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Company Law
HANDBOOK

27th Edition (Volume 2)

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27th Edition (Volume 1)

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Company Law Handbook

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The commentary in this book states the law as at 1 May 2025.

30. Registrar must keep Index of Company Names

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

[30.01] History

This section is derived from s 22C(1) of the former Companies Ordinance (Cap 32).

For equivalent provisions in UK, see the Companies Act 2006, s 1099.

[30.02] Overview

When it is intended to form a company, it is necessary to check the Index of Company Names to ensure that the name of the proposed company is not the same as or too like the name of a company already in the Index (see s 108(1)(a)).

Section 1100 of the UK Companies Act 2006 gives an express right to any person to inspect the index. In Hong Kong, there is no such express right. Section 45 of the new Ordinance requires the Registrar to make the Companies Register available for public inspection. The Companies Register is defined into s 2(1) as the records kept under s 27. Arguably therefore, s 45 does not apply to the Index of Company Names, since the Index is not a record kept under s 27. On the other hand, s 30 appears under Division 3 which is entitled 'Companies Register', so, presumably, the Index is to be considered as part of the Companies Register.

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.

[31.01] History

Parts of this section are derived from ss 346(1)(a), (b) and 348(1), other parts are derived from the Australian Corporations Act 2001, s 1274(8) and the remaining parts are new.

For equivalent provisions:

(1) UK: Companies Act 2006, ss 1072 to 1076;

(2) Australia: Corporations Act 2001, s 1274.

[31.02] Overview

The section deals with unsatisfactory documents. If a document is unsatisfactory, the Registrar may refuse to accept the document; or, after having accepted the document, exercise the powers specified in s 35(2) and (3). However, documents

may be accepted by Registry staff who fail to notice that the document is unsatisfactory. Clearly, failure to pay the fee (see s 31(1)(f)) would be picked up by Registry counter staff, but other grounds for the document being unsatisfactory might be missed. In that situation, with the Registry having accepted the document, the Registrar may refuse under s 35 to register the unsatisfactory document and return it to the person who delivered it for registration or advise that the document be appropriately amended or completed or that a fresh document be delivered for registration in place of the unsatisfactory document.

The legislative purpose of s 31(1) was to maintain and safeguard the integrity of the information appearing on the Companies Register and ensure the accuracy and timeliness of information on the public register: *Kazuo Okada v Registrar of Companies* [2019] 1 HKLRD 483, [2018] HKCU 4400, [2018] HKCFI 2770.

The section sets out the factors for a document being unsatisfactory.

The threshold 'is ineffective' in s 31(1)(i)(i) is a high threshold and is only satisfied if there is a clear relevant defect and not simply where the alleged ineffectiveness remains the subject of conjecture or where the Registrar only thinks that the document may turn out to be ineffective if a certain internal dispute of the company is resolved against the presenter: see *China Capital Strategy Ltd & Ors v Registrar of Companies* [2016] HKCU 557 (unreported, HCMP 3275/2013, 9 March 2016).

See Companies Registry External Circular No 4/2014 (Major Changes in Filing Requirements), 6 January 2014; External Circular No 7/2014 (Rectification of Information on the Companies Register), 7 February 2014, in particular para 1.

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.

[32.01] History

Parts of this section are derived from ss 346(1)(c) and (1A) and 346A of the former Companies Ordinance (Cap 32) and s 1068(1), (3), (4), (6) and (7) of the UK Companies Act 2006; the remaining parts are new.

There are no equivalent provisions in Australia and Singapore.

[32.02] Overview

The section provides the enabling power for the Registrar to specify requirements for the applicable requirements in s 31, as to content, form, authentication and delivery of documents, and other matters mentioned in this section, which determine whether a document delivered to the Registrar for registration is unsatisfactory with the consequences set out in s 35.

For example, s (1)(c) covers requirements as to the manner of delivery of a document.

Note that sub-s (7) provides that such requirements are not subsidiary legislation.

See Companies Registry External Circular No. 4/2014 (Major Changes in Filing Requirements), 6 January 2014; External Circular No 8/2014 (Requirements for Documents Delivered for Registration), 7 February 2014.

