business includes the entering into of credit transactions, or the giving of guarantees or provision of securities in connection with credit transactions, as the case may be;

(*b*) the credit transaction, guarantee or security is entered into, given or provided by the company in the ordinary course of its business; and

(*c*) the amount of the credit transaction, guarantee or security is not greater, and the terms of it are not more favourable, than what is reasonable to expect the company to have offered to a person of the same financial standing but unconnected with the company.

11.28 Exception for intra-group transaction

If a company is a member of a group of companies, the company is not prohibited by section 11.18 or 11.19 from –

(*a*) making a loan or quasi-loan to, or entering into a credit transaction as creditor for, a body corporate that is a member of the group; or

(*b*) giving a guarantee or providing security in connection with –

(i) a loan or quasi-loan made by any person to such a body corporate; or

(ii) a credit transaction entered into by any person as creditor for such a body corporate.

Subdivision 4 – Consequences of Contravention

11.29 Civil consequences of contravention

(1) If a company enters into a transaction in contravention of section 11.16, 11.17, 11.18 or 11.19, or enters into an arrangement in contravention of section 11.20, the transaction or arrangement is voidable at the company's instance unless –

(*a*) restitution of any money or other asset that was the subject matter of the transaction or arrangement is no longer possible;

(*b*) the company has been indemnified for any loss or damage resulting from the transaction or arrangement; or

(*c*) a person who is not a party to the transaction or arrangement acquired rights in good faith, for value, and without actual notice of the contravention, and those rights would be affected by the avoidance.

(2) Whether or not the transaction or arrangement has been avoided, each of the persons specified in subsection (3) is liable –

(*a*) to account to the company for any gain that the person has made, directly or indirectly, by the transaction or arrangement; and

(*b*) jointly and severally with any other person so liable under this section, to indemnify the company for any loss or damage resulting from the transaction or arrangement.

(3) The persons are –

(*a*) a director of the company, or of a holding company of the company, for whom the company entered into the transaction or arrangement;

(*b*) an entity connected with such a director, for whom the company entered into the transaction or arrangement;

(*c*) the director of the company, or of a holding company of the company, with whom such an entity is connected; and

(*d*) any other director of the company who authorized the transaction or arrangement.

(4) Despite subsection (2) –

(*a*) the connected entity specified in subsection (3)(*b*) is not liable if the connected entity establishes that, at the time the transaction or arrangement was entered into, the connected entity did not know the circumstances constituting the contravention;

(*b*) the director specified in subsection (3)(*c*) is not liable if the director establishes that the director took all reasonable steps to secure the company's compliance with section 11.18, 11.19 or 11.20, as the case may be; and

(*c*) a director specified in subsection (3)(*d*) is not liable if the director establishes that, at the time the transaction or arrangement was entered into, the director did not know the circumstances constituting the contravention.

(5) This section does not exclude the operation of any other Ordinance or rule of law by virtue of which the transaction or arrangement may be called in question or any liability to the company may arise.

11.30 Affirmation of contravening transaction or arrangement

(1) Despite section 11.29, a transaction or arrangement may no longer be avoided under that section if, within a reasonable period after it is entered into, the transaction or arrangement is affirmed.

(2) If a transaction or arrangement contravenes Subdivision 2 because it was entered into without the prescribed approval of the company's members,

the transaction or arrangement must be affirmed by the company by a resolution of those members.

(3) If a transaction or arrangement contravenes Subdivision 2 because it was entered into without the prescribed approval of the holding company's members, the transaction or arrangement must be affirmed by the holding company by a resolution of those members.

(4) If a transaction or arrangement contravenes Subdivision 2 because it was entered into without the prescribed approval of the company's members and the prescribed approval of the holding company's members, the transaction or arrangement must be affirmed –

(*a*) by the company by a resolution of the company's members; and

(*b*) by the holding company by a resolution of the holding company's members.

(5) This section does not affect the validity of a company's or holding company's decision to affirm a transaction or arrangement if it is taken by unanimous consent of the company's or holding company's members.

11.31 Provisions supplementary to section 11.30

(1) The following requirements must be met in relation to a resolution of the members of any company under section 11.30 –

(*a*) in the case of a written resolution, a memorandum setting out the matters specified in subsection (3) is sent to every member at or before the time at which the proposed resolution is sent to the member; or

(*b*) in the case of a resolution at a meeting –

(i) a memorandum setting out the matters specified in subsection (3) is sent to every member together with the notice convening the meeting; and

(ii) if the company is a public company, the resolution is passed after disregarding every vote in favour of the resolution by a member specified in subsection (4).

(2) Subject to any provision of the company's articles, any accidental failure to send the memorandum to a member is to be disregarded for the purpose of determining whether the requirement specified in subsection (1)(*a*) or (*b*)(i) has been met.

(3) The matters specified for the purposes of subsection (1)(*a*) and (*b*)(i) are –

(*a*) in the case of a resolution for the purpose of a contravention of section 11.16, 11.17 or 11.18 –

(i) the nature of the transaction to be affirmed by the resolution;

(ii) the amount of the loan or quasi-loan;

(iii) the purpose for which the loan or quasi-loan is required; and

(iv) the extent of the company's liability under any transaction connected with the loan or quasi-loan;

(*b*) in the case of a resolution for the purpose of a contravention of section 11.19 –

(i) the nature of the transaction to be affirmed by the resolution;

(ii) the amount and value of the credit transaction;

(iii) the purpose for which the goods, land or services supplied, sold, leased, hired or otherwise disposed of under the credit transaction are required; and

(iv) the extent of the company's liability under any transaction connected with the credit transaction; or

(*c*) in the case of a resolution for the purpose of a contravention of section 11.20 –

(i) the matter that would have to be disclosed if the company were seeking affirmation of the transaction to which the arrangement relates;

(ii) the nature of the arrangement to be affirmed by the resolution; and

(iii) the extent of the company's liability under the arrangement.

(4) The member specified for the purposes of subsection (1)(*b*)(ii) is –

(*a*) in the case of a resolution for the purpose of a contravention of section 11.16 or 11.17 –

(i) one who is the director to whom the loan or quasi-loan is proposed to be made or was made;

(ii) one who is any other director of the company who authorized the loan or quasi-loan; or

(iii) one who holds any shares in the company in trust for the director specified in subparagraph (i) or (ii);

(*b*) in the case of a resolution for the purpose of a contravention of section 11.18 –

(i) one who is the connected entity to whom the loan or quasi-loan is proposed to be made or was made;

(ii) one who is the director with whom that entity is connected;

(iii) one who is any other director of the company who authorized the loan or quasi-loan; or

(iv) one who holds any shares in the company in trust for the director specified in subparagraph (ii) or (iii) or that connected entity;

(*c*) in the case of a resolution for the purpose of a contravention of section 11.19 –

(i) one who is the director or connected entity for whom the credit transaction is proposed to be entered into or was entered into;

(ii) one who is the director with whom that entity is connected;

(iii) one who is any other director of the company who authorized the credit transaction; or

(iv) one who holds any shares in the company in trust for the director specified in subparagraph (i), (ii) or (iii) or that connected entity; or

(*d*) in the case of a resolution for the purpose of a contravention of section 11.20 –

(i) one who is the director or connected entity for whom the arrangement is proposed to be entered into or was entered into;

(ii) one who is the director with whom that entity is connected;

(iii) one who is any other director of the company who authorized the arrangement; or

(iv) one who holds any shares in the company in trust for the director specified in subparagraph (i), (ii) or (iii) or that connected entity.

(5) Subsection (1)(*b*)(ii) does not prevent a member specified in subsection (4) from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.

(6) In this section, a reference to a transaction to which an arrangement relates is –

(*a*) in the case of an arrangement mentioned in section 11.20(1)(*a*) or (2)(*a*), a reference to the transaction entered into with a director or an entity connected with a director under the arrangement; or

(*b*) in the case of an arrangement mentioned in section 11.20(1)(*b*) or (2)(*b*) in relation to any rights, obligations or liabilities under a transaction, a reference to the transaction.

Division 3 – Payment for Loss of Office

Subdivision 1 – Preliminary

11.32 Interpretation

(1) In this Division –

"affected member" (受影響成員) means –

(*a*) a holder of the shares to which the takeover offer relates; or

(*b*) a holder of shares of the same class as any of the shares to which the takeover offer relates;

"director" (董事) includes a shadow director;

"takeover offer" (收購要約) means a takeover offer within the meaning of Part 13.[12]

(2) In this Division –

(*a*) a reference to payment, compensation or consideration includes benefits otherwise than in cash; and

(*b*) a reference to loss of office as a director excludes loss of a person's status as a shadow director.

[12] A consultation draft of Part 13 will be published later.

(3) In section 11.34 and Subdivisions 2 and 3, a reference to a payment to a director or past director includes –

(*a*) a payment to an entity connected with the director or past director; and

(*b*) a payment to a person at the direction of, or for the benefit of –

(i) the director or past director; or

(ii) an entity connected with the director or past director.

(4) In section 11.34 and Subdivisions 2 and 3, a reference to a payment by a person includes a payment by another person at the direction of, or on behalf of, the person.

(5) For the purposes of this Division, a body corporate is not regarded as a shadow director of any of its subsidiaries only because the directors, or a majority of the directors, of the subsidiary are accustomed to act in accordance with its direction or instructions.

11.33 Payment for loss of office

(1) In this Division, a reference to a payment for loss of office made to a director or past director of a company is a reference to a payment made to the director or past director –

(*a*) by way of compensation for loss of office as director of the company;

(*b*) by way of compensation for loss, while director of the company or in connection with ceasing to be director of it, of –

(i) any other office or employment in connection with the management of the affairs of the company; or

(ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company;

(*c*) as consideration for or in connection with the retirement from the office as director of the company; or

(*d*) as consideration for or in connection with the retirement, while director of the company or in connection with ceasing to be director of it, from –

(i) any other office or employment in connection with the management of the affairs of the company; or

(ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company.

(2) If, in connection with a transfer mentioned in section 11.38 or 11.39 –

(*a*) the price to be paid to a director or past director of the company specified in subsection (3) for any shares in the company exceeds the price that could at the time have been obtained by other holders of like shares; or

(*b*) any valuable consideration is given to a director or past director of the company specified in subsection (3) by a person other than the company,

the excess, or (as the case may be) the money value of the consideration, is regarded as a payment for loss of office for the purposes of sections 11.38 and 11.39.

(3) The director or past director of the company is –

(*a*) one who is or was to cease to hold office in connection with the transfer; or

(*b*) one who is or was to cease to be the holder of either of the following offices in connection with the transfer –

(i) any other office or employment in connection with the management of the affairs of the company;

(ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company.

(4) Subsection (1)(*a*) or (*b*) applies to a loss of office occurring on or after the commencement of this Division.

(5) Subsection (1)(*c*) or (*d*) applies to a retirement occurring on or after the commencement of this Division.

(6) For the purposes of subsections (4) and (5), a loss of office or retirement occurs –

(*a*) in the case of a directorship, when the person ceases to be a director;

(*b*) in the case of any other office, when the person ceases to hold the office; or

(*c*) in the case of an employment, when the employment comes to an end.

11.34 Prescribed approval of members or affected members

(1) For the purposes of this Division, a reference to the prescribed approval of the members or affected members of any company is a reference to an approval obtained by a resolution of those members or affected members –

(*a*) that is passed before the payment for loss of office is made; and

(*b*) in respect of which the requirements specified in subsection (2) are met.

(2) The requirements specified for the purposes of subsection (1)(*b*) are –

(*a*) in the case of a written resolution, a memorandum setting out the particulars of the payment is sent to every member or affected member, as the case may be, at or before the time at which the proposed resolution is sent to the member or affected member; or

(*b*) in the case of a resolution at a meeting –

(i) a memorandum setting out the particulars of the payment is sent to every member or affected member, as the case may be, together with the notice convening the meeting; and

(ii) if the company is a public company, the resolution is passed after disregarding every vote in favour of the resolution by a member or affected member, as the case may be, specified in subsection (4) or (5).

(3) Subject to any provision of the company's articles, any accidental failure to send the memorandum to a member or affected member, as the case may be, is to be disregarded for the purpose of determining whether the requirement specified in subsection (2)(*a*) or (*b*)(i) has been met.

(4) In the case of a resolution for the purposes of section 11.37 or 11.38, the member specified for the purposes of subsection (2)(*b*)(ii) is –

(*a*) one who is the director or past director to whom the payment for loss of office is proposed to be made;

(*b*) one who is the proposed recipient of the payment for loss of office and who is not the director or past director specified in paragraph (*a*); or

(*c*) one who holds any shares in the company in trust for that director, past director or recipient.

(5) In the case of a resolution for the purposes of section 11.39, the affected member specified for the purposes of subsection (2)(*b*)(ii) is –

(*a*) one who is the director or past director to whom the payment for loss of office is proposed to be made;

(*b*) one who is the proposed recipient of the payment for loss of office and who is not the director or past director specified in paragraph (*a*);

(*c*) one who makes the takeover offer;

(*d*) one who is an associate of the person making the takeover offer; or

(*e*) one who holds any shares in the company in trust for –

(i) that director, past director or recipient;

(ii) the maker of the takeover offer specified in paragraph (*c*); or

(iii) the associate.

(6) Subsection (2)(*b*)(ii) does not prevent a member or affected member, as the case may be, specified in subsection (4) or (5) from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.

(7) In this section –

"associate" (有聯繫者), in relation to a person making a takeover offer, means an associate of the person within the meaning of Part 13.[13]

[13] A consultation draft of Part 13 will be published later.

(8) For the purposes of subsection (1)(*a*), it is irrelevant whether the resolution is passed before, on or after the commencement of this Division.

11.35 Preservation of effect of members' or affected members' unanimous consent

(1) If, under a provision of this Division, a transaction must not be entered into without the prescribed approval of any company's members or affected members, the provision does not prohibit the transaction from being entered into with the unanimous consent of those members or affected members that is given before it is entered into.

(2) If, under a provision of this Division, a transaction may be entered into with only the prescribed approval of any company's members or affected members, the provision does not preclude the transaction from being entered into with the unanimous consent of those members or affected members that is given before it is entered into.

(3) For the purposes of subsection (1) or (2), it is irrelevant whether the unanimous consent is given before, on or after the commencement of this Division.

11.36 This Division does not affect operation of other Ordinance or law

This Division does not affect the operation of any other Ordinance or rule of law requiring disclosure to be made with respect to –

(*a*) any payment for loss of office mentioned in section 11.37, 11.38 or 11.39; or

(*b*) any other like payment made or to be made to a director or past director of a company.

Subdivision 2 – Prohibitions

11.37 Company must not make payment for loss of office to director or past director

(1) Without the prescribed approval of its members, a company must not make a payment for loss of office to a director or past director of the company.

(2) Without the prescribed approval of its members and the prescribed approval of the holding company's members, a company must not make a payment for loss of office to a director or past director of a holding company of the company.

(3) Despite subsection (2) –

(*a*) a company may enter into the transaction with only the prescribed approval of its members if the holding company is incorporated outside Hong Kong; and

(*b*) a company may enter into the transaction with only the prescribed approval of the holding company's members if it is a wholly owned subsidiary of the holding company, and the holding company is incorporated in Hong Kong.

11.38 Person must not make payment for loss of office to director or past director in connection with transfer of company's undertaking or property

(1) Without the prescribed approval of the company's members, a person must not make a payment for loss of office to a director or past director of a company in connection with a transfer of the whole or any part of the undertaking or property of the company.

(2) Without the prescribed approval of the company's members and the prescribed approval of the subsidiary's members, a person must not make a payment for loss of office to a director or past director of a company in

connection with a transfer of the whole or any part of the undertaking or property of a subsidiary of the company.

(3) For the purposes of this section, a payment is presumed, except in so far as the contrary is shown, to be made in connection with a transfer of any undertaking or property of a company if it is made in pursuance of an arrangement –

(*a*) entered into as part of the agreement for the transfer, or within one year before or 2 years after that agreement; and

(*b*) to which the company, or any person to whom the transfer is made, is privy.

(4) Despite subsection (2), a person may enter into the transaction with only the prescribed approval of the company's members if the subsidiary is incorporated outside Hong Kong or is a wholly owned subsidiary of the company.

11.39 Person must not make payment for loss of office to director or past director in connection with transfer of shares resulting from takeover offer

(1) Without the prescribed approval of the affected members, a person must not make a payment for loss of office to a director or past director of a company in connection with a transfer of shares in the company, or in a subsidiary of the company, resulting from a takeover offer.

(2) For the purposes of this section, a payment is presumed, except in so far as the contrary is shown, to be made in connection with a transfer of any shares in a company if it is made in pursuance of an arrangement –

(*a*) entered into as part of the agreement for the transfer, or within one year before or 2 years after that agreement; and

(*b*) to which the company, or any person to whom the transfer is made, is privy.

(3) Despite subsection (1), a person may enter into the transaction without the prescribed approval of a body corporate's affected members if the body corporate is incorporated outside Hong Kong.

(4) For the purposes of this section, the prescribed approval of the affected members of a payment is regarded as being obtained if –

(*a*) a quorum is not present at a meeting to consider the resolution in respect of which the requirement specified in section 11.34(2)(*b*)(i) is met;

(*b*) the meeting is adjourned to a later date; and

(*c*) a quorum is not present at the adjourned meeting.

Subdivision 3 – Exceptions to Subdivision 2

11.40 Exception for payments in discharge of legal obligation etc.

(1) A person is not prohibited by Subdivision 2 from making a payment in good faith –

(*a*) in discharge of an existing legal obligation;

(*b*) by way of damages for breach of an existing legal obligation;

(*c*) by way of settlement or compromise of any claim arising in connection with a person's office or employment; or

(*d*) by way of pension in respect of past services.

(2) For the purposes of subsection (1), if part of a payment falls within that subsection and part of it does not, the payment is to be regarded as if those parts were separate payments.

(3) In this section –

"existing legal obligation" (現存法律義務) –

(*a*) in relation to a payment falling within section 11.37 and made by a company, means an obligation of the company, or an associated company of it, that was not entered into in

connection with, or in consequence of, the event giving rise to the payment for loss of office; or

(*b*) in relation to a payment falling within section 11.38 or 11.39 and made by a person in connection with a transfer of any undertaking, property or shares, means an obligation of the person that was not entered into for the purpose of, in connection with, or in consequence of, the transfer;

"pension" (退休金) includes any superannuation allowance, superannuation gratuity or similar payment.

(4) For the purposes of the definition of "existing legal obligation" in subsection (3), if a payment falls within both sections 11.37 and 11.38 or within both sections 11.37 and 11.39, it is regarded as falling within section 11.37 but not within section 11.38 or 11.39.

11.41 Exception for small payment

(1) A company is not prohibited by section 11.37 from making a payment to a director or past director if the aggregate of the amount or value of the payment, and the amount or value of any other payment for loss of office made by the company or a subsidiary of the company to the director or past director in connection with the same event, does not exceed $20,000.

(2) A company is not prohibited by section 11.38 or 11.39 from making a payment to a director or past director in connection with a transfer of any undertaking or property of, or shares in, the company or a subsidiary of the company if the aggregate of the amount or value of the payment, and the amount or value of any other payment for loss of office made by the company or a subsidiary of the company to the director or past director in connection with the transfer, does not exceed $20,000.

(3) A subsidiary of a company is not prohibited by section 11.38 or 11.39 from making a payment to a director or past director in connection with a

transfer of any undertaking or property of, or shares in, the company or a subsidiary of the company if the aggregate of the amount or value of the payment, and the amount or value of any other payment for loss of office made by the company, or the subsidiary making the payment, to the director or past director in connection with the transfer, does not exceed $20,000.

Subdivision 4 – Consequences of Contravention

11.42 Interpretation

For the purposes of this Division –

(*a*) unless the court directs otherwise, a payment is regarded as being made in contravention of section 11.38 if it is made in contravention of both sections 11.37 and 11.38; and

(*b*) unless the court directs otherwise, a payment is regarded as being made in contravention of section 11.39 if it is made in contravention of both sections 11.37 and 11.39.

11.43 Civil consequences of contravention of section 11.37

If a payment is made by a company in contravention of section 11.37 –

(*a*) the payment is held by the recipient in trust for the company; and

(*b*) any director of the company who authorized the payment is jointly and severally liable to indemnify the company for any loss resulting from the payment.

11.44 Civil consequences of contravention of section 11.38

(1) This section applies if a payment is made in connection with a transfer of any undertaking or property of a company, or a subsidiary of a company, in contravention of section 11.38.

(2) The payment is held by the recipient in trust for the company or subsidiary.

(3) If the payment is made by or on behalf of the company, any director of the company who authorized the payment is jointly and severally liable to indemnify the company for any loss resulting from the payment.

(4) If the payment is made by or on behalf of the subsidiary, any director of the subsidiary who authorized the payment is jointly and severally liable to indemnify the subsidiary for any loss resulting from the payment.

11.45 Civil consequences of contravention of section 11.39

(1) This section applies if a payment is made in connection with a transfer of shares in a company, or a subsidiary of a company, resulting from a takeover offer in contravention of section 11.39.

(2) The payment is held by the recipient in trust for those who have sold their shares as a result of the offer made.

(3) The recipient must bear the expenses in distributing that sum amongst those who have sold their shares.

(4) If the payment is made by or on behalf of the company, any director of the company who authorized the payment is jointly and severally liable to indemnify the company for any loss resulting from the payment.

(5) If the payment is made by or on behalf of the subsidiary, any director of the subsidiary who authorized the payment is jointly and severally liable to indemnify the subsidiary for any loss resulting from the payment.

Division 4 – Directors' Service Contract

11.46 Interpretation

(1) In this Division –

"director" (董事) includes a shadow director.

(2) For the purposes of this Division, a body corporate is not regarded as a shadow director of any of its subsidiaries only because the directors, or a majority of the directors, of the subsidiary are accustomed to act in accordance with its direction or instructions.

11.47 Service contract

(1) In this Division, a reference to a service contract of a director of a company –

(*a*) is a reference to a contract under which –

(i) the director undertakes personally to perform services, as director or otherwise, for the company or for a subsidiary of the company; or

(ii) services, as director or otherwise, that the director undertakes personally to perform are made available by a third party to the company or to a subsidiary of the company; and

(*b*) includes the terms of a person's appointment as director of the company.

(2) In this Division, a reference to a service contract of a director of a company is not restricted to a contract for the performance of services outside the scope of a director's ordinary duties.

11.48 Prescribed approval of members

(1) For the purposes of this Division, a reference to the prescribed approval of the members of any company is a reference to an approval obtained by a resolution of those members –

(*a*) that is passed before the company agrees to the provision; and

(*b*) in respect of which the requirements specified in subsection (2) are met.

(2) The requirements specified for the purposes of subsection (1)(*b*) are –

(*a*) in the case of a written resolution, a memorandum setting out the proposed service contract (incorporating the provision in question) is sent to every member at or before the time at which the proposed resolution is sent to the member; or

(*b*) in the case of a resolution at a meeting –

(i) a memorandum setting out the proposed service contract (incorporating the provision in question) is sent to every member together with the notice convening the meeting; and

(ii) if the company is a public company, the resolution is passed after disregarding every vote in favour of the resolution by a member specified in subsection (4).

(3) Subject to any provision of the company's articles, any accidental failure to send the memorandum to a member is to be disregarded for the purpose of determining whether the requirement specified in subsection (2)(*a*) or (*b*)(i) has been met.

(4) The member specified for the purposes of subsection (2)(*b*)(ii) is –

(*a*) one who is the director with whom the service contract is proposed to be entered into; or

(*b*) one who holds any shares in the company in trust for that director.

(5) Subsection (2)(*b*)(ii) does not prevent a member specified in subsection (4) from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.

(6) For the purposes of subsection (1)(*a*), it is irrelevant whether the resolution is passed before, on or after the commencement of this Division.

11.49 Preservation of effect of members' unanimous consent

(1) If, under section 11.50(1) or (2), any provision must not be agreed to without the prescribed approval of any company's members, that section does not prohibit the provision from being agreed to with the unanimous consent of those members that is given before it is agreed to.

(2) If, under section 11.50(3), any provision may be agreed to with only the prescribed approval of any company's members, that section does not preclude the provision from being agreed to with the unanimous consent of those members that is given before it is agreed to.

(3) For the purposes of subsection (1) or (2), it is irrelevant whether the unanimous consent is given before, on or after the commencement of this Division.

11.50 Company must not agree to director's long-term employment

(1) Without the prescribed approval of its members, a company must not agree to any provision under which the guaranteed term of the employment of a director of the company with the company exceeds or may exceed 3 years.

(2) Without the prescribed approval of its members and the prescribed approval of the holding company's members, a company must not agree to any provision under which the guaranteed term of the employment of a director of a holding company of the company within the group consisting of the holding company and its subsidiaries exceeds or may exceed 3 years.

(3) Despite subsection (2) –

(*a*) a company may agree to the provision with only the prescribed approval of its members if the holding company is incorporated outside Hong Kong; and

(*b*) a company may agree to the provision with only the prescribed approval of the holding company's members if

it is a wholly owned subsidiary of the holding company, and the holding company is incorporated in Hong Kong.

(4) In this section –

"employment" (僱用) means any employment under a director's service contract.

(5) In this section, a reference to the guaranteed term of a director's employment is a reference to –

(*a*) the period (if any) during which the employment –

(i) is to continue, or may be continued, otherwise than at the instance of the company (whether under the original contract or under a new contract entered into in pursuance of it); and

(ii) cannot be terminated by the company by notice, or can be so terminated only in specified circumstances;

(*b*) in the case of employment terminable by the company by notice, the period of notice required to be given; or

(*c*) in the case of employment having a period within paragraph (*a*) and a period within paragraph (*b*), the aggregate of those periods.

(6) For the purposes of this section, if, more than 6 months before the end of the guaranteed term of a director's employment, the company enters into a further service contract otherwise than in pursuance of a right given, by or under the original contract, to the other party to it, the guaranteed term of the employment under the further contract is regarded as including the unexpired period of the guaranteed term of the employment under the original contract.

(7) For the purposes of subsection (6), it is irrelevant whether the original contract is entered into before, on or after the commencement of this Division.

11.51 Civil consequences of contravention of section 11.50

If a company agrees to a provision in contravention of section 11.50 –

(*a*) the provision is void to the extent of the contravention; and

(*b*) the contract is to be regarded as containing a term entitling the company to terminate it at any time by giving reasonable notice.

11.52 Copy of contract or memorandum to be available for inspection

(1) A company must keep the following available for inspection at its registered office or at a prescribed place –

(*a*) a copy of the service contract of every director of the company or of a subsidiary of the company;

(*b*) if the contract is not in writing, a written memorandum setting out the terms of the contract.

(2) A company must –

(*a*) retain the copy or memorandum for at least one year after the date of termination or expiry of the contract; and

(*b*) keep the copy or memorandum available for inspection during that time.

(3) If the copy or memorandum is kept available for inspection at a place other than the company's registered office, the company must notify the Registrar of the place, or any change in the place, at which the copy or memorandum is kept. The notice must be given to the Registrar in the specified form within 14 days after the copy or memorandum is first kept at that place or within 14 days after the change (as the case may be).

(4) If a company contravenes subsection (1), (2) or (3), 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.

(5) In this section, a reference to a service contract includes a variation of the contract.

(6) For the purposes of subsection (1), it is irrelevant whether the service contract is entered into before, on or after the commencement of this Division.

11.53 Right of member to inspect and request copy

(1) A copy of a service contract or a written memorandum required to be kept by a company under section 11.52 must be open to inspection by any member of the company without charge.[14]

(2) A member of the company is entitled, on request and on payment of a prescribed fee, to be provided with a copy of the service contract or memorandum.

(3) The company must provide the member with the copy within a prescribed period after the request and the prescribed fee are received by the company.

(4) If a company contravenes subsection (3) –

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

(*b*) the Court of First Instance may by order direct that the copy be provided to the person requesting it.

(5) In this section, a reference to a service contract includes a variation of the contract.

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[14] Regulation will be made under clause 12.125 to make provision as to the time, duration and manner of inspection.

Division 5 – Substantial Property Transaction

11.54 Interpretation

(1) In this Division –

"director" (董事) includes a shadow director.

(2) For the purposes of this Division, a body corporate is not regarded as a shadow director of any of its subsidiaries only because the directors, or a majority of the directors, of the subsidiary are accustomed to act in accordance with its direction or instructions.

11.55 Non-cash asset

(1) In this Division –

(*a*) a reference to a non-cash asset is a reference to any property or interest in property, other than cash; and

(*b*) a reference to an acquisition of a non-cash asset includes –

(i) the creation or extinction of an estate or interest in, or a right over, any property; and

(ii) the discharge of a liability of any person, other than a liability for a liquidated sum.

(2) In subsection (1)(*a*) –

"cash" (現金) includes currency other than Hong Kong currency.

11.56 Substantial non-cash asset

(1) In this Division, a reference to a substantial non-cash asset is –

(*a*) in relation to an arrangement entered into by a private company or a company limited by guarantee, a reference to a non-cash asset the value of which, as at the time the arrangement is entered into –

(i) exceeds 10% of the company's asset value and is over $100,000; or

(ii) exceeds $1,500,000; or

(*b*) in relation to an arrangement entered into by a public company, a reference to a non-cash asset the value of which, as at the time the arrangement is entered into –

(i) exceeds 10% of the company's asset value and is over $750,000; or

(ii) exceeds $10,000,000.

(2) For the purposes of this Division –

(*a*) an arrangement involving more than one non-cash asset; or

(*b*) an arrangement that is one of a series involving non-cash assets,

is to be regarded as if the arrangement involved a non-cash asset of a value equal to the aggregate value of all the non-cash assets involved in the arrangement or the series.

(3) In this section, a reference to a company's asset value at any time is –

(*a*) a reference to the value of the company's net assets as determined by reference to its most recent annual financial statement prepared in accordance with Part 9;[15] or

(*b*) if no annual financial statement has been prepared, a reference to the amount of the company's called-up share capital.

(4) In this section, an annual financial statement is a company's most recent annual financial statement if the time for sending it out to members of the company is most recent.

11.57 Prescribed approval of members

(1) For the purposes of this Division, a reference to the prescribed approval of the members of any company is a reference to an approval obtained

[15] A consultation draft of Part 9 will be published later.

by a resolution of those members in respect of which the requirements specified in subsection (2) are met.

(2) The requirements specified for the purposes of subsection (1) are –

(*a*) in the case of a written resolution, a memorandum setting out the matters specified in subsection (4) is sent to every member at or before the time at which the proposed resolution is sent to the member; or

(*b*) in the case of a resolution at a meeting –

(i) a memorandum setting out the matters specified in subsection (4) is sent to every member together with the notice convening the meeting; and

(ii) if the company is a public company, the resolution is passed after disregarding every vote in favour of the resolution by a member specified in subsection (5).

(3) Subject to any provision of the company's articles, any accidental failure to send the memorandum to a member is to be disregarded for the purpose of determining whether the requirement specified in subsection (2)(*a*) or (*b*)(i) has been met.

(4) The matters specified for the purposes of subsection (2)(*a*) and (*b*)(i) are the particulars of the arrangement, including its nature, the substantial non-cash asset involved, and the parties to it.

(5) The member specified for the purposes of subsection (2)(*b*)(ii) is –

(*a*) one who is the director, or the entity connected with a director –

(i) who acquires or is to acquire from the company a substantial non-cash asset under the arrangement; or

(ii) from whom the company acquires or is to acquire a substantial non-cash asset under the arrangement;

(*b*) one who is the director with whom that entity is connected; or

(*c*) one who holds any shares in the company in trust for the director specified in paragraph (*a*) or (*b*) or that connected entity.

(6) Subsection (2)(*b*)(ii) does not prevent a member specified in subsection (5) from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.

(7) For the purposes of subsection (1), it is irrelevant whether the resolution is passed before, on or after the commencement of this Division.

11.58 Preservation of effect of members' unanimous consent

(1) If, under section 11.59(1) or (2), an arrangement must not be entered into unless the prescribed approval of any company's members has been obtained, that section does not prohibit the arrangement from being entered into with the unanimous consent of those members that is given before it is entered into.

(2) If, under section 11.59(4), an arrangement may be entered into with only the prescribed approval of any company's members, that section does not preclude the arrangement from being entered into with the unanimous consent of those members that is given before it is entered into.

(3) For the purposes of subsection (1) or (2), it is irrelevant whether the unanimous consent is given before, on or after the commencement of this Division.

11.59 Company must not acquire substantial non-cash asset from director etc.

(1) A company must not enter into an arrangement under which –

(*a*) a director of the company, or an entity connected with such a director, acquires or is to acquire from the company, directly or indirectly, a substantial non-cash asset; or

(*b*) the company acquires or is to acquire a substantial non-cash asset, directly or indirectly, from such a director or an entity connected with such a director,

unless the company has obtained the prescribed approval of its members, or the arrangement is conditional on the prescribed approval of its members being obtained.

