An Ordinance to reform and modernize Hong Kong company law, to restate part of the enactments relating to companies, to make other provision relating to companies, and to provide for incidental and connected matters.

[3 March 2014]

(Enacting provision omitted—E.R. 1 of 2013)

Part 1

Preliminary

(Format changes—E.R. 1 of 2013)

Division 1

Short Title and Commencement

1.

Short title and commencement

(1)

This Ordinance may be cited as the

Companies Ordinance

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(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

2.

Interpretation

(1)

In this Ordinance—

accounting transaction

(

會計交易

), in relation to a company, means a transaction that is required by section 373 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;

articles

(

), in relation to a company, means the articles of association of the company;

Note—

Please also see section 98. A condition of an existing company's memorandum of association is to be regarded as a provision of the company's articles.

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; but

(b)

excludes a corporation sole;

certificate of re-domiciliation

(

遷冊證明書

) has the meaning given by section 820A;

(Added 14 of 2025 s. 3)

certified public accountant (practising)

(

執業會計師

) has the meaning given by section 2(1) of the Accounting and Financial Reporting Council Ordinance (Cap. 588);

(Amended L.N. 66 of 2022)

commencement date

(

生效日期

), in relation to any provision of this Ordinance, means the date on which that provision comes into operation;

Companies Register

(

公司登記冊

) means the records kept under section 27;

company

(

公司

) means—

(a)

a company formed and registered under this Ordinance;

(b)

an existing company; or

(Amended 14 of 2025 s. 3)

(c)

a re-domiciled company;

(Added 14 of 2025 s. 3)

company secretary

(

公司秘書

) includes any person occupying the position of company secretary (by whatever name called);

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

means the Court of First Instance;

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;

financial year

(

財政年度

), in relation to a company, means a financial year of the company determined in accordance with Division 3 of Part 9;

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 67(1)(a); or

(b)

in relation to an existing company, means a person who subscribed to or signed on the company's memorandum of association;

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;

identity card

(

身分證

) means an identity card issued under the Registration of Persons Ordinance (Cap. 177);

Index of Company Names

(《

公司名稱索引

》) means the index of names kept under section 30;

information system

(

資訊系統

) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

intended RC

(

籌劃中公司

) has the meaning given by section 820A;

(Added 14 of 2025 s. 3)

listed company

(上市公司

) means a company that has any of its shares listed on a recognized stock market;

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;

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; but

(b) excludes—

(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 and Miscellaneous Provisions) Ordinance (Cap. 32);

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;

non-Hong Kong company

(

非香港公司

) means a company incorporated outside Hong Kong, other than a re-domiciled company, that—

(Amended 14 of 2025 s. 3)

(a)

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

(b)

has established a place of business in Hong Kong before that commencement date and continues to have a place of business in Hong Kong at that commencement date;

officer

(

高級人員

), in relation to a body corporate, includes a director, manager or company secretary of the body corporate;

Official Receiver

(

破產管理署署長

) means the Official Receiver appointed under the Bankruptcy Ordinance (Cap. 6);

ordinary resolution

(

普通決議

) —see section 563;

predecessor Ordinance

(《

前身條例

》) means the Companies Ordinance (Cap. 32) as in force from time to time before the commencement date[e] of section 2 of Schedule 9;

recognized exchange company

(

認可交易所

) means a company recognized under section 19(2) of the Securities and Futures Ordinance (Cap. 571) as an exchange company for operating a stock market;

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);

redeemable shares

(

可贖回股份

) means shares that are to be redeemed, or are liable to be redeemed, at the option of the company or the shareholder;

re-domiciled company

(

經遷冊公司

)—

(a)

means a body corporate registered under section 820C(1); and

(b)

includes such a body corporate a certificate in respect of which is issued under section 132(1);

(Added 14 of 2025 s. 3)

re-domiciliation date

(

遷冊日

) has the meaning given by section 820A;

(Added 14 of 2025 s. 3)

re-domiciliation form

(

遷冊表格

) has the meaning given by section 820A;

(Added 14 of 2025 s. 3)

registered non-Hong Kong company

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

Registrar

(

處長

) means the Registrar of Companies appointed under section 21(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 455(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;

share warrant

(

股份權證

) means a warrant—

(a)

stating that the bearer is entitled to the shares specified in the warrant; and

(b)

enabling the shares to be transferred by delivery of the warrant;

special resolution

(

特別決議

) —see section 564;

specified form

(

指明格式

) means the form specified under section 23;

treasury shares

(

庫存股份

), in relation to a listed company, means shares of the company held by the company continuously—

(a)

under section 272B(1) since they were bought back; or

(b)

under section 272I(1) since they were regarded as having been bought back;

(Added 1 of 2025 s. 3)

unlisted company

(

非上市公司

) means a company that does not have any of its shares listed on a recognized stock market;

written resolution

(

書面決議

) —see Subdivision 2 of Division 1 of Part 12.

(1A)

In this Ordinance, a reference to holding treasury shares by a listed company includes holding treasury shares by the company otherwise than in the name of the company but through a nominee as defined by section 272A.

(Added 1 of 2025 s. 3)

(2)

In this Ordinance—

(a)

a reference to this Ordinance includes any subsidiary legislation made under this Ordinance; and

(b)

a reference to a provision of the predecessor Ordinance, except in Part 21 and Schedule 11, includes the provision, or such part of the provision, having a continuing effect under Schedule 11 or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

(3)

In this Ordinance—

(a)

a reference to a manager of the property of a body corporate includes a manager of part of that property;

(b)

a reference to a receiver of the property of a body corporate includes—

(i)

a receiver of part of that property; and

(ii)

a receiver of the income arising from that property or part of that property; and

(c)

a reference to the appointment of a manager or receiver made under powers contained in an instrument includes—

(i)

an appointment made under powers conferred by an Ordinance; and

(ii)

an appointment made under powers that, by virtue of an Ordinance, are implied in and have effect as if contained in an instrument.

(4)

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 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 the form of an electronic record; and

(Amended 35 of 2018 s. 3)

(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.

(5)

In subsection (4)—

(a)

a reference to sending a document—

(i)

includes supplying, delivering, forwarding or producing the document and, in the case of a notice, giving the document; but

(ii)

excludes serving the document; and

(b)

a reference to supplying information includes sending, delivering, forwarding or producing the information.

(5A)

A re-domiciled company is, for the purposes of the laws of Hong Kong, to be regarded as a company incorporated in Hong Kong with effect from its re-domiciliation date.

(Added 14 of 2025 s. 3)

(5B)

Subsection (5A) is subject to any amendment made by the Companies (Amendment) (No. 2) Ordinance 2025 (14 of 2025) to a provision of an Ordinance that has the effect that—

(a)

for a provision that applies to a company or body corporate incorporated in Hong Kong—the provision so amended also applies, with or without modifications, to a re-domiciled company; or

(b)

for a provision that applies to a company or body corporate incorporated outside Hong Kong—the provision so amended does not apply to a re-domiciled company.

(Added 14 of 2025 s. 3)

(5C)

Subsection (5A)—

(a)

does not apply to a re-domiciled company that is an airline;

(b)

does not have the effect of regarding a re-domiciled company as a company incorporated, or formed and registered, under this Ordinance or a former Companies Ordinance; and

(c)

does not apply to a provision specified in Schedule 12.

(Added 14 of 2025 s. 3)

(6)

A note located in the text of this Ordinance is provided for information only and has no legislative effect.

Editorial Note:

Commencement date: 3 March 2014.

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, or participates in, 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, or participates in, the contravention or failure; and

(c)

the person authorizes or permits, or participates in, the contravention or failure.

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 notice published in the Gazette, amend subsection (3), (4) or (5).

5.

Dormant company

(1)

If a qualified private company passes a special resolution specified in subsection (2), and the resolution is delivered to the Registrar for registration, the company is a dormant company for the purposes of Parts 9, 10 and 12 as from the date mentioned in subsection (2)(a) as declared by the resolution.

(2)

The special resolution specified for the purposes of subsection (1) 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)

any later date that is specified in that resolution; and

(b)

authorizing the directors to deliver that resolution to the Registrar for registration.

(3)

If—

(a)

before the repeal of section 344A of the predecessor Ordinance by section 912, a company passed a special resolution under subsection (1) of that section, and the resolution has not been delivered to the Registrar; and

(b)

the resolution is delivered to the Registrar for registration after the repeal,

the company is also a dormant company for the purposes of Parts 9, 10 and 12 as from the date of delivery of the resolution to the Registrar or as from a later date as is specified in the resolution.

(4)

If, immediately before the repeal of section 344A of the predecessor Ordinance by section 912, a company was deemed to be a dormant company for the purposes of that section, the company continues to be a dormant company for the purposes of Parts 9, 10 and 12 as from the commencement date[c] of this section.

(Amended 35 of 2018 s. 4)

(5)

A company that is a dormant company for the purposes of Parts 9, 10 and 12 ceases to be such dormant company if—

(a)

the company passes a special resolution declaring that the company intends to enter into an accounting transaction, and the resolution is delivered to the Registrar for registration; or

(b)

there is an accounting transaction in relation to the company.

(6)

In this section—

qualified private company

(

合資格私人公司

) means a private company that is not a company specified in subsection (7).

(7)

A company specified for the purposes of the definition of ***qualified private company*** in subsection (6) 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 Ordinance (Cap. 41);

(Amended 12 of 2015 s. 165)

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

(g)

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

(8)

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

Editorial Note:

Commencement date: 3 March 2014.

6.

Offering shares or debentures to public, etc.

(1)

In this Ordinance, a reference to offering shares or debentures of a company to the public includes offering them to a section of the public, whether selected—

(a)

as members or debenture holders of the company;

(b)

as clients of the person making the offer; or

(c)

in any other manner.

(2)

In this Ordinance and in a company's articles, a reference to an invitation to the public to subscribe for shares or debentures of a company includes an invitation to a section of the public, whether selected—

(a)

as members or debenture holders of the company;

(b)

as clients of the person making the invitation; or

(c)

in any other manner.

(3)

Neither subsection (1) nor subsection (2) operates to treat a private offer of shares or debentures, or a private invitation to subscribe for shares or debentures, as an offer or invitation made to the public.

(4)

In particular—

(a)

a provision in a company's articles prohibiting invitations to the public to subscribe for shares or debentures is not to be regarded as prohibiting a private invitation to subscribe for shares or debentures to be made to members or debenture holders; and

(b)

the provisions of this Ordinance relating to private companies are to be construed accordingly.

(5)

In this section, an offer of shares or debentures, or an invitation to subscribe for shares or debentures, is a private offer or invitation if the offer or invitation can properly be regarded, in all the circumstances, as being—

(a)

not calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(b)

a domestic concern of the persons making and receiving the offer or invitation.

Division 3

Interpretation of this Ordinance: Types of Companies

Subdivision 1

Limited Company and Unlimited Company

7.

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.

8.

Company limited by shares

(1)

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 articles to any amount unpaid on the shares held by the members.

(2)

For the purposes of subsection (1), the liability of the members of an existing company is to be regarded as being limited by the company's articles to any amount unpaid on the shares held by the members if a condition of the memorandum of association of the company stating that the liability of the members is limited is regarded as a provision of the articles by virtue of section 98.

9.

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 articles to the amount that the members undertake, by those articles, 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.

10.

Unlimited company

For the purposes of this Ordinance, a company is an unlimited company if there is no limit on the liability of its members.

Subdivision 2

Private Company and Public Company

11.

Private company

(1)

For the purposes of this Ordinance, a company is a private company if—

(a)

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; and

(b)

it is not a company limited by guarantee.

(2)

In subsection (1)(a)(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 to be regarded as one member.

12.

Public company

For the purposes of this Ordinance, a company is a public company if—

(a)

it is not a private company; and

(b)

it is not a company limited by guarantee.

Division 4

Interpretation of this Ordinance: Holding Company and Subsidiary

(Amended 35 of 2018 s. 5)

13.

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.

14.

Provisions supplementary to section 13

(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 to be 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 to be 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 to be 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 to be 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.

15.

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.

16.

(Repealed 35 of 2018 s. 6)

Division 5

Application of this Ordinance

17.

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)

For the purpose of applying this Ordinance to an existing company, 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.

18.

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)

For the purpose of applying this Ordinance to a company mentioned in subsection (1), 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).

19.

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)

For the purpose of applying this Ordinance to a company mentioned in subsection (1), 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 Companies Register

(Format changes—E.R. 1 of 2013)

Division 1

Preliminary

20.

Interpretation

(1)

In this Part—

company

(

公司

) includes—

(a)

a non-Hong Kong company registered under section 777(1); or

(b)

a company that was, at any time before the commencement date 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);

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.

(2)

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

Division 2

Registrar of Companies

21.

Office of Registrar

(1)

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

(2)

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

(3)

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.

(4)

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.

22.

Registrar's functions

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

23.

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.

24.

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—

(a)

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

(b)

must 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.

25.

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.

26.

Fees payable to Registrar

(1)

The Financial Secretary may make regulations to require payment to the Registrar of fees in respect of—

(a)

the performance of any of the Registrar's functions; or

(b)

the provision by the Registrar of services or facilities for purposes incidental to, or otherwise connected with, the performance of any of the Registrar's functions.

(2)

The regulations may—

(a)

provide for the amount of the fees to be fixed by or determined under the regulations;

(b)

provide for different fees to be payable in respect of the same matter in different circumstances; and

(c)

specify when and how fees are to be paid.

(3)

The Registrar—

(a)

may, subject to the approval of the Financial Secretary, determine what fees are chargeable in respect of the performance of functions or the provision of services or facilities—

(i)

for which fees are not provided for by the regulations; or

(ii)

in circumstances other than those for which fees are provided by the regulations; and

(b)

may charge such fees.

(4)

Fees received by the Registrar must be paid into the general revenue, unless the fees are required by section 5 of the Trading Funds Ordinance (Cap. 430) to be paid into the Companies Registry Trading Fund.

Division 3

Companies Register

27.

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;

(b)

the information contained in every certificate that is issued by the Registrar under this Ordinance; and

(c)

the information contained in every prospectus registered by the Registrar under section 38D or 342C of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

(2)

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

(3)

For the purposes of subsections (1) and (2), the Registrar must record the specified address as the correspondence address of a director, reserve director or company secretary of the following company—

(a)

an existing company;

(b)

a

company

falling within paragraph (a) of the definition of ***company*** in section 20(1) that is registered under section 777(1) by virtue of section 132 of Schedule 11; or

(c)

a

company

falling within paragraph (b) of the definition of ***company*** in section 20(1).

#(4)

After the specified address is recorded under subsection (3) as the correspondence address of a director, reserve director or company secretary of a company, the Registrar must update the entry of such correspondence address with—

(a)

the latest address of the company's registered office contained in a notice of change of address of the company's registered office—

(i)

that is sent under section 92(3) of the predecessor Ordinance or section 658(3); and

(ii)

that is registered by the Registrar under this Part; or

(b)

the latest address of the company's principal place of business in Hong Kong contained in a return in respect of the change of address of the company's principal place of business in Hong Kong—

(i)

that is delivered under section 335(1)(d) of the predecessor Ordinance or section 791(1); and

(ii)

that is registered by the Registrar under this Part.

#(5)

Subsection (4) does not apply if, in relation to the director, reserve director or company secretary of a company—

(a)

a notice or return is delivered under section 645(4), 652(2) or 791(1) in respect of a change of the person's correspondence address; and

(b)

the notice or return is registered by the Registrar under this Part.

#(6)

For the purposes of subsection (3), an address is the specified address in relation to a director, reserve director or company secretary of a company if—

(a)

immediately before the commencement date of this section, the address was shown on the register of companies under the predecessor Ordinance as the address of the company's registered office or principal place of business in Hong Kong;

(b)

the address is contained, as the address of the company's registered office, in an incorporation form—

(i)

delivered before the commencement date[e] of Division 1 of Part 3 to the Registrar for registration under section 15(1) of the predecessor Ordinance; and

(ii)

registered on or after that commencement date[e] under section 16(1) of the predecessor Ordinance; or

(c)

the address is contained, as the address of the company's principal place of business in Hong Kong, in an application for registration delivered before the commencement date[e] of Division 2 of Part 16 to the Registrar under section 333 of the predecessor Ordinance and the registration takes place under section 777(1).

Editorial Note:

[e] Section 27(3), (4), (5) and (6) in so far as it relates to a director or reserve director is not yet in operation.

[e] Commencement date: 3 March 2014.

28.

Provisions supplementary to section 27

(1)

The records kept under section 27 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.

(2)

A record of information for the purposes of section 27(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.

(3)

Subject to subsections (1) and (2), a record of information for the purposes of section 27(1) may be kept in any form that the Registrar thinks fit.

(4)

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.

(5)

If the Registrar records the information contained in a document for the purposes of section 27(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.

29.

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 27(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 27(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 required by section 48 not to make any information available for public inspection, the Registrar is not required to keep a record of the information for any longer than appears to the Registrar to be reasonably necessary for the purpose for which the information was delivered to the Registrar.

30.

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

31.

Unsatisfactory document

(1)

For the purposes of this Division, a document delivered to the Registrar for registration is unsatisfactory if—

(a)

the information contained in the document is not capable of being reproduced in legible form;

(b)

in the case of a document that is neither in English nor in Chinese, it is not accompanied by a certified translation of it in English or Chinese;

(c)

the requirements specified in relation to the document under section 32 are not complied with;

(d)

the document is not delivered in accordance with an agreement made under section 33, and any regulations made under section 34, in relation to it;

(e)

the applicable requirements of the Ordinance under which the document is delivered are not complied with;

(f)

the document is not accompanied by the fee payable for the registration;

(g)

the document, or any signature on, or any digital or electronic signature accompanying, the document—

(i)

is incomplete or incorrect; or

(ii)

is altered without proper authority;

(h)

the information contained in the document—

(i)

is internally inconsistent; or

(ii)

is inconsistent with other information on the Companies Register or other information contained in another document delivered to the Registrar;

(i)

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; or

(j)

the document contains matters contrary to law.

(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.

32.

Registrar may specify requirements (for section 31(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 41(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.

33.

Registrar may agree to delivery by electronic means (for section 31(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 34.

34.

Financial Secretary may make regulations requiring delivery by electronic means (for section 31(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.

Subdivision 2

Registrar's Powers to Refuse to Accept and to Register Document

35.

Registrar may refuse to accept or register document

(1)

If the Registrar is of the opinion that a document delivered to him or her for registration under an Ordinance is unsatisfactory, the Registrar—

(a)

may refuse to accept the document; or

(b)

may, after having accepted the document, exercise the powers specified in subsection (3) or (4).

(2)

Subsection (1) does not apply to a prospectus as defined by section 2(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

(3)

The Registrar may refuse to register the document and return the document to the person who delivered it for registration.

(4)

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.

(5)

If the Registrar—

(a)

refuses to accept a document under subsection (1)(a);

(b)

has not received a document; or

(c)

refuses to register a document under subsection (3),

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.

36.

Registrar may withhold registration of document pending further particulars etc.

For the purpose of determining whether the powers specified in section 35(3) and (4) are exercisable in relation to a document, 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 as to whether the document is unsatisfactory;

(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 any order or direction that the Registrar thinks necessary and to conduct the application diligently;

(iv)

to comply with other directions of the Registrar.

37.

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 35(3), the person may, within 42 days after the decision, appeal to the Court against the decision.

(2)

The Court may make any order that it thinks fit, including an order as to costs.

(3)

If the Court 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.

38.

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 35(3).

(2)

The Registrar must 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)

If a notice is sent to a person under subsection (2) with respect to a document, the period specified in subsection (4) is to be disregarded for the purpose of calculating the daily penalty under an Ordinance that makes it an offence for failing to comply with a requirement to deliver the document and that imposes a penalty for each day during which the offence continues.

(4)

The period is one beginning on 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 Companies Register

39.

Registrar may require company to resolve inconsistency with Companies Register

(1)

If it appears to the Registrar that the information contained in a document registered by the Registrar in respect of a company is inconsistent with other information relating to the company on the Companies Register, the Registrar may give notice to the company—

(a)

stating in what respect the information contained in the document appears to be inconsistent with other information on the Companies 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 the 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 for the purpose of resolving the inconsistency and that the proceedings are being 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.

(4)

If a person is charged with an offence under subsection (3) for failure to comply with a requirement, it is a defence to establish that the person took all reasonable steps to secure compliance with the requirement.

40.

Registrar may require further information for updating etc.

(1)

For the purpose of ensuring that a person's information on the Companies 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 Companies Register.

(2)

If a person fails to comply with a requirement under subsection (1)—

(a)

where the person is a company, the company, and every responsible person of the company, commit an offence; or

(b)

where the person is not a company, the person commits an offence.

(3)

A person who commits an offence under subsection (2) 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 person is charged with an offence under subsection (2) for failure to comply with a requirement, it is a defence to establish that the person took all reasonable steps to secure compliance with the requirement.

41.

Registrar may rectify typographical or clerical error in Companies Register

(1)

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

42.

Registrar must rectify information on Companies Register on order of Court

(1)

The Court may, on application by any person, by order direct the Registrar to rectify any information on the Companies 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, the Court may require the Registrar to rectify the information by registering the document.

(3)

This section does not apply if the Court 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 Companies Register.

(4)

The Court must not order the removal of any information from the Companies 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 Companies Register will cause material damage to the company; and

(b)

the company's interest in removing the information outweighs the interest of other persons in the information continuing to appear on the Companies Register.

(5)

If the Court makes an order for the rectification of any information on or the removal of any information from the Companies Register under subsection (1), the Court 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 Companies Register.

(6)

If the Court makes an order for the removal of any information from the Companies Register under subsection (1), it may direct—

(a)

that a note made under section 44(1) in relation to the information is to be removed from the Companies Register;

(b)

that the order is not to be made available for public inspection as part of the Companies Register; and

(c)

that—

(i)

no note is to be made under section 44(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 must not give a 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 Companies 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 the interest of other persons in disclosure.

(8)

If the Court 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.

43.

Registrar may appear in proceedings for rectification

(1)

In any proceedings before the Court for the purposes of section 42, 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 a statement in writing signed by the Registrar, giving particulars of the matters relevant to the proceedings and within the Registrar's knowledge.

(3)

Unless otherwise directed by the Court, a statement submitted under subsection (2) is to be regarded as forming part of the evidence in the proceedings.

44.

Registrar may annotate Companies Register

(1)

The Registrar may make a note in the Companies Register for the purpose of providing information in relation to—

(a)

a rectification of an error contained in any information on the Companies Register under section 41;

(b)

a rectification of any information on the Companies Register under section 42;

(c)

a removal of any information from the Companies Register under section 42; or

(d)

any other information on the Companies Register.

(2)

For the purposes of this Ordinance, a note made under subsection (1) is part of the Companies 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 Companies Register

45.

Registrar must make Companies Register available for public inspection

(1)

The Registrar must make the Companies 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 to which this subsection applies, or its directors or other officers, in matters of or connected with any act of the company;

(ii)

a director or other officers of such 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 such a company as mortgagee;

(v)

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

(vi)

a person who is appointed as the receiver or manager of the property of such 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)

Subsection (1) applies to—

(a)

a

company

falling within the definition of ***company*** in section 20(1); and

(b)

an unregistered company as defined by section 326 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

(3)

For the purposes of subsection (1), the Registrar must, on receiving the fee payable under the regulations made under section 26, allow a person to inspect any information on the Companies Register in any form that the Registrar thinks fit.

(4)

For the purposes of subsection (1), the Registrar may, on receiving the fee payable under the regulations made under section 26, produce to a person a copy or a certified true copy of any document or information on the Companies Register, in so far as the document or information may be made available for public inspection, in any form that the Registrar thinks fit.

(5)

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 on the date of the order, the person must not, without the leave of the court—

(a)

be a director, or a liquidator or provisional liquidator, of any company to which subsection (1) applies;

(b)

be a receiver or manager of the property of such a company; or

(c)

in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of such a company.

46.

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 45(4), 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.

Division 7

Materials in Companies Register Unavailable for Public Inspection

Subdivision 1

General Protection

47.

Interpretation

In this Subdivision—

withheld address

(

不提供的地址

) means an address withheld from public inspection under section 49(1)(a);

withheld identification number

(

不提供的身分識別號碼

) means a number withheld from public inspection under section 49(1)(b);

withheld information

(

不提供的資料

) means a withheld address or a withheld identification number.

48.

Information excluded from public inspection by law or court order

The Registrar must not make available for public inspection under section 45 any information excluded from public inspection by or under an Ordinance or by an order of the court.

49.

Registrar may withhold residential address and identification number from public inspection

(1)

The Registrar may, on application made for the purposes of this subsection, withhold from public inspection under section 45—

(a)

a relevant address of the applicant contained, as an address of the applicant's location, in a document to which this subsection applies; or

(b)

a number contained, as the full number of the identity card or passport of the applicant, in a document to which this subsection applies.

(2)

Subsection (1) applies to a document delivered to the Registrar for registration under any of the following Ordinances before, on or after the commencement date of this section—

(a)

this Ordinance;

(b)

the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

(c)

the predecessor Ordinance.

(3)

If a person's address is withheld from public inspection under subsection (1)(a), the Registrar must instead make available for public inspection an address contained in the person's application as the person's correspondence address.

(4)

An application for the purposes of subsection (1)(a) may be made only by a director, reserve director or company secretary, or a former director, reserve director or company secretary, of a company. An application for the purposes of subsection (1)(b) may be made by any person.

(5)

If an address is required by section 56(6) to be entered in a register of directors as the usual residential address and the correspondence address of a director within a period of 5 years specified in that section, an application must not be made for the purposes of subsection (1) in relation to the address during the period.

(6)

If an address is not prohibited by section 56(7) from being entered in a register of directors as the correspondence address of a director, or from being stated in a notice or return as the changed correspondence address of a director, during a period of 5 years specified in that section, an application must not be made for the purposes of subsection (1) in relation to the address during the period.

(7)

An application for the purposes of subsection (1) must—

(a)

contain the information required by regulations made under subsection (8)(a);

(b)

be accompanied by the documents required by regulations made under subsection (8)(b); and

(c)

be accompanied by a fee prescribed by regulations made under subsection (8)(c).

(8)

The Financial Secretary may make regulations—

(a)

providing for the information to be contained in an application made for the purposes of subsection (1), including—

(i)

the correspondence address required for the purposes of subsection (3); and

(ii)

any other information specified by the Registrar for such an application;

(b)

providing for the documents to accompany such an application, including any document specified by the Registrar for such an application;

(c)

prescribing the fees to accompany such an application; and

(d)

providing for the powers of the Registrar to require additional documents and information to be provided to the Registrar for the purposes of determining such an application.

(9)

The regulations may provide that the correspondence address required for the purposes of subsection (3) must not be a post office box number.

(10)

In this section—

relevant address

(

有關地址

), in relation to an applicant who makes an application for the purposes of subsection (1), means an address specified by the applicant in the application as a usual residential address of the applicant as at the date of the document in which the address is contained.

50.

Restriction on use or disclosure of withheld information

The Registrar must not use or disclose withheld information except—

(a)

as permitted by section 51; or

(b)

in accordance with section 52.

51.

Permitted use or disclosure of withheld information by Registrar

(1)

The Registrar may use—

(a)

a withheld address for communicating with the director, reserve director or company secretary in question; or

(b)

a withheld identification number for communicating with the person in question.

(2)

The Registrar may use withheld information for the purpose of or in connection with the performance of the Registrar's functions.

(3)

The Registrar may, on application made for the purposes of this subsection, disclose withheld information to a person specified by regulations made under subsection (5)(e). A disclosure may only be made in accordance with regulations made under subsection (5).

(4)

An application for the purposes of subsection (3) must—

(a)

contain the information required by regulations made under subsection (5)(a);

(b)

be accompanied by the documents required by regulations made under subsection (5)(b); and

(c)

be accompanied by a fee prescribed by regulations made under subsection (5)(c).

(5)

The Financial Secretary may make regulations—

(a)

providing for the information to be contained in an application made for the purposes of subsection (3), including any information specified by the Registrar for such an application;

(b)

providing for the documents to accompany such an application, including any document specified by the Registrar for such an application;

(c)

prescribing the fees payable for the purposes of subsection (3) to accompany such an application;

(d)

providing for the powers of the Registrar to require additional documents and information to be provided to the Registrar for the purposes of determining such an application;

(e)

specifying the persons to whom withheld information may be disclosed; and

(f)

providing for the conditions in accordance with which withheld information may be disclosed to such persons, including the extent to which such information may be disclosed to them.

52.

Disclosure under order of Court

(1)

The Court may make an order for the disclosure by the Registrar of a withheld address—

(a)

if—

(i)

there is evidence that the service of documents at an address contained in an application under section 49(1) as the correspondence address is not effective to bring them to the notice of the director, reserve director or company secretary in question; or

(ii)

it is necessary or expedient for the withheld address to be disclosed in connection with the enforcement of an order or decree of a court; and

(b)

if the Court is satisfied that it is appropriate to make the order.

(2)

The Court may make an order for the disclosure by the Registrar of a withheld identification number—

(a)

if it is necessary or expedient for the number to be disclosed in connection with the enforcement of an order or decree of a court; and

(b)

if the Court is satisfied that it is appropriate to make the order.

(3)

An order under subsection (1) or (2) may be made on the application of—

(a)

a creditor of the company in respect of which the document containing the withheld information is delivered to the Registrar for registration under this Ordinance, the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) or the predecessor Ordinance; or

(b)

any other person appearing to the Court to have a sufficient interest.

(4)

An order under subsection (1) or (2) must specify the persons to whom, and purposes for which, the disclosure is authorized.

Subdivision 2

Protection of Residential Address and Identification Number Contained in Certain Documents

53.

Interpretation

(1)

In this Subdivision—

director

(

董事

) includes a person nominated as a reserve director under section 455(1);

protected address

(

受保護地址

) means, subject to subsection (2)(a), an address that falls within section 54(2)(a);

protected identification number

(

受保護身分識別號碼

) means a number that falls within section 54(2)(b);

protected information

(

受保護資料

) means a protected address or a protected identification number;

relevant correspondence address

(

有關通訊地址

), in relation to a director of a company, means the address contained, as the correspondence address of the director, in whichever is the most recent of the following—

(a)

in the case of a

company

other than those falling within paragraph (a) or (b) of the definition of ***company*** in section 20(1)—

(i)

an incorporation form delivered to the Registrar for registration under section 67(1)(b) in relation to the formation of the company or a re-domiciliation form of the company delivered to the Registrar under section 820B(2);

(Amended 14 of 2025 s. 4)

(ii)

a notice delivered to the Registrar for registration under section 645(1) or (2) in relation to the appointment of a director, or the nomination of a reserve director, of the company;

(iii)

a notice delivered to the Registrar for registration under section 645(4) in relation to a change in the particulars contained in the register of directors of the company;

(iv)

a notice delivered to the Registrar for registration under section 684(1)(d) in relation to the appointment of a director of the company; or

(v)

an application delivered for the purposes of section 807(1) in relation to the registration of the company;

(b)

in the case of a

company

falling within paragraph (a) or (b) of the definition of ***company*** in section 20(1)—

(i)

an application to the Registrar under section 776(2) or (3) for registration of the company;

(ii)

a return delivered to the Registrar for registration under section 791(1) in relation to a change in the directors of the company; or

(iii)

a return delivered to the Registrar for registration under section 791(1) in relation to a change in the particulars of the directors of the company delivered to the Registrar under Part 16.

(2)

For the purposes of this Subdivision—

(a)

an address of a person does not cease to fall within section 54(2)(a) just because the person ceases to be a director of the company; and

(b)

a reference to a director includes, to that extent, a former director.

(3)

Subsection (2)(b) does not apply to a reference to a director in section 55 or 56.

54.

Registrar must not make residential address and identification number available for public inspection

(1)

Subsection (2) applies if—

(a)

a document—

(i)

is delivered to the Registrar for registration in respect of a company under this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and is in a form prescribed by or under, or specified under, the relevant Ordinance; or

*(ii)

is delivered to the Registrar for registration in respect of a company under a provision of the predecessor Ordinance having a continuing effect under Schedule 11 or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1) and is in a form specified under section 914(6)(a) or (8)(a);

(b)

any part of the document is required by the relevant Ordinance to contain, and contains—

(i)

the usual residential address of a director of the company; or

(ii)

the full number of the identity card or passport of any person; and

(c)

the Registrar records the information contained in the document for the purposes of section 27(1).

(2)

The Registrar must not make available for public inspection under section 45(1)—

(a)

an address contained, as the usual residential address of a director of the company, in any part of the document that is required by the relevant Ordinance to contain that usual residential address; or

(b)

a number contained, as the full number of the identity card or passport of any person, in any part of the document that is required by the relevant Ordinance to contain that full number.

(3)

In this section—

relevant Ordinance

(

有關條例

), in relation to a document or any part of a document, means the Ordinance under which the document is delivered to the Registrar for registration.

Editorial Note:

*Not yet in operation.

55.

Registrar may make protected address available for inspection

(1)

Despite section 54(2)(a), the Registrar may make a protected address available for public inspection in accordance with section 56 if—

(a)

communications sent by the Registrar to the director, and requiring a response within a specified period, remain unanswered; or

(b)

there is evidence that the service of documents by the Registrar at the relevant correspondence address of the director is not effective to bring them to the notice of the director.

(2)

The Registrar must not make a decision under subsection (1) unless the Registrar—

(a)

has notified the director and the company that he or she proposes to make the protected address available for public inspection under subsection (1); and

(b)

has considered any representation made within the period specified under subsection (3)(b).

(3)

A notice under subsection (2)(a)—

(a)

must state the grounds for the proposal; and

(b)

must specify a period within which representations may be made before the protected address is made available for public inspection under subsection (1).

(4)

A notice under subsection (2)(a) must be sent to the director—

(a)

at the protected address; or

(b)

if it appears to the Registrar that service at the protected address may not be effective to bring it to the notice of the director, at the relevant correspondence address of the director.

56.

Provision supplementary to section 55

(1)

If the Registrar is to make a protected address available for public inspection under section 55(1), he or she must proceed as if—

(a)

a notice had been delivered to the Registrar for registration under section 645(4) stating that the correspondence address of the director is changed to the protected address; or

(b)

a return had been delivered to the Registrar for registration under section 791 stating that the correspondence address of the director is changed to the protected address.

(2)

The Registrar must give written notice of having done so—

(a)

to the director; and

(b)

to the company.

(3)

A written notice must also state the decision date in relation to the protected address.

(4)

A written notice under subsection (2)(a) must be sent to the director—

(a)

at the protected address; or

(b)

if it appears to the Registrar that service at the protected address may not be effective to bring it to the notice of the director, at the relevant correspondence address of the director.

(5)

On receipt of a written notice, the company must enter the protected address in its register of directors as the correspondence address of the director.

(6)

If, within 5 years after the decision date for a protected address, the director notifies the company of another address as his or her usual residential address—

(a)

the company must enter that other address in its register of directors as the usual residential address and the correspondence address of the director; and

(b)

the company must proceed with the notice or return under section 645(4) or 791 as if the correspondence address of the director was also changed to that other address.

(7)

During the period of 5 years after the decision date for a protected address—

(a)

the company must not enter in its register of directors as the correspondence address of the director any address other than—

(i)

the protected address; or

(ii)

if, after the protected address is made available for public inspection under section 55(1), an address is notified by the director to the company as his or her usual residential address, the address so notified; and

(b)

the company must not state in the notice or return under section 645(4) or 791 that the correspondence address of the director is changed to any address other than—

(i)

the protected address; or

(ii)

if, after the protected address is made available for public inspection under section 55(1), an address is notified by the director to the company as his or her usual residential address, the address so notified.

(8)

Subsections (5), (6)(a) and (7)(a) do not apply to—

(a)

a non-Hong Kong company registered under section 777(1); or

(b)

a company that was, at any time before the commencement date of Part 16, registered in the register kept under section 333AA of the predecessor Ordinance.

(9)

If a company contravenes subsection (5), (6) or (7), 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.

(10)

In this section—

decision date

(

決定日期

), in relation to a protected address, means the date on which the Registrar decides to make the protected address available for public inspection under section 55(1).

57.

Restriction on use or disclosure of protected information

The Registrar must not use or disclose protected information except—

(a)

as permitted by section 58; or

(b)

in accordance with section 59.

58.

Permitted use or disclosure of protected information by Registrar

(1)

The Registrar may use—

(a)

a protected address for communicating with the director in question; or

(b)

a protected identification number for communicating with the person in question.

(2)

The Registrar may use protected information for the purpose of or in connection with the performance of the Registrar's functions.

(3)

The Registrar may, on application made for the purposes of this subsection, disclose protected information to a person specified by regulations made under subsection (5)(e). A disclosure may only be made in accordance with regulations made under subsection (5).

(4)

An application for the purposes of subsection (3) must—

(a)

contain the information required by regulations made under subsection (5)(a);

(b)

be accompanied by the documents required by regulations made under subsection (5)(b); and

(c)

be accompanied by a fee prescribed by regulations made under subsection (5)(c).

(5)

The Financial Secretary may make regulations—

(a)

providing for the information to be contained in an application made for the purposes of subsection (3), including any information specified by the Registrar for such an application;

(b)

providing for the documents to accompany such an application, including any document specified by the Registrar for such an application;

(c)

prescribing the fees payable for the purposes of subsection (3) to accompany such an application;

(d)

providing for the powers of the Registrar to require additional documents and information to be provided to the Registrar for the purposes of determining such an application;

(e)

specifying the persons to whom protected information may be disclosed; and

(f)

providing for the conditions in accordance with which protected information may be disclosed to such persons, including the extent to which such information may be disclosed to them.

59.

Disclosure under order of Court

(1)

The Court may make an order for the disclosure by the Registrar of a protected address—

(a)

if—

(i)

there is evidence that the service of documents at the relevant correspondence address of the director is not effective to bring them to the notice of the director; or

(ii)

it is necessary or expedient for the protected address to be disclosed in connection with the enforcement of an order or decree of a court; and

(b)

if the Court is satisfied that it is appropriate to make the order.

(2)

The Court may make an order for the disclosure by the Registrar of a protected identification number—

(a)

if it is necessary or expedient for the number to be disclosed in connection with the enforcement of an order or decree of a court; and

(b)

if the Court is satisfied that it is appropriate to make the order.

(3)

An order under subsection (1) or (2) may be made on the application of—

(a)

a creditor of the company in respect of which the document containing the protected information is delivered to the Registrar for registration under this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); or

(b)

any other person appearing to the Court to have a sufficient interest.

(4)

An order under subsection (1) or (2) must specify the persons to whom, and purposes for which, the disclosure is authorized.

Subdivision 3

Supplementary

60.

Extent of prohibition

If a prohibition under this Division 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.

Division 8

Miscellaneous

61.

Registrar may issue certificates in any manner

(1)

The Registrar may issue a certificate under this Ordinance in any manner the Registrar thinks fit.

(2)

Without limiting the powers of the Registrar under subsection (1), the Registrar may issue a certificate in the form of an electronic record.

62.

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; or

(b)

the authority under which a document is delivered to the Registrar.

63.

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 functions under this Ordinance; or

(b)

in the exercise, or purported exercise, of powers under this Ordinance.

(2)

Where, for the purposes of this Ordinance, a protected person provides a service by means of which information in electronic form is supplied to the public, or supplies information by means of magnetic tapes or any electronic mode, 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—

(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 any equipment used for the service or for supplying the information.

(3)

Where, for the purposes of this Ordinance, a protected person provides a service or facility by means 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 means 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.

64.

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 31(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.

65.

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 on conviction on indictment to imprisonment for 7 years.

(3)

A person commits an offence if the person wilfully 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 3

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

(Format changes—E.R. 1 of 2013)

Division 1

Company Formation

Subdivision 1

General Requirements for Formation

66.

Types of companies

Only the following companies may be formed under this Ordinance—

(a)

a public company limited by shares;

(b)

a private company limited by shares;

(c)

a public unlimited company with a share capital;

(d)

a private unlimited company with a share capital;

(e)

a company limited by guarantee without a share capital.

67.

Formation of company

(1)

Any one or more persons may form a company by—

(a)

signing the articles of the company intended to be formed; and

(b)

delivering to the Registrar for registration—

(i)

an incorporation form in the specified form; and

(ii)

a copy of the articles.

(2)

A company may only be formed for a lawful purpose.

68.

Content of incorporation form

(1)

An incorporation form must—

(a)

in relation to the company intended to be formed, contain the particulars and statements specified in section 1 of Schedule 2;

(b)

in relation to each founder member of the company, contain the particulars specified in section 2 of Schedule 2;

(c)

in relation to each person who is to be a director of the company on the company's formation, contain—

(i)

the particulars specified in section 3 of Schedule 2; and

(ii)

the statement specified in section 4 of Schedule 2;

(d)

in relation to each person who is to be the company secretary, or one of the joint company secretaries, of the company on that formation, contain the particulars specified in section 5 of Schedule 2;

(e)

contain the statements specified in section 7 of Schedule 2; and

(f)

contain the statement of compliance specified in section 70(1).

(2)

If the company intended to be formed is a company limited by shares or an unlimited company, the incorporation form must also contain the statement specified in section 8 of Schedule 2.

69.

Signing of incorporation form

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

70.

Statement of compliance to be contained in incorporation form

(1)

The statement specified for the purposes of section 68(1)(f) is a statement certifying that—

(a)

all the requirements of this Ordinance in respect of the registration of the company intended to be formed have been complied with; and

(b)

the information, statements and particulars contained in the incorporation form are accurate and consistent with those in the company's articles.

(2)

The Registrar may accept the statement of compliance as sufficient evidence that all the requirements of this Ordinance in respect of the registration of the company have been complied with.

Subdivision 2

Incorporation of Company

71.

Issue of certificate of incorporation on registration

(1)

On registering an incorporation form and a copy of the articles delivered under section 67(1)(b), the Registrar must issue a certificate of incorporation certifying that the company—

(a)

is incorporated under this Ordinance; and

(b)

is a limited company or an unlimited company.

(2)

A certificate of incorporation must be signed by the Registrar.

72.

Conclusiveness of certificate of incorporation

A certificate of incorporation is conclusive evidence that—

(a)

all the requirements of this Ordinance in respect of the registration of the company have been complied with; and

(b)

the company is registered under this Ordinance.

73.

Effect of incorporation

(1)

On and after the date of incorporation stated in the certificate of incorporation, the founder members, and any other persons who may from time to time become the company's members, are a body corporate with the name stated in the certificate or, if a change of name has effect under section 107, 110, 770 or 772, with the new name.

(2)

On and after the date of incorporation, the body corporate is capable of exercising all the functions of an incorporated company, and has perpetual succession.

(3)

On and after the date of incorporation, the founder members, and any other persons who may from time to time become the company's members, are liable to contribute to the assets of the company in the event of the company being wound up as is mentioned in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

74.

Delivery of director's written consent

(1)

Each consent given for the purposes of section 4(b)(ii) of Schedule 2 in relation to a company intended to be formed must be delivered in the specified form to the Registrar for registration not later than 15 days after the date of incorporation of the company.

(2)

If subsection (1) is contravened, the company, every responsible person of the company, and the founder member who signs the incorporation form for the purposes of section 69, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of $700 for each day during which the offence continues.

(3)

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

Division 2

Company Articles

Subdivision 1

General

75.

Articles prescribing regulations for company

A company must have articles prescribing regulations for the company.

76.

Language of articles

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

(Amended 35 of 2018 s. 7)

77.

Form of articles

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

Subdivision 2

Model Articles

78.

Financial Secretary may prescribe model articles

(1)

The Financial Secretary may, by notice published in the Gazette, prescribe model articles for companies.

(2)

Any amendment of model articles under this section does not affect—

(Amended 14 of 2025 s. 6)

(a)

a company incorporated before the amendment takes effect; or

(b)

a body corporate registered under section 820C(1) before the amendment takes effect.

(Amended 14 of 2025 s. 6)

79.

Adoption of model articles

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

80.

Application of model articles to limited company

(1)

On the incorporation of a limited company or the registration of a limited company under section 820C(1)(a) or (b), the model articles that are prescribed for the type of company to which the company belongs and that are for the time being in force, so far as applicable, form part of the company's articles in the same manner, and to the same extent, as if those model articles had been registered as the company's articles.

(Amended 14 of 2025 s. 7)

(2)

Subsection (1) applies if the company's registered articles do not prescribe any regulations for the company.

(3)

If the company's registered articles prescribe any regulations for the company, subsection (1) applies in so far as the articles do not exclude or modify the model articles.

Subdivision 3

Content and Effect of Articles

81.

Company name

(1)

If a company has both an English name and a Chinese name, its articles must state both the English name and the Chinese name.

(2)

If a company has only an English name or a Chinese name, its articles must state the English name or the Chinese name.

(Replaced 35 of 2018 s. 8)

82.

Company's objects

(1)

If a licence is granted under section 103(2) to an association intended to be formed as a limited company or under section 103(4) to a limited company, then during the period when the licence is in force, the articles of the company must state the company's objects.

(2)

The articles of any other company may state the company's objects.

(3)

Subsections (1) and (2) do not affect any requirement relating to the articles of a company specified in any other Ordinance.

83.

Members' liabilities

(1)

The articles of a limited company must state that the liability of its members is limited.

(2)

For an unlimited company that is formed and registered under this Ordinance or a re-domiciled company that is registered under section 820C(1)(c) or (d) as an unlimited company, the articles of the company must state that the liability of its members is unlimited.

(Amended 14 of 2025 s. 8)

84.

Liabilities or contributions of members of limited company

(1)

The articles of a company limited by shares must state that the liability of its members is limited to any amount unpaid on the shares held by the members.

(2)

The articles of a company limited by guarantee must state that each person who is a member of the company undertakes that if the company is wound up while the person is a member of the company, or within one year after the person ceases to be such

a member, the person will contribute an amount required of the person, not exceeding a specified amount, to the company's assets—

(a)

for the payment of the company's debts and liabilities contracted before the person ceases to be such a member;

(b)

for the payment of the costs, charges and expenses of winding up the company; and

(c)

for the adjustment, among the contributories, of their rights.

(3)

Subsection (1) does not apply to the articles of an existing company that is deemed to be a company limited by shares under section 4(3) of the predecessor Ordinance.

85.

Capital and initial shareholdings

(1)

The articles of a company with a share capital must state the information required under section 8 (except subsection (1)(d)(iv), (v), (vi) and (vii)) of Schedule 2 to be contained in the company's incorporation form.

(2)

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

(Amended 14 of 2025 s. 9)

86.

Effect of articles

(1)

Subject to this Ordinance, a company's articles, once registered under this Ordinance or a former Companies Ordinance—

(a)

have effect as a contract under seal—

(i)

between the company and each member; and

(ii)

between a member and each other member; and

(b)

are to be regarded as containing covenants on the part of the company and of each member to observe all the provisions of the articles.

(2)

Without limiting subsection (1), the articles are enforceable—

(a)

by the company against each member;

(b)

by a member against the company; and

(c)

by a member against each other member.

(3)

Money payable by a member to the company under the articles—

(a)

is a debt due from the member to the company; and

(b)

is of the nature of a specialty debt.

Subdivision 4

Alteration of Articles

87.

Company may alter articles

(1)

Subject to this Ordinance, a company may alter its articles.

(2)

Except as provided in Division 8, a company must not alter in its articles any statement mentioned in section 83 or 84(1).

(3)

Subject to section 180, a company with a share capital must not make any alteration to its articles that is inconsistent with any rights attached to shares in a class of shares in the company.

(4)

Subject to section 188, a company without a share capital must not make any alteration to its articles that is inconsistent with any rights of a class of members of the company.

(5)

A company limited by guarantee must not alter in its articles the information required under section 84(2) other than to increase the specified amount.

88.

Alteration by special resolution or ordinary resolution

(1)

Subject to this Ordinance, this section applies to the alteration of a company's articles.

(2)

Subject to subsection (3) and any other provisions of this Ordinance, a company may only alter its articles by special resolution.

(3)

An alteration in articles to the maximum number of shares that the company may issue may be made by ordinary resolution.

(4)

Subject to this Ordinance, an alteration made in accordance with this section is as valid as if the alteration were originally contained in the articles.

(5)

Within 15 days after the date on which an alteration takes effect, the company must deliver to the Registrar for registration—

(a)

a notice of the alteration in the specified form; and

(b)

a copy, certified by an officer of the company as correct, of the articles as altered.

(5A)

Subsection (5) does not apply to an alteration by a special resolution to change the name of a company passed under section 107 or 770.

(Added 35 of 2018 s. 9)

(6)

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

89.

Alteration of company's objects

(1)

This section applies to an alteration of the objects of a company as stated in the company's articles.

(2)

The company may, by special resolution of which notice has been given to all the members of the company (including members who are not entitled to such notice under the company's articles), alter the objects by—

(a)

abandoning or restricting any of the objects; or

(b)

adopting any new object that could lawfully have been contained—

(i)

in the case of a company that is formed and registered under this Ordinance or that is a re-domiciled company, in the company's articles when the articles were registered; or

(Amended 14 of 2025 s. 11)

(ii)

in the case of an existing company, in the company's memorandum of association when the memorandum was registered.

(3)

If a relevant company passes such a resolution, a notice of the resolution must also be given to all holders of the relevant debentures of the company, and the notice must be the same as the notice mentioned in subsection (2).

(4)

For the purposes of subsection (3), if there is no provision regulating the giving of notice to the holders of the relevant debentures, the provisions of the company's articles regulating the giving of notice to members are to apply.

(5)

If a relevant company passes a special resolution altering its objects, an application to cancel the alteration may be made to the Court in accordance with section 91, and if an application is made, the alteration does not have effect except in so far as it is confirmed by the Court.

(6)

After passing a special resolution altering its objects—

(a)

in the case of a relevant company, if no application is made under subsection (5), the company must, within 15 days after the end of the application period, deliver to the Registrar for registration the documents specified in subsection (7);

(b)

in the case of a relevant company, if an application is made under subsection (5), the company—

(i)

must immediately give notice of that fact to the Registrar; and

(ii)

within 15 days after the date of any Court order cancelling or confirming the alteration or, if an extension of time is granted under subsection (8), within the extended period, must deliver to the Registrar for registration an office copy of the order and, in the case of an order confirming the alteration, the documents specified in subsection (7); or

(c)

in the case of a company other than a relevant company, the company must, within 15 days after the date of passing the resolution, deliver to the Registrar for registration the documents specified in subsection (7).

(7)

The documents are—

(a)

a notice of the alteration in the specified form; and

(b)

a copy, certified by an officer of the company as correct, of the company's articles as altered.

(8)

The Court may at any time by order extend the period for delivery of any documents under subsection (6)(b).

(9)

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

(10)

In this section—

relevant company

(

有關公司

) means—

(a)

a private company; or

(b)

a company limited by guarantee that, immediately before the commencement date[e] of this Division, was a private company as defined by section 2(1) of the predecessor Ordinance in force at that time;

relevant debentures

(

有關債權證

) means any debentures, secured by a floating charge, that were issued or first issued before 15 February 1963 or that form part of the same series as any debentures so issued.

Editorial Note:

Commencement date: 3 March 2014.

90.

Alteration of certain articles by existing company

(1)

Subject to subsection (2), this section applies to an alteration of any provision of the articles of an existing company if the provision—

(a)

was, immediately before the commencement date of this Division, contained in the company's memorandum of association (whether registered before, on or after 31 August 1984); and

(b)

could lawfully have been contained in the company's articles instead of in the memorandum of association when the memorandum was registered.

(2)

This section does not apply if any provision of the articles of an existing company—

(a)

was, immediately before the commencement date of this Part, contained in the company's memorandum of association (whether registered before, on or after 31 August 1984); and

(b)

provides for or prohibits the alteration of any provision mentioned in subsection (1).

(3)

An existing company may by special resolution alter any provision mentioned in subsection (1).

(4)

If a relevant company passes such a resolution, an application to cancel the alteration may be made to the Court in accordance with section 91, and if an application is made, the alteration does not have effect except in so far as it is confirmed by the Court.

(5)

After passing a resolution under subsection (3)—

(a)

in the case of a relevant company, if no application is made under subsection (4), the company must, within 15 days after the end of the application period, deliver to the Registrar for registration the documents specified in subsection (6);

(b)

in the case of a relevant company, if an application is made under subsection (4), the company—

(i)

must immediately give notice of that fact to the Registrar; and

(ii)

within 15 days after the date of any Court order cancelling or confirming the alteration or, if an extension of time is granted under subsection (7), within the extended period, must deliver to the Registrar for registration

an office copy of the order and, in the case of an order confirming the alteration, the documents specified in subsection (6); or

(c)

in the case of a company other than a relevant company, the company must, within 15 days after the date of passing the resolution, deliver to the Registrar for registration the documents specified in subsection (6).

(6)

The documents are—

(a)

a notice of the alteration in the specified form; and

(b)

a copy, certified by an officer of the company as correct, of the company's articles as altered.

(7)

The Court may at any time by order extend the period for delivery of any documents under subsection (5)(b).

(8)

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

(9)

This section does not authorize any variation or abrogation of the special rights of any class of members.

(10)

In this section—

relevant company

(

有關公司

) means—

(a)

a private company; or

(b)

a company limited by guarantee that, immediately before the commencement date[e] of this Division, was a private company as defined by section 2(1) of the predecessor Ordinance in force at that time.

Editorial Note:

[e] Commencement date: 3 March 2014.

91.

Application to Court to cancel alteration

(1)

An application under section 89(5) to cancel an alteration of the objects of a company may be made—

(a)

by the holders of at least 5% in aggregate of the number of the issued shares in the company or any class of the company's issued share capital or, if the company is not limited by shares, by at least 5% of the company's members; or

(b)

by the holders of at least 5% in value of the company's debentures that are mentioned in the definition of ***relevant debentures***

in section 89(10).

(2)

An application under section 89(5) may be made on behalf of the persons mentioned in subsection (1)(a) or (b) by any one or more of them appointed in writing by all of them for the purpose.

(3)

An application under section 90(4) to cancel an alteration of a provision of the articles of an existing company may be made by the holders of at least 5% in aggregate of the number of the issued shares in the company or any class of the company's issued share capital or, if the company is not limited by shares, by at least 5% of the company's members.

(3A)

For the purposes of subsections (1)(a) and (3), any of the company's issued shares held as treasury shares are to be disregarded.

(Added 1 of 2025 s. 4)

(4)

An application under section 90(4) may be made on behalf of the persons mentioned in subsection (3) by any one or more of them appointed in writing by all of them for the purpose.

(5)

An application under section 89(5) or 90(4) may only be made within 28 days after the date of passing the relevant special resolution.

(6)

On an application under section 89(5) or 90(4), the Court—

(a)

may cancel or confirm the alteration (either wholly or in part), on any terms and conditions it thinks fit;

(b)

may adjourn the proceedings so that an arrangement may be made to its satisfaction for the purchase of the interests of dissentient members; and

(c)

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

92.

Certain alterations not binding on members

(1)

Despite any provision in a company's articles, a person who is a member of the company is not bound by any alteration of the articles that takes effect after the date on which the person became a member, if and so far as the alteration—

(a)

requires the person to take or subscribe for more shares than the number of shares held by the person on the date on which the alteration takes effect;

(b)

in any way increases the person's liability as at that date to contribute to the company's share capital; or

(c)

in any way increases the person's liability as at that date to pay money to the company.

(2)

Subsection (1) does not apply if the person agrees in writing before, on or after the alteration taking effect to be bound by the alteration.

93.

Company must incorporate alteration into articles

(1)

If an alteration is made to a company's articles, the company must incorporate the alteration in every copy of the articles issued on or after the date on which the alteration takes effect.

(2)

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

94.

Alteration affecting status of private company

(1)

If a private company alters its articles so that the articles no longer comply with section 11(1)(a), the company ceases to be a private company on the date on which the alteration takes effect.

(2)

In addition to the documents required under section 88(5), the company must, within 15 days after the date on which the alteration takes effect, deliver to the Registrar for registration—

(a)

a notice of the change of the company's status in the specified form; and

(b)

a copy (certified by an officer of the company to be true) of the company's annual financial statements that are—

(i)

prepared in accordance with section 379; and

(ii)

prepared for the financial year immediately before the financial year in which the alteration takes effect.

(3)

If a company contravenes subsection (2)(a), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of $300 for each day during which the offence continues.

(4)

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

95.

Alteration affecting status of public company

(1)

If a public company alters its articles so that the articles comply with section 11(1)(a), the company ceases to be a public company on the date on which the alteration takes effect.

(2)

In addition to the documents required under section 88(5), the company must, within 15 days after the date on which the alteration takes effect, deliver to the Registrar for registration a notice of the change of the company's status in the specified form.

(3)

If a company contravenes subsection (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of $300 for each day during which the offence continues.

96.

Notifying Registrar of alteration by order of Court

(1)

If any provision of a company's articles, or the effect of any provision of a company's articles, is altered by an order of the Court, the company must, within 15 days after the date on which the alteration takes effect, deliver to the Registrar for registration a notice of the alteration in the specified form.

(2)

A notice of alteration must be accompanied by—

(a)

an office copy of the order; and

(b)

a copy of the articles as altered by the order.

(3)

Subsection (2)(a) does not apply if the company is required to deliver an office copy of the order to the Registrar under another provision of this Ordinance.

(4)

If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of $300 for each day during which the offence continues.

97.

Copies of articles to be provided to members

(1)

A company must, on request of a member of the company, provide, without charge, the member with an up-to-date copy of the company articles within 7 days after it receives the request.

(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.

Subdivision 5

Miscellaneous

98.

Conditions of memorandum of association of existing company to be regarded as provisions of articles

(1)

A condition that immediately before the commencement date[e] of this Division was contained in the memorandum of association of an existing company and was in force is, for all purposes, to be regarded as a provision of the company's articles.

(2)

If a memorandum of association is registered on or after the commencement date[e] of this Division under the provisions having a continuing effect under Schedule 11, a condition contained in that memorandum is, for all purposes, to be regarded as a provision of the company's articles registered under the predecessor Ordinance.

(3)

If, before the commencement date[e] of this Division, a special resolution altering a condition of the memorandum of association of an existing company was passed under section 8(1) or 25A(1) of the predecessor Ordinance and the alteration takes effect on or after that date, then the altered condition is, for all purposes, to be regarded as a provision of the company's articles registered under the predecessor Ordinance.

(4)

Despite subsections (1), (2) and (3), if a condition mentioned in subsection (1) or (2), or an altered condition mentioned in subsection (3), states—

(a)

the amount of share capital with which the existing company proposes to be registered or is registered; or

(b)

the division of the share capital of the company into shares of a fixed amount,

the condition is, to the extent that it relates to the matter mentioned in paragraph (a) or (b), for all purposes, to be regarded as deleted and not to be regarded as a provision of the company's articles.

(5)

In any Ordinance in force immediately before the commencement date[e] of this Division, or in any other document made before that date—

(a)

a reference to the memorandum of association of an existing company is a reference to the company's articles; and

(b)

a reference to a condition of the memorandum of association of an existing company is a reference to a provision of the company's articles.

Editorial Note:

[e] Commencement date: 3 March 2014.

99.

Articles of company limited by guarantee

(1)

This section applies to—

(a)

a company limited by guarantee registered under a former Companies Ordinance on or after 1 January 1912 that does not have a share capital; and

(b)

a company registered as a company limited by guarantee under this Ordinance.

(2)

A provision in the company's articles, or in any resolution of the company, purporting to give a person a right to participate in the company's divisible profits otherwise than as a member is void.

(3)

For the purposes of a provision of this Ordinance relating to the articles of a company limited by guarantee, a provision in the company's articles, or in any resolution of the company, purporting to divide the company's undertaking into shares or interests, is to be regarded as a provision for a share capital.

Division 3

Company Name

Subdivision 1

Restriction on Company Name

100.

Company must not be registered by certain names

(1)

A company must not be registered by—

(a)

subject to subsection (1A), a name that is the same as a name appearing in the Index of Company Names;

(Amended 14 of 2025 s. 12)

(b)

a name that is the same as a name of a body corporate incorporated or established under an Ordinance;

(c)

a name the use of which by the company would, in the Registrar's opinion, constitute a criminal offence; or

(d)

a name that, in the Registrar's opinion, is offensive or otherwise contrary to the public interest.

(1A)

Subsection (1)(a) does not apply to a company if—

(a)

the registration by the name is for the purposes of Part 17A (***registration***);

(b)

the company was a registered non-Hong Kong company immediately before the registration; and

(c)

the name concerned was the corporate name or approved name of the company immediately before the registration.

(Added 14 of 2025 s. 12)

(2)

Except with the Registrar's prior approval, a company must not be registered by—

(a)

a name that, in the Registrar's opinion, would be likely to give the impression that the company is connected in any way with—

(i)

the Central People's Government;

(ii)

the Government; or

(iii)

any department or agency of the Central People's Government or the Government;

(b)

a name that contains any word or expression for the time being specified in an order under section 101; or

(c)

a name that is the same as a name for which a direction has been given under—

(i)

section 108, 109 or 771; or

(ii)

section 22 or 22A of the predecessor Ordinance on or after 10 December 2010.

(3)

In this section—

approved name

(

經批准名稱

) has the meaning given by section 774(1);

corporate name

(

法團名稱

) has the meaning given by section 774(1).

(Added 14 of 2025 s. 12)

101.

Financial Secretary may specify word or expression for section 100(2)(b)

The Financial Secretary may, by order published in the Gazette, specify any word or expression for the purposes of section 100(2)(b).

Subdivision 2

Limited Company Name with "Limited" as Last Word etc.

102.

Limited company must not be registered without "Limited" as last word of name etc.

A limited company must not be registered by—

(a)

if the company has an English name only, a name without "Limited" as the last word of the name;

(b)

if the company has a Chinese name only, a name without "有限公司" as the last 4 characters of the name; or

(c)

if the company has both an English name and a Chinese name—

(i)

an English name without "Limited" as the last word of the name; and

(ii)

a Chinese name without "有限公司" as the last 4 characters of the name.

103.

Registrar's licence to dispense with "Limited" etc.

(1)

The Registrar may exercise the power under subsection (2) in respect of an association intended to be formed as a limited company, if it is proved to the Registrar's satisfaction that—

(a)

the company is to be formed for promoting commerce, art, science, religion or charity or any other useful objects;

(b)

the association intends to apply the company's profits or other income in promoting its objects; and

(c)

the association intends to prohibit the payment of dividends to the company's members.

(2)

The Registrar may, by licence, permit the association to be registered as a limited company by—

(a)

if the company has an English name only, a name without "Limited" as the last word of the name;

(b)

if the company has a Chinese name only, a name without "有限公司" as the last 4 characters of the name; or

(c)

if the company has both an English name and a Chinese name—

(i)

an English name without "Limited" as the last word of the name; and

(ii)

a Chinese name without "有限公司" as the last 4 characters of the name.

(3)

The Registrar may exercise the power under subsection (4) in respect of a limited company, if it is proved to the Registrar's satisfaction that—

(a)

the objects of the company are restricted to—

(i)

promoting commerce, art, science, religion or charity or any other useful objects; and

(ii)

objects incidental or conducive to the objects mentioned in subparagraph (i);

(b)

the company is required by its articles to apply its profits or other income in promoting its objects; and

(c)

the company is prohibited by its articles from paying dividends to its members.

(4)

The Registrar may, by licence, permit the limited company to—

(a)

if the company has an English name only, change the name to delete from it the word "Limited";

(b)

if the company has a Chinese name only, change the name to delete from it the characters "有限公司"; or

(c)

if the company has both an English name and a Chinese name—

(i)

change the English name to delete from it the word "Limited"; and

(ii)

change the Chinese name to delete from it the characters "有限公司".

(5)

A change of company name under a licence mentioned in subsection (4) may only be made by special resolution, and section 107(2), (3), (4), (5) and (6) applies to such a change as it applies to a change of company name under section 107.

(6)

To avoid doubt, a company registered by a name under a licence granted under this section—

(a)

has the privileges of a limited company; and

(b)

subject to section 105(1), has the obligations of a limited company.

104.

Terms and conditions of licence

(1)

A licence under section 103 may be granted on any terms and conditions the Registrar thinks fit.

(2)

The terms and conditions—

(a)

are binding on the company; and

(b)

are to be incorporated in the articles of the company if the Registrar so directs.

105.

Effect of licence

(1)

The company to which a licence under section 103 relates is exempt from—

(a)

section 102;

(b)

regulations made under section 659 in relation to the use of the word “Limited” as part of its English name or use of the characters “有限公司” as part of its Chinese name; and

(c)

section 662 in relation to the delivery of particulars relating to members to the Registrar.

(2)

While a licence under section 103 remains in force, the company must not alter its articles except under a direction given under this section or section 104(2)(b) or with the Registrar’s prior written approval.

(3)

On granting an approval under subsection (2), the Registrar may vary the licence by making it subject to any terms and conditions he or she thinks fit, in addition to or in place of the terms or conditions to which the licence was subject immediately before the variation.

(4)

The terms and conditions imposed under subsection (3)—

(a)

are binding on the company; and

(b)

are to be incorporated in the articles of the company if the Registrar so directs.

106.

Revocation of licence

(1)

The Registrar may at any time revoke a licence granted under section 103 on being satisfied that—

(a)

the company has failed to comply with any of the terms or conditions to which the licence is subject; or

(b)

any one or more of the requirements specified in section 103(1) or (3) (as the case may be) are no longer met.

(2)

Before revoking a licence, the Registrar—

(a)

must notify the company in writing of the Registrar’s intention to do so; and

(b)

must give the company an opportunity to be heard.

(3)

If a licence is revoked, the Registrar must give the company a notice in writing of the revocation.

(4)

On the revocation of a licence, the company ceases to be entitled to the exemptions mentioned in section 105(1).

(5)

Within the period specified in the notice of revocation, the company must change its name by special resolution to—

(a)

if the company has an English name only, add “Limited” as the last word of the name;

(b)

if the company has a Chinese name only, add “有限公司” as the last 4 characters of the name; and

(c)

if the company has both an English name and a Chinese name—

(i)

add “Limited” as the last word of the English name; and

(ii)

add “有限公司” as the last 4 characters of the Chinese name.

(6)

Section 107(2), (3), (4), (5) and (6) applies to a change of company name under subsection (5) as it applies to a change of company name under section 107.

(7)

If the company fails to comply with subsection (5), the Registrar must in the Companies Register—

(a)

if the company has an English name only, add “Limited” as the last word of the name;

(b)

if the company has a Chinese name only, add “有限公司” as the last 4 characters of the name; and

(c)

if the company has both an English name and a Chinese name—

(i)

add “Limited” as the last word of the English name; and

(ii)

add “有限公司” as the last 4 characters of the Chinese name.

Subdivision 3

Change of Company Name

107.

Company may change name by special resolution

(1)

A company may change a company name by special resolution.

(2)

Within 15 days after the date of passing the special resolution, the company must deliver to the Registrar for registration a notice in the specified form of the change of company name.

(3)

After receipt of a notice under subsection (2), the Registrar must, unless the new name is a name by which the company must not be registered under section 100—

(a)

enter the new name in the Companies Register in place of the former name; and

(b)

issue to the company a certificate of change of name.

(4)

The change of the name has effect from the date on which the certificate of change of name is issued.

(5)

A change of name under this section does not affect any rights or obligations of the company or render defective any legal proceedings by or against it. Any legal proceedings that could have been commenced or continued by or against it by its former name may be commenced or continued by or against it by its new name.

(6)

If a company contravenes subsection (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of $300 for each day during which the offence continues.

108.

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

(1)

The Registrar may by notice in writing direct a company to change, within the period specified in the notice, a name by which the company is registered under this Ordinance or the predecessor Ordinance if—

(a)

the name is, as at the time of the registration, the same as or in the Registrar's opinion too like a name that appeared or should have appeared in the index of names kept under section 22C of the predecessor Ordinance or in the Index of Company Names;

(b)

the name is, as at the time of the registration, the same as or in the Registrar's opinion too like a name of a body corporate incorporated or established under an Ordinance;

(c)

it appears to the Registrar that misleading information has been given for the company's registration by the name;

(d)

it appears to the Registrar that any undertaking or assurance given for the registration by the name has not been fulfilled; or

(e)

the name is a name by which, as at the time of the registration, the company must not be registered because of section 100(2)(a) or (b).

(2)

The Registrar may by notice in writing direct a company to change, within the period specified in the notice, a name by which the company is registered under this Ordinance or any former Companies Ordinance if, after the company is registered by the name—

(a)

a court makes an order restraining the company from using the name or any part of the name; and

(b)

an office copy of the order, and a notice in the specified form, are delivered to the Registrar for registration by a person in whose favour the order is made.

(3)

A direction may only be given—

(a)

in the case of subsection (1)(a) or (b), within 12 months after the date of registration by the name;

(b)

in the case of subsection (1)(c) or (d), within 5 years after the date of registration by the name; and

(c)

in the case of subsection (1)(e), within 3 months after the date of registration by the name.

(4)

The Registrar may, before the end of the period specified in a notice given under subsection (1) or (2), by notice in writing extend the period.

(5)

If a company fails to comply with a direction within the period specified in the notice or, if the period is extended under subsection (4), within the extended period, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 6 and, in the case of a continuing offence, to a further fine of $2,000 for each day during which the offence continues.

109.

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

(1)

The Registrar may by notice in writing direct a company to change a name by which the company is registered under this Ordinance or any former Companies Ordinance if—

(a)

the Registrar is of the opinion that the name gives so misleading an indication of the nature of the company's activities as to be likely to cause harm to the public; or

(b)

the name is a name by which, as at the time of the registration, the company must not be registered because of section 100(1)(c) or (d).

(2)

The company must comply with a direction within the period of 6 weeks after the date of the direction or, if the period is extended under subsection (4), within the extended period.

(3)

A company may, within 3 weeks after the date of a direction, appeal to the Administrative Appeals Board against the direction.

(4)

The Registrar may, before the end of the period of 6 weeks after the date of the direction, by notice in writing extend the period.

(5)

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

110.

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

(1)

This section applies if—

(a)

the Registrar directs a company to change a name under section 108(1) or (2) or 109(1) or, on or after 10 December 2010 under section 22 or 22A of the predecessor Ordinance; and

(b)

the company fails to comply with the direction—

(i)

in the case of a direction under section 108(1) or (2), within the period specified in the notice or, if the period is extended under section 108(4), within the extended period;

(ii)

in the case of a direction under section 109(1), within the relevant period specified in section 109(2);

(iii)

in the case of a direction under section 22(2), (3A), (3B) or (4) of the predecessor Ordinance, within the period specified by the Registrar or, if the period is extended under section 22(5) of that Ordinance, within the extended period; or

(iv)

in the case of a direction under section 22A(1) or (1A) of the predecessor Ordinance, within the period specified in section 22A(2) of that Ordinance or, if a period is specified by the court under section 22A(3) of that Ordinance for the direction, within the period specified by the court.

(2)

Without limiting section 108(5) or 109(5), or section 22(6) or 22A(4) of the predecessor Ordinance (as the case may be), the Registrar may change the name to—

(a)

in the case of an English name, a name that consists of the words "Company Registration Number" as its prefix, followed by the registration number of the company as stated in the certificate of incorporation or the certificate of re-domiciliation;

(b)

in the case of a Chinese name, a name that consists of the characters "公司註冊編號" as its prefix, followed by the registration number of the company as stated in the certificate of incorporation or the certificate of re-domiciliation; or

(c)

in the case of a name consisting of both an English name and a Chinese name—

(i)

an English name that consists of the words "Company Registration Number" as its prefix, followed by the registration number of the company as stated in the certificate of incorporation or the certificate of re-domiciliation; and

(ii)

a Chinese name that consists of the characters "公司註冊編號" as its prefix, followed by the registration number of the company as stated in the certificate of incorporation or the certificate of re-domiciliation.

(Amended 14 of 2025 s. 13)

(3)

The Registrar must enter the new name in the Companies Register in place of the former name.

(4)

The change of name has effect from the date on which the new name is entered in the Companies Register.

(5)

Within 30 days after the date of entering the new name in the Companies Register, the Registrar—

(a)

must by notice in writing notify the company of—

(i)

the fact that a name of the company has been changed;

(ii)

the new name; and

(iii)

the date on which the change takes effect under subsection (4); and

(b)

must by notice in the Gazette notify that fact, the new name and that date.

(6)

A change of name under this section does not affect any rights or obligations of the company or render defective any legal proceedings by or against it. Any legal proceedings that could have been commenced or continued by or against it by its former name may be commenced or continued by or against it by its new name.

Subdivision 4

Supplementary Provision

111.

Determining whether name is same as or similar to another name

(1)

This section applies in determining—

(a)

whether a name is the same as another name for the purposes of section 100(1)(a) or (b) or (2)(c) or 108(1)(a) or (b); or

(b)

whether a name is too like another name for the purposes of section 108(1)(a) or (b).

(2)

If the definite article is the first word of the name, the definite article must be disregarded.

(3)

If any of the words, expressions or characters specified in subsection (4), or an abbreviation of any of them, appears at the end of the name, the word, expression, character or abbreviation must be disregarded.

(4)

The words, expressions or characters are—

(a)

“company”;

(b)

“and company”;

(c)

“company limited”;

(d)

“and company limited”;

(e)

“limited”;

(f)

“unlimited”;

(g)

“public limited company”;

(h)

“公司”;

(i)

“有限公司”;

(j)

“無限公司”;

(k)

“公眾有限公司”.

(5)

The following must be disregarded—

(a)

type or case of letters;

(b)

spaces between letters;

(c)

accent marks;

(d)

punctuation marks.

(6)

The following expressions are to be regarded as the same—

(a)

“and” and “&”;

(b)

“Hong Kong”, “Hongkong” and “HK”;

(c)

“Far East” and “FE”.

(7)

A Chinese character is to be regarded as the same as another Chinese character if the Registrar is satisfied, having regard to the usage of the 2 characters in Hong Kong, that the 2 characters can reasonably be used interchangeably.

Division 4

Membership

112.

Members of company

(1)

A founder member of a company is to be regarded as having agreed to become a member of the company.

(2)

On the registration of a company, a founder member of the company must be entered, as a member, in the company's register of members.

(3)

Any other person who agrees to become a member of a company and whose name is entered, as a member, in the company's register of members is a member of the company.

113.

Members of holding company

(1)

Subject to this section—

(a)

a body corporate cannot be a member of a company of which the body corporate is a subsidiary; and

(b)

any allotment or transfer of shares in a company to a body corporate that is a subsidiary of the company is void.

(2)

Subsection (1) does not apply if—

(a)

the body corporate is a member of the company as a personal representative; or

(b)

the body corporate is a member of the company as a trustee, and the holding company or any of its subsidiaries is not beneficially interested under the trust.

(3)

For the purposes of subsection (2)(b), a company or subsidiary is not beneficially interested under a trust if it is interested under the trust only by way of security for the purpose of a transaction entered into by it in the ordinary course of a business (including the lending of money).

(4)

Subsection (1) does not prevent a body corporate that was, on 31 August 1984, already a member of a holding company of the body corporate from continuing to be such a member.

(5)

Subsection (1) does not prevent a company that on the date it becomes a subsidiary of another company is a member of that other company from continuing to be such a member.

(6)

Subsection (1) does not prevent a body corporate from becoming a member of a holding company of the body corporate, or prevent an allotment to a body corporate of shares in a holding company of the body corporate, by virtue of the exercise by the body corporate of any rights of conversion—

(a)

attached to any shares in the holding company held by the body corporate on 31 August 1984; or

(b)

under any debentures of the holding company held by the body corporate on 31 August 1984.

(7)

If a body corporate is a member of a holding company of the body corporate, subsection (1) does not prevent the body corporate from accepting or holding further shares in the holding company if those shares are allotted to the body corporate as fully paid up as a consequence of a capitalization of reserves or profits by the holding company.

(8)

If a company makes an offer of shares to its members, the company—

(a)

may sell, on behalf of any of its subsidiaries, any such shares that the subsidiary could, but for this section, have taken by virtue of shares in the company that are already held by the subsidiary; and

(b)

may pay to the subsidiary the proceeds of the sale.

(9)

Even though a body corporate is a member of a holding company of the body corporate, it has no right to vote at—

(a)

meetings of the holding company; or

(b)

meetings of any class of members of the holding company.

(10)

Subsection (9) does not apply if the body corporate is such a member in the circumstances described in subsection (2).

(11)

In this section, a reference to a body corporate includes a nominee for the body corporate.

(12)

In this section, a reference to shares, in relation to a holding company that is a company limited by guarantee or an unlimited company, includes the interest of the company's members, whatever the form of the interest and whether or not the company has a share capital.

114.

Notifying Registrar of increase in number of members of company limited by guarantee

(1)

If a company limited by guarantee increases the number of its members beyond the registered number, the company must, within 15 days after the increase is resolved by the company or takes place (whichever is the earlier), deliver to the Registrar for registration a notice of the increase in the specified form.

(2)

If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of $300 for each day during which the offence continues.

(3)

In this section—

registered number

註冊人數

) means—

(a)

the number of members with which the company proposes to register, whether contained in the incorporation form for the purposes of section 1(e) of Schedule 2 or stated in the articles under section 10(2) of the predecessor Ordinance; or

(b)

the increased number of the company's members last notified to the Registrar under subsection (1).

Division 5

Capacity and Powers of Company

115.

Company's capacity etc.

(1)

A company has the capacity, rights, powers and privileges of a natural person of full age.

(2)

Without limiting subsection (1), a company—

(a)

may do any act that it is permitted or required to do by its articles or any Ordinance or rule of law; and

(b)

has power to acquire, hold and dispose of land.

(3)

In this section—

land

(

土地

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

116.

Company's exercise of powers limited by articles

(1)

If the objects of a company are stated in its articles, the company must not do any act that it is not authorized to do by its articles.

(2)

If any power of a company is expressly modified or excluded by its articles, the company must not exercise the power contrary to that modification or exclusion.

(3)

A member of a company may bring proceedings to restrain the company from doing any act in contravention of subsection (1) or (2).

(4)

Proceedings must not be brought under subsection (3) in respect of any act to be done in fulfilment of a legal obligation arising from a previous act of the company.

(5)

An act by a company (including a transfer of property to or by the company) is not invalid only because the company does the act in contravention of subsection (1) or (2).

117.

Transaction or act binds company despite limitation in articles etc.

(1)

Subject to section 119, in favour of a person dealing with a company in good faith, the power of the company's directors to bind the company, or authorize others to do so, is to be regarded as free of any limitation under any relevant document of the company.

(2)

For the purposes of subsection (1)—

(a)

a person deals with a company if the person is a party to any transaction or any other act to which the company is a party;

(b)

a person dealing with a company is presumed, unless the contrary is proved, to have acted in good faith;

(c)

a person dealing with a company is not to be regarded as acting in bad faith by reason only of the person's knowing that an act is beyond the directors' powers under any relevant document of the company; and

(d)

a person dealing with a company is not required to inquire as to the limitations on the power of the company's directors to bind the company or authorize others to do so.

(3)

This section does not affect any right of a member of the company to bring proceedings to restrain the doing of an act that is beyond the directors' powers.

(4)

Proceedings must not be brought under subsection (3) in respect of any act to be done in fulfilment of a legal obligation arising from a previous act of the company.

(5)

This section does not affect any liability incurred by the directors, or any other person, by reason of the directors' exceeding their powers.

(6)

In this section—

relevant document

(

有關文件

), in relation to a company, means—

(a)

the company's articles;

(b)

any resolutions of the company or of any class of members of the company; or

(c)

any agreements between the members, or members of any class of members, of the company.

118.

Transaction or act involving directors or their associates is voidable

(1)

This section applies if—

(a)

a company enters into a transaction; and

(b)

the transaction binds the company because the power of the directors to bind the company, or authorize others to do so, is to be regarded under section 117 as free of any limitation under any relevant document of the company.

(2)

The transaction is voidable at the instance of the company if the parties to the transaction include—

(a)

a director of the company or of a holding company of the company; or

(b)

an entity connected with such a director.

(3)

The transaction ceases to be voidable if—

(a)

restitution of any money or other asset that was the subject matter of the transaction is no longer possible;

(b)

the company is indemnified for any loss or damage resulting from the transaction;

(c)

a person who is not a party to the transaction has acquired rights in good faith and for value, and without actual notice of the directors' exceeding their powers, and those rights would be affected by the avoidance of the transaction; or

(d)

the transaction is affirmed by the company.

(4)

Whether or not the transaction is avoided under subsection (2), any party to the transaction falling within subsection (2)(a) or (b) is liable, and any director of the company who has authorized the transaction is liable, to—

(a)

account to the company for any gain that the party or director has directly or indirectly made from the transaction; and

(b)

indemnify the company against any loss or damage resulting from the transaction.

(5)

A person who is not a director of the company is not liable under subsection (4) if the person shows that, at the time of the transaction, the person did not know that the directors were exceeding their powers.

(6)

Subject to subsection (7), this section does not affect the rights of any party to the transaction not falling within subsection (2)(a) or (b).

(7)

The Court may, on application by the company or a party covered by subsection (6), affirm, sever or set aside the transaction on any terms it thinks just.

(8)

This section does not exclude the operation of any other Ordinance or rule of law by which the transaction may be called in question or any liability to the company may arise.

(9)

In subsection (2)(b), the reference to an entity connected with a director has the meaning given by section 486.

(10)

In this section—

transaction

(

交易

) includes any act.

119.

Section 117 not to apply to certain cases

(1)

Section 117 does not apply to any act of an exempted company except in favour of a person who—

(a)

does not know at the time of the act that the company is an exempted company; or

(b)

gives full consideration for the act and does not know—

(i)

that the act is not permitted by any relevant document of the company; or

(ii)

that the act is beyond the powers of the directors.

(2)

If an exempted company purports to transfer or grant an interest in property, the fact that—

(a)

the act was not permitted by any relevant document of the company; or

(b)

the directors exceeded any limitation on their powers under any relevant document of the company,

does not affect the title of a person who subsequently acquires the property or any interest in it for full consideration without actual notice of any of the circumstances set out in paragraph (a) or (b).

(3)

In any civil proceedings arising out of subsection (1) or (2), the burden of proving that—

(a)

a person knew that the company was an exempted company;

(b)

a person knew that the act was not permitted by any relevant document of the company; or

(c)

a person knew that the act was beyond the powers of the directors,

lies on the person who asserts that fact.

(4)

In this section—

exempted company

(

獲豁免公司

) means a company—

(a)

to which a licence under section 103 relates; and

(b)

that is exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112);

relevant document

(

有關文件

), in relation to a company, means—

(a)

the company's articles;

(b)

any resolutions of the company or of any class of members of the company; or

(c)

any agreements between the members, or members of any class of members, of the company.

120.

No constructive notice of matters disclosed in articles etc.

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

(a)

the articles of a company kept by the Registrar; or

(b)

a return or resolution kept by the Registrar.

Division 6

Contracts of Company

121.

Contracts made by or on behalf of company

(1)

This section applies to—

(a)

a contract that would be required by law to be in writing and under seal if made between natural persons;

(b)

a contract that would be required by law to be in writing, and to be signed by the parties to the contract, if made between natural persons; and

(c)

a contract that, though made orally and not in writing, would by law be valid if made between natural persons.

(2)

A contract specified in subsection (1)(a) may be made by a company—

(a)

in writing under the company's common seal (if any); or

(b)

in writing executed in accordance with section 127(3) and expressed (in whatever words) to be executed by the company.

(3)

A contract specified in subsection (1)(b) may be made on behalf of a company in writing signed by any person acting with the company's authority (whether express or implied).

(4)

A contract specified in subsection (1)(c) may be made on behalf of a company orally by any person acting with the company's authority (whether express or implied).

(5)

A contract made in accordance with this section—

(a)

is effective in law; and

(b)

binds the company and its successors and all other parties to the contract.

(6)

A contract made in accordance with this section may be varied or discharged in the same manner in which it is authorized by this section to be made.

122.

Contracts made before company's incorporation

(1)

This section applies if a contract purports to have been made in the name or on behalf of a company before the company was incorporated.

(2)

Subject to any express agreement to the contrary—

(a)

the contract has effect as a contract entered into by the person purporting to act for the company or as an agent for the company; and

(b)

the person is personally liable on the contract and is entitled to enforce the contract.

(3)

After incorporation, the company may ratify the contract to the same extent as if—

(a)

the company had already been incorporated when the contract was entered into; and

(b)

the contract had been entered into on the company's behalf by an agent acting without the company's authority.

(4)

Despite subsection (2)(b), if the contract is ratified by the company, then on and after the ratification, the liability of the person mentioned in that subsection is not greater than the liability that the person would have incurred if the person had entered into the contract after the company's incorporation as an agent acting without the company's authority.

123.

Bills of exchange and promissory notes

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

Division 7

Execution of Documents

Subdivision 1

Company Seal

124.

Company may have common seal etc.

(1)

A company may have a common seal.

(2)

A company's common seal must be a metallic seal having the company's name engraved on it in compliance with subsection (2A) in legible form.

(Amended 35 of 2018 s. 10)

(2A)

A company's common seal must be engraved with—

(a)

if the company has both an English name and a Chinese name—the English name or the Chinese name or both; or

(b)

if the company has only an English name or a Chinese name—the English name or the Chinese name.

(Added 35 of 2018 s. 10)

(3)

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

(4)

If an officer of a company or a person on behalf of a company uses, or authorizes the use of, a seal that purports to be the company's common seal and that contravenes subsection (2), the officer or person commits an offence and is liable to a fine at level 3.

125.

Official seal for use abroad

(1)

A company with a common seal may have an official seal for use outside Hong Kong.

(2)

Such an official seal must be a replica of the company's common seal, but have engraved on it in legible form the name of every place where it is to be used.

(3)

A company with an official seal for use in a place may, by writing under its common seal, authorize any person appointed for the purpose to affix, in that place, the official seal to any deed or any other document to which the company is a party.

(4)

As between a company and any person dealing with an executing agent of the company, the authority of the agent continues—

(a)

if the authorization mentions a period during which the authority is to continue, until the end of the period; or

(b)

if the authorization does not mention such a period, until a notice of revocation or termination of the agent's authority has been given to the person.

(5)

The person affixing an official seal must, on the deed or other document to which the seal is affixed, certify in writing the date on which, and the place at which, the seal is so affixed.

(6)

A deed or other document to which an official seal is affixed binds the company as if it had been executed under the company's common seal.

(7)

In this section—

executing agent

(

簽立代理人

), in relation to a company, means a person authorized by the company under subsection (3).

126.

Official seal for sealing share certificates etc.

(1)

A company with a common seal may have an official seal—

(a)

for sealing securities issued by the company; or

(b)

for sealing documents creating or evidencing securities issued by the company.

(2)

Such an official seal must be a replica of the company's common seal, but have engraved on it in legible form the word "securities" or the characters "證券" or both such word and characters.

(3)

A company that was incorporated before 31 August 1984 and that has such an official seal may use the seal for sealing any securities or documents mentioned in subsection (1), despite anything in—

(a)

any instrument constituting or regulating the company; or

(b)

any instrument, made before that date, relating to securities or documents sealed with the seal.

Subdivision 2

Execution Requirements

127.

Execution of documents by company

(1)

A company may execute a document under its common seal.

(2)

If a company executes a document under its common seal, the seal must be affixed in accordance with the provisions of its articles.

(3)

A company may also execute a document—

(a)

in the case of a company with only one director, by having it signed by the director on the company's behalf; or

(b)

in the case of a company with 2 or more directors, by having it signed on the company's behalf by—

(i)

the 2 directors or any 2 of the directors; or

(ii)

any of the directors and the company secretary of the company.

(4)

For the purposes of subsection (3), if a person is to sign a document on behalf of 2 or more companies, the person must sign the document separately in each capacity.

(5)

A document signed in accordance with subsection (3) and expressed (in whatever words) to be executed by the company has effect as if the document had been executed under the company's common seal.

(6)

In favour of a person specified in subsection (7), a document is to be regarded as having been executed by a company if the document purports to have been signed in accordance with subsection (3).

(7)

The person is a purchaser in good faith for valuable consideration and includes—

(a)

a lessee;

(b)

a mortgagee; or

(c)

any other person who for valuable consideration acquires the property.

(8)

This section also applies to a document that is executed, or purports to be executed, by a company in the name of or on behalf of another person whether or not that other person is also a company.

128.

Execution of deeds by company

(1)

A company may execute a document as a deed by—

(a)

executing it in accordance with section 127;

(b)

having it expressed (in whatever words) to be executed by the company as a deed; and

(c)

delivering it as a deed.

(2)

For the purposes of subsection (1)(c), a document is presumed, unless the contrary is proved, to be delivered as a deed on its being executed in accordance with section 127.

(3)

If there is any conflict or inconsistency between this section and the provisions of any other Ordinance, this section prevails over those provisions to the extent of the conflict or inconsistency.

129.

Execution of deeds or other documents by attorney for company

(1)

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

(2)

A deed or any other document executed by an attorney on behalf of the company binds the company and has effect as if it were executed by the company.

(3)

This section does not affect the operation of any other Ordinance as to the execution of powers of attorney.

Division 8

Re-registration of Unlimited Company as Company Limited by Shares

130.

Unlimited company may apply for re-registration as company limited by shares

(1)

A company registered as an unlimited company on or after 31 August 1984 may be re-registered as a company limited by shares if the company—

(a)

passes a special resolution specified in subsection (2); and

(b)

delivers to the Registrar for registration an application in accordance with section 131.

(2)

The special resolution—

(a)

must resolve that the company is to be re-registered as a company limited by shares;

(b)

must state the manner in which the liability of the members is to be limited on the re-registration;

(c)

must provide for the alterations to the company's articles that are necessary to bring the articles into conformity with the requirements of this Ordinance in respect of the articles of a company to be formed under this Ordinance as a company limited by shares;

(d)

must contain a statement specified in subsection (3); and

(e)

may state the maximum number of shares that the company may issue.

(3)

The statement—

(a)

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

(b)

must state the total amount of share capital subscribed by its members before the re-registration, and the total amount of share capital to be subscribed by its members on the re-registration;

(c)

must state the amount to be paid up or to be regarded as paid up, and the amount to remain unpaid or to be regarded as remaining unpaid, on the total number of shares issued before the re-registration, and on the total number of shares that the company proposes to issue on the re-registration;

(d)

if the share capital is to be divided into different classes of shares on the re-registration, must also state the classes and, for each class—

(i)

the particulars specified in subsection (5);

(ii)

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

(iii)

the total amount of share capital in that class subscribed by its members before the re-registration, and the total amount of share capital in that class to be subscribed by its members on the re-registration; and

(iv)

the amount to be paid up or to be regarded as paid up, and the amount to remain unpaid or to be regarded as remaining unpaid, on the total number of shares in that class issued before the re-registration, and on the total number of shares in that class that the company proposes to issue on the re-registration; and

(e)

must state, in respect of each member—

(i)

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

(ii)

the total amount of share capital subscribed by the member before the re-registration, and the total amount of share capital to be subscribed by the member on the re-registration.

(4)

If the shares proposed to be issued to a member on the re-registration belong to 2 or more classes, the information required under subsection (3)(e) must be stated in respect of each class.

(5)

The particulars for the purposes of subsection (3)(d) are—

(a)

particulars of any voting rights attached to shares in the class, including rights that arise only in certain circumstances;

(b)

particulars of any rights attached to shares in the class, as respects dividends, to participate in a distribution;

(c)

particulars of any rights attached to shares in the class, as respects capital, to participate in a distribution (including on a winding up); and

(d)

whether or not shares in the class are redeemable shares.

131.

Application for re-registration

(1)

An application under section 130(1)—

(a)

must be in the specified form; and

(b)

must be accompanied by a copy of the company's articles as proposed to be altered by the special resolution.

(2)

Such an application may only be delivered to the Registrar on or after the date on which the Registrar receives a copy of the special resolution delivered under section 622.

132.

Issue of certificate because of re-registration

(Amended 14 of 2025 s. 14)

(1)

On registering an application and a copy of the articles delivered under section 131(1), the Registrar must issue a certificate certifying that the company is a company limited by shares.

(Amended 14 of 2025 s. 14)

(2)

The certificate must be signed by the Registrar.

(3)

On the issue of the certificate—

(a)

the company becomes a company limited by shares; and

(b)

the alterations to the company's articles as provided for in the special resolution for re-registration under section 130(2)(c) take effect despite anything in this Ordinance.

(4)

A certificate issued under subsection (1) is conclusive evidence that—

(Amended 14 of 2025 s. 14)

(a)

all the requirements of this Ordinance in respect of re-registration of the company have been complied with; and

(b)

the company is re-registered as a company limited by shares under this Ordinance.

133.

Winding up of company re-registered as company limited by shares

(1)

This section applies if—

(a)

a company is re-registered as a company limited by shares under this Division or section 19 of the predecessor Ordinance; and

(b)

the company is wound up.

(2)

Despite section 170(1)(a) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), a person who is not a member of the company but was a member at the time of the re-registration is liable to contribute to the assets of the company in respect of debts and liabilities of the company contracted before the re-registration if the winding up commences within 3 years beginning on the day of the re-registration.

(3)

Despite section 170(1)(c) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), a person who was a member or a past member of the company at the time of the re-registration is liable to contribute to the assets of the

company in respect of debts and liabilities of the company contracted before the re-registration if every person who was a member of the company at that time is no longer a member of the company.

(4)

Subsection (3) applies even though the existing members of the company have satisfied the contribution required to be made by them under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

(5)

Despite section 170(1)(d) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), there is no limit on the amount that a person is liable to contribute under subsection (2) or (3).

Part 4

Share Capital

(Format changes—E.R. 1 of 2013)

Division 1

Nature of Shares

134.

Nature and transferability of shares

(1)

A share or other interest of a member in a company is personal property.

(2)

A share or other interest of a member in a company is transferable in accordance with the company's articles.

135.

No nominal value

(1)

Shares in a company have no nominal value.

(2)

This section applies to shares issued before the commencement date of this section as well as shares issued on or after that date.

Note—

Division 2 of Part 4 of Schedule 11 contains transitional provisions relating to the abolition of nominal value.

Editorial Note:

- Commencement date: 3 March 2014.

136.

Numbering of shares

(1)

Each share in a company must be distinguished by an appropriate number, except as provided by subsection (2) or (3).

(2)

If, at any time—

(a)

all the issued shares in a company are fully paid up and rank equally for all purposes; or

(b)

all the issued shares of a particular class in a company are fully paid up and rank equally for all purposes,

none of those shares is required to have a distinguishing number as long as it remains fully paid up and ranks equally for all purposes with all shares of the same class for the time being issued and fully paid up.

(3)

If new shares are issued by a company on the terms that, within a period not exceeding 12 months, they will rank equally for all purposes with all the existing shares, or with all the existing shares of a particular class, in the company, neither the new shares nor the corresponding existing shares are required to have distinguishing numbers as long as all of them are fully paid up and rank equally for all purposes.

(4)

If subsection (3) applies and the shares are not numbered, any share certificates for the new shares must be appropriately worded or enfaced.

137.

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

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

138.

Repeal of power to issue stock

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

Note—

Sections 174 and 175 contain provisions relating to the reconversion of stock into shares.

139.

Repeal of power to issue share warrants

(1)

A company does not have power to issue a share warrant.

(2)

The bearer of a share warrant issued before the material date is entitled, on surrendering it for cancellation, to have the bearer's name entered in the register of members of the company.

(Amended 14 of 2025 s. 15)

(3)

If the company enters the bearer's name in the register of its members without the share warrant being surrendered and cancelled, the company is liable for any loss suffered by a person as a result of the bearer's name being entered in the register.

(4)

The company must enter the date of surrender of a share warrant in the register of its members.

(5)

If a company's articles so provide, the bearer of a share warrant may be regarded as a member of the company, either to the full extent or for any purposes specified in the articles.

(6)

In this section—

material date

(

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)—

(a)

for a company that is not a re-domiciled company—means 3 March 2014; and

(b)

for a re-domiciled company—means the re-domiciliation date.

(Added 14 of 2025 s. 15)

Division 2

Allotment and Issue of Shares

140.

Exercise by directors of power to allot shares or grant rights

(1)

Except in accordance with section 141, the directors of a company must not exercise any power—

(a)

to allot shares in the company; or

(b)

to grant rights to subscribe for, or to convert any security into, shares in the company.

(2)

Subsection (1) does not apply to—

(a)

an allotment of shares, or grant of rights, under an offer made to the members of the company in proportion to their shareholdings;

(b)

an allotment of shares, or grant of rights, on a bonus issue of shares to the members of the company in proportion to their shareholdings;

(c)

an allotment to a founder member of a company of shares that the member, by signing the company's articles, has agreed to take; or

(d)

an allotment of shares made in accordance with a grant of a right to subscribe for, or to convert any security into, shares if the right was granted in accordance with an approval under section 141.

(3)

For the purposes of subsection (2)(a), the offer is not required to be made to any member whose address is in a place where the offer is not permitted under the law of that place.

(4)

A director commits an offence if the director knowingly contravenes, or authorizes or permits a contravention of, this section.

(5)

A director who commits an offence under subsection (4) is liable to a fine at level 5 and to imprisonment for 6 months.

(6)

Nothing in this section or section 141 affects the validity of an allotment or other transaction.

141.

Allotment of shares or grant of rights with company approval

(1)

The directors of a company may exercise a power—

(a)

to allot shares in the company; or

(b)

to grant rights to subscribe for, or to convert any security into, shares in the company,

if the company gives approval in advance by resolution of the company.

(2)

Approval may be given for a particular exercise of the power or for its exercise generally, and may be unconditional or subject to conditions.

(3)

Subject to subsections (4) and (5), an approval expires—

(a)

if the company is required to hold an annual general meeting, on the earlier of—

(i)

the conclusion of the annual general meeting held next after the approval was given;

(ii)

the expiry of the period within which the next annual general meeting after the approval was given is required to be held;

(b)

if the company is not required to hold an annual general meeting because of section 612(1), on the date on which the requirements of that section are satisfied; or

(c)

if the company is not required to hold an annual general meeting for any other reason, on the date specified in the approval, which must not be more than 12 months after the approval was given.

(4)

An approval may be revoked or varied at any time by resolution of the company.

(5)

The directors may allot shares or grant rights after an approval has expired if—

(a)

the shares are allotted, or the rights are granted, under an offer, agreement or option made or granted by the company before the approval expired; and

(b)

the approval allowed the company to make or grant an offer, agreement or option that would or might require shares to be allotted, or rights to be granted, after the approval had expired.

142.

Return of allotment

(1)

Within one month after an allotment of shares, a limited company must deliver to the Registrar for registration a return of the allotment that complies with subsection (2).

(2)

A return—

(a)

must be in the specified form;

(b)

must include a statement of capital, as at the time immediately after the allotment, that complies with section 201;

(Amended 35 of 2018 s. 11)

(c)

must state—

(i)

the number of shares allotted;

(ii)

the name and address of each allottee; and

(iii)

if the company's issued share capital is increased as a result of the allotment, the amount of the increase;

(d)

for any shares allotted for consideration (whether wholly or partly cash consideration or non-cash consideration)—

(i)

must state the amount paid or regarded as paid on each share and the amount (if any) remaining unpaid or regarded as remaining unpaid on each share;

(ii)

in the case of an allotment wholly or partly for non-cash consideration under an arrangement made under Division 2 of Part 13, must contain particulars of the order of the Court sanctioning the arrangement; and

(iii)

in any other case of an allotment wholly or partly for non-cash consideration, must contain particulars of the contract for sale, or for services or other consideration in respect of which the shares were allotted; and

(e)

for any shares allotted credited as fully paid up (whether on or without a capitalization)—

(i)

must state the amount regarded as paid on each share; and

(ii)

must contain particulars of the resolution authorizing the capitalization or allotment.

(3)

If a limited 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.

(4)

If a limited company fails to deliver a return that complies with subsection (2) within one month after an allotment of shares, the Court may, on application by the company or a responsible person of the company, extend the period for delivery of the return by a period determined by the Court.

(5)

The Court may extend a period under subsection (4) only if it is satisfied—

(a)

that failure to deliver the return was accidental or due to inadvertence; or

(b)

that it is just and equitable to extend the period.

(6)

If the Court extends the period for delivery of a return, any liability already incurred by the company or a responsible person of the company for an offence under subsection (3) is extinguished and subsection (1) has effect as if the reference to one month were a reference to the extended period.

143.

Registration of allotment

(1)

A company must register an allotment of shares as soon as practicable and in any event within 2 months after the date of the allotment, by entering in the register of its members the information referred to in section 627(2) and (3).

(2)

If a company fails to register an allotment of shares within 2 months after the date of the allotment, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of $700 for each day during which the offence continues.

144.

Issue of share certificate on allotment

(1)

Within 2 months after an allotment of shares, a company must complete the certificates for the shares and have the certificates ready for delivery.

(2)

Subsection (1) does not apply if the conditions of issue of the shares provide otherwise.

(3)

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

145.

Order of Court for delivery of share certificate

(1)

If a company contravenes section 144 in relation to an allotment of shares, a person entitled to the certificates for the shares may serve a notice on the company requiring it to deliver the certificates to the person within 10 days.

(2)

If a company on which a notice has been served under subsection (1) does not deliver the certificates within 10 days after service of the notice, the person may apply to the Court for an order under subsection (3).

(3)

On an application under subsection (2), the Court may make an order directing the company and any officer of the company to deliver the certificates to the person within the period specified in the order.

(4)

The order may provide that all costs of and incidental to the application are to be borne by the company or by an officer of the company responsible for the contravention.

146.

Validation by Court of issue or allotment

(1)

This section applies if a company purports to issue or allot shares and—

(a)

the issue or allotment is or may be invalid for any reason; or

(b)

the terms of the issue or allotment are inconsistent with or not authorized by—

(i)

this Ordinance or any other Ordinance; or

(ii)

the company's articles.

(2)

The company, a creditor of the company or a holder or mortgagee of any of the shares may apply to the Court for an order validating, or confirming the terms of, the issue or allotment.

(3)

The Court may make an order under subsection (2) if the Court is satisfied that it is just and equitable to do so.

(4)

On delivery of an office copy of the order to the Registrar, the order has effect from the time of the purported issue or allotment.

Division 3

Commissions and Expenses

147.

General prohibition of commissions, discounts and allowances

(1)

Except as permitted by section 148, a company must not apply any of its shares or share capital, either directly or indirectly, in payment of any commission, discount or allowance to a person in consideration of the person—

(a)

subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the company; or

(b)

procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the company.

(2)

It is immaterial how the shares or share capital are applied, whether by being added to the purchase money of property acquired by the company or to the contract price of work to be executed for the company, or being paid out of the nominal purchase money or contract price, or otherwise.

(3)

Nothing in this section affects the payment of brokerage by a company.

148.

Permitted commissions

(1)

If the conditions in subsection (2) are satisfied, a company may pay a commission to a person in consideration of the person—

(a)

subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the company; or

(b)

procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the company.

(2)

The conditions are that—

(a)

the payment of the commission is authorized by the company's articles;

(b)

the commission paid or agreed to be paid does not exceed the lesser of—

(i)

10% of the price at which the shares are issued;

(ii)

the amount or rate authorized by the articles; and

(c)

if the shares are not offered to the public for subscription, the company, before making the payment—

(i)

delivers to the Registrar for registration a notice in the specified form disclosing the amount or rate of the commission and the number of shares (if any) that persons have agreed for a commission to subscribe for absolutely; and

(ii)

discloses the amount or rate of the commission and the number of shares (if any) that persons have agreed for a commission to subscribe for absolutely in any circular or notice issued by the company inviting subscriptions for the shares.

(3)

A vendor to, promoter of, or other person who receives payment in money or shares from, a company may apply any part of the money or shares so received in payment of any commission the payment of which directly by the company would be permitted by this section.

(4)

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

149.

Capital may be applied in writing off certain expenses and commission

A company may apply its share capital in writing off—

(a)

the preliminary expenses of the company;

(b)

any commission paid under section 148 or under section 46 of the predecessor Ordinance; or

(c)

any other expenses of any issue of shares in the company.

Division 4

Transfer and Transmission of Shares

Subdivision 1

Transfer of Shares

150.

Requirement for instrument of transfer

(1)

A company must not register a transfer of shares in the company unless a proper instrument of transfer has been delivered to the company.

(2)

Subsection (1) does not affect any power of a company to register as a member a person to whom the right to shares has been transmitted by operation of law.

151.

Registration of transfer or refusal of registration

(1)

The transferee or transferor of shares in a company may lodge the transfer with the company.

(2)

Within 2 months after the transfer is lodged, the company must either—

(a)

register the transfer; or

(b)

send the transferee and the transferor notice of refusal to register the transfer.

(3)

If a company refuses registration, the transferee or transferor may request a statement of the reasons for the refusal.

(4)

If a request is made under subsection (3), the company must, within 28 days after receiving the request—

(a)

send the person who made the request a statement of the reasons; or

(b)

register the transfer.

(5)

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

152.

Order of Court for registration

(1)

If a company refuses to register a transfer, the transferee or the transferor may apply to the Court for an order under this section.

(2)

On an application under subsection (1), the Court may order the company to register the transfer, if the Court is satisfied that the application is well-founded.

153.

Transfer by personal representative

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

154.

