

- (c) a removal of any information from the Companies Register under section 42; or
 - (d) any other information on the Companies Register.
- (2) For the purposes of this Ordinance, a note made under subsection (1) is part of the Companies Register.
- (3) The Registrar may remove a note if the Registrar is satisfied that it no longer serves any useful purpose.

Division 6

Inspection of Companies Register

45. Registrar must make Companies Register available for public inspection

- (1) The Registrar must make the Companies Register available for public inspection at all reasonable times so as to enable any member of the public—
- (a) to ascertain whether the member of the public is dealing with—
 - (i) a company to which this subsection applies, or its directors or other officers, in matters of or connected with any act of the company;
 - (ii) a director or other officers of such a company in matters of or connected with the administration of the company, or of its property;
 - (iii) a person against whom a disqualification order has been made by a court;
 - (iv) a person who has entered into possession of the property of such a company as mortgagee;
 - (v) a person who is appointed as the provisional liquidator or liquidator in the winding up of such a company; or
 - (vi) a person who is appointed as the receiver or manager of the property of such a company; and
 - (b) to ascertain the particulars of the company, its directors or other officers, or its former directors (if any), or the particulars of any person mentioned in paragraph (a)(iv), (v) or (vi).

- (2) Subsection (1) applies to—
- (a) a company falling within the definition of company in section 20(1); and
 - (b) an unregistered company as defined by section 326 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).
- (3) For the purposes of subsection (1), the Registrar must, on receiving the fee payable under the regulations made under section 26, allow a person to inspect any information on the Companies Register in any form that the Registrar thinks fit.
- (4) For the purposes of subsection (1), the Registrar may, on receiving the fee payable under the regulations made under section 26, produce to a person a copy or a certified true copy of any document or information on the Companies Register, in so far as the document or information may be made available for public inspection, in any form that the Registrar thinks fit.
- (5) In this section—

disqualification order (取消資格令), in relation to a person, means an order that, for a period specified in the order beginning on the date of the order, the person must not, without the leave of the court—

- (a) be a director, or a liquidator or provisional liquidator, of any company to which subsection (1) applies;
- (b) be a receiver or manager of the property of such a company; or
- (c) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of such a company.

46. Registrar's certified true copy admissible as evidence

In any proceedings—

- (a) a document purporting to be a copy of any information produced under section 45(4), and purporting to be certified by the Registrar as a true copy of the information, is admissible in evidence on its production without further proof; and

- (6) A limited company's articles may exclude or restrict the exercise of a power conferred by this section.

173. Notice of redenomination

- (1) Within one month after passing a resolution under section 172, a company must deliver a notice in the specified form to the Registrar for registration in relation to the redenomination.
- (2) The notice must include a statement of capital as at the date of the redenomination that complies with section 201.
- (3) 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.

174. Reconversion of stock into shares

- (1) A company that has converted paid up shares into stock (before the repeal by this Ordinance of the power to do so) may, by resolution of the company, reconvert that stock into paid up shares.

Note—

Section 138 repeals the power of a company to convert its shares into stock.

- (2) A resolution under this section may authorize a company to exercise the power to reconvert stock—
 - (a) on more than one occasion;
 - (b) at a specified time or in specified circumstances.

175. Notice of reconversion

- (1) Within one month after passing a resolution under section 174, a company must deliver a notice in the specified form to the Registrar for registration in relation to the reconversion of stock.
- (2) The notice must include a statement of capital as at the date of the reconversion that complies with section 201.
- (3) 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.

Division 7

Classes of Shares and Class Rights

Subdivision 1

Companies having a Share Capital

176. Application of Subdivision

This Subdivision applies to a company that has a share capital.

177. Rights attached to shares

In this Ordinance, a reference to the rights attached to a share in a class of shares in a company is a reference to the rights of the holder of that share as a member of the company.

178. Classes of shares

- (1) For the purposes of this Ordinance, shares are in one class if the rights attached to them are in all respects uniform.
- (2) The rights attached to shares are not to be regarded as different from those attached to other shares only because they do not carry the same rights to dividends in the 12 months immediately following their allotment.

179. Description of shares of different classes

- (1) A share certificate issued by a company that has different classes of shares must contain in a prominent position a statement—
 - (a) stating that the company's share capital is divided into different classes of shares; and
 - (b) specifying the voting rights attached to shares in each class.
- (2) If a company has a class of shares the holders of which are not entitled to vote at general meetings of the company—
 - (a) the descriptive title of shares in the class must include the words "non voting" or the Chinese characters "無表決權"; and
 - (b) the company must ensure that those words appear legibly on any share certificate issued by the company.

present in person or, if proxies are permitted, by proxy at a meeting summoned for the purpose—

- (a) in accordance with the provisions of the trust deed; or
- (b) if the trust deed makes no provision for summoning meetings, in a manner approved by the Court.