(2) A company must not enter into an arrangement specified in subsection (3) unless –

(*a*) the company has obtained –

(i) the prescribed approval of its members; and

(ii) the prescribed approval of the holding company's members; or

(*b*) the arrangement is conditional on both of the following approval being obtained –

(i) the prescribed approval of its members;

(ii) the prescribed approval of the holding company's members.

(3) The arrangement specified for the purposes of subsection (2) is an arrangement under which –

(*a*) a director of a holding company of the company, or an entity connected with such a director, acquires or is to acquire from the company, directly or indirectly, a substantial non-cash asset; or

(*b*) the company acquires or is to acquire a substantial non-cash asset, directly or indirectly, from such a director or an entity connected with such a director.

(4) Despite subsection (2)(*a*) –

(*a*) if the holding company is incorporated outside Hong Kong or is being wound up (except where the winding up is a members' voluntary winding up), a company may enter into the arrangement even though the company has obtained only the prescribed approval of its members; and

(*b*) if the company is a wholly owned subsidiary of the holding company, and the holding company is incorporated in Hong Kong, a company may enter into the arrangement even though the company has obtained only the prescribed approval of the holding company's members.

(5) If a company enters into an arrangement that is conditional on the prescribed approval mentioned in subsection (1) or (2) being obtained, it is not subject to any liability because of a failure to obtain that approval.

(6) Subsections (1) and (2) do not apply to an arrangement entered into by a company that is being wound up unless the winding up is a members' voluntary winding up.

(7) Subsections (1) and (2) do not apply to a transaction so far as it relates to –

(*a*) anything to which a director is entitled under the service contract; or

(*b*) a payment for loss of office to a director within the meaning of Division 3.

(8) Subsections (1) and (2) do not apply to –

(*a*) a transaction between a company and another person in the capacity of a member of the company;

(*b*) a transaction between a holding company and its wholly owned subsidiary; or

(*c*) a transaction between 2 wholly owned subsidiaries of the same holding company.

11.60 Civil consequences of contravention of section 11.59

(1) If a company enters into an arrangement in contravention of section 11.59, the arrangement, and any transaction entered into in pursuance of the arrangement (whether by the company or any other person), is voidable at the company's instance unless –

(*a*) restitution of any money or other asset that was the subject matter of the arrangement or transaction is no longer possible;

(*b*) the company has been indemnified for any loss or damage resulting from the arrangement or transaction; or

(*c*) a person who is not a party to the arrangement or transaction acquired rights in good faith, for value, and without actual notice of the contravention, and those rights would be affected by the avoidance.

(2) Whether or not the arrangement or transaction has been avoided, each of the persons specified in subsection (3) is liable –

(*a*) to account to the company for any gain that the person has made, directly or indirectly, by the arrangement or transaction; and

(*b*) jointly and severally with any other person so liable under this section, to indemnify the company for any loss or damage resulting from the arrangement or transaction.

(3) The persons are –

(*a*) a director of the company, or an entity connected with such a director –

(i) who acquires or is to acquire from the company a substantial non-cash asset under the arrangement; or

(ii) from whom the company acquires or is to acquire a substantial non-cash asset under the arrangement;

(*b*) the director with whom such an entity is connected; and

(*c*) any other director of the company who authorized the arrangement or transaction.

(4) Despite subsection (2) –

(*a*) the connected entity specified in subsection (3)(*a*) is not liable if the connected entity establishes that, at the time the arrangement was entered into, the connected entity did not know the circumstances constituting the contravention;

(*b*) the director specified in subsection (3)(*b*) is not liable if the director establishes that the director took all reasonable steps to secure the company's compliance with section 11.59; and

(*c*) a director specified in subsection (3)(*c*) is not liable if the director establishes that, at the time the arrangement or transaction was entered into, the director did not know the circumstances constituting the contravention.

(5) This section does not exclude the operation of any other Ordinance or rule of law by virtue of which the arrangement or transaction may be called in question or any liability to the company may arise.

11.61 Affirmation of contravening arrangement or transaction

(1) Despite section 11.60, an arrangement, or a transaction entered into by the company in pursuance of an arrangement, may no longer be avoided under that section if, within a reasonable period after it is entered into, the arrangement or transaction is affirmed.

(2) If an arrangement contravenes section 11.59 because it was entered into without the prescribed approval of the company's members, the arrangement, or a transaction entered into by the company in pursuance of the arrangement, must be affirmed by the company by a resolution of those members.

(3) If an arrangement contravenes section 11.59 because it was entered into without the prescribed approval of the holding company's members, the arrangement, or a transaction entered into by the company in pursuance of the arrangement, must be affirmed by the holding company by a resolution of those members.

(4) If an arrangement contravenes section 11.59 because it was entered into without the prescribed approval of the company's members and the prescribed approval of the holding company's members, the arrangement, or a transaction entered into by the company in pursuance of the arrangement, must be affirmed –

(*a*) by the company by a resolution of the company's members; and

(*b*) by the holding company by a resolution of the holding company's members.

(5) This section does not affect the validity of a company's or holding company's decision to affirm an arrangement or transaction if it is taken by unanimous consent of the company's or holding company's members.

11.62 Provisions supplementary to section 11.61

(1) The following requirements must be met in relation to a resolution of the members of any company under section 11.61 –

(*a*) in the case of a written resolution, a memorandum setting out the matters specified in subsection (3) is sent to every member at or before the time at which the proposed resolution is sent to the member; or

(*b*) in the case of a resolution at a meeting –

(i) a memorandum setting out the matters specified in subsection (3) is sent to every member together with the notice convening the meeting; and

(ii) if the company is a public company, the resolution is passed after disregarding every vote in favour of the resolution by a member specified in subsection (4).

(2) Subject to any provision of the company's articles, any accidental failure to send the memorandum to a member is to be disregarded for the purpose of determining whether the requirement specified in subsection (1)(*a*) or (*b*)(i) has been met.

(3) The matters specified for the purposes of subsection (1)(*a*) and (*b*)(i) are the particulars of the arrangement or transaction, including its nature, the substantial non-cash asset involved, and the parties to it.

(4) The member specified for the purposes of subsection (1)(*b*)(ii) is –

(*a*) one who is the director, or the entity connected with a director –

(i) who acquires or is to acquire from the company a substantial non-cash asset under the arrangement; or

(ii) from whom the company acquires or is to acquire a substantial non-cash asset under the arrangement;

(*b*) one who is the director with whom that entity is connected;

(*c*) one who is any other director of the company who authorized the arrangement or transaction; or

(*d*) one who holds any shares in the company in trust for the director specified in paragraph (*a*), (*b*) or (*c*) or that connected entity.

(5) Subsection (1)(*b*)(ii) does not prevent a member specified in subsection (4) from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.

Division 6 – Material Interests in Transaction, Arrangement or Contract

11.63 Director must declare material interests

(1) If a director of a company is in any way, directly or indirectly, interested in a transaction, arrangement or contract, or a proposed transaction, arrangement or contract, with the company that is significant in relation to the company's business, and the director's interest is material, the director must declare the nature and extent of the director's interest to the other directors.

(2) If an entity connected with a director of a public company is in any way, directly or indirectly, interested in a transaction, arrangement or contract, or a proposed transaction, arrangement or contract, with the company that is significant in relation to the company's business, and the connected entity's interest is material, the director must declare the nature and extent of the connected entity's interest to the other directors.

(3) If a declaration made under this section proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.

(4) A declaration of interest in a transaction, arrangement or contract that has been entered into must be made as soon as reasonably practicable. A declaration of interest in a proposed transaction, arrangement or contract must be made before the company enters into the transaction, arrangement or contract. Failure to comply with this requirement does not affect the underlying duty to make the declaration.

(5) This section does not require a director to declare an interest –

(*a*) if the director is not aware of the interest or the transaction, arrangement or contract in question; or

(*b*) if, or to the extent that, the interest concerns the terms of the director's service contract that have been or are to be considered by –

(i) a meeting of the directors; or

(ii) a committee of the directors appointed for the purpose under the company's constitution.

(6) For the purposes of subsection (5)(*a*), a director is regarded as being aware of matters of which the director ought reasonably to be aware.

(7) This section does not affect the operation of any other Ordinance or rule of law restricting a director of a company from having any interest in a transaction, arrangement or contract with the company.

11.64 Declaration to directors

(1) A declaration to directors under section 11.63 must be –

(*a*) made at a directors' meeting;

(*b*) made by notice in writing and sent by the director to the other directors; or

(*c*) made by general notice by the director to the other directors.

(2) A notice for the purposes of subsection (1)(*b*) –

(*a*) must be sent –

(i) in hard copy form; or

(ii) if the recipient has agreed to receive it in electronic form, in the electronic form so agreed; and

(*b*) must be sent –

(i) by hand or by post; or

(ii) if the recipient has agreed to receive it by electronic means, by the electronic means so agreed.

(3) If a declaration to directors under section 11.63 is made by notice in writing –

(*a*) the making of the declaration is to be regarded as forming part of the proceedings at the next directors' meeting after the notice is given; and

(*b*) section 10.31 applies as if the declaration had been made at that meeting.

(4) A general notice by a director for the purposes of subsection (1)(*c*) is a notice to the effect that –

(*a*) the director –

(i) has an interest (as member, officer, employee or otherwise) in a body corporate or firm specified in the notice; and

(ii) is to be regarded as interested in any transaction, arrangement or contract that may, after the effective date of the notice, be made with the specified body corporate or firm; or

(*b*) the director –

(i) is connected with a person specified in the notice (other than a body corporate or firm); and

(ii) is to be regarded as interested in any transaction, arrangement or contract that may, after the effective date of the notice, be made with the specified person.

(5) A general notice must state –

(*a*) the nature and extent of the director's interest in the specified body corporate or firm; or

(*b*) the nature of the director's connection with the specified person.

(6) A general notice is not effective unless –

(*a*) it is given at a directors' meeting; or

(*b*) the director takes reasonable steps to secure that it is brought up and read at the next directors' meeting after it is given.

11.65 Declaration to directors in case of company with sole director

(1) If a declaration to directors under section 11.63 is required of a sole director of a company that is required to have more than one director –

(*a*) the declaration must be recorded in writing;

(*b*) the making of the declaration is to be regarded as forming part of the proceedings at the next directors' meeting after the notice is given; and

(*c*) section 10.31 applies as if the declaration had been made at that meeting.

(2) This section does not affect the operation of section 11.69.

11.66 Application to shadow director

(1) Subject to subsections (2), (3) and (4), the provisions of this Division relating to the duty of a director to declare an interest under section 11.63 apply to a shadow director in the same manner as they apply to a director.

(2) Section 11.64(1)(*a*) and (6) does not apply to a shadow director.

(3) A general notice by a shadow director for the purposes of section 11.64(1)(*c*) is not effective unless it is given by notice in writing and sent by the shadow director to the other directors.

(4) A notice for the purposes of subsection (3) –

(*a*) must be sent –

(i) in hard copy form; or

(ii) if the recipient has agreed to receive it in electronic form, in the electronic form so agreed; and

(*b*) must be sent –

(i) by hand or by post; or

(ii) if the recipient has agreed to receive it by electronic means, by the electronic means so agreed.

11.67 Offence

(1) A director or shadow director who contravenes section 11.63(1) or (2) commits an offence and is liable to a fine at level 6.

(2) If a person is charged under subsection (1) for contravening section 11.63(2), it is a defence to establish that the person took all reasonable steps to secure compliance with that section.

Division 7 – Miscellaneous

11.68 Disclosure of management contract

(1) This section applies if –

(*a*) a company enters into a contract by which a person undertakes the management and administration of the whole or any substantial part of any business of the company; and

(*b*) the contract is not a contract of service with any director of the company or any person engaged in the full-time employment of the company.

(2) The directors' report for any year in which the contract is in force must include –

(*a*) a statement of the existence and duration of the contract; and

(*b*) the name of every director and shadow director interested in the contract, and the nature and extent of the interest.

(3) The company must keep the following available for inspection at its registered office or at a prescribed place –

(*a*) a copy of the contract;

(*b*) if the contract is not in writing, a written memorandum setting out the terms of the contract.

(4) The company must –

(*a*) retain the copy or memorandum for at least one year after the date of termination or expiry of the contract; and

(*b*) keep the copy or memorandum available for inspection during that time.

(5) If the copy or memorandum is kept available for inspection at a place other than the company's registered office, the company must notify the Registrar of the place, or any change in the place, at which the copy or memorandum is kept. The notice must be given to the Registrar in the specified form within 14 days after the copy or memorandum is first kept at that place or within 14 days after the change (as the case may be).

(6) If subsection (2), (3), (4) or (5) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of $300 for each day during which the offence continues.

11.69 Contract with sole member who is also director

(1) This section applies if –

(*a*) a company having only one member enters into a contract with the member;

(*b*) the member is also a director of the company; and

(*c*) the contract is not entered into in the ordinary course of the company's business.

(2) Unless the contract is in writing, the company must ensure that the terms of the contract are set out in a written memorandum kept at the place where the books containing the minutes of the directors' meetings are kept.

(3) If a company contravenes subsection (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of $300 for each day during which the offence continues.

(4) A contravention of subsection (2) in relation to a contract does not affect the validity of the contract.

(5) This section does not exclude the operation of any other Ordinance or rule of law applying to contracts between a company and a director of the company.

(6) In this section –

"director" (董事) includes a shadow director.

11.70 Financial Secretary may amend certain sums

(1) Subject to subsection (2), the Financial Secretary may, by order published in the Gazette, amend any provision of this Part by substituting for any sum of money specified in the provision a sum specified in the order.

(2) An order under this section may not be made to amend the amount of a fine.

(3) An order under this section does not have effect in relation to anything done or not done before the order comes into operation.

(4) Proceedings in respect of any liability incurred before an order under this section comes into operation may be continued or instituted as if the order had not been made.

11.71 Transitional and saving arrangements for Division 2

(1) This section applies if –

(*a*) before the commencement of Division 2, a company entered into a transaction specified in section 157HA(3)(*a*) of the predecessor Ordinance;

(*b*) the transaction was entered into on the condition specified in section 157HA(4)(*b*) of the predecessor Ordinance; and

(*c*) that condition has not been satisfied before the commencement of Division 2.

(2) If the company has dispensed with the holding of annual general meeting in accordance with section 12.76, the specified condition continues to apply as if it provided –

(*a*) that the approval of the company is required on or before the last date on which the company would otherwise have been required to hold an annual general meeting; and

(*b*) that any liability falling on any person in connection with the transaction must be discharged within 6 months after that date if that approval is not forthcoming.

11.72 Transitional and saving arrangements for Division 3

(1) Despite the repeal of sections 163, 163A, 163B, 163C and 163D of the predecessor Ordinance, those sections continue to apply in relation to a loss of office or retirement specified in those sections that occurs before the commencement of Division 3.

(2) For the purposes of this section, a loss of office or retirement occurs –

(*a*) in the case of a directorship, when the person ceases to be a director; or

(*b*) in the case of any other office, when the person ceases to hold the office.

11.73 Transitional and saving arrangements for section 11.69

Despite the repeal of section 162B of the predecessor Ordinance, that section continues to apply in relation to a contract specified in that section and entered into before the commencement of section 11.69.

PART 12

COMPANY ADMINISTRATION AND PROCEDURE

Division 1 – Resolutions and Meetings

Subdivision 1 – Preliminary

12.1 Interpretation

(1) In this Division –

"circulation date" (傳閱日期), in relation to a written resolution or a proposed written resolution, means –

(*a*) the date on which copies of the resolution are sent to eligible members in accordance with section 12.7; or

(*b*) if copies are sent to eligible members on different days, the first of those days;

"electronic address" (電子地址) means any sequence or combination of letters, characters, numbers or symbols of any language or, any number, used for the purposes of sending or receiving a document or information by electronic means.

(2) For the purposes of this Division –

(*a*) in relation to a proposed written resolution, the eligible members are the members who would have been entitled to vote on the resolution on the circulation date of the resolution; and

(*b*) if the persons entitled to vote on the resolution change during the course of the day that is the circulation date of the resolution, the eligible members are the persons entitled to vote on the resolution at the time that the first copy of the resolution is sent to a member for agreement.

(3) Nothing in this Division affects any Ordinance or rule of law as to –

(*a*) things done otherwise than by passing a resolution;

(*b*) circumstances in which a resolution is or is not to be regarded as having been passed; or

(*c*) cases in which a person is precluded from alleging that a resolution has not been duly passed.

Subdivision 2 – Written Resolution

12.2 Written resolution

(1) Anything that may be done by a resolution of a company in general meeting may be done, without a meeting and without any previous notice being required, by a written resolution of the members of the company.

(2) Anything that may be done by a resolution of a meeting of a class of members of a company may be done, without a meeting and without any previous notice being required, by a written resolution of that class of members of the company.

(3) If a resolution is required under any Ordinance to be passed as an ordinary resolution or a special resolution, the resolution may be passed as a written resolution; and a reference in any Ordinance to an ordinary resolution or a special resolution includes a written resolution.

(4) A reference in any Ordinance to the date of passing of a resolution or the date of a meeting is, in relation to a written resolution, the date on which the written resolution is passed under section 12.10.

(5) A written resolution of a company has effect as if passed by –

(*a*) the company in general meeting; or

(*b*) a meeting of the relevant class of members of the company,

as the case may be, and a reference in any Ordinance to a meeting at which a resolution is passed or to members voting in favour of a resolution is to be construed accordingly.

(6) This section does not apply to –

(*a*) a resolution removing an auditor before the end of the auditor's term of office; or

(*b*) a resolution removing a director before the end of the director's term of office.

12.3 Power to propose written resolution

(1) A resolution may be proposed as a written resolution by –

(*a*) the directors of a company; or

(*b*) the members of a company representing not less than the requisite percentage of the total voting rights of all the members entitled to vote on the resolution.

(2) The requisite percentage mentioned in subsection (1)(*b*) is 2.5% or a lower percentage specified for this purpose in the company's articles.

12.4 Company's duty to circulate written resolution proposed by directors

If the directors of a company have proposed a resolution as a written resolution under section 12.3(1)(*a*), the company must circulate the resolution.

12.5 Members' power to request circulation of written resolution

(1) The members of a company may request the company to circulate a resolution that –

(*a*) may properly be moved; and

(*b*) is proposed as a written resolution under section 12.3(1)(*b*).

(2) If the members request a company to circulate a resolution, they may request the company to circulate with the resolution a statement of not more than 1 000 words on the subject matter of the resolution.

12.6 Company's duty to circulate written resolution proposed by members

(1) A company must circulate a resolution proposed as a written resolution under section 12.3(1)(*b*) and any statement mentioned in section 12.5(2) if it has received requests that it do so from the members of the company representing not less than the requisite percentage of the total voting rights of all the members entitled to vote on the resolution.

(2) The requisite percentage mentioned in subsection (1) is 2.5% or a lower percentage specified for this purpose in the company's articles.

(3) A request –

(*a*) may be sent to the company in hard copy form or in electronic form;

(*b*) must identify the resolution and any statement mentioned in section 12.5(2); and

(*c*) must be authenticated by the person or persons making it.

12.7 Circulation of written resolution

(1) If a company is required under section 12.4 or 12.6 to circulate a resolution proposed as a written resolution, the company must send at its own expense to every eligible member and every other member (if any) who is not an eligible member –

(*a*) a copy of the resolution; and

(*b*) if so required under section 12.5(2), a copy of a statement mentioned in that section.

(2) The company may comply with subsection (1) –

(*a*) by sending copies at the same time (so far as reasonably practicable) to all members in hard copy form or in electronic form or by making the copies available on a website;

(*b*) if it is possible to do so without undue delay, by sending the same copy to each member in turn (or different copies to each of a number of members in turn); or

(*c*) by sending copies to some members in accordance with paragraph (*a*) and sending a copy or copies to other members in accordance with paragraph (*b*).

(3) The company must send the copies (or if copies are sent to members on different days, the first of those copies) not more than 21 days after it becomes subject to the requirement under subsection (1) to send the copies.

(4) If the company sends a copy of a proposed written resolution or statement by making it available on a website, the copy is not validly sent for the purposes of this Subdivision unless the copy is available on the website throughout the period –

(*a*) beginning on the circulation date; and

(*b*) ending on the date on which the resolution lapses under section 12.12.

(5) The company must ensure that the copy of the proposed written resolution sent to an eligible member is accompanied by guidance as to –

(*a*) how to signify agreement to the resolution under section 12.10; and

(*b*) the date by which the resolution must be passed if it is not to lapse under section 12.12.

(6) If a company contravenes subsection (1), (3) or (5), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5.

(7) The validity of the resolution, if passed, is not affected by a contravention of subsection (1), (3) or (5).

12.8 Application not to circulate accompanying statement

(1) A company is not required to circulate a statement mentioned in section 12.5(2) if, on an application by the company or another person who claims to be aggrieved, the Court of First Instance is satisfied that the rights given by that section are being abused.

(2) The Court of First Instance may order the members who requested the circulation of the statement to pay the whole or part of the company's costs on an application under subsection (1), even if they are not parties to the application.

12.9 Company's duty to notify auditor of proposed written resolution

(1) If a company is required to send a resolution to a member of the company under section 12.7, it must, on or before the circulation date, send to the auditor of the company (if more than one auditor, to everyone of them) –

(*a*) a copy of the resolution; and

(*b*) a copy of any other document relating to the resolution that is required to be sent to a member of the company under that section.

(2) The copies may be sent to the auditor or auditors of the company in hard copy form or in electronic form.

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

(4) The validity of the resolution, if passed, is not affected by a contravention of subsection (1).

12.10 Procedure for signifying agreement to proposed written resolution

(1) A written resolution is passed when all eligible members have signified their agreement to it.

(2) A member signifies agreement to a proposed written resolution when the company receives from the member (or from someone acting on the member's behalf) a document –

(*a*) identifying the resolution to which it relates; and

(*b*) indicating the member's agreement to the resolution.

(3) The document –

(*a*) may be sent to the company in hard copy form or in electronic form; and

(*b*) must be authenticated by the member or by someone acting on the member's behalf.

(4) A member's agreement to a written resolution, once signified, may not be revoked.

12.11 Agreement signified by eligible members who are joint holders of shares

(1) If –

(*a*) 2 or more eligible members are joint holders of shares of a company; and

(*b*) the senior holder has signified his or her agreement to a proposed written resolution,

then the other joint holder or holders are to be regarded as having signified their agreement to the proposed written resolution for the purposes of section 12.10(1).

(2) For the purposes of this section, the senior holder of a share is determined by the order in which the names of the joint holders appear in the register of members of the company.

(3) Subsections (1) and (2) have effect subject to any provision of the company's articles.

12.12 Period for agreeing to proposed written resolution

(1) A proposed written resolution lapses if it is not passed before the end of –

(*a*) the period specified for this purpose in the company's articles; or

(*b*) if none is specified, the period of 28 days beginning on the circulation date.

(2) The agreement of a member to a proposed written resolution is ineffective if signified after the end of that period.

12.13 Company's duty to notify members and auditor that written resolution has been passed

(1) If a resolution of a company is passed as a written resolution, the company must, within 15 days after the resolution is passed, send a copy of the written resolution to –

(*a*) every member of the company; and

(*b*) the auditor of the company (if more than one auditor, to everyone of them).

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

12.14 Sending document relating to written resolution by electronic means

If a company has given an electronic address in any document containing or accompanying a proposed written resolution, it is to be regarded as having agreed that any document or information relating to that resolution may be sent by electronic means to that address (subject to any conditions or limitations specified in the document).

12.15 Relationship between this Subdivision and provisions of company's articles

(1) A provision of a company's articles is void in so far as it would have the effect that a resolution that is required by or otherwise provided for in an Ordinance could not be proposed and passed as a written resolution.

(2) Nothing in this Subdivision affects any provision of a company's articles authorizing the company to pass a resolution without a meeting, otherwise than in accordance with this Subdivision.

(3) Subsection (2) applies only if the resolution has been agreed to by all the members of the company who are entitled to vote on the resolution.

12.16 Application and saving

(1) This Subdivision applies to resolutions for which the circulation date is on or after the commencement of this Subdivision.

(2) Sections 116B (except subsections (7), (8), (9) and (10)), 116BA and 116BB of the predecessor Ordinance continue to apply to resolutions sent or circulated to any relevant member before the commencement of this Subdivision.

(3) In this section –

"relevant member" (有關成員) means a member whose signature is required by section 116B(1) of the predecessor Ordinance.

Subdivision 3 – Resolutions at Meetings

12.17 Resolution at general meeting

(1) A resolution of the members of a company is validly passed at a general meeting if –

(*a*) notice of the meeting and of the resolution is given;

(*b*) the meeting is held and conducted; and

(*c*) the resolution is passed,

in accordance with this Subdivision and Subdivisions 4, 5, 6, 7, 8 and 9 (and, if relevant, Subdivision 10) and the company's articles.

(2) If a provision of this Ordinance –

(*a*) requires a resolution of a company, or of the members (or of a class of members) of a company; and

(*b*) does not specify what kind of resolution is required,

what is required is an ordinary resolution unless the company's articles require a higher majority (or unanimity).

12.18 Ordinary resolution

(1) An ordinary resolution of the members (or of a class of members) of a company means a resolution that is passed by a simple majority.

(2) A resolution passed at a general meeting on a show of hands is passed by a simple majority if it is passed by a simple majority of –

(*a*) the members who (being entitled to do so) vote in person on the resolution; and

(*b*) the persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.

(3) A resolution passed on a poll taken at a general meeting is passed by a simple majority if it is passed by members representing a simple majority of the total voting rights of all the members who (being entitled to do so) vote in person or by proxy on the resolution.

(4) Anything that may be done by an ordinary resolution may also be done by a special resolution.

12.19 Special resolution

(1) A special resolution of the members (or of a class of members) of a company means a resolution that is passed by a majority of at least 75%.

(2) A resolution passed at a general meeting on a show of hands is passed by a majority of at least 75% if it is passed by at least 75% of –

(*a*) the members who (being entitled to do so) vote in person on the resolution; and

(*b*) the persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.

(3) A resolution passed on a poll taken at a general meeting is passed by a majority of at least 75% if it is passed by members representing at least 75% of the total voting rights of all the members who (being entitled to do so) vote in person or by proxy on the resolution.

(4) If a resolution is passed at a general meeting –

(*a*) the resolution is not a special resolution unless the notice of the meeting included the text of the resolution and specified the intention to propose the resolution as a special resolution; and

(*b*) if the notice of the meeting so specified, the resolution may only be passed as a special resolution.

(5) A reference to an extraordinary resolution of a company or of a meeting of any class of members of a company –

(*a*) contained in any Ordinance that was enacted or document that existed before 31 August 1984; and

(*b*) deemed, in relation to a resolution passed or to be passed on or after that date, to be a special resolution of the company or meeting under section 116(5) of the predecessor Ordinance,

continues to be deemed to be such a special resolution of the company or meeting.

12.20 Application and saving

(1) This Subdivision applies to resolutions (other than written resolutions) –

(*a*) of which notice is given on or after the commencement of this Subdivision; or

(*b*) that are proposed at a meeting of which notice is given on or after the commencement of this Subdivision, other than a meeting convened in accordance with a requisition made

before the commencement of this Subdivision under section 113 of the predecessor Ordinance.

(2) The predecessor Ordinance (including section 116) continues to apply to resolutions (other than written resolutions) –

(*a*) of which notice was given before the commencement of this Subdivision; or

(*b*) that are proposed at a meeting –

(i) of which notice was given before the commencement of this Subdivision; or

(ii) that is convened in accordance with a requisition made before the commencement of this Subdivision under section 113 of the predecessor Ordinance.

(3) If notice of a meeting is given over more than one day, it is to be regarded for the purposes of this section as given on the first of those days.

(4) If copies of a requisition are deposited on more than one day, the references in this section to the date on which the requisition is made are to be construed as references to the first day on which the copies deposited are sufficient to require the company to act.

Subdivision 4 – Calling Meetings

12.21 Directors' power to call general meeting

The directors of a company may call a general meeting of the company.

12.22 Members' power to request directors to call general meeting

(1) The members of a company may request the directors to call a general meeting of the company.

(2) The directors are required to call a general meeting if the company has received requests to do so from members of the company representing at

least 5% of the total voting rights of all the members having a right to vote at general meetings.

(3) A request –

(*a*) must state the general nature of the business to be dealt with at the meeting; and

(*b*) may include the text of a resolution that may properly be moved and is intended to be moved at the meeting.

(4) Requests may consist of several documents in like form.

(5) A request –

(*a*) may be sent to the company in hard copy form or in electronic form; and

(*b*) must be authenticated by the person or persons making it.

12.23 Directors' duty to call general meeting requested by members

(1) Directors required under section 12.22 to call a general meeting must call a meeting within 21 days after the date on which they become subject to the requirement.

(2) A meeting called under subsection (1) must be held on a date not more than 28 days after the date of the notice convening the meeting.

(3) If the requests received by the company identify a resolution that may properly be moved and is intended to be moved at the meeting, the notice of the meeting must include notice of the resolution.

(4) The business that may be dealt with at the meeting includes a resolution of which notice has been included in the notice of meeting in accordance with subsection (3).

(5) If the resolution is to be proposed as a special resolution, the directors are to be regarded as not having duly called the meeting unless the notice of the meeting includes the text of the resolution and specifies the intention to propose the resolution as a special resolution.

12.24 Members' power to call general meeting at company's expense

(1) If the directors –

(*a*) are required under section 12.22 to call a general meeting; and

(*b*) do not do so in accordance with section 12.23,

the members who requested the meeting, or any of them representing more than one half of the total voting rights of all of them, may themselves call a general meeting.

(2) If the requests received by the company identify a resolution that may properly be moved and is intended to be moved at the meeting, the notice of the meeting must include notice of the resolution.

(3) The meeting must be called for a date not more than 3 months after the date on which the directors become subject to the requirement to call a meeting.

(4) The meeting must be called in the same manner, as nearly as possible, as that in which that meeting is required to be called by the directors of the company.

(5) The business that may be dealt with at the meeting includes a resolution of which notice has been included in the notice of meeting in accordance with subsection (2).

(6) Any reasonable expenses incurred by the members requesting the meeting by reason of the failure of the directors duly to call a meeting must be reimbursed by the company.

(7) Any sum so reimbursed must be retained by the company out of any sum due or to become due from the company by way of fees or other remuneration in respect of the services of the directors who were in default.

12.25 Members' power to call general meeting when there is no director etc.

(1) If at any time a company does not have any director or does not have sufficient directors capable of acting to form a quorum, any director, or any 2 or more members of the company representing at least 10% of the total voting rights of all the members having a right to vote at general meetings, may call a general meeting in the same manner, as nearly as possible, as that in which that meeting may be called by the directors of the company.

(2) Subsection (1) has effect in so far as the articles of the company do not make other provision in that behalf.

12.26 Power of Court of First Instance to order meeting

(1) This section applies if for any reason it is impracticable –

(*a*) to call a general meeting of a company in any manner in which general meetings of that company may be called; or

(*b*) to conduct the meeting in the manner prescribed by the company's articles or this Ordinance.

(2) The Court of First Instance may, either of its own motion or on application –

(*a*) by a director of the company; or

(*b*) by a member of the company who would be entitled to vote at the meeting,

order a general meeting of the company to be called, held and conducted in any manner the Court of First Instance thinks fit.

(3) If the order is made, the Court of First Instance may give any ancillary or consequential directions that it thinks expedient.

(4) Directions given under subsection (3) may include a direction that one member of the company present at the meeting in person or by proxy is to be regarded as constituting a quorum.

(5) A general meeting called, held and conducted in accordance with an order under subsection (2) is to be regarded for all purposes as a general meeting of the company duly called, held and conducted.

(6) The legal personal representative of a deceased member of a company is to be regarded in all respects, for the purposes of this section, as a member of the company having the same rights with respect to attending and voting at a meeting of the company as the deceased member would, if living, have had.

12.27 Application and saving

(1) Sections 12.22, 12.23 and 12.24 apply in relation to requests made on or after the commencement of those sections.

(2) Section 113 of the predecessor Ordinance continues to apply in relation to requisitions made before the commencement of sections 12.22, 12.23 and 12.24.

(3) Section 12.25 applies in relation to a meeting of which notice is given on or after the commencement of that section.

(4) Section 114A(1)(*b*) of the predecessor Ordinance continues to apply in relation to a meeting of which notice was given before the commencement of section 12.25.

(5) If notice of a meeting is given over more than one day, it is to be regarded for the purposes of this section as given on the first of those days.

(6) If requests are made or copies of a requisition are deposited on more than one day, the references in this section to the date on which the request or requisition is made are to be construed as references to the first day on which the requests made or copies deposited are sufficient to require the company to act.

Subdivision 5 – Notice of Meetings

12.28 Notice required of general meeting

(1) A general meeting of a company (other than an adjourned meeting) must be called by notice of –

(*a*) in the case of an annual general meeting, at least 21 days; and

(*b*) in any other case –

(i) if the company is a limited company, at least 14 days; and

(ii) if the company is an unlimited company, at least 7 days.

(2) If the company's articles require a longer period of notice than that specified in subsection (1), a general meeting of a company (other than an adjourned meeting) must be called by notice of that longer period.