Certification of transfer

(1)

The certification by a company of an instrument of transfer of shares in the company—

(a)

is a representation by the company to any person acting on the faith of the certification that documents have been produced to the company that evidence title to the shares in the transferor named in the instrument; and

(b)

is not a representation that the transferor has any title to the shares.

(2)

If a person acts on the faith of a false certification by a company made negligently, the company is under the same liability to the person as if the certification had been made fraudulently.

(3)

For the purposes of this section, an instrument of transfer is certified by a company if it bears—

(a)

the words “certificate lodged”, or words to the same effect, in English or Chinese; and

(b)

under or adjacent to those words, the signature or initials of a person having the actual or apparent authority to certify transfers on behalf of the company.

(4)

Unless the contrary is proved, a signature or initials appearing on an instrument of transfer as referred to in subsection (3)(b) must be regarded—

(a)

as the signature or initials of the person whose signature or initials they purport to be; and

(b)

as having been placed on the instrument by that person or by another person who has the actual or apparent authority to use the signature or initials for the purpose of certifying transfers on behalf of the company.

155.

Issue of share certificate on transfer

(1)

Within the period specified in subsection (2), a company must complete the certificates for any of its shares that are transferred and have the certificates ready for delivery.

(2)

The period is—

(a)

for a private company, 2 months after the day on which the transfer is lodged with the company;

(b)

for any other company, 10 business days after the day on which the transfer is lodged with the company.

(3)

Subsection (1) does not apply to a transfer if—

(a)

the conditions of issue of the shares provide otherwise;

(b)

stamp duty has not been paid in respect of the transfer;

(c)

the transfer is invalid; or

(d)

the company, being entitled to do so, refuses to register the transfer.

(4)

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

(5)

In this section—

business day

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

156.

Order of Court for delivery of share certificate

(1)

If a company contravenes section 155 in relation to a transfer of shares, a person entitled to the certificates for the shares may serve a notice on the company requiring it to deliver the certificates to the person within 10 days.

(2)

If a company on which a notice has been served under subsection (1) does not deliver the certificates within 10 days after service of the notice, the person may apply to the Court for an order under subsection (3).

(3)

On an application under subsection (2), the Court may make an order directing the company and any officer of the company to deliver the certificates to the person within the period specified in the order.

(4)

The order may provide that all costs of and incidental to the application are to be borne by the company or by an officer of the company responsible for the contravention.

157.

Compensation regarding forged share transfers

(1)

A company may—

(a)

pay compensation to a person for loss arising from a transfer of shares in the company under a forged transfer or a transfer under a forged power of attorney;

(b)

provide, by insurance, reservation of capital or accumulation of income, a fund to meet claims for compensation;

(c)

borrow on the security of its property for the purpose of paying compensation; and

(d)

impose any reasonable restrictions on the transfer of its shares or with respect to powers of attorney for the transfer of its shares that the company considers necessary to guard against losses arising from forgery.

(2)

A company that pays compensation to a person under this section has the same rights and remedies against the person liable for the loss as the person compensated would have had.

(3)

If the shares in a company have, by amalgamation or otherwise, become shares in another company, the other company has the same powers under this section as the first company would have had if it had continued.

Subdivision 2

Transmission of Shares by Operation of Law

158.

Registration or refusal of registration

(1)

This section applies if the right to shares is transmitted to a person by operation of law and the person notifies the company in writing that the person wishes to be registered as a member of the company in respect of the shares.

(2)

Within 2 months after receiving the notification, the company must either—

(a)

register the person as a member of the company in respect of the shares; or

(b)

send the person notice of refusal of registration.

(3)

If a company refuses registration, the person may request a statement of the reasons for the refusal.

(4)

If a person makes a request under subsection (3), the company must, within 28 days after receiving the request—

(a)

send the person a statement of the reasons; or

(b)

register the person as a member of the company in respect of the shares.

(5)

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

159.

Order of Court for registration

(1)

If a company refuses registration under section 158, the person to whom the right to the shares was transmitted may apply to the Court for an order under this section.

(2)

On an application under subsection (1), the Court may order the company to register the person as a member of the company in respect of the shares, if the Court is satisfied that the application is well-founded.

160.

Pre-emption rights in relation to transmission by law

(1)

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

(2)

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

Subdivision 3

General

161.

Evidence of grant of probate etc.

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

Division 5

Replacement of Listed Companies' Lost Share Certificates

162.

Interpretation

In this Division—

eligible person

(

合資格人士

), in relation to shares in a listed company, means—

(a)

a registered holder of the shares; or

(b)

a person who claims to be entitled to have the person's name entered in the register of members of the company in respect of the shares;

genuine purchaser

(

真正購買者

), in relation to shares, means—

(a)

a person (other than a person to whom a new certificate for the shares is issued under this Division) who purchases the shares in good faith for value and without notice of any defect in the title of the seller; or

(b)

a person who becomes entitled to the shares at any time after the purchase of them by a person referred to in paragraph (a);

new certificate

(

新股份證明書

) means a share certificate that replaces a share certificate that has been lost;

original certificate

(

原有股份證明書

) means a share certificate that has been lost;

registered holder

(

登記持有人

), in relation to shares in a listed company, means a person whose name is entered in the register of members of the company in respect of the shares;

website

(

網站

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

163.

Application for new certificate

(1)

If a share certificate for shares in a listed company has been lost, an eligible person may apply to the company for a new certificate.

(2)

The application—

(a)

must be in the specified form; and

(b)

must be accompanied by a statutory declaration by the eligible person stating the following—

(i)

that the original certificate has been lost;

(ii)

when the original certificate was last in the person's possession and how the person ceased to have possession of it;

(iii)

whether the person has executed any transfer in respect of the shares, in blank or otherwise;

(iv)

that no other person is entitled to have their name entered in the register of members of the company in respect of the shares; and

(v)

any other matters that are necessary to verify the grounds on which the application is made.

164.

Publication requirements

(1)

A listed company that intends to issue a new certificate on an application under section 163 must publish a notice in the specified form in accordance with this section.

(2)

The notice must be published—

(a)

on the company's website; and

(b)

in the Gazette if—

(i)

the eligible person making the application is not the registered holder of the shares or does not have the registered holder's consent to make the application; or

(ii)

the latest value of the shares exceeds $200,000.

(3)

The notice must be published in the Gazette under subsection (2)(b) within one month after it is first published on the company's website under subsection (2)(a).

(4)

Before publishing a notice under this section, the company must—

(a)

deliver a copy of the notice to the recognized exchange company that operates the stock market on which the shares concerned are listed; and

(b)

obtain a certificate from an authorized officer of that exchange company that the copy is being exhibited in accordance with subsection (5).

(5)

A recognized exchange company must exhibit a copy of a notice received under subsection (4)(a) in a conspicuous place on the premises on which the stock market operates or make the notice available on its official website for a period of at least—

(a)

one month, for a notice that is not required to be published under subsection (2)(b); or

(b)

3 months, for a notice that is required to be published under subsection (2)(b).

(6)

For the purposes of subsection (5), a failure to make a copy of a notice available on an exchange company's official website throughout a period mentioned in that subsection is to be disregarded if—

(a)

the notice is made available on the website for part of that period; and

(b)

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

(7)

If the application was made by an eligible person who is not the registered holder of the shares and does not have the registered holder's consent to make the application, the listed company—

(a)

must serve a copy of the notice under this section on the registered holder by sending it by registered post to the registered holder's last address appearing in the register of members of the company; and

(b)

must not publish the notice under this section until at least 3 months after the day on which the copy was served.

(8)

In this section—

latest value

(

最新價值

) of shares means the value of the shares calculated at the last recorded price paid for shares of the same class in the company at the recognized stock market prior to the making of the application for the new certificate.

165.

Issue of new certificate

(1)

A listed company may issue a new certificate on an application under section 163 if—

(a)

the company has published a notice under section 164 and—

(i)

if the notice is published under section 164(2)(a), the notice has been made available on the company's website throughout a period of at least one month; or

(ii)

if the notice is published under section 164(2)(b), the notice has been made available on the company's website throughout a period of at least 3 months and published in the Gazette in accordance with section 164(3);

(b)

the company has not received notice of any other claim in respect of the shares; and

(c)

in the case of an application by an eligible person who is not the registered holder of the shares—

(i)

an instrument of transfer in respect of the shares has been delivered to the company under section 150; or

(ii)

if the application was made without the registered holder's consent, the company has caused an instrument of transfer to be executed on behalf of the registered holder by a person appointed by the company and executed by the applicant on the applicant's own behalf.

(2)

An instrument of transfer referred to in subsection (1)(c)(ii) is to be regarded as an instrument of transfer duly delivered to the company under section 150.

(3)

A listed company that issues a new certificate must without delay—

(a)

cancel the original certificate; and

(b)

record the issue of the new certificate and cancellation of the original certificate in the register of its members.

(4)

For the purposes of subsection (1)(a), a failure to make a notice available on a company's website throughout a period mentioned in that subsection is to be disregarded if—

(a)

the notice is made available on the website for part of that period; and

(b)

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

166.

Public notice of issue of new certificate

(1)

A listed company that issues a new certificate must—

(a)

publish a notice in the specified form in accordance with this section; and

(b)

deliver a copy of the notice to the recognized exchange company that operates the stock market on which the shares concerned are listed within 14 days after the date of issue.

(2)

The notice must be published by making it available on the listed company's website throughout a period of at least 7 days beginning on a date falling within 14 days after the date of issue.

(3)

If the listed company was required by section 164(2)(b) to publish a notice in the Gazette of its intention to issue the new certificate, the notice under this section must also be published in the Gazette within 14 days after the date of issue.

(4)

For the purposes of subsection (2), a failure to make a notice available on a listed company's website throughout a period mentioned in that subsection is to be disregarded if—

(a)

the notice is made available on the website for part of that period; and

(b)

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

(5)

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

167.

Orders of Court for rectification of the register

(1)

Subject to this section, if a listed company issues a new certificate in respect of shares, nothing in this Division affects the power of the Court to make an order under section 633 in favour of a person claiming to be entitled to the shares as against—

(a)

the person to whom the new certificate is issued; or

(b)

a person whose name is subsequently entered in the register of members of the company in respect of the shares.

(2)

The Court must not make an order under section 633 as against a person referred to in subsection (1)(b) if that person is a genuine purchaser of the shares.

(3)

If the Court makes an order under section 633 as against the person to whom the new certificate is issued or a person whose name is subsequently entered in the register of members of the company in respect of the shares—

(a)

the Court must not order the payment of damages by the company; and

(b)

the company is not otherwise liable for any damage caused by the issue of the new certificate or cancellation of the original certificate in accordance with this Division.

Note—

Section 633 gives the Court power to make an order for rectification of the register of members of a company.

168.

Liability if rectification cannot be ordered

(1)

This section applies if an order cannot be made under section 633 because of section 167(2).

(2)

The company is not liable for any damage suffered by the claimant because of the issue of the new certificate or cancellation of the original certificate, unless the company has acted deceitfully.

(3)

If the genuine purchaser purchased the shares from the person to whom the new certificate is issued, the person to whom the new certificate is issued is liable to the claimant for the value of the shares as at the date of purchase.

(4)

If the genuine purchaser purchased the shares from a person whose name was subsequently entered in the register of members of the company in respect of the shares, the person to whom the new certificate is issued and any person whose name was subsequently entered in the register in respect of the shares (other than a genuine purchaser) are jointly and severally liable to the claimant for the value of the shares as at the date the shares were purchased by the genuine purchaser.

(5)

In this section—

claimant

(

申索人

) means the person in whose favour an order could have been made under section 633 but for section 167(2).

169.

Applicant to pay expenses

(1)

An applicant for a new certificate must pay all expenses relating to the application.

(2)

A listed company may refuse to deal, or to deal further, with an application until it is satisfied that the applicant has made reasonable provision for payment of the expenses relating to the application.

Division 6

Alteration of Share Capital

170.

Permitted alteration of share capital

(1)

A limited company may alter its share capital in any one or more of the ways set out in subsection (2).

(2)

The company may—

(a)

increase its share capital by allotting and issuing new shares in accordance with this Part;

(b)

increase its share capital without allotting and issuing new shares, if the funds or other assets for the increase are provided by the members of the company;

(c)

capitalize its profits, with or without allotting and issuing new shares;

(d)

allot and issue bonus shares with or without increasing its share capital;

(e)

convert all or any of its shares into a larger or smaller number of shares;

(f)

cancel shares—

(i)

that, at the date the resolution for cancellation is passed, have not been taken or agreed to be taken by any person; or

(ii)

that have been forfeited.

(3)

A limited company may alter its share capital as referred to in subsection (2)(e) or (f) only by resolution of the company.

Note—

Sections 140 and 141 contain provisions requiring a resolution of the company for an allotment of shares. Those sections may be relevant to an alteration of share capital referred to in subsection (2)(a), (c) or (d).

(4)

A resolution referred to in subsection (3) may authorize the company to exercise the power—

(a)

on more than one occasion;

(b)

at a specified time or in specified circumstances.

(5)

Any amount remaining unpaid on shares being converted under subsection (2)(e) is to be divided equally among the replacement shares.

(6)

If shares are cancelled under subsection (2)(f), the company must reduce its share capital by the amount of the shares cancelled.

(7)

For the purposes of Part 5, a cancellation of shares under this section is not a reduction of share capital.

(8)

A limited company's articles may exclude or restrict the exercise of a power conferred by this section.

171.

Notice of alteration of share capital

(1)

Within one month after altering its share capital under section 170, a company must deliver a notice to the Registrar for registration in relation to the alteration of share capital.

(2)

The notice—

(a)

must be in the specified form;

(b)

if the company's issued share capital is increased by the alteration, must state the amount of the increase; and

(c)

must include a statement of capital, as at the time immediately after the alteration, that complies with section 201.

(Amended 35 of 2018 s. 12)

(3)

A company is not required to deliver a notice under this section in relation to an alteration of share capital involving an allotment of shares.

Note—

For an allotment of shares, section 142 requires a company to deliver a return of the allotment to the Registrar for registration.

(4)

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

172.

Redenomination of share capital

(1)

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

(2)

A resolution under this section may authorize a limited company to redenominate its share capital—

(a)

on more than one occasion;

(b)

at a specified time or in specified circumstances.

(3)

A redenomination does not affect any rights or obligations of members under the company's articles, or any restrictions affecting members under the company's articles.

(4)

In particular, it does not affect any entitlement to dividends (including entitlement to dividends in a particular currency), voting rights or liability in respect of amounts remaining unpaid on shares (including liability in a particular currency).

(5)

For the purposes of this section, the company's articles include the terms on which any shares in the company are allotted or held.

(6)

A limited company's articles may exclude or restrict the exercise of a power conferred by this section.

173.

Notice of redenomination

(1)

Within one month after passing a resolution under section 172, a company must deliver a notice in the specified form to the Registrar for registration in relation to the redenomination.

(2)

The notice must include a statement of capital, as at the time immediately after the redenomination, that complies with section 201.

(Amended 35 of 2018 s. 13)

(3)

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

174.

Reconversion of stock into shares

(1)

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

Note—

Section 138 repeals the power of a company to convert its shares into stock.

(2)

A resolution under this section may authorize a company to exercise the power to reconvert stock—

(a)

on more than one occasion;

(b)

at a specified time or in specified circumstances.

175.

Notice of reconversion

(1)

Within one month after passing a resolution under section 174, a company must deliver a notice in the specified form to the Registrar for registration in relation to the reconversion of stock.

(2)

The notice must include a statement of capital, as at the time immediately after the reconversion, that complies with section 201.

(Amended 35 of 2018 s. 14)

(3)

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

Division 7

Classes of Shares and Class Rights

Subdivision 1

Companies having a Share Capital

176.

Application of Subdivision

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

177.

Rights attached to shares

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

178.

Classes of shares

(1)

For the purposes of this Ordinance, shares are in one class if the rights attached to them are in all respects uniform.

(2)

The rights attached to shares are not to be regarded as different from those attached to other shares only because they do not carry the same rights to dividends in the 12 months immediately following their allotment.

179.

Description of shares of different classes

(1)

A share certificate issued by a company that has different classes of shares must contain in a prominent position a statement—

(a)

stating that the company's share capital is divided into different classes of shares; and

(b)

specifying the voting rights attached to shares in each class.

(2)

If a company has a class of shares the holders of which are not entitled to vote at general meetings of the company—

(a)

the descriptive title of shares in the class must include the words "non voting" or the Chinese characters "無表決權"; and

(b)

the company must ensure that those words appear legibly on any share certificate issued by the company.

(3)

Subsection (2) does not apply to shares that are described as preference shares or preferred shares.

(4)

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

180.

Varying class rights

(1)

Rights attached to shares in a class of shares in a company may be varied only—

(a)

in accordance with provisions in the company's articles for the variation of those rights; or

(b)

if there are no such provisions, with the consent of holders of shares in that class given in accordance with this section.

(2)

Subsection (1) is without prejudice to any other restrictions on the variation of the rights.

Example—

A company could make an agreement with the holders of shares in a class that imposes restrictions on the variation of class rights.

(3)

The consent required for the purposes of subsection (1)(b) is—

(Amended 35 of 2018 s. 15)

(a)

written consent of holders representing at least 75% of the total voting rights of holders of shares in the class; or

(b)

a special resolution passed at a separate general meeting of holders of shares in the class sanctioning the variation.

(4)

A variation takes effect—

(a)

if the consent for the variation is full consent—at the time specified in subsection (4B); or

(b)

if the consent for the variation is not full consent—at the time specified in subsection (4C).

(Replaced 35 of 2018 s. 15)

(4A)

For the purposes of subsection (4), full consent for a variation is—

(a)

written consent of all holders representing the total voting rights of holders of shares in the class; or

(b)

a resolution passed unanimously by all holders representing the total voting rights of holders of shares in the class at a separate general meeting of those holders.

(Added 35 of 2018 s. 15)

(4B)

The time specified for the purposes of subsection (4)(a) is—

(a)

the date of the full consent; or

(b)

if a later date is specified for the purpose in the full consent—the later date.

(Added 35 of 2018 s. 15)

(4C)

The time specified for the purposes of subsection (4)(b) is—

(a)

if no application is made under section 182 for the variation to be disallowed—the end of the period within which applications may be made under that section; or

(b)

if an application is made under that section for the variation to be disallowed—

(i)

the time when the application is withdrawn or finally determined; or

(ii)

(if there is more than one application) the time when the last of the applications is withdrawn or finally determined.

(Added 35 of 2018 s. 15)

(4D)

Subsection (4)(b) does not apply if the variation is disallowed.

(Added 35 of 2018 s. 15)

(5)

Any amendment of a provision in a company's articles for the variation of the rights attached to shares in a class, or the insertion of any such provision into the articles, is itself to be regarded as a variation of those rights.

(6)

Nothing in this section affects the Court's powers under sections 673, 675 and 725.

181.

Notifying class members of variation

(1)

If the rights attached to shares in any class of shares in a company are varied, the company must give written notice of the variation to each holder of shares in that class within 14 days after the date on which the variation is made.

(2)

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

182.

Disallowance or confirmation of variation by Court

(1)

If the rights attached to shares in any class of shares in a company are varied, holders representing at least 10% of the total voting rights of holders of shares in the class may apply to the Court to have the variation disallowed.

(1A)

However, the holders may not apply to the Court under subsection (1) to have the variation disallowed if the variation is made with—

(a)

written consent of all holders representing the total voting rights of holders of shares in the class; or

(b)

a resolution passed unanimously by all holders representing the total voting rights of holders of shares in the class at a separate general meeting of those holders.

(Added 35 of 2018 s. 16)

(2)

An application must be made within 28 days after the date on which the variation is made.

(3)

An application may be made on behalf of the members entitled to apply by any one or more of them appointed in writing by all of them.

(4)

The following persons are entitled to be heard on an application—

(a)

the applicant;

(b)

any other person who appears to the Court to be interested in the application.

(5)

The Court may, by order, disallow the variation if it is satisfied that the variation would unfairly prejudice the members represented by the applicant.

(6)

If the Court is not so satisfied, it must, by order, confirm the variation.

(7)

Nothing in this section affects—

(a)

the right of a member to petition the Court under section 724; or

(b)

the Court's powers under section 725.

183.

Delivery of order of Court to Registrar

(1)

If the Court makes an order under section 182 in relation to a company, the company must deliver an office copy of the order to the Registrar for registration within 15 days after it is made.

(2)

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

184.

Notifying Registrar of variation

(1)

If the rights attached to shares in any class of shares in a company are varied, the company must deliver to the Registrar for registration, within one month after the date on which the variation takes effect—

(a)

a copy of the resolution or other document that authorized the variation; and

(b)

a notice in the specified form including a statement of capital, as at the time immediately after the variation takes effect, that complies with section 201.

(Amended 35 of 2018 s. 17)

(2)

Subsection (1)(a) does not apply if the company is required to deliver a copy of the resolution or other document to the Registrar under another provision of this Ordinance.

(3)

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

Subdivision 2

Companies without a Share Capital

185.

Application of Subdivision

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

186.

Rights of members

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

187.

Classes of members

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

188.

Varying class rights

(1)

Rights of a class of members of a company that does not have a share capital may be varied only—

(a)

in accordance with provisions in the company's articles for the variation of those rights; or

(b)

if there are no such provisions, with the consent of the members of that class given in accordance with this section.

(2)

Subsection (1) is without prejudice to any other restrictions on the variation of the rights.

Example—

A company could make an agreement with the members of a class that imposes restrictions on the variation of class rights.

(3)

The consent required for the purposes of subsection (1)(b) is—

(Amended 35 of 2018 s. 18)

(a)

written consent of at least 75% of the members in the class; or

(b)

a special resolution passed at a separate general meeting of the members in the class sanctioning the variation.

(4)

A variation takes effect—

(a)

if the consent for the variation is full consent—at the time specified in subsection (4B); or

(b)

if the consent for the variation is not full consent—at the time specified in subsection (4C).

(Replaced 35 of 2018 s. 18)

(4A)

For the purposes of subsection (4), full consent for a variation is—

(a)

written consent of all members in the class; or

(b)

a resolution passed unanimously by all members in the class at a separate general meeting of those members.

(Added 35 of 2018 s. 18)

(4B)

The time specified for the purposes of subsection (4)(a) is—

(a)

the date of the full consent; or

(b)

if a later date is specified for the purpose in the full consent—the later date.

(Added 35 of 2018 s. 18)

(4C)

The time specified for the purposes of subsection (4)(b) is—

(a)

if no application is made under section 190 for the variation to be disallowed—the end of the period within which applications may be made under that section; or

(b)

if an application is made under that section for the variation to be disallowed—

(i)

the time when the application is withdrawn or finally determined; or

(ii)

(if there is more than one application) the time when the last of the applications is withdrawn or finally determined.

(Added 35 of 2018 s. 18)

(4D)

Subsection (4)(b) does not apply if the variation is disallowed.

(Added 35 of 2018 s. 18)

(5)

Any amendment of a provision in a company's articles for the variation of the rights of a class of members, or the insertion of any such provision into the articles, is itself to be regarded as a variation of those rights.

(6)

Nothing in this section affects the Court's powers under sections 673, 675 and 725.

189.

Notifying class members of variation

(1)

If the rights of any class of members of a company that does not have a share capital are varied, the company must give written notice of the variation to each member in that class within 14 days after the date on which the variation is made.

(2)

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

190.

Disallowance or confirmation of variation by Court

(1)

If the rights of any class of members of a company that does not have a share capital are varied, members representing at least 10% of the members in the class may apply to the Court to have the variation disallowed.

(1A)

However, the members may not apply to the Court under subsection (1) to have the variation disallowed if the variation is made with—

(a)

written consent of all members in the class; or

(b)

a resolution passed unanimously by all members in the class at a separate general meeting of those members.

(Added 35 of 2018 s. 19)

(2)

An application must be made within 28 days after the date on which the variation is made.

(3)

An application may be made on behalf of the members entitled to apply by any one or more of them appointed in writing by all of them.

(4)

The following persons are entitled to be heard on an application—

(a)

the applicant;

(b)

any other person who appears to the Court to be interested in the application.

(5)

The Court may, by order, disallow the variation if it is satisfied that the variation would unfairly prejudice the members represented by the applicant.

(6)

If the Court is not so satisfied, it must, by order, confirm the variation.

(7)

Nothing in this section affects—

(a)

the right of a member to petition the Court under section 724; or

(b)

the Court's powers under section 725.

191.

Delivery of order of Court to Registrar

(1)

If the Court makes an order under section 190 in relation to a company, the company must deliver an office copy of the order to the Registrar for registration within 15 days after it is made.

(2)

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

192.

Notifying Registrar of variation

(1)

If the rights of any class of members of a company that does not have a share capital are varied, the company must deliver to the Registrar for registration, within one month after the date on which the variation takes effect—

(a)

a copy of the resolution or other document that authorized the variation; and

(b)

a notice in the specified form.

(2)

Subsection (1)(a) does not apply if the company is required to deliver a copy of the resolution or other document to the Registrar under another provision of this Ordinance.

(3)

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

Subdivision 3

General

193.

Variation includes abrogation

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

Division 8

Supplementary and Miscellaneous

Subdivision 1

Relief from Share Capital Requirements

194.

Interpretation

(1)

In this Division—

arrangement

(

安排

) means any agreement, scheme or arrangement;

company

(

公司

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

equity share capital

(

權益股本

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

equity shares

(

權益股份

) means shares comprised in a company's equity share capital;

issuing company

(

發行公司

) means a company that issues shares;

non-equity shares

(

非權益股份

) means shares in a company other than equity shares;

transfer

(

轉讓

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

(2)

In this Division—

(a)

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

(b)

a reference to the issue or transfer of shares to a company includes the issue or transfer of shares to a nominee of the company;

(c)

a reference to the transfer of shares by a company includes the transfer of shares by a nominee of the company.

195.

Group reconstruction relief

(1)

This section applies if an issuing company—

(a)

is a wholly owned subsidiary of another company (

the holding company

); and

(b)

issues shares—

(i)

to the holding company; or

(ii)

to another wholly owned subsidiary of the holding company,

in consideration for the transfer to the issuing company of non-cash assets of a company (

the transferor company

) that is a member of the group of companies that comprises the holding company and all its wholly owned subsidiaries.

(2)

Any excess of the value of the assets transferred over their net base value may be disregarded when recording as share capital of the issuing company the amount of consideration for the issue by the issuing company of its shares. Consequently, the minimum amount of consideration required to be recorded as share capital of the issuing company in respect of the shares issued for the transfer is the net base value of the assets transferred.

(3)

The net base value of the assets transferred is the amount by which the base value of the assets transferred exceeds the base value of any liabilities of the transferor company assumed by the issuing company as consideration for the assets transferred.

(4)

For the purposes of this section—

(a)

the base value of assets transferred is the lesser of—

(i)

the cost of those assets to the transferor company;

(ii)

the amount at which those assets are stated in the transferor company's accounting records immediately before the transfer;

(b)

the base value of liabilities assumed is the amount at which they are stated in the transferor company's accounting records immediately before the transfer.

196.

Merger relief

(1)

This section applies if an issuing company has secured at least a 90% equity holding in another company under an arrangement providing for the issue of equity shares in the issuing company on terms that the consideration for the shares issued is to be provided—

(a)

by the issue or transfer to the issuing company of equity shares in the other company; or

(b)

by the cancellation of any equity shares in the other company not held by the issuing company.

(2)

Any excess of the value of the equity shares acquired or cancelled under the arrangement over the subscribed capital of the other company attributable to those shares may be disregarded when recording as share capital of the issuing company the amount of consideration for the issue by the issuing company of its shares. Consequently, the minimum amount of consideration required to be recorded as share capital of the issuing company in respect of the shares issued under the arrangement is the subscribed capital of the other company attributable to the equity shares acquired or cancelled.

(3)

If the arrangement also provides for the issue of any shares in the issuing company on terms that the consideration for those shares is to be provided—

(a)

by the issue or transfer to the issuing company of non-equity shares in the other company; or

(b)

by the cancellation of any non-equity shares in the other company not held by the issuing company,

any excess of the value of the non-equity shares acquired or cancelled under the arrangement over the subscribed capital of the other company attributable to those shares may be disregarded when recording as share capital of the issuing company the amount of consideration for the issue by the issuing company of its shares.

(4)

This section does not apply in a case falling within section 195.

197.

Merger relief: meaning of 90% equity holding

(1)

This section has effect in determining, for the purposes of section 196, whether a company (

company A

) has secured at least a 90% equity holding in another company (

company B

) under an arrangement mentioned in section 196(1).

(2)

Company A has secured at least a 90% equity holding in company B if, in consequence of an acquisition or cancellation of equity shares in company B under that arrangement, company A holds in aggregate 90% or more of the equity shares in company B (whether or not all or any of the equity shares in company B held by company A were acquired under that arrangement).

(3)

If the equity shares in company B are divided into different classes of shares, company A is not regarded as having secured at least a 90% equity holding in company B unless the requirements of subsection (2) are met in relation to each of those classes of shares taken separately.

(4)

For the purposes of this section, the following shares are regarded as held by company A—

(a)

shares held by a company that is company A's holding company or subsidiary;

(b)

shares held by a subsidiary of company A's holding company; and

(c)

shares held by nominees of company A or of a company referred to in paragraph (a) or (b).

198.

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

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

199.

Regulations

(1)

The Financial Secretary may make regulations for restricting or otherwise modifying the relief provided by this Subdivision.

(2)

Regulations made under this section are subject to the approval of the Legislative Council.

Subdivision 2

Miscellaneous

200.

Provision for different amounts to be paid on shares

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

(a)

make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;

(b)

accept from any member the whole or part of the amount remaining unpaid on any shares held by the member, although no part of that amount has been called up; and

(c)

pay a dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

201.

Statement of capital

(1)

This section applies if a provision of this Part or Part 5 requires a statement of capital to be included in a return or notice delivered to the Registrar for registration.

(2)

A statement of capital must state—

(a)

the total number of issued shares in the company;

(b)

the amount paid up or regarded as paid up and the amount (if any) remaining unpaid or regarded as remaining unpaid on the total number of issued shares in the company; and

(Amended 35 of 2018 s. 20)

(c)

the total amount of the company's issued share capital.

(Amended 35 of 2018 s. 20)

(d)

(Repealed 35 of 2018 s. 20)

(2A)

If the issued share capital is divided into different classes of shares, a statement of capital must also state, for each class of shares—

(a)

the particulars specified in subsection (3);

(b)

the total number of issued shares in the class;

(c)

the amount paid up or regarded as paid up, and the amount (if any) remaining unpaid or regarded as remaining unpaid, on the total number of issued shares in the class; and

(d)

the total amount of issued share capital of the class.

(Added 35 of 2018 s. 20)

(3)

The particulars are—

(a)

particulars of any voting rights attached to shares in the class, including rights that arise only in certain circumstances;

(b)

particulars of any rights attached to shares in the class, as respects dividends, to participate in a distribution;

(c)

particulars of any rights attached to shares in the class, as respects capital, to participate in a distribution (including on a winding up); and

(d)

whether or not shares in the class are redeemable shares.

202.

Notice of paid up capital

(1)

An official document of a company that states the company's issued capital must also state no less prominently the company's paid up capital.

(2)

If a company issues, circulates or distributes an official document in Hong Kong that does not comply with subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.

(3)

In this section—

official document

(

正式文件

) of a company, means a notice, circular, advertisement or other official publication of the company.

Part 5

Transactions in relation to Share Capital

(Format changes—E.R. 1 of 2013)

Division 1

Preliminary

203.

Interpretation

(1)

In this Part—

Commission

(

監察機關

) means—

(a)

subject to paragraphs (b) and (c), the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap. 571);

(b)

if any relevant transfer order made under section 25 of that Ordinance is in force, the recognized exchange company concerned or both the Securities and Futures Commission and the recognized exchange company concerned, in accordance with the provisions of that order; or

(c)

if any relevant transfer order made under section 68 of that Ordinance is in force, the recognized exchange controller concerned or both the Securities and Futures Commission and the recognized exchange controller concerned, in accordance with the provisions of that order;

contingent buy-back contract

(

待確定回購合約

) means a contract entered into by a company relating to any of its shares—

(a)

that is not a contract to buy back those shares; but

(b)

under which the company may (subject to any conditions) become entitled or obliged to buy back those shares;

distributable profits

(

可分派利潤

), in relation to the making of a payment by a company, means those profits out of which the company could lawfully make a distribution equal in value to the payment;

recognized exchange controller

(

認可控制人

) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

specified Chinese language newspaper

(

指明中文報章

) means a Chinese language newspaper that is specified under subsection (2);

specified English language newspaper

(

指明英文報章

) means an English language newspaper that is specified under subsection (2).

(2)

The Chief Secretary for Administration may specify Chinese language newspapers and English language newspapers for the purposes of this Part and must publish a list of the specified newspapers in the Gazette.

Division 2

Solvency Test

204.

Application of Division

This Division has effect for the following transactions—

(a)

a reduction of share capital by special resolution supported by a solvency statement under Subdivision 2 of Division 3;

(b)

a payment out of capital in respect of a share redemption or buy-back under Division 4;

(c)

the giving of financial assistance by a company under Subdivision 4 of Division 5.

205.

Solvency test

A company satisfies the solvency test in relation to a transaction if—

(a)

immediately after the transaction there will be no ground on which the company could be found to be unable to pay its debts; and

(b)

either—

(i)

if it is intended to commence the winding up of the company within 12 months after the date of the transaction, the company will be able to pay its debts in full within 12 months after the commencement of the winding up; or

(ii)

in any other case, the company will be able to pay its debts as they become due during the period of 12 months immediately following the date of the transaction.

206.

Solvency statement

(1)

A solvency statement in relation to a transaction is a statement that each of the directors making it has formed the opinion that the company satisfies the solvency test in relation to the transaction.

(2)

In forming an opinion for the purpose of making a solvency statement, a director must—

(a)

inquire into the company's state of affairs and prospects; and

(b)

take into account all the liabilities of the company (including contingent and prospective liabilities).

(3)

A solvency statement—

(a)

must be in the specified form;

(b)

must state—

(i)

the date on which it is made; and

(ii)

the name of each director making it; and

(c)

must be signed by each director making it.

(4)

Subsection (3)(a) does not apply to a solvency statement made for the purposes of the giving of financial assistance by a company under Subdivision 4 of Division 5.

207.

Offences regarding solvency statement

A director who makes a solvency statement without having reasonable grounds for the opinion expressed in it 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 6 and to imprisonment for 6 months.

208.

Power to modify solvency test by regulation

(1) The Chief Executive in Council may make regulations—

(a) modifying the solvency test or its application to any transaction or class of transactions; or

(b) modifying the matters that a director is required to take into account in forming an opinion for the purpose of making a solvency statement.

(2) Regulations made under this section are subject to the approval of the Legislative Council.

Division 3

Reduction of Share Capital

Subdivision 1

General Provisions

209.

Application of Division

This Division applies to—

(a) a company limited by shares; and

(b) a company limited by guarantee having a share capital that was formed as, or became, such a company under a former Companies Ordinance before 13 February 2004.

210.

Permitted reductions of share capital

(1) A company may, in accordance with the procedure specified in section 211, reduce its share capital under this Division in any way.

Examples—

1.

A company may extinguish or reduce the liability on any of its shares in respect of share capital not paid up.

2.

A company may, either with or without extinguishing or reducing liability on any of its shares—

(a)

cancel any paid-up share capital that is lost or unrepresented by available assets; or

(b)

repay any paid-up share capital in excess of the company's wants.

(2)

However, a company must not reduce its share capital if, as a result of the reduction, there would no longer be any member of the company holding shares other than redeemable shares.

(3)

This Division is subject to any provision of a company's articles that prohibits or restricts the reduction of the company's share capital.

211.

Procedure for a company to reduce its share capital

The procedure for a company to reduce its share capital under this Division is—

(a)

by special resolution supported by a solvency statement under Subdivision 2; or

(b)

by special resolution confirmed by the Court under Subdivision 3.

212.

Offence if share capital is reduced in contravention of Division

(1)

If a company reduces its share capital in contravention of this Division, the company, and every responsible person of the company, commit an offence and each is liable—

(a)

on conviction on indictment to a fine of $1,250,000 and to imprisonment for 5 years; or

(b)

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

(2)

An offence is not committed under this section in relation to a reduction of share capital by a company only because one or more directors of the company commit an offence under section 207 in making a solvency statement for the purposes of the reduction of share capital.

(3)

An offence is not committed under this section if the reduction of share capital occurs as a result of a share redemption or buy-back in accordance with Division 4 or as otherwise provided in this Ordinance.

213.

Liability of members following reduction of share capital

(1)

If a company's share capital is reduced under this Division, a past or present member of the company is not liable in respect of a share to a call or contribution exceeding in amount the difference (if any) between—

(a)

the issue price of the share; and

(b)

the aggregate of the amount paid up on the share (if any) and the amount reduced on the share.

(2)

Subsection (1) is subject to section 232.

(3)

Nothing in this section affects the rights of the contributories among themselves.

214.

Reserves arising from reductions of share capital

(1)

If a company reduces its share capital in accordance with this Division, a reserve arising from the reduction is to be regarded for the purposes of Part 6 as realized profit.

(2)

Subsection (1) is subject to anything to the contrary in—

(a)

an order of, or undertaking given to, the Court;

(b)

the resolution for, or any other resolution relevant to, the reduction of share capital; or

(c)

the company's articles.

Subdivision 2

Reduction of Share Capital by Special Resolution Supported by Solvency Statement

215.

Special resolution for reduction of share capital

(1)

A company may reduce its share capital by special resolution in accordance with this Subdivision.

(2)

The special resolution and the reduction of share capital take effect when the return under section 224 or 225 in relation to the reduction is registered by the Registrar.

216.

Solvency statement for reduction of share capital

(1)

All directors of the company must make a solvency statement that complies with Division 2 in relation to the reduction of share capital.

(2)

The special resolution for reduction of share capital must be passed within 15 days after the date of the solvency statement.

(3)

If the special resolution is proposed as a written resolution, a copy of the solvency statement must be sent to every member of the company at or before the time when the proposed resolution is sent to them.

(4)

If the special resolution is proposed at a meeting, a copy of the solvency statement must be made available for inspection by members at the meeting.

(5)

The special resolution is not effective if subsection (3) or (4) (as applicable) is not complied with.

217.

Special resolution: exercise of voting rights

(1)

If the special resolution for reduction of share capital is proposed as a written resolution, a member of the company holding shares to which the resolution relates is not an eligible member for the purposes of Subdivision 2 of Division 1 of Part 12 (written resolution) in respect of those shares.

(2)

If the special resolution is proposed at a meeting, the resolution is not effective if—

(a)

any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares; and

(b)

the resolution would not have been passed if the member had not done so.

(3)

For the purposes of subsection (2)—

(a)

a member holding shares to which the resolution relates is to be regarded as exercising the voting rights carried by those shares not only if the member votes in respect of them on a poll on the question whether the resolution should be passed but also if the member votes on the resolution otherwise than on a poll;

(b)

any member of the company may demand a poll on that question; and

(c)

a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.

(4)

The special resolution is not effective if a demand for a poll referred to in subsection (3)(b) is refused.

(5)

This section does not apply in the case of a reduction of share capital that applies equally to all issued shares in the company.

218.

Public notice of reduction of share capital

(1)

If a special resolution for reduction of share capital is passed, the company must, on or before the date specified in subsection (2), publish a notice in the Gazette—

(a)

stating that the company has approved a reduction of share capital;

(b)

specifying the amount of share capital to be reduced and the date of the special resolution;

(c)

stating where the special resolution and solvency statement are available for inspection; and

(d)

stating that a member of the company who did not consent to or vote in favour of the special resolution or a creditor of the company may, within 5 weeks after the date of the special resolution, apply to the Court under section 220 for cancellation of the special resolution.

(2)

The date is—

(a)

a date that falls on the last working day of the week after the week in which the special resolution is passed; or

(b)

if the period between the date in paragraph (a) and the date on which the special resolution is passed is less than 4 business days (both dates exclusive), a date that falls on the last working day of the week next following.

Examples—

1.

The special resolution is passed on 2 February of a year (Thursday). Apart from Saturdays and Sundays, all other dates in February of that year are business days. The date that falls on the last working day of the week after the week in which the special resolution is passed is 10 February (Friday) of that year. There are 5 business days between 2 February and 10 February. Therefore, the relevant notice must be published in the Gazette on or before 10 February (Friday) of that year.

2.

The special resolution is passed on 30 March of a year (Friday). Both 4 April (Wednesday) and 6 April (Friday) of that year are general holidays. 2 April (Monday), 3 April (Tuesday), 5 April (Thursday) and 13 April (Friday) of that year are business days. The date that falls on the last working day of the week after the week in which the special resolution is passed is 5 April (Thursday). There are only 2 business days between 30 March and 5 April. Therefore, the relevant notice must be published in the Gazette on or before the last working day of the week next following, which is 13 April (Friday) of that year.

(3)

Before the end of the week after the week in which the special resolution for reduction of share capital is passed, the company must also—

(a)

publish a notice to the same effect as the notice under subsection (1) in at least one specified Chinese language newspaper and at least one specified English language newspaper; or

(b)

give written notice to that effect to each of its creditors.

(4)

If the 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.

(5)

The company must deliver to the Registrar for registration a copy of the solvency statement no later than the day on which the company—

(a)

publishes the notice under subsection (1); or

(b)

if earlier, first publishes the notice or gives notice to creditors under subsection (3).

(6)

If the 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 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)

For the purposes of subsection (2)—

business day

(

辦公日

) means a day that is not—

(a)

a general holiday;

(b)

a Saturday; or

(c)

a black rainstorm warning day or gale warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);

working day

(

工作日

) means a day that is not—

(a)

a general holiday; or

(b)

a Saturday.

219.

Inspection of special resolution and solvency statement

(1)

The company must ensure that the special resolution for reduction of share capital and the solvency statement made in relation to it are kept at its registered office or at a place prescribed by regulations made under section 657 for the period—

(a)

beginning on the day on which the company—

(i)

publishes the notice under section 218(1); or

(ii)

if earlier, first publishes the notice or gives notice to creditors under section 218(3); and

(b)

ending 5 weeks after the date of the special resolution.

(2)

The company must permit a member or creditor of the company to inspect the special resolution and solvency statement without charge during business hours in that period.

(3)

If the 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.

(4)

If the company contravenes subsection (2), the Court may by order require the company to permit an immediate inspection.

220.

Application to Court by members or creditors

(1)

Subject to subsection (2), a member or creditor of the company may apply to the Court, within 5 weeks after the date of the special resolution for reduction of share capital, for cancellation of the resolution.

(2)

A member who consented to or voted in favour of the special resolution is not entitled to apply.

(3)

An application may be made on behalf of the persons entitled to apply by any one or more of them appointed in writing by all of them.

(4)

If an application is made under this section—

(a)

the applicant must, as soon as possible, serve the application on the company; and

(b)

the company must give the Registrar notice in the specified form of the application within 7 days after the day on which the application is served on the company.

(5)

If the company contravenes subsection (4)(b), 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.

221.

Power of Court to adjourn proceedings

(1)

The Court may adjourn proceedings on an application under section 220 so that an arrangement may be made to its satisfaction for the protection of the interests of dissentient members or dissentient creditors.

(2)

The Court may give any directions and make any orders it thinks expedient for facilitating or carrying into effect any such arrangement.

222.

Power of Court to confirm or cancel special resolution

(1)

On an application under section 220, the Court must make an order confirming or cancelling the special resolution for reduction of share capital, and may do so on any terms and conditions it thinks fit.

(2)

If the Court confirms the special resolution, it may by order alter or extend any date or period of time specified—

(a)

in the special resolution; or

(b)

in any provision of this Division applying to the special resolution or the reduction of share capital.

(3)

If the Court thinks fit, the order may—

(a)

provide for the company to buy back the shares of any of its members and for the reduction accordingly of the company's share capital;

(b)

provide for the protection of the interests of members or creditors of the company;

(c)

make any alteration to the company's articles that may be required as a consequence;

(d)

require the company not to make any, or any specified, alteration to its articles.

(4)

If the order of the Court requires the company not to make any, or any specified, alteration to its articles, the company does not have power to make any such alteration without leave of the Court.

(5)

The powers of the Court under this section do not limit its powers under section 221.

223.

Company to deliver copy of order of Court to Registrar

(1)

Within 15 days after the making of an order by the Court under section 222, or within any longer period ordered by the Court, the company must deliver an office copy of the order to the Registrar for registration.

(2)

If the 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.

224.

Registration of return if no application to Court

(1)

If—

(a)

no application is made under section 220 in respect of the special resolution for reduction of share capital; and

(b)

the company delivers a return that complies with subsection (2) to the Registrar no earlier than 5 weeks and no later than 7 weeks after the date of the special resolution,

the Registrar must register the return.

Note—

Under section 215(2), the special resolution and the reduction of share capital take effect when the return is registered by the Registrar.

(2)

The return—

(a)

must be in the specified form;

(b)

must contain particulars of the reduction of share capital; and

(c)

must include a statement of capital, as at the time immediately after the reduction of share capital, that complies with section 201.

225.

Registration of return if application to Court

(1)

If—

(a)

an application is made under section 220 in respect of the special resolution for reduction of share capital;

(b)

either—

(i)

the Court makes an order under section 222 confirming the special resolution; or

(ii)

the proceedings on the application are ended without determination by the Court (for example, by the withdrawal of the application); and

(c)

the company delivers to the Registrar a return that complies with subsection (2)—

(i)

within 15 days after the making of the order, or within any longer period ordered by the Court; or

(ii)

within 15 days after the proceedings are ended without determination by the Court or, if there are more than one such proceedings, the last of them are so ended,

the Registrar must register the return.

Note—

Under section 215(2), the special resolution and the reduction of share capital take effect when the return is registered by the Registrar.

(2)

The return—

(a)

must be in the specified form;

(b)

must contain particulars of the reduction of share capital; and

(c)

must include a statement of capital, as at the time immediately after the reduction of share capital, that complies with section 201.

Subdivision 3

Reduction of Share Capital Confirmed by Court

226.

Special resolution and application to Court for confirmation of reduction of share capital

(1)

A company may pass a special resolution for reduction of share capital under this Subdivision and apply by petition to the Court for an order confirming the reduction.

(2)

Unless the Court directs otherwise, section 227 (creditors entitled to object to reduction of share capital) applies if the proposed reduction of share capital involves either—

(a)

the diminution of liability in respect of unpaid share capital; or

(b)

the payment to a shareholder of any paid-up share capital.

(3)

The Court may direct that section 227 is not to apply to any class or classes of creditors if the Court thinks it proper to do so, having regard to any special circumstances of the case.

(4)

The Court may direct that section 227 is to apply in any other case.

227.

Creditors entitled to object to reduction of share capital

(1)

If this section applies (see section 226(2) and (4)), a creditor of the company is entitled to object to the reduction of share capital if the creditor is entitled, at the date fixed by the Court, to any debt or claim that would be admissible in proof against the company if the company were to commence being wound up on that date.

(2)

The Court must settle a list of creditors entitled to object.

(3)

For the purposes of subsection (2), the Court—

(a)

must ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims; and

(b)

may publish a notice fixing a period within which, or a date by which, creditors not on the list are to claim to be entered on the list or are to be excluded from the right of objecting.

(4)

If a creditor on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of the creditor on the company securing payment of the debt or claim.

(5)

For the purposes of subsection (4), the debt or claim must be secured by appropriating (as the Court directs) the following amount—

(a)

if the company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it, the full amount of the debt or claim; or

(b)

if the company does not admit, and is not willing to provide for, the full amount of the debt or claim, or if the amount is contingent or not ascertained, an amount fixed by the Court after an inquiry and adjudication as if the company were being wound up by the Court.

228.

Offence in connection with creditors list

(1)

An officer of a company—

(a)

must not intentionally or recklessly—

(i)

conceal the name of a creditor entitled to object to the reduction of share capital; or

(ii)

misrepresent the nature or amount of the debt or claim of a creditor; or

(b)

must not be knowingly concerned in any such concealment or misrepresentation.

(2)

A person who contravenes subsection (1) 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 6 and to imprisonment for 6 months.

229.

Order of Court confirming reduction of share capital

(1)

On an application by petition under section 226, the Court may make an order confirming the reduction of share capital on any terms and conditions it thinks fit.

(2)

The Court must not confirm the reduction of share capital unless it is satisfied, with respect to every creditor of the company who is entitled to object to the reduction of share capital under section 227, that—

(a)

the creditor's consent has been obtained; or

(b)

the creditor's debt or claim has been discharged, has determined or has been secured.

230.

Registration of order, minute and return

(1)

If—

(a)

the Court makes an order under section 229 confirming the reduction of share capital; and

(b)

within 15 days after the making of the order, or within any longer period ordered by the Court, the company delivers to the Registrar—

(i)

an office copy of the order;

(ii)

a minute that complies with subsection (2) and that is approved by the Court; and

(iii)

a return that complies with subsection (3),

the Registrar must register the order, minute and return.

(2)

The minute must state, with respect to the company's share capital as altered by the order—

(a)

the amount of the share capital;

(b)

the total number of issued shares in the company;

(c)

the amount of each share; and

(d)

the amount paid up and the amount (if any) remaining unpaid on each share.

(3)

The return—

(a)

must be in the specified form;

(b)

must contain particulars of the reduction of share capital (by reference to the order or minute, or otherwise); and

(c)

must include a statement of capital, as at the time immediately after the reduction of share capital, that complies with section 201.

(4)

The special resolution, as confirmed by the order, takes effect on registration of the order, minute and return by the Registrar.

(5)

Notice of the registration must be published in the manner directed by the Court.

231.

Certification of registration

(1)

The Registrar must certify the registration of an order, minute and return under section 230.

(2)

The certificate must be signed by the Registrar.

(3)

The certificate is conclusive evidence—

(a)

that the requirements of this Ordinance for the reduction of share capital have been complied with; and

(b)

that the company's share capital is as stated in the minute.

232.

Liability to creditors omitted from list of creditors

(1)

This section applies to a reduction of share capital confirmed by the Court under section 229 if—

(a)

a creditor entitled to object to the reduction of share capital was not entered on the list of creditors because the creditor was not aware—

(i)

of the proceedings for reduction of share capital; or

(ii)

of their nature or effect with respect to the creditor's debt or claim; and

(b)

after the reduction of share capital the company is unable to pay the debt or claim.

(2)

A person who was a member of the company on the date of registration of the order confirming the special resolution for the reduction is liable to contribute for the payment of the debt or claim an amount not exceeding the amount that the person would have been liable to contribute if the company had commenced to be wound up on the day before that date.

(3)

If the company is wound up, the Court, on application by the creditor and proof of the creditor's lack of awareness referred to in subsection (1)(a), may, if it thinks fit—

(a)

settle a list of persons liable to contribute under this section; and

(b)

make and enforce calls and orders on them as if they were ordinary contributories in a winding up.

(4)

Nothing in this section affects the rights of the contributories among themselves.

Division 4

Share Redemptions and Buy-backs

Subdivision 1

Preliminary

233.

Application of Division

This Division applies to—

(a)

a company limited by shares; and

(b)

a company limited by guarantee having a share capital that was formed as, or became, such a company under a former Companies Ordinance before 13 February 2004.

Subdivision 2

Redeemable Shares

234.

Issue of redeemable shares

(1)

Subject to subsections (2) and (3), a company may issue redeemable shares.

(2)

A company's articles may prohibit or restrict the issue of redeemable shares.

(3)

A company must not issue redeemable shares at a time when there are no issued shares in the company other than redeemable shares.

235.

Terms, conditions and manner of redemption

(1)

The directors of a company may determine the terms, conditions and manner of redemption of shares if they are authorized to do so—

(a)

by the company's articles; or

(b)

by resolution of the company.

(2)

A resolution under subsection (1)(b) may be an ordinary resolution even if it amends the company's articles.

(3)

If the directors are authorized under subsection (1) to determine the terms, conditions and manner of redemption of shares—

(a)

they must do so before the shares are allotted; and

(b)

any obligation of the company to state in a statement of capital the rights attached to the shares extends to the terms, conditions and manner of redemption.

(4)

If the directors are not authorized under subsection (1), the terms, conditions and manner of redemption of shares must be stated in the company's articles.

Subdivision 3

Share Buy-backs

236.

General power of company to buy back its own shares

(1)

Subject to subsections (2) and (3) and Subdivision 6, a company may buy back its own shares in accordance with—

(a)

for a listed company, Subdivision 4;

(b)

for an unlisted company, Subdivision 5.

(2)

A company's articles may prohibit or restrict a buy-back by the company of its own shares.

(3)

A company must not buy back its own shares if, as a result of the buy-back, there would no longer be any member of the company holding shares other than redeemable shares.

(4)

A buy-back that contravenes subsection (3) is void.

237.

Retention and inspection of share buy-back contracts

(1)

This section applies to—

(a)

a listed company that enters into a contract for the buy-back of its own shares that is authorized under section 240; and

(b)

an unlisted company that—

(i)

under an authorization under section 244, enters into a contract for the buy-back of its own shares;

(ii)

under an authorization under section 247, agrees to a variation of a contract for the buy-back of its own shares;

(iii)

under an authorization under section 251, agrees to release its rights under a contract for the buy-back of its own shares; or

(iv)

under an authorization under section 254, agrees to a variation of an agreement to release its rights under a contract for the buy-back of its own shares.

(2)

The company must keep at its registered office or at a place prescribed by regulations made under section 657—

(a)

a copy of the contract or agreement if it is in writing; and

(b)

if not, a memorandum of its terms.

(3)

The copy or memorandum must be kept from the conclusion of the contract or agreement until the end of the period of 10 years beginning on the day on which the buy-back of all the shares under the contract is completed or the day on which the contract otherwise terminates.

(4)

Subject to subsection (5), the company must make the copy or memorandum available during business hours for inspection without charge by—

(a)

a member of the company; and

(b)

any other person, in the case of a listed company.

(5)

The company may, by resolution, impose reasonable restrictions on the making available of the copy or memorandum for inspection, as long as not less than 2 hours per day are allowed for inspection.

(6)

If a company contravenes subsection (2) or (3), or if an inspection required under subsection (4) is refused, 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)

In the case of a refusal of an inspection required under subsection (4), the Court may by order require the company to permit an immediate inspection.

(8)

In this section—

contract

(

合約

) includes a contingent buy-back contract.

Subdivision 4

Share Buy-backs: Listed Companies

238.

Share buy-back under general offer

(1)

A listed company may buy back its own shares under a general offer that is authorized in advance by resolution of the company.

(2)

The company must include with the notice of the proposed resolution—

(a)

a copy of the document containing the proposed general offer; and

(b)

a statement, signed by the directors of the company, containing information that would enable a reasonable person to form a valid and justifiable opinion as to the merits of the offer.

(3)

If, under the proposed general offer, a member of the company may be compelled to dispose of the member's shares under Division 5 of Part 13 (compulsory acquisition after general offer for share buy-back)—

(a)

the company must appoint an independent investment adviser to advise members who may be affected by the compulsory disposal on the merits of the offer; and

(b)

the resolution authorizing the offer must be a special resolution on which no non-tendering member votes.

(4)

A person is eligible for appointment as an investment adviser under subsection (3)(a) only if—

(a)

the person is a corporation licensed to carry on, or an authorized financial institution registered for carrying on, a business in advising on securities or advising on corporate finance under Part V of the Securities and Futures Ordinance (Cap. 571); and

(b)

the person is neither—

(i)

a member, officer, shadow director or employee of the company making the general offer or of an associated company of that company; nor

(ii)

an associated company of the company making the general offer.

(5)

For the purposes of a special resolution referred to in subsection (3)(b)—

(a)

a non-tendering member is to be regarded as voting not only if the non-tendering member votes on a poll on the question whether the resolution should be passed but also if the non-tendering member votes on the resolution otherwise than on a poll;

(b)

any member of the company may demand a poll on that question; and

(c)

a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.

(6)

In this section—

general offer

(

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) has the meaning given by section 707;

non-tendering member

(

不售股成員

) has the meaning given by section 705.

239.

Share buy-back on recognized stock market or approved stock exchange

(1)

A listed company may buy back its own shares on a recognized stock market or on an approved stock exchange if the buy-back is authorized in advance by resolution of the company.

(2)

The company must include a memorandum of the terms of the proposed buy-back with the notice of the proposed resolution.

(3)

A resolution authorizing a buy-back under this section is valid for the period expiring on the date of the next annual general meeting of the company, and that period may be extended by the company at that annual general meeting until the date of the following annual general meeting.

(4)

In this section—

approved stock exchange

(

核准證券交易所

) means a stock exchange approved for the purposes of this section by notice published in the Gazette by—

(a)

the Commission; and

(b)

the recognized exchange company that operates the recognized stock market on which the shares concerned are listed.

240.

Share buy-back otherwise than under section 238 or 239

(1)

A listed company may buy back its own shares otherwise than under section 238 or 239 if the contract for buy-back of the shares is authorized in advance by special resolution.

(2)

A contract may take the form of a contingent buy-back contract.

(3)

The company must include with the notice of the proposed special resolution—

(a)

a copy of the proposed contract or, if it is not in writing, a memorandum of its terms; and

(b)

a statement, signed by the directors of the company, after having made due and diligent inquiry of the members of the company holding the shares to which the proposed contract relates, containing information that would enable a reasonable person to form a valid and justifiable opinion as to the merits of the contract.

(4)

A special resolution under this section is not effective if—

(a)

any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares; and

(b)

the resolution would not have been passed if the member had not done so.

(5)

For the purposes of subsection (4)—

(a)

a member holding shares to which the resolution relates is to be regarded as exercising the voting rights carried by those shares not only if the member votes in respect of them on a poll on the question whether the resolution should be passed but also if the member votes on the resolution otherwise than on a poll;

(b)

any member of the company may demand a poll on that question; and

(c)

a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.

(6)

A special resolution under this section is not effective if a demand for a poll referred to in subsection (5)(b) is refused.

241.

Exemptions

(1)

The Commission may exempt any listed company from any of the provisions of section 238, 239 or 240, subject to any conditions it thinks fit.

(2)

The Commission may—

(a)

suspend or withdraw an exemption granted under subsection (1) on the ground that the conditions subject to which the exemption was granted have not been complied with or on any other ground the Commission thinks fit; or

(b)

vary any condition imposed under subsection (1).

242.

No assignment of right to buy back own shares

The following rights of a listed company are not capable of being assigned—

(a)

rights under a general offer authorized under section 238;

(b)

rights under a buy-back on a recognized stock market or on an approved stock exchange authorized under section 239;

(c)

rights under a contract authorized under section 240.

243.

Release of right to buy back own shares

(1)

An agreement by a listed company to release its rights under a contract authorized under section 240 or under a general offer authorized under section 238 is void unless the terms of the release agreement are authorized in advance by special resolution.

(2)

Section 240(3), (4), (5) and (6) applies to the authorization for a proposed release agreement as it applies to the authorization for a proposed contract under section 240.

Subdivision 5

Share Buy-backs: Unlisted Companies

244.

Share buy-back under contract

(1)

An unlisted company may buy back its own shares under a contract that is authorized in advance by special resolution.

(2)

A contract may take the form of a contingent buy-back contract.

(3)

The authorization for a contract may be varied, revoked or from time to time renewed by special resolution.

(4)

A special resolution conferring, varying, revoking or renewing the authorization for a contract is subject to sections 245 and 246.

245.

Resolution authorizing contract: disclosure of contract details

(1)

This section applies in relation to a special resolution to confer, vary, revoke or renew the authorization for a contract under section 244.

(2)

A copy of the proposed contract (if it is in writing) or a memorandum setting out its terms (if it is not) must be made available to members—

(a)

in the case of a written resolution, by being sent to every member of the company at or before the time when the proposed resolution is sent to them; or

(b)

in the case of a resolution proposed at a meeting, by being made available for inspection by members of the company—

(i)

at the company's registered office or at a place prescribed by regulations made under section 657, for a period of not less than 15 days ending on the date of the meeting; and

(ii)

at the meeting.

(3)

A memorandum referred to in subsection (2) must include the names of members holding shares to which the proposed contract relates.

(4)

A copy of a proposed contract made available under subsection (2) must have annexed to it a memorandum specifying any of those names that do not appear in the proposed contract.

(5)

The special resolution is not effective if the requirements of this section are not complied with.

246.

Resolution authorizing contract: exercise of voting rights

(1)

This section applies to a special resolution to confer, vary, revoke or renew the authorization for a contract under section 244.

(2)

If the special resolution is proposed as a written resolution, a member holding shares to which the resolution relates is not an eligible member for the purposes of Subdivision 2 of Division 1 of Part 12 (written resolution) in respect of those shares.

(3)

If the special resolution is proposed at a meeting, the resolution is not effective if—

(a)

any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares; and

(b)

the resolution would not have been passed if the member had not done so.

(4)

For the purposes of subsection (3)—

(a)

a member holding shares to which the resolution relates is to be regarded as exercising the voting rights carried by those shares not only if the member votes in respect of them on a poll on the question whether the resolution should be passed but also if the member votes on the resolution otherwise than on a poll;

(b)

any member of the company may demand a poll on that question; and

(c)

a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.

(5)

The special resolution is not effective if a demand for a poll referred to in subsection (4)(b) is refused.

247.

Variation of authorized contract

(1)

An unlisted company may agree to a variation of a contract authorized under section 244 if the variation agreement is authorized in advance by special resolution.

(2)

The authorization for a variation agreement may be varied, revoked or from time to time renewed by special resolution.

(3)

A special resolution conferring, varying, revoking or renewing the authorization for a variation agreement is subject to sections 248 and 249.

248.

Resolution authorizing variation: disclosure of details of variation

(1)

This section applies in relation to a special resolution to confer, vary, revoke or renew the authorization for a variation agreement under section 247.

(2)

A copy of the proposed variation agreement (if it is in writing) or a memorandum giving details of the proposed variation agreement (if it is not) must be made available to members—

(a)

in the case of a written resolution, by being sent to every member of the company at or before the time when the proposed resolution is sent to them; or

(b)

in the case of a resolution proposed at a meeting, by being made available for inspection by members of the company—

(i)

at the company's registered office or at a place prescribed by regulations made under section 657, for a period of not less than 15 days ending on the date of the meeting; and

(ii)

at the meeting.

(3)

There must also be made available to members in accordance with subsection (2) a copy of the original contract or memorandum, together with any variations previously made.

(4)

A memorandum referred to in subsection (2) must include the names of members holding shares to which the proposed variation agreement relates.

(5)

A copy of a proposed variation agreement made available under subsection (2) must have annexed to it a memorandum specifying any of those names that do not appear in the proposed variation agreement.

(6)

The special resolution is not effective if the requirements of this section are not complied with.

249.

Resolution authorizing variation: exercise of voting rights

(1)

This section applies to a special resolution to confer, vary, revoke or renew the authorization for a variation agreement under section 247.

(2)

If the special resolution is proposed as a written resolution, a member holding shares to which the resolution relates is not an eligible member for the purposes of Subdivision 2 of Division 1 of Part 12 (written resolution) in respect of those shares.

(3)

If the special resolution is proposed at a meeting, the resolution is not effective if—

(a)

any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares; and

(b)

the resolution would not have been passed if the member had not done so.

(4)

For the purposes of subsection (3)—

(a)

a member holding shares to which the resolution relates is to be regarded as exercising the voting rights carried by those shares not only if the member votes in respect of them on a poll on the question whether the resolution should be passed but also if the member votes on the resolution otherwise than on a poll;

(b)

any member of the company may demand a poll on that question; and

(c)

a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.

(5)

The special resolution is not effective if a demand for a poll referred to in subsection (4)(b) is refused.

250.

No assignment of right to buy back own shares

The rights of an unlisted company under a contract authorized under section 244 (as varied from time to time under section 247) are not capable of being assigned.

251.

Release of right to buy back own shares

(1)

An agreement by an unlisted company to release its rights under a contract authorized under section 244 (as varied from time to time under section 247) is void unless the terms of the release agreement are authorized in advance by special resolution.

(2)

The authorization for a release agreement may be varied, revoked or from time to time renewed by special resolution.

(3)

A special resolution conferring, varying, revoking or renewing the authorization for a release agreement is subject to sections 252 and 253.

252.

Resolution authorizing release: disclosure of details of release

(1)

This section applies in relation to a special resolution to confer, vary, revoke or renew the authorization for a release agreement under section 251.

(2)

A copy of the proposed release agreement (if it is in writing) or a memorandum giving details of the proposed release agreement (if it is not) must be made available to members—

(a)

in the case of a written resolution, by being sent to every member of the company at or before the time when the proposed resolution is sent to them; or

(b)

in the case of a resolution proposed at a meeting, by being made available for inspection by members of the company—

(i)

at the company's registered office or at a place prescribed by regulations made under section 657, for a period of not less than 15 days ending on the date of the meeting; and

(ii)

at the meeting.

(3)

There must also be made available to members in accordance with subsection (2) a copy of the original contract or memorandum, together with any variations previously made.

(4)

A memorandum referred to in subsection (2) must include the names of members holding shares to which the proposed release agreement relates.

(5)

A copy of a proposed release agreement made available under subsection (2) must have annexed to it a memorandum specifying any of those names that do not appear in the proposed release agreement.

(6)

The special resolution is not effective if the requirements of this section are not complied with.

253.

Resolution authorizing release: exercise of voting rights

(1)

This section applies to a special resolution to confer, vary, revoke or renew the authorization for a release agreement under section 251.

(2)

If the special resolution is proposed as a written resolution, a member holding shares to which the resolution relates is not an eligible member for the purposes of Subdivision 2 of Division 1 of Part 12 (written resolution) in respect of those shares.

(3)

If the special resolution is proposed at a meeting, the resolution is not effective if—

(a)

any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares; and

(b)

the resolution would not have been passed if the member had not done so.

(4)

For the purposes of subsection (3)—

(a)

a member holding shares to which the resolution relates is to be regarded as exercising the voting rights carried by those shares not only if the member votes in respect of them on a poll on the question whether the resolution should be passed but also if the member votes on the resolution otherwise than on a poll;

(b)

any member of the company may demand a poll on that question; and

(c)

a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.

(5)

The special resolution is not effective if a demand for a poll referred to in subsection (4)(b) is refused.

254.

Variation of release of right to buy back own shares

(1)

An unlisted company may agree to a variation of a release agreement authorized under section 251 if the variation agreement is authorized in advance by special resolution.

(2)

The authorization for a variation agreement may be varied, revoked or from time to time renewed by special resolution.

(3)

A special resolution conferring, varying, revoking or renewing the authorization for a variation agreement is subject to sections 255 and 256.

255.

Resolution authorizing variation of release: disclosure of details of variation

(1)

This section applies in relation to a special resolution to confer, vary, revoke or renew the authorization for a variation agreement under section 254.

(2)

A copy of the proposed variation agreement (if it is in writing) or a memorandum giving details of the proposed variation agreement (if it is not) must be made available to members—

(a)

in the case of a written resolution, by being sent to every member of the company at or before the time when the proposed resolution is sent to them; or

(b)

in the case of a resolution proposed at a meeting, by being made available for inspection by members of the company—

(i)

at the company's registered office or at a place prescribed by regulations made under section 657, for a period of not less than 15 days ending on the date of the meeting; and

(ii)

at the meeting.

(3)

There must also be made available to members in accordance with subsection (2) a copy of the original release agreement or memorandum, together with any variations previously made.

(4)

A memorandum referred to in subsection (2) must include the names of members holding shares to which the proposed variation agreement relates.

(5)

A copy of a proposed variation agreement made available under subsection (2) must have annexed to it a memorandum specifying any of those names that do not appear in the proposed variation agreement.

(6)

The special resolution is not effective if the requirements of this section are not complied with.

256.

Resolution authorizing variation of release: exercise of voting rights

(1)

This section applies to a special resolution to confer, vary, revoke or renew the authorization for a variation agreement under section 254.

(2)

If the special resolution is proposed as a written resolution, a member holding shares to which the resolution relates is not an eligible member for the purposes of Subdivision 2 of Division 1 of Part 12 (written resolution) in respect of those shares.

(3)

If the special resolution is proposed at a meeting, the resolution is not effective if—

(a)

any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares; and

(b)

the resolution would not have been passed if the member had not done so.

(4)

For the purposes of subsection (3)—

(a)

a member holding shares to which the resolution relates is to be regarded as exercising the voting rights carried by those shares not only if the member votes in respect of them on a poll on the question whether the resolution should be passed but also if the member votes on the resolution otherwise than on a poll;

(b)

any member of the company may demand a poll on that question; and

(c)

a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.

(5)

The special resolution is not effective if a demand for a poll referred to in subsection (4)(b) is refused.

Subdivision 6

Payment for Share Redemptions and Buy-backs

257.

Payment for redemption or buy-back

(1)

If a company redeems or buys back its own shares, the shares must be paid for on redemption or buy-back.

(2)

Subject to subsections (3) and (4), a company may make a payment in respect of a redemption or buy-back of its own shares—

(a)

out of the company's distributable profits;

(b)

out of the proceeds of a fresh issue of shares made for the purpose of the redemption or buy-back; or

(c)

out of capital in accordance with this Subdivision.

(3)

A listed company must not make a payment out of capital in respect of a buy-back of its own shares on a recognized stock market or on an approved stock exchange under section 239.

(4)

Subject to subsection (3), a payment referred to in subsection (5) may be made by a company only—

(a)

out of the company's distributable profits; or

(b)

out of capital in accordance with this Subdivision.

(5)

Subsection (4) applies to a payment by a company in consideration of any of the following—

(a)

the company acquiring any right with respect to the buy-back of its own shares under Subdivision 4 or 5;

(b)

the variation of a contract authorized under Subdivision 5; or

(c)

the release, or variation of the release, of any of the company's obligations with respect to the buy-back of any of its own shares under Subdivision 4 or 5.

258.

Special resolution for payment out of capital

(1)

Subject to section 257(3), a company may make a payment out of capital in respect of the redemption or buy-back of its own shares by special resolution in accordance with this Subdivision.

(2)

Subject to section 263, the payment out of capital and the redemption or buy-back must be made no earlier than 5 weeks and no later than 7 weeks after the date of the special resolution.

259.

Solvency statement for payment out of capital

(1)

All directors of the company must make a solvency statement that complies with Division 2 in relation to the payment out of capital.

(2)

The special resolution for payment out of capital must be passed within 15 days after the date of the solvency statement.

(3)

If the special resolution is proposed as a written resolution, a copy of the solvency statement must be sent to every member of the company at or before the time when the proposed resolution is sent to them.

(4)

If the special resolution is proposed at a meeting, a copy of the solvency statement must be made available for inspection by members at the meeting.

(5)

The special resolution is not effective if subsection (3) or (4) (as applicable) is not complied with.

260.

Special resolution: exercise of voting rights

(1)

If the special resolution for payment out of capital is proposed as a written resolution, a member of the company holding shares to which the resolution relates is not an eligible member for the purposes of Subdivision 2 of Division 1 of Part 12 (written resolution) in respect of those shares.

(2)

If the special resolution for payment out of capital is proposed at a meeting, the resolution is not effective if—

(a)

any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares; and

(b)

the resolution would not have been passed if the member had not done so.

(3)

For the purposes of subsection (2)—

(a)

a member holding shares to which the resolution relates is to be regarded as exercising the voting rights carried by those shares not only if the member votes in respect of them on a poll on the question whether the resolution should be passed but also if the member votes on the resolution otherwise than on a poll;

(b)

any member of the company may demand a poll on that question; and

(c)

a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.

(4)

The special resolution is not effective if a demand for a poll referred to in subsection (3)(b) is refused.

(5)

This section does not apply to a buy-back by a listed company under a general offer in accordance with section 238.

261.

Public notice of payment out of capital

(1)

If a special resolution for payment out of capital is passed, the company must, on or before the date specified in subsection (2), publish a notice in the Gazette—

(a)

stating that the company has approved a payment out of capital;

(b)

specifying the amount of the payment out of capital and the date of the special resolution;

(c)

stating where the special resolution and solvency statement are available for inspection; and

(d)

stating that a member of the company who did not consent to or vote in favour of the special resolution or a creditor of the company may, within 5 weeks after the date of the special resolution, apply to the Court under section 263 for cancellation of the special resolution.

(2)

The date is—

(a)

a date that falls on the last working day of the week after the week in which the special resolution is passed; or

(b)

if the period between the date in paragraph (a) and the date on which the special resolution is passed is less than 4 business days (both dates exclusive), a date that falls on the last working day of the week next following.

Examples—

1.

The special resolution is passed on 2 February of a year (Thursday). Apart from Saturdays and Sundays, all other dates in February of that year are business days. The date that falls on the last working day of the week after the week in which the special resolution is passed is 10 February (Friday) of that year. There are 5 business days between 2 February and 10 February. Therefore, the relevant notice must be published in the Gazette on or before 10 February (Friday) of that year.

2.

The special resolution is passed on 30 March of a year (Friday). Both 4 April (Wednesday) and 6 April (Friday) of that year are general holidays. 2 April (Monday), 3 April (Tuesday), 5 April (Thursday) and 13 April (Friday) of that year are business days. The date that falls on the last working day of the week after the week in which the special resolution is passed is 5 April (Thursday). There are only 2 business days between 30 March and 5 April. Therefore, the relevant notice must be published in the Gazette on or before the last working day of the week next following, which is 13 April (Friday) of that year.

(3)

Before the end of the week after the week in which the special resolution for payment out of capital is passed, the company must also—

(a)

publish a notice to the same effect as the notice under subsection (1) in at least one specified Chinese language newspaper and at least one specified English language newspaper; or

(b)

give written notice to that effect to each of its creditors.

(4)

If the 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.

(5)

The company must deliver to the Registrar for registration a copy of the solvency statement no later than the day on which the company—

(a)

publishes the notice under subsection (1); or

(b)

if earlier, first publishes the notice or gives notice to creditors under subsection (3).

(6)

If the 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 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)

For the purposes of subsection (2)—

business day

(

辦公日

) means a day that is not—

(a)

a general holiday;

(b)

a Saturday; or

(c)

a black rainstorm warning day or gale warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);

working day

(

工作日

) means a day that is not—

(a)

a general holiday; or

(b)

a Saturday.

262.

Inspection of special resolution and solvency statement

(1)

The company must ensure that the special resolution for payment out of capital and the solvency statement made in relation to it are kept at its registered office or at a place prescribed by regulations made under section 657 for the period—

(a)

beginning on the day on which the company—

(i)

publishes the notice under section 261(1); or

(ii)

if earlier, first publishes the notice or gives notice to creditors under section 261(3); and

(b)

ending 5 weeks after the date of the special resolution.

(2)

The company must permit a member or creditor of the company to inspect the special resolution and solvency statement without charge during business hours in that period.

(3)

If the 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.

(4)

If the company contravenes subsection (2), the Court may by order require the company to permit an immediate inspection.

263.

Application to Court by members or creditors

(1)

Subject to subsection (2), a member or creditor of the company may apply to the Court, within 5 weeks after the date of the special resolution for payment out of capital, for cancellation of the resolution.

(2)

A member who consented to or voted in favour of the special resolution is not entitled to apply.

(3)

An application may be made on behalf of the persons entitled to apply by any one or more of them appointed in writing by all of them.

(4)

If an application is made under this section—

(a)

the applicant must, as soon as possible, serve the application on the company; and

(b)

the company must give the Registrar notice in the specified form of the application within 7 days after the day on which the application is served on the company.

(5)

If the company contravenes subsection (4)(b), 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.

264.

Power of Court to adjourn proceedings

(1)

The Court may adjourn proceedings on an application under section 263 so that an arrangement may be made to its satisfaction for the protection of the interests of dissentient members or dissentient creditors.

(2)

The Court may give any directions and make any orders it thinks expedient for facilitating or carrying into effect any such arrangement.

265.

Power of Court to confirm or cancel special resolution

(1)

On an application under section 263, the Court must make an order confirming or cancelling the special resolution for payment out of capital, and may do so on any terms and conditions it thinks fit.

(2)

If the Court confirms the special resolution, it may by order alter or extend any date or period of time specified—

(a)

in the special resolution; or

(b)

in any provision of this Division applying to the special resolution, the payment out of capital or the redemption or buy-back.

(3)

If the Court thinks fit, the order may—

(a)

provide for the company to buy back the shares of any of its members and for the reduction accordingly of the company's share capital;

(b)

provide for the protection of the interests of members or creditors of the company;

(c)

make any alteration to the company's articles that may be required as a consequence;

(d)

require the company not to make any, or any specified, alteration to its articles.

(4)

If the order of the Court requires the company not to make any, or any specified, alteration to its articles, the company does not have power to make any such alteration without leave of the Court.

(5)

The powers of the Court under this section do not limit its powers under section 264.

266.

Company to deliver copy of order of Court to Registrar

(1)

Within 15 days after the making of an order by the Court under section 265, or within any longer period ordered by the Court, the company must deliver an office copy of the order to the Registrar for registration.

(2)

If the 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.

Subdivision 7

General Provisions on Share Redemptions and Buy-backs

(Amended 1 of 2025 s. 5)

267.

General prohibition on acquisition of own shares

(1)

Except as provided by this Ordinance, a company must not acquire its own shares, whether by redemption, buy-back, subscription or otherwise.

(2)

If a company contravenes subsection (1), an offence is committed by—

(a)

the company;

(b)

every responsible person of the company; and

(c)

every non-tendering member of the company (as defined by section 705) who knowingly permits the contravention.

(3)

A person who commits an offence under subsection (2) is liable—

(a)

on conviction on indictment to a fine of $1,250,000 and to imprisonment for 5 years; or

(b)

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

(4)

Subject to section 236(4) and Division 2 of Part 14 (remedies for unfair prejudice to members' interests), a redemption or buy-back of shares by a company under this Division is not void only because of a failure to comply with this Division.

268.

No redemption or buy-back of unpaid or partly-paid shares

A company must not redeem or buy back its own shares unless they are fully paid.

269.

Effect of redemption or buy-back

(1)

Subject to Subdivision 8, shares redeemed or bought back under this Division are to be regarded as cancelled on redemption or buy-back.

(Amended 1 of 2025 s. 6)

(2)

Whether or not Subdivision 8 applies, on redemption or buy-back of its own shares, a company must—

(Amended 1 of 2025 s. 6)

(a)

reduce the amount of its share capital if the shares were redeemed or bought back out of capital;

(b)

reduce the amount of its profits if the shares were redeemed or bought back out of profits; or

(c)

reduce the amount of its share capital and profits proportionately if the shares were redeemed or bought back out of both capital and profits,

by the total amount of the price paid by the company for the shares.

270.

Return of share redemption or buy-back

(1)

A company that redeems or buys back any shares under this Division must, within 15 days after the date on which the shares are delivered to the company, deliver a return to the Registrar for registration.

(2)

The return—

(a)

must be in the specified form;

(b)

must state, for the shares of each class redeemed or bought back—

(i)

the number of shares; and

(ii)

the date on which they were delivered to the company;

(c)

must include a statement of capital, as at the time immediately after the redemption or buy-back, that complies with section 201;

(d)

in the case of a listed company, must also state, for the shares of each class redeemed or bought back—

(i)

the maximum and minimum prices paid in respect of the shares;

(Amended 1 of 2025 s. 7)

(ii)

the aggregate amount paid by the company for the shares; and

(iii)

if applicable, the number of shares—

(A)

bought back and held by the company under section 272B(1); or

(B)

regarded as having been bought back and held by the company under section 272I(1); and

(Added 1 of 2025 s. 7)

(e)

in the case of a redemption or buy-back financed by a payment out of capital, must also state particulars of the payment including the date and amount of the payment.

(3)

Details of shares delivered to the company on different dates and under different contracts may be included in a single return. If this is done, the amount required to be stated under subsection (2)(d)(ii) is the aggregate amount paid by the company for all the shares to which the return relates.

(4)

If the 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 6 and, in the case of a continuing offence, to a further fine of $2,000 for each day during which the offence continues.

271.

Effect of company's failure to redeem or buy back

(1)

This section applies if, under this Division, a company—

(a)

issues redeemable shares; or

(b)

agrees to buy back any of its own shares.

(2)

The company is not liable in damages for any failure on its part to redeem or buy back any of the shares.

(3)

Subsection (2) is without prejudice to any right of the holder of the shares other than the right to sue the company for damages for the failure.

(4)

A court must not grant an order for specific performance of the terms of the redemption or buy-back if the company shows that it is unable to make a payment in respect of the redemption or buy-back out of distributable profits.

272.

Effect on winding up of company's failure to redeem or buy back

(1)

This section applies if—

(a)

a company—

(i)

issues redeemable shares under this Division; or

(ii)

agrees to buy back any of its own shares under this Division;

(b)

the company is wound up; and

(c)

at the commencement of the winding up any of those shares have not been redeemed or bought back.

(2)

The terms of the redemption or buy-back may be enforced against the company.

(3)

Subsection (2) does not apply if—

(a)

the terms of the redemption or buy-back provided for the redemption or buy-back to take place at a date later than that of the commencement of the winding up; or

(b)

during the period—

(i)

beginning on the day on which the redemption or buy-back was to have taken place; and

(ii)

ending on the commencement of the winding up,

the company could not at any time have lawfully made a payment in respect of the redemption or buy-back out of distributable profits.

(4)

Shares are to be regarded as cancelled when they are redeemed or bought back under subsection (2).

(5)

The following must be paid in priority to any amount that the company is liable under subsection (2) to pay in respect of any shares—

(a)

all other debts and liabilities of the company (other than any due to members in their capacity as such); and

(b)

if other shares carry rights (whether as to capital or income) that are preferred to the rights as to capital attaching to those shares, any amount due in satisfaction of those preferred rights.

(6)

Subject to subsection (5), any amount payable under subsection (2) must be paid in priority to any amounts due to members in satisfaction of their rights (whether as to capital or income) as members.

(7)

If, under section 264A of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), a creditor of a company is entitled to payment of any interest only after payment of all other debts of the company, the company's debts and liabilities for the purposes of subsection (5) include the liability to pay that interest.

Subdivision 8

Treasury Shares

(Subdivision 8 added 1 of 2025 s. 8)

272A.

Interpretation

In this Subdivision—

delisted

(

終止上市

), in relation to a listed company, means the company ceases to have any of its shares listed on a recognized stock market;

nominee

(

代名人

) means—

(a)

a recognized clearing house as defined by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571); or

(b)

a subsidiary of a recognized clearing house mentioned in paragraph (a).

272B.

Listed companies, on buying back their own shares, may hold them as treasury shares

(1)

A listed company that buys back its own shares under this Division may hold the shares.

(2)

If a listed company holding treasury shares is delisted, all its treasury shares are to be regarded as cancelled on the company being delisted.

272C.

Names of listed companies or nominees holding treasury shares must be entered in registers of members of companies

(1)

A listed company holding treasury shares must—

(a)

if the treasury shares are held in the name of the company—enter its name in the register of members of the company in accordance with section 627; or

(b)

if the treasury shares are held through a nominee—enter the nominee's name in the register of members of the company in accordance with section 627.

(2)

Despite subsection (1), the listed company or the nominee (as the case requires) is not to be regarded, in respect of the treasury shares, as—

(a)

a member of the company for the purposes of this Ordinance (except section 2 of Schedule 6); or

(b)

a member, shareholder or contributory of the company for the purposes of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

Note—

Please also see section 2(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) for the definitions of ***member*** and ***contributory***.

272D.

Cancellation, sale or transfer of treasury shares

A listed company holding treasury shares—

(a)

may at any time cancel any of its treasury shares; and

(b)

may at any time sell or transfer (whether or not for a consideration) any of its treasury shares to any person.

272E.

Return of cancellation of treasury shares

(1)

This section applies if—

(a)

a listed company cancels any of its treasury shares under section 272D(a); or

(b)

a listed company is delisted and the treasury shares held by it are regarded as cancelled under section 272B(2).

(2)

The company must deliver a return of the cancellation to the Registrar for registration within 15 days after—

(a)

for subsection (1)(a)—the date on which the shares are cancelled, whether or not the company is subsequently delisted; or

(b)

for subsection (1)(b)—the date on which the shares are regarded as cancelled.

(3)

The return—

(a)

must be in the specified form;

(b)

must state, for the treasury shares of each class cancelled or regarded as cancelled—

(i)

the total number of the shares; and

(ii)

the date on which the shares are cancelled or regarded as cancelled (as the case may be); and

(c)

must include a statement of capital, as at the time immediately after the treasury shares are cancelled or regarded as cancelled (as the case may be), that complies with section 201.

(4)

The particulars of treasury shares cancelled, or regarded as cancelled, on different dates may be included in a single return.

(5)

If a company contravenes subsection (2), the company, and every responsible person of the company, commit an offence, and each is liable on conviction—

(a)

to a fine at level 6; and

(b)

for a continuing offence—to a further fine of $2,000 for each day during which the offence continues.

272F.

Return of sale or transfer of treasury shares

(1)

If a listed company sells or transfers any of its treasury shares under section 272D(b), the company (whether or not it is subsequently delisted) must deliver a return of the sale or transfer to the Registrar for registration within 15 days after the date of the sale or transfer.

(2)

The return—

(a)

must be in the specified form;

(b)

must state, for the treasury shares of each class sold or transferred (whether or not for a consideration)—

(i)

the total number of the shares; and

(ii)

the date of the sale or transfer;

(c)

for treasury shares that are sold or transferred for a consideration (whether wholly or partly cash consideration or non-cash consideration)—

(i)

must state the amount paid, or for non-cash consideration, regarded as paid, to the company for each share; and

(ii)

if the consideration is wholly or partly non-cash, must state the particulars of—

(A)

the contract for the sale and purchase in respect of which the shares are sold or transferred; or

(B)

the contract for the services or other non-cash consideration in respect of which the shares are sold or transferred; and

(d)

must include a statement of capital, as at the time immediately after the sale or transfer of the treasury shares, that complies with section 201.

(3)

The particulars of treasury shares sold or transferred on different dates may be included in a single return.

(4)

If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable on conviction—

(a)

to a fine at level 6; and

(b)

for a continuing offence—to a further fine of $2,000 for each day during which the offence continues.

(5)

If a company fails to deliver a return within the period specified in subsection (1) (***specified period***), the Court may, on application by the company or a responsible person of the company, extend the specified period by a period determined by the Court.

(6)

However, the Court may extend the specified period only if it is satisfied that—

(a)

the failure to deliver the return was accidental or due to inadvertence; or

(b)

it is just and equitable to extend the period.

(7)

If the Court extends the specified period—

(a)

any liability already incurred by the company or a responsible person of the company for an offence under subsection (4) is extinguished; and

(b)

subsection (1) has effect as if the reference to 15 days were a reference to the extended period.

272G.

Sections 140, 141 and 170(2)(a) apply to sale or transfer of treasury shares

If a listed company sells or transfers any of its treasury shares under section 272D(b), sections 140, 141 and 170(2)(a) apply in relation to the sale or transfer of the treasury shares as if it were an allotment of shares in the company.

272H.

Rights attached to treasury shares suspended

(1)

All rights attached to treasury shares are to be regarded as suspended, and any act done in purported exercise of the rights is void.

Note—

The rights to be regarded as suspended include—

(a)

the right to attend or vote at any of the company's meetings (including a general meeting under section 566(2) and a meeting under section 670);

(b)

the right to receive any dividends purported to be paid for those shares; and

(c)

the right to receive any distribution of the company's assets in the form of cash or otherwise (including any distribution of assets to members on a winding up) in respect of those shares.

(2)

In particular, treasury shares are not to be counted towards the total voting rights in respect of shares or any class of shares of a listed company under this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

(3)

Nothing in this section prevents an allotment of shares as fully paid bonus shares in respect of treasury shares.

272I.

Bonus shares allotted in respect of treasury shares to be regarded as shares bought back under this Division

(1)

If a listed company allots, in respect of its treasury shares, any shares in the company as fully paid bonus shares, those bonus shares—

(a)

are to be regarded as being bought back under this Division by the company on their allotment; and

(b)

may be held by the company.

(2)

Bonus shares under subsection (1) that are not held by the company are to be regarded as cancelled on allotment and sections 269 and 270 apply in respect of the shares.

Subdivision 9

Modification of this Division by Regulations

(Added 1 of 2025 s. 9)

273.

Power to modify by regulation

(1)

The Chief Executive in Council may make regulations modifying any of the provisions of this Division with respect to—

(a)

the authorization required for a company to buy back its own shares;

(b)

the authorization required for the release by a company of its rights under a contract for the buy-back of its own shares, including a contingent buy-back contract; and

(c)

the information to be included in a return by a company to the Registrar in relation to a share redemption or buy-back.

(2)

Regulations made under this section are subject to the approval of the Legislative Council.

Division 5

Financial Assistance for Acquisition of Own Shares

Subdivision 1

Preliminary

274.

Interpretation

(1)

In this Division—

financial assistance

(

資助

) means—

(a)

financial assistance given by way of gift;

(b)

financial assistance given—

(i)

by way of guarantee, security or indemnity (other than an indemnity in respect of the indemnifier's own neglect or default); or

(ii)

by way of release or waiver;

(c)

financial assistance given—

(i)

by way of a loan or any other agreement under which any of the obligations of the person giving the assistance are to be fulfilled at a time when in accordance with the agreement any obligation of another party to the agreement remains unfulfilled; or

(ii)

by way of the novation of, or the assignment of rights arising under, a loan or other agreement referred to in subparagraph (i); or

(d)

any other financial assistance given by a company if—

(i)

the net assets of the company are reduced to a material extent by the giving of the assistance; or

(ii)

the company has no net assets;

liabilities

(

負債

) includes any amount retained as reasonably necessary for the purpose of providing for any liability or loss that is—

(a)

likely to be incurred; or

(b)

certain to be incurred but uncertain as to the amount or as to the date on which it will arise;

net assets

(

淨資產

) of a company that gives any financial assistance under this Division, means the amount by which the aggregate of the company's assets exceeds the aggregate of its liabilities (taking the amount of both assets and liabilities to be as stated in the company's accounting records immediately before the financial assistance is given).

(2)

In this Division—

(a)

a reference to a person incurring a liability includes the person changing their financial position by making an agreement or arrangement (whether enforceable or unenforceable, and whether made on the person's own account or with any other person) or by any other means; and

(b)

a reference to a company giving financial assistance for the purpose of reducing or discharging a liability incurred by a person for the purpose of the acquisition of shares includes the company giving financial assistance for the purpose of wholly or partly restoring the person's financial position to what it was before the acquisition took place.

Subdivision 2

General Prohibition on Financial Assistance for Acquisition of Own Shares

275.

Prohibition on financial assistance for acquisition of shares or for reducing or discharging liability for acquisition

(1)

If a person is acquiring or proposing to acquire shares in a company, the company or any of its subsidiaries must not give financial assistance directly or indirectly for the purpose of the acquisition before or at the same time as the acquisition takes place, except as provided by this Division.

(2)

If—

(a)

a person has acquired shares in a company; and

(b)

any person has incurred a liability for the purpose of the acquisition,

the company or any of its subsidiaries must not give financial assistance directly or indirectly for the purpose of reducing or discharging the liability, except as provided by this Division.

(3)

(Repealed 35 of 2018 s. 27)

(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 of $150,000 and to imprisonment for 12 months.

276.

Failure to comply with Division does not affect validity of financial assistance, etc.

If a company gives financial assistance in contravention of this Division, the validity of the financial assistance and of any contract or transaction connected with it is not affected only because of the contravention.

Subdivision 3

Exceptions from Prohibition

277.

General exceptions

This Division does not prohibit any of the following transactions—

(a)

the distribution of a company's assets—

(i)

by way of dividend lawfully made; or

(ii)

in the course of winding up the company;

(b)

the allotment of bonus shares (including a transfer of treasury shares as bonus shares);

(Amended 1 of 2025 s. 10)

(c)

the reduction of a company's share capital in accordance with Division 3;

(d)

the redemption or buy-back of a company's own shares in accordance with Division 4;

(e)

anything done in accordance with a court order under Division 2 of Part 13 (arrangements and compromises);

(f)

anything done under an arrangement made under section 237 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (power of liquidator to accept shares, etc., as consideration for sale of property of company);

(g)

anything done under an arrangement made between a company and its creditors that is binding on the creditors because of section 254 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (arrangement, when binding on creditors).

278.

Principal purpose exception

This Division does not prohibit a company from giving financial assistance for the purpose of the acquisition of a share in the company or its holding company or for the purpose of reducing or discharging a liability incurred for such an acquisition if—

(a)

either—

(i)

the company's principal purpose in giving the assistance is not to give it for the purpose of the acquisition of a share in the company or its holding company or for the purpose of reducing or discharging a liability incurred for such an acquisition; or

(ii)

the giving of the assistance for the purpose of the acquisition of a share in the company or its holding company or for the purpose of reducing or discharging a liability incurred for such an acquisition is only an incidental part of some larger purpose of the company; and

(b)

the assistance is given in good faith in the interests of the company.

279.

Exception for money lending businesses

Subject to section 282, this Division does not prohibit the lending of money by a company in the ordinary course of business if the lending of money is part of the ordinary business of the company.

280.

Exception for employee share schemes

(1)

Subject to section 282, this Division does not prohibit—

(a)

the giving by a company, in good faith in the interests of the company, of financial assistance for the purposes of an employee share scheme; or

(b)

the giving of financial assistance by a company for the purposes of, or in connection with, anything done by the company or another company in the same group of companies for the purposes of enabling or facilitating transactions in shares in the company or its holding company between, and involving the acquisition of beneficial ownership of those shares by—

(i)

persons employed or formerly employed in good faith by that company or another company in the same group of companies; or

(ii)

spouses, widows, widowers, or minor children of persons referred to in subparagraph (i).

(2)

In this section—

children

(

子女

) includes step-children, illegitimate children and children adopted in any manner recognized by the law of Hong Kong;

employee share scheme

(

僱員參股計劃

) means a scheme for encouraging or facilitating the holding of shares in a company by or for the benefit of—

(a)

persons employed or formerly employed in good faith by that company or another company in the same group of companies; or

(b)

spouses, widows, widowers, or minor children of persons referred to in paragraph (a);

minor children

(

未成年子女

) means children who are under 18 years of age.

281.

Exception for loans to employees

(1)

Subject to section 282, this Division does not prohibit the making by a company of loans to its eligible employees for the purpose of enabling them to acquire fully paid shares in the company or its holding company to be held by them by way of beneficial ownership.

(2)

In this section—

child

(

子女

) includes a step-child, an illegitimate child and a child adopted in any manner recognized by the law of Hong Kong;

eligible employees

(

合資格的僱員

), in relation to a company, means persons employed in good faith by the company, other than—

(a)

a director of the company;

(b)

a director's spouse;

(c)

a director's child who is under 18 years of age;

(d)

a trustee of a trust (other than an employee share scheme as defined by section 280(2) or a pension scheme)—

(i)

the beneficiaries of which include a person referred to in paragraph (a), (b) or (c); or

(ii)

the terms of which confer a power on the trustees that may be exercised for the benefit of a person referred to in paragraph (a), (b) or (c); or

(e)

a partner of a person referred to in paragraph (a), (b) or (c) or of a trustee referred to in paragraph (d).

282.

Special restriction for listed companies

Section 279, 280 or 281 applies to a listed company only if—

(a)

the company has net assets that are not reduced by the giving of the financial assistance; or

(b)

to the extent that those assets are reduced, the assistance is provided by a payment out of distributable profits.

Subdivision 4

Authorization for Giving Financial Assistance

283.

Financial assistance not exceeding 5% of shareholders funds

(1)

A company may give financial assistance for the purpose of the acquisition of a share in the company or its holding company or for the purpose of reducing or discharging a liability incurred for such an acquisition if—

(a)

the directors resolve, before the assistance is given, that—

(i)

the company should give the assistance;

(ii)

giving the assistance is in the best interests of the company; and

(iii)

the terms and conditions under which the assistance is to be given are fair and reasonable to the company;

(b)

on the same day that the directors pass the resolution, the directors who vote in favour of it make a solvency statement that complies with Division 2 in relation to the giving of the assistance;

(c)

the aggregate amount of the assistance and any other financial assistance given under this section that has not been repaid does not exceed 5% of the paid up share capital and reserves of the company (as disclosed in the most recent audited financial statements of the company); and

(d)

the assistance is given not more than 12 months after the day on which the solvency statement is made under paragraph (b).

(2)

The resolution of the directors under subsection (1)(a) must set out in full the grounds for their conclusions as to the matters referred to in subsection (1)(a)(i), (ii) and (iii).

(3)

A reference in subsection (1)(c) to any other financial assistance given under this section that has not been repaid includes the amount of any financial assistance given in the form of a guarantee or security for which the company remains liable at the time the financial assistance in question is given.

(4)

Within 15 days after giving financial assistance under this section, the company must send to each member of the company a copy of the solvency statement made under subsection (1)(b) and a notice containing the following information—

(a)

the class and number of shares in respect of which the assistance was given;

(b)

the consideration paid or payable for those shares;

(c)

the name of the person receiving the assistance and, if a different person, the name of the beneficial owner of those shares;

(d)

the nature, the terms and the amount of the assistance.

(5)

If the 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.

284.

Financial assistance with approval of all members

(1)

A company may give financial assistance for the purpose of the acquisition of a share in the company or its holding company or for the purpose of reducing or discharging a liability incurred for such an acquisition if—

(a)

the directors resolve, before the assistance is given, that—

(i)

the company should give the assistance;

(ii)

giving the assistance is in the best interests of the company; and

(iii)

the terms and conditions under which the assistance is to be given are fair and reasonable to the company;

(b)

on the same day that the directors pass the resolution, the directors who vote in favour of it make a solvency statement that complies with Division 2 in relation to the giving of the assistance;

(c)

the giving of the assistance is approved by written resolution of all members of the company before the assistance is given; and

(d)

the assistance is given not more than 12 months after the day on which the solvency statement is made under paragraph (b).

(2)

The resolution of the directors under subsection (1)(a) must set out in full the grounds for their conclusions as to the matters referred to in subsection (1)(a)(i), (ii) and (iii).

285.

Financial assistance by ordinary resolution

(1)

A company may give financial assistance for the purpose of the acquisition of a share in the company or its holding company or for the purpose of reducing or discharging a liability incurred for such an acquisition if—

(a)

the directors resolve, before the assistance is given, that—

(i)

the company should give the assistance;

(ii)

giving the assistance is in the best interests of the company and is of benefit to those members of the company not receiving the assistance; and

(iii)

the terms and conditions under which the assistance is to be given are fair and reasonable to the company and to those members not receiving the assistance;

(b)

on the same day that the directors pass the resolution, the directors who vote in favour of it make a solvency statement that complies with Division 2 in relation to the giving of the assistance;

(c)

the company sends to each member of the company a copy of the solvency statement made under paragraph (b) and a notice containing the following information—

(i)

the nature and terms of the assistance and the name of the person to whom it will be given;

(ii)

if it will be given to a nominee for another person, the name of that other person;

(iii)

the text of the resolution of the directors;

(iv)

any further information and explanation that would be necessary for a reasonable member to understand the nature of the assistance and the implications of giving it for the company and the members;

(d)

the giving of the assistance is approved by resolution of the company before the assistance is given; and

(e)

the assistance is given—

(i)

not less than 28 days after the day on which the resolution is passed under paragraph (d); and

(ii)

not more than 12 months after the day on which the solvency statement is made under paragraph (b).

(2)

The notice and copy of the solvency statement must be sent to each member under subsection (1)(c) at least 14 days before the day on which the resolution under subsection (1)(d) is proposed and may accompany notice of the meeting at which the resolution will be proposed.

(3)

Despite subsection (1)(e)(i), if an application is made to the Court under section 286 in relation to the giving of financial assistance under this section, the financial assistance must not be given until the application is finally determined, unless the Court orders otherwise.

(4)

The resolution of the directors under subsection (1)(a) must set out in full the grounds for their conclusions as to the matters referred to in subsection (1)(a)(i), (ii) and (iii).

286.

Application to Court for restraining order

(1)

Within 28 days after the day on which a resolution for the giving of financial assistance is passed under section 285(1)(d), an application to the Court for an order restraining the giving of financial assistance may be made—

(a)

if the company is limited by shares, by members representing at least 5% of the total voting rights of holders of shares in the company; or

(b)

in any other case, by members representing at least 5% of the members of the company.

(2)

Despite subsection (1), a member who consented to or voted in favour of the resolution is not entitled to apply.

(3)

An application may be made on behalf of the members entitled to apply by any one or more of them appointed in writing by all of them.

(4)

An application under this section may be made only on the ground that—

(a)

the giving of the assistance is neither—

(i)

in the best interests of the company; nor

(ii)

of benefit to those members of the company not receiving the assistance; or

(b)

the terms and conditions under which the assistance is to be given are not fair and reasonable to—

(i)

the company; and

(ii)

those members not receiving the assistance.

(5)

If an application is made under this section—

(a)

the applicant must, as soon as possible, serve the application on the company; and

(b)

the company must give the Registrar notice in the specified form of the application within 7 days after the day on which the application is served on the company.

(6)

If the company contravenes subsection (5)(b), 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.

287.

Power of Court to adjourn application

(1)

The Court may adjourn proceedings on an application under section 286 so that an arrangement may be made to its satisfaction for the protection of the interests of dissentient members.

(2)

The Court may give any directions and make any orders it thinks expedient for facilitating or carrying into effect any such arrangement.

288.

Power of Court to confirm or restrain giving of financial assistance

(1)

On an application under section 286, the Court must make an order confirming or restraining the giving of financial assistance, and may do so on any terms and conditions it thinks fit.

(2)

If the Court confirms the giving of financial assistance, it may by order alter or extend any date or period of time specified—

(a)

in the directors' resolution under section 285(1)(a) or the resolution of the company under section 285(1)(d); or

(b)

in any provision of this Division applying to the giving of financial assistance.

(3)

If the Court thinks fit, the order may—

(a)

provide for the company to buy back the shares of any of its members and for the reduction accordingly of the company's share capital;

(b)

make any alteration to the company's articles that may be required as a consequence;

(c)

require the company not to make any, or any specified, alteration to its articles.

(4)

If the order of the Court requires the company not to make any, or any specified, alteration to its articles, the company does not have power to make any such alteration without leave of the Court.

(5)

The powers of the Court under this section do not limit its powers under section 287.

289.

Company to deliver copy of order of Court to Registrar

(1)

Within 15 days after the making of an order by the Court under section 288, or within any longer period ordered by the Court, the company must deliver an office copy of the order to the Registrar for registration.

(2)

If the 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.

Part 6

Distribution of Profits and Assets

(Format changes—E.R. 1 of 2013)

Division 1

Preliminary

290.

Interpretation

(1)

In this Part—

called up share capital

(

已催繳股本

), in relation to a company, means so much of its share capital as equals the aggregate amount of the calls made on its shares (whether or not those calls have been paid), together with—

(a)

any share capital paid up without being called; and

(b)

any share capital to be paid on a specified future date under the articles, the terms of allotment of the relevant shares, or any other arrangements for payment of those shares,

and

uncalled share capital

(

未催繳股本

) is to be read accordingly;

capitalization

(

資本化

), in relation to a company's profits, means any of the following operations (whenever carried out)—

(a)

applying the profits in wholly or partly paying up unissued shares in the company to be allotted to members of the company as fully or partly paid bonus shares;

(b)

transferring the profits to share capital;

distribution

(

分派

) means every description of distribution of a company's assets to its members, whether in cash or otherwise, except distribution by way of—

(a)

an issue of shares as fully or partly paid bonus shares;

(ab)

a transfer of treasury shares as fully paid bonus shares;

(Added 1 of 2025 s. 11)

(b)

a redemption or buy-back of any shares in the company out of capital (including the proceeds of any fresh issue of shares), or out of unrealized profits, in accordance with Division 4 of Part 5;

(c)

a reduction of share capital by extinguishing or reducing any member's liability on any of the company's shares in respect of share capital not paid up, or by repaying paid up share capital;

(d)

a distribution of assets to the members on the company's winding up; or

(e)

financial assistance given by the company to a member under section 283, 284 or 285;

financial assistance

(

資助

) has the meaning given by section 274(1);

financial items

(

財務項目

) means all of the following—

(a)

profits, losses, assets and liabilities;

(b)

provisions;

(c)

share capital and reserves (including undistributable reserves);

net assets

(

淨資產

), in relation to a company, means the aggregate of the company's assets less the aggregate of its liabilities;

undistributable reserves

(

不可分派的儲備

), in relation to a company, means—

(a)

subject to subsection (2), the amount by which the company's accumulated, unrealized profits, so far as not previously utilized by capitalization, exceeds its accumulated, unrealized losses, so far as not previously written off in a reduction or reorganization of capital; or

(b)

any other reserve that the company is prohibited from distributing by an Ordinance (other than this Part) or by its articles.

(2)

In paragraph (a) of the definition of ***undistributable reserves*** in subsection (1), a reference to capitalization excludes a transfer of profits of the company to its capital redemption reserve on or after 1 September 1991.

(3)

In this Part—

(a)

a reference to profits of any particular description is a reference to profits of that description made at any time; and

(b)

a reference to losses of any particular description is a reference to losses of that description made at any time.

(4)

For the purposes of this Part, any financial statements are referential financial statements if the distribution in question is made pursuant to determinations made by reference to financial items as stated in the financial statements under section 302.

291.

Realized profits and losses

(1)

In this Part, a reference to realized profits or realized losses of a company is a reference to those profits or losses of the company that are regarded as realized profits or realized losses for the purpose of any financial statements prepared by the directors in accordance with principles generally accepted, at the time when the financial statements are prepared, with respect to the determination for accounting purposes of realized profits or realized losses.

(2)

Subsection (1) does not affect any specific provision (whether in an Ordinance or otherwise) under which profits or losses of any description are regarded as realized.

(3)

If, after making all reasonable enquiries, a company's directors are unable to determine whether or not a particular profit or loss made before 1 September 1991 is realized, they may treat the profit as realized, and the loss as unrealized, for the purposes of this Part.

292.

Certain amount to be regarded as realized profit or loss

(1)

For the purposes of this Part, a provision other than an amount specified in subsection (2) is to be regarded as a realized loss.

(2)

The amount is one written off or retained by way of providing for a diminution in value of a fixed asset appearing on a revaluation of—

(a)

all of the company's fixed assets; or

(b)

all of the company's fixed assets other than goodwill.

(3)

For the purposes of subsection (2), any consideration by the directors of the value at a particular time of a fixed asset is to be regarded as a revaluation of the asset if—

(a)

in the case of a listed company, the conditions specified in subsection (4)(a) and (b) are satisfied; or

(b)

in the case of any other company—

(i)

where the referential financial statements are the financial statements specified in section 304, the conditions specified in subsection (4)(a) and (b) are satisfied; or

(ii)

where the referential financial statements are the financial statements specified in section 305 or 306, the condition specified in subsection (4)(a) is satisfied.

(4)

The conditions are—

(a)

that the directors are satisfied that the aggregate value at that time of the company's fixed assets is not less than the aggregate amount at which they are for the time being stated in the financial statements; and

(b)

that it is stated in a note to the referential financial statements that—

(i)

the directors have considered the value of the company's fixed assets without actually revaluing them;

(ii)

the directors are satisfied that the aggregate value at the time of consideration of those assets is or was not less than the aggregate amount at which they are or were for the time being stated in the financial statements; and

(iii)

accordingly, by virtue of this subsection, amounts are stated in the referential financial statements on the basis that a revaluation of the company's fixed assets is to be regarded as having taken place at that time.

(5)

For the purposes of this Part, if—

(a)

on the revaluation of a fixed asset, an unrealized profit is shown to have been made; and

(b)

on or after the revaluation, a sum is written off or retained for depreciation of the fixed asset over a period,

the amount by which the sum exceeds the projected sum in relation to the depreciation of that asset over the period is to be regarded as a realized profit made over the period.

(6)

In determining whether a company has made a profit or loss on an asset for the purposes of subsection (5), the value given to the asset in the earliest available record of its value made on or after its acquisition by the company is to be regarded as the cost of the asset if—

(a)

there is no record of the original cost of the asset; or

(b)

a record of the original cost of the asset cannot be obtained without unreasonable expense or delay.

(7)

In subsection (5)—

projected sum

(

預計款項

), in relation to a depreciation of a fixed asset, means a sum that would have been written off or retained for depreciation if the revaluation of the asset had not been made.

(8)

For the purposes of this section, an asset of a company is to be regarded as a fixed asset if it is intended for use in the company's activities, or otherwise to be held for the purpose of the company's activities, on a continuing basis.

293.

(Repealed 20 of 2023 s. 110)

294.

Distribution in kind: certain amount to be regarded as realized profit

If a company makes a distribution consisting of or including a non-cash asset, and any part of the amount at which the asset is stated in the referential financial statements represents an unrealized profit, that part of that amount is to be regarded as a realized profit for the purpose of determining, before or after the distribution, the lawfulness of the distribution in accordance with this Part.

295.

Application of Part

(1)

This Part applies in relation to a distribution made on or after the commencement date[a] of this Part, except a distribution specified in subsection (2).

(2)

The excepted distribution is a distribution the amount of which would, had this Part applied in relation to the distribution, be determined under section 302 by reference to the financial items as stated in any financial statements for a financial year or period beginning before the commencement date[a] of this Part.

Editorial Note:

[a] Commencement date: 3 March 2014.

296.

Saving for other restraints on distribution

This Part does not affect any Ordinance or rule of law, or any provision of a company's articles, restricting the sums out of which, or the cases in which, a distribution may be made.

Division 2

Prohibitions and Restrictions

297.

Prohibition on certain distributions

(1)

A company may only make a distribution out of profits available for distribution.

(2)

For the purposes of this section, a company's profits available for distribution are its accumulated, realized profits, so far as not previously utilized by distribution or capitalization, less its accumulated, realized losses, so far as not previously written off in a reduction or reorganization of capital.

298.

Listed company may only make certain distributions

(1)

A listed company may only make a distribution—

(a)

if the amount of its net assets is not less than the aggregate of its called up share capital and undistributable reserves; and

(b)

if, and to the extent that, the distribution does not reduce the amount of those assets to an amount less than that aggregate.

(2)

A listed company must not include any uncalled share capital as an asset for the purpose of determining the amount of its net assets under this section.

299.

Restriction on application of unrealized profits

A company must not apply an unrealized profit in paying up debentures or in paying up any amount unpaid on its issued shares.

300.

Financial Secretary may modify or exempt provisions in relation to investment company

(1)

On application by an investment company, the Financial Secretary may—

(a)

modify, in relation to the company, any of the prohibitions or restrictions in section 297, 298 or 299; or

(b)

exempt the company from any of such prohibitions or restrictions.

(2)

The Financial Secretary may make a modification or exemption under subsection (1) subject to any terms and conditions that the Financial Secretary thinks fit.

(3)

In this section—

investment company

(

投資公司

) means a listed company whose principal business consists of investing its funds in securities, land or other assets with the aim of—

(a)

spreading investment risk; and

(b)

giving its members the benefit of the results of the management of the assets.

301.

Consequences of unlawful distribution

(1)

This section applies if—

(a)

a company makes a distribution, or part of a distribution, to one of its members in contravention of—

(i)

section 297, 298 or 299; or

(ii)

a prohibition or restriction in that section as modified under section 300; and

(b)

at the time of the distribution, the member knows or has reasonable grounds for believing that the distribution, or that part of the distribution (as the case may be) is made in contravention of that section or modified prohibition or restriction.

(2)

If the distribution is made in cash, the member is liable to repay the distribution, or that part of the distribution (as the case may be) to the company.

(3)

If the distribution is made otherwise than in cash, the member is liable to pay to the company a sum equal to the value of the distribution or that part of the distribution (as the case may be) at the time of the distribution.

(4)

This section does not affect any obligation otherwise imposed on a member of a company to repay a distribution unlawfully made to the member.

(5)

This section does not apply in relation to—

(a)

any payment made by a company in respect of the redemption or buy-back by the company of shares in itself; or

(b)

any financial assistance given by a company in contravention of section 275.

Division 3

Provisions Supplementary to Division 2

302.

Justification of distribution by reference to financial statements

The amount of a distribution that may be made without contravening section 297, 298 or 299, or a prohibition or restriction in that section as modified under section 300, is to be determined by reference to the financial items as stated in the financial statements specified in Division 4.

303.

Successive distributions

(1)

This section applies if—

(a)

a company proposes to make a distribution pursuant to determinations made by reference to financial items as stated in any financial statements; and

(b)

the company—

(i)

has made one or more prior distributions pursuant to determinations made by reference to financial items as stated in the financial statements; or

(ii)

since the financial statements were prepared, has given financial assistance specified in subsection (3) or has made a payment specified in subsection (4).

(2)

Section 302 applies for the purpose of determining the amount of the proposed distribution that may be made without contravening section 297, 298 or 299, or a prohibition or restriction in that section as modified under section 300, as if the amount of the proposed distribution were increased by the amount of the prior distributions, financial assistance and other payments.

(3)

The financial assistance is—

(a)

financial assistance that is given by the company out of its distributable profits; or

(b)

financial assistance—

(i)

that is given by the company in contravention of Division 5 of Part 5; and

(ii)

the giving of which reduces the company's net assets or increases its net liabilities.

(4)

The payment is—

(a)

a payment made by the company in respect of the buy-back by the company of shares in itself (except a payment lawfully made otherwise than out of distributable profits); or

(b)

a payment made by the company of any description specified in section 257(5) (except a payment lawfully made otherwise than out of distributable profits).

(5)

In this section—

liabilities

(

負債

) has the meaning given by section 274(1);

net assets

(

淨資產

), in relation to a company that gives any financial assistance, means the amount by which the aggregate of the company's assets exceeds the aggregate of its liabilities (taking the amount of both assets and liabilities to be as stated in the company's accounting records immediately before the financial assistance is given);

net liabilities

(

淨負債

), in relation to a company that gives any financial assistance, means the amount by which the aggregate of the company's liabilities exceeds the aggregate of its assets (taking the amount of both assets and liabilities to be as stated in the company's accounting records immediately before the financial assistance is given).

Division 4

Specified Financial Statements

304.

Last annual financial statements specified for purposes of section 302

(1)

Subject to sections 305 and 306, the financial statements specified for the purposes of section 302 are the financial statements prepared by the directors for the previous financial year, in relation to which subsections (2), (3), (4), (5) and (6) are complied with.

(2)

The financial statements must—

(a)

have been laid before the company in general meeting under section 429(1); or

(b)

have been sent to every member under section 430(3).

(3)

The financial statements must—

(a)

have been properly prepared in accordance with Subdivision 3 of Division 4 of Part 9; or

(b)

have been properly prepared in accordance with Subdivision 3 of Division 4 of Part 9, except only in relation to the matters that are not material for the purpose specified in subsection (8).

(4)

The company's auditor must have prepared a report on the financial statements under section 405.

(5)

If, in the auditor's report, the auditor has not given an unqualified opinion to the effect that the financial statements have been properly prepared in compliance with this Ordinance, the auditor must have given a written statement as to whether, in the auditor's opinion, the matter in respect of which the report is qualified is material for the purpose specified in subsection (8).

(6)

A written statement under subsection (5)—

(a)

may be made at the time of the report or subsequently; and

(b)

must be laid before the company in general meeting or sent to every member to whom the auditor's report is sent under section 430(3).

(7)

A written statement under subsection (5) is sufficient for the purpose of a distribution to which it relates and that has been proposed. If such a written statement relates to distributions of any particular description, the statement is also sufficient for the purpose of a distribution included in those distributions, even though the distribution has not been proposed at the time of the statement.

(8)

The purpose specified for subsections (3) and (5) is the purpose of determining, by reference to the financial items as stated in the financial statements, whether the distribution would be made in contravention of section 297, 298 or 299, or a prohibition or restriction in that section as modified under section 300.

305.

Interim financial statements specified for purposes of section 302

(1)

This section applies where the distribution would be made in contravention of section 297, 298 or 299, or a prohibition or restriction in that section as modified under section 300, if the amount of distribution that may be made were determined by reference to the financial items as stated in the financial statements specified in section 304.

(2)

The financial statements specified for the purposes of section 302 are the company's financial statements—

(a)

in the case of a listed company—

(i)

that is necessary to enable a reasonable judgement to be made as to the amounts of the financial items; and

(ii)

in relation to which subsections (3), (5) and (6) are complied with; or

(b)

in the case of any other company, that is necessary to enable a reasonable judgement to be made as to the amounts of the financial items.

(3)

Subject to subsection (4), the financial statements must—

(a)

have been properly prepared in accordance with Subdivision 3 of Division 4 of Part 9; or

(b)

have been properly prepared in accordance with Subdivision 3 of Division 4 of Part 9, except only in relation to the matters that are not material for the purpose of determining, by reference to the financial items as stated in the financial statements, whether the distribution would be made in contravention of section 297, 298 or 299, or a prohibition or restriction in that section as modified under section 300.

(4)

The requirement under subsection (3) for any financial statements to be properly prepared in accordance with Subdivision 3 of Division 4 of Part 9 has effect subject to any modification that is necessary for applying that requirement to the financial statements prepared otherwise than for a financial year.

(5)

A statement of financial position that forms part of the financial statements—

(a)

must be approved by the directors;

(b)

must be signed by 2 directors on the directors' behalf; and

(c)

must state the name of the directors who signed the statement on the directors' behalf.

(6)

A copy of the financial statements must have been delivered to the Registrar for registration.

306.

Initial financial statements specified for purposes of section 302

(1)

If the distribution is proposed to be declared before any financial statements are laid before the company in general meeting under section 429(1) or sent to every member under section 430(3), the financial statements specified for the purposes of section 302 are the company's financial statements—

(a)

in the case of a listed company—

(i)

that are necessary to enable a reasonable judgement to be made as to the amounts of the financial items; and

(ii)

in relation to which subsections (2), (4), (5), (6) and (7) are complied with; or

(b)

in the case of any other company, that are necessary to enable a reasonable judgement to be made as to the amounts of the financial items.

(2)

Subject to subsection (3), the financial statements must—

(a)

have been properly prepared in accordance with Subdivision 3 of Division 4 of Part 9; or

(b)

have been properly prepared in accordance with Subdivision 3 of Division 4 of Part 9, except only in relation to the matters that are not material for the purpose specified in subsection (8).

(3)

The requirement under subsection (2) for any financial statements to be properly prepared in accordance with Subdivision 3 of Division 4 of Part 9 has effect subject to any modification that is necessary for applying that requirement to any financial statements prepared otherwise than for a financial year.

(4)

A statement of financial position that forms part of the financial statements—

(a)

must be approved by the directors;

(b)

must be signed by 2 directors on the directors' behalf; and

(c)

must state the name of the directors who signed the statement on the directors' behalf.

(5)

The company's auditor must have prepared a report on the financial statements stating whether, in the auditor's opinion, the financial statements satisfy subsection (2)(a).

(6)

If, in the auditor's report, the auditor has not given an unqualified opinion to the effect that the financial statements satisfy subsection (2)(a), the auditor must have given a written statement as to whether, in the auditor's opinion, the matter in respect of which the report is qualified is material for the purpose specified in subsection (8).

(7)

A copy of the financial statements, of the auditor's report of the financial statements, and of any written statement under subsection (6), must have been delivered to the Registrar for registration.

(8)

The purpose specified for subsections (2) and (6) is the purpose of determining, by reference to the financial items as stated in the financial statements, whether the distribution would be made in contravention of section 297, 298 or 299, or a prohibition or restriction in that section as modified under section 300.

Part 7

Debentures

(Format changes—E.R. 1 of 2013)

Division 1

Preliminary

307.

Interpretation

In this Part—

branch register

(

登記支冊

) means a branch register kept under section 312;

debenture

(

債權證

), in relation to a company—

(a)

includes bonds and any other debt securities of the company, whether or not constituting a charge on the assets of the company; and

(b)

except in sections 308, 311(2)(a), 312 and 331(1)(a) and Divisions 3 and 4, includes debenture stock;

register of debenture holders

(

債權證持有人登記冊

) means a register kept under section 308.

Division 2

Register of Debenture Holders

308.

Register of debenture holders

(1)

If a company issues a series of debentures, or any debenture stock, that are not transferable by delivery, the company must keep in the English or Chinese language a register of the holders of the debentures or debenture stock.

(2)

A company must enter in the register of debenture holders—

(a)

the name and address of each holder of debentures or debenture stock;

(b)

the amount of debentures or debenture stock held by each holder;

(c)

the date on which each person is entered in the register as a holder of debentures or debenture stock; and

(d)

the date on which any person ceases to be a holder of debentures or debenture stock.

(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.

309.

Place where register must be kept

(1)

A company must keep its register of debenture holders at—

(a)

the company's registered office; or

(b)

a place prescribed by regulations made under section 657.

(2)

A company must notify the Registrar of the place at which the register of debenture holders is kept. The notice must be in the specified form and delivered to the Registrar for registration within 15 days after the register is first kept at that place.

(3)

A company must notify the Registrar of any change (other than a change of the address of the company's registered office) in the place at which the register of debenture holders is kept. The notice must be in the specified form and delivered to the Registrar for registration within 15 days after the change.

(4)

Subsection (2) does not require a company to notify the Registrar of the place at which the register of debenture holders is kept—

(a)

if, in the case of a register that came into existence on or after the commencement date[e] of this Division, it has at all times been kept at the company's registered office; or

(b)

if—

(i)

immediately before that commencement date[e], the company kept a register for the purposes of section 74A of the predecessor Ordinance; and

(ii)

on and after that commencement date[e], that register is kept as a register of debenture holders for the purposes of section 308(1) at the place at which it was kept immediately before that commencement date[e].

(5)

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 4 and, in the case of a continuing offence, to a further fine of $700 for each day during which the offence continues.

Editorial Note:

Commencement date: 3 March 2014.

310.

Right to inspect and request copy

(1)

A member of a company is entitled, on request made in the prescribed manner and without charge, to inspect the register of debenture holders of the company in accordance with regulations made under section 657.

(2)

A person who is registered in the register as a debenture holder of the company is entitled, on request made in the prescribed manner and without charge, to inspect the register in accordance with regulations made under section 657.

(3)

Any other person is entitled, on request made in the prescribed manner and on payment of a prescribed fee, to inspect the register in accordance with regulations made under section 657.

(4)

A person is entitled, on request and on payment of a prescribed fee, to be provided with a copy of the register of debenture holders of a company, or any part of it, in accordance with regulations made under section 657.

(5)

A debenture holder of a company or the trustee for all debenture holders of a company is entitled, on request and on payment of a prescribed fee, to be provided with a copy of any trust deed or any other document securing the issue of the debentures in accordance with regulations made under section 657.

(6)

In this section—

prescribed

(

訂明

) means prescribed by regulations made under section 657.

311.

Power to close register of debenture holders

(1)

A company may, on giving notice in accordance with subsection (2), close its register of debenture holders, or any part of it, for any period or periods not exceeding in the whole 30 days in each year.

(2)

A notice for the purposes of subsection (1)—

(a)

in the case of a company having any of the debentures or debenture stock mentioned in section 308(1) listed on a recognized stock market, 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 by a resolution passed in that year by a majority in value of the debenture holders present in person or, if proxies are permitted, by proxy at a meeting summoned for the purpose or otherwise in accordance with the trust deed or any other document securing the issue of the debentures.

(4)

The period of 30 days mentioned in subsection (1) must not be extended for a further period or periods exceeding 30 days in the whole 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 company 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.

312.

Branch register of debenture holders

(1)

If a company issues in a place outside Hong Kong a series of debentures, or any debenture stock, that are not transferable by delivery, the company may, if it is authorized to do so by its articles, cause to be kept there a branch register of the holders of the debentures or debenture stock who are resident there.

(2)

A company that begins to keep a branch register must deliver to the Registrar for registration a notice in the specified form within 15 days after doing so, stating the address where the branch register is kept.

(3)

A company that keeps a branch register must deliver to the Registrar for registration a notice in the specified form of any change in the address where the branch register is kept, within 15 days after the change.

(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.

313.

Keeping of branch register

(1)

A branch register must be kept in the same manner in which the company's register of debenture holders (

the principal register

) is by this Ordinance required to be kept.

(2)

A company that keeps a branch register may close it in the same manner in which the principal register may be closed under section 311 except that the advertisement mentioned in that section must be inserted in a newspaper circulating generally in the place in which the branch register is kept.

(3)

A company that keeps a branch register—

(a)

must cause a duplicate of it to be kept at the place at which the company's principal register is kept; and

(b)

must, within 15 days after an entry is made in the branch register—

(i)

transmit a copy of the entry to its registered office; and

(ii)

update the duplicate of the branch register.

(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.

314.

Transactions in debentures registered in branch register

(1)

The debentures registered in a branch register of a company must be distinguished from those registered in the company's register of debenture holders.

(2)

No transaction with respect to any debentures registered in a branch register may, during the continuance of that registration, be registered in any other register.

315.

Discontinuance of branch register

(1)

A company may discontinue a branch register.

(2)

If a company discontinues 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 debenture holders.

(3)

If a company discontinues a branch register, it must, within 15 days after the discontinuance, deliver to the Registrar for registration a notice in the specified form informing the Registrar of—

(a)

the discontinuance; and

(b)

the register to which the entries have been transferred.

(4)

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.

Division 3

Allotment of Debentures or Debenture Stock

316.

Return of allotment

(1)

Within one month after an allotment of debentures or debenture stock, a company must deliver to the Registrar for registration a return of the allotment that complies with subsection (2).

(2)

A return—

(a)

must be in the specified form; and

(b)

must state—

(i)

the amount of debentures or debenture stock allotted;

(ii)

the name and address of each allottee;

(iii)

the date of allotment of debentures or debenture stock; and

(iv)

the date of redemption of debentures or debenture stock.

(2A)

Subsection (2)(b)(ii) does not apply if the debentures or debenture stock are transferable by delivery.

(Added 35 of 2018 s. 28)

(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 4 and, in the case of a continuing offence, to a further fine of $700 for each day during which the offence continues.

(4)

If a company fails to deliver a return that complies with subsection (2) within one month after an allotment of debentures or debenture stock, the Court may, on application by the company or a responsible person of the company, extend the period for delivery of the return by a period determined by the Court.

(5)

The Court may extend a period under subsection (4) only if it is satisfied—

(a)

that failure to deliver the return was accidental or due to inadvertence; or

(b)

that it is just and equitable to extend the period.

(6)

If the Court extends the period for delivery of a return, any liability already incurred by the company or a responsible person of the company for an offence under subsection (3) is extinguished and subsection (1) has effect as if the reference to one month were a reference to the extended period.

317.

Registration of allotment

(1)

A company must register an allotment of debentures or debenture stock as soon as practicable and in any event within 2 months after the date of the allotment, by entering in its register of debenture holders the information mentioned in section 308(2).

(2)

If a company fails to register an allotment of debentures or debenture stock within 2 months after the date of the allotment, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of $700 for each day during which the offence continues.

318.

Issue of debenture or certificate for debenture stock on allotment

(1)

Within 2 months after an allotment of debentures or debenture stock, a company must—

(a)

in the case of an allotment of debentures, complete the debentures and have them ready for delivery; or

(b)

in the case of an allotment of debenture stock, complete the certificates for the debenture stock and have them ready for delivery.

(2)

Subsection (1) does not apply if the conditions of allotment of the debentures or debenture stock provide otherwise.

(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 4 and, in the case of a continuing offence, to a further fine of $700 for each day during which the offence continues.

319.

Court order for delivery of debenture or certificate for debenture stock

(1)

If a company contravenes section 318 in relation to an allotment of debentures or debenture stock, a person entitled to the debentures or certificates for the debenture stock may serve a notice on the company requiring it to deliver the debentures or certificates to the person within 10 days.

(2)

If a company on which a notice has been served under subsection (1) does not deliver the debentures or certificates within 10 days after service of the notice, the person may apply to the Court for an order under subsection (3).

(3)

On an application under subsection (2), the Court may make an order directing the company and any officer of the company to deliver the debentures or certificates to the person within the period specified in the order.

(4)

The order may provide that all costs of and incidental to the application are to be borne by the company or by an officer of the company responsible for the contravention.

Division 4

Transfer of Debentures or Debenture Stock

320.

Requirement for instrument of transfer

(1)

A company must not register a transfer of debentures or debenture stock of the company unless a proper instrument of transfer has been delivered to the company.

(2)

Subsection (1) does not affect any power of a company to register as a debenture holder a person to whom the right to debentures or debenture stock has been transmitted by operation of law.

321.

Registration of transfer or refusal of registration

(1)

The transferee or transferor of debentures or debenture stock of a company may lodge the transfer with the company.

(2)

Within 2 months after the transfer is lodged, the company must either—

(a)

register the transfer; or

(b)

send the transferee and the transferor notice of refusal to register the transfer.

(3)

If a company contravenes subsection (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.

322.

Certification of transfer

(1)

The certification by a company of an instrument of transfer of any debentures or debenture stock of the company—

(a)

is a representation by the company to any person acting on the faith of the certification that documents have been produced to the company that evidence title to the debentures or debenture stock in the transferor named in the instrument; and

(b)

is not a representation that the transferor has any title to the debentures or debenture stock.

(2)

If a person acts on the faith of a false certification by a company made negligently, the company is under the same liability to the person as if the certification had been made fraudulently.

(3)

For the purposes of this section, an instrument of transfer is certified by a company if it bears—

(a)

the words “certificate lodged”, or words to the same effect, in English or Chinese; and

(b)

under or adjacent to those words, the signature or initials of a person having the actual or apparent authority to certify transfers on behalf of the company.

(4)

Unless the contrary is proved, a signature or initials appearing on an instrument of transfer as mentioned in subsection (3)(b) must be regarded—

(a)

as the signature or initials of the person whose signature or initials they purport to be; and

(b)

as having been placed on the instrument by that person or by another person who has the actual or apparent authority to use the signature or initials for the purpose of certifying transfers on behalf of the company.

323.

Issue of debenture or certificate for debenture stock on transfer

(1)

Within the period specified in subsection (2), a company must—

(a)

in the case of a transfer of debentures, complete the debentures and have them ready for delivery; or

(b)

in the case of a transfer of debenture stock, complete the certificates for the debenture stock and have them ready for delivery.

(2)

The period is—

(a)

for a private company, 2 months after the day on which the transfer is lodged with the company;

(b)

for any other company, 10 business days after the day on which the transfer is lodged with the company.

(3)

Subsection (1) does not apply to a transfer if—

(a)

the conditions of issue of the debentures or debenture stock provide otherwise;

(b)

stamp duty has not been paid in respect of the transfer;

(c)

the transfer is invalid; or

(d)

the company, being entitled to do so, refuses to register the transfer.

(4)

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

(5)

In this section—

business day

(

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

324.

Court order for delivery of debenture or certificate for debenture stock

(1)

If a company contravenes section 323 in relation to a transfer of debentures or debenture stock, a person entitled to the debentures or certificates for the debenture stock may serve a notice on the company requiring it to deliver the debentures or certificates to the person within 10 days.

(2)

If a company on which a notice has been served under subsection (1) does not deliver the debentures or certificates within 10 days after service of the notice, the person may apply to the Court for an order under subsection (3).

(3)

On an application under subsection (2), the Court may make an order directing the company and any officer of the company to deliver the debentures or certificates to the person within the period specified in the order.

(4)

The order may provide that all costs of and incidental to the application are to be borne by the company or by an officer of the company responsible for the contravention.

Division 5

Miscellaneous Provisions

325.

Evidence of grant of probate etc.

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

326.

Form of register of holders of debentures kept under instrument made by company

(1)

This section applies to a register of holders of debentures that is required to be kept under an instrument made by a company.

(2)

If a provision of the instrument requires the register to be kept in a legible form, the provision is to be construed as requiring the register to be kept either—

(a)

in a legible form; or

(b)

in a non-legible form capable of being reproduced in a legible form.

327.

Perpetual debentures

(1)

Despite any rule of equity to the contrary, a condition contained in any debentures, or in a deed securing the issue of any debentures, is not invalid only because the debentures are, by the condition, made—

(a)

irredeemable;

(b)

redeemable only on the happening of a contingency (however remote); or

(c)

redeemable only on the expiration of a period of time (however long).

(2)

Subsection (1) applies to debentures whenever issued and to deeds whenever executed.

328.

Power to reissue redeemed debentures

(1)

This section applies if a company has, whether before, on or after the commencement date[a] of this section, redeemed any debentures previously issued.

(2)

A company has, and is to be regarded as always having had, the power to reissue redeemed debentures, either by reissuing the same debentures or by issuing new debentures in their place, unless—

(a)

a provision to the contrary (express or implied) is contained in the company's articles or any contract made by the company; or

(b)

the company has, by passing a resolution to that effect or by any other act, manifested its intention that the debentures are to be cancelled.

(3)

On a reissue of any redeemed debentures, a person entitled to the debentures has, and is to be regarded as always having had, the same priorities as if the debentures had never been redeemed.

(4)

A reissue of redeemed debentures, whether before, on or after the commencement date[a] of this section—

(a)

is to be regarded as an issue of new debentures for the purposes of stamp duty; and

(b)

is not to be regarded as an issue of new debentures for the purposes of any provision limiting the amount or number of debentures to be issued.

(5)

A person lending money on the security of any debentures reissued under this section that appear to be stamped may give the debentures in evidence in any proceedings for enforcing the person's security.

(6)

If a person gives the debentures in evidence in any proceedings for enforcing the person's security under subsection (5), the stamp duty and penalty payable under the Stamp Duty Ordinance (Cap. 117) in respect of the reissue of the debentures are to be paid by the company.

(7)

Subsections (5) and (6) do not apply if the person had notice or, but for the person's negligence, might have discovered that the debentures were not stamped.

(8)

If any debentures redeemed before 1 July 1933 are reissued on or after that date, the reissue does not prejudice, and is to be regarded as never having prejudiced, any right or priority that a person would have had under or by virtue of any mortgage or charge created before that date.

Editorial Note:

[a] Commencement date: 3 March 2014.

329.

Deposit of debentures to secure advances

If a company has, whether before, on or after the commencement date[a] of this section, deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures are not to be regarded as having been redeemed only because the account of the company has ceased to be in debit while the debentures remained so deposited.

Editorial Note:

[a] Commencement date: 3 March 2014.

330.

Specific performance of contracts to subscribe for debentures

A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

331.

Court may order meeting of debenture holders

(1)

This section applies to any person who holds—

(a)

any debentures that form part of a series issued by a company and rank equally with the other debentures of that series; or

(b)

any debenture stock of a company.

(2)

If a person to whom this section applies, either alone or jointly with any other such person, holds at least the specified percentage of the value of the company's debentures, the person may apply to the Court for a meeting of the company's debenture holders to be held to give directions to the trustee for the debenture holders.

(3)

Subsection (2) may be excluded by the debentures, or the trust deeds or other documents securing the issue of the debentures.

(4)

In this section—

specified percentage

(

指明百分比

) means—

(a)

10%; or

(b)

the higher percentage that may be provided for in the debentures, or the trust deeds or other documents securing the issue of the debentures.

332.

Liability of trustees for debenture holders

(1)

A provision contained in—

(a)

a trust deed securing an issue of debentures; or

(b)

a contract with the holders of debentures secured by a trust deed,

is void to the extent that it would exempt a trustee of the trust deed from, or indemnify the trustee against, liability for breach of trust for the trustee's failure to show the degree of care and diligence required of the trustee as a trustee, having regard to the provisions of the trust deed conferring on the trustee any powers, authorities or discretions.

(2)

Subsection (1) does not—

(a)

invalidate a release otherwise validly given in respect of anything done, or omitted to be done, by a trustee before the giving of the release;

(b)

invalidate any provision enabling such a release to be given—

(i)

on being agreed to by a majority of at least 75% in value of the debenture holders present and voting in person or, if proxies are permitted, by proxy at a meeting summoned for the purpose; and

(ii)

either with respect to specific acts or omissions or on the trustee dying or ceasing to act;

(c)

invalidate any provision in force on 31 August 1984 so long as any person who is then entitled to the benefit of the provision, or who is afterwards given the benefit of the provision under subsection (3), remains a trustee of the trust deed; or

(d)

deprive any person of any exemption or right to be indemnified in respect of anything done, or omitted to be done, by the person while any provision mentioned in paragraph (c) was in force.

(3)

While a trustee of a trust deed remains entitled to the benefit of a provision saved by subsection (2)(c) or (d), the benefit may be given, in accordance with subsection (4), to—

(a)

all present and future trustees of the trust deed; or

(b)

any named trustees or proposed trustees of the trust deed.

(4)

The benefit is to be given by a resolution passed by a majority of at least 75% in value of the debenture holders present in person or, if proxies are permitted, by proxy at a meeting summoned for the purpose—

(a)

in accordance with the provisions of the trust deed; or

(b)

if the trust deed makes no provision for summoning meetings, in a manner approved by the Court.

Part 8

Registration of Charges

(Format changes—E.R. 1 of 2013)

Division 1

Preliminary

333.

Interpretation

(1)

In this Part—

charge

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) includes mortgage;

manager

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經理人

) excludes a special manager of the estate or business of a company or registered non-Hong Kong company appointed under section 216 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

(2)

For the purposes of this Part—

(a)

if a ship or aircraft of a registered non-Hong Kong company is registered in Hong Kong, it is to be regarded as property in Hong Kong of the company even though it is physically located outside Hong Kong; and

(b)

if a ship or aircraft of a registered non-Hong Kong company is registered in a place outside Hong Kong, it is to be regarded as property outside Hong Kong of the company even though it is physically located in Hong Kong.

(3)

In Divisions 2 and 4, a reference to a person interested in a charge excludes the company or registered non-Hong Kong company creating the charge.

(4)

For the purposes of Divisions 2 and 3, a copy of an instrument in relation to a charge delivered for registration is a certified copy if it is certified as a true copy—

(a)

by—

(i)

a director or company secretary of the company or registered non-Hong Kong company delivering the copy for registration; or

(ii)

a person authorized by that company or registered non-Hong Kong company for the purpose; or

(b)

by—

(i)

any other person interested in the charge; or

(ii)

in the case of—

(A)

an interested person who is a natural person, a person authorized by the interested person for the purpose; or

(B)

an interested person that is a body corporate, a person authorized by the interested person for the purpose, or a director or company secretary of the interested person.

(5)

In Division 6, a reference to the charged property of a registered non-Hong Kong company is a reference to—

(a)

the property in Hong Kong of the company and subject to a charge created by the company, except property that was not in Hong Kong when the charge was created; or

(b)

the property in Hong Kong of the company and subject to a charge that subsisted when the property was acquired by the company, except property that was not in Hong Kong when it was so acquired.

Division 2

Obligation to Register Specified Charges after Creation

334.

Specified charge

(1)

In this Division, a reference to a specified charge is a reference to any of the following charges created on or after the material date—

(Amended 14 of 2025 s. 16)

(a)

a charge on uncalled share capital of the company;

(b)

a charge created or evidenced by an instrument that, if executed by a natural person, would require registration as a bill of sale;

(c)

a charge on land (wherever situate) or any interest in land, except a charge for any rent or other periodical sum issuing out of land;

(d)

a charge on book debts of the company;

(e)

a charge on calls made but not paid;

(f)

a charge on instalments due, but not paid, on the issue price of shares;

(g)

a charge on a ship or any share in a ship;

(h)

a charge on an aircraft or any share in an aircraft;

(i)

a charge on—

(i)

goodwill;

(ii)

a patent or a licence under a patent;

(iii)

a trademark; or

(iv)

a copyright or a licence under a copyright;

(j)

a floating charge on the company's undertaking or property.

(2)

For the purposes of subsection (1)(c), the holding of debentures entitling the holder to a charge on land is not to be regarded as an interest in the land.

(3)

For the purposes of subsection (1)(d)—

(a)

the deposit by way of security of a negotiable instrument given to secure the payment of book debts is not to be regarded as a charge on those book debts; and

(b)

if a company maintains a deposit of money with another person (whether the money is deposited by the company or by any other person for the company's benefit), a charge on the company's right to repayment of the money is not to be regarded as a charge on book debts of the company.

(4)

For the purposes of subsection (1)(d) and (j), if a company charters a ship from a shipowner, the shipowner's lien on the subfreights for amounts due under the charter is not to be regarded as a charge on book debts of the company or as a floating charge on the company's undertaking or property.

(5)

In this section—

material date

(

關鍵日期

)—

(a)

for a company that is not a re-domiciled company—means 3 March 2014; and

(b)

for a re-domiciled company—means the re-domiciliation date.

(Added 14 of 2025 s. 16)

335.

Company must register specified charge created by it

(1)

A company must deliver a statement of the particulars of every specified charge created by the company, together with a certified copy of the instrument (if any) creating or evidencing the charge, to the Registrar for registration within the registration period specified in subsection (5)(a).

(2)

Where—

(a)

a specified charge created by a company—

(i)

is given in a debenture forming part of a series by reference to any other instrument containing the charge (whether or not also contained in the debenture); or

(ii)

is contained in a debenture forming part of a series (but not given in the debenture by reference to any other instrument); and

(b)

every holder of the debentures of the series is entitled equally to the benefit of the charge,

the company is to be regarded as having complied with subsection (1) in relation to the specified charge if the company delivers a statement of the particulars of the charge, together with a certified copy of an instrument specified in subsection (4), to the Registrar for registration within the registration period specified in subsection (5)(b).

(3)

A person interested in a specified charge—

(a)

may deliver a statement of the particulars of the charge, together with a certified copy of the instrument (if any) creating or evidencing the charge, to the Registrar for registration within the registration period specified in subsection (5)(a); or

(b)

may, in the case of subsection (2), deliver a statement of the particulars of the charge, together with a certified copy of an instrument specified in subsection (4), to the Registrar for registration within the registration period specified in subsection (5)(b).

(4)

The instrument is—

(a)

for the purposes of subsection (2)(a)(i), the instrument by reference to which the specified charge is given; or

(b)

for the purposes of subsection (2)(a)(ii), any one debenture of the series.

(5)

The registration period is—

(a)

for the purposes of subsection (1) or (3)(a)—

(i)

one month after the date on which the specified charge is created; or

(ii)

where the specified charge is created outside Hong Kong and comprising property situate outside Hong Kong, one month after the date on which a certified copy of the instrument creating or evidencing that charge could, if despatched with due diligence, have been received in Hong Kong in due course of post; and

(b)

for the purposes of subsection (2) or (3)(b)—

(i)

one month after the execution of the instrument by reference to which the specified charge is given or if there is no such instrument, one month after the execution of the first debenture of the series; or

(ii)

where the specified charge is created outside Hong Kong and comprising property situate outside Hong Kong, one month after the date on which a certified copy of the specified instrument could, if despatched with due diligence, have been received in Hong Kong in due course of post.

(6)

A statement of the particulars of a specified charge—

(a)

must be in the specified form; and

(b)

must be accompanied by the prescribed fee.

(7)

If a person interested in a specified charge pays to the Registrar any prescribed fee for the registration of a statement of the particulars of the charge, the fee is recoverable from the company creating the charge.

(8)

If a specified charge is created in Hong Kong and comprises property situate outside Hong Kong, a certified copy of the instrument creating or purporting to create the charge may be delivered to the Registrar for registration under subsection (1), (2) or (3) even though further proceedings may be necessary to make that charge valid or effectual according to the law of the place in which the property is situate.

336.

Registered non-Hong Kong company must register specified charge created by it

(1)

A registered non-Hong Kong company must deliver a statement of the particulars of every specified charge created by the company on property in Hong Kong of the company, together with a certified copy of the instrument (if any) creating or evidencing the charge, to the Registrar for registration within the registration period specified in subsection (6)(a).

(2)

Where—

(a)

a specified charge created by a registered non-Hong Kong company on property in Hong Kong of the company—

(i)

is given in a debenture forming part of a series by reference to any other instrument containing the charge (whether or not also contained in the debenture); or

(ii)

is contained in a debenture forming part of a series (but not given in the debenture by reference to any other instrument); and

(b)

every holder of the debentures of the series is entitled equally to the benefit of the charge,

the company is to be regarded as having complied with subsection (1) in relation to the specified charge if the company delivers a statement of the particulars of the charge, together with a certified copy of an instrument specified in subsection (4), to the Registrar for registration within the registration period specified in subsection (6)(b).

(3)

A person interested in a specified charge—

(a)

may deliver a statement of the particulars of the charge, together with a certified copy of the instrument (if any) creating or evidencing the charge, to the Registrar for registration within the registration period specified in subsection (6)(a); or

(b)

may, in the case of subsection (2), deliver a statement of the particulars of the charge, together with a certified copy of an instrument specified in subsection (4), to the Registrar for registration within the registration period specified in subsection (6)(b).

(4)

The instrument is—

(a)

for the purposes of subsection (2)(a)(i), the instrument by reference to which the specified charge is given; or

(b)

for the purposes of subsection (2)(a)(ii), any one debenture of the series.

(5)

Subsections (1) and (2) do not apply to a charge on property if the property was not in Hong Kong when the charge was created by the registered non-Hong Kong company.

(6)

The registration period is—

(a)

for the purposes of subsection (1) or (3)(a), one month after the date on which the specified charge is created; and

(b)

for the purposes of subsection (2) or (3)(b)—

(i)

one month after the execution of the instrument by reference to which the specified charge is given; or

(ii)

if there is no such instrument, one month after the execution of the first debenture of the series.

(7)

A statement of the particulars of a specified charge—

(a)

must be in the specified form; and

(b)

must be accompanied by the prescribed fee.

(8)

If a person interested in a specified charge pays to the Registrar any prescribed fee for the registration of a statement of the particulars of the charge, the fee is recoverable from the registered non-Hong Kong company creating the charge.

336A.

Supplementary provisions for section 336—where company incorporated outside Hong Kong ceases to be registered non-Hong Kong company because of registration under section 820C

(1)

This section applies if—

(a)

a company incorporated outside Hong Kong becomes a re-domiciled company (***re-domiciliation***); and

(b)

immediately before the re-domiciliation, the company is required, but has yet, to comply with the requirement under section 336(1) (***requirement***) in relation to a charge.

(2)

Despite the re-domiciliation—

(a)

the company is required to comply with the requirement in relation to the charge; and

(b)

section 336(2), (3) and (8) applies in relation to the charge,

as if the re-domiciliation had not taken place and the company were still a registered non-Hong Kong company.

(Added 14 of 2025 s. 17)

337.

Consequences of contravention of section 335 or 336

(1)

This section applies if—

(a)

a company contravenes section 335(1) in relation to a charge, and a person interested in the charge has not registered the charge under section 335(3); or

(b)

a registered non-Hong Kong company, or a company to which section 336A applies, contravenes section 336(1) in relation to a charge, and a person interested in the charge has not registered the charge under section 336(3).

(2)

Subject to section 346, the company, and every responsible person of the company, commit an offence.

(3)

A person who commits an offence under subsection (2) 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)

Subject to section 346, the charge is void against any liquidator and creditor of the company so far as any security on its undertaking or property is conferred by the charge.

(5)

Subsection (4) does not prejudice any contract or obligation for repayment of the money secured by the charge.

(6)

At the lender's option, the money secured by a charge becomes immediately payable when the charge becomes void under subsection (4).

(Amended 14 of 2025 s. 18)

Division 3

Obligation to Register Existing Charges

338.

Company must register charge existing on property acquired

(1)

This section applies if—

(a)

a company acquires property subject to a charge; and

(b)

the charge is of a kind that a statement of its particulars would have been required by section 335(1) to be delivered for registration had it been created by the company after the acquisition.

(2)

The company must deliver a statement of the particulars of the charge, together with a certified copy of the instrument (if any) creating or evidencing the charge, to the Registrar for registration within the registration period specified in subsection (3).

(3)

The registration period is—

(a)

one month after the date on which the acquisition is completed; or

(b)

where the property is situate, and the charge was created, outside Hong Kong, one month after the date on which a certified copy of the instrument creating or evidencing the charge could, if despatched with due diligence, have been received in Hong Kong in due course of post.

(4)

A statement of the particulars of a charge—

(a)

must be in the specified form; and

(b)

must be accompanied by the prescribed fee.

(5)

Subject to section 346, if a company contravenes subsection (2), the company, and every responsible person of the company, commit an offence.

(6)

A person who commits an offence under subsection (5) 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.

338A.

Re-domiciled company must register charge created by company before re-domiciliation date and charge existing on property acquired before re-domiciliation date

(1)

This section applies if—

(a)

a company incorporated outside Hong Kong has created a charge before it becomes a re-domiciled company;

(b)

the charge subsists on the re-domiciliation date; and

(c)

the charge is of a kind that a statement of its particulars would have been required by section 335 to be delivered for registration had the charge been created by the re-domiciled company on or after that date.

(2)

This section also applies if—

(a)

after a company incorporated outside Hong Kong has acquired property in Hong Kong or in any other place subject to a charge, it becomes a re-domiciled company;

(b)

the charge subsists on the re-domiciliation date; and

(c)

the charge is of a kind that a statement of its particulars would have been required by section 338 to be delivered for registration had the property been acquired by the re-domiciled company on or after that date.

(3)

Despite subsections (1) and (2), this section does not apply if the re-domiciled company has complied with section 336, 339 or 340 in relation to the charge.

(4)

The re-domiciled company must deliver a statement of the particulars of the charge to the Registrar for registration within 1 month after the re-domiciliation date.

(5)

If there is a specified instrument in relation to the charge, the re-domiciled company must deliver the statement under subsection (4) together with a certified copy of the specified instrument or, if there is more than one specified instrument in relation to the charge, a certified copy of any of those specified instruments.

(6)

A statement of the particulars of a charge—

(a)

must be in the specified form; and

(b)

must be accompanied by the prescribed fee.

(7)

Subject to section 346, if a re-domiciled company contravenes subsection (4) or (5) in relation to a charge, the company, and every responsible person of the company, commit an offence.

(8)

A person who commits an offence under subsection (7) is liable on conviction 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—

specified instrument

(

指明文書

)—see section 338B.

(Added 14 of 2025 s. 19)

338B.

Meaning of

specified instrument

—for section 338A

(1)

This section explains the meaning of ***specified instrument*** for the purposes of section 338A.

(2)

If—

(a)

a charge of a re-domiciled company is given in a debenture forming part of a series by reference to any other instrument containing the charge (whether or not also contained in the debenture); and

(b)

every holder of the debentures of the series is entitled equally to the benefit of the charge,

the instrument by reference to which the charge is given is the specified instrument in relation to the charge.

(3)

If—

(a)

a charge of a re-domiciled company is contained in a debenture forming part of a series (but not given in the debenture by reference to any other instrument); and

(b)

every holder of the debentures of the series is entitled equally to the benefit of the charge,

any one debenture of the series is a specified instrument in relation to the charge.

(4)

In relation to any other charge, an instrument creating or evidencing the charge is a specified instrument in relation to the charge.

(Added 14 of 2025 s. 19)

339.

Registered non-Hong Kong company must register charge existing on property acquired

(1)

This section applies if—

(a)

a registered non-Hong Kong company acquires property in Hong Kong subject to a charge; and

(b)

the charge is of a kind that a statement of its particulars would have been required by section 336(1) to be delivered for registration had it been created by the registered non-Hong Kong company after the acquisition.

(2)

Subsection (1)(a) does not apply to a charge on property if the property was not in Hong Kong when the property was acquired by the registered non-Hong Kong company.

(3)

The registered non-Hong Kong company must deliver a statement of the particulars of the charge, together with a certified copy of the instrument (if any) creating or evidencing the charge, to the Registrar for registration within the registration period specified in subsection (4).

(4)

The registration period is one month after the date on which the acquisition is completed.

(5)

A statement of the particulars of a charge—

(a)

must be in the specified form; and

(b)

must be accompanied by the prescribed fee.

(6)

Subject to section 346, if a registered non-Hong Kong company contravenes subsection (3), the company, and every responsible person of the company, commit an offence.

(7)

A person who commits an offence under subsection (6) 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.

339A.

Supplementary provisions for section 339—where company incorporated outside Hong Kong ceases to be registered non-Hong Kong company because of registration under section 820C

(1)

This section applies if—

(a)

a company incorporated outside Hong Kong becomes a re-domiciled company (***re-domiciliation***); and

(b)

immediately before the re-domiciliation, the company is required, but has yet, to comply with the requirement under section 339(3) (***requirement***) in relation to a charge.

(2)

Despite the re-domiciliation—

(a)

the company is required to comply with the requirement in relation to the charge; and

(b)

section 339(6) and (7) applies in relation to the charge,

as if the re-domiciliation had not taken place and the company were still a registered non-Hong Kong company.

(Added 14 of 2025 s. 20)

340.

Registered non-Hong Kong company must register charge existing on property on date of company's registration under Part 16

(1)

This section applies if—

(a)

a registered non-Hong Kong company has, on the date of its registration under Part 16, property in Hong Kong subject to—

(i)

a charge created by the company; or

(ii)

a charge that subsisted when the property was acquired; and

(b)

the charge is of a kind that a statement of its particulars would have been required by section 336(1) or 339(3) to be delivered for registration had the charge been created by the company, or had the property been acquired by the company, after the company has been registered under Part 16.

(2)

The registered non-Hong Kong company must deliver a statement of the particulars of the charge, together with a certified copy of the instrument (if any) creating or evidencing the charge, to the Registrar for registration within the registration period specified in subsection (5).

(3)

If, in the case of subsection (1)(a)(i)—

(a)

the charge—

(i)

is given in a debenture forming part of a series by reference to any other instrument containing the charge (whether or not also contained in the debenture); or

(ii)

is contained in a debenture forming part of a series (but not given in the debenture by reference to any other instrument); and

(b)

every holder of the debentures of the series is entitled equally to the benefit of the charge,

the registered non-Hong Kong company is to be regarded as having complied with subsection (2) in relation to the charge if that company delivers a statement of the particulars of the charge, together with a certified copy of an instrument specified in subsection (4), to the Registrar for registration within the registration period specified in subsection (5).

(4)

The instrument is—

(a)

for the purposes of subsection (3)(a)(i), the instrument by reference to which the charge is given; or

(b)

for the purposes of subsection (3)(a)(ii), any one debenture of the series.

(5)

The registration period is one month after the date on which the registered non-Hong Kong company is registered under Part 16.

(6)

A statement of the particulars of a charge—

(a)

must be in the specified form; and

(b)

must be accompanied by the prescribed fee.

(7)

Subject to section 346, if a registered non-Hong Kong company contravenes subsection (2), the company, and every responsible person of the company, commit an offence.

(8)

A person who commits an offence under subsection (7) 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.

340A.

Supplementary provisions for section 340—where company incorporated outside Hong Kong ceases to be registered non-Hong Kong company because of registration under section 820C

(1)

This section applies if—

(a)

a company incorporated outside Hong Kong becomes a re-domiciled company (***re-domiciliation***); and

(b)

immediately before the re-domiciliation, the company is required, but has yet, to comply with the requirement under section 340(2) (***requirement***) in relation to a charge.

(2)

Despite the re-domiciliation—

(a)

the company is required to comply with the requirement in relation to the charge; and

(b)

section 340(3), (7) and (8) applies in relation to the charge,

as if the re-domiciliation had not taken place and the company were still a registered non-Hong Kong company.

(Added 14 of 2025 s. 21)

Division 4

Obligation to Register Other Particulars of Debentures

341.

Company or registered non-Hong Kong company must register particulars of issue of debentures

(1)

This section applies if—

(a)

a debenture forming part of a series—

(i)

contains a charge created by a company or registered non-Hong Kong company; or

(ii)

gives a charge created by a company or registered non-Hong Kong company, by reference to any other instrument containing the charge;

(b)

every holder of the debentures of the series is entitled equally to the benefit of the charge; and

(c)

a statement of the particulars of the charge is required to be delivered for registration under section 335(2), 336(2), 338A(4) or 340(3).

(Amended 14 of 2025 s. 22)

(2)

The company or registered non-Hong Kong company must deliver a statement of the particulars of every issue of the debentures of the series to the Registrar for registration within the registration period specified in subsection (4).

(3)

A person interested in the charge may deliver a statement of the particulars of an issue of debentures to the Registrar for registration within the registration period specified in subsection (4).

(4)

The registration period is—

(a)

if a statement of the particulars of the charge is delivered for registration under section 335(2) or 336(2)—

(i)

in the case of an issue of debentures made at the time of the creation of the charge, the registration period specified in relation to the registration of the charge in section 335(5)(b) or 336(6)(b); or

(ii)

in the case of any subsequent issue of debentures, one month after the date of the issue;

(Amended 14 of 2025 s. 22)

(ab)

if a statement of the particulars of the charge is delivered for registration under section 338A(4)—

(i)

in the case of an issue of debentures made on or before the re-domiciliation date, 1 month after that date; or

(ii)

in the case of any subsequent issue of debentures, 1 month after the date of the issue; or

(Added 14 of 2025 s. 22)

(b)

if a statement of the particulars of the charge is delivered for registration under section 340(3)—

(i)

in the case of an issue of debentures made on or before the registration under Part 16, the registration period specified in relation to the registration of the charge in section 340(5); or

(ii)

in the case of any subsequent issue of debentures, one month after the date of the issue.

(5)

A statement of the particulars of an issue of debentures must be in the specified form.

(6)

Without limiting section 23, a statement of the particulars of an issue of debentures must contain the date and the amount of the issue.

(7)

Subject to section 346, if subsection (2) is contravened, and a person interested in the charge has not delivered a statement of the particulars of the issue of debentures for registration under subsection (3), the company or registered non-Hong Kong company, and every responsible person of the company or registered non-Hong Kong company, commit an offence.

(8)

A person who commits an offence under subsection (7) 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)

A contravention of subsection (2) does not affect the validity of the debentures issued.

(10)

In this section, a reference to the time of the creation of a charge is a reference to the time of execution of—

(a)

the instrument by reference to which the charge is given; or

(b)

if there is no such instrument, the first debenture of the series.

342.

Company or registered non-Hong Kong company must register particulars of commission etc. in relation to debentures

(1)

This section applies if—

(a)

any commission, allowance or discount has been paid or made, directly or indirectly, by a company or registered non-Hong Kong company to any person in consideration of the person—

(i)

subscribing or agreeing to subscribe, absolutely or conditionally, for any debenture of the company or registered non-Hong Kong company; or

(ii)

procuring or agreeing to procure absolute or conditional subscriptions for any debenture of the company or registered non-Hong Kong company;

(b)

the debenture—

(i)

creates or evidences a charge; or

(ii)

forms part of a series of debentures, and either contains a charge or gives a charge by reference to any other instrument containing a charge;

(c)

the charge is created by the company or registered non-Hong Kong company; and

(d)

a statement of the particulars of the charge is required to be delivered for registration under—

(i)

section 335(1);

(ii)

section 336(1);

(Amended 14 of 2025 s. 23)

(iia)

section 338A(4); or

(Added 14 of 2025 s. 23)

(iii)

section 340(2).

(2)

The company or registered non-Hong Kong company must deliver a statement of the particulars of the commission, allowance or discount to the Registrar for registration within the registration period specified in subsection (6)(a).

(3)

Where—

(a)

in the case of subsection (1)(d)(i), a statement of the particulars of the charge is delivered for registration under section 335(2); or

(b)

in the case of subsection (1)(d)(ii), a statement of the particulars of the charge is delivered for registration under section 336(2),

the company or registered non-Hong Kong company is to be regarded as having complied with subsection (2) if it delivers a statement of the particulars of the commission, allowance or discount to the Registrar for registration within the registration period specified in subsection (6)(b).

(3A)

Where, in the case of subsection (1)(d)(iia), a statement of the particulars of the charge is delivered for registration under section 338A(4), the company is to be regarded as having complied with subsection (2) if it delivers a statement of the particulars of the commission, allowance or discount to the Registrar for registration within the registration period specified in subsection (6)(ba).

(Added 14 of 2025 s. 23)

(4)

Where, in the case of subsection (1)(d)(iii), a statement of the particulars of the charge is delivered for registration under section 340(3), the registered non-Hong Kong company is to be regarded as having complied with subsection (2) if it delivers a statement of the particulars of the commission, allowance or discount to the Registrar for registration within the registration period specified in subsection (6)(c).

(5)

A person interested in the charge—

(a)

may deliver a statement of the particulars of the commission, allowance or discount to the Registrar for registration within the registration period specified in subsection (6)(a); or

(b)

may, in the case of subsection (3), deliver a statement of the particulars of the commission, allowance or discount to the Registrar for registration within the registration period specified in subsection (6)(b).

(6)

The registration period is—

(a)

for the purposes of subsection (2) or (5)(a)—

(i)

in the case of subsection (1)(d)(i), the registration period specified in relation to the registration of the charge in section 335(5)(a);

(ii)

in the case of subsection (1)(d)(ii), the registration period specified in relation to the registration of the charge in section 336(6)(a);

(Amended 14 of 2025 s. 23)

(iia)

in the case of subsection (1)(d)(iia), 1 month after the re-domiciliation date; or

(Added 14 of 2025 s. 23)

(iii)

in the case of subsection (1)(d)(iii), the registration period specified in relation to the registration of the charge in section 340(5);

(b)

for the purposes of subsection (3) or (5)(b)—

(i)

in the case of an issue of debentures made at the time of the creation of the charge, the registration period specified in relation to the registration of that charge in section 335(5)(b) or 336(6)(b); or

(ii)

in the case of any subsequent issue of debentures, one month after the date of the issue;

(Amended 14 of 2025 s. 23)

(ba)

for the purposes of subsection (3A)—

(i)

in the case of an issue of debentures made on or before the re-domiciliation date, 1 month after that date; or

(ii)

in the case of any subsequent issue of debentures, 1 month after the date of the issue; or

(Added 14 of 2025 s. 23)

(c)

for the purposes of subsection (4)—

(i)

in the case of an issue of debentures made on or before the registration under Part 16, the registration period specified in relation to the registration of that charge in section 340(5); or

(ii)

in the case of any subsequent issue of debentures, one month after the date of the issue.

(7)

A statement of the particulars of any commission, allowance or discount must be in the specified form.

(8)

For the purposes of this section, the deposit of any debenture as security for any debt of a company or registered non-Hong Kong company is not to be regarded as an issue of debentures at a discount.

(9)

In this section, a reference to the time of the creation of a charge is a reference to the time of execution of—

(a)

the instrument by reference to which the charge is given; or

(b)

if there is no such instrument, the first debenture of the series.

343.

Consequences of contravention of section 342

(1)

Subject to section 346, if section 342(2) is contravened, and a person interested in the charge has not delivered a statement of the particulars of the commission, allowance or discount (as the case may be) for registration under section 342(5), the company or registered non-Hong Kong company, and every responsible person of the company or registered non-Hong Kong company, commit an offence.

(2)

A person who commits an offence under subsection (1) 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)

A contravention of section 342(2) does not affect the validity of the debentures issued.

Division 5

Provisions Supplementary to Divisions 2, 3 and 4

344.

Certificate of registration

(1)

This section applies if a statement of the particulars of a charge, and the requisite accompanying instrument, are delivered by a company or registered non-Hong Kong company, or by a person interested in the charge, to the Registrar for registration under Division 2 or 3.

(2)

After registering the statement and the requisite accompanying instrument, the Registrar must issue a certificate to the company or registered non-Hong Kong company, or to the interested person, certifying registration of the charge under Division 2 or 3.

(3)

A certificate of registration must be signed by the Registrar.

(4)

A certificate of registration is conclusive evidence that the requirements of this Part as to registration have been satisfied.

345.

Notification to Registrar of payment of debt, release, etc.

(1)

This section applies if—

(a)

the debt secured by a registered charge has been paid or satisfied in whole or in part; or

(b)

the whole or any part of the property or undertaking subject to a registered charge—

(i)

has been released from the charge; or

(ii)

has ceased to form part of the company's or registered non-Hong Kong company's property or undertaking.

(2)

The company or registered non-Hong Kong company, or the mortgagee or person entitled to the charge, may notify the Registrar of the payment, satisfaction, release or cessation.

(3)

A notification—

(a)

must be in the specified form;

(b)

must be accompanied by the prescribed fee; and

(c)

must be accompanied by a certified copy of any instrument required by the Registrar for the purpose of evidencing the payment, satisfaction, release or cessation.

(4)

If the Registrar is satisfied from the instrument accompanying a notification that the payment, satisfaction, release or cessation did take place, the Registrar must process the notification, and the accompanying instrument, in the same way as if they were delivered to the Registrar for registration.

(5)

For the purposes of this section, a copy of an instrument is a certified copy if it is certified as a true copy by—

(a)

the mortgagee or the person entitled to the charge; or

(b)

in the case of—

(i)

a mortgagee or entitled person who is a natural person, a person authorized by the mortgagee or entitled person for the purpose; or

(ii)

a mortgagee or entitled person that is a body corporate—

(A)

a person authorized by the mortgagee or entitled person for the purpose; or

(B)

a director or company secretary of the mortgagee or entitled person.

(6)

For the purposes of this section, a charge is a registered charge—

(a)

if—

(i)

a statement of the particulars of the charge, and the requisite accompanying instrument, have been delivered to the Registrar for registration under Division 2 or 3; and

(ii)

the Registrar has recorded the information contained in the statement, and in that instrument, for the purposes of section 27(1); or

(b)

if—

(i)

immediately before the commencement date[e] of this Division, the charge was registered under Part III of the predecessor Ordinance; or

(ii)

on or after the commencement date[e] of this Division, the charge has been registered under Part III of the predecessor Ordinance having a continuing effect under Schedule 11.

Editorial Note:

[e] Commencement date: 3 March 2014.

346.

Extension of time for registration

(1)

The Court may, on application by the company or registered non-Hong Kong company or by a person interested in the charge, order that—

(a)

the registration period specified in section 335(5), 336(6), 338(3), 338A(4), 339(4), 340(5), 341(4) or 342(6) be extended;

(Amended 14 of 2025 s. 24)

(b)

the time required for registration by section 80 or 82 of the predecessor Ordinance, or that section as extended by section 91 of that Ordinance, having a continuing effect under Schedule 11 be extended; or

(c)

the time required for registration by section 91(5) of the predecessor Ordinance having a continuing effect under Schedule 11 be extended.

(2)

The Court may make an order under subsection (1) on any terms and conditions that the Court thinks just and expedient.

(3)

The Court must not make an order unless the Court is satisfied that—

(a)

the failure specified in subsection (5)—

(i)

was accidental;

(ii)

was due to inadvertence or to some other sufficient cause; or

(iii)

is not of a nature to prejudice the position of creditors or members of the company or registered non-Hong Kong company; or

(b)

it is just and equitable to grant the relief on other grounds.

(4)

If—

(a)

the Court makes an order under subsection (1) in relation to a charge or debenture; and

(b)

the failure specified in subsection (5) is rectified within the extended period or time,

any liability already incurred for an offence under the offence provision specified in subsection (6) in relation to the registration of the charge or debenture is extinguished.

(5)

The failure is—

(a)

in the case of subsection (1)(a), a failure to deliver a statement as required under Division 2, 3 or 4, or any accompanying instrument, within that registration period;

(b)

in the case of subsection (1)(b), a failure to deliver—

(i)

the particulars as required under section 80 or 82 of the predecessor Ordinance having a continuing effect under section 63(2), 64(2), 65(2) or 66(2) of Schedule 11 within that time; or

(ii)

a statement as required under section 80 or 82 of the predecessor Ordinance having a continuing effect under section 63(4)(a), 64(4)(a), 65(4) or 66(4) of Schedule 11, or any accompanying instrument, within that time; or

(c)

in the case of subsection (1)(c), a failure to deliver—

(i)

the particulars as required under section 91(5) of the predecessor Ordinance having a continuing effect under section 67(2) of Schedule 11 within that time; or

(ii)

a statement as required under section 91(5) of the predecessor Ordinance having a continuing effect under section 67(4) of Schedule 11, or any accompanying instrument, within that time.

(6)

The offence provision is—

(a)

in the case of subsection (1)(a), section 337(2), 338(5), 338A(7), 339(6), 340(7), 341(7) or 343(1);

(Amended 14 of 2025 s. 24)

(b)

in the case of subsection (1)(b), section 81 or 82 of the predecessor Ordinance having a continuing effect under Schedule 11; or

(c)

in the case of subsection (1)(c), section 91(6) of the predecessor Ordinance having a continuing effect under Schedule 11.

347.

Rectification of registered particulars

(1)

The Court may, on application by the company or registered non-Hong Kong company or by a person interested in the charge, order that—

(a)

an omission or misstatement of any particular in any of the following be rectified—

(i)

a statement of the particulars of a charge, or any accompanying instrument, delivered for registration under—

(A)

Division 2 or 3;

(B)

section 80 or 82 of the predecessor Ordinance, or that section by virtue of section 91 of that Ordinance, having a continuing effect under section 63(4)(a), 64(4)(a), 65(4) or 66(4) of Schedule 11; or

(C)

section 91(5) of the predecessor Ordinance having a continuing effect under section 67(4) of Schedule 11;

(ii)

a statement of the particulars of an issue of debentures, or a statement of the particulars of commission, allowance or discount, delivered for registration under—

(A)

Division 4;

(B)

section 80 or 82 of the predecessor Ordinance, or that section by virtue of section 91 of that Ordinance, having a continuing effect under section 63(4)(a), 64(4)(a), 65(4) or 66(4) of Schedule 11; or

(C)

section 91(5) of the predecessor Ordinance having a continuing effect under section 67(4) of Schedule 11;

(iii)

a notification, or any accompanying instrument, under section 345;

(iv)

a memorandum under section 85 of the predecessor Ordinance; or

(b)

an omission or misstatement of any of the following be rectified—

(i)

any particular with respect to a charge delivered for registration before the commencement date[e] of this section under section 80, 82 or 91(5) of the predecessor Ordinance;

(ii)

any particular with respect to a charge delivered for registration under section 80, 82 or 91(5) of the predecessor Ordinance having a continuing effect under section 63(2), 64(2), 65(2), 66(2) or 67(2) of Schedule 11.

(2)

The Court may make an order under subsection (1) on any terms and conditions that the Court thinks just and expedient.

(3)

The Court must not make an order unless the Court is satisfied that—

(a)

the omission or misstatement—

(i)

was accidental;

(ii)

was due to inadvertence or to some other sufficient cause; or

(iii)

is not of a nature to prejudice the position of creditors or members of the company or registered non-Hong Kong company; or

(b)

it is just and equitable to grant the relief on other grounds.

(4)

The Court may make an order to rectify an omission or misstatement of any particular in any accompanying instrument mentioned in subsection (1)(a)(i) or (iii) to the extent as permitted by common law rules and equitable principles.

Editorial Note:

[e] Commencement date: 3 March 2014.

Division 6

Notice to Registrar of Enforcement of Security

348.

Notice of appointment of receiver or manager

(1)

If a person obtains an order for the appointment of a receiver or manager of the property of a company or the charged property of a registered non-Hong Kong company, or appoints such a receiver or manager under the powers contained in an instrument, the person must, within 7 days after the date of the order or of the appointment under those powers, deliver a statement of that fact to the Registrar for registration.

(2)

A statement under subsection (1) must include—

(a)

the name and address of the person appointed as receiver or manager; and

(b)

the number of that person's identity card, or if that person does not have an identity card, the number and issuing country of any passport held by that person.

(3)

A statement under subsection (1)—

(a)

must be in the specified form; and

(b)

must be accompanied by the prescribed fee.

(4)

If a person contravenes subsection (1), the person 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.

349.

Notice of mortgagee entering into possession of property

(1)

If a person enters into possession of the property of a company, or the charged property of a registered non-Hong Kong company, as mortgagee, the person must, within 7 days after the date of entering into possession, deliver a statement of that fact to the Registrar for registration.

(2)

A statement under subsection (1) must include—

(a)

if the person is a natural person—

(i)

the person's name and address; and

(ii)

the number of the person's 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

(b)

if the person is a body corporate, its name and the address of its registered or principal office.

(3)

A statement under subsection (1)—

(a)

must be in the specified form; and

(b)

must be accompanied by the prescribed fee.

(4)

If a person contravenes subsection (1), the person 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.

350.

Notice of cessation of appointment of receiver or manager or mortgagee going out of possession of property, etc.

(1)

This section applies to—

(a)

a person—

(i)

whose particulars are required to be included in a statement delivered to the Registrar under section 348(1); or

(ii)

whose particulars were, before the commencement date[a] of section 348, required to be included in a notice delivered to the Registrar under section 87(1) of the predecessor Ordinance; and

(b)

a person—

(i)

whose particulars are required to be included in a statement delivered to the Registrar under section 349(1); or

(ii)

whose particulars were, before the commencement date[a] of section 349, required to be included in a notice delivered to the Registrar under section 87(2) of the predecessor Ordinance.

(2)

If the person mentioned in subsection (1)(a) ceases to act as receiver or manager, the person must, within 7 days after the date of the cessation, deliver a statement of the cessation to the Registrar for registration.

(3)

If the person mentioned in subsection (1)(b) goes out of possession of the property or charged property, the person must, within 7 days after going out of possession, deliver a statement of that fact to the Registrar for registration.

(4)

If there is any change to the particulars of the person included in the statement or notice, the person must, within 15 days after the date of the change, deliver a statement of that change to the Registrar for registration.

(5)

Subsection (4) does not apply if—

(a)

in the case of a person mentioned in subsection (1)(a)—

(i)

the person has ceased to act as receiver or manager; and

(ii)

the person has delivered a statement of the cessation to the Registrar under subsection (2) or has, before the commencement date[a] of section 348, given notice of the cessation under section 87(4) of the predecessor Ordinance; or

(b)

in the case of a person mentioned in subsection (1)(b)—

(i)

the person has gone out of possession of the property or charged property; and

(ii)

the person has delivered a statement of that fact to the Registrar under subsection (3) or has, before the commencement date[a] of section 349, given notice of that fact under section 87(4) of the predecessor Ordinance.

(6)

A statement under subsection (2), (3) or (4) must be in the specified form.

(7)

If a person contravenes subsection (2), (3) or (4), the person 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.

Editorial Note:

[a] Commencement date: 3 March 2014.

Division 7

Company's and Registered Non-Hong Kong Company's Records and Register of Charges

351.

Obligation to keep copies of instruments creating charges

(1)

A company must keep at its registered office, or at a place prescribed by regulations made under section 657—

(a)

a copy of every instrument creating a charge required to be registered by the company under this Part; and

(b)

a copy of every instrument creating a charge required to be registered by the company under Part III of the predecessor Ordinance.

(2)

A registered non-Hong Kong company must keep at its principal place of business in Hong Kong, or at a place prescribed by regulations made under section 356—

(a)

a copy of every instrument creating a charge required to be registered by the company under this Part; and

(b)

a copy of every instrument creating a charge required to be registered by the company under Part III of the predecessor Ordinance.

(3)

Where—

(a)

a series of debentures is issued by a company or registered non-Hong Kong company;

(b)

the debentures contain a charge required to be registered by the company or registered non-Hong Kong company under this Part or under Part III of the predecessor Ordinance; and

(c)

the terms of the debentures are the same,

the company or registered non-Hong Kong company is to be regarded as having complied with subsection (1) or (2) in relation to the debentures if it keeps a copy of one of the debentures in accordance with that subsection.

(4)

A company or registered non-Hong Kong company—

(a)

must, within 15 days after a copy of an instrument mentioned in subsection (1) or (2) is first kept at a place, notify the Registrar of the place; and

(b)

must, within 15 days after there is a change in the place where a copy of such an instrument is kept, notify the Registrar of the change.

(4A)

Subsection (4)(b) does not apply to a change of—

(a)

the address of the company's registered office; or

(b)

the address of the registered non-Hong Kong company's principal place of business in Hong Kong.

(Added 35 of 2018 s. 30)

(5)

A notification under subsection (4)(a) or (b) must be in the specified form.

(6)

Subsection (4)(a) does not require a company or registered non-Hong Kong company to notify the Registrar of the place at which a copy of an instrument is kept—

(a)

if, in the case of a copy that came into existence on or after the commencement date[e] of this section, it has at all times been kept at the company's registered office, or the registered non-Hong Kong company's principal place of business in Hong Kong; or

(b)

if—

(i)

immediately before that commencement date[e], the company or registered non-Hong Kong company kept a copy of the instrument for the purposes of section 88 of the predecessor Ordinance; and

(ii)

on and after that commencement date[a], that copy is kept for the purposes of subsection (1) or (2) at the place at which it was kept immediately before that commencement date[a].

(7)

If subsection (1), (2) or (4) is contravened, the company or registered non-Hong Kong company, and every responsible person of the company or registered non-Hong Kong 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.

Editorial Note:

[a] Commencement date: 3 March 2014.

352.

Obligation of company to keep register of charges

(1)

A company must keep a register of charges—

(a)

at the company's registered office; or

(b)

at a place prescribed by regulations made under section 657.

(2)

A company—

(a)

must enter in its register of charges—

(i)

every charge specifically affecting property of the company; and

(ii)

every floating charge on the whole or part of the company's property or undertaking; and

(b)

must enter in its register of charges the following particulars in respect of every charge specified in paragraph (a)(i) and (ii)—

(i)

the amount secured by the charge;

(ii)

a description of the property charged;

(iii)

except in the case of securities to bearer, the names of the persons entitled to the charge.

(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.

(4)

If an officer of the company knowingly and wilfully authorizes or permits the omission of an entry required to be made under subsection (2), the officer commits an offence and is liable to a fine at level 5.

353.

Obligation of registered non-Hong Kong company to keep register of charges

(1)

A registered non-Hong Kong company must keep a register of charges—

(a)

at the company's principal place of business in Hong Kong; or

(b)

at a place prescribed by regulations made under section 356.

(2)

A registered non-Hong Kong company—

(a)

must enter in its register of charges—

(i)

every charge created by the company on property in Hong Kong of the company; and

(ii)

every charge on property in Hong Kong that is acquired by the company; and

(b)

must enter in its register of charges the following particulars in respect of every charge specified in paragraph (a)(i) and (ii)—

(i)

the amount secured by the charge;

(ii)

a description of the property charged;

(iii)

except in the case of securities to bearer, the names of the persons entitled to the charge.

(3)

Subsection (2) does not apply to a charge on property if the property was not in Hong Kong when the charge was created by, or the property was acquired by, the registered non-Hong Kong company.

(4)

If a registered non-Hong Kong 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.

(5)

If an officer of the registered non-Hong Kong company knowingly and wilfully authorizes or permits the omission of an entry required to be made under subsection (2), the officer commits an offence and is liable to a fine at level 5.

354.

Notification of place where register of charges is kept

(1)

A company or registered non-Hong Kong company must notify the Registrar of the place at which the register of charges is kept. The notice must be in the specified form and delivered to the Registrar for registration within 15 days after the register is first kept at that place.

(2)

A company or registered non-Hong Kong company must notify the Registrar of any change (other than a change of the address of the company's registered office or registered non-Hong Kong company's principal place of business in Hong Kong) in the place at which the register of charges is kept. The notice must be in the specified form and delivered to the Registrar for registration within 15 days after the change.

(3)

Subsection (1) does not require a company or registered non-Hong Kong company to notify the Registrar of the place at which the register of charges is kept—

(a)

if, in the case of a register that came into existence on or after the commencement date[e] of this section, it has at all times been kept at—

(i)

the company's registered office; or

(ii)

the registered non-Hong Kong company's principal place of business in Hong Kong; or

(b)

if—

(i)

immediately before that commencement date[e], the company or registered non-Hong Kong company kept a register for the purposes of section 89 of the predecessor Ordinance; and

(ii)

on and after that commencement date[e], that register is kept as a register of charges for the purposes of section 352(1) or 353(1) at the place at which it was kept immediately before that commencement date[e].

(4)

If subsection (1) or (2) is contravened, the company or registered non-Hong Kong company, and every responsible person of the company or registered non-Hong Kong 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.

Editorial Note:

[e] Commencement date: 3 March 2014.

355.

Right to inspect

(1)

A member or creditor of a company is entitled, on request made in the prescribed manner and without charge, to inspect, in accordance with regulations made under section 657—

(a)

the copies kept by the company under section 351(1); and

(b)

the register of charges kept by the company under section 352(1).

(2)

A member or creditor of a registered non-Hong Kong company is entitled, on request made in the prescribed manner and without charge, to inspect, in accordance with regulations made under section 356—

(a)

the copies kept by the company under section 351(2); and

(b)

the register of charges kept by the company under section 353(1).

(3)

Any other person is entitled, on request made in the prescribed manner and on payment of a prescribed fee, to inspect, in accordance with regulations made under section 356 or 657—

(a)

the copies kept by a company or registered non-Hong Kong company under section 351(1)(a) or (2)(a); and

(b)

the register of charges kept by a company or registered non-Hong Kong company under section 352(1) or 353(1).

(4)

In this section—

prescribed

(

訂明

) means prescribed by regulations made under section 356 or 657.

356.

Financial Secretary may make regulations for purposes of this Division

(1)

The Financial Secretary may make regulations—

(a)

prescribing a place at which—

(i)

copies of instruments creating charges are to be kept by a registered non-Hong Kong company under section 351; or

(ii)

a register of charges is to be kept by a registered non-Hong Kong company under section 353;

(b)

providing for the obligations of a registered non-Hong Kong company to make the copies and the register available for inspection under section 355;

(c)

prescribing the fees for the purposes of section 355(3); and

(d)

prescribing any other thing that is required or permitted to be prescribed under this Division in respect of those copies and that register.

(2)

Regulations made under subsection (1)(a) may—

(a)

prescribe a place other than the registered non-Hong Kong company's principal place of business in Hong Kong;

(b)

prescribe a place—

(i)

by reference to the place at which the registered non-Hong Kong company keeps any other records; or

(ii)

in any other way;

(c)

provide that section 351 or 353 is not complied with by keeping the copies, or the register of charges, at a place prescribed in the regulations unless conditions prescribed in the regulations are met; and

(d)

prescribe more than one place for the purpose specified in subsection (1)(a)(i) or (ii).

(3)

Regulations made under subsection (1)(b) may—

(a)

make provision as to the time, duration and manner of inspection;

(b)

prescribe the manner in which a request for inspection is to be made; and

(Amended 35 of 2018 s. 31)

(c)

define what may be required of the registered non-Hong Kong company as regards the nature, extent and manner of extracting or presenting any information for the purposes of inspection.

(4)

Regulations made under subsection (1) may provide that—

(a)

if a registered non-Hong Kong company contravenes any of the regulations, 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 may, in prescribed circumstances—

(i)

by order compel an immediate inspection of the copies and the register of charges; and

(ii)

make any order as to the time, duration and manner of inspection; and

(d)

if the copies, or the register of charges, are kept at the office of a person other than the registered non-Hong Kong company concerned, an order mentioned in paragraph (c) may be made against that other person and that other person's officers and other employees.

(5)

Nothing in any provision of this Ordinance or in the regulations made under this section is to be construed as preventing a registered non-Hong Kong 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.

Part 9

Accounts and Audit

(Format changes—E.R. 1 of 2013)

Division 1

Preliminary

357.

Interpretation

(1)

In this Part—

accounting standards

(

會計準則

) means statements of standard accounting practice issued or specified by a body prescribed by the Regulation;

(Added 35 of 2018 s. 32)

annual consolidated financial statements

(

周年綜合財務報表

) means the consolidated statements required to be prepared under section 379(2) or (3A)(a)(ii);

(Amended 35 of 2018 s. 32)

annual financial statements

(

周年財務報表

) means the statements required to be prepared under section 379(1), (3A)(a)(i) or (b);

(Amended 35 of 2018 s. 32)

auditor's report

(

核數師報告

) means the report required to be prepared under section 405;

directors' report

(

董事報告

) means—

(a)

the report required to be prepared under section 388(1); or

(b)

the consolidated report required to be prepared under section 388(2);

financial statements

(

財務報表

) means annual financial statements or annual consolidated financial statements;

non-Hong Kong body corporate

(

非香港法人團體

)—

(Amended 14 of 2025 s. 25)

(a)

means a body corporate incorporated outside Hong Kong; but

(b)

does not include a re-domiciled company;

(Added 35 of 2018 s. 32. Amended 14 of 2025 s. 25)

Regulation

(《

規例

》) means the regulations made under sections 451 and 452;

summary financial report

(

財務摘要報告

) means a financial report prepared under section 439.

(2)

In this Part, a reference to the reporting documents for a financial year is a reference to all of the following—

(a)

the financial statements for the financial year;

(b)

the directors' report for the financial year;

(c)

the auditor's report on those financial statements.

(3)

For the purposes of this Part, a body corporate is a wholly owned subsidiary of another body corporate if it has only the following as members—

(a)

that other body corporate;

(b)

a wholly owned subsidiary of that other body corporate;

(c)

a nominee of that other body corporate or such a wholly owned subsidiary.

(4)

In this Part—

(a)

a reference to accounting standards applicable to any financial statements of a company is a reference to accounting standards as are, in accordance with their terms, relevant to the company's circumstances and to the financial statements;

(b)

a reference to a holding company includes a parent undertaking that is a company, and a reference to a group of companies is to be construed accordingly; and

(c)

a reference to a parent undertaking or subsidiary undertaking is to be construed in accordance with Schedule 1.

(Added 35 of 2018 s. 32)

358.

Application in relation to financial year beginning on or after commencement date of relevant provision etc.

(1)

Each of the following sections applies in relation to a financial year beginning on or after the commencement date[a] of that section—

(a)

section 359;

(b)

section 379;

(c)

section 388;

(d)

section 389;

(e)

section 429;

(f)

section 430;

(g)

section 439.

(2)

Each of the following sections applies in relation to accounting records for a financial year beginning on or after the commencement date[a] of that section—

(a)

section 373;

(b)

section 374;

(c)

section 376;

(d)

section 377.

(3)

Each of the following sections applies in relation to financial statements for a financial year beginning on or after the commencement date[a] of that section—

(a)

section 380;

(b)

section 381;

(c)

section 382;

(d)

section 383;

(e)

section 436;

(f)

section 449.

(4)

Section 387 applies in relation to a statement of financial position for a financial year beginning on or after the commencement date[a] of that section.

(5)

Each of the following sections applies in relation to a directors' report for a financial year beginning on or after the commencement date[a] of that section—

(a)

section 390;

(b)

section 391.

(6)

Each of the following sections applies in relation to an appointment of an auditor for a financial year beginning on or after the commencement date[a] of that section—

(a)

section 394;

(b)

section 395;

(c)

section 396;

(d)

section 398;

(e)

section 399.

(7)

Each of the following sections applies in relation to a person appointed as auditor for a financial year beginning on or after the commencement date[e] of that section—

(a)

section 402;

(b)

section 403;

(c)

section 404.

(8)

Section 411 applies in relation to a general meeting of which notice is given on or after the commencement date[e] of that section.

(9)

Each of the following sections applies in relation to a person who is appointed, or is deemed to be reappointed, as auditor for a financial year beginning on or after the commencement date[e] of that section—

(a)

section 412;

(b)

section 416;

(c)

section 417;

(d)

section 418;

(e)

section 419.

(10)

Section 415 applies to a provision made on or after the commencement date[e] of that section.

(11)

Section 435 applies in relation to—

(a)

any financial statements and directors' report for a financial year beginning on or after the commencement date[e] of that section; and

(b)

any auditor's report on those financial statements.

(12)

Section 440 applies in relation to a summary financial report for a financial year beginning on or after the commencement date[a] of that section.

(13)

Schedule 4 applies in relation to financial statements for a financial year beginning on or after the commencement date[a] of that Schedule.

Editorial Note:

[a] Commencement date: 3 March 2014.

Division 2

Reporting Exemption

359.

Company falling within reporting exemption

(1)

For the purposes of this Part, a company falls within the reporting exemption for a financial year—

(a)

if—

(i)

it is qualified as a small private company or small guarantee company for the financial year; and

(ii)

it is not a company specified in subsection (4) at any time during the financial year;

(b)

if—

(i)

it is a private company at all times, and is not a company specified in subsection (4) at any time, during the financial year;

(ii)

it does not have any subsidiary and is not a subsidiary of another company; and

(iii)

all members of the company agree in writing that the company is to fall within the reporting exemption for the financial year only; or

(c)

if—

(i)

it is a private company at all times, and is not a company specified in subsection (4) at any time, during the financial year;

(ii)

it is qualified as an eligible private company for the financial year; and

(iii)

the conditions specified in section 360(1) are satisfied.

(2)

For the purposes of this Part, a company also falls within the reporting exemption for a financial year if—

(a)

it is a private company at all times, and is not a company specified in subsection (4) at any time, during the financial year;

(b)

it is the holding company of a group of companies, of which, at any time during the financial year, no member is—

(i)

a company specified in subsection (4); or

(ii)

a non-Hong Kong body corporate specified in subsection (5); and

(Replaced 35 of 2018 s. 33)

(c)

the group of companies—

(i)

is qualified as a group of small private companies for the financial year; or

(ii)

is qualified as a group of eligible private companies for the financial year and the conditions specified in section 360(2) are satisfied.

(3)

For the purposes of this Part, a company also falls within the reporting exemption for a financial year if—

(a)

it is a company limited by guarantee at all times, and is not a company specified in subsection (4) at any time, during the financial year;

(b)

it is the holding company of a group of companies, of which, at any time during the financial year, no member is—

(i)

a company specified in subsection (4); or

(ii)

a non-Hong Kong body corporate specified in subsection (5); and

(Replaced 35 of 2018 s. 33)

(c)

the group of companies is qualified as a group of small guarantee companies for the financial year.

(3A)

For the purposes of this Part, a company also falls within the reporting exemption for a financial year if—

(a)

it is a private company or a company limited by guarantee at all times, and is not a company specified in subsection (4) at any time, during the financial year;

(b)

it is the holding company of a group of companies, of which, at any time during the financial year, no member is—

(i)

a company specified in subsection (4); or

(ii)

a non-Hong Kong body corporate specified in subsection (5);

(c)

the group of companies is qualified as a mixed group for the financial year; and

(d)

(where any member of the group of companies is qualified as an eligible private company, but is not qualified as a small private company, for the financial year) the conditions specified in section 360(2) are satisfied.

(Added 35 of 2018 s. 33)

(4)

The company specified for the purposes of subsections (1), (2), (3) and (3A) is—

(Amended 35 of 2018 s. 33)

(a)

one that carries on any banking business and holds a valid banking licence granted under the Banking Ordinance (Cap. 155);

(b)

one that is a corporation licensed under Part V of the Securities and Futures Ordinance (Cap. 571) to carry on a business in any regulated activity within the meaning of that Ordinance; or

(c)

one that—

(i)

carries on any insurance business otherwise than solely as an agent; or

(ii)

accepts, by way of trade or business (other than banking business), loans of money at interest or repayable at a premium, otherwise than on terms involving the issue of debentures or other securities.

(5)

The non-Hong Kong body corporate specified for the purposes of subsections (2), (3) and (3A) is—

(a)

a non-Hong Kong body corporate that carries on any business that, had it been carried on in Hong Kong, would be required to be carried on under a valid banking licence granted under the Banking Ordinance (Cap. 155), or under a licence under Part V of the Securities and Futures Ordinance (Cap. 571) to carry on a business in any regulated activity within the meaning of that Ordinance;

(b)

a non-Hong Kong body corporate that—

(i)

carries on any insurance business otherwise than solely as an agent; or

(ii)

accepts, by way of trade or business (other than banking business), loans of money at interest or repayable at a premium, otherwise than on terms involving the issue of debentures or other securities; or

(c)

a non-Hong Kong body corporate that would have fallen within the meaning of public company in section 12 had it been incorporated under this Ordinance.

(Added 35 of 2018 s. 33)

(6)

Despite section 358, the amendments made to subsections (2)(b) and (3)(b) by the Companies (Amendment) (No. 2) Ordinance 2018 (35 of 2018), and subsections (3A)(b)(ii) and (5), apply only in relation to a financial year beginning on or after the commencement date* of section 33 of that Ordinance.

(Added 35 of 2018 s. 33)

Editorial Note:

* Commencement date: 1 February 2019.

360.

Conditions specified for section 359(1)(c)(iii), (2)(c)(ii) and (3A)(d)

(Amended 35 of 2018 s. 34)

(1)

The conditions specified for the purposes of section 359(1)(c)(iii) are—

(a)

subject to subsection (3), a resolution is passed at a general meeting by the members holding at least 75% of the voting rights in the company to the effect that the company is to fall within the reporting exemption for the financial year; and

(b)

the members holding the remaining voting rights do not vote against the resolution.

(2)

The conditions specified for the purposes of section 359(2)(c)(ii) and (3A)(d) are—

(a)

subject to subsection (3), a resolution is passed at a general meeting by the members holding at least 75% of the voting rights in the holding company to the effect that the holding company is to fall within the reporting exemption for the financial year; and

(b)

the members holding the remaining voting rights do not vote against the resolution.

(Replaced 35 of 2018 s. 34)

(3)

If—

(a)

a resolution is passed for the purposes of subsection (1)(a) or (2)(a) to the effect that a company is to fall within the reporting exemption for a financial year;

(b)

by notice in writing to the company, a member holding voting rights in the company objects to the company falling within the reporting exemption for the financial year; and

(c)

the notice is given at least 6 months before the end of the financial year to which the objection relates,

the resolution is regarded as not being passed in relation to the financial year to which the objection relates.

(Amended 35 of 2018 s. 34)

(4)

Within 14 days after receiving a notice under subsection (3)(b), a company must notify its members of the objection.

(5)

Special notice is required for a resolution mentioned in subsection (1)(a) or (2)(a).

(Amended 35 of 2018 s. 34)

Note—

See also section 578 which sets out the requirements regarding special notice.

361.

Small private company

(1)

For the purposes of this Part, if a company is a private company formed and registered under this Ordinance or is a private company that is a re-domiciled company, and any 2 of the conditions specified in section 1(1) of Schedule 3 are satisfied in its first financial year, the company is qualified as a small private company for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4).

(Amended 14 of 2025 s. 26)

(2)

For the purposes of this Part, if a company is an existing private company, and any 2 of the conditions specified in section 1(1) of Schedule 3 are satisfied—

(a)

in its first financial year after the coming into operation of this section; or

(b)

in the financial year of the company for the purposes of the predecessor Ordinance that immediately precedes that first financial year,

the company is qualified as a small private company for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4).

(3)

For the purposes of this Part, if—

(a)

a company is a private company; and

(b)

after its first financial year after the coming into operation of this section, any 2 of the conditions specified in section 1(1) of Schedule 3 are satisfied for 2 consecutive financial years,

the company is also qualified as a small private company for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is disqualified under subsection (4).

(4)

For the purposes of this Part, if, after a company is qualified as a small private company under subsection (1), (2) or (3), any 2 of the conditions specified in section 1(2) of Schedule 3 are not satisfied for 2 consecutive financial years, the company is disqualified as a small private company for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is qualified again under subsection (3).

362.

Eligible private company

(1)

For the purposes of this Part, if a company is a private company formed and registered under this Ordinance or is a private company that is a re-domiciled company, and any 2 of the conditions specified in section 1(3) of Schedule 3 are satisfied in its first financial year, the company is qualified as an eligible private company for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4).

(Amended 14 of 2025 s. 27)

(2)

For the purposes of this Part, if a company is an existing private company, and any 2 of the conditions specified in section 1(3) of Schedule 3 are satisfied—

(a)

in its first financial year after the coming into operation of this section; or

(b)

in the financial year of the company for the purposes of the predecessor Ordinance that immediately precedes that first financial year,

the company is qualified as an eligible private company for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4).

(3)

For the purposes of this Part, if—

(a)

a company is a private company; and

(b)

after its first financial year after the coming into operation of this section, any 2 of the conditions specified in section 1(3) of Schedule 3 are satisfied for 2 consecutive financial years,

the company is also qualified as an eligible private company for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is disqualified under subsection (4).

(4)

For the purposes of this Part, if, after a company is qualified as an eligible private company under subsection (1), (2) or (3), any 2 of the conditions specified in section 1(4) of Schedule 3 are not satisfied for 2 consecutive financial years, the company is disqualified as an eligible private company for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is qualified again under subsection (3).

363.

Small guarantee company

(1)

For the purposes of this Part, if a company is a company limited by guarantee formed and registered under this Ordinance, and the condition specified in section 1(5) of Schedule 3 is satisfied in its first financial year, the company is qualified as a small guarantee company for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4).

(2)

For the purposes of this Part, if a company is an existing company limited by guarantee, and the condition specified in section 1(5) of Schedule 3 is satisfied—

(a)

in its first financial year after the coming into operation of this section; or

(b)

in the financial year of the company for the purposes of the predecessor Ordinance that immediately precedes that first financial year,

the company is qualified as a small guarantee company for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4).

(3)

For the purposes of this Part, if—

(a)

a company is a company limited by guarantee; and

(b)

after its first financial year after the coming into operation of this section, the condition specified in section 1(5) of Schedule 3 is satisfied for 2 consecutive financial years,

the company is also qualified as a small guarantee company for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is disqualified under subsection (4).

(4)

For the purposes of this Part, if, after a company is qualified as a small guarantee company under subsection (1), (2) or (3), the condition specified in section 1(6) of Schedule 3 is not satisfied for 2 consecutive financial years, the company is disqualified as a small guarantee company for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is qualified again under subsection (3).

364.

Group of small private companies

(1)

For the purposes of this Part, if—

(a)

the holding company of a group of companies is formed and registered under this Ordinance or is a re-domiciled company; and

(Amended 14 of 2025 s. 28)

(b)

the conditions specified in section 1(7) of Schedule 3, and any 2 of the conditions specified in section 1(8) of that Schedule, are satisfied in the holding company's first financial year,

the group is qualified as a group of small private companies for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4) or (5).

(2)

For the purposes of this Part, if—

(a)

the holding company of a group of companies is an existing company; and

(b)

the conditions specified in section 1(7) of Schedule 3, and any 2 of the conditions specified in section 1(8) of that Schedule, are satisfied—

(Amended 35 of 2018 s. 35)

(i)

in the holding company's first financial year after the coming into operation of this section; or

(ii)

in the holding company's financial year for the purposes of the predecessor Ordinance that immediately precedes that first financial year,

the group is qualified as a group of small private companies for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4) or (5).

(3)

For the purposes of this Part, if, after the first financial year of the holding company of a group of companies after the coming into operation of this section, the conditions specified in section 1(7) of Schedule 3, and any 2 of the conditions specified in section 1(8) of that Schedule, are satisfied for 2 consecutive financial years of the holding company, the group is also qualified as a group of small private companies for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is disqualified under subsection (4) or (5).

(4)

For the purposes of this Part, if, after a group of companies is qualified as a group of small private companies under subsection (1), (2) or (3), another company or non-Hong Kong body corporate becomes a new member of the group in a financial year of the holding company such that either a condition specified in section 1(7) of Schedule 3 is not satisfied, or any 2 of the conditions specified in section 1(9) of that Schedule are not satisfied, for the financial year, the group is disqualified as a group of small private companies for the financial year, and every subsequent financial year, until it is qualified again under subsection (3).

(5)

For the purposes of this Part, if, after a group of companies is qualified as a group of small private companies under subsection (1), (2) or (3), either a condition specified in section 1(7) of Schedule 3 is not satisfied, or any 2 of the conditions specified in section 1(9) of that Schedule are not satisfied, for 2 consecutive financial years of the holding company, the group is also disqualified as a group of small private companies for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is qualified again under subsection (3).

(Amended 35 of 2018 s. 35)

365.

Group of eligible private companies

(1)

For the purposes of this Part, if—

(a)

the holding company of a group of companies is formed and registered under this Ordinance or is a re-domiciled company; and

(Amended 14 of 2025 s. 29)

(b)

the conditions specified in section 1(10) of Schedule 3, and any 2 of the conditions specified in section 1(11) of that Schedule, are satisfied in the holding company's first financial year,

the group is qualified as a group of eligible private companies for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4) or (5).

(2)

For the purposes of this Part, if—

(a)

the holding company of a group of companies is an existing company; and

(b)

the conditions specified in section 1(10) of Schedule 3, and any 2 of the conditions specified in section 1(11) of that Schedule, are satisfied—

(Amended 35 of 2018 s. 36)

(i)

in the holding company's first financial year after the coming into operation of this section; or

(ii)

in the holding company's financial year for the purposes of the predecessor Ordinance that immediately precedes that first financial year,

the group is qualified as a group of eligible private companies for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4) or (5).

(3)

For the purposes of this Part, if, after the first financial year of the holding company of a group of companies after the coming into operation of this section, the conditions specified in section 1(10) of Schedule 3, and any 2 of the conditions specified in section 1(11) of that Schedule, are satisfied for 2 consecutive financial years of the holding company, the group is also qualified as a group of eligible private companies for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is disqualified under subsection (4) or (5).

(4)

For the purposes of this Part, if, after a group of companies is qualified as a group of eligible private companies under subsection (1), (2) or (3), another company or non-Hong Kong body corporate becomes a new member of the group in a financial year of the holding company such that either a condition specified in section 1(10) of Schedule 3 is not satisfied, or any 2 of the conditions specified in section 1(12) of that Schedule are not satisfied, for the financial year, the group is disqualified as a group of eligible private companies for the financial year, and every subsequent financial year, until it is qualified again under subsection (3).

(5)

For the purposes of this Part, if, after a group of companies is qualified as a group of eligible private companies under subsection (1), (2) or (3), either a condition specified in section 1(10) of Schedule 3 is not satisfied, or any 2 of the conditions specified in section 1(12) of that Schedule are not satisfied, for 2 consecutive financial years of the holding company, the group is also disqualified as a group of eligible private companies for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is qualified again under subsection (3).

(Amended 35 of 2018 s. 36)

366.

Group of small guarantee companies

(1)

For the purposes of this Part, if—

(a)

the holding company of a group of companies is formed and registered under this Ordinance; and

(b)

the conditions specified in section 1(12A) and (13) of Schedule 3 are satisfied in the holding company's first financial year,

the group is qualified as a group of small guarantee companies for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4) or (5).

(2)

For the purposes of this Part, if—

(a)

the holding company of a group of companies is an existing company; and

(b)

the conditions specified in section 1(12A) and (13) of Schedule 3 are satisfied—

(Amended 35 of 2018 s. 37)

(i)

in the holding company's first financial year after the coming into operation of this section; or

(ii)

in the holding company's financial year for the purposes of the predecessor Ordinance that immediately precedes that first financial year,

the group is qualified as a group of small guarantee companies for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4) or (5).

(3)

For the purposes of this Part, if, after the first financial year of the holding company of a group of companies after the coming into operation of this section, the conditions specified in section 1(12A) and (13) of Schedule 3 are satisfied for 2 consecutive financial years of the holding company, the group is also qualified as a group of small guarantee companies for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is disqualified under subsection (4) or (5).

(4)

For the purposes of this Part, if, after a group of companies is qualified as a group of small guarantee companies under subsection (1), (2) or (3), another company or non-Hong Kong body corporate becomes a new member of the group in a financial year of the holding company such that a condition specified in section 1(12A) of Schedule 3 is not satisfied, or the condition specified in section 1(14) of that Schedule is not satisfied, for the financial year, the group is disqualified as a group of small guarantee companies for the financial year, and every subsequent financial year, until it is qualified again under subsection (3).

(5)

For the purposes of this Part, if, after a group of companies is qualified as a group of small guarantee companies under subsection (1), (2) or (3), a condition specified in section 1(12A) of Schedule 3 is not satisfied, or the condition specified in section 1(14) of that Schedule is not satisfied, for 2 consecutive financial years of the holding company, the group is also disqualified as a group of small guarantee companies for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is qualified again under subsection (3).

(Amended 35 of 2018 s. 37)

366A.

Mixed group

(1)

For the purposes of this Part, if—

(a)

the holding company of a group of companies is a company;

(b)

the group only consists of—

(i)

one or more bodies corporate specified in subsection (2); and

(ii)

one or more bodies corporate specified in subsection (3); and

(c)

the specified conditions are satisfied—

(i) in the first financial year of the holding company after the coming into operation of this section; or

(ii) in the financial year of the holding company that immediately precedes that first financial year,

the group is qualified as a mixed group for that first financial year, and every subsequent financial year, until it is disqualified under subsection (6) or (7).

(2) A body corporate specified for the purposes of subsection (1)(b)(i) is—

(a) a small private company;

(b) a non-Hong Kong body corporate that would have been qualified as a small private company had it been incorporated under this Ordinance;

(c) an eligible private company; or

(d) a non-Hong Kong body corporate that would have been qualified as an eligible private company had it been incorporated under this Ordinance.

(3) A body corporate specified for the purposes of subsection (1)(b)(ii) is—

(a) a small guarantee company; or

(b) a non-Hong Kong body corporate that would have been qualified as a small guarantee company had it been incorporated under this Ordinance.

(4) For the purposes of subsection (1)(c), a reference to specified conditions is a reference to—

(a) if the holding company is a small private company—any 2 of the conditions specified in section 1(8) of Schedule 3;

(b) if the holding company is an eligible private company—any 2 of the conditions specified in section 1(11) of that Schedule;

(c) if the holding company is a small guarantee company—the condition specified in section 1(13) of that Schedule.

(5) For the purposes of this Part, if, after the first financial year of the holding company of a group of companies after the coming into operation of this section, the condition under subsection (1)(b), and the conditions specified in subsection (4)(a), (b) or (c), are satisfied for 2 consecutive financial years of the holding company, the group is also qualified as a mixed group for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is disqualified under subsection (6) or (7).

(6)

For the purposes of this Part, if, after a group of companies is qualified as a mixed group under subsection (1) or (5), another company or non-Hong Kong body corporate becomes a new member of the group in a financial year of the holding company and, for the financial year—

(a)

either—

(i)

that other company is not a small private company, an eligible private company or a small guarantee company; or

(ii)

that other body corporate would not have been qualified as a small private company, an eligible private company or a small guarantee company had it been incorporated under this Ordinance; or

(b)

the specified conditions are not satisfied,

the group is disqualified as a mixed group for the financial year, and every subsequent financial year, until it is qualified again under subsection (5).

(7)

For the purposes of this Part, if, after a group of companies is qualified as a mixed group under subsection (1) or (5), for 2 consecutive financial years of the holding company, either—

(a)

the condition under subsection (1)(b) is not satisfied; or

(b)

the specified conditions are not satisfied,

the group is also disqualified as a mixed group for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is qualified again under subsection (5).

(8)

For the purposes of subsections (6)(b) and (7)(b), a reference to specified conditions is a reference to—

(a)

if the holding company is a small private company—any 2 of the conditions specified in section 1(9) of Schedule 3;

(b)

if the holding company is an eligible private company—any 2 of the conditions specified in section 1(12) of that Schedule;

(c)

if the holding company is a small guarantee company—the condition specified in section 1(14) of that Schedule.

(Added 35 of 2018 s. 38)

Division 3

A Company's Financial Year

367.

Financial year

(1)

A company's first financial year after the coming into operation of this section begins on the first day of its first accounting reference period and ends on—

(Amended 35 of 2018 s. 39)

(a)

subject to paragraph (b), the last day of that period; or

(b)

another date, within 7 days before, or after, the end of that period, as specified by the directors.

(Amended 35 of 2018 s. 39)

(2)

Every subsequent financial year of a company begins on the date immediately following the end of the previous financial year and ends on—

(Amended 35 of 2018 s. 39)

(a)

subject to paragraph (b), the last day of the accounting reference period immediately following the one by reference to which the previous financial year is determined; or

(b)

another date, within 7 days before, or after, the end of that period, as specified by the directors.

(Amended 35 of 2018 s. 39)

(3)

If an undertaking is not a company, a reference in this Ordinance to its financial year is a reference to a period in respect of which a profit and loss account of the undertaking is required, by its constitution or by the law under which it is established, to be made up, whether or not the period is a year.

(4)

A company's directors must secure that the financial year of each of its subsidiary undertakings coincides with the company's financial year unless, in the directors' opinion, there are good reasons against those financial years coinciding with each other.

(5)

In this section—

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.

368.

Accounting reference period

(1)

Subject to subsection (1A), for an existing company formed and registered before the commencement date[e] of Division 1 of Part 3, the first accounting reference period begins on the date immediately following its primary accounting reference date and ends on the first anniversary of its primary accounting reference date.

(Amended 35 of 2018 s. 40)

(1A)

For an existing company that was a dormant company at the beginning of the commencement date[e] of Division 1 of Part 3 but has ceased to be a dormant company—

(a)

subsection (1) does not apply; and

(b)

the first accounting reference period begins on the date the company ceased to be a dormant company and ends on its primary accounting reference date.

(Added 35 of 2018 s. 40)

(2)

For—

(a)

a company formed and registered under this Ordinance; and

(b)

a company formed and registered under a provision of the predecessor Ordinance having a continuing effect under Schedule 11 or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1),

the first accounting reference period begins on the date of its incorporation and ends on its primary accounting reference date.

(2A)

For a re-domiciled company, the first accounting reference period begins on its re-domiciliation date and ends on its primary accounting reference date.

(Added 14 of 2025 s. 30)

(3)

Every subsequent accounting reference period of a company is the period of 12 months beginning immediately after the end of the previous accounting reference period and ending on its accounting reference date, unless the accounting reference period is shortened or extended, as stated in a directors' resolution under section 371(3).

Editorial Note:

[e] Commencement date: 3 March 2014.

369.

Primary accounting reference date

(1)

For an existing company formed and registered before the commencement date[e] of Division 1 of Part 3, the primary accounting reference date is—

(a)

the date up to which the company's accounts are made if, on or after the commencement date[e] of this section, the company's accounts—

(i)

have been laid before the company in general meeting under section 122 of the predecessor Ordinance having a continuing effect under Schedule 11; or

(ii)

have been provided to the members under section 111(6) of the predecessor Ordinance having a continuing effect under Schedule 11; or

(b)

if, on or after the commencement date[e] of this section, such company's accounts have not been laid or provided as mentioned in paragraph (a)(i) or (ii)—

(i)

in the case where such accounts have been prepared on or before the date by which the company is required by section 111(1) of the predecessor Ordinance having a continuing effect under Schedule 11 to hold a general meeting, the date up to which those accounts are made;

(ii)

in the case where subparagraph (i) does not apply, but accounts made up to a date falling more than one day before the commencement date[e] of this section have been prepared on or before the date by which the company is required by that section 111(1) to hold a general meeting, the first anniversary of the date up to which those accounts are made;

(Amended 35 of 2018 s. 41)

(iii)

in the case where subparagraphs (i) and (ii) do not apply and the company is required by that section 111(1) to hold a general meeting, the date by which the meeting is required to be held; or

(Replaced 35 of 2018 s. 41)

(iv)

in the case where subparagraphs (i) and (ii) do not apply, and the company was a dormant company at the beginning of the commencement date[e] of Division 1 of Part 3 but has ceased to be a dormant company—

(A)

a date specified by the directors, which must fall within 18 months after the date the company ceased to be a dormant company; or

(B)

if no date is specified before the last day of the month in which the anniversary of the company's incorporation first occurs after the company ceased to be a dormant company, the last day of the month.

(Added 35 of 2018 s. 41)

(2)

Subsection (1)(a) and (b)(i) does not apply if those accounts are made up to a date falling more than one day before the commencement date[e] of this section.

(3)

Subsection (1)(a)(i) does not apply unless the general meeting is held—

(a)

in the case of the company's first general meeting, within 18 months of the company's incorporation; or

(b)

in any other case, within 15 months, and in the year, after the company's last annual general meeting.

(4)

Subsection (1)(b)(ii) does not apply if those accounts are made up to a date falling more than one day before the beginning of the period of 12 months before the commencement date[e] of this section.

(5)

For any of the companies specified in subsection (6A), the primary accounting reference date is—

(Amended 14 of 2025 s. 31)

(a)

a date specified by the directors before the relevant date for the purposes of this paragraph; or

(b)

in the absence of such a specified date, the relevant date.

(6)

A date specified for the purposes of subsection (5)(a)—

(a)

for a company that is not a re-domiciled company—must fall within 18 months after the date of the company's incorporation; and

(b)

for a re-domiciled company—must fall within 18 months after the re-domiciliation date.

(Replaced 14 of 2025 s. 31)

(6A)

The following companies are specified for the purposes of subsection (5)—

(a)

a company formed and registered under this Ordinance;

(b)

a company formed and registered under a provision of the predecessor Ordinance having a continuing effect under Schedule 11 or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1);

(c)

a re-domiciled company.

(Added 14 of 2025 s. 31)

(7)

In this section—

relevant anniversary

(

有關周年日

), in relation to a company's incorporation, means the anniversary of the company's incorporation that first occurs after this section comes into operation;

relevant date

(

有關日期

)—

(a)

in relation to a company that is not a re-domiciled company—means the last day of the month in which the relevant anniversary of the company's incorporation falls; and

(b)

in relation to a re-domiciled company—means the last day of the month in which the anniversary of the re-domiciliation date of the company falls.

(Replaced 14 of 2025 s. 31)

Editorial Note:

Commencement date: 3 March 2014.

370.

Accounting reference date

Subject to section 371, a company's accounting reference date is the anniversary of its primary accounting reference date.

371.

Alteration of accounting reference date

(1)

The directors of a company may specify a new accounting reference date in relation to—

(a)

the company's current accounting reference period and every subsequent accounting reference period; or

(b)

the company's previous accounting reference period and every subsequent accounting reference period.

(2)

If the directors of a public company or a company limited by guarantee specify a new accounting reference date under subsection (1), the company must, within 15 days after the date of the directors' resolution specifying the new accounting reference date, deliver a notice, in the specified form, of that new date to the Registrar for registration.

(3)

A directors' resolution by which a new accounting reference date is specified, and a notice of that new date delivered to the Registrar, must state—

(a)

whether the current or previous accounting reference period concerned is to be shortened, so as to end on the first occasion on which the new accounting reference date falls or fell after the beginning of that period; or

(b)

whether the current or previous accounting reference period concerned is to be extended, so as to end on the second occasion on which the new accounting reference date falls or fell after the beginning of that period.

(4)

The directors of a company must not specify a new accounting reference date in relation to the previous accounting reference period if—

(a)

the period for laying before the company in general meeting under section 429 a copy of the reporting documents for the financial year determined by reference to that accounting reference period has expired; or

(b)

the period for sending a copy of the reporting documents for the financial year to the members under section 430(3) has expired.

(5)

The directors of a company must not specify a new accounting reference date in relation to an accounting reference period so as to extend the period to longer than 18 months.

(6)

The directors of a company must not specify a new accounting reference date in relation to the current or previous accounting reference period so as to extend that period if—

(a)

those directors have specified a new accounting reference date in relation to an earlier accounting reference period so as to extend that earlier period; and

(b)

the earlier accounting reference period ended within 5 years before the new accounting reference date is specified.

(7)

Subsection (6) does not apply if—

(a)

the new accounting reference date to be specified by the directors coincides with the accounting reference date of a holding company of the company; or

(b)

the specification is approved by a members' resolution.

(8)

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.

(9)

In this section—

previous accounting reference period

(

對上的會計參照期

), in relation to a company, means the accounting reference period of the company immediately preceding the company's current accounting reference period.

Division 4

Preparation of Financial Statements and Directors' Reports

Subdivision 1

Preliminary

372.

Interpretation

In this Division—

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.

Subdivision 2

Accounting Records

373.

Company must keep accounting records

(1)

A company must keep accounting records that comply with subsections (2) and (3).

(2)

The accounting records must be sufficient—

(a)

to show and explain the company's transactions;

(b)

to disclose with reasonable accuracy, at any time, the company's financial position and financial performance; and

(c)

to enable the directors to ensure that the financial statements comply with this Ordinance.

(3)

In particular, the accounting records must contain—

(a)

daily entries of all sums of money received and expended by the company, and the matters in respect of which the receipt and expenditure takes place; and

(b)

a record of the company's assets and liabilities.

(4)

If subsection (1) does not apply in relation to a subsidiary undertaking of a company, the company must take all reasonable steps to secure that the subsidiary undertaking keeps accounting records that are sufficient to enable the company's directors to ensure that any financial statements required to be prepared under Subdivision 3 of Division 4 comply with this Ordinance.

(5)

A director of a company who fails to take all reasonable steps to secure compliance with subsection (1) or (4) commits an offence and is liable to a fine of $300,000.

(6)

A director of a company who wilfully fails to take all reasonable steps to secure compliance with subsection (1) or (4) commits an offence and is liable to a fine of $300,000 and to imprisonment for 12 months.

(7)

If a person is charged with an offence under subsection (5), it is a defence to establish that the person had reasonable grounds to believe, and did believe, that a competent and reliable person—

(a)

was charged with the duty of ensuring that subsection (1) or (4) (as the case may be) was complied with; and

(b)

was in a position to discharge that duty.

374.

Where accounting records to be kept

(1)

A company's accounting records—

(a)

must be kept at its registered office or any other place that the directors think fit; and

(b)

must be open to inspection by the directors at all times without charge.

(2)

If a company's accounting records are kept at a place outside Hong Kong, the accounts and returns with respect to the business dealt with in those records—

(a)

must be sent to, and kept at, a place in Hong Kong; and

(b)

must be open to inspection by the directors at all times without charge.

(3)

Those accounts and returns—

(a)

must disclose with reasonable accuracy the financial position of the business in question at intervals of not more than 6 months; and

(b)

must be sufficient to enable the directors to ensure that any financial statements required to be prepared under Subdivision 3 of Division 4 comply with this Ordinance.

(4)

A director of a company who fails to take all reasonable steps to secure compliance with subsection (1), (2) or (3) commits an offence and is liable to a fine of $300,000.

(5)

A director of a company who wilfully fails to take all reasonable steps to secure compliance with subsection (1), (2) or (3) commits an offence and is liable to a fine of $300,000 and to imprisonment for 12 months.

(6)

If a person is charged with an offence under subsection (4), it is a defence to establish that the person had reasonable grounds to believe, and did believe, that a competent and reliable person—

(a)

was charged with the duty of ensuring that subsection (1), (2) or (3) (as the case may be) was complied with; and

(b)

was in a position to discharge that duty.

375.

Director may obtain copies of accounting records during inspection

(1)

A company must allow a director of the company to make a copy of its accounting records in the course of inspection.

(2)

A company must provide a director of the company with a copy of its accounting records without charge if so requested by the director.

(3)

For the purposes of subsection (2)—

(a)

if the director requests a copy of the company's accounting records in hard copy form, the company must provide the copy in hard copy form; and

(b)

if the director requests a copy of the company's accounting records in electronic form, the company must provide the copy in any electronic form that the company thinks fit.

(4)

Subsections (2) and (3) do not require a company to provide a director of the company with a copy of its accounting records in electronic form if it keeps its accounting records by recording the information in hard copy form only.

(5)

If any accounting records are kept by a company by recording the information in electronic form, a requirement under this Subdivision for the accounting records to be open to inspection is to be regarded as a requirement—

(a)

for a reproduction of the recording in hard copy form to be open to inspection; and

(b)

for the recording to be open to inspection by electronic means at the request of a person entitled to inspect the accounting records.

(6)

A director of a company who fails to take all reasonable steps to secure compliance with subsection (1) or (2) 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.

(7)

If a person is charged with an offence under subsection (6), it is a defence to establish that the person had reasonable grounds to believe, and did believe, that a competent and reliable person—

(a)

was charged with the duty of ensuring that subsection (1) or (2) (as the case may be) was complied with; and

(b)

was in a position to discharge that duty.

376.

Form of accounting records

(1)

The information contained in a company's accounting records must be adequately recorded such that they are available for future reference.

(2)

Subject to subsection (1), a company's accounting records may be—

(a)

kept in hard copy form or electronic form; and

(b)

arranged in the manner that the directors think fit.

(3)

If a company's accounting records are kept in electronic form, the company must ensure that those records are capable of being reproduced in hard copy form.

(4)

If any accounting records are kept by a company otherwise than by making entries in a bound book, the company—

(a)

must take adequate precautions to guard against falsification; and

(b)

must take adequate steps to facilitate the discovery of a falsification.

(5)

If subsection (1) 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.

(6)

If subsection (3) or (4) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.

377.

How long accounting records to be preserved

(1)

This section applies to any accounting records, or any accounts and returns, that are required by section 373(1) or 374(2) to be kept.

(2)

The company must preserve the records, or the accounts and returns, for 7 years after the end of the financial year to which the last entry made or matter recorded in the records, or the accounts and returns, relates.

(3)

A director of a company who fails to take all reasonable steps to secure compliance with subsection (2) commits an offence and is liable to a fine of $300,000.

(4)

A director of a company who wilfully fails to take all reasonable steps to secure compliance with subsection (2) commits an offence and is liable to a fine of $300,000 and to imprisonment for 12 months.

(5)

If a person is charged with an offence under subsection (3), it is a defence to establish that the person had reasonable grounds to believe, and did believe, that a competent and reliable person—

(a)

was charged with the duty of ensuring that subsection (2) was complied with; and

(b)

was in a position to discharge that duty.

378.

Court may order accounting records to be inspected on director's behalf

(1)

On application by a director of a company, the Court may by order authorize a person to inspect the company's accounting records on the director's behalf.

(2)

Unless the Court otherwise directs, a person so authorized may make copies of the accounting records.

(3)

The Court may make any or all of the following orders—

(a)

an order limiting the use that a person so authorized may make of the information obtained during the inspection;

(b)

an order limiting the right of a person so authorized to make copies in accordance with subsection (2);

(c)

any other order that it thinks fit.

Subdivision 3

Financial Statements

379.

Directors must prepare financial statements

(1)

Subject to subsection (2), a company's directors must prepare for each financial year statements that comply with sections 380 and 383.

(2)

Subject to subsection (3A), if the company is a holding company at the end of the financial year, the directors must instead prepare for the financial year consolidated statements that comply with sections 380, 381 and 383.

(3)

Subsection (3A) applies—

(Amended 35 of 2018 s. 42)

(a)

if the company is a wholly owned subsidiary of another body corporate at the end of the financial year;

(b)

if—

(i)

the company is a partially owned subsidiary of another body corporate at the end of the financial year;

(ii)

at least 6 months before the end of the financial year, the directors notify the members in writing of the directors' intention not to prepare consolidated statements for the financial year, and the notification does not relate to any other financial year; and

(iii)

as at a date falling 3 months before the end of the financial year, no member has responded to the notification by giving the directors a written request for the preparation of consolidated statements for the financial year; or

(c)

if—

(i)

the company is a partially owned subsidiary of another body corporate at the end of the financial year; and

(ii)

all members agree in writing before the end of the financial year that consolidated statements will not be prepared for the financial year, and the agreement does not relate to any other financial year.

(Added 35 of 2018 s. 42)

(3A)

If this subsection applies because of—

(a)

subsection (3)(a)—the directors must prepare for the financial year—

(i)

statements that comply with sections 380 and 383; or

(ii)

consolidated statements that comply with sections 380, 381 and 383; or

(b)

subsection (3)(b) or (c)—the directors must prepare for the financial year statements that comply with sections 380 and 383.

(Added 35 of 2018 s. 42)

(4)

If, as respects any financial statements a copy of which is laid before a company in general meeting under section 429, or sent to a member under section 430 or otherwise circulated, published or issued by the company, a director of the company fails to take all reasonable steps to secure compliance with subsection (1), (2) or (3A), the director commits an offence and is liable to a fine of $300,000.

(5)

If, as respects any financial statements a copy of which is laid before a company in general meeting under section 429, or sent to a member under section 430 or otherwise circulated, published or issued by the company, a director of the company wilfully fails to take all reasonable steps to secure compliance with subsection (1), (2) or (3A), the director commits an offence and is liable to a fine of $300,000 and to imprisonment for 12 months.

(6)

If a person is charged with an offence under subsection (4), it is a defence to establish that the person had reasonable grounds to believe, and did believe, that a competent and reliable person—

(a)

was charged with the duty of ensuring that subsection (1), (2) or (3A) (as the case may be) was complied with; and

(b)

was in a position to discharge that duty.

(Amended 35 of 2018 s. 42)

380.

General requirements for financial statements

(1)

The annual financial statements for a financial year—

(a)

must give a true and fair view of the financial position of the company as at the end of the financial year; and

(b)

must give a true and fair view of the financial performance of the company for the financial year.

(2)

The annual consolidated financial statements for a financial year—

(a)

must give a true and fair view of the financial position of the company, and all the subsidiary undertakings, as a whole as at the end of the financial year; and

(b)

must give a true and fair view of the financial performance of the company, and all the subsidiary undertakings, as a whole for the financial year.

(3)

The financial statements for a financial year must comply with—

(a)

if the company falls within the reporting exemption for the financial year, Part 1 of Schedule 4; or

(b)

if the company does not fall within the reporting exemption for the financial year, Parts 1 and 2 of Schedule 4.

(4)

The financial statements for a financial year must also comply with—

(a)

any other requirements of this Ordinance in relation to the financial statements; and

(b)

the accounting standards applicable to the financial statements.

(5)

If, in relation to any financial statements, compliance with subsections (3) and (4) would be insufficient to give a true and fair view under subsection (1) or (2), the financial statements must contain all additional information necessary for that purpose.

(6)

If, in relation to any financial statements, compliance with subsection (3) or (4) would be inconsistent with a requirement to give a true and fair view under subsection (1) or (2), the financial statements—

(a)

must depart from subsection (3) or (4) (as the case may be) to the extent necessary for it to give a true and fair view; and

(b)

must contain the reasons for, and the particulars and effect of, the departure.

(7)

Subsections (1), (2), (5) and (6) do not apply if the company falls within the reporting exemption for the financial year.

(8)

(Repealed 35 of 2018 s. 43)

(9)

This section has effect subject to section 382.

381.

Subsidiary undertakings to be included in annual consolidated financial statements

(1)

Subject to subsections (2) and (3), the annual consolidated financial statements for a financial year must include all the subsidiary undertakings of the company.

(2)

Where the company falls within the reporting exemption for the financial year, one or more subsidiary undertakings may be excluded from the annual consolidated financial statements in compliance with the accounting standards applicable to the statements.

(3)

Where the company does not fall within the reporting exemption for the financial year—

(a)

one subsidiary undertaking may be excluded from the annual consolidated financial statements if the inclusion of the subsidiary undertaking is not material for the purpose of giving a true and fair view of the financial position, and of the financial performance, mentioned in section 380(2)(a) and (b); and

(b)

more than one subsidiary undertaking may be excluded from the annual consolidated financial statements if the inclusion of those subsidiary undertakings taken together is not material for the purpose of giving a true and fair view of the financial position, and of the financial performance, mentioned in section 380(2)(a) and (b).

(4)

This section has effect subject to section 382.

382.

Provisions supplementary to sections 380 and 381

(1)

This section applies if at any time during a financial year of a private company—

(a)

the company registers any transfer of shares in the company in contravention of the restrictions imposed by the company's articles;

(b)

the membership of the company exceeds the number specified in section 11(1)(a)(ii); or

(c)

the company makes an invitation to the public to subscribe for any shares or debentures of the company.

(2)

The financial statements of the company for the financial year must comply with sections 380 and 381 as if the company were a public company.

(3)

The Court may, on the application of the company or a person interested in the matter, order that subsections (1) and (2) do not apply.

(4)

The Court may make the order on any terms and conditions that the Court thinks just and expedient.

(5)

The Court must not make the order unless the Court is satisfied that—

(a)

the occurrence of the event mentioned in subsection (1)(a), (b) or (c) was accidental;

(b)

it was due to inadvertence or to some other sufficient cause that the event occurred; or

(c)

it is just and equitable to grant the relief on other grounds.

383.

Notes to financial statements to contain information on directors' emoluments etc.

(1)

The financial statements for a financial year must contain, in the notes to the statements, the information prescribed by the Regulation for the purposes of this subsection about the following—

(a)

the directors' emoluments;

(b)

the directors' retirement benefits;

(c)

payments made or benefit provided in respect of the termination of the service of directors, whether in the capacity of directors or in any other capacity while directors;

(d)

loans, quasi-loans and other dealings in favour of—

(i)

directors of the company and of a holding company of the company;

(ii)

bodies corporate controlled by such directors; and

(iii)

entities connected with such directors;

(e)

material interests of directors in transactions, arrangements or contracts entered into by the company;

(Amended 35 of 2018 s. 44)

(f)

consideration provided to or receivable by third parties for making available the services of a person as director or in any other capacity while director.

(2)

In subsection (1)—

(a)

a reference to a director—

(i)

in the case of subsection (1)(b), includes a former director;

(ii)

in the case of subsection (1)(c) includes a former director and shadow director; and

(iii)

in the case of subsection (1)(d) and (e), includes a shadow director;

(b)

a reference to a body corporate controlled by a director has the meaning given by section 492; and

(c)

a reference to an entity connected with a director has the meaning given by section 486.

(3)

Despite subsection (1)(d), the financial statements for a financial year are not required to contain the information prescribed by the Regulation for the purposes of that subsection if the company complies with the requirements prescribed by the Regulation for the purposes of this subsection.

(4)

The notes to any financial statements must also comply with other requirements prescribed by the Regulation.

(5)

A person who is, or has been during the preceding 5 years, a director or shadow director of a company must give notice to the company of any matter that—

(a)

is prescribed by the Regulation;

(b)

relates to the person; and

(c)

is necessary for the purposes of subsection (1).

(6)

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

384.

Register of particulars not required to be contained in notes to financial statements

(1)

A company must enter into a register the particulars that would, but for section 383(3), be required by section 383(1)(d) to be contained in the notes to the financial statements for a financial year.

(2)

A company must keep the particulars in the register for at least 10 years after the date on which the particulars are entered.

(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.

385.

Place where register mentioned in section 384 must be kept

(1)

A company must keep the register mentioned in section 384 at—

(a)

the company's registered office; or

(b)

a place prescribed by regulations made under section 657.

(2)

A company must notify the Registrar of the place at which the register mentioned in section 384 is kept. The notice must be in the specified form and be delivered to the Registrar for registration within 15 days after the register is first kept at that place.

(3)

A company must notify the Registrar of any change (other than a change of the address of the company's registered office) in the place at which the register mentioned in section 384 is kept. The notice must be in the specified form and be delivered to the Registrar for registration within 15 days after the change.

(4)

Subsection (2) does not require a company to notify the Registrar of the place at which the register mentioned in section 384 is kept—

(a)

if, in the case of a register that came into existence on or after the commencement date[e] of this section, it has at all times been kept at the company's registered office; or

(b)

if—

(i)

immediately before that commencement date[e], the company kept a register for the purposes of section 161BB of the predecessor Ordinance; and

(ii)

on and after that commencement date[e], that register is kept as a register for the purposes of section 384 at the place at which that register was kept immediately before that commencement date[e].

(Amended 35 of 2018 s. 45)

(5)

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 4 and, in the case of a continuing offence, to a further fine of $700 for each day during which the offence continues.

Editorial Note:

[e] Commencement date: 3 March 2014.

386.

Right to inspect and request copy

(1)

A member of a company is entitled, on request made in the prescribed manner and without charge, to inspect the register kept by the company under section 384 in accordance with regulations made under section 657.

(2)

A member of a company is entitled, on request and on payment of a prescribed fee, to be provided with a copy of the register kept by the company under section 384, or any part of it, in accordance with regulations made under section 657.

(3)

In this section—

prescribed

(

訂明

) means prescribed by regulations made under section 657.

387.

Statement of financial position to be approved and signed

(1)

A statement of financial position that forms part of any financial statements—

(a)

must be approved by the directors; and

(b)

must be signed—

(i)

by 2 directors on the directors' behalf; or

(ii)

in the case of a company having only one director, by the director.

(2)

Every copy of a statement of financial position that forms part of any financial statements laid before a company in general meeting under section 429, or sent to a member under section 430 or otherwise circulated, published or issued by the company, must state the name of the person who signed the statement on the directors' behalf.

(3)

If, as respects any financial statements a copy of which is circulated, published or issued by the company, subsection (1) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

(4)

If subsection (2) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

Subdivision 4

Directors' Report

388.

Directors must prepare directors' report

(1)

A company's directors must prepare for each financial year a report that—

(a)

complies with sections 390 and 543(2) and Schedule 5;

(b)

contains the information prescribed by the Regulation; and

(c)

complies with other requirements prescribed by the Regulation.

(2)

Despite subsection (1), if the company is a holding company in a financial year, and the directors prepare annual consolidated financial statements for the financial year, the directors must instead prepare for the financial year a consolidated report that—

(a)

complies with sections 390 and 543(2) and Schedule 5;

(b)

contains the information prescribed by the Regulation; and

(c)

complies with other requirements prescribed by the Regulation.

(3)

Subsection (1) or (2) does not require the directors' report for a financial year to comply with Schedule 5 if—

(a)

the company falls within the reporting exemption for the financial year;

(b)

the company is a wholly owned subsidiary of another body corporate at the end of the financial year; or

(Amended 35 of 2018 s. 46)

(c)

the company is a private company that does not fall within the reporting exemption for the financial year, and a special resolution is passed by the members to the effect that the company is not to prepare a business review required by that Schedule for the financial year.

(4)

A resolution for the purposes of subsection (3)(c)—

(a)

may be passed in relation to—

(i)

a financial year; or

(ii)

a financial year and every subsequent financial year;

(b)

must be passed at least 6 months before the end of the financial year to which the directors' report relates; and

(c)

may only be revoked by a special resolution.

(5)

Subsections (1), (2) and (3) have effect subject to section 389.

(6)

A director of a company who fails to take all reasonable steps to secure compliance with subsection (1) or (2) commits an offence and is liable to a fine of $150,000.

(7)

A director of a company who wilfully fails to take all reasonable steps to secure compliance with subsection (1) or (2) commits an offence and is liable to a fine of $150,000 and to imprisonment for 6 months.

(8)

If a person is charged with an offence under subsection (6), it is a defence to establish that the person had reasonable grounds to believe, and did believe, that a competent and reliable person—

(a)

was charged with the duty of ensuring that subsection (1) or (2) (as the case may be) was complied with; and

(b)

was in a position to discharge that duty.

389.

Provisions supplementary to section 388

(1)

This section applies if at any time during a financial year of a private company—

(a)

the company registers any transfer of shares in the company in contravention of the restrictions imposed by the company's articles;

(b)

the membership of the company exceeds the number specified in section 11(1)(a)(ii); or

(c)

the company makes an invitation to the public to subscribe for any shares or debentures of the company.

(2)

The directors' report for the financial year is required to comply with section 388 as if the company were a public company.

(3)

The Court may, on the application of the company or a person interested in the matter, order that subsections (1) and (2) do not apply.

(4)

The Court may make the order on any terms and conditions that the Court thinks just and expedient.

(5)

The Court must not make the order unless the Court is satisfied that—

(a)

the occurrence of the event mentioned in subsection (1)(a), (b) or (c) was accidental;

(b)

it was due to inadvertence or to some other sufficient cause that the event occurred; or

(c)

it is just and equitable to grant the relief on other grounds.

390.

Contents of directors' report: general

(1)

A directors' report for a financial year must contain—

(a)

the name of every person who was a director of the company—

(i)

during the financial year; or

(ii)

during the period beginning with the end of the financial year and ending on the date of the report; and

(b)

the principal activities of the company in the course of the financial year.

(2)

A directors' report must contain particulars of any other matter—

(a)

that is material for the members' appreciation of the state of the company's affairs; and

(b)

the disclosure of which will not, in the directors' opinion, be harmful to the business of the company.

(3)

Subject to subsection (4), this section has effect in relation to a directors' report required to be prepared under section 388(2) as if a reference to the company in subsection (1) or (2) were a reference to—

(Amended 35 of 2018 s. 47)

(a)

the company; and

(b)

the subsidiary undertakings included in the annual consolidated financial statements for the financial year.

(4)

If both of the conditions specified in subsection (5) are satisfied, this section has effect in relation to a directors' report required to be prepared under section 388(2) as if a reference to the company in subsections (1)(b) and (2) were a reference to—

(a)

the company; and

(b)

the subsidiary undertakings included in the annual consolidated financial statements for the financial year.

(Added 35 of 2018 s. 47)

(5)

The conditions are—

(a)

the company is a holding company of a subsidiary undertaking at the end of the financial year; and

(b)

subsection (6) is complied with in respect of a list of the name of every person who was a director of the subsidiary undertaking—

(i)

during the financial year; or

(ii)

during the period beginning with the end of the financial year and ending on the date of the report.

(Added 35 of 2018 s. 47)

(6)

The list of the names—

(a)

must, throughout the period specified in subsection (7), be—

(i)

kept at the company's registered office; and

(ii)

made available for inspection by the members free of charge during business hours; or

(b)

must be made available on the company's website throughout that period.

(Added 35 of 2018 s. 47)

(7)

The period is one that—

(a)

begins on the expiry of the day on which the company sends or provides a copy of the directors' report to the members in accordance with section 430 or 612(1)(b); and

(b)

ends on the day on which a copy of the directors' report for the subsequent financial year is sent or provided to the members in accordance with section 430 or 612(1)(b).

(Added 35 of 2018 s. 47)

391.

Directors' report to be approved and signed

(1)

A directors' report—

(a)

must be approved by the directors; and

(b)

must be signed on the directors' behalf by a director or by the company secretary.

(2)

Every copy of a directors' report laid before a company in general meeting under section 429, or sent to a member under section 430 or otherwise circulated, published or issued by the company, must state the name of the person who signed the report on the directors' behalf.

(3)

If, as respects any directors' report a copy of which is circulated, published or issued by the company, subsection (1) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

(4)

If subsection (2) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

Division 5

Auditor and Auditor's Report

Subdivision 1

Preliminary

392.

Interpretation

In this Division—

appointment period

(

委任期

), in relation to a financial year, means the period of 28 days beginning on whichever is the earlier of the following—

(a)

the date on which a copy of the reporting documents for the previous financial year is sent or provided to every member of the company under section 430(3) or 612(1)(b) (as the case may be);

(b)

the last date on which a copy of the reporting documents for the previous financial year must be sent or provided to every member of the company under section 430(3) or 612(1)(b) (as the case may be);

cessation statement

(

停任陳述

) means a statement given under section 422(1), (2) or (3) or 423(2)(a);

practice unit

(

執業單位

) has the meaning given by section 2(1) of the Accounting and Financial Reporting Council Ordinance (Cap. 588);

(Amended L.N. 66 of 2022)

statement of circumstance

(

情況陳述

) means a statement given under section 424(a) or 425(1)(a).

Subdivision 2

Appointment of Auditor

393.

Eligibility for appointment

(1)

Only a practice unit is eligible for appointment as auditor of a company under this Subdivision.

(2)

The following are disqualified for appointment as auditor of a company under this Subdivision—

(a)

a person who is an officer or employee of the company;

(b)

a person who is a partner or employee of a person mentioned in paragraph (a);

(c)

a person who—

(i)

is, by virtue of paragraph (a) or (b), disqualified for appointment as auditor of any other undertaking that is a subsidiary undertaking, or a parent undertaking, of the company or is a subsidiary undertaking of that parent undertaking; or

(ii)

would be so disqualified if the undertaking were a company.

(3)

In this section, a reference to an officer or employee of a company excludes an auditor of the company.

394.

Auditor must be appointed for each financial year

(1)

An auditor must be appointed for each financial year of a company.

(2)

An auditor may be appointed only under this Subdivision.

395.

Appointment of first auditor by directors

(1)

This section applies to—

(a)

a company formed and registered under this Ordinance;

(b)

a company formed and registered under a provision of the predecessor Ordinance having a continuing effect under Schedule 11 or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1); and

(Amended 14 of 2025 s. 32)

(c)

a re-domiciled company.

(Added 14 of 2025 s. 32)

(2)

If the company is required to hold an annual general meeting in accordance with section 610 in respect of its first financial year, the directors may appoint the auditor of the company for that first financial year at any time before the annual general meeting.

(3)

If, by virtue of section 612(1) or (2), the company is not required to hold an annual general meeting in accordance with section 610 in respect of its first financial year, the directors may appoint the auditor of the company for that first financial year at any time before the appointment period in relation to the next financial year.

396.

Appointment of auditor by company members

(1)

A company must appoint the auditor of the company for a financial year by a resolution passed at the annual general meeting held in respect of the previous financial year.

(2)

Subsection (1) does not apply to a company that, by virtue of section 612(2), is not required to hold an annual general meeting in accordance with section 610 in respect of the previous financial year.

(3)

A company must appoint the auditor of the company for a financial year by a resolution passed at a general meeting if—

(a)

by virtue of section 612(2), it is not required to hold an annual general meeting in accordance with section 610 in respect of the previous financial year; and

(b)

no person is deemed to be reappointed as auditor of the company for the financial year under section 403.

(4)

An appointment under subsection (3) must be made before the end of the appointment period in relation to the financial year.

(5)

If, at the annual general meeting held in respect of the previous financial year, a company has not appointed the auditor of the company for a financial year, the company must make the appointment by a resolution passed at another general meeting.

(6)

A company to which section 395 applies may, by a resolution passed at a general meeting, appoint the auditor of the company for its first financial year if the directors have not done so under that section.

397.

Appointment to fill casual vacancy

(1)

The directors may appoint a person to fill a casual vacancy in the office of auditor of the company.

(2)

If the directors have not done so within one month after the casual vacancy occurs, the members may, by a resolution passed at a general meeting, appoint a person to fill the casual vacancy.

398.

Appointment of auditor by Court

(1)

The Court may, on application by a member of a company, appoint the auditor of the company for a financial year if—

(a)

in the case of a company required to hold an annual general meeting in accordance with section 610 in respect of the previous financial year—

(i)

at the annual general meeting, no person has been appointed as auditor of the company for the financial year; or

(ii)

an annual general meeting has not been held in accordance with that section; or

(b)

in the case of a company not required to hold an annual general meeting in accordance with section 610 in respect of the previous financial year by virtue of section 612(2)—

(i)

at the end of the appointment period in relation to the financial year, no person has been appointed as auditor of the company for the financial year; and

(ii)

no person is deemed to be reappointed as auditor of the company for the financial year under section 403.

(2)

The Court may, on application by a member of a company to which section 395 applies, appoint the auditor of the company for its first financial year if an appointment has not been made under sections 395(2) or (3) and 396(6).

(3)

The Court may, on application by a member of a company, appoint a person to fill a casual vacancy in the office of auditor of the company if an appointment has not been made under section 397.

399.

Effect of appointing a firm as auditor

If a firm is appointed, by the firm name, as auditor of a company, the appointment is to be regarded as an appointment of those persons who—

(a)

are the partners in the firm from time to time during the currency of the appointment; and

(b)

are eligible, and not disqualified, for appointment as auditor of the company under this Subdivision.

400.

Special notice required for resolution for appointing auditor in some cases

(1)

Special notice is required for—

(a)

a resolution proposed for the purposes of section 396(1), (3) or (5) for appointing a person as auditor in place of a specified incumbent; and

(b)

a resolution proposed for the purposes of section 397(2).

Note—

See also section 578 which sets out the requirements regarding special notice.

(2)

Special notice is also required for a resolution proposed for the purposes of section 396(1), (3) or (5) for appointing a specified incumbent as auditor if that incumbent holds office by virtue of an appointment by the directors to fill a casual vacancy under section 397(1).

(3)

On receipt of a special notice, the company must send a copy of it—

(a)

to the person proposed to be appointed as auditor; and

(b)

in the case of—

(i)

a proposed appointment under section 396(1), (3) or (5) of a person in place of a specified incumbent, to that incumbent; or

(ii)

a proposed appointment under section 396(1), (3) or (5) of a specified incumbent who holds office by virtue of an appointment under section 397(1) or (2) to fill a casual vacancy caused by a resignation, to the person who resigned.

(4)

In this section—

specified incumbent

(

指明在任人

) means—

(a)

the person who is the last auditor of the company and whose term of office as auditor has expired; or

(b)

the person whose term of office as auditor will expire—

(i)

at the end of the general meeting; or

(ii)

at the end of the appointment period in relation to the financial year concerned.

401.

Copies of written resolution for appointment must be sent to new and old auditors

(1)

This section applies if an appointment of an auditor specified in subsection (2) is proposed to be effected by a written resolution of the members of a company.

(2)

The appointment is—

(a)

an appointment under section 396(1), (3) or (5) of a person in place of a specified incumbent; or

(b)

an appointment under section 396(1), (3) or (5) of a specified incumbent who holds office by virtue of an appointment under section 397(1) or (2) to fill a casual vacancy caused by a resignation.

(3)

On receipt of a copy of the proposed resolution, the company must send a copy of it—

(a)

to the person proposed to be appointed as auditor; and

(b)

in the case of—

(i)

subsection (2)(a), to the specified incumbent; or

(ii)

subsection (2)(b), to the person who resigned.

(4)

If a company contravenes subsection (3), the written resolution is ineffective.

(5)

In this section—

specified incumbent

(

指明在任人

) means—

(a)

the person who is the last auditor of the company and whose term of office as auditor has expired; or

(b)

the person whose term of office as auditor will expire at the end of the appointment period in relation to the financial year concerned.

402.

Terms of office of auditor

(1)

A person appointed as auditor of a company holds office in accordance with the terms of the appointment.

(2)

Despite subsection (1)—

(a)

a person appointed as auditor of a company does not take office until the previous auditor's appointment is terminated; and

(b)

a person appointed as auditor of a company for a financial year under section 395, 396, 397 or 398 holds office until—

(i)

if the company holds an annual general meeting in accordance with section 610 in respect of the financial year, the end of the annual general meeting;

(ii)

if, by virtue of section 612(1), the company does not hold an annual general meeting in accordance with section 610 in respect of the financial year, the date of the written resolution passed for the purposes of section 612(1); or

(iii)

if, by virtue of section 612(2), the company does not hold an annual general meeting in accordance with section 610 in respect of the financial year, the end of the appointment period in relation to the next financial year.

403.

Person deemed to be reappointed as auditor

(1)

If—

(a)

by virtue of section 612(2), a company is not required to hold an annual general meeting in accordance with section 610 in respect of a financial year; and

(b)

at the end of the appointment period in relation to the next financial year, no person has been appointed as auditor of the company for that next financial year,

the person who is the auditor of the company as at the end of that appointment period is deemed to be reappointed, at that time, as auditor of the company for that next financial year on the same terms of appointment.

(2)

Despite subsection (1), the person is not deemed to be reappointed as auditor of the company for the next financial year if—

(a)

the person was appointed as auditor under section 395 or 397(1);

(b)

the company's articles require an actual appointment;

(c)

before the person is deemed to be reappointed under that subsection, the members have by a resolution passed at a general meeting resolved that the person should not be reappointed as auditor for that next financial year;

(d)

the person declines the reappointment in a written notice sent to the company at least 14 days before the end of the appointment period in relation to that next financial year; or

(e)

members representing at least the requisite percentage of the voting rights of all the members who would be entitled to vote on a resolution that the person should not be reappointed give the company a notice complying with subsection (5).

(3)

Special notice is required for a resolution proposed for the purposes of subsection (2)(c).

Note—

See also section 578 which sets out the requirements regarding special notice.

(4)

On receipt of a special notice, the company must send a copy of it to the person proposed not to be reappointed.

(5)

A notice for the purposes of subsection (2)(e)—

(a)

must state that the person should not be reappointed;

(b)

must be authenticated by the member or members giving it;

(c)

must be delivered to the company in hard copy form or electronic form; and

(d)

must be received by the company before the end of the accounting reference period immediately preceding the time when the reappointment would have effect.

(6)

This section does not affect the operation of Subdivision 6.

(7)

In ascertaining the amount of any compensation or damages payable to a person on ceasing to hold office of auditor for any reason, no account is to be taken of any loss of the opportunity of being deemed to be reappointed as auditor under this section.

(8)

In this section—

requisite percentage

(

所需百分比

) means 5%, or a lower percentage specified for the purposes of this section in the company's articles.

404.

Auditor's remuneration

(1)

The remuneration of an auditor of a company appointed by the members may be fixed—

(a)

by a resolution passed at a general meeting; or

(b)

in the manner specified in such a resolution.

(2)

The remuneration of an auditor of a company appointed by the directors—

(a)

may be fixed by the directors when making the appointment; or

(b)

if it has not been fixed by the directors, may be fixed—

(i)

by a resolution passed at a general meeting; or

(ii)

in the manner specified in such a resolution.

(3)

The remuneration of an auditor of a company appointed by the Court—

(a)

may be fixed by the Court when making the appointment; or

(b)

if it has not been fixed by the Court, may be fixed—

(i)

by a resolution passed at a general meeting; or

(ii)

in the manner specified in such a resolution.

(4)

In this section—

remuneration

(

酬金

), in relation to an auditor of a company, includes any sum paid by the company in respect of the expenses of the auditor.

Subdivision 3

Auditor's Report

405.

Auditor's duty to report

A company's auditor must prepare a report for the members on any financial statements prepared by the directors, a copy of which is laid before the company in general meeting under section 429, or is sent to a member under section 430 or otherwise circulated, published or issued by the company, during the auditor's term of office.

406.

Auditor's opinion on financial statements, directors' report, etc.

(1)

An auditor's report must state, in the auditor's opinion—

(a)

whether the financial statements have been properly prepared in compliance with this Ordinance; and

(b)

in particular, whether the financial statements—

(i)

in the case of annual financial statements of a company that does not fall within the reporting exemption for the financial year, give a true and fair view of the financial position and financial performance of the company as required by section 380; or

(ii)

in the case of annual consolidated financial statements of a company that does not fall within the reporting exemption for the financial year, give a true and fair view of the financial position and financial performance of the company and all the subsidiary undertakings as required by section 380.

(2)

If a company's auditor is of the opinion that the information in a directors' report for a financial year is not consistent with the financial statements for the financial year, the auditor—

(a)

must state that opinion in the auditor's report; and

(b)

may bring that opinion to the members' attention at a general meeting.

407.

Auditor's opinion on other matters

(1)

In preparing an auditor's report, the auditor must carry out an investigation that will enable the auditor to form an opinion as to—

(a)

whether adequate accounting records have been kept by the company; and

(b)

whether the financial statements are in agreement with the accounting records.

(2)

A company's auditor must state the auditor's opinion in the auditor's report if the auditor is of the opinion that—

(a)

adequate accounting records have not been kept by the company; or

(b)

the financial statements are not in agreement with the accounting records in any material respect.

(3)

If a company's auditor fails to obtain all the information or explanations that, to the best of the auditor's knowledge and belief, are necessary and material for the purpose of the audit, the auditor must state that fact in the auditor's report.

(4)

If the financial statements do not comply with section 383(1), the auditor must include in the auditor's report, so far as the auditor is reasonably able to do so, a statement giving the particulars that are required to be, but have not been, contained in the financial statements.

408.

Offences relating to contents of auditor's report

(1)

Every person specified in subsection (2) commits an offence if the person knowingly or recklessly causes a statement required to be contained in an auditor's report under section 407(2)(b) or (3) to be omitted from the report.

(2)

The persons are—

(a)

if the auditor who prepares the auditor's report is a natural person—

(i)

the auditor; and

(ii)

every employee and agent of the auditor who is eligible for appointment as auditor of the company;

(b)

if the auditor who prepares the auditor's report is a firm, every partner, employee and agent of the auditor who is eligible for appointment as auditor of the company; or

(c)

if the auditor who prepares the auditor's report is a body corporate, every officer, member, employee and agent of the auditor who is eligible for appointment as auditor of the company.

(3)

A person who commits an offence under subsection (1) is liable to a fine of $150,000.

409.

Auditor's reports to be signed

(1)

An auditor's report must be signed—

(a)

if the auditor is a natural person, by the auditor; or

(b)

if the auditor is a firm or body corporate, by a natural person authorized to sign the auditor's name on the auditor's behalf.

(2)

An auditor's report must state the auditor's name.

(3)

Every copy of an auditor's report laid before a company in general meeting under section 429, or sent to a member under section 430 or otherwise circulated, published or issued by the company, must state the auditor's name.

(4)

If subsection (3) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

Subdivision 4

Auditor's Rights and Privileges, etc.

410.

Qualified privileges

(1)

In the absence of malice, an auditor of a company is not liable to any action for defamation at the suit of any person in respect of any statement made by the auditor in the course of performing duties as auditor of the company.

(2)

In the absence of malice, a person is not liable to any action for defamation at the suit of any person in respect of the publication of any document—

(a)

prepared by an auditor of a company in the course of performing duties as auditor of the company; and

(b)

required by this Ordinance—

(i)

to be delivered to the Registrar; or

(ii)

to be sent to any member of the company or any other person.

(3)

This section does not limit or affect any other right, privilege or immunity that an auditor of a company, or any other person, has as defendant in an action for defamation.

(4)

In this section, a reference to performing duties as auditor of a company includes—

(a)

making a cessation statement, giving the statement to the company, and requesting the company to comply with the requirement specified in section 422(5) in relation to the statement; and

(b)

making a statement of circumstances, and giving the statement to the company.

411.

Rights in relation to general meeting

(1)

A person appointed as auditor of a company is entitled—

(a)

to attend any of the company's general meetings; and

(b)

to be heard, at any of the company's general meetings, on any part of the business of the meeting that concerns the person as auditor of the company.

(2)

A person's entitlement under subsection (1)(a) or (b) is, if the person is a firm or body corporate, exercisable by a natural person authorized by the person to act as the person's representative at the meeting.

412.

Rights in relation to information

(1)

An auditor of a company has a right of access to the company's accounting records.

(2)

An auditor of a company may require a person that is a related entity of the company, or was a related entity of the company at the time to which the information or explanation relates, to provide the auditor with any information or explanation that the auditor reasonably requires for the performance of the duties as auditor of the company.

(3)

If an auditor has required a person to provide any information or explanation under subsection (2), the person must provide the information or explanation as soon as practicable after being required.

(4)

If a subsidiary undertaking of a company is neither a company incorporated in Hong Kong nor a re-domiciled company, an auditor of the company may require the company to obtain from any of the persons specified in subsection (5) any information or explanation that the auditor reasonably requires for the performance of the duties as auditor of the company.

(Amended 14 of 2025 s. 33)

(5)

The persons are—

(a)

the subsidiary undertaking;

(b)

a person who—

(i)

is an officer or auditor of the subsidiary undertaking; or

(ii)

was an officer or auditor of the subsidiary undertaking at the time to which the information or explanation relates; and

(c)

a person who—

(i)

holds or is accountable for any of the subsidiary undertaking's accounting records; or

(ii)

held or was accountable for the subsidiary undertaking's accounting records at the time to which the information or explanation relates.

(6)

If an auditor has required a company to obtain any information or explanation from a person under subsection (4), the company must take all reasonable steps to obtain the information or explanation as soon as practicable after being required.

(7)

A statement made by a person in response to a requirement under subsection (2) or (4) may not be used in evidence against the person in any criminal proceedings except proceedings for an offence under section 413.

(8)

This section does not compel a person to disclose information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

(9)

In this section—

officer

(

高級人員

), in relation to a subsidiary undertaking that is not a body corporate, means—

(a)

a member of the governing body of the undertaking; or

(b)

any other person involved in the management of the undertaking;

(Added 35 of 2018 s. 49)

related entity

(

有關連實體

), in relation to a company, means—

(a)

an officer of the company;

(b)

a subsidiary undertaking of the company that is a company incorporated in Hong Kong or a re-domiciled company;

(Amended 14 of 2025 s. 33)

(c)

an officer or auditor of such a subsidiary undertaking; or

(d)

a person holding or accountable for any of the accounting records of the company or such a subsidiary undertaking.

413.

Offences relating to section 412

(1)

A person who contravenes section 412(3) commits an offence and 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.

(2)

If a person is charged with an offence under subsection (1), it is a defence to establish that it was not reasonably practicable for the person to provide the information or explanation.

(3)

A person commits an offence if—

(a)

the person makes a statement to an auditor of a company that conveys or purports to convey any information or explanation that the auditor requires, or is entitled to require, under section 412(2) or (4);

(b)

the statement is misleading, false or deceptive in a material particular; and

(c)

the person knows that, or is reckless as to whether or not, the statement is misleading, false or deceptive in a material particular.

(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.

(5)

If a company contravenes section 412(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.

(6)

If a person is charged with an offence under subsection (5) for failing to obtain any information or explanation from a subsidiary undertaking or another person, it is a defence to establish that—

(a)

it would be an offence under the law of a place outside Hong Kong for the subsidiary undertaking or that other person to provide the information or explanation to the defendant; and

(b)

the subsidiary undertaking or that other person did not provide the information or explanation to the defendant on that ground.

(7)

This section does not affect an auditor's right to apply for an injunction to enforce any of the auditor's rights under section 412.

414.

Auditor may provide information to incoming auditor without contravening duties

(1)

A person who is or has been an auditor of a company does not contravene any duty owed by the person as such auditor in law by reason only that the person gives workrelated information to another person—

(a)

who is an auditor of the company;

(b)

who has been appointed as auditor of the company but whose term of office has not yet begun; or

(c)

to whom the company has offered the position as auditor but who has not yet been appointed.

(2)

Subsection (1) does not apply unless the person who gives work-related information to another person—

(a)

does so in good faith; and

(b)

reasonably believes that the information is relevant to the performance of that other person's duties as auditor of the company.

(3)

In this section—

work-related information

(

工作資料

), in relation to a person who is or has been an auditor of a company, means information of which the person became aware in the capacity of auditor.

Subdivision 5

Auditor's Liability

415.

Avoidance of provisions protecting auditor from liability

(1)

This section applies to a provision contained in a company's articles, or in a contract entered into by a company, or otherwise.

(2)

If a provision purports to exempt an auditor of the company from any liability that would otherwise attach to the auditor in connection with any negligence, default, breach of duty or breach of trust occurring in the course of performance of the duties as auditor in relation to the company, the provision is void.

(3)

If, by a provision, the company directly or indirectly provides an indemnity for an auditor of the company, or an auditor of an associated company of the company, against any liability attaching to the auditor in connection with any negligence, default, breach of duty or breach of trust occurring in the course of performance of the duties as auditor in relation to the company or associated company (as the case may be), the provision is void.

(4)

Subsection (3) does not prevent a company from taking out and keeping in force insurance for an auditor of the company, or an auditor of an associated company of the company, against—

(a)

any liability to any person attaching to the auditor in connection with any negligence, default, breach of duty or breach of trust (except for fraud) occurring in the course of performance of the duties of auditor in relation to the company or associated company (as the case may be); or

(b)

any liability incurred by the auditor in defending any proceedings (whether civil or criminal) taken against the auditor for any negligence, default, breach of duty or breach of trust (including fraud) occurring in the course of performance of the duties of auditor in relation to the company or associated company (as the case may be).

(5)

Subsection (3) does not prevent a company from indemnifying an auditor of the company against any liability incurred by the auditor—

(a)

in defending any proceedings (whether civil or criminal) in which judgment is given in the auditor's favour or the auditor is acquitted; or

(b)

in connection with an application under section 903 or 904 in which relief is granted to the auditor by the Court.

(6)

In this section, a reference to performance of the duties of auditor includes—

(a)

making a cessation statement, giving the statement to the company, and requesting the company to comply with the requirement specified in section 422(5) in relation to the statement;

(Amended 35 of 2018 s. 50)

(ab)

requiring the company to send a copy of a cessation statement to every member under section 423(2)(b); and

(Added 35 of 2018 s. 50)

(b)

making a statement of circumstances, and giving the statement to the company.

Subdivision 6

Termination of Auditor's Appointment

416.

When appointment is terminated

(1)

A person's appointment as auditor of a company is terminated if—

(a)

the term of office expires;

(b)

the person resigns from office under section 417(1);

(c)

the person ceases to be auditor under section 418;

(d)

the person is removed from office under section 419(1); or

(e)

a winding up order is made in respect of the company.

(2)

Where a firm is appointed, by the firm name, as auditor of a company, the appointment is also terminated if every person who is regarded as being appointed as auditor by virtue of section 399—

(a)

ceases to be a partner in the firm before the term of office expires; or

(b)

ceases to be eligible, or becomes disqualified, for appointment as auditor of the company under Subdivision 2 before the term of office expires.

(3)

Where a body corporate is appointed as auditor of a company, the appointment is also terminated if the body corporate is dissolved.

(4)

If 2 or more persons are appointed as auditor of a company, and the appointment of any of the persons is terminated, the termination does not affect the appointment of the other person.

417.

Resignation of auditor

(1)

A person may resign from the office of auditor by giving the company a notice in writing that is accompanied by a statement required to be given under section 424.

(2)

Such a person's term of office expires—

(a)

at the end of the day on which notice is given to the company under subsection (1); or

(b)

if the notice specifies a time on a later day for the purpose, at that time.

(3)

Within 15 days beginning on the date on which a company receives a notice of resignation, the company must deliver a notification in the specified form of that fact to the Registrar for registration.

(4)

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 5 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of $1,000 for each day during which the offence continues.

418.

Cessation of office

(1)

If, while holding office as auditor of a company, a person ceases to be eligible, or becomes disqualified, for appointment as auditor of the company under Subdivision 2, the person—

(a)

immediately ceases to be auditor of the company; and

(b)

must notify the company of the cessation in writing within 14 days from the date of the cessation.

(2)

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

(3)

If a person is charged with an offence under subsection (2), it is a defence to establish that the person did not know, and had no reason to believe, that the person had ceased to be eligible, or had become disqualified, for appointment as auditor of the company under Subdivision 2.

419.

Company may remove auditor

(1)

A company may by an ordinary resolution passed at a general meeting remove a person from the office of auditor despite—

(a)

any agreement between the person and the company; or

(b)

anything in the company's articles.

(2)

Special notice is required for an ordinary resolution proposed for the purposes of subsection (1).

Note—

See also section 578 which sets out the requirements regarding special notice.

(3)

On receipt of a special notice, the company must send a copy of it to the person proposed to be removed.

(4)

If an ordinary resolution for the removal is passed, the company must deliver a notice in the specified form of that fact to the Registrar for registration within 15 days beginning on the date on which it is passed.

(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.

420.

Removed auditor not deprived of compensation, damages, etc.

Section 419 does not deprive a person of compensation or damages payable to the person in respect of the person ceasing—

(a)

to hold office as auditor of a company; or

(b)

to hold any appointment that is terminated with the termination of the person's appointment as auditor.

Subdivision 7

Outgoing Auditor's Right to Requisition Meeting of Company and Make Representation

421.

Resigning auditor may requisition meeting

(1)

If a person gives under section 417(1) a notice of resignation that is accompanied by a statement of circumstances given under section 424(a), the person may, by another notice given to the company with the notice of resignation, require the directors to convene a general meeting of the company for receiving and considering the explanation of the circumstances connected with the resignation that the person places before the meeting.

(2)

Within 21 days beginning on the date on which the company receives that other notice, the directors must convene a general meeting for a date falling within 28 days after the date on which the notice convening the meeting is given.

(3)

If the directors of a company contravene subsection (2), every director who failed to take all reasonable steps to secure that a general meeting was convened as required by that subsection 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.

422.

Cessation statement in relation to, and attendance at, general meeting

(1)

If a general meeting is convened under section 421(2), the person who resigns from the office of auditor—

(a)

may give the company a statement by the person that sets out in reasonable length the circumstances surrounding the resignation;

(b)

may request the company to comply with the requirement specified in subsection (5) in relation to the statement; and

(c)

is entitled—

(i)

to be given every notice of, and every other item of communication, relating to the general meeting, that a member of the company is entitled to be given;

(ii)

to attend the general meeting; and

(iii)

to be heard at the general meeting on any part of the business of the meeting that concerns the person as auditor or former auditor of the company.

(2)

If special notice is given under section 400(1)(a) for a resolution for appointing a person as auditor in place of another person, that other person—

(a)

may give the company a statement by that other person that sets out in reasonable length the circumstances surrounding the termination of the appointment as auditor;

(b)

may request the company to comply with the requirement specified in subsection (5) in relation to the statement; and

(c)

is entitled—

(i)

to be given every notice of, and every other item of communication, relating to the general meeting, that a member of the company is entitled to be given;

(ii)

to attend the general meeting; and

(iii)

to be heard at the general meeting on any part of the business of the meeting that concerns the person as auditor or former auditor of the company.

(3)

If special notice is given under section 419(2) for an ordinary resolution for removing a person from the office of auditor, the person—

(a)

may give the company a statement by the person that sets out in reasonable length the circumstances surrounding the proposed removal; and

(b)

may request the company to comply with the requirement specified in subsection (5) in relation to the statement.

(4)

A person's entitlement under subsection (1)(c)(ii) or (iii) or (2)(c)(ii) or (iii) is, if the person is a firm or body corporate, exercisable by a natural person authorized by the person to act as the person's representative at the meeting.

(5)

The requirement specified for the purposes of subsection (1)(b), (2)(b) or (3)(b) is—

(a)

if the company receives the statement on a date that is more than 2 days before the last day on which notice may be given under section 571(1) to call the general meeting, the requirement—

(i)

to state, in every notice of the meeting given to the members, that the statement has been made; and

(ii)

to send a copy of the statement to every member to whom a notice of the meeting is or has been given; or

(b)

if the company has not sent a copy of the statement to every member to whom a notice of the meeting is or has been given, the requirement to ensure that the statement is read out at the meeting.

(6)

Unless exempted by an order under subsection (7), the company must comply with a request made under subsection (1)(b), (2)(b) or (3)(b).

(7)

On application by the company or by anyone who claims to be aggrieved, the Court may order that the company is exempted from complying with the request, if it is satisfied that the person who has given a statement and made a request under subsection (1)(a) and (b), (2)(a) and (b) or (3)—

(a)

has abused the right to do so; or

(b)

has used such a right to secure needless publicity for defamatory matter.

(8)

If a company contravenes subsection (6), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5.

423.

Cessation statement in relation to written resolution

(1)

This section applies if a company sends a copy of a written resolution to a person under section 401(3)(b)(i).

(2)

The person may, within 14 days after receiving a copy of the written resolution from the company—

(a)

give the company a statement by the person that sets out in reasonable length the circumstances surrounding the termination of the appointment as auditor; and

(b)

require the company to send a copy of the statement to every member at the same time when the written resolution is circulated under section 550 or 552.

(3)

Section 553 applies to the circulation of the written resolution as if the reference to 21 days in section 553(3) were replaced by a reference to 28 days.

(4)

Unless exempted by an order under subsection (5), the company must comply with a requirement made under subsection (2)(b).

(5)

On application by the company or by anyone who claims to be aggrieved, the Court may order that the company is exempted from complying with the requirement, if it is satisfied that the person who has given a statement and made a requirement under subsection (2)—

(a)

has abused the right to do so; or

(b)

has used such a right to secure needless publicity for defamatory matter.

(6)

If a company contravenes subsection (4), the written resolution is ineffective.

Subdivision 8

Outgoing Auditor’s Statement of Circumstances

424.

Duty of resigning auditor to give statement

A person who resigns from office under section 417(1) must, on the resignation, give the company—

(a)

if the person considers that there are circumstances connected with the resignation that should be brought to the attention of the company's members or creditors, a statement of those circumstances; or

(b)

if the person considers that there are no such circumstances, a statement to that effect.

425.

Duty of auditor who retires or is removed to give statement

(1)

Subject to subsection (3), a person whose appointment as auditor is terminated under section 416(1)(a) or (d) must, on the termination, give the company—

(a)

if the person considers that there are circumstances connected with the termination that should be brought to the attention of the company's members or creditors, a statement of those circumstances; or

(b)

if the person considers that there are no such circumstances, a statement to that effect.

(2)

Such a person must send a statement mentioned in subsection (1) to the company so that it will be received by the company—

(a)

where the person's term of office expires because the person is not deemed to be reappointed as auditor under section 403(2)(d), at least 14 days before the end of the appointment period in relation to the next financial year; or

(b)

in any other case, within 14 days beginning on the date of termination.

(3)

Subsection (1) does not apply if—

(a)

the person's appointment is terminated under section 416(1)(a); and

(b)

the person—

(i)

is appointed as auditor of the company for a term immediately following the term of office that expires; or

(ii)

is deemed by section 403 to be reappointed as auditor of the company for the next financial year.

(4)

A person who contravenes subsection (1) or (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.

(5)

If a person is charged with an offence under subsection (4), it is a defence to establish that the person took all reasonable steps to secure compliance with subsection (1) or (2) (as the case may be).

426.

Company's and aggrieved person's responses to statement of circumstances

(1)

If a company is given a statement of circumstances, the company must, within 14 days beginning on the date on which it receives the statement—

(a)

send a copy of the statement to every member of the company; or

(b)

apply to the Court for an order directing that copies of the statement are not to be sent under paragraph (a).

(2)

If a company makes an application under subsection (1)(b), it must give notice of the application to the person who has given the statement of circumstances to the company.

(3)

A person who claims to be aggrieved by a statement of circumstances may, within 14 days beginning on the date on which the company receives the statement, apply to the Court for an order directing that copies of the statement are not to be sent under subsection (1)(a).

(4)

If a person makes an application under subsection (3), the person must give notice of the application to—

(a)

the company; and

(b)

the person who has given the statement of circumstances to the company.

(5)

If—

(a)

a person gives a company a statement of circumstances; and

(b)

within 21 days beginning on the date on which the company receives the statement, the person has not received notice of an application under subsection (2) or (4),

the person must within the next 7 days deliver a copy of the statement to the Registrar for registration.

(6)

If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each 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.

(7)

If a person contravenes subsection (5), the person 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.

(8)

If a person is charged with an offence under subsection (7), it is a defence to establish that the person took all reasonable steps to secure compliance with subsection (5).

Court may order statement of circumstances not to be sent

(1)

This section applies if an application has been made under section 426(1)(b) or (3) in relation to a statement of circumstances given by a person to a company.

(2)

If the Court is satisfied that the person has abused the use of the statement of circumstances or is using the statement to secure needless publicity for defamatory matter, the Court—

(a)

must direct that copies of the statement are not to be sent under section 426(1)(a); and

(b)

may order the person, though not a party to the application, to pay the applicant's costs on the application in whole or in part.

(3)

If the Court gives directions under subsection (2)(a), the company must, within 15 days beginning on the date on which the directions are given—

(a)

send a notice setting out the effect of the directions to—

(i)

every member of the company; and

(ii)

unless already named as a party to the proceedings, the person who has given the statement of circumstances to the company; and

(b)

deliver a copy of the notice to the Registrar for registration.

(4)

If the Court decides not to grant the application, the company must, within 15 days beginning on the date on which the decision is made or on which the proceedings are discontinued for any reason—

(a)

give notice of the decision to the person who has given the statement of circumstances to the company; and

(b)

send a copy of the statement of circumstances to every member of the company and to that person.

(5)

Within 7 days beginning on the date on which a person receives a notice under subsection (4)(a), the person must deliver a copy of the statement of circumstances to the Registrar for registration.

428.

Offences relating to section 427

(1)

If a company contravenes section 427(3) or (4), the company, and every responsible person of the company, commit an offence, and each 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.

(2)

A person who contravenes section 427(5) 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.

(3)

If a person is charged with an offence under subsection (2) for contravening section 427(5), it is a defence to establish that the person took all reasonable steps to secure compliance with that section.

Division 6

Laying and Publication of Financial Statements and Reports

429.

Directors must lay financial statements etc. before company in general meeting

(1)

A company's directors must, in respect of each financial year, lay before the company in annual general meeting, or in any other general meeting directed by the Court, a copy of the reporting documents for the financial year within the period specified in section 431.

(2)

Subsection (1) does not apply in relation to a financial year in respect of which an annual general meeting is not required to be held under section 612.

(3)

A director of a company who fails to take all reasonable steps to secure compliance with subsection (1) commits an offence and is liable to a fine of $300,000.

(4)

A director of a company who wilfully fails to take all reasonable steps to secure compliance with subsection (1) commits an offence and is liable to a fine of $300,000 and to imprisonment for 12 months.

(5)

If a person is charged with an offence under subsection (3)—

(a)

it is a defence to establish that the person had reasonable grounds to believe, and did believe, that a competent and reliable person—

(i)

was charged with the duty of ensuring that subsection (1) was complied with; and

(ii)

was in a position to discharge that duty; and

(b)

it is not a defence to establish that the financial statements or report was not in fact prepared as required by this Ordinance.

430.

Company must send copies of financial statements etc. to members before general meeting

(1)

If a company is required to hold an annual general meeting in accordance with section 610 in respect of a financial year, the company must send a copy of the reporting documents for the financial year to every member at least 21 days before the date of the meeting at which the copy is required by section 429 to be laid.

(2)

For the purposes of subsection (1), even though a copy of the reporting documents for the financial year is sent to a member less than 21 days before the date of the meeting at which the copy is required by section 429 to be laid, the copy is to be regarded as having been sent to the member at least 21 days before that date if so agreed by all members entitled to attend and vote at that meeting.

(3)

If, by virtue of section 612(2), a company is not required to hold an annual general meeting in accordance with section 610 in respect of a financial year, the company must send a copy of the reporting documents for the financial year to every member within the period specified in section 431.

(4)

For the purposes of section 833(3)(c), a notification is to be sent—

(a)

in the case of subsection (1), at least 21 days before the date of the general meeting at which a copy of the reporting documents is required by section 429 to be laid; or

(b)

in the case of subsection (3), at least 21 days before the date on which a copy of the reporting documents is sent to every member under that subsection.

(5)

The period specified for the purposes of section 833(3)(d)(i) is—

(a)

in the case of subsection (1), the period beginning at least 21 days before the date of the general meeting at which a copy of the reporting documents is required by section 429 to be laid and ending on the date of that meeting; or

(b)

in the case of subsection (3), the period of 21 days after the date on which a notification under section 833(3)(c) is sent.

(6)

If a copy or copies of the reporting documents are sent under this section over a period of days, the copy or copies are to be regarded as having been sent on the last day of the period for the purpose of a reference in this Ordinance to the day on which the copy or copies are sent under this section.

431.

Period for laying and sending financial statements etc.

(1)

Subject to subsection (2), the period specified for the purposes of sections 429(1) and 430(3) is—

(a)

where the company is a private company described in subsection (3), or a company limited by guarantee, at the end of the accounting reference period by reference to which the financial year is determined—

(i)

subject to subparagraph (ii), the period of 9 months, or any longer period directed by the Court, after the end of that accounting reference period; or

(ii)

if that accounting reference period is the company's first accounting reference period and is longer than 12 months, whichever of the periods set out in subsection (4)(a) and (b) expires last; or

(b)

where the company is neither a private company described in subsection (3), nor a company limited by guarantee, at the end of that accounting reference period—

(i)

subject to subparagraph (ii), the period of 6 months, or any longer period directed by the Court, after the end of that accounting reference period; or

(ii)

if that accounting reference period is the company's first accounting reference period and is longer than 12 months, whichever of the periods set out in subsection (5)(a) and (b) expires last.

(2)

If, after a new accounting reference date is specified under section 371(1), the accounting reference period by reference to which the financial year is determined is shortened, the period specified for the purposes of section 429(1) and 430(3) is whichever of the following expires last—

(a)

the period specified in subsection (1);

(b)

the period of 3 months after the date of the directors' resolution.

(3)

For the purposes of subsection (1)(a) or (b), the private company is one that is not a subsidiary of a public company at any time during the financial year.

(4)

The periods set out for the purposes of subsection (1)(a)(ii) are—

(a)

the period of 9 months, or any longer period directed by the Court, after the first anniversary of the specified event; and

(Amended 14 of 2025 s. 34)

(b)

the period of 3 months after the end of the accounting reference period by reference to which the financial year is determined.

(5)

The periods set out for the purposes of subsection (1)(b)(ii) are—

(a)

the period of 6 months, or any longer period directed by the Court, after the first anniversary of the specified event; and

(Amended 14 of 2025 s. 34)

(b)

the period of 3 months after the end of the accounting reference period by reference to which the financial year is determined.

(6)

In this section—

specified event

(

指明事件

)—

(a)

in relation to a company other than a re-domiciled company—means the incorporation of the company; and

(b)

in relation to a re-domiciled company—means the registration of the company under section 820C(1).

(Added 14 of 2025 s. 34)

432.

Exception to section 430

(1)

Section 430 does not require a company to send a copy of any document to a member whose address is unknown to the company.

(2)

Section 430 does not require a company to send a copy of any document—

(a)

in the case of joint holders of shares none of whom is entitled to receive notices of the company's general meeting, to more than one of the holders; or

(b)

in the case of joint holders of shares some of whom are so entitled and some not, to those who are not entitled.

(3)

Section 430 does not require a company to send a copy of any document to a member if the company has sent the member a copy of the summary financial report for the financial year under section 441, or in compliance with a request under section 444.

(4)

If a company does not have a share capital, section 430 does not require the company to send a copy of any document to a member who is not entitled to receive notice of general meeting of the company.

433.

Offences relating to section 430

(1)

If a company contravenes section 430(1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5.

(2)

If a company contravenes section 430(3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine of $300,000.

(3)

If a company wilfully contravenes section 430(3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine of $300,000 and to imprisonment for 12 months.

(4)

If a person is charged with an offence under subsection (1) or (2), it is not a defence to establish that the financial statements or report was not in fact prepared as required by this Ordinance.

434.

Company must send to non-voting members other documents

(1)

A company must, at the same time when it sends a copy of the reporting documents under section 430, send to every member who is not entitled to vote at a general meeting of the company—

(a)

a copy of any document issued by the company and circulated by the company with a copy of the reporting documents under section 430; and

(b)

a copy of any other document intended for the purpose of providing information about the company's affairs that is so circulated.

(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 5.

435.

Company must send copies of financial statements etc. to members and others on demand

(1)

Within 7 days after a demand is made by a member or a member's personal representative, a company must send to the member or personal representative—

(a)

one copy of the latest financial statements;

(b)

one copy of the latest directors' report; or

(c)

one copy of the auditor's report on those latest financial statements.

(2)

A copy of a document that a person is entitled to be sent under subsection (1) is in addition to any copy of the document that the person is entitled to be sent under section 430.

(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 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 person is charged with an offence under subsection (3), it is a defence to establish that the member or member's personal representative (as the case may be) had previously made another demand for the document concerned and had been provided with a copy of the document.

436.

Requirement in connection with publication of financial statements etc.

(1)

This section applies if a company—

(a)

circulates, publishes or issues—

(i)

any specified financial statements in relation to the company; or

(ii)

any non-statutory accounts in relation to the company; or

(b)

otherwise makes such financial statements or accounts available for public inspection in a manner calculated to invite members of the public generally, or any class of them, to read the financial statements or accounts.

(2)

The specified financial statements must be accompanied by the auditor's report on those statements.

(3)

The non-statutory accounts must be accompanied by a statement indicating—

(a)

that those accounts are not specified financial statements in relation to the company;

(b)

whether the specified financial statements for the financial year with which those accounts purport to deal have been delivered to the Registrar;

(c)

whether an auditor's report has been prepared on the specified financial statements for the financial year; and

(d)

whether the auditor's report—

(i)

was qualified or otherwise modified;

(ii)

referred to any matter to which the auditor drew attention by way of emphasis without qualifying the report; or

(iii)

contained a statement under section 406(2) or 407(2) or (3).

(4)

The non-statutory accounts must not be accompanied by any auditor's report on the specified financial statements.

(5)

If subsection (2), (3) or (4) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine of $150,000.

(6)

In this section—

non-statutory accounts

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非法定帳目

), in relation to a company—

(a)

means—

(i)

any statement of financial position or statement of comprehensive income, otherwise than as part of any financial statements prepared by the directors, relating to, or purporting to deal with, a financial year of the company; or

(ii)

accounts in any form, otherwise than as part of any financial statements prepared by the directors, purporting to be a statement of financial position or statement of comprehensive income for a group of companies consisting of the company and its subsidiary undertakings relating to, or purporting to deal with, a financial year of the company; but

(b)

excludes any summary financial report;

(Replaced 35 of 2018 s. 52)

specified financial statements

(

指明財務報表

), in relation to a company, means any financial statements prepared by the directors—

(a)

a copy of which is required by section 429(1) to be laid before the company in general meeting; or

(b)

a copy of which is required by section 430(3) to be sent to every member or is otherwise circulated, published or issued by the company.

Division 7

Summary Financial Reports

437.

Interpretation

In this Division—

potential member

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潛在成員

), in relation to a company, means a person who is entitled, whether conditionally or unconditionally, to become a member of the company.

438.

Application of Division

This Division applies to a company in relation to a financial year if the company does not fall within the reporting exemption for the financial year.

439.

Directors may prepare financial report in summary form

(1)

The directors of a company may prepare for a financial year a financial report, in summary form, derived from the reporting documents for the financial year, a copy of which is required to be sent to every member of the company under section 430.

(2)

A financial report prepared under subsection (1)—

(a)

must contain the information prescribed by the Regulation; and

(b)

must comply with other requirements prescribed by the Regulation.

(3)

If subsection (2) is contravened—

(a)

a director who failed to take all reasonable steps to secure compliance with that subsection commits an offence and is liable to a fine of $300,000; and

(b)

a director who wilfully failed to take all reasonable steps to secure compliance with that subsection commits an offence and is liable to a fine of $300,000 and to imprisonment for 12 months.

(4)

If a person is charged with an offence under subsection (3)(a), it is a defence to establish that the person had reasonable grounds to believe, and did believe, that a competent and reliable person—

(a)

was charged with the duty of ensuring that subsection (2) was complied with; and

(b)

was in a position to discharge that duty.

440.

Summary financial report to be approved and signed

(1)

A summary financial report—

(a)

must be approved by the directors; and

(b)

must be signed on the directors' behalf by a director.

(2)

Every copy of a summary financial report sent to a member under this Division or otherwise circulated, published or issued by the company must state the name of the director who signed the report on the directors' behalf.

(3)

If, as respect any summary financial report a copy of which is circulated, published or issued by the company, subsection (1) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

(4)

If subsection (2) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

441.

Company may send copy of summary financial report to member

(1)

If a company is required to send a copy of the reporting documents for a financial year to a member under section 430, the company may send a copy of the summary financial report for the financial year (if any) to the member instead.

(2)

If a company sends a copy of the summary financial report for a financial year to a member under subsection (1), the copy must be sent during the period within which a copy of the reporting documents for the financial year would be required to be sent to the member by the company under section 430.

442.

Company may seek member's intent on receiving summary financial report

(1)

A company may notify every member or potential member to give the company a notice of intent under subsection (3).

(2)

A notification to a member or potential member—

(a)

must be given in writing; and

(b)

must be given in relation to a financial year.

(3)

In response to a notification, a member or potential member may give the company a notice of intent to—

(a)

request—

(i)

either a copy of the reporting documents or a copy of the summary financial report; or

(ii)

none of those copies; and

(b)

in the case of paragraph (a)(i), request the copy to be sent by the company in hard copy form, in electronic form, or by making it available on a website.

(4)

A member or potential member may only make a request under subsection (3)(b) in response to a notification for a copy of the reporting documents or a copy of the summary financial report to be sent in electronic form or by making it available on a website if the company has given, in the notification, the member or potential member an option to request the copy to be so sent.

(5)

If a notice of intent is received by the company at least 28 days before the first date on which a copy of the reporting documents for the financial year is sent to a member under section 430, the notice of intent has effect in relation to that financial year, and every subsequent financial year, until it ceases to have effect by virtue of subsection (7).

(6)

If a notice of intent is received by the company less than 28 days before the first date on which a copy of the reporting documents for the financial year is sent to a member under section 430—

(a)

the notice of intent has effect in relation to every financial year subsequent to that financial year until it ceases to have effect by virtue of subsection (7); and

(b)

the member or potential member is to be regarded as—

(i)

having requested a copy of the summary financial report for the financial year; and

(ii)

having requested the summary financial report to be sent by the company in hard copy form.

(7)

A notice of intent ceases to have effect if the person who gave the notice—

(a)

is no longer a member of the company; or

(b)

revokes the notice by giving the company a written notice of revocation.

(8)

If a member or potential member does not give the company a notice of intent in response to a notification before the first date on which a copy of the reporting documents for the financial year is sent to a member under section 430, the member or potential member is to be regarded as—

(a)

having requested a copy of the summary financial report for the financial year and every subsequent financial year; and

(b)

having requested the summary financial report to be sent by the company in hard copy form.

(9)

Subsection (8) ceases to have effect in relation to a person if—

(a)

the person is no longer a member of the company; or

(b)

the person gives the company a written notice of cessation of statutory election.

443.

Notice of revocation and notice of cessation of statutory election

(1)

A notice of revocation given by a person for the purposes of section 442(7)(b)—

(a)

must state the financial year to which it relates;

(b)

must state that the notice of intent previously given by the person is revoked;

(c)

must state that the person requests—

(i)

either a copy of the reporting documents or a copy of the summary financial report; or

(ii)

none of those copies; and

(d)

in the case of paragraph (c)(i), must state that the person requests the copy to be sent by the company in hard copy form, in electronic form, or by making it available on a website.

(2)

The request stated in a notice of revocation under subsection (1)(c) must be different from the request stated in the notice of intent revoked by the notice of revocation.

(3)

A notice of cessation of statutory election given by a person for the purposes of section 442(9)(b)—

(a)

must state the financial year to which it relates;

(b)

must state that the person is no longer regarded as having made the requests mentioned in section 442(8);

(c)

must state that the person requests—

(i)

either a copy of the reporting documents or a copy of the summary financial report; or

(ii)

none of those copies; and

(d)

in the case of paragraph (c)(i), must state that the person requests the copy to be sent by the company in hard copy form, in electronic form, or by making it available on a website.

(4)

A person may only state in a notice of revocation under subsection (1)(d), or a notice of cessation of statutory election under subsection (3)(d), that the person requests for a copy of the reporting documents or a copy of the summary financial report to be sent in electronic form or by making it available on a website if the company has given, in the notification under section 442(1) to which the notice relates, the person an option to request the copy to be so sent.

(5)

If a notice of revocation, or a notice of cessation of statutory election, is received by the company at least 28 days before the first date on which a copy of the reporting documents for the financial year to which the notice relates is sent to a member under section 430, the notice has effect in relation to that financial year, and every subsequent financial year.

(6)

If a notice of revocation, or a notice of cessation of statutory election, is received by the company less than 28 days before the first date on which a copy of the reporting documents for the financial year to which the notice relates is sent to a member under section 430, the notice has effect in relation to every financial year subsequent to that financial year.

444.

Company must comply with member's request in notice of intent etc.

(1)

If a person requests a copy of the reporting documents, or a copy of the summary financial report, in a relevant notice, the company must comply with the request unless it is prohibited from doing so by section 446.

(2)

The request must be complied with during the period within which a copy of the reporting documents for the relevant financial year would be required to be sent to the person by the company under section 430.

(3)

Subsection (1) does not require a company to comply with a potential member's request unless the potential member becomes a member of the company at least 28 days before the first date on which a copy of the reporting documents for the financial year is sent to a member under section 430(1) or (3).

(4)

In this section—

relevant financial year

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有關財政年度

) means the financial year in relation to which the relevant notice has effect under section 442 or 443;

relevant notice

(

有關通知

) means—

(a)

a notice of intent given under section 442(3);

(b)

a notice of revocation given for the purposes of section 442(7)(b); or

(c)

a notice of cessation of statutory election given for the purposes of section 442(9)(b).

445.

Additional copy of reports etc. to be sent by company

(1)

If a company has sent a copy of the summary financial report for a financial year to a person under section 441, or in compliance with a request under section 444, the company must, at the person's request, send a copy of the reporting documents for the financial year to the person at the time specified in subsection (3).

(2)

If a company has sent a copy of the reporting documents for a financial year to a person under section 430, the company must, at the person's request, send a copy of the summary financial report for the financial year to the person at the time specified in subsection (3) unless it is prohibited from doing so by section 446.

(3)

The time specified for subsection (1) or (2) is—

(a)

where a copy of the reporting documents for the financial year is to be laid before the company in general meeting under section 429(1), and the company receives the person's request more than 14 days before the date of that meeting, any time falling at least 7 days before the date of that meeting; or

(b)

in any other case, any time within 14 days after the date on which the company receives the person's request.

(4)

Subsection (1) or (2) does not require a company to send a copy of the summary financial report or reporting documents for a financial year to a person if—

(a)

where a copy of the reporting documents for the financial year is laid before the company in general meeting under section 429(1), the person's request is made after the expiry of a period of 6 months after the date of that meeting; or

(b)

where a copy of the reporting documents for the financial year is sent to every member under section 430(3), the person's request is made after the expiry of a period of 6 months after the date on which the copy is sent.

(5)

Subsection (2) does not require a company to send a copy of the summary financial report for a financial year to a person unless—

(a)

the company has prepared the summary financial report for the financial year; and

(b)

when the company sent a copy of the reporting documents for the financial year to the person, the company gave the person a right to request a copy of the summary financial report for the financial year.

(6)

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.

(7)

If a company is charged with an offence under subsection (6), it is a defence to establish that it took all reasonable steps to secure compliance with subsection (1) or (2) (as the case may be).

446.

Company must not send summary financial report under some circumstances

(1)

A company must not send a copy of the summary financial report for the purposes of section 441(1) for a financial year to a member if—

(a)

the company's articles require that a copy of the reporting documents for the financial year must be sent to each member; or

(b)

the company's articles prohibit the company from sending a copy of the summary financial report for the purposes of section 441(1) for the financial year to a member.

(2)

A company must not send a copy of the summary financial report for a financial year to a member if—

(a)

an auditor's report has not been prepared on the financial statements for the financial year;

(b)

the summary financial report has not been approved by the directors;

(c)

the summary financial report has not been signed on the directors' behalf; or

(d)

the summary financial report does not comply with section 439(2).

(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.

Division 8

Miscellaneous

447.

Exemption applicable to dormant company

(1)

The following provisions do not apply to a company that is a dormant company under section 5(1)—

(a)

section 367(4);

(b)

Subdivisions 3 and 4 of Division 4;

(c)

Subdivisions 2 and 3 of Division 5;

(d)

sections 411 and 412;

(e)

Subdivisions 6, 7 and 8 of Division 5;

(f)

Divisions 6 and 7.

(2)

If such a company enters into an accounting transaction—

(a)

subsection (1) ceases to have effect on and after the date of the accounting transaction; and

(b)

a member of the company who knew or ought to have known about the accounting transaction, and every director of the company, are personally liable for any debt or liability of the company arising out of the accounting transaction.

(3)

In this section—

director

(

董事

) includes a shadow director.

448.

Liability for untrue or misleading statement in reports

(1)

This section applies to—

(a)

a directors' report; and

(b)

a summary financial report so far as it is derived from a directors' report.

(2)

A director of a company is liable to compensate the company for any loss suffered by the company as a result of—

(a)

any untrue or misleading statement in the report; or

(b)

the omission from the report of anything required to be included in it.

(3)

A director is not liable unless—

(a)

in the case of subsection (2)(a), the director knew the statement to be untrue or misleading or was reckless as to whether it was untrue or misleading; or

(b)

in the case of subsection (2)(b), the director knew the omission to be a dishonest concealment of a material fact.

(4)

A person is not subject to any liability to another person other than the company resulting from reliance, by that other person or any other person, on information contained in the report.

(5)

For the purposes of subsection (4), a person is also subject to a liability to another person if that other person is entitled against the person—

(a)

to be granted any civil remedy; or

(b)

to rescind or repudiate an agreement.

(6)

This section does not affect liability for criminal offence.

449.

Voluntary revision of financial statements etc.

(1)

If—

(a)

a copy of any financial statements prepared by the directors of a company has been sent under section 430 to a member; and

(b)

it subsequently appears to the directors of the company that the financial statements did not comply with this Ordinance,

the directors may cause the financial statements to be revised and make necessary consequential revisions to the summary financial report or directors' report concerned.

(2)

Such revision of the financial statements is to be confined to—

(a)

those aspects of the financial statements that did not comply with this Ordinance; and

(b)

other necessary consequential revisions.

(3)

If—

(a)

the directors of a company decide to cause any financial statements to be revised under subsection (1); and

(b)

a copy of the financial statements has been delivered to the Registrar in compliance with section 664(3)(b),

the company must, within 7 days after the decision, deliver to the Registrar for registration a warning statement, in the specified form, that the financial statements will be so revised.

(4)

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 5 and, in the case of a continuing offence, to a further fine of $1,000 for each day during which the offence continues.

450.

Financial Secretary may make regulation regarding revision of financial statements etc.

(1)

The Financial Secretary may make regulations—

(a)

providing for the application of this Ordinance in relation to the financial statements, summary financial report or directors' report that has been revised under section 449; and

(b)

providing for requirements in relation to revised financial statements, summary financial report or directors' report.

(2)

The regulations may—

(a)

make different provisions according to whether the financial statements, summary financial report or directors' report has been revised by—

(i)

supplementing the financial statements or report with another document that shows the revisions; or

(ii)

replacing the financial statements or report;

(b)

provide for the functions of the persons who prepare the auditor's report in relation to the financial statements, summary financial report or directors' report that has been revised;

(c)

where—

(i)

the financial statements or directors' report, or a copy of the statements or report, has, before the revision, been laid before the company in general meeting under section 429, been sent to members under section 430, or been delivered to the Registrar in compliance with section 664(3)(b); or

(ii)

a copy of a summary financial report has, before the revision, been sent to a member under section 441, or in compliance with a request under section 444 or 445(2),

require the company or the directors of the company to take the steps specified in the regulations in relation to the financial statements or report that has been revised; and

(d)

provide for the application of this Ordinance to the financial statements, summary financial report or directors' report that has been revised, subject to such additions, exceptions and modifications as may be specified in the regulations.

(3)

The regulations may provide that any of the following is an offence—

(a)

a failure to take all reasonable steps to secure compliance with, as respects the financial statements, summary financial report or directors' report that has been revised—

(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)

The maximum fine that may be prescribed for an offence committed wilfully is $300,000 and the maximum imprisonment is 12 months. The maximum fine that may be prescribed for an offence not committed wilfully is $300,000. In addition, in the case of a continuing offence, a further fine not exceeding $2,000 for each day during which the offence continues may be prescribed.

(4A)

The regulations may also provide that—

(a)

a contravention of a provision in relation to revised financial statements is an offence; and

(b)

the maximum penalty that may be prescribed—

(i)

for such an offence of which a person is convicted on indictment, is a fine of $150,000 and imprisonment for 2 years; and

(ii)

for such an offence of which a person is summarily convicted, is a fine at level 5 and imprisonment for 6 months.

(Added 35 of 2018 s. 53)

(5)

The regulations may provide for defences to any such offence.

451.

Financial Secretary may make regulation regarding disclosures of certain information

The Financial Secretary may make regulations prescribing, for the purposes of section 383(3), a requirement that the financial statements for the financial year are to contain a statement showing the information about the matter mentioned in section 383(1)(d).

452.

Financial Secretary may make other regulations

(1)

The Financial Secretary may make regulations prescribing a body for the purposes of the definition of ***accounting standards*** in section 357(1).

(Amended 35 of 2018 s. 54)

(2)

The Financial Secretary may make regulations—

(a)

prescribing information that is required to be contained in the notes to any financial statements under section 383(1); and

(b)

prescribing other requirements for notes to any financial statements.

(3)

The Financial Secretary may make regulations—

(a)

prescribing information that is required to be contained in a directors' report under section 388(1) and (2); and

(b)

prescribing other requirements for a directors' report.

(4)

The Financial Secretary may make regulations—

(a)

prescribing information that is required to be contained in a summary financial report under section 439(2); and

(b)

prescribing other requirements for a summary financial report.

(5)

The Financial Secretary may make regulations—

(a)

providing for the form and contents of—

(i)

a notification under section 442(2);

(ii)

a notice of intent under section 442(3); or

(iii)

any document attached to such a notification or notice; and

(b)

providing that any such document is to be postage prepaid.

Part 10

Directors and Company Secretaries

(Format changes—E.R. 1 of 2013)

Division 1

Appointment, Removal and Resignation of Directors

Subdivision 1

Requirement to have Directors

453.

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)

For a company formed and registered under this Ordinance, with effect from the date of incorporation, the first directors of the company are the persons named as the directors in the incorporation form delivered to the Registrar under section 67(1).

(Amended 14 of 2025 s. 35)

(3A)

For a re-domiciled company that is a public company, with effect from the re-domiciliation date, the first directors of the company are the persons named in the re-domiciliation form delivered to the Registrar under section 820B(2) as the first directors of the company after it is registered under section 820C(1).

(Added 14 of 2025 s. 35)

(4)

A person who is deemed to be a director of the company under section 153(2) of the pre-amended predecessor Ordinance immediately before the commencement date[e] 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 delivered to the Registrar in accordance with section 645(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).

(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).

Editorial Note:

[e] Commencement date: 3 March 2014.

Private company required to have at least one director

(1)

A private company must have at least one director.

(2)

For a private company formed and registered under this Ordinance, with effect from the date of incorporation, the first directors of the company are the persons named as the directors in the incorporation form delivered to the Registrar under section 67(1).

(Amended 14 of 2025 s. 36)

(2A)

For a re-domiciled company that is a private company, with effect from the re-domiciliation date, the first directors of the company are the persons named in the re-domiciliation form delivered to the Registrar under section 820B(2) as the first directors of the company after it is registered under section 820C(1).

(Added 14 of 2025 s. 36)

(3)

A person who is deemed to be a director of a private company under section 153A(2) of the pre-amended predecessor Ordinance immediately before the commencement date[e] 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 delivered to the Registrar in accordance with section 645(1).

(4)

In subsection (3)—

pre-amended predecessor Ordinance

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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).

Editorial Note:

[e] Commencement date: 3 March 2014.

455.

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 by a resolution passed at a 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 464; or

(ii)

the company at a 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 deliver a notice to the Registrar in accordance with section 645(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 464,

whichever is the earlier.

(5)

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

(a)

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

(b)

that the reserve director is not prohibited by law nor disqualified from acting as a director of the company.

456.

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 or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) 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.

457.

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.

458.

Direction requiring company to appoint director

(1)

If it appears to the Registrar that a company is in contravention of section 453(2), 454(1) or 457(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)

subject to subsection (3), the period within which the company must comply with the direction; and

(c)

that a failure to comply with the direction is an offence under subsection (6).

(3)

The period must not be less than one month or more than 3 months after the date on which the direction is given.

(4)

The Registrar may, before the end of the period specified in the direction, by notice in writing extend the period.

(5)

The company must comply with the direction by making the necessary appointment or appointments before the end of the period specified in the direction, or, if the period is extended by the Registrar under subsection (4), the extended period.

(6)

If a company fails to comply with 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

459.

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 or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) 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.

460.

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 may be so made has first been passed at the meeting without any vote 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 to be regarded as a motion for the appointment of the person.

461.

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 456(3) or 459(2); or

(b)

the resolution for the appointment of the person as a director is void under section 460(3).

Subdivision 3

Removal and Resignation of Directors

462.

Resolution to remove director

(1)

A company may by an ordinary resolution passed at a general meeting remove a director before the end of the director's term of office, despite anything in its articles 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 who has held office for life since 31 August 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.

Note—

See also section 578 which sets out the requirements regarding special notice.

(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)

In relation to 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) 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.

463.

Director's right to protest against removal

(1)

On receipt of notice of a resolution under section 462(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 462(4) to remove a director, the director—

(a)

may make with respect to the resolution representations in writing to the company (not exceeding a reasonable length); and

(b)

may request the company to comply with the requirement specified in subsection (4) in relation to the representations.

(4)

The requirement specified for the purposes of subsection (3)(b) is—

(a)

if the company receives the representations on a date that is more than 2 days before the last day on which notice may be given under section 571(1) to call the meeting, the requirement—

(i)

to state, in every notice of the meeting given to the members, that the representations have been made; and

(ii)

to send a copy of the representations to every member to whom a notice of the meeting is or has been given; or

(b)

if the company has not sent a copy of the representations to every member to whom a notice of the meeting is or has been given, the requirement to ensure that the representations are read out at the meeting.

(5)

Unless exempted by an order under subsection (6), the company must comply with a request made under subsection (3)(b).

(6)

On application by the company or by anyone who claims to be aggrieved, the Court may order that the company is exempted from complying with the request, if it is satisfied that the person who has made representations and made a requirement under subsection (3)—

(a)

has abused the right to do so; or

(b)

has used such a right to secure needless publicity for defamatory matter.

(7)

If the company contravenes subsection (5), the resolution passed under section 462(1) is void even though section 562(1) is complied with.

464.

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 deliver a notice of the resignation to the Registrar in the manner required by section 645(4).

(3)

Despite subsection (2), if the director resigning has reasonable grounds for believing that the company will not deliver the notice, the director resigning must deliver to the Registrar for registration a notice of the resignation in the specified form.

(4)

The notice required to be delivered 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

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) includes a reserve director and a person regarded as a director under section 455(4).

Division 2

Directors' Duty of Care, Skill and Diligence

465.

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.

(6)

For the purposes of subsection (5), a body corporate is not to be regarded as a shadow director of any of its subsidiaries by reason only that the directors, or a majority of the directors, of the subsidiary are accustomed to act in accordance with its direction or instructions.

466.

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

Without affecting other provisions of this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the consequences of breach (or threatened breach) of the duty specified in section 465(1) are the same as would apply if the common law rules or equitable principles that section 465(1) replaces applied.

Division 3

Directors' Liabilities

467.

Interpretation and application

(1)

In this Division—

permitted indemnity provision

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), 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 469(2);

third party

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), in relation to a company, means a person other than the company or an associated company.

(2)

Sections 468, 469 and 470 apply to any provision made on or after the commencement date[e] of those sections.

(3)

Sections 471 and 472 apply to a permitted indemnity provision made on or after the commencement date[e] of those sections.

(4)

Section 473 applies to conduct by a director on or after the commencement date[e] of that section.

Editorial Note:

[e] Commencement date: 3 March 2014.

468.

Avoidance of provisions protecting director from liability

(1)

This section applies to a provision contained in a company's articles, or in a contract entered into by a company, or otherwise.

(2)

If a provision purports to exempt a director of the company 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, the provision is void.

(3)

If, by a provision, the company directly or indirectly provides an indemnity for a director of the company, or a director of an associated company of the 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 associated company (as the case may be), the provision is void.

(4)

Subsection (3) does not prevent a company from taking out and keeping in force insurance for a director of the company, or a director of an associated company of the company, against—

(a)

any liability to any person attaching to the director in connection with any negligence, default, breach of duty or breach of trust (except for fraud) in relation to the company or associated company (as the case may be); or

(b)

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 (including fraud) in relation to the company or associated company (as the case may be).

469.

Permitted indemnity provision

(1)

Section 468(3) 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 of the company, in which judgment is given against the director;

(iii)

in defending civil proceedings brought on behalf of the company by a member of the company or of an associated company of the company, in which judgment is given against the director;

(iv)

in defending civil proceedings brought on behalf of an associated company of the company by a member of the associated company or by a member of an associated company of the associated company, in which judgment is given against the director; or

(v)

in connection with an application for relief under section 358 of the predecessor Ordinance or section 903 or 904 in which the Court 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.

470.

Permitted indemnity provision to be disclosed in directors' report

(1)

If, when a directors' report prepared by the directors of a company is approved in accordance with section 391, 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 prepared by the directors 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.

(3)

If, when a directors' report prepared by the directors of a company is approved in accordance with section 391, a permitted indemnity provision made by the company is in force for the benefit of one or more directors of an associated company of the company, the report must state that the provision is in force.

(4)

If, at any time during the financial year to which a directors' report prepared by the directors 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 of the company, the report must state that the provision was in force.

(5)

In this section—

directors' report

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) means—

(a)

the report required to be prepared under section 388(1); or

(b)

the consolidated report required to be prepared under section 388(2).

471.

Place where copy of permitted indemnity provision must be kept

(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 of that 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 at its registered office or at a place prescribed by regulations made under section 657—

(a)

a copy of the permitted indemnity provision;

(b)

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

(3)

The company—

(a)

must retain the copy or memorandum for at least one year after the date of termination or expiry of the provision; and

(b)

must keep the copy or memorandum available for inspection during that time.

(4)

If the copy or memorandum is kept 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 in the specified form and delivered to the Registrar for registration within 15 days after the copy or memorandum is first kept at that place or within 15 days after the change (as the case may be).

(5)

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 3.

(6)

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.

(7)

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

472.

Right of member to inspect and request copy

(1)

A member of a company is entitled, on request made in the prescribed manner and without charge, to inspect, in accordance with regulations made under section 657, a copy of a permitted indemnity provision or a written memorandum kept by the company under section 471.

(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 in accordance with regulations made under section 657.

(3)

In this section—

prescribed

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) means prescribed by regulations made under section 657.

(4)

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

473.

Ratification of conduct by director involving negligence, etc.

(1)

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

(2)

A decision of the company to ratify the conduct may only be made by resolution of the members of the company.

(3)

If such a resolution is proposed at a meeting, 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,

is to be disregarded.

(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

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) includes acts and omissions;

(b)

director

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) includes a former director;

(c)

a shadow director is to be regarded as a director; and

(d)

a reference to an entity connected with a director has the meaning given by section 486.

(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.

Division 4

Appointment and Resignation of Company Secretaries

474.

Company required to have company secretary

(1)

A company must have a company secretary.

(2)

For a company formed and registered under this Ordinance, with effect from the date of incorporation, the first company secretary of the company is the person named as the company secretary in the incorporation form delivered to the Registrar under section 67(1).

(Amended 14 of 2025 s. 37)

(2A)

For a re-domiciled company, with effect from the re-domiciliation date, the first company secretary of the company is the person named in the re-domiciliation form delivered to the Registrar under section 820B(2) as the first company secretary of the company after it is registered under section 820C(1).

(Added 14 of 2025 s. 37)

(3)

If, in relation to a company mentioned in subsection (2), the name of a firm is specified in the incorporation form under section 5(1)(c) of Schedule 2, all partners of the firm as at the date of the incorporation form are the first joint company secretaries of the company.

(Amended 14 of 2025 s. 37)

(3A)

If, in relation to a re-domiciled company, the name of a firm is specified in the re-domiciliation form under section 6(2)(c) of Schedule 6B, all partners of the firm as at the re-domiciliation date are the first joint company secretaries of the re-domiciled company.

(Added 14 of 2025 s. 37)

(4)

A company secretary of a company must—

(a)

if a natural person, ordinarily reside in Hong Kong; and

(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 company secretary may be done—

(a)

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

(b)

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

475.

Circumstances under which director may not be company secretary

(1)

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

(2)

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

(3)

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

476.

Direction requiring company to appoint company secretary

(1)

If it appears to the Registrar that a company is in contravention of section 474(1) or (4) or 475(2) or (3), the Registrar may direct the company to appoint a company 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)

subject to subsection (3), the period within which the company must comply with the direction; and

(c)

that a failure to comply with the direction is an offence under subsection (6).

(3)

The period must not be less than one month or more than 3 months after the date on which the direction is given.

(4)

The Registrar may, before the end of the period specified in the direction, by notice in writing extend the period.

(5)

The company must comply with the direction by making the necessary appointment before the end of the period specified in the direction, or, if the period is extended by the Registrar under subsection (4), the extended period.

(6)

If a company fails to comply with 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.

477.

Resignation of company secretary

(1)

A company 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 company secretary at any time.

(2)

If a company secretary of a company resigns, the company must deliver a notice of the resignation to the Registrar in the manner required by section 652(2).

(3)

Despite subsection (2), if the company secretary resigning has reasonable grounds for believing that the company will not deliver the notice, the company secretary resigning must deliver to the Registrar for registration a notice of the resignation in the specified form.

(4)

The notice required to be delivered under subsection (3) must state—

(a)

whether the company 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 company 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 company 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 Company Secretaries

478.

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 deemed to be 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.

479.

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

(1)

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

(a)

both as director and company secretary; or

(b)

both as director and in place of the company secretary.

(2)

This section applies to—

(a)

any provision of this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); and

(b)

any provision in a company's articles.

480.

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 and Miscellaneous Provisions) Ordinance (Cap. 32).

481.

Minutes of directors' meetings and directors' resolutions

(Amended 35 of 2018 s. 55)

(1)

A company must cause the following to be recorded—

(Amended 35 of 2018 s. 55)

(a)

minutes of all proceedings at meetings of its directors; and

(b)

all resolutions passed by its directors without a meeting.

(2)

A company must keep the records under subsection (1) for at least 10 years from—

(Amended 35 of 2018 s. 55)

(a)

the date of the meeting; or

(b)

the date of the passing of the resolution without a 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.

(4)

This section does not apply to a resolution passed without a meeting before the commencement date* of section 55 of the Companies (Amendment) (No. 2) Ordinance 2018 (35 of 2018).

(Added 35 of 2018 s. 55)

(Amended 35 of 2018 s. 55)

Editorial Note:

* Commencement date: 1 February 2019.

482.

Minutes as evidence

(1)

Minutes recorded in accordance with section 481, if purporting to be signed by the chairperson of the meeting or by the chairperson of the next directors' meeting, are evidence of the proceedings at the meeting.

(2)

If the proceedings at a meeting of directors are evidenced by minutes under subsection (1), then, until the contrary is proved—

(Amended 35 of 2018 s. 56)

(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 duly taken place; and

(c)

all appointments at the meeting are to be regarded as valid.

(3)

Subsection (2)(c) is subject to sections 456(3) and 459(2).

483.

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 10 years from the date of the decision.

(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) is liable to a fine at level 3.

(7)

A person who commits an offence under subsection (5) 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.

(8)

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

Part 11

Fair Dealing by Directors

(Format changes—E.R. 1 of 2013)

Division 1

Preliminary

484.

Interpretation

(1)

In this Division—

child

(

子女

) includes a step-child, an illegitimate child and a child adopted in any manner recognized by the law of Hong Kong;

cohabitation relationship

(

同居關係

) means a relationship between 2 persons (whether of the same sex or of the opposite sex) who live together as a couple in an intimate relationship;

director

(

董事

) includes a shadow director.

(2)

In this Division, a reference to a minor child is a reference to a child who is under 18 years of age.

485.

Circumstances constituting contravention

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

486.

Connected entity

(1)

In this Part, a reference to an entity connected with a director or former director of a company is a reference to—

(a)

a member of the director's or former director's family;

(b)

a person who is in a cohabitation relationship with the director or former director;

(c)

a minor child of a person falling within paragraph (b) who—

(i)

is not a child of the director or former director; and

(ii)

lives with the director or former director;

(d)

a body corporate with which the director or former director is associated;

(e)

a person acting in the capacity as trustee of a specified trust, other than a trust for the purpose of an employee share scheme or a pension scheme; or

(f)

a person acting in the capacity as partner of—

(i)

the director or former director;

(ii)

the spouse of the director or former director;

(iii)

a minor child of the director or former director; or

(iv)

another person who, by virtue of paragraph (e), is an entity connected with the director or former director.

(2)

For the purposes of subsection (1)(e), a trust is a specified trust—

(a)

if the beneficiaries of the trust include—

(i)

the director or former director;

(ii)

the spouse of the director or former director; or

(iii)

a minor child of the director or former director; or

(b)

if—

(i)

the terms of the trust give a power to the trustees that may be exercised for the benefit of—

(A)

the director or former director;

(B)

the spouse of the director or former director; or

(C)

a minor child of the director or former director; and

(ii)

the director or former director knows that the director or former director, or the spouse or child, is an object of the power.

(3)

In this section—

employee share scheme

(

僱員參股計劃

) means a scheme for encouraging or facilitating the holding of shares in a company by or for the benefit of—

(a)

persons employed or formerly employed in good faith by that company or another company in the same group of companies; or

(b)

the spouses, widows, widowers or minor children of persons referred to in paragraph (a);

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).

487.

Family member of director or former director

In this Part, a reference to a member of a director's or former director's family is a reference to—

(a)

the spouse of the director or former director;

(b)

a child of the director or former director; or

(c)

a parent of the director or former director.

488.

Director or former director associated with body corporate

(1)

For the purposes of this Part, a director or former director is associated with a body corporate if—

(a)

the director or former director, or any one or more of the entities specified in subsection (3), or the director or former director together with any one or more of those specified entities, 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 former director; or

(ii)

an entity connected with the director or former director.

(2)

In this section, a reference to voting power the exercise of which is controlled by a director or former director, or by an entity specified in subsection (3), includes voting power the exercise of which is controlled by another body corporate if the director or former director, or any one or more of the specified entities, or the director or former director together with any one or more of the specified entities, are entitled to exercise, or control the exercise of, more than 50% of the voting power at any general meeting of that other body corporate.

(3)

The entity specified for the purposes of subsections (1) and (2) is—

(a)

the spouse of the director or former director;

(b)

a minor child of the director or former director; or

(c)

a person who, by virtue of section 486(1)(e), is an entity connected with the director or former director.

489.

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)

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

490.

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

491.

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;

specified company

(

指明公司

) means—

(a)

a public company; or

(b)

a private company or company limited by guarantee that is a subsidiary of a public company.

(2)

For the purposes of this Division, a body corporate is not to be regarded as a shadow director of any of its subsidiaries by reason only that the directors, or a majority of the directors, of the subsidiary are accustomed to act in accordance with its directions or instructions.

492.

Body corporate controlled by director

(1)

For the purposes of this Division, a body corporate is controlled by a director if—

(a)

the director is entitled to exercise, or control the exercise of, more than 50% 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 the director.

(2)

In subsection (1), a reference to voting power the exercise of which is controlled by a director includes voting power the exercise of which is controlled by another body corporate if the director is entitled to exercise, or control the exercise of, more than 50% of the voting power at any general meeting of that other body corporate.

493.

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 pursuant to 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 pursuant to 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.

494.

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 before 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.

495.

Person for whom transaction or arrangement entered into

(1)

In this Division, a reference to a director, a body corporate controlled by 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, controlled body corporate 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, a body corporate controlled by a director, or an entity connected with a director if—

(a)

in the case of an arrangement mentioned in section 504(1)(a) or (2)(a), a company takes part in the arrangement under which another person enters into a transaction with the director, controlled body corporate or connected entity; or

(b)

in the case of an arrangement mentioned in section 504(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, controlled body corporate or connected entity.

496.

Prescribed approval of members

(1)

In this Division, a reference to the prescribed approval of the members of a company that enters into a transaction or arrangement, or the members of a holding company of the company, is a reference to an approval obtained by a resolution of those members—

(a)

that is passed before the transaction or arrangement is entered into; 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)

that, 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)

that, in the case of a resolution passed at a general 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 specified 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 omission 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 500, 501 or 502—

(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 503—

(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 504—

(i)

the matters 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 500 or 501—

(i)

one who is the controlled body corporate to whom the loan is proposed to be made or was made;

(ii)

one who is the director—

(A)

who controls that body corporate; or

(B)

to whom the loan or quasi-loan is proposed to be made or was made; or

(iii)

one who holds any shares in the company in trust for that controlled body corporate or director;

(b)

in the case of a resolution for the purposes of section 502—

(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 503—

(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 504—

(i)

one who is the controlled body corporate, or connected entity, for whom the arrangement is proposed to be entered into or was entered into;

(ii)

one who is the director—

(A)

who controls that body corporate;

(B)

with whom that entity is connected; or

(C)

for whom the arrangement is proposed to be entered into or was entered into; or

(iii)

one who holds any shares in the company in trust for that controlled body corporate, connected entity or director.

(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 504(1)(a) or (2)(a), a reference to the transaction entered into with a director, a body corporate controlled by a director, or an entity connected with a director under the arrangement; or

(b)

in the case of an arrangement mentioned in section 504(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 date[a] of this Division.

Editorial Note:

[a] Commencement date: 3 March 2014.

497.

Value of transaction or arrangement etc.

(1)

For the purposes of this Division—

(a)

the value of a transaction is to be 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, the body corporate controlled by a 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 504(1)(a) or (2)(a) is the value of the transaction entered into with a director, a body corporate controlled by a director, or an entity connected with a director under the arrangement; and

(b)

the value of an arrangement mentioned in section 504(1)(b) or (2)(b) in relation to any rights, obligations or liabilities under a transaction is the value of the transaction.

498.

Total exposure amount

(1)

In sections 509 and 510—

total exposure amount

(

風險承擔總額

) means—

(a)

in relation to a company that is not a specified company, the aggregate of the amounts specified in subsection (2); or

(b)

in relation to a specified company, the aggregate of the amounts specified in subsection (3).

(2)

The amounts specified for the purposes of paragraph (a) of the definition of ***total exposure amount*** in subsection (1) are—

(a)

the amount of the transaction in question;

(b)

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, or to a body corporate controlled by such a director (excluding the transaction in question, and any loan made with the prescribed approval mentioned in section 500 or by virtue of section 499, 505, 506, 507, 508, 511 or 512);

(c)

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, or to a body corporate controlled by such a director (excluding the transaction in question, and any guarantee or security given or provided with the prescribed approval mentioned in section 500 or by virtue of section 499, 505, 506, 507, 508, 511 or 512); and

(d)

the aggregate of the net amounts incurred or to be incurred by the company at that time under every arrangement specified in subsection (4) that is entered into by the company (excluding any arrangement entered into with the prescribed approval mentioned in section 504 or by virtue of section 499).

(3)

The amounts specified for the purposes of paragraph (b) of the definition of ***total exposure amount*** in subsection (1) are—

(a)

the amount of the transaction in question;

(b)

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 a body corporate controlled by such a director, 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 500, 501, 502 or 503 or by virtue of section 499, 505, 506, 507, 508, 511 or 512);

(c)

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 a body corporate controlled by such a director, 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 500, 501, 502 or 503 or by virtue of section 499, 505, 506, 507, 508, 511 or 512); and

(d)

the aggregate of the net amounts incurred or to be incurred by the company at that time under every arrangement specified in subsection (5) that is entered into by the company (excluding any arrangement entered into with the prescribed approval mentioned in section 504 or by virtue of section 499).

(4)

An arrangement specified for the purposes of subsection (2)(d) is—

(a)

an arrangement under which—

(i)

another person makes a questionable loan to—

(A)

a director of the company or of a holding company of the company; or

(B)

a body corporate controlled by such a director; and

(ii)

that other person, pursuant to 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—

(i)

a director of the company or of a holding company of the company; or

(ii)

a body corporate controlled by such a director.

(5)

An arrangement specified for the purposes of subsection (3)(d) 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)

a director of the company or of a holding company of the company;

(B)

a body corporate controlled by such a director; or

(C)

an entity connected with such a director; and

(ii)

that other person, pursuant to 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)

a director of the company or of a holding company of the company;

(B)

a body corporate controlled by such a director; or

(C)

an entity connected with such a director; or

(ii)

a questionable credit transaction entered into by another person as creditor for—

(A)

a director of the company or of a holding company of the company; or

(B)

an entity connected with such a director.

(6)

In this section—

(a)

a reference to a questionable loan or quasi-loan made by a person to a director of the company, a body corporate controlled by such a director, 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 500(1), 501(1) or 502(1) or would have been so prohibited in the absence of sections 509 and 510;

(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 503(1) or would have been so prohibited in the absence of sections 509 and 510;

(c)

a reference to a questionable loan or quasi-loan made by a person to a director of a holding company of the company, a body corporate controlled by such a director, 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 500(2), 501(2) or 502(2) or would have been so prohibited in the absence of sections 509 and 510; 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 503(2) or would have been so prohibited in the absence of sections 509 and 510.

499.

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 a company's members, the provision does not prohibit the transaction or arrangement from being entered into with the unanimous consent of those members 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 a company's members, the provision does not preclude the transaction or arrangement from being entered into with the unanimous consent of those members 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 date[a] of this Division.

Editorial Note:

[a] Commencement date: 3 March 2014.

Subdivision 2

Prohibitions

500.

Company must not make loan etc. to director or body corporate controlled by director

(1)

Without the prescribed approval of its members, a company must not—

(a)

make a loan to—

(i)

a director of the company; or

(ii)

a body corporate controlled by such a director; or

(b)

give a guarantee or provide security in connection with a loan made by any person to—

(i)

a director of the company; or

(ii)

a body corporate controlled by 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—

(i)

a director of a holding company of the company; or

(ii)

a body corporate controlled by such a director; or

(b)

give a guarantee or provide security in connection with a loan made by any person to—

(i)

a director of a holding company of the company; or

(ii)

a body corporate controlled by 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—

(Amended 14 of 2025 s. 38)

(i)

is incorporated outside Hong Kong; and

(ii)

is not a re-domiciled company; 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—

(Amended 14 of 2025 s. 38)

(i)

is incorporated in Hong Kong; or

(ii)

is a re-domiciled company.

(Amended 14 of 2025 s. 38)

501.

Specified company must not make quasi-loan etc. to director

(1)

Without the prescribed approval of its members, a specified 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 specified 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 specified company may enter into the transaction with only the prescribed approval of its members if the holding company—

(Amended 14 of 2025 s. 39)

(i)

is incorporated outside Hong Kong; and

(ii)

is not a re-domiciled company; and

(b)

a specified 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—

(Amended 14 of 2025 s. 39)

(i)

is incorporated in Hong Kong; or

(ii)

is a re-domiciled company.

(Amended 14 of 2025 s. 39)

502.

Specified company must not make loan or quasi-loan etc. to connected entity

(1)

Without the prescribed approval of its members, a specified 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 specified 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 specified company may enter into the transaction with only the prescribed approval of its members if the holding company—

(Amended 14 of 2025 s. 40)

(i)

is incorporated outside Hong Kong; and

(ii)

is not a re-domiciled company; and

(b)

a specified 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—

(Amended 14 of 2025 s. 40)

(i)

is incorporated in Hong Kong; or

(ii)

is a re-domiciled company.

(Amended 14 of 2025 s. 40)

503.

Specified company must not enter into credit transaction etc. as creditor for director or connected entity

(1)

Without the prescribed approval of its members, a specified 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 specified 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 specified company may enter into the transaction with only the prescribed approval of its members if the holding company—

(Amended 14 of 2025 s. 41)

(i)

is incorporated outside Hong Kong; and

(ii)

is not a re-domiciled company; and

(b)

a specified 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—

(Amended 14 of 2025 s. 41)

(i)

is incorporated in Hong Kong; or

(ii)

is a re-domiciled company.

(Amended 14 of 2025 s. 41)

Company must not take part in arrangement purporting to circumvent sections 500 to 503

(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, a body corporate controlled by such a director, or an entity connected with such a director; and

(ii)

that other person, pursuant to 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—

(i)

a director of the company;

(ii)

a body corporate controlled by such a director; or

(iii)

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, a body corporate controlled by such a director, or an entity connected with such a director; and

(ii)

that other person, pursuant to 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—

(i)

a director of a holding company of the company;

(ii)

a body corporate controlled by such a director; or

(iii)

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—

(Amended 14 of 2025 s. 42)

(i)

is incorporated outside Hong Kong; and

(ii)

is not a re-domiciled company; 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—

(Amended 14 of 2025 s. 42)

(i)

is incorporated in Hong Kong; or

(ii)

is a re-domiciled company.

(Amended 14 of 2025 s. 42)

(4)

In this section—

(a)

a reference to a questionable transaction entered into by a person with a director of the company, a body corporate controlled by such a director, 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 500(1), 501(1), 502(1) or 503(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, a body corporate controlled by such a director, 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 500(2), 501(2), 502(2) or 503(2) or would have been so prohibited in the absence of Subdivision 3.

Subdivision 3

Exceptions to Subdivision 2

505.

Exception for loan, quasi-loan and credit transaction of value not exceeding 5% of net assets or called-up share capital

(1)

A company is not prohibited by section 500, 501, 502 or 503 from making a loan or quasi-loan, entering into a credit transaction or giving a guarantee or providing security in connection with a loan, quasi-loan or 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 5% of—

(a)

the value of the company's net assets as determined by reference to the relevant financial statements of the company; or

(b)

if no such relevant financial statements have been prepared, the amount of the company's called-up share capital.

(2)

In this section, a reference to the relevant financial statements of a company is—

(a)

a reference to the company's annual financial statements or annual consolidated financial statements prepared under Part 9 that were most recently sent to its members under section 430; or

(b)

if no such annual financial statements or annual consolidated financial statements have been sent since the commencement date[e] of section 430, a reference to the company's accounts prepared under section 122 of the predecessor Ordinance that were most recently sent to its members under section 129G of that Ordinance.

(3)

A transaction or arrangement is a relevant transaction or arrangement for the purposes of subsection (1)—

(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, a body corporate controlled by such a director, or an entity connected with such a director, it is entered into for the director, controlled body corporate or connected entity by the company or a subsidiary of the company as permitted by subsection (1); or

(ii)

where the transaction in question is entered into for a director of a holding company of the company, a body corporate controlled by such a director, or an entity connected with such a director, it is entered into for the director, controlled body corporate or connected entity by the holding company or a subsidiary of the holding company as permitted by subsection (1).

(4)

Despite subsection (3), a transaction or arrangement is not a relevant transaction or arrangement for the purposes of subsection (1) 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 subsection (1), the body corporate is no longer such a subsidiary.

Editorial Note:

• Commencement date: 3 March 2014.

506.

Exception for expenditure on company business

(1)

A company is not prohibited by section 500, 501, 502 or 503 from entering into any transaction to provide—

(a)

a director of the company or of a holding company of the company;

(b)

a body corporate controlled by such a director; or

(c)

an entity connected with such a director,

with funds to meet expenditure specified in subsection (2) or to avoid incurring such expenditure.

(2)

The expenditure is one incurred or to be incurred by the director, controlled body corporate or connected entity (as the case may be)—

(a)

for the purposes of the company; or

(b)

for the purpose of enabling the director, controlled body corporate or connected entity (as the case may be) to properly perform duties as an officer of the company.

507.

Exception for expenditure on defending proceedings etc.

(1)

If the condition specified in subsection (2) is satisfied, a company is not prohibited by section 500, 501, 502 or 503 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 903 or 904; 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—

(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.

508.

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 500, 501, 502 or 503 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.

509.

Exception for home loan

(1)

If the conditions specified in subsection (2) are satisfied, a company is not prohibited by section 500, 501, 502 or 503 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;

(ii)

an employee of the company who is a director of a holding company of the company; or

(iii)

an employee of the company who is an entity connected with a director of the company or of a holding company of the company;

(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 10% of—

(i)

the value of the company's net assets as determined by reference to the relevant financial statements of the company; or

(ii)

if no such relevant financial statements have 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; and

(d)

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, a reference to the relevant financial statements of a company is—

(a)

a reference to the company's annual financial statements or annual consolidated financial statements prepared under Part 9 that were most recently sent to its members under section 430; or

(b)

if no such annual financial statements or annual consolidated financial statements have been sent since the commencement date[a] of section 430, a reference to the company's accounts prepared under section 122 of the predecessor Ordinance that were most recently sent to its members under section 129G of that Ordinance.

Editorial Note:

[a] Commencement date: 3 March 2014.

510.

Exception for leasing goods and land etc.

(1)

If the conditions specified in subsection (2) are satisfied, a company is not prohibited by section 500, 501, 502 or 503 from leasing or hiring goods or leasing land to—

(a)

a director of the company or of a holding company of the company;

(b)

a body corporate controlled by such a director; or

(c)

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 10% of—

(i)

the value of the company's net assets as determined by reference to the relevant financial statements of the company; or

(ii)

if no such relevant financial statements have been prepared, the amount of the company's called-up share capital; 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 had been leased, on the open market, to a person unconnected with the company.

(3)

In this section, a reference to the relevant financial statements of a company is—

(a)

a reference to the company's annual financial statements or annual consolidated financial statements prepared under Part 9 that were most recently sent to its members under section 430; or

(b)

if no such annual financial statements or annual consolidated financial statements have been sent since the commencement date[a] of section 430, a reference to the company's accounts prepared under section 122 of the predecessor Ordinance that were most recently sent to its members under section 129G of that Ordinance.

Editorial Note:

[a] Commencement date: 3 March 2014.

511.

Exception for transaction entered into in ordinary course of business

(1)

A company is not prohibited by section 500, 501 or 502 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 503 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.

512.

Exception for intra-group transaction

If a company is a member of a group of companies, the company is not prohibited by section 500, 501, 502 or 503 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

513.

Civil consequences of contravention

(1)

If a company enters into a transaction in contravention of section 500, 501, 502 or 503, or enters into an arrangement in contravention of section 504, 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 other than the director, controlled body corporate, or connected entity, for whom the transaction or arrangement was entered into 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)

a body corporate controlled by such a director, or an entity connected with such a director, for whom the company entered into the transaction or arrangement;

(c)

the director of the company who controls such a body corporate or with whom such an entity is connected;

(d)

the director of a holding company of the company who controls such a body corporate or with whom such an entity is connected; and

(e)

any other director of the company who authorized the transaction or arrangement.

(4)

Despite subsection (2)—

(a)

the controlled body corporate or connected entity specified in subsection (3)(b) is not liable if the controlled body corporate or connected entity establishes that, at the time the transaction or arrangement was entered into, it was not aware of the circumstances constituting the contravention;

(b)

the director specified in subsection (3)(c) or (d) is not liable if the director establishes that the director took all reasonable steps to secure the company's compliance with section 500, 502, 503 or 504 (as the case may be); and

(c)

a director specified in subsection (3)(e) is not liable if the director establishes that, at the time the transaction or arrangement was entered into, the director was not aware of 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 into question or any liability to the company may arise.

514.

Affirmation of contravening transaction or arrangement

(1)

Despite section 513, 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 affirmation of the transaction or arrangement must be obtained by a resolution of the company's 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 affirmation of the transaction or arrangement must be obtained by a resolution of the holding company's 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 affirmation of the transaction or arrangement must be obtained—

(a)

by a resolution of the company's members; and

(b)

by a resolution of the holding company's members.

(5)

Subsections (2), (3) and (4) do 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.

515.

Provisions supplementary to section 514

(1)

The following requirements must be met in relation to a resolution of the members of any company under section 514—

(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 passed at a general 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 specified 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 omission 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 500, 501 or 502—

(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 503—

(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 504—

(i)

the matters 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 500 or 501—

(i)

one who is the controlled body corporate to whom the loan is proposed to be made or was made;

(ii)

one who is the director—

(A)

who controls that body corporate; or

(B)

to whom the loan or quasi-loan is proposed to be made or was made;

(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 controlled body corporate;

(b)

in the case of a resolution for the purpose of a contravention of section 502—

(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 503—

(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 504—

(i)

one who is the controlled body corporate, or connected entity, for whom the arrangement is proposed to be entered into or was entered into;

(ii)

one who is the director—

(A)

who controls that body corporate;

(B)

with whom that entity is connected; or

(C)

for whom the arrangement is proposed to be entered into or was entered into;

(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 (ii) or (iii) or that controlled body corporate or 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 504(1)(a) or (2)(a), a reference to the transaction entered into with a director, a body corporate controlled by a director, or an entity connected with a director under the arrangement; or

(b)

in the case of an arrangement mentioned in section 504(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

516.

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 as defined by section 689.

(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.

(3)

In section 517 and Subdivisions 2 and 3, a reference to a payment to a director or former director includes—

(a)

a payment to an entity connected with the director or former director; and

(b)

a payment to a person made at the direction of, or for the benefit of—

(i)

the director or former director; or

(ii)

an entity connected with the director or former director.

(4)

In section 517 and Subdivisions 2 and 3, a reference to a payment by a person includes a payment by another person made at the direction of, or on behalf of, the person.

(5)

For the purposes of this Division, a body corporate is not to be regarded as a shadow director of any of its subsidiaries by reason only that the directors, or a majority of the directors, of the subsidiary are accustomed to act in accordance with its directions or instructions.

517.

Payment for loss of office

(1)

In this Division, a reference to a payment for loss of office made to a director or former director of a company is a reference to a payment made to the director or former 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 522 or 523—

(a)

the price to be paid to a director or former 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 former 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 to be regarded as a payment for loss of office for the purposes of sections 522 and 523.

(3)

The director or former 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) and (b) applies to a loss of office occurring on or after the commencement date[e] of this Division.

(5)

Subsection (1)(c) and (d) applies to a retirement occurring on or after the commencement date[e] 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.

(7)

In this section—

subsidiary undertaking

(

附屬企業

) has the same meaning as in Part 9.

(Added 35 of 2018 s. 57)

Editorial Note:

[e] Commencement date: 3 March 2014.

518.

Prescribed approval of members or affected members

(1)

In this Division, a reference to the prescribed approval of the members or affected members of a 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)

that, 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)

that, in the case of a resolution passed at a general 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 omission 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 521 or 522, the member specified for the purposes of subsection (2)(b)(ii) is—

(a)

one who is the director or former 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 former director specified in paragraph (a); or

(c)

one who holds any shares in the company in trust for that director, former director or recipient.

(5)

In the case of a resolution for the purposes of section 523, the affected member specified for the purposes of subsection (2)(b)(ii) is—

(a)

one who is the director or former 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 former 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, former 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 as defined by section 667.

(8)

For the purposes of subsection (1)(a), it is irrelevant whether the resolution is passed before, on or after the commencement date[e] of this Division.

Editorial Note:

[e] Commencement date: 3 March 2014.

519.

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 a 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 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 a 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 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 date[e] of this Division.

Editorial Note:

[e] Commencement date: 3 March 2014.

520.

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 521, 522 or 523; or

(b)

any other like payment made or to be made to a director or former director of a company.

Subdivision 2

Prohibitions

521.

Company must not make payment for loss of office to director or former director

(1)

Without the prescribed approval of its members, a company must not make a payment for loss of office to a director or former 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 former 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—

(Amended 14 of 2025 s. 43)

(i)

is incorporated outside Hong Kong; and

(ii)

is not a re-domiciled company; 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—

(Amended 14 of 2025 s. 43)

(i)

is incorporated in Hong Kong; or

(ii)

is a re-domiciled company.

(Amended 14 of 2025 s. 43)

522.

Person must not make payment for loss of office to director or former 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 former 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 former 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 pursuant to an arrangement—

(a)

entered into as part of the agreement for the transfer, or within one year before or 2 years after that agreement is entered into; 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—

(Amended 14 of 2025 s. 44)

(a)

is incorporated outside Hong Kong and is not a re-domiciled company; or

(b)

is a wholly owned subsidiary of the company.

(Amended 14 of 2025 s. 44)

523.

Person must not make payment for loss of office to director or former 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 former 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 pursuant to an arrangement—

(a)

entered into as part of the agreement for the transfer, or within one year before or 2 years after that agreement is entered into; 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 and is not a re-domiciled company.

(Amended 14 of 2025 s. 45)

(4)

For the purposes of this section, the prescribed approval of the affected members of a payment is to be regarded as being obtained if—

(a)

a quorum is not present at a general meeting to consider the resolution in respect of which the requirement specified in section 518(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

524.

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 the termination of 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 521 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 522 or 523 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 521 and 522 or within both sections 521 and 523, it is to be regarded as falling within section 521 but not within section 522 or 523.

525.

Exception for small payment

(1)

A company is not prohibited by section 521 from making a payment to a director or former 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 former director in connection with the same event, does not exceed $100,000.

(2)

A company is not prohibited by section 522 or 523 from making a payment to a director or former 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 former director in connection with the transfer, does not exceed $100,000.

(3)

A subsidiary of a company (***excepted subsidiary***) is not prohibited by section 522 or 523 from making a payment to a director or former 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 excepted subsidiary or a subsidiary of the excepted subsidiary to the director or former director in connection with the transfer, does not exceed $100,000.

(Amended 35 of 2018 s. 58)

(4)

Subsection (3) applies in relation to a loss of office that occurs on or after the commencement date* of section 58 of the Companies (Amendment) (No. 2) Ordinance 2018 (35 of 2018).

(Added 35 of 2018 s. 58)

(5)

Subsection (3), as in force immediately before the commencement date* of section 58 of the Companies (Amendment) (No. 2) Ordinance 2018 (35 of 2018), continues to apply in relation to a loss of office specified in that subsection that occurred before that commencement date*.

(Added 35 of 2018 s. 58)

Editorial Note:

* Commencement date: 1 February 2019.

Subdivision 4

Consequences of Contravention

526.

Interpretation

For the purposes of this Division—

(a)

unless the court directs otherwise, a payment is to be regarded as being made in contravention of section 522 if it is made in contravention of both sections 521 and 522; and

(b)

unless the court directs otherwise, a payment is to be regarded as being made in contravention of section 523 if it is made in contravention of both sections 521 and 523.

527.

Civil consequences of contravention of section 521

If a payment is made by a company in contravention of section 521—

(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.

528.

Civil consequences of contravention of section 522

(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 522.

(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.

529.

Civil consequences of contravention of section 523

(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 523.

(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

530.

Interpretation

(1)

In this Division—

director

(

董事

) includes a shadow director.

(2)

For the purposes of this Division, a body corporate is not to be regarded as a shadow director of any of its subsidiaries by reason only that the directors, or a majority of the directors, of the subsidiary are accustomed to act in accordance with its directions or instructions.

531.

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 that the director undertakes personally to perform, as director or otherwise, are to be 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 as director.

532.

Prescribed approval of members

(1)

In this Division, a reference to the prescribed approval of the members of a 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)

that, 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)

that, in the case of a resolution passed at a general 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 omission 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 date[e] of this Division.

Editorial Note:

[e] Commencement date: 3 March 2014.

533.

Preservation of effect of members' unanimous consent

(1)

If, under section 534(1), any provision must not be agreed to without the prescribed approval of a company's members, that section does not prohibit the provision from being agreed to with the unanimous consent of those members given before it is agreed to.

(2)

For the purposes of subsection (1), it is irrelevant whether the unanimous consent is given before, on or after the commencement date[e] of this Division.

Editorial Note:

[e] Commencement date: 3 March 2014.

534.

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)

In this section—

employment

(

僱用

) means any employment under a director's service contract.

(3)

In this section, a reference to the guaranteed term of a director's employment is—

(a)

a reference to 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 pursuant to 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, a reference to 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), a reference to the aggregate of those periods.

(4)

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 pursuant to 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 to be regarded as including the unexpired period of the guaranteed term of the employment under the original contract.

(5)

For the purposes of subsection (4), it is irrelevant whether the original contract is entered into before, on or after the commencement date[a] of this Division.

Editorial Note:

[a] Commencement date: 3 March 2014.

535.

Civil consequences of contravention of section 534

If a company agrees to a provision in contravention of section 534—

(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.

Division 5

Material Interests in Transaction, Arrangement or Contract

536.

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 in accordance with sections 537, 538 and 539.

(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 in accordance with sections 537, 538 and 539.

(3)

If a declaration made under subsection (1) or (2) proves to be, or becomes, inaccurate or incomplete, the director must make a further declaration in accordance with sections 537, 538 and 539.

(4)

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 articles.

(5)

For the purposes of subsection (4)(a), a director is to be regarded as being aware of matters of which the director ought reasonably to be aware.

(6)

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.

537.

Declaration to directors: timing

(1)

A declaration of interest under section 536 in a transaction, arrangement or contract that has been entered into must be made as soon as reasonably practicable.

(2)

A declaration of interest under section 536 in a proposed transaction, arrangement or contract must be made before the company enters into the transaction, arrangement or contract.

(3)

Failure to comply with subsection (1) or (2) does not affect the underlying duty to make the declaration.

538.

Declaration to directors: procedures

(1)

A declaration to directors under section 536 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.

(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 536 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 481 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 entered into 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 entered into 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 must be given—

(a)

at a directors' meeting; or

(b)

in writing and sent to the company.

Note—

See also section 541 which requires a company receiving a general notice to send the general notice to other directors.

(7)

A general notice given under subsection (6)(a) takes effect on the date of the directors' meeting.

(8)

A general notice given under subsection (6)(b) takes effect on the twenty-first day after the day on which it is sent to the company.

539.

Declaration to directors in case of company with sole director

(1)

If a declaration to directors under section 536 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 481 applies as if the declaration had been made at that meeting.

(2)

This section does not affect the operation of section 545.

540.

Application of Division 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 536 apply to a shadow director in the same manner as they apply to a director.

(2)

Section 538(1)(a) and (6) does not apply to a shadow director.

(3)

A general notice by a shadow director for the purposes of section 538(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.

541.

Companies must send general notices to other directors

(1)

If a company receives a notice under section 538(6)(b) from a director, it must, within 15 days after the day on which it receives the notice, send a copy of the notice to other directors of the company.

(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 6.

542.

Offence

(1)

A director or shadow director who contravenes section 536(1), (2) or (3) commits an offence and is liable to a fine at level 6.

(2)

If a person is charged with an offence under subsection (1) for contravening section 536(2), it is a defence to establish that the person took all reasonable steps to secure compliance with that section.

Division 6

Miscellaneous

543.

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 at its registered office or at a place prescribed by regulations made under section 657—

(a)

a copy of the contract;

(b)

if such a contract is not in writing, a written memorandum setting out the terms of the contract.

(4)

The company—

(a)

must retain the copy or memorandum for at least one year after the date of termination or expiry of the contract; and

(b)

must keep the copy or memorandum available for inspection during that time.

(5)

If the copy or memorandum is kept at a place other than the company's registered office, the company must deliver to the Registrar for registration a notice, in the specified form, of the place, or any change in the place, at which the copy or memorandum is kept. The notice must be delivered to the Registrar within 15 days after the copy or memorandum is first kept at that place or within 15 days after the change (as the case may be).

(6)

If subsection (3) or (4) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.

(7)

If subsection (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.

(8)

In this section—

directors' report

(

董事報告

) means—

(a)

the report required to be prepared under section 388(1); or

(b)

the consolidated report required to be prepared under section 388(2).

544.

Right of member to inspect and request copy

(1)

A member of a company is entitled, on request made in the prescribed manner and without charge, to inspect, in accordance with regulations made under section 657, a copy of a contract or a written memorandum kept by the company under section 543.

(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 contract or memorandum in accordance with regulations made under section 657.

(3)

In this section, a reference to a contract includes a variation of the contract.

(4)

In this section—

prescribed

(

訂明

) means prescribed by regulations made under section 657.

545.

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—

(a)

the terms of the contract are set out in a written memorandum within 15 days from the entering into of the contract; and

(b)

the memorandum is kept at the place at which 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.

(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.

(7)

For the purposes of this section, a body corporate is not to be regarded as a shadow director of any of its subsidiaries by reason only that the directors, or a majority of the directors, of the subsidiary are accustomed to act in accordance with its directions or instructions.

546.

Financial Secretary may amend certain sums or percentage figures

(1)

Subject to subsection (2), the Financial Secretary may, by notice published in the Gazette, amend any provision of Division 2 or 3—

(a)

by substituting for any sum of money specified in the provision a sum specified in the notice; or

(b)

by substituting for any percentage figure specified in the provision a percentage figure specified in the notice.

(2)

A notice under this section may not be made to amend the amount of a fine.

(3)

A notice under this section does not have effect in relation to anything done or not done before the notice comes into operation.

(4)

Proceedings in respect of any liability incurred before a notice under this section comes into operation may be continued or instituted as if the notice had not been made.

Part 12

Company Administration and Procedure

(Format changes—E.R. 1 of 2013)

Division 1

Resolutions and Meetings

Subdivision 1

Preliminary

547.

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 553; 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;

(Amended 2 of 2023 s. 3)

virtual meeting technology

(

虛擬會議科技

) means a technology that allows a person to listen, speak and vote at a meeting without being physically present at the meeting.

(Added 2 of 2023 s. 3)

(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 the operation of any other 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

548.

Written resolution

(1)

Anything that may be done by a resolution passed at a general meeting of a company 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 passed at 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 by 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 556.

(5)

A written resolution of a company has effect as if passed by—

(a)

the company at a 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.

549.

Power to propose written resolution

A resolution may be proposed as a written resolution by—

(a)

the directors of a company; or

(b)

a member of a company.

550.

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 549(a), the company must circulate the resolution.

551.

Members' power to request circulation of written resolution

(1)

A member 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 549(b).

(2)

If a member requests a company to circulate a resolution, the member 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.

(3)

However, each member may only request the company to circulate one such statement with respect to the resolution.

552.

Company's duty to circulate written resolution proposed by members

(1)

A company must circulate a resolution proposed as a written resolution under section 549(b) and any statement mentioned in section 551(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 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 551(2); and

(c)

must be authenticated by the person or persons making it.

553.

Circulation of written resolution

(1)

If a company is required under section 550 or 552 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 551(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 558.

(5)

For the purposes of subsection (4), a failure to make a copy of a proposed written resolution or statement available on a website throughout the period mentioned in that subsection is to be disregarded if—

(a)

the copy 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.

(6)

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 556; and

(b)

the date by which the resolution must be passed if it is not to lapse under section 558.

(7)

If a company contravenes subsection (1), (3) or (6), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5.

(8)

The validity of the resolution, if passed, is not affected by a contravention of subsection (1), (3) or (6).

554.

Application not to circulate accompanying statement

(1)

A company is not required to circulate a statement mentioned in section 551(2) if, on an application by the company or another person who claims to be aggrieved, the Court is satisfied that the rights given by that section are—

(a)

being abused; or

(b)

being used to secure needless publicity for defamatory matter.

(2)

The Court 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.

555.

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 553, it must, on or before the circulation date, send to the auditor of the company (if more than one auditor, to each of them)—

(Amended 35 of 2018 s. 59)

(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).

556.

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.

557.

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;

(b)

any holder has signified their agreement to a proposed written resolution; and

(c)

if the company has received, before the end of the period mentioned in section 558(1), any objection to the proposed written resolution from any other holder, the holder who has signified the agreement is more senior than the holder who has made the objection,

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 556(1).

(2)

For the purposes of this section, the seniority of a 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.

558.

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.

559.

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 notice of this fact to—

(a)

every member of the company; and

(b)

the auditor of the company (if more than one auditor, to each of them).

(Amended 35 of 2018 s. 60)

(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.

560.

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).

561.

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.

Subdivision 3

Resolutions at Meetings

562.

General provisions

(1)

A resolution 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)

For the purposes of subsection (1), if there is any inconsistency between a provision of a Subdivision referred to in that subsection, and a provision of the company's articles, unless otherwise provided in or in respect of that Subdivision, the provision of that Subdivision prevails over the provision of the articles to the extent of the inconsistency.

(3)

If a provision of any Ordinance—

(a)

requires or otherwise provides for 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).

563.

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 the total of the following—

(a)

the number of the members who (being entitled to do so) vote in person on the resolution;

(b)

the number of 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.

564.

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 the total of the following—

(a)

the number of the members who (being entitled to do so) vote in person on the resolution;

(b)

the number of 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.

Subdivision 4

Calling Meetings

565.

Directors' power to call general meeting

The directors of a company may call a general meeting of the company.

566.

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.

567.

Directors' duty to call general meeting requested by members

(1)

Directors required under section 566 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.

568.

Members' power to call general meeting at company's expense

(1)

If the directors—

(a)

are required under section 566 to call a general meeting; and

(b)

do not do so in accordance with section 567,

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.

569.

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 general meetings 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.

570.

Power of Court 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 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 thinks fit.

(3)

If the order is made, the Court 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.

Subdivision 5

Notice of Meetings

571.

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.

572.

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).

573.

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 date and time of the meeting;

(Replaced 2 of 2023 s. 4)

(ba)

specify—

(i)

if the notice specifies only the physical venue of the meeting—the physical venue;

(ii)

if the notice specifies only the virtual meeting technology to be used for holding the meeting—the virtual meeting technology; or

(iii)

if the notice specifies both the physical venue of the meeting and the virtual meeting technology to be used for holding the meeting—both the physical venue and the virtual meeting technology; and

(Added 2 of 2023 s. 4)

(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.

574.

Persons entitled to receive notice of general meeting

(1)

Notice of a general meeting of a company must be given 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 given 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 given to members who are so entitled.

(5)

A company is only required to comply with subsection (4) if the company is required to give 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 571(1) or in the company's articles, subsection (4) is to be regarded as having been complied with if the notice required to be given under that subsection is given as soon as practicable after that time.

575.

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 given to a member, the company must give a copy of it to its auditor (if more than one auditor, to each of them) at the same time as the notice or the other document is given to the member.

(Amended 35 of 2018 s. 61)

(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.

576.

Contents of notice of general meeting

(1)

A company must ensure that a notice of a general meeting of the company—

(a)

specifies the date and time of the meeting;

(b)

specifies either or both of the following—

(i)

the physical venue of the meeting;

(ii)

the virtual meeting technology to be used for holding the meeting;

(Replaced 2 of 2023 s. 5)

(ba)

if 2 or more physical venues are specified under paragraph (b)(i)—specifies the principal venue, and the other venue or venues, of the meeting;

(Added 2 of 2023 s. 5)

(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), (ba) and (c) has effect subject to any provision of the company's articles.

(Amended 2 of 2023 s. 5)

(2A)

To avoid doubt—

(a)

a notice of a general meeting of a company may specify the virtual meeting technology to be used for holding the meeting (whether or not the notice also specifies the physical venue of the meeting) unless—

(i)

the company's articles expressly preclude the holding of a general meeting by using virtual meeting technology; or

(ii)

the company's articles require a general meeting to be held only at a physical venue; and

(b)

for the purposes of paragraph (a)(ii), a provision of the company's articles having the effect of requiring a notice of a general meeting to specify the physical venue of the meeting is not in itself a provision that requires a general meeting to be held only at a physical venue.

(Added 2 of 2023 s. 5)

(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 567(3) or 568(2); or

(b)

notice has been given under section 615.

(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 common law rules or equitable principles, or the provisions of any other Ordinance, as regards the validity of a resolution.

(7)

In subsection (1)(e)—

wholly owned subsidiary

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全資附屬公司

) has the meaning given by section 357(3).

577.

Explanation of improving director's emoluments to be set out in notice of general meeting

(1)

A company must not at a general meeting amend its articles so as to provide emoluments or improved emoluments for a director of the company in respect of the office as director unless—

(a)

there is set out in the notice calling the meeting or in a document attached to the notice an adequate explanation of the provision; and

(b)

the provision is approved by a resolution not relating also to other matters.

(2)

In this section—

emoluments

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) includes—

(a)

fees and percentages;

(b)

any sums paid by way of expenses allowance;

(c)

any contribution paid in respect of the director under any pension scheme; and

(d)

any benefits received by the director otherwise than in cash in respect of the director's services as director.

578.

Resolution requiring special notice

(1)

If by any provision of this Ordinance special notice is required to be given 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.

579.

Accidental omission 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 omission 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.

(2)

Except in relation to notice given under section 567, 568 or 616, subsection (1) has effect subject to any provision of the company's articles.

Subdivision 6

Members' Statements

580.

Members' power to request circulation of statement

(1)

A member 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)

However, each member may only request the company to circulate—

(a)

one such statement with respect to the resolution mentioned in subsection (1)(a); and

(b)

one such statement with respect to the other business mentioned in subsection (1)(b).

(3)

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.

(4)

In subsection (3)—

relevant right to vote

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) 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.

(5)

A request under subsection (3)—

(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.

581.

Company's duty to circulate members' statement

(1)

A company that is required under section 580 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 582(2) and 583.

(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.

582.

Expenses of circulating members' statement

(1)

The expenses of the company in complying with section 581 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 581 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.

583.

Application not to circulate members' statement

(1)

A company is not required to circulate a statement under section 581 if, on an application by the company or another person who claims to be aggrieved, the Court is satisfied that the rights given by section 580 are—

(a)

being abused; or

(b)

being used to secure needless publicity for defamatory matter.

(2)

The Court 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.

Subdivision 7

Procedure at Meetings

583A.

Mode of holding general meeting

(1)

A company may hold a general meeting—

(a)

at a physical venue;

(b)

by using virtual meeting technology; or

(c)

both at a physical venue and by using virtual meeting technology.

(2)

Subsection (1) has effect subject to any provision of the company's articles.

(3)

To avoid doubt—

(a)

a company may hold a general meeting by using virtual meeting technology (whether or not also at a physical venue) unless—

(i)

the company's articles expressly preclude the holding of a general meeting by using virtual meeting technology; or

(ii)

the company's articles require a general meeting to be held only at a physical venue; and

(b)

for the purposes of paragraph (a)(ii), a provision of the company's articles having the effect of requiring a notice of a general meeting to specify the physical venue of the meeting is not in itself a provision that requires a general meeting to be held only at a physical venue.

(Added 2 of 2023 s. 6)

584.

Meeting at 2 or more physical venues

(Amended 2 of 2023 s. 7)

(1)

If a general meeting of a company is held at 2 or more physical venues (whether or not also by using the virtual meeting technology specified in the notice of the meeting), the company must use any technology that allows the members of the company who are not together at the same physical venue to listen, speak and vote at the meeting.

(Replaced 2 of 2023 s. 7)

(2)

Subsection (1) has effect subject to any provision of the company's articles.

585.

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.

(4A)

For the purposes of this section, a person who attends a general meeting by using the virtual meeting technology specified in the notice of the meeting is to be regarded as being present while so attending.

(Added 2 of 2023 s. 8)

(5)

In this section—

corporate representative

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) means a person authorized under section 606 to act as the representative of the body corporate.

586.

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.

587.

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.

Subdivision 8

Voting at Meetings

588.

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 in respect of which the proxy is appointed; and

(Amended 35 of 2018 s. 62)

(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.

589.

Votes of joint holders of shares

(1)

In the case of joint holders of shares of a company, only the vote of the most senior holder who votes (and any proxies duly authorized by the holder) may be counted by the company.

(2)

For the purposes of this section, the seniority of a 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.

590.

Declaration by chairperson on show of hands

(1)

On a vote on a resolution on a show of hands at a general meeting, 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 618 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).

591.

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.

592.

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.

593.

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.

594.

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.

595.

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.

Subdivision 9

Proxies and Corporate Representatives

596.

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.

597.

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 596(1) and (3); and

(b)

the requirement under section 596(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.

598.

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.

(3)

In calculating the periods mentioned in subsection (2), no account is to be taken of any part of a day that is a public holiday.

599.

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.

600.

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, commits an offence, and each is liable to a fine at level 3.

601.

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.

602.

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.

603.

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 588—

(a)

vote as a proxy—

(i)

on a show of hands; or

(ii)

on a poll; and

(b)

vote in the way specified (if any) 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, subject to section 588(2), 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.

604.

Notice required of termination of proxy's authority

(1)

This section applies to a 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.

(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 public holiday.

605.

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.

606.

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 as that body corporate could exercise if it were an individual member, creditor, or holder of debentures, of the company.

607.

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.

608.

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.

Subdivision 10

Annual General Meetings

609.

Interpretation

In this Subdivision—

accounting reference period

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) has the meaning given by section 368.

610.

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 first anniversary of the specified event; 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 first anniversary of the specified event; or

(Amended 14 of 2025 s. 47)

(ii)

3 months after the end of that accounting reference period,

whichever is the later.

(Amended 35 of 2018 s. 63)

(3)

If a company has by a directors' resolution under section 371 or a notice delivered 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 date of the directors' resolution,

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 date of the directors' resolution,

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 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 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 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, 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.

(10)

In this section—

specified event

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)—

(a)

in relation to a company other than a re-domiciled company—means the incorporation of the company; and

(b)

in relation to a re-domiciled company—means the registration of the company under section 820C(1).

(Added 14 of 2025 s. 47)

611.

Exemption of dormant company from requirement to hold annual general meeting

(1)

Section 610 does not apply to a company that is a dormant company under section 5(1).

(2)

If such a company enters into an accounting transaction, subsection (1) ceases to have effect on and after the date of the accounting transaction.

612.

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 610 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 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 610 if—

(a)

the company has only one member; or

(b)

all of the following are satisfied—

(i)

the company has by resolution passed in accordance with section 613(1) dispensed with the holding of the annual general meeting;

(ii)

the company has not revoked the resolution under section 614(1), or the company has revoked the resolution under that section but is not required to hold an annual general meeting under section 614(2)(b);

(iii)

no member of the company has required the holding of the annual general meeting under section 613(5).

613.

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 610.

(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)

is not to have effect for the financial year in respect of which the period specified in section 610 for holding an annual general meeting of the company has expired; 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 610 applies in respect of the financial year to which the notice relates.

614.

Revocation of resolution dispensing with annual general meeting

(1)

A company may revoke a resolution mentioned in section 613(1) by passing an ordinary resolution to that effect.

(2)

If a resolution mentioned in section 613(1) is revoked or otherwise ceases to have effect, the company—

(a)

is required to hold an annual general meeting in accordance with section 610; 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 613(5).

615.

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 610, 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 have a right to vote on the resolution at the annual general meeting to which the requests relate.

(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.

616.

Company's duty to circulate resolution for annual general meeting

(1)

A company that is required under section 615 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.

Subdivision 11

Records of Resolutions and Meetings

617.

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 at a general meeting; and

(b)

has effect as if agreed by the company at a 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.

(4)

A contravention of subsection (2) does not affect the validity of any decision mentioned in that subsection.

618.

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 116BC(1) of the predecessor Ordinance or section 617(2).

(2)

A company must keep the copy, minutes or written record under subsection (1) for at least 10 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.

619.

Place where records must be kept

(1)

A company must keep a specified record at—

(Amended 35 of 2018 s. 64)

(a)

the company's registered office; or

(b)

a prescribed place.

(2)

A company must notify the Registrar of the place at which a specified record is kept. The notice must be in the specified form and delivered to the Registrar for registration within 15 days after the specified record is first kept at that place.

(Amended 35 of 2018 s. 64)

(3)

A company must notify the Registrar of any change (other than a change of the address of the company's registered office) in the place at which a specified record is kept. The notice must be in the specified form and delivered to the Registrar for registration within 15 days after the change.

(Amended 35 of 2018 s. 64)

(4)

Subsection (2) does not require a company to notify the Registrar of the place at which a specified record is kept, if—

(a)

for a specified record that came into existence on or after the commencement date[a] of this section—it has at all times been kept at the company's registered office; or

(b)

for a specified record that is a copy of a resolution, minutes or written record mentioned in section 618(1) which came into existence before that commencement date[a]—

(i)

immediately before that commencement date[a], the company kept the specified record for the purposes of section 119A of the predecessor Ordinance; and

(ii)

on and after that commencement date[a], the specified record is kept for the purposes of section 618 at the place at which it was kept immediately before that commencement date[a].

(Replaced 35 of 2018 s. 64)

(5)

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 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—

prescribed

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) means prescribed by regulations made under section 657;

(Amended 35 of 2018 s. 64)

specified record

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) means—

(a)

the minutes recorded in accordance with section 481(1) of proceedings at a meeting of directors held on or after the commencement date* of section 64 of the Companies (Amendment) (No. 2) Ordinance 2018 (35 of 2018);

(b)

the resolutions passed by directors without a meeting on or after the commencement date* of section 64 of the Companies (Amendment) (No. 2) Ordinance 2018 (35 of 2018) and recorded in accordance with section 481(1);

(c)

the written record mentioned in section 483(1) of a decision taken by the sole director of a private company on or after the commencement date* of section 64 of the Companies (Amendment) (No. 2) Ordinance 2018 (35 of 2018); or

(d)

the copy of a resolution, minutes or written record mentioned in section 618(1).

(Added 35 of 2018 s. 64)

Editorial Note:

Commencement date: 3 March 2014.

* Commencement date: 1 February 2019.

620.

Right to inspect and request copy

(1)

A member of a company is entitled, on request made in the prescribed manner and without charge, to inspect, in accordance with regulations made under section 657, the records kept by the company under section 618.

(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 in accordance with regulations made under section 657.

(3)

In this section—

prescribed

(

訂明

) means prescribed by regulations made under section 657.

621.

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 618(1)(a) and purports to be signed by a director of the company or company 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 kept under section 618(1)(b), 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.

(Amended 35 of 2018 s. 65)

(3)

If the proceedings of a general meeting of a company are evidenced by minutes under subsection (2), then, until the contrary is proved—

(Amended 35 of 2018 s. 65)

(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 duly taken place; and

(c)

all appointments 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 617(2), the record is sufficient evidence of the decision having been taken by the member.

622.

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 107 or 770;

(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)

an agreement made for the purposes of section 359(1)(b)(iii);

(f)

a resolution passed for the purposes of section 360(1)(a) and (2)(a);

(Amended 35 of 2018 s. 66)

(g)

a resolution passed under section 613;

(h)

a resolution requiring a company to be wound up voluntarily, passed under section 228(1)(a) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

(i)

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;

(j)

an order of the Court (which alters a company's articles) a copy of which is required to be delivered to the Registrar under section 96; and

(k)

an order of the Court which alters a resolution or an agreement referred to in paragraph (a), (b), (c), (d), (e), (f), (g), (h) or (i).

(2)

The company must deliver a copy of the order under subsection (1)(k), resolution or agreement to the Registrar for registration within 15 days after it is made or passed.

(3)

The company must ensure that a copy of the resolution, agreement or order of the Court that is for the time being in force is included 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.

(4)

Subsection (3) does not apply to an existing company whose articles have not been registered under this Ordinance or any former Companies Ordinance.

(5)

If the company is an existing company whose 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 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) 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 (3) 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 or provisional liquidator of the company is to be regarded as an officer of the company.

Subdivision 12

Application to Class Meetings

623.

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 566, 567, 568, 570 and 575 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 585 and 591 do not apply in relation to a meeting in connection with the variation of the rights attached to shares in a class (

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 to be 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.

624.

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 566, 567, 568, 570 and 575 do not apply in relation to a meeting of a class of members.

(3)

In addition to those sections mentioned in subsection (2), sections 585 and 591 do not apply in relation to a meeting in connection with the variation of the rights of a class of members (

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.

Division 2

Registers (other than Register of Significant Controllers)

(Amended 3 of 2018 s. 3)

Subdivision 1

Preliminary

625.

Interpretation

In this Division—

prescribed

(

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) means prescribed by regulations made under section 657.

Subdivision 2

Register of Members

626.

Interpretation

In this Subdivision—

branch register

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) means, except in section 640, a branch register of members kept under section 636.

627.

Register of members

(1)

A company must keep in the English or Chinese language a register of members.

(2)

A company must enter in the register of members—

(a)

the names and addresses of its members;

(b)

the date on which each person is entered in the register as a member; and

(c)

the date on which any person ceases to be a member.

(3)

In the case of a company having a share capital, the company must enter in the register of 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 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 10 years from that date.

(6)

A company must retain a copy of any details that were included in the register of members immediately before the commencement date[e] of subsection (5) until 10 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.

Editorial Note:

[e] Commencement date: 3 March 2014.

628.

Place where register must be kept

(1)

A company must keep its register of members at—

(a)

the company's registered office; or

(b)

a prescribed place.

(2)

A company must notify the Registrar of the place at which the register of members is kept. The notice must be in the specified form and delivered to the Registrar for registration within 15 days after the register is first kept at that place.

(3)

A company must notify the Registrar of any change (other than a change of the address of the company's registered office) in the place at which the register of members is kept. The notice must be in the specified form and delivered to the Registrar for registration within 15 days after the change.

(4)

Subsection (2) does not require a company to notify the Registrar of the place at which the register of members is kept—

(a)

if, in the case of a register that came into existence on or after the commencement date[e] of this section, it has at all times been kept at the company's registered office; or

(b)

if—

(i)

immediately before that commencement date[e], the company kept a register for the purposes of section 95 of the predecessor Ordinance; and

(ii)

on and after that commencement date[e], that register is kept as a register of members for the purposes of section 627 at the place at which it was kept immediately before that commencement date[e].

(5)

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 4 and, in the case of a continuing offence, to a further fine of $700 for each day during which the offence continues.

Editorial Note:

[e] Commencement date: 3 March 2014.

629.

Statement that company has only one member

(1)

If, after a person ceases to be a member of a company, the number of members of the company falls to one, the company must, within 15 days after the date on which the cessation is entered in its register of members under section 627(2)(c), enter in the register—

(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, within 15 days after the date on which the particulars of the new member are entered in its register of members under section 627(2), enter in the register—

(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.

630.

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 its register of members is in a form that constitutes in itself an index.

(2)

The company must make any necessary alteration in the index within 15 days after the date on which any alteration is made in its register of 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 its register of 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.

631.

Right to inspect and request copy

(1)

A member of a company is entitled, on request made in the prescribed manner and without charge, to inspect the register of members of the company, and the index of members' names, in accordance with regulations made under section 657.

(2)

Any other person is entitled, on request made in the prescribed manner and on payment of a prescribed fee, to inspect the register and index in accordance with regulations made under section 657.

(3)

A person is entitled, on request and on payment of a prescribed fee, to be provided with a copy of the register or index, or any part of it, in accordance with regulations made under section 657.

632.

Power to close register of members

(1)

A company may, on giving notice in accordance with subsection (2), close its register of members, or the part of it relating to members holding shares of any class, for any period or periods not exceeding in the whole 30 days in each year.

(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 by a resolution of the company's members passed in that year.

(4)

The period of 30 days mentioned in subsection (1) must not be extended for a further period or periods exceeding 30 days in the whole 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 company 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.

633.

Power of Court 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 in 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 for rectification of the register.

(2)

If an application is made under subsection (1), the Court may—

(a)

refuse the application; or

(b)

subject to section 167, order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(3)

Subject to section 167, on an application under subsection (1), the Court—

(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.

(4)

In the case of a company required by this Ordinance to deliver particulars relating to its members to the Registrar for registration, the Court, when making an order for rectification of the register, must by its order direct notice of the rectification to be given to the Registrar.

634.

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.

635.

Register to be proof in the absence of contrary evidence

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.

636.

Branch register of members

(1)

A company having a share capital may keep in a place outside Hong Kong 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 deliver to the Registrar for registration a notice in the specified form within 15 days after doing so, stating the address where the branch register is kept.

(3)

A company that keeps a branch register must deliver to the Registrar for registration a notice in the specified form of any change in the address where the branch register is kept, within 15 days after the change.

(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.

637.

Keeping of branch register

(1)

A branch register must be kept in the same manner in which the company's register of members (***the principal register***) is by this Ordinance required to be kept.

(2)

A company that keeps a branch register may close it in the same manner in which the principal register may be closed under section 632 except that the advertisement mentioned in that section must be inserted in a newspaper circulating generally in the place in which the branch register is kept.

(3)

A company that keeps a branch register—

(a)

must cause a duplicate of it to be kept at the place at which the company's principal register is kept; and

(b)

must, within 15 days after an entry is made in the branch register—

(i)

transmit a copy of the entry to its registered office; and

(ii)

update the duplicate of the branch register.

(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.

638.

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 company's register of members.

(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.

639.

Discontinuance of branch register

(1)

A company may discontinue a branch register.

(2)

If a company discontinues 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.

(3)

If a company discontinues a branch register, it must within 15 days after the discontinuance deliver to the Registrar for registration a notice in the specified form informing the Registrar of—

(a)

the discontinuance; and

(b)

the register to which all the entries have been transferred.

(4)

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.

640.

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 631 and 633, 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.

Subdivision 3

Register of Directors

641.

Register of directors

(1)

A company must keep in the English or Chinese language a register of directors.

(2)

Subject to section 56(5), (6)(a) and (7)(a), a company must enter in the register of directors the required particulars specified in section 643 of each person who is a director or reserve director (if any) of the company.

(3)

A company must keep the register of directors at—

(a)

the company's registered office; or

(b)

a prescribed place.

(4)

A company must notify the Registrar of the place at which the register of directors is kept. The notice must be in the specified form and delivered to the Registrar for registration within 15 days after the register is first kept at that place.

(5)

A company must notify the Registrar of any change (other than a change of the address of the company's registered office) in the place at which the register of directors is kept. The notice must be in the specified form and delivered to the Registrar for registration within 15 days after the change.

(6)

Subsection (4) does not require a company to notify the Registrar of the place at which the register of directors is kept—

(a)

if, in the case of a register that came into existence on or after the commencement date[e] of this section, it has at all times been kept at the company's registered office; or

(b)

if—

(i)

immediately before that commencement date[e], the company kept a register for the purposes of section 158 of the predecessor Ordinance; and

(ii)

on and after that commencement date[e], that register, in so far as it relates to the directors or reserve directors of the company, is kept as a register of directors for the purposes of subsection (1) at the place at which it was kept immediately before that commencement date[e].

(7)

If a company contravenes subsection (1), (2), (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.

Editorial Note:

[e] Commencement date: 3 March 2014.

642.

Right to inspect and request copy

(1)

A member of a company is entitled, on request made in the prescribed manner and without charge, to inspect the register of directors of the company in accordance with regulations made under section 657.

(2)

Any other person is entitled, on request made in the prescribed manner and on payment of the prescribed fee, to inspect the register in accordance with regulations made under section 657.

(3)

A person is entitled, on request and on payment of a prescribed fee, to be provided with a copy of the register, or any part of it, in accordance with regulations made under section 657.

643.

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), its register of 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 a correspondence 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, its register of 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 a correspondence 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, its register of 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 a correspondence 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;

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;

surname

(

姓氏

), for a person usually known by a title different from the person's surname, means that title.

(5)

For the purposes of subsections (1)(a)(ii), (2)(b) and (3)(b), a correspondence address must not be a post office box number.

(6)

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, a name or surname by which she was known before her marriage.

(7)

The Financial Secretary may, by notice published in the Gazette, amend subsection (1), (2), (3), (4), (5) or (6).

644.

Protection of certain particulars from inspection

(1)

Despite section 642(1), (2) and (3), a company may withhold the following particulars contained in its register of directors from a person who inspects the register or requests for a copy of it or any part of it—

(a)

an address contained in the register as the usual residential address of a director or reserve director; and

(b)

the number of the identity card or passport of a director or reserve director.

(2)

A company may only exercise the power under subsection (1) in the prescribed manner and to the prescribed extent.

645.

Duty to notify Registrar of appointment and change

(1)

If a person is appointed as director of a company otherwise than under section 453(3), (3A) or (4) or 454(2), (2A) or (3), the company must, within 15 days after the appointment, deliver to the Registrar for registration a notice in the specified form containing—

(Amended 14 of 2025 s. 49)

(a)

the director's particulars specified in its register of directors;

(b)

a statement that the person has accepted the appointment; and

(c)

if the person is a natural person, a statement that he or she has attained the age of 18 years.

(2)

The company must, within 15 days after the nomination of a person as a reserve director of the company, deliver to the Registrar for registration a notice in the specified form containing all the particulars with respect to that person that are required to be contained in its register of directors.

(3)

If a person is nominated as a reserve director of a private company, the company must, within 15 days after the nomination, deliver to the Registrar for registration a statement in the specified form 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 15 days after the cessation or change, deliver to the Registrar for registration a notice in the specified form containing—

(a)

the particulars of cessation or change and the date on which it occurred; and

(b)

other matters that are specified in the form.

(5)

If the company is not allowed under section 56(7)(b) to state in a notice under subsection (4) that a director's correspondence address is changed to an address other than the address specified in subparagraph (i) or (ii) of that section, subsection (4) does not apply in relation to that change.

(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.

646.

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 643 and 645.

(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 643 and 645.

(3)

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

647.

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 for inspection by any person on payment of a prescribed fee.

(4)

Despite subsection (3), the following particulars contained in the index must not be open for inspection under that subsection—

(a)

the usual residential address of the director or reserve director; and

(b)

the full number of the identity card or passport of the director or reserve director.

(5)

Subsection (4) does not affect the inclusion in the index of a correspondence address of the director or reserve director, nor does it affect the inspection of the correspondence address under subsection (3), even if the correspondence address is the same as the usual residential address of the director or reserve director.

Subdivision 4

Register of Company Secretaries

648.

Register of company secretaries

(1)

A company must keep in the English or Chinese language a register of company secretaries.

(2)

A company must enter in the register of company secretaries the required particulars specified in section 650 of a person who is, or persons who are the company secretary or joint company secretaries of the company.

(3)

A company must keep the register of company secretaries at—

(a)

the company's registered office; or

(b)

a prescribed place.

(4)

A company must notify the Registrar of the place at which the register of company secretaries is kept. The notice must be in the specified form and delivered to the Registrar for registration within 15 days after the register is first kept at that place.

(5)

A company must notify the Registrar of any change (other than a change of the address of the company's registered office) in the place at which the register of company secretaries is kept. The notice must be in the specified form and delivered to the Registrar for registration within 15 days after the change.

(6)

Subsection (4) does not require a company to notify the Registrar of the place at which the register of company secretaries is kept—

(a)

if, in the case of a register that came into existence on or after the commencement date[a] of this section, it has at all times been kept at the company's registered office; or

(b)

if—

(i)

immediately before that commencement date[a], the company kept a register for the purposes of section 158 of the predecessor Ordinance; and

(ii)

on and after that commencement date[a], that register, in so far as it relates to the company secretary or joint company secretaries of the company, is kept as a register of company secretaries for the purposes of subsection (1) at the place at which it was kept immediately before that commencement date[a].

(7)

If a company contravenes subsection (1), (2), (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.

Editorial Note:

[a] Commencement date: 3 March 2014.

649.

Right to inspect and request copy

(1)

A member of a company is entitled, on request made in the prescribed manner and without charge, to inspect the register of company secretaries of the company in accordance with regulations made under section 657.

(2)

Any other person is entitled, on request made in the prescribed manner and on payment of the prescribed fee, to inspect the register in accordance with regulations made under section 657.

(3)

A person is entitled, on request and on payment of a prescribed fee, to be provided with a copy of the register, or any part of it, in accordance with regulations made under section 657.

650.

Particulars of company secretaries to be registered

(1)

The register of company secretaries of a company must contain the following particulars with respect to the company secretary or, if there are joint company secretaries, with respect to each of them—

(a)

if the company 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 company secretary does not have an identity card, the number and issuing country of any passport held by the company secretary; and

(b)

if the company 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 company 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;

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, a name or surname by which she was known before her marriage.

(6)

The Financial Secretary may, by notice published in the Gazette, amend subsection (1), (2), (3), (4) or (5).

651.

Protection of identification number from inspection

(1)

Despite section 649(1), (2) and (3), a company may withhold the number of the identity card or passport of a company secretary contained in its register of company secretaries from a person who inspects the register or requests for a copy of it or any part of it.

(2)

A company may only exercise the power under subsection (1) in the prescribed manner and to the prescribed extent.

652.

Duty to notify Registrar of appointment and change

(1)

If a person or persons are appointed as company secretary or joint company secretaries of a company otherwise than under section 474(2), (2A), (3) or (3A), the company must, within 15 days after the appointment, deliver to the Registrar for registration a notice in the specified form containing the company secretary's or joint company secretaries' particulars specified in its register of company secretaries.

(Amended 14 of 2025 s. 50)

(2)

If a person ceases to be a company secretary of the company or there is any change in the particulars contained in the register of company secretaries of a company, the company must, within 15 days after the cessation or change, deliver to the Registrar for registration a notice in the specified form containing—

(a)

the particulars of the cessation or change and the date on which it occurred; and

(b)

any other particulars 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.

653.

Duty of company secretary to make disclosure

(1)

A company secretary of a company must give notice to the company of matters relating to the company secretary that are required for the purposes of sections 650 and 652.

(2)

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

Division 2A

Register of Significant Controllers

(Division 2A added 3 of 2018 s. 4)

Subdivision 1

Preliminary

653A.

Interpretation

In this Division—

applicable company

(

適用公司

) means a company other than—

(a)

a listed company; or

(b)

a company that falls within a type of company, or class of companies, exempted by regulations made under section 653ZG(1)(a);

commencement date

(

生效日期

) means the date of commencement of this Division;

existing company

(

原有公司

) means a company that came into existence before the commencement date;

function

(

職能

) includes a power and a duty;

law enforcement officer

(

執法人員

)—see section 653B;

legal entity

(

法律實體

)—

(a)

means a body of persons, corporate or unincorporate, that is a legal person under the law that governs it; but

(b)

does not include a specified entity;

prescribed

(

訂明

) means prescribed by regulations made under section 657;

registrable change

(

須登記更改

)—see section 653F;

registrable legal entity

(

須登記法律實體

)—see section 653D;

registrable person

(

須登記人士

)—see section 653C;

related person

(

有關連人士

)—see section 653G;

required particulars

(

所需詳情

) means the particulars prescribed in Schedule 5B;

significant control

(

重大控制權

)—see section 653E;

significant controller

(

重要控制人

) means—

(a) a registrable person of an applicable company; or

(b) a registrable legal entity of an applicable company;

significant controllers register

(

重要控制人登記冊

) means the register mentioned in section 653H(1);

specified entity

(

指明實體

) means—

(a)

a corporation sole;

(b)

a government of a country or territory, or part of a country or territory;

(c)

an international organization whose members include 2 or more countries or territories (or their governments); or

(d)

a local authority or local government in a country or territory;

specified function

(

指明職能

), in relation to a law enforcement officer, means a function of the officer under the law of Hong Kong that is a function relating to the prevention, detection or investigation of money laundering, or terrorist financing, as defined by section 1 of Part 1 of Schedule 1 to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615).

653B.

Law enforcement officer

(1)

Each of the following is a law enforcement officer for the purposes of this Division—

(a)

an officer of the Companies Registry;

(b)

an officer of the Customs and Excise Department;

(c)

an officer of the Hong Kong Monetary Authority;

(d)

an officer of the Hong Kong Police Force;

(e)

an officer of the Immigration Department;

(f)

an officer of the Inland Revenue Department;

(g)

an officer of the Insurance Authority established under section 4AAA(1) of the Insurance Ordinance (Cap. 41);

(h)

an officer of the Independent Commission Against Corruption established under section 3 of the Independent Commission Against Corruption Ordinance (Cap. 204);

(i)

an officer of the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap. 571);

(j)

an officer of any department or agency of the Government, or of any statutory body, that is specified by the Financial Secretary by regulations made under section 653ZG(1)(b) for the purposes of this paragraph.

(2)

In subsection (1)—

statutory body

(

法定團體

) means a body established or constituted by or under the authority of an Ordinance.

653C.

Registrable person

(1)

If a natural person or specified entity has significant control over an applicable company, the person or entity is a registrable person of the company.

(2)

Despite subsection (1), a natural person or specified entity that has significant control over an applicable company is not a registrable person of the company if the condition specified in subsection (3) is satisfied.

(3)

The condition is that the natural person or specified entity has significant control over the company only because—

(a)

the person or entity holds or has rights or shares in the company through a registrable legal entity of the company (***entity A***), and entity A has any of its shares listed on a recognized stock market; or

(b)

the person or entity holds or has rights or shares in the company through a chain of legal entities with the last one in the chain being a registrable legal entity of the company (***entity B***), and entity B has any of its shares listed on a recognized stock market.

Note—

See also section 653E and Schedule 5A which provide for the criteria for determining whether a person has significant control over an applicable company.

653D.

Registrable legal entity

A legal entity is a registrable legal entity of an applicable company if the entity—

(a)

is a member of the company; and

(b)

has significant control over the company.

Note—

See also section 653E and Schedule 5A which provide for the criteria for determining whether a person has significant control over an applicable company.

653E.

How to determine whether person has significant control over applicable company

A person has significant control over an applicable company if the person meets one or more of the conditions specified in Part 1 of Schedule 5A in relation to the company.

653F.

Registrable change

There is a registrable change with respect to a person if—

(a)

the person ceases to be a significant controller of an applicable company; or

(b)

any other change results in any particulars entered in the company's significant controllers register for the person being incorrect or incomplete.

653G.

Related person

(1)

This section applies if—

(a)

a provision of this Division provides that if a requirement of a notice given to a legal entity is not complied with (***failure***), a related person of the entity commits an offence; or

(b)

a provision in the regulations made under section 653ZG provides that a related person of a legal entity commits an offence if a provision is contravened (***contravention***).

(2)

For the purposes of the provision, a person is a related person of a legal entity that is a body corporate (***entity A***) if—

(a)

the person is an officer or shadow director of entity A; and

(b)

the person authorizes or permits, or participates in, the failure or contravention.

(3)

A person is also a related person of entity A if—

(a)

the person is an officer or shadow director of another body corporate that is an officer or shadow director of entity A;

(b)

the other body corporate authorizes or permits, or participates in, the failure or contravention; and

(c)

the person authorizes or permits, or participates in, the failure or contravention.

(4)

For the purposes of the provision, a person is a related person of a legal entity other than a body corporate (***entity B***) if—

(a)

the person is an officer of entity B that is similar to an officer or shadow director of a body corporate (***similar officer of entity B***); and

(b)

the person authorizes or permits, or participates in, the failure or contravention.

(5)

A person is also a related person of entity B if—

(a)

the person is an officer or shadow director of a body corporate;

(b)

the body corporate is a similar officer of entity B and authorizes or permits, or participates in, the failure or contravention; and

(c)

the person authorizes or permits, or participates in, the failure or contravention.

Subdivision 2

Keeping of Significant Controllers Register

653H.

Keeping of register

(1)

Each applicable company must keep a register of its significant controllers.

(2)

Subsection (1) applies to an applicable company even if the company does not have a significant controller.

(3)

The significant controllers register of an applicable company must be kept in the English or Chinese language.

(4)

If subsection (1) or (3) is contravened, 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.

653I.

Contents of register

(1)

The significant controllers register of an applicable company must contain the following particulars of each person that the company knows to be a significant controller of the company—

(a)

the particulars prescribed in Schedule 5B that are applicable to the person; and

(b)

for a registrable change with respect to the person—

(i)

details of the change; and

(ii)

the date on which the change occurs.

(2)

The register must also contain—

(a)

the name and contact details of at least one person designated by the company under section 653ZC; and

(b)

all the additional matters required to be noted in the register under Schedule 5C in relation to the company.

(3)

If subsection (1)(a) or (b) or (2)(a) or (b) is contravened, 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.

(4)

To avoid doubt, section 634 does not affect what may be contained or entered in the significant controllers register of an applicable company.

653J.

Entering of particulars in register—registrable person

(1)

The particulars required under section 653I(1)(a) to be contained in the significant controllers register of an applicable company for a natural person or specified entity—

(a)

must not be entered in the register unless they are all confirmed by the person or entity; and

(b)

must be entered in the register within 7 days after they have all been so confirmed.

(2)

The particulars required under section 653I(1)(b) to be contained in the significant controllers register of an applicable company for a registrable change with respect to a natural person or specified entity—

(a)

must not be entered in the register unless they are all confirmed by the person or entity; and

(b)

must be entered in the register within 7 days after they have all been so confirmed.

(3)

If subsection (1)(a) or (b) or (2)(a) or (b) is contravened, 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.

(4)

For the purposes of this section, a particular of a natural person or specified entity is or has been confirmed by that person or entity only if the particular is or has been—

(a)

provided or confirmed by that person or entity; or

(b)

provided or confirmed by another person with that natural person's or specified entity's knowledge.

653K.

Entering of particulars in register—registrable legal entity

(1)

A particular required under section 653I(1) to be contained in the significant controllers register of an applicable company for a legal entity must be entered in the register within 7 days after the particular comes to the notice of the company.

(2)

If subsection (1) is contravened, 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.

653L.

When may entries in register be destroyed

If a person ceases to be a significant controller of an applicable company, all the entries in the company's significant controllers register relating to the person may be destroyed—

(a)

for a natural person or specified entity—after the end of a period of 6 years from the date on which the person or entity ceased to be the company's registrable person; and

(b)

for a legal entity—after the end of a period of 6 years from the date on which the entity ceased to be the company's registrable legal entity.

653M.

Place at which register must be kept

(1)

An applicable company must keep its significant controllers register at—

(a)

the company's registered office; or

(b)

a prescribed place.

(2)

The company must notify the Registrar in accordance with subsection (3) of the place at which its significant controllers register is kept.

(3)

The notice—

(a)

must be in the specified form; and

(b)

must be delivered to the Registrar for registration within 15 days after the register is first kept at that place.

(4)

An applicable company is not required to comply with subsection (2) if, since its significant controllers register came into existence, the register has at all times been kept at the company's registered office.

(5)

Without affecting subsection (4), an existing company is not required to comply with subsection (2) if—

(a)

since the commencement date, the company's register of members has at all times been kept at the place at which it was kept immediately before that date;

(b)

since the company's significant controllers register came into existence, the register has also at all times been kept at that place; and

(c)

immediately before the commencement date, the company has delivered to the Registrar every notice that is required under section 628 in respect of its register of members.

(6)

If subsection (1) or (2) is contravened, 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.

653N.

Change in place at which register is kept

(1)

An applicable company must notify the Registrar in accordance with subsection (2) of a change in the place at which its significant controllers register is kept.

(2)

The notice—

(a)

must be in the specified form; and

(b)

must be delivered to the Registrar for registration within 15 days after the change.

(3)

An applicable company is not required to comply with subsection (1) in relation to a change mentioned in that subsection if—

(a)

its significant controllers register is kept at the company's registered office; and

(b)

the change is due to a change of the registered office's address.

(4)

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

Subdivision 3

Investigation and Obtaining Information by Applicable Company

653O.

Interpretation

(1)

In this Subdivision—

specified particulars

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), in relation to a person—

(a)

means the particulars of the person falling within a description of the particulars prescribed in Schedule 5B; but

(b)

if the person is a natural person, does not include—

(i)

the number of an identity card of the person; and

(ii)

the number and issuing country of a passport held by the person.

(2)

In sections 653P, 653Q and 653R, a reference to knowing the identity of a person includes knowing any information from which the person can be identified.

653P.

Company's duty to investigate and obtain information

(1)

An applicable company must take reasonable steps—

(a)

to ascertain whether there is any significant controller of the company; and

(b)

if any, to identify each of them.

(2)

Without limiting subsection (1), if the company knows, or has reasonable cause to believe, that a person is a significant controller of the company, the company must give a notice, in accordance with section 653Q, to the person within 7 days after the first of the following to happen—

(a)

the company first knows that the person is a significant controller of the company;

(b)

the company first has reasonable cause to believe that the person is such a controller.

(3)

Without limiting subsection (1), if the company knows, or has reasonable cause to believe, that a particular person knows the identity of another person who is a significant controller of the company, the company must give a notice, in accordance with section 653R, to the particular person within 7 days after the first of the following to happen—

(a)

the company first knows that the particular person knows the identity of another person who is a significant controller of the company;

(b)

the company first has reasonable cause to believe that the particular person knows the identity of another person who is such a controller.

(4)

If subsection (1), (2) or (3) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

Note—

See also section 653S which provides for the circumstances under which an applicable company is not required to comply with this section.

653Q.

Notice under section 653P(2)

(1)

A notice given under section 653P(2) by an applicable company must be in writing and must require the addressee of the notice to confirm, as the case requires—

(a)

whether or not the addressee is a registrable person of the company; or

(b)

whether or not the addressee is a registrable legal entity of the company.

(2)

The notice must—

(a)

state that if the addressee confirms that the addressee is a registrable person or registrable legal entity of the company, the addressee is required to—

(i)

confirm or correct the required particulars of the addressee that are included in the notice; and

(ii)

provide any required particulars of the addressee that are missing from the notice; and

(b)

require the addressee to—

(i)

state whether or not the addressee knows the identity of another person who is a significant controller of the company; and

(ii)

if the addressee knows the identity of such a person—

(A)

provide to the company all the specified particulars of that person that are known to the addressee; and

(B)

state whether or not the particulars are provided with that person's knowledge.

(3)

The notice must also state that the addressee must comply with the requirements made under this section within 1 month from the date of the notice.

653R.

Notice under section 653P(3)

(1)

A notice given under section 653P(3) by an applicable company must be in writing and must—

(a)

require the addressee of the notice to confirm whether or not the addressee knows the identity of another person who is a significant controller of the company; and

(b)

state that if the addressee confirms that the addressee knows the identity of such a person, the addressee is required to—

(i)

provide to the company all the specified particulars of that person that are known to the addressee; and

(ii)

state whether or not the particulars are provided with that person's knowledge.

(2)

The notice must also state that the addressee must comply with the requirements made under this section within 1 month from the date of the notice.

653S.

Circumstances where notice under section 653P not required

An applicable company is not required to comply with section 653P with respect to a significant controller of the company if—

(a)

for a registrable person of the company—

(i)

the company has already been informed of the person's status as such; and

(ii)

all the required particulars of the person have been provided to the company by the person or with the person's knowledge; and

(b)

for a registrable legal entity of the company—

(i)

the company has already been informed of the entity's status as such; and

(ii)

all the required particulars of the entity have been provided to the company.

Subdivision 4

Applicable Company to Keep Information Up-to-date

653T.

Company's duty to keep information up-to-date

(1)

This section applies to an applicable company if the company knows, or has reasonable cause to believe, that there is a registrable change with respect to a person, the details of which are required to be contained in the significant controllers register of the company.

(2)

The company must give a notice, in accordance with section 653U, to the person to whom the registrable change relates within 7 days after the first of the following to happen—

(a)

the registrable change first comes to the notice of the company;

(b)

the company first has reasonable cause to believe that the change has occurred.

(3)

If subsection (2) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

Note—

See also section 653V which provides for the circumstances under which an applicable company is not required to comply with this section.

653U.

Notice under section 653T

(1)

A notice given under section 653T by an applicable company must be in writing and must—

(a)

require the addressee of the notice to confirm whether or not there is a registrable change with respect to the addressee; and

(b)

state that if the addressee confirms that there is such a change, the addressee is required to—

(i)

inform the company of the date on which the change occurs;

(ii)

confirm or correct any particulars—

(A)

that are required to be contained in the significant controllers register of the company for the addressee; and

(B)

that are included in the notice; and

(iii)

provide any particulars—

(A)

that are required to be contained in the register for the addressee; and

(B)

that are missing from the notice.

(2)

The notice must also state that the addressee must comply with the requirements made under this section within 1 month from the date of the notice.

653V.

Circumstances where notice under section 653T not required

(1)

An applicable company is not required to comply with section 653T in relation to a registrable change with respect to a natural person or specified entity if—

(a)

the company has already been informed of the change; and

(b)

the information has been provided to the company by the person or entity, or with the person's or entity's knowledge.

(2)

An applicable company is not required to comply with section 653T in relation to a registrable change with respect to a legal entity if the company has already been informed of the change.

Subdivision 5

Inspection of Significant Controllers Register

653W.

Right to inspect and request copy of register

(1)

A person whose name is entered in the significant controllers register of an applicable company as a significant controller of the company is entitled, on request made in the prescribed manner and without charge, to inspect the register in accordance with regulations made under section 657.

(2)

A person mentioned in subsection (1) is entitled, on request and on payment of a prescribed fee, to be provided with a copy of the register, or a part of it, in accordance with regulations made under section 657.

Note—

For the duties of a company regarding the inspection and provision of copies of its company records, and the power of the Court to make an order relating to the inspection and provision of copies of such records—see regulations made under section 657.

653X.

Register be available for inspection etc. by law enforcement officer

(1)

An applicable company must, on demand made by an officer of the Companies Registry for the purpose of ascertaining whether this Division is or has been complied with, or on demand made by any other law enforcement officer for the purpose of the officer's performance under the law of Hong Kong of a specified function, act as follows—

(a)

at any reasonable time make its significant controllers register available for inspection by the officer at the place at which the register is kept; and

(b)

permit the officer to make a copy of the register, or a part of it, in the course of inspection.

(2)

If subsection (1)(a) or (b) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

653Y.

Court order relating to inspection of register

(1)

This section applies if section 653X(1)(a) is contravened in relation to a demand made by a law enforcement officer under section 653X(1).

(2)

The Court may, on application by the law enforcement officer, order the applicable company concerned to permit the officer to inspect the company's significant controllers register.

(3)

An order made under subsection (2) may—

(a)

direct the company to permit the officer to inspect the register—

(i)

immediately after the order is made; or

(ii)

from the time specified in the order; and

(b)

specify the duration and manner of the inspection.

(4)

Subsection (5) applies if—

(a)

the register is kept at the office of a person other than the company; and

(b)

section 653X(1)(a) is contravened because of a default of the person.

(5)

The power of the Court under subsection (2) extends to the making of an order against the person mentioned in subsection (4) and the person's officers and employees.

653Z.

Court order relating to making copy of register

(1)

This section applies if section 653X(1)(b) is contravened in relation to a demand made by a law enforcement officer under section 653X(1).

(2)

The Court may, on application by the law enforcement officer, order the applicable company concerned to permit the officer to make a copy of the company's significant controllers register, or a part of it, in the course of inspection.

(3)

An order made under subsection (2) may also specify 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.

(4)

Subsection (5) applies if—

(a)

the register is kept at the office of a person other than the company; and

(b)

section 653X(1)(b) is contravened because of a default of the person.

(5)

The power of the Court under subsection (2) extends to the making of an order against the person mentioned in subsection (4) and the person's officers and employees.

Subdivision 6

Miscellaneous or Related Matters

653ZA.

Addressee of notice to comply with requirements made under section 653Q, 653R or 653U

(1)

If a requirement made under section 653Q, 653R or 653U is not complied with within 1 month from the date of the notice concerned, the addressee of the notice, and (if the addressee is a legal entity) every related person of the entity, commit an offence, and each is liable to a fine at level 4.

(2)

If a person is charged with an offence under subsection (1), it is a defence for the person to prove that the requirement was frivolous or vexatious.

653ZB.

Legal professional privilege

In complying with a notice given under this Division by an applicable company, a person is not required to provide any information to the company that the person would on grounds of legal professional privilege be entitled to refuse to give or provide in legal proceedings.

653ZC.

Designated representative

(1)

An applicable company must designate at least one person as its representative to provide the following assistance relating to the significant controllers register of the company—

(a)

assistance to an officer of the Companies Registry to facilitate ascertaining whether this Division is or has been complied with;

(b)

assistance to any other law enforcement officer to facilitate the officer's performance under the law of Hong Kong of a specified function.

(2)

The company must not designate a person under subsection (1) unless—

(a)

the person—

(i)

is a natural person resident in Hong Kong; and

(ii)

is a director, employee or member of the company; or

(b)

the person is an accounting professional, a legal professional, or a TCSP licensee, as defined by section 1 of Part 2 of Schedule 1 to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615).

653ZD.

Power of Court to order rectification of register

(1)

An interested party may apply to the Court to rectify the significant controllers register of an applicable company if—

(a)

the name of a person is, without sufficient cause, entered in or omitted from the register; or

(b)

a default is made or an unnecessary delay takes place in entering in the register the fact that a person has ceased to be a significant controller of the company.

(2)

If an application is made under subsection (1), the Court may—

(a)

refuse the application; or

(b)

order that the register be rectified.

(3)

A rectification order may include an order for the company to pay any damages sustained by an aggrieved party.

(4)

On an application made under subsection (1), the Court—

(a)

may decide whether the name of a person who is a party to the application should be entered in or omitted from the register; and

(b)

generally may decide any question considered necessary or expedient to rectify the register.

(5)

In subsection (1)—

interested party

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), in relation to a matter mentioned in subsection (1), means—

(a)

a person aggrieved by the matter;

(b)

a significant controller of the company; or

(c)

the company.

653ZE.

Offence for false information

(1)

A person commits an offence if the person, in purported compliance with a notice given under this Division, knowingly or recklessly makes a statement or provides any information that is misleading, false or deceptive in a material particular.

(2)

A person who commits an offence under subsection (1) 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.

653ZF.

Applicable company not to be affected with notice of certain rights or put on enquiry as to certain rights

An applicable company—

(a)

is not, because of anything done under this Division, affected with notice of—

(i)

(ii) the rights of a person in relation to any shares in the company; or

(b) other rights of a person in or with respect to the company; and

is not, because of anything done under this Division, put on enquiry as to those rights of a person.

653ZG.

Financial Secretary may make regulations

(1) Without affecting section 657, the Financial Secretary may make regulations—

(a) to exempt a type of company, or class of companies, from this Division or a provision of this Division;

(b) to specify any department or agency of the Government, and any statutory body, for the purposes of section 653B(1)(j);

(c) to provide for matters relating to a notice given under this Division by an applicable company, including providing for—

(i) the form and content of the notice; and

(ii) the way in which it is to be given; and

(d) to provide for incidental or supplementary matters relating to keeping a significant controllers register of an applicable company.

(2) Regulations made under subsection (1) may provide that—

(a) if a company contravenes any of the regulations made under that subsection, an offence is committed by—

(i) the company; and

(ii) every responsible person of the company;

(b) if a legal entity contravenes any of the regulations made under that subsection, an offence is committed by—

(i) the entity; and

(ii) every related person of the entity; and

(c) a person who commits an offence mentioned in paragraph (a) or (b) 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.

Note—

See also section 910 which provides for supplementary provisions for regulations made under this Ordinance.

653ZH.

Transitional provision for section 653J

For the purposes of section 653J(1), in relation to an existing company, a particular is confirmed only if the particular is confirmed on or after the commencement date.

653ZI.

Transitional provision for section 653K

For the purposes of section 653K, in determining the time at which a particular comes to the notice of an existing company, any knowledge of the particular that the company had before the commencement date is not to be taken into account.

653ZJ.

Transitional provisions for section 653P

(1)

For the purposes of section 653P(2), if, on the commencement date, an existing company knows, or has reasonable cause to believe, that a person is a significant controller of the company, the company must give the notice required under that section within 7 days after the commencement date.

(2)

For the purposes of section 653P(3), if, on the commencement date, an existing company knows, or has reasonable cause to believe, that a person knows the identity of another person who is a significant controller of the company, the company must give the notice required under that section within 7 days after the commencement date.

653ZK.

Transitional provision for section 653S

For the purposes of section 653S, in relation to an existing company, a particular has been provided only if the particular has been provided on or after the commencement date.

Division 3

Company Records

654.

Meaning of

company records

In this Division—

company records

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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.

655.

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 the company records is to be regarded as a duty to allow inspection of—

(a)

a reproduction of the recording, or the relevant part of the recording, in hard copy form; or

(b)

if requested by the person inspecting the recording, the recording, or the relevant part of the recording, by electronic means.

(5)

If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of $300 for each day during which the offence continues.

(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 3.

(7)

In this section—

in electronic form

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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.

656.

Duty to take precautions against falsification

(1)

If company records are kept otherwise than by making entries in a bound book, a company—

(a)

must take adequate precautions to guard against falsification; and

(b)

must 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.

657.

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 make available for inspection any company records; or

(iii)

to provide copies of any company records or trust deeds;

(b)

prescribe the fees payable in respect of company records or trust deeds; and

(c)

prescribe any other thing that is required or permitted to be prescribed under this Ordinance in respect of company records or trust deeds.

(2)

The regulations may—

(a)

prescribe places other than a company's registered office at which company records are required to be kept;

(b)

prescribe the manner in which a request for inspection is to be made;

(c)

require a company to inform a person of the most recent date on which alterations were made to a register or an index;

(d)

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;

(e)

define what may be required of a company as regards the nature, extent and manner of extracting or presenting any information for the purposes of inspection or the provision of copies;

(f)

make provision as to the time within which a copy of company records, or a copy of a trust deed, must be provided; and

(g)

prescribe the manner in which and the extent to which a company may exercise the power under section 644 or 651.

(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; and

(c)

prescribe more than one place in relation to that provision.

(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 may—

(i)

by order compel an immediate inspection of company records;

(ii)

by order direct that a copy of company records, or a copy of a trust deed, be provided to a person entitled to be provided with the copy; and

(iii)

make any order 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; and

(d)

if company records or a trust deed is 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 (if any).

(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.

(6)

In this section—

trust deed

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) means a trust deed or any other document securing the issue of debentures.

Division 4

Registered Office and Publication of Company Names

658.

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)

For a company formed and registered under this Ordinance, the intended address of the 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 delivered to the Registrar under subsection (3).

(Amended 14 of 2025 s. 51)

(2A)

For a re-domiciled company, the intended address of the registered office stated in the re-domiciliation form registered under section 820C(5) is to be regarded as its registered office with effect from the re-domiciliation date until a notice of change in respect of the address is delivered to the Registrar under subsection (3).

(Added 14 of 2025 s. 51)

(3)

If the address of a company's registered office is changed, the company must deliver to the Registrar for registration a notice of the change in the specified form within 15 days after the change.

(4)

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).

(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 5 and, in the case of a continuing offence, to a further fine of $1,000 for each day during which the offence continues.

659.

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 common seals, and 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;

(b)

may make provision as to the manner in which any prescribed information is to be displayed, stated or provided; and

(c)

may exempt a company from any requirement of the regulations made under subsection (1).

(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.

660.

Criminal consequences of failure to make required disclosures

Regulations made under section 659 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.

661.

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 659, 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

662.

Requirement to deliver annual return

(1)

A private company that is not a re-domiciled company must, in respect of every year (except the year of its incorporation), deliver to the Registrar for registration an annual return specified in subsection (5) within 42 days after the company's return date.

(Amended 14 of 2025 s. 52)

(2)

The company's return date mentioned in subsection (1) is, in respect of a particular year, the anniversary of the date of the company's incorporation in that year.

(2A)

A private company that is a re-domiciled company must, in respect of every year (other than the year in which the certificate of re-domiciliation is issued), deliver to the Registrar for registration an annual return specified in subsection (5) within 42 days after the company's return date.

(Added 14 of 2025 s. 52)

(2B)

For the purposes of subsection (2A), the company's return date in respect of a particular year is the anniversary of the company's re-domiciliation date in that particular year.

(Added 14 of 2025 s. 52)

(3)

A public company or a company limited by guarantee must in respect of every financial year deliver to the Registrar for registration an annual return specified in subsection (5) within 42 days after the company's return date.

(4)

The company's return date mentioned in subsection (3) is, in respect of a particular financial year—

(a)

if the company is a public company, the date that is 6 months after the end of its accounting reference period; and

(b)

if the company is a company limited by guarantee, the date that is 9 months after the end of its accounting reference period.

(5)

An annual return under this section must comply with the requirements under section 664.

(6)

If a company contravenes subsection (1), (2A) 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.

(Amended 14 of 2025 s. 52)

(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 period

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會計參照期

) has the meaning given by section 368.

663.

Exemption of dormant company from requirement to deliver annual return

(1)

Section 662 does not apply to a company that is a dormant company under section 5(1).

(2)

If such a company enters into an accounting transaction, subsection (1) ceases to have effect on and after the date of the accounting transaction.

664.

Contents of annual return

(1)

A company's annual return under section 662 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 23, 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 662 must—

(a)

contain the information specified in Schedule 6; and

(b)

be accompanied by the documents specified in that Schedule.

(4)

Despite subsection (3), if—

(a)

an annual return is required to be delivered by a private company under section 662(1) in respect of a year; and

(b)

at any time during the year—

(i)

the company registers any transfer of shares in the company in contravention of the restriction imposed by the company's articles;

(ii)

the membership of the company exceeds the number specified in section 11(1)(a)(ii); or

(iii)

the company makes an invitation to the public to subscribe for any shares or debentures of the company,

the annual return must contain the information, and be accompanied by the documents, specified in subsection (5) instead.

(5)

The information and documents are—

(a)

information and documents specified for the purposes of a public company in Schedule 6; and

(b)

information and documents that relate to the financial year of the company ending on a date within the year in respect of which the annual return is required to be delivered.

(6)

The Court may, on the application of the company or a person interested in the matter, order that subsection (4) does not apply to the company.

(7)

The Court may make the order on any terms and conditions that the Court thinks just and expedient.

(8)

The Court must not make the order unless the Court is satisfied that—

(a)

the occurrence of the event mentioned in subsection (4)(b)(i), (ii) or (iii) was accidental;

(b)

it was due to inadvertence or to some other sufficient cause that the event occurred; or

(c)

it is just and equitable to grant the relief on other grounds.

665.

Construction of reference to annual return

A reference in this Ordinance to a company's last annual return, or to an annual return delivered in accordance with section 662, 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 date[e] of that section, or forwarded to the Registrar in accordance with the predecessor Ordinance.

Editorial Note:

[e] Commencement date: 3 March 2014.

Part 13

Arrangements, Amalgamation, and Compulsory Share Acquisition in Takeover and Share Buy-back

(Amended E.R. 1 of 2013)

(Format changes—E.R. 1 of 2013)

Division 1

Preliminary

666.

Interpretation

In this Part—

child

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) includes a step-child, an illegitimate child and a child adopted in any manner recognized by the law of Hong Kong;

cohabitation relationship

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同居關係

) means a relationship between 2 persons (whether of the same sex or of the opposite sex) who live together as a couple in an intimate relationship;

offer period

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要約期

), in relation to an offer, means the period within which the offer can be accepted;

repurchasing company

(

回購公司

), in relation to a general offer, means the listed company that makes the offer.

667.

Associate

(1)

In this Part, a reference to an associate of an offeror or member, is—

(a)

if the offeror or member is a natural person, a reference to—

(i)

the offeror's or member's spouse;

(ii)

a person who is in a cohabitation relationship with the offeror or member;

(iii)

a child of the offeror or member;

(iv)

a child of a person falling within subparagraph (ii) who—

(A)

is not a child of the offeror or member;

(B)

lives with the offeror or member; and

(C)

has not attained the age of 18;

(v)

a parent of the offeror or member;

(vi)

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

(vii)

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

(b)

if the offeror or member is a body corporate, a reference to—

(i)

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

(ii)

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

(iii)

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

(2)

In this Part, a reference to an associate of a repurchasing company is a reference to—

(a)

a body corporate in the same group of companies as the repurchasing company;

(b)

a body corporate in which the repurchasing company is substantially interested; or

(c)

a person who is a party, or a nominee of a party, to an acquisition agreement with the repurchasing company.

(3)

For the purposes of subsections (1) and (2), an offeror, member or repurchasing company is substantially interested in a body corporate if—

(a)

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

(b)

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

(4)

In subsection (3), a reference to voting power the exercise of which is controlled by an offeror, member or repurchasing company includes voting power the exercise of which is controlled by another body corporate if the offeror, member or repurchasing company is entitled to exercise, or control the exercise of, more than 50% of the voting power at any general meeting of that other body corporate.

(5)

For the purposes of subsections (1) and (2), an agreement is an acquisition agreement if—

(a)

it is an agreement for the acquisition of—

(i)

any of the shares to which the takeover offer or general offer relates; or

(ii)

an interest in those shares; and

(b)

it includes provisions imposing obligations or restrictions on any of the parties to it with respect to the use, retention or disposal of the party's interests in the shares acquired pursuant to the agreement.

Division 2

Arrangements and Compromises

668.

Interpretation

(1)

In this Division—

arrangement

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

company

(
公司

), except in section 675, means a company liable to be wound up under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

(2)

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

669.

Application of Division

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

(a)

the creditors, or any class of the creditors, of the company;

(b)

the members, or any class of the members, of the company.

670.

Court may order meeting of creditors or members to be summoned

(1)

The Court may, on application made for the purposes of this subsection—

(a)

order a meeting specified in subsection (2)(a), or a meeting specified in subsection (2)(b), or both (as the case may be) to be summoned in any manner that the Court directs; and

(b)

for the purposes of section 674(4), declare a person to be a person specified under that section.

(2)

The meeting is—

(a)

if the arrangement or compromise is proposed to be entered into—

(i)

with the creditors of the company, a meeting of those creditors; or

(ii)

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

(b)

if the arrangement or compromise is proposed to be entered into—

(i)

with the members of the company, a meeting of those members; or

(ii)

with a class of the members of the company, a meeting of that class of members.

(3)

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

(a)

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

(b)

in the case of a meeting of a class of creditors, the company or any creditor of that class;

(c)

in the case of a meeting of members, the company or any of the members; or

(d)

in the case of a meeting of a class of members, the company or any member of that class.

(4)

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

(5)

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

671.

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

(1)

If a meeting is summoned under section 670—

(a)

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

(b)

every notice summoning the meeting that is given by advertisement—

(i)

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

(ii)

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

(2)

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

(3)

An explanatory statement—

(a)

must explain the effect of the arrangement or compromise; and

(b)

must state—

(i)

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

(ii)

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

(4)

If the arrangement or compromise affects the rights of the company's debenture holders, an explanatory statement must give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the directors.

(5)

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

(a)

the company;

(b)

every responsible person of the company;

(c)

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

(d)

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

(6)

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

(7)

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

672.

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

(1)

If a meeting is summoned under section 670, a director of the company, or a trustee for its debenture holders, must give notice to the company of any matter relating to the director or trustee that may be necessary for the purposes of section 671.

(2)

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

673.

Court may sanction arrangement or compromise

(1)

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

(2)

The Court may, on application made for the purposes of this subsection, sanction the arrangement or compromise.

(3)

Subject to subsection (4), an application for the purposes of subsection (2) may be made only by—

(a)

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

(b)

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

(c)

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

(d)

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

(4)

If the company is being wound up, an application for the purposes of subsection (2) may be made only by the liquidator or provisional liquidator.

(5)

An arrangement or compromise sanctioned by the Court under subsection (2) is binding—

(a)

on the company or, if the company is being wound up, on the liquidator or provisional liquidator and contributories of the company; and

(b)

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

(6)

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

(7)

If the order of the Court amends the company's articles, or any resolution or agreement to which section 622 applies, the office copy of that order delivered to the Registrar for registration for the purposes of subsection (6) must be accompanied by a copy of those articles, or the resolution or agreement, as amended.

(8)

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

674.

Provision supplementary to section 673(1): agreement to arrangement or compromise

(1)

For the purposes of section 673(1)—

(a)

the creditors agree to the arrangement or compromise if, at a meeting of the creditors summoned under section 670, a majority in number representing at least 75% in value of the creditors present and voting, in person or by proxy, agree to the arrangement or compromise;

(b)

a class of creditors agrees to the arrangement or compromise if, at a meeting of the class of creditors summoned under section 670, a majority in number representing at least 75% in value of the class of creditors present and voting, in person or by proxy, agree to the arrangement or compromise;

(c)

subject to subsection (2)(a), the members agree to the arrangement or compromise if, at a meeting of the members summoned under section 670—

(i)

members representing at least 75% of the voting rights of the members present and voting, in person or by proxy, agree to the arrangement or compromise; and

(ii)

unless the Court orders otherwise, a majority in number of the members present and voting, in person or by proxy, agree to the arrangement or compromise; and

(d)

subject to subsection (2)(b), a class of members agrees to the arrangement or compromise if, at a meeting of the class of members summoned under section 670—

(i)

members representing at least 75% of the voting rights of the class of members present and voting, in person or by proxy, agree to the arrangement or compromise; and

(ii)

unless the Court orders otherwise, a majority in number of the class of members present and voting, in person or by proxy, agree to the arrangement or compromise.

(2)

However, where the arrangement involves a general offer within the meaning of section 707 or a takeover offer—

(a)

the members agree to the arrangement if—

(i)

at a meeting of the members summoned under section 670, members representing at least 75% of the voting rights of the members present and voting, in person or by proxy, agree to the arrangement; and

(ii)

the votes cast against the arrangement at the meeting do not exceed 10% of the total voting rights attached to all disinterested shares in the company;

(b)

a class of members agrees to the arrangement if—

(i)

at a meeting of the class of members summoned under section 670, members representing at least 75% of the voting rights of the class of members present and voting, in person or by proxy, agree to the arrangement; and

(ii)

the votes cast against the arrangement at the meeting do not exceed 10% of the total voting rights attached to all disinterested shares of the class in the company.

(3)

In subsection (2)—

disinterested shares

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) means—

(a)

in the case of a takeover offer, shares in the company other than those held—

(i)

by the offeror, or by a nominee on behalf of the offeror;

(ii)

by an associate of the offeror (except a person who falls within section 667(1)(a)(vii) or (b)(iii) or a person specified in subsection (4)); or

(iii)

by a person who is a party to an acquisition agreement within the meaning of section 667(5) with the offeror (except a person specified in subsection (4)), or by a nominee on behalf of the person under the acquisition agreement;

(b)

in the case of a general offer, shares in the company other than those held—

(i)

by a non-tendering member as defined by section 705(1), or by a nominee on behalf of the member;

(ii)

by an associate of such a non-tendering member (except a person who falls within section 667(1)(a)(vii) or (b)(iii) or a person specified in subsection (4));

(iii)

by a nominee on behalf of the repurchasing company;

(iv)

by an associate of such a repurchasing company (except a person who falls within section 667(2)(c) or a person specified in subsection (4)); or

(v)

by a person who is a party to such an acquisition agreement with such a non-tendering member or repurchasing company (except a person specified in subsection (4)), or by a nominee on behalf of the person under the acquisition agreement.

(4)

The person specified for the purposes of paragraph (a)(ii) and (iii) and (b)(ii), (iv) and (v) of the definition of ***disinterested shares*** in subsection (3) is a person declared under section 670(1)(b) to be a person specified under this section.

(5)

For the purposes of subsections (2) and (3)—

(a)

an offer to acquire shares in a company is a takeover offer if—

(i)

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

(ii)

the terms of the offer are the same—

(A)

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

(B)

where the offer relates to shares of different classes, in relation to all the shares of each class to which the offer relates; and

(b)

an offer under which consideration is provided for the cancellation of shares in a company is also a takeover offer if—

(i)

it is an offer under which consideration is provided for the cancellation of all the shares, or all the shares of any class, in the company, except—

(A)

those that, at the date of the offer, are held by the offeror;

(B)

those that are specified in the offer document as shares that are not to be cancelled under the offer; and

(C)

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

(ii)

the terms of the offer are the same—

(A)

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

(B)

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

(6)

In subsection (5)—

shares

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股份

) means shares, other than specified treasury shares, that have been allotted on the date of the offer.

(Amended 1 of 2025 s. 12)

(7)

In subsection (5)(a)(i) and (b)(i), a reference to shares that are held by an offeror—

(a)

includes shares that the offeror has contracted, unconditionally or subject to conditions being satisfied, to acquire; but

(b)

excludes shares that are the subject of a contract—

(i)

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

(ii)

entered into for no consideration and by deed, for consideration of negligible value, or for consideration consisting of a promise by the offeror to make the offer.

(8)

For the purposes of subsection (5)(a)(ii) and (b)(ii), even though, in relation to all the shares, or all the shares of a class of shares, to which an offer relates, there is a difference in the value of consideration offered for the shares allotted earlier as against the value of consideration offered for those allotted later, the terms of the offer are to be regarded as the same in relation to all the shares concerned if—

(a)

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

(b)

the difference in value of consideration merely reflects that difference in entitlement to dividend; and

(c)

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

(9)

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

(a)

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

(b)

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

(c)

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

(d)

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

(10)

Despite subsection (5), a takeover offer may include, among the shares to which it relates—

(Amended 1 of 2025 s. 12)

(a)

shares that will be allotted after the date of the offer but before a date specified in the offer; and

(b)

all or any specified treasury shares that are sold or transferred under section 272D(b) before a date specified in the offer.

(Amended 1 of 2025 s. 12)

(11)

In subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10), a reference to shares in a company includes—

(a)

debentures that are convertible into shares in the company; and

(b)

securities of the company that are convertible into, or entitle the holder to subscribe for, shares in the company.

Those subsections apply to those debentures or securities as if they were shares of a separate class of the company, and a reference to a member or a holder of shares in those subsections is to be read accordingly.

(12)

In subsections (6) and (10)—

specified treasury shares

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) means shares—

(a)

that are treasury shares held by the company on the date of the offer; or

(b)

that become treasury shares held by the company after the date of the offer but before a date specified in the offer.

(Added 1 of 2025 s. 12)

675.

Court's additional powers to facilitate reconstruction or amalgamation

(1)

This section applies if—

(a)

an application is made for the purposes of section 673(2) to sanction the arrangement or compromise; and

(b)

it is shown to the Court that—

(i)

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

(ii)

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

(2)

If the Court sanctions the arrangement or compromise, it may, by the order or a subsequent order, make provision for any or all of the following—

(a)

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

(b)

the allotting or appropriation by the transferee of any shares, debentures, policies, or other like interests in the transferee which, under the arrangement or compromise, are to be allotted or appropriated by the transferee to or for any person;

(c)

the continuation by or against the transferee of any legal proceedings pending by or against the transferor;

(d)

the dissolution, without winding up, of the transferor;

(e)

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

(f)

the transfer or allotting of any interest in property to any person concerned in the arrangement or compromise;

(g)

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

(3)

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

(a)

the property is, by virtue of the order, transferred to, and vests in, the transferee; and

(b)

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

(4)

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

(5)

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

(6)

If the order of the Court amends the company's articles, or any resolution or agreement to which section 622 applies, the office copy of that order delivered to the Registrar for registration for the purposes of subsection (5) must be accompanied by a copy of those articles, or the resolution or agreement, as amended.

(7)

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

(8)

In this section—

liabilities

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法律責任

) includes—

(a)

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

(b)

duties of any other description;

property

(

財產

) includes—

(a)

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

(b)

rights and powers of any other description;

transferee

(

受讓人

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

transferor

(

出讓人

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

676.

Court may order costs

(1)

This section applies in relation to an application made for the purposes of section 673(2) for an order of the Court sanctioning an arrangement that falls within section 674(2).

(2)

The Court may make any order that it thinks fit about the costs incurred or to be incurred by a member who dissents from the arrangement in opposing the application.

(3)

An order may require the company or any other party to the application to indemnify the member against the costs incurred or to be incurred by the member.

(4)

The Court 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, opposing the application.

(5)

The Court may only make an order about costs under this section against the member if the member's opposition to the application is frivolous or vexatious.

677.

Company's articles to be accompanied by order of Court

(1)

Every copy of the company's articles issued by the company after an order is made for the purposes of section 673 or 675 must be accompanied by a copy of the order, unless the effect of the order, and the effect of the arrangement or compromise to which the order relates, has been incorporated into the articles by alteration to those articles.

(2)

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

Division 3

Amalgamation of Companies within Group

678.

Interpretation

(1)

In this Division, a company is a wholly owned subsidiary of another body corporate if it has no members except—

(Amended 35 of 2018 s. 69)

(a)

that other body corporate;

(b)

a nominee of that other body corporate;

(c)

a wholly owned subsidiary of that other body corporate; or

(d)

a nominee of that subsidiary.

(Amended 35 of 2018 s. 69)

(2)

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

(3)

For the purposes of this Division, a resolution approving an amalgamation mentioned in section 680(1) or 681(1) is an amalgamation proposal that has been approved.

679.

Solvency statement

(1)

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

(a)

in the directors' opinion—

(i)

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

(ii)

the amalgamated company will be able to pay its debts as they fall due during the period of 12 months immediately after the date on which the amalgamation is to become effective; and

(b)

as at the date of the statement—

(i)

none of the following exists—

(A)

any floating charge created by the amalgamating company;

(B)

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

(ii)

there exists such a floating charge or other security, and each person entitled to the charge or security has consented in writing to the amalgamation proposal.

(2)

The time specified for the purposes of subsection (1) is—

(a)

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

(b)

if the amalgamation is to be approved by a written resolution, the circulation date of the resolution.

(3)

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

(4)

In subsection (2)(b)—

circulation date

(

傳閱日期

) has the meaning given by section 547(1).

680.

Vertical amalgamation

(1)

A company (

amalgamating holding company

), and one or more of its wholly owned subsidiaries, may amalgamate, and continue, as one company if—

(a)

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

(b)

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

(2)

The terms are—

(a)

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

(b)

that the articles of the amalgamated company will be the same as the articles of the amalgamating holding company;

(c)

that the directors of each amalgamating company—

(i)

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

(ii)

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

(d)

that the directors of each amalgamating company have confirmed that as at the date of the solvency statement made by them—

(i)

none of the following exists—

(A)

any floating charge created by the amalgamating company;

(B)

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

(ii)

there exists such a floating charge or other security, and each person entitled to the charge or security has consented in writing to the amalgamation proposal;

(e)

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

(3)

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

(4)

An approval for the purposes of subsection (1)(b) must be obtained by a special resolution of the company passed on a poll at a general meeting or by a written resolution.

(5)

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

681.

Horizontal amalgamation

(1)

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

(Amended 35 of 2018 s. 70)

(2)

The terms are—

(a)

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

(b)

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

(c)

that the directors of each amalgamating company—

(i)

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

(ii)

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

(d)

that the directors of each amalgamating company have confirmed that as at the date of the solvency statement made by them—

(i)

none of the following exists—

(A)

any floating charge created by the amalgamating company;

(B)

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

(ii)

there exists such a floating charge or other security, and each person entitled to the charge or security has consented in writing to the amalgamation proposal;

(e)

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

(3)

An approval for the purposes of subsection (1) must be obtained by a special resolution of the amalgamating company passed on a poll at a general meeting or by a written resolution.

(4)

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

682.

Directors of amalgamating company must notify secured creditors of proposed amalgamation

(1)

The directors of each amalgamating company under section 680 or 681 must comply with subsection (2)—

(a)

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

(b)

if the amalgamation is to be approved by a written resolution, on or before the circulation date of the resolution.

(2)

Those directors—

(a)

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

(b)

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

(3)

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

(4)

In subsection (1)(b)—

circulation date

(

傳閱日期

) has the meaning given by section 547(1).

683.

Director of amalgamating company must issue certificate on solvency statement

(1)

Every director of the amalgamating company who votes in favour of making a solvency statement must issue a certificate—

(a)

stating—

(i)

that, in the director's opinion, the conditions specified in section 679(1)(a)(i) and (ii) are satisfied; and

(ii)

the grounds for that opinion; and

(b)

stating that the condition specified in section 679(1)(b) is satisfied.

(2)

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

(3)

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

(4)

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

(a)

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

(b)

on summary conviction to a fine at level 6 and to imprisonment for 6 months.

684.

Registration of amalgamation

(1)

For the purpose of effecting an amalgamation, the following documents must be delivered to the Registrar for registration within 15 days after the approval of the amalgamation proposal—

(a)

the amalgamation proposal that has been approved;

(b)

every certificate required by section 683(1);

(c)

a certificate issued by the directors of each amalgamating company stating that the amalgamation has been approved in accordance with—

(i)

this Division; and

(ii)

the articles of the amalgamating company;

(d)

a notice of appointment of the directors of the amalgamated company;

(e)

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

(2)

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

(3)

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

(4)

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

685.

Effective date of amalgamation

(1)

A certificate of amalgamation issued under section 684(3) must specify a date as the effective date of the amalgamation.

(2)

If an amalgamation proposal specifies a date on which the amalgamation is intended to become effective, and that date is the same as or later than the date on which the Registrar registers the documents mentioned in section 684(1), that date must be specified in the certificate of amalgamation as the effective date of the amalgamation.

(3)

On the effective date of an amalgamation—

(a)

the amalgamation takes effect;

(b)

each amalgamating company ceases to exist as an entity separate from the amalgamated company; and

(c)

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

(4)

On and after the effective date of an amalgamation—

(a)

any proceedings pending by or against an amalgamating company may be continued by or against the amalgamated company;

(b)

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

(c)

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

(5)

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

686.

Court may intervene in amalgamation proposal in certain cases

(1)

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

(2)

Without limiting subsection (1), the Court may make an order—

(a)

directing that effect must not be given to the amalgamation proposal;

(b)

modifying the amalgamation proposal in the manner specified in the order; or

(c)

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

(3)

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

(4)

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

(5)

If the Registrar receives a notice under subsection (4), he or she must withhold registration of the documents mentioned in section 684(1) unless the Court otherwise directs or the application is dismissed by the Court or is withdrawn.

(6)

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

(7)

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

Division 4

Compulsory Acquisition after Takeover Offer

Subdivision 1

Preliminary

687.

Interpretation

In this Division—

nominee

(

代名人

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

688.

Application of Division to convertible securities and debentures

(1)

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

(2)

In this Division, a reference to 90% in number of the shares of any class is—

(a)

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

(b)

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

689.

Takeover offer

(1)

For the purposes of this Division, an offer to acquire shares in a company is a takeover offer if—

(a)

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

(b)

the terms of the offer are the same—

(i)

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

(ii)

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

(2)

In subsection (1)—

shares

(

股份

) means shares, other than specified treasury shares, that have been allotted on the date of the offer.

(Amended 1 of 2025 s. 13)

(3)

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

(a)

includes shares that the offeror has contracted, unconditionally or subject to conditions being satisfied, to acquire; but

(b)

excludes shares that are the subject of a contract—

(i)

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

(ii)

entered into for no consideration and by deed, for consideration of negligible value, or for consideration consisting of a promise by the offeror to make the offer.

(4)

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

(a)

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

(b)

the difference in value of consideration merely reflects that difference in entitlement to dividend; and

(c)

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

(5)

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

(a)

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

(b)

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

(c)

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

(d)

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

(6)

Despite subsection (1), a takeover offer may include, among the shares to which it relates—

(Amended 1 of 2025 s. 13)

(a)

shares that will be allotted after the date of the offer but before a date specified in the offer; and

(b)

all or any specified treasury shares that are sold or transferred under section 272D(b) before a date specified in the offer.

(Amended 1 of 2025 s. 13)

(7)

In subsections (2) and (6)—

specified treasury shares

(

指明庫存股份

) means shares—

(a)

that are treasury shares held by the company on the date of the offer; or

(b)

that become treasury shares held by the company after the date of the offer but before a date specified in the offer.

(Added 1 of 2025 s. 13)

690.

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

(1)

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

(a)

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

(b)

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

(c)

either—

(i)

the offer is published in the Gazette; or

(ii)

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

(2)

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

(3)

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

(4)

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

691.

Shares to which takeover offer relates

(1)

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

(2)

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

(a)

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

(b)

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

(3)

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

(4)

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

(a)

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

(b)

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

692.

Revised offer not to be regarded as fresh offer

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

(a)

the terms of the offer make provision for—

(i)

their revision; and

(ii)

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

(b)

the revision is made in accordance with that provision.

Subdivision 2

“Squeeze-out”

693.

Offeror may give notice to buy out minority shareholders

(1)

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

(2)

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

(3)

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

(4)

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

(5)

The Court may, on application under subsection (3) or (4), make the order if it is satisfied that—

(a)

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

(b)

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

(c)

the consideration offered is fair and reasonable.

(6)

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

(7)

If the Court makes an order authorizing the offeror to give notice to the holder of any shares, the offeror may give notice to that holder.

694.

Notice to minority shareholders

(1)

A notice to a holder of shares under section 693—

(a)

must be given in the specified form; and

(b)

must be given to the holder before whichever is the earlier of the following—

(i)

the end of the period of 3 months beginning on the day after the end of the offer period of the takeover offer;

(ii)

the end of the period of 6 months beginning on the date of the takeover offer.

(2)

The notice must be given to the holder of shares—

(a)

by delivering it personally to that holder in Hong Kong;

(b)

by sending it by registered post to that holder to—

(i)

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

(ii)

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

(c)

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

(3)

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

(a)

there is no address of the holder in Hong Kong registered in the books of the company; and

(b)

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

(4)

If the takeover offer gives the holder of shares a choice of consideration, the notice—

(a)

must give particulars of the choices;

(b)

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

(c)

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

(5)

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

(6)

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

(7)

For the purposes of subsection (5), consideration is to be regarded as being provided by a third party if it is made available to the offeror on terms that it is to be used by the offeror as consideration for the takeover offer.

695.

Offeror's right to buy out minority shareholders

(1)

This section applies if a notice is given under section 693 to the holder of any shares.

(2)

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

(3)

The Court may, on application by the holder made within 2 months after the date on which the notice was given, order that—

(a)

the offeror is not entitled and bound to acquire the shares; or

(b)

the offeror is entitled and bound to acquire the shares on the terms specified in the order.

(4)

For the purposes of subsection (2)—

(a)

if the takeover offer falls within section 694(4), the terms of the takeover offer are to be regarded as including the particulars and statements included in the notice for the purposes of that section;

(b)

if the takeover offer falls within section 694(5), the terms of the takeover offer are to be regarded as not including the option unless the offeror indicates otherwise in the notice; and

(c)

if, within 2 months after the date of the notice, the holder of the shares, by a letter sent to the offeror at an address specified in the notice, exercises the corresponding option offered under section 694(6), the terms of the takeover offer are to be regarded as including the corresponding option.

696.

Obligations of offeror with right to buy out minority shareholders

(1)

If, by virtue of section 695(2), an offeror is entitled and bound to acquire any shares in a company, the offeror must comply with subsection (3) within 2 months after the date of the notice.

(2)

If an application for the purposes of section 695(3) is pending at the end of those 2 months, the offeror must comply with subsection (3) as soon as practicable after the application has been disposed of, unless the Court orders that the offeror is not entitled and bound to acquire the shares.

(3)

The offeror—

(a)

must send to the company—

(i)

a copy of the notice under section 693; and

(ii)

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

(b)

must pay or transfer to the company the consideration for the shares to which the notice relates.

(4)

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

697.

Company must register offeror as shareholder

On receiving an instrument of transfer under section 696(3)(a)(ii), the company must register the offeror as the holder of the shares.

698.

Company must hold consideration paid by offeror on trust

(1)

On receiving any consideration under section 696(3)(b) in respect of any shares, the company must hold the consideration on trust for the person who, before the offeror acquired the shares, was entitled to them.

(2)

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

(3)

The company must not pay out or deliver the consideration to any person claiming to be entitled to it unless the person produces to the company—

(a)

the share certificate or other evidence of title to the shares; or

(b)

an indemnity to the company's satisfaction.

699.

Provisions supplementary to section 698

(1)

This section applies if—

(a)

the person entitled to the consideration held on trust under section 698(1) cannot be found;

(b)

the company has made reasonable enquiries at reasonable intervals to find that person; and

(c)

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

(2)

The company, or if the company is wound up, the liquidator, must sell—

(a)

any consideration other than cash; and

(b)

any benefit other than cash that has accrued from the consideration.

(3)

The company, or if the company is wound up, the liquidator, must pay into court a sum representing—

(a)

the consideration so far as it is cash;

(b)

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

(c)

any interest, dividend or other benefit that has accrued from the consideration.

(4)

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

(5)

The expenses of the following may be paid out of the consideration held on trust—

(a)

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

(b)

the sale mentioned in subsection (2);

(c)

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

Subdivision 3

"Sell-out"

700.

Offeror may be required to buy out minority shareholders

(1)

If, in the case of a takeover offer that does not relate to shares of different classes—

(a)

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

(b)

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

(Amended 1 of 2025 s. 14)

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

(2)

If, in the case of a takeover offer that relates to shares of different classes—

(a)

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

(b)

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

(Amended 35 of 2018 s. 71; 1 of 2025 s. 14)

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

(3)

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

(a)

the end of the offer period;

(b)

the date of the notice given to the holder under section 701.

(4)

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

(5)

In this section, a reference to shares controlled by an offeror is a reference to—

(a)

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

(b)

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

(c)

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

701.

Offeror must notify minority shareholders of right to be bought out

(1)

If the holder of any shares is entitled under section 700 to require an offeror to acquire the shares, the offeror must give notice to the holder of—

(a)

the holder's rights under that section; and

(b)

the period within which those rights are exercisable.

(2)

Subsection (1) does not apply if the offeror has given the holder a notice under section 693 that the offeror desires to acquire the shares.

(3)

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

702.

Notice to minority shareholders

(1)

A notice to a holder of shares under section 701—

(a)

must be given in the specified form; and

(b)

must be given to the holder within one month after the first day on which the holder of the shares is entitled under section 700 to require the offeror to acquire those shares.

(2)

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

(3)

The notice must be given to the holder of shares—

(a)

by delivering it personally to that holder in Hong Kong;

(b)

by sending it by registered post to that holder to—

(i)

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

(ii)

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

(c)

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

(4)

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

(a)

there is no address of the holder in Hong Kong registered in the books of the company; and

(b)

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

(5)

If the takeover offer gives the holder of shares a choice of consideration, the notice—

(a)

must give particulars of the choices;

(b)

must state that the holder may indicate the holder's choice in the letter requiring the offeror to acquire any shares under section 700; and

(c)

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

(6)

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

(7)

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

(8)

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

(9)

For the purposes of subsection (7), consideration is to be regarded as being provided by a third party if it is made available to the offeror on terms that it is to be used by the offeror as consideration for the takeover offer.

703.

Minority shareholders' right to be bought out by offeror

(1)

This section applies if the holder of any shares requires the offeror to acquire the shares under section 700.

(2)

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

(3)

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

(4)

For the purposes of subsection (2)—

(a)

if the takeover offer falls within section 702(5), the terms of the takeover offer are to be regarded as including the particulars and statements included in the notice for the purposes of that section;

(b)

if the takeover offer falls within section 702(7), the terms of the takeover offer are to be regarded as not including the option unless the offeror indicates otherwise in the notice under section 701; and

(c)

if, when requiring the offeror to acquire the shares, the holder of the shares exercises the corresponding option offered under section 702(8), the terms of the takeover offer are to be regarded as including the corresponding option.

704.

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

(1)

This section applies if—

(a)

the holder of any shares exercises rights given by section 700 to require an offeror to acquire the shares;

(b)

at the time when those rights are exercised, there are shares in the company—

(i)

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

(ii)

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

(c)

the requirement imposed by section 700(1)(b) or (2)(b) (as the case may be) would not be satisfied if those shares were not taken into account.

(2)

For the purposes of section 703, the holder of shares is to be regarded as not having exercised the rights to require the offeror to acquire the shares unless, at any time before the end of the period during which those rights are exercisable—

(a)

in the case of a takeover offer that does not relate to shares of different classes, the shares that the offeror has, by virtue of acceptances of the offer, acquired or contracted unconditionally to acquire, with or without any other shares in the company that the offeror has acquired, or has contracted unconditionally to acquire, represent at least 90% in number of the shares in the company (excluding treasury shares); or

(b)

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

(Amended 1 of 2025 s. 15)

Division 5

Compulsory Acquisition after General Offer for Share Buy-back

Subdivision 1

Preliminary

705.

Interpretation

(1)

In this Division—

nominee

(

代名人

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

non-tendering member

(

不售股成員

), in relation to a general offer, means a member who gives notice under section 711(1) that the member will not tender any shares to be bought back by the repurchasing company under the offer.

(2)

In this Division, a reference to shares that are held by a non-tendering member includes—

(a)

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

(b)

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

706.

Application of Division to convertible securities and debentures

(1)

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

(2)

In this Division, a reference to 90% in number of the shares of any class is—

(a)

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

(b)

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

707.

General offer

(1)

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

(a)

it is an offer to buy back all the shares, or all the shares of any class, in the company, except—

(i)

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

(ii)

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

(b)

the terms of the offer are the same—

(i)

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

(ii)

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

(2)

In subsection (1)—

shares

(

股份

) means shares, other than specified treasury shares, that have been allotted on the date of the offer.

(Amended 1 of 2025 s. 16)

(3)

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

(a)

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

(b)

excludes shares that are the subject of a contract—

(i)

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

(ii)

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

(4)

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

(a)

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

(b)

the difference in value of consideration merely reflects that difference in entitlement to dividend; and

(c)

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

(5)

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

(a)

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

(b)

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

(c)

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

(d)

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

(6)

Despite subsection (1), a general offer may include, among the shares to which it relates—

(Amended 1 of 2025 s. 16)

(a)

shares that will be allotted after the date of the offer but before a date specified in the offer; and

(b)

all or any specified treasury shares that are sold or transferred under section 272D(b) before a date specified in the offer.

(Amended 1 of 2025 s. 16)

(7)

In subsections (2) and (6)—

specified treasury shares

(

指明庫存股份

) means shares—

(a)

that are treasury shares held by the repurchasing company on the date of the offer; or

(b)

that become treasury shares held by the repurchasing company after the date of the offer but before a date specified in the offer.

(Added 1 of 2025 s. 16)

708.

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

(1)

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

(a)

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

(b)

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

(c)

either—

(i)

the offer is published in the Gazette; or

(ii)

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

(2)

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

(3)

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

(4)

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

709.

Shares to which general offer relates

(1)

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

(2)

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

(a)

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

(b)

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

(3)

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

(4)

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

(a)

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

(b)

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

(5)

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

710.

Revised offer not to be regarded as fresh offer

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

(a)

the terms of the offer make provision for—

(i)

their revision; and

(ii)

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

(b)

the revision is made in accordance with that provision.

711.

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

(1)

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

(2)

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

(3)

In this section—

authorizing meeting

(

授權會議

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

Subdivision 2

"Squeeze-out"

712.

Repurchasing company may give notice to buy out minority shareholders

(1)

This section applies if a member or members of the repurchasing company has or have given notice under section 711 that the member or members will not tender any shares to be bought back by that company under a general offer.

(2)

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

(3)

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

(4)

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

(5)

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

(6)

The Court may, on application under subsection (4) or (5), make the order if it is satisfied that—

(a)

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

(b)

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

(c)

the consideration offered is fair and reasonable.

(7)

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

(8)

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

713.

Notice to minority shareholders

(1)

A notice to a holder of shares under section 712—

(a)

must be given in the specified form; and

(b)

must be given to the holder before whichever is the earlier of the following—

(i)

the end of the period of 3 months beginning on the day after the end of the offer period of the general offer;

(ii)

the end of the period of 6 months beginning on the date of the general offer.

(2)

The notice must be given to the holder of shares—

(a)

by delivering it personally to that holder in Hong Kong;

(b)

by sending it by registered post to that holder to—

(i)

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

(ii)

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

(c)

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

(3)

The repurchasing company may apply to the Registrar for directions regarding the manner in which the notice is to be given to a holder of shares if—

(a)

there is no address of the holder in Hong Kong registered in the books of the company; and

(b)

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

(4)

If the general offer gives the holder of shares a choice of consideration, the notice—

(a)

must give particulars of the choices;

(b)

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

(c)

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

714.

Repurchasing company's right to buy out minority shareholders

(1)

This section applies if a notice is given under section 712 to the holder of any shares.

(2)

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

(3)

The Court may, on application by the holder made within 2 months after the date on which the notice was given, order that—

(a)

the repurchasing company is not entitled and bound to buy back the shares; or

(b)

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

(4)

For the purposes of subsection (2), if the general offer falls within section 713(4), the terms of the general offer are to be regarded as including the particulars and statements included in the notice for the purposes of that section.

715.

Obligations of repurchasing company with right to buy out minority shareholders

(1)

If, by virtue of section 714(2), a repurchasing company is entitled and bound to buy back any shares in the company, the company must comply with section 716 within 2 months after the date of the notice.

(2)

If an application for the purposes of section 714(3) is pending at the end of those 2 months, the repurchasing company must comply with section 716 as soon as practicable after the application has been disposed of.

716.

Repurchasing company must pay for shares to which notice relates

(1)

The repurchasing company must pay the consideration for any shares to which the notice under section 712 relates to the holder of the shares if that holder produces to the repurchasing company—

(a)

the share certificate or other evidence of title to the shares; or

(b)

an indemnity to the repurchasing company's satisfaction.

(2)

The repurchasing company must cancel any other shares to which the notice under section 712 relates and deposit the consideration for those shares into a separate interest-bearing bank account.

(3)

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

(4)

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

(a)

the share certificate or other evidence of title to the shares; or

(b)

an indemnity to the repurchasing company's satisfaction.

717.

Provisions supplementary to section 716

(1)

This section applies if—

(a)

the person entitled to the consideration held on trust under section 716(3) cannot be found;

(b)

the repurchasing company has made reasonable enquiries at reasonable intervals to find that person; and

(c)

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

(2)

The repurchasing company, or if the repurchasing company is wound up, the liquidator or provisional liquidator, must sell—

(a)

any consideration other than cash; and

(b)

any benefit other than cash that has accrued from the consideration.

(3)

The repurchasing company, or if the repurchasing company is wound up, the liquidator or provisional liquidator, must pay into court a sum representing—

(a)

the consideration so far as it is cash;

(b)

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

(c)

any interest, dividend or other benefit that has accrued from the consideration.

(4)

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

(5)

The expenses of the following may be paid out of the consideration held on trust—

(a)

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

(b)

the sale mentioned in subsection (2);

(c)

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

Subdivision 3

“Sell-out”

718.

Repurchasing company may be required to buy out minority

(1)

This section applies if a member or members of the repurchasing company has or have given notice under section 711 that the member or members will not tender any shares to be bought back by that company under a general offer.

(2)

If, in the case of a general offer that does not relate to shares of different classes—

(a)

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

(b)

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

(Amended 1 of 2025 s. 17)

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

(3)

If, in the case of a general offer that relates to shares of different classes—

(a)

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

(b)

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

(Amended 1 of 2025 s. 17)

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

(4)

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

(a)

the end of the offer period;

(b)

the date of the notice given to the holder under section 719.

(5)

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

(6)

In this section, a reference to shares controlled by a repurchasing company is a reference to any of the following shares (excluding treasury shares)—

(Amended 1 of 2025 s. 17)

(a)

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

(b)

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

(Amended 1 of 2025 s. 17)

(c)

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

719.

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

(1)

If the holder of any shares is entitled under section 718 to require a repurchasing company to buy back the shares, the repurchasing company must give notice to the holder of—

(a)

the holder's rights under that section; and

(b)

the period within which those rights are exercisable.

(2)

Subsection (1) does not apply if the repurchasing company has given the holder a notice under section 712 that it desires to buy back the shares.

(3)

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

720.

Notice to minority shareholders

(1)

A notice to a holder of shares under section 719—

(a)

must be given in the specified form; and

(b)

must be given to the holder within one month after the first day on which the holder of the shares is entitled under section 718 to require the repurchasing company to buy back those shares.

(2)

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

(3)

The notice must be given to the holder of shares—

(a)

by delivering it personally to that holder in Hong Kong;

(b)

by sending it by registered post to that holder to—

(i)

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

(ii)

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

(c)

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

(4)

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

(a)

there is no address of the holder in Hong Kong registered in the books of the company; and

(b)

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

(5)

If the general offer gives the holder of shares a choice of consideration, the notice—

(a)

must give particulars of the choices;

(b)

must state that the holder may indicate the holder's choice in the letter requiring the repurchasing company to buy back any shares under section 718; and

(c)

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

(6)

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

721.

Minority shareholders' right to be bought out by repurchasing company

(1)

This section applies if the holder of any shares requires the repurchasing company to buy back the shares under section 718.

(2)

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

(3)

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

(4)

For the purposes of subsection (2), if the general offer falls within section 720(5), the terms of the general offer are to be regarded as including the particulars and statements included in the notice for the purposes of that section.

Part 14

Remedies for Protection of Companies' or Members' Interests

(Format changes—E.R. 1 of 2013)

Division 1

Preliminary

722.

Interpretation

(1)

In this Part—

company

(

公司

) includes a non-Hong Kong company.

(2)

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

Division 2

Remedies for Unfair Prejudice to Members' Interests

723.

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.

724.

When Court may order remedies

(1)

The Court may exercise the power under section 725(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 may exercise the power under section 725(1)(b) and (2) if, on a petition by the Financial Secretary under section 879(3), 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 may exercise the power under section 725(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

(b)

an actual act or omission of the company (including one done or made on behalf of the company) was so prejudicial.

725.

Remedies that Court may order

(1)

The Court may—

(a)

for the purposes of section 724(1), make any order that it thinks fit for giving relief in respect of the matter mentioned in section 724(1)(a) or (b); and

(b)

for the purposes of section 724(2), make any order that it thinks fit for giving relief in respect of the matter mentioned in section 724(2)(a) or (b).

(2)

Without limiting subsection (1), the Court—

(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 724(1)(a) or (2)(a);

(B)

restraining the doing of the act mentioned in section 724(1)(b) or (2)(b); or

(C)

requiring the doing of an act that, as mentioned in section 724(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 any other 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 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 724(3), the Court 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.

726.

Alteration of articles by order of Court

(1)

This section applies if a company's articles are altered by an order under section 725.

(2)

The alteration has the same effect, and this Ordinance applies to the articles, 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, to alter the articles in a way that is inconsistent with the order.

(4)

Within 15 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.

727.

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—

(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 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.

Division 3

Remedies for Others' Conduct in relation to Companies etc.

728.

Application of section 729

(1)

Section 729 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 729 also applies if, in relation to a company—

(a)

a person had engaged, was engaging or was proposing to engage, before the commencement date of this section, in—

(i)

conduct that constituted or would constitute a contravention of the predecessor Ordinance and that would also constitute a contravention of this Ordinance;

(ii)

conduct that constituted or would constitute a default relating to a contravention of the predecessor Ordinance and that would also constitute the same default relating to a contravention of this Ordinance; or

(iii)

conduct that constituted or would constitute a breach specified in subsection (4); and

(b)

the engagement or proposal still subsists.

(3)

Section 729 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 date[a] of this section, to do an act or thing that the person was required by the predecessor Ordinance to do;

(b)

the person is also required by this Ordinance to do the act or thing; 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 articles.

(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)

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.

Editorial Note:

[a] Commencement date: 3 March 2014.

729.

Court may order remedies

(1)

The Court 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 728(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 728(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 may, on application by the Financial Secretary under section 879(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 728(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 728(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 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 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.

730.

Provisions supplementary to section 729

(1)

The Court 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 729(1) or (2).

(2)

The Court may discharge or vary an injunction granted under subsection (1) or section 729(1) or (2).

Division 4

Derivative Action for Remedies for Misconduct against Companies etc.

731.

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 any court.

732.

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 granted under section 733, 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 granted under section 733, 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 granted under section 733, 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 736, 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.

733.

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 may grant leave for the purposes of section 732(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 732(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 732(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 accordance with subsection (3), and the notice complies with subsection (4).

(2)

The Court may refuse to grant leave if it is satisfied that—

(a)

in the case of an application for leave to bring proceedings under section 732(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 732(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—

(a)

in the case of a company as defined by section 2(1), by leaving the notice at, or by sending the notice by post to, its registered office; or

(b)

in the case of a non-Hong Kong company, in a manner that the notice is sufficiently served on the company by virtue of section 803.

(4)

The written notice must state—

(a)

the member's intention to apply for leave for the purposes of section 732(1), (2) or (3) in respect of the company; and

(b)

the reasons for that intention.

(5)

The Court may grant leave to dispense with the service of a written notice for the purposes of subsection (1)(c).

734.

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 732(1) or (2);

(ii)

intervening in proceedings under section 732(3); or

(iii)

applying for leave for the purposes of section 732(1), (2) or (3);

(b)

is not a ground for the Court to refuse to grant leave for the purposes of section 732(1), (2) or (3); and

(c)

is not a ground for any 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 732(1), (2) or (3); or

(b)

an application for leave for the purposes of section 732(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.

735.

No discontinuance or settlement of proceedings without leave of Court

If proceedings are brought or intervened in under section 732(1), (2) or (3), the proceedings may only be discontinued or settled with the leave of the Court.

736.

Court may dismiss derivative proceedings brought by member under common law etc.

(1)

This section applies if—

(a)

after the Court grants leave to a member of a company, or of an associated company of a company, for the purposes of section 732(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 grants leave to a member of a company, or of an associated company of a company, for the purposes of section 732(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 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 given by the law.

737.

Court's general powers to order and direct

(1)

The Court may make any order, and give any direction, that it thinks fit in respect of—

(a)

any proceedings brought or intervened in under section 732(1), (2) or (3);

(b)

an application for leave for the purposes of section 732(1), (2) or (3);

(c)

a refusal to grant such leave; or

(d)

an order under section 736(2).

(2)

Without limiting subsection (1), the Court 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 directions 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 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 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.

738.

Court may order costs

(1)

The Court 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 732(1), (2) or (3); or

(ii)

an application for leave for the purposes of section 732(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 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.

Division 5

Members' Inspection of Company's Records

739.

Interpretation

In this Division—

document

(

文件

) has the meaning given by section 838(1);

record

(

紀錄

) has the meaning given by section 838(1).

740.

Court may order inspection of records or documents

(1)

On application by a required number of a company's members, the Court may make an order—

(a)

authorizing a person who is the applicant or one of the applicants to inspect any record or document of the company; or

(b)

authorizing a person who is not the applicant or one of the applicants to inspect any record or document of the company on behalf of the applicant or applicants.

(2)

The Court may make an order authorizing a person to inspect a record or document 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 makes an order authorizing a person to inspect a record or document, the person may, unless the Court otherwise orders, make copies of the record or document.

(4)

If the Court makes an order authorizing a person to inspect a record or document, 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 record or document to the person;

(b)

an order specifying the record or document 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 or, if the person is not the applicant, the applicant to disclose any information 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; or

(b)

at least 5 members of the company.

741.

Preservation of secrecy

(1)

If, on application by one or more members of a company, the Court makes an order under section 740(1) authorizing a person to inspect a record or document, the person may disclose any information obtained as a result of the inspection to a person who is an applicant.

(2)

The authorized person, or the applicant to whom the information was disclosed, must not, without the company's prior consent in writing, disclose any information obtained as a result of the inspection to a person who is not an applicant.

(3)

Despite subsection (2), the authorized person, or the applicant to whom the information was disclosed, may disclose such information 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 740(1) or (4); or

(c)

permitted in accordance with law or a requirement made under law.

(4)

If the Court makes an order under section 740(1) authorizing a person to inspect a record or document, the person, or the applicant to whom the information was disclosed, must not, unless the Court otherwise orders, use any information obtained as a result of the inspection for any purpose other than the purpose for which the inspection is applied for.

(5)

A person who contravenes subsection (2) or (4) 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.

742.

Legal professional privilege

Section 740, or an order made under it, does not authorize a person to inspect any record or document containing information that is subject to legal professional privilege.

743.

Protection of personal data

To avoid doubt, sections 740 and 741, or an order made under section 740, do not authorize the collection, retention or use of personal data in contravention of the Personal Data (Privacy) Ordinance (Cap. 486).

Part 15

Dissolution by Striking off or Deregistration

(Format changes—E.R. 1 of 2013)

Division 1

Striking off

Subdivision 1

Registrar's Power to Strike off Name of Company not in Operation or Carrying on Business

744.

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—

(i)

for a company other than a re-domiciled company—to each founder member whose name and address are known to the Registrar; and

(ii)

for a re-domiciled company—to each member of the company whose name and address are known to the Registrar.

(Replaced 14 of 2025 s. 53)

(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 Companies Register, and the company dissolved, at the end of 3 months after the date of the notice.

745.

Registrar must follow up under certain circumstances

(1)

This section applies if, within one month after sending a letter under section 744(1)—

(a)

the Registrar does not receive a reply to the letter; or

(b)

the Registrar receives a reply to the letter to the effect that the company is not in operation or carrying on business.

(2)

The Registrar must, within 30 days after the end of that one month—

(a)

subject to subsection (4), send to the company by registered post another letter—

(i)

referring to the letter sent under section 744(1); and

(ii)

stating that—

(A)

no reply to it has been received; or

(B)

the Registrar has received a reply to it to the effect that the company is not in operation or carrying on business; 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 Companies Register, and the company dissolved, at the end of 3 months after the date of the notice.

(3)

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—

(i)

for a company other than a re-domiciled company—to each founder member whose name and address are known to the Registrar; and

(ii)

for a re-domiciled company—to each member of the company whose name and address are known to the Registrar.

(Replaced 14 of 2025 s. 54)

(4)

The Registrar is not required to send a letter to the company under subsection (2)(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.

746.

Registrar may strike off company's name

(1)

After publishing a notice under section 744(3) or 745(2)(b), the Registrar may, unless cause is shown to the contrary, strike the company's name off the Companies 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 Companies Register.

(3)

On publication of the notice under subsection (2), the company is dissolved.

Subdivision 2

Striking off under Other Circumstances

747.

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 or provisional liquidator is acting; or

(ii)

the company's affairs are fully wound up; and

(c)

the returns required to be made by the liquidator or provisional 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 or provisional liquidator (if any), a notice that, unless cause is shown to the contrary, the company's name will be struck off the Companies 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—

(i)

for a company other than a re-domiciled company—to each founder member whose name and address are known to the Registrar; and

(ii)

for a re-domiciled company—to each member of the company whose name and address are known to the Registrar.

(Replaced 14 of 2025 s. 55)

(4)

A notice to be sent to a liquidator or provisional liquidator must be addressed to the liquidator or provisional liquidator at the addressee's last known address.

(5)

The Registrar is not required to send a notice to the company or the liquidator or provisional 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 or provisional liquidator (as the case may be) cannot be ascertained; or

(b)

the notice is unlikely to be received by the company or the liquidator or provisional 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 Companies 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 Companies Register.

(8)

On publication of the notice under subsection (7), the company is dissolved.

748.

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 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 Companies Register and the company dissolved.

(2)

If an order is made, the company is dissolved on the date of the order.

Division 2

Deregistration

749.

Interpretation

(1)

In this Division—

company

(

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) excludes—

(a)

a public 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 Ordinance (Cap. 41);

(Amended 12 of 2015 s. 167)

(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 750 is made.

(3)

The Financial Secretary may, by notice published in the Gazette, amend subsection (2).

750.

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;

(e)

the company's assets do not consist of any immovable property situate in Hong Kong; and

(f)

if the company is a holding company, none of its subsidiary's assets consist of any immovable property situate in Hong Kong.

(3)

An application—

(a)

must be in the specified form;

(b)

must be accompanied by the prescribed fee; and

(c)

must 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)

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.

Note—

Please also see section 873 which empowers the Registrar to require the production of records or documents, and the provision of information or explanation in respect of the records or documents,

for the purpose of enquiring into whether any act that would constitute an offence under subsection (6) has been done.

751.

Registrar may deregister company

(1)

On receiving an application under section 750, 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)

A company is deregistered on the date of publication of the notice under subsection (3).

(5)

On the deregistration of a company, the Registrar must give notice of the deregistration to the applicant, or to the person nominated in the application to be given the notice.

(6)

A company is dissolved on deregistration.

Division 3

Property of Dissolved Company and Other Miscellaneous Matters

752.

Dissolved company's property vested in Government

(1)

If a company is dissolved under this Part or section 226A, 227, 239 or 248 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), 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 Companies Register under—

(a)

Division 4; or

(b)

section 290 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

(3)

If any property or right is vested in the Government under subsection (1), the property or right remains subject to the liabilities imposed on the property or right by law and 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), 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 but 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.

753.

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 752(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 752(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 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 Government's title to the property or right must be disclaimed under subsection (2) or (3).

(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 752(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—

(a)

must register a notice of disclaimer;

(b)

must publish in the Gazette a copy of the notice; and

(c)

must 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.

754.

Effect of disclaimer

(1)

If the Registrar disclaims the Government's title to any property or right under section 753, the property or right is to be regarded as not having been vested in the Government under section 752(1).

(2)

A disclaimer—

(a)

terminates, with effect from 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.

755.

Court may make vesting order

(1)

On application by a person who—

(a)

claims an interest in any property or right disclaimed under section 753; or

(b)

is subject to a liability in respect of such property or right that is not discharged by the disclaimer,

the Court 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 thinks fit.

(3)

An order for the vesting of a property or right in, or its delivery to, a person subject to a liability mentioned in subsection (1)(b), or a trustee for the person, may only be made if it appears to the Court that it would be just to do so for the purpose of compensating the person in respect of the disclaimer.

(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.

756.

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.

757.

Registrar may act as dissolved company's or liquidator's representative

(1)

This section applies if—

(a)

a company has been dissolved under—

(i)

this Part;

(ii)

section 226A, 227, 239 or 248 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); or

(iii)

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 act, that is not discretionary, 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 or provisional 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 or provisional 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.

758.

Former director must keep dissolved company's books and papers for 6 years

(1)

If a company is dissolved under this Part or section 226A, 227, 239 or 248 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), 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.

(4)

If a person is charged with an offence under subsection (3), it is a defence to establish that the person had reasonable grounds to believe, and did believe, that a competent and reliable person—

(a)

was charged with the duty of ensuring that subsection (1) was complied with; and

(b)

was in a position to discharge that duty.

759.

Court's power to wind up dissolved companies

The Court's powers under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) to wind up a company are not affected by the fact that—

(a)

the company's name has been struck off the Companies Register under section 746 or 747 and the company is dissolved under that section; or

(b)

the company has been deregistered, and is dissolved, under section 751.

Division 4

Restoration to Companies Register

Subdivision 1

Administrative Restoration by Registrar

760.

Application to Registrar for restoration of company

(1)

This section applies to—

(a)

a company whose name—

(i)

has been struck off the Companies Register under section 746 or 747; or

(ii)

has been struck off the register under section 291 of the predecessor Ordinance; and

(b)

the company is dissolved under that section.

(2)

A person who was a director or member of the company may apply to the Registrar for the restoration of the company to the Companies Register.

(3)

An application must be made within 20 years after the date of the dissolution. 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 was a director or member of the company; and

(b)

that the conditions specified in section 761(2) are met.

(5)

The Registrar may accept the statement as sufficient evidence of the matters mentioned in subsection (4)(a) and (b).

761.

Conditions for granting application

(1)

The Registrar must not grant an application made under section 760 unless all the conditions specified in subsection (2), and any other conditions that the Registrar thinks fit, are met.

(2)

The conditions are—

(a)

that the company was, at the time its name was struck off the Companies Register, in operation or carrying on business;

(b)

that, 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 752(1), the Government has no objection to the restoration;

(Amended 35 of 2018 s. 72)

(c)

that 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; and

(Amended 35 of 2018 s. 72)

(d)

that 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, have been paid or reimbursed by the applicant.

(Added 35 of 2018 s. 72)

(3)

(Repealed 35 of 2018 s. 72)

762.

Registrar's decision on application

(1)

The Registrar must notify the applicant of the decision on an application made under section 760.

(2)

If the Registrar grants the application, the company is restored to the Companies 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.

763.

Registrar may restore company deregistered by mistake

(1)

The Registrar may, on his or her own initiative, restore a company to the Companies Register if satisfied that it has been deregistered, and is dissolved, under section 291AA of the predecessor Ordinance or section 751 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 Companies Register by publishing in the Gazette a notice declaring the restoration, and the restoration takes effect on the date of publication of the notice.

764.

Effect of restoration

(1)

If a company is restored to the Companies 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 may give directions, and make orders, as seem 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 Order of Court

765.

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 for the restoration of the company to the Companies 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 for the restoration of the company to the Companies 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 Companies Register under section 746, 747 or 748, and the company is dissolved under that section; or

(b)

a company has been deregistered, and is dissolved, under section 751.

(4)

An application to the Court for the restoration of the company to the Companies 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.

766.

When application must be made

(1)

Subject to subsections (2) and (4)—

(a)

an application under section 765(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 765(2) must be made within 20 years of the deregistration; and

(c)

an application under section 765(4) must be made within 20 years after the date of the dissolution.

(2)

An application under section 765 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 Companies Register under section 746 or 747, and the company is dissolved under that section;

(b)

an application has been made under section 760 for the restoration of the company to the Companies Register; and

(c)

the Registrar has refused the application.

(4)

An application under section 765(4) must be made—

(a)

within 20 years after the date of the dissolution or any further time that the Court allows on application by the applicant; or

(b)

if the period of 20 years has ended, within 28 days after the Registrar gives notification of the refusal under section 762(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.

767.

Court's decision on application

(1)

The Court may grant an application made under section 765(1) if satisfied that—

(a)

the company was, at the time the company's name or the company was struck off, in operation or carrying on business; or

(b)

it is otherwise just that the company be restored to the Companies Register.

(2)

The Court may grant an application made under section 765(2) if satisfied that it is just that the company be restored to the Companies Register.

(3)

The Court may grant an application made under section 765(4) if satisfied that—

(a)

in the case of a company whose name has been struck off the Companies Register—

(i)

the company was, at the time its name was struck off, in operation or carrying on business; or

(ii)

it is otherwise just that the company be restored to the Companies Register; or

(b)

in the case of a company that has been deregistered—

(i)

any of the requirements specified in section 750(2)(a), (b), (c), (d) or (e) was not met; or

(ii)

it is otherwise just that the company be restored to the Companies Register.

(4)

The Court must not grant an application made pursuant to section 766(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 must have regard to its power under section 768(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 grants an application made under section 765, 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 Companies Register under subsection (6), the Registrar must publish in the Gazette a notice of the restoration.

768.

Effect of restoration

(1)

If a company is restored to the Companies Register under section 767, it is to be regarded as having continued in existence as if it had not been dissolved.

(2)

The Court may give directions, and make orders, as seem 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 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 Companies 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 752(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.

Subdivision 3

Supplementary Provisions

769.

Company's name on restoration

If a company is restored to the Companies Register under this Division, it is restored under its former name.

770.

Company must change prohibited name

(1)

Subsection (2) applies if, had the company applied on the date of the restoration to be registered by the former name, section 100 would have prohibited the company from being registered by that name.

(2)

Within 28 days after the restoration, the company—

(a)

must by a special resolution change its name; and

(b)

must give notice in the specified form of the change to the Registrar.

(3)

If a company gives notice of a change of name under subsection (2)(b), the Registrar must, unless the company is prohibited by section 100 from being registered by the new name—

(a)

enter the new name on the Companies Register in place of the former name; and

(b)

issue a certificate of change of name.

(4)

The change of name has effect from the date on which the certificate of change of name is issued.

(5)

A change of name under this section does not affect any rights or obligations of the company or render defective any legal proceedings by or against it. Any legal proceedings that could have been commenced or continued by or against it by its former name may be commenced or continued by or against it by its new name.

(6)

If the 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.

(7)

In this section—

former name

(

前有名稱

), in relation to a company restored to the Companies Register under this Division, means the name that the company had immediately before it was dissolved.

771.

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

(1)

The Registrar may by notice in writing direct a company to change, within the period specified in the notice, a name under which the company is restored to the Companies Register under this Division if—

(a)

the name is, as at the time of the restoration, the same as or in the Registrar's opinion too like a name that appeared or should have appeared in the index of names kept under section 22C of the predecessor Ordinance or in the Index of Company Names; or

(b)

the name is, as at the time of the restoration, the same as or in the Registrar's opinion too like a name of a body corporate incorporated or established under an Ordinance.

(2)

A direction may only be given within 12 months after the restoration.

(3)

The Registrar may, before the end of the period specified in a notice given under subsection (1), by notice in writing extend the period.

(4)

If a company fails to comply with a direction within the period specified in the notice or extended under subsection (3), 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.

772.

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

(1)

This section applies if—

(a)

a company contravenes section 770(2) in relation to a name; or

(b)

the Registrar directs a company to change a name under section 771(1), and the company fails to comply with the direction within the period specified in the notice or, if the period is extended under section 771(3), within the extended period.

(Amended 14 of 2025 s. 56)

(2)

Without limiting section 770(6) or 771(4), the Registrar may change the name to—

(a)

in the case of an English name, a name that consists of the words "Company Registration Number" as its prefix, followed by the registration number of the company as stated in the certificate of incorporation or the certificate of re-domiciliation;

(b)

in the case of a Chinese name, a 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 or the certificate of re-domiciliation; or

(c)

in the case of a name consisting of both an English name and a Chinese name—

(i)

a new English name that consists of the words "Company Registration Number" as its prefix, followed by the registration number of the company as stated in the certificate of incorporation or the certificate of re-domiciliation; and

(ii)

a new Chinese 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 or the certificate of re-domiciliation.

(Amended 14 of 2025 s. 56)

(3)

The Registrar must enter the new name in the Companies Register in place of the former name.

(4)

The change of name has effect from the date on which the new name is entered in the Companies Register.

(5)

Within 30 days after the date of entering the new name in the Companies Register, the Registrar—

(a)

must notify the company in writing of—

(i)

the fact that the name of the company has been changed;

(ii)

the new name; and

(iii)

the date on which the change takes effect under subsection (3); and

(b)

must publish a notice of that fact, the new name and that date in the Gazette.

(6)

A change of name under this section does not affect any rights or obligations of the company or render defective any legal proceedings by or against it. Any legal proceedings that could have been commenced or continued by or against it by its former name may be commenced or continued by or against it by its new name.

773.

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 of the predecessor Ordinance or section 752(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 Companies Register under this Division or section 290 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

(Amended 35 of 2018 s. 73)

(2)

Subsections (3), (4), (5) and (6) apply if the company is restored to the Companies Register.

(3)

The restoration does not affect the disposition or dealing.

(4)

Subsection (3) does not limit the effect of the restoration in relation to any other property or right previously vested in or held on trust for the company.

(5)

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.

(6)

Subject to subsection (7), the Government must pay to the company—

(a)

if the Government 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.

(7)

There may be deducted from the amount payable under subsection (6) the Government's reasonable costs in connection with the disposition or dealing to the extent that the costs have not been paid to the Government as a condition of a restoration under section 762 or pursuant to a direction under section 768.

Part 16

Non-Hong Kong Companies

(Format changes—E.R. 1 of 2013)

Division 1

Preliminary

774.

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 Companies Register under section 782(5)(a) or 785(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 Accounting and Financial Reporting Council Ordinance (Cap. 588);

(Amended L.N. 66 of 2022)

(d)

a firm of solicitors; or

(Amended L.N. 66 of 2022)

(e)

a CPA firm as defined by section 2(1) of the Accounting and Financial Reporting Council Ordinance (Cap. 588),

(Added L.N. 66 of 2022)

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 Companies 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;

place of business

(

營業地點

) includes a share transfer office and a share registration office but excludes an office specified in subsection (3);

place of incorporation

(

成立為法團所在地方

)—see subsections (1A) and (1B);

(Added 14 of 2025 s. 57)

procedural regulations

(《

程序規例

》) means regulations made under section 805;

required details

(

所需細節

), in relation to an authorized representative, means—

(a)

the name and address in Hong Kong of the representative;

(Amended 35 of 2018 s. 74)

(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;

solicitor

(

律師

) means a person who is qualified to act as a solicitor under the Legal Practitioners Ordinance (Cap. 159).

(1A)

Subject to subsection (1B), the jurisdiction outside Hong Kong in which a non-Hong Kong company is incorporated and under the law of which it is registered as a company is the place of incorporation of the non-Hong Kong company.

(Added 14 of 2025 s. 57)

(1B)

If, at any time after the incorporation of a non-Hong Kong company, the non-Hong Kong company—

(a)

has transferred its domicile to a jurisdiction outside Hong Kong; and

(b)

is registered as a company under the law of that jurisdiction,

the jurisdiction under the law of which the non-Hong Kong company is currently so registered is the place of incorporation of the non-Hong Kong company.

(Added 14 of 2025 s. 57)

(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 notice published in the Gazette, amend subsection (3).

775.

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 notice published in the Gazette, amend subsection (2).

Division 2

Registration

776.

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 date of this Part;

(b)

a non-Hong Kong company that—

(i)

at that commencement date, has a place of business in Hong Kong established before the commencement date; and

(ii)

had not complied with section 333 of the predecessor Ordinance as in force immediately before that commencement date; and

(Amended 14 of 2025 s. 58)

(c)

a non-Hong Kong company whose registration is revoked under section 820F.

(Added 14 of 2025 s. 58)

(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 date of this Part, apply to the Registrar for registration as a registered non-Hong Kong company.

(3A)

A non-Hong Kong company falling within the description in subsection (1)(c) must, within one month after the revocation order made under section 820F takes effect, apply to the Registrar for registration as a registered non-Hong Kong company.

(Added 14 of 2025 s. 58)

(4)

An application under subsection (2), (3) or (3A)—

(Amended 14 of 2025 s. 58)

(a)

must be in the specified form;

(b)

must contain the particulars prescribed by procedural regulations;

(c)

must 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)

must be accompanied by the documents prescribed by procedural regulations; and

(e)

must be delivered to the Registrar.

(5)

If none of the non-Hong Kong company's domestic names is in characters of the Latin alphabet or in Chinese, an application under subsection (2), (3) or (3A) must also contain—

(Amended 35 of 2018 s. 75; 14 of 2025 s. 58)

(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), (3) or (3A), the company, every responsible person of the company, and every agent of the company who authorizes or permits 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.

(Amended 14 of 2025 s. 58)

777.

Registration of non-Hong Kong company

(1)

On receiving an application under section 776(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 776(5) to contain a certified translation of a domestic name, the Registrar must enter in the Companies Register, as a corporate name—

(a)

the non-Hong Kong company's domestic name in characters of the Latin alphabet, or that company's domestic name in Chinese, or both; and

(Amended 35 of 2018 s. 76)

(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 776(5), the Registrar must enter that translation in the Companies Register as a corporate name.

(4)

On registering a non-Hong Kong company under subsection (1), the Registrar—

(a)

must issue to the company a certificate of registration, with the Registrar's signature, certifying the registration; and

(b)

must register the application and accompanying documents.

Division 3

Addition, Change or Cessation of Corporate Name

778.

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 characters of the Latin alphabet 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.

(Amended 35 of 2018 s. 77)

(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—

(a)

containing the particulars of the cessation; and

(b)

where, after the cessation, the company no longer has a name entered in the Companies Register as a corporate name, also containing the following particulars—

(i)

at least one new domestic name in characters of the Latin alphabet or in Chinese; or

(Amended 35 of 2018 s. 77)

(ii)

the certified translation, in English or Chinese, of at least one domestic name.

(4)

Subsection (2) or (3) does not apply unless the registered non-Hong Kong company is registered in the Companies Register by the domestic name or a translation of it.

(5)

If—

(a)

a registered non-Hong Kong company does not have a corporate name in characters of the Latin alphabet, and the company adopts a certified translation, in English, of a domestic name, under which it is to carry on business in Hong Kong; or

(Amended 35 of 2018 s. 77)

(b)

a registered non-Hong Kong company does not have a corporate name in Chinese, and the company adopts a certified translation, in Chinese, of a domestic name, under which it is to carry on business in Hong Kong,

the company must, within one month after the date of the adoption, deliver to the Registrar for registration a return containing the particulars of the adoption and the certified translation of the domestic name.

(6)

If a translation of a domestic name of a registered non-Hong Kong company is entered in the Companies Register as a corporate name, and the company replaces the translation with another translation of the domestic name, under which it is to carry on business in Hong Kong, the company must, within one month after the date of the replacement, deliver to the Registrar for registration a return containing the particulars of the replacement and the certified translation of the domestic name.

(7)

If a translation of a domestic name of a registered non-Hong Kong company is entered in the Companies Register as a corporate name, and the translation ceases to 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 cessation, deliver to the Registrar for registration a return—

(a)

containing the particulars of the cessation; and

(b)

where, after the cessation, the company no longer has a name entered in the Companies Register as a corporate name, also containing the following particulars—

(i)

at least one new domestic name in characters of the Latin alphabet or Chinese; or

(Amended 35 of 2018 s. 77)

(ii)

the certified translation, in English or Chinese, of at least one domestic name.

(8)

A return under subsection (1), (2), (3), (5), (6) or (7)—

(a)

must be in the specified form; and

(b)

must be accompanied by the documents specified by the Registrar.

(9)

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 characters of the Latin alphabet nor in Chinese.

(Amended 35 of 2018 s. 77)

(10)

If a registered non-Hong Kong company contravenes subsection (1), (2), (3), (5), (6) or (7), the company, every responsible person of the company, and every agent of the company who authorizes or permits 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.

778A.

Supplementary provisions for section 778—where company incorporated outside Hong Kong ceases to be registered non-Hong Kong company because of registration under section 820C

(1)

This section applies if—

(a)

a company incorporated outside Hong Kong becomes a re-domiciled company (***re-domiciliation***); and

(b)

immediately before the re-domiciliation, the company is required, but has yet, to comply with a requirement under section 778 (***requirement***) to deliver a return to the Registrar for registration.

(2)

Despite the re-domiciliation—

(a)

the company is required to comply with the requirement in relation to the return; and

(b)

section 778(10) applies to a non-compliance with the requirement by the company,

as if the re-domiciliation had not taken place and the company were still a registered non-Hong Kong company.

(Added 14 of 2025 s. 59)

779.

Registration of corporate name

(1)

If the Registrar receives a return under section 778(1), (2), (3), (5), (6) or (7), the Registrar—

(a)

must make a note in the Companies Register to the effect that there is a change of corporate name;

(b)

(if the return is delivered to the Registrar under that section not because of section 778A) must issue to the company concerned a fresh certificate of registration containing the current corporate name; and

(Amended 14 of 2025 s. 60)

(c)

must register the return and accompanying documents.

(2)

If the Registrar receives a return under section 778(1), the Registrar must also enter in the Companies Register, as a corporate name, the new domestic name to which the return relates.

(Amended 14 of 2025 s. 60)

(3)

If the Registrar receives a return under section 778(2), and the return is not required by section 778(9) to contain a certified translation of a new domestic name, the Registrar must also enter in the Companies Register, as a corporate name—

(a)

the new domestic name to which the return relates; and

(Replaced 14 of 2025 s. 60)

(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 778(2), and the return contains a certified translation of a new domestic name for the purposes of section 778(9), the Registrar must also enter that translation in the Companies Register as a corporate name.

(5)

If the Registrar receives a return under section 778(3) or (7), and the return contains the particulars required by section 778(3)(b) or (7)(b), the Registrar must also enter in the Companies Register as a corporate name the new domestic name, or the certified translation of a domestic name, contained in the return.

(6)

If the Registrar receives a return under section 778(5) or (6), the Registrar must also enter in the Companies Register, as a corporate name, the certified translation of the domestic name contained in the return.

(7)

On a note being made under subsection (1)(a), a name entered in the Companies 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 Companies Register to that effect.

(8)

On an entry being made under subsection (2) or (3), a translation of a domestic name of the company concerned that is entered in the Companies 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 Companies Register to that effect.

(Amended 14 of 2025 s. 60)

Division 4

Regulation of Names Used by Registered Non-Hong Kong Companies to Carry on Business in Hong Kong

780.

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 state the reasons for serving the notice.

(3)

A notice for the purposes of subsection (1)(a) must be served on a registered non-Hong Kong company within 6 months beginning on the material date.

(4)

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 Companies Register under section 777 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 Companies Register under section 779 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 is entered in the Companies Register on a restoration of the company to the Companies Register, means the date of the restoration;

(d)

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 Companies Register as at the coming into operation 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;

(e)

in relation to a name that is entered in the Companies Register under section 782(5) or 785(5) as an approved name, means the date on which the certificate of registration was issued under that section; or

(f)

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.

781.

Effect of notice

(1)

If a registered non-Hong Kong company is served with a notice under section 780(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, every responsible person of the company, and every agent of the company who authorizes or permits 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.

782.

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 780(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 Companies 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 Companies 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 780(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 780(1), those proceedings may be commenced or continued by or against it by the name entered in the Companies Register under subsection (5)(a) as an approved name in relation to the corporate name.

783.

Withdrawal of notice

(1)

After a registered non-Hong Kong company is served with a notice under section 780(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 781(1) ceases to apply to the registered non-Hong Kong company.

(3)

If, after the notice is served, a name is entered in the Companies Register as an approved name in relation to the corporate name, the Registrar must, on withdrawing the notice—

(a)

make a note in the Companies 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.

784.

Appeal against decision to serve notice

Within 3 weeks after being served with a notice under section 780(1)(b) for a corporate name or for an approved name in relation to a corporate name, a registered non-Hong Kong company may appeal to the Administrative Appeals Board against the decision to serve the notice.

785.

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 Companies 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 Companies 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

786.

Company must keep authorized representative's required details registered in Companies Register

(1)

This section applies if—

(a)

a person is registered in the Companies Register as an authorized representative of a registered non-Hong Kong company;

(b)

the person ceases to be an authorized representative of the non-Hong Kong company; and

(c)

after the cessation, no person is registered in the Companies Register as an authorized representative of the non-Hong Kong company.

(2)

For the purposes of subsection (1)(b), it is irrelevant, that at the time of the cessation, the company is no longer a registered non-Hong Kong company by virtue of section 794(3) or 798(3).

(3)

Within one month after the person ceases to be an authorized representative of the non-Hong Kong company, that company must deliver to the Registrar for registration under section 791(1) a return in respect of another person as an authorized representative of the company.

(4)

Subsection (3) does not apply to the 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.

(5)

If a non-Hong Kong company contravenes subsection (3), the company, every responsible person of the company, and every agent of the company who authorizes or permits 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.

787.

Termination of authorization

(1)

A person registered in the Companies 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 Companies Register as an authorized representative of the company by sending to the person's address shown in the Companies 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)

Subsection (3) does not apply to the sender if, at the time when the notice is sent, the registered non-Hong Kong company has ceased to have a place of business in Hong Kong for at least 11 months.

(5)

A notification under subsection (3)—

(a)

must be in the specified form; and

(b)

must be accompanied by the documents prescribed by procedural regulations.

(6)

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).

(7)

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.

(8)

In this section, a reference to a registered non-Hong Kong company includes a non-Hong Kong company that is no longer a registered non-Hong Kong company by virtue of section 794(3) or 798(3).

787A.

Supplementary provisions for section 787—where company incorporated outside Hong Kong ceases to be registered non-Hong Kong company because of registration under section 820C

(1)

Subsections (2) and (3) apply if—

(a)

a company incorporated outside Hong Kong becomes a re-domiciled company (***re-domiciliation***);

(b)

a notice of termination has been sent under section 787(1) or (2) in relation to the company before the re-domiciliation; and

(c)

immediately before the re-domiciliation, the sender of the notice is required, but has yet, to comply with the requirement under section 787(3) (***requirement***).

(2)

Despite the re-domiciliation, the sender of the notice is required to comply with the requirement, as if the re-domiciliation had not taken place and the company were still a registered non-Hong Kong company.

(3)

If the sender is required to comply with the requirement because of subsection (2)—

(a)

section 787(7) does not apply; and

(b)

the termination takes effect on the re-domiciliation date.

(4)

Subsection (5) applies in any other case where there is a re-domiciliation.

(5)

A person—

(a)

who was registered in the Companies Register before the re-domiciliation as an authorized representative of the company concerned; and

(b)

who was an authorized representative of the company immediately before the re-domiciliation,

is no longer such an authorized representative once the re-domiciliation takes place, and the authorization ceases to have effect on the re-domiciliation date.

(Added 14 of 2025 s. 61)

Division 6

Returns and Accounts of Registered Non-Hong Kong Companies

788.

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 777(4)(a) or the predecessor Ordinance, a registered non-Hong Kong company must deliver to the Registrar a return for registration.

(2)

A return—

(a)

must be in the specified form;

(b)

must contain the particulars prescribed by procedural regulations; and

(c)

must be accompanied by the documents prescribed by procedural regulations.

(3)

If a registered non-Hong Kong company contravenes subsection (1), the company, every responsible person of the company, and every agent of the company who authorizes or permits 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.

788A.

Supplementary provisions for section 788—where company incorporated outside Hong Kong ceases to be registered non-Hong Kong company because of registration under section 820C

(1)

This section applies if—

(a)

a company incorporated outside Hong Kong becomes a re-domiciled company (***re-domiciliation***); and

(b)

immediately before the re-domiciliation, the company is required, but has yet, to comply with the requirement under section 788(1) (***requirement***) in relation to an anniversary mentioned in that section.

(2)

Despite the re-domiciliation—

(a)

the company is required to comply with the requirement in relation to the anniversary;

(b)

section 788(3) applies to the non-compliance with the requirement by the company;

(c)

section 788(4) applies to the conviction of an offence for the non-compliance with the requirement; and

(d)

section 788(5) applies to a failure to comply with an order made under section 788(4) (as applied by paragraph (c)),

as if the re-domiciliation had not taken place and the company were still a registered non-Hong Kong company.

(Added 14 of 2025 s. 62)

789.

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 788, 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, every responsible person of the company, and every agent of the company who authorizes or permits 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 a responsible person or an 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 responsible person 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.

(Amended 35 of 2018 s. 78)

(5)

If a registered non-Hong Kong company, or a responsible person or an agent of a registered non-Hong Kong company, fails to comply with an order under subsection (4), the company, or the responsible person 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.

(Amended 35 of 2018 s. 78)

(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.

789A.

Supplementary provisions for section 789—where company incorporated outside Hong Kong ceases to be registered non-Hong Kong company because of registration under section 820C

(1)

This section applies if—

(a)

a company incorporated outside Hong Kong becomes a re-domiciled company (***re-domiciliation***);

(b)

section 789(1) applied to the company before the re-domiciliation; and

(c)

a return is required to be delivered for registration under section 788 because of section 788A.

(2)

The company is required to comply with the requirement under section 789(2) (***requirement***) in relation to the return.

(3)

If there is a non-compliance with the requirement by the company in relation to the return—

(a)

section 789(3) applies to the non-compliance with the requirement;

(b)

section 789(4) applies to the conviction of an offence for the non-compliance; and

(c)

section 789(5) applies to a failure to comply with an order made under section 789(4) (as applied by paragraph (b)),

as if the re-domiciliation had not taken place and the company were still a registered non-Hong Kong company.

(Added 14 of 2025 s. 64)

790.

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 789, and it appears to the directors of the 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 company to which section 336(1) of the predecessor Ordinance or section 789(1)(a) applies, the law of its place of incorporation; or

(b)

in relation to the accounts of a company to which section 336(2) of the predecessor Ordinance or section 789(1)(b) applies—

(Amended 14 of 2025 s. 65)

(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 the company decide to revise any accounts under subsection (1), the company must, within 15 days 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 the company contravenes subsection (4), the company, every responsible person of the company, and every agent of the company who authorizes or permits 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.

(Amended 14 of 2025 s. 65)

791.

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, company secretary (or, where there are joint company secretaries, each of them) or authorized representatives of the company;

(c)

the particulars of the directors, company secretary (or, where there are joint company secretaries, each of them) or authorized representatives of the company delivered to the Registrar under this Part;

(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; or

(e)

the place of incorporation of the company.

(Added 14 of 2025 s. 66)

(3)

A return—

(a)

must be in the specified form;

(b)

must contain the particulars prescribed by procedural regulations; and

(c)

must be accompanied by the documents prescribed by procedural regulations.

(4)

If the registered non-Hong Kong company is not allowed under section 56(7)(b) to state in a return under this section that a director's correspondence address is changed to an address other than the address specified in section 56(7)(b)(i) or (ii), this section does not apply in relation to that change.

(5)

If a registered non-Hong Kong company contravenes subsection (1) in respect of a change specified in subsection (2)(a), the company, every responsible person of the company, and every agent of the company who authorizes or permits the contravention, commit an offence, and each is liable on conviction 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)

If a registered non-Hong Kong company contravenes subsection (1) in respect of a change specified in subsection (2)(b) or (c), the company, every responsible person of the company, and every agent of the company who authorizes or permits the contravention, commit an offence, and each is liable on conviction 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 registered non-Hong Kong company contravenes subsection (1) in respect of a change specified in subsection (2)(d), the company, every responsible person of the company, and every agent of the company who authorizes or permits the contravention, commit an offence, and each is liable on conviction 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.

(8)

If a registered non-Hong Kong company contravenes subsection (1) in respect of a change specified in subsection (2)(e), the company, every responsible person of the company, and every agent of the company who authorizes or permits the contravention, commit an offence, and each is liable on conviction 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.

(Added 14 of 2025 s. 66)

(Amended 14 of 2025 s. 66)

791A.

Supplementary provisions for section 791—where company incorporated outside Hong Kong ceases to be registered non-Hong Kong company because of registration under section 820C

(1)

This section applies if—

(a)

a company incorporated outside Hong Kong becomes a re-domiciled company (***re-domiciliation***); and

(b)

immediately before the re-domiciliation, the company is required, but has yet, to comply with the requirement under section 791(1) (***requirement***) in relation to a change specified in section 791(2).

(2)

Despite the re-domiciliation—

(a)

the company is required to comply with the requirement in relation to the change; and

(b)

section 791(5), (6), (7) or (8) (as the case requires) applies to the non-compliance with the requirement,

as if the re-domiciliation had not taken place and the company were still a registered non-Hong Kong company.

(Added 14 of 2025 s. 67)

Division 7

Other Obligations

792.

(Repealed 35 of 2018 s. 79)

793.

Registered non-Hong Kong company must notify Registrar of commencement of liquidation etc.

(1)

Within 15 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 15 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, every responsible person of the company, and every agent of the company who authorizes or permits 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.

794.

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—

(a)

must register the notice in relation to the registered non-Hong Kong company; and

(b)

must enter in the Companies Register a statement that the company has ceased to have a place of business in Hong Kong.

(3)

On the entry of the statement in the Companies Register under subsection (2)(b), the company is no longer a registered non-Hong Kong company.

(4)

If a registered non-Hong Kong company contravenes subsection (1), the company, every responsible person of the company, and every agent of the company who authorizes or permits 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.

795.

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 15 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—

(a)

must register the notice and document in relation to the registered non-Hong Kong company; and

(b)

must enter in the Companies Register a statement that the company has been dissolved.

(3)

On the entry of the statement in the Companies Register under subsection (2)(b), the company is no longer a registered non-Hong Kong company.

(4)

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.

(5)

If a person is charged with an offence under subsection (4), it is a defence to establish that the person did not know, and had no reason to believe, that the registered non-Hong Kong company was dissolved.

Division 8

Striking off

796.

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 Companies Register; or

(b)

if no required details of authorized representatives of the company are shown in the Companies 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 Companies 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.

797.

Registrar must follow up under certain circumstances

(1)

This section applies if, within one month after sending a letter under section 796(1)—

(a)

the Registrar does not receive a reply to the letter; or

(b)

the Registrar receives a reply to the letter to the effect that the registered non-Hong Kong company has ceased to have a place of business in Hong Kong.

(2)

The Registrar must, within 30 days after the end of that one month—

(a)

subject to subsection (4), send to the registered non-Hong Kong company by registered post another letter—

(i)

referring to the letter sent under section 796(1); and

(ii)

stating that—

(A)

no reply to it has been received; or

(B)

the Registrar has received a reply to it to the effect that the company has ceased to have a place of business in Hong Kong; 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 Companies 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.

(3)

A letter must be addressed—

(a)

to an authorized representative of the registered non-Hong Kong company whose required details are shown in the Companies Register; or

(b)

if no required details of authorized representatives of the company are shown in the Companies Register, to any place of business established by the company in Hong Kong.

(4)

The Registrar is not required to send a letter to the registered non-Hong Kong company under subsection (2)(a) if the Registrar is of the opinion that the letter is unlikely to be received by the company.

798.

Registrar may strike off registered non-Hong Kong company's name

(1)

After publishing a notice under section 796(3) or 797(2)(b), the Registrar may, unless cause is shown to the contrary, strike the registered non-Hong Kong company's name off the Companies 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 Companies Register.

(3)

On publication of the notice under subsection (2), the non-Hong Kong company is no longer a registered non-Hong Kong company.

(4)

Subject to subsection (5), 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)

Subsection (4) does not prohibit the non-Hong Kong company from having a place of business in Hong Kong that is established after the publication of the notice under subsection (2) if it applies for registration under section 776(2) within one month after establishing that place of business.

(6)

If a non-Hong Kong company contravenes subsection (4), the company, every responsible person of the company, and every agent of the company who authorizes or permits 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.

799.

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 Companies Register under section 798; 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 Companies 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 800(2) are met.

(5)

The Registrar may accept the statement as sufficient evidence of the matters mentioned in subsection (4)(a) and (b).

800.

Conditions for granting application

(1)

The Registrar must not grant an application made under section 799 unless all the conditions specified in subsection (2), and any other conditions that the Registrar thinks fit, are met.

(2)

The conditions are—

(a)

that the non-Hong Kong company had at the time of the application, and at any time within the period of 6 months before its name was struck off the Companies Register, a place of business in Hong Kong; and

(b)

that 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.

801.

Registrar's decision on application

(1)

The Registrar must notify the applicant of the decision on an application made under section 799.

(2)

If the Registrar grants the application, the non-Hong Kong company is restored to the Companies 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

802.

Registrar to keep index of directors

(1)

The Registrar must keep an index of every person who is a director of a registered non-Hong Kong company.

(2)

The particulars contained in the index must, in respect of each director, include—

(a)

the name and address of the director;

(b)

the latest particulars sent to the Registrar in respect of the director;

(c)

the name of each company or registered non-Hong Kong company of which the director can be identified as a director.

(3)

The index kept under this section must be open to the inspection of any person on payment of a prescribed fee.

(4)

Despite subsection (3), the following particulars contained in the index must not be open for inspection under that subsection—

(a)

the usual residential address of the director;

(b)

the full number of the identity card or passport of the director.

(5)

Subsection (4) does not affect the inclusion in the index of a correspondence address of the director, nor does it affect the inspection of the correspondence address under subsection (3), even if the correspondence address is the same as the usual residential address of the director.

803.

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 Companies Register; and

(b)

it is left at, or sent by post to, the representative's last known address in Hong Kong.

(Amended 35 of 2018 s. 80)

(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 Companies 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 Companies 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 Companies Register; or

(b)

where no such addresses are shown in the Companies 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.

(5)

Any process or notice required to be served on a non-Hong Kong company (other than a registered non-Hong Kong company) is sufficiently served—

(a)

in the case of a company that has established a place of business in Hong Kong, if it is left at, or sent by post to, the place of business; or

(b)

in the case of a company that has established, but no longer has, a place of business in Hong Kong—

(i)

if—

(A)

it is sent by registered post to the company's registered office (or the equivalent) in the company's place of incorporation; and

(B)

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; or

(ii)

where the address of such registered office, or principal place of business, cannot be ascertained but the company has had a place of business in Hong Kong within the previous 12 months, if it is left at, or sent by post to, the place of business in Hong Kong.

804.

Financial Secretary may make regulations

(1)

The Financial Secretary may make regulations providing for the application of this Ordinance in relation to the accounts that have been revised under section 790.

(2)

The 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 company incorporated outside Hong Kong to which section 790 applies to take the steps specified in the regulations in relation to the accounts that have been revised; and

(Amended 14 of 2025 s. 68)

(c)

apply this Ordinance to the accounts that have been revised subject to such additions, exceptions and modifications as are specified in the regulations.

(3)

The regulations may provide that any of the following is an offence, punishable by a fine or imprisonment, or both—

(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)

The maximum fine that may be prescribed for an offence committed wilfully is $300,000 and the maximum imprisonment is 12 months. The maximum fine that may be prescribed for an offence not committed wilfully is $300,000. In addition, in the case of a continuing offence, a further fine not exceeding $2,000 for each day during which the offence continues may be prescribed.

(5)

The regulations may provide for defences to any such offence.

805.

Financial Secretary may make regulations

(1)

The Financial Secretary may make regulations prescribing—

(a)

the particulars to be contained in an application under section 776(2) or (3);

(b)

the documents to accompany an application under section 776(2) or (3);

(c)

the documents to accompany a notification under section 787(3);

(d)

the particulars to be contained in a return under section 788(1) or 791(1); and

(e)

the documents to accompany a return under section 788(1) or 791(1).

(2)

The Financial Secretary may make regulations—

(a)

providing that an application under section 776(2) or (3), or a return under section 778(2), may contain a certified translation of a domestic name of the non-Hong Kong company; and

(b)

providing for the procedures and requirements for the purpose.

(3)

Subsection (2) does not apply to an application or return that is required by section 776(5) or 778(9) to contain a certified translation of a domestic name.

805A.

Requirement to disclose non-Hong Kong company's name etc.

(1)

The Financial Secretary may make regulations to require non-Hong Kong 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 a non-Hong Kong company;

(b)

may make provision as to the manner in which any prescribed information is to be displayed, stated or provided; and

(c)

may exempt a non-Hong Kong company from any requirement of the regulations made under subsection (1).

(3)

The regulations may provide that, for the purposes of any requirement to disclose a non-Hong Kong 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.

(Added 35 of 2018 s. 81)

805B.

Criminal consequences of failure to make required disclosures

Regulations made under section 805A may provide that—

(a)

if a non-Hong Kong 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 a 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.

(Added 35 of 2018 s. 81)

Part 17

Companies not Formed, but Registrable, under this Ordinance

(Format changes—E.R. 1 of 2013)

Division 1

Preliminary

806.

Interpretation

In this Part—

constitutional document

(

章程文件

), 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

807.

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 that complies with section 810(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.

808.

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.

809.

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.

810.

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; and

(Amended 35 of 2018 s. 82)

(c)

for the adjustment, among the contributories, of their rights.

(3)

For the purposes of subsection (1), it is irrelevant whether the resolution is passed before, on or after the commencement date[e] of this Division.

Editorial Note:

[e] Commencement date: 3 March 2014.

811.

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.

812.

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

813.

Application of Division

This Division applies if an eligible company is registered under this Part as an unlimited company or a company limited by guarantee.

814.

Status, property, rights and liabilities of eligible company

(1)

On being issued with a certificate of registration under section 812, 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.

815.

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.

816.

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 that complies with section 810(2).

817.

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.

(3)

Subject to subsections (5) and (6), so much of sections 89 and 91 as relate to the matters specified in subsection (4) applies to an alteration (so far as applicable) if the eligible company, had it been formed under this Ordinance, would have been a private company.

(4)

The matters specified for the purposes of subsection (3) are—

(a)

matters consequential on the passing of a resolution for an alteration under section 89; and

(b)

an application to the Court for the cancellation of an alteration of a private company's objects.

(5)

A reference in section 89(7) to a copy of the company's articles as altered is to be read as a copy of the articles substituted for a non-statutory constitutional document of the eligible company under this section.

(6)

On the delivery to the Registrar under section 89 of a copy of the company's articles substituted for a non-statutory constitutional document of the eligible company or on the date when the alteration is no longer liable to be cancelled by order of the Court, whichever is the later—

(a)

the articles apply to the company in the same manner as if it were a private company registered under this Ordinance with the articles; and

(b)

the non-statutory constitutional document ceases to apply to the company.

(7)

An alteration may be made under subsection (1) with or without an alteration of the eligible company's objects under section 89.

818.

This Ordinance applies to eligible company

(1)

Subject to section 819, 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.

819.

Exceptions to section 818(1)

(1)

The eligible company may not adopt as its articles any or all of the provisions of the model articles prescribed under section 78, unless those provisions are adopted by special resolution.

(2)

Subject to section 820, the eligible company does not have any power to alter a provision in an Ordinance relating to the company.

820.

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 17A

Re-domiciled Companies

(Part 17A added 14 of 2025 s. 69)

Division 1

Preliminary

820A.

Interpretation

In this Part—

application date

(

申請日

), in relation to a non-HK corporation, means the date on which the corporation makes an application under section 820B;

certificate of re-domiciliation

(

遷冊證明書

) means a certificate issued under section 820C(5)(c);

information

(

資料

) includes particulars;

intended RC

(

籌劃中公司

), in relation to an application made under section 820B by a non-HK corporation, means the company that the corporation is intended to become by registering under section 820C(1);

non-HK corporation

(

非香港法團

) means a body corporate that is a company incorporated outside Hong Kong;

place of incorporation

(

成立地

), in relation to a body corporate, means—

(a)

the jurisdiction outside Hong Kong in which the body corporate is incorporated and under the law of which it is registered as at the application date; or

(b)

if the body corporate has, after its incorporation, transferred its domicile to a jurisdiction outside Hong Kong, and is registered as a company under the law of that jurisdiction as at the application date—that jurisdiction;

re-domiciliation date

(

遷冊日

), in relation to a body corporate, means the date on which a certificate of re-domiciliation is issued to the body corporate;

re-domiciliation form

(

遷冊表格

), in relation to a body corporate, means the re-domiciliation form delivered by the corporation to the Registrar under section 820B(2)(a).

Division 2

Registration

820B.

Application requirements

(1)

A non-HK corporation may apply to the Registrar for registration under section 820C(1) as—

(a)

a public company limited by shares;

(b)

a private company limited by shares;

(c)

a public unlimited company with a share capital; or

(d)

a private unlimited company with a share capital.

(2)

The application must be made by the non-HK corporation (***applicant***) by delivering to the Registrar—

(a)

a re-domiciliation form in the specified form; and

(b)

a copy of the proposed articles.

(3)

The re-domiciliation form delivered to the Registrar under subsection (2)(a)—

(a)

must contain—

(i)

the information and statements specified in Schedule 6A; and

(ii)

a statement of compliance certifying—

(A)

that all of the requirements in this section and Schedules 6A, 6B and 6C that are applicable to the application for registration of the applicant (***applicable requirements***) have been complied with; and

(B)

that the information and statements contained in the form are accurate and consistent with those in the proposed articles;

(b)

must be signed by one of the directors of the applicant; and

(c)

must be accompanied by the documents specified in Schedule 6C.

(4)

The Registrar may accept a statement of compliance as sufficient evidence that all of the applicable requirements have been complied with.

(5)

In this section—

proposed articles

(

擬用章程細則

) means the articles of association that the members of the applicant have resolved to be adopted as the articles of association of the intended RC with effect from the date on which it is registered under section 820C(1).

820C.

Consideration of application and registration by Registrar

(1)

On an application made under section 820B by a non-HK corporation (***applicant***), and on payment of the fee prescribed for the registration, the Registrar may register the applicant as—

(a)

a public company limited by shares;

(b)

a private company limited by shares;

(c)

a public unlimited company with a share capital; or

(d)

a private unlimited company with a share capital.

(2)

The Registrar must refuse to register an applicant under subsection (1) if any of the requirements mentioned in section 820B that are applicable to the application is not complied with.

(3)

The Registrar must refuse to register an applicant under subsection (1) if the Registrar is of the opinion that the intended RC is likely to be used for an unlawful purpose or for a purpose contrary to public interest.

(4)

The Registrar may require an applicant to provide any further documents or information that is, in the Registrar's opinion, necessary for considering the application made under section 820B.

(5)

On registering an applicant under subsection (1), the Registrar must also—

(a)

register the re-domiciliation form;

(b)

register the document delivered to the Registrar by the applicant under section 820B(2)(b); and

(c)

issue a certificate to the applicant certifying that the applicant is registered under subsection (1) as a limited company or an unlimited company (as the case requires).

(6)

A registration under subsection (1) begins to have effect on the date of issue of the certificate of re-domiciliation.

(7)

On the date on which a certificate of re-domiciliation is issued to a body corporate registered as a company under subsection (1), the articles contained in the document registered under subsection (5)(b) becomes the articles of association of the registered company.

(8)

A certificate of re-domiciliation is conclusive evidence that the body corporate to which the certificate is issued is registered under subsection (1).

820D.

Effect of registration under section 820C

(1)

The fact that a body corporate is registered under section 820C(1)—

(a)

does not have the effect of creating a new legal entity;

(b)

does not affect—

(i)

the identity or continuity of the body corporate as a body corporate registered in its place of incorporation;

(ii)

any contract made, resolution passed or other thing done by or in relation to the body corporate; and

(iii)

any function, property, right, privilege, obligation or liability acquired, accrued or incurred by or to the body corporate; and

(c)

does not render defective any legal proceedings commenced or continued by or against the body corporate.

(2)

To avoid doubt, on or after the re-domiciliation date, any legal proceedings that could have been commenced by or against the body corporate may be commenced or continued by or against the re-domiciled company.

(3)

To avoid doubt, with effect from the re-domiciliation date, all property of the body corporate is the property of the re-domiciled company.

(4)

For tax purposes, this section does not have the effect of transferring any assets of the body corporate or changing the beneficial ownership of any of those assets.

(5)

For a body corporate that was a registered non-Hong Kong company immediately before the re-domiciliation date, its registration under Part 16 ceases to have effect on that date.

820E.

Deregistration in place of incorporation

(1)

This section applies to a body corporate to which a certificate of re-domiciliation is issued under section 820C(5)(c).

(2)

As soon as practicable after the re-domiciliation date, the body corporate must take all reasonable steps to procure its deregistration in its place of incorporation.

(3)

Within 120 days after the re-domiciliation date (***specified period***), the body corporate—

(a)

must be deregistered in its place of incorporation; and

(b)

must submit to the Registrar a document evidencing the deregistration to the satisfaction of the Registrar.

(4)

If the document mentioned in subsection (3)(b) is in a language other than the English language and the Chinese language, the document must be accompanied by a certified translation of the document in the English language or the Chinese language.

(5)

On an application made by the body corporate, the Registrar may extend the specified period subject to any conditions the Registrar considers appropriate.

(6)

In this section—

deregister

(

撤銷註冊

), in relation to a body corporate, means to cease to have a registration under the law of its place of incorporation relating to the incorporation or domicile of the body corporate in that place.

820F.

Revocation of registration under this Ordinance

(1)

This section applies if the Registrar is satisfied that there is sufficient evidence to show that a re-domiciled company—

(a)

has failed to comply with section 820E(2); or

(b)

has failed to comply with section 820E(3)(a) or (b) or (4) within the period specified in section 820E(3) or, if the specified period is extended under section 820E(5), the extended period.

(2)

Subject to subsections (3) and (5), after the expiry of the period specified under subsection (4), the Registrar may by order revoke the registration of the re-domiciled company under this Ordinance.

(3)

If the Registrar intends to make an order under subsection (2) (***revocation order***) in relation to a re-domiciled company, the Registrar must give the company a written notice informing the company of the Registrar's intention to revoke the registration.

(4)

The notice must specify a period of not less than 30 days within which the company may make any written representation to the Registrar.

(5)

If the Registrar receives, within the period specified under subsection (4), any representation made by the company, the Registrar must consider the representation.

(6)

If a revocation order is made under this section, the Registrar must, as soon as practicable after the order is made—

(a)

cause a copy of the revocation order to be published in the Gazette; and

(b)

cause a copy of the order to be served on the body corporate concerned.

(7)

The revocation order takes effect on the date on which a copy of it is published under subsection (6)(a).

(8)

A decision of the Registrar under this section to revoke the registration of a re-domiciled company under this Ordinance is final.

(9)

The fact that the registration of a body corporate is revoked under this section does not affect any liability of an officer or a member of the body corporate and any such liability may be enforced as if the registration had not been revoked.

Division 3

Miscellaneous or Related Matters

820G.

Delivery of director's written consent

(1)

A consent given for the purposes of section 4(1)(b)(ii) of Schedule 6B in relation to an application made under section 820B by a body corporate must be delivered in the specified form to the Registrar for registration within 15 days after the re-domiciliation date.

(2)

If subsection (1) is contravened, the re-domiciled company concerned, and every specified person, commit an offence and each is liable on conviction to a fine at level 4 and, in the case of a continuing offence, to a further fine of $700 for each day during which the offence continues.

(3)

In any proceedings against a director of the re-domiciled company under this section, it is a defence to establish that the director took all reasonable steps to secure compliance with subsection (1).

(4)

In this section—

specified person

(

指明人士

), in relation to a re-domiciled company, means—

(a)

every director of the re-domiciled company who has signed the re-domiciliation form; or

(b)

every other person who is a responsible person of the company.

820H.

Reporting duty of re-domiciled companies after registration under section 820C

(1)

This section applies to a body corporate that is registered under section 820C(1)(a), (b), (c) or (d).

(2)

Within 15 days after the re-domiciliation date, the re-domiciled company concerned must deliver to the Registrar for registration a return that complies with subsection (3).

(3)

A return—

(a)

must be in the specified form;

(b)

must include a statement of share capital, as at the re-domiciliation date, that complies with section 201; and

(c)

must state the following particulars relating to the members of the re-domiciled company—

(i)

if the company is not a listed company—

(A)

the number of issued shares held by each member of the company in relation to each class of shares as at the re-domiciliation date;

(B)

the name and address of each member; and

(ii)

if the company is a listed company—

(A)

the number of issued shares held by each specified member of the company in relation to each class of shares as at the re-domiciliation date;

(B)

the percentage of issued shares held by each specified member of the company in relation to each class of shares as at that date;

(C)

the name and address of each specified member of the company.

(4)

In subsection (3)(c)(ii), a reference to a specified member of a re-domiciled company is, in relation to a class of shares, a reference to a member of the company who holds at least 5% of the issued shares in that class.

(5)

If a re-domiciled company contravenes subsection (2), the company, and every responsible person of the company, commit an offence, and each is liable on conviction 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 re-domiciled company fails to deliver a return that complies with subsection (3) within 15 days after the re-domiciliation date (***failure***), the Court may, on application of the company or a responsible person of the company, extend the period for delivery of the return by a period determined by the Court.

(7)

The Court may not extend a period under subsection (6) unless it is satisfied that—

(a)

the failure was accidental or due to inadvertence; or

(b)

it is just and equitable to extend the period.

(8)

If the Court extends the period for delivery of a return—

(a)

any liability already incurred by the company or a responsible person of the company for an offence under subsection (5) is extinguished; and

(b)

subsection (2) has effect as if the reference to 15 days were a reference to the extended period.

Part 18

Communications to and by Companies

(Format changes—E.R. 1 of 2013)

Division 1

Preliminary

821.

Interpretation

(1)

In this Part—

address

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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 or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) 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 or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) 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; but

(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.

822.

Minimum period specified for purposes of sections 828(3), 831(4), 833(6) and 833A(10)

(Amended 1 of 2025 s. 18)

(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 828(3), 831(4), 833(6) and 833A(10).

(Amended 1 of 2025 s. 18)

(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.

823.

Period specified for purposes of sections 828(7)(a), 831(7)(a) and 833(12)(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 828(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 831(7)(a) and 833(12)(b).

(2)

The period is the period set out in subsection (3), (4) or (5).

(3)

If that other person is not a company, the period set out for the purposes of subsection (2) 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) 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)

If the articles, instrument or agreement does not specify the period, the period set out for the purposes of subsection (2) is 48 hours.

(6)

In calculating a period of hours mentioned in subsection (5), any part of a day that is not a business day is to be disregarded.

824.

Time specified for purposes of sections 828(7)(b), 829(5)(a), 831(7)(b) and 832(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 828(7)(b) and 829(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 831(7)(b) and 832(5)(a).

(2)

The time is whichever is the later of the following—

(a)

the second business day after the day on which the document or information is sent or supplied;

(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.

825.

Address specified for purposes of sections 831(3)(b)(iii) and 832(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 831(3)(b)(iii) and 832(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 company 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 company secretaries.

(4)

If that other person is a company and is not a person covered by subsection (3), 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.

826.

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

827.

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

828.

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 to be 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 822.

(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 823 after it is sent or supplied, unless the contrary is proved;

(b)

where the document or information is sent or supplied by post, at the time specified in section 824, unless the contrary is proved; or

(c)

where the document or information is sent or supplied by hand, at the time when the document or information is delivered.

829.

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 824, unless the contrary is proved; or

(b)

where the document or information is sent or supplied by hand, at the time when the document or information is delivered.

830.

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

831.

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 to be 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 825; 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 822.

(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 823 after it is sent or supplied, unless the contrary is proved;

(b)

where the document or information is sent or supplied by post, at the time specified in section 824, unless the contrary is proved; or

(c)

where the document or information is sent or supplied by hand, at the time when the document or information is delivered.

832.

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 825.

(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 company 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 824, unless the contrary is proved; or

(b)

where the document or information is sent or supplied by hand, at the time when the document or information is delivered.

833.

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 to be regarded under subsection (4) or (5) or section 833A(2) or (4) 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)

subject to section 833B(1), the company has notified that other person of the matters specified in subsection (8); 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 on—

(Amended 1 of 2025 s. 19)

(A)

the date on which the notification under paragraph (c) is sent to that other person; or

(B)

if paragraph (c) does not apply because of section 833B(1)—the date on which the document or information is first made available on the website.

(Amended 1 of 2025 s. 19)

(4)

For the purposes of subsection (3)(a)(i), a person who is a member of the company is, subject to section 833B(2), to be 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—

(Amended 1 of 2025 s. 19)

(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)

subject to section 833B(1), 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 on the date on which the request was sent; and

(Amended 1 of 2025 s. 19)

(c)

subject to section 833B(1), the request—

(Amended 1 of 2025 s. 19)

(i)

stated clearly the effect of a failure to respond within those 28 days; and

(ii)

was sent at least 12 months after any 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, subject to section 833B(2), to be 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—

(Amended 1 of 2025 s. 19)

(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)

subject to section 833B(1), 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 on the date on which the request was sent; and

(Amended 1 of 2025 s. 19)

(c)

subject to section 833B(1), the request—

(Amended 1 of 2025 s. 19)

(i)

stated clearly the effect of a failure to respond within those 28 days; and

(ii)

was sent at least 12 months after any 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 822.

(7)

For the purposes of subsection (3)(c), if the applicable provision specifies the time by which or the period within which the notification is to be sent, the notification must be sent by that time or within that period.

(8)

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.

(9)

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.

(10)-(11)

(Repealed 1 of 2025 s. 19)

(12)

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 823 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).

(13)

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.

833A.

Communication by means of website regarded, on one-off notification, as having been agreed to

(1)

Subsection (2)—

(a)

applies for the purposes of section 833(3)(a)(i); and

(b)

applies if the person referred to in section 833(3)(a)(i) is a member of the company referred to in that section.

(2)

Subject to section 833B(2), the person is to be regarded as having agreed that the document or information (referred to in section 833(3)(a)(i)) may be sent or supplied by the company to the person by making it available on a website if—

(a)

the articles of the company contain a provision to the effect that documents or information generally may be so sent or supplied by the company to its members; and

(b)

subject to section 833B(1), the company has individually sent to the person a one-off notification that complies with subsection (5) and (if applicable) subsection (6).

(3)

Subsection (4)—

(a)

applies for the purposes of section 833(3)(a)(i); and

(b)

applies if the person referred to in section 833(3)(a)(i) is a debenture holder of the company referred to in that section.

(4)

Subject to section 833B(2), the person is to be regarded as having agreed that the document or information (referred to in section 833(3)(a)(i)) 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 (as defined by section 833(13)) 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; and

(b)

subject to section 833B(1), the company has individually sent to the person a one-off notification that complies with subsection (5) and (if applicable) subsection (6).

(5)

The one-off notification specified for the purposes of subsections (2)(b) and (4)(b) must contain the following matters—

(a)

the arrangements under which documents or information generally may be sent or supplied by the company to its members or debenture holders (as the case requires) by making them available on a website;

(b)

the address of the website;

(c)

the place on the website where those documents or information may be accessed;

(d)

how to access those documents or information;

(e)

a statement of—

(i)

the person's right to request documents or information to be sent or supplied in electronic form under section 833C; and

(ii)

the person's right to request documents or information to be sent or supplied in hard copy form under section 837.

(6)

Also, the one-off notification must contain an invitation specified in subsection (7) if the person—

(a)

has not agreed generally that any document or information may be sent or supplied in electronic form by the company to the person for the purposes of section 831(3)(a);

(b)

has agreed generally that any document or information may be sent or supplied in electronic form by the company to the person for the purposes of section 831(3)(a) but the agreement has been revoked under section 831(4); or

(c)

has not specified an address to which any document or information may be sent or supplied by electronic means to the person for the purposes of section 831(3)(b)(i).

(7)

The invitation specified for the purposes of subsection (6) is an invitation to the person—

(a)

to agree generally that any document or information may be sent or supplied in electronic form by the company to the person for the purposes of section 831(3)(a); and

(b)

to specify an address to which any document or information may be sent or supplied by electronic means to the person for the purposes of section 831(3)(b)(i).

(8)

Subsection (9) applies if an agreement is regarded under subsection (2) or (4) as having been given by the person.

(9)

Section 833(3)(c) does not apply in relation to the person if—

(a)

the company is a listed company; or

(b)

where the company is an unlisted company—

(i)

the person has agreed that the document or information may be sent or supplied by the company to the person by making it available on a website without any notification under section 833(3)(c); and

(ii)

the person has not revoked the agreement.

(10)

The person has not revoked the agreement for the purposes of subsection (9)(b)(ii) unless the person has given the company a notice of revocation of not less than the period specified in section 822.

(Added 1 of 2025 s. 20)

833B.

Cases where notifications and requests not required, and communication by means of website not regarded as having been agreed to, for purposes of sections 833 and 833A

(1)

Sections 833(3)(c), (4)(b) and (c) and (5)(b) and (c) and 833A(2)(b) and (4)(b) do not apply in relation to the person referred to in section 833(3)(a)(i) if—

(a)

the person—

(i)

where the person is not a company—

(A)

has not agreed that the document or information may be sent or supplied to the person in electronic form for the purposes of section 831(3)(a)(i); or

(B)

has not specified an address to which the document or information may be sent or supplied to the person for the purposes of section 831(3)(b)(i)(A); or

(ii)

where the person is a company—

(A)

has not so agreed;

(B)

has not specified such an address; or

(C)

is not regarded under this Ordinance as having so agreed or is not regarded under this Ordinance as having specified such an address; and

(b)

any document or information has been sent or supplied, in hard copy form, by the company to the person by post to an address specified for the purposes of section 832(2)(b), and it has been returned by the post office as undeliverable at the address.

(2)

For the purposes of sections 833(4) and (5) and 833A(2) and (4), the person is not to be 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)

in the case of section 833(4), except where section 833(4)(b) does not apply because of subsection (1), it is proved that the person has not received the request under section 833(4)(b);

(b)

in the case of section 833(5), except where section 833(5)(b) does not apply because of subsection (1), it is proved that the person has not received the request under section 833(5)(b);

(c)

in the case of section 833A(2), except where section 833A(2)(b) does not apply because of subsection (1), it is proved that the person has not received the one-off notification under section 833A(2)(b); and

(d)

in the case of section 833A(4), except where section 833A(4)(b) does not apply because of subsection (1), it is proved that the person has not received the one-off notification under section 833A(4)(b).

(Added 1 of 2025 s. 20)

833C.

Communication by means of website: right to request document or information in electronic form

(1)

This section applies if—

(a)

a document or information is sent or supplied by a company to a person for the purposes of an applicable provision by making it available on a website; and

(b)

the person is a member or debenture holder of the company.

(2)

The person may request the company to send or supply the document or information in electronic form to an address specified by the person in the request if the request is made within 28 days after the date the document or information is regarded under section 833(12)(b) as having been received by the person.

(3)

The company must, in accordance with a request made under subsection (2), send or supply the document or information in electronic form to the person 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 person—within 7 days after the date of receiving the request.

(4)

Subsection (3) does not apply if the person has not specified an address in the request under subsection (2).

(5)

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

(Added 1 of 2025 s. 20)

834.

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.

835.

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 is required to 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.

836.

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.

837.

Member or debenture holder may require hard copy

(1A)

This section applies if a document or information is authorized or required to be sent or supplied by a company to a member or debenture holder under this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

(Added 35 of 2018 s. 83)

(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, within 7 days after the date of receiving the request.

(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.

Part 19

Investigations and Enquiries

(Format changes—E.R. 1 of 2013)

Division 1

Preliminary

838.

Interpretation

(1)

In this Part—

agent

(

代理人

), in relation to a company, includes—

(a)

a banker or solicitor of the company; and

(b)

a person, whether an officer of the company or not, who is engaged as an auditor of the company;

authorized institution

(

認可機構

) has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155);

books

(

簿冊

) includes accounts and accounting information, however compiled or stored, and whether or not recorded in a legible form;

delegate

(

獲轉授人

) —

(a)

in relation to an inspector, means a person to whom the inspector has delegated any power under section 850(1);

(b)

in relation to the Financial Secretary, means a person to whom the Financial Secretary has delegated any power under section 870;

(c)

in relation to the Registrar, means a public officer to whom the Registrar has delegated any power under section 874;

document

(

文件

) means—

(a)

any register, books or tape recording;

(b)

any input or output, in whatever form, into or from an information system; and

(c)

any other document or similar material (whether produced mechanically, electronically, magnetically, optically, manually or by any other means);

information

(

資料

) includes—

(a)

data, text, images, sound codes, computer programmes, software and databases; and

(b)

any combination of the things mentioned in paragraph (a);

inspector

(

審查員

) means—

(a)

a person appointed under section 840 or 841 to investigate a company's affairs; or

(b)

a person appointed under section 853 to continue an investigation;

officer

(

高級人員

), in relation to a body corporate, means a director, manager or company secretary of, or any other person involved in the management of, the body corporate;

record

(

紀錄

) means any record of information (however compiled or stored) and includes—

(a)

any books, deed, contract, agreement, voucher and receipt;

(b)

any document or other material used with or produced by an information system;

(c)

any information that is recorded otherwise than in a legible form but is capable of being reproduced in a legible form;

(d)

any document, disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of other equipment) of being reproduced; and

(e)

any film (including a microfilm), disc, tape or other device in which visual images are embodied so as to be capable (with or without the aid of other equipment) of being reproduced.

(2)

For the purposes of this Part, a body corporate is an associated body corporate of a company if—

(a)

the body corporate and the company are members of the same group of companies; or

(b)

the body corporate and the company are substantially controlled by the same person.

Division 2

Investigation of Company's Affairs by Inspectors

Subdivision 1

Preliminary

839.

Interpretation

In this Division—

company

(

公司

) —

(a)

in section 840, includes a registered non-Hong Kong company;

(b)

in section 841, includes a non-Hong Kong company;

final report

(

最終報告

) means the final report mentioned in section 856;

interim report

(

中期報告

) means the interim report mentioned in section 855;

investigation

(

調查

) means an investigation into a company's affairs under section 840 or 841.

Subdivision 2

Appointment by Financial Secretary of Inspectors to Investigate Company's Affairs

840.

Appointment of inspector on application by company or members

(1)

The Financial Secretary may, on application by a company, appoint a person to investigate the company's affairs if the company has by special resolution declared that the company's affairs ought to be so investigated.

(2)

The Financial Secretary may also appoint a person to investigate a company's affairs—

(a)

for a company having a share capital, on application by—

(i)

at least 100 members; or

(ii)

members holding at least 10% of the shares issued (excluding treasury shares); or

(Amended 1 of 2025 s. 21)

(b)

for a company not having a share capital, on application by at least 10% in number of the persons on the company's register of members.

(3)

An application for the purposes of subsection (1) or (2) must be supported by the evidence required by the Financial Secretary to show that the applicant has good reason for requesting the investigation.

(4)

The Financial Secretary must not appoint a person under subsection (1) or (2) to investigate a company's affairs unless the Financial Secretary is satisfied that it is in the public interest to do so.

(5)

The Financial Secretary may, before making an appointment under subsection (1) or (2), require an applicant for an appointment under subsection (1) or (2) to give security for the payment of the expenses of the investigation, in an amount specified by the Financial Secretary.

841.

Appointment of inspector on Court's or Financial Secretary's initiative

(1)

The Financial Secretary must appoint a person to investigate a company's affairs if the Court by order declares that the company's affairs ought to be so investigated.

(2)

The Financial Secretary may appoint a person to investigate a company's affairs if it appears to the Financial Secretary that there are circumstances suggesting that—

(a)

the company was formed for a fraudulent or unlawful purpose;

(ab)

the company's registration under section 820C(1) was sought or obtained for a fraudulent or unlawful purpose;

(Added 14 of 2025 s. 70)

(b)

the company's affairs are being or have been conducted—

(i)

in a manner unfairly prejudicial to the interests of its members generally or of one or more members;

(ii)

with intent to defraud its creditors or the creditors of any other person; or

(iii)

for any other fraudulent or unlawful purpose;

(Amended 14 of 2025 s. 70)

(c)

the persons concerned with the formation of the company have, in relation to the formation, engaged in fraud, misfeasance or other misconduct towards it, its members or its creditors;

(Replaced 14 of 2025 s. 70)

(d)

(if the company is a re-domiciled company) the persons involved in seeking or obtaining the registration under section 820C(1) for the company have, in relation to the registration, engaged in fraud, misfeasance or other misconduct towards it, its members or its creditors; or

(Added 14 of 2025 s. 70)

(e)

the persons concerned with the management of the company's affair have, in relation to the management, engaged in fraud, misfeasance or other misconduct towards it, its members or its creditors.

(Added 14 of 2025 s. 70)

(3)

The Financial Secretary must not appoint a person under subsection (2) to investigate a company's affairs unless the Financial Secretary is satisfied that it is in the public interest to do so.

(4)

The Financial Secretary may appoint a person under subsection (2) to investigate a company's affairs even though the company is in the course of being wound up voluntarily.

842.

Notice of appointment as inspector to be delivered to Registrar

(1)

A person who is appointed as an inspector under section 840 or 841 must deliver a notice of the appointment to the Registrar for registration.

(2)

The notice must be delivered to the Registrar within 15 days after the date of the appointment and must be in the specified form.

Subdivision 3

Financial Secretary's Powers to Give Directions to Inspectors

843.

General power of Financial Secretary to give directions regarding investigation

(1)

The Financial Secretary may give directions to an inspector regarding an investigation.

(2)

The Financial Secretary may give directions under this section—

(a)

on the Financial Secretary's own initiative; or

(b)

at the request of the inspector.

(3)

The Financial Secretary may vary or revoke any directions given under this section.

844.

Financial Secretary may give directions regarding subject matter of investigation etc.

(1)

Without limiting section 843, the Financial Secretary may give directions to an inspector with respect to any or all of the following—

(a)

the terms or subject matter of the investigation (whether by reference to a specified area of a company's operation, a specified transaction, a specified period of time or otherwise);

(b)

the matters the inspector must take into account or must not take into account in conducting the investigation;

(c)

the steps the inspector must take or must not take in conducting the investigation.

(2)

Without limiting section 843, the Financial Secretary may also give directions to an inspector to require that the interim report or final report of the investigation—

(a)

is to include the inspector's opinion with respect to a specified matter;

(b)

is not to make reference to a specified matter;

(c)

is to be made in a specified form or manner; or

(d)

is to be completed by a specified date.

(3)

In this section—

specified

(

指明

) means specified in directions given under this section.

845.

Financial Secretary may give directions to terminate or suspend investigation

(1)

Without limiting section 843, the Financial Secretary may, at any time before the completion of an investigation, direct the inspector—

(a)

to terminate the investigation; or

(b)

to suspend the investigation for a period as specified by the Financial Secretary.

(2)

If the inspector is appointed under section 841(1), the Financial Secretary must not give directions under subsection (1)(a) unless—

(a)

it appears to the Financial Secretary that—

(i)

matters have come to light in the course of the investigation which suggest that a criminal offence under the laws of Hong Kong has been committed; and

(ii)

those matters have been referred to a law enforcement agency; or

(b)

the giving of the directions is approved by the Court.

Subdivision 4

Inspectors' Powers

846.

Inspector may require production of records and documents etc.

(1)

An inspector appointed to investigate a company's affairs may, by notice in writing, require any of the persons specified in subsection (2) to do any or all of the following—

(a)

produce, within the time and at the place specified in the notice, any record or document specified in the notice that—

(i)

is or may be relevant to the investigation; and

(ii)

is in the person's custody or power;

(b)

take all reasonable steps to preserve the record or document before it is produced to the inspector;

(c)

attend before the inspector at the time and place specified in the notice, and answer any question, whether on oath or otherwise, relating to any matter under investigation that the inspector may raise with the person;

(d)

answer any question relating to any matter under investigation that is specified in the notice;

(e)

give the inspector all other assistance in connection with the investigation that the person is reasonably able to give.

(2)

The persons are—

(a)

the company;

(b)

an officer or former officer of the company;

(c)

an agent or former agent of the company;

(d)

a person whom the inspector has reasonable grounds to believe—

(i)

to be in possession of any record or document that contains, or is likely to contain, information relevant to the investigation; or

(ii)

otherwise to be in possession of that information.

(3)

An inspector must not require an authorized institution to produce any record or document, or disclose any information, relating to the affairs of a customer of the institution under subsection (1) unless—

(a)

the inspector has reasonable grounds to believe that the customer may be able to provide information relevant to the investigation; and

(b)

the inspector is satisfied that the production or disclosure is necessary for the purposes of the investigation and so certifies in writing.

(4)

In subsection (1)(b), a reference to preserving a record or document includes preventing a person from—

(a)

removing, disposing of or destroying the record or document;

(b)

erasing, adding to or altering in any other manner an entry or other particulars contained in the record or document; or

(c)

interfering in any other manner with, or causing or permitting any other person to interfere with, the record or document.

(5)

An inspector may administer an oath to any person for the purposes of subsection (1)(c).

847.

Inspector may require production of director's accounts

(1)

If an inspector appointed to investigate a company's affairs has reasonable grounds to believe that a director or former director of the company maintains or has maintained an account specified in subsection (2), the inspector may, by notice in writing, require the director or former director to produce to the inspector all documents relating to the account that are in the possession, or under the control, of the director or former director.

(2)

The account is one of whatever description maintained by the director or former director (whether alone or jointly with any other person) with a bank, deposit-taking company or similar financial institution (whether in Hong Kong or elsewhere), into or out of which there has been paid—

(a)

any emolument, retirement benefit or compensation in respect of the directorship, particulars of which are not contained in the notes to the financial statements of the company for any financial year, contrary to section 383;

(b)

any loan or quasi-loan in favour of the director or former director, or any money that has resulted from or has been used in the financing of any dealing in favour of the director or former director, particulars of which are not contained in the notes to the financial statements of the company for any financial year, contrary to section 383; or

(c)

any money that has been in any way connected with any misconduct of the director or former director (whether fraudulent or not) towards the company or its members.

848.

Provisions supplementary to sections 846 and 847: powers to require explanation etc.

(1)

If a person produces a record or document in compliance with a requirement imposed under section 846 or 847, the inspector may—

(a)

make copies, or otherwise record the details, of the record or document; and

(b)

by notice in writing, require the person to provide any information or explanation in respect of the record or document.

(2)

If a person gives any answer or provides any information or explanation in compliance with a requirement imposed under subsection (1) or section 846, the inspector may, by notice in writing, further require the person to verify, within the time specified in that further requirement, the answer, information or explanation by a statutory declaration.

(3)

If a person does not give any answer or provide any information or explanation in compliance with a requirement imposed under subsection (1) or section 846 for the reason that the answer, information or explanation is not within the person's knowledge or in the person's possession, the inspector may, by notice in writing, further require the person to verify, within the time specified in that further requirement, that reason and fact by a statutory declaration.

(4)

A statutory declaration mentioned in subsection (2) or (3) may be taken by the inspector.

849.

Inspector may exercise powers in relation to associated body corporate

If an inspector appointed to investigate a company's affairs considers it necessary for the purposes of the investigation, the inspector may also exercise any or all of the powers under sections 846, 847 and 848 in relation to an associated body corporate of the company, as if the references to a company in those sections were references to an associated body corporate.

850.

Delegation of powers by inspector

(1)

An inspector appointed to investigate a company's affairs may delegate in writing any or all of the powers conferred under sections 846, 847 and 848 to another person.

(2)

An inspector may delegate powers under subsection (1) in relation to the company or an associated body corporate of the company.

(3)

If 2 or more inspectors are appointed to investigate a company's affairs, the power under subsection (1) is exercisable by each of them.

Subdivision 5

Resignation, Removal and Replacement of Inspectors

851.

Resignation of inspector

An inspector may resign by notice in writing to the Financial Secretary.

852.

Revocation of appointment of inspector by Financial Secretary

The Financial Secretary may revoke the appointment of an inspector by notice in writing to the inspector.

853.

Appointment of replacement inspector

(1)

If an inspector dies or resigns, or an inspector's appointment is revoked, the Financial Secretary may appoint another person to continue the investigation.

