

office copy of the order to the Registrar for registration in accordance with Section 289. The company and every responsible person will commit an offence for failure to file the said order within the specified time limit.

Equivalent Provisions in CO

289.02 There is no equivalent provision in the CO.

Transitional Arrangements

289.03 Sections 47A to 48 of the CO (so far as they relate to the giving of financial assistance by an unlisted company) continue to apply to the giving of financial assistance by an unlisted company if the directors' statement under Section 47E(6) of the CO was made before the commencement date of Division 5 of Part 5 of the Companies Ordinance (*i.e.* 3 March 2014) (Section 46(1) of Schedule 11 of the Companies Ordinance).

For avoidance of doubt, Division 5 of Part 5 does not apply to the giving of financial assistance under CO (Section 46(2) of Schedule 11 of the Companies Ordinance).

Part 6

DISTRIBUTION OF PROFITS AND ASSETS

- Division 1 Preliminary
- Division 2 Prohibitions and Restrictions
- Division 3 Provisions Supplementary to Division 2
- Division 4 Specified Financial Statements

Brief Overview of Part 6

Part 6 of the new Companies Ordinance deals with the requirement for distribution of profits and assets (Sections 290 to 306).

Distribution of profits can only be made out of profits available for distribution which is its accumulated realized profits (so far as previously not distributed or capitalized) less its accumulated realized losses (so far as not previously written off in a reduction or reorganization of capital).

PART 6 DISTRIBUTION OF PROFITS AND ASSETS

Division 1 Preliminary

290. Interpretation

(1) In this Part—
called up share capital (已催繳股本), in relation to a company, means so much of its share capital as equals the aggregate amount of the calls made on its shares (whether or not those calls have been paid), together with—

- (a) any share capital paid up without being called; and
 - (b) any share capital to be paid on a specified future date under the articles, the terms of allotment of the relevant shares, or any other arrangements for payment of those shares, and
- uncalled share capital** (未催繳股本) is to be read accordingly;

Excepted distribution 2: redemption or buy-back of the company's own shares out of capital or unrealized profits

These are excepted because of the separate requirements and protection afforded under Division 4 of Part 5 of the new Ordinance. Under the new Ordinance, share redemptions and buy-backs are not limited to private companies, but would include public companies as well (Section 233). Separate requirements for share buy-backs are set out for listed and unlisted companies respectively (Section 236).

Excepted distribution 3: reduction of capital which are unpaid or repayment of paid up capital

These are excepted because there are separate requirements and protections for reduction of capital set out under Division 3 of Part 5 of the new Ordinance. Under the new Ordinance, a court-free procedure for reduction of capital is provided under Sections 215 to 225, and the main requirement being a solvency statement signed by all the directors of the company.

Excepted distribution 4: distribution of assets to members upon winding up

When a company winds up, the statutory provisions relating to distributions will take effect, and shareholders will only receive distributions after all the company's creditors have been paid off.

Excepted distribution 5: financial assistance provided by the company to a member

These are subject to the express requirements and protections set out in Sections 283 – 285 of the new Ordinance.

Equivalent Provisions in CO

290.03

Sections 79A(1), 79A(2), 79C(2), and 79F(2) of the CO are restated in substance.

291. Realized profits and losses

(1) In this Part, a reference to realized profits or realized losses of a company is a reference to those profits or losses of the company that are regarded as realized profits or realized losses for the purpose of any financial statements prepared by the directors in accordance with principles generally accepted, at the time when the financial statements are prepared, with respect to the determination for accounting purposes of realized profits or realized losses.

(2) Subsection (1) does not affect any specific provision (whether in an Ordinance or otherwise) under which profits or losses of any description are regarded as realized.

(3) If, after making all reasonable enquiries, a company's directors are unable to determine whether or not a particular profit or loss made before 1 September 1991 is realized, they may treat the profit as realized, and the loss as unrealized, for the purposes of this Part.

COMMENTARY

Overview

This section provides that “realized profits” or “realized losses”, in relation to a company's accounts, are those profits or losses of the company which fall to be treated as realized in accordance with principles generally accepted for accounting purpose for determination of realized profits or realized losses at the time accounts are prepared. Sections 292 to 294 of the Ordinance further provide the determination of “realized profits” or “realized losses”.

291.01

Equivalent Provisions in CO

This section restates Sections 79A(3) and 79B(4) of the CO.

291.02

292. Certain amount to be regarded as realized profit or loss

(1) For the purposes of this Part, a provision other than an amount specified in subsection (2) is to be regarded as a realized loss.

(2) The amount is one written off or retained by way of providing for a diminution in value of a fixed asset appearing on a revaluation of—

- (a) all of the company's fixed assets; or
- (b) all of the company's fixed assets other than goodwill.

(3) For the purposes of subsection (2), any consideration by the directors of the value at a particular time of a fixed asset is to be regarded as a revaluation of the asset if—

- (a) in the case of a listed company, the conditions specified in subsection (4)(a) and (b) are satisfied; or
- (b) in the case of any other company—
 - (i) where the referential financial statements are the financial statements specified in section 304, the conditions specified in subsection (4)(a) and (b) are satisfied; or
 - (ii) where the referential financial statements are the financial statements specified in section 305 or 306, the condition specified in subsection (4)(a) is satisfied.

- (4) The conditions are—
- (a) that the directors are satisfied that the aggregate value at that time of the company's fixed assets is not less than the aggregate amount at which they are for the time being stated in the financial statements; and
 - (b) that it is stated in a note to the referential financial statements that—
 - (i) the directors have considered the value of the company's fixed assets without actually revaluing them;
 - (ii) the directors are satisfied that the aggregate value at the time of consideration of those assets is or was not less than the aggregate amount at which they are or were for the time being stated in the financial statements; and
 - (iii) accordingly, by virtue of this subsection, amounts are stated in the referential financial statements on the basis that a revaluation of the company's fixed assets is to be regarded as having taken place at that time.
- (5) For the purposes of this Part, if—
- (a) on the revaluation of a fixed asset, an unrealized profit is shown to have been made; and
 - (b) on or after the revaluation, a sum is written off or retained for depreciation of the fixed asset over a period, the amount by which the sum exceeds the projected sum in relation to the depreciation of that asset over the period is to be regarded as a realized profit made over the period.
- (6) In determining whether a company has made a profit or loss on an asset for the purposes of subsection (5), the value given to the asset in the earliest available record of its value made on or after its acquisition by the company is to be regarded as the cost of the asset if—
- (a) there is no record of the original cost of the asset; or
 - (b) a record of the original cost of the asset cannot be obtained without unreasonable expense or delay.
- (7) In subsection (5)—
- projected sum** (預計款項), in relation to a depreciation of a fixed asset, means a sum that would have been written off or retained for depreciation if the revaluation of the asset had not been made.
- (8) For the purposes of this section, an asset of a company is to be regarded as a fixed asset if it is intended for use in the company's activities,

or otherwise to be held for the purpose of the company's activities, on a continuing basis.

COMMENTARY

Overview

Any provision in account is treated as a realized loss by this Section 292 of the Ordinance except that the provision for revaluation for diminution in value of a fixed asset arises on revaluation of all the fixed assets or all the fixed assets other than goodwill. To qualify for the exception, the directors have to comply with the conditions specified in Subsection 292(4) of the Ordinance.

292.01

The general rule is that if a sum is written off or retained with respect to the original value/cost of a fixed asset, which is defined as the "projected sum" under Section 292(7) of the new Ordinance, it will be treated as a realized loss. However, if that asset is revalued and an unrealized profit is made, the difference between the revaluation and the original costs of the fixed assