

**ALLOTMENT OF ADDITIONAL SHARES  
RESOLVED that:**

NOTED THAT authority having been obtained under section 57B of the Companies Ordinance (Cap. 32) from the Founder Member, [no. of additional shares] of \$1.00 each in the capital of the Company, be and are hereby allotted to [XYZ Corporation Ltd] for cash with HK\$0.5 payable on allotment and the balance of HK\$0.5 to be paid as and when called up by the board of directors, and that the Common Seal of the Company be affixed to the share certificate to be issued to XYZ Corporation Ltd in accordance with the Articles of Association of the Company.

.....  
Chin Chung Shu  
Sole Director

## DIRECTORS & COMPANY SECRETARIES

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### 15-010 Who are company officers?

An "officer", in relation to a corporation, includes:

- a director;
- a secretary;
- a manager.

#### Directors

A director is appointed to carry out the day to day management and control of a company. Directors are charged with onerous duties (see 15-600ff).

The Ordinance defines a director as any person occupying the position of director, whatever he may be called, and includes:

- a person in accordance with whose directions or instructions the directors of a company are accustomed to act, ie a shadow director;
- an alternate or substitute director.

"Shadow director" means a person in accordance with whose directions or instructions the directors of a company are accustomed to act (sec 2). However, a person shall not be deemed to be a shadow director by reason only that the directors act on advice given by him in a professional capacity (eg a lawyer or an accountant). Anybody who functions as a director will be vested with the duties and liabilities of a director even though he may not be called a director or formally appointed to the office of director.

#### Company secretary

Every company is required to appoint a company secretary. A director may hold office as a company secretary, but where something is required to be done by both a director and a secretary, it must not be done by the same person acting in both capacities.

No private company having only one director shall have as secretary of the company a body corporate the sole director of which is the sole director of the private company (sec 154(4)).

## Directors

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### Appointment of directors

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### 15-100 Requirements for appointment

#### Statutory requirements

A non-private company must have at least two directors at any time. Every private company must have at least one director.

For a private company which is not a member of a group of companies that includes a listed company, it may appoint a body corporate as its director.

A director must be of full age and capacity (ie 18 years old) and not disqualified under the Ordinance or any other laws.

If a company has only one member and that person is the sole director of the company, a reserve director can be appointed at general meeting to take over the management of the company in the event of the death of the sole director/member.

**Share qualification**

The Articles of a company may require a director to hold a specified share qualification. If so, the director must hold the share qualification within two months after his appointment or such shorter period as is fixed by the Articles (sec 155).

Unless the Articles provide otherwise, the qualification shares must be held by the director solely and not as one of several joint holders.

If the director does not obtain his qualification shares within two months, or after obtaining it, ceases to hold the qualification shares at any time, he must vacate his office. He cannot be re-appointed until he has obtained his qualification shares.

Regulation 79 of Table A provides that the share qualification for directors may be fixed by the company in a general meeting.

**Consent to act**

The Ordinance provides that with effect from the date of incorporation (sec 153 and 153A), the person(s) named as director(s) in Form NC1 or NC1G as the case may be is/are the first director(s) of the Company, he (they) must sign in the Form giving his/their consent(s) to act as Director.

Any person appointed subsequent to the incorporation of a company must sign in the relevant page of D2A giving his consent to act as Director.

If a company is incorporated by way of electronic incorporation and if the signature of first director(s) cannot be submitted at the time of incorporation, the company has 14 days to obtain the consent to act as director from the first director(s) (Form NC3) and submit this form to the Companies Registry within 14 days from the date of incorporation.

Law: sec 158(4AA).

**15-150 Requirements for non-private companies and companies without share capital**

In addition to the above requirements for appointment of directors, non-private companies and companies without share capital must also comply with certain requirements regarding voting procedure.

The appointment of two or more directors in these types of companies must be voted on individually unless there is a prior resolution passed unanimously agreeing to a single resolution being passed for the appointment. If this preliminary resolution is not first passed, any single resolution purporting to appoint the directors will be void and no one named in the resolution will in fact have been appointed.

Law: sec 157A.

**15-200 Procedure for appointment****First directors**

Table A provides that the number of the directors and the names of the first directors will be determined in writing by the Founder Member(s) of the memorandum or a majority of them.

**Subsequent appointments**

The Memorandum and Articles of Association of a company governs the appointment of subsequent directors in the company.

Directors of a company can appoint any person to be a director to fill a casual vacancy or as an addition to existing directors (Table A, Regulation 97). A director appointed to fill a casual vacancy will not be taken into account in determining the number of directors who are to retire by rotation at an annual general meeting. The director so appointed can only hold office till the next annual general meeting of the company, where he is eligible for re-election.

Shareholders can also appoint directors by way of resolution at a general meeting or by written resolutions.

Where the number of directors of a company (not being a private company) is reduced below two or in any other cases the number being reduced below the minimum set in the Articles of Association, the remaining director may act to appoint additional director to reach the minimum number if permitted by the Articles of Association or to convene a general meeting.