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.

[33.01] History

Subsections (1) and (2) of this section are derived from s 1070(1) and (2) of the UK Companies Act 2006. The other subsections are new.

[33.02] Overview

This section relates to s 31(1)(d) which refers to such agreement as is mentioned in s 33 and any regulations made by the Financial Secretary pursuant to s 34. No standard form of agreement has yet been specified.

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.

[34.01] History

This section is new. It is derived from UK Companies Act 2006 s 1069(1) and (3).

There is no equivalent provision in Australia. In Singapore, see Singapore Companies Act (Chapter 50), s 12A(1A), (1B).

[34.02] Overview

No regulations have yet been made.

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.

[35.01] History

This section is derived from s 348 of the former Companies Ordinance (Cap 32).

For equivalent provisions:

(1) UK: Companies Act 2006, ss 1072 to 1076;

(2) Australia: Corporations Act, s 1274(8), (9);

(3) Singapore: Companies Act (Chapter 50), s 12(5).

[35.02] Overview

Unlike the former s 348, this section is linked via sub-s (1) to the concept of an unsatisfactory document as found in s 31. After having accepted the unsatisfactory document (see s 31), the Registrar may exercise the powers in sub-ss (3) and (4). The consequences of non-acceptance or non-receipt of a document or the Registrar's refusal to register the document under sub-s (3) is provided by sub-s (5) which is to treat the document as not having been delivered. Compare the consequence in the UK, which provides that there is no proper delivery within ss 1072 to 1076 of the UK Companies Act 2006. As to sub-s (5), see Companies Registry External Circular No 4/2014 (Major Changes in Filing Requirements), 6 January 2014, paras 2 and 3.

As to which, see s 36.

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.

[36.01] History

This section is new. It is derived from the Australian Corporations Act 2001 s 1274(8) and (9).

In the UK, there does not appear to be any specific equivalent power in the legislation, but the Companies Registry may act similarly, administratively. In Singapore, see Companies Act (Chapter 50), s 12(5).

[36.02] Overview

For the power of the Registrar of Companies to accept an amending or corrective affidavit/affirmation made in a filed return under the former CO. The court had no power to order the removal of any entry on the register under the former CO. See now s 42: the Registrar must rectify information on Companies Register on an order of court.

See *Re Hang Lung Properties Ltd* [2008] 1 HKC 119, [2008] 2 HKLRD 198 (CFI) and Companies Registry External Circular No 1/2009.

Tongda Group Holdings Ltd v Registrar of Companies [2004] HKCU 1171 (unreported, HCMP 1356/2004, 30 September 2004) (CFI); *Lin Ming Chen v Shu Quan* [2013] 5 HKC 316, [2013] 2 HKLRD 288 (CFI).

The purpose of s 36(b) was to assist the Registrar to decide whether to register or refuse to register, a document delivered to the Registrar for registration: *Kazan Okada v Registrar of Companies* [2019] 1 HKLRD 483, [2018] HKCU 3408, [2018] HKCFI 2778.

Note the power of the Registrar under sub-s (b)(iii) to request the presentor of the document to make an application to the court.

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.

[37.01] History

This section is derived from s 348(3) and (4) of the former Companies Ordinance (Cap 32).

There does not appear to be any equivalent provision in the UK or Australia. In Singapore, see Singapore Companies Act (Chapter 50), s 12(6).

[37.02] Overview

Where the 42-day period has lapsed, but there is a re-submission of the documents or a fresh request to register the documents already lodged in cases where, for example, there has been a material change of circumstances, a renewed decision of the Registrar following the re-submission or fresh request can itself be appealable within 42 days after the renewed decision; however, the court must be vigilant against dressed-up requests which are no more than a ploy to circumvent the time limit. *China Capital Strategy Ltd & Ors v Registrar of Companies* [2016] HKCU 557(unreported, HCMP 3275/2013, 9 March 2016).

The application to the court against the Registrar's decision to refuse registration should be made by originating summons pursuant to RHC Ord 102 r 2: see *China Capital Strategy Ltd & Ors v Registrar of Companies* [2016] HKCU 557(unreported, HCMP 3275/2015, 9 March 2016).

For examples of an application made under the equivalent provision (s 348(3)) of the former CO, see *Tongda Group Holdings Ltd v Registrar of Companies* [2004] HKCU 1171(unreported, HCMP 1356/2004, 30 September 2004) as referred to in the Overview to s 36; *Jointa Ltd v Registrar of Companies* [2014] HKCU 355(unreported, HCMP 426/2013, 12 February 2014) (Registrar's refusal to register document); and *China Capital Strategy Ltd & Ors v Registrar of Companies* [2016] HKCU 557(unreported, HCMP 3275/2013, 9 March 2016).

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).

[38.01] History

This section is derived from s 346(2)–(4) of the former Companies Ordinance (Cap 32).

[38.02] Overview

Where a document is delivered to the Registrar for registration and the Registrar refuses to register the document under s 35(3)), the Registrar must send a notice of refusal and the reasons for refusal to the presentor of the document. If such notice is sent, the period referred to in sub-s (4) will be disregarded for the purpose of calculating the daily penalty under the Ordinance (the daily default fine) for failing to deliver the document.

Note the daily default fines in the subsequent sections.

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.

[39.01] History

This section is new. It is derived from UK Companies Act 2006, s 1093(1), (3) and (4).

There do not appear to be equivalent provisions in Australia or Singapore, where presumably the problem is dealt with administratively, if at all. But see Singapore Companies Act (Chapter 50), s 12B (Rectification of register), which is in very general terms.

[39.02] Overview

This section enables the Registrar of Companies to notify a company of an apparent inconsistency in the information on the Register, eg, where a notification of change/removal of a director is presented where there is no record on the Register of his appointment. The Registrar may give notice to the company requiring them to resolve the inconsistency within the period specified in the notice to the company. Failure by the company to do so is an offence. A level 5 fine is HK$0 to HK$50,000.

For 'responsible person', see s 3.

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.

[40.01] History

This section is new. It is derived from the Australian Corporations Act 2001, s 1274(15) to (17).

There do not appear to be equivalent provisions under UK Companies Act 2006 or Singapore Companies Act (Chapter 50), where presumably the problem is dealt with administratively, if at all. But see Singapore Companies Act s 12B (Rectification of register), which is in very general terms.

[40.02] Overview

This section is new. Under the former CO (Cap 32), there was no such general power. In the context of directors, reserve directors and company secretaries there was under the former CO a duty under s 158B(1) for such persons to give notice to the company of such matters relating to themselves as might be necessary for the purpose of former s 158 and the penalty under former s 349.

See now the new CO (Cap 622), s 646 for directors and s 653 for company secretaries.

See now the new CO Cap 622 s 895 for false statements; see Companies Registry External Circular No 1/2013 Reporting Correct Addresses in Specified Forms Filed with the Companies Registry (to deal with a problem revealed by the Hong Kong Ming Pao Daily in January 2013).

See Companies Registry External Circular No 7/2014 (Rectification of Information on the Companies Register), 7 February 2014, especially paras 4 et seq.

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.

[40.01] History

This section is new. It is derived from the Singapore Companies Act (Chapter 50), s 12B(3) and (4).

For equivalent provisions in the UK, see Companies Act 2006, s 1094 (Administrative removal of material from the Register) and s 1095 (Rectification of Register on application to Registrar).

[41.02] Overview

Presumably the Registrar cannot remove any information where the registration thereof has had legal consequences, eg the incorrect number of shares allotted in *Re Hang Lung Properties Ltd* [2008] 2 HKLRD 196, [2007] HKCU 1816 (CFI), referred to in the Overview to s 36. See Companies Registry External Circular No 7/2014 (Rectification of Information on the Companies Register) 7 February 2014, especially paras 4 et seq.

42. Registrar must rectify information on Companies Register by 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 is 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.

[42.01] History

This section is new. It is derived from the UK Companies Act 2000, s 1096(1), (3), (4) and (5) (for differences between s 42 and UKCA s 1096, see *Re China Nice Education Research Publishing Investment & Management Co Ltd* [2016] 3 HKLRD 525, [2016] HKCU 1471 (CFI)). And see the Singapore Companies Act (Chapter 50), s 12B.

[42.02] Overview

Note that besides rectification the court may order removal of information subject to the conditions in sub-s (1). The court may order the registration of a document effecting the rectification: sub-s (2). This section does not apply if some other provision of Cap 622 or any other Ordinance is applicable: sub-s (3); eg s 347 and see *The Building & Loan Agency (Asia) Ltd v Joy Rich Development Ltd* [2014] HKCU 2126 (unreported, HCMP 1887/2012, 11 September 2014) (CFI). Subsection (4) sets out the grounds on which removal may be ordered. Subsections (6) and (7) deal with directions that the court may make when ordering removal. And see External Circular No 7/2014, 7 February 2014, especially at [9] and [10]; *Chan Pui Sze v Perfect Star Credit Ltd & Ors* [2021] HKCU 1108, [2021] HKCFI 274.

The application to the court may be made by any person. The application is made by originating summons pursuant to The Rules of the High Court (Cap 4A), O 102 r 2.

In *Wellable Investments Ltd v Li Wai Chiu Joseph* [2016] HKCU 842 (unreported, HCMP 510/2016, 11 April 2016) (CFI), the court ordered rectification pursuant to s 42 to remove a notice of change of director and notice of change of registered office where those notices had been lodged without the company's authority and where the signatures on the notices purportedly by a director were forged; and see also *Sterling Payment Services Ltd v Registrar of Companies* [2021] HKCU 3504, [2021] HKCFI 2047. In *Re China Nice Education Research Publishing Investment and Management Co Ltd* [2016] 3 HKLRD 525, [2016] HKCU 1471 (CFI), a return of allotment was ordered to be removed from the Register and other documents ordered to be rectified. The effect of s 42(4) was to restrict the power to order removal under sub-s (1) and to make rectification the ordinary remedy. Nevertheless, the threshold for satisfying s 42(4) is fairly low: *Harrison Ltd v Registrar of Companies & Anor* [2020] HKCU 4452, [2020] HKCFI 3112 at [11]; *Light Shine Ltd v Cheung Ho Lai Lily & Ors* [2021] HKCU 6103, [2021] HKCFI 3750 at [21]. See also *Lin Ren Xiang v Gold Glory Holdings Ltd* [2017] HKCU 1072 (unreported, HCMP 557/2014, 28 April 2017) (CFI); *Yuen Yin Kwan v Sino Insurance Brokers Group Ltd* [2020] 1 HKLRD 1117, [2020] HKCU 374, [2020] HKCFI 284; *Dai Weimin v Registrar of Companies and Ors* [2022] HKCU 4569,

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Companies (Non-Hong Kong Companies) Regulation (Cap 622J) 1898
Companies (Fees) Regulation (Cap 622K) 1911
Companies (Unfair Prejudice Petitions) Proceedings Rules (Cap 622L) 1935
Non-Hong Kong Companies (Disclosure of Company Name, Place of Incorporation and Members' Limited Liability) Regulation (Cap 622M) 1942
Companies (Residential Addresses and Identification Numbers) Regulation (Cap 622N) 1947

The commentary in this book states the law as at 1 May 2025.

There are no equivalent provisions in the UK or Australia.

[683.02] Overview

The section provides that each director who votes in favour of the solvency statement (s 679) must issue a statement confirming that in his opinion the requirements of the solvency statement are satisfied and setting out his grounds for such opinion.

Failure of a director to issue the statement under s 683(1) is an offence and the director is liable to a maximum fine of HK$25,000 (level 4 fine). A director who votes in favour or causes a solvency statement to be made without having reasonable grounds for the matters stated therein commits an offence and is liable on conviction on indictment to a fine of HK$150,000 and 2 years imprisonment or on summary conviction to a level 6 fine, ie a maximum fine of HK$100,000 (Sch 8, Criminal Procedure Ordinance (Cap 221)) and 6 months imprisonment.

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.

[684.01] History

This is a new section. It is derived from the New Zealand Companies Act 1993, ss 223 and 224; and the Singapore Companies Act (Chapter 50), ss 215E(1), 215F(1) and (4).

There are no equivalent provisions in the UK or Australia.

[684.02] Overview

This section sets out the documents required to be delivered to the Registrar to effect the amalgamation. Subsection (1) sets out the specific documents required.

Such documents must be delivered to the Registrar within 15 days after the approval of the amalgamation.

The general rule in cases in which a specified period is fixed during which a thing must be done is that the day from which the period runs is not to be counted: *Dodds v Walker* [1981] 2 All ER 609 (HL) at 610.

[684.03] Forms

The specified forms required to be delivered to the Registrar under subs (1) are NAMA1 to NAMA5.

A certificate of amalgamation will be issued after the documents in subs (1) are registered: sub-s (3).

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.

[685.01] History

This is a new section. It is derived from the New Zealand Companies Act 1993, ss 224(2) and 225; the Singapore Companies Act (Chapter 50), ss 215F(1), (4) and 215G; and the Ontario Business Corporations Act 1990, s 179(a.1).

There are no equivalent provisions in the UK or Australia.

[685.02] Overview

The effective date of amalgamation is the date specified in the certificate of amalgamation issued under s 685(3): subs (1), (2).

On the date of amalgamation, each amalgamating company will cease to exist as an entity separate from the amalgamated company and the newly amalgamated company will take on all benefits and will be subject to all liabilities of the amalgamating companies: sub-s (3). But the amalgamating company will not be struck from the register, cf *Singapore JX Holdings Inc & Anor v Singapore Airlines Ltd* [2016] SGHC 212. In a situation where two or more of the amalgamating companies have floating charges subsisting over their respective assets in favour of different security holders, there will be a question of priorities between the competing security holders over the assets of the amalgamated company, which may result in unfairness between the security holders. For this reason, the security

holders are required to give their written consent to the amalgamation under ss 680(2)(d)(ii) and 681(2)(d)(ii).

On or after the date of the amalgamation, legal proceedings by or against the amalgamating companies may be continued by or against the new company, whereas convictions, orders, judgments, rulings and agreements concerning the amalgamating companies may be enforced by or against the new company: subs (4).

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.

[686.01] History

This is a new section. It is derived from s 226 of the New Zealand Companies Act 1993; and the Singapore Companies Act (Chapter 50), s 215H.

There are no equivalent provisions in the UK or Australia.

[686.02] Overview

This section gives the Court jurisdiction to make orders in relation to the amalgamation proposal where it is satisfied that an amalgamation proposal may be unfairly prejudicial to a member or creditor of an amalgamating company or a person to whom the amalgamating company is under an obligation.

An application to the Court may be made by the creditor, member or person to whom the company is under an obligation and must be made before the date on which the amalgamation becomes effective: sub-s (1). The application is made by originating summons: Rules of High Court (Cap 4A) O 102, r 2(1), (2). On making an application to the Court, ie issue of the originating summons, the applicant must deliver to the Registrar for registration notice of the application to the Court in the specified form: sub-s (4). The specified form is Form NAMA6 'Notice of Application to Court to Intervene in Amalgamation Proposal'. Upon receiving the said notice, the Registrar must withhold registration of documents submitted under s 681(4), unless otherwise directed by the Court or unless the application is dismissed or withdrawn: sub-s (5). The Court may make any order it deems fit including, not giving effect to the amalgamation, varying the proposal, directing that parties reconsider the proposal or part thereof: sub-s (2). It may also order the buy-out of the shares of the unfairly prejudiced party in the amalgamating company: sub-s (3). An office copy of any order made by the Court under this section must be delivered by the company concerned to the Registrar within 7 days of the date of the order: sub-s (6). On contravention, for 'responsible person' see s 3. A level 3 fine is a maximum fine of HK$10,000 (Sch 8, Criminal Procedure Ordinance (Cap 221)) together with a daily fine of HK$300 for each day the offence continues: sub-s (7).

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.

[687.01] History

This is a new section. It is derived from s 168(3)(a) of the former Companies Ordinance (Cap 32).

There is no equivalent provision elsewhere.

[687.02] Overview

The section restates the provision from which it is derived.

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.

