

- (5) The directors may allot shares or grant rights after an approval has expired if—
- the shares are allotted, or the rights are granted, under an offer, agreement or option made or granted by the company before the approval expired; and
  - the approval allowed the company to make or grant an offer, agreement or option that would or might require shares to be allotted, or rights to be granted, after the approval had expired.

#### 142. Return of Allotment

- Within one month after an allotment of shares, a limited company must deliver to the Registrar for registration a return of the allotment that complies with subsection (2).
- A return—
  - must be in the specified form;
  - must include a statement of capital as at the date of the allotment that complies with section 201;
  - must state—
    - the number of shares allotted;
    - the name and address of each allottee; and
    - if the company's issued share capital is increased as a result of the allotment, the amount of the increase;
  - for any shares allotted for consideration (whether wholly or partly cash consideration or non-cash consideration)—
    - must state the amount paid or regarded as paid on each share and the amount (if any) remaining unpaid or regarded as remaining unpaid on each share;
    - in the case of an allotment wholly or partly for non-cash consideration under an arrangement made under Division 2 of Part 13, must contain particulars of the order of the Court sanctioning the arrangement; and
    - in any other case of an allotment wholly or partly for non-cash consideration, must contain particulars of the contract for sale, or for services or other consideration in respect of which the shares were allotted; and
  - for any shares allotted credited as fully paid up (whether on or without a capitalization)—
    - must state the amount regarded as paid on each share; and
    - must contain particulars of the resolution authorizing the capitalization or allotment.
- If a limited company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and,

in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

- If a limited company fails to deliver a return that complies with subsection (2) within one month after an allotment of shares, the Court may, on application by the company or a responsible person of the company, extend the period for delivery of the return by a period determined by the Court.
- The Court may extend a period under subsection (4) only if it is satisfied—
  - that failure to deliver the return was accidental or due to inadvertence; or
  - that it is just and equitable to extend the period.
- If the Court extends the period for delivery of a return, any liability already incurred by the company or a responsible person of the company for an offence under subsection (3) is extinguished and subsection (1) has effect as if the reference to one month were a reference to the extended period.

#### 143. Registration of Allotment

- A company must register an allotment of shares as soon as practicable and in any event within 2 months after the date of the allotment, by entering in the register of its members the information referred to in section 627(2) and (3).
- If a company fails to register an allotment of shares within 2 months after the date of the allotment, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

#### 144. Issue of Share Certificate on Allotment

- Within 2 months after an allotment of shares, a company must complete the certificates for the shares and have the certificates ready for delivery.
- Subsection (1) does not apply if the conditions of issue of the shares provide otherwise.
- If a company contravenes this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

#### 145. Order of Court for Delivery of Share Certificate

- If a company contravenes section 144 in relation to an allotment of shares, a person entitled to the certificates for the shares may serve a notice on the company requiring it to deliver the certificates to the person within 10 days.
- If a company on which a notice has been served under subsection (1) does not deliver the certificates within 10 days after service of the notice, the person may apply to the Court for an order under subsection (3).

- (3) On an application under subsection (2), the Court may make an order directing the company and any officer of the company to deliver the certificates to the person within the period specified in the order.
- (4) The order may provide that all costs of and incidental to the application are to be borne by the company or by an officer of the company responsible for the contravention.

#### 146. Validation by Court of Issue or Allotment

- (1) This section applies if a company purports to issue or allot shares and—
  - (a) the issue or allotment is or may be invalid for any reason; or
  - (b) the terms of the issue or allotment are inconsistent with or not authorized by—
    - (i) this Ordinance or any other Ordinance; or
    - (ii) the company's articles.
- (2) The company, a creditor of the company or a holder or mortgagee of any of the shares may apply to the Court for an order validating, or confirming the terms of, the issue or allotment.
- (3) The Court may make an order under subsection (2) if the Court is satisfied that it is just and equitable to do so.
- (4) On delivery of an office copy of the order to the Registrar, the order has effect from the time of the purported issue or allotment.

### DIVISION 3

#### COMMISSIONS AND EXPENSES

#### 147. General Prohibition of Commissions, Discounts and Allowances

- (1) Except as permitted by section 148, a company must not apply any of its shares or share capital, either directly or indirectly, in payment of any commission, discount or allowance to a person in consideration of the person—
  - (a) subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the company; or
  - (b) procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the company.
- (2) It is immaterial how the shares or share capital are applied, whether by being added to the purchase money of property acquired by the company or to the contract price of work to be executed for the company, or being paid out of the nominal purchase money or contract price, or otherwise.
- (3) Nothing in this section affects the payment of brokerage by a company.

#### 148. Permitted Commissions

- (1) If the conditions in subsection (2) are satisfied, a company may pay a commission to a person in consideration of the person—
  - (a) subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the company; or
  - (b) procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the company.
- (2) The conditions are that—
  - (a) the payment of the commission is authorized by the company's articles;
  - (b) the commission paid or agreed to be paid does not exceed the lesser of—
    - (i) 10% of the price at which the shares are issued;
    - (ii) the amount or rate authorized by the articles; and
  - (c) if the shares are not offered to the public for subscription, the company, before making the payment—
    - (i) delivers to the Registrar for registration a notice in the specified form disclosing the amount or rate of the commission and the number of shares (if any) that persons have agreed for a commission to subscribe for absolutely; and
    - (ii) discloses the amount or rate of the commission and the number of shares (if any) that persons have agreed for a commission to subscribe for absolutely in any circular or notice issued by the company inviting subscriptions for the shares.
- (3) A vendor to, promoter of, or other person who receives payment in money or shares from, a company may apply any part of the money or shares so received in payment of any commission the payment of which directly by the company would be permitted by this section.
- (4) If a company contravenes the condition referred to in subsection (2)(c)(i), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

#### 149. Capital may be Applied in Writing off Certain Expenses and Commission

A company may apply its share capital in writing off—

- (a) the preliminary expenses of the company;
- (b) any commission paid under section 148 or under section 46 of the predecessor Ordinance; or
- (c) any other expenses of any issue of shares in the company.