(2)

For the purposes of this Division (except this section), a person appointed to continue an investigation under subsection (1)—

(a)

is to be regarded as having been appointed under the provision of this Division under which the former inspector was appointed; and

(b)

is subject to any direction given to the former inspector under this Division that has not been revoked.

854.

Former inspector must hand over documents etc.

(1)

This section applies to—

(a)

an inspector to whom the Financial Secretary has given a direction to terminate the investigation under section 845(1)(a); or

(b)

a person—

(i)

who has resigned as an inspector; or

(ii)

whose appointment as an inspector has been revoked.

(2)

The inspector or person must produce any document that the inspector or person has obtained or generated during the course of the investigation to—

(a)

the Financial Secretary; or

(b)

if directed by the Financial Secretary—

(i)

a person appointed to continue the investigation under section 853(1); or

(ii)

a person referred to in section 881(2)(a) or (b).

(3)

The inspector or person must also, if directed by the Financial Secretary, inform—

(a)

the Financial Secretary;

(b)

a person appointed to continue the investigation under section 853(1); or

(c)

a person referred to in section 881(2)(a) or (b),

of any matter that came to the inspector's or person's knowledge as a result of the investigation.

(4)

A document mentioned in subsection (2) must be produced in a form as directed by the Financial Secretary.

Subdivision 6

Reports by Inspectors

855.

Interim report to be made by inspector etc.

(1)

An inspector—

(a)

must, if directed by the Financial Secretary, prepare an interim report on the investigation; and

(b)

may at any time prepare an interim report on the investigation if the inspector considers it appropriate to do so.

(2)

If an inspector is directed under section 845(1)(a) to terminate an investigation, any direction previously given by the Financial Secretary referred to in subsection (1)(a) ceases to have effect.

(3)

An interim report must be delivered to the Financial Secretary within the time directed by the Financial Secretary or, in the absence of directions, within a reasonable time after it is prepared.

(4)

An inspector must, within a reasonable time after the delivery of an interim report to the Financial Secretary, deliver to the Registrar for registration a notice of that fact in the specified form.

(5)

Irrespective of whether an interim report has been or will be prepared, an inspector—

(a)

may, at any time in the course of the investigation, inform the Financial Secretary of any matter that comes to the inspector's knowledge as a result of the investigation; and

(b)

must inform the Financial Secretary of any matter that comes to the inspector's knowledge as a result of the investigation, if directed to do so by the Financial Secretary.

856.

Final report to be made by inspector etc.

(1)

An inspector must, on the completion of the investigation, prepare a final report on the investigation.

(2)

An inspector who is directed under section 845(1)(a) to terminate an investigation must still prepare a final report on the investigation if directed to do so—

(a)

where the inspector is appointed under section 840(1) or (2) or 841(2), by the Financial Secretary; or

(b)

where the inspector is appointed under section 841(1), by the Court.

(3)

A final report must be delivered to the Financial Secretary within the time directed by the Financial Secretary or, in the absence of directions, within a reasonable time after it is prepared.

(4)

An inspector must, within a reasonable time after the delivery of a final report to the Financial Secretary, deliver to the Registrar for registration a notice of that fact in the specified form.

857.

Interim report or final report may cover affairs of associated body corporate

If an inspector appointed to investigate a company's affairs or a delegate of the inspector has exercised any of the powers under section 846, 847 or 848 in relation to an associated body corporate of the company, the inspector must also report on the affairs of that body corporate in the interim report or final report, so far as the inspector considers that the affairs of that body corporate are relevant to the investigation.

858.

Inspector must send report to affected persons etc.

(1)

If, in the opinion of an inspector appointed to investigate a company's affairs, any person named in an interim report or final report on the investigation would in the event of a publication or other disclosure of the report, or any part of the report, be adversely affected by the publication or disclosure, the inspector must, before delivering the report to the Financial Secretary—

(a)

send the draft report or that part of the draft report to the person; and

(b)

give the person a reasonable opportunity to be heard.

(2)

Before an inspector sends a draft interim report or final report, or part of the draft report, to a person under subsection (1), the inspector may—

(a)

cause any passages in the draft report or that part of the draft report to be concealed from view or to be obliterated; and

(b)

require the person to keep the draft report or that part of the draft report confidential.

859.

Financial Secretary to file copies of inspector's report with Court

(1)

As soon as practicable after receiving an interim report or final report from an inspector appointed under section 841(1), the Financial Secretary must file a copy of the report with the Court.

(2)

The Financial Secretary may, before filing a copy of an interim report or final report with the Court under subsection (1), specify the period and manner in which access to the report is to be restricted.

860.

Financial Secretary may send copies of inspector's report to applicants of investigation etc.

(1)

After receiving an interim report or final report from an inspector appointed to investigate a company's affairs, the Financial Secretary may—

(a)

send a copy of the report to the company at its registered office; or

(b)

on request and on receipt of the prescribed fee, send a copy of the report to—

(i)

a member of the company or a member of its associated body corporate the affairs of which are reported in the report under section 857;

(ii)

the auditors of the company or body corporate;

(iii)

a person whose conduct is mentioned in the report;

(iv)

the applicant for the investigation; or

(v)

any other person whose financial interest appears to the Financial Secretary to be affected by the matters dealt with in the report, whether as a creditor of the company or body corporate, or a possible investor or otherwise.

(2)

Before sending a copy of an interim report or final report to any person under subsection (1), the Financial Secretary may—

(a)

cause any passage in the report to be concealed from view or to be obliterated; and

(b)

require the person to keep the copy of the report confidential.

861.

Publication of inspector's report

(1)

The Financial Secretary may publish, either in whole or in part, any interim report or final report delivered to the Financial Secretary under this Division.

(2)

The Financial Secretary must deliver to the Registrar for registration a copy of any interim report or final report, or any part of an interim report or final report, that is published under subsection (1) as soon as practicable after it is published.

(3)

In this section—

publish

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) includes distribute, make available and disseminate.

862.

Inspector's report to be evidence

In any civil proceedings before a court (including proceedings for the disqualification of a director)—

(a)

a document purporting to be a copy of an interim report or final report prepared by an inspector, or a part of such a report, and purporting to be certified by the inspector or the Financial Secretary as a true copy of the report or part, is admissible in evidence on its production without further proof; and

(b)

on being admitted in evidence under paragraph (a), the document is evidence of the facts stated in the report or that part of the report.

Subdivision 7

Miscellaneous

863.

Offences for failing to comply with requirements under Subdivision 4 etc.

(1)

A person commits an offence if the person, without reasonable excuse, fails to comply with any requirement imposed on the person under Subdivision 4.

(2)

A person commits an offence if the person, with intent to defraud, fails to comply with any requirement imposed on the person under Subdivision 4.

(3)

An officer or employee of a company or body corporate on which a requirement is imposed under Subdivision 4 commits an offence if the officer or employee, with intent to defraud, causes or allows the company or body corporate to fail to comply with the requirement.

(4)

A person commits an offence if the person—

(a)

in purported compliance with a requirement imposed on the person under Subdivision 4—

(i)

produces any record or document that is false or misleading in a material particular;

(ii)

provides any information or explanation that is false or misleading in a material particular; or

(iii)

says or states anything that is false or misleading in a material particular; and

(b)

knows that, or is reckless as to whether or not, the record or document, the information or explanation, or the thing said or stated, is false or misleading in a material particular.

(5)

A person commits an offence if the person, with intent to defraud, in purported compliance with a requirement imposed on the person under Subdivision 4—

(a)

produces any record or document that is false or misleading in a material particular;

(b)

provides any information or explanation that is false or misleading in a material particular; or

(c)

says or states anything that is false or misleading in a material particular.

(6)

An officer or employee of a company or body corporate on which a requirement is imposed under Subdivision 4 commits an offence if the officer or employee, with intent to defraud, causes or allows the company or body corporate to, in purported compliance with the requirement—

(a)

produce any record or document that is false or misleading in a material particular;

(b)

provide any information or explanation that is false or misleading in a material particular; or

(c)

say or state anything that is false or misleading in a material particular.

(7)

A person is not excused from complying with a requirement imposed on the person under Subdivision 4 only on the ground that to do so might tend to incriminate the person.

(8)

Despite anything in this Ordinance, no criminal proceedings may be instituted against a person under subsection (1), (2), (3), (4), (5) or (6) in respect of any conduct if—

(a)

proceedings have previously been instituted against the person for the purposes of section 864(2)(b) in respect of the same conduct; and

(b)

those proceedings remain pending, or by reason of the previous institution of those proceedings, no proceedings may again be lawfully instituted against the person for the purposes of section 864(2)(b) in respect of the same conduct.

(9)

A person who commits an offence under subsection (1) is liable—

(a)

on conviction on indictment to a fine of $200,000 and to imprisonment for one year; or

(b)

on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(10)

A person who commits an offence under subsection (2), (3), (5) or (6) is liable—

(a)

on conviction on indictment to a fine of $1,000,000 and to imprisonment for 7 years; or

(b)

on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(11)

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

(a)

on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b)

on summary conviction to a fine at level 6 and to imprisonment for 6 months.

864.

Inspector may apply to Court to inquire into failure to comply with requirements under Subdivision 4

(1)

If a person fails to comply with a requirement imposed on the person under Subdivision 4, the inspector may, by originating summons, apply to the Court for an inquiry into the failure.

(2)

The Court may, if it is satisfied that the person has without reasonable excuse failed to comply with the requirement, do any or all of the following—

(a)

order the person to comply with the requirement within the period specified by the Court;

(b)

punish the person, and any other person knowingly involved in the failure, in the same manner as if the person and, if applicable, that other person had been guilty of contempt of court.

(3)

Despite anything in this Ordinance, no proceedings may be instituted against a person for the purposes of subsection (2)(b) in respect of any conduct if—

(a)

criminal proceedings have previously been instituted against the person under section 863(1), (2), (3), (4), (5) or (6) in respect of the same conduct; and

(b)

those criminal proceedings remain pending, or by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against the person under section 863(1), (2), (3), (4), (5) or (6) in respect of the same conduct.

865.

Use of incriminating evidence in proceedings

(1)

If an inspector or a delegate of an inspector requires a person, under Subdivision 4, to give an answer to any question or to provide any information or explanation in respect of any record or document produced, the inspector or delegate must ensure that the person has first been informed or reminded of the limitations imposed by subsection (2) on the admissibility in evidence of the inspector's or delegate's requirement and of the answer given, or information or explanation provided, by the person.

(2)

Despite anything in this Ordinance, if the conditions specified in subsection (3) are satisfied, the inspector's or delegate's requirement and the answer given, or information or explanation provided, by the person are not admissible in evidence against the person in criminal proceedings, other than those in which the person is charged with an offence in respect of the answer, information or explanation—

(a)

under section 863(4), (5) or (6);

(b)

under Part V of the Crimes Ordinance (Cap. 200); or

(c)

for perjury.

(3)

The conditions are—

(a)

that the answer, information or explanation might tend to incriminate the person; and

(b)

that the person so claims before giving the answer, or providing the information or explanation.

866.

Expenses of investigation

(1)

The expenses of an investigation are to be defrayed in the first instance out of the general revenue but the persons mentioned in subsection (2) are liable to repay the expenses to the Government to the extent mentioned in that subsection.

(2)

Those persons and the extent of their liability are as follows—

(a)

if, on a prosecution for an offence instituted as a result of the investigation, a person is convicted of the offence by the court, the person is liable to repay the expenses to the Government to the extent ordered by the court;

(b)

if the inspector who conducted the investigation was appointed under section 840 or 841(1), any body corporate dealt with by the interim report or final report is liable to repay the expenses to the Government to the extent directed by the Financial Secretary;

(c)

if the inspector who conducted the investigation was appointed under section 840 on application by a company or members of a company, the company or any of those members who made the application are liable to repay the expenses to the Government to the extent directed by the Financial Secretary.

(3)

When making an order or giving directions under a paragraph of subsection (2), the court or the Financial Secretary (as the case may be) may order or direct that 2 or more persons liable under that paragraph are to be jointly liable or jointly and severally liable for any of the expenses ordered or directed to be repaid to the Government.

(4)

On making an order on the extent of a person's liability under paragraph (a) of subsection (2), the court may further order that the person is also liable to indemnify another person against any liability to which that other person may be subject under paragraph (b) or (c) of that subsection.

(5)

If the inspector who conducted the investigation was appointed under section 840 or 841(1), the interim report or final report of the investigation may, if the inspector thinks fit, include a recommendation as to the extent to which the expenses of the investigation should be repaid by a person referred to in paragraph (a), (b) or (c) of subsection (2).

(6)

An inspector must include a recommendation mentioned in subsection (5) in the interim report or final report of the investigation if so directed by the Financial Secretary.

(7)

The recommendation of an inspector under subsection (5) or (6)—

(a)

in relation to a person referred to in paragraph (a) of subsection (2)—

(i)

must not be disclosed to the court until after the person has been convicted; and

(ii)

does not bind the court; and

(b)

in relation to a person referred to in paragraph (b) or (c) of subsection (2), does not bind the Financial Secretary.

(8)

For the purposes of this section, the expenses of an investigation include—

(a)

reasonable expenses incidental to the investigation; and

(b)

such reasonable sums for general staff costs and overhead expenses of the Government, and for the cost of insurance for the inspector, as are determined by the Financial Secretary.

(9)

An amount that is repayable to the Government under subsection (2) is recoverable as a civil debt due to the Government.

Division 3

Enquiry into Company's Affairs by Financial Secretary

867.

Interpretation

In this Division—

company (公司) —

(a)

in section 868(a), includes a registered non-Hong Kong company;

(b)

in section 868(b), includes a non-Hong Kong company.

868.

Circumstances under which Financial Secretary may enquire into company's affairs

The Financial Secretary may enquire into a company's affairs if—

(a)

the Financial Secretary considers that doing so would assist the Financial Secretary in deciding whether to appoint an inspector under section 840(2); or

(b)

it appears to the Financial Secretary that there is a good reason for doing so.

869.

Financial Secretary may require production of records and documents etc.

(1)

For the purpose of enquiring into a company's affairs under section 868, if the Financial Secretary considers that a record or document is or may be relevant to the enquiry, the Financial Secretary may, by notice in writing, require—

(a)

the company; or

(b)

any other person who appears to the Financial Secretary to be in possession of the record or document,

to produce the record or document within the time and at the place specified in the notice.

(2)

If a company or a person produces a record or document in compliance with a requirement imposed under subsection (1), the Financial Secretary may—

(a)

make copies, or otherwise record the details, of the record or document; and

(b)

by notice in writing, require an officer or former officer of the company or the person to provide any information or explanation in respect of the record or document.

(3)

The Financial Secretary must not require an authorized institution to produce any record or document, or disclose any information, relating to the affairs of a customer of the institution under subsection (1) or (2) unless—

(a)

the Financial Secretary has reasonable grounds to believe that the customer may be able to provide information relevant to the enquiry; and

(b)

the Financial Secretary is satisfied that the production or disclosure is necessary for the purposes of the enquiry and so certifies in writing.

(4)

If an authorized institution produces a record or document relating to the affairs of its customer in compliance with a requirement imposed under subsection (1), the Financial Secretary may also require that customer to provide any information or explanation in respect of the record or document.

(5)

If a company or a person does not produce a record or document in compliance with a requirement imposed under subsection (1), the Financial Secretary may, by notice in writing, require the company or person to state, to the best of the company's or person's knowledge and belief, where the record or document is.

870.

Financial Secretary may delegate powers under section 869

The Financial Secretary may delegate in writing any or all of the powers conferred under section 869 to another person.

871.

Offences for failing to comply with requirements under section 869 etc.

(1)

A person commits an offence if the person, without reasonable excuse, fails to comply with any requirement imposed on the person under section 869.

(2)

A person commits an offence if the person, with intent to defraud, fails to comply with any requirement imposed on the person under section 869.

(3)

An officer or employee of a company on which a requirement is imposed under section 869 commits an offence if the officer or employee, with intent to defraud, causes or allows the company to fail to comply with the requirement.

(4)

A person commits an offence if the person—

(a)

in purported compliance with a requirement imposed on the person under section 869—

(i)

produces any record or document that is false or misleading in a material particular; or

(ii)

provides any information or explanation that is false or misleading in a material particular; and

(b)

knows that, or is reckless as to whether or not, the record or document, or the information or explanation, is false or misleading in a material particular.

(5)

A person commits an offence if the person, with intent to defraud, in purported compliance with a requirement imposed on the person under section 869—

(a)

produces any record or document that is false or misleading in a material particular; or

(b)

provides any information or explanation that is false or misleading in a material particular.

(6)

An officer or employee of a company on which a requirement is imposed under section 869 commits an offence if the officer or employee, with intent to defraud, causes or allows the company to, in purported compliance with the requirement—

(a)

produce any record or document that is false or misleading in a material particular; or

(b)

provide any information or explanation that is false or misleading in a material particular.

(7)

A person is not excused from complying with a requirement imposed on the person under section 869 only on the ground that to do so might tend to incriminate the person.

(8)

A person who commits an offence under subsection (1) is liable—

(a)

on conviction on indictment to a fine of $200,000 and to imprisonment for one year; or

(b)

on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(9)

A person who commits an offence under subsection (2), (3), (5) or (6) is liable—

(a)

on conviction on indictment to a fine of $1,000,000 and to imprisonment for 7 years; or

(b)

on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(10)

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

(a)

on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b)

on summary conviction to a fine at level 6 and to imprisonment for 6 months.

872.

Use of incriminating evidence in proceedings

(1)

If the Financial Secretary or a delegate of the Financial Secretary requires a person, under section 869, to provide any information or explanation in respect of any record or document produced, the Financial Secretary or delegate must ensure that the person has first been informed or reminded of the limitations imposed by subsection (2) on the admissibility in evidence of the Financial Secretary's or delegate's requirement and of the information or explanation provided by the person.

(2)

Despite anything in this Ordinance, if the conditions specified in subsection (3) are satisfied, the Financial Secretary's or delegate's requirement, as well as the information or explanation provided by the person, are not admissible in evidence against the person in criminal proceedings other than those in which the person is charged with an offence in respect of the information or explanation—

(a)

under section 871(4), (5) or (6);

(b)

under Part V of the Crimes Ordinance (Cap. 200); or

(c)

for perjury.

(3)

The conditions specified for the purposes of subsection (2) are—

(a)

that the information or explanation might tend to incriminate the person; and

(b)

that the person so claims before providing the information or explanation.

Division 4

Enquiry by Registrar

873.

Registrar may require production of records and documents etc.

(1)

For the purpose of enquiring into whether any specified act has been done, if each of the conditions specified in subsection (2) is satisfied, the Registrar may, by notice in writing, require a person—

(a)

to produce, within the time and at the place specified in the notice, any record or document specified in the notice; and

(b)

if the record or document is produced, to provide any information or explanation in respect of the record or document.

(2)

Subject to subsection (3), the conditions are—

(a)

that the Registrar has reason to believe that—

(i)

a specified act has been done;

(ii)

the record, document, information or explanation is relevant to the enquiry; and

(iii)

the person is in possession of the record or document; and

(b)

that it is so certified in writing by the Registrar.

(3)

Subsection (2)(a)(iii) does not apply if the person who is to be required to produce the record or document is—

(a)

the body corporate to which the act relates; or

(b)

an officer of that body corporate.

(4)

The Registrar must not require an authorized institution to produce any record or document, or disclose any information, relating to the affairs of a customer of the institution under subsection (1) unless—

(a)

the Registrar has reasonable grounds to believe that the customer may be able to provide information relevant to the enquiry; and

(b)

the Registrar is satisfied that the production or disclosure is necessary for the purposes of the enquiry and so certifies in writing.

(5)

If an authorized institution produces a record or document relating to the affairs of its customer in compliance with a requirement imposed under subsection (1), the Registrar may also require that customer to provide any information or explanation in respect of the record or document.

(6)

If a person produces a record or document in compliance with a requirement imposed under subsection (1), the Registrar may make copies, or otherwise record the details, of the record or document.

(7)

The Financial Secretary may, by notice published in the Gazette, amend subsection (8).

(8)

In this section—

specified act

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) means an act that would constitute an offence under section 750(6) or 895(1).

874.

Registrar may delegate powers under section 873

The Registrar may delegate in writing any or all of the powers conferred under section 873 to any public officer.

875.

Offences for failing to comply with requirements under section 873 etc.

(1)

A person commits an offence if the person, without reasonable excuse, fails to comply with any requirement imposed on the person under section 873.

(2)

A person commits an offence if the person, with intent to defraud, fails to comply with any requirement imposed on the person under section 873.

(3)

An officer or employee of a body corporate on which a requirement is imposed under section 873 commits an offence if the officer or employee, with intent to defraud, causes or allows the body corporate to fail to comply with the requirement.

(4)

A person commits an offence if the person—

(a)

in purported compliance with a requirement imposed on the person under section 873—

(i)

produces any record or document that is false or misleading in a material particular; or

(ii)

provides any information or explanation that is false or misleading in a material particular; and

(b)

knows that, or is reckless as to whether or not, the record or document, or the information or explanation, is false or misleading in a material particular.

(5)

A person commits an offence if the person, with intent to defraud, in purported compliance with a requirement imposed on the person under section 873—

(a)

produces any record or document that is false or misleading in a material particular; or

(b)

provides any information or explanation that is false or misleading in a material particular.

(6)

An officer or employee of a body corporate on which a requirement is imposed under section 873 commits an offence if the officer or employee, with intent to defraud, causes or allows the body corporate to, in purported compliance with the requirement—

(a)

produce any record or document that is false or misleading in a material particular; or

(b)

provide any information or explanation that is false or misleading in a material particular.

(7)

A person is not excused from complying with a requirement imposed on the person under section 873 only on the ground that to do so might tend to incriminate the person.

(8)

A person who commits an offence under subsection (1) is liable—

(a)

on conviction on indictment to a fine of $150,000 and to imprisonment for one year; or

(b)

on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(9)

A person who commits an offence under subsection (2), (3), (5) or (6) is liable—

(a)

on conviction on indictment to a fine of $1,000,000 and to imprisonment for 3 years; or

(b)

on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(10)

A person who commits an offence under subsection (4) 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.

876.

Use of incriminating evidence in proceedings

(1)

If the Registrar or a delegate of the Registrar requires a person, under section 873, to provide any information or explanation in respect of any record or document produced, the Registrar or delegate must ensure that the person has first been informed or reminded of the limitations imposed by subsection (2) on the admissibility in evidence of the Registrar's or delegate's requirement and of the information or explanation provided by the person.

(2)

Despite anything in this Ordinance, if the conditions specified in subsection (3) are satisfied, the Registrar's or delegate's requirement, as well as the information or explanation provided by the person, are not admissible in evidence against the person in criminal proceedings other than those in which the person is charged with an offence in respect of the information or explanation—

(a)

under section 875(4), (5) or (6);

(b)

under Part V of the Crimes Ordinance (Cap. 200); or

(c)

for perjury.

(3)

The conditions specified for the purposes of subsection (2) are—

(a)

that the information or explanation might tend to incriminate the person; and

(b)

that the person so claims before providing the information or explanation.

Division 5

Supplementary Provisions to Divisions 2, 3 and 4

Subdivision 1

Supplementary Provisions Applicable to Divisions 2 and 3

877.

Magistrate's warrants

(1)

If a magistrate is satisfied on information on oath that there are reasonable grounds to suspect that there is, or is likely to be, on premises specified in the information any record or document that may be required to be produced under Division 2 or 3, the magistrate may issue a warrant in respect of the premises.

(Amended 17 of 2018 s. 141)

(2)

For the purposes of subsection (1), the information—

(a)

must set out—

(i)

the nature of the record or document that is, or is likely to be, on the premises; and

(ii)

the provision of Division 2 or 3 under which the record or document may be required to be produced; and

(b)

must be laid by—

(i)

in relation to an investigation under Division 2, an inspector; or

(ii)

in relation to an enquiry under Division 3, the Financial Secretary or a delegate of the Financial Secretary.

(3)

A warrant issued under subsection (1) authorizes a person specified in it, and such other persons as may be necessary to assist in its execution, to—

(a)

enter the premises, if necessary by force, at any time within the period of 7 days beginning with the date of the warrant; and

(b)

search for, seize and remove, any record or document that the person so specified has reasonable grounds to believe may be required to be produced under Division 2 or 3 (as the case may be).

(4)

If an authorized person has reasonable grounds to believe that another person on the premises is employed or engaged to provide a service in connection with a business that is or has been conducted on the premises, the authorized person may require that other person to produce for examination any record or document that—

(a)

is in the possession of that other person; and

(b)

the authorized person has reasonable grounds to believe may be required to be produced under Division 2 or 3 (as the case may be).

(5)

An authorized person may, in relation to any record or document required to be produced under subsection (4)—

(a)

prohibit any person found on the premises from—

(i)

removing the record or document from the premises;

(ii)

erasing anything from, adding anything to, or otherwise altering anything in, the record or document; or

(iii)

otherwise interfering in any manner with, or causing or permitting any other person to interfere with, the record or document; and

(b)

take any other steps that appear to the authorized person to be necessary for—

(i)

preserving the record or document; or

(ii)

preventing interference with the record or document.

(6)

Any record or document removed by an authorized person may be retained for—

(a)

a period not exceeding 6 months beginning with the day of its removal; or

(b)

if the record or document is or may be required for the purposes of any criminal proceedings, or any proceedings under this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), such longer period as may be necessary for the purposes of those proceedings.

(7)

If an authorized person removes any record or document under this section, the person—

(a)

must as soon as practicable after the removal give a receipt for the record or document; and

(b)

may permit any other person who, but for the removal, would be entitled to inspect the record or document, at all reasonable times—

(i)

to inspect it; and

(ii)

to make copies or otherwise record details of it.

(8)

Section 102 of the Criminal Procedure Ordinance (Cap. 221) applies to any property that has, by virtue of this section, come into the possession of an inspector, the Financial Secretary or a delegate of the Financial Secretary, as it applies to property that has come into the possession of the police.

(9)

A person commits an offence if the person—

(a)

without reasonable excuse, fails to comply with a requirement or prohibition under subsection (4) or (5); or

(b)

obstructs an authorized person in the exercise of a power conferred by subsection (3), (4) or (5).

(10)

A person who commits an offence under subsection (9) is liable—

(a)

on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b)

on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(11)

In this section—

authorized person

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) means a person authorized by a warrant issued under subsection (1) to carry out the acts set out in paragraphs (a) and (b) of subsection (3).

878.

Officers must give assistance in prosecution instituted as a result of investigation etc.

(1)

If—

(a)

an investigation under Division 2 or an enquiry under Division 3 has been carried out; and

(b)

a prosecution for an offence is instituted as a result of the investigation or enquiry,

every officer or former officer, employee or former employee, or agent or former agent of any body corporate the affairs of which have been investigated or enquired into in that investigation or enquiry must give the Secretary for Justice all assistance in connection with the prosecution that the officer, employee or agent is reasonably able to give.

(2)

Subsection (1) does not require a person to give any assistance in connection with the prosecution if the person is a defendant in the proceedings.

879.

Proceedings on specified materials

(1)

If it appears to the Financial Secretary from any specified materials that it is expedient in the public interest that a body corporate which may be wound up under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) should be wound up, the Financial Secretary may present a petition for it to be wound up.

(2)

On a petition by the Financial Secretary under subsection (1), the Court may make a winding up order if the Court thinks it just and equitable for the body corporate to be wound up.

(3)

If it appears to the Financial Secretary from any specified materials that—

(a)

a company's or non-Hong Kong 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 or non-Hong Kong company (including one done or made on its behalf) is or would be so prejudicial,

the Financial Secretary may, whether or not a petition has been presented under subsection (1), present to the Court a petition for an order to be made under section 725(1)(b) or (2).

(4)

If it appears to the Financial Secretary from any specified materials that, in relation to a company or non-Hong Kong company, a person—

(a)

has engaged, is engaging or is proposing to engage in any conduct specified in section 728(1)(a); or

(b)

before the commencement date[e] of section 728, had engaged, was engaging or was proposing to engage in any conduct specified in section 728(2)(a), and the engagement or proposal still subsists,

the Financial Secretary may apply to the Court for the remedies under section 729(2).

(5)

If it appears to the Financial Secretary from any specified materials that, in relation to a company or non-Hong Kong company, a person—

(a)

has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing specified in section 728(1)(b); or

(b)

before the commencement date[e] of section 728, had refused or failed, was refusing or failing, or was proposing to refuse or fail, to do an act or thing that the person was required by the predecessor Ordinance and is required by this Ordinance to do, and the refusal, failure or proposal still subsists,

the Financial Secretary may apply to the Court for the remedies under section 729(2).

(6)

If it appears to the Financial Secretary from any specified materials that it is expedient in the public interest that a disqualification order be made under section 168J(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) against any person who is or has been a director or shadow director of—

(a)

a company as defined by section 2(1);

(b)

an unregistered company as defined by section 326(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (other than a partnership, whether limited or not, or an association), wherever incorporated, that—

(i)

is carrying on business in Hong Kong, or has carried on business in Hong Kong; and

(ii)

may be wound up under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); or

(c)

a registered non-Hong Kong company,

the Financial Secretary may apply to the Court for such an order to be made against that person.

(7)

In this section—

specified materials

(

指明材料

) means—

(a)

any report made on, or any record, document or information obtained in, an investigation under Division 2 by an inspector or a delegate of an inspector; or

(b)

any record, document or information obtained in an enquiry under Division 3 by the Financial Secretary or a delegate of the Financial Secretary.

Editorial Note:

Commencement date: 3 March 2014.

880.

Preservation of secrecy

(1)

Except in the performance of any function under this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), or for carrying into effect the provisions of this Ordinance or that Ordinance, a person specified in subsection (3)—

(a)

must not permit any person to have access to any matter relating to the affairs of any person that comes to the specified person's knowledge in an investigation under Division 2 or an enquiry under Division 3, or otherwise in connection with the investigation or enquiry; and

(b)

must not communicate any such matter to any person other than the person to whom the matter relates.

(2)

Subsection (1) has effect subject to section 881(1) and (2).

(3)

The persons specified for the purposes of subsection (1) are—

(a)

a public officer;

(b)

an inspector or a delegate of an inspector or of the Financial Secretary, or an employee, agent, consultant or adviser of the inspector or delegate;

(c)

an employee, agent, consultant or adviser who is employed or appointed for the purposes of an investigation under Division 2 or an enquiry under Division 3;

(d)

a person who performs or has performed any function in an investigation under Division 2 or an enquiry under Division 3;

(e)

a person who has assisted any other person in the performance of any function in an investigation under Division 2 or an enquiry under Division 3; and

(f)

a person who, under section 858 or 860—

(i)

has been sent a draft report or a part of the draft report, or a report, on an investigation; and

(ii)

has been required to keep the draft report or that part of the draft report, or the report, confidential.

881.

Permitted disclosure and restrictions

(1)

A person specified in section 880(3) may—

(a)

disclose information that has already been made available to the public;

(b)

disclose information for the purpose of any criminal proceedings in Hong Kong or any investigation conducted by a law enforcement agency with a view to bringing any such proceedings;

(c)

disclose information for the purpose of seeking advice from or giving advice by counsel, a solicitor or other professional adviser, acting or proposing to act in a professional capacity in connection with any matter arising under this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

(d)

disclose information in connection with any judicial or other proceedings to which the specified person is a party; and

(e)

disclose information in accordance with an order of a court or tribunal, or in accordance with a law or a requirement made under a law.

(2)

The Financial Secretary may—

(a)

subject to subsection (3), disclose information to—

(i)

the Chief Executive;

(ii)

the Secretary for Justice;

(iii)

the Secretary for Financial Services and the Treasury;

(iv)

the Commissioner of Police of Hong Kong;

(v)

the Commissioner of the Independent Commission Against Corruption;

(vi)

the Commissioner of Inland Revenue;

(vii)

the Registrar;

(viii)

the Official Receiver in a capacity other than that of a liquidator or provisional liquidator appointed under, or holding such office by virtue of, the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

(ix)

the Monetary Authority;

(x)

the Securities and Futures Commission;

(xi)

the Accounting and Financial Reporting Council;

(Amended L.N. 66 of 2022)

(xii)

the Market Misconduct Tribunal;

(xiii)

the Insurance Authority;

(xiv)

the Mandatory Provident Fund Schemes Authority;

(xv)

an inspector;

(xvi)

a delegate of the Financial Secretary;

(xvii)

a company recognized as an exchange company under section 19(2) of the Securities and Futures Ordinance (Cap. 571);

(xviii)

the Privacy Commissioner for Personal Data;

(xix)

the Ombudsman; or

(xx)

a public officer authorized by the Financial Secretary under subsection (7);

(b)

subject to subsection (3), disclose information in respect of a company whose affairs are or have been investigated under section 840 or 841, or enquired into under section 869, to—

(i)

the Official Receiver in the capacity of a liquidator or provisional liquidator of the company appointed under, or holding such office by virtue of, the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); or

(ii)

any other person who—

(A)

is a liquidator or provisional liquidator of the company appointed under that Ordinance; or

(B)

acts in a similar capacity in relation to the company under any law of a place outside Hong Kong;

(c)

disclose information with the consent of—

(i)

the person from whom the information was obtained or received; and

(ii)

if the information does not relate to such person, the person to whom it relates; and

(d)

disclose information in summary form that is so framed as to prevent particulars relating to any person from being ascertained from it.

(3)

The Financial Secretary must not disclose information under subsection (2)(a) or (b) unless the Financial Secretary is of the opinion that—

(a)

the disclosure will enable or assist the recipient of the information to perform the recipient's functions; and

(b)

it is not contrary to the public interest that the information be so disclosed.

(4)

Subject to subsection (5), if information is disclosed under subsection (1) or (2) (other than subsection (1)(a) or (2)(d)) or section 880(1)—

(a)

the person to whom the information is so disclosed; and

(b)

any other person who obtains or receives the information from that person,

must not disclose the information to any other person.

(5)

Subsection (4) does not prohibit a person mentioned in paragraph (a) or (b) of that subsection from disclosing the information to any other person if—

(a)

the Financial Secretary consents to the disclosure;

(b)

the information has already been made available to the public;

(c)

the disclosure is for the purpose of seeking advice from or giving advice by counsel, a solicitor or other professional adviser, acting or proposing to act in a professional capacity in connection with any matter arising under this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

(d)

the disclosure is in connection with any judicial or other proceedings to which the person so referred to is a party; or

(e)

the disclosure is in accordance with an order of a court or tribunal, or in accordance with a law or a requirement made under a law.

(6)

The Financial Secretary may attach such conditions as the Financial Secretary considers appropriate to—

(a)

a disclosure of information made under subsection (2); or

(b)

a consent granted under subsection (5)(a).

(7)

The Financial Secretary may authorize any public officer as a person to whom information may be disclosed under subsection (2)(a)(xx).

882.

Offences on breach of secrecy

(1)

A person who contravenes section 880(1) commits an offence.

(2)

A person commits an offence if—

(a)

the person discloses any information in contravention of section 881(4); and

(b)

at the time of the disclosure—

(i)

the person knew, or ought to have known, that the information was previously disclosed to, or obtained or received by, the person as described in section 881(4)(a) or (b); and

(ii)

the person had no reasonable grounds to believe that the person was not prohibited from disclosing the information by virtue of section 881(5).

(3)

A person who commits an offence under subsection (1) or (2) is liable—

(a)

on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b)

on summary conviction to a fine at level 6 and to imprisonment for 6 months.

Subdivision 2

Supplementary Provisions Applicable to Divisions 2, 3 and 4

883.

Interpretation

In this Subdivision—

specified officer

(

指明人員

) —

(a)

in relation to an investigation under Division 2, means an inspector or a delegate of an inspector;

(b)

in relation to an enquiry under Division 3, means the Financial Secretary or a delegate of the Financial Secretary; and

(c)

in relation to an enquiry under Division 4, means the Registrar or a delegate of the Registrar.

884.

Protection in relation to certain disclosures

(1)

If—

(a)

a person makes a disclosure to a specified officer otherwise than in compliance with a requirement made by the officer under Division 2, 3 or 4 (as the case may be); and

(b)

the disclosure satisfies each of the conditions specified in subsection (2),

the person is not liable in any proceedings relating to a breach of duty of confidentiality by reason only of the disclosure.

(2)

The conditions are—

(a)

that the disclosure is of a kind that the person could be required to make under Division 2, 3 or 4 (as the case may be);

(b)

that the person makes the disclosure in good faith and in the reasonable belief that the disclosure is capable of assisting the specified officer in the investigation under Division 2 or enquiry under Division 3 or 4;

(c)

that the information disclosed is not more than is reasonably necessary for the purpose of assisting the specified officer in the investigation under Division 2 or enquiry under Division 3 or 4;

(d)

that the disclosure is not prohibited by virtue of any enactment.

(3)

Subsection (1) does not apply to a disclosure made by a person in the capacity as a banker or lawyer in respect of information to which the person owes a duty of confidentiality in that capacity.

885.

Protection of informers etc.

(1)

Any information concerning the identity of a protected person is not admissible in evidence in any proceedings before a court or tribunal.

(2)

In such proceedings, a witness is not obliged—

(a)

to disclose the name or address of a protected person who is not a witness in those proceedings; or

(b)

to state any matter that would lead, or would tend to lead, to discovery of the name or address of a protected person who is not a witness in those proceedings.

(3)

If a book, document or paper that is in evidence, or liable to inspection, in such proceedings contains an entry—

(a)

in which a protected person is named or described; or

(b)

that might lead to discovery of a protected person,

the court or tribunal (as the case may be) must cause all such entries to be concealed from view, or to be obliterated, so far as may be necessary to protect the identity of the protected person from discovery.

(4)

In such proceedings, the court or tribunal may, despite subsection (1), (2) or (3), permit inquiry, and require full disclosure, concerning a protected person if—

(a)

it is of the opinion that justice cannot be fully done between the parties to the proceedings without disclosure of the name of the protected person; or

(b)

it is satisfied that the protected person made a material statement that the person—

(i)

knew or believed to be false; or

(ii)

did not believe to be true.

(5)

This section has effect despite the preparation or publication of any interim report or final report of an investigation under Division 2.

(6)

In this section—

protected person

(

受保障人士

) means—

(a)

an informer who has given information to a specified officer with respect to an investigation under Division 2 or an enquiry under Division 3 or 4; or

(b)

a person who has assisted a specified officer with respect to such an investigation or enquiry.

886.

Legal professional privilege

(1)

Subject to subsection (2), this Part does not affect any claims, rights or entitlements that would, apart from this Part, arise on the ground of legal professional privilege.

(2)

Subsection (1) does not affect any requirement under Division 2, 3 or 4 to disclose the name and address of a client of a legal practitioner (whether or not the legal practitioner is qualified in Hong Kong to practise as counsel or to act as a solicitor).

887.

Immunity

(1)

A person who complies with a requirement imposed by a specified officer under Subdivision 4 of Division 2 or section 869 or 873 does not incur any civil liability by reason only of that compliance.

(2)

A person does not incur any civil liability in respect of anything done, or omitted to be done, by the person in good faith in the performance, or purported performance, of any function under this Part.

888.

Production of information in information systems etc.

(1)

If—

(a)

a specified officer requires any record or document to be produced under Subdivision 4 of Division 2 or section 869 or 873; and

(b)

any information or matter contained in the record or document is recorded otherwise than in a legible form but is capable of being reproduced in a legible form,

the officer may require the production of a reproduction of the recording of the information or matter, or the relevant part of the recording, in a legible form.

(2)

If—

(a)

a specified officer requires any record or document to be produced under Subdivision 4 of Division 2 or section 869 or 873; and

(b)

any information or matter contained in the record or document is recorded in an information system,

the officer may require the production of a reproduction of the recording of the information or matter, or the relevant part of the recording, in a form that enables the information or matter to be reproduced in a legible form.

889.

Lien claimed on records or documents

If a person claims a lien on any record or document in the person's possession that is required to be produced under Subdivision 4 of Division 2 or section 869 or 873—

(a)

the lien does not affect the requirement to produce the record or document;

(b)

no fee is payable for or in respect of the production; and

(c)

the production does not affect the lien.

890.

Destruction of documents

(1)

A person commits an offence if—

(a)

the person destroys, falsifies, conceals or otherwise disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any record or document that is required to be produced under Subdivision 4 of Division 2 or section 869 or 873; and

(b)

the person does so with intent to conceal, from the specified officer by whom the requirement was imposed, facts or matters capable of being disclosed by the record or document.

(2)

A person who commits an offence under subsection (1) is liable—

(a)

on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b)

on summary conviction to a fine at level 6 and to imprisonment for 6 months.

891.

Inspection of records or documents seized etc.

(1)

This section applies if a specified officer has taken possession of any record or document under this Part.

(2)

The specified officer must, subject to any reasonable conditions the officer may impose as to security or otherwise, permit any person who would be entitled to inspect the record or document had the officer not taken possession of it, at all reasonable times—

(a)

to inspect it; and

(b)

to make copies or otherwise record details of it.

Division 6

Investigation of Company's Affairs by Persons Appointed by Company

892.

Appointment of person by company to investigate its affairs

(1)

A company may, by special resolution, appoint a person to investigate its affairs.

(2)

For the purpose of investigating the company's affairs, the appointed person may, by notice in writing, require any officer or agent of the company to do any or all of the following—

(a)

produce to the appointed person any record or document relating to any matter under investigation that is in the officer's or agent's custody or power;

(b)

attend before the appointed person at the time and place specified in the notice, and answer any question, whether on oath or otherwise, relating to any matter under investigation that the appointed person may raise with the officer or agent;

(c)

answer any question relating to any matter under investigation that is specified in the notice.

(3)

The appointed person may administer an oath to any person for the purposes of subsection (2)(b).

893.

Court may inquire into failure of officer or agent to attend before appointed person etc.

(1)

If an officer or agent of a company fails to comply with a requirement imposed on the officer or agent under section 892(2), the appointed person may apply to the Court for an inquiry into the failure.

(2)

The Court may, if it is satisfied that the officer or agent has without any reasonable excuse failed to comply with the requirement, punish the officer or agent (as the case may be) in the same manner as if the officer or agent had been guilty of contempt of court.

894.

Report by appointed person

(1)

A person appointed to investigate a company's affairs under section 892(1) must, on the conclusion of the investigation, report on the investigation in any manner as that company in general meeting may direct.

(2)

In any proceedings before a court—

(a)

a document purporting to be a copy of the report, and purporting to be signed by the appointed person and the company, 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 any opinion of the appointed person expressed in the report.

Part 20

Miscellaneous

(Format changes—E.R. 1 of 2013)

Division 1

Miscellaneous Offences

895.

Offence for false statement

(1)

A person commits an offence if, in any return, report, financial statements, certificate or other document, required by or for the purposes of any provision of this Ordinance, the person knowingly or recklessly makes a statement that is misleading, false or deceptive in any material particular.

Note—

Please also see section 873 which empowers the Registrar to require the production of records or documents, and the provision of information or explanation in respect of the records or documents, for the purpose of enquiring into whether any act that would constitute an offence under this subsection has been done.

(2)

A person who commits an offence under subsection (1) 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.

(3)

This section does not affect the operation of—

(a)

Part V of the Crimes Ordinance (Cap. 200); or

(b)

section 19, 20 or 21 of the Theft Ordinance (Cap. 210).

896.

Offence for improper use of "Limited" or "有限公司" etc.

(1)

A person commits an offence if the person—

(a)

is not incorporated with limited liability; and

(b)

uses, trades or carries on business under a name or title of which—

(i)

the word “Limited”, or a contraction or imitation of that word, is the last word;

(ii)

the Chinese version of the word “Limited”, or of a contraction or imitation of that word, is the last word; or

(iii)

the Chinese characters “有限公司” form part.

(2)

A person commits an offence if the person—

(a)

is not incorporated; and

(b)

uses, trades or carries on business under a name or title of which—

(i)

the word “Corporation” or “Incorporated”, or a contraction or imitation of that word, is the last word;

(ii)

the Chinese version of the word “Corporation” or “Incorporated”, or of a contraction or imitation of that word, is the last word; or

(iii)

the Chinese characters “註冊公司” or “法人團體” form part.

(3)

A person who commits an offence under subsection (1) or (2) is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of $300 for each day during which the offence continues.

Division 2

Miscellaneous Provisions relating to Investigation or Enforcement Measures

897.

Court may order inspection or production of records or documents if offence suspected

(1)

The Court may, on application by the Secretary for Justice, make an order under subsection (2) or (3) if it is satisfied that—

(a)

there is reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the company’s affairs; and

(b)

evidence of the commission of the offence is to be found in—

(i)

any record or document of, or under the control of, the company; or

(ii)

any record or document of a person carrying on a banking business, which relate to the company’s affairs.

(2)

The Court may, in the case of a record or document mentioned in subsection (1)(b)(i), make an order—

(a)

authorizing a person named in the order to inspect the record or document for the purpose of investigating and obtaining evidence of the offence; or

(b)

requiring the company secretary of the company, or any other officer of the company named in the order, to produce the record or document to a person, and at a place, named in the order.

(3)

The Court may, in the case of a record or document mentioned in subsection (1)(b)(ii), make an order authorizing a person named in the order to inspect the record or document for the purpose of investigating and obtaining evidence of the offence.

(4)

In this section—

document

(

文件

) has the meaning given by section 838(1);

record

(

紀錄

) has the meaning given by section 838(1).

898.

Enforcement of requirements by order of Court

(1)

This section applies if a company or an officer of a company contravenes a requirement of this Ordinance—

(a)

to send, deliver, supply, forward or produce a document to the Registrar; or

(b)

to give notice to the Registrar of any matter.

(2)

The Registrar, or a member or creditor of the company, may serve a notice on the company or officer requiring the company or officer to comply with the requirement.

(3)

If the company or officer fails to make good the contravention within 14 days after service of the notice, the Court may, on application by the Registrar, or by a member or creditor of the company, make an order—

(a)

in the case of a contravention by the company, directing the company and any officer of the company to make good the contravention within the time specified in the order; or

(b)

in the case of a contravention by the officer, directing the officer to make good the contravention within the time specified in the order.

(4)

An order may provide that all costs of and incidental to the application are to be borne—

(a)

in the case of a contravention by the company, by the company or by any officer of the company responsible for the contravention; or

(b)

in the case of a contravention by the officer, by that officer.

(5)

This section does not affect the operation of any Ordinance imposing penalties on a company or any officer of a company in respect of the contravention.

899.

Registrar may give notice to suspected offender about not instituting proceedings under certain conditions

(1)

If the Registrar has reason to believe that a person has committed an offence specified in Schedule 7, the Registrar may give the person a notice in writing that—

(a)

alleges that the person has committed an offence specified in the Schedule, and contains the particulars of the offence;

(b)

contains—

(i)

in the case of an offence mentioned in subsection (5), the terms of the notice by reference to that subsection; or

(ii)

in the case of an offence mentioned in subsection (6), the terms of the notice by reference to that subsection;

(c)

specifies the period and amount for the purposes of that subsection; and

(d)

contains any other information that the Registrar thinks fit.

(2)

A notice may be given only before the proceedings on the offence commence.

(3)

The Registrar may, by a further notice in writing, extend the period specified under subsection (1)(c). This power is exercisable within, or after the end of, that period.

(4)

A notice under subsection (1) may not be withdrawn within the period specified in the notice or that period as extended under subsection (3).

(5)

Where the offence is an offence constituted by a failure to do an act or thing—

(a)

no proceedings will be instituted against the person in respect of that offence if, within the period specified in a notice under subsection (1) or that period as extended under subsection (3), the person pays to the Registrar the amount specified in the notice and does the act or thing; or

(b)

proceedings may be instituted against the person in respect of that offence if, within the period specified in a notice under subsection (1) or that period as extended under subsection (3), the person has not paid to the Registrar the amount specified in the notice or has not done the act or thing.

(6)

Where the offence is not an offence constituted by a failure to do an act or thing—

(a)

no proceedings will be instituted against the person in respect of that offence if, within the period specified in a notice under subsection (1) or that period as extended under subsection (3), the person pays to the Registrar the amount specified in the notice; or

(b)

proceedings may be instituted against the person in respect of that offence if, within the period specified in a notice under subsection (1) or that period as extended under subsection (3), the person has not paid to the Registrar the amount specified in the notice.

(7)

The payment of an amount specified in a notice given to a person under subsection (1) is not to be regarded as an admission by the person of any liability for the offence alleged in the notice to have been committed by the person.

900.

Limitation on commencement of proceedings

(1)

Despite section 26 of the Magistrates Ordinance (Cap. 227), an information or complaint relating to an offence under this Ordinance may be tried if it is laid before or made to a magistrate—

(a)

within 3 years after the commission of the offence; and

(b)

within 12 months after the date on which the supporting evidence came to the Secretary for Justice's knowledge.

(2)

For the purposes of this section, a certificate of the Secretary for Justice as to the date on which the supporting evidence came to the Secretary for Justice's knowledge is conclusive evidence of that date.

(3)

This section does not apply to—

(a)

an indictable offence; or

(b)

an offence triable either on indictment or summarily.

(4)

In this section—

supporting evidence

(

助控證據

) means evidence sufficient, in the Secretary for Justice's opinion, to justify the proceedings.

901.

Application of fines

(1)

When imposing a fine under this Ordinance, the court may direct that the whole or any part of the fine is to be applied in or towards payment of the costs of the proceedings.

(2)

Subject to a direction under subsection (1), a fine under this Ordinance must be paid into the general revenue.

(3)

Subsection (2) has effect despite anything in any other Ordinance.

Division 3

Miscellaneous Provisions relating to Misconduct by Officer or Auditor of Company

902.

Interpretation

In this Division—

misconduct

(

不當行為

) means negligence, default, breach of duty or breach of trust;

specified person

(

指明人士

) means—

(a)

an officer of a company; or

(b)

a person employed by a company as an auditor.

903.

Court may grant company officer etc. relief in proceedings for misconduct

(1)

This section applies if, in any proceedings for any misconduct against a specified person, it appears to the Court that the person—

(a)

is or may be liable for the misconduct;

(b)

has acted honestly and reasonably; and

(c)

ought fairly to be excused for the misconduct, having regard to all the circumstances of the case (including those connected with the person's appointment).

(2)

The Court may relieve the specified person, either wholly or partly, from the liability on any terms that the Court thinks fit.

(3)

If the case is tried by a judge with a jury, the judge may—

(a)

withdraw the case in whole or in part from the jury; and

(b)

direct judgment to be entered for the specified person on the terms as to costs or otherwise that the judge thinks fit.

904.

Court may grant company officer etc. relief for misconduct on officer's application

(1)

A specified person may apply to the Court for relief if the person has reason to apprehend that a claim will or might be made against the person for any misconduct.

(2)

On an application, the Court may relieve the specified person, either wholly or partly, from the liability on any terms that the Court thinks fit if it appears to the Court that the person—

(a)

is or may be liable for the misconduct;

(b)

has acted honestly and reasonably; and

(c)

ought fairly to be excused for the misconduct, having regard to all the circumstances of the case (including those connected with the person's appointment).

Division 4

Other Miscellaneous Provisions

905.

Costs in action by company etc.

(1)

This section applies where—

(a)

a company is a plaintiff in an action or other legal proceedings; and

(b)

it appears, by credible testimony, to the court having jurisdiction in the matter that there is reason to believe the company will be unable to pay the defendant's costs if the defendant succeeds in the defence.

(2)

Without limiting the powers of the court under any other Ordinance, the court may—

(a)

require sufficient security to be given for those costs; and

(b)

stay all proceedings until the security is given.

(3)

In this section—

company

(

公司

) means—

(a)

a limited company; or

(b)

a company incorporated outside Hong Kong that is not a re-domiciled company.

(Replaced 14 of 2025 s. 71)

906.

Saving as to private prosecution

Nothing in this Ordinance relating to the institution of criminal proceedings by the Secretary for Justice precludes any person from instituting or carrying on any such proceedings.

907.

Saving for privileged communication

If proceedings are instituted under this Ordinance against any person by the Secretary for Justice, nothing in this Ordinance is to be regarded as requiring any person to disclose any information that the person is entitled to refuse to disclose on grounds of legal professional privilege.

908.

Paperless holding and transfer of shares and debentures

(Not yet in operation)

Schedule 8, which contains amendments relating to paperless holding and transfer of shares and debentures, has effect.

909.

Power to make regulations

(1)

The Financial Secretary may make regulations for any matter required or permitted to be prescribed under this Ordinance.

(2)

Subsection (1) does not apply if the Chief Executive in Council or the Financial Secretary is empowered under another Part to make regulations for the matter.

910.

Supplementary provisions for regulations made under this Ordinance

Subsidiary legislation made by the Chief Executive in Council or the Financial Secretary under this Ordinance may—

(a)

make different provision for different cases or classes of cases; and

(b)

contain any consequential, transitional, saving, incidental or supplementary provisions, that the Chief Executive in Council or the Financial Secretary (as the case may be) thinks fit.

911.

Financial Secretary and Registrar may amend Schedules

(1)

The Financial Secretary may, by notice published in the Gazette, amend Schedule 1, 2, 3, 4, 5, 5A, 5B, 5C, 6A, 6B, 6C or 7.

(Amended 3 of 2018 s. 5; 14 of 2025 s. 72)

(2)

The Registrar may, by notice published in the Gazette, amend Schedule 6.

Part 21

Consequential Amendments, and Transitional and Saving Provisions

(Format changes—E.R. 1 of 2013)

Division 1

Consequential and Related Amendments

912.

Amendments to enactments

(1)

The enactments specified in Schedules 9 and 10 are amended as set out in those Schedules.

(2)

The Financial Secretary may, by notice published in the Gazette—

(a)

amend Schedule 9 or 10 to make such consequential or related amendments to any enactment as are necessary on account of the coming into operation of any provision of this Ordinance; or

(b)

repeal any provision in Schedule 9 or 10 that is no longer necessary on account of the coming into operation of any provision of this Ordinance.

Division 2

Transitional and Saving Provisions

913.

Transitional and saving provisions

(1)

The transitional and saving provisions as set out in Schedule 11 have effect.

(2)

The Financial Secretary may, by notice published in the Gazette, amend Schedule 11.

914.

Extended effect of saving provision

(1)

This section applies if a provision of the predecessor Ordinance is repealed by section 912 but has a continuing effect under Schedule 11, or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), or both, after the repeal.

(2)

The saving as mentioned in subsection (1) for the effect of a provision of the predecessor Ordinance extends to any other provision of the predecessor Ordinance—

(a)

that defines an expression used in the provision; or

(b)

in accordance with which the provision is to be construed.

(3)

The saving as mentioned in subsection (1) for the effect of a provision of the predecessor Ordinance that creates an offence extends to the entry relating to that provision in the Twelfth Schedule to the predecessor Ordinance.

(4)

Section 304(1) and (2) of, and the Eighth Schedule to, the predecessor Ordinance, as in force immediately before their repeal, continue to apply in respect of a matter that is required or authorized by or under a provision of the predecessor Ordinance having a continuing effect as mentioned in subsection (1) if, immediately before that provision was repealed by section 912, a fee specified in that Schedule was payable to the Registrar in respect of that matter.

(5)

Subject to subsections (7) and (9), the saving as mentioned in subsection (1) for the effect of a provision of the predecessor Ordinance that refers to a prescribed or specified form, or refers to a prescribed manner, extends to the form or manner and to the power under which it is prescribed or specified.

(6)

If the provision of the predecessor Ordinance refers to a specified form, the Registrar may—

(a)

specify another form for the purpose; and

(b)

determine a date in relation to that other form for the purposes of subsection (7)(b).

(7)

If the Registrar exercises the powers under subsection (6), the effect of the provision of the predecessor Ordinance is to be construed as—

(a)

also referring to the form specified under subsection (6)(a) before the date determined under subsection (6)(b); and

(b)

only referring to that form on or after that date.

(8)

If the provision of the predecessor Ordinance requires a person, in relation to a particular purpose of that Ordinance, to state or furnish any matter, particulars or information to the Registrar, but does not require the matter, particulars or information to be stated or furnished in a specified form, the Registrar may—

(a)

specify a form for the purpose; and

(b)

determine a date in relation to the form for the purposes of subsection (9).

(9)

If the Registrar exercises the powers under subsection (8), the effect of the provision of the predecessor Ordinance is to be construed as requiring the matter, particulars or information to be stated or furnished in the form specified under subsection (8)(a) on or after the date determined under subsection (8)(b).

915.

Offence for false statement

(1)

This section applies if—

(a)

a provision of the predecessor Ordinance is repealed by section 912 but has a continuing effect under Schedule 11, or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), or both, after the repeal; and

(b)

after the repeal, any return, report, certificate, balance sheet or other document, is required by or for the purposes of the provision.

(2)

A person commits an offence if, in the return, report, certificate, balance sheet or document, the person wilfully makes a statement false in any material particular knowing it to be false.

(3)

A person who commits an offence under subsection (2) is liable to a fine at level 6 and to imprisonment for 6 months.

(4)

This section does not affect the operation of—

(a)

Part V of the Crimes Ordinance (Cap. 200); or

(b)

section 19, 20 or 21 of the Theft Ordinance (Cap. 210).

916.

Limitation on commencement of proceedings

(1)

This section applies if—

(a)

a provision of the predecessor Ordinance is repealed by section 912 but has a continuing effect under Schedule 11, or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), or both, after the repeal; and

(b)

after the repeal, an offence is committed under the provision.

(2)

Despite section 26 of the Magistrates Ordinance (Cap. 227), an information or complaint relating to the offence may be tried if it is laid or made—

(a)

within 3 years after the commission of the offence; and

(b)

within 12 months after the date on which the supporting evidence came to the Secretary for Justice's knowledge.

(3)

For the purposes of this section, a certificate of the Secretary for Justice as to the date on which the supporting evidence came to the Secretary for Justice's knowledge is conclusive evidence of that date.

(4)

This section does not apply to an offence committed before 1 March 1973.

(5)

In this section—

supporting evidence

(

助控證據

) means evidence sufficient, in the Secretary for Justice's opinion, to justify the proceedings.

917.

Application of fines

(1)

This section applies if—

(a)

a provision of the predecessor Ordinance is repealed by section 912 but has a continuing effect under Schedule 11, or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), or both, after the repeal; and

(b)

after the repeal, a fine is imposed under the provision.

(2)

When imposing the fine, the Court or magistrate may direct that the whole or any part of the fine is to be applied—

(a)

in or towards payment of the costs of the proceedings; or

(b)

in or towards rewarding the person on whose information, or at whose suit, the fine is recovered.

(3)

Subject to a direction under subsection (2), the fine must be paid into the general revenue.

(4)

Subsection (3) has effect despite anything in any other Ordinance.

918.

Saving as to private prosecution

(1)

This section applies if—

(a)

a provision of the predecessor Ordinance is repealed by section 912 but has a continuing effect under Schedule 11, or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), or both, after the repeal; and

(b)

the provision relates to the institution of criminal proceedings by the Secretary for Justice.

(2)

Nothing in the provision precludes any person from instituting or carrying on any criminal proceedings.

919.

Saving for privileged communication

(1)

This section applies if—

(a)

a provision of the predecessor Ordinance is repealed by section 912 but has a continuing effect under Schedule 11, or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), or both, after the repeal; and

(b)

after the repeal, proceedings are instituted under the provision against any person by the Secretary for Justice.

(2)

Nothing in the provision is to be regarded as requiring any person who has acted as solicitor for the defendant to disclose any privileged communication made to the person in that capacity.

Division 3

Supplemental Provisions

920.

This Part etc. not to derogate from section 23 of Cap. 1

This Part, and Schedules 9, 10 and 11, are in addition to and not in derogation of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), except as otherwise provided in this Part or those Schedules.

921.

Continuity of law

(1)

This section applies if a provision of this Ordinance re-enacts (with or without modification) a provision of another Ordinance repealed by this Ordinance.

(2)

The repeal and re-enactment does not affect the continuity of the law.

(3)

Anything done (including subsidiary legislation made), or having effect as if done, under or for the purposes of the repealed provision that could have been done under or for the purposes of the corresponding provision of this Ordinance, if in force or effective immediately before the commencement date of that corresponding provision, has effect after that commencement date as if done under or for the purposes of that corresponding provision.

(4)

A reference (express or implied) in an Ordinance, instrument or document to a provision of this Ordinance is to be construed (so far as the context permits) as including, as respects times, circumstances and purposes in relation to which the corresponding repealed provision had effect, a reference to that corresponding provision.

(5)

A reference (express or implied) in an Ordinance, instrument or document to a repealed provision is to be construed (so far as the context permits), as respects times, circumstances and purposes in relation to which the corresponding provision of this Ordinance has effect, as being or (according to the context) including a reference to the corresponding provision of this Ordinance.

(6)

This section has effect subject to any specific transitional or saving provision contained in this Ordinance.

Schedule 1

[ss. 357 & 911]

(Amended 35 of 2018 s. 85)

Parent Undertakings and Subsidiary Undertakings

1.

Interpretation

(1)

In this Schedule—

(Amended 35 of 2018 s. 85)

accounting standards

(

會計準則

) has the same meaning as in Part 9;

(Added 35 of 2018 s. 85)

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 any capital, means—

(i)

the interest giving a right to share in the profits, or giving rise to a 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;

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.

(2)

In this Schedule, a reference to accounting standards applicable to any financial statements of a parent undertaking is a reference to accounting standards as are, in accordance with their terms, relevant to the parent undertaking's circumstances and to the financial statements.

(Added 35 of 2018 s. 85)

2.

Parent undertaking

(1)

For the purposes of this Schedule and Part 9, an undertaking is a parent undertaking of another undertaking if—

(a)

it has control over that other undertaking; or

(b)

it is a parent of that other undertaking for the purposes of the accounting standards applicable to its financial statements.

(2)

For the purposes of subsection (1)(a), an undertaking has control over another undertaking if it has the power to govern the financial and operating policies of that other undertaking so as to obtain benefits from that other undertaking's activities.

(3)

For the purposes of subsection (1)(a), an undertaking is presumed, unless the contrary is proved, to have control over another undertaking if—

(a)

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

(b)

it has the power to exercise a majority of the voting rights in that other undertaking by reason of an agreement with other members of that other undertaking;

(c)

it has the right to appoint or remove a majority of the board of directors, or an equivalent governing body, of that other undertaking; or

(d)

it has the power to cast a majority of votes at meetings of the board of directors, or an equivalent governing body, of that other undertaking.

(4)

Subsection (3) does not limit subsection (2).

(5)

For the purposes of subsection (3), 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 to vote at general meetings of the undertaking on all, or substantially all, matters; 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, or 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.

(6)

For the purposes of subsection (3)(c), a reference to the right to appoint or remove a majority of a board of directors or an equivalent governing body is—

(a)

a reference to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters; or

(b)

a reference to the right to appoint or remove members of the body holding a majority of the voting rights at meetings of the body on all, or substantially all, matters.

(7)

For the purposes of subsection (6)—

(a)

in determining whether an undertaking has the right to appoint or remove a director or a member of the equivalent governing body, a right that is exercisable only with another person's consent is to be disregarded unless no other person has the right; and

(b)

an undertaking has the right to appoint a director or a member of the equivalent governing body if—

(i)

a person's appointment as a director or a member follows necessarily from that person's appointment as a director or a member in relation to the undertaking; or

(ii)

the directorship or membership is held by the undertaking itself.

(Replaced 35 of 2018 s. 85)

3.

Provisions supplementary to section 2 of this Schedule

(1)

For the purposes of this Schedule, a right held by a subsidiary undertaking of another undertaking is to be regarded as being held by that other undertaking.

(2)

For the purposes of this Schedule—

(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 Schedule—

(a)

a right held by a person in a fiduciary capacity is to be regarded as not being held by the person; and

(b)

a right held by a person as nominee for another is to be regarded as being held by that other.

(4)

For the purposes of this Schedule, a right is to be 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 Schedule, a right attached to shares held by way of security is to be 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 to be 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.

4.

Subsidiary undertaking

(1)

For the purposes of this Schedule and Part 9, 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 Schedule and Part 9, an undertaking is also a subsidiary undertaking of another undertaking if a parent undertaking of it is a subsidiary undertaking of that other undertaking.

(Amended 35 of 2018 s. 85)

Schedule 2

[ss. 68, 74, 85, 114, 474 & 911]

(Amended 14 of 2025 s. 73)

Content of Incorporation Form

Part 1

Particulars and Statements of Company

1.

Particulars and statements relating to company

The particulars and statements specified for the purposes of section 68(1)(a) are—

(a)

the proposed name of the company;

(b)

the proposed address of the company's registered office in Hong Kong;

(c)

a statement as to whether the company is to be a company limited by shares or by guarantee, or an unlimited company;

(d)

if the company is to be a company limited by shares or an unlimited company, a statement as to whether it is to be a private or public company; and

(e)

if the company is to be a company limited by guarantee, the number of members with which it proposes to register.

Part 2

Particulars of Founder member

2.

Particulars of founder member

The particulars specified for the purposes of section 68(1)(b) are the name and address of the founder member.

Part 3

Particulars and Statement of Proposed Officers

3.

Particulars of director

(1)

The particulars specified for the purposes of section 68(1)(c)(i) are—

(a)

if the person 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;

(iii)

the correspondence address; and

(iv)

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

(b)

if the person is a body corporate, the corporate name and the address of its registered or principal office.

(2)

For the purposes of subsection (1)(a)(iii), a correspondence address must not be a post office box number.

4.

Statement relating to director

The statement specified for the purposes of section 68(1)(c)(ii) is—

(a)

if the person is the signatory to the incorporation form, a statement by the person—

(i)

that the person has consented to be a director of the company; and

(ii)

if the person is a natural person, that he or she has attained the age of 18 years; or

(b)

if the person is not the signatory to the incorporation form—

(i)

a statement by the person that the person has consented to be a director of the company and, if the person is a natural person, that he or she has attained the age of 18 years; or

(ii)

a statement by the signatory that the person has consented to be a director of the company and, if the person is a natural person, that he or she has attained the age of 18 years.

5.

Particulars of company secretary

(1)

The particulars specified for the purposes of section 68(1)(d) are—

(a)

if the person is a natural person and is not a person covered by paragraph (c)—

(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 person does not have an identity card, the number and issuing country of any passport held by the person;

(b)

if the person is a body corporate and is not a person covered by paragraph (c), the corporate name and the address of its registered or principal office; or

(c)

if the person is a partner of a firm all partners of which are to be the joint company secretaries of the company, the firm's name and the address of the firm's principal office.

(2)

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.

6.

Definitions

(1)

In this Part—

forename

(

名字

) includes a Christian or given name;

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 Part, to have no other permanent address; and

(b)

does not include a post office box number;

signatory

(

簽署人

), in relation to an incorporation form, means the founder member who signs the form for the purposes of section 69;

surname

(

姓氏

), for a person usually known by a title different from the person's surname, means that title.

(2)

In this Part, 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 his or her 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, a name or surname by which she was known before her marriage.

Part 4

Statements relating to Articles

7.

Statements relating to articles

The statements specified for the purposes of section 68(1)(e) are—

(a)

a statement that the company's articles have been signed for the purposes of section 67(1)(a) by every person proposing to become a member of the company on the company's formation; and

(b)

a statement that the contents of the copy of the company's articles delivered under section 67(1)(b)(ii), with or without the part showing the signature and the date of signing as they appear on the original document, are the same as those of the articles.

Part 5

Statement of Capital and Initial Shareholdings

8.

Statement of capital and initial shareholdings

(1)

The statement specified for the purposes of section 68(2) is a statement that—

(a)

states the total number of shares that the company proposes to issue on the company's formation;

(b)

states the total amount of share capital to be subscribed by the company's founder members on that formation;

(c)

states the amount to be paid up or to be regarded as paid up, and the amount to remain unpaid or to be regarded as remaining unpaid, on the total number of shares that the company proposes to issue on that formation;

(d)

if the share capital is to be divided into different classes of shares on that formation, also states the classes and, for each class—

(i)

the total number of shares in that class that the company proposes to issue on that formation;

(ii)

the total amount of share capital in that class to be subscribed by the company's founder members on that formation;

(iii)

the amount to be paid up or to be regarded as paid up, and the amount to remain unpaid or to be regarded as remaining unpaid, on the total number of shares in that class that the company proposes to issue on that formation;

(iv)

the particulars of any voting rights attached to shares in that class, including rights that arise only in certain circumstances;

(v)

the particulars of any rights attached to shares in that class, as respects dividends, to participate in a distribution;

(vi)

the particulars of any rights attached to shares in that class, as respects capital, to participate in a distribution (including on a winding up); and

(vii)

whether or not shares in that class are redeemable shares; and

(e)

in respect of each founder member, states the number of shares that the company proposes to issue to the member and the total amount of share capital to be subscribed by the member on that formation.

(2)

If the shares proposed to be issued to a founder member on the formation belong to 2 or more classes, the information required under subsection (1)(e) must be stated in respect of each class.

Schedule 3

[ss. 361, 362, 363, 364, 365, 366, 366A & 911]

(Amended 35 of 2018 s. 86)

Specified Qualifying Conditions for Sections 361 to 366A

(Amended 35 of 2018 s. 86)

1A.

Interpretation

In this Schedule—

non-Hong Kong body corporate

(

非香港法人團體

)—

(Amended 14 of 2025 s. 74)

(a)

means a body corporate incorporated outside Hong Kong; but

(b)

does not include a re-domiciled company.

(Amended 14 of 2025 s. 74)

(Added 35 of 2018 s. 86)

1.

Qualifying conditions

(1)

The conditions specified for the purposes of section 361(1), (2) and (3) are—

(a)

that the amount of the company's total revenue for the financial year, as would be reflected in the company's annual financial statements for the financial year if the company were qualified as a small private company for the financial year, does not exceed $100 million;

(b)

that the amount of the company's total assets at the date of the statement of financial position for the financial year, as would be reflected in the company's annual financial statements for the financial year if the company were qualified as a small private company for the financial year, does not exceed $100 million; and

(c)

that the average number of the company's employees during the financial year does not exceed 100.

(2)

The conditions specified for the purposes of section 361(4) are—

(a)

that the amount of the company's total revenue for the financial year, as reflected in the company's annual financial statements for the financial year, does not exceed $100 million;

(b)

that the amount of the company's total assets at the date of the statement of financial position for the financial year, as reflected in the company's annual financial statements for the financial year, does not exceed $100 million; and

(c)

that the average number of the company's employees during the financial year does not exceed 100.

(3)

The conditions specified for the purposes of section 362(1), (2) and (3) are—

(a)

that the amount of the company's total revenue for the financial year, as would be reflected in the company's annual financial statements for the financial year if the company were qualified as an eligible private company for the financial year, does not exceed $200 million;

(b)

that the amount of the company's total assets at the date of the statement of financial position for the financial year, as would be reflected in the company's annual financial statements for the financial year if the company were qualified as an eligible private company for the financial year, does not exceed $200 million; and

(c)

that the average number of the company's employees during the financial year does not exceed 100.

(4)

The conditions specified for the purposes of section 362(4) are—

(a)

that the amount of the company's total revenue for the financial year, as reflected in the company's annual financial statements for the financial year, does not exceed $200 million;

(b)

that the amount of the company's total assets at the date of the statement of financial position for the financial year, as reflected in the company's annual financial statements for the financial year, does not exceed $200 million; and

(c)

that the average number of the company's employees during the financial year does not exceed 100.

(5)

The condition specified for the purposes of section 363(1), (2) and (3) is that the amount of the company's total revenue for the financial year, as would be reflected in the company's annual financial statements for the financial year if the company were qualified as a small guarantee company for the financial year, does not exceed $25 million.

(6)

The condition specified for the purposes of section 363(4) is that the amount of the company's total revenue for the financial year, as reflected in the company's annual financial statements for the financial year, does not exceed $25 million.

(7)

The conditions specified for the purposes of section 364(1), (2), (3), (4) and (5) are—

(a)

that each company in the group is qualified as a small private company for the financial year; and

(b)

that each non-Hong Kong body corporate in the group would have been qualified as a small private company for the financial year had it been incorporated under this Ordinance.

(Replaced 35 of 2018 s. 86)

(8)

The conditions specified for the purposes of section 364(1), (2) and (3) and section 366A(4)(a) are—

(Amended 35 of 2018 s. 86)

(a)

that the aggregate amount of the group's total revenue for the financial year does not exceed $100 million;

(b)

that the aggregate amount of the group's total assets at the date of the statement of financial position for the financial year does not exceed $100 million; and

(c)

that the aggregate number of employees of the group during the financial year does not exceed 100.

(9)

The conditions specified for the purposes of section 364(4) and (5) and section 366A(8)(a) are—

(Amended 35 of 2018 s. 86)

(a)

that the aggregate amount of the group's total revenue for the financial year does not exceed $100 million;

(b)

that the aggregate amount of the group's total assets at the date of the statement of financial position for the financial year does not exceed $100 million; and

(c)

that the aggregate number of employees of the group during the financial year does not exceed 100.

(10)

The conditions specified for the purposes of section 365(1), (2), (3), (4) and (5) are—

(a)

that each company in the group is qualified as an eligible private company for the financial year; and

(b)

that each non-Hong Kong body corporate in the group would have been qualified as an eligible private company for the financial year had it been incorporated under this Ordinance.

(Replaced 35 of 2018 s. 86)

(11)

The conditions specified for the purposes of section 365(1), (2) and (3) and section 366A(4)(b) are—

(Amended 35 of 2018 s. 86)

(a)

that the aggregate amount of the group's total revenue for the financial year does not exceed $200 million;

(b)

that the aggregate amount of the group's total assets at the date of the statement of financial position for the financial year does not exceed $200 million; and

(c)

that the aggregate number of employees of the group during the financial year does not exceed 100.

(12)

The conditions specified for the purposes of section 365(4) and (5) and section 366A(8)(b) are—

(Amended 35 of 2018 s. 86)

(a)

that the aggregate amount of the group's total revenue for the financial year does not exceed $200 million;

(b)

that the aggregate amount of the group's total assets at the date of the statement of financial position for the financial year does not exceed $200 million; and

(c)

that the aggregate number of employees of the group during the financial year does not exceed 100.

(12A)

The conditions specified for the purposes of section 366(1), (2), (3), (4) and (5) are—

(a)

that each company in the group is qualified as a small guarantee company for the financial year; and

(b)

that each non-Hong Kong body corporate in the group would have been qualified as a small guarantee company for the financial year had it been incorporated under this Ordinance.

(Added 35 of 2018 s. 86)

(13)

The condition specified for the purposes of section 366(1), (2) and (3) and section 366A(4)(c) is that the aggregate amount of the group's total revenue for the financial year does not exceed $25 million.

(Replaced 35 of 2018 s. 86)

(14)

The condition specified for the purposes of section 366(4) and (5) and section 366A(8)(c) is that the aggregate amount of the group's total revenue for the financial year does not exceed $25 million.

(Replaced 35 of 2018 s. 86)

(15)

In subsections (1), (3), (5), (7), (8), (10), (11) and (13)—

(a)

a reference to a financial year of a company for the purposes of section 361(2), 362(2), 363(2), 364(2), 365(2) or 366(2) includes a financial year of the company for the purposes of the predecessor Ordinance that immediately precedes the company's first financial year after the coming into operation of this section; and

(b)

a reference to a company's annual financial statements is, in the case of a financial year of the company for the purposes of the predecessor Ordinance, a reference to the company's accounts for the financial year.

2.

Provisions supplementary to section 1 of this Schedule

(1)

For the purposes of section 1(1)(a), (2)(a), (3)(a), (4)(a), (5), (6), (8)(a), (9)(a), (11)(a), (12)(a), (13) and (14) of this Schedule, the amount of total revenue for a financial year that is shorter or longer than 12 months is to be calculated on a pro-rata basis as if the length of the financial year were 12 months.

(2)

For the purposes of section 1(8), (11) and (13) of this Schedule, the aggregate amount of the group's total revenue or assets—

(Amended 35 of 2018 s. 86)

(a)

is to be calculated by aggregating the total revenue or assets (as the case may be) of each member in the group, as would be reflected in the member's annual financial statements or annual consolidated financial statements for the financial year if the group were qualified as a group of small private companies, eligible private companies or small guarantee companies, or a mixed group (as the case may be); and

(b)

is to be calculated on the basis that the set-offs and other adjustments for transactions between members in the group have been made.

(3)

For the purposes of section 1(9), (12) and (14) of this Schedule, the aggregate amount of the group's total revenue or assets—

(Amended 35 of 2018 s. 86)

(a)

is to be calculated by aggregating the total revenue or assets (as the case may be) of each member in the group, as reflected in the member's annual financial statements or annual consolidated financial statements for the financial year; and

(b)

is to be calculated on the basis that the set-offs and other adjustments for transactions between members in the group have been made.

(4)

For the purposes of section 1(8)(c), (9)(c), (11)(c) and (12)(c) of this Schedule, the aggregate number of employees of the group during a financial year is to be calculated by aggregating the average number of employees of each member in the group during the financial year.

(5)

For the purposes of subsection (4) and of section 1(1)(c), (2)(c), (3)(c) and (4)(c) of this Schedule, the average number of the employees of a company or a member in a group during a financial year is to be calculated by using the following formula—

(Amended 35 of 2018 s. 86)

$$\frac{M}{N}$$

where—

M represents the aggregate of the number of the employees of the company or the member in the group as at the end of each month during the financial year;

N represents the number of months in the financial year.

(6)

In subsections (2)(a) and (3)(a), a reference to a company's annual financial statements or annual consolidated financial statements is, in the case of a financial year of the company for the purposes of the predecessor Ordinance mentioned in section 1(15)(a) of this Schedule, a reference to the company's accounts or group accounts for the financial year.

(Amended 35 of 2018 s. 86)

Schedule 4

[ss. 358, 380 & 911]

Accounting Disclosures

Part 1

Disclosures for Companies whether or not Falling within Reporting Exemption

1.

Aggregate amount of authorized loans

The financial statements for a financial year must contain, under separate headings, the aggregate amount of any outstanding loans made under the authority of sections 280 and 281 during the financial year.

2.

Statement of financial position to be contained in notes to annual consolidated financial statements

(1)

The annual consolidated financial statements for a financial year—

(a)

must contain, in the notes to the statements, the holding company's statement of financial position for the financial year; and

(b)

must include a note disclosing the movement in the holding company's reserves.

(2)

Despite section 380(4), the holding company's statement of financial position to be contained in the notes to the annual consolidated financial statements for a financial year is not required to contain any notes.

(3)

That statement of financial position must be in the format in which that statement would have been prepared if the holding company had not been required to prepare any annual consolidated financial statements for the financial year.

3.

Subsidiary's financial statements must contain particulars of ultimate parent undertaking

(1)

This section applies if, at the end of a financial year, a company is the subsidiary of another undertaking.

(2)

The company's financial statements for the financial year must contain, in the notes to the statements—

(a)

the name of the undertaking regarded by the directors as being the company's ultimate parent undertaking; and

(b)

the following information relating to that undertaking as known to the directors—

(i)

if that undertaking is a body corporate, the country in which it is incorporated;

(ii)

if that undertaking is not a body corporate, the address of its principal place of business.

(3)

In this section—

parent undertaking

(

母企業

) has the same meaning as in Part 9.

(Added 35 of 2018 s. 87)

4.

Compliance with applicable accounting standards

The financial statements for a financial year must state—

(a)

whether they have been prepared in accordance with the applicable accounting standards as defined by section 357(1); and

(Amended 35 of 2018 s. 87)

(b)

if they have not been so prepared, the particulars of, and the reasons for, any material departure from those standards.

Part 2

Disclosures for Companies not Falling within Reporting Exemption

1.

Remuneration of auditor

(1)

A company's financial statements for a financial year must state, under a separate heading, the amount of the remuneration of the auditor.

(2)

In this section—

remuneration

(

酬金

), in relation to an auditor of a company, includes any sum paid by the company in respect of the auditor's expenses.

Schedule 5

[ss. 388 & 911]

Contents of Directors' Report: Business Review

1.

A directors' report for a financial year must contain a business review that consists of—

(a)

a fair review of the company's business;

(b)

a description of the principal risks and uncertainties facing the company;

(c)

particulars of important events affecting the company that have occurred since the end of the financial year; and

(d)

an indication of likely future development in the company's business.

2.

To the extent necessary for an understanding of the development, performance or position of the company's business, a business review must include—

(a)

an analysis using financial key performance indicators;

(b)

a discussion on—

(i)

the company's environmental policies and performance; and

(ii)

the company's compliance with the relevant laws and regulations that have a significant impact on the company; and

(c)

an account of the company's key relationships with its employees, customers and suppliers and others that have a significant impact on the company and on which the company's success depends.

3.

This Schedule does not require the disclosure of any information about impending developments or matters in the course of negotiation if the disclosure would, in the directors' opinion, be seriously prejudicial to the company's interests.

4.

This Schedule has effect in relation to a directors' report required to be prepared under section 388(2) as if a reference to the company were a reference to—

(a)

the company; and

(b)

the subsidiary undertakings included in the annual consolidated financial statements for the financial year.

5.

In this Schedule—

key performance indicators

(

關鍵表現指標

) means factors by reference to which the development, performance or position of the company's business can be measured effectively;

(Amended 35 of 2018 s. 88)

subsidiary undertaking

(

附屬企業

) has the same meaning as in Part 9.

(Added 35 of 2018 s. 88)

Schedule 5A

[ss. 653E & 911]

Significant Control over Applicable Company

Part 1

Who has Significant Control over Applicable Company

1.

Significant control over applicable company

A person has significant control over an applicable company as defined by section 653A if one or more of the following conditions are met—

(a)

the person holds, directly or indirectly—

(i)

if the company has a share capital—more than 25% of the issued shares in the company; and

(ii)

if the company does not have a share capital—a right or rights to share in more than 25% of the capital or, as the case requires, profits of the company;

(b)

the person holds, directly or indirectly, more than 25% of the voting rights in the company;

(c)

the person holds, directly or indirectly, the right to appoint or remove a majority of the board of directors of the company;

(d)

the person has the right to exercise, or actually exercises, significant influence or control over the company;

(e)

the person has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm—

(i)

that, under the law governing the trust or firm, is not a legal person; and

(ii)

whose trustees or members meet one or more of the conditions (in their capacity as such) specified in paragraphs (a), (b), (c) and (d).

Note—

In relation to paragraphs (d) and (e), when determining whether a person has the right to exercise, or actually exercises, significant influence or control over an applicable company or the activities of a trust or firm, regard may be had to any guidelines issued under section 24.

Part 2

Interpretative Provisions

Division 1

Preliminary

2.

Purpose of this Part

This Part sets out the provisions for the interpretation of this Schedule.

3.

Interpretation

(1)

In this Part—

legal entity

(

法律實體

) has the meaning given by section 653A.

(2)

For the purposes of this Part, an arrangement—

(a)

includes—

(i)

a scheme, agreement or understanding, whether or not it is legally enforceable; and

(ii)

a convention, custom or practice of any kind; and

(b)

refers only to an arrangement with some degree of stability, whether by its nature or terms, the time it has been in existence or otherwise.

Division 2

Shares

4.

Joint interest—share

If a person holds a share jointly with another person, each of them is regarded as holding the share.

5.

Joint arrangement—share

(1)

If shares held by a person and those held by another person are the subject of a joint arrangement between the person and the other person, each of them is regarded as holding the combined shares of both of them.

(2)

For the purposes of subsection (1), a joint arrangement is an arrangement between the holders of shares to exercise all, or substantially all, the rights conferred by their respective shares jointly in a way pre-determined by the arrangement.

6.

Share held by nominee

A share held by a nominee for another person is regarded as being held by that other person.

7.

Share held indirectly

(1)

A person holds a share indirectly if the person has a majority stake in a legal entity (***entity A***) and—

(a)

entity A holds the share; or

(b)

entity A is part but not the last of a chain of legal entities and—

(i)

each of those legal entities (other than the last one in the chain) has a majority stake in the entity immediately below it in the chain; and

(ii)

the last one in the chain holds the share.

(2)

For the purposes of subsection (1), a person has a majority stake in a legal entity if—

(a)

the person holds a majority of the voting rights in that entity;

(b)

the person is a member of that entity and has the right to appoint or remove a majority of the board of directors of that entity;

(c)

the person is a member of that entity and, under an agreement with another member of that entity, controls alone a majority of the voting rights in that entity; or

(d)

the person has the right to exercise, or actually exercises, dominant influence or control over that entity.

Division 3

Rights

8.

Who is regarded as holding right

(1)

If a person controls a right, the person is regarded as holding the right, whether or not the person in fact holds the right.

(2)

Although a person in fact holds a right, the person is not regarded as holding the right unless the person also controls the right.

(3)

For the purposes of this section, a person controls a right if, under an arrangement between the person and another person, a right is exercisable—

(a)

only by the person;

(b)

only in accordance with the person's directions or instructions; or

(c)

only with the person's consent or concurrence.

9.

Joint interest—right

If a person holds a right jointly with another person, each of them is regarded as holding the right.

10.

Joint arrangement—right

(1)

If rights held by a person and those held by another person are the subject of a joint arrangement between the person and the other person, each of them is regarded as holding the combined rights of both of them.

(2)

For the purposes of subsection (1), a joint arrangement is an arrangement between the holders of rights to exercise all, or substantially all, the rights conferred by their respective rights jointly in a way pre-determined by the arrangement.

11.

Voting rights in legal entity

(1)

A reference to the voting rights in a legal entity is a reference to—

(a)

if the entity has a share capital—the rights given to its members in respect of their shares to vote at general meetings of the entity on all matters or on substantially all matters; and

(b)

if the entity does not have a share capital—the rights given to its members to vote at general meetings of the entity on all matters or on substantially all matters.

(2)

For a legal entity that does not have general meetings at which matters are decided by exercising such rights—

(a)

a reference to the voting rights in the entity is a reference to—

(i)

if the entity has a share capital—the rights equivalent to those mentioned in subsection (1)(a); and

(ii)

if the entity does not have a share capital—the rights equivalent to those mentioned in subsection (1)(b); and

(b)

a reference to 25% of the voting rights in the entity is a reference to the right under the entity's constitution to block changes to the overall policy of the entity or to the terms of its constitution.

12.

Appointment or removal of majority of board of directors

A reference to a right to appoint or remove a majority of the board of directors of a legal entity—

(a)

is a reference to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all matters or on substantially all matters; and

(b)

in relation to a legal entity that does not have a board of directors, is a reference to the right to appoint or remove members of an equivalent governing body holding a majority of the voting rights at meetings of the body on all matters or on substantially all matters.

13.

Right held indirectly

(1)

A person holds a right indirectly if the person has a majority stake in a legal entity (***entity A***) and—

(a)

entity A holds the right; or

(b)

entity A is part but not the last of a chain of legal entities and—

(i)

each of those legal entities (other than the last one in the chain) has a majority stake in the entity immediately below it in the chain; and

(ii)

the last one in the chain holds the right.

(2)

For the purposes of subsection (1), a person has a majority stake in a legal entity if—

(a)

the person holds a majority of the voting rights in that entity;

(b)

the person is a member of that entity and has the right to appoint or remove a majority of the board of directors of that entity;

(c)

the person is a member of that entity and, under an agreement with another member of that entity, controls alone a majority of the voting rights in that entity; or

(d)

the person has the right to exercise, or actually exercises, dominant influence or control over that entity.

14.

Circumstances under which legal entity would be regarded as having right to appoint director of another legal entity

(1)

A legal entity (***entity B***) is regarded as having a right to appoint a director of another legal entity (***entity C***) if—

(a)

a person's appointment as a director of entity C follows necessarily from that person's appointment as a director of entity B; or

(b)

the directorship of entity C is held by entity B itself.

(2)

For the purposes of subsection (1), if entity B does not have a board of directors, a reference to a director of entity B in subsection (1)(a) is a reference to a member of an equivalent governing body of entity B.

(3)

For the purposes of subsection (1), if entity C does not have a board of directors—

(a)

a reference to a director of entity C in subsection (1)(a) is a reference to a member of an equivalent governing body of entity C; and

(b)

a reference to the directorship of entity C in subsection (1)(b) is a reference to the membership of an equivalent governing body of entity C.

15.

Right attached to shares held by way of security

(1)

A right attached to shares held by way of security is regarded as being held by the person providing the security—

(a)

if, except for the situation specified in subsection (2), the right 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 for the situation specified in subsection (2), the right is exercisable only in that person's interests.

(2)

The situation is that the right—

(a)

is exercised for the purpose of preserving the value of the security; or

(b)

is exercised for the purpose of realizing the security.

16.

Right exercisable only in certain circumstances

(1)

A right that is exercisable only in certain circumstances is taken into account only if—

(a)

the circumstances have arisen; or

(b)

the circumstances are within the control of the person having the right.

(2)

A right exercisable under subsection (1)(a) is exercisable for so long as the circumstances exist.

(3)

A right that is normally exercisable but is temporarily incapable of being exercised continues to be taken into account.

(4)

A reference in this section to a right that is exercisable does not include a right that is exercisable by a provisional liquidator, liquidator or creditor under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

(Schedule 5A added 3 of 2018 s. 6)

Schedule 5B

[ss. 653A, 653I, 653O & 911]

Required Particulars of Significant Controllers

Part 1

Preliminary

1.

Interpretation

In this Schedule—

applicable company

(

適用公司

) has the meaning given by section 653A;

registrable person

(

須登記人士

) has the meaning given by section 653C;

significant controllers register

(

重要控制人登記冊

) has the meaning given by section 653A.

Part 2

Natural Person

2.

Particulars of natural person

(1)

This section applies if a registrable person of an applicable company is a natural person.

(2)

The following are the particulars required under section 653I(1)(a) to be contained in the significant controllers register of the company for the person—

(a)

the person's present forename and surname, former forename or surname (if any), and aliases (if any);

(b)

the person's correspondence address, which must not be a post office box number;

(c)

the number of the person's identity card or, if the person does not have an identity card, the number and issuing country of a passport held by the person;

(d)

the date on which the person became a registrable person of the company;

(e)

the nature of the person's control over the company.

(3)

In this section—

forename

(

名字

) includes a Christian or given name;

surname

(

姓氏

), in relation to a person usually known by a title that is different from the person's surname, means that title.

(4)

In this section, a reference to a person's former forename or surname does not include—

(a)

a forename or surname of the person that was changed or ceased to be used before the person attained the age of 18 years;

(b)

a forename or surname of the person that has been changed or ceased to be used for a period of at least 20 years;

(c)

if the person is usually known by a title different from the person's surname, the name by which the person was known before adopting or succeeding to that title; and

(d)

if the person is a married woman, a name or surname by which the person was known before the marriage.

Part 3

Specified Entity

3.

Particulars of specified entity

(1)

This section applies if a registrable person of an applicable company is a specified entity.

(2)

The following are the particulars required under section 653I(1)(a) to be contained in the significant controllers register of the company for the entity—

(a)

the entity's name;

(b)

the address of the entity's principal office;

(c)

the entity's legal form, and the law that governs it;

(d)

the date on which the entity became a registrable person of the company;

(e)

the nature of the entity's control over the company.

(3)

In this section—

specified entity

(

指明實體

) has the meaning given by section 653A.

Part 4

Legal Entity

4.

Particulars of legal entity

(1)

This section applies to a registrable legal entity of an applicable company.

(2)

The following are the particulars required under section 653I(1)(a) to be contained in the significant controllers register of the company for the entity—

(a)

the entity's name;

(b)

if the entity is a company as defined by section 2(1) but is not a re-domiciled company—

(Amended 14 of 2025 s. 75)

(i)

the company's registration number as stated in its certificate of incorporation; and

(ii)

the address of its registered office;

(ba)

if the entity is a re-domiciled company—

(i)

the company's registration number as stated in its certificate of re-domiciliation; and

(ii)

the address of its registered office;

(Added 14 of 2025 s. 75)

(c)

if the entity is not a company as defined by section 2(1)—

(i)

if the entity has not transferred its domicile to any other jurisdiction after its incorporation or formation—

(A)

the entity's registration number (or the equivalent) as stated in its certificate of incorporation or formation (or the equivalent); and

(B)

the address of its registered or principal office; and

(ii)

if the entity has transferred its domicile to any other jurisdiction after its incorporation or formation—

(A)

the entity's registration number (or the equivalent) as stated in the certificate of registration (or the equivalent) issued in the latest domicile certifying that the entity is registered under the law of its latest place of domicile; and

(B)

the address of its registered or principal office;

(Replaced 14 of 2025 s. 75)

(d)

the entity's legal form, and the law that governs it;

(e)

the date on which the entity became a registrable legal entity of the company;

(f)

the nature of the entity's control over the company.

(3)

In this section—

registrable legal entity

(

須登記法律實體

) has the meaning given by section 653D.

(Schedule 5B added 3 of 2018 s. 6)

Schedule 5C

[ss. 653I & 911]

Additional Matters

Part 1

Preliminary

1.

Interpretation

In this Schedule—

applicable company

(

適用公司

) has the meaning given by section 653A;

registrable person

(

須登記人士

) has the meaning given by section 653C;

required particulars

(

所需詳情

) has the meaning given by section 653A;

significant controller

(

重要控制人

) has the meaning given by section 653A;

significant controllers register

(

重要控制人登記冊

) has the meaning given by section 653A;

specified period

(

指明限期

), in relation to a notice given under section 653P or 653T, means the period of 1 month from the date of the notice.

Part 2

Inclusion of Additional Matters in Certain Cases

2.

Case 1—where there is no significant controller

(1)

This section applies if an applicable company knows, or has reasonable cause to believe, that it has no significant controller.

(2)

The company must note in its significant controllers register that the company knows, or has reasonable cause to believe, that it has no significant controller.

3.

Case 2—where there is unidentified registrable person

(1)

This section applies if—

(a)

an applicable company knows, or has reasonable cause to believe, that it has a registrable person; and

(b)

the company has not been able to identify that person.

(2)

The company must—

(a)

note in its significant controllers register that the company knows, or has reasonable cause to believe, that it has a registrable person but has not been able to identify that person; and

(b)

make a separate note in the register in respect of each person that the company has not been able to identify.

4.

Case 3—where particulars of identified registrable person are not confirmed

(1)

This section applies if—

(a)

an applicable company has identified a registrable person of the company; and

(b)

not all the required particulars of that person have been confirmed under section 653J.

(2)

The company must—

(a)

note in its significant controllers register that the company has identified a registrable person of the company but not all the required particulars of that person have been confirmed under section 653J; and

(b)

make a separate note in the register in respect of each registrable person whose required particulars have not been so confirmed.

5.

Case 4—where company's investigations are ongoing

(1)

This section applies to an applicable company if—

(a)

none of the following provisions of this Schedule applies to the company—

(i)

section 2;

(ii)

section 3;

(iii)

section 4;

(b)

the company has not entered, and is not yet required to enter, the required particulars of a significant controller of the company in its significant controllers register; and

(c)

the company has not completed taking reasonable steps to ascertain whether it has a significant controller.

(2)

The company must note in its significant controllers register that the company has not yet completed taking reasonable steps to ascertain whether it has a significant controller.

6.

Case 5—where matters noted under section 2, 3, 4 or 5 of this Schedule has ceased to be true

(1)

This section applies to an applicable company if a matter noted in its significant controllers register under section 2, 3, 4 or 5 of this Schedule has ceased to be true.

(2)

The company must—

(a)

note in its significant controllers register that the matter has ceased to be true; and

(b)

note also in the register the date on which the matter ceased to be true.

7.

Case 6—where requirement made under section 653Q or 653R is not complied with within specified period

(1)

This section applies if—

(a)

an applicable company has given a notice under section 653P(2) or (3); and

(b)

the addressee of the notice has failed to comply with a requirement of the notice made under section 653Q or 653R within the specified period.

(2)

The company must—

(a)

note in its significant controllers register that the company has given a notice under section 653P(2) or (3) (as the case requires) in respect of which a requirement made under section 653Q or 653R (as the case requires) has not been complied with within the specified period; and

(b)

make a separate note in the register in respect of each such notice.

8.

Case 7—where all requirements made under section 653Q or 653R are complied with after specified period

(1)

This section applies if—

(a)

an applicable company has given a notice under section 653P(2) or (3);

(b)

a note has been made in the company's significant controllers register in respect of the notice under section 7 of this Schedule; and

(c)

the addressee of the notice has complied with all of the requirements of the notice made under section 653Q or 653R after the specified period.

(2)

The company must—

(a)

note in its significant controllers register that the company has given a notice under section 653P(2) or (3) (as the case requires) in respect of which all of the requirements made under section 653Q or 653R (as the case requires) have been complied with after the specified period; and

(b)

make a separate note in the register in respect of each such notice.

(3)

Each separate note must also state the date of the compliance.

9.

Case 8—where requirement made under section 653U is not complied with within specified period

(1)

This section applies if—

(a)

an applicable company has given a notice under section 653T(2); and

(b)

the addressee of the notice has failed to comply with a requirement of the notice made under section 653U within the specified period.

(2)

The company must—

(a)

note in the entry for the addressee in its significant controllers register that the company has given the notice to the addressee; and

(b)

note also in the register that the addressee has failed to comply with the requirement within the specified period.

10.

Case 9—where all requirements made under section 653U are complied with after specified period

(1)

This section applies if—

(a)

an applicable company has given a notice under section 653T(2);

(b)

a note has been made in the company's significant controllers register in respect of the notice under section 9 of this Schedule; and

(c)

the addressee of the notice has complied with all of the requirements of the notice made under section 653U after the specified period.

(2)

The company must—

(a)

note in the entry for the addressee in its significant controllers register that the addressee has complied with all of the requirements after the specified period; and

(b)

note also in the register the date of the compliance.

(Schedule 5C added 3 of 2018 s. 6)

Schedule 6

[ss. 272C, 664 & 911]

(Amended 1 of 2025 s. 22)

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 662(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 to which the company makes up 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)

any person who at the date of the return is a director or reserve director of the company; and

(ii)

any person who at that date is a company secretary of the company,

that are by this Ordinance required to be contained with respect to them in the register of directors and register of company 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 as at the date of the return.

3.

If a director or reserve director is a natural person, the particulars as required under section 1(i) of this Schedule do not include—

(a)

an address contained in the register of directors as the usual residential address of the director or reserve director; and

(b)

the full number of the identity card or passport of the director or reserve director.

4.

If a company secretary is a natural person, the particulars as required under section 1(i) of this Schedule do not include the full number of the identity card or passport of the company secretary.

5.

In the case of a company that keeps a branch register of members in accordance with section 636(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

6.

An annual return under section 662(1) must also contain the following information in respect of the private company—

(a)

a statement that the company has not—

(i)

since the date of the last return; or

(ii)

in the case of a first return—

(A)

if the company is not a re-domiciled company—since the date of the incorporation of the company; and

(B)

if the company is a re-domiciled company—since the re-domiciliation date,

(Replaced 14 of 2025 s. 76)

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 that the excess consists wholly of persons who, under section 11(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

7.

An annual return under section 662(3) must be accompanied by—

(a)

copies of the documents required to be sent to every member of the company under section 430, certified by a director or company 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.

Schedule 6A

[ss. 820B & 911 & Schs. 6B & 6C]

Information and Statements to be Contained in Re-domiciliation Form

Part 1

Preliminary

1.

Interpretation

In this Schedule—

applicant

(

申請人

), in relation to an application made under section 820B, means the non-HK corporation that makes the application;

application date

(

申請日

), in relation to an application made under section 820B, means the date on which the applicant makes the application;

constitutional document

(

章程文件

), in relation to a body corporate, means—

(a)

the charter, statutes or memorandum (including the articles of association) of the body corporate; or

(b)

any other instrument defining the corporate's constitution;

information

(

資料

) has the meaning given by section 820A;

non-HK corporation

(

非香港法團

) has the meaning given by section 820A;

place of incorporation

(

成立地

) has the meaning given by section 820A.

Part 2

Information and Statements to be Contained in Re-domiciliation Form

2.

Re-domiciliation form to contain certain information and statements

The re-domiciliation form to be delivered to the Registrar under section 820B(2) must contain the following in relation to the applicant—

(a)

the name of the applicant;

(b)

the place of incorporation of the applicant;

(c)

information as to whether the applicant is a non-Hong Kong company registered under Part 16;

(d)

if the applicant is a non-Hong Kong company registered under Part 16—the applicant's business registration number;

(e)

information as to whether the applicant is a listed company;

(f)

the information specified in section 3 of this Schedule; and

(g)

the statements specified in section 4 of this Schedule.

3.

Supplementary provisions for section 2(f) of this Schedule

(1)

The information referred to in section 2(f) of this Schedule is as follows—

(a)

the total number of shares issued by the applicant (***issued shares***) as at the latest practicable date before the application date;

(b)

the total amount of the issued share capital of the applicant as at the reference date;

(c)

the amount paid up or regarded as paid up on the total number of issued shares as at the reference date;

(d)

the amount remaining unpaid or regarded as remaining unpaid on the total number of issued shares as at the reference date;

(e)

if, in respect of the issued share capital of the applicant, there are different classes of shares as at the reference date—

(i)

a description of each of those classes (***each class***);

(ii)

the total number of issued shares in each class as at the reference date;

(iii)

the total amount of the issued share capital in respect of each class as at the reference date;

(iv)

the amount paid up or regarded as paid up on the total number of issued shares in each class as at the reference date;

(v)

the amount remaining unpaid or regarded as remaining unpaid on the total number of issued shares in each class as at the reference date;

(vi)

the particulars of any voting rights attached to the shares in each class, including rights that arise only in certain circumstances;

(vii)

the particulars of any rights attached to the shares in each class, as respects dividends, to participate in a distribution;

(viii)

the particulars of any rights attached to the shares in each class, as respects capital, to participate in a distribution (including on a winding up); and

(ix)

information as to whether or not the shares in each class are redeemable shares;

(f)

subject to subsections (2), (3) and (4), the number of shares that the applicant has issued, as at the reference date, to each member; and

(g)

subject to subsections (2), (3) and (4), the amount of the issued share capital held by each member as at the reference date.

(2)

If the applicant—

(a)

is not a listed company; and

(b)

as at the reference date, has issued more than one class of shares to a member,

the information required under subsection (1)(f) and (g) must be stated in respect of each class of shares issued to the member.

(3)

If the applicant is a listed company and, as at the reference date, has not issued more than one class of shares to any of its member—

(a)

the information required under subsection (1)(f) is the number of shares that the applicant has issued, as at the reference date, to each member who holds at least 5% of the issued shares as at that date; and

(b)

the information required under subsection (1)(g) is the amount of the issued share capital that is held, as at the reference date, by each member who holds at least 5% of the issued shares as at that date.

(4)

If the applicant is a listed company and, as at the reference date, has issued more than one class of shares to any of its members—

(a)

the information required under subsection (1)(f) is the number of shares in each class that the applicant has issued, as at the reference date, to each member who holds at least 5% of the issued shares in that class as at that date; and

(b)

the information required under subsection (1)(g) is the amount of the issued share capital in respect of each class that is held, as at the reference date, by each member who holds at least 5% of the issued shares in that class as at that date.

(5)

For the purposes of subsection (1)(a), the latest practicable date referred to in that subsection must be a date not earlier than 15 days before the application date.

(6)

In this section—

latest practicable date

(

在切實可行的範圍內屬最近期的某日

)—see subsection (5);

member

(

成員

) means a member of the applicant;

reference date

(

參考日

) means the date as at which the total number of issued shares is to be stated in the re-domiciliation form because of subsection (1)(a).

4.

Supplementary provisions for section 2(g) of this Schedule

(1)

The statements referred to in section 2(g) of this Schedule are—

(a)

a statement confirming that the applicant is, under the law of its place of incorporation, of a type that is the same or substantially the same as the intended type;

(b)

if the liability of the members of the applicant (***members***) is limited—a statement confirming that the way in which and the extent to which the liability is limited is defined in the constitutional document of the applicant;

(c)

a statement confirming that—

(i)

there is, under the law of the applicant's place of incorporation, a regime that allows the applicant to deregister in the place of incorporation for the purpose of its registration in another jurisdiction as a company (***deregistration***); and

(ii)

neither the law of the place of incorporation nor the constitutional document of the applicant prohibits the applicant to become a re-domiciled company (***re-domiciliation***);

(d)

if, under the law of the place of incorporation or the constitutional document of the applicant, the applicant is required to obtain permission (however described) for the re-domiciliation—a statement confirming that the permission has been obtained;

(e)

if, under the law of the place of incorporation or the constitutional document of the applicant, the applicant is required to obtain consent from its members for the re-domiciliation (***relevant requirement***)—a statement confirming that the relevant requirement has been complied with;

(f)

if there is no relevant requirement, a statement confirming—

(i)

that a resolution of members is duly passed for the re-domiciliation under the law of the place of incorporation and the constitutional document of the applicant; and

(ii)

that the resolution is passed at a meeting, or (if it is passed without a meeting) is passed in writing, by a majority of at least 75%; and

(g)

a statement confirming that, if the applicant becomes a re-domiciled company, the applicant will, as soon as practicable after the re-domiciliation date, take all reasonable steps to procure the deregistration.

(2)

In this section—

deregister

(

撤銷註冊

) has the meaning given by section 820E(6);

eligible member

(

合資格成員

), in relation to the re-domiciliation, means a member who, under the law of the place of incorporation and the constitutional document of the applicant, is entitled to vote on a resolution for the re-domiciliation;

intended type

(

擬註冊類別

) means the type of company that is specified in section 820C(1)(a), (b), (c) or (d) and that the applicant has indicated in the re-domiciliation form that the applicant intends to be registered as under section 820C(1).