(3) A general meeting of a company is to be regarded, despite the fact that it is called by shorter notice than that specified in subsection (1) or in the company's articles, as having been duly called if it is so agreed –

(*a*) in the case of an annual general meeting, by all the members entitled to attend and vote at the meeting; and

(*b*) in any other case, by a majority in number of the members having the right to attend and vote at the meeting, being a majority together representing at least 95% of the total voting rights at the meeting of all the members.

12.29 Manner in which notice to be given

(1) Notice of a general meeting of a company must be given –

(*a*) in hard copy form or in electronic form; or

(*b*) by making the notice available on a website,

or partly by one of those means and partly by another.

(2) If a company has given an electronic address in a notice calling a meeting, it is to be regarded as having agreed that any document or information relating to proceedings at the meeting may be sent by electronic means to that address (subject to any conditions or limitations specified in the notice).

12.30 Publication of notice of general meeting on website

(1) Without limiting Part 18, notice of a general meeting is not validly given by a company by making it available on a website unless it is given in accordance with this section.

(2) When the company notifies a member of the availability of the notice on the website, the notification must –

(*a*) state that it concerns a notice of a company meeting;

(*b*) specify the place, date and time of the meeting; and

(*c*) in the case of an annual general meeting, state that it is an annual general meeting.

(3) The notice must be available on the website throughout the period beginning on the date of that notification and ending on the conclusion of the meeting.

12.31 Persons entitled to receive notice of general meeting

(1) Notice of a general meeting of a company must be sent to –

(*a*) every member of the company; and

(*b*) every director.

(2) In subsection (1), the reference to a member includes any person who is entitled to a share in consequence of the death or bankruptcy of a member, if the company has been notified of that person's entitlement.

(3) Subsections (1) and (2) have effect subject to any provision of the company's articles.

(4) In the case of a listed company, notice of a general meeting of the company must be sent to every member not entitled to vote at the meeting at the same time and in the same manner as notice of the meeting is sent to members who are so entitled.

(5) A company is only required to comply with subsection (4) if the company is required to send notice of a general meeting of the company to members who are entitled to vote at the general meeting.

(6) Despite subsection (4), if a meeting is called at any time by shorter notice than that specified in section 12.28(1) or in the company's articles, subsection (4) is to be regarded as having been complied with if the notice required to be sent under that subsection is sent as soon as practicable after that time.

12.32 Duty to give notice of general meeting to auditor

(1) If notice of a general meeting of a company or any other document relating to the general meeting is required to be sent to a member, the company must send a copy of it to its auditor (if more than one auditor, to everyone of them) at the same time as the notice or the other document is sent to the member.

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

12.33 Contents of notice of general meeting

(1) A company must ensure that notice of a general meeting of the company –

(*a*) specifies the date and time of the meeting;

(*b*) specifies the place of the meeting (and if the meeting is to be held in 2 or more places, the principal place of the meeting and the other place or places of the meeting);

(*c*) states the general nature of the business to be dealt with at the meeting;

(*d*) in the case of a notice calling an annual general meeting, states that the meeting is an annual general meeting; and

(*e*) if a resolution is intended to be moved at the meeting –

(i) includes notice of the resolution; and

(ii) (where the company is not a wholly owned subsidiary) includes or is accompanied by a statement containing the information and explanation, if any, that is reasonably necessary to indicate the purpose of the resolution.

(2) Subsection (1)(*a*), (*b*) and (*c*) has effect subject to any provision of the company's articles.

(3) Subsection (1)(*e*) does not apply in relation to a resolution of which –

(*a*) notice has been included in the notice of meeting under section 12.23(3) or 12.24(2); or

(*b*) notice has been given under section 12.78.

(4) If a company contravenes subsection (1)(*e*), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.

(5) The validity of a resolution, if passed at a general meeting of a company, is not affected by a contravention of subsection (1)(*e*).

(6) Subsection (5) does not affect any rule of common law or of equity or any other Ordinance, as regards the validity of a resolution.

(7) In subsection (1)(*e*) –

"wholly owned subsidiary" (全資附屬公司) has the meaning given by section 9.13(10).[16]

12.34 Resolution requiring special notice

(1) If by any provision of this Ordinance special notice is required of a resolution, the resolution is not effective unless notice of the intention to move it has been given to the company at least 28 days before the meeting at which it is moved.

(2) The company must, if practicable, give its members notice of the resolution at the same time and in the same manner as it gives notice of the meeting.

(3) If that is not practicable, the company must give its members notice of the resolution at least 14 days before the meeting –

(*a*) by advertisement in a newspaper circulating generally in Hong Kong; or

(*b*) in any other manner allowed by the company's articles.

(4) If, after notice of the intention to move the resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice is to be regarded as having been properly given, though not given within the time required.

12.35 Accidental failure to give notice of meeting or resolution

(1) If a company gives notice of –

(*a*) a general meeting; or

(*b*) a resolution intended to be moved at a general meeting,

any accidental failure to give notice to, or any non-receipt of notice by, any person entitled to receive notice must be disregarded for the purpose of determining whether notice of the meeting or resolution is duly given.

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[16] A consultation draft of Part 9 will be published later.

(2) Except in relation to notice given under section 12.23, 12.24 or 12.79, subsection (1) has effect subject to any provision of the company's articles.

12.36 Application and saving

(1) Sections 12.28, 12.29, 12.30, 12.31, 12.32 and 12.33 apply in relation to meetings of which notice is given on or after the commencement of those sections.

(2) The predecessor Ordinance (including sections 111(1), 114, 114A, 141(7) and 155B) continues to apply in relation to a meeting of which notice was given before the commencement of sections 12.28, 12.31 and 12.33.

(3) If notice of a meeting is given over more than one day, it is to be regarded for the purposes of subsections (1) and (2) as given on the first of those days.

(4) Section 12.34 applies in relation to resolutions for which special notice is required if notice of the intention to move the resolution is given to the company on or after the commencement of that section.

(5) Section 116C of the predecessor Ordinance continues to apply to resolutions for which special notice is required if notice of the intention to move the resolution was given to the company before the commencement of section 12.34.

(6) Section 12.35 applies to meetings or resolutions of which notice is given on or after the commencement of that section.

(7) The reference in subsection (6) to cases in which notice is given on or after the commencement of section 12.35 includes cases in which notice would be regarded as so given if section 12.35 applied.

Subdivision 6 – Members' Statements

12.37 Members' power to request circulation of statement

(1) The members of a company may request the company to circulate, to members of the company entitled to receive notice of a general meeting, a statement of not more than 1 000 words with respect to –

(*a*) a matter mentioned in a proposed resolution to be dealt with at that meeting; or

(*b*) other business to be dealt with at that meeting.

(2) A company is required to circulate the statement if it has received requests to do so from –

(*a*) members representing at least 2.5% of the total voting rights of all the members who have a relevant right to vote; or

(*b*) at least 50 members who have a relevant right to vote and hold shares in the company on which there has been paid up an average sum, per member, of at least $2,000.

(3) In subsection (2), a "relevant right to vote" (相關表決權利) means –

(*a*) in relation to a statement with respect to a matter mentioned in a proposed resolution, a right to vote on that resolution at the meeting to which the requests relate; and

(*b*) in relation to any other statement, a right to vote at the meeting to which the requests relate.

(4) A request –

(*a*) may be sent to the company in hard copy form or in electronic form;

(*b*) must identify the statement to be circulated;

(*c*) must be authenticated by the person or persons making it; and

(*d*) must be received by the company at least 7 days before the meeting to which it relates.

12.38 Company's duty to circulate members' statement

(1) A company that is required under section 12.37 to circulate a statement must send a copy of it to each member of the company entitled to receive notice of the meeting –

(*a*) in the same manner as the notice of the meeting; and

(*b*) at the same time as, or as soon as reasonably practicable after, it gives notice of the meeting.

(2) Subsection (1) has effect subject to sections 12.39(2) and 12.40.

(3) 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 5.

12.39 Expenses of circulating members' statement

(1) The expenses of the company in complying with section 12.38 need not be paid by the members who requested the circulation of the statement if –

(*a*) the meeting to which the requests relate is an annual general meeting of the company; and

(*b*) requests sufficient to require the company to circulate the statement are received in time to enable the company to send a copy of the statement at the same time as it gives notice of the meeting.

(2) Otherwise –

(*a*) the expenses of the company in complying with section 12.38 must be paid by the members who requested the circulation of the statement unless the company resolves otherwise; and

(*b*) unless the company has previously so resolved, it is not bound to comply with that section unless there is deposited with or tendered to it, not later than 7 days before the meeting, a sum reasonably sufficient to meet its expenses in doing so.

12.40 Application not to circulate members' statement

(1) A company is not required to circulate a statement under section 12.38 if, on an application by the company or another person who claims to be aggrieved, the Court of First Instance is satisfied that the rights given by section 12.37 are being abused.

(2) The Court of First Instance may order the members who requested the circulation of the statement to pay the whole or part of the company's costs on an application under subsection (1), even if they are not parties to the application.

12.41 Application and saving

(1) This Subdivision applies to requests made on or after the commencement of this Subdivision.

(2) Section 115A of the predecessor Ordinance, in so far as it relates to the circulation of any statement in relation to an annual general meeting, continues to apply in relation to requisitions made to a company under section 115A(1)(*b*) of the predecessor Ordinance before the commencement of this Subdivision.

(3) If requests are made or copies of a requisition are deposited on more than one day, the references in this section to the date on which the request

or requisition is made are to be construed as references to the first day on which the requests made or copies deposited are sufficient to require the company to act.

Subdivision 7 – Procedure at Meetings

12.42 Meeting at 2 or more places

(1) A company may hold a general meeting at 2 or more places using any audio-visual technology that enables the members of the company to exercise their right to speak and vote at the meeting.

(2) Subsection (1) has effect subject to any provision of the company's articles.

12.43 Quorum at meeting

(1) If a company has only one member, that member present in person or by proxy is a quorum of a general meeting of the company.

(2) If that member of the company is a body corporate, that member present by its corporate representative is also a quorum of a general meeting of the company.

(3) Subject to subsection (1) and the provisions of a company's articles, 2 members present in person or by proxy is a quorum of a general meeting of the company.

(4) If a member of the company is a body corporate, that member present by its corporate representative counts towards a quorum of a general meeting of the company.

(5) In this section –

"corporate representative" (法團代表) means a person authorized under section 12.68 to act as the representative of the body corporate.

12.44 Chairperson of meeting

(1) A member may be elected to be the chairperson of a general meeting by a resolution of the company passed at the meeting.

(2) Subsection (1) is subject to any provision of the company's articles that states who may or who may not be chairperson.

12.45 Resolution passed at adjourned meeting

If a resolution is passed at an adjourned meeting of a company, the resolution is for all purposes to be regarded as having been passed on the date on which it was in fact passed, and is not to be regarded as having been passed on any earlier date.

12.46 Application and saving

(1) This Subdivision applies to meetings of which notice is given on or after the commencement of this Subdivision.

(2) The predecessor Ordinance (including sections 114A(1)(*c*) and (*d*), 114AA and 118) continues to apply to meetings of which notice was given before the commencement of this Subdivision.

(3) If notice of a meeting is given over more than one day, it is to be regarded for the purposes of this section as given on the first of those days.

Subdivision 8 – Voting at Meetings

12.47 General rules on votes

(1) On a vote on a resolution on a show of hands at a general meeting –

(*a*) every member present in person has one vote; and

(*b*) every proxy present who has been duly appointed by a member entitled to vote on the resolution has one vote.

(2) If a member appoints more than one proxy, the proxies so appointed are not entitled to vote on the resolution on a show of hands.

(3) On a vote on a resolution on a poll taken at a general meeting –

(*a*) in the case of a company having a share capital –

(i) every member present in person has one vote for each share held by him or her; and

(ii) every proxy present who has been duly appointed by a member has one vote for each share held by that member; and

(*b*) in the case of a company not having a share capital –

(i) every member present in person has one vote; and

(ii) every proxy present who has been duly appointed by a member entitled to vote on the resolution has one vote.

(4) Subsections (1), (2) and (3) have effect subject to any provision of the company's articles.

(5) If any shares in a company are held in trust for the company, those shares do not, for so long as they are so held, confer any right to vote at a general meeting of the company.

12.48 Votes of joint holders of shares

(1) In the case of joint holders of shares of a company, only the vote of the senior holder who votes (and any proxies duly authorized by the senior holder) may be counted by the company.

(2) For the purposes of this section, the senior holder of a share is determined by the order in which the names of the joint holders appear in the register of members of the company.

(3) Subsections (1) and (2) have effect subject to any provision of the company's articles.

12.49 Declaration by chairperson on show of hands

(1) On a vote on a resolution at a general meeting on a show of hands, a declaration by the chairperson that the resolution –

(*a*) has or has not been passed; or

(*b*) passed by a particular majority,

is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(2) An entry in respect of the declaration in minutes of the meeting recorded in accordance with section 12.82 is also conclusive evidence of that fact without the proof.

(3) This section does not have effect if a poll is demanded in respect of the resolution before or on the declaration under subsection (1) (and the demand is not subsequently withdrawn).

12.50 Right to demand poll

(1) A provision of a company's articles is void in so far as it would have the effect of excluding the right to demand a poll at a general meeting on any question other than –

(*a*) the election of the chairperson of the meeting; or

(*b*) the adjournment of the meeting.

(2) A provision of a company's articles is void in so far as it would have the effect of making ineffective a demand for a poll at a general meeting on any question other than those specified in subsection (1)(*a*) and (*b*), which is made –

(*a*) by at least 5 members having the right to vote at the meeting;

(*b*) by a member or members representing at least 5% of the total voting rights of all the members having the right to vote at the meeting; or

(*c*) by the chairperson of the meeting.

(3) The appointment of a proxy to vote on a matter at a general meeting of a company authorizes the proxy to demand, or join in demanding, a poll on that matter.

(4) In applying subsection (2), a demand by a proxy counts –

(*a*) for the purposes of subsection (2)(*a*), as a demand by the member; and

(*b*) for the purposes of subsection (2)(*b*), as a demand by a member representing the voting rights that the proxy is authorized to exercise.

12.51 Chairperson's duty to demand poll

If, before or on the declaration of the result on a show of hands at a general meeting, the chairperson of the meeting knows from the proxies received by the company that the result on a show of hands will be different from that on a poll, the chairperson must demand a poll.

12.52 Voting on poll

On a poll taken at a general meeting of a company, a member entitled to more than one vote need not, if the member votes –

(*a*) use all the votes; or

(*b*) cast all the votes the member uses in the same way.

12.53 Company's duty to record result of poll in minutes of general meeting

(1) In respect of a resolution decided on a poll taken at a general meeting of a company, the company must record in the minutes of proceedings of the general meeting –

(*a*) the result of the poll;

(*b*) the total number of votes that could be cast on the resolution;

(*c*) the number of votes in favour of the resolution; and

(*d*) the number of votes against the resolution.

(2) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of $300 for each day during which the offence continues.

12.54 Place where voting document must be kept available for inspection

(1) This section applies in relation to any record or document relating to a vote cast at a general meeting on a resolution, including –

(*a*) the instrument appointing a proxy to vote at the meeting; and

(*b*) if a poll is taken at the meeting, the voting paper relating to the poll.

(2) A company must keep the record or document available for inspection at –

(*a*) the company's registered office; or

(*b*) a prescribed place.

(3) A company must –

(*a*) retain the record or document for at least 7 years from the date on which the vote is cast; and

(*b*) keep the record or document available for inspection during that time.

(4) A company must notify the Registrar of the place, or any change in the place, at which the record or document is kept for the purpose of this section. The notice must be given to the Registrar in the specified form within 14 days after the record or document is first kept at that place or within 14 days after the change (as the case may be).

(5) Subsection (4) does not apply in relation to any record or document that has been kept at the registered office of the company at all times since it came into existence.

(6) If a company contravenes subsection (2), (3) or (4), 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.

12.55 Right of member to inspect voting document

The record or document to which section 12.54 applies must be open to inspection by any member of the company without charge.[17]

12.56 Saving for provisions of articles as to determination of entitlement to vote

Nothing in this Subdivision affects –

(*a*) any provision of a company's articles –

(i) requiring an objection to a person's entitlement to vote on a resolution to be made in accordance with the articles; and

(ii) for the determination of the objection to be final and conclusive; or

(*b*) the grounds on which such a determination may be questioned in legal proceedings.

12.57 Application and saving

(1) This Subdivision applies to meetings of which notice is given on or after the commencement of this Subdivision.

(2) The predecessor Ordinance (including sections 114A(1)(*e*), 114D, 114E and 116(2)) continues to apply to meetings of which notice was given before the commencement of this Subdivision.

(3) If notice of a meeting is given over more than one day, it is to be regarded for the purposes of this section as given on the first of those days.

[17] Regulation will be made under clause 12.125 to make provision as to the time, duration and manner of inspection.

Subdivision 9 – Proxies and Corporate Representatives

12.58 Right to appoint proxy

(1) Subject to subsection (2), a member of a company is entitled to appoint another person (whether a member or not) as a proxy to exercise all or any of the member's rights to attend and to speak and vote at a general meeting of the company.

(2) In the case of a company limited by guarantee, the company's articles may require that a proxy must be a member of the company and if the company's articles so require, a member of the company may only appoint another member as a proxy.

(3) In the case of a company having a share capital, a member of the company may appoint separate proxies to represent respectively the number of the shares held by the member that is specified in their instruments of appointment.

12.59 Notice of meeting to contain statement of rights etc.

(1) A company must ensure that in a notice calling a general meeting of the company, there must appear, with reasonable prominence, a statement informing the member of –

(*a*) the rights under section 12.58(1) and (3); and

(*b*) the requirement under section 12.58(2).

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

(3) A contravention of subsection (1) does not affect the validity of the meeting or of anything done at the meeting.

12.60 Notice required of appointment of proxy etc.

(1) This section applies to –

(*a*) the appointment of a proxy; and

(*b*) any document necessary to show the validity of, or otherwise relating to, the appointment of a proxy.

(2) A provision of the company's articles is void in so far as it would have the effect of requiring the appointment or document to be received by the company or another person earlier than the following time –

(*a*) in the case of a general meeting or adjourned general meeting, 48 hours before the time for holding the meeting or adjourned meeting;

(*b*) in the case of a poll taken more than 48 hours after it was demanded, 24 hours before the time appointed for the taking of the poll;

(*c*) in the case of a poll taken not more than 48 hours after it was demanded, the time at which it was demanded.

(3) In calculating the periods mentioned in subsection (2), no account is to be taken of any part of a day that is –

(*a*) a public holiday; or

(*b*) a black rainstorm warning day or gale warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).

12.61 Sending documents relating to proxies in electronic form

(1) If a company has given an electronic address in –

(*a*) an instrument of proxy issued by the company in relation to a general meeting; or

(*b*) an invitation to appoint a proxy issued by the company in relation to the meeting,

it is to be regarded as having agreed that any document or information relating to proxies for that meeting may be sent by electronic means to that address (subject to any conditions or limitations specified in the instrument or invitation).

(2) In subsection (1), documents relating to proxies include –

(*a*) the appointment of a proxy in relation to a general meeting;

(*b*) any document necessary to show the validity of, or otherwise relating to, the appointment of a proxy; and

(*c*) notice of the termination of the authority of a proxy.

12.62 Company-sponsored invitations to appoint proxies

(1) A company must not, for the purposes of a general meeting of the company, issue at its expense invitations to members to appoint as proxy a specified person or a number of specified persons unless the invitations are issued to all members entitled to be sent a notice of the meeting and to vote at the meeting by proxy.

(2) Subsection (1) is not contravened if –

(*a*) there is issued to a member at that member's request a form of appointment naming the proxy or a list of persons willing to act as proxy; and

(*b*) the form or list is available on request to all members entitled to vote at the meeting by proxy.

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

12.63 Requirement as to instrument of proxy issued by company

(1) This section applies to an instrument of proxy issued to a member of a company by the company for use by the member for appointing a proxy to attend and vote at a general meeting of the company.

(2) The instrument of proxy must be such as to enable the member, according to the member's intention, to instruct the proxy to vote in favour of or

against (or, in default of instructions, to exercise the proxy's discretion in respect of) each resolution dealing with any business to be transacted at the meeting.

12.64 Chairing meeting by proxy

(1) A proxy may be elected to be the chairperson of a general meeting by a resolution of the company passed at the meeting.

(2) Subsection (1) is subject to any provision of the company's articles that states who may or who may not be chairperson.

12.65 Company-sponsored proxy's duty to vote in the way specified in appointment of proxy

(1) This section applies to a person who is named by a company as a proxy, whether the nomination is made in –

(*a*) an instrument of proxy issued by the company in relation to a general meeting; or

(*b*) an invitation to appoint a proxy issued by the company in relation to the meeting.

(2) If the person has been duly appointed as a proxy by a member entitled to vote at the meeting, that person must, subject to section 12.47 –

(*a*) vote as a proxy –

(i) on a show of hands; or

(ii) on a poll; and

(*b*) vote in the way specified by the member in the appointment of proxy.

(3) If the person has been duly appointed as a proxy by 2 or more members entitled to vote at the meeting and the members specify different ways to vote in their appointment of proxy, the proxy –

(*a*) must vote on a show of hands in the way specified by the member or members representing a simple majority of the

total voting rights that the proxy is authorized to exercise at the meeting; and

(*b*) if there is no majority, must not vote on a show of hands.

(4) A person who knowingly and wilfully contravenes subsection (2) or (3) commits an offence and is liable to a fine at level 3.

12.66 Notice required of termination of proxy's authority

(1) This section applies to notice that the authority of a person to act as proxy is terminated ("notice of termination").

(2) The termination of the authority of a person to act as proxy does not affect –

(*a*) whether there is a quorum at a general meeting (irrespective of whether the proxy has been counted in deciding the question);

(*b*) the validity of anything the person does as chairperson of a general meeting; or

(*c*) the validity of a poll demanded by the person at a general meeting,

unless the company receives notice of the termination before the commencement of the meeting.

(3) The termination of the authority of a person to act as proxy does not affect the validity of a vote given by that person unless the company receives notice of the termination –

(*a*) before the commencement of the meeting or adjourned meeting at which the vote is given; or

(*b*) in the case of a poll taken more than 48 hours after it is demanded, before the time appointed for the taking of the poll.

(4) If the company's articles require or permit members to give notice of termination to a person other than the company, the references in subsections (2) and (3) to the company receiving notice have effect as if they were –

(*a*) references to that person; or

(*b*) references to the company or that person,

as the case requires.

(5) Subsections (2) and (3) have effect subject to any provision of the company's articles that has the effect of requiring notice of termination to be received by the company or another person at a time earlier than that specified in those subsections.

(6) Subsection (5) is subject to subsection (7).

(7) A provision of the company's articles is void in so far as it would have the effect of requiring notice of termination to be received by the company or another person earlier than the following time –

(*a*) in the case of a general meeting or adjourned general meeting, 48 hours before the time for holding the meeting or adjourned meeting;

(*b*) in the case of a poll taken more than 48 hours after it was demanded, 24 hours before the time appointed for the taking of the poll;

(*c*) in the case of a poll taken not more than 48 hours after it was demanded, the time at which it was demanded.

(8) In calculating the periods mentioned in subsections (3)(*b*) and (7), no account is to be taken of any part of a day that is –

(*a*) a public holiday; or

(*b*) a black rainstorm warning day or gale warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).

12.67 Effect of member's voting in person on proxy's authority

(1) A proxy's authority in relation to a resolution is to be regarded as revoked if the member who has appointed the proxy –

(*a*) attends in person the general meeting at which the resolution is to be decided; and

(*b*) exercises, in relation to that resolution –

(i) the voting right attached to the shares in respect of which the proxy is appointed; or

(ii) if the company does not have a share capital, the voting right the member is entitled to exercise.

(2) A member who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid appointment of a proxy has been delivered to the company by or on behalf of that member.

12.68 Representation of body corporate at meetings

(1) A body corporate may by resolution of its directors or other governing body –

(*a*) if it is a member of a company, authorize any person it thinks fit to act as its representative at any meeting of the company; and

(*b*) if it is a creditor (including a holder of debentures) of a company, authorize any person it thinks fit to act as its representative at any meeting of any creditors of the company held under the provisions of –

(i) this Ordinance; or

(ii) any debenture or trust deed or other instrument.

(2) A person authorized under subsection (1) is entitled to exercise the same powers on behalf of the body corporate which the person represents as that

body corporate could exercise if it were an individual member, creditor, or holder of debentures, of the company.

12.69 Representation of recognized clearing house at meetings

(1) A recognized clearing house within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571) may, if it or its nominee is a member of a company, authorize any person or persons it thinks fit to act as its representative or representatives, at any meeting of the company.

(2) If more than one person is authorized under subsection (1), the authorization must specify the number and class of shares in respect of which each person is so authorized.

(3) A person authorized under subsection (1) is entitled to exercise the same powers on behalf of the recognized clearing house (or its nominee) as that clearing house (or its nominee) could exercise if it were an individual member of the company.

12.70 Saving for more extensive rights given by articles

Nothing in this Subdivision prevents a company's articles from giving more extensive rights to members or proxies than are given by this Subdivision.

12.71 Application and saving

(1) This Subdivision applies to meetings of which notice is given on or after the commencement of this Subdivision.

(2) The predecessor Ordinance (including sections 114C and 115) continues to apply to meetings of which notice was given before the commencement of this Subdivision.

(3) If notice of a meeting is given over more than one day, it is to be regarded for the purposes of this section as given on the first of those days.

Subdivision 10 – Annual General Meetings

12.72 Interpretation

In this Subdivision –

"accounting reference period" (會計參照期) has the meaning given by section 9.6.

12.73 Requirement to hold annual general meeting

(1) Subject to subsections (2) and (3), a company must, in respect of each financial year of the company, hold a general meeting as its annual general meeting within the following period (in addition to any other meetings held during the period) –

(*a*) in the case of a private company or a company limited by guarantee, 9 months after the end of its accounting reference period by reference to which the financial year is to be determined; and

(*b*) in the case of any other company, 6 months after the end of its accounting reference period by reference to which the financial year is to be determined.

(2) If the accounting reference period mentioned in subsection (1) is the first accounting reference period of the company and is longer than 12 months, the company must hold a general meeting as its annual general meeting within the following period –

(*a*) in the case of a private company or a company limited by guarantee –

(i) 9 months after the anniversary of the company's incorporation; or

(ii) 3 months after the end of that accounting reference period,

whichever is the later; and

(*b*) in the case of any other company –

(i) 6 months after the anniversary of the company's incorporation; or

(ii) 3 months after the end of that accounting reference period,

whichever is the later.

(3) If a company has by a directors' resolution under section 9.7 or a notice given to the Registrar under that section, shortened an accounting reference period, the company must hold a general meeting as its annual general meeting within the following period –

(*a*) in the case of a private company or a company limited by guarantee –

(i) 9 months after the end of the shortened accounting reference period; or

(ii) 3 months after the shortening of the accounting reference period takes effect,

whichever is the later; and

(*b*) in the case of any other company –

(i) 6 months after the end of the shortened accounting reference period; or

(ii) 3 months after the shortening of the accounting reference period takes effect,

whichever is the later.

(4) A private company mentioned in subsections (1), (2) and (3) does not include a private company that is, at any time during the financial year, a subsidiary of a public company.

(5) If for any reason the Court of First Instance thinks fit to do so, it may, on an application made before the end of the period otherwise allowed for holding an annual general meeting in respect of a financial year of a company, by order extend that period by a further period specified in the order.

(6) If the period otherwise allowed for holding an annual general meeting in respect of a financial year of a company has been extended under subsection (5), the company must hold a general meeting as its annual general meeting within the period as so extended.

(7) If a company contravenes subsection (1), (2), (3) or (6), the Court of First Instance may, on application by any member of the company –

(*a*) call, or direct the calling of, a general meeting of the company; and

(*b*) give any ancillary or consequential directions that the Court of First Instance thinks expedient, including –

(i) a direction modifying or supplementing, in relation to the calling, holding and conducting of the meeting, the operation of the company's articles; and

(ii) a direction that one member of the company present in person or by proxy is to be regarded as constituting a meeting.

(8) Subject to any directions of the Court of First Instance, a general meeting held under subsection (7) is to be regarded as an annual general meeting of the company in respect of the financial year in respect of which the company has failed to hold an annual general meeting in accordance with this section.

(9) If a company contravenes subsection (1), (2), (3) or (6), or contravenes a direction given under subsection (7), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5.

12.74 Exemption of dormant company from requirement to hold annual general meeting

(1) A company that is a dormant company under section 1.5(1) is exempt from complying with section 12.73.

(2) If, during the period between the date on which a company becomes a dormant company under section 1.5(1) and the date on which the company ceases to be a dormant company under section 1.5(4), the company enters into an accounting transaction as defined in section 1.5(5), then –

(*a*) the exemption under subsection (1) ceases as from the date of the accounting transaction; and

(*b*) any shareholder of the company who knew or ought to have known about the accounting transaction and all directors of the company are personally liable for any debt or liability of the company arising out of the accounting transaction.

(3) In subsection (2)(*b*) –

"director" (董事) includes a shadow director.

12.75 Circumstances in which company not required to hold annual general meeting

(1) A company is not required to hold an annual general meeting in accordance with section 12.73 if –

(*a*) everything that is required or intended to be done at the meeting (by resolution or otherwise) is done by a written resolution; and

(*b*) a copy of each document (including any account or record) that under this Ordinance would otherwise be required to be laid before the company at the meeting or otherwise produced at the meeting is provided to each member, on or before the circulation date of the written resolution.

(2) A company is also not required to hold an annual general meeting in accordance with section 12.73 if –

(*a*) the company has only one member; or

(*b*) the company has by resolution passed in accordance with section 12.76(1) dispensed with the holding of the annual general meeting and has not revoked the resolution under section 12.77(1), and no member of the company has required the holding of the annual general meeting under section 12.76(5).

(3) If a company is not required to hold an annual general meeting under subsection (1) or (2) in respect of a financial year, the directors of the company are not required to lay the company's annual financial statement, the directors' report and a directors' remuneration report before the company in accordance with section 9.50 in respect of that financial year.

12.76 Dispensation with annual general meeting

(1) A company may, by resolution passed in accordance with subsection (3), dispense with the holding of annual general meetings in accordance with section 12.73.

(2) A resolution mentioned in subsection (1) may be passed by a written resolution or at a general meeting.

(3) Despite any other provision of this Ordinance, a resolution mentioned in subsection (1) is only to be regarded as passed if it has been passed by all members of the company who –

(*a*) are entitled to vote on the resolution on the date of the resolution; or

(*b*) in the case of a written resolution, are entitled to vote on the resolution on the circulation date of the resolution.

(4) A resolution under subsection (1) –

(*a*) has effect for –

(i) the financial year in respect of which the period specified in section 12.73 for holding an annual

general meeting of the company has not expired; and

(ii) subsequent financial years; and

(*b*) does not affect any liability already incurred by reason of default in holding an annual general meeting.

(5) If an annual general meeting would be required to be held in respect of a financial year but for this section, and the meeting has not been held, any member of the company may, by notice to the company not later than 3 months before the end of the period within which the company would be required to hold an annual general meeting in respect of that financial year but for this section, require the holding of an annual general meeting in respect of that financial year.

(6) A notice mentioned in subsection (5) must be given in hard copy form or in electronic form.

(7) If a notice mentioned in subsection (5) is given, section 12.73 applies in respect of the financial year to which the notice relates.

12.77 Revocation of resolution dispensing with annual general meeting

(1) A company may revoke a resolution mentioned in section 12.76(1) by passing an ordinary resolution to that effect.

(2) If a resolution mentioned in section 12.76(1) is revoked or otherwise ceases to have effect, the company –

(*a*) is required to hold an annual general meeting in accordance with section 12.73; but

(*b*) is not required to hold an annual general meeting in respect of a financial year that, but for this paragraph, would be required to be held within 3 months after the resolution ceases to have effect.

(3) Subsection (2) does not affect any obligation of the company to hold an annual general meeting in respect of a financial year in accordance with a notice given under section 12.76(5).

12.78 Members' power to request circulation of resolution for annual general meeting

(1) If a company is required to hold an annual general meeting under section 12.73, the members of the company may request the company to give, to members of the company entitled to receive notice of the annual general meeting, notice of a resolution that may properly be moved and is intended to be moved at that meeting.

(2) A company must give notice of a resolution if it has received requests that it do so from –

(*a*) the members of the company representing at least 2.5% of the total voting rights of all the members who have a right to vote on the resolution at the annual general meeting to which the requests relate; or

(*b*) at least 50 members who –

(i) have a right to vote on the resolution at the annual general meeting to which the requests relate; and

(ii) hold shares in the company on which there has been paid up an average sum, per member, of at least $2,000.

(3) A request –

(*a*) may be sent to the company in hard copy form or in electronic form;

(*b*) must identify the resolution of which notice is to be given;

(*c*) must be authenticated by the person or persons making it; and

(*d*) must be received by the company not later than –

(i) 6 weeks before the annual general meeting to which the requests relate; or

(ii) if later, the time at which notice is given of that meeting.