**DIVISION 4**  
**TRANSFER AND TRANSMISSION OF SHARES**

**Subdivision 1**  
**Transfer of Shares**

**150. Requirement for Instrument of Transfer**

- (1) A company must not register a transfer of shares in the company unless a proper instrument of transfer has been delivered to the company.
- (2) Subsection (1) does not affect any power of a company to register as a member a person to whom the right to shares has been transmitted by operation of law.

**151. Registration of Transfer or Refusal of Registration**

- (1) The transferee or transferor of shares in a company may lodge the transfer with the company.
- (2) Within 2 months after the transfer is lodged, the company must either—
  - (a) register the transfer; or
  - (b) send the transferee and the transferor notice of refusal to register the transfer.
- (3) If a company refuses registration, the transferee or transferor may request a statement of the reasons for the refusal.
- (4) If a request is made under subsection (3), the company must, within 28 days after receiving the request—
  - (a) send the person who made the request a statement of the reasons; or
  - (b) register the transfer.
- (5) If a company contravenes subsection (2) or (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

**152. Order of Court for Registration**

- (1) If a company refuses to register a transfer, the transferee or the transferor may apply to the Court for an order under this section.
- (2) On an application under subsection (1), the Court may order the company to register the transfer, if the Court is satisfied that the application is well-founded.

**153. Transfer by Personal Representative**

A transfer of a share or other interest of a deceased member of a company by his or her personal representative is as valid as if the personal representative had been the

registered holder of that share or interest at the time of execution of the instrument of transfer.

**154. Certification of Transfer**

- (1) The certification by a company of an instrument of transfer of shares in the company—
  - (a) is a representation by the company to any person acting on the faith of the certification that documents have been produced to the company that evidence title to the shares in the transferor named in the instrument; and
  - (b) is not a representation that the transferor has any title to the shares.
- (2) If a person acts on the faith of a false certification by a company made negligently, the company is under the same liability to the person as if the certification had been made fraudulently.
- (3) For the purposes of this section, an instrument of transfer is certified by a company if it bears—
  - (a) the words "certificate lodged", or words to the same effect, in English or Chinese; and
  - (b) under or adjacent to those words, the signature or initials of a person having the actual or apparent authority to certify transfers on behalf of the company.
- (4) Unless the contrary is proved, a signature or initials appearing on an instrument of transfer as referred to in subsection (3)(b) must be regarded—
  - (a) as the signature or initials of the person whose signature or initials they purport to be; and
  - (b) as having been placed on the instrument by that person or by another person who has the actual or apparent authority to use the signature or initials for the purpose of certifying transfers on behalf of the company.

**155. Issue of Share Certificate on Transfer**

- (1) Within the period specified in subsection (2), a company must complete the certificates for any of its shares that are transferred and have the certificates ready for delivery.
- (2) The period is—
  - (a) for a private company, 2 months after the day on which the transfer is lodged with the company;
  - (b) for any other company, 10 business days after the day on which the transfer is lodged with the company.
- (3) Subsection (1) does not apply to a transfer if—
  - (a) the conditions of issue of the shares provide otherwise;
  - (b) stamp duty has not been paid in respect of the transfer;

- (c) the transfer is invalid; or
  - (d) the company, being entitled to do so, refuses to register the transfer.
- (4) If a company contravenes this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (5) In this section—

*business day* (營業日) means a day on which a recognized stock market is open for the business of dealing in securities.

#### 156. Order of Court for Delivery of Share Certificate

- (1) If a company contravenes section 155 in relation to a transfer of shares, a person entitled to the certificates for the shares may serve a notice on the company requiring it to deliver the certificates to the person within 10 days.
- (2) If a company on which a notice has been served under subsection (1) does not deliver the certificates within 10 days after service of the notice, the person may apply to the Court for an order under subsection (3).
- (3) On an application under subsection (2), the Court may make an order directing the company and any officer of the company to deliver the certificates to the person within the period specified in the order.
- (4) The order may provide that all costs of and incidental to the application are to be borne by the company or by an officer of the company responsible for the contravention.

#### 157. Compensation Regarding Forged Share Transfers

- (1) A company may—
  - (a) pay compensation to a person for loss arising from a transfer of shares in the company under a forged transfer or a transfer under a forged power of attorney;
  - (b) provide, by insurance, reservation of capital or accumulation of income, a fund to meet claims for compensation;
  - (c) borrow on the security of its property for the purpose of paying compensation; and
  - (d) impose any reasonable restrictions on the transfer of its shares or with respect to powers of attorney for the transfer of its shares that the company considers necessary to guard against losses arising from forgery.
- (2) A company that pays compensation to a person under this section has the same rights and remedies against the person liable for the loss as the person compensated would have had.
- (3) If the shares in a company have, by amalgamation or otherwise, become shares in another company, the other company has the same powers under this section as the first company would have had if it had continued.

### Subdivision 2

#### Transmission of Shares by Operation of Law

##### 158. Registration or Refusal of Registration

- (1) This section applies if the right to shares is transmitted to a person by operation of law and the person notifies the company in writing that the person wishes to be registered as a member of the company in respect of the shares.
- (2) Within 2 months after receiving the notification, the company must either—
  - (a) register the person as a member of the company in respect of the shares; or
  - (b) send the person notice of refusal of registration.
- (3) If a company refuses registration, the person may request a statement of the reasons for the refusal.
- (4) If a person makes a request under subsection (3), the company must, within 28 days after receiving the request—
  - (a) send the person a statement of the reasons; or
  - (b) register the person as a member of the company in respect of the shares.
- (5) If a company contravenes subsection (2) or (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

##### 159. Order of Court for Registration

- (1) If a company refuses registration under section 158, the person to whom the right to the shares was transmitted may apply to the Court for an order under this section.
- (2) On an application under subsection (1), the Court may order the company to register the person as a member of the company in respect of the shares, if the Court is satisfied that the application is well-founded.

