

liable under the same paragraph, according to the amount of their respective liabilities thereunder. (Amended 6 of 1984 s 104)

(Replaced 4 of 1963 s 8)
[cf 1948 c 38 s 170 U.K.]

[148.01] History

Section 148 was introduced in 1963, replacing an earlier provision, and is based upon the UK Companies Act 1948, s 170 (cf s 439 Companies Act 1985 (UK)). Subsection (3) was amended in 1978 and substantial revisions were made in 1984; subsections (1)(a) and (c) were replaced; subsection (1)(d) was added and subsections (1), (2) and (4) were amended.

[148.02] Overview

This section concerns the expenses of the investigation of the affairs of a company. In the first instance, the expenses of, and incidental to, an investigation by an inspector appointed by the Financial Secretary will be defrayed out of the general revenue of Hong Kong. However, following persons are liable to repay certain expenses:

- (1) any person who is convicted by a court or magistrate on a prosecution instituted as a result of the investigation, or who is ordered by a court or magistrate to pay damages or restore any property in proceedings brought by the Financial Secretary under s 147(3) (see above) or to pay the whole or any part of the costs of any such proceedings, to such extent as may be ordered by such court or magistrate;
- (2) any body corporate in whose name proceedings are brought by the Financial Secretary under s 147(3), to the amount or value of any sums or property recovered by it as a result of those proceedings. The amount for which the body corporate is liable will be a first charge on the sums or property concerned;
- (3) any body corporate dealt with by the report, where the inspector was appointed otherwise than of the Financial Secretary's own motion, is liable, except so far as the Financial Secretary otherwise directs; and
- (4) the applicants for the investigation, where the inspector was appointed upon the application of members under s 142 (see above) is liable to such extent (if any) as the Financial Secretary may direct.

In the latter two cases, the report of an inspector may, if he thinks fit, and must, if the Financial Secretary so directs, include a recommendation as to the directions that, in the light of the investigation, he thinks appropriate.

In the first two cases, any person liable to repay the Government is also liable to indemnify all persons against liability under the third and fourth cases and any person liable under the first case is also liable to indemnify all persons under the second case. Furthermore, any person liable under any of the cases is entitled to contribution from any other person under the same case according to the amount of their respective liabilities: s 148(4).

[148.03] Costs and expenses incurred by the Financial Secretary

Costs incurred by the Financial Secretary in connection with civil proceedings brought by him under s 147(3) (see above) including any indemnity granted by the Government under s 147(4) (see above) are to be treated as expenses of the investigation.

[148.04] Jurisdiction

This section applies not only to companies incorporated in Hong Kong under the Companies Ordinance but also to all bodies corporate incorporated outside Hong Kong which have a place of business in Hong Kong or have at any time had a place of business there as if they were registered under the Companies Ordinance: see s 146A above.

149. Inspector's report to be evidence

A copy of any report of an inspector appointed under section 142 or 143, signed by the inspector and counter-signed by the Financial Secretary, shall be

admissible in any legal proceedings as evidence of the opinion of the inspector in relation to any matter contained in the report and, in proceedings on an application under section 168J, as evidence of any fact stated therein.

(Added 4 of 1963 s 8; Amended 30 of 1994 s 2)
[cf 1948 c 38 s 171 U.K.]

[149.01] History

Section 149 was added in 1963 and is based upon the UK Companies Act 1948, s 171. In 1994, the section was amended to allow a copy of a report of an inspector appointed under s 142 or 143 to be admissible as evidence in proceedings on an application to disqualify a person who is or has been a director, or shadow director, under s 168J.

[149.02] Overview

This section provides that a copy of any report of an inspector appointed under s 142 or 143, signed by both the inspector and the Financial Secretary, is admissible in any legal proceedings as evidence of the opinion of the inspector. The inspector's opinion may be admitted as evidence in relation to any matter contained in the report and in proceedings on an application under s 168J to disqualify a director following an investigation of any company, as evidence of any fact stated in the report. And see *Re Peregrine Investments Holdings Ltd & Anor* (2005) HCMP 112/2002 (and note Companies (Disqualification of Directors) Proceedings Rules (Cap 32K) r 4(2)).

[149.03] Cases

Savings and Investment Bank Ltd v Gasco Investments (Netherlands) BV [1984] 1 All ER 296 (inspectors' reports are not records for the purposes of the Evidence Act (UK) 1968, s 4(1) (cf the Evidence Ordinance, Cap 8, s 49)); *Re Koscot Interplanetary (UK) Ltd* [1972] 3 All ER 829 (evidence in the form of third party statements obtained by the Financial Secretary when investigating the affairs of a company is admissible on a winding up petition presented under s 147, albeit hearsay evidence); *Re Rex Williams Leisure Plc (in administration)* [1994] 3 All ER 27 (CA) (UK) (such statements are impliedly also admissible in directors' disqualification proceedings).

[149.04] Jurisdiction

This section applies not only to companies incorporated in Hong Kong under the Companies Ordinance but also to all bodies corporate incorporated outside Hong Kong which have a place of business in Hong Kong or have at any time had a place of business there as if they were registered under the Companies Ordinance: see s 146A above.