12.79 Company's duty to circulate resolution for annual general meeting

(1) A company that is required under section 12.78 to give notice of a resolution must send a copy of it at the company's own expense to each member of the company entitled to receive notice of the annual general meeting –

(*a*) in the same manner as the notice of the meeting; and

(*b*) at the same time as, or as soon as reasonably practicable after, it gives notice of the meeting.

(2) The business that may be dealt with at an annual general meeting includes a resolution of which notice is given in accordance with subsection (1).

(3) For the purposes of subsection (2), notice is to be regarded as having been given in accordance with subsection (1) despite the accidental omission to give notice to one or more members.

(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 5.

12.80 Application and saving

(1) The repeal of section 115A of the predecessor Ordinance does not affect its application in relation to a requisition under section 115A(1)(*a*) of the predecessor Ordinance made to a company before the repeal.

(2) In the case of an existing company required to hold an annual general meeting under section 12.73 –

(*a*) section 111 of the predecessor Ordinance continues to apply to determine the date by which the company must

hold its first annual general meeting after the commencement of section 12.73; and

(*b*) section 12.73 applies in relation to subsequent annual general meetings.

(3) The repeal of section 111(2), (3), (4) and (5) of the predecessor Ordinance does not affect its operation in relation to a company if an application under section 111(2) of the predecessor Ordinance was made before the commencement of section 12.73.

(4) Sections 12.78 and 12.79 apply to requests made on or after the commencement of those sections.

(5) Section 115A of the predecessor Ordinance, in so far as it relates to giving notice of a resolution in relation to an annual general meeting, continues to apply in relation to requisitions made to a company under section 115A(1)(*a*) of the predecessor Ordinance before the commencement of sections 12.78 and 12.79.

(6) If requests are made or copies of a requisition are deposited on more than one day, the references in this section to the date on which the request or requisition is made are to be construed as references to the first day on which the requests made or copies deposited are sufficient to require the company to act.

Subdivision 11 – Records of Resolutions and Meetings

12.81 Written record where company has only one member

(1) This section applies if a company has only one member and that member takes any decision that –

(*a*) may be taken by the company in general meeting; and

(*b*) has effect as if agreed by the company in general meeting.

(2) The member must, unless the decision is taken by way of a written resolution, provide the company with a written record of that decision within 7 days after the decision is made.

(3) A person who contravenes subsection (2) commits an offence and is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of $300 for each day during which the offence continues.

(4) A contravention of subsection (2) does not affect the validity of any decision mentioned in that subsection.

12.82 Records of resolutions and meetings, etc.

(1) A company must keep records comprising –

(*a*) copies of all resolutions of members passed otherwise than at general meetings;

(*b*) minutes of all proceedings of general meetings; and

(*c*) all written records provided to the company in accordance with section 12.81(2).

(2) A company must keep the records under subsection (1) for at least 20 years from the date of the resolution, meeting or decision, as the case may be.

(3) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of $1,000 for each day during which the offence continues.

12.83 Place where records must be kept available for inspection

(1) A company must keep the records mentioned in section 12.82 available for inspection at –

(*a*) the company's registered office; or

(*b*) a prescribed place.

(2) A company must notify the Registrar of the place, or any change in the place, at which the records mentioned in section 12.82 are kept for the

purpose of this section. The notice must be given to the Registrar in the specified form within 14 days after the records are first kept at that place or within 14 days after the change (as the case may be).

(3) Subsection (2) does not apply in relation to records that have been kept at the registered office of the company –

(*a*) at all times since they came into existence; or

(*b*) if they were in existence on 31 August 1984, at all times since then.

(4) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of $1,000 for each day during which the offence continues.

12.84 Right to inspect and request copy

(1) The records required to be kept by a company under section 12.82 must be open to inspection by any member of the company without charge.[18]

(2) A member of the company is entitled, on request and on payment of a prescribed fee, to be provided with a copy of any of those records.

(3) The company must provide the member with the copy within a prescribed period after the request and prescribed fee are received by the company.

(4) If a company contravenes subsection (3) –

(*a*) the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of $1,000 for each day during which the offence continues; and

[18] Regulation will be made under clause 12.125 to make provision as to the time, duration and manner of inspection.

(*b*) the Court of First Instance may by order direct that the copy be provided to the person requesting it.

12.85 Records as evidence of resolutions etc.

(1) If the record of a resolution of members passed otherwise than at a general meeting is kept under section 12.82(1)(*a*) and purports to be signed by a director of the company or secretary of the company, then –

(*a*) the record is evidence of the passing of the resolution; and

(*b*) until the contrary is proved, the requirements of this Ordinance with respect to those proceedings are to be regarded as having been complied with.

(2) The minutes of proceedings of a general meeting, if purporting to be signed by the chairperson of that meeting or by the chairperson of the next general meeting, are evidence of the proceedings.

(3) If the record of the minutes of proceedings of a general meeting of a company is kept under section 12.82(1)(*b*), then, until the contrary is proved –

(*a*) the meeting is to be regarded as having been duly held and convened;

(*b*) all proceedings at the meeting are to be regarded as having been duly taken place; and

(*c*) all appointments of directors, managers or liquidators made at the meeting are to be regarded as valid.

(4) If a company has only one member and that member provides the company with a written record of a decision in accordance with section 12.81(2), the record is sufficient evidence of the decision having been taken by the member.

12.86 Registration of and requirements relating to certain resolutions, etc.

(1) This section applies to –

(*a*) a special resolution, other than a special resolution to change the name of a company passed under section 3.41;[19]

(*b*) a resolution agreed to by all the members of a company that, if not so agreed to, would not have been effective for its purpose unless passed as a special resolution;

(*c*) a resolution or agreement agreed to by all the members of a class that, if not so agreed to, would not have been effective for its purpose unless passed by some particular majority or otherwise in some particular manner;

(*d*) a resolution or agreement that effectively binds all the members of a class though not agreed to by all those members;

(*e*) a resolution requiring a company to be wound up voluntarily, passed under section 228(1)(*a*) of the Companies (Winding Up Provisions) Ordinance (Cap. 32);[20]

(*f*) a resolution varying any matter or provision in the articles of a company that is expressly authorized by the articles to be varied by ordinary resolution;

(*g*) an order of the Court of First Instance (which alters a company's constitution) a copy of which is required to be delivered to the Registrar under section 3.30(2)(*a*).

(2) The company must send a copy of the resolution or agreement to the Registrar within 15 days after it is passed or made.

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[19] A consultation draft of Part 3 will be published later.

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

(3) The Registrar must keep a record of the copy of the resolution or agreement sent under subsection (2).

(4) If the company's articles have been registered under this Ordinance or any former Companies Ordinance, the company must ensure that a copy of the resolution, agreement or order of the Court of First Instance that is for the time being in force is embodied in or annexed to every copy of the articles issued, as the case may be –

(*a*) after the passing of the resolution; or

(*b*) after the making of the agreement or the order of the Court of First Instance.

(5) If the company's articles have not been registered under this Ordinance or any former Companies Ordinance, the company must send a copy of the resolution, agreement or order of the Court of First Instance that is for the time being in force to any member at that member's request, without charge.

(6) If the resolution or agreement is not in writing, a reference to a copy of the resolution or agreement in subsections (2), (3), (4) and (5) is to be construed as a written memorandum setting out the terms of the resolution or agreement.

(7) If a company contravenes subsection (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of $300 for each day during which the offence continues.

(8) If a company contravenes subsection (4) or (5), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.

(9) For the purposes of subsections (7) and (8), a liquidator of the company is to be regarded as an officer of the company.

12.87 Application and saving

(1) Sections 12.81, 12.82, 12.83, 12.84 and 12.85 apply in relation to resolutions passed, meetings held or decisions taken on or after the commencement of those sections.

(2) The predecessor Ordinance (including sections 116B(7), (8), (9) and (10), 116BC, 119, 119A and 120) continues to apply in relation to resolutions passed, meetings held or decisions taken before the commencement of sections 12.81, 12.82, 12.83, 12.84 and 12.85.

(3) Section 12.86 (except subsections (4) and (5)) applies in relation to resolutions passed, agreements and orders made on or after the commencement of that section.

(4) Section 117(1), (5) and (7) of the predecessor Ordinance continues to apply in relation to resolutions passed and agreements made, but not forwarded to the Registrar, before the commencement of section 12.86 (except subsections (4) and (5)).

(5) Section 12.86(4), (7), (8) and (9) applies in relation to a company's articles issued on or after the commencement of that section.

(6) Section 117(2), (6) and (7) of the predecessor Ordinance continues to apply in relation to a company's articles registered before the commencement of section 12.86(4).

(7) Section 12.86(5), (7), (8) and (9) applies if the request is received by the company on or after the commencement of that section.

(8) Section 117(3), (6) and (7) of the predecessor Ordinance continues to apply if the request is received by the company before the commencement of section 12.86(5).

Subdivision 12 – Application to Class Meetings

12.88 Application to class meetings of companies with share capital

(1) Subject to subsections (2) and (3), this Division (except Subdivision 10) applies, with necessary modifications, in relation to a meeting of holders of shares in a class of a company's shares as it applies in relation to a general meeting.

(2) Sections 12.22, 12.23, 12.24, 12.26 and 12.32 do not apply in relation to a meeting of holders of shares in a class of a company's shares.

(3) In addition to those sections mentioned in subsection (2), sections 12.43 and 12.50 do not apply in relation to a meeting in connection with the variation of the rights attached to shares in a class (a "variation of class rights meeting").

(4) The quorum for a variation of class rights meeting is –

(*a*) in the case of a meeting other than an adjourned meeting, 2 persons present in person or by proxy together holding at least one-third of the total voting rights of holders of shares in the class; and

(*b*) in the case of an adjourned meeting, one person present in person or by proxy holding any shares in the class.

(5) For the purposes of subsection (4), if a person is present by proxy, that person is regarded as holding only the shares in respect of which the proxy is authorized to exercise voting rights.

(6) At a variation of class rights meeting, any holder of shares in the class who is present in person or by proxy may demand a poll.

(7) For the purposes of this section –

(*a*) 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 such a provision into the articles, is itself to be regarded as a variation of those rights; and

(*b*) a reference to the variation of the rights attached to shares in a class includes the abrogation of those rights.

12.89 Application to class meetings of companies without share capital

(1) Subject to subsections (2) and (3), this Division (except Subdivision 10) applies, with necessary modifications, in relation to a meeting of a class of members of a company without a share capital as it applies in relation to a general meeting.

(2) Sections 12.22, 12.23, 12.24, 12.26 and 12.32 do not apply in relation to a meeting of a class of members.

(3) In addition to those sections mentioned in subsection (2), sections 12.43 and 12.50 do not apply in relation to a meeting in connection with the variation of the rights of a class of members (a "variation of class rights meeting").

(4) The quorum for a variation of class rights meeting is –

(*a*) in the case of a meeting other than an adjourned meeting, 2 members of the class present in person or by proxy together representing at least one-third of the total voting rights of members of the class; and

(*b*) in the case of an adjourned meeting, one member of the class present (in person or by proxy).

(5) At a variation of class rights meeting, any member present in person or by proxy may demand a poll.

(6) For the purposes of this section –

(*a*) 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 such a provision into the articles, is itself to be regarded as a variation of those rights; and

(*b*) a reference to the variation of the rights of a class of members includes the abrogation of those rights.

12.90 Application and saving

(1) This Subdivision applies to meetings in relation to which the provisions applied by this Subdivision have effect.

(2) Section 63A(6) of the predecessor Ordinance continues to apply to meetings of which notice was given before the commencement of this Subdivision.

(3) If notice of a meeting is given over more than one day, it is to be regarded for the purposes of this section as given on the first of those days.

Division 2 – Registers

Subdivision 1 – Register of Members

12.91 Interpretation

In this Subdivision –

"branch register" (登記支冊) means, except in section 12.107, a branch register of members kept under section 12.102.

12.92 Register of members

(1) A company must keep in the English or Chinese language a register of its members.

(2) A company must enter in the register of its members –

(*a*) the names and addresses of the members;

(*b*) the date on which each person was entered in the register as a member; and

(*c*) the date on which any person ceased to be a member.

(3) In the case of a company having a share capital, the company must enter in the register of its members, with the names and addresses of the members, a statement of –

(*a*) the shares held by each member, distinguishing each share by its number so long as the share has a number; and

(*b*) the amount paid or agreed to be considered as paid on the shares of each member.

(4) A company must enter in the register of its members the particulars required under subsections (2) and (3) within 2 months after the company has received notice of the particulars concerned.

(5) In the case of a person mentioned in subsection (2)(*c*), all entries in the register relating to that person on the date on which the person ceased to be a member may be destroyed after the end of a period of 20 years from that date.

(6) A company must retain a copy of any details that were included in its register of members immediately before the commencement of subsection (5) until –

(*a*) 20 years after the commencement of that subsection; or

(*b*) if earlier, 20 years after the member concerned ceased to be a member.

(7) If a company contravenes subsection (1), (4) or (6), 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.

12.93 Place where register must be kept available for inspection

(1) A company must keep the register of its members available for inspection at –

(*a*) the company's registered office; or

(*b*) a prescribed place.

(2) A company must notify the Registrar of the place, or any change in the place, at which the register of its members is kept for the purpose of this section. The notice must be given to the Registrar in the specified form within 14 days after the register is first kept at that place or within 14 days after the change (as the case may be).

(3) Subsection (2) does not apply in relation to a register of members that has been kept at the registered office of the company –

(*a*) at all times since it came into existence; or

(*b*) if it was in existence on 31 August 1984, at all times since then.

(4) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of $700 for each day during which the offence continues.

12.94 Statement that company has only one member

(1) If the number of members of a company falls to one, the company must, on the occurrence of that event, enter in the register of its members –

(*a*) a statement that it has only one member; and

(*b*) the date on which it became a company having only one member.

(2) If the membership of a company increases from one to 2 or more members, the company must, on the occurrence of that event, enter in the register of its members –

(*a*) a statement that it has ceased to have only one member; and

(*b*) the date on which that event occurred.

(3) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of $700 for each day during which the offence continues.

12.95 Index of members

(1) A company having more than 50 members must keep an index of the names of the members of the company, unless the register of its members is in a form that constitutes in itself an index.

(2) The company must make any necessary alteration in the index within 7 days after the date on which any alteration is made in the register of its members.

(3) The company must ensure that the index contains, in respect of each member, a sufficient indication to enable the account of that member in the register to be readily found.

(4) The company must keep the index at the same place as the register of its members at all times.

(5) If a company contravenes subsection (1), (2), (3) 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.

12.96 Right to inspect and request copy

(1) Except when the register of members of a company is closed under section 12.98, the register and the index of members' names must be open to inspection –

(*a*) by any member of the company without charge; and

(*b*) by any other person on payment of a prescribed fee.[21]

(2) A person is entitled, on request and on payment of a prescribed fee, to be provided with a copy of –

(*a*) the register of members of a company or the index of members' names; or

(*b*) any part of the register or index.

[21] Regulation will be made under clause 12.125 to make provision as to the time, duration and manner of inspection.

(3) The company must provide the person with the copy within a prescribed period after the request and prescribed fee are received by the company.

(4) When a person inspects the register, or the company provides the person with a copy of the register or any part of it, the company must inform the person of the most recent date (if any) on which alterations were made to the register.

(5) When a person inspects the index of members' names, or the company provides the person with a copy of the index or any part of it, the company must inform the person whether there is any alteration to the register that is not reflected in the index.

(6) If a company contravenes subsection (3), (4) or (5), 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.

(7) If a company contravenes subsection (3), the Court of First Instance may by order direct that the copy be provided to the person requesting it.

(8) The Court of First Instance must not make an order under subsection (7) if it is satisfied that the rights given by subsection (2) are being abused.

12.97 Consequences of contravening requirements as to register owing to other person's default

If the register of members of a company is kept at the office of a person other than the company, and by reason of any default of that other person, the company contravenes section 12.96(3), then the power of the Court of First Instance under section 12.96(7) extends to the making of an order against that other person and that other person's officers and other employees.

12.98 Power to close register of members

(1) A company may, on giving notice in accordance with subsection (2), close for any time or times not exceeding in the whole 30 days in each year, the register of members of the company or the part of the register relating to members holding shares of any class.

(2) A notice for the purposes of subsection (1) –

(*a*) if the company is a listed company, must be given –

(i) in accordance with the listing rules applicable to the stock market; or

(ii) by advertisement in a newspaper circulating generally in Hong Kong; and

(*b*) in the case of any other company, must be given by advertisement in a newspaper circulating generally in Hong Kong.

(3) The period of 30 days mentioned in subsection (1) may be extended in respect of any year in relation to the register (or any part of the register) of members of a company, by a resolution passed in that year.

(4) The period of 30 days mentioned in subsection (1) must not be extended beyond 60 days in any year.

(5) A company must, on demand, provide any person seeking to inspect a register or part of a register that is closed under this section with a certificate signed by the secretary of the company stating the period for which, and by whose authority, it is closed.

(6) If a company contravenes subsection (5), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.

(7) In subsection (2) –

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

12.99 Power of Court of First Instance to rectify register

(1) If –

(*a*) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or

(*b*) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

a person aggrieved, or any member of the company, or the company, may apply to the Court of First Instance for rectification of the register.

(2) If an application is made under subsection (1), the Court of First Instance may –

(*a*) refuse the application; or

(*b*) subject to section 4.35, [22] order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(3) Subject to section 4.35, on an application under subsection (1) the Court of First Instance –

(*a*) may decide any question relating to the title of any person who is a party to the application to have the person's name entered in or omitted from the register, whether the question arises –

(i) between members or alleged members; or

(ii) between members or alleged members on the one hand and the company on the other hand; and

(*b*) generally may decide any question necessary or expedient to be decided for rectification of the register.

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[22] A consultation draft of Part 4 will be published later.

(4) In the case of a company required by this Ordinance to send a list of its members to the Registrar, the Court of First Instance, when making an order for rectification of the register, must by its order direct notice of the rectification to be given to the Registrar.

12.100 Trusts not to be entered in register

No notice of any trust (whether expressed, implied or constructive) may be –

(*a*) entered in the register of members of a company; or

(*b*) receivable by the Registrar.

12.101 Register to be evidence

(1) In the absence of evidence to the contrary, the register of members is proof of any matters that are by this Ordinance required or authorized to be inserted in it.

(2) If in any proceedings under this Ordinance it is sought to challenge the accuracy of any entry in the register of members by evidence of any transaction, the evidence is not admissible for that purpose unless the transaction occurred not more than 20 years prior to the commencement of the proceedings.

12.102 Branch register of members

(1) A company having a share capital may, if it transacts business in a place outside Hong Kong, cause to be kept there a branch register of its members resident there if it is authorized to do so by its articles.

(2) A company that begins to keep a branch register must give to the Registrar a notice in the specified form within 14 days after doing so, stating the address where the branch register is kept.

(3) A company that keeps a register of members under a licence issued under section 103 of the predecessor Ordinance and continues to keep the register after the expiration of the licence must give to the Registrar a notice in

the specified form within 14 days after the expiration, stating the address where the register is kept.

(4) If a company contravenes subsection (2) or (3), 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.

12.103 Keeping of branch register

(1) A branch register must be kept in the same manner in which the company's register of members (in this section called the principal register) is by this Ordinance required to be kept.

(2) A company that keeps a branch register may only close the branch register in the same manner in which the principal register is closed under section 12.98 except that the advertisement before closing the register must be inserted in some newspaper circulating in the place in which the branch register is kept.

(3) A company that keeps a branch register must –

(*a*) transmit to its registered office a copy of every entry in its branch register as soon as may be after the entry is made; and

(*b*) cause to be kept at the place where the company's principal register is kept a duplicate of its branch register duly entered up from time to time.

(4) A duplicate of a branch register is to be regarded for all the purposes of this Ordinance as part of the principal register.

(5) Subject to the provisions of this Ordinance, a company may by its articles make any provision that it thinks fit respecting the keeping of branch registers.

(6) If a company contravenes subsection (3), 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.

12.104 Transactions in shares registered in branch register

(1) The shares registered in a branch register of a company must be distinguished from those registered in the register of members of the company.

(2) No transaction with respect to any shares registered in a branch register may, during the continuance of that registration, be registered in any other register.

12.105 Discontinuance of branch register

(1) A company may discontinue to keep a branch register.

(2) If a company discontinues keeping a branch register, all the entries in that register must be transferred to –

(*a*) some other branch register kept in the same place outside Hong Kong by the company; or

(*b*) the company's register of members.

12.106 Duty to notify Registrar of discontinuance etc. of branch register

(1) A company keeping a branch register must give to the Registrar a notice in the specified form of –

(*a*) any change in the address where the branch register is kept, within 14 days after the change; and

(*b*) if the company discontinues keeping the branch register, the discontinuance and the register to which all the entries have been transferred, within 14 days after the discontinuance.

(2) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a

fine at level 4 and, in the case of a continuing offence, to a further fine of $700 for each day during which the offence continues.

12.107 Provisions as to branch registers of non-Hong Kong companies kept in Hong Kong

If under the law in force in any place outside Hong Kong, companies incorporated under that law have power to keep in Hong Kong branch registers of their members resident in Hong Kong, the Financial Secretary may by order direct that –

(*a*) those branch registers must be kept at a place in Hong Kong as specified in the order;

(*b*) sections 12.96 and 12.99, subject to any modifications and adaptations specified in the order, apply to and in relation to those branch registers kept in Hong Kong as they apply to and in relation to the registers of members.

12.108 Application and saving

(1) The power given by section 12.92(5) is exercisable on or after the commencement of that section, whenever the period of 20 years specified in that section expires.

(2) Section 12.96(4) and (5) applies if a person –

(*a*) inspects a company's register of members or index of members' names on or after the commencement of that section; or

(*b*) is provided by a company on or after the commencement of that section with a copy of the company's register of members or any part of it,

whether the person's request to inspect, or be provided with a copy, was made before, on or after the commencement of that section.

(3) Section 12.101(2) applies to causes of action arising on or after the commencement of that section.

(4) The time limit for causes of action arising before the commencement of section 12.101(2) is –

(*a*) 20 years from the commencement of section 12.101(2); or

(*b*) 30 years (as provided by section 102(2) of the predecessor Ordinance) from the date on which the cause of action arose,

whichever expires first.

(5) Subsection (4) does not affect any lesser period of limitation.

Subdivision 2 – Register of Directors

12.109 Register of directors

(1) A company must keep in the English or Chinese language a register of its directors.

(2) A company must enter in the register of its directors the required particulars specified in section 12.111 of each person who is a director or reserve director (if any) of the company.

(3) A company must keep the register of its directors available for inspection at –

(*a*) the company's registered office; or

(*b*) a prescribed place.

(4) A company must notify the Registrar of the place, or any change in the place, at which the register of its directors is kept for the purpose of this section. The notice must be given to the Registrar in the specified form within 14 days after the register is first kept at that place or within 14 days after the change (as the case may be).

(5) Subsection (4) does not apply in relation to a register of directors that has been kept at the registered office of the company –

(*a*) at all times since it came into existence; or

(*b*) if it was in existence on 31 August 1984, at all times since then.

(6) If a company contravenes subsection (1), (2), (3) 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.

12.110 Right to inspect and request copy

(1) The register of directors of a company must be open to inspection –

(*a*) by any member of the company without charge; and

(*b*) by any other person on payment of a prescribed fee.[23]

(2) A person is entitled, on request and on payment of a prescribed fee, to be provided with a copy of the register of directors or any part of it.

(3) The company must provide the person with the copy within a prescribed period after the request and prescribed fee are received by the company.

(4) When a person inspects the register, or the company provides the person with a copy of the register or any part of it, the company must inform the person of the most recent date (if any) on which alterations were made to the register.

(5) If a company contravenes subsection (3) 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.

(6) If a company contravenes subsection (3), the Court of First Instance may by order direct that the copy be provided to the person requesting it.

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[23] Regulation will be made under clause 12.125 to make provision as to the time, duration and manner of inspection.

(7) The Court of First Instance must not make an order under subsection (6) if it is satisfied that the rights given by subsection (2) are being abused.

12.111 Particulars of directors to be registered

(1) If a company is a private company (other than one that is a member of a group of companies of which a listed company is a member), the register of its directors must contain the following particulars with respect to each director –

(*a*) if the director is a natural person –

(i) the present forename and surname, former forename or surname (if any), and aliases (if any);

(ii) the usual residential address; and

(iii) the number of the identity card or, if the director does not have an identity card, the number and issuing country of any passport held by the director; and

(*b*) if the director is a body corporate, the corporate name and the address of its registered or principal office.

(2) If a company is a public company, a company limited by guarantee, or a private company that is a member of a group of companies of which a listed company is a member, the register of its directors must contain the following particulars with respect to each director –

(*a*) the present forename and surname, former forename or surname (if any), and aliases (if any);

(*b*) the usual residential address; and

(*c*) the number of the identity card or, if the director does not have an identity card, the number and issuing country of any passport held by the director.

(3) If a company is a private company having only one member and that member is the sole director of the company, the register of its directors must contain the following particulars with respect to the reserve director of the company (if any) –

(*a*) the present forename and surname, former forename or surname (if any), and aliases (if any);

(*b*) the usual residential address; and

(*c*) the number of the identity card or, if the director does not have an identity card, the number and issuing country of any passport held by the director.

(4) In this section –

"forename" (名字) includes a Christian or given name;

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

"residential address" (住址) –

(*a*) does not include an address at a hotel unless the person to whom it relates is stated, for the purposes of this section, to have no other permanent address; and

(*b*) does not include a post office box number unless the number is coupled with a residential address;

"surname" (姓氏), for a person usually known by a title different from the person's surname, means that title.

(5) In this section, a reference to a former forename or surname does not include –

(*a*) in relation to a person –

(i) a forename or surname that was changed or ceased to be used before the person attained the age of 18 years; and

(ii) a forename or surname that has been changed or ceased to be used for a period of at least 20 years;

(*b*) in relation to a person usually known by a title different from the person's surname, the name by which the person was known before the adoption of or succession to the title; and

(*c*) in relation to a married woman, the name or surname by which she was known before the marriage.

(6) The Financial Secretary may, by order published in the Gazette, amend subsection (1), (2), (3), (4) or (5).

12.112 Duty to notify Registrar of appointment and change

(1) If a person is appointed as director of a company otherwise than under section 10.1(3) or (4) or section 10.2(2) or (3), the company must, within 14 days after the appointment, give to the Registrar a notice in the specified form containing –

(*a*) the director's particulars specified in the register of its directors; and

(*b*) if the person is a natural person, a statement, authenticated by the person, that he or she has accepted the appointment and has attained the age of 18 years.

(2) The company must, within 14 days after the nomination of a person as a reserve director of the company, give to the Registrar a notice in the specified form containing all the particulars with respect to that person that are required to be contained in the register of its directors.

(3) If a person is nominated as a reserve director of a private company, the company must, within 14 days after the nomination, give to the Registrar a statement in the specified form, authenticated by the person, that the person has accepted the nomination and has attained the age of 18 years.

(4) If a person ceases to be a director or reserve director of a company or there is any change in the particulars contained in the register of directors of a company, the company must, within 14 days after the cessation or change, give to the Registrar a notice in the specified form –

(*a*) specifying the cessation or change and the date on which it occurred; and

(*b*) containing other matters that are specified in the form.

(5) If a company contravenes subsection (1), (2), (3) 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.

12.113 Duty of director to make disclosure

(1) A director of a company must give notice to the company of matters relating to the director that are required for the purposes of sections 12.111 and 12.112.

(2) A reserve director of a company must give notice to the company of matters relating to the reserve director that are required for the purposes of sections 12.111 and 12.112.

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

12.114 Registrar to keep an index of directors

(1) The Registrar must keep an index of every person who is a director of a company or a reserve director of a private company.

(2) The particulars contained in the index must, in respect of each director or reserve director, include –

(*a*) the name and address of the director or reserve director;

(*b*) the latest particulars sent to the Registrar in respect of the director or reserve director; and

(*c*) the name of each company of which the director or reserve director can be identified as a director or reserve director.

(3) The index kept under this section must be open to the inspection of any person on payment of a prescribed fee.

12.115 Application and saving

(1) On or after the commencement of section 12.109, the register of directors and secretaries kept by a company under section 158(1) of the predecessor Ordinance, in so far as it relates to the company's directors or reserve directors, is to be regarded as a register of directors kept under and for the purposes of section 12.109.

(2) An existing company need not comply with any provision of this Ordinance requiring the company's register of directors to contain particulars additional to those required by the predecessor Ordinance until the earlier of –

(*a*) the date to which the company makes up its first annual return made up to a date on or after the commencement of section 12.111; and

(*b*) the last date to which the company should have made up that return.

(3) Subsection (2) does not apply in relation to a director of whom particulars are first registered on or after the commencement of section 12.111 (whether the director was appointed before, on or after that commencement).

(4) Subsection (2) ceases to apply in relation to a director whose registered particulars fall to be altered on or after the commencement of section 12.111 (whether the change occurred before, on or after that commencement).

(5) Subsections (2), (3) and (4) do not affect the particulars required to be included in the company's annual return.

(6) On the commencement of section 12.111, an existing company must remove from its register of directors any entry relating to a shadow director.

(7) Section 12.112 applies as if the shadow director had ceased to be a director on the commencement of section 12.111.

(8) The removal by an existing company from its register of directors on or after the commencement of section 12.111 of particulars required by the predecessor Ordinance but not required by this Ordinance does not give rise to any duty to notify the Registrar under section 12.112.

(9) Section 12.112 applies in relation to –

(*a*) a change among a company's directors or reserve directors; or

(*b*) a change in the particulars contained in the register,

occurring on or after the commencement of section 12.111.

(10) Section 158 of the predecessor Ordinance continues to apply in relation to a change occurring before the commencement of section 12.111.

Subdivision 3 – Register of Secretaries

12.116 Register of secretaries

(1) A company must keep in the English or Chinese language a register of its secretaries.

(2) A company must enter in the register of its secretaries the required particulars specified in section 12.118 of a person who is, or persons who are the secretary or joint secretaries of the company.

(3) A company must keep the register of its secretaries available for inspection at –

(*a*) the company's registered office; or

(*b*) a prescribed place.

(4) A company must notify the Registrar of the place, or any change in the place, at which the register of its secretaries is kept for the purpose of this section. The notice must be given to the Registrar in the specified form within 14 days after the register is first kept at that place or within 14 days after the change (as the case may be).

(5) Subsection (4) does not apply in relation to a register of secretaries that has been kept at the registered office of the company –

(*a*) at all times since it came into existence; or

(*b*) if it was in existence on 31 August 1984, at all times since then.

(6) If a company contravenes subsection (1), (2), (3) 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.

12.117 Right to inspect and request copy

(1) The register of secretaries of a company must be open to the inspection –

(*a*) of any member of the company without charge; and

(*b*) of any other person on payment of a prescribed fee.[24]

(2) A person is entitled, on request and on payment of a prescribed fee, to be provided with a copy of the register of secretaries or any part of it.

(3) The company must provide the person with the copy within a prescribed period after the request and prescribed fee are received by the company.

(4) When a person inspects the register, or the company provides the person with a copy of the register or any part of it, the company must inform the person of the most recent date (if any) on which alterations were made to the register.

(5) If a company contravenes subsection (3) 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.

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[24] Regulation will be made under clause 12.125 to make provision as to the time, duration and manner of inspection.

(6) If a company contravenes subsection (3), the Court of First Instance may by order direct that the copy be provided to the person requesting it.

(7) The Court of First Instance must not make an order under subsection (6) if it is satisfied that the rights given by subsection (2) are being abused.

12.118 Particulars of secretaries to be registered

(1) The register of secretaries of a company must contain the following particulars with respect to the secretary or, if there are joint secretaries, with respect to each of them –

(*a*) if the secretary is a natural person –

(i) the present forename and surname, former forename or surname (if any), and aliases (if any);

(ii) the correspondence address; and

(iii) the number of the identity card or, if the secretary or joint secretary does not have an identity card, the number and issuing country of any passport held by the secretary or joint secretary; and

(*b*) if the secretary is a body corporate, the corporate name and the address of its registered or principal office.

(2) If all the partners in a firm are joint secretaries of a company, the name and principal office of the firm may be stated instead of the particulars mentioned in subsection (1)(*a*) or (*b*).

(3) In this section –

"forename" (名字) includes a Christian or given name;

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

"surname" (姓氏), for a person usually known by a title different from the person's surname, means that title.

(4) For the purposes of subsection (1)(*a*)(ii), a correspondence address must be a place in Hong Kong and must not be a post office box number.

(5) In this section, a reference to a former forename or surname does not include –

(*a*) in relation to a person –

(i) a forename or surname that was changed or ceased to be used before the person attained the age of 18 years; and

(ii) a forename or surname that has been changed or ceased to be used for a period of at least 20 years;

(*b*) in relation to a person usually known by a title different from the person's surname, the name by which the person was known before the adoption of or succession to the title; and

(*c*) in relation to a married woman, the name or surname by which she was known before the marriage.

(6) The Financial Secretary may, by order published in the Gazette, amend subsection (1), (2), (3), (4) or (5).

12.119 Duty to notify Registrar of appointment and change

(1) If a person or persons are appointed as secretary or joint secretaries of a company otherwise than under section 10.24(2) or (3), the company must, within 14 days after the appointment, give to the Registrar a notice in the specified form containing –

(*a*) the secretary's or joint secretaries' particulars specified in the register of its secretaries; and

(*b*) if the person or any of the persons is a natural person, a statement, authenticated by the person, that he or she has accepted the appointment.

(2) If a person ceases to be a secretary of the company or there is any change in the particulars contained in the register of secretaries of a company, the company must, within 14 days after the cessation or change, give to the Registrar a notice in the specified form –

(*a*) specifying the cessation or change and the date on which it occurred; and

(*b*) containing other matters that are specified in the form.

(3) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of $700 for each day during which the offence continues.

12.120 Duty of secretary to make disclosure

(1) A secretary of a company must give notice to the company of matters relating to the secretary that are required for the purposes of sections 12.118 and 12.119.

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

12.121 Application and saving

(1) On or after the commencement of section 12.116, the register of directors and secretaries kept by a company under section 158(1) of the predecessor Ordinance, in so far as it relates to the company's secretaries or joint secretaries, is to be regarded as a register of secretaries kept under and for the purposes of section 12.116.

(2) An existing company need not comply with any provision of this Ordinance requiring the company's register of secretaries to contain particulars additional to those required by the predecessor Ordinance until the earlier of –

(*a*) the date to which the company makes up its first annual return made up to a date on or after the commencement of section 12.118; and

(*b*) the last date to which the company should have made up that return.

(3) Subsection (2) does not apply in relation to a secretary of whom particulars are first registered on or after the commencement of section 12.118 (whether the secretary was appointed before, on or after that commencement).

(4) Subsection (2) ceases to apply in relation to a secretary whose registered particulars fall to be altered on or after the commencement of section 12.118 (whether the change occurred before, on or after that commencement).

(5) Subsections (2), (3) and (4) do not affect the particulars required to be included in the company's annual return.

(6) In the case of an existing company –

(*a*) the relevant existing address of a secretary is to be regarded, on or after the commencement of section 12.118, as the correspondence address of the secretary; and

(*b*) an entry in the company's register of secretaries stating the relevant existing address is to be regarded, on or after the commencement of section 12.118, as complying with the requirement to state a correspondence address.

(7) The relevant existing address is the address that immediately before the commencement of section 12.118 appeared in the company's register of directors and secretaries as the usual residential address of the secretary or joint secretary.

(8) A notification of a change of a relevant existing address occurring before the commencement of section 12.118 that is received by the company on or after that commencement is to be regarded as being a notification of a change of correspondence address.

(9) The operation of subsections (6), (7) and (8) does not give rise to any duty to notify the Registrar under section 12.119.

(10) The removal by an existing company from its register of secretaries on or after the commencement of section 12.118 of particulars

required by the predecessor Ordinance but not required by this Ordinance does not give rise to any duty to notify the Registrar under section 12.119.

(11) Section 12.119 applies in relation to –

(*a*) a change among a company's secretaries; or

(*b*) a change in the particulars contained in the register,

occurring on or after the commencement of section 12.118.

(12) Section 158 of the predecessor Ordinance continues to apply in relation to a change occurring before the commencement of section 12.118.

Division 3 – Company Records

12.122 Meaning of "company records"

In this Division –

"company records" (公司紀錄) means any register, index, agreement, memorandum, minutes or other document required by this Ordinance to be kept by a company, but does not include accounting records.

12.123 Form of company records

(1) A company must adequately record for future reference the information required to be contained in any company records.

(2) Subject to subsection (1), company records may be –

(*a*) kept in hard copy form or in electronic form; and

(*b*) arranged in the manner that the directors of the company think fit.

(3) If the records are kept in electronic form, the company must ensure that they are capable of being reproduced in hard copy form.

(4) If any company records required by this Ordinance to be kept by a company are kept by the company by recording the information in question in electronic form, any duty imposed on the company under this Ordinance to allow inspection of, or to provide a copy of the company records or any part of

the company records is to be regarded as a duty to allow inspection of, or to provide, a reproduction of –

(*a*) the recording in hard copy form; or

(*b*) the relevant part of the recording in hard copy form.

(5) If a company contravenes subsection (1) or (3), 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.

(6) In this section –

"in electronic form" (電子形式) means in the form of an electronic record;

"in hard copy form" (印本形式) means in a paper form or similar form capable of being read.

12.124 Duty to take precautions against falsification

(1) If company records are kept otherwise than by making entries in a bound book, a company must –

(*a*) take adequate precautions to guard against falsification; and

(*b*) take adequate steps to facilitate the discovery of the falsification.

(2) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of $300 for each day during which the offence continues.

12.125 Regulations about keeping and inspection of company records and provision of copies

(1) The Financial Secretary may make regulations to –

(*a*) provide for the obligations of a company that is required by any provision of this Ordinance –

(i) to keep any company records;

(ii) to keep available for inspection any company records; or

(iii) to provide copies of any company records;

(*b*) prescribe the fees payable in respect of company records; and

(*c*) prescribe any other thing that is required or permitted to be prescribed under this Ordinance in respect of company records.

(2) The regulations may –

(*a*) prescribe places other than a company's registered office at which company records are required to be kept;

(*b*) make provision as to the time, duration and manner of inspection, including the circumstances in which and the extent to which the copying of information is permitted in the course of inspection;

(*c*) define what may be required of the company as regards the nature, extent and manner of extracting or presenting any information for the purposes of inspection or the provision of copies; and

(*d*) make provision as to the time within which a copy of company records must be provided.

(3) Regulations made under subsection (2)(*a*) may, in relation to a provision of this Ordinance requiring a company to keep any company records –

(*a*) prescribe a place –

(i) by reference to the company's principal place of business or the place at which the company keeps any other records; or

(ii) in any other way;

(*b*) provide that that provision is not complied with by keeping company records at a place prescribed in the regulations unless conditions prescribed in the regulations are met;

(*c*) prescribe more than one place in relation to that provision; and

(*d*) provide that that provision is not complied with by keeping company records at a place prescribed in the regulations unless all the company's records subject to that provision are kept there.

(4) Regulations made under subsection (1), (2) or (3) may provide that –

(*a*) if a company contravenes any of the regulations made under subsection (1), (2) or (3), an offence is committed by –

(i) the company; and

(ii) every responsible person of the company;

(*b*) a person who commits an offence mentioned in paragraph (*a*) is liable to a fine not exceeding level 5 and, in the case of a continuing offence, to a further fine not exceeding $1,000 for each day during which the offence continues;

(*c*) the Court of First Instance may, in prescribed circumstances, by order compel an immediate inspection of company records or direct that a copy of company records be sent to a person entitled to be provided with the copy;

(*d*) if company records are kept at the office of a person other than the company concerned, an order mentioned in

paragraph (*c*) may be made against that other person and that other person's officers and other employees; and

(*e*) the Court of First Instance must not make an order mentioned in paragraph (*c*) if it is satisfied that the rights of inspecting company records or the rights to be provided with a copy of company records are being abused.

(5) Nothing in any provision of this Ordinance or in the regulations made under this section is to be construed as preventing a company –

(*a*) from providing more extensive facilities than are required by the regulations; or

(*b*) if a fee may be charged, from charging a lesser fee than that prescribed or none at all.

Division 4 – Registered Office and Publication of Company Names

12.126 Registered office of company

(1) A company must have a registered office in Hong Kong to which all communications and notices may be addressed.

(2) The intended address of a company's registered office stated in the incorporation form registered in respect of the company is to be regarded as the address of its registered office with effect from the date of its incorporation until a notice of change in respect of the address is given to the Registrar under subsection (3).

(3) If the address of a company's registered office is changed, the company must give a notice of the change in the specified form to the Registrar within 14 days after the change.

(4) The Registrar must record the change a notice of which is given under subsection (3).

(5) The inclusion in the annual return of a company of a statement as to the address of its registered office does not satisfy the obligation imposed by subsection (3).

(6) If a company contravenes subsection (1) or (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of $1,000 for each day during which the offence continues.

12.127 Requirement to disclose company name, etc.

(1) The Financial Secretary may make regulations to require companies –

(*a*) to display prescribed information in prescribed locations;

(*b*) to state prescribed information in prescribed descriptions of documents or communications; and

(*c*) to provide prescribed information on request to those they deal with in the course of their business.

(2) The regulations –

(*a*) may in prescribed circumstances require disclosure of the name of the company; and

(*b*) may make provision as to the manner in which any prescribed information is to be displayed, stated or provided.

(3) The regulations may provide that, for the purposes of any requirement to disclose a company's name, any variation between a word or words required to be part of the name and a permitted abbreviation of that word or those words (or vice versa) is to be disregarded.

12.128 Criminal consequences of failure to make required disclosures

Regulations made under section 12.127 may provide that –

(*a*) if a company contravenes any of the regulations made under that section, an offence is committed by –

(i) the company; and

(ii) every responsible person of the company;

(*b*) if any person who is acting on behalf of the company contravenes any of the regulations made under that section, an offence is committed by that person; and

(*c*) a person who commits an offence mentioned in paragraph (*a*) or (*b*) is liable to a fine not exceeding level 3 and, in the case of a continuing offence, to a further fine not exceeding $300 for each day during which the offence continues.

12.129 Civil consequence of failure to make required disclosures

If an officer of a company or a person on its behalf signs or authorizes to be signed on behalf of the company, any bill of exchange, promissory note, endorsement, cheque or order for money or goods in which the company's name is not mentioned in the manner as required by regulations made under section 12.127, that officer or person is personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount of it (unless it is duly paid by the company).

Division 5 – Annual Return

12.130 Requirement to deliver annual return

(1) A private company must in respect of every year (except the year of its incorporation) deliver to the Registrar an annual return specified in subsection (5) within 42 days after the company's return date.

(2) The company's return date is, in respect of a particular year, the anniversary of the date of the company's incorporation in that year.

(3) A public company or a company limited by guarantee must in respect of every financial year deliver to the Registrar an annual return specified in subsection (5) within 42 days after the company's return date.

(4) The company's return date is, in respect of a particular financial year –

(*a*) if the company is a public company, the date that is 6 months after the company's accounting reference date; and

(*b*) if the company is a company limited by guarantee, the date that is 9 months after the company's accounting reference date.

(5) An annual return under this section must –

(*a*) comply with the requirements under section 12.132; and

(*b*) be authenticated by a director or secretary of the company.

(6) If a company contravenes subsection (1) or (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of $1,000 for each day during which the offence continues.

(7) If a person is convicted of an offence under subsection (6), the magistrate may, in addition to any penalty that may be imposed, order that the person must, within a time specified in the order do the act that the person has failed to do.

(8) A person who contravenes an order under subsection (7) commits an offence and is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of $1,000 for each day during which the offence continues.

(9) In this section –

"accounting reference date" (會計參照日) has the meaning given by section 9.7.

12.131 Exemption of dormant company from requirement to deliver annual return

(1) A company that is a dormant company under section 1.5(1) is exempt from complying with section 12.130.

(2) If, during the period between the date on which a company becomes a dormant company under section 1.5(1) and the date on which the company ceases to be a dormant company under section 1.5(4), the company enters into an accounting transaction as defined in section 1.5(5), then –

(*a*) the exemption under subsection (1) ceases as from the date of the accounting transaction; and

(*b*) any shareholder of the company who knew or ought to have known about the accounting transaction and all directors of the company are personally liable for any debt or liability of the company arising out of the accounting transaction.

(3) In subsection (2)(*b*) –

"director" (董事) includes a shadow director.

12.132 Contents of annual return

(1) A company's annual return under section 12.130 must –

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

(*b*) contain, with respect to the company, the particulars specified in the form.

(2) Without limiting section 2.5, the Registrar may, for the purposes of this section, specify different forms or particulars in relation to different types of companies.

(3) Without limiting subsection (1), an annual return under section 12.130 must –

(*a*) contain the information specified in the Schedule; and

(*b*) be accompanied by the documents specified in that Schedule.

(4) The Registrar may, by order published in the Gazette, amend the Schedule.

12.133 Application and saving

(1) This Division and the Schedule apply to annual returns made up to a date on or after the commencement of this Division and the Schedule.

(2) Sections 107 and 109 of the predecessor Ordinance continue to apply to annual returns made up to a date before the commencement of this Division and the Schedule.

(3) A reference in this Ordinance to a company's last return, or to a return delivered in accordance with this Division, is to be construed as including (so far as necessary to ensure the continuity of the law) a return made up to a date before the commencement of this Division and the Schedule, or forwarded to the Registrar in accordance with the predecessor Ordinance.

SCHEDULE [ss. 12.132 & 12.133]

INFORMATION TO BE CONTAINED IN ANNUAL RETURN AND DOCUMENTS BY WHICH ANNUAL RETURN MUST BE ACCOMPANIED

PART 1

INFORMATION TO BE CONTAINED IN ANNUAL RETURN

1. An annual return under section 12.130(1) or (3) must contain the following information in respect of the company –

(*a*) the company name, its registered number and business name (if any);

(*b*) the type of company;

(*c*) the address of the registered office of the company;

(*d*) the date of the return;

(*e*) particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges that –

(i) are required to be registered with the Registrar under this Ordinance; or

(ii) would have been required to be so registered if created after 1 January 1912;

(*f*) in the case of a company having a share capital –

(i) particulars relating to members and share capital of the company; and

(ii) if the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the amount of stock held by each of the existing members;

(*g*) in the case of a company not having a share capital, except for a company registered with an unlimited number of members, the number of members of the company;

(*h*) if any company records are kept at a place other than the company's registered office, the address of that place and the records that are kept there;

(*i*) particulars with respect to –

(i) the persons who at the date of the return are the directors of the company; and

(ii) any person who at that date is a secretary of the company or a reserve director of the company,

that are by this Ordinance required to be contained with respect to them in the register of directors and register of secretaries of a company.

2. In the case of a listed company, the particulars relating to members as required under section 1(*f*)(i) of this Schedule are limited to those relating to members who held 5% or more of the issued shares in any class of the company's shares at any time since the return date of the last annual return.

3. In the case of a company that keeps a branch register of members in accordance with section 12.102(1), the particulars of the entries in that register need not be included in the annual return if copies of those entries have not been received at the registered office of the company. Those particulars must, so far as they relate to matters that are required to be contained in the annual return, be included in the next annual return after copies of those entries are received at the registered office of the company.

PART 2

ADDITIONAL INFORMATION TO BE CONTAINED IN ANNUAL RETURN OF PRIVATE COMPANY

1. An annual return under section 12.130(1) must also contain the following information in respect of the private company –

(*a*) a statement authenticated by a director or secretary of the company that the company has not –

(i) since the date of the last return; or

(ii) in the case of a first return, since the date of the incorporation of the company,

issued any invitation to the public to subscribe for any shares or debentures of the company; and

(*b*) if the annual return discloses the fact that the number of members of the company exceeds 50, a statement authenticated by a director or secretary of the company that the excess consists wholly of persons who, under

section 1.10(2), are excluded in the calculation of the number of members of the company.

PART 3

DOCUMENTS BY WHICH ANNUAL RETURN OF PUBLIC COMPANY OR COMPANY LIMITED BY GUARANTEE MUST BE ACCOMPANIED

1. An annual return under section 12.130(3) must be accompanied by –

(*a*) copies of the documents required to be sent to every member of the company under section 9.52, certified by a director or secretary of the company to be true copies; and

(*b*) if any of the documents mentioned in paragraph (*a*) is in a language other than English or Chinese, a certified translation (to be annexed to that document) in English or Chinese of the document.

PART 14

REMEDIES FOR PROTECTION OF COMPANIES' OR MEMBERS' INTERESTS

Division 1 – Preliminary

14.1 Interpretation

In this Part –

"company" (公司) includes a non-Hong Kong company.

Division 2 – Remedies for Unfair Prejudice to Members' Interests

14.2 Interpretation

(1) In this Division, a reference to a member of a company includes –

(*a*) the personal representative of a person who, immediately before the person's death, was a member of the company; and

(*b*) a trustee of, or a person beneficially interested in, the shares of the company by virtue of the will or intestacy of another person who, immediately before that other person's death, was a member of the company.

(2) In this Division, a reference to a past member of a company includes the personal representative of a person who, immediately before the person's death, was a past member of the company.

(3) For the purposes of this Division, a person is not a past member of a company unless –

(*a*) the person was, but is no longer, a member of the company; and

(*b*) the person ceased to be such a member on or after 15 July 2005.

14.3 When Court may order remedies

(1) The Court of First Instance may exercise the power under section 14.4(1)(*a*) and (2) if, on a petition by a member of a company, it considers that –

(*a*) the company's affairs are being or have been conducted in a manner unfairly prejudicial to the interests of the members generally or of one or more members (including the member); or

(*b*) an actual or proposed act or omission of the company (including one done or made on behalf of the company) is or would be so prejudicial.

(2) The Court of First Instance may exercise the power under section 14.4(1)(*b*) and (2) if, on a petition by the Financial Secretary under section 19.44(3),[25] it considers that –

(*a*) a company's affairs are being or have been conducted in a manner unfairly prejudicial to the interests of the members generally or of one or more members; or

(*b*) an actual or proposed act or omission of a company (including one done or made on behalf of the company) is or would be so prejudicial.

(3) The Court of First Instance may exercise the power under section 14.4(4) if, on a petition by a past member of a company, it considers that at the time when the past member was a member of the company –

(*a*) the company's affairs were conducted in a manner unfairly prejudicial to the interests of the members at that time generally or of one or more members at that time (including the past member); or

[25] A consultation draft of Part 19 will be published later.

(*b*) an actual act or omission of the company (including one done or made on behalf of the company) was so prejudicial.

14.4 Remedies that Court may order

(1) The Court of First Instance may –

(*a*) for the purposes of section 14.3(1), make any order that it thinks fit for giving relief in respect of the matter mentioned in section 14.3(1)(*a*) or (*b*); and

(*b*) for the purposes of section 14.3(2), make any order that it thinks fit for giving relief in respect of the matter mentioned in section 14.3(2)(*a*) or (*b*).

(2) Without limiting subsection (1), the Court of First Instance –

(*a*) may make any or all of the following orders –

(i) an order –

(A) restraining the continuance of the conduct of the company's affairs in the manner mentioned in section 14.3(1)(*a*) or (2)(*a*);

(B) restraining the doing of the act mentioned in section 14.3(1)(*b*) or (2)(*b*); or

(C) requiring the doing of an act that, as mentioned in section 14.3(1)(*b*) or (2)(*b*), the company has omitted, or has proposed to omit, to do;

(ii) an order that proceedings that the Court thinks fit be brought in the company's name against any person, and on any terms, that the Court so orders;

(iii) an order appointing a receiver or manager of either or both of the following –

(A) the company's property, or any part of the property;

(B) the company's business, or any part of the business;

(iv) any other order that the Court thinks fit, whether –

(A) for regulating the conduct of the company's affairs in future;

(B) for the purchase of the shares of any member of the company by another member of the company;

(C) for the purchase of the shares of any member of the company by the company and the reduction accordingly of the company's capital; or

(D) for the purpose; and

(*b*) may order the company or any other person to pay any damages, and any interest on those damages, that the Court thinks fit to a member of the company whose interests have been unfairly prejudiced by the conduct of the company's affairs or by the act or omission.

(3) The Court of First Instance may, on making an order under subsection (2)(*a*)(iii), specify the powers and duties of, and fix the remuneration of, the receiver or manager.

(4) For the purposes of section 14.3(3), the Court of First Instance may order the company or any other person to pay any damages, and any interest on those damages, that the Court thinks fit to a member of the company at the material time whose interests were unfairly prejudiced by the conduct of the company's affairs or by the act or omission.

(5) To avoid doubt, a member, past or present, of a company is not entitled to recover, by way of damages under subsection (2)(*b*) or (4), any loss

that solely reflects the loss suffered by the company that only the company is entitled to recover under the common law.

(6) In this section –

"material time" (關鍵時間) means the time when the past member was a member of the company.

14.5 Alteration of constitution by Court order

(1) This section applies if a company's constitution is altered by an order under section 14.4.

(2) The alteration has the same effect, and this Ordinance applies to the constitution, as if the alteration were made by a resolution of the company.

(3) Despite anything in this Ordinance, the company has no power, without the leave of the Court of First Instance, to alter the constitution in a way that is inconsistent with the order.

(4) Within 14 days after the order is made, the company must deliver an office copy of the order to the Registrar for registration.

(5) If a company contravenes subsection (4), 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.

(6) In this section, a reference to an alteration made to a company's constitution includes an addition made to the constitution.

14.6 Chief Justice may make rules

(1) Subject to the approval of the Legislative Council, the Chief Justice may make rules –

(*a*) for regulating proceedings under this Division; and

(*b*) for prescribing fees payable in respect of such proceedings.

(2) If the rules empower a person to put a question to another person, they may also provide that that other person's reply to the question may be used in evidence against that other person.

(3) The rules may empower the Court of First Instance –

(*a*) to fix any fee payable in respect of such proceedings that is not prescribed by the rules; and

(*b*) to vary the fee so fixed.

(4) The rules may provide that a fee payable to a person in respect of such proceedings is recoverable as a debt due to the person.

(5) A fee may be prescribed by the rules, or fixed or varied by the Court of First Instance under the rules, by reference to a scale of fees and percentages.

(6) A fee may be so prescribed, fixed or varied without reference to the amount of administrative or other costs incurred or likely to be incurred in relation to such proceedings.

(7) A fee so prescribed, fixed or varied is not invalid by reason only of the amount of the fee.

14.7 Transitional arrangements

(1) If, before 15 July 2005, a petition has been presented for an order under section 168A of the Companies Ordinance (Cap. 32) as in force immediately before that date, that section continues to apply in relation to the petition as if it had not been amended by section 4 of Schedule 3 to the Companies (Amendment) Ordinance 2004 (30 of 2004).

(2) If, on or after 15 July 2005 but before the commencement of this Division, a petition has been presented for an order under section 168A of the Companies Ordinance (Cap. 32) as in force immediately before that commencement, that section continues to apply in relation to the petition as if it had not been repealed.

Division 3 – Remedies for Others' Conduct in relation to Companies etc.

14.8 Application of section 14.9

(1) Section 14.9 applies if, in relation to a company –

(*a*) a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute –

(i) a contravention of this Ordinance;

(ii) a default relating to a contravention of this Ordinance; or

(iii) a breach specified in subsection (4); or

(*b*) a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required by this Ordinance to do.

(2) Section 14.9 also applies if, in relation to a company –

(*a*) a person had engaged, was engaging or was proposing to engage, before the commencement of this section, in –

(i) conduct that constituted or would constitute a contravention of the predecessor Ordinance and that would constitute a contravention of this Ordinance as well;

(ii) conduct that constituted or would constitute a default relating to a contravention of the predecessor Ordinance and that would constitute the same default relating to a contravention of this Ordinance as well; or

(iii) conduct that constituted or would constitute a breach specified in subsection (4); and

(*b*) the engagement or proposal still subsists.

(3) Section 14.9 also applies if, in relation to a company –

(*a*) a person had refused or failed, was refusing or failing, or was proposing to refuse or fail, before the commencement of this section, to do an act or thing that the person was required by the predecessor Ordinance to do;

(*b*) the person is required by this Ordinance to do the act or thing as well; and

(*c*) the refusal, failure or proposal still subsists.

(4) The breach specified for the purposes of subsection (1)(*a*)(iii) or (2)(*a*)(iii) is –

(*a*) a breach of the person's fiduciary duties owed to the company in any capacity other than as a director of the company;

(*b*) a breach of the person's fiduciary or other duties as a director of the company owed to the company; or

(*c*) a breach of the company's constitution.

(5) In this section, a reference to a default relating to a contravention of this Ordinance or the predecessor Ordinance is a reference to –

(*a*) an attempt to contravene the Ordinance;

(*b*) aiding, abetting, counselling or procuring another person to contravene the Ordinance;

(*c*) inducing or attempting to induce, whether by threats, promises or otherwise, another person to contravene the Ordinance;

(*d*) the person being in any way, directly or indirectly, knowingly concerned in, or a party to, a contravention of the Ordinance by another person; or

(*e*) conspiring with others to contravene the Ordinance.

14.9 Court may order remedies

(1) The Court of First Instance may, on application by the Financial Secretary under section 19.44(4) or (5), do any or all of the following –

(*a*) grant an injunction, on the terms that the Court thinks fit –

(i) in the case of section 14.8(1)(*a*) or (2), restraining the person from engaging in the conduct or requiring the person to do any act or thing; or

(ii) in the case of section 14.8(1)(*b*) or (3), requiring the person to do any act or thing;

(*b*) order the person to pay damages to any other person;

(*c*) declare any contract to be void or voidable to the extent specified in the order.

(2) The Court of First Instance may, on application by a member or creditor of the company whose interests have been, are or would be affected by the conduct or by the refusal or failure, do any or all of the following –

(*a*) grant an injunction, on the terms that the Court thinks fit –

(i) in the case of section 14.8(1)(*a*) or (2), restraining the person from engaging in the conduct or requiring the person to do any act or thing; or

(ii) in the case of section 14.8(1)(*b*) or (3), requiring the person to do any act or thing;

(*b*) order the person to pay damages to any other person;

(*c*) declare any contract to be void or voidable to the extent specified in the order.

(3) The Court of First Instance may grant an injunction under subsection (1)(*a*)(i) or (2)(*a*)(i) restraining a person from engaging in a conduct –

(*a*) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in the conduct;

(*b*) whether or not the person has previously engaged in the conduct; and

(*c*) whether or not there is an imminent danger of substantial damage to any other person if the person engages in the conduct.

(4) The Court of First Instance may grant an injunction under subsection (1)(*a*) or (2)(*a*) requiring a person to do an act or thing –

(*a*) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do the act or thing;

(*b*) whether or not the person has previously refused or failed to do the act or thing; and

(*c*) whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do the act or thing.

(5) To avoid doubt, a person is not entitled to recover, by way of damages under subsection (1)(*b*) or (2)(*b*), any loss that solely reflects the loss suffered by the company that only the company is entitled to recover under the common law.

14.10 Provisions supplementary to section 14.9

(1) The Court of First Instance may grant an interim injunction or interim damages, or both, on the terms and conditions that it thinks fit pending the determination of an application under section 14.9(1) or (2).

(2) The Court of First Instance may discharge or vary an injunction granted under subsection (1) or section 14.9(1) or (2).

14.11 Transitional arrangements

If, before the commencement of this Division, an application has been made for the purposes of section 350B of the Companies Ordinance (Cap. 32) as in force immediately before that commencement, that section continues to apply in relation to the application as if it had not been repealed.

Division 4 – Derivative Action for Remedies for Misconduct against Companies etc.

14.12 Interpretation

In this Division –

"misconduct" (不當行為) means fraud, negligence, breach of duty, or default in compliance with any Ordinance or rule of law;

"proceedings" (法律程序) means any proceedings (other than criminal proceedings) within the jurisdiction of the court.

14.13 Member of company or of associated company may bring or intervene in proceedings

(1) If misconduct is committed against a company, a member of the company or of an associated company of the company may, with the leave of the Court of First Instance granted under section 14.14, bring proceedings in respect of the misconduct before the Court on behalf of the company.

(2) If, because of misconduct committed against the company, a company fails to bring proceedings in respect of any matter, a member of the company or of an associated company of the company may, with the leave of the Court of First Instance granted under section 14.14, bring proceedings in respect of the matter before the court on behalf of the company.

(3) If, because of misconduct committed against the company, a company fails to diligently continue, discontinue or defend proceedings, a member of the company or of an associated company of the company may, with the leave of the Court of First Instance granted under section 14.14, intervene in

the proceedings before the court for the purpose of continuing, discontinuing or defending those proceedings on behalf of the company.

(4) The cause of action in relation to the proceedings under subsection (1) or (2) is vested in the company. Any of those proceedings must be brought in the name of, and the relief (if any) must be sought on behalf of, the company.

(5) The right to continue, discontinue or defend any proceedings intervened in under subsection (3) is vested in, and the relief (if any) must be sought on behalf of, the company.

(6) Subject to section 14.17, this Division does not affect any common law right of a member of a company, or a member of an associated company of a company, to bring proceedings on behalf of the company, or intervene in any proceedings to which the company is a party.

(7) This section does not prevent a member of a company, or of an associated company of a company, from bringing proceedings in respect of the company, or intervening in any proceedings to which the company is a party, on the member's own behalf in respect of any personal right.

14.14 Leave of Court to bring or intervene in proceedings

(1) On application by a member of a company or of an associated company of a company, the Court of First Instance may grant leave for the purposes of section 14.13(1), (2) or (3) if it is satisfied that –

(*a*) on the face of the application, it appears to be in the company's interests that leave be granted to the member;

(*b*) in the case of –

(i) an application for leave to bring proceedings under section 14.13(1) or (2), there is a serious question to be tried and the company has not itself brought the proceedings; or

(ii) an application for leave to intervene in proceedings under section 14.13(3), the company

has not diligently continued, discontinued or defended the proceedings; and

(*c*) except where leave is granted by the Court under subsection (5), the member has served a written notice on the company in compliance with subsections (3) and (4).

(2) The Court of First Instance may refuse to grant leave if it is satisfied that –

(*a*) in the case of an application for leave to bring proceedings under section 14.13(1) or (2), the member has, in the exercise of any common law right, brought proceedings on behalf of the company in respect of the same cause or matter; or

(*b*) in the case of an application for leave to intervene in proceedings under section 14.13(3), the member has, in the exercise of any common law right, intervened in the proceedings in question to which the company is a party.

(3) The written notice must be served on the company, at least 14 days before the member applies for leave in respect of the company, by leaving the notice at, or by sending the notice by post to –

(*a*) in the case of a company as defined by section 1.2(1), its registered office; or

(*b*) in the case of a non-Hong Kong company, the address of an authorized representative of the company shown in the Register.

(4) The written notice must state –

(*a*) the member's intention to apply for leave for the purposes of section 14.13(1), (2) or (3) in respect of the company; and

(*b*) the reasons for that intention.

(5) The Court of First Instance may grant leave to dispense with the service of a written notice for the purposes of subsection (1)(*c*).

14.15 Approval or ratification of conduct does not bar derivative action

(1) If a company's members approve or ratify any conduct, the approval or ratification –

(*a*) does not prevent a member of the company, or of an associated company of the company, from –

(i) bringing proceedings under section 14.13(1) or (2);

(ii) intervening in proceedings under section 14.13(3); or

(iii) applying for leave for the purposes of section 14.13(1), (2) or (3);

(*b*) is not a ground for the Court of First Instance to refuse to grant leave for the purposes of section 14.13(1), (2) or (3); or

(*c*) is not a ground for the court to determine the proceedings brought or intervened in by the member in favour of the defendant.

(2) Despite subsection (1), the court may, after having regard to the matters specified in subsection (3), take the approval or ratification into account in deciding what judgment or order to make in respect of –

(*a*) any proceedings brought or intervened in under section 14.13(1), (2) or (3); or

(*b*) an application for leave for the purposes of section 14.13(1), (2) or (3).

(3) The matters are –

(*a*) whether the members were acting for proper purposes, having regard to the company's interests, when they approved or ratified the conduct;

(*b*) to what extent those members were connected with the conduct, when they approved or ratified the conduct; and

(*c*) how well-informed about the conduct those members were, when they decided whether or not to approve or ratify the conduct.

14.16 No discontinuance or settlement of proceedings without leave of Court

If proceedings are brought or intervened in under section 14.13(1), (2) or (3), the proceedings must not be discontinued or settled without the leave of the Court of First Instance.

14.17 Court may dismiss derivative proceedings brought by member under common law etc.

(1) This section applies if –

(*a*) after the Court of First Instance grants leave to a member of a company, or of an associated company of a company, for the purposes of section 14.13(1) or (2), the member, in the exercise of any common law right, brings proceedings on behalf of the company in respect of the same cause or matter; or

(*b*) after the Court of First Instance grants leave to a member of a company, or of an associated company of a company, for the purposes of section 14.13(3), the member, in the exercise of any common law right, intervenes in the proceedings in question to which the company is a party.

(2) The Court of First Instance may –

(*a*) order to be amended any pleading or the indorsement of any writ in the proceedings brought under the common law, or in the intervention under the common law;

(*b*) order to be struck out such pleading or that indorsement, or anything in such pleading or that indorsement; and

(*c*) order the proceedings brought under the common law, or the intervention under the common law, to be stayed or dismissed or judgment to be entered accordingly.

(3) This section is in addition to, and does not derogate from, any power of the Court of First Instance given by the law.

14.18 Court's general powers to order and direct

(1) The Court of First Instance may make any order, and give any direction, that it thinks fit in respect of –

(*a*) any proceedings brought or intervened in under section 14.13(1), (2) or (3);

(*b*) an application for leave for the purposes of section 14.13(1), (2) or (3);

(*c*) a refusal to grant such leave; or

(*d*) an order under section 14.17(2).

(2) Without limiting subsection (1), the Court of First Instance may do any or all of the following under paragraph (*a*) or (*b*) of that subsection –

(*a*) make an interim order pending the determination of the proceedings or application;

(*b*) give a direction concerning the conduct of the proceedings or application;

(*c*) make an order directing the company, or an officer of the company –

(i) to provide, or not to provide, any information or assistance that the Court thinks fit for the purpose of the proceedings or application; or

(ii) to do, or not to do, any other act;

(*d*) make an order appointing an independent person to investigate and report to the Court on –

(i) the company's financial position;

(ii) the facts or circumstances that gave rise to the proceedings or application; or

(iii) the costs incurred by the parties to the proceedings or application, and by the member who brought or intervened in the proceedings or who made the application.

(3) If the Court of First Instance appoints an independent person under subsection (2)(*d*), it may –

(*a*) order any or all of the following persons to be liable for any expenses arising out of the investigation –

(i) the company;

(ii) the parties to the proceedings or application;

(iii) the member who brought or intervened in the proceedings or who made the application;

(*b*) review, vary or revoke an order made under paragraph (*a*); and

(*c*) make any other order that it thinks fit for the purposes of that subsection.

(4) The Court of First Instance may, in relation to one or more persons who are liable for any expenses under an order made or varied under subsection (3), determine the nature and extent of the liability of the person or each of the persons.

14.19 Court may order costs

(1) The Court of First Instance may make any order that it thinks fit about the costs –

(*a*) incurred or to be incurred in relation to –

(i) any proceedings brought or intervened in, or to be brought or intervened in, under section 14.13(1), (2) or (3); or

(ii) an application for leave for the purposes of section 14.13(1), (2) or (3); and

(*b*) incurred or to be incurred by the member, the company, or any other parties to the proceedings or application.

(2) An order may require the company to indemnify, out of its assets, the member against the costs incurred or to be incurred by that member in bringing or intervening in the proceedings or in making the application.

(3) The Court of First Instance may only make an order about costs (including the requirement as to indemnification) under this section in favour of the member if it is satisfied that the member was acting in good faith in, and had reasonable grounds for, bringing or intervening in the proceedings or making the application.

14.20 Transitional arrangements

If, before the commencement of this Division, an application has been made for leave to bring or intervene in proceedings under section 168BC of the Companies Ordinance (Cap. 32) as in force immediately before that commencement, Part IVAA of the Companies Ordinance (Cap. 32) as in force immediately before that commencement continues to apply in relation to the application and, where leave is granted to bring or intervene in proceedings, to the proceedings so brought or intervened in, as if that Part had not been repealed.

Division 5 – Members' Inspection of Company's Records

14.21 Interpretation

In this Division –

"record" (紀錄) includes books and paper.

14.22 Court may order inspection of records

(1) On application by a required number of a company's members, the Court of First Instance may make an order –

(*a*) authorizing a person who is the applicant or one of the applicants to inspect any records of the company; or

(*b*) authorizing a person who is not the applicant or one of the applicants to inspect any records of the company on behalf of the applicant or applicants.

(2) The Court of First Instance may make an order authorizing a person to inspect records if it is satisfied that –

(*a*) the application is made in good faith; and

(*b*) the inspection is for a proper purpose.

(3) If the Court of First Instance makes an order authorizing a person to inspect records, the person may, unless the Court otherwise orders, make copies of the records.

(4) If the Court of First Instance makes an order authorizing a person to inspect records, it may make any other order that it thinks fit, including –

(*a*) an order requiring the company, or an officer of the company, to produce any records to the person;

(*b*) an order specifying the records that may be inspected by the person;

(*c*) an order requiring the applicant to pay the expenses reasonably incurred by the company in the inspection; and

(*d*) an order permitting the person to disclose any information or document obtained as a result of the inspection to any other person specified in the order.

(5) A person who complies with an order made under subsection (1) or (4) does not incur any civil liability by reason only of the compliance.

(6) In this section, a reference to a required number of a company's members is a reference to –

(*a*) the number of members that represents at least 2.5% of the voting rights of all the members having a right to vote at the company's general meetings at the date of application;

(*b*) the number of members that holds shares in the company on which there has been paid up an aggregate sum of at least $100,000; or

(*c*) at least 5 members of the company.

14.23 Preservation of secrecy

(1) If, on application by one or more members of a company, the Court of First Instance makes an order under section 14.22(1) authorizing a person to inspect records, the person must not, without the company's prior consent in writing, disclose any information or document obtained as a result of the inspection to another person who is not an applicant.

(2) Despite subsection (1), the person may disclose such information or document to another person if the disclosure is –

(*a*) required with a view to the institution of, or otherwise for the purpose of, any criminal proceedings;

(*b*) permitted in accordance with an order made under section 14.22(1) or (4); or

(*c*) permitted in accordance with law or a requirement made under law.

(3) If the Court of First Instance makes an order under section 14.22(1) authorizing a person to inspect records, the person must not, unless the Court otherwise orders, use any information or document obtained as a result of the inspection for any purpose other than the purpose for which the inspection is applied for.

(4) A person who contravenes subsection (1) or (3) commits an offence and 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 5 and to imprisonment for 6 months.

14.24 Legal professional privilege

Section 14.22, or an order made under it, does not authorize a person to inspect any records containing information that is subject to legal professional privilege.

14.25 Transitional arrangements

If, before the commencement of this Division, an application has been made for an order for inspection under section 152FA of the Companies Ordinance (Cap. 32) as in force immediately before that commencement, sections 152FA, 152FB, 152FC, 152FD and 152FE of the Companies Ordinance (Cap. 32) as in force immediately before that commencement continue to apply in relation to the application and, where an order for inspection is made, to the inspection, as if they had not been repealed.

PART 15

DISSOLUTION BY STRIKING OFF OR DEREGISTRATION

Division 1 – Striking off

Subdivision 1 – Registrar's Power to Strike off Name of Company not in Operation or Carrying on Business

15.1 Registrar may send inquiry letter to company

(1) If the Registrar has reasonable cause to believe that a company is not in operation or carrying on business, the Registrar may send to the company by post a letter inquiring whether the company is in operation or carrying on business.

(2) A letter must be addressed –

(*a*) to the company at its registered office;

(*b*) if notice of the company's registered office has not been given to the Registrar, to the care of an officer of the company; or

(*c*) if there is no officer of the company whose name and address are known to the Registrar, to each founder member whose name and address are known to the Registrar.

(3) If the Registrar is of the opinion that the address of the company's registered office cannot be ascertained or that a letter under subsection (1) is unlikely to be received by the company, the Registrar may, instead of sending a letter under that subsection, publish in the Gazette a notice that, unless cause is shown to the contrary, the company's name will be struck off the Register, and the company dissolved, at the end of 3 months after the date of the notice.

15.2 Registrar must follow up if no answer to inquiry letter

(1) If the Registrar does not receive a reply to the letter within one month after sending it under section 15.1(1), the Registrar must, within 30 days after the end of that one month –

(*a*) subject to subsection (3), send to the company by registered post another letter referring to the letter sent under that section and stating that no reply to it has been received; and

(*b*) publish in the Gazette a notice that, unless cause is shown to the contrary, the company's name will be struck off the Register, and the company dissolved, at the end of 3 months after the date of the notice.

(2) A letter must be addressed –

(*a*) to the company at its registered office;

(*b*) if notice of the company's registered office has not been given to the Registrar, to the care of an officer of the company; or

(*c*) if there is no officer of the company whose name and address are known to the Registrar, to each founder member whose name and address are known to the Registrar.

(3) The Registrar is not required to send a letter to the company under subsection (1)(*a*) if the Registrar is of the opinion that the address of the company's registered office cannot be ascertained or that the letter is unlikely to be received by the company.

15.3 Registrar may strike off company's name

(1) After publishing a notice under section 15.1(3) or 15.2(1)(*b*), the Registrar may, unless cause is shown to the contrary, strike the company's name off the Register at the end of 3 months after the date of the notice.

(2) The Registrar must publish in the Gazette a notice indicating that the company's name has been struck off the Register.

(3) On the publication of the notice under subsection (2), the company is dissolved.

Subdivision 2 – Striking off under Other Circumstances

15.4 Registrar's duty to act in case of company being wound up

(1) Subsection (2) applies if –

(*a*) a company is being wound up;

(*b*) the Registrar has reasonable cause to believe that –

(i) no liquidator is acting; or

(ii) the company's affairs are fully wound up; and

(*c*) the returns required to be made by the liquidator have not been made for 6 consecutive months.

(2) Subject to subsection (5), the Registrar must publish in the Gazette, and send to the company or the liquidator (if any), a notice that, unless cause is shown to the contrary, the company's name will be struck off the Register, and the company dissolved, at the end of 3 months after the date of the notice.

(3) A notice to be sent to a company must be addressed –

(*a*) to the company at its registered office;

(*b*) if notice of the company's registered office has not been given to the Registrar, to the care of an officer of the company; or

(*c*) if there is no officer of the company whose name and address are known to the Registrar, to each founder member whose name and address are known to the Registrar.

(4) A notice to be sent to a liquidator must be addressed to the liquidator at the liquidator's last known address.

(5) The Registrar is not required to send a notice to the company or liquidator under subsection (2) if the Registrar is of the opinion that –

(*a*) the address of the company's registered office, or the name and address of the liquidator, as the case may be, cannot be ascertained; or

(*b*) the notice is unlikely to be received by the company or liquidator, as the case may be.

(6) After publishing a notice under subsection (2), the Registrar may, unless cause is shown to the contrary, strike the company's name off the Register at the end of 3 months after the date of the notice.

(7) The Registrar must publish in the Gazette a notice indicating that the company's name has been struck off the Register.

(8) On the publication of the notice under subsection (7), the company is dissolved.

15.5 Court may strike off name of company not appropriate to be wound up

(1) If, on application by the Registrar, it appears to the Court of First Instance that a company should be dissolved but, having regard to the company's assets or for other reasons, it would not be appropriate to wind up the company, the Court may order that the company's name be struck off the Register and the company dissolved.

(2) If an order is made, the company is dissolved on the date of the order.

Division 2 – Deregistration

15.6 Interpretation

(1) In this Division –

"company" (公司) excludes –

(*a*) a listed company; and

(*b*) a company specified in subsection (2).

(2) The company is –

(*a*) an authorized institution as defined by section 2(1) of the Banking Ordinance (Cap. 155);

(*b*) an insurer as defined by section 2(1) and (2) of the Insurance Companies Ordinance (Cap. 41);

(*c*) a corporation licensed under Part V of the Securities and Futures Ordinance (Cap. 571) to carry on a business in any regulated activity as defined by section 1 of Part 1 of Schedule 1 to that Ordinance;

(*d*) an associated entity, within the meaning of Part VI of the Securities and Futures Ordinance (Cap. 571), of a corporation mentioned in paragraph (*c*);

(*e*) an approved trustee as defined by section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);

(*f*) a company registered as a trust company under Part VIII of the Trustee Ordinance (Cap. 29);

(*g*) a company having a subsidiary that falls within paragraph (*a*), (*b*), (*c*), (*d*), (*e*) or (*f*); or

(*h*) a company that fell within paragraph (*a*), (*b*), (*c*), (*d*), (*e*), (*f*) or (*g*) at any time during the 5 years immediately before the application under section 15.7 is made.

(3) The Financial Secretary may, by order published in the Gazette, amend subsection (2).

15.7 Application for deregistration

(1) A company, or a director or member of a company, may apply to the Registrar for deregistration of the company.

(2) An application must not be made unless, at the time of the application –

(*a*) all the members agree to the deregistration;

(*b*) the company has not commenced operation or business, or has not been in operation or carried on business during the 3 months immediately before the application;

(*c*) the company has no outstanding liabilities;

(*d*) the company is not a party to any legal proceedings; and

(*e*) the company's assets do not consist of any immovable property situate in Hong Kong.

(3) An application must –

(*a*) be in the specified form;

(*b*) be accompanied by the prescribed fee; and

(*c*) be accompanied by a written notice from the Commissioner of Inland Revenue stating that the Commissioner has no objection to the company being deregistered.

(4) If the applicant is a company, it must nominate in the application a natural person to be given notice of the deregistration.

(5) The applicant must give the Registrar any further information that the Registrar may request in connection with an application.

(6) The Registrar may assume without inquiry that any information given in connection with an application is true unless it is proved to the Registrar's satisfaction, in an objection to the deregistration or otherwise, that the information is false.

(7) A person who, in connection with an application, knowingly or recklessly gives any information to the Registrar that is false or misleading in a material particular commits an offence and is liable –

(*a*) on conviction on indictment to a fine of $300,000 and to imprisonment for 2 years; or

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

15.8 Registrar may deregister company

(1) On receiving an application under section 15.7, the Registrar must publish in the Gazette a notice of the proposed deregistration unless the Registrar is aware of a failure to comply with subsection (2), (3), (4) or (5) of that section.

(2) The notice must state that unless an objection to the deregistration is received within 3 months after the date of publication of the notice, the Registrar may deregister the company.

(3) If, at the end of those 3 months, the Registrar has not received any objection to the deregistration, the Registrar may deregister the company by publishing in the Gazette another notice declaring it to be deregistered on the date of publication of that other notice.

(4) On deregistering a company, the Registrar must also give notice of the deregistration to the applicant, or to the person nominated in the application to be given the notice.

(5) A company is dissolved on deregistration.

Division 3 – Property of Dissolved Company and Other Miscellaneous Matters

15.9 Dissolved company's property vested in Government

(1) If a company is dissolved under this Part, every property and right vested in or held on trust for the company immediately before the dissolution is vested in the Government as bona vacantia.

(2) Subsection (1) has effect subject to the possible restoration of the company to the Register under Division 4.

(3) If any property or right is vested in the Government under subsection (1), the property or right –

(*a*) remains subject to the liabilities imposed on the property or right by law; and

(*b*) does not have the benefit of any exemption that it might otherwise have as a property or right vested in the Government.

(4) Despite subsection (3)(*a*), the Government is only required to satisfy those liabilities out of the property or right to the extent that it is properly available to satisfy those liabilities.

(5) In this section –

(*a*) a reference to a property or right vested in or held on trust for a company includes a leasehold property and excludes a property or right held by the company on trust for any other person; and

(*b*) a reference to a liability imposed on a property or right by law includes a liability that –

(i) is a charge or claim on the property or right; and

(ii) arises under an Ordinance that imposes rates, taxes or other charges.

15.10 Disclaimer of dissolved company's property

(1) If any property or right, other than immovable property situate in Hong Kong, is vested in the Government under section 15.9(1), the Registrar may, on his or her own initiative or on written application by a person interested in the property or right, disclaim the Government's title to the property or right by a notice of disclaimer.

(2) If the Registrar disclaims the Government's title to any property or right on his or her own initiative, the Registrar must do so within 3 years after the date on which the fact that the property or right is vested in the Government under section 15.9(1) first came to the Registrar's notice.

(3) If the Registrar disclaims the Government's title to any property or right on application by a person, the Registrar must do so within whichever of the following periods ends first –

(*a*) 3 years after the date on which the fact that the property or right is vested in the Government under section 15.9(1) first came to the Registrar's notice;

(*b*) 3 months after the Registrar's receipt of the application.

(4) A notice of disclaimer is of no effect if it is signed after the end of the period within which the Registrar must disclaim the Government's title to the property or right.

(5) If a notice of disclaimer contains a statement that –

(*a*) the fact that the property or right is vested in the Government under section 15.9(1) first came to the Registrar's notice on a date specified in the statement; or

(*b*) no application for a disclaimer with respect to the property or right was received by the Registrar before a date specified in the statement,

the statement is sufficient evidence of the matter stated in it unless the contrary is proved.

(6) The Registrar must –

(*a*) register a notice of disclaimer;

(*b*) publish in the Gazette a copy of the notice; and

(*c*) send a copy of the notice to the person who made the application for the purposes of subsection (1).

(7) The right to disclaim under this section may be waived by or on behalf of the Government either expressly, or by taking possession or other act showing an intention to waive the right.

15.11 Effect of disclaimer

(1) If the Registrar disclaims the Government's title to any property or right under section 15.10, the property or right is to be regarded as not having been vested in the Government under section 15.9(1).

(2) A disclaimer –

(*a*) terminates, with effect on or after the date of the disclaimer, the company's rights, interests and liabilities in or in respect of the property or right disclaimed; and

(*b*) except so far as is necessary for the purpose of releasing the company from any liability, does not affect any other person's rights or liabilities.

15.12 Court may make vesting order

(1) On application by a person who –

(*a*) claims an interest in any property or right disclaimed under section 15.10; or

(*b*) is subject to a liability in respect of such property or right that is not discharged by the disclaimer,

the Court of First Instance may make an order for the vesting of the property or right in, or its delivery to, a person entitled to it, or a person subject to the liability mentioned in paragraph (*b*), or a trustee for a person so entitled or subject.

(2) An order may be made on the terms that the Court of First Instance thinks fit.

(3) An order for the vesting of a property or right in, or its delivery to, a person subject to a liability may only be made if it appears to the Court of First Instance that it would be just to do so for the purpose of compensating the person.

(4) On the making of an order for the vesting of a property or right in, or its delivery to, a person, the property or right is vested in the person without conveyance, assignment or transfer.

15.13 Transitional arrangements for disclaimer of property vested in Government under predecessor Ordinance

If any property or right, other than immovable property, is vested in the Government under section 292 of the predecessor Ordinance, sections 290C and 290D of the Companies Ordinance (Cap. 32) as in force immediately before the commencement of this Subdivision continue to apply in relation to a disclaimer of the Government's title to the property or right as if those sections had not been repealed.

15.14 Liabilities of directors etc. of dissolved company continue

Even though a company is dissolved under this Part, the liability (if any) of every director, manager and member of the company continues and may be enforced as if the company had not been dissolved.

15.15 Registrar may act as dissolved company's or liquidator's representative

(1) This section applies if –

(*a*) a company has been dissolved under this Part or section 291, 291A or 291AA of the predecessor Ordinance; and

(*b*) it is proved to the Registrar's satisfaction that –

(i) the company, if still existing, would be legally or equitably bound to carry out, complete or give effect to a dealing, transaction or matter; and

(ii) in order to carry out, complete or give effect to the dealing, transaction or matter, a purely administrative, not discretionary, act should have been done by or on behalf of the company, or should be done by or on behalf of the company if still existing.

(2) The Registrar may do the act, or cause the act to be done, as the company's or the liquidator's representative.

(3) The Registrar may execute or sign any relevant instrument or document, adding a memorandum stating that the Registrar has done so as the company's or the liquidator's representative.

(4) An instrument or document executed or signed by the Registrar under subsection (3) has the same effect as if the company, if still existing, had executed the instrument or document.

15.16 Former director must keep dissolved company's books and papers for 6 years

(1) If a company is dissolved under this Part, every person who was a director of the company immediately before the dissolution must ensure that the company's books and papers are kept for at least 6 years after the date of the dissolution.

(2) Subsection (1) does not apply to the books and papers that are otherwise required to be kept by another person under this Ordinance or any other Ordinance.

(3) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 3.

15.17 Court's power to wind up dissolved companies

(1) The Court of First Instance's power to wind up a company specified in subsection (2) is not exercisable unless the company is restored to the Register under Division 4.

(2) The company is –

(*a*) one whose name has been struck off the Register under section 15.3 or 15.4 and that is dissolved under that section; or

(*b*) one that has been deregistered, and is dissolved, under section 15.8.

Division 4 – Restoration to Register

Subdivision 1 – Administrative Restoration by Registrar

15.18 Application to Registrar for restoration of company

(1) If a company's name has been struck off the Register under section 15.3 or 15.4, and the company is dissolved under that section, a person who was a director or member of the company may apply to the Registrar for the restoration of the company to the Register.

(2) An application must be made within 6 years after the date of the dissolution. For this purpose, an application is made when it is received by the Registrar.

(3) An application must be accompanied by a statement –

(*a*) that the applicant was a director or member of the company; and

(*b*) that the conditions specified in section 15.19(2) are met.

(4) The Registrar may accept the statement as sufficient evidence of the matters mentioned in subsection (3)(*a*) and (*b*).

15.19 Conditions for granting application

(1) The Registrar must not grant an application made under section 15.18 unless all the conditions specified in subsection (2), and any other conditions that the Registrar thinks fit, are met.

(2) The conditions are –

(*a*) the company was, at the time its name was struck off the Register, in operation or carrying on business;

(*b*) if any immovable property situate in Hong Kong previously vested in or held on trust for the company has

been vested in the Government under section 15.9(1), the applicant has obtained, at the applicant's own costs, the Government's confirmation that it has no objection to the restoration; and

(*c*) the applicant has delivered to the Registrar the documents relating to the company that are necessary to bring up to date the records kept by the Registrar.

(3) For the purposes of subsection (2)(*b*), the costs for obtaining the Government's confirmation include the Government's costs, expenses and liabilities in dealing with the property or right during the period of dissolution, or in connection with the proceedings on the application, that may be demanded as a condition of giving the confirmation.

15.20 Registrar's decision on application

(1) The Registrar must notify the applicant of the decision on an application made under section 15.18.

(2) If the Registrar grants the application, the company is restored to the Register on the date on which notification is given under subsection (1), and the Registrar must register the notification and publish in the Gazette a notice of the restoration.

15.21 Registrar may restore company deregistered by mistake

(1) The Registrar may, on his or her own initiative, restore a company to the Register if satisfied that it has been deregistered, and is dissolved, under section 291AA of the predecessor Ordinance or section 15.8 as a result of a mistake of the Registrar.

(2) In subsection (1), a reference to a mistake of the Registrar excludes a mistake that is made on the basis of wrong or false information given by the applicant in connection with the application for deregistration.

(3) The Registrar may restore a company to the Register by publishing in the Gazette a notice declaring the restoration, and the restoration takes effect on the date of publication of the notice.

15.22 Effect of restoration

(1) If a company is restored to the Register under this Subdivision, it is to be regarded as having continued in existence as if it had not been dissolved.

(2) On application by any person, the Court of First Instance may give any direction, and make any order, as seems just for placing the company and all other persons in the same position as nearly as may be as if the company had not been dissolved.

(3) An application for the purposes of subsection (2) must be made within 3 years after the date of the restoration.

Subdivision 2 – Restoration by Court Order

15.23 Application to Court for restoration

(1) Where a company's name or a company has been struck off the register under section 291 or 291A of the predecessor Ordinance, and the company is dissolved under that section, an application to the Court of First Instance for the restoration of the company to the Register may be made by a person who –

(*a*) was a director or member or creditor of the company; and

(*b*) feels aggrieved by the striking off.

(2) Where a company has been deregistered, and is dissolved, under section 291AA of the predecessor Ordinance, an application to the Court of First Instance for the restoration of the company to the Register may be made by a person who feels aggrieved by the deregistration.

(3) Subsection (4) applies if –

(*a*) a company's name has been struck off the Register under section 15.3 or 15.4, and the company is dissolved under that section; or

(*b*) a company has been deregistered, and is dissolved, under section 15.8.

(4) An application to the Court of First Instance for the restoration of the company to the Register may be made –

(*a*) by a person who was a director or member or creditor of the company; or

(*b*) by any other person, including the Government, who appears to the Court to have an interest in the matter.

15.24 When application must be made

(1) Subject to subsections (2) and (4) –

(*a*) an application under section 15.23(1) must be made within 20 years after the date on which the notice was published in the Gazette under section 291(6), or on which the order was made under section 291A(1), of the predecessor Ordinance;

(*b*) an application under section 15.23(2) must be made within 20 years of the deregistration; and

(*c*) an application under section 15.23(4) must be made within 6 years after the date of the dissolution.

(2) An application under section 15.23 may be made at any time if the purpose of the application is to enable a person to bring proceedings against the company for damages for personal injury.

(3) Subsection (4) applies if –

(*a*) a company's name has been struck off the Register under section 15.3 or 15.4, and the company is dissolved under that section;

(*b*) an application has been made under section 15.18 for the restoration of the company to the Register; and

(*c*) the Registrar has refused the application.

(4) An application under section 15.23(4) must be made –

(*a*) within 6 years after the date of the dissolution or any further time that the Court of First Instance allows on application by the applicant; or

(*b*) if the period of 6 years has ended, within 28 days after the Registrar gives notification of the refusal under section 15.20(1).

(5) In this section –

"damages for personal injury" (人身傷害損害賠償) includes –

(*a*) any sum and damages claimed by virtue of section 20(2)(*b*)(i) of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23);

(*b*) damages under the Fatal Accidents Ordinance (Cap. 22); and

(*c*) any compensation for death or incapacity under section 5, 6 or 32 of the Employees' Compensation Ordinance (Cap. 282);

"personal injury" (人身傷害) includes any disease and any impairment of a person's physical or mental condition.

15.25 Court's decision on application

(1) The Court of First Instance may grant an application made under section 15.23(1) if satisfied that –

(*a*) the company was, at the time its name or it was struck off, in operation or carrying on business; or

(*b*) it is otherwise just that the company be restored to the Register.

(2) The Court of First Instance may grant an application made under section 15.23(2) if satisfied that it is just that the company be restored to the Register.

(3) The Court of First Instance may grant an application made under section 15.23(4) if satisfied that –

(*a*) in the case of a company whose name has been struck off the Register –

(i) the company was, at the time the name was struck off, in operation or carrying on business; or

(ii) it is otherwise just that the company be restored to the Register; or

(*b*) in the case of a company that has been deregistered –

(i) any of the requirements specified in section 15.7(2)(*a*), (*b*), (*c*), (*d*) or (*e*) was not met; or

(ii) it is otherwise just that the company be restored to the Register.

(4) The Court of First Instance must not grant an application made pursuant to section 15.24(2) if it appears to the Court that the proceedings would fail by reason of an Ordinance limiting the time within which proceedings may be brought.

(5) In making a decision under subsection (4) not to grant an application, the Court of First Instance must have regard to its power under section 15.26(2) to direct that the period between the dissolution of the company and the making of the Court's order does not count for the purposes of the Ordinance.

(6) If the Court of First Instance grants an application made under section 15.23, the applicant must deliver to the Registrar for registration an office copy of the Court's order, and the restoration takes effect on the registration.

(7) After a company is restored to the Register under subsection (6), the Registrar must publish in the Gazette a notice of the restoration.

15.26 Effect of restoration

(1) If a company is restored to the Register under section 15.25, it is to be regarded as having continued in existence as if it had not been dissolved.

(2) The Court of First Instance may give any direction, and make any order, as seems just for placing the company and all other persons in the same position as nearly as may be as if the company had not been dissolved.

(3) The Court of First Instance may also give directions as to –

(*a*) the delivery to the Registrar of the documents relating to the company that are necessary to bring up to date the records kept by the Registrar;

(*b*) the payment of the Registrar's costs in connection with the proceedings for the restoration of the company to the Register; and

(*c*) if any property or right previously vested in or held on trust for the company has been vested in the Government under section 15.9(1), the payment of the Government's costs, expenses and liabilities in dealing with the property or right during the period of dissolution, or in connection with the proceedings on the application.

15.27 Transitional arrangements

(1) If, before the commencement of this Subdivision, an application has been made for the purposes of section 291(7) or 291A(2) of the Companies Ordinance (Cap. 32) as in force immediately before that commencement, that section continues to apply in relation to the application as if it had not been repealed.

(2) If, before the commencement of this Subdivision, an application has been made for the purposes of section 291AB(2) of the Companies

Ordinance (Cap. 32) as in force immediately before that commencement, section 291AB(2), (3), (4) and (5) of that Ordinance continues to apply in relation to the application as if it had not been repealed.

Subdivision 3 – Supplementary Provisions

15.28 Company's name on restoration

(1) If a company is restored to the Register under this Division, it is restored under its former name.

(2) Subsection (3) applies if, had the company applied on the date of the restoration to be registered by the former name, section 3.33[26] would have prohibited the company from being registered by that name.

(3) Within 28 days after the restoration, the company must –

(*a*) by a special resolution change its name; and

(*b*) give notice in the specified form of the change to the Registrar.

(4) If the company contravenes subsection (3) –

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

(*b*) the Registrar may substitute the name of the company with –

(i) in the case of an English name, a new name that consists of the words "Company Registration Number" as its prefix, followed by the registration number of the company as stated in the certificate of incorporation; or

[26] A consultation draft of Part 3 will be published later.

(ii) in the case of a Chinese name, a new name that consists of the Chinese characters "公司註冊編號" as its prefix, followed by the registration number of the company as stated in the certificate of incorporation.

(5) If a company gives notice of a change of name under subsection (3)(*b*), or if the Registrar exercises the power under subsection (4)(*b*), the Registrar must, unless the company is prohibited by section 3.33 from being registered by the new name –

(*a*) enter the new name on the Register in place of the former name; and

(*b*) issue a certificate of change of name.

(6) The change of name has effect from the date on which the certificate of change of name is issued.

(7) A change of name under this section does not affect any rights or obligations of the company or render defective any legal proceedings by or against it. Any legal proceedings that could have been commenced or continued by or against it by its former name may be commenced or continued by or against it by its new name.

(8) In this section –

"former name" (前有名稱), in relation to a company restored to the Register under this Division, means the name that the company had immediately before it was dissolved.

15.29 Effect of restoration on bona vacantia property or right

(1) The Government may dispose of or otherwise deal with any property or right vested in it under section 292(1) of the predecessor Ordinance or section 15.9(1), or an interest in the property or right, in the same manner as it may dispose of or otherwise deal with any other property or right vested in it as

bona vacantia, even though the company may be restored to the Register under this Division.

(2) Subsections (3), (4) and (5) apply if the company is restored to the Register.

(3) The restoration does not –

(*a*) affect the disposition or dealing; or

(*b*) limit the effect of the restoration in relation to any other property or right previously vested in or held on trust for the company.

(4) If any property, right or interest is still vested in the Government at the time of the restoration, it revests in the company subject to any liability, interest or claim that was attached to the property, right or interest immediately before the revest.

(5) Subject to subsection (6), the Registrar must pay to the company –

(*a*) if the Registrar received any consideration for the property, right or interest disposed of or otherwise dealt with, an amount equal to –

(i) the amount of the consideration; or

(ii) the value of the consideration as at the date of the disposition or dealing; or

(*b*) if no consideration was received, an amount equal to the value of the property, right or interest disposed of or otherwise dealt with as at the date of the disposition or dealing.

(6) There may be deducted from the amount payable under subsection (5) the Registrar's reasonable costs in connection with the disposition or dealing to the extent that the costs have not been paid to the Registrar as a condition of a restoration under section 15.20 or pursuant to a direction under section 15.26.

PART 16

NON-HONG KONG COMPANIES

Division 1 – Preliminary

16.1 Interpretation

(1) In this Part –

"approved name" (經批准名稱), in relation to a registered non-Hong Kong company, means –

(*a*) the name entered in the Register under section 16.9(5)(*a*) or 16.12(5)(*a*); or

(*b*) the name by which the company was registered by virtue of section 337B(3) of the predecessor Ordinance;

"authorized representative" (獲授權代表), in relation to a registered non-Hong Kong company, means –

(*a*) a natural person resident in Hong Kong;

(*b*) a solicitor corporation as defined by section 2(1) of the Legal Practitioners Ordinance (Cap. 159);

(*c*) a corporate practice as defined by section 2(1) of the Professional Accountants Ordinance (Cap. 50); or

(*d*) a firm of solicitors or certified public accountants (practising),

that is authorized to accept on the company's behalf service of any process or notice required to be served on the company;

"corporate name" (法團名稱), in relation to a registered non-Hong Kong company, means a domestic name, or a translation of a domestic name, by which the company is registered in the Register;

"domestic name" (本土名稱), in relation to a non-Hong Kong company, means the name or names by which the company is registered in its place of incorporation;

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

"place of business" (營業地點) includes a share transfer office and a share registration office and excludes an office specified in subsection (3);

"procedural regulations" (《程序規例》) means regulations made under section 16.31;

"required details" (所需細節), in relation to an authorized representative, means –

(*a*) the name and address of the representative;

(*b*) the date on which the representative was authorized; and

(*c*) in the case of a natural person –

(i) the number of the representative's identity card; or

(ii) if the representative does not have an identity card, the number and issuing country of any passport held by the representative;

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

"solicitor" (律師) means a person who is qualified to act as a solicitor under the Legal Practitioners Ordinance (Cap. 159).

(2) In this Part, a reference to a certified translation, in English or Chinese, of a domestic name is a reference to an English or Chinese translation of that name as shown in a certified translation, in English or Chinese (as the case may be), of the certificate of incorporation (or its equivalent) of the non-Hong Kong company.

(3) The office specified for the purposes of the definition of "place of business" in subsection (1) is a local representative office established, or

maintained, with the Monetary Authority's approval, under section 46 of the Banking Ordinance (Cap. 155) by a bank as defined by subsection (9) of that section.