##### 160. Pre-emption Rights in Relation to Transmission by Law

- (1) This section applies if a company's articles give a member or class of members of the company a right of pre-emption or right to purchase shares in the company on the occurrence of an event that constitutes a transmission of the right to the shares by operation of law.
- (2) If this section applies, the registration as a member of the company of the person to whom the right to the shares is transmitted is subject to the right of pre-emption or right to purchase shares contained in the articles and that right may be enforced against the person.

**DIVISION 2**  
**ARRANGEMENTS AND COMPROMISES**

**668. Interpretation**

(1) In this Division—

*arrangement* (安排) includes a reorganization of the company's share capital by the consolidation of shares of different classes, or by the division of shares into different classes, or both;

*company* (公司), except in section 675, means a company liable to be wound up under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap.32).

(2) In this Division, a reference to a company's articles, in the case of a company not having articles, is to be read as the instrument constituting or defining the constitution of the company.

**669. Application of Division**

This Division applies if an arrangement or compromise is proposed to be entered into by a company with either or both of the following—

- (a) the creditors, or any class of the creditors, of the company;
- (b) the members, or any class of the members, of the company.

**670. Court May Order Meeting of Creditors or Members to be Summoned**

(1) The Court may, on application made for the purposes of this subsection—

- (a) order a meeting specified in subsection (2)(a), or a meeting specified in subsection (2)(b), or both (as the case may be) to be summoned in any manner that the Court directs; and
- (b) for the purposes of section 674(4), declare a person to be a person specified under that section.

(2) The meeting is—

- (a) if the arrangement or compromise is proposed to be entered into—
  - (i) with the creditors of the company, a meeting of those creditors; or
  - (ii) with a class of the creditors of the company, a meeting of that class of creditors; and
- (b) if the arrangement or compromise is proposed to be entered into—
  - (i) with the members of the company, a meeting of those members; or
  - (ii) with a class of the members of the company, a meeting of that class of members.

(3) Subject to subsection (4), an application for the purposes of subsection (1) may be made only by—

- (a) in the case of a meeting of creditors, the company or any of the creditors;
- (b) in the case of a meeting of a class of creditors, the company or any creditor of that class;
- (c) in the case of a meeting of members, the company or any of the members; or
- (d) in the case of a meeting of a class of members, the company or any member of that class.

(4) If the company is being wound up, an application for the purposes of subsection (1) may be made only by the liquidator or provisional liquidator.

(5) An application for the purposes of subsection (1) must be made in a summary way.

**671. Explanatory Statements to be Issued or Made Available to Creditors or Members**

(1) If a meeting is summoned under section 670—

- (a) every notice summoning the meeting that is sent to a creditor or member must be accompanied by an explanatory statement complying with subsections (3) and (4); and
- (b) every notice summoning the meeting that is given by advertisement—
  - (i) must include an explanatory statement complying with subsections (3) and (4); or
  - (ii) must state where and how a creditor or member entitled to attend the meeting may obtain a copy of the explanatory statement.

(2) If a notice given by advertisement states that a creditor or member entitled to attend the meeting may obtain a copy of an explanatory statement, the company must provide a copy of the statement, free of charge, to a creditor or member applying in the manner specified in the notice.

(3) An explanatory statement—

- (a) must explain the effect of the arrangement or compromise; and
- (b) must state—
  - (i) any material interests of the company's directors, whether as directors or as members or as creditors of the company or otherwise, under the arrangement or compromise; and
  - (ii) the effect of the arrangement or compromise on those interests, in so far as the effect is different from the effect on the like interests of other persons.

(4) If the arrangement or compromise affects the rights of the company's debenture holders, an explanatory statement must give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the directors.

- (5) If subsection (1) or (2) is contravened, all of the following commit an offence—
- the company;
  - every responsible person of the company;
  - a liquidator or provisional liquidator of the company who authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention;
  - a trustee of a deed for securing the issue of the company's debentures who authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention.
- (6) A person who commits an offence under subsection (5) is liable to a fine at level 5.
- (7) If a person is charged with an offence under subsection (5) for a contravention of subsection (1), it is a defence to establish that the contravention was due to the refusal of another person, who was a director of the company or a trustee for debenture holders of the company, to supply the necessary particulars of that other person's interests.

#### 672. Directors and Trustees Must Notify Company of Interests Under Arrangement or Compromise etc.

- If a meeting is summoned under section 670, a director of the company, or a trustee for its debenture holders, must give notice to the company of any matter relating to the director or trustee that may be necessary for the purposes of section 671.
- A person who contravenes subsection (1) commits an offence and is liable to a fine at level 5.

#### 673. Court May Sanction Arrangement or Compromise

- This section applies if the creditors or the class of creditors, or the members or the class of members, or both, with whom the arrangement or compromise is proposed to be entered into, agree or agrees to the arrangement or compromise.
- The Court may, on application made for the purposes of this subsection, sanction the arrangement or compromise.
- Subject to subsection (4), an application for the purposes of subsection (2) may be made only by—
  - in the case of an arrangement or compromise proposed to be entered into with the creditors of a company, the company or any of the creditors;
  - in the case of an arrangement or compromise proposed to be entered into with a class of creditors of a company, the company or any creditor of that class;
  - in the case of an arrangement or compromise proposed to be entered into with the members of a company, the company or any of the members; or
  - in the case of an arrangement or compromise proposed to be entered into with a class of members of a company, the company or any member of that class.
- If the company is being wound up, an application for the purposes of subsection (2) may be made only by the liquidator or provisional liquidator.

