

STATUTORY BOOKS

Introduction	¶25-010
Company records	¶25-050
Checklist of contents of statutory books	¶25-100
Inspection of statutory books	¶25-150
How long statutory books must be retained	¶25-200
Checklist for maintaining statutory books	¶25-250

¶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

Companies Ordinance Section No (unless otherwise stated)	Type of statutory book & contents
95	<p>Register of members</p> <p>The register must contain:</p> <ul style="list-style-type: none"> the name and address of each member; 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; the date on which each person was entered as member; the date on which a person ceased to be a member; amount of stock or stock units held by each member where a company has converted shares into stocks. <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>
Securities and Futures Ordinance sec 336	<p>Register of directors' and chief executives' shareholdings and Register of substantial shareholders etc</p> <ul style="list-style-type: none"> All notifications made by parties pursuant to Pt 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. Entries must be in chronological order. Once notification is received, the register(s), as the case may be, must be updated within 3 business days. 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. 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.

Companies Ordinance Section No (unless otherwise stated)	Type of statutory book & contents
	<ul style="list-style-type: none"> The registers have to be kept for 6 years after a company ceases to be a listed corporation.
158, 158(2), (2A) and (2B)	<p>Register of directors and secretaries</p> <p>Directors</p> <p>The register of directors must contain with respect to each director:</p> <ul style="list-style-type: none"> present full name; any alias; any former names; usual residential address; 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; in the case of a body corporate, its corporate name and registered or principal office (applicable to private company only); <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>
158(3)	<p>Secretaries</p> <p>The register of secretaries must contain with respect to each secretary:</p> <ul style="list-style-type: none"> present full name; any former names; any alias; 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; usual residential address; 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.

Companies Ordinance Section No (unless otherwise stated)	Type of statutory book & contents
	<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 fulfill the 'ordinarily resident' requirement.</p> <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 & 89	<p>Register of charges and copies of instruments creating the charges</p> <p>The register of charges must contain with respect to each charge:</p> <ul style="list-style-type: none"> 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; a short description of the property charged; the amount secured by the charge; and the names of the persons entitled to the charge (ie the chargee). <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>Written records of sole member</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>Minute books</p> <p>The minute books must contain:</p> <ul style="list-style-type: none"> general meeting minutes; and directors' meeting minutes. <p>Note: general meeting minutes are available for inspection only to shareholders and auditors while directors' meeting minutes are for inspection by directors and auditors. It would be advisable to keep these minutes separately to avoid inadvertent disclosure/inspection by those who do not have the rights of inspection.</p>

Companies Ordinance Section No (unless otherwise stated)	Type of statutory book & contents
153C	<p>Written records of sole director</p> <p>If a company has only one director and that director takes the decision, he shall unless the decision is in the form of a resolution, furnish the company written records of the decision within 7 days after taking decision.</p>
74A	<p>Register of debenture holders</p> <p>The register must contain with respect to each debenture holder:</p> <ul style="list-style-type: none"> name of debenture holder; address of debenture holder; occupation or description of debenture holder; date of becoming debenture holder; date of ceasing to be debenture holder; and amount of debentures held.
121	<p>Accounting records</p> <p>The records must:</p> <ul style="list-style-type: none"> be sufficient to explain transactions of company; be sufficient to disclose company's financial position at all times; be sufficient to enable true and fair accounts to be prepared and audited; and include working papers.

¶25-150 Inspection of statutory books

Any register, minute book or document of a company which is required to be available for inspection under the Ordinance must be available for inspection at the place where they are required to be kept for at least two hours during business hours. Unless the register is closed and notice has been given in accordance with Section 99 of the *Companies Ordinance*, no prior appointment or notification for inspection is required to be made with the company.

The person permitted to inspect any register, minute book or document may make copies of or take extracts from it.

If an officer of the company fails to allow a copy to be made or extract to be taken, he is guilty of an offence (for penalties, see the table of offences and penalties at ¶3-700 of the "Administration" chapter).