Part 8

Registration of Charges

Division 1

Preliminary

333. Interpretation

(1) In this Part—

charge (押記) includes mortgage;

manager (經理人) excludes a special manager of the estate or business of a company or registered non-Hong Kong company appointed under section 216 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

(2) For the purposes of this Part—

(a) if a ship or aircraft of a registered non-Hong Kong company is registered in Hong Kong, it is to be regarded as property in Hong Kong of the company even though it is physically located outside Hong Kong; and

(b) if a ship or aircraft of a registered non-Hong Kong company is registered in a place outside Hong Kong, it is to be regarded as property outside Hong Kong of the company even though it is physically located in Hong Kong.

(3) In Divisions 2 and 4, a reference to a person interested in a charge excludes the company or registered non-Hong Kong company creating the charge.

(4) For the purposes of Divisions 2 and 3, a copy of an instrument in relation to a charge delivered for registration is a certified copy if it is certified as a true copy—

(a) by—

(i) a director or company secretary of the company or registered non-Hong Kong company delivering the copy for registration; or

(ii) a person authorized by that company or registered non-Hong Kong company for the purpose; or

- (b) the subsidiary undertaking or that other person did not provide the information or explanation to the defendant on that ground.
- (7) This section does not affect an auditor's right to apply for an injunction to enforce any of the auditor's rights under section 412.

414. Auditor may provide information to incoming auditor without contravening duties

- (1) A person who is or has been an auditor of a company does not contravene any duty owed by the person as such auditor in law by reason only that the person gives work-related information to another person—
- who is an auditor of the company;
 - who has been appointed as auditor of the company but whose term of office has not yet begun; or
 - to whom the company has offered the position as auditor but who has not yet been appointed.
- (2) Subsection (1) does not apply unless the person who gives work-related information to another person—
- does so in good faith; and
 - reasonably believes that the information is relevant to the performance of that other person's duties as auditor of the company.
- (3) In this section—
- work-related information** (工作資料), in relation to a person who is or has been an auditor of a company, means information of which the person became aware in the capacity of auditor.

Subdivision 5

Auditor's Liability

415. Avoidance of provisions protecting auditor from liability

- (1) This section applies to a provision contained in a company's articles, or in a contract entered into by a company, or otherwise.
- (2) If a provision purports to exempt an auditor of the company from any liability that would otherwise attach to the auditor in connection with any negligence, default, breach of duty or breach of trust occurring in the course

of performance of the duties as auditor in relation to the company, the provision is void.

- (3) If, by a provision, the company directly or indirectly provides an indemnity for an auditor of the company, or an auditor of an associated company of the company, against any liability attaching to the auditor in connection with any negligence, default, breach of duty or breach of trust occurring in the course of performance of the duties as auditor in relation to the company or associated company (as the case may be), the provision is void.
- (4) Subsection (3) does not prevent a company from taking out and keeping in force insurance for an auditor of the company, or an auditor of an associated company of the company, against—
- any liability to any person attaching to the auditor in connection with any negligence, default, breach of duty or breach of trust (except for fraud) occurring in the course of performance of the duties of auditor in relation to the company or associated company (as the case may be); or
 - any liability incurred by the auditor in defending any proceedings (whether civil or criminal) taken against the auditor for any negligence, default, breach of duty or breach of trust (including fraud) occurring in the course of performance of the duties of auditor in relation to the company or associated company (as the case may be).
- (5) Subsection (3) does not prevent a company from indemnifying an auditor of the company against any liability incurred by the auditor—
- in defending any proceedings (whether civil or criminal) in which judgment is given in the auditor's favour or the auditor is acquitted; or
 - in connection with an application under section 903 or 904 in which relief is granted to the auditor by the Court.
- (6) In this section, a reference to performance of the duties of auditor includes—
- making a cessation statement, giving the statement to the company, and requesting the company to comply with the requirement specified in section 422(5) in relation to the statement; and

444. Company must comply with member's request in notice of intent etc.

- (1) If a person requests a copy of the reporting documents, or a copy of the summary financial report, in a relevant notice, the company must comply with the request unless it is prohibited from doing so by section 446.
- (2) The request must be complied with during the period within which a copy of the reporting documents for the relevant financial year would be required to be sent to the person by the company under section 430.
- (3) Subsection (1) does not require a company to comply with a potential member's request unless the potential member becomes a member of the company at least 28 days before the first date on which a copy of the reporting documents for the financial year is sent to a member under section 430(1) or (3).
- (4) In this section—

relevant financial year (有關員才政年度) means the financial year in relation to which the relevant notice has effect under section 442 or 443;

relevant notice (有關通知) means—

- (a) a notice of intent given under section 442(3);
- (b) a notice of revocation given for the purposes of section 442(7)(b); or
- (c) a notice of cessation of statutory election given for the purposes of section 442(9)(b).