149A. (Repealed 72 of 1994 s 5)

[149A.01] General Note

See s 296(2A) and [296.01].

150. Saving for solicitors and bankers

Expanded Cross Reference: 142, 143, 144, 145, 145A, 145B, 146, 146A, 147, 148, 149

Nothing in sections 142 to 149 shall require disclosure to the Financial Secretary or to an inspector appointed by him-

- (a) by a solicitor of any privileged communication made to him in that capacity, except as respects the name and address of his client; or
- (b) by a body corporate's bankers as such of any information as to the affairs of any of their customers other than the body corporate. (Amended 6 of 1984 s 105)

(Added 4 of 1963 s 8)
(cf 1948 c 38 s 175 U.K.)

[150.01] History

This section was added in 1963 and is based upon the UK Companies Act 1948, s 175. Subsection (b) was amended in 1984.

[150.02] Overview

Nothing in the preceding sections (ie 1ss 142-149) requires disclosure to the Financial Secretary or to an inspector appointed by him.

- (1) by a solicitor of any privileged communication made to him except the name and address of his client; or
- (2) by a body corporate's bankers of any information as to the affairs of any of their customers other than the body corporate.

[150.03] Jurisdiction

This section applies not only to companies incorporated in Hong Kong under the Companies Ordinance but also to all bodies corporate incorporated outside Hong Kong which have a place of business in Hong Kong or have at any time had a place of business there as if they were registered under the Companies Ordinance: see s 146A above.

151. Notice to Registrar

Upon the appointment of an inspector under section 142 or 143 and upon the submission of his final report, the inspector shall forward to the Registrar a notice of such appointment or of such submission, as the case may be, in the specified form.

(Replaced 4 of 1963 s 8; Amended 28 of 2003 s 55)

[151.01] History

This section was added in 1963, replacing an earlier provision. It was amended in 2003 to provide for giving such notice in a specified form.

[151.02] Overview

When an inspector is appointed under s 142 or 143 (see above), he must forward to the Registrar a notice (Specified Form IN1) of such appointment. The inspector must also give notice to the Registrar that he has submitted his final report to the Financial Secretary (Specified Form IN2).

152. Power of company to appoint inspector

- (1) A company may, by special resolution, appoint an inspector to investigate its affairs.
- (2) It shall be the duty of all officers and agents of the company to produce to the inspector all books and documents in their custody or power.

- (3) An inspector may examine on oath the officers and agents of the company in relation to its business, and may administer an oath accordingly.
- (4) If any officer or agent of the company refuses to produce to the inspector any book or document which it is his duty under this section so to produce, refuses to attend before the inspector when required so to do, or refuses to answer any questions that is put to him by the inspector with respect to the affairs of the company, the inspector may certify the fact under his hand to the court, and the court may thereupon inquire into the case, and, after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement that may be offered in defence, punish the offender in like manner as if he had been guilty of contempt to the court. (Amended 6 of 1984 s 106)
- (5) On the conclusion of the investigation the inspector shall report his opinion in such manner and to such persons as the company in general meeting may direct.
- (6) A copy of the report of an inspector appointed under this section, signed by the inspector and sealed with the seal of the company to which the report relates, shall be admissible in any legal proceedings as evidence of the opinion of the inspector in relation to any matter contained in the report.

(Added 4 of 1963 s 8)

[152.01] History

This section was added in 1963 and subsection (4) amended in 1984. The equivalent UK provision was repealed in 1948. The reason for it being added in Hong Kong is explained in the First Report of the Companies Law Revision Committee (1971) (para 3.14-15), namely, that s 43(1)(b) gives the Financial Secretary a discretion to appoint whereas the equivalent UK provision provides that an appointment must be made.

[152.02] Overview

A company may, by special resolution, appoint an inspector to investigate its affairs. This provision allows a company to appoint a third party to conduct an investigation in circumstances where there is no application to the Financial Secretary under s 142 and no reasons why the Financial Secretary should appoint one under s 143.

When an inspector is appointed under this provision, it is the duty of all the officers and agents of that company to produce to the inspector all books and documents which are in their custody or power. Such inspectors may examine the officers and agents of the company in relation to its business on oath, and may also administer an oath.

Under this provision, there is no 'savings' in respect of matters required to be disclosed by solicitors and bankers (cf s 150) and it appears that questions tending to incriminate must be answered (cf s 145(3A)).

On the conclusion of the investigation, the inspector must report his opinion in such manner and to such persons as the company in general meeting may direct: s 152(5).

A copy of the report of an inspector appointed under this section, signed by the inspector and sealed with the seal of the company to which the report relates, is admissible in any legal proceedings as evidence of the opinion of the inspector in relation to any matter contained in the report.

[152.03] Non-compliance

If any officer or agent of the company refuses:

- (1) to produce to the inspector any book or document which it is his duty under this section to produce;
- (2) to attend before the inspector when required to do so; or
- (3) to answer any question that is put to him by the inspector with respect to the affairs of the company,

innocent third parties dealing with the company are concerned where these parties are unaware of the limits placed on the powers of the company. Section 367(1) now makes it clear that ss 5A and 5B will to some degree apply to companies retrospectively, that is, it will apply to companies registered prior to the commencement of these sections as well as to companies registered after the commencement of these provisions. However, this does not mean that these new provisions will apply to earlier acts of companies formed prior to the commencement of ss 5A and 5B. Thus, s 367(2) provides that the retrospective operation of ss 5A and 5B will not mean that they will limit the application of any other provisions of the Companies (Amendment) Ordinance 1997. Also, the passage of s 367(1) will not mean that any void transactions which occurred prior to the commencement of ss 5A and 5B will now be validated by the passage of the latter provisions: s 367(2)(b).

FIRST SCHEDULE

[sections 2, 4, 14 & 360]

(Amended 28 of 2003 s. 115)

TABLE A [sections 2, 11, 114A, 322 & 360]

(Amended 28 of 2003 s. 115)

PART I

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES, NOT BEING A PRIVATE COMPANY

Interpretation

- In these regulations—
 - “Ordinance” (本條例) means the Companies Ordinance, Cap 32;
 - “seal” (印章) means the common seal of the company;
 - “secretary” (秘書) means any person appointed to perform the duties of the secretary of the company.
 - Expressions used in these regulations referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.
 - Wherever any provision of these regulations (except a provision for the appointment of a proxy) requires that a communication as between the company, its directors or members be effected in writing, the requirement may be satisfied by the communication being given in the form of an electronic record if the person to whom the communication is given consents to it being given to him in that form.
 - Wherever any provision of these regulations requires that a meeting of the company, its directors or members be held, the requirement may be satisfied by the meeting being held by such lawful electronic means and in such manner as may be agreed by the company in general meeting.
 - Unless the context otherwise requires, words or expressions used in these regulations shall have the same meaning as in the Ordinance or any statutory modification thereof in force at the date at which these regulations become binding on the company. (Replaced 28 of 2003 s. 115)
- Share Capital and Variation of Rights**
- Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, any share in the company may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of capital or otherwise as the company may from time to time by ordinary resolution determine.
 - Subject to the sections 49 to 49S of the Ordinance, the company may issue shares on the terms that they are, or at the option of the company

- or the holder of the shares are liable, to be redeemed on such terms and in such manner as may be provided by the company's articles of association. (Replaced L.N. 188 of 1993)
4. If at any time the share capital is divided into different classes of shares, the rights attached to any class may, whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths in nominal value of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class.
 5. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.
 6. The company may exercise the powers of paying commissions conferred by section 46 of the Ordinance, provided that the rate per cent or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the said section and the rate of the commission shall not exceed the rate of 10 per cent of the price at which the shares in respect whereof the same is paid are issued or an amount equal to 10 per cent of such price (as the case may be). Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other. The company may also on any issue of shares pay such brokerage as may be lawful.
 7. Except as required by law, no person shall be recognized by the company as holding any share upon any trust, and the company shall not be bound by or be compelled in any way to recognize (even when having notice thereof) any equitable, contingent, future or partial interest in any share or any interest in any fractional part of a share or other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.
 8. Every person whose name is entered as a member in the register of members shall be entitled without payment to receive within 2 months after allotment or lodgement of transfer (or within such other period as the conditions of issue shall provide) one certificate for all his shares or several certificates each for 1 or more of his shares upon payment of \$5 for every certificate after the first or such less sum as the directors shall from time to time determine. Every certificate shall be under the seal, or under the official seal kept by the company under section 73A of the Ordinance, and shall specify the shares to which it relates and the amount paid up thereon. Provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than 1 certificate, and delivery of a certificate for a share to 1 of several joint holders shall be sufficient delivery to all such holders.
 9. If a share certificate be defaced, lost or destroyed, it may be renewed on payment of a fee of \$5 or such less sum and on such terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the company of investigating evidence as the directors think fit.

10. (Repealed L.N. 188 of 1993)

Lien

11. The company shall have a first and paramount lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a first and paramount lien on all shares (other than fully paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's lien, if any, on a share shall extend to all dividends payable thereon.
12. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless a sum in respect of which the lien exists is presently payable, nor until the expiration of 14 days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.
13. To give effect to any such sale the directors may authorize some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprized in any such transfer, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.
14. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue, if any, shall (subject to a like lien for sums not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

Calls on Shares

15. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times, provided that no call shall exceed one-fourth of the nominal value of the share or be payable at less than 1 month from the date fixed for the payment of the last preceding call, and each member shall (subject to receiving at least 14 days' notice specifying the time or times and place of payment) pay to the company at the time or times and place so specified the amount called on his shares. A call may be revoked or postponed as the directors may determine.
16. A call shall be deemed to have been made at the time when the resolution of the directors authorizing the call was passed and may be required to be paid by instalments.
17. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.