The court may, on being satisfied that there is good reason to do so by order compel an immediate inspection of copies and registers.

¶35-010 What is a share?

A share is the interest of a shareholder in a company measured in monetary terms. It represents a percentage or fraction of the capital of the company. A shareholder's participation in the company, in terms of liability and dividends while the company is a going concern, as well as the distribution of its assets on winding up, depends on the number of shares he holds in the company. The ownership of shares carries rights and obligations defined by the Ordinance and the articles of the company. Shareholders are collectively the owners of a company.

Part II of the Ordinance contains the provisions governing:

- the share capital of a company;
- issue and allotment of shares;
- the rights attached to different classes of shares; and
- the transfer of shares.

Generally, the Ordinance defines "share" as a share in the capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied. The shares or other interest of any member in a company shall be personal estate, transferable in manner provided by articles of the company, and shall not be the nature of real estate (sec 65). Accordingly, the laws relating to personal property apply to shares and equitable interests in shares may be created and dealt with.

Shares may be of different types, conferring different rights on their holders (see ¶35-050ff).

Nominal value

The nominal value of a share is the notional value attached to the share when issued. It is initially determined by the promoters of the company and may subsequently be changed by the shareholders in general meeting in accordance with the articles of the company. The most common nominal value is \$1. Nominal value is sometimes referred to as par value.

Market value

The market value of a share is the actual value of the share.

In a private company, market value is usually calculated on the basis of the net tangible assets of the company or its earnings over the total number of shares (price earnings ratio).

If the shares of a company are traded on the Stock Exchange, the market value of the shares is determined by, amongst other things, supply and demand.

¶35-010

Capital structure

The capital structure of a company is generally described in terms of its authorised capital and its issued capital. The authorised capital is the limit up to which the company may allow subscriptions (eg a company may have an authorised capital of \$200,000 divided into 200,000 shares of \$1 each). The issued capital is the amount of capital taken up by shareholders in exchange for consideration of cash or kind from the shareholders (eg a company may have an authorised capital of \$200,000 divided into 200,000 shares of \$1 each but an issued capital of \$100,000 divided into 100,000 shares of \$1 each).

CLASSES OF SHARES

Introduction	¶35-050
Ordinary/equity shares	¶35-100
Preference shares	¶35-150
Employees' shares	¶35-200
Founders'/management shares	¶35-250
Stock	¶35-300

¶35-050 Introduction

The memorandum and articles of the company regulate the types or classes of shares a company may issue and the rights attached to each class of share, eg voting rights, rights to receive dividends and to receive capital in the event of a winding up.

The main classes of shares that may be issued are described below.

¶35-100 Ordinary/equity shares

Ordinary shares give holders control over the company. Ordinary shareholders are effectively the owners of the company, having the full right to vote. They are entitled to dividends and return of capital after preference shareholders. In the event of liquidation, ordinary shareholders rank after all liabilities of the company are paid.

¶35-150 Preference shares

Preference shares give preferential rights to their holders to:

- a fixed and cumulative dividend; and
- a return of capital.

No preference shares may be issued unless the memorandum and articles of the company set out the rights of holders of those shares in relation to other shares with respect to:

- repayment of capital;
- participation in surplus assets and profits;
- cumulative or non-cumulative dividends;
- voting; and
- priority of repayment of capital and dividend.

Preference shares generally carry no voting rights nor rights to participate beyond a specified amount in any distribution, whether by way of dividend, or on redemption, in a winding up or otherwise.

Cumulative and non-cumulative preference shares

Cumulative preference shares give the shareholder a dividend at a fixed rate throughout the life of the company. If the company does not have sufficient profits in a particular year to meet the fixed dividend payments, the deficit is made up in later years. The articles of the company may provide that holders of cumulative preference shares be entitled to voting rights when dividends are in arrears.