(4) The Financial Secretary may, by order published in the Gazette, amend subsection (3).

16.2 Certified copy

(1) For the purposes of this Part, a copy of a document is a certified copy if it is certified as a true copy of the document by a person specified in subsection (2).

(2) The person is –

(*a*) if the copy is certified in the non-Hong Kong company's place of incorporation –

(i) an official of the government of that place to whose custody the original of the document is committed;

(ii) a notary public practising in that place;

(iii) a lawyer practising in that place;

(iv) a professional accountant practising in that place;

(v) an officer of a court of law duly authorized by the law of that place to certify documents for any judicial or other legal purpose; or

(vi) a professional company secretary practising in that place;

(*b*) if the copy is certified in Hong Kong –

(i) a notary public practising in Hong Kong;

(ii) a solicitor practising in Hong Kong;

(iii) a certified public accountant (practising);

(iv) an officer of the court in Hong Kong who is authorized by law to certify documents for any judicial or other legal purpose;

(v) a consular officer of the non-Hong Kong company's place of incorporation; or

(vi) a professional company secretary practising in Hong Kong;

(*c*) an officer of the non-Hong Kong company; or

(*d*) an authorized representative of the registered non-Hong Kong company.

(3) The Secretary may, by order published in the Gazette, amend subsection (2).

Division 2 – Registration

16.3 Certain non-Hong Kong companies must apply for registration

(1) This section applies to –

(*a*) a non-Hong Kong company that establishes a place of business in Hong Kong on or after the commencement of this Part; and

(*b*) a non-Hong Kong company that –

(i) at that commencement, has a place of business in Hong Kong established before the commencement; and

(ii) had not complied with section 333 of the Companies Ordinance (Cap. 32) as in force immediately before that commencement.

(2) A non-Hong Kong company falling within subsection (1)(*a*) must, within one month after the establishment of the place of business, apply to the Registrar for registration as a registered non-Hong Kong company.

(3) A non-Hong Kong company falling within subsection (1)(*b*) must, within one month after the commencement of this Part, apply to the Registrar for registration as a registered non-Hong Kong company.

(4) An application under subsection (2) or (3) must –

(*a*) be in the specified form;

(*b*) contain the particulars prescribed by procedural regulations;

(*c*) contain the required details of at least one person who is proposed to be an authorized representative on registration of the non-Hong Kong company;

(*d*) be accompanied by the documents prescribed by procedural regulations; and

(*e*) be delivered to the Registrar.

(5) If none of the non-Hong Kong company's domestic names is in Roman script or in Chinese, an application under subsection (2) or (3) must also contain –

(*a*) where the company has one domestic name, a certified translation of that name in English or Chinese, or both; or

(*b*) where the company has more than one domestic name, a certified translation of one of those names in English or Chinese, or both.

(6) If a non-Hong Kong company contravenes subsection (2) or (3), the company, and every officer or agent of the company who authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of $1,000 for each day during which the offence continues.

16.4 Registration of non-Hong Kong company

(1) On receiving an application under section 16.3(2) or (3), the Registrar must register the non-Hong Kong company as a registered non-Hong Kong company.

(2) If the application is not required by section 16.3(5) to contain a certified translation of a domestic name, the Registrar must enter in the Register, as a corporate name –

(*a*) the non-Hong Kong company's domestic name in Roman script, or that company's domestic name in Chinese, or both; and

(*b*) the certified translation, in English or Chinese, of a domestic name (if any) contained in the application pursuant to procedural regulations.

(3) If the application contains a certified translation of a domestic name for the purposes of section 16.3(5), the Registrar must enter that translation in the Register as a corporate name.

(4) On registering a non-Hong Kong company under subsection (1), the Registrar must –

(*a*) issue to the company a certificate of registration, with the Registrar's signature, certifying the registration; and

(*b*) register the application and accompanying documents.

Division 3 – Addition, Change or Cessation of Corporate Name

16.5 Company must notify Registrar of addition, change or cessation of name or translation of name

(1) If, as a result of an addition of domestic name, a registered non-Hong Kong company has a new domestic name in Roman script or in Chinese, the company must, within one month after the date of the addition, deliver to the Registrar for registration a return containing the particulars of the addition.

(2) If, as a result of a change to a domestic name, a registered non-Hong Kong company has a new domestic name, the company must, within one month after the date of the change, deliver to the Registrar for registration a return containing the particulars of the change.

(3) If a name of a registered non-Hong Kong company ceases to be a domestic name, the company must, within one month after the date of the cessation, deliver to the Registrar for registration a return containing the particulars of the cessation.

(4) Subsection (2) or (3) does not apply unless the registered non-Hong Kong company is registered in the Register by the domestic name or a translation of it.

(5) A registered non-Hong Kong company must, within one month after the date of a decision mentioned in paragraph (*a*), (*b*) or (*c*), deliver to the Registrar for registration a return containing the particulars of the decision, and the certified translation of the domestic name, if –

(*a*) the company does not have a corporate name in Roman script, and it decides to adopt a certified translation, in English, of a domestic name, under which it is to carry on business in Hong Kong;

(*b*) the company does not have a corporate name in Chinese, and it decides to adopt a certified translation, in Chinese, of a domestic name, under which it is to carry on business in Hong Kong; or

(*c*) a translation of a domestic name of the company is entered in the Register as a corporate name, and it decides to replace the translation with another translation of the domestic name, under which it is to carry on business in Hong Kong.

(6) If a translation of a domestic name of a registered non-Hong Kong company is entered in the Register as a corporate name, and the company

decides that the translation will no longer be a name under which it is to carry on business in Hong Kong, the company must, within one month after the date of the decision, deliver to the Registrar for registration a return containing the particulars of the decision.

(7) A return under subsection (1), (2), (3), (5) or (6) must –

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

(*b*) be accompanied by the documents specified by the Registrar.

(8) A return under subsection (2) must also contain a certified translation of the new domestic name in English or Chinese, or both, if the new domestic name is neither in Roman script nor in Chinese.

(9) If a registered non-Hong Kong company contravenes subsection (1), (2), (3), (5) or (6), the company, and every officer or agent of the company who authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention, 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.

16.6 Registration of corporate name

(1) If the Registrar receives a return under section 16.5(1), (2), (3), (5) or (6), the Registrar must –

(*a*) make a note in the Register to the effect that there is a change of corporate name;

(*b*) issue to the registered non-Hong Kong company a fresh certificate of registration containing the current corporate name; and

(*c*) register the return and accompanying documents.

(2) If the Registrar receives a return under section 16.5(1), the Registrar must also enter in the Register, as a corporate name, the registered non-Hong Kong company's new domestic name.

(3) If the Registrar receives a return under section 16.5(2), and the return is not required by section 16.5(8) to contain a certified translation of a new domestic name, the Registrar must also enter in the Register, as a corporate name –

(*a*) the registered non-Hong Kong company's new domestic name; and

(*b*) the certified translation, in English or Chinese, of that domestic name (if any) contained in the return pursuant to procedural regulations.

(4) If the Registrar receives a return under section 16.5(2), and the return contains a certified translation of a new domestic name for the purposes of section 16.5(8), the Registrar must also enter that translation in the Register as a corporate name.

(5) If the Registrar receives a return under section 16.5(5), the Registrar must also enter in the Register, as a corporate name, the certified translation of the domestic name contained in the return.

(6) On a note being made under subsection (1)(*a*), a name entered in the Register as an approved name in relation to the old corporate name is no longer an approved name, and the Registrar must make another note in the Register to that effect.

(7) On an entry being made under subsection (2) or (3), a translation of a domestic name of the registered non-Hong Kong company that is entered in the Register as a corporate name of the company is no longer a corporate name if it is in the same language as the new domestic name, and the Registrar must make a note in the Register to that effect.

Division 4 – Regulation of Names Used by Registered Non-Hong Kong Companies to Carry on Business in Hong Kong

16.7 Registrar may serve notice to regulate use of corporate names or approved names

(1) The Registrar may serve a notice on a registered non-Hong Kong company if satisfied that a corporate name or approved name of the company –

(*a*) is the same as or is too like –

(i) a name that appears, or should have appeared, in the index of names kept under section 22C of the predecessor Ordinance or in the Index of Company Names on the material date; or

(ii) the name of a body corporate incorporated or established under an Ordinance before the material date; or

(*b*) gives so misleading an indication of the nature of the company's activities in Hong Kong as to be likely to cause harm to the public.

(2) A notice must be served on a registered non-Hong Kong company within 6 months beginning with the material date and must state the reasons for serving the notice.

(3) In this section –

"material date" (關鍵日期) –

(*a*) in relation to a domestic name, or a translation of a domestic name, of a registered non-Hong Kong company that is entered in the Register under section 16.4 as a corporate name, means the date on which the certificate of registration was issued under that section;

(*b*) in relation to a domestic name, or a translation of a domestic name, of a registered non-Hong Kong company that is entered in the Register under section 16.6 as a

corporate name, means the date on which the certificate of registration was issued under that section;

(*c*) in relation to a domestic name, or a translation of a domestic name, of a registered non-Hong Kong company that has already been entered in the Register as at the commencement of this Part, means –

(i) the date on which the company complied with section 333 of the predecessor Ordinance; or

(ii) if the company has delivered a return for registration under section 335 of the predecessor Ordinance, the date on which the certificate of registration was issued under that section;

(*d*) in relation to a name that is entered in the Register under section 16.9(5) or 16.12(5) as an approved name, means the date on which the certificate of registration was issued under that section; or

(*e*) in relation to a name by which the registered non-Hong Kong company was registered by virtue of section 337B(3) of the predecessor Ordinance as an approved name, means the date of the registration.

16.8 Effect of notice

(1) If a registered non-Hong Kong company is served with a notice under section 16.7(1) for a corporate name or approved name, the company must not, after the end of 2 months after the date of service, carry on business in Hong Kong under that name.

(2) If a registered non-Hong Kong company contravenes subsection (1), the company, and every officer or agent of the company who authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention, commit an offence.

(3) A person who commits an offence under subsection (2) is liable to a fine at level 6 and, in the case of a continuing offence, to a further fine of $2,000 for each day during which the offence continues.

(4) This section does not invalidate any transaction entered into by the registered non-Hong Kong company.

16.9 Registration of approved name for carrying on business in Hong Kong

(1) If a registered non-Hong Kong company is served with a notice under section 16.7(1) for a corporate name or for an approved name in relation to a corporate name, the company may apply, in writing, to the Registrar for approval of another name, in relation to the corporate name, under which the company is to carry on business in Hong Kong.

(2) An application must be delivered to the Registrar.

(3) On receiving an application for approval of a name, the Registrar must approve the name unless satisfied that the name –

(*a*) is the same as or is too like –

(i) a name that appears, or should have appeared, in the Index of Company Names; or

(ii) the name of a body corporate incorporated or established under an Ordinance; or

(*b*) gives so misleading an indication of the nature of the registered non-Hong Kong company's activities in Hong Kong as to be likely to cause harm to the public.

(4) If the Registrar approves a name, the registered non-Hong Kong company may deliver to the Registrar for registration a return, in the specified form, specifying the name so approved.

(5) On receiving a return, the Registrar must, unless satisfied that the name specified in it is the same as a name that appears, or should have appeared, in the Index of Company Names –

(*a*) enter that specified name in the Register as the name, in relation to the corporate name, under which the registered non-Hong Kong company is to carry on business in Hong Kong;

(*b*) issue to the company a fresh certificate of registration containing the corporate name and the name so entered; and

(*c*) register the return.

(6) On the issue of the fresh certificate of registration, the name entered in the Register under subsection (5)(*a*) is, for all purposes of the law, the name under which the registered non-Hong Kong company is to carry on business in Hong Kong.

(7) Subsection (6) does not affect any rights or obligations vested in the registered non-Hong Kong company under the name for which the notice is served on the company under section 16.7(1).

(8) Subsection (6) does not render defective any legal proceedings by or against the registered non-Hong Kong company. If there are any legal proceedings that might have been commenced or continued by or against that company by the name for which the notice is served on that company under section 16.7(1), those proceedings may be commenced or continued by or against it by the name entered in the Register under subsection (5)(*a*) as an approved name in relation to the corporate name.

16.10 Withdrawal of notice

(1) After a registered non-Hong Kong company is served with a notice under section 16.7(1) for a corporate name or for an approved name in relation

to a corporate name, the Registrar may, on written application by the company, withdraw the notice.

(2) If the notice is withdrawn, section 16.8(1) ceases to apply to the registered non-Hong Kong company.

(3) If, after the notice is served, a name is entered in the Register as an approved name in relation to the corporate name, the Registrar must, on withdrawing the notice –

(*a*) make a note in the Register to the effect that the name is no longer an approved name; and

(*b*) issue to the registered non-Hong Kong company a fresh certificate of registration containing the name for which the notice is served.

16.11 Setting aside of notice

(1) Within 3 weeks after being served with a notice under section 16.7(1) for a corporate name or for an approved name in relation to a corporate name, a registered non-Hong Kong company may apply to the Court of First Instance to set aside the notice, and the Court may set it aside or confirm it.

(2) If the Court of First Instance sets aside the notice, the registered non-Hong Kong company must deliver a sealed copy of the Court order to the Registrar as soon as practicable after the order is made.

(3) If, after the notice is served, a name is entered in the Register as an approved name in relation to the corporate name, the Registrar must, on receiving a sealed copy of the Court order –

(*a*) make a note in the Register to the effect that the name is no longer an approved name; and

(*b*) issue to the registered non-Hong Kong company a fresh certificate of registration containing the name for which the notice is served.

16.12 Change of approved name

(1) A registered non-Hong Kong company may apply, in writing, to the Registrar for change of an approved name, in relation to a corporate name, under which the company is to carry on business in Hong Kong.

(2) An application must be delivered to the Registrar.

(3) On receiving an application for change of an approved name, the Registrar must approve the new name unless satisfied that the new name –

(*a*) is the same as or is too like –

(i) a name that appears, or should have appeared, in the Index of Company Names; or

(ii) the name of a body corporate incorporated or established under an Ordinance; or

(*b*) gives so misleading an indication of the nature of the registered non-Hong Kong company's activities in Hong Kong as to be likely to cause harm to the public.

(4) If the Registrar approves a new name, the registered non-Hong Kong company may deliver to the Registrar for registration a return, in the specified form, specifying the new name so approved.

(5) On receiving a return, the Registrar must, unless satisfied that the new name specified in it is the same as a name that appears, or should have appeared, in the Index of Company Names –

(*a*) enter the new name in the Register as the name, in relation to the corporate name, under which the registered non-Hong Kong company is to carry on business in Hong Kong;

(*b*) make a note in the Register to the effect that there is a change of approved name;

(*c*) issue to the company a fresh certificate of registration containing the corporate name and the new approved name; and

(*d*) register the return.

(6) On the issue of the fresh certificate of registration, the new approved name is, for all purposes of the law, the name under which the registered non-Hong Kong company is to carry on business in Hong Kong.

(7) Subsection (6) does not affect any rights or obligations vested in the registered non-Hong Kong company under the corporate name or the old approved name.

(8) Subsection (6) does not render defective any legal proceedings by or against the registered non-Hong Kong company. If there are any legal proceedings that might have been commenced or continued by or against that company by the corporate name or the old approved name, those proceedings may be commenced or continued by or against it by the new approved name in relation to the corporate name.

Division 5 – Authorized Representatives of Registered Non-Hong Kong Companies

16.13 Company must keep authorized representative's required details registered in Register

(1) This section applies if –

(*a*) a person is registered in the Register as an authorized representative of a registered non-Hong Kong company;

(*b*) the person ceases to be such a representative; and

(*c*) after the cessation, no person is registered in the Register as an authorized representative of the company.

(2) Within one month after the person ceases to be an authorized representative of the registered non-Hong Kong company, that company must deliver to the Registrar for registration under section 16.18(1) a return in respect of another person as an authorized representative of the company.

(3) Subsection (2) does not apply to the registered non-Hong Kong company if, when the person ceases to be an authorized representative of that

company, it has ceased to have a place of business in Hong Kong for at least 11 months.

(4) If a registered non-Hong Kong company contravenes subsection (2), the company, and every officer or agent of the company who authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of $1,000 for each day during which the offence continues.

16.14 Termination of authorization

(1) A person registered in the Register as an authorized representative of a registered non-Hong Kong company may terminate the authorization by sending to the company's registered office (or the equivalent) in its place of incorporation a written notice of termination stating the date of termination.

(2) A registered non-Hong Kong company may terminate the authorization of a person registered in the Register as an authorized representative of the company by sending to the person's address shown in the Register a written notice of termination stating the date of termination.

(3) After sending a notice of termination under subsection (1) or (2), the sender must, within one month after the date of the notice, notify the Registrar, in writing, of the date of termination.

(4) A notification under subsection (3) must –

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

(*b*) be accompanied by the documents prescribed by procedural regulations.

(5) A notification under subsection (3) –

(*a*) if given by a person registered as an authorized representative of a registered non-Hong Kong company, must contain a statement by the person that the company

has been notified of the termination under subsection (1); or

(*b*) if given by a registered non-Hong Kong company, must contain a statement by the company that the person registered as an authorized representative of the company has been notified of the termination under subsection (2).

(6) If an authorization is terminated under subsection (1) or (2), the termination takes effect on whichever is the later of the following –

(*a*) the date of termination stated in the notice of termination;

(*b*) the expiration of 21 days after subsection (3) is complied with.

Division 6 – Returns and Accounts of Registered Non-Hong Kong Companies

16.15 Company must deliver annual return for registration

(1) Within 42 days after each anniversary of the date on which the certificate of registration was issued under section 16.4(4)(*a*) or the predecessor Ordinance, a registered non-Hong Kong company must deliver to the Registrar a return for registration.

(2) A return must –

(*a*) be in the specified form;

(*b*) contain the particulars prescribed by procedural regulations; and

(*c*) be accompanied by the documents prescribed by procedural regulations.

(3) If a registered non-Hong Kong company contravenes subsection (1), the company, and every officer or agent of the company who authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention, commit an offence, and each is liable to a fine at level 5 and, in

the case of a continuing offence, to a further fine of $1,000 for each day during which the offence continues.

(4) If a registered non-Hong Kong company, or an officer or agent of a registered non-Hong Kong company, is convicted of an offence under subsection (3), the magistrate may, in addition to any penalty that may be imposed, order the company, or the officer or agent, to deliver to the Registrar a return for registration within a time specified in the order.

(5) If a registered non-Hong Kong company, or an officer or agent of a registered non-Hong Kong company, fails to comply with an order under subsection (4), the company, or the officer or agent, commits an offence and is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of $1,000 for each day during which the offence continues.

16.16 Company must deliver accounts for registration

(1) This section applies if a registered non-Hong Kong company is required to publish its accounts, or to deliver copies of its accounts to any person in whose office the accounts may be inspected as of right by members of the public –

(*a*) by the law of its place of incorporation; or

(*b*) by either of the following, but not by the law of its place of incorporation –

(i) the law of any other jurisdiction where it is registered as a company;

(ii) the rules of any stock exchange or similar regulatory bodies in that jurisdiction.

(2) When the registered non-Hong Kong company delivers to the Registrar a return for registration under section 16.15, it must also deliver to the Registrar for registration –

(*a*) in the case of subsection (1)(*a*), a certified copy of its latest published accounts for a period of at least 12 months that comply with the law of its place of incorporation; or

(*b*) in the case of subsection (1)(*b*), a certified copy of its latest published accounts for a period of at least 12 months that comply with any of the law or rules mentioned in subparagraphs (i) and (ii) of that subsection.

(3) If a registered non-Hong Kong company contravenes subsection (2), the company, and every officer or agent of the company who authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of $1,000 for each day during which the offence continues.

(4) If a registered non-Hong Kong company, or an officer or agent of a registered non-Hong Kong company, is convicted of an offence under subsection (3), the magistrate may, in addition to any penalty that may be imposed, order the company, or the officer or agent, to deliver to the Registrar the certified copy of any accounts mentioned in subsection (2)(*a*) or (*b*) for registration within a time specified in the order.

(5) If a registered non-Hong Kong company, or an officer or agent of a registered non-Hong Kong company, fails to comply with an order under subsection (4), the company, or the officer or agent, commits an offence and is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of $1,000 for each day during which the offence continues.

(6) In this section, a reference to a certified copy of any accounts is, if the accounts are not in English or Chinese, a reference to a certified translation of the accounts in English or Chinese.

16.17 Directors may revise accounts not complying with certain requirement

(1) If a certified copy of any accounts has been delivered to the Registrar for registration under section 336 of the predecessor Ordinance or section 16.16, and it appears to the directors of the registered non-Hong Kong company that the accounts did not comply with the regulatory requirement specified in subsection (2), those directors may revise the accounts.

(2) The regulatory requirement is –

(*a*) in relation to the accounts of a registered non-Hong Kong company to which section 336(1) of the predecessor Ordinance or section 16.16(1)(*a*) applies, the law of its place of incorporation; or

(*b*) in relation to the accounts of a registered non-Hong Kong company to which section 336(2) of the predecessor Ordinance or section 16.16(1)(*b*) applies –

(i) the law of any other jurisdiction where it is registered as a company; or

(ii) the rules of any stock exchange or similar regulatory bodies in that jurisdiction.

(3) A revision of the accounts must be confined to –

(*a*) those aspects in which the accounts did not comply with the regulatory requirement specified in subsection (2); and

(*b*) other necessary consequential revisions.

(4) If the directors of a registered non-Hong Kong company decide to revise any accounts under subsection (1), the company must, as soon as practicable after the decision, deliver to the Registrar for registration a warning statement, in the specified form, that the accounts will be so revised.

(5) If a registered non-Hong Kong company contravenes subsection (4), the company, and every officer or agent of the company who authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the

contravention, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of $1,000 for each day during which the offence continues.

16.18 Company must deliver return for registration in case of change of certain particulars

(1) If there is, in relation to a registered non-Hong Kong company, a change specified in subsection (2), the company must, within one month after the date of the change, deliver to the Registrar for registration a return containing the particulars of the change.

(2) The change is one made in –

(*a*) the charter, statutes or memorandum (including articles, if any) of the registered non-Hong Kong company, or other instruments defining the company's constitution;

(*b*) the directors, secretary (or, where there are joint secretaries, each of them) or authorized representatives of the company;

(*c*) the particulars of the directors, secretary (or, where there are joint secretaries, each of them) or authorized representatives of the company delivered to the Registrar under this Part; or

(*d*) the address of the company's principal place of business in Hong Kong or of its registered office (or the equivalent), or its principal place of business, in its place of incorporation.

(3) A return must –

(*a*) be in the specified form;

(*b*) contain the particulars prescribed by procedural regulations; and

(*c*) be accompanied by the documents prescribed by procedural regulations.

(4) If a registered non-Hong Kong company contravenes subsection (1), the company, and every officer or agent of the company who authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of $1,000 for each day during which the offence continues.

Division 7 – Other Obligations

16.19 Non-Hong Kong company must state names, place of incorporation, etc.

(1) A non-Hong Kong company must, in every prospectus inviting subscriptions for its shares or debentures in Hong Kong –

(*a*) state its place of incorporation; and

(*b*) if applicable, state in legible characters that the liability of its members is limited.

(2) A non-Hong Kong company must, on every place where it carries on business in Hong Kong –

(*a*) conspicuously exhibit its name and its place of incorporation; and

(*b*) if applicable, conspicuously exhibit a notice of the fact that the liability of its members is limited.

(3) A non-Hong Kong company must, in every bill-head, letter paper, notice and other official publication of the company in Hong Kong –

(*a*) state in legible characters its name and its place of incorporation; and

(*b*) if applicable, state in legible characters that the liability of its members is limited.

(4) If a non-Hong Kong company is in liquidation, it must, in every advertisement of the company in Hong Kong –

(*a*) state in legible characters its name and its place of incorporation; and

(*b*) if applicable, state in legible characters that the liability of its members is limited.

(5) If a non-Hong Kong company is in liquidation, it must comply with subsection (6) –

(*a*) when exhibiting its name under subsection (2); or

(*b*) when stating its name under subsection (3) or (4).

(6) The non-Hong Kong company must –

(*a*) if its name is in a language other than Chinese, add "(in liquidation)" after the name;

(*b*) if its name is in Chinese, add "(正進行清盤)" after the name; or

(*c*) if its name is in Chinese and in a language other than Chinese –

(i) add "(正進行清盤)" after the name in Chinese; and

(ii) add "(in liquidation)" after the name in that other language.

(7) If a non-Hong Kong company contravenes subsection (1), (3), (4) or (5), the company, and every officer or agent of the company who authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention, commit an offence, and each is liable to a fine at level 5.

(8) If a non-Hong Kong company contravenes subsection (2), the company, and every officer or agent of the company who authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention, commit an offence, and each is liable to a fine at level 3 and, in the case of a

continuing offence, to a further fine of $300 for each day during which the offence continues.

(9) In this section, a reference to a non-Hong Kong company's name is –

(*a*) in the case of a registered non-Hong Kong company, a reference to the company's corporate name; or

(*b*) in the case of a registered non-Hong Kong company with an approved name, in relation to a corporate name, shown in the Register, a reference to the company's corporate name and approved name.

16.20 Registered non-Hong Kong company must notify Registrar of commencement of liquidation etc.

(1) Within 14 days after the later of the dates specified in subsection (2), a registered non-Hong Kong company must deliver to the Registrar for registration a notice, in the specified form, containing –

(*a*) the particulars specified in subsection (3); and

(*b*) if a person is appointed as liquidator or provisional liquidator, the further particulars specified in subsection (4).

(2) The dates are –

(*a*) the date of commencement of any proceedings for the liquidation of the registered non-Hong Kong company; and

(*b*) the date on which the notice of commencement of such proceedings was served on the company according to the law of the place in which those proceedings are commenced.

(3) The particulars are –

(*a*) the date of commencement of the proceedings for the liquidation of the registered non-Hong Kong company;

(*b*) the country where the proceedings are commenced; and

(*c*) whether the liquidation is a voluntary or compulsory liquidation, or is in another mode of liquidation as specified in the notice under subsection (1).

(4) The further particulars are –

(*a*) whether the person is appointed as liquidator or provisional liquidator;

(*b*) whether the person is a sole liquidator, or one of the joint, or joint and several, liquidators;

(*c*) the date of the appointment; and

(*d*) the following details of the person –

(i) in the case of a natural person, the present forename and surname, the address, and the number of the identity card or, if the person does not have an identity card, the number and issuing country of any passport held by the person; or

(ii) in any other case, the name and the address.

(5) Subsection (6) applies if –

(*a*) any change occurs in the particulars contained in a notice under subsection (1);

(*b*) a liquidator or provisional liquidator is appointed after such a notice is delivered to the Registrar for registration; or

(*c*) the liquidator or provisional liquidator whose name is contained in such a notice has ceased to hold office as such.

(6) Within 14 days after the change, appointment or cessation, the registered non-Hong Kong company must deliver to the Registrar for registration

a notice, in the specified form, containing the particulars of the change, the further particulars specified in subsection (4) of the liquidator or provisional liquidator appointed, or the date of the cessation to hold office as liquidator or provisional liquidator.

(7) If a registered non-Hong Kong company contravenes subsection (1) or (6), the company, and every officer or agent of the company who authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention, 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.

(8) In this section –

"forename" (名字) includes a Christian or given name;

"surname" (姓氏), in the case of a person usually known by a title different from the person's surname, means the title.

16.21 Registered non-Hong Kong company must notify Registrar of cessation of place of business in Hong Kong

(1) If a registered non-Hong Kong company ceases to have a place of business in Hong Kong, the company must, within 7 days after the cessation, deliver to the Registrar a notice, in the specified form, of that fact.

(2) On receiving a notice, the Registrar must –

(*a*) register the notice in relation to the registered non-Hong Kong company; and

(*b*) enter in the Register a statement that the company has ceased to have a place of business in Hong Kong.

(3) If a registered non-Hong Kong company contravenes subsection (1), the company, and every officer or agent of the company who authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention, 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.

16.22 Authorized representative of registered non-Hong Kong company must notify Registrar of dissolution

(1) If a registered non-Hong Kong company is dissolved, an authorized representative of the company must, within 14 days after the date of dissolution, deliver to the Registrar –

(*a*) a notice, in the specified form, of that fact; and

(*b*) a certified copy of the instrument effecting the dissolution or, in the case of an instrument not in English or Chinese, a certified translation of the instrument in English or Chinese.

(2) On receiving a notice and document under subsection (1), the Registrar must –

(*a*) register the notice and document in relation to the registered non-Hong Kong company; and

(*b*) enter in the Register a statement that the company has been dissolved.

(3) If an authorized representative of a registered non-Hong Kong company contravenes subsection (1), the authorized representative commits an offence and is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of $300 for each day during which the offence continues.

(4) If a person is charged under subsection (3), it is a defence to establish that the person took all reasonable steps to secure compliance with subsection (1).

Division 8 – Striking off

16.23 Registrar may send inquiry letter to registered non-Hong Kong company

(1) If the Registrar has reasonable cause to believe that a registered non-Hong Kong company has ceased to have a place of business in Hong Kong, the Registrar may send to the company by post a letter inquiring whether the company has ceased to have a place of business in Hong Kong.

(2) A letter must be addressed –

(*a*) to an authorized representative of the registered non-Hong Kong company whose required details are shown in the Register; or

(*b*) if no required details of authorized representatives of the company are shown in the Register, to any place of business established by the company in Hong Kong.

(3) If the Registrar is of the opinion that a letter under subsection (1) is unlikely to be received by the registered non-Hong Kong company, the Registrar may, instead of sending a letter under that subsection, publish in the Gazette a notice that, unless cause is shown to the contrary, the company's name will be struck off the Register, and the company will no longer be a registered non-Hong Kong company, at the end of 3 months after the date of the notice.

16.24 Registrar must follow up if no answer to inquiry letter

(1) If the Registrar does not receive a reply to the letter within one month after sending it under section 16.23(1), the Registrar must, within 30 days after the end of that one month –

(*a*) subject to subsection (3), send to the registered non-Hong Kong company by registered post another letter referring to the letter sent under that section and stating that no reply to it has been received; and

(*b*) publish in the Gazette a notice that, unless cause is shown to the contrary, the company's name will be struck off the Register, and the company will no longer be a registered

non-Hong Kong company, at the end of 3 months after the date of the notice.

(2) A letter must be addressed –

(*a*) to an authorized representative of the registered non-Hong Kong company whose required details are shown in the Register; or

(*b*) if no required details of authorized representatives of the company are shown in the Register, to any place of business established by the company in Hong Kong.

(3) The Registrar is not required to send a letter to the registered non-Hong Kong company under subsection (1)(*a*) if the Registrar is of the opinion that the letter is unlikely to be received by the company.

16.25 Registrar may strike off registered non-Hong Kong company's name

(1) After publishing a notice under section 16.23(3) or 16.24(1)(*b*), the Registrar may, unless cause is shown to the contrary, strike the registered non-Hong Kong company's name off the Register at the end of 3 months after the date of the notice.

(2) The Registrar must publish in the Gazette a notice indicating that the non-Hong Kong company's name has been struck off the Register.

(3) On the publication of the notice under subsection (2), the non-Hong Kong company is no longer a registered non-Hong Kong company.

(4) The non-Hong Kong company must not have a place of business in Hong Kong as long as it is not a registered non-Hong Kong company.

(5) If a non-Hong Kong company contravenes subsection (4), the company, and every officer or agent of the company who authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of $1,000 for each day during which the offence continues.

16.26 Application to Registrar for restoration of non-Hong Kong company

(1) This section applies if a non-Hong Kong company's name –

(*a*) has been struck off the Register under section 16.25; or

(*b*) has been struck off the register of companies by virtue of section 339A(2) of the predecessor Ordinance.

(2) A person who is a director or member of the non-Hong Kong company may apply to the Registrar for the restoration of the company to the Register.

(3) An application must be made within 6 years after the date of the striking off. For this purpose, an application is made when it is received by the Registrar.

(4) An application must be accompanied by a statement –

(*a*) that the applicant is a director or member of the non-Hong Kong company; and

(*b*) that the conditions specified in section 16.27(2) are met.

(5) The Registrar may accept the statement as sufficient evidence of the matters mentioned in subsection (4)(*a*) and (*b*).

16.27 Conditions for granting application

(1) The Registrar must not grant an application made under section 16.26 unless all the conditions specified in subsection (2), and any other conditions that the Registrar thinks fit, are met.

(2) The conditions are –

(*a*) the non-Hong Kong company had, at the time its name was struck off the Register, a place of business in Hong Kong; and

(*b*) the applicant has delivered to the Registrar the documents relating to the non-Hong Kong company that are necessary to bring up to date the records kept by the Registrar.

16.28 Registrar's decision on application

(1) The Registrar must notify the applicant of the decision on an application made under section 16.26.

(2) If the Registrar grants the application, the non-Hong Kong company is restored to the Register on the date on which notification is given under subsection (1), and the Registrar must register the notification and publish in the Gazette a notice of the restoration.