- (5) An arrangement or compromise sanctioned by the Court under subsection (2) is binding—
- on the company or, if the company is being wound up, on the liquidator or provisional liquidator and contributories of the company; and
  - on the creditors or the class of creditors, or the members or the class of members, or both, with whom the arrangement or compromise is proposed to be entered into.
- (6) An order made by the Court under subsection (2) has no effect until an office copy of the order is registered by the Registrar under Part 2.
- (7) If the order of the Court amends the company's articles, or any resolution or agreement to which section 622 applies, the office copy of that order delivered to the Registrar for registration for the purposes of subsection (6) must be accompanied by a copy of those articles, or the resolution or agreement, as amended.
- (8) If subsection (7) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.

#### 674. Provision Supplementary to Section 673(1): Agreement to Arrangement or Compromise

(1) For the purposes of section 673(1)—

- the creditors agree to the arrangement or compromise if, at a meeting of the creditors summoned under section 670, a majority in number representing at least 75% in value of the creditors present and voting, in person or by proxy, agree to the arrangement or compromise;
- a class of creditors agrees to the arrangement or compromise if, at a meeting of the class of creditors summoned under section 670, a majority in number representing at least 75% in value of the class of creditors present and voting, in person or by proxy, agree to the arrangement or compromise;
- subject to subsection (2)(a), the members agree to the arrangement or compromise if, at a meeting of the members summoned under section 670—
  - members representing at least 75% of the voting rights of the members present and voting, in person or by proxy, agree to the arrangement or compromise; and
  - unless the Court orders otherwise, a majority in number of the members present and voting, in person or by proxy, agree to the arrangement or compromise; and
- subject to subsection (2)(b), a class of members agrees to the arrangement or compromise if, at a meeting of the class of members summoned under section 670—
  - members representing at least 75% of the voting rights of the class of members present and voting, in person or by proxy, agree to the arrangement or compromise; and
  - unless the Court orders otherwise, a majority in number of the class of members present and voting, in person or by proxy, agree to the arrangement or compromise.

(2) However, where the arrangement involves a general offer within the meaning of section 707 or a takeover offer—

- (a) the members agree to the arrangement if—
- (i) at a meeting of the members summoned under section 670, members representing at least 75% of the voting rights of the members present and voting, in person or by proxy, agree to the arrangement; and
  - (ii) the votes cast against the arrangement at the meeting do not exceed 10% of the total voting rights attached to all disinterested shares in the company;
- (b) a class of members agrees to the arrangement if—
- (i) at a meeting of the class of members summoned under section 670, members representing at least 75% of the voting rights of the class of members present and voting, in person or by proxy, agree to the arrangement; and
  - (ii) the votes cast against the arrangement at the meeting do not exceed 10% of the total voting rights attached to all disinterested shares of the class in the company.

(3) In subsection (2)—

*disinterested shares* (無利害關係股份) means—

- (a) in the case of a takeover offer, shares in the company other than those held—
- (i) by the offeror, or by a nominee on behalf of the offeror;
  - (ii) by an associate of the offeror (except a person who falls within section 667(1)(a)(vii) or (b)(iii) or a person specified in subsection (4)); or
  - (iii) by a person who is a party to an acquisition agreement within the meaning of section 667(5) with the offeror (except a person specified in subsection (4)), or by a nominee on behalf of the person under the acquisition agreement;
- (b) in the case of a general offer, shares in the company other than those held—
- (i) by a non-tendering member as defined by section 705(1), or by a nominee on behalf of the member;
  - (ii) by an associate of such a non-tendering member (except a person who falls within section 667(1)(a)(vii) or (b)(iii) or a person specified in subsection (4));
  - (iii) by a nominee on behalf of the repurchasing company;
  - (iv) by an associate of such a repurchasing company (except a person who falls within section 667(2)(c) or a person specified in subsection (4)); or

(v) by a person who is a party to such an acquisition agreement with such a non-tendering member or repurchasing company (except a person specified in subsection (4)), or by a nominee on behalf of the person under the acquisition agreement.

(4) The person specified for the purposes of paragraph (a)(ii) and (iii) and (b)(ii), (iv) and (v) of the definition of *disinterested shares* in subsection (3) is a person declared under section 670(1)(b) to be a person specified under this section.

(5) For the purposes of subsections (2) and (3)—

- (a) an offer to acquire shares in a company is a takeover offer if—
- (i) it is an offer to acquire all the shares, or all the shares of any class, in the company, except those that, at the date of the offer, are held by the offeror; and
  - (ii) the terms of the offer are the same—
    - (A) where the offer does not relate to shares of different classes, in relation to all the shares to which the offer relates; or
    - (B) where the offer relates to shares of different classes, in relation to all the shares of each class to which the offer relates; and
- (b) an offer under which consideration is provided for the cancellation of shares in a company is also a takeover offer if—
- (i) it is an offer under which consideration is provided for the cancellation of all the shares, or all the shares of any class, in the company, except—
    - (A) those that, at the date of the offer, are held by the offeror;
    - (B) those that are specified in the offer document as shares that are not to be cancelled under the offer; and
    - (C) those that, at the date of the offer, are held by a member residing in a place where such an offer is contrary to the law of the place; and
  - (ii) the terms of the offer are the same—
    - (A) where the offer does not relate to shares of different classes, in relation to all the shares to which the offer relates; or
    - (B) where the offer relates to shares of different classes, in relation to all the shares of each class to which the offer relates.

(6) In subsection (5)—

*shares* (股份) means shares that have been allotted on the date of the offer.