XYZ LIMITED

(the "Company")

WRITTEN RESOLUTION OF THE REMAINING DIRECTOR OF THE COMPANY PASSED IN ACCORDANCE WITH THE PROVISIONS OF THE COMPANY'S ARTICLES OF ASSOCIATION

APPOINTMENT OF ADDITIONAL DIRECTOR

NOTED that the minimum number of director of the Company is fixed at two

FURTHER NOTED that because of the resignation/accidental death of Mr Y, the Company has only one director.

RESOLVED that Mr Z be appointed as a director with effect from (date) to restore the minimum number of directors to two.

Dated:

Mr ABC  
Remaining Director

Checklist — Procedure for appointment of directors

Procedure	Relevant section in the Ordinance or as otherwise stated	Remarks
Check Articles for: <ul style="list-style-type: none"> <li>• method of appointment;</li> <li>• minimum and maximum number of directors;</li> <li>• share qualification;</li> <li>• other procedures.</li> </ul>	153, 155	see 15-100
Is the proposed director disqualified from acting as a director?	156, 168E-H & 168L	see 15-300
Obtain consent to act (in the relevant page of NC1 or NC1G or D2A as the case may be). For companies incorporated through electronic incorporation, NC3 can be submitted to the Registrar of Companies within 14 days from the date of incorporation.	158(4AA)	see 12-060
Obtain director's disclosure of interest in contracts.	162	see 12-460
Obtain director's disclosure of interest in shares in the company, its holding company or subsidiary.		see 12-460
Prepare board resolution to appoint director: <ul style="list-style-type: none"> <li>• ensure compliance with Articles;</li> </ul>	157A	see 24-140

**Transfer of shares — single transfer**

RESOLVED:

1. That the transfer of shares numbered [ ] to [ ] from [name of transferor], as transferor, to [name of transferee], as transferee, be and is hereby approved.
2. That the old certificate in the name of the transferor be cancelled and that a new certificate in the name of the transferee be issued and the Common Seal of the Company be affixed thereto.

Transfer of shares — subject to stamping

directors'  
resolution

RESOLVED

1. That the transfer of xxx shares in the capital of the Company from Mr CCT to Ms KKG be approved, subject to the instrument of transfer being duly stamped and presented to the Company for registration.
2. That share certificate issued to Mr CCT be cancelled and that new share certificate be signed, sealed issued to Ms KKG in accordance with the provisions of Articles of Association and that details of the share transfer be updated in the registers of members and transfers.

**BOOKS OF THE COMPANY**

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### 25-010 Introduction

It is compulsory for a company to maintain certain information under the *Companies Ordinance*. The information is available to the general public in some cases and only to members and creditors of the company in others.

The information may be kept and maintained at:

- the registered office of the company;
- the principal place of business of the company; or
- such other place as the directors may approve if proper notices are filed with the Registrar of Companies.

The term "book and paper" includes accounts, deeds, writings and documents.

"Document" includes summons, notice, order and other legal process and registers.

It is the duty of the directors and secretaries of the company to ensure that the company's statutory and non-statutory books are properly established, maintained and up-to-date. Officers of a company are personally liable for failure to maintain statutory books and may be liable on conviction to penalties and default penalties under the Ordinance. (For a table of offences and penalties, see 3-700 of the "Administration" chapter.)

Law: sec 88(4), 95(4) and 158(8).

### 25-050 Company records

The following must be maintained by each company:

- (where debentures have been issued) register of debenture holders (sec 74A);
- register of charges and copies of all charging instruments (sec 88 and 89);
- register of members (sec 95);
- written records of sole member (sec 116BC), if applicable;
- minute books (sec 119);
- written records of sole director (sec 153C), if applicable;
- register of directors and secretaries (sec 158);
- accounting records (sec 121).

The following registers are required for listed companies:

- register of directors' and chief executives' interests and short position (*Securities and Futures Ordinance*, sec 336);
- register of interests in shares and short positions of substantial shareholders (*Securities and Futures Ordinance*, sec 336);

In addition to the statutory books, it is usual for a company to maintain the following non-statutory books:

- register of transfers;
- register of documents sealed or seal book;
- register of important documents (containing for example the Memorandum and Articles of the company, the company lease, licences issued by the relevant authorities relating to the company's business, etc).

Ready printed statutory and non-statutory books may be purchased from stationers. The information relating to a company may be kept in the form of a bound book or in loose leaf sheets with binders.

For information which is not kept by making entries in a bound book but in any other manner, the following must be observed:

- reasonable precautions must be taken to guard against falsification and facilitate the discovery of falsifications; and

- proper facilities must be provided to enable the register, index, minute book or books of account to be inspected.

Law: sec 90, 98, 120 and 158(8).

**25-100 Checklist of contents of statutory books**

<i>Companies Ordinance Section No (unless otherwise stated)</i>	<i>Type of statutory book &amp; contents</i>
95	<p><b>Register of members</b></p> <p>The register must contain:</p> <ul style="list-style-type: none"> <li>• the name and address of each member;</li> <li>• if the company has a share capital, the number of shares held by each member (distinguished by share numbers, if any, or by the number of certificates, if any) and the amount paid (or agreed to be considered as paid) on the shares held by each member;</li> <li>• the date on which each person was entered as member;</li> <li>• the date on which a person ceased to be a member;</li> <li>• amount of stock or stock units held by each member where a company has converted shares into stocks.</li> </ul> <p>Note 1: if all the issued shares of the company or all the shares within one particular class are fully paid up, distinguishing number is not necessary (sec 65A).</p> <p>Note 2: all entries relating to a person can be destroyed 30 years after that person ceased to be a member (sec 951(ii)).</p>
96	<p>Index of members (if members exceed 50 unless the register constitutes an index).</p>

<i>Companies Ordinance Section No (unless otherwise stated)</i>	<i>Type of statutory book &amp; contents</i>
<i>Securities and Futures Ordinance sec 336</i>	<p><b>Register of directors' and chief executives' shareholdings and Register of substantial shareholders etc</b></p> <ul style="list-style-type: none"> <li>• All notifications made by parties pursuant to Part XV of the <i>Securities and Futures Ordinance</i> and received by the company have to be kept either in the register of directors and executives or register of substantial shareholders.</li> <li>• Entries must be in chronological order.</li> <li>• Once notification is received, the register(s), as the case may be, must be updated within 3 business days.</li> <li>• If the register does not constitute an index, an index must be made to enable information to be readily found against those persons whose names appear in the register.</li> <li>• The company shall, within 10 business days after the day on which a name is recorded in the register, make any necessary alteration in the index.</li> <li>• The registers have to be kept for 6 years after a company ceases to be a listed corporation.</li> </ul>
158, 158(2), (2A) and (2B)	<p><b>Register of directors and secretaries</b></p> <p><i>Directors</i></p> <p>The register of directors must contain with respect to each director:</p> <ul style="list-style-type: none"> <li>• present full name;</li> <li>• any alias;</li> <li>• any former names;</li> <li>• usual residential address;</li> <li>• the number of his identity card (if any) or, in the absence of such number, the number and the issuing country of any passport held by him;</li> </ul>

Companies Ordinance Section No (unless otherwise stated)	Type of statutory book & contents
158(3)	<ul style="list-style-type: none"> <li>• in the case of a body corporate, its corporate name and registered or principal office (applicable to private company only);</li> </ul> <p>Note 1: If a body corporate is the director, its incorporation number should be obtained if it is incorporated in Hong Kong in order to complete the specified forms reporting its appointment as director and any subsequent changes thereof.</p> <p>Note 2: A person to be appointed as a director of a company listed in Hong Kong has to disclose his other directorships in listed companies whether listed in Hong Kong or overseas for the past 3 years in accordance with Main Board Listing Rules 13.51(2).</p> <p><b>Secretaries</b></p> <p>The register of secretaries must contain with respect to each secretary:</p> <ul style="list-style-type: none"> <li>• present full name;</li> <li>• any former names;</li> <li>• any alias;</li> <li>• the number of his identity card (if any) or, in the absence of such number, the number and the issuing country of any passport held by him;</li> <li>• usual residential address;</li> <li>• in the case of a body corporate, its corporate name and registered or principal office, provided that where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated instead of the said particulars.</li> </ul> <p>Note 1: As the secretary should ordinarily be resident in Hong Kong, it is normally expected that an individual acting as secretary of a company should have identity card. If none, care must be made to check if that person fulfills the "ordinarily resident" requirement.</p>

Companies Ordinance Section No (unless otherwise stated)	Type of statutory book & contents
	<p>Note 2: If the secretary is a body corporate, it must either be incorporated or having a principal place of business in Hong Kong. Therefore, the incorporation or registration number should be available (sec 154(2))</p>
88 and 89	<p><b>Register of charges and copies of instruments creating the charges</b></p> <p>The register of charges must contain with respect to each charge:</p> <ul style="list-style-type: none"> <li>• the date of creation of the charge and if the charge was a charge existing on property acquired by the company, the date of acquisition of the property;</li> <li>• a short description of the property charged;</li> <li>• the amount secured by the charge; and</li> <li>• the names of the persons entitled to the charge (ie the chargee).</li> </ul> <p>If the charge contains a whole series of debentures, the total amount of the whole series and details of the trustees, if any, for the debenture holders have to be included in the register.</p>
116BC	<p><b>Written records of sole member</b></p> <p>If a company has only one member and that member takes decision without passing a resolution, a written record of the decision has to be furnished to the company within 7 days after taking decision and the company has to keep a book of all these written records.</p>
119	<p><b>Minute books</b></p> <p>The minute books must contain:</p> <ul style="list-style-type: none"> <li>• general meeting minutes; and</li> <li>• directors' meeting minutes.</li> </ul>