[688.01] History

Subsection (1) is derived from s 168(2) of the former Companies Ordinance (Cap 32). Subsection (2) is derived from the Ninth Schedule of the former CO (Cap 32).

[688.02] Overview

The section applies the provisions of Division 4 to convertibles securities and 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, or 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)*

[689.01] History

This section is derived from s 168 and the Ninth Schedule of the former Companies Ordinance (Cap 32). Subsections (2) and (6) were amended, and sub-s (7) added, by the Companies (Amendment) Ordinance (1 of 2025), effective 17 April 2025.

For equivalent provisions:

(1) UK: ss 974–976 of the Companies Act;

(2) Australia: s 414 of the Corporations Act 2001; and

(3) Singapore: s 215 of the Companies Act (Chapter 50).

[689.02] Overview

This section clarifies the definition of 'takeover offer' and provides a definition for 'shares held by an offeror', which was not previously dealt with in the former Companies Ordinance (Cap 32).

Subsection (1) sets out the definition of a takeover offer. It must be an offer to acquire all the shares (or shares of any class) in the company except those that, at the date of the offer, are held by the offeror. In relation to all the shares to which the offer relates (or all the shares of the class to which the offer relates), the terms of the offer must be the same. For the meaning of 'shares to which the offer relates', see sub-s (6) and s 691.

Under sub-s (3), 'shares that are held by an offeror' include shares that the offeror has contracted, unconditionally or conditionally to acquire, but exclude shares that are subject to a contract which is intended to secure that the holder of the shares will accept the offer when it is made and 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.

[689.03] Transitional and saving arrangements

Note that pursuant to s 123 of Sch 11 to this Ordinance, where an acquisition offer is made before the commencement of this Division, ss 168(1) to (3) and the Ninth

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),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.

[690.01] History

This is a new section. It is derived from s 978 of the UK Companies Act 2006.

[690.02] Overview

Notwithstanding that an offer is not communicated to a holder of shares, it may still be considered a takeover offer if the conditions set out in sub-s (1)(a) to (c) are fulfilled.

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.

[691.01] History

This is a new section. It is derived from ss 977 and 979 of the UK Companies Act 2006.

[691.02] Overview

This section sets out the definition of 'shares to which the offer relates', which was not previously considered under the former Companies Ordinance (Cap 32). Such shares may include the following:

(1) Shares which the offeror acquires or contracted to acquire other than by virtue of acceptances of the offer during the offer period unless the acquisition consideration exceeds the consideration specified in the terms of the offer: sub-s (2); and

(2) Shares which the offeror acquires or contracted to acquire other than by virtue of acceptances of the offer during the offer period unless the acquisition consideration exceeds the consideration specified in the terms of the offer: sub-s (2); and

Shares that are allotted after the date of the offer but before a date specified in the offer can also be shares to which the offer relates: s 689(6).

For 'associate', see s 667. For 'nominee', see s 687.

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.

[692.01] History

This is a new section added by this Ordinance. It is derived from s 974(7) of the UK Companies Act 2006.

[692.02] Overview

Under the former Companies Ordinance (Cap 32), there was no provision on revised offers to provide for unexpected changes of circumstances after the making of an offer. As a result, an offeror who wished to revise his offer had to make a fresh takeover offer and address the acceptances received under the old offer. Section 692 allows a revision of the terms of the offer without the need for a fresh offer if the terms of the original offer make provision for their revision and treat existing acceptances as acceptances on the revised terms.

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.

[693.01] History

This section is derived from the Ninth Schedule, Part 1, paras 1 and 2 of the former Companies Ordinance (Cap 32).

For equivalent provisions:

(1) UK: UK Companies Act 2006, s 979;

(2) Australia: Corporation Act 2001, s 414;

(3) Singapore: Companies Act (Chapter 50), s 215.

[693.02] Overview

This section provides a mechanism for an offeror in a takeover offer to give notice to the remaining shareholders to which the offer relates of its intention to purchase the remaining shares. This and the following sections in Subdivision 2 facilitate a takeover. Where nine-tenths have accepted the takeover offer, the dissenting minority may be forced to sell to the offeror.