445. Additional copy of reports etc. to be sent by company

- (1) If a company has sent a copy of the summary financial report for a financial year to a person under section 441, or in compliance with a request under section 444, the company must, at the person's request, send a copy of the reporting documents for the financial year to the person at the time specified in subsection (3).
- (2) If a company has sent a copy of the reporting documents for a financial year to a person under section 430, the company must, at the person's request, send a copy of the summary financial report for the financial year to the person at the time specified in subsection (3) unless it is prohibited from doing so by section 446.

- (3) The time specified for subsection (1) or (2) is—
 - (a) where a copy of the reporting documents for the financial year is to be laid before the company in general meeting under section 429(1), and the company receives the person's request more than 14 days before the date of that meeting, any time falling at least 7 days before the date of that meeting; or
 - (b) in any other case, any time within 14 days after the date on which the company receives the person's request.
- (4) Subsection (1) or (2) does not require a company to send a copy of the summary financial report or reporting documents for a financial year to a person if—
 - (a) where a copy of the reporting documents for the financial year is laid before the company in general meeting under section 429(1), the person's request is made after the expiry of a period of 6 months after the date of that meeting; or
 - (b) where a copy of the reporting documents for the financial year is sent to every member under section 430(3), the person's request is made after the expiry of a period of 6 months after the date on which the copy is sent.
- (5) Subsection (2) does not require a company to send a copy of the summary financial report for a financial year to a person unless—
 - (a) the company has prepared the summary financial report for the financial year; and
 - (b) when the company sent a copy of the reporting documents for the financial year to the person, the company gave the person a right to request a copy of the summary financial report for the financial year.
- (6) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

- (b) both as director and in place of the company secretary.
- (2) This section applies to—
- (a) any provision of this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); and
- (b) any provision in a company's articles.

480. Provisions as to undischarged bankrupt acting as director

- (1) A person who is an undischarged bankrupt must not act as director of, or directly or indirectly take part or be concerned in the management of, a company, except with the leave of the Court by which the person was adjudged bankrupt.
- (2) A person who contravenes subsection (1) commits an offence and is liable—
- (a) on conviction on indictment to a fine of \$700,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine of \$150,000 and to imprisonment for 12 months.
- (3) The Court must not give leave for the purposes of this section unless notice of intention to apply for it has been served on the Official Receiver.
- (4) If the Official Receiver is of opinion that it is contrary to the public interest that an application under subsection (3) should be granted, the Official Receiver must attend the hearing of, and oppose the granting of, the application.
- (5) In subsection (1)—

company (公司) has the meaning given by section 168C(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

481. Minutes of directors' meetings

- (1) A company must cause minutes of all proceedings at meetings of its directors to be recorded.
- (2) A company must keep the records under subsection (1) for at least 10 years from the date of the meeting.
- (3) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level

5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

482. Minutes as evidence

- (1) Minutes recorded in accordance with section 481, if purporting to be signed by the chairperson of the meeting or by the chairperson of the next directors' meeting, are evidence of the proceedings at the meeting.
- (2) If minutes have been recorded in accordance with section 481 of the proceedings at a meeting of directors, then, until the contrary is proved—
- (a) the meeting is to be regarded as having been duly held and convened;
- (b) all proceedings at the meeting are to be regarded as having duly taken place; and
- (c) all appointments at the meeting are to be regarded as valid.
- (3) Subsection (2)(c) is subject to sections 456(3) and 459(2).

483. Written record of decision of sole director of private company

- (1) If a private company has only one director and the director takes any decision that—
- (a) may be taken in a meeting of directors; and
- (b) has effect as if agreed in a meeting of directors, the director must (unless that decision is taken by way of a resolution in writing) provide the company with a written record of that decision within 7 days after the decision is made.
- (2) If the director provides the company with a written record of a decision in accordance with subsection (1), that record is sufficient evidence of the decision having been taken by the director.
- (3) A company must keep a written record provided to the company in accordance with subsection (1) for at least 10 years from the date of the decision.
- (4) A director who contravenes subsection (1) commits an offence.

- (b) unless the court directs otherwise, a payment is to be regarded as being made in contravention of section 523 if it is made in contravention of both sections 521 and 523.

527. Civil consequences of contravention of section 521

If a payment is made by a company in contravention of section 521—

- (a) the payment is held by the recipient in trust for the company; and
- (b) any director of the company who authorized the payment is jointly and severally liable to indemnify the company for any loss resulting from the payment.

528. Civil consequences of contravention of section 522

- (1) This section applies if a payment is made in connection with a transfer of any undertaking or property of a company, or a subsidiary of a company, in contravention of section 522.
- (2) The payment is held by the recipient in trust for the company or subsidiary.
- (3) If the payment is made by or on behalf of the company, any director of the company who authorized the payment is jointly and severally liable to indemnify the company for any loss resulting from the payment.
- (4) If the payment is made by or on behalf of the subsidiary, any director of the subsidiary who authorized the payment is jointly and severally liable to indemnify the subsidiary for any loss resulting from the payment.

529. Civil consequences of contravention of section 523

- (1) This section applies if a payment is made in connection with a transfer of shares in a company, or a subsidiary of a company, resulting from a takeover offer in contravention of section 523.
- (2) The payment is held by the recipient in trust for those who have sold their shares as a result of the offer made.
- (3) The recipient must bear the expenses in distributing that sum amongst those who have sold their shares.
- (4) If the payment is made by or on behalf of the company, any director of the company who authorized the payment

is jointly and severally liable to indemnify the company for any loss resulting from the payment.

- (5) If the payment is made by or on behalf of the subsidiary, any director of the subsidiary who authorized the payment is jointly and severally liable to indemnify the subsidiary for any loss resulting from the payment.

Division 4

Directors' Service Contract

530. Interpretation

- (1) In this Division—
director (董事) includes a shadow director.
- (2) For the purposes of this Division, a body corporate is not to be regarded as a shadow director of any of its subsidiaries by reason only that the directors, or a majority of the directors, of the subsidiary are accustomed to act in accordance with its directions or instructions.

531. Service contract

- (1) In this Division, a reference to a service contract of a director of a company—
- (a) is a reference to a contract under which—
- (i) the director undertakes personally to perform services, as director or otherwise, for the company or for a subsidiary of the company; or
- (ii) services that the director undertakes personally to perform, as director or otherwise, are to be made available by a third party to the company or to a subsidiary of the company; and
- (b) includes the terms of a person's appointment as director of the company.
- (2) In this Division, a reference to a service contract of a director of a company is not restricted to a contract for the performance of services outside the scope of a director's ordinary duties as director.

603. Company-sponsored proxy's duty to vote in the way specified in appointment of proxy

- (1) This section applies to a person who is named by a company as a proxy, whether the nomination is made in—
 - (a) an instrument of proxy issued by the company in relation to a general meeting; or
 - (b) an invitation to appoint a proxy issued by the company in relation to the meeting.
- (2) If the person has been duly appointed as a proxy by a member entitled to vote at the meeting, that person must, subject to section 588—
 - (a) vote as a proxy—
 - (i) on a show of hands; or
 - (ii) on a poll; and
 - (b) vote in the way specified (if any) by the member in the appointment of proxy.
- (3) If the person has been duly appointed as a proxy by 2 or more members entitled to vote at the meeting and the members specify different ways to vote in their appointment of proxy, the proxy—
 - (a) must, subject to section 588(2), vote on a show of hands in the way specified by the member or members representing a simple majority of the total voting rights that the proxy is authorized to exercise at the meeting; and
 - (b) if there is no majority, must not vote on a show of hands.
- (4) A person who knowingly and wilfully contravenes subsection (2) or (3) commits an offence and is liable to a fine at level 3.

604. Notice required of termination of proxy's authority

- (1) This section applies to a notice that the authority of a person to act as proxy is terminated (*notice of termination*).
- (2) The termination of the authority of a person to act as proxy does not affect—
 - (a) whether there is a quorum at a general meeting (irrespective of whether the proxy has been counted in deciding the question);

- (b) the validity of anything the person does as chairperson of a general meeting; or
- (c) the validity of a poll demanded by the person at a general meeting,

unless the company receives notice of the termination before the commencement of the meeting.

- (3) The termination of the authority of a person to act as proxy does not affect the validity of a vote given by that person unless the company receives notice of the termination—
 - (a) before the commencement of the meeting or adjourned meeting at which the vote is given; or
 - (b) in the case of a poll taken more than 48 hours after it is demanded, before the time appointed for the taking of the poll.
- (4) If the company's articles require or permit members to give notice of termination to a person other than the company, the references in subsections (2) and (3) to the company receiving notice have effect as if they were—
 - (a) references to that person; or
 - (b) references to the company or that person, as the case requires.
- (5) Subsections (2) and (3) have effect subject to any provision of the company's articles that has the effect of requiring notice of termination to be received by the company or another person at a time earlier than that specified in those subsections.
- (6) Subsection (5) is subject to subsection (7).
- (7) A provision of the company's articles is void in so far as it would have the effect of requiring notice of termination to be received by the company or another person earlier than the following time—
 - (a) in the case of a general meeting or adjourned general meeting, 48 hours before the time for holding the meeting or adjourned meeting;
 - (b) in the case of a poll taken more than 48 hours after it was demanded, 24 hours before the time appointed for the taking of the poll.

- (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
 - (b) where the order so directs, the property vests freed from any charge that is to cease to have effect by virtue of the arrangement or compromise.
- (4) If an order provides for the transfer of liabilities under subsection (2), the liabilities are, by virtue of the order, transferred to, and become liabilities of, the transferee.
- (5) If the Court, by an order, makes provision for any matter under subsection (2), the order has no effect to the extent to which it purports to make the provision until an office copy of the order is registered by the Registrar under Part 2.
- (6) 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 (5) must be accompanied by a copy of those articles, or the resolution or agreement, as amended.
- (7) If subsection (6) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.
- (8) In this section—
- liabilities** (法律責任) includes—

- (a) duties of a personal character and incapable of being assigned or performed vicariously under the law; and
 - (b) duties of any other description;
- property** (貝才產) includes—
- (a) rights and powers of a personal character and incapable of being assigned or performed vicariously under the law; and
 - (a) rights and powers of any other description;
- transferee** (受讓人), in relation to an arrangement or compromise proposed for the purpose of a scheme of reconstruction or amalgamation, means the company to which another company's property, undertaking or liabilities, or any part of it or them, is to be transferred under the scheme;
- transferor** (出讓人), in relation to an arrangement or compromise proposed for the purpose of a scheme of reconstruction or amalgamation, means the company whose property, undertaking or liabilities, or any part of it or them, is to be transferred to another company under the scheme.

676. Court may order costs

- (1) This section applies in relation to an application made for the purposes of section 673(2) for an order of the Court sanctioning an arrangement that falls within section 674(2).
- (2) The Court may make any order that it thinks fit about the costs incurred or to be incurred by a member who dissents from the arrangement in opposing the application.
- (3) An order may require the company or any other party to the application to indemnify the member against the costs incurred or to be incurred by the member.
- (4) The Court may only make an order about costs (including the requirement as to indemnification) under this section in favour of the member if it is satisfied that the member was acting in good faith in, and had reasonable grounds for, opposing the application.
- (5) The Court may only make an order about costs under this section against the member if the member's opposition to the application is frivolous or vexatious.

706. Application of Division to convertible securities and debentures

- (1) This Division applies in relation to debentures of a repurchasing company that are convertible into shares in the company, or to securities of a repurchasing company that are convertible into, or entitle the holder to subscribe for, shares in the company, as if those debentures or securities were shares of a separate class of the company. A reference to a holder of shares, and to shares being allotted, is to be read accordingly.
- (2) In this Division, a reference to 90% in number of the shares of any class is—
- in the case of securities mentioned in subsection (1), a reference to 90% of the number of those securities; and
 - in the case of debentures mentioned in subsection (1), a reference to 90% of the total amount payable on those debentures.

707. General offer

- (1) For the purposes of this Division, a listed company's offer to buy back shares in the company is a general offer if—
- it is an offer to buy back 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 a member residing in a place where such an offer is contrary to the law of the place; and
 - those that, at the date of the offer, are held by the repurchasing company; and
 - the terms of the offer are the same—
 - where the offer does not relate to shares of different classes, in relation to all the shares to which the offer relates; or
 - where the offer relates to shares of different classes, in relation to all the shares of each class to which the offer relates.
- (2) In subsection (1)—
- shares** (股份) means shares that have been allotted on the date of the offer.

- (3) In subsection (1)(a)(ii), a reference to shares that are held by the repurchasing company—

- is a reference to shares that the repurchasing company has contracted, unconditionally or subject to conditions being satisfied, to acquire; but
- excludes shares that are the subject of a contract—
 - entered into by the repurchasing company with a holder of shares in that company in order to secure that the holder will accept the offer when it is made; and
 - entered into for no consideration and by deed, for consideration of negligible value, or for consideration consisting of a promise by the repurchasing company to make the offer.

- (4) For the purposes of subsection (1)(b), even though, in relation to all the shares, or all the shares of a class of shares, to which an offer relates, there is a difference in the value of consideration offered for the shares allotted earlier as against the value of consideration offered for those allotted later, the terms of the offer are to be regarded as the same in relation to all the shares concerned if—

- 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;
- the difference in value of consideration merely reflects that difference in entitlement to dividend; and
- but for the difference in the value of consideration, the terms of the offer would be the same in relation to all the shares concerned.

- (5) For the purposes of subsection (1)(b), even though, in relation to all the shares, or all the shares of a class of shares, to which an offer relates, there is a difference in the form of consideration offered, the terms of the offer are to be regarded as the same in relation to all the shares concerned if—

- 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

paragraph (b), or a trustee for a person so entitled or subject.

- (2) An order may be made on the terms that the Court thinks fit.
- (3) An order for the vesting of a property or right in, or its delivery to, a person subject to a liability mentioned in subsection (1)(b), or a trustee for the person, may only be made if it appears to the Court that it would be just to do so for the purpose of compensating the person in respect of the disclaimer.
- (4) On the making of an order for the vesting of a property or right in, or its delivery to, a person, the property or right is vested in the person without conveyance, assignment or transfer.

756. Liabilities of directors etc. of dissolved company continue

Even though a company is dissolved under this Part, the liability (if any) of every director, manager and member of the company continues and may be enforced as if the company had not been dissolved.