(3)

For the purposes of subsection (1)(f), a resolution passed at a meeting is passed by a majority of at least 75% if—

(a)

it is passed by at least 75% of the total of the following—

(i)

the number of eligible members who vote in person on the resolution;

(ii)

the number of persons who vote on the resolution as duly appointed proxies of eligible members; or

(b)

it is passed by members representing at least 75% of the total voting rights of all the eligible members who vote in person or by proxy on the resolution.

(4)

For the purposes of subsection (1)(f), a resolution passed without a meeting is passed in writing by a majority of at least 75% if—

(a)

at least 75% of all eligible members have signified in writing their agreement to it; or

(b)

members representing at least 75% of the total voting rights of all eligible members have signified in writing their agreement to it.

Part 3

Information and Statements to be Contained in Re-domiciliation Form in relation to Intended RC

5.

Re-domiciliation form to contain certain information and statements in relation to intended RC

(1)

The re-domiciliation form to be delivered to the Registrar under section 820B(2) must contain the following in relation to the intended RC—

(a)

the name of the intended RC;

(b)

the address that is proposed to be the registered office of the intended RC;

(c)

a statement that states the intention of the applicant to become a re-domiciled company and its intention to be registered as—

(i)

a public company limited by shares;

(ii)

a private company limited by shares;

(iii)

a public unlimited company with a share capital; or

(iv)

a private unlimited company with a share capital;

(d)

for each person who is to be a director of the intended RC if it is registered under section 820C(1)—the particulars and statement specified in sections 3 and 4 of Schedule 6B;

(e)

for each person who, as at the application date, is a director of the applicant and who, if the intended RC is registered, would not be a director of the re-domiciled company because of the registration—the particulars specified in section 5 of Schedule 6B;

(f)

for each person who is to be the company secretary or one of the joint company secretaries of the intended RC if it is registered under section 820C(1)—the particulars specified in section 6 of Schedule 6B;

(g)

for each person who, as at the application date, is a company secretary or one of the joint company secretaries of the applicant and who, if the intended RC is registered, would not be a company secretary, or one of the joint company secretaries, (as the case requires) of the re-domiciled company because of the registration—the particulars specified in section 7 of Schedule 6B; and

(h)

a statement—

(i)

confirming that—

(A)

the proposed articles contained in the copy delivered under section 820B(2)(b) have been signed by each person who is to be a member of the intended RC on its registration; and

(B)

members of the applicant have resolved under the constitutional document that the proposed articles should be adopted; or

(ii)

confirming that—

(A)

the proposed articles contained in the copy delivered under section 820B(2)(b) have been signed by each person who is to be a director of the intended RC on its registration; and

(B)

members of the applicant have resolved under the constitutional document that the proposed articles should be adopted.

(2)

In this section—

proposed articles

(

擬用章程細則

) has the meaning given by section 820B(5).

(Schedule 6A added 14 of 2025 s. 77)

Schedule 6B

[ss. 474, 820B, 820G & 911 & Sch. 6A]

Directors and Company Secretary of Re-domiciled Company

Part 1

Preliminary

1.

Interpretation

(1)

In this Schedule—

applicant

(

申請人

), in relation to an application made under section 820B, means the non-HK corporation that makes the application;

application date

(

申請日

), in relation to an application made under section 820B, means the date on which the applicant makes the application;

forename

(

名字

) includes a Christian or given name;

non-HK corporation

(

非香港法團

) has the meaning given by section 820A;

surname

(

姓氏

), for a person usually known by a title different from the person's surname, means that title.

(2)

In this Schedule, 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, a name or surname by which the woman was known before the woman's marriage.

Part 2

Directors of Re-domiciled Company

2.

Application of sections 3 and 4 of this Schedule

Sections 3 and 4 of this Schedule apply for the purposes of section 5(1)(d) of Schedule 6A.

3.

Particulars of person to be director of intended RC on registration

(1)

The particulars required to be contained in the re-domiciliation form in respect of each person who is to be a director of the intended RC on its registration are—

(a)

if the person 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;

(iii)

the correspondence address;

(iv)

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; and

(v)

if, as at the application date, the person is a director of the applicant—the date of appointment of the person as the director; and

(b)

if the person is a body corporate—

(i)

the name of the body corporate;

(ii)

the address of its registered or principal office; and

(iii)

if, as at the application date, the person is a director of the applicant—the date of appointment of the person as the director.

(2)

For the purposes of subsection (1)(a)(iii), a correspondence address must not be a post office box number.

(3)

In this section—

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 Schedule, to have no other permanent address; and

(b)

does not include a post office box number.

4.

Statement relating to person to be director of intended RC on registration

(1)

The statement required to be contained in the re-domiciliation form in respect of each person who is to be a director of the intended RC on its registration is—

(a)

if the person is the signatory to the re-domiciliation form, a statement by the person—

(i)

that the person has consented to be a director of the intended RC on its registration; and

(ii)

(if the person is a natural person) that the person has attained the age of 18 years; and

(b)

if the person is not the signatory to the re-domiciliation form—

(i)

a statement by the person—

(A)

that the person has consented to be a director of the intended RC on its registration; and

(B)

(if the person is a natural person) that the person has attained the age of 18 years; or

(ii)

a statement by the signatory—

(A)

that the person has consented to be a director of the intended RC on its registration; and

(B)

(if the person is a natural person) that the person has attained the age of 18 years.

(2)

In this section—

signatory

(

簽署人

), in relation to an application made under section 820B, means the person who signs the re-domiciliation form under section 820B(3)(b) for the application.

5.

Particulars of person who would not be director of intended RC on registration

(1)

This section applies for the purposes of section 5(1)(e) of Schedule 6A.

(2)

The particulars required to be contained in the re-domiciliation form in respect of each person to which section 5(1)(e) of Schedule 6A applies are—

(a)

if the person is a natural person—

(i)

the present forename and surname, former forename or surname (if any), and aliases (if any); and

(ii)

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; and

(b)

if the person is a body corporate—the name of the body corporate.

(3)

For the purposes of subsection (2)(a)(ii), the number of the identity card or passport is not required to be a full number.

Part 3

Company Secretary of Re-domiciled Company

6.

Particulars of person to be company secretary of intended RC on registration

(1)

This section applies for the purposes of section 5(1)(f) of Schedule 6A.

(2)

The particulars required to be contained in the re-domiciliation form in respect of each person who is to be the company secretary, or one of the joint company secretaries, of the intended RC on its registration are—

(a)

if the person is a natural person and is not a person covered by paragraph (c)—

(i)

the present forename and surname, former forename or surname (if any), and aliases (if any);

(ii)

the correspondence address;

(iii)

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; and

(iv)

if, as at the application date, the person is a company secretary or one of the joint company secretaries of the applicant (***specified secretary***)—the date on which the person becomes the specified secretary;

(b)

if the person is a body corporate and is not a person covered by paragraph (c)—

(i)

the name of the body corporate;

(ii)

the address of its registered or principal office; and

(iii)

if the person is a specified secretary on the application date—the date on which the person becomes the specified secretary; and

(c)

if the person is a partner of a firm each partner of which is to be one of the joint company secretaries of the intended RC on its registration—

(i)

the firm's name;

(ii)

the address of the firm's principal office; and

(iii)

if, as at the application date, the person is one of the joint company secretaries of the applicant—the date on which the person becomes one of the joint company secretaries of the applicant.

(3)

For the purposes of subsection (2)(a)(ii)—

(a)

a correspondence address must be a place in Hong Kong; and

(b)

must not be a post office box number.

7.

Particulars of person who would not be company secretary or one of the joint company secretaries of intended RC on registration

(1)

This section applies for the purposes of section 5(1)(g) of Schedule 6A.

(2)

The particulars required to be contained in the re-domiciliation form in respect of each person to which section 5(1)(g) of Schedule 6A applies are—

(a)

if the person is a natural person—

(i)

the present forename and surname, former forename or surname (if any), and aliases (if any); and

(ii)

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;

(b)

if the person is a body corporate—the name of the body corporate; and

(c)

if the person is a partner of a firm each partner of which is one of the joint company secretaries of the applicant—the name of the firm.

(3)

For the purposes of subsection (2)(a)(ii), the number of the identity card or passport is not required to be a full number.

(Schedule 6B added 14 of 2025 s. 77)

Schedule 6C

[ss. 820B & 911]

Documents to Accompany Re-domiciliation Form

1.

Interpretation

(1)

In this Schedule—

applicant

(

申請人

), in relation to an application made under section 820B, means the non-HK corporation that makes the application;

application date

(

申請日

), in relation to an application made under section 820B, means the date on which the applicant makes the application;

certified copy

(

經核證副本

)—see subsection (5);

constitutional document

(

章程文件

) has the meaning given by section 1 of Schedule 6A;

deregister

(

撤銷註冊

) has the meaning given by section 820E(6);

eligible member

(

合資格成員

) has the meaning given by section 4(2) of Schedule 6A;

latest practicable date

(

在切實可行的範圍內屬最近期的某日

)—see subsection (2);

non-HK corporation

(

非香港法團

) has the meaning given by section 820A;

place of incorporation

(

成立地

) has the meaning given by section 820A;

proposed articles

(

擬用章程細則

) has the meaning given by section 820B(5).

(2)

For the purposes of section 2(1)(e) of this Schedule, the latest practicable date referred to in that section must be a date not earlier than 12 months before the application date.

(3)

For the purposes of section 2(1)(f)(viii) of this Schedule, a resolution passed at a meeting is passed by a majority of at least 75% if—

(a)

it is passed by at least 75% of the total of the following—

(i)

the number of eligible members who vote in person on the resolution;

(ii)

the number of persons who vote on the resolution as duly appointed proxies of eligible members; or

(b)

it is passed by members representing at least 75% of the total voting rights of all the eligible members who vote in person or by proxy on the resolution.

(4)

For the purposes of section 2(1)(f)(viii) of this Schedule, a resolution passed without a meeting is passed in writing by a majority of at least 75% if—

(a)

at least 75% of all eligible members have signified in writing their agreement to it; or

(b)

members representing at least 75% of the total voting rights of all eligible members have signified in writing their agreement to it.

(5)

For the purposes of this Schedule, 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 (6).

(6)

The person is—

(a)

if the copy is certified in the place of incorporation of the applicant that makes the application under section 820B—

(i)

an official of the government of that place to whose custody 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 place of incorporation of the applicant; or

(vi)

a professional company secretary practising in Hong Kong; or

(c)

an officer of the applicant.

2.

Re-domiciliation form to be accompanied by certain documents

(1)

A re-domiciliation form delivered by an applicant to the Registrar under section 820B(2) must be accompanied by the following documents—

(a)

if the place of incorporation of the applicant is the place in which the applicant is incorporated—

(i)

a certified copy of the certificate of incorporation of the applicant, or a certified copy of any equivalent document, issued under the law of that place; and

(ii)

a certified copy of each constitutional document of the applicant;

(b)

if the place of incorporation of the applicant is any other place (***particular place***)—

(i)

a certified copy of the certificate of incorporation of the applicant, or a certified copy of any equivalent document, issued under the law of the place in which the applicant is incorporated;

(ii)

a certified copy of the certificate of registration of the applicant as a company, or a certified copy of any equivalent document, issued under the law of the particular place; and

(iii)

a certified copy of each constitutional document of the applicant;

(c)

a certificate specified in subsection (2);

(d)

if neither the law of the place of incorporation nor the constitutional document of the applicant requires consent from members of the applicant for the applicant to become a re-domiciled company (***re-domiciliation***)—a certified copy of the resolution referred to in section 4(1)(f) of Schedule 6A;

(e)

the accounts of the applicant as at the latest practicable date before the application date or (if under the law of the place of incorporation of the applicant, or the rules of any stock exchange or similar regulatory bodies in that place, the applicant is also required to prepare audited accounts) the audited accounts of the applicant as at the latest practicable date before the application date;

(f)

a legal opinion, issued within 35 days before the application date by a legal practitioner who practises the law of the place of incorporation of the applicant—

(i)

that the applicant is duly registered and validly subsisting in the place of incorporation;

(ii)

that the applicant is an entity the type of which is the same or substantially the same as that of the intended RC;

(iii)

that each of the persons specified in the re-domiciliation form to be a director of the intended RC is not disqualified from being appointed as a director, under the law of the place of incorporation;

(iv)

if the proposed name of the intended RC is different from the name of the applicant—

(A)

that the proposed name has been duly approved by the members of the applicant to be adopted as the name of the intended RC; and

(B)

that the change of the name of the applicant to the proposed name would not affect its deregistration in the place of incorporation (***deregistration***);

(v)

that—

(A)

there is, under the law of the place of incorporation, a regime that allows the deregistration of the applicant for the purpose of its registration in another jurisdiction as a company; and

(B)

neither the law of the place of incorporation nor the constitutional document of the applicant prohibits the re-domiciliation;

(vi)

if, under the law of the place of incorporation or the constitutional document of the applicant, the applicant is required to obtain permission (however described) for the re-domiciliation—that the permission has been duly obtained;

(vii)

if, under the law of the place of incorporation or the constitutional document of the applicant, the applicant is required to obtain consent from its members for the re-domiciliation (***relevant requirement***)—that the relevant requirement has been complied with;

(viii)

if there is no relevant requirement—

(A)

that a resolution of members is duly passed for the re-domiciliation under the law of the place of incorporation and the constitutional document of the applicant; and

(B)

that the resolution is passed at a meeting, or (if it is passed without a meeting) is passed in writing, by a majority of at least 75%;

(ix)

that there is no petition or similar proceedings in the place of incorporation to wind up or liquidate the applicant that is pending;

(x)

that there is no order to wind up or liquidate the applicant in the place of incorporation;

(xi)

that no person is appointed or acting in the place of incorporation as a receiver or liquidator (however described) with respect to the applicant or any property of the applicant;

(xii)

that the applicant is not operating or carrying on business under any scheme, order, compromise or other similar arrangement, relating to the insolvency of the applicant that is entered into or made by the applicant in its place of incorporation with any other person;

(xiii)

that the deregistration of the applicant for the purpose of the re-domiciliation is allowed under the law of the place of incorporation; and

(xiv)

that the proposed articles have been approved by the members of the applicant and resolved by them to be adopted with effect from the re-domiciliation date; and

(g)

if a document mentioned in paragraph (a), (b), (c), (d), (e) or (f) is in a language other than the English language and the Chinese language—a certified translation of the document in the English language or the Chinese language.

(2)

The certificate referred to in subsection (1)(c) is a certificate, signed and issued in compliance with the requirement in subsection (3), to the effect that—

(a)

the applicant has only one place of incorporation, being the one specified in the certificate of incorporation (or the equivalent) or the certificate of registration (or the equivalent) under subsection (1)(b);

(b)

the applicant—

(i)

if the place of incorporation is the place in which the applicant is incorporated—has a registration relating to its incorporation under the law of that place; and

(ii)

if the place of incorporation is not the place in which the applicant is incorporated—is registered as a company under the law of the place of incorporation;

(c)

the applicant has not been notified of any petition or similar proceedings to wind up or liquidate the applicant that is pending in any place;

(d)

the applicant has not been notified of any order to wind up or liquidate the applicant in any other place;

(e)

no resolution has been passed in any place to wind up or liquidate the applicant;

(f)

the applicant has not been notified of the appointment of any receiver or liquidator (however described) with respect to the applicant or any property of the applicant (***specified person***) and no person is acting as a specified person in any place;

(g)

the applicant is not operating or carrying on business under any scheme, order, compromise or other similar arrangement relating to the insolvency of the applicant entered into or made by the applicant in any place with any other person;

(h)

the applicant has served on all its creditors notice of the applicant's proposal to become a re-domiciled company;

(i)

any consent to or approval for the re-domiciliation required by any contract entered into or undertaking given by the applicant has been obtained or waived;

(j)

any consent to or approval for the deregistration required by any contract entered into or undertaking given by the applicant has been obtained or waived;

(k)

the deregistration of the applicant is not prohibited under the law of the place of incorporation or by the constitutional document of the applicant;

(l)

the proposed articles have been approved by the members of the applicant and resolved by them to be adopted with effect from the re-domiciliation date;

(m)

the first financial year of the applicant at the place of incorporation ends on or before the application date;

(n)

the application is not intended to defraud existing creditors of the applicant and is made in good faith; and

(o)

the board of directors of the applicant—

(i)

has made a full inquiry into the affairs of the applicant; and

(ii)

has formed an opinion that the applicant will be able to pay its debts which fall due within the period of 12 months beginning on the application date.

(3)

For the purposes of subsection (2), the certificate mentioned in that subsection—

(a)

must be signed by a director of the applicant certifying that the director has been approved by resolution of the board of directors of the applicant to sign the certificate; and

(b)

must be issued by the board of directors of the applicant within 35 days before the application date.

(Schedule 6C added 14 of 2025 s. 77)

Schedule 7

[ss. 899 & 911]

Offences in respect of which Proceedings not Instituted under Certain Conditions

1.

An offence under section 74(2)

2.

An offence under section 124(3)

3.

An offence under section 124(4)

4.

An offence under section 662(6)

5.

An offence under section 788(3)

6.

An offence under section 789(3)

6A.

An offence under section 820G(2)

(Added 14 of 2025 s. 78)

7.

(Repealed 35 of 2018 s. 89)

8.

An offence under section 7(1) or (2) of the Companies (Disclosure of Company Name and Liability Status) Regulation (Cap. 622 sub. leg. B)

(Added L.N. 161 of 2013)

9.

An offence under section 8 of the Non-Hong Kong Companies (Disclosure of Company Name, Place of Incorporation and Members' Limited Liability) Regulation (Cap. 622 sub. leg. M), in so far as it relates to the contravention of section 3(1) or (2), 4 or 5 of that Regulation

(Added L.N. 33 of 2019. Amended 14 of 2025 s. 78)

Schedule 8

(Not yet in operation)

[s. 908]

Amendments relating to Paperless Holding and Transfer of Shares and Debentures

1.

This Ordinance amended

This Ordinance is amended as set out in sections 2 to 14 of this Schedule.

2.

Section 2 amended (Interpretation)

Section 2(1)—

Add in alphabetical order

“

prescribed securities

(

訂明證券

) has the meaning given by section 397(5) of the Securities and Futures Ordinance (Cap. 571);

Scripless Rules

(《

無紙化規則

》) means rules made under section 397(1A) of the Securities and Futures Ordinance (Cap. 571);”.

3.

Section 134 amended (Nature and transferability of shares)

Section 134(2), after “articles”—

Add

“subject, for shares or other interests that are prescribed securities, to the Scripless Rules”.

4.

Section 137 amended (Share certificate to be proof of title in the absence of contrary evidence)

(1)

Section 137—

Renumber the section as section 137(1).

(2)

After section 137(1)—

Add

“(2)

Subsection (1) does not affect section 635.”.

5.

Section 144 amended (Issue of share certificate on allotment)

Section 144—

Repeal subsection (2)

Substitute

“(2)

Subsection (1) does not apply if—

(a)

the shares are prescribed securities that are allotted in accordance with the Scripless Rules; or

(b)

the shares are not prescribed securities and the conditions of issue of the shares provide otherwise.".

6.

Section 150 amended (Requirement for instrument of transfer)

After section 150(2)—

Add

"(3)

Subsection (1) does not apply to a transfer, made in accordance with the Scripless Rules, of shares that are prescribed securities.".

7.

Section 153 amended (Transfer by personal representative)

Section 153—

Repeal

"execution of the instrument of transfer"

Substitute

"the transfer".

8.

Section 155 amended (Issue of share certificate on transfer)

Section 155(3)—

Repeal paragraph (a)

Substitute

"(a)

either—

(i)

the shares are prescribed securities that are transferred in accordance with the Scripless Rules; or

(ii)

the shares are not prescribed securities and the conditions of issue of the shares provide otherwise;".

9.

Section 318 amended (Issue of debenture or certificate for debenture stock on allotment)

Section 318—

Repeal subsection (2)

Substitute

"(2)

Subsection (1) does not apply if—

(a)

the debentures or debenture stock are prescribed securities that are allotted in accordance with the Scripless Rules; or

(b)

the debentures or debenture stock are not prescribed securities and the conditions of issue of the debentures or debenture stock provide otherwise.".

10.

Section 320 amended (Requirement for instrument of transfer)

After section 320(2)—

Add

"(3)

Subsection (1) does not apply to a transfer, made in accordance with the Scripless Rules, of debentures or debenture stock that are prescribed securities.".

11.

Section 323 amended (Issue of debenture or certificate for debenture stock on transfer)

Section 323(3)—

Repeal paragraph (a)

Substitute

"(a)

either—

(i)

the debentures or debenture stock are prescribed securities that are transferred in accordance with the Scripless Rules; or

(ii)

the debentures or debenture stock are not prescribed securities and the conditions of issue of the debentures or debenture stock provide otherwise;".

12.

Section 627A added

After section 627—

Add

"627A.

Additional register entries for prescribed securities

(1)

If a company's share capital is divided into different classes of shares and any of those shares are prescribed securities, the company must enter in the register of its members—

(a)

a statement that its share capital is divided into different classes of shares;

(b)

the voting rights attached to the shares of each class;

(c)

in relation to a class of shares the holders of which are not entitled to vote at general meetings of the company, the words "non voting" or the Chinese characters "無表決權"; and

(d)

any other matters that are required by the Scripless Rules to be entered in the register.

(2)

Subsection (1)(c) does not apply to shares that are described as preference shares or preferred shares.

(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 4 and, in the case of a continuing offence, to a further fine of $700 for each day during which the offence continues.".

13.

Section 635 amended (Register to be proof in the absence of contrary evidence)

(1)

Section 635—

Renumber the section as section 635(1).

(2)

After section 635(1)—

Add

"(2)

Without limiting subsection (1), in the absence of evidence to the contrary, an entry in the register of members recording a person as holding any share is proof of the person's title to the share.".

14.

Section 696 amended (Obligations of offeror with right to buy out minority shareholders)

Section 696—

Repeal subsection (4)

Substitute

"(4)

Subsection (3)(a)(ii) does not require the offeror to send to the company an instrument of transfer of—

(a)

any shares for which a share warrant is for the time being outstanding; or

(b)

any shares that are prescribed securities, if the transfer of the shares is made in accordance with the Scripless Rules.".

Schedule 9

[ss. 912 & 920]

Consequential and Related Amendments to Companies Ordinance (Cap. 32) and its Subsidiary Legislation

1-164.

(Omitted as spent—E.R. 1 of 2014)

165.

Companies (Exemption from Statement of Turnover) Order repealed

The Companies (Exemption from Statement of Turnover) Order (Cap. 32 sub. leg. D)—

Repeal the Order.

166.

Companies (Specification of Names) Order repealed

The Companies (Specification of Names) Order (Cap. 32 sub. leg. E)—

Repeal the Order.

167-199.

(Omitted as spent—E.R. 1 of 2014)

200.

Companies (Summary Financial Reports of Listed Companies) Regulation repealed

The Companies (Summary Financial Reports of Listed Companies) Regulation (Cap. 32 sub. leg. M)—

Repeal the Regulation.

201.

Companies (Revision of Accounts and Reports) Regulation repealed

The Companies (Revision of Accounts and Reports) Regulation (Cap. 32 sub. leg. N)—

Repeal the Regulation.

(Amended E.R. 1 of 2013)

Schedule 10

(Omitted as spent—E.R. 1 of 2014)

1-480.

(Omitted as spent—E.R. 1 of 2014)

Schedule 11

[ss. 27, 369 & 913]

(Amended E.R. 1 of 2013)

Transitional and Saving Provisions

Part 1

Preliminary

1.

Interpretation

In this Schedule—

repeal

(

廢除

) means a repeal by section 912, and

repealed

is to be construed accordingly.

Part 2

Transitional and Saving Arrangements for Part 2

2.

Office of Registrar

(1)

A person holding or acting in the office of Registrar of Companies immediately before the commencement date[e] of section 21 continues to hold or act in that office (as the case may be) as if the person were appointed under section 21(1).

(2)

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 section 21(4) to be prepared.

(3)

The place directed or last directed by the Chief Executive under section 303(1) of the predecessor Ordinance before the commencement date of section 21 is to be regarded as the place that has been designated under section 21(3).

2A.

Correspondence address of directors etc. in Companies Register

(1)

The Registrar must, for the purposes of section 27, record the following address as the correspondence address of a director or reserve director of a company—

(a)

if the company is an existing company, or a company formed and registered under this Ordinance before the specified date—the address shown, immediately before that date, on the Companies Register as the address of the company's registered office; or

(b)

if the company is a non-Hong Kong company registered in the Companies Register as a registered non-Hong Kong company before the specified date—the address shown, immediately before that date, on the Companies Register as the address of the company's principal place of business in Hong Kong.

(2)

If an incorporation form under section 67(1)(b)—

(a)

is delivered under that section in relation to a company before the specified date; and

(b)

is registered under section 71(1) on or after that date,

the Registrar must, for the purposes of section 27, record the address contained, as the intended address of the company's registered office, in the form as the correspondence address of a director or reserve director of the company.

(3)

If, on an application under section 776(2) that is delivered by a company under section 776(4)(e) before the specified date, the Registrar registers the company under section 777(1) on or after that date, the Registrar must, for the purposes of section 27, record the address contained, as the address of the company's principal place of business in Hong Kong, in the application as the correspondence address of a director or reserve director of the company.

(4)

After an address is recorded under subsection (1), (2) or (3) as the correspondence address of a director or reserve director of a company, the Registrar must update the entry of such correspondence address with—

(a)

the latest address of the company's registered office contained in a notice of change of address of the company's registered office that is delivered under section 658(3) and registered by the Registrar under Part 2; or

(b)

the latest address of the company's principal place of business in Hong Kong contained in a return in respect of the change of address of the company's principal place of business in Hong Kong that is delivered under section 791(1) and registered by the Registrar under Part 2.

(5)

Subsection (4) ceases to apply when, in relation to the director or reserve director—

(a)

a notice or return is delivered under section 645(4) or 791(1) in respect of a change of the director's or reserve director's correspondence address; and

(b)

the notice or return is registered by the Registrar under Part 2.

(6)

In this section—

company

(

公司

) has the meaning given by section 20(1);

specified date

(

指明日期

) means the date on which section 54(2) comes into operation.

(Added L.N. 101 of 2021)

Part 3

Transitional and Saving Arrangements for Part 3

3.

Application for company formation

(1)

This section applies to a pending application—

(a)

that was made before the commencement date[e] of Division 1 of Part 3 to the Registrar for the purposes of section 14A(1) of the predecessor Ordinance; and

(b)

in respect of which section 15(1) of that Ordinance was complied with before that date.

(2)

Sections 4, 5, 6, 9, 10, 11, 12, 14, 14A, 15, 16, 18, 18A, 20, 23 and 24 of the predecessor Ordinance, Tables A, B, C, D and E in the First Schedule to that Ordinance, and the Companies (Specification of Names) Order (Cap. 32 sub. leg. E), as in force immediately before their repeal, continue to apply in relation to the pending application.

4.

Application for Registrar's licence to dispense with "Limited" etc.

Section 21(1), (2) and (3) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a pending application delivered to the Registrar before the commencement date[e] of Subdivision 2 of Division 3 of Part 3 for a licence under section 21(1) or (2) of the predecessor Ordinance.

5.

Licence dispensing with "Limited" etc.

A licence that was granted under section 21(1) or (2) of the predecessor Ordinance and was in force immediately before the commencement date[e] of Subdivision 2 of Division 3 of Part 3 is to be regarded as a licence granted under section 103 for the purposes of this Ordinance.

6.

Alteration of company's objects

(1)

Section 8 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a special resolution passed before the commencement date[e] of Subdivision 4 of Division 2 of Part 3 for the purposes of section 8(1) of the predecessor Ordinance.

(2)

Item 1(a) of Schedule 1 to the Companies (Fees and Percentages) Order (Cap. 32 sub. leg. C), as in force immediately before its repeal, continues to apply in relation to a petition to confirm an alteration in a memorandum presented under section 8 of the predecessor Ordinance having a continuing effect under subsection (1).

7.

Alteration of certain conditions of memorandum of association

Sections 8(2)(a), (3), (4), (7), (7A) and (8) and 25A of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a special resolution passed before the commencement date[e] of Subdivision 4 of Division 2 of Part 3 for the purposes of section 25A(1) of the predecessor Ordinance.

8.

Alteration of articles by special resolution

Section 13 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a special resolution passed before the commencement date[e] of Subdivision 4 of Division 2 of Part 3 for the purposes of section 13(1) of the predecessor Ordinance.

9.

Savings for Table A in former Companies Ordinance

This Ordinance does not affect—

(a)

Table A in the First Schedule to the Companies Ordinance 1865 (1 of 1865), as in force from time to time, so far as it applies to any existing company;

(b)

(c) Table A in the First Schedule to the Companies Ordinance 1911 (58 of 1911), as in force from time to time, so far as it applies to any existing company; and

(c) Table A in the First Schedule to the predecessor Ordinance, so far as it applies to any existing company.

10.

Special resolution changing company name

Sections 20 and 22(1A), (1B), (7) and (8) of the predecessor Ordinance and the Companies (Specification of Names) Order (Cap. 32 sub. leg. E), as in force immediately before their repeal, continue to apply in relation to a special resolution passed before the commencement date[e] of Subdivision 3 of Division 3 of Part 3 for the purposes of section 22(1) of the predecessor Ordinance.

11.

Registrar's direction to change company name

(1) Section 22(5) and (6) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a direction given by the Registrar before the commencement date[e] of Subdivision 3 of Division 3 of Part 3 under section 22(2), (3A), (3B) or (4) of the predecessor Ordinance.

(2) Sections 22(7) and (8) and 22A(2), (3) and (4) of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a direction given by the Registrar before the commencement date[e] of Subdivision 3 of Division 3 of Part 3 under section 22A(1) or (1A) of the predecessor Ordinance.

12.

Re-registration of unlimited company as limited company

(1) This section applies to a special resolution—

(a) that was passed before the commencement date[e] of Subdivision 2 of Division 2 of Part 3 for the purposes of section 19(1) of the predecessor Ordinance by an existing company registered as an unlimited company on or after 31 August 1984; and

(b) in respect of which no certificate of incorporation was issued before that commencement date[e] under section 19(4) of that Ordinance.

(2) Sections 19(1), (2), (3), (4) and (5) and 117 of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to the special resolution.

(3) An unlimited company re-registered as a limited company on or after the commencement date[e] of Division 2 of Part 3 under the provisions having a continuing effect under subsection (2) is, for all purposes, to be regarded as a limited company registered under the predecessor Ordinance.

Part 4

Transitional and Saving Arrangements for Part 4

Division 1

General Transitional and Saving Provisions

13.

Conversion of shares into stock

(1)

Section 138 does not affect the conversion of shares into stock on or after the commencement date[e] of that section in accordance with a resolution passed before that commencement date[e].

(2)

The reference in section 174 to the conversion of shares into stock before the repeal of the power to do so includes a conversion referred to in subsection (1).

(3)

The following provisions of the predecessor Ordinance, as in force immediately before their repeal, continue to apply to a conversion of shares into stock that took place before the commencement date[e] of section 138 or a conversion referred to in subsection (1)—

(a)

section 54 (so far as it relates to a conversion of shares into stock);

(b)

paragraph (i) of the proviso to section 95(1); and

(c)

section 95(4) (so far as it relates to that paragraph).

(4)

If any amounts of stock have been entered in the register of members of the company in accordance with paragraph (i) of the proviso to section 95(1) of the predecessor Ordinance, those amounts are to be regarded as the details required by Subdivision 2 of Division 2 of Part 12 to be entered in the register instead of the details relating to shares.

14.

Share warrants

(1)

This section applies if a company has issued a share warrant before the commencement date[e] of section 139 but has not complied with section 97(1) of the predecessor Ordinance before that commencement date[e].

(2)

Section 97(1) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply to the company in relation to the share warrant.

(3)

If the particulars of a share warrant have been entered in the register of members of the company in accordance with section 97(1) of the predecessor Ordinance, those particulars are to be regarded as the details required by Subdivision 2 of Division 2 of Part 12 to be entered in the register.

15.

Exercise by directors of power to allot shares or grant rights

Section 140 does not apply to an allotment of shares by a company on or after the commencement date[e] of that section in accordance with an offer, agreement or option made or granted by the company before 31 August 1984.

16.

Allotment of shares or grant of rights with company approval

An approval in force under section 57B of the predecessor Ordinance immediately before the commencement date[e] of section 141 has effect on and after that commencement date[e] as if given under section 141.

17.

Return of allotments

Section 45 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply to shares allotted before the commencement date[e] of section 142.

18.

Registration of allotment

Section 143 applies to shares allotted on or after the commencement date[e] of that section.

19.

Issue of share certificate on allotment

Section 70 of the predecessor Ordinance (so far as it relates to an allotment of shares), as in force immediately before its repeal, continues to apply to shares allotted before the commencement date[e] of section 144.

20.

Validation by Court of issue or allotment

Section 57C of the predecessor Ordinance, as in force immediately before its repeal, continues to apply to shares purportedly issued or allotted before the commencement date[e] of section 146.

21.

Permitted commissions

Section 46 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to an agreement made in accordance with that section before the commencement date[e] of section 148 for a company to pay commission to a person in consideration of the person subscribing or agreeing to subscribe for shares in the company or procuring or agreeing to procure subscriptions.

22.

Registration of transfer or refusal of registration

Section 69 of the predecessor Ordinance (so far as it relates to a transfer of shares), as in force immediately before its repeal, continues to apply to a transfer lodged before the commencement date[e] of section 151.

23.

Issue of share certificate on transfer

Section 70 of the predecessor Ordinance (so far as it relates to a transfer of shares), as in force immediately before its repeal, continues to apply to a transfer lodged before the commencement date[e] of section 155.

24.

Transmission of shares by operation of law

Section 69 of the predecessor Ordinance (so far as it relates to a transmission of shares by operation of law), as in force immediately before its repeal, continues to apply to shares transmitted before the commencement date[e] of Subdivision 2 of Division 4 of Part 4.

25.

Replacement of listed companies' lost share certificates

(1)

An application may be made under section 163 for a new share certificate whether the original certificate was lost before, on or after the commencement date[e] of that section, unless an application for a new certificate had already been made under section 71A of the predecessor Ordinance before that commencement date[e].

(2)

Section 71A of the predecessor Ordinance, as in force immediately before its repeal, continues to apply to an application for a new certificate made before the commencement date[e] of section 163.

26.

Notice of alteration of share capital

(1)

This section applies if a company, before the commencement date[e] of section 171, does anything referred to in section 54(1)(a) to (f) of the predecessor Ordinance.

(2)

Section 54 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply to the company in relation to the thing done.

27.

Notice of increase of share capital

Section 55 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply to an increase in a company's share capital if the resolution authorizing the increase was passed before the commencement date[e] of section 171.

28.

Description of shares of different classes

Section 57A of the predecessor Ordinance, as in force immediately before its repeal, continues to apply to a share certificate, prospectus or directors' report issued before the commencement date[e] of section 179.

29.

Variation of class rights: companies having a share capital

(1)

Sections 63A and 64 of the predecessor Ordinance, as in force immediately before their repeal, continue to apply to a variation or abrogation of the rights attaching to a class of shares if the resolution or written consent for the variation or abrogation was passed or given before the commencement date[e] of section 180.

(2)

Item 2(a) of Schedule 1 to the Companies (Fees and Percentages) Order (Cap. 32 sub. leg. C), as in force immediately before its repeal, continues to apply in relation to an application made under section 64 of the predecessor Ordinance having a continuing effect under subsection (1).

30.

Notifying Registrar of variation or attachment of rights to a class of shares

Section 64A of the predecessor Ordinance, as in force immediately before its repeal, continues to apply to an attachment of rights to a class of shares before the commencement date[e] of section 184.

31.

Variation of class rights: companies without a share capital

Sections 188 to 192 apply in relation to a variation or abrogation of the rights of a class of members of a company on or after the commencement date[e] of those sections.

32.

Repeal of provision about reserve share capital

The repeal of sections 52 and 56 of the predecessor Ordinance does not affect the validity of any resolution under those sections that was in force immediately before the repeal.

33.

Payment of interest out of capital

(1)

Section 57 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply to the payment of interest by a company if the special resolution under paragraph (a) of the proviso to that section authorizing the payment was passed before the repeal, regardless of when the sanction of the court for the payment is obtained.

(2)

Without limiting subsection (1), the company may charge interest to capital in accordance with section 57 of the predecessor Ordinance if—

(a)

interest was paid by a company in accordance with that section before its repeal, but not charged to capital; or

(b)

interest is paid by a company after the repeal in accordance with a special resolution passed under paragraph (a) of the proviso to that section before the repeal, regardless of when the sanction of the court for the payment is obtained.

Note—

Paragraph (b) of the proviso to section 57 of the predecessor Ordinance requires the sanction of the court to be obtained before the payment is made.

34.

Relief from share capital requirements

(1)

Subdivision 1 of Division 8 of Part 4 applies in relation to an issue of shares on or after the commencement date[e] of that Subdivision whether the arrangement for the issue or the transfer of non-cash assets was made before, on or after that commencement date[e].

(2)

A reference in section 198 to an amount that, because of Subdivision 1 of Division 8 of Part 4, is not required to be recorded as a company's share capital includes an amount that, immediately before the repeal of section 48E of the predecessor Ordinance, was not included in the company's share premium account by virtue of section 48C or 48D of the predecessor Ordinance.

Division 2

Transitional Provisions relating to Abolition of Nominal Value

35.

Interpretation

In this Division—

continuing provision

(

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) means a provision of the predecessor Ordinance that has a continuing effect under this Schedule.

36.

References to amount paid on shares issued before commencement date[e] of section 135

For the purposes of the operation of this Ordinance on and after the commencement date[e] of section 135 in relation to a share issued before that commencement date[e]—

(a)

the amount paid on the share is the sum of all amounts paid to the company at any time for the share; and

(b)

the amount remaining unpaid on the share is the difference between the issue price of the share and the amount paid on the share.

37.

Treatment of share premium account and capital redemption reserve

(1)

At the beginning of the commencement date[e] of section 135, any amount standing to the credit of the company's share premium account and capital redemption reserve becomes part of the company's share capital.

(2)

Any amount that would be required by a continuing provision to be transferred to a company's share premium account or capital redemption reserve on or after the commencement date[e] of section 135 becomes part of the company's share capital.

38.

Use of amount standing to credit of share premium account

(1)

Despite section 37 of this Schedule, a company may, on or after the commencement date[e] of section 135, use the amount that was standing to the credit of its share premium account immediately before that commencement date[e] to—

(a)

pay up, in accordance with an agreement made before that commencement date[e], shares that are to be issued on or after that commencement date[e] to members of the company as fully paid bonus shares;

(b)

write off—

(i)

the preliminary expenses of the company incurred before that commencement date[e]; or

(ii)

the expenses incurred, commission paid, or discount allowed, before that commencement date[e], in respect of any issue of shares in the company; or

(c)

provide for the premium payable on redemption of redeemable preference shares issued before 1 September 1991.

(2)

Despite section 37 of this Schedule, if redeemable shares issued by a company on or after 1 September 1991 but before the commencement date[e] of section 135 are redeemed on or after the commencement date[e] of section 135, any premium payable on their redemption may be paid out of the proceeds of a fresh issue of shares made for the purpose of the redemption, up to an amount equal to the lesser of—

(a)

the aggregate of the premiums received by the company on the issue of the shares redeemed;

(b)

the amount that was standing to the credit of the company's share premium account immediately before the commencement date[e] of section 135 less any amounts already applied under subsection (1) or this subsection.

(3)

If an amount is paid under subsection (2), the remaining amount available for the purposes of subsection (1) or (2) must be reduced by a corresponding amount.

39.

Calls on partly paid shares

The liability of a shareholder for calls in respect of money remaining unpaid on shares issued before the commencement date[a] of section 135 (whether on account of the nominal value of the shares or by way of premium) is not affected by the share ceasing to have a nominal value.

40.

References in contracts and other documents to par or nominal value

(1)

This section applies for the purpose of interpreting and applying on or after the commencement date[a] of section 135—

(a)

a contract entered into before that commencement date[a] (including a company's articles);

(b)

a resolution of a company or of any of its members made before that commencement date[a]; or

(c)

a trust deed or other document executed before that commencement date[a].

(2)

A reference to the par or nominal value of a share (whether made expressly or by implication) is a reference to—

(a)

if the share was issued before the commencement date[a] of section 135, the nominal value of the share immediately before that commencement date[a];

(b)

if the share is issued on or after the commencement date[a] of section 135 but shares of the same class were on issue immediately before that commencement date[a], the nominal value that the share would have had if it had been issued immediately before that commencement date[a]; or

(c)

if the share is issued on or after the commencement date[a] of section 135 and shares of the same class were not on issue immediately before that commencement date[a], the nominal value determined by the directors.

(3)

A reference to share premium is a reference to any residual share capital in relation to the share.

(4)

A reference to a right to a return of capital on a share is a reference to a right to a return of capital of a value equal to the amount paid in respect of the nominal value of the share.

(5)

A reference to a distribution in a winding up in proportion to the capital paid up on a share is a reference to a distribution in a winding up in proportion to the amount paid in respect of the nominal value of the share.

(6)

A reference to the aggregate par or nominal value of the company's issued share capital is a reference to that aggregate as it existed immediately before the commencement date[a] of section 135 and—

(a)

increased to take account of the nominal value of any shares issued on or after that commencement date[a]; and

(b)

reduced to take account of the nominal value of any shares cancelled on or after that commencement date[a].

(7)

Despite subsection (2) or (6), if the nominal value of a share is altered on or after the commencement date[e] of section 135 under a continuing provision, a reference to the par or nominal value of the share is a reference to the nominal value as so altered.

41.

References in continuing provisions of the predecessor Ordinance

(1)

A reference in a continuing provision to the nominal amount or nominal value of a share is, in relation to any period on or after the commencement date[e] of section 135, a reference to the nominal amount or nominal value of the share immediately before that commencement date[e], and a reference to share premium is to be construed accordingly.

(2)

A reference in a continuing provision to a company's share premium account or capital redemption reserve is, in relation to any period on or after the commencement date[e] of section 135, a reference to the company's share premium account or capital redemption reserve immediately before that commencement date[e].

(3)

Despite subsection (1), if the nominal amount or nominal value of a share is altered on or after the commencement date[e] of section 135 under a continuing provision, a reference in a continuing provision to the nominal amount or nominal value of the share is a reference to the nominal amount or nominal value as so altered.

Part 5

Transitional and Saving Arrangements for Part 5

42.

Reduction of share capital confirmed by Court

(1)

Section 58 (so far as it relates to a reduction of share capital) and sections 59 to 63 of the predecessor Ordinance and Order 102 of the Rules of the High Court (Cap. 4 sub. leg. A), as in force immediately before the commencement date[e] of Subdivision 3 of Division 3 of Part 5, continue to apply in relation to a resolution for reducing share capital that was passed under section 58(1) of the predecessor Ordinance immediately before that commencement date[e].

(2)

Sections 58 to 63 of the predecessor Ordinance and Order 102 of the Rules of the High Court (Cap. 4 sub. leg. A), as in force immediately before the commencement date[e] of Subdivision 3 of Division 3 of Part 5—

(a)

continue to apply, by virtue of section 48B(1) of the predecessor Ordinance as so in force, in relation to a resolution for reducing share premium that was passed under section 58(1) of the predecessor Ordinance before that commencement date[e]; and

(b)

continue to apply, by virtue of section 49H(4) of the predecessor Ordinance as so in force, in relation to a resolution for reducing capital redemption reserve that was passed under section 58(1) of the predecessor Ordinance before that commencement date[e].

(3)

Item 1(b) of Schedule 1 to the Companies (Fees and Percentages) Order (Cap. 32 sub. leg. C), as in force immediately before its repeal—

(a)

continues to apply to an application to confirm a reduction of share capital made under section 59 of the predecessor Ordinance having a continuing effect under subsection (1);

(b)

continues to apply, by virtue of section 48B(1) of the predecessor Ordinance as in force immediately before its repeal, to an application to confirm a reduction of share premium made under section 59 of the predecessor Ordinance having a continuing effect under subsection (2)(a); and

(c)

continues to apply, by virtue of section 49H(4) of the predecessor Ordinance as in force immediately before its repeal, to an application to confirm a reduction of capital redemption reserve made under section 59 of the predecessor Ordinance having a continuing effect under subsection (2)(b).

(4)

Division 3 of Part 5 does not apply to a reduction of share capital referred to in subsection (1).

43.

Share redemptions and buy-backs

(1)

Sections 49, 49A, 49B, 49BA, 49C, 49E, 49F, 49G, 49H, 49P, 49Q, 49R, 49S, 58 and 168B of, and the Thirteenth Schedule to, the predecessor Ordinance (so far as they relate to a redemption or purchase by a listed company of its own shares), as in force immediately before their repeal, continue to apply in relation to an authorization that was in force under section 49BA, 49E(2) or 49F(3) of the predecessor Ordinance immediately before the commencement date[e] of Division 4 of Part 5.

(2)

Sections 49 to 49S and 58 of the predecessor Ordinance (so far as they relate to a redemption or purchase by an unlisted company of its own shares), as in force immediately before their repeal, continue to apply in relation to an authorization or approval that was in force under section 49D, 49E(3) or 49F(2) of the predecessor Ordinance immediately before the commencement date[e] of Division 4 of Part 5.

(3)

Division 4 of Part 5 does not apply to a redemption or purchase by a company of its own shares under an authorization or approval referred to in subsection (1) or (2).

44.

Redeemable shares issued before commencement date[e]

Any redeemable preference shares issued before 1 September 1991 and any redeemable shares issued on or after that date but before the commencement date[e] of section 234 may be redeemed in accordance with this Ordinance.

45.

Effect of company's failure to redeem or buy back

Sections 271 and 272 do not apply to any redeemable preference shares issued before 1 September 1991.

46.

Financial assistance by unlisted company for acquisition of its own shares

(1)

Sections 47A to 48 of the predecessor Ordinance (so far as they relate to the giving of financial assistance by an unlisted company), as in force immediately before their repeal, continue to apply to the giving of financial assistance by an unlisted company if the directors' statement under section 47E(6) of the predecessor Ordinance was made before the commencement date of Division 5 of Part 5.

(2)

Division 5 of Part 5 does not apply to the giving of financial assistance referred to in subsection (1).

47.

Specified newspapers

Until the Chief Secretary for Administration publishes a list of Chinese language newspapers and English language newspapers in the Gazette under section 203(2), a Chinese language newspaper or an English language newspaper specified in the list of newspapers last published under section 71A(3)(a) of the predecessor Ordinance is taken to be a specified Chinese language newspaper or a specified English language newspaper (as the case may be) for the purposes of Part 5.

Part 6

Transitional and Saving Arrangements for Part 6

48.

Saving of predecessor Ordinance for certain distribution

(1)

Subject to subsection (2), Part IIA of the predecessor Ordinance, as in force immediately before its repeal, continues to apply to a distribution specified in section 295(2), to which Part 6 does not apply.

(2)

That Part IIA applies as if—

(a)

in section 79A(1) of the predecessor Ordinance, in the definition of ***distribution***, the following had been added after paragraph (b)—

"(ca)

the redemption or buy-back of any shares in the company out of capital (including the proceeds of any fresh issue of shares), or out of unrealized profits, in accordance with Division 4 of Part 5 of the Companies Ordinance (Cap. 622);

(cb)

financial assistance given by the company to a member under section 283, 284 or 285 of the Companies Ordinance (Cap. 622);";

(b)

in section 79J(2) of the predecessor Ordinance, the following had been added after paragraph (a)—

"(ba)

financial assistance—

(i)

that is given by the company in contravention of Division 5 of Part 5 of the Companies Ordinance (Cap. 622); and

(ii)

the giving of which reduces the company's net assets or increases its net liabilities;"; and

(c)

in section 79M(2) of the predecessor Ordinance—

(i)

in paragraph (a), the word "or" had been deleted; and

(ii)

the following had been added after paragraph (a)—

"(ba)

financial assistance given by a company in contravention of section 275 of the Companies Ordinance (Cap. 622);".

49.

Saving for certain older provisions in articles

If, immediately before 1 September 1991, a company was authorized by a provision of its articles to apply its unrealized profits in paying up, in full or in part, unissued shares to be allotted to the members as fully or partly paid bonus shares, that provision continues (subject to any alteration of the articles) as authority for those profits to be so applied after that date.

Part 7

Transitional and Saving Arrangements for Part 7

50.

Register of debenture holders

On and after the commencement date[e] of section 308, a register of holders of debentures kept under section 74A of the predecessor Ordinance is to be regarded as a register of debenture holders kept under section 308.

51.

Notifying Registrar of place where register of debenture holders is kept

Section 74A(4) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to an obligation to send notice to the Registrar that arose before the commencement date[e] of section 309 under section 74A(3) of the predecessor Ordinance.

52.

Right to inspect register of debenture holders

Sections 75(1), (4), (5) and (6) and 348C(3) of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a request received by the company before the commencement date[e] of section 310 for inspecting a register of debenture holders.

53.

Right to obtain copy of register of debenture holders

Sections 75(2), (4) and (5) and 348C(3) of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a request received by the company before the commencement date[e] of section 310 for a copy of a register of debenture holders (or any part of it).

54.

Request for copy of trust deed or other document

Section 75(3), (4) and (5) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a request received by the company before the commencement date[e] of section 310 for a copy of any trust deed or any other document securing any issue of debentures.

55.

Company to close register of debenture holders

Section 99 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a closure of a register of debenture holders if the notice for the purposes of section 99(1) of the predecessor Ordinance was given before the commencement date[e] of section 311.

56.

Return of allotment

Section 316 applies to debentures or debenture stock allotted on or after the commencement date[e] of that section.

57.

Registration of allotment

Section 317 applies to debentures or debenture stock allotted on or after the commencement date[e] of that section.

58.

Issue of debenture or certificate for debenture stock on allotment

Section 70 of the predecessor Ordinance (so far as it relates to an allotment of debentures or debenture stock), as in force immediately before its repeal, continues to apply in relation to debentures or debenture stock allotted before the commencement date[e] of sections 318 and 319.

59.

Registration of transfer or refusal of registration

Section 69 of the predecessor Ordinance (so far as it relates to a transfer of debentures or debenture stock), as in force immediately before its repeal, continues to apply in relation to a transfer of debentures or debenture stock lodged before the commencement date[e] of section 321.

60.

Issue of debenture or certificate for debenture stock on transfer

Section 70 of the predecessor Ordinance (so far as it relates to a transfer of debentures or debenture stock), as in force immediately before its repeal, continues to apply in relation to a transfer of debentures or debenture stock lodged before the commencement date[e] of sections 323 and 324.

61.

Meeting of debenture holders

Sections 75A, 113, 114B, 114C, 114D(2) and 114E of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a requisition made before the commencement date[e] of section 331 for a meeting of debenture holders and to any relevant meeting of debenture holders.

Part 8

Transitional and Saving Arrangements for Part 8

62.

Interpretation

(1)

In this Part, a copy of an instrument in relation to a charge delivered for registration is a certified copy if it is certified as a true copy—

(a)

by—

(i)

a director or company secretary of the company, or of the non-Hong Kong company registered under Part XI of the predecessor Ordinance, delivering the copy for registration; or

(ii)

a person authorized by that company or non-Hong Kong company for the purpose; or

(b)

by—

(i)

any other person interested in the charge; or

(ii)

in the case of—

(A)

an interested person who is a natural person, a person authorized by the interested person for the purpose; or

(B)

an interested person that is a body corporate, a person authorized by the interested person for the purpose, or a director or company secretary of the interested person.

(2)

In this Part, a reference to the charged property of a non-Hong Kong company registered under Part XI of the predecessor Ordinance is a reference to—

(a)

the property in Hong Kong of the company and subject to a charge created by the company, except property that was not in Hong Kong when the charge was created; or

(b)

the property in Hong Kong of the company and subject to a charge that subsisted when the property was acquired by the company, except property that was not in Hong Kong when it was so acquired.

63.

Charge created by company

(1)

This section applies to a charge if—

(a)

before section 80 of the predecessor Ordinance was repealed, a company created the charge; and

(b)

the charge was required by that section to be registered.

(2)

Subject to subsection (4), sections 80 and 81 of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to the charge.

(3)

Subject to section 68 of this Schedule, section 83(2) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the charge.

(4)

On the expiry of the period of 8 weeks after the commencement date[e] of Division 2 of Part 8—

(a)

that section 80 applies in relation to the charge as if—

(i)

in subsection (1) of that section, the words "the particulars of the charge (which must include those specified in subsection (1A) and be in the specified form), together with the instrument, if any, by which the charge is created or evidenced" had been substituted by the words "a statement of the particulars of the charge (in the same form as that specified for the purposes of section 335(1) of the Companies Ordinance (Cap. 622)), together with a certified copy of the instrument (if any) creating or evidencing the charge";

(ii)

subsection (1A) of that section had been deleted;

(iii)

in subsection (3) of that section, the words "the delivery to and the receipt by the Registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and" had been deleted;

(iv)

in subsection (3) of that section, the words "the instrument or copy" had been substituted by the words "a certified copy of the instrument";

(v)

in subsection (3) of that section, the words "the particulars and instrument or copy" had been substituted by the words "the statement and a certified copy of the instrument";

(vi)

in subsection (4) of that section, the words "the instrument" had been substituted by the words "a certified copy of the instrument";

(vii)

in subsection (7) of that section, the words after "5 weeks after the execution of the" and before the proviso had been substituted by the words "instrument by reference to which the charge is given or, if there is no such instrument, after the execution of the first debenture of the series, a statement of the particulars of the charge (in the same form as that specified for the purposes of section 335(2) of the Companies Ordinance (Cap. 622)), together with a certified copy of the instrument by reference to which the charge is given or, if there is no such instrument, any one debenture of the series:";

(viii)

in subsection (7) of that section, in the proviso, the words "particulars of the date and amount of each issue" had been substituted by the words "a statement of the particulars of every issue (in the same form as that specified for the purposes of section 341(2) of the Companies Ordinance (Cap. 622))"; and

(ix)

in subsection (8) of that section, the words "the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent of the commission, discount, or allowance so paid or made" had been substituted by the words "a statement required to be sent for registration under this section must be accompanied by a statement of the particulars of the commission, allowance or discount (in the same form as that specified for the purposes of section 342(2) of the Companies Ordinance (Cap. 622))"; and

(b)

that section 81 applies in relation to the charge as if—

(i)

in subsection (1) of that section, the words "the particulars of every charge created by the company and of the issues of debentures of a series, requiring registration under section 80" had been substituted by the words "the statement, or a certified copy of the instrument or debenture, or both, as required under section 80(1), (7) or (8)";

(ii)

in subsection (1) of that section, the words "any such charge" had been substituted by the words "any such statement or certified copy (as the case may be)"; and

(iii)

in subsection (3) of that section, the words "the particulars of any charge created by the company, or of the issues of debentures of a series, requiring registration as aforesaid" had been substituted by the words "the statement or certified copy that the company is required under subsection (1) to do so".

64.

Charge created by non-Hong Kong company

(1)

This section applies to a charge if—

(a)

before section 80 of the predecessor Ordinance was repealed, a non-Hong Kong company registered under Part XI of the predecessor Ordinance created the charge; and

(b)

the charge was required by that section, as extended by section 91 of the predecessor Ordinance, to be registered.

(2)

Subject to subsection (4), sections 80 and 81 of the predecessor Ordinance, as in force immediately before their repeal, continue to apply, by virtue of section 91 of the predecessor Ordinance as so in force, in relation to the charge.

(3)

Subject to section 68 of this Schedule, section 83(2) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply, by virtue of section 91 of the predecessor Ordinance as so in force, in relation to the charge.

(4)

On the expiry of the period of 8 weeks after the commencement date[e] of Division 2 of Part 8—

(a)

that section 80 applies in relation to the charge as if—

(i)

in subsection (1) of that section, the words "the particulars of the charge (which must include those specified in subsection (1A) and be in the specified form), together with the instrument, if any, by which the charge is created or evidenced" had been substituted by the words "a statement of the particulars of the charge (in the same form as that specified for the purposes of section 336(1) of the Companies Ordinance (Cap. 622)), together with a certified copy of the instrument (if any) creating or evidencing the charge";

(ii)

subsection (1A) of that section had been deleted;

(iii)

in subsection (7) of that section, the words after "5 weeks after the execution of the" and before the proviso had been substituted by the words "instrument by reference to which the charge is given or, if there is no such instrument, after the execution of the first debenture of the series, a statement of the particulars of the charge (in the same form as that specified for the purposes of section 336(2) of the Companies Ordinance (Cap. 622)), together with a certified copy of the instrument by reference to which the charge is given or, if there is no such instrument, any one debenture of the series:";

(iv)

in subsection (7) of that section, in the proviso, the words "particulars of the date and amount of each issue" had been substituted by the words "a statement of the particulars of every issue (in the same form as that specified for the purposes of section 341(2) of the Companies Ordinance (Cap. 622))"; and

(v)

in subsection (8) of that section, the words "the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent of the commission, discount, or allowance so paid or made" had been substituted by the words "a statement required to be sent for registration under this section must be accompanied by a statement of the particulars of the commission, allowance or discount (in the same form as that specified for the purposes of section 342(2) of the Companies Ordinance (Cap. 622))"; and

(b)

that section 81 applies in relation to the charge as if—

(i)

in subsection (1) of that section, the words "the particulars of every charge created by the company and of the issues of debentures of a series, requiring registration under section 80" had been substituted by the words "the statement, or a certified copy of the instrument or debenture, or both, as required under section 80(1), (7) or (8)";

(ii)

in subsection (1) of that section, the words "any such charge" had been substituted by the words "any such statement or certified copy (as the case may be)"; and

(iii)

in subsection (3) of that section, the words "the particulars of any charge created by the company, or of the issues of debentures of a series, requiring registration as aforesaid" had been substituted by the words "the statement or certified copy that the non-Hong Kong company is required under subsection (1) to do so".

65.

Charge existing on property acquired by company

(1)

This section applies to a charge if—

(a)

before section 82 of the predecessor Ordinance was repealed, a company acquired any property subject to the charge; and

(b)

the charge was required by that section to be registered.

(2)

Subject to subsection (4), section 82 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the charge.

(3)

Subject to section 68 of this Schedule, section 83(2) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the charge.

(4)

On the expiry of the period of 8 weeks after the commencement date[e] of Division 3 of Part 8, that section 82 applies in relation to the charge as if—

(a)

in subsection (1) of that section, the words "the particulars of the charge (which must include those specified in section 80(1A) and be in the specified form), together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced" had been substituted by the

words “a statement of the particulars of the charge (in the same form as that specified for the purposes of section 338(2) of the Companies Ordinance (Cap. 622)), together with a certified copy of the instrument (if any) creating or evidencing the charge”;

(b)

in subsection (1) of that section, in the proviso, the words “which the copy” had been substituted by the words “which the certified copy”; and

(c)

in subsection (1) of that section, in the proviso, the words “the particulars and the copy of the instrument” had been substituted by the words “the statement and certified copy”.

66.

Charge existing on property acquired by non-Hong Kong company

(1)

This section applies to a charge if—

(a)

before section 82 of the predecessor Ordinance was repealed, a non-Hong Kong company registered under Part XI of the predecessor Ordinance acquired any property subject to the charge; and

(b)

the charge was required by that section, as extended by section 91 of the predecessor Ordinance, to be registered.

(2)

Subject to subsection (4), section 82 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply, by virtue of section 91 of the predecessor Ordinance as so in force, in relation to the charge.

(3)

Subject to section 68 of this Schedule, section 83(2) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply, by virtue of section 91 of the predecessor Ordinance as so in force, in relation to the charge.

(4)

On the expiry of the period of 8 weeks after the commencement date[e] of Division 3 of Part 8, that section 82 applies in relation to the charge as if in subsection (1) of that section, the words “the particulars of the charge (which must include those specified in section 80(1A) and be in the specified form), together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced” had been substituted by the words “a statement of the particulars of the charge (in the same form as that specified for the purposes of section 339(3) of the Companies Ordinance (Cap. 622)), together with a certified copy of the instrument (if any) creating or evidencing the charge”.

67.

Charge existing on property on date of non-Hong Kong company’s registration under Part XI of predecessor Ordinance

(1)

This section applies to a charge if—

(a)

before section 91(5) of the predecessor Ordinance was repealed, a non-Hong Kong company had, on the date of its registration under Part XI of the predecessor Ordinance, property in Hong Kong subject to the charge; and

(b)

the charge was required by that section to be registered.

(2)

Subject to subsection (4), section 91(5) and (6) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the charge.

(3)

Subject to section 68 of this Schedule, section 83(2) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the charge.

(4)

On the expiry of the period of 8 weeks after the commencement date of Division 3 of Part 8, that section 91(5) applies in relation to the charge as if the words "for registration the particulars in the specified form (including any instrument or its copy by which the charge was created or is evidenced) that are mentioned in this Part as requiring registration in respect of a charge of that kind" had been substituted by the words—

"for registration—

(a)

either or both of the following—

(i)

a statement of the particulars of the charge (in the same form as that specified for the purposes of section 340(2) of the Companies Ordinance (Cap. 622)), together with a certified copy of the instrument (if any) creating or evidencing the charge;

(ii)

a statement of the particulars of the charge (in the same form as that specified for the purposes of section 340(3) of the Companies Ordinance (Cap. 622)), together with a certified copy of the instrument by reference to which the charge is given or, if there is no such instrument, any one debenture of the series; and

(b)

(if applicable) the statement as required under the proviso to section 80(7) or (8) having a continuing effect under section 64(4)(a)(iv) or (v) of Schedule 11 to the Companies Ordinance (Cap. 622)".

68.

Certificates on registration of charge

Section 83(2) of the predecessor Ordinance, as in force immediately before its repeal—

(a)

continues to apply in relation to a charge to which section 63 or 65 of this Schedule applies; and

(b)

continues to apply, by virtue of section 91 of the predecessor Ordinance as so in force, in relation to a charge to which section 64, 66 or 67 of this Schedule applies,

as if the words "this Part" (wherever appearing) had been substituted by the words "this Part having a continuing effect under Schedule 11 to the Companies Ordinance (Cap. 622)".

69.

Entries of satisfaction and release

Section 85 of the predecessor Ordinance, as in force immediately before its repeal—

(a)

continues to apply in relation to an application made by a company, the mortgagee, or the person entitled to the charge, before the commencement date[e] of Division 5 of Part 8 for the purposes of that section 85; and

(b)

continues to apply, by virtue of section 91 of the predecessor Ordinance as so in force, in relation to an application made by a non-Hong Kong company registered under Part XI of the predecessor Ordinance, the mortgagee, or the person entitled to the charge, before that commencement date[e] for the purposes of that section 85.

70.

Extension of time for registration and rectification of register of charges

Section 86 of the predecessor Ordinance, as in force immediately before its repeal—

(a)

continues to apply in relation to an application made by a company, or any person interested, before the commencement date[e] of sections 346 and 347 for the purposes of that section 86; and

(b)

continues to apply, by virtue of section 91 of the predecessor Ordinance as so in force, in relation to an application made by a non-Hong Kong company registered under Part XI of the predecessor Ordinance, or any person interested, before that commencement date[e] for the purposes of that section 86.

71.

Notice to Registrar of appointment of receiver or manager etc.

(1)

This section applies if, before section 87 of the predecessor Ordinance was repealed—

(a)

a person made an appointment of a receiver or manager of the property of a company, or the charged property of a non-Hong Kong company registered under Part XI of the predecessor Ordinance, to which subsection (1) of that section 87 applied;

(b)

a person obtained an order for the appointment of such a receiver or manager;

(c)

a person entered into possession of the property of a company, or the charged property of a non-Hong Kong company registered under Part XI of the predecessor Ordinance, as mortgagee;

(d)

a person who was appointed as receiver or manager of the property of a company, or the charged property of a non-Hong Kong company registered under Part XI of the predecessor Ordinance, and in respect of whom notice was required to be given under subsection (1) of that section 87, ceased to act as receiver or manager;

(e)

a person who is mentioned in paragraph (c), and in respect of whom notice was required to be given under subsection (2) of that section 87, went out of possession of the property; or

(f)

any change occurred in the particulars given in a notice under subsection (1) or (2) of that section 87.

(2)

In the case of subsection (1)(a) or (b), section 87(1), (3), (6), (7) and (8) of the predecessor Ordinance, as in force immediately before its repeal—

(a)

continues to apply in relation to an appointment for a property of a company; and

(b)

continues to apply, by virtue of section 91 of the predecessor Ordinance as so in force, in relation to an appointment for a charged property of a non-Hong Kong company registered under Part XI of the predecessor Ordinance.

(3)

In the case of subsection (1)(c), section 87(2), (3), (6) and (7) of the predecessor Ordinance, as in force immediately before its repeal—

(a)

continues to apply in relation to an entry into possession of a property of a company; and

(b)

continues to apply, by virtue of section 91 of the predecessor Ordinance as so in force, in relation to an entry into possession of a charged property of a non-Hong Kong company registered under Part XI of the predecessor Ordinance.

(4)

In the case of subsection (1)(d), section 87(4), (6), (7) and (8) of the predecessor Ordinance, as in force immediately before its repeal—

(a)

continues to apply in relation to the ceasing to act as receiver or manager of a property of a company; and

(b)

continues to apply, by virtue of section 91 of the predecessor Ordinance as so in force, in relation to the ceasing to act as receiver or manager of a charged property of a non-Hong Kong company registered under Part XI of the predecessor Ordinance.

(5)

In the case of subsection (1)(e), section 87(4), (6) and (7) of the predecessor Ordinance, as in force immediately before its repeal—

(a)

continues to apply in relation to the going out of possession of a property of a company; and

(b)

continues to apply, by virtue of section 91 of the predecessor Ordinance as so in force, in relation to the going out of possession of a charged property of a non-Hong Kong company registered under Part XI of the predecessor Ordinance.

(6)

In the case of subsection (1)(f), section 87(5), (6), (7) and (8) of the predecessor Ordinance, as in force immediately before its repeal—

(a)

continues to apply in relation to a change that occurred in the particulars given in connection with an appointment of a receiver or manager of, or an entry into possession as mortgagee of, a property of a company; and

(b)

continues to apply, by virtue of section 91 of the predecessor Ordinance as so in force, in relation to a change that occurred in the particulars given in connection with an appointment of a receiver or manager of, or an entry into

possession as mortgagee of, a charged property of a non-Hong Kong company registered under Part XI of the predecessor Ordinance.

72.

Register of charges

On and after the commencement date[e] of section 352—

(a)

a register of charges kept under section 89 of the predecessor Ordinance is to be regarded as a register of charges kept under section 352(1); and

(b)

a register of charges kept, by virtue of section 91 of the predecessor Ordinance, under section 89 of that Ordinance, is to be regarded as a register of charges kept under section 353(1).

73.

Notifying Registrar of place where copies of instruments creating charges are kept

Section 88(4) of the predecessor Ordinance, as in force immediately before its repeal—

(a)

continues to apply in relation to an obligation of a company to send notice to the Registrar under section 88(3) of the predecessor Ordinance that arose before the commencement date[e] of section 351; and

(b)

continues to apply, by virtue of section 91 of the predecessor Ordinance as so in force, in relation to an obligation of a non-Hong Kong company registered under Part XI of the predecessor Ordinance to send notice to the Registrar under section 88(3) of the predecessor Ordinance that arose before that commencement date[e].

74.

Notifying Registrar of place where register of charges is kept

Section 89(4) and (5) of the predecessor Ordinance, as in force immediately before its repeal—

(a)

continues to apply in relation to an obligation of a company to send notice to the Registrar under section 89(3) of the predecessor Ordinance that arose before the commencement date[e] of section 354; and

(b)

continues to apply, by virtue of section 91 of the predecessor Ordinance as so in force, in relation to an obligation of a non-Hong Kong company registered under Part XI of the predecessor Ordinance to send notice to the Registrar under section 89(3) of the predecessor Ordinance that arose before that commencement date[e].

75.

Right to inspect copies of instruments creating charges and register of charges

Sections 90 and 348C(3) of the predecessor Ordinance, as in force immediately before their repeal—

(a)

continue to apply in relation to a request received by a company before the commencement date[e] of section 355 for inspecting a register of charges or copies of instruments creating a charge; and

(b)

continue to apply, by virtue of section 91 of the predecessor Ordinance as so in force, in relation to a request received by a non-Hong Kong company registered under Part XI of the predecessor Ordinance before that commencement date[e] for inspecting a register of charges or copies of instruments creating a charge.

Part 9

Transitional and Saving Arrangements for Part 9

76.

Books of account

Sections 121 and 348C of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to books of account for a financial year beginning before the commencement date[e] of Subdivision 2 of Division 4 of Part 9 and ending on or after that commencement date[e].

77.

Financial year and related matters

Sections 127 and 141D of, and the Eleventh Schedule to, the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a financial year beginning before the commencement date[e] of Division 3 of Part 9 and ending on or after that commencement date[e].

78.

Accounts and directors' report

(1)

Sections 122, 123, 124, 125, 126, 128, 129, 129A, 129B, 129C, 129D, 129G, 141C, 161, 161A, 161B, 161BA and 161BB of, and the Tenth Schedule to, the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to accounts for a financial year beginning before the commencement date[e] of Subdivision 3 of Division 4 of Part 9 and ending on or after that commencement date[e].

(2)

Despite subsection (1), section 122(1B) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to accounts for a financial year beginning before the commencement date[e] of Subdivision 3 of Division 4 of Part 9 and ending on or after that commencement date[e] as if paragraph (b) of that section were omitted.

(3)

If the Court makes an order under section 122(1B) of the predecessor Ordinance having a continuing effect under subsection (2), the accounts to be laid at the meeting concerned must be made up to the company's primary accounting reference date under section 369(1)(b).

(4)

Sections 129D, 129E, 129F and 141C of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a directors' report for a financial year beginning before the commencement date[e] of Subdivision 4 of Division 4 of Part 9 and ending on or after that commencement date[e].

79.

Appointment of auditor

(1)

Sections 131(1), (2), (3), (4) and (9), 132 and 140 of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to an appointment of auditor for a financial year beginning before the commencement date[e] of Subdivision 2 of Division 5 of Part 9 and ending on or after that commencement date[e].

(2)

Section 131(8) of, and paragraph 15 of the Tenth Schedule to, the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a person appointed as auditor for a financial year beginning before the commencement date[e] of Subdivision 2 of Division 5 of Part 9 and ending on or after that commencement date[e].

80.

Auditor's report

(1)

Sections 141(1), (2), (3), (4), (5) and (6), 161(8) and 161B(12) of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a financial year beginning before the commencement date[e] of Subdivision 3 of Division 5 of Part 9 and ending on or after that commencement date[e].

(2)

Section 141(7) and (8) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a general meeting of which notice is given before the commencement date[e] of Subdivision 4 of Division 5 of Part 9.

81.

Removal and resignation of auditor

(1)

Sections 131(6), (7) and (10) and 132 of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a removal of a person appointed as auditor for a financial year beginning before the commencement date[e] of Subdivision 6 of Division 5 of Part 9 and ending on or after that commencement date[e].

(2)

Sections 140A and 140B of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a resignation of a person appointed as auditor for a financial year beginning before the commencement date[e] of Subdivision 6 of Division 5 of Part 9 and ending on or after that commencement date[e].

82.

Indemnity provision

Section 165 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a provision made before the commencement date[e] of Subdivision 5 of Division 5 of Part 9.

83.

Summary financial report

Sections 141CA, 141CB, 141CC, 141CD, 141CE and 141CF of the predecessor Ordinance, and the Companies (Summary Financial Reports of Listed Companies) Regulation (Cap. 32 sub. leg. M), as in force immediately before their repeal, continue to apply in relation to a summary financial report for a financial year beginning before the commencement date[e] of Division 7 of Part 9 and ending on or after that commencement date[e].

84.

Voluntary revision of accounts etc.

Section 141E of the predecessor Ordinance, and the Companies (Revision of Accounts and Reports) Regulation (Cap. 32 sub. leg. N), as in force immediately before their repeal, continue to apply in relation to accounts for a financial year beginning before the commencement date[e] of section 449 and ending on or after that commencement date[e].

85.

Register kept under section 161BB(2) of predecessor Ordinance

On and after the commencement date[e] of section 384, a register kept under section 161BB(2) of the predecessor Ordinance is to be regarded as a register kept under section 384.

86.

Right to inspect register kept under section 161BB(2) of predecessor Ordinance

Sections 161BB(5), (7) and (8) and 348C(3) of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a request received by the company before the commencement date[e] of section 386 for inspecting a register kept under section 161BB(2) of the predecessor Ordinance.

87.

Right to obtain copy of register kept under section 161BB(2) of predecessor Ordinance

Sections 161BB(6), (7) and (8) and 348C(3) of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a request received by the company before the commencement date[e] of section 386 for a copy of the register kept under section 161BB(2) of the predecessor Ordinance.

Part 10

Transitional and Saving Arrangements for Part 10

88.

First directors of companies

Section 153(2) or 153A(2) (as the case requires) of the predecessor Ordinance, as in force immediately before its repeal, applies in relation to a company formed and registered under a provision of the predecessor Ordinance having a continuing effect under this Schedule or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

89.

Requirement to have at least one director who is natural person

(1)

If, on the commencement date[e] of section 457—

(a)

a company has at least one director; but

(b)

that director is not a natural person and none of the company's other directors (if any) are natural persons,

section 457(2) does not apply to the company until after the end of 6 months after that commencement date[e].

(2)

If, on the date of incorporation of a company formed and registered under a provision of the predecessor Ordinance having a continuing effect under this Schedule or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1)—

(a)

the company has at least one director; but

(b)

that director is not a natural person and none of the company's other directors (if any) are natural persons,

section 457(2) does not apply to the company until after the end of 6 months after the commencement date[e] of section 457.

(3)

If, on the commencement date[e] of section 457, a company is a company deemed to be a dormant company under section 344A of the predecessor Ordinance, section 457(2) does not apply in relation to the company.

(4)

If the company mentioned in subsection (3) enters into an accounting transaction, that subsection ceases to have effect on and after the date of the accounting transaction.

90.

Validity of acts of director

Section 157 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to acts done before the commencement date[e] of section 461.

91.

Removal of director

Section 157B(4) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply if the representations were received by the company before the commencement date[e] of section 463.

92.

Directors' liabilities

So far as it relates to directors, section 165 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to any provision to which it applied immediately before the commencement date[e] of sections 468, 469 and 470.

93.

First company secretaries

Section 154(1AA) of the predecessor Ordinance, as in force immediately before its repeal, applies in relation to a company formed and registered under a provision of the predecessor Ordinance having a continuing effect under this Schedule or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

94.

Records of meetings of directors

(1)

Section 119 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply to meetings of directors held before the commencement date[e] of sections 481 and 482.

(2)

Despite subsection (1), a company is not required to keep the minutes that have been entered in a book in accordance with section 119(1) of the predecessor Ordinance if they have been kept for at least 10 years from the date of the meeting.

(3)

Section 153C of the predecessor Ordinance, as in force immediately before its repeal, continues to apply to decisions taken before the commencement date[e] of section 483.

(4)

Despite subsection (3), a company is not required to keep a record that has been entered into a book in accordance with section 153C(3) of the predecessor Ordinance if the record has been kept for at least 10 years from the date of the decision.

Part 11

Transitional and Saving Arrangements for Part 11

95.

Loans etc. to directors or other persons

(1)

This section applies if—

(a)

before the commencement date[e] of Division 2 of Part 11, 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 that commencement date[e].

(2)

If the company has dispensed with the holding of an annual general meeting in accordance with section 613, 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.

96.

Loss of office or retirement

(1)

Sections 163, 163A, 163B, 163C and 163D of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a loss of office or retirement specified in those sections that occurred before the commencement date[e] of Division 3 of Part 11.

(2)

For the purposes of this section, a loss of office or retirement occurred—

(a)

in the case of a directorship, when the person ceased to be a director; or

(b)

in the case of any other office, when the person ceased to hold the office.

97.

Contracts with sole member who is also director

Section 162B of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a contract specified in that section and entered into before the commencement date[e] of section 545.

Part 12

Transitional and Saving Arrangements for Part 12

98.

Interpretation

(1)

For the purposes of sections 100, 101, 102, 104, 105, 106 and 111 of this Schedule, if notice of a meeting is given over more than one day, it is to be regarded as given on the first of those days.

(2)

For the purposes of sections 100, 101, 103 and 107 of this Schedule, if copies of a requisition are deposited on more than one day, the date on which the requisition is made is to be regarded as the first day on which the copies deposited are sufficient to require the company to act.

99.

Written resolution

(1)

Sections 116B (except subsections (7), (8), (9) and (10)), 116BA and 116BB of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to resolutions sent or circulated to any relevant member before the commencement date[e] of Subdivision 2 of Division 1 of Part 12.

(2)

In this section—

relevant member

(

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) means a member whose signature is required by section 116B(1) of the predecessor Ordinance.

100.

Resolutions at meetings

Section 116 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to resolutions (other than written resolutions)—

(a)

of which notice was given before the commencement date[e] of Subdivision 3 of Division 1 of Part 12; or

(b)

that are proposed at a meeting—

(i)

of which notice was given before that commencement date[e]; or

(ii)

that is convened in accordance with a requisition made before that commencement date[e] under section 113 of the predecessor Ordinance.

101.

Calling meetings

(1)

Section 113 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to requisitions made before the commencement date[e] of sections 566, 567 and 568.

(2)

Section 114A(1)(b) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a meeting of which notice was given before the commencement date[e] of section 569.

102.

Notice of meetings

(1)

Sections 111(1), 114, 114A, 116A, 141(7) and 155B of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a meeting of which notice was given before the commencement date[e] of sections 571, 574, 576 and 577.

(2)

Section 116C of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation 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 date[e] of section 578.

103.

Members' statements

In so far as it relates to the circulation of any statement in relation to an annual general meeting, section 115A of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to requisitions made to a company under section 115A(1)(b) of the predecessor Ordinance before the commencement date[e] of Subdivision 6 of Division 1 of Part 12.

104.

Procedure at meetings

Sections 114A(1)(c) and (d), 114AA and 118 of the predecessor Ordinance, as in force immediately before their repeal, continue to apply to meetings of which notice was given before the commencement date[e] of Subdivision 7 of Division 1 of Part 12.

105.

Voting at meetings

Sections 114A(1)(e), 114D, 114E and 116(2) of the predecessor Ordinance, as in force immediately before their repeal, continue to apply to meetings of which notice was given before the commencement date[e] of Subdivision 8 of Division 1 of Part 12.

106.

Proxies and corporate representatives

Sections 114C and 115 of the predecessor Ordinance, as in force immediately before their repeal, continue to apply to meetings of which notice was given before the commencement date[e] of Subdivision 9 of Division 1 of Part 12.

107.

Annual general meetings

(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)

If a company is required under section 78(1) of this Schedule to lay at its annual general meeting an account or a balance sheet in accordance with section 122 of the predecessor Ordinance—

(a)

section 111(1), (5) and (6) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to an annual general meeting at which the account or balance sheet is to be laid; and

(b)

section 610 applies in relation to subsequent annual general meetings.

(3)

For the purposes of subsection (2)(a), section 111(6)(a) of the predecessor Ordinance has effect as if for the words "a resolution or resolutions in accordance with section 116B", there were substituted the words "a written resolution or written resolutions".

(4)

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 date[e] of section 610.

(5)

If a company has contravened section 111(1) of the predecessor Ordinance and no member of the company has made an application under section 111(2) of that Ordinance, section 610(7), (8) and (9) has effect in relation to the company as if—

(a)

for the words "subsection (1), (2), (3) or (6)" in section 610(7) and (9), there were substituted the words "section 111(1) of the predecessor Ordinance"; and

(b)

for the words "the financial year in respect of which the company has failed to hold an annual general meeting in accordance with this section" in section 610(8), there were substituted the words "the year in respect of which the company has failed to hold an annual general meeting in accordance with section 111(1) of the predecessor Ordinance".

(6)

In so far as it relates to giving notice of a resolution in relation to an annual general meeting, section 115A of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to requisitions made to a company under section 115A(1)(a) of the predecessor Ordinance before the commencement date[e] of sections 615 and 616.

108.

Records of resolutions and meetings

(1)

Sections 116B(7), (8), (9) and (10), 116BC, 119, 119A and 120 of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to resolutions passed, meetings held or decisions taken before the commencement date[e] of sections 617 to 621.

(2)

Despite subsection (1), a company is not required to keep a record or the minutes that have been entered into a book in accordance with section 116B(7), 116BC(3) or 119(1) of the predecessor Ordinance if the record or the minutes have been kept for at least 10 years from the date of the resolution, meeting or decision, as the case may be.

(3)

Section 117(1), (5) and (7) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to resolutions passed and agreements made, but not forwarded to the Registrar, before the commencement date[e] of section 622 (except subsections (3) and (5)).

(4)

Section 117(2), (6) and (7) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a company's articles issued before the commencement date[e] of section 622(3).

(5)

Section 117(3), (6) and (7) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply if the request was received by the company before the commencement date[e] of section 622(5).

109.

Right to inspect records of resolutions and meetings

Sections 120(1), (3) and (4) and 348C(3) of the predecessor Ordinance, as in force immediately before their repeal—

(a)

continue to apply in relation to a request received by the company before the commencement date[e] of section 620 for inspecting the books containing the minutes of proceedings of any general meeting of the company;

(b)

continue to apply, by virtue of section 116B(9) of the predecessor Ordinance as so in force, in relation to a request received by the company before the commencement date[e] of section 620 for inspecting the record made in accordance with section 116B(7) of that Ordinance; and

(c)

continue to apply, by virtue of section 116BC(4) of the predecessor Ordinance as so in force, in relation to a request received by the company before the commencement date[e] of section 620 for inspecting the record made in accordance with section 116BC(3) of that Ordinance.

110.

Right to obtain copy of records of resolutions and meetings

Sections 120(2), (3) and (4) and 348C(3) of the predecessor Ordinance, as in force immediately before their repeal—

(a)

continue to apply in relation to a request received by the company before the commencement date[e] of section 620 for a copy of the books containing the minutes of proceedings of any general meeting of the company;

(b)

continue to apply, by virtue of section 116B(9) of the predecessor Ordinance as so in force, in relation to a request received by the company before the commencement date[e] of section 620 for a copy of the record made in accordance with section 116B(7) of that Ordinance; and

(c)

continue to apply, by virtue of section 116BC(4) of the predecessor Ordinance as so in force, in relation to a request received by the company before the commencement date[e] of section 620 for a copy of the record made in accordance with section 116BC(3) of that Ordinance.

111.

Application to class meetings

Section 63A(6) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to meetings of which notice was given before the commencement date[e] of Subdivision 12 of Division 1 of Part 12.

112.

Register of members

(1)

On and after the commencement date[e] of section 627, a register of members kept under section 95 of the predecessor Ordinance is to be regarded as a register of members kept under and for the purposes of section 627.

(2)

Sections 98(1), (3) and (4) and 348C(3) of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a request received by the company before the commencement date= of section 631 for inspecting a register of members or index of members' names.

(3)

Sections 98(2), (3) and (4) and 348C(3) of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a request received by the company before the commencement date# of section 631 for a copy of a register of members (or any part of it).

(4)

Section 99 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a closure of a register of members if the notice for the purposes of section 99(1) of the predecessor Ordinance was given before the commencement date= of section 632.

(5)

Section 104 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a register of members kept under a licence issued under section 103 of that Ordinance.

113.

Inspection of register of directors and secretaries

Sections 158(7), (8) and (9) and 348C(3) of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a request received by the company before the commencement date= of sections 642 and 649 for inspecting a register of directors and secretaries.

114.

Register of directors

On and after the commencement date= of section 641, a 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 641.

115.

(Repealed L.N. 101 of 2021)

115A.

Correspondence address in company's register of directors etc.

(1)

This section applies in relation to the following company—

(a)

an existing company; or

(b)

a company formed and registered under this Ordinance before the specified date.

(2)

The register of directors (***register***) of the company need not contain a specified director's correspondence address for compliance with section 643(1)(a)(ii), (2)(b) or (3)(b) before the company's specified annual return date.

(3)

Despite subsection (2), the company's register must contain a specified director's correspondence address before the company's specified annual return date if—

(a)

the particulars of the specified director are first entered in the register on or after the specified date; or

(b)

any change is made to the particulars of the specified director contained in the register on or after the specified date.

(4)

For the purposes of subsection (3)(a), the company's register must contain the specified director's correspondence address beginning on the date on which the particulars are first entered in the register.

(5)

For the purposes of subsection (3)(b), the company's register must contain the specified director's correspondence address beginning on the date on which the change is made.

(6)

The address of the company's registered office is, for all purposes relating to the company's register, to be regarded as the correspondence address of a specified director of the company until whichever is the earlier of the following—

(a)

the date on which the company enters the specified director's correspondence address in the register;

(b)

the company's specified annual return date.

(7)

The company need not, for compliance with section 645(4), deliver to the Registrar a notice—

(a)

for entering in the company's register a specified director's correspondence address before the specified date;

(b)

for making any change to a specified director's correspondence address contained in the company's register before the specified date; or

(c)

because the address of the company's registered office is regarded as a specified director's correspondence address under subsection (6).

(8)

Despite subsection (7), if, immediately before the specified date—

(a)

a specified director's correspondence address was contained in the company's register; and

(b)

the address was not the address of the company's registered office,

the company must, for compliance with section 645(4), deliver to the Registrar a notice in relation to the specified director's correspondence address as if there were, on that date, a change in the specified director's correspondence address contained in the register to the address mentioned in paragraph (a).

(9)

An annual return of the company under section 662(1) or (3) made up to a date before the specified date need not contain a correspondence address of a person who at the date of the return is a specified director of the company.

(10)

In this section—

annual return date

(

周年申報表日期

), in relation to a company, means the return date of the company determined in accordance with section 662(2) or (4);

specified annual return date

(

指明周年申報表日期

), in relation to a company, means—

(a)

if the specified date falls on an annual return date of the company—the specified date; or

(b)

if not—the first annual return date of the company after the specified date;

specified date

(

指明日期

) means the date on which section 54(2) comes into operation;

specified director

(

指明董事

) means a director or reserve director who is a natural person.

(Added L.N. 101 of 2021)

116.

Supplementary provisions relating to particulars to be registered

(1)

On the commencement date of section 643, an existing company must remove from its register of directors any entry relating to a shadow director who is deemed to be a director of the company under section 158(10)(a) of the predecessor Ordinance.

(2)

If, in accordance with section 158 of the predecessor Ordinance, an existing company has sent to the Registrar a notification in relation to a shadow director of the company, section 645 applies as if the shadow director had ceased to be a director on the commencement date of section 643.

(3)

The removal by an existing company from its register of directors on or after the commencement date of section 643 of particulars required by the predecessor Ordinance but not required by this Ordinance does not give rise to any duty to deliver a notice to the Registrar under section 645.

(4)

Section 158 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a change occurring before the commencement date of section 643.

117.

Register of company secretaries

On and after the commencement date[e] of section 648, a 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 secretary or joint company secretaries of the company, is to be regarded as a register of company secretaries kept under and for the purposes of section 648.

118.

Particulars to be registered in register of company secretaries

(1)

An existing company need not comply with any provision of this Ordinance requiring the company's register of company secretaries to contain particulars additional to those required by the predecessor Ordinance until—

(a)

the date to which the company makes up its first annual return made up to a date on or after the commencement date[e] of section 650; or

(b)

if the company fails to do so, the last date to which the company should have made up that return.

(2)

Unless the existing company is a company formed and registered under a provision of the predecessor Ordinance having a continuing effect under this Schedule or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), subsection (1) does not apply in relation to a company secretary of whom particulars are first registered on or after the commencement date[e] of section 650 (whether the company secretary was appointed before, on or after that date).

(3)

Subsection (1) ceases to apply in relation to a company secretary whose registered particulars fall to be altered on or after the commencement date[e] of section 650 (whether the change occurred before, on or after that date).

(4)

Subsections (1), (2) and (3) do not affect the particulars required to be included in the company's annual return.

(5)

In the case of a company secretary of an existing company who is a natural person, the address of the company's registered office is to be regarded, on and after the commencement date[e] of section 650, as the correspondence address of the company secretary.

(6)

The operation of subsection (5) does not give rise to any duty to deliver a notice to the Registrar under section 652.

119.

Supplementary provisions relating to particulars to be registered

(1)

The removal by an existing company from its register of company secretaries on or after the commencement date[e] of section 650 of particulars required by the predecessor Ordinance but not required by this Ordinance does not give rise to any duty to deliver a notice to the Registrar under section 652.

(2)

Section 158 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a change occurring before the commencement date[e] of section 650.

120.

Registered office of company

Section 92 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a change occurring before the commencement date[e] of section 658.

121.

Annual return

(1)

Except where the company is a private company having a share capital, if the financial year (as defined in section 2(1) of the predecessor Ordinance) of the company begins before the commencement date[e] of section 662 and ends on or after that date—

(a)

sections 107 and 109 of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to the company for that financial year; and

(b)

section 662 applies in relation to the company for the first financial year that begins on or after that commencement date[e] and all subsequent financial years.

(2)

If the company is a private company having a share capital, sections 107 and 109 of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to the company's annual returns made up to a date before the commencement date[e] of section 662.

Part 13

Transitional and Saving Arrangements for Part 13

122.

Saving of predecessor Ordinance etc. for sanctioning arrangement or compromise

(1)

Sections 166, 166A and 167 of the predecessor Ordinance and rule 117 of the Companies (Winding-up) Rules (Cap. 32 sub. leg. H), as in force immediately before the commencement date[e] of Division 2 of Part 13, continue to apply in relation to an arrangement or compromise if, before that commencement date[e], an application was made to the Court for the purposes of section 166(1) of the predecessor Ordinance for a meeting to be summoned in relation to the arrangement or compromise.

(2)

Item 2(e) of Schedule 1 to the Companies (Fees and Percentages) Order (Cap. 32 sub. leg. C), as in force immediately before its repeal, continues to apply in relation to an application made under section 166 of the predecessor Ordinance having a continuing effect under subsection (1).

123.

Acquisition offer

Section 168(1), (2) and (3) of, and the Ninth Schedule to, the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to an acquisition offer—

(a)

that was made before the commencement date[e] of Division 4 of Part 13; and

(b)

in relation to which those provisions applied immediately before the repeal.

Part 14

Transitional and Saving Arrangements for Part 14

124.

Petition in case of unfair prejudice

(1)

Section 168A of the predecessor Ordinance, as in force immediately before 15 July 2005, continues to apply in relation to a petition presented before 15 July 2005 for an order under that section 168A.

(2)

Section 168A of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a petition presented on or after 15 July 2005, but before the commencement date[e] of Division 2 of Part 14, for an order under that section.

(3)

The Companies (Winding-up) Rules (Cap. 32 sub. leg. H), as in force immediately before the commencement date[e] of Division 2 of Part 14, continue to apply in relation to a petition presented on or after 15 July 2005, but before that commencement date[e], for an order under section 168A of the predecessor Ordinance.

125.

Application for injunction

Section 350B(1)(g) and (h) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to an application made before the commencement date[e] of Division 3 of Part 14 for the purposes of that section.

126.

Derivative action in case of misconduct against companies etc.

Part IVAA of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to—

(a)

an application made before the commencement date[e] of Division 4 of Part 14 for leave to bring or intervene in proceedings under section 168BC of the predecessor Ordinance, as in force immediately before its repeal; and

(b)

if leave is granted to bring or intervene in proceedings, the proceedings so brought or intervened in.

127.

Application for inspection of company's records

Sections 152FA, 152FB, 152FC, 152FD and 152FE of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to—

(a)

an application made before the commencement date[e] of Division 5 of Part 14 for an order for inspection under section 152FA of the predecessor Ordinance, as in force immediately before its repeal; and

(b)

if an order for inspection is made, the inspection.

Part 15

Transitional and Saving Arrangements for Part 15

128.

Disclaimer of property vested in Government under predecessor Ordinance

Sections 290C and 290D of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to a disclaimer of the Government's title to any property or right (other than immovable property) vested in the Government before the commencement date[e] of Division 3 of Part 15 under section 292 of the predecessor Ordinance.

129.

Striking off

(1)

Section 291(2), (3) and (6) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the striking off the register of the name of a company and to the dissolution of the company if, before the commencement date[e] of Subdivision 1 of Division 1 of Part 15, the Registrar has sent a letter to the company under section 291(1) of the predecessor Ordinance.

(2)

Section 291(6) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the striking off the register of the name of a company and to the dissolution of the company if, before the commencement date[e] of Subdivision 1 of Division 1 of Part 15, the Registrar has published in the Gazette a notice in relation to the company under section 291(5) of the predecessor Ordinance.

(3)

Section 291(6) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the striking off the register of the name of a company and to the dissolution of the company if, before the commencement date[e] of Subdivision 2 of Division 1 of Part 15, the Registrar has published in the Gazette a notice in relation to the company under section 291(4) of the predecessor Ordinance.

(4)

Section 291A of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the striking off the register of the name of a company and to the dissolution of the company if, before the commencement date[e] of Subdivision 2 of Division 1 of Part 15, the Registrar has made an application for the purposes of section 291A(1) of the predecessor Ordinance.

(5)

Section 291AA of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the deregistration of a company and to the dissolution of the company if, before the commencement date[e] of Division 2 of Part 15, an application has been made under section 291AA(1) of the predecessor Ordinance.

130.

Restoration

(1)

Section 291(7) or 291A(2) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to an application made before the commencement date[e] of Subdivision 2 of Division 4 of Part 15 for the purposes of that section.

(2)

Section 291AB(2), (3), (4) and (5) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to an application made before the commencement date[e] of Subdivision 2 of Division 4 of Part 15 for the purposes of section 291AB(2) of the predecessor Ordinance as in force immediately before the repeal.

131.

Bona vacantia

Section 292(2) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to section 292(1) of the predecessor Ordinance as so in force and having a continuing effect by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

Part 16

Transitional and Saving Arrangements for Part 16

132.

Application for registration

(1)

If, immediately before the commencement date[e] of Division 2 of Part 16, 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 776(2).

(2)

Paragraph (a) of Part III of the Eighth Schedule to the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to an application mentioned in subsection (1), as if the reference to section 333AA(2)(c) in that paragraph were a reference to section 777(4)(a).

(3)

Paragraph (aa) of Part III of the Eighth Schedule to the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to an application mentioned in subsection (1), as if the reference to section 333 in that paragraph were a reference to section 776.

133.

Registered particulars of authorized representative

Section 333A(2) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to a non-Hong Kong company if, on or after the commencement date[e] of Division 5 of Part 16, the company delivers to the Registrar for registration a return in respect of another authorized representative for the purposes of section 335(1)(b) of the predecessor Ordinance having a continuing effect by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

134.

Registration of return

(1)

If—

(a)

before the commencement date[e] of Division 3 of Part 16, a return and other documents were delivered to the Registrar for registration under section 335(2) of the predecessor Ordinance; and

(b)

as at the beginning of that commencement date[e], the Registrar has not registered the return and issued a fresh certificate of registration under section 335(3) of the predecessor Ordinance because the Registrar has not received all the documents mentioned in section 335(2)(b) of the predecessor Ordinance,

the return is to be regarded as a return delivered to the Registrar for registration under section 778.

(2)

If, on or after the commencement date[e] of Division 3 of Part 16, a return and other documents are delivered to the Registrar for registration under section 335(2) of the predecessor Ordinance having a continuing effect by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), the return is to be regarded as a return delivered to the Registrar for registration under section 778.

(3)

Paragraph (a) of Part III of the Eighth Schedule to the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to an application mentioned in subsection (1), as if the reference to section 335(3) in that paragraph were a reference to section 779(1)(b).

135.

Notice to regulate use of corporate names

A notice that was served under section 337B of the predecessor Ordinance, as in force immediately before its repeal, and that was in force immediately before the commencement date[e] of Division 4 of Part 16, continues in force and has effect as if it were a notice served under section 780.

136.

Notice of cessation of place of business in Hong Kong

If, on or after the commencement date[e] of Division 7 of Part 16, a non-Hong Kong company sends a notice to the Registrar under section 339(1) of the predecessor Ordinance having a continuing effect by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), section 339(2) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the notice and the company.

137.

Notice of dissolution

If, on or after the commencement date[e] of Division 7 of Part 16, an agent of a non-Hong Kong company sends a notice and other documents to the Registrar under section 339AA(1) of the predecessor Ordinance having a continuing effect by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), section 339AA(2) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the notice and documents and the company.

138.

Striking off

(1)

Section 291(2), (3) and (6) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply, by virtue of section 339A(2) of the predecessor Ordinance as so in force, in relation to the striking off the register of the name of a non-Hong Kong company if, before the commencement date[e] of Division 8 of Part 16, the Registrar has sent a letter to the company under section 291(1) of the predecessor Ordinance.

(2)

Section 291(6) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply, by virtue of section 339A(2) of the predecessor Ordinance as so in force, in relation to the striking off the register of the name of a non-Hong Kong company if, before the commencement date[e] of Division 8 of Part 16, the Registrar has published in the Gazette a notice in relation to the company under section 291(5) of the predecessor Ordinance.

(3)

Section 291(6) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply, by virtue of section 339A(2) of the predecessor Ordinance as so in force, in relation to the striking off the register of the name of a non-Hong Kong company if, before the commencement date[e] of Division 8 of Part 16, the Registrar has published in the Gazette a notice in relation to the company under section 291(4) of the predecessor Ordinance.

139.

Restoration

Section 291(7) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply, by virtue of section 339A(2) of the predecessor Ordinance as so in force, in relation to an application made before the commencement date[e] of Division 8 of Part 16 for the purposes of that section 291(7) as in force immediately before the repeal.

140.

Certificates previously issued

(1)

This section applies to a certificate—

(a)

that was issued under—

(i)

section 333(3) or (5) of the predecessor Ordinance as in force from time to time before 14 December 2007; or

(ii)

section 333AA(2)(c) or 335(3) of the predecessor Ordinance as in force immediately before its repeal; and

(b)

that was in force immediately before the commencement date[e] of Part 16.

(2)

The certificate continues in force and has effect as if it were a certificate issued under section 777(4)(a) or 779(1)(b) (as the case may be).

Part 17

Transitional and Saving Arrangements for Part 17

141.

Application for registration

(1)

If, immediately before the commencement date[e] of Part 17, there was a pending application for registration under section 310 of the predecessor Ordinance, the application is to be regarded as an application for registration made under section 807.

(2)

Despite section 811, the applicant is not required to pay any fee to the Registrar for the registration if—

(a)

the company is not registered as a limited company; or

(b)

the company is registered as a limited company, but the liability of the shareholders was limited by some other Ordinance before the registration.

Part 18

Transitional and Saving Arrangements for Part 19

142.

Investigation by inspectors appointed under section 142 or 143 of predecessor Ordinance

(1)

This section applies if, before the commencement date[e] of Division 2 of Part 19—

(a)

an inspector was appointed under section 142 or 143 of the predecessor Ordinance by the Financial Secretary to investigate the affairs of a company; and

(b)

a final report on the investigation has not yet been published.

(2)

Sections 144, 145, 145A, 145B, 146, 146A, 150, 151, 152B, 152D and 152F(1) of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to the investigation.

(3)

In section 145B of the predecessor Ordinance, the reference to "section 161" or "section 161B" is to be construed as a reference to "section 161 or section 383 of the Companies Ordinance (Cap. 622)" or "section 161B or section 383 of the Companies Ordinance (Cap. 622)" respectively.

(4)

In section 146(3)(a)(ii) of the predecessor Ordinance, the reference to "the fee appointed under section 305 for a certified copy of a document where the copy has been prepared in the office of the Registrar" is to be construed as a reference to "the fee prescribed by the Financial Secretary for the purposes of section 860(1)(b) of the Companies Ordinance (Cap. 622)".

143.

Expenses of investigation by inspectors appointed under section 142 or 143 of predecessor Ordinance

If, before the commencement date[e] of Division 2 of Part 19—

(a)

an inspector was appointed under section 142 or 143 of the predecessor Ordinance by the Financial Secretary to investigate the affairs of a company; and

(b)

the expenses of and incidental to the investigation has not yet been settled,

section 148 of that Ordinance continues to apply in relation to those expenses.

144.

Report made and information obtained by inspectors appointed under section 142 or 143 of predecessor Ordinance

(1)

Section 147(1) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to any prosecution arising from—

(a)

any report made, or any information supplied, under section 146 of that Ordinance; or

(b)

any information or document obtained under section 152B of that Ordinance.

(2)

Sections 147(2), 168A(1) and 168J(1) of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to—

(a)

any report made under section 146 of that Ordinance; or

(b)

any information or document obtained under section 152B of that Ordinance.

(3)

Section 147(3) and (4) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to—

(a)

any report made, or any information supplied, under section 146 of that Ordinance; or

(b)

any information or document obtained under section 152B of that Ordinance.

(4)

Section 149 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to any report made under section 146(1) of that Ordinance.

(5)

Section 152C of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to any information or document obtained under section 152B of that Ordinance.

145.

Requirement for production of books or papers under section 152A of predecessor Ordinance

(1)

This section applies if, before the commencement date[e] of Division 3 of Part 19, the Financial Secretary, or a person authorized by the Financial Secretary, required a company or body corporate to produce books or papers under section 152A(1) of the predecessor Ordinance.

(2)

Sections 152A(2), (3), (4), (5) and (6), 152B, 152C, 152D, 152E and 152F of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to the requirement.

(3)

Section 147(1) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to any prosecution arising from any information or document obtained under section 152A or 152B of that Ordinance.

(4)

Sections 147(2), (3) and (4), 168A(1) and 168J(1) of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to any information or document obtained under section 152A or 152B of that Ordinance.

146.

Order under section 168A(1) of predecessor Ordinance

(1)

This section applies if—

(a)

before the commencement date[e] of Division 2 or 3 of Part 19 (as the case may be)—

(i)

the Financial Secretary, under section 147(2)(b) of the predecessor Ordinance, presented a petition for an order under section 168A(1) of that Ordinance; and

(ii)

the petition has not yet been determined; or

(b)

on or after the commencement date[e] of Division 2 or 3 of Part 19 (as the case may be), the Financial Secretary, in reliance on section 144(2) or 145(4) of this Schedule presents a petition for an order under section 168A(1) of the predecessor Ordinance.

(2)

Section 168A(2), (2C), (3), (4) and (6) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the petition.

147.

Application for disqualification order under section 168J(1) of predecessor Ordinance

(1)

This section applies if—

(a)

before the commencement date[e] of Division 2 or 3 of Part 19 (as the case may be)—

(i)

the Financial Secretary made an application for a disqualification order under section 168J(1) of the predecessor Ordinance; and

(ii)

the application has not yet been determined; or

(b)

on or after the commencement date[e] of Division 2 or 3 of Part 19 (as the case may be), the Financial Secretary, in reliance on section 144(2) or 145(4) of this Schedule, makes an application for a disqualification order under section 168J(1) of the predecessor Ordinance.

(2)

Section 168J(2) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the application.

148.

Investigation by inspectors appointed under section 152(1) of predecessor Ordinance

(1)

This section applies if, before the commencement date[e] of Division 6 of Part 19, an inspector was appointed under section 152(1) of the predecessor Ordinance by a company to investigate its affairs.

(2)

Section 152(2), (3), (4) and (5) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to the investigation.

(3)

Section 152(6) of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to any report of the inspector on the investigation.

Part 19

Transitional and Saving Arrangements for Part 20

149.

Inspection and production of documents if offence suspected

Section 351B of the predecessor Ordinance, as in force immediately before its repeal, continues to apply in relation to an application made before the commencement date[e] of section 897 for the purposes of that section.

(Amended E.R. 1 of 2013)

Editorial Note:

- Commencement date: 3 March 2014.
- Specified date: 24 October 2022.
- Part 16 came into operation on 3 March 2014, except sections 791(4) and 802(4) and (5). See L.N. 163 of 2013.

Schedule 12

[s. 2]

Provisions Specified for Section 2(5C)(c)

The following are provisions specified for the purposes of section 2(5C)(c)—

(a)

paragraph (c) of the definition of ***company*** in section 8 of Schedule 2 to the Trustee Ordinance (Cap. 29);

(b)

paragraph (c) of the definition of ***company*** in section 2(1) of the Money Lenders Ordinance (Cap. 163);

(c)

paragraph (c) of the definition of ***company*** referred to in Forms 2, 3, 5, 7, 9 and 11 in Schedule 2 to the Money Lenders Regulations (Cap. 163 sub. leg. A);

(d)

section 6(1) of the Civil Aviation Ordinance (Cap. 448);

(e)

article 4(3)(d)(i) of the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C);

(f)

section 12(1)(c)(ii) of the Small Unmanned Aircraft Order (Cap. 448 sub. leg. G);

(g)

sections 180(3)(b) and 236(4)(b) of the Copyright Ordinance (Cap. 528).

(Schedule 12 added 14 of 2025 s. 80)