For non-cumulative preference shares, dividends need only be paid in the years when the company has sufficient profits to enable the fixed rate to be paid. The company does not have an obligation to meet the deficit in the following years. Holders of non-cumulative preference shares usually have no voting rights.

Redeemable preference shares

Redeemable preference shares are shares that give:

- the holders the right to be repaid their capital; or
- the company the right to repay the capital within a specified period or after a specified time.

The redemption price to be paid by the company is usually set above par value to compensate the shareholder for the involuntary loss of his investment.

Redemption does not amount to a reduction of the authorised share capital of the company.

To protect the interests of creditors, redeemable preference shares cannot be redeemed:

- except out of profits which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of redemption; and
- unless they are paid up.

The premium payable on redemption, if any, must be provided for out of profits or the share premium account.

If shares are redeemed out of profits, a capital redemption reserve equal to the nominal amount of shares redeemed must be created. Profits that would otherwise be available for dividend are transferred to the capital redemption reserve.

If a company is about to redeem any preference shares, it may issue shares up to the nominal value of the shares to be redeemed as if the preference shares had never been issued, and the issue will not be treated as an increase in capital under the Ordinance. If new shares are issued before the preference shares have been redeemed, the old shares must be redeemed within one month of the issue of new shares.

The company must give notice of redemption of the preference shares in the prescribed Form SC11 (Notification of change of share capital structure) within one month from the date of redemption.

Convertible preference shares

Convertible preference shares are preference shares that carry the option of being converted to any other class of shares at the option of the holder.

Law: sec 49, 49A and 54.

¶35-200 Employees' shares

Employees' shares may be issued to employees if authorised by the articles of the company. The shares are usually issued as an incentive to employees to give them a sense of participation in the success of the company.

¶35-250 Founders'/management shares

Founders' shares are normally offered in limited numbers to the founders or promoters of a company. They usually carry very large voting rights in comparison to the value and also entitle the holder to a large portion of the company's surplus profits after dividends have been paid to other classes of shares. Founders' shares are usually issued in family-controlled companies and are issued as an incentive or recognition of the holder's status in the company.

¶35-300 Stock

The nominal capital of a company may be divided into stock instead of shares. Unlike shares, stock:

- cannot be issued directly and can only be converted from fully paid up shares;
- are transferable in fractions (eg \$50 worth of stock can be transferred in fractions such as \$0.50, \$5, \$10, etc).

The main advantage in the use of stock instead of shares is that it allows the transfer of fractions of interest in the company. When shares are converted into stock, the nominal capital of the company may effectively be subdivided. This is not commonly done in practice since companies usually provide in their articles for a minimum lot of stocks that must be transferred.

Under the Ordinance, a company may, if authorised by its articles, alter its memorandum by a shareholders' resolution to convert all or any of its paid up shares into stock and re-convert that stock into paid up shares of any denomination. An example of authorisation in the articles is in Table A, reg 41 of the First Schedule.

Law: sec 53(1)(c).

Note:

The *Companies Ordinance* does not specify whether shares are registered shares or bearer shares. A company could, therefore, issue bearer shares to its shareholders. However, if this is the case, the company cannot insert sec 29 of the *Companies Ordinance* in its Articles of Association and, it will be a non-private company. Audited accounts have to be submitted to the Registrar of Companies for filing when Annual Return is filed. The financial position of the Company will become known to the general public.

¶35-400 Difference between shareholder and member

A member of a company is:

- the person deemed to be a member of the company by virtue of his being a founder member to its memorandum;
- every other person who agrees to become a member and whose name is entered in the company's register of members.

On the basis of this definition, a member is not necessarily a shareholder (eg where a company has no share capital). Nor is a shareholder necessarily a member (eg where a person buys shares but is not registered in the register of members). Thus, while the terms "shareholder" and "member" are often used interchangeably eg a shareholders' meeting is also referred to as a members' meeting, the two are not synonymous.