757. Registrar may act as dissolved company's or liquidator's representative

- (1) This section applies if—
 - (a) a company has been dissolved under—
 - (i) this Part;
 - (ii) section 226A, 227, 239 or 248 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); or
 - (iii) section 291, 291A or 291AA of the predecessor Ordinance; and
 - (b) it is proved to the Registrar's satisfaction that—
 - (i) the company, if still existing, would be legally or equitably bound to carry out, complete or give effect to a dealing, transaction or matter; and
 - (ii) in order to carry out, complete or give effect to the dealing, transaction or matter, a purely administrative act, that is not discretionary, should have been done by or on behalf of the company, or should be done by or on behalf of the company if still existing.

- (2) The Registrar may do the act, or cause the act to be done, as the company's or the liquidator's or provisional liquidator's representative.
- (3) The Registrar may execute or sign any relevant instrument or document, adding a memorandum stating that the Registrar has done so as the company's or the liquidator's or provisional liquidator's representative.
- (4) An instrument or document executed or signed by the Registrar under subsection (3) has the same effect as if the company, if still existing, had executed the instrument or document.

758. Former director must keep dissolved company's books and papers for 6 years

- (1) If a company is dissolved under this Part or section 226A, 227, 239 or 248 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), every person who was a director of the company immediately before the dissolution must ensure that the company's books and papers are kept for at least 6 years after the date of the dissolution.
- (2) Subsection (1) does not apply to the books and papers that are otherwise required to be kept by another person under this Ordinance or any other Ordinance.
- (3) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 3.
- (4) If a person is charged with an offence under subsection (3), it is a defence to establish that the person had reasonable grounds to believe, and did believe, that a competent and reliable person—
 - (a) was charged with the duty of ensuring that subsection (1) was complied with; and
 - (b) was in a position to discharge that duty.

759. Court's power to wind up dissolved companies

The Court's powers under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) to wind up a company are not affected by the fact that—

- (a) the company's name has been struck off the Companies Register under section 746 or 747 and the company is dissolved under that section; or

- (ii) had not complied with section 333 of the predecessor Ordinance as in force immediately before that commencement date.
- (2) A non-Hong Kong company falling within subsection (1) (a) must, within one month after the establishment of the place of business, apply to the Registrar for registration as a registered non-Hong Kong company.
 - (3) A non-Hong Kong company falling within subsection (1) (b) must, within one month after the commencement date of this Part, apply to the Registrar for registration as a registered non-Hong Kong company.
 - (4) An application under subsection (2) or (3)—
 - (a) must be in the specified form;
 - (b) must contain the particulars prescribed by procedural regulations;
 - (c) must contain the required details of at least one person who is proposed to be an authorized representative on registration of the non-Hong Kong company;
 - (d) must be accompanied by the documents prescribed by procedural regulations; and
 - (e) must be delivered to the Registrar.
 - (5) If none of the non-Hong Kong company's domestic names is in Roman script or in Chinese, an application under subsection (2) or (3) must also contain—
 - (a) where the company has one domestic name, a certified translation of that name in English or Chinese, or both; or
 - (b) where the company has more than one domestic name, a certified translation of one of those names in English or Chinese, or both.
 - (6) If a non-Hong Kong company contravenes subsection (2) or (3), the company, every responsible person of the company, and every agent of the company who authorizes or permits the contravention, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

777. Registration of non-Hong Kong company

- (1) On receiving an application under section 776(2) or (3), the Registrar must register the non-Hong Kong company as a registered non-Hong Kong company.
- (2) If the application is not required by section 776(5) to contain a certified translation of a domestic name, the Registrar must enter in the Companies Register, as a corporate name—
 - (a) the non-Hong Kong company's domestic name in Roman script, or that company's domestic name in Chinese, or both; and
 - (b) the certified translation, in English or Chinese, of a domestic name (if any) contained in the application pursuant to procedural regulations.
- (3) If the application contains a certified translation of a domestic name for the purposes of section 776(5), the Registrar must enter that translation in the Companies Register as a corporate name.
- (4) On registering a non-Hong Kong company under subsection (1), the Registrar—
 - (a) must issue to the company a certificate of registration, with the Registrar's signature, certifying the registration; and
 - (b) must register the application and accompanying documents.

Division 3

Addition, Change or Cessation of Corporate Name

778. Company must notify Registrar of addition, change or cessation of name or translation of name

- (1) If, as a result of an addition of domestic name, a registered non-Hong Kong company has a new domestic name in Roman script or in Chinese, the company must, within one month after the date of the addition, deliver to the Registrar for registration a return containing the particulars of the addition.
- (2) If, as a result of a change to a domestic name, a registered non-Hong Kong company has a new domestic name, the company must, within one month after the date of the

Division 8

Striking off

796. Registrar may send inquiry letter to registered non-Hong Kong company

- (1) If the Registrar has reasonable cause to believe that a registered non-Hong Kong company has ceased to have a place of business in Hong Kong, the Registrar may send to the company by post a letter inquiring whether the company has ceased to have a place of business in Hong Kong.
- (2) A letter must be addressed—
 - (a) to an authorized representative of the registered non-Hong Kong company whose required details are shown in the Companies Register; or
 - (b) if no required details of authorized representatives of the company are shown in the Companies Register, to any place of business established by the company in Hong Kong.
- (3) If the Registrar is of the opinion that a letter under subsection (1) is unlikely to be received by the registered non-Hong Kong company, the Registrar may, instead of sending a letter under that subsection, publish in the Gazette a notice that, unless cause is shown to the contrary, the company's name will be struck off the Companies Register, and the company will no longer be a registered non-Hong Kong company, at the end of 3 months after the date of the notice.

797. Registrar must follow up under certain circumstances

- (1) This section applies if, within one month after sending a letter under section 796(1)—
 - (a) the Registrar does not receive a reply to the letter; or
 - (b) the Registrar receives a reply to the letter to the effect that the registered non-Hong Kong company has ceased to have a place of business in Hong Kong.
- (2) The Registrar must, within 30 days after the end of that one month—

- (a) subject to subsection (4), send to the registered non-Hong Kong company by registered post another letter—

- (i) referring to the letter sent under section 796(1); and
- (ii) stating that—
 - (A) no reply to it has been received; or
 - (B) the Registrar has received a reply to it to the effect that the company has ceased to have a place of business in Hong Kong; and

- (b) publish in the Gazette a notice that, unless cause is shown to the contrary, the company's name will be struck off the Companies Register, and the company will no longer be a registered non-Hong Kong company, at the end of 3 months after the date of the notice.

- (3) A letter must be addressed—

- (a) to an authorized representative of the registered non-Hong Kong company whose required details are shown in the Companies Register; or
- (b) if no required details of authorized representatives of the company are shown in the Companies Register, to any place of business established by the company in Hong Kong.

- (4) The Registrar is not required to send a letter to the registered non-Hong Kong company under subsection (2)(a) if the Registrar is of the opinion that the letter is unlikely to be received by the company.

798. Registrar may strike off registered non-Hong Kong company's name

- (1) After publishing a notice under section 796(3) or 797(2)(b), the Registrar may, unless cause is shown to the contrary, strike the registered non-Hong Kong company's name off the Companies Register at the end of 3 months after the date of the notice.
- (2) The Registrar must publish in the Gazette a notice indicating that the non-Hong Kong company's name has been struck off the Companies Register.

- (4) On making an order on the extent of a person's liability under paragraph (a) of subsection (2), the court may further order that the person is also liable to indemnify another person against any liability to which that other person may be subject under paragraph (b) or (c) of that subsection.
- (5) If the inspector who conducted the investigation was appointed under section 840 or 841(1), the interim report or final report of the investigation may, if the inspector thinks fit, include a recommendation as to the extent to which the expenses of the investigation should be repaid by a person referred to in paragraph (a), (b) or (c) of subsection (2).
- (6) An inspector must include a recommendation mentioned in subsection (5) in the interim report or final report of the investigation if so directed by the Financial Secretary.
- (7) The recommendation of an inspector under subsection (5) or (6)—
- (a) in relation to a person referred to in paragraph (a) of subsection (2)—
 - (i) must not be disclosed to the court until after the person has been convicted; and
 - (ii) does not bind the court; and
 - (b) in relation to a person referred to in paragraph (b) or (c) of subsection (2), does not bind the Financial Secretary.
- (8) For the purposes of this section, the expenses of an investigation include—
- (a) reasonable expenses incidental to the investigation; and
 - (b) such reasonable sums for general staff costs and overhead expenses of the Government, and for the cost of insurance for the inspector, as are determined by the Financial Secretary.
- (9) An amount that is repayable to the Government under subsection (2) is recoverable as a civil debt due to the Government.

Division 3

Enquiry into Company's Affairs by Financial Secretary

867. Interpretation

In this Division—

company (公司)—

- (a) in section 868(a), includes a registered non-Hong Kong company;
- (b) in section 868(b), includes a non-Hong Kong company.

868. Circumstances under which Financial Secretary may enquire into company's affairs

The Financial Secretary may enquire into a company's affairs if—

- (a) the Financial Secretary considers that doing so would assist the Financial Secretary in deciding whether to appoint an inspector under section 840(2); or
- (b) it appears to the Financial Secretary that there is a good reason for doing so.

869. Financial Secretary may require production of records and documents etc.

- (1) For the purpose of enquiring into a company's affairs under section 868, if the Financial Secretary considers that a record or document is or may be relevant to the enquiry, the Financial Secretary may, by notice in writing, require—

- (a) the company; or
- (b) any other person who appears to the Financial Secretary to be in possession of the record or document,

to produce the record or document within the time and at the place specified in the notice.

- (2) If a company or a person produces a record or document in compliance with a requirement imposed under subsection (1), the Financial Secretary may—

- (a) make copies, or otherwise record the details, of the record or document; and

a body corporate which may be wound up under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) should be wound up, the Financial Secretary may present a petition for it to be wound up.

- (2) On a petition by the Financial Secretary under subsection (1), the Court may make a winding up order if the Court thinks it just and equitable for the body corporate to be wound up.
- (3) If it appears to the Financial Secretary from any specified materials that—
- a company's or non-Hong Kong company's affairs are being or have been conducted in a manner unfairly prejudicial to the interests of the members generally or of one or more members; or
 - an actual or proposed act or omission of a company or non-Hong Kong company (including one done or made on its behalf) is or would be so prejudicial,

the Financial Secretary may, whether or not a petition has been presented under subsection (1), present to the Court a petition for an order to be made under section 725(1)(b) or (2).

- (4) If it appears to the Financial Secretary from any specified materials that, in relation to a company or non-Hong Kong company, a person—
- has engaged, is engaging or is proposing to engage in any conduct specified in section 728(1)(a); or
 - before the commencement date of section 728, had engaged, was engaging or was proposing to engage in any conduct specified in section 728(2)(a), and the engagement or proposal still subsists,
- the Financial Secretary may apply to the Court for the remedies under section 729(2).
- (5) If it appears to the Financial Secretary from any specified materials that, in relation to a company or non-Hong Kong company, a person—
- has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing specified in section 728(1)(b); or
 - before the commencement date of section 728, had refused or failed, was refusing or failing, or was

proposing to refuse or fail, to do an act or thing that the person was required by the predecessor Ordinance and is required by this Ordinance to do, and the refusal, failure or proposal still subsists,

the Financial Secretary may apply to the Court for the remedies under section 729(2).

- (6) If it appears to the Financial Secretary from any specified materials that it is expedient in the public interest that a disqualification order be made under section 168J(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) against any person who is or has been a director or shadow director of—
- a company as defined by section 2(1);
 - an unregistered company as defined by section 326(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (other than a partnership, whether limited or not, or an association), wherever incorporated, that—
 - is carrying on business in Hong Kong, or has carried on business in Hong Kong; and
 - may be wound up under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); or
 - a registered non-Hong Kong company,
- the Financial Secretary may apply to the Court for such an order to be made against that person.

(7) In this section—

specified materials (指明材料) means—

- any report made on, or any record, document or information obtained in, an investigation under Division 2 by an inspector or a delegate of an inspector; or
- any record, document or information obtained in an enquiry under Division 3 by the Financial Secretary or a delegate of the Financial Secretary.

880. Preservation of secrecy

- (1) Except in the performance of any function under this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), or for

Division 4

Other Miscellaneous Provisions

905. Costs in action by company etc.

- (1) This section applies where—
- (a) a company is a plaintiff in an action or other legal proceedings; and
 - (b) it appears, by credible testimony, to the court having jurisdiction in the matter that there is reason to believe the company will be unable to pay the defendant's costs if the defendant succeeds in the defence.
- (2) Without limiting the powers of the court under any other Ordinance, the court may—
- (a) require sufficient security to be given for those costs; and
 - (b) stay all proceedings until the security is given.
- (3) In this section—
- company* (公司) means—
- (a) a limited company; or
 - (b) a company incorporated outside Hong Kong.

906. Saving as to private prosecution

Nothing in this Ordinance relating to the institution of criminal proceedings by the Secretary for Justice precludes any person from instituting or carrying on any such proceedings.

907. Saving for privileged communication

If proceedings are instituted under this Ordinance against any person by the Secretary for Justice, nothing in this Ordinance is to be regarded as requiring any person to disclose any information that the person is entitled to refuse to disclose on grounds of legal professional privilege.

908. Paperless holding and transfer of shares and debentures

Schedule 8, which contains amendments relating to paperless holding and transfer of shares and debentures, has effect.

909. Power to make regulations

- (1) The Financial Secretary may make regulations for any matter required or permitted to be prescribed under this Ordinance.
- (2) Subsection (1) does not apply if the Chief Executive in Council or the Financial Secretary is empowered under another Part to make regulations for the matter.

910. Supplementary provisions for regulations made under this Ordinance

Subsidiary legislation made by the Chief Executive in Council or the Financial Secretary under this Ordinance may—

- (a) make different provision for different cases or classes of cases; and
- (b) contain any consequential, transitional, saving, incidental or supplementary provisions, that the Chief Executive in Council or the Financial Secretary (as the case may be) thinks fit.

911. Financial Secretary and Registrar may amend Schedules

- (1) The Financial Secretary may, by notice published in the Gazette, amend Schedule 1, 2, 3, 4, 5 or 7.
- (2) The Registrar may, by notice published in the Gazette, amend Schedule 6.