Where the offeror has acquired more than the 90% threshold of the shares to which the offer relates, it may give notice to the remaining shareholders that the offeror desires to acquire their shares: subss (1), (2). For requirements of the notice, see s 694.

Under the former Companies Ordinance (Cap 32), there was no procedure for an offeror to apply for a court order authorising the giving of squeeze out notices for those takeover offers which failed to achieve the relevant threshold for giving of such notices, because of untraceable shareholders related to the offer. Subsections (3) to (7) provide for the mechanism which will apply if the offeror has been unable to trace the relevant shareholders after reasonable enquiry. The consideration offered must be fair and reasonable and the Court may not make an order unless it considers that it is just and equitable to do so having regard, in particular, to the number of shareholders who have been traced but have not accepted the offer.

The Court will only make such order where the offeror had been unable to locate one or more shareholders to which the offer relates and had such shareholder accepted the takeover offer, the offeror would have acquired at least the 90% threshold of the shares: subs (5).

For claim form and witness statement in support (which can be adapted) see (UK) 8(6) *Atkin's Court Forms*, 2nd edn (2010 Issue), pp 861–866.

For the meaning of 'shares to which the offer relates', see s 691.

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.

[694.01] History

This section is derived from the Ninth Schedule, Part 1 of the former Companies Ordinance (Cap 32); and the UK Companies Act 2006, ss 980(1), (2) and 981(3), (4).

For equivalent provisions:

(1) Australia: Corporation Act 2001, s 414;

(2) Singapore: Companies Act (Chapter 50), s 215.

[694.02] Overview

The section provides the procedure and requirements for the offeror to give notice to buy out minority shareholders in a takeover offer.

The specified form for the notice is Form NRE1.

The notice must be given by personal delivery or registered post or in the manner as directed by the Registrar if directions are sought: subss (2) and (3).

For the contents of notice see subss (4) to (7).

695. Offeror's right to buy out minority shareholders

(1) This section applies if a notice is given under section 694 by 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.

[695.01] History

This section is derived from the Ninth Schedule of the former Companies Ordinance (Cap 32); and the UK Companies Act 2006, ss 981(2), (3), (5) and 988(1), (2).

[695.02] Overview

Where a notice to buy out has been given by the offeror to a minority shareholder under s 693, the recipient of the notice may within 2 months, apply to the Court of First Instance (s 2(1)) to oppose the buy out and the Court may order either that the offeror is entitled to and bound to acquire the holder's shares on the terms set out in the order, or, that the offeror it not entitled and bound to acquire the holder's shares: sub-s (3). If there is no application to the Court, the offeror is automatically entitled and bound to acquire the holder's shares: sub-s (2).

Application to the Court of First Instance is made by originating summons: RHC O 103 r 2(1) and (2); and supporting affidavit.

For the forms of claim and witness statement (which can be adapted) see (UK) 8(6) *Atkin's Court Forms*, 2nd edn (2010 Issue), p 856 et seq and for form of order p 860.

Applications to the court will rarely succeed on substantive merit, though they may on some technical defect in the process. Once the transferee company has acquired a 90% shareholding of a company, it should not be prevented from converting the target company into a wholly owned subsidiary by acquiring the holding of the minority: *Blue Metal Industries Ltd v Dilley* [1970] AC 827 (PC) at 848–849. All the more so when the takeover is part of a scheme which has been sanctioned by the court under s 673. The onus then rests on the dissentient to show that the scheme is not fair so that he should not be compulsorily deprived of his shares: *Re Evertite Locknuts* [1945] Ch 220; *Re Press Caps Ltd* [1949] Ch 434 (CA); *Re Grierson, Oldham & Adams Ltd* [1968] Ch 17 at 31. But 90% acceptance carries little weight where there is substantial identity interest between the transferee company and the shareholders who have accepted (*Re Bugle Press Ltd* [1961] Ch 270, [1960] 3 All ER 791 (CA, Eng)), or where the shareholders who did not accept were misled by erroneous advice (*Re Lifecare International Plc* [1990] BCLC 222) or have not received the information they are entitled to under the Takeover Code (*Re Chez Nico (Restaurants) Ltd* [1992] BCLC 192).