(3) On the restoration, the striking off is to be regarded as not having taken place.

Division 9 – Miscellaneous

16.29 Service of process or notice

(1) Subject to subsections (3) and (4), any process or notice required to be served on a registered non-Hong Kong company is sufficiently served if –

(*a*) it is addressed to an authorized representative of the company whose required details are shown in the Register; and

(*b*) it is left at, or sent by post to, the representative's last known address.

(2) Subsections (3) and (4) apply if –

(*a*) no required details of authorized representatives of a registered non-Hong Kong company are shown in the Register; or

(*b*) every one of the company's authorized representatives refuses to accept service on behalf of the company or the process or notice cannot be served on any of them.

(3) Any process or notice required to be served on the registered non-Hong Kong company is sufficiently served if it is left at, or sent by post to, any place of business established by the company in Hong Kong.

(4) In the case of a registered non-Hong Kong company that no longer has a place of business in Hong Kong, any process or notice required to be served on the company is sufficiently served –

(*a*) if –

(i) it is sent by registered post to the company's registered office (or the equivalent) in the company's place of incorporation at the address as shown in the Register; and

(ii) a copy of it is sent by registered post to the company's principal place of business (if any) in the company's place of incorporation at the address as shown in the Register; or

(*b*) where no such addresses are shown in the Register, if it is left at, or sent by post to, any place in Hong Kong at which the company has had a place of business within the previous 12 months.

16.30 Chief Executive in Council may make regulations

(1) The Chief Executive in Council may by regulations provide for the application of this Ordinance in relation to the accounts that have been revised under section 16.17.

(2) Those regulations may –

(*a*) make different provisions according to whether the accounts have been revised by –

(i) supplementing the accounts with another document that shows the revisions; or

(ii) replacing the accounts;

(*b*) require a registered non-Hong Kong company to take the steps specified in the regulations in relation to the accounts that have been revised;

(*c*) apply this Ordinance to the accounts that have been revised subject to such additions, exceptions and modifications as specified in the regulations; and

(*d*) provide for incidental, consequential and transitional provisions.

(3) Those regulations may provide that any of the following is an offence –

(*a*) a failure to take all reasonable steps to secure compliance as respects the accounts that have been revised with –

(i) a specified provision of the regulations; or

(ii) a specified provision of this Ordinance as having effect under the regulations;

(*b*) a contravention of –

(i) a specified provision of the regulations; or

(ii) a specified provision of this Ordinance as having effect under the regulations.

(4) Those regulations may –

(*a*) provide that –

(i) an offence committed wilfully is punishable by a fine not exceeding $300,000, or by a term of imprisonment not exceeding 12 months, or by both such fine and imprisonment; and

(ii) an offence not committed wilfully is punishable by a fine not exceeding $300,000;

(*b*) provide that, in the case of a continuing offence, such an offence is punishable by a further fine not exceeding $2,000 for each day during which the offence continues; and

(*c*) provide for any specified defence to be available in proceedings for such an offence.

16.31 Financial Secretary may make regulations

(1) The Financial Secretary may by regulations prescribe –

(*a*) the particulars to be contained in an application under section 16.3(2) or (3);

(*b*) the documents to accompany an application under section 16.3(2) or (3);

(*c*) the documents to accompany a notification under section 16.14(3);

(*d*) the particulars to be contained in a return under section 16.15(1) or 16.18(1); and

(*e*) the documents to accompany a return under section 16.15(1) or 16.18(1).

(2) The Financial Secretary may by regulations –

(*a*) provide that an application under section 16.3(2) or (3), or a return under section 16.5(2), may contain a certified translation of a domestic name of the non-Hong Kong company; and

(*b*) provide for the procedures and requirements for the purpose.

(3) Subsection (2) does not apply to an application or return that is required by section 16.3(5) or 16.5(8) to contain a certified translation of a domestic name.

16.32 Transitional arrangements

(1) If, immediately before the commencement of Division 2, there was a pending application for registration under section 333(1) of the predecessor Ordinance, the application is to be regarded as an application for registration made under section 16.3(2).

(2) If –

(*a*) a return was delivered to the Registrar for registration under section 335(2) of the Companies Ordinance (Cap. 32) as in force immediately before the commencement of Division 3; and

(*b*) as at that commencement, the Registrar has not registered the return and issued a fresh certificate of registration under section 335(3) of that Ordinance because the Registrar has not received all the documents mentioned in section 335(2)(*b*) of that Ordinance,

the return is to be regarded as a return delivered to the Registrar for registration under section 16.5.

(3) Despite the repeal of section 337B of the predecessor Ordinance, a notice that was served under that section, and was in force immediately before the commencement of Division 4, continues in force and has effect as if it were a notice served under section 16.7.

(4) If, before the commencement of Division 8, the Registrar has sent a letter to a non-Hong Kong company under section 291(1) of the predecessor Ordinance inquiring whether the company has ceased to have a place of business in Hong Kong, the provisions of that Ordinance relating to the striking off the register of companies of the names of defunct companies continue to extend and apply by virtue of section 339A(2) of that Ordinance as if those provisions, and that section 339A(2), had not been repealed.

16.33 Savings for certificates previously issued

(1) This section applies to a certificate –

(*a*) that was issued under –

(i) section 333(3) or (5) of the Companies Ordinance (Cap. 32) as in force from time to time before 14 December 2007; or

(ii) section 333AA(2)(*c*) or 335(3) of the Companies Ordinance (Cap. 32) as in force immediately before the commencement of this Part; and

(*b*) that was in force immediately before that commencement.

(2) Despite the repeal of those sections, the certificate continues in force and has effect as if it were a certificate issued under section 16.4(4)(*a*) or 16.6(1)(*b*), as the case may be.

PART 17

COMPANIES NOT FORMED, BUT REGISTRABLE, UNDER THIS ORDINANCE

Division 1 – Preliminary

17.1 Interpretation

In this Part –

"constitutional document" (章程性質文件), in relation to an eligible company, means –

(*a*) an Ordinance constituting or regulating the company; or

(*b*) a non-statutory constitutional document of the company;

"eligible company" (合資格公司) means a company –

(*a*) formed after 1 May 1865 in pursuance of an Ordinance other than this Ordinance or a former Companies Ordinance; or

(*b*) otherwise constituted after that date according to law;

"non-statutory constitutional document" (不屬法定的章程性質文件), in relation to an eligible company, means any deed of settlement, or other instrument, constituting or regulating the company.

Division 2 – Registration of Eligible Companies

17.2 Registrar may register eligible company

(1) The Registrar may, on application by an eligible company, register the company as –

(*a*) an unlimited company; or

(*b*) a company limited by guarantee.

(2) An application for the purposes of subsection (1) must be in the specified form.

(3) An application for the purposes of subsection (1) must be accompanied by –

(*a*) a copy of every constitutional document of the eligible company; and

(*b*) in the case of an application for registration as a company limited by guarantee, a copy of the resolution complying with section 17.5(2).

(4) A registration under subsection (1) is not invalid by reason only of it having taken place with a view to the eligible company being wound up.

17.3 General restrictions on Registrar's power to register

(1) If the liability of the members of an eligible company is limited by an Ordinance or otherwise according to law, the Registrar must not register the company under this Part.

(2) The Registrar must not register an eligible company under this Part as a company limited by guarantee unless –

(*a*) if the company has an English name only –

(i) the name by which the company is to be registered has "Limited" as the last word of that name; and

(ii) a Chinese equivalent of it that the company may use has "有限公司" as the last 4 Chinese characters of the equivalent;

(*b*) if the company has a Chinese name only –

(i) the name by which the company is to be registered has "有限公司" as the last 4 Chinese characters of that name; and

(ii) an English equivalent of it that the company may use has "Limited" as the last word of the equivalent; or

(*c*) if the company has both an English name and a Chinese name –

(i) the English name by which the company is to be registered has "Limited" as the last word of that name; and

(ii) the Chinese name by which the company is to be registered has "有限公司" as the last 4 Chinese characters of that name.

17.4 Registrar must not register without members' assent

(1) The Registrar must not register an eligible company under this Part as an unlimited company unless there is assent to the registration by a majority of the members present at a general meeting of the company convened for the purpose.

(2) The Registrar must not register an eligible company under this Part as a company limited by guarantee unless there is assent to the registration by at least 75% of the members present at a general meeting of the company convened for the purpose.

(3) For the purposes of this section, in computing a majority, or 75%, of the members where a poll is demanded, the number of votes to which each member is entitled according to the eligible company's regulations must be taken into account.

(4) In this section, a reference to a member present at a general meeting is –

(*a*) a reference to a member present in person; or

(*b*) if proxies are allowed by the eligible company's regulations, a reference to a member present by proxy.

17.5 Registrar must not register without resolution declaring amount of guarantee

(1) The Registrar must not register an eligible company under this Part as a company limited by guarantee unless the members pass a resolution that complies with subsection (2).

(2) The resolution must declare that each person who is a member of the eligible company undertakes that if the company is wound up while the person is such a member, or within one year after the person ceases to be such a member, the person will contribute an amount required of the person, not exceeding a specified amount, to the company's assets –

(*a*) for the payment of the company's debts and liabilities contracted before the person ceases to be such a member;

(*b*) for the payment of the costs and expenses of winding up the company; or

(*c*) for the adjustment, among the contributories, of their rights.

17.6 Eligible company must pay registration fee

Before the Registrar registers an eligible company under this Part, the company must pay a prescribed fee to the Registrar for the registration.

17.7 Registrar must issue certificate of registration

On registering an eligible company under this Part, the Registrar must issue to it a certificate of registration, with the Registrar's signature or printed signature.

Division 3 – Consequences of Registration

17.8 Application

This Division applies if an eligible company is registered under this Part as an unlimited company or a company limited by guarantee.

17.9 Status, property, rights and liabilities of eligible company

(1) On being issued with a certificate of registration under section 17.7, the eligible company is to be regarded as having been incorporated under this Ordinance as an unlimited company or a company limited by guarantee, whichever is applicable.

(2) Subsection (1) does not operate to create a new legal entity for the eligible company.

(3) The registration does not affect the eligible company's property.

(4) The registration does not affect the eligible company's rights and liabilities in respect of –

(*a*) any debt or obligation incurred by or on behalf of, or owed to, the company before the registration; or

(*b*) any contract entered into by or on behalf of the company before the registration.

17.10 Continuation of existing proceedings

(1) Subject to subsection (2), any action or other legal proceedings that are, at the time of registration, pending by or against the eligible company, or any of its officers or members, may be continued in the same manner as if the registration had not taken place.

(2) Execution must not be issued against the effects of a member of the eligible company on any judgment, decree or order obtained in any such pending action or proceedings.

(3) If the eligible company's property and effects are insufficient to satisfy the judgment, decree or order, an order may be obtained for winding up the company.

17.11 Continuation of existing constitutional document

(1) The provisions in a constitutional document of the eligible company are to be regarded as conditions and regulations of the company in the same manner and with the same incidents as if those provisions were, had the company been formed under this Ordinance, contained in the articles with which the company would have been formed.

(2) In subsection (1), a reference to a constitutional document of an eligible company includes, in the case of an eligible company registered as a company limited by guarantee, the resolution complying with section 17.5(2).

17.12 Eligible company may substitute articles for non-statutory constitutional document

(1) The eligible company may alter the form of its constitution by substituting articles for a non-statutory constitutional document of the company.

(2) An alteration must be made by special resolution.

17.13 This Ordinance applies to eligible company

(1) Subject to section 17.14, this Ordinance applies to the eligible company and its officers, members, contributories and creditors in the same manner in all respects as if the company had been formed under this Ordinance.

(2) Despite anything in a constitutional document of the eligible company, a provision of this Ordinance applies to the company if the provision relates to an unlimited company's registration as a limited company.

17.14 Exceptions to section 17.13(1)

(1) The eligible company may not adopt as its articles any or all of the provisions of the model articles prescribed under section 3.16,[27] unless those provisions are adopted by special resolution.

[27] A consultation draft of Part 3 will be published later.

(2) Subject to section 17.15, the eligible company does not have any power to alter a provision in an Ordinance relating to the company.

(3) If the eligible company is wound up, a person specified in subsection (5) is a contributory –

(*a*) liable to pay or contribute to the payment of –

(i) the company's debts and liabilities contracted before the registration;

(ii) any sum for the adjustment of the rights of the members among themselves in respect of those debts and liabilities; and

(iii) the costs and expenses of winding up the company, so far as relating to those debts and liabilities; and

(*b*) liable to contribute to the company's assets all sums due from the person in respect of the liability under paragraph (*a*).

(4) In the event of the death, bankruptcy or insolvency of such a contributory, the provisions of this Ordinance with respect to the personal representatives, and to the trustees of bankrupt or insolvent contributories, apply.

(5) The person specified for the purposes of subsection (3) is a person who is liable to pay or contribute to the payment of the eligible company's debts and liabilities contracted before the registration.

17.15 Eligible company's power to alter constitution

This Ordinance does not derogate from any power, vested in the eligible company, by virtue of a constitutional document of the company, of altering its constitution or regulations.

PART 18

COMMUNICATIONS TO AND BY COMPANIES

Division 1 – Preliminary

18.1 Interpretation

(1) In this Part –

"address" (地址) includes a number, or any sequence or combination of letters, characters, numbers or symbols of any language, used for the purpose of sending or receiving a document or information by electronic means;

"applicable provision" (適用條文) –

(*a*) in Division 3, means a provision of this Ordinance that authorizes or requires the document or information to be sent or supplied to a company; or

(*b*) in Division 4, means a provision of this Ordinance that authorizes or requires the document or information to be sent or supplied by a company to another person;

"business day" (辦公日) means a day that is not –

(*a*) a general holiday; or

(*b*) a black rainstorm warning day or gale warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);

"document" (文件), except in Division 2, excludes a document that is issued for the purpose of any legal proceedings.

(2) In this Part –

(*a*) a reference to sending a document, except in Division 2 –

(i) includes supplying, delivering, forwarding or producing the document and, in the case of a notice, giving the document; and

(ii) excludes serving the document; and

(*b*) a reference to supplying information includes sending, delivering, forwarding or producing the information.

(3) For the purposes of this Part, a person sends a document, or supplies information, by post if the person posts a prepaid envelope containing the document or information.

18.2 Minimum period specified for purposes of sections 18.8(3), 18.11(4) and 18.13(6)

(1) This section specifies the minimum period of the notice of revocation, in relation to an agreement between a company and another person, for the purposes of sections 18.8(3), 18.11(4) and 18.13(6).

(2) The minimum period is whichever is the longer of the following –

(*a*) a period of 7 days;

(*b*) the period set out in subsection (3) or (4).

(3) If that other person is not a company, the period set out for the purposes of subsection (2)(*b*) is –

(*a*) where that other person is a member of the company, the period specified for the purpose in the company's articles;

(*b*) where that other person is a debenture holder of the company, the period specified for the purpose in the instrument creating the debenture; or

(*c*) where that other person is not such a member or holder, the period specified for the purpose in any agreement between the person and the company.

(4) If that other person is a company, the period set out for the purposes of subsection (2)(*b*) is –

(*a*) where that other person is a member of the company, the period specified for the purpose in the company's articles;

(*b*) where the company is a member of that other person, the period specified for the purpose in the person's articles;

(*c*) where that other person is a debenture holder of the company or where the company is a debenture holder of that other person, the period specified for the purpose in the instrument creating the debenture; or

(*d*) where neither that other person nor the company is such a member or holder, the period specified for the purpose in any agreement between the person and the company.

18.3 Period specified for purposes of sections 18.8(7)(*a*), 18.11(7)(*a*) and 18.13(9)(*b*)

(1) This section specifies –

(*a*) the period, in relation to a document or information sent or supplied to a company by another person, for the purposes of section 18.8(7)(*a*); and

(*b*) the period, in relation to a document or information sent or supplied by a company to another person, for the purposes of sections 18.11(7)(*a*) and 18.13(9)(*b*).

(2) The period is whichever is the longer of the following –

(*a*) a period of 48 hours;

(*b*) the period set out in subsection (3) or (4).

(3) If that other person is not a company, the period set out for the purposes of subsection (2)(*b*) is –

(*a*) where that other person is a member of the company, the period specified for the purpose in the company's articles;

(*b*) where that other person is a debenture holder of the company, the period specified for the purpose in the instrument creating the debenture; or

(*c*) where that other person is not such a member or holder, the period specified for the purpose in any agreement between the person and the company.

(4) If that other person is a company, the period set out for the purposes of subsection (2)(*b*) is –

(*a*) where that other person is a member of the company, the period specified for the purpose in the company's articles;

(*b*) where the company is a member of that other person, the period specified for the purpose in the person's articles;

(*c*) where that other person is a debenture holder of the company or where the company is a debenture holder of that other person, the period specified for the purpose in the instrument creating the debenture; or

(*d*) where neither that other person nor the company is such a member or holder, the period specified for the purpose in any agreement between the person and the company.

(5) In calculating a period of hours mentioned in subsection (2)(*a*), any part of a day that is not a business day is to be disregarded.

18.4 Time specified for purposes of sections 18.8(7)(*b*), 18.9(5)(*a*), 18.11(7)(*b*) and 18.12(5)(*a*)

(1) This section specifies –

(*a*) the time, in relation to a document or information sent or supplied to a company by another person, for the purposes of sections 18.8(7)(*b*) and 18.9(5)(*a*); and

(*b*) the time, in relation to a document or information sent or supplied by a company to another person, for the purposes of sections 18.11(7)(*b*) and 18.12(5)(*a*).

(2) The time is whichever is the later of the following –

(*a*) the time at which the document or information would be delivered in the ordinary course of post;

(*b*) the time set out in subsection (3) or (4).

(3) If that other person is not a company, the time set out for the purposes of subsection (2)(*b*) is –

(*a*) where that other person is a member of the company, the time specified for the purpose in the company's articles;

(*b*) where that other person is a debenture holder of the company, the time specified for the purpose in the instrument creating the debenture; or

(*c*) where that other person is not such a member or holder, the time specified for the purpose in any agreement between the person and the company.

(4) If that other person is a company, the time set out for the purposes of subsection (2)(*b*) is –

(*a*) where that other person is a member of the company, the time specified for the purpose in the company's articles;

(*b*) where the company is a member of that other person, the time specified for the purpose in the person's articles;

(*c*) where that other person is a debenture holder of the company or where the company is a debenture holder of that other person, the time specified for the purpose in the instrument creating the debenture; or

(*d*) where neither that other person nor the company is such a member or holder, the time specified for the purpose in any agreement between the person and the company.

18.5 Address specified for purposes of sections 18.11(3)(*b*)(iii) and 18.12(2)(*b*)

(1) This section specifies the address, in relation to a document or information sent or supplied by a company to another person, for the purposes of sections 18.11(3)(*b*)(iii) and 18.12(2)(*b*).

(2) Subject to subsections (3) and (4), the address is –

(*a*) an address specified for the purpose by that other person generally or specifically; or

(*b*) an address to which a provision of this Ordinance authorizes or requires the document or information to be sent or supplied.

(3) If that other person (whether or not a company) is a member, debenture holder, director or secretary of the company, the address is –

(*a*) the address specified in subsection (2); or

(*b*) the person's address as shown in the company's register of members, register of debenture holders, register of directors or register of secretaries.

(4) If that other person is a company, the address is –

(*a*) the address specified in subsection (2); or

(*b*) its registered office.

(5) If the company is unable to obtain an address specified in subsection (2), (3) or (4), the address is that other person's address last known to the company.

18.6 Effect of this Part on sending documents etc. to Registrar

In its application in relation to documents or information to be sent or supplied to the Registrar, this Part has effect subject to Part 2.

Division 2 – Service of Document on Company

18.7 Service of document

A document may be served on a company by leaving it at, or sending it by post to, the company's registered office.

Division 3 – Other Communication to Company by Person who is not Company

18.8 Communication in electronic form

(1) This section applies if a document or information is sent or supplied, in electronic form, to a company by a person who is not a company.

(2) The document or information is sent or supplied to the company for the purposes of an applicable provision if –

(*a*) the company –

(i) has agreed, generally or specifically, that the document or information may be sent or supplied to it in electronic form and has not revoked the agreement; or

(ii) is regarded under a provision of this Ordinance as having so agreed;

(*b*) the document or information is sent or supplied –

(i) by electronic means to an address –

(A) specified for the purpose by the company generally or specifically; or

(B) regarded under a provision of this Ordinance as having been so specified for the purpose; or

(ii) by hand or by post to an address specified in subsection (4); and

(*c*) the document or information is sent or supplied in a form, and by a means, that, in the person's reasonable opinion, will enable the recipient –

(i) to read the document or information, or, to the extent that it consists of images, to see the document or information, with the naked eye or with the eye with suitable corrective lens; and

(ii) to retain a copy of the document or information.

(3) The company has not revoked the agreement for the purposes of subsection (2)(*a*)(i) unless it has given the person a notice of revocation of not less than the period specified in section 18.2.

(4) The address specified for the purposes of subsection (2)(*b*)(ii) is –

(*a*) an address specified for the purpose by the company generally or specifically;

(*b*) the company's registered office; or

(*c*) an address to which a provision of this Ordinance authorizes or requires the document or information to be sent or supplied.

(5) For the purposes of an applicable provision that authorizes or requires the document or information to be authenticated, the document or information is sufficiently authenticated if –

(*a*) the person's identity is confirmed in a manner specified by the company; or

(*b*) where no manner has been specified, the communication contains or is accompanied by a statement of the person's identity, and the company has no reason to doubt the truth of the statement.

(6) If the document or information is sent or supplied by a person on behalf of another, subsection (5) does not affect any provision of the company's articles under which the company may require reasonable evidence of the former's authority to act on behalf of the latter.

(7) If the document or information is sent or supplied to a company for the purposes of an applicable provision, it is to be regarded as being received by the company –

(*a*) where the document or information is sent or supplied by electronic means, at the end of the period specified in section 18.3 after it is sent or supplied;

(*b*) where the document or information is sent or supplied by post, at the time specified in section 18.4; or

(*c*) where the document or information is sent or supplied by hand, at the time when the document or information is delivered.

18.9 Communication in hard copy form

(1) This section applies if a document or information is sent or supplied, in hard copy form, to a company by a person who is not a company.

(2) The document or information is sent or supplied to the company for the purposes of an applicable provision if the document or information is sent or supplied by hand or by post to –

(*a*) an address specified for the purpose by the company generally or specifically;

(*b*) the company's registered office; or

(*c*) an address to which a provision of this Ordinance authorizes or requires the document or information to be sent or supplied.

(3) For the purposes of an applicable provision that authorizes or requires the document or information to be authenticated, the document or information is sufficiently authenticated if it is signed by the person.

(4) If the document or information is sent or supplied by a person on behalf of another, subsection (3) does not affect any provision of the company's articles under which the company may require reasonable evidence of the former's authority to act on behalf of the latter.

(5) If the document or information is sent or supplied to a company for the purposes of an applicable provision, it is to be regarded as being received by the company –

(*a*) where the document or information is sent or supplied by post, at the time specified in section 18.4; or

(*b*) where the document or information is sent or supplied by hand, at the time when the document or information is delivered.

18.10 Communication in other forms

(1) This section applies if a document or information is sent or supplied, otherwise than in electronic or hard copy form, to a company by a person who is not a company.

(2) The document or information is sent or supplied to the company for the purposes of an applicable provision if the document or information is sent or supplied in a form or manner that has been agreed by the company.

Division 4 – Other Communication by Company to Another Person

18.11 Communication in electronic form

(1) Subject to subsection (2), this section applies if a document or information is sent or supplied, in electronic form, by a company to another person.

(2) This section does not apply if the document or information is sent or supplied by the company to that other person by making it available on a website.

(3) The document or information is sent or supplied to that other person for the purposes of an applicable provision if –

(*a*) that other person –

(i) where that other person is not a company, has agreed, generally or specifically, that the document or information may be sent or supplied to the person in electronic form and has not revoked the agreement; or

(ii) where that other person is a company, has so agreed and has not revoked the agreement, or is

regarded under a provision of this Ordinance as having so agreed;

(*b*) the document or information is sent or supplied –

(i) by electronic means to an address –

(A) where that other person is not a company, specified for the purpose by that other person generally or specifically; or

(B) where that other person is a company, so specified for the purpose, or regarded under a provision of this Ordinance as having been so specified for the purpose;

(ii) by hand to that other person; or

(iii) by hand or by post to an address specified in section 18.5; and

(*c*) the document or information is sent or supplied in a form, and by a means, that, in the company's reasonable opinion, will enable the recipient –

(i) to read the document or information, or, to the extent that it consists of images, to see the document or information, with the naked eye or with the eye with suitable corrective lens; and

(ii) to retain a copy of the document or information.

(4) That other person has not revoked the agreement for the purposes of subsection (3)(*a*) unless the person has given the company a notice of revocation of not less than the period specified in section 18.2.

(5) For the purposes of an applicable provision that authorizes or requires the document or information to be authenticated, the document or information is sufficiently authenticated if –

(*a*) the company's identity is confirmed in a manner specified by that other person; or

(*b*) where no manner has been specified, the communication contains or is accompanied by a statement of the company's identity, and that other person has no reason to doubt the truth of the statement.

(6) If the document or information is sent or supplied by a person on behalf of the company to another company, subsection (5) does not affect any provision of that other company's articles under which that other company may require reasonable evidence of the person's authority to act on behalf of the company for which the document or information is sent or supplied.

(7) If the document or information is sent or supplied to that other person for the purposes of an applicable provision, it is to be regarded as being received by that other person –

(*a*) where the document or information is sent or supplied by electronic means, at the end of the period specified in section 18.3 after it is sent or supplied;

(*b*) where the document or information is sent or supplied by post, at the time specified in section 18.4; or

(*c*) where the document or information is sent or supplied by hand, at the time when the document or information is delivered.

18.12 Communication in hard copy form

(1) This section applies if a document or information is sent or supplied, in hard copy form, by a company to another person.

(2) The document or information is sent or supplied to that other person for the purposes of an applicable provision if the document or information is sent or supplied –

(*a*) by hand to that other person; or

(*b*) by hand or by post to an address specified in section 18.5.

(3) For the purposes of an applicable provision that authorizes or requires the document or information to be authenticated, the document or information is sufficiently authenticated if it is signed by a director or secretary of the company or by an officer of the company authorized for the purpose.

(4) If the document or information is sent or supplied by a person on behalf of the company to another company, subsection (3) does not affect any provision of that other company's articles under which that other company may require reasonable evidence of the person's authority to act on behalf of the company for which the document or information is sent or supplied.

(5) If the document or information is sent or supplied to that other person for the purposes of an applicable provision, it is to be regarded as being received by that other person –

(*a*) where the document or information is sent or supplied by post, at the time specified in section 18.4; or

(*b*) where the document or information is sent or supplied by hand, at the time when the document or information is delivered.

18.13 Communication by means of website

(1) Subject to subsection (2), this section applies if a document or information is sent or supplied by a company to another person by making it available on a website.

(2) This section does not apply if the document or information is sent or supplied by a member of a company to the company.

(3) The document or information is sent or supplied to that other person for the purposes of an applicable provision if –

(*a*) that other person –

(i) has agreed, generally or specifically, that the document or information may be sent or supplied by the company to the person by making it

available on a website, or is regarded under subsection (4) or (5) as having so agreed; and

(ii) has not revoked the agreement;

(*b*) the document or information is sent or supplied in a form, and by a means, that, in the company's reasonable opinion, will enable the recipient –

(i) to read the document or information, or, to the extent that it consists of images, to see the document or information, with the naked eye or with the eye with suitable corrective lens; and

(ii) to retain a copy of the document or information;

(*c*) the company has notified that other person of the matters specified in subsection (7); and

(*d*) the company has made the document or information available on the website throughout –

(i) the period specified by the applicable provision; or

(ii) where no period is specified, the period of 28 days beginning with the date on which the notification under paragraph (*c*) is sent to that other person.

(4) For the purposes of subsection (3)(*a*)(i), a person who is a member of the company is regarded as having agreed that the document or information may be sent or supplied by the company to the person by making it available on a website if –

(*a*) the company's members have resolved, or the company's articles contain a provision to the effect, that documents or information generally may be so sent or supplied by the company to its members;

(*b*) the company has individually requested the person to agree that documents or information generally, or the

document or information, may be so sent or supplied by the company to the person and has not received a response to the request within 28 days beginning with the date on which the request was sent; and

(*c*) the request –

(i) stated clearly the effect of a failure to respond within those 28 days; and

(ii) was sent at least 12 months after a prior request made to the person for the purposes of paragraph (*b*) in respect of the same or a similar class of documents or information.

(5) For the purposes of subsection (3)(*a*)(i), a person who is a debenture holder of the company is regarded as having agreed that the document or information may be sent or supplied by the company to the person by making it available on a website if –

(*a*) the instrument creating the debenture contains a provision to the effect, or the equivalent debenture holders have resolved in accordance with the provisions of that instrument, that documents or information generally may be so sent or supplied by the company to those holders;

(*b*) the company has individually requested the person to agree that documents or information generally, or the document or information, may be so sent or supplied by the company to the person and has not received a response to the request within 28 days beginning with the date on which the request was sent; and

(*c*) the request –

(i) stated clearly the effect of a failure to respond within those 28 days; and

(ii) was sent at least 12 months after a prior request made to the person for the purposes of paragraph (*b*) in respect of the same or a similar class of documents or information.

(6) That other person has not revoked the agreement for the purposes of subsection (3)(*a*)(ii) unless the person has given the company a notice of revocation of not less than the period specified in section 18.2.

(7) The matters specified for the purposes of subsection (3)(*c*) are –

(*a*) the presence of the document or information on the website;

(*b*) if the document or information is not available on the website on the date of the notification, the date on which it will be so available;

(*c*) the address of the website;

(*d*) the place on the website where the document or information may be accessed; and

(*e*) how to access the document or information.

(8) For the purposes of subsection (3)(*d*), a failure to make a document or information available on a website throughout the period mentioned in that subsection is to be disregarded if –

(*a*) the document or information 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.

(9) If the document or information is sent or supplied to that other person for the purposes of an applicable provision –

(*a*) it is to be regarded as being sent or supplied on whichever is the later of the following –

(i) the date on which the document or information is first made available on the website;

(ii) the date on which a notification under subsection (3)(*c*) is sent; and

(*b*) it is to be regarded as being received by that other person at the end of the period specified in section 18.3 after whichever is the later of the following –

(i) the time when the document or information is first made available on the website;

(ii) the time when that other person receives a notification under subsection (3)(*c*).

(10) In this section –

"equivalent debenture holders" (相應債權證持有人), in relation to a person to whom a document or information is sent or supplied by a company, means the debenture holders of the company ranking equally for all purposes with the person.

18.14 Communication in other forms

(1) This section applies if a document or information is sent or supplied by a company to another person otherwise than in electronic or hard copy form or by making it available on a website.

(2) The document or information is sent or supplied to that other person for the purposes of an applicable provision if the document or information is sent or supplied in a form or manner that has been agreed by that other person.

18.15 Joint holders of shares or debentures

(1) This section applies if –

(*a*) a provision of this Ordinance authorizes or requires a document or information to be sent or supplied by a company to the holders of its shares or debentures; and

(*b*) a document or information must be sent to joint holders of the shares or debentures.

(2) Subject to anything in the company's articles, the document or information is sent or supplied to the joint holders for the purposes of the provision if the document or information is sent or supplied to –

(*a*) each of the joint holders; or

(*b*) the holder whose name appears first in the company's register of members or register of debenture holders.

(3) Subject to anything in the company's articles, anything to be agreed or specified by the holders for the purposes of this Division must be agreed or specified by all the joint holders.

18.16 Death or bankruptcy of holder of shares

(1) This section applies if –

(*a*) a provision of this Ordinance authorizes or requires a document or information to be sent or supplied by a company to the holders of its shares; and

(*b*) a holder of the shares is dead or bankrupt.

(2) Subject to anything in the company's articles, the document or information is sent or supplied to that holder for the purposes of the provision if the document or information –

(*a*) is sent or supplied to the persons claiming to be entitled to the shares in consequence of the death or bankruptcy by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address within Hong Kong supplied for the purpose by the persons so claiming; or

(*b*) until such an address has been so supplied, is sent or supplied in any manner in which it might have been sent or supplied if the death or bankruptcy had not occurred.

18.17 Member or debenture holder may require hard copy

(1) A member or debenture holder of a company may, within 28 days after the date of receiving from the company a document or information, otherwise than in hard copy form, request the company to send or supply to the member or holder the document or information in hard copy form.

(2) The company must send or supply to the member or holder the document or information in hard copy form, free of charge –

(*a*) within 21 days after the date of receiving the request; or

(*b*) if the document or information requires an action to be taken by the member or holder on or before a date, at least 7 days before the date.

(3) Subsection (2)(*b*) does not apply unless the member or holder makes a request under subsection (1) at least 14 days before the date mentioned in subsection (2)(*b*).

(4) If a company contravenes subsection (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of $300 for each day during which the offence continues.