(7) In subsection (5)(a)(i) and (b)(i), a reference to shares that are held by an offeror—

- (a) includes shares that the offeror has contracted, unconditionally or subject to conditions being satisfied, to acquire; but

- (b) excludes shares that are the subject of a contract—
- (i) entered into by the offeror with a holder of shares in the company in order to secure that the holder will accept the offer when it is made; and
  - (ii) entered into for no consideration and by deed, for consideration of negligible value, or for consideration consisting of a promise by the offeror to make the offer.
- (8) For the purposes of subsection (5)(a)(ii) and (b)(ii), even though, in relation to all the shares, or all the shares of a class of shares, to which an offer relates, there is a difference in the value of consideration offered for the shares allotted earlier as against the value of consideration offered for those allotted later, the terms of the offer are to be regarded as the same in relation to all the shares concerned if—
- (a) shares carry an entitlement to a particular dividend that other shares of the same class, by reason of being allotted at a different time, do not carry;
  - (b) the difference in value of consideration merely reflects that difference in entitlement to dividend; and
  - (c) but for the difference in the value of consideration, the terms of the offer would be the same in relation to all the shares concerned.
- (9) For the purposes of subsection (5)(a)(ii) and (b)(ii), even though, in relation to all the shares, or all the shares of a class of shares, to which an offer relates, there is a difference in the form of consideration offered, the terms of the offer are to be regarded as the same in relation to all the shares concerned if—
- (a) the law of a place outside Hong Kong precludes an offer of consideration in the form specified in the terms of the offer, or precludes it except after compliance by the offeror with conditions with which the offeror is unable to comply or that the offeror regards as unduly onerous;
  - (b) consideration in another form is offered to a person to whom an offer of consideration in the specified form is so precluded;
  - (c) the person is able to receive consideration in that other form that is of substantially equivalent value; and
  - (d) but for the difference in the form of consideration, the terms of the offer would be the same in relation to all the shares concerned.
- (10) Despite subsection (5), a takeover offer may include, among the shares to which it relates, shares that will be allotted after the date of the offer but before a date specified in the offer.
- (11) In subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10), a reference to shares in a company includes—
- (a) debentures that are convertible into shares in the company; and

- (b) securities of the company that are convertible into, or entitle the holder to subscribe for, shares in the company.

Those subsections apply to those debentures or securities as if they were shares of a separate class of the company, and a reference to a member or a holder of shares in those subsections is to be read accordingly.

#### 675. Court's Additional Powers to Facilitate Reconstruction or Amalgamation

- (1) This section applies if—
- (a) an application is made for the purposes of section 673(2) to sanction the arrangement or compromise; and
  - (b) it is shown to the Court that—
    - (i) the arrangement or compromise is proposed for the purpose of, or in connection with, a scheme for the reconstruction of one or more companies, or for the amalgamation of 2 or more companies; and
    - (ii) under the scheme, the property or undertaking of any company concerned in the scheme, or any part of that property or undertaking, is to be transferred to another company.
- (2) If the Court sanctions the arrangement or compromise, it may, by the order or a subsequent order, make provision for any or all of the following—
- (a) the transfer of the transferor's property, undertaking or liabilities, or any part of it or them, to the transferee;
  - (b) the allotting or appropriation by the transferee of any shares, debentures, policies, or other like interests in the transferee which, under the arrangement or compromise, are to be allotted or appropriated by the transferee to or for any person;
  - (c) the continuation by or against the transferee of any legal proceedings pending by or against the transferor;
  - (d) the dissolution, without winding up, of the transferor;
  - (e) the provision to be made for any person, who within the time, and in the manner, that the Court directs, dissents from the arrangement or compromise;
  - (f) the transfer or allotting of any interest in property to any person concerned in the arrangement or compromise;
  - (g) any incidental, consequential and supplemental matters that are necessary to ensure that the reconstruction or amalgamation is fully and effectively carried out.
- (3) If an order provides for the transfer of property under subsection (2)—
- (a) the property is, by virtue of the order, transferred to, and vests in, the transferee; and

- (2) For the purposes of this Ordinance, an undertaking is also a parent undertaking of another undertaking if it has the right to exercise a dominant influence over that other undertaking by virtue of—
- (a) the provisions contained in any document constituting or regulating that other undertaking; or
  - (b) a contract in writing that—
    - (i) is of a kind authorized by any document constituting or regulating that other undertaking; and
    - (ii) is permitted by the law under which that other undertaking is established.
- (3) In subsection (1)(b), a reference to the voting rights in an undertaking is—
- (a) in the case of an undertaking having a share capital, a reference to the rights given to the members in respect of their shares; or
  - (b) in the case of an undertaking not having a share capital—
    - (i) if the undertaking is required to hold general meetings at which matters are decided by the exercise of voting rights, a reference to the rights given to the members to vote at the general meetings on all matters or on substantially all matters; or
    - (ii) if the undertaking is not required to hold such general meetings, a reference to the rights under the undertaking's constitution to direct the undertaking's overall policy or to alter the terms of that constitution.
- (4) For the purposes of subsection (1)(b), an undertaking is a member of another undertaking if—
- (a) a person acting on behalf of it, or of any of its subsidiary undertakings, holds shares in that other undertaking; or
  - (b) any of its subsidiary undertakings is a member of that other undertaking.
- (5) For the purposes of subsection (1)(b)(ii), a reference to the right to appoint or remove a majority of a board of directors is a reference to the right to appoint or remove directors holding a majority of the voting rights at meetings of the directors on all matters or on substantially all matters.
- (6) For the purposes of subsection (5)—
- (a) in determining whether an undertaking has the right to appoint or remove a director, a right that is exercisable only with another person's consent is to be disregarded unless no other person has the right; and
  - (b) an undertaking has the right to appoint a director if—
    - (i) it necessarily follows from a person's appointment as a director of the undertaking that the person is appointed as a director of that other undertaking; or
    - (ii) the directorship is held by the undertaking itself.

