

## 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.