Substantial shareholder

The duty to disclose substantial shareholdings in listed company is contained in a separate Ordinance, the *Securities and Futures Ordinance (Cap 571)*. A shareholder is obliged to make a disclosure when:

- an acquisition or disposal takes his interests above or below the notifiable interest; and
- there is a 1% change above the notifiable interest.

The "notifiable interest" is taken to be 5% of the issued voting share capital of the company or if the company has more than one class of voting shares, it is 5% of the class in question.

A substantial shareholder is required to give notice in writing to the company and the Stock Exchange stating:

- his name and address;
- full particulars of the voting shares in the company in which he has an interest, including the name of the registered holder of the shares;
- full particulars of each such interest; and
- reason for disclosure.

The notice must be given within three business days next following the day on which the duty to disclose arises.

Law: sec 28.

ALLOTMENT AND ISSUE OF SHARES

Share application procedures	¶35-500
Checklist for allotment and issue of shares	¶35-600
Restrictions on allotment	¶35-650
Return of allotments	¶35-700
Share certificates	¶35-750

¶35-500 Share application procedures

Founder shares

For incorporation purposes, founder members of the memorandum of a company must state in the memorandum, opposite to their respective names, the number of shares that they have agreed to take.

Founder shares are deemed to have been allotted on the date of incorporation.

Post incorporation

Private limited company

The application procedure is relatively easy. Only existing members or persons approved by the directors of the company may apply. A simple share application form should be completed, signed by the applicant and sent to the company secretary or the board of directors together with the requisite payment within a specified timeframe.

Unless the shares are to be allotted to existing members on a pro-rata basis, allotment mandate, ie shareholder resolution conferring on the board of directors authority to allot shares, must have been obtained from existing members.

Law: sec 57B.

See ¶39-340 specimen letter of application for shares for a private company.

Listed company

Applications are made on a prescribed application form previously approved by the Stock Exchange.

¶35-600 Checklist for allotment and issue of shares

The following list includes some of the usual matters that have to be considered before shares are allotted and issued:

- (1) Are the shares to be issued to a signer to the memorandum of the company as a founder member? If not, there should be a written application for the shares.

- (2) Check the articles of the company on the specific requirements for allotment of shares. Have the relevant resolutions been passed in general meeting?
- (3) Are there any restrictions on allotment? If not, allot the shares (see ¶35-650 for details on restrictions on allotment).
- (4) If the shares to be issued are of a certain class (eg preference shares), the memorandum and articles of the company should provide for the issue of such shares.

After allotment and issue, the following matters must be considered:

- (1) Has the prescribed Form SC1 (Return of allotments) been filed with the Registrar of Companies? If shares are allotted for consideration other than cash, does a certified copy of the contract relating to the allotment, or in its absence, Form SC5 (Particulars of a contract relating to shares) has been filed with the Registrar of Companies? (see ¶35-700 on returns of allotment and Form SC5)
- (2) Have the share certificates been issued? (see ¶35-750 on share certificates)
- (3) Has the register of members been updated?

The register of members should be updated once the allotment or transfer has been made and the share certificate has been issued. This includes the updating of the index to the register of members, if applicable. Section 95 of the Ordinance sets out the prescribed contents of the register of members.

It is important to keep the register of members updated and accurate as the register is *prima facie* evidence of any matters directed or authorised to be inserted in it by the Ordinance.

Law: sec 102(1).

¶35-650 Restrictions on allotment

Before issuing shares to an applicant, it is prudent to ascertain whether there are any applicable restrictions. The following are some examples of restrictions on allotment.

Limit of authorised capital

Do the shares to be issued fall within the limit of the unissued balance of the company's authorised capital? Where special classes of shares are allowed in the articles, check that the limit (if any) for each class is not exceeded.

Note:

The shares to be allotted, together with any existing shares, must not exceed the authorised share capital of the company. If the unissued balance of the authorised capital is insufficient for the proposed allotment, the authorised capital must be increased before the allotment can take place.