- (7) For the purposes of subsection (2), an undertaking does not have any right to exercise a dominant influence over another undertaking unless—
- (a) it has a right to give directions with respect to the operating and financial policies of that other undertaking; and
  - (b) that other undertaking's directors are, or a majority of them is, obliged to comply with the directions, whether or not the directions are for that other undertaking's benefit.

### 3. Provisions Supplementary to Section 2 of This Schedule

- (1) For the purposes of this Schedule, a right held by a subsidiary undertaking of another undertaking is to be regarded as being held by that other undertaking.
- (2) For the purposes of this Schedule—
- (a) without limiting paragraph (b), a right that is exercisable only in certain circumstances is taken into account—
    - (i) only when the circumstances have arisen and for so long as they continue to exist; or
    - (ii) only when the circumstances are within the control of the person having the right; and
  - (b) a right that is normally exercisable but is temporarily incapable of being exercised continues to be taken into account.
- (3) For the purposes of this Schedule—
- (a) a right held by a person in a fiduciary capacity is to be regarded as not being held by the person; and
  - (b) a right held by a person as nominee for another is to be regarded as being held by that other.
- (4) For the purposes of this Schedule, a right is to be regarded as being held by a person as nominee for another if it is exercisable only on the instructions, or with the consent, of that other.
- (5) For the purposes of this Schedule, a right attached to shares held by way of security is to be regarded as being held by the person providing the security—
- (a) if, except where the right is exercised for the purpose of preserving the value of the security or of realizing the security, it is exercisable only in accordance with that person's instructions; or
  - (b) if—
    - (i) the shares are held in connection with the granting of loans as part of normal business activities; and
    - (ii) except where the right is exercised for the purpose of preserving the value of the security or of realizing the security, it is exercisable only in that person's interests.

- (6) Subsections (3) and (5) do not require a right held by a parent undertaking to be regarded as being held by any of its subsidiary undertakings.
- (7) For the purposes of subsection (5), a right is to be regarded as being exercisable in accordance with the instructions, or in the interests, of an undertaking if it is exercisable in accordance with the instructions, or in the interests (as the case may be) of any group undertaking of the undertaking.
- (8) In this section, an undertaking is a group undertaking of another undertaking if—
- it is a parent or subsidiary undertaking of that other undertaking; or
  - it is a subsidiary undertaking of any parent undertaking of that other undertaking.

#### 4. Subsidiary Undertaking

- For the purposes of this Ordinance, an undertaking is a subsidiary undertaking of another undertaking if that other undertaking is a parent undertaking of it.
- For the purposes of this Ordinance, an undertaking is also a subsidiary undertaking of another undertaking if a parent undertaking of it is a subsidiary undertaking of that other undertaking.

## CONTENT OF INCORPORATION FORM

### PART 1

#### PARTICULARS AND STATEMENTS OF COMPANY

##### 1. Particulars and Statements Relating to Company

The particulars and statements specified for the purposes of section 68(1)(a) are—

- the proposed name of the company;
- the proposed address of the company's registered office in Hong Kong;
- statement as to whether the company is to be a company limited by shares or by guarantee, or an unlimited company;
- if the company is to be a company limited by shares or an unlimited company, a statement as to whether it is to be a private or public company; and
- if the company is to be a company limited by guarantee, the number of members with which it proposes to register.

### PART 2

#### PARTICULARS OF FOUNDER MEMBER

##### 2. Particulars of Founder Member

The particulars specified for the purposes of section 68(1)(b) are the name and address of the founder member.

### PART 3

#### PARTICULARS AND STATEMENT OF PROPOSED OFFICERS

##### 3. Particulars of Director

- The particulars specified for the purposes of section 68(1)(c)(i) are—
  - if the person is a natural person—
    - the present forename and surname, former forename or surname (if any), and aliases (if any);
    - the usual residential address;
    - the correspondence address; and

- (iv) the number of the identity card or, if the person does not have an identity card, the number and issuing country of any passport held by the person; or
  - (b) if the person is a body corporate, the corporate name and the address of its registered or principal office.
- (2) For the purposes of subsection (1)(a)(iii), a correspondence address must not be a post office box number.

#### 4. Statement Relating to Director

The statement specified for the purposes of section 68(1)(c)(ii) is—

- (a) if the person is the signatory to the incorporation form, a statement by the person—
  - (i) that the person has consented to be a director of the company; and
  - (ii) if the person is a natural person, that he or she has attained the age of 18 years; or
- (b) if the person is not the signatory to the incorporation form—
  - (i) a statement by the person that the person has consented to be a director of the company and, if the person is a natural person, that he or she has attained the age of 18 years; or
  - (ii) a statement by the signatory that the person has consented to be a director of the company and, if the person is a natural person, that he or she has attained the age of 18 years.

#### 5. Particulars of Company Secretary

- (1) The particulars specified for the purposes of section 68(1)(d) are—
- (a) if the person is a natural person and is not a person covered by paragraph (c)—
    - (i) the present forename and surname, former forename or surname (if any), and aliases (if any);
    - (ii) the correspondence address; and
    - (iii) the number of the identity card or, if the person does not have an identity card, the number and issuing country of any passport held by the person;
  - (b) if the person is a body corporate and is not a person covered by paragraph (c), the corporate name and the address of its registered or principal office; or
  - (c) if the person is a partner of a firm all partners of which are to be the joint company secretaries of the company, the firm's name and the address of the firm's principal office.
- (2) For the purposes of subsection (1)(a)(ii), a correspondence address must be a place in Hong Kong and must not be a post office box number.

#### 6. Definitions

- (1) In this Part—

*forename* (名字) includes a Christian or given name;

*residential address* (住址)—

- (a) does not include an address at a hotel unless the person to whom it relates is stated, for the purposes of this Part, to have no other permanent address; and
- (b) does not include a post office box number;

*signatory* (簽署人), in relation to an incorporation form, means the founder member who signs the form for the purposes of section 69;

*surname* (姓氏), for a person usually known by a title different from the person's surname, means that title.

- (2) In this Part, a reference to a former forename or surname does not include—

(a) in relation to a person—

- (i) a forename or surname that was changed or ceased to be used before the person attained the age of 18 years; and
  - (ii) a forename or surname that has been changed or ceased to be used for a period of at least 20 years;
- (b) in relation to a person usually known by a title different from his or her surname, the name by which the person was known before the adoption of or succession to the title; and
- (c) in relation to a married woman, a name or surname by which she was known before her marriage.

## PART 4

### STATEMENTS RELATING TO ARTICLES

#### 7. Statements Relating to Articles

The statements specified for the purposes of section 68(1)(e) are—

- (a) a statement that the company's articles have been signed for the purposes of section 67(1)(a) by every person proposing to become a member of the company on the company's formation; and
- (b) a statement that the contents of the copy of the company's articles delivered under section 67(1)(b)(ii), with or without the part showing the signature and the date of signing as they appear on the original document, are the same as those of the articles.

## PART 5

STATEMENT OF CAPITAL AND  
INITIAL SHAREHOLDINGS

## 8. Statement of Capital and Initial Shareholdings

- (1) The statement specified for the purposes of section 68(2) is a statement that—
- (a) states the total number of shares that the company proposes to issue on the company's formation;
  - (b) states the total amount of share capital to be subscribed by the company's founder members on that formation;
  - (c) states the amount to be paid up or to be regarded as paid up, and the amount to remain unpaid or to be regarded as remaining unpaid, on the total number of shares that the company proposes to issue on that formation;
  - (d) if the share capital is to be divided into different classes of shares on that formation, also states the classes and, for each class—
    - (i) the total number of shares in that class that the company proposes to issue on that formation;
    - (ii) the total amount of share capital in that class to be subscribed by the company's founder members on that formation;
    - (iii) the amount to be paid up or to be regarded as paid up, and the amount to remain unpaid or to be regarded as remaining unpaid, on the total number of shares in that class that the company proposes to issue on that formation;
    - (iv) the particulars of any voting rights attached to shares in that class, including rights that arise only in certain circumstances;
    - (v) the particulars of any rights attached to shares in that class, as respects dividends, to participate in a distribution;
    - (vi) the particulars of any rights attached to shares in that class, as respects capital, to participate in a distribution (including on a winding up); and
    - (vii) whether or not shares in that class are redeemable shares; and
  - (e) in respect of each founder member, states the number of shares that the company proposes to issue to the member and the total amount of share capital to be subscribed by the member on that formation.
- (2) If the shares proposed to be issued to a founder member on the formation belong to 2 or more classes, the information required under subsection (1)(e) must be stated in respect of each class.

## SCHEDULE 3

[ss.360, 361, 362, 363, 364,  
365, 366 & 911]SPECIFIED QUALIFYING CONDITIONS  
FOR SECTIONS 361 TO 366

## 1. Qualifying Conditions

- (1) The conditions specified for the purposes of section 361(1), (2) and (3) are—
- (a) that the amount of the company's total revenue for the financial year, as would be reflected in the company's annual financial statements for the financial year if the company were qualified as a small private company for the financial year, does not exceed \$100 million;
  - (b) that the amount of the company's total assets at the date of the statement of financial position for the financial year, as would be reflected in the company's annual financial statements for the financial year if the company were qualified as a small private company for the financial year, does not exceed \$100 million; and
  - (c) that the average number of the company's employees during the financial year does not exceed 100.
- (2) The conditions specified for the purposes of section 361(4) are—
- (a) that the amount of the company's total revenue for the financial year, as reflected in the company's annual financial statements for the financial year, does not exceed \$100 million;
  - (b) that the amount of the company's total assets at the date of the statement of financial position for the financial year, as reflected in the company's annual financial statements for the financial year, does not exceed \$100 million; and
  - (c) that the average number of the company's employees during the financial year does not exceed 100.
- (3) The conditions specified for the purposes of section 362(1), (2) and (3) are—
- (a) that the amount of the company's total revenue for the financial year, as would be reflected in the company's annual financial statements for the financial year if the company were qualified as an eligible private company for the financial year, does not exceed \$200 million;
  - (b) that the amount of the company's total assets at the date of the statement of financial position for the financial year, as would be reflected in the company's annual financial statements for the financial year if the company were qualified as an eligible private company for the financial year, does not exceed \$200 million; and
  - (c) that the average number of the company's employees during the financial year does not exceed 100.

- (4) The conditions specified for the purposes of section 362(4) are—
- that the amount of the company's total revenue for the financial year, as reflected in the company's annual financial statements for the financial year, does not exceed \$200 million;
  - that the amount of the company's total assets at the date of the statement of financial position for the financial year, as reflected in the company's annual financial statements for the financial year, does not exceed \$200 million; and
  - that the average number of the company's employees during the financial year does not exceed 100.
- (5) The condition specified for the purposes of section 363(1), (2) and (3) is that the amount of the company's total revenue for the financial year, as would be reflected in the company's annual financial statements for the financial year if the company were qualified as a small guarantee company for the financial year, does not exceed \$25 million.
- (6) The condition specified for the purposes of section 363(4) is that the amount of the company's total revenue for the financial year, as reflected in the company's annual financial statements for the financial year, does not exceed \$25 million.
- (7) The condition specified for the purposes of section 364(1), (2), (3), (4) and (5) is that each company in the group is qualified as a small private company for the financial year.
- (8) The conditions specified for the purposes of section 364(1), (2) and (3) are—
- that the aggregate amount of the group's total revenue for the financial year does not exceed \$100 million;
  - that the aggregate amount of the group's total assets at the date of the statement of financial position for the financial year does not exceed \$100 million; and
  - that the aggregate number of employees of the group during the financial year does not exceed 100.
- (9) The conditions specified for the purposes of section 364(4) and (5) are—
- that the aggregate amount of the group's total revenue for the financial year does not exceed \$100 million;
  - that the aggregate amount of the group's total assets at the date of the statement of financial position for the financial year does not exceed \$100 million; and
  - that the aggregate number of employees of the group during the financial year does not exceed 100.
- (10) The condition specified for the purposes of section 365(1), (2), (3), (4) and (5) is that each company in the group is qualified as an eligible private company for the financial year.
- (11) The conditions specified for the purposes of section 365(1), (2) and (3) are—
- that the aggregate amount of the group's total revenue for the financial year does not exceed \$200 million;

- that the aggregate amount of the group's total assets at the date of the statement of financial position for the financial year does not exceed \$200 million; and
  - that the aggregate number of employees of the group during the financial year does not exceed 100.
- (12) The conditions specified for the purposes of section 365(4) and (5) are—
- that the aggregate amount of the group's total revenue for the financial year does not exceed \$200 million;
  - that the aggregate amount of the group's total assets at the date of the statement of financial position for the financial year does not exceed \$200 million; and
  - that the aggregate number of employees of the group during the financial year does not exceed 100.
- (13) The conditions specified for the purposes of section 366(1), (2) and (3) are—
- that each company in the group is qualified as a small guarantee company for the financial year; and
  - that the aggregate amount of the group's total revenue for the financial year does not exceed \$25 million.
- (14) The conditions specified for the purposes of section 366(4) and (5) are—
- that each company in the group is qualified as a small guarantee company for the financial year; and
  - that the aggregate amount of the group's total revenue for the financial year does not exceed \$25 million.
- (15) In subsections (1), (3), (5), (7), (8), (10), (11) and (13)—
- a reference to a financial year of a company for the purposes of section 361(2), 362(2), 363(2), 364(2), 365(2) or 366(2) includes a financial year of the company for the purposes of the predecessor Ordinance that immediately precedes the company's first financial year after the coming into operation of this section; and
  - a reference to a company's annual financial statements is, in the case of a financial year of the company for the purposes of the predecessor Ordinance, a reference to the company's accounts for the financial year.

## 2. Provisions Supplementary to Section 1 of This Schedule

- For the purposes of section 1(1)(a), (2)(a), (3)(a), (4)(a), (5), (6), (8)(a), (9)(a), (11)(a), (12)(a), (13)(b) and (14)(b) of this Schedule, the amount of total revenue for a financial year that is shorter or longer than 12 months is to be calculated on a pro-rata basis as if the length of the financial year were 12 months.
- For the purposes of section 1(8), 1(11) and (13)(b) of this Schedule, the aggregate amount of the group's total revenue or assets—
  - is to be calculated by aggregating the total revenue or assets (as the case may be) of each company in the group, as would be reflected in the company's annual

financial statements or annual consolidated financial statements for the financial year if the group were qualified as a group of small private companies, eligible private companies or small guarantee companies (as the case may be); and

- (b) is to be calculated on the basis that the set-offs and other adjustments for transactions between companies in the group have been made.
- (3) For the purposes of section 1(9), 1(12) and (14)(b) of this Schedule, the aggregate amount of the group's total revenue or assets—
- (a) is to be calculated by aggregating the total revenue or assets (as the case may be) of each company in the group, as reflected in the company's annual financial statements or annual consolidated financial statements for the financial year; and
- (b) is to be calculated on the basis that the set-offs and other adjustments for transactions between companies in the group have been made.
- (4) For the purposes of section 1(8)(c), (9)(c), (11)(c) and (12)(c) of this Schedule, the aggregate number of employees of the group during a financial year is to be calculated by aggregating the average number of employees of each company in the group during the financial year.
- (5) For the purposes of subsection (4) and of section 1(1)(c), (2)(c), (3)(c) and (4)(c) of this Schedule, the average number of a company's employees during a financial year is to be calculated by using the following formula—

$$\frac{M}{N}$$

where—

M represents the aggregate of the number of the company's employees as at the end of each month during the financial year;

N represents the number of months in the financial year.

- (6) In subsections (2)(a) and (3)(a), a reference to a company's annual financial statements or annual consolidated financial statements is, in the case of a financial year of the company for the purposes of the predecessor Ordinance mentioned in section 1(15)(a) of this Schedule, a reference to the company's accounts or group accounts for the financial year.

## ACCOUNTING DISCLOSURES

### PART 1

#### DISCLOSURES FOR COMPANIES WHETHER OR NOT FALLING WITHIN REPORTING EXEMPTION

##### 1. Aggregate Amount of Authorized Loans

The financial statements for a financial year must contain, under separate headings, the aggregate amount of any outstanding loans made under the authority of sections 280 and 281 during the financial year.

##### 2. Statement of Financial Position to be Contained in Notes to Annual Consolidated Financial Statements

- (1) The annual consolidated financial statements for a financial year—
- (a) must contain, in the notes to the statements, the holding company's statement of financial position for the financial year; and
- (b) must include a note disclosing the movement in the holding company's reserves.
- (2) Despite section 380(4), the holding company's statement of financial position to be contained in the notes to the annual consolidated financial statements for a financial year is not required to contain any notes.
- (3) That statement of financial position must be in the format in which that statement would have been prepared if the holding company had not been required to prepare any annual consolidated financial statements for the financial year.

##### 3. Subsidiary's Financial Statements Must Contain Particulars of Ultimate Parent Undertaking

- (1) This section applies if, at the end of a financial year, a company is the subsidiary of another undertaking.
- (2) The company's financial statements for the financial year must contain, in the notes to the statements—
- (a) the name of the undertaking regarded by the directors as being the company's ultimate parent undertaking; and
- (b) the following information relating to that undertaking as known to the directors—
- (i) if that undertaking is a body corporate, the country in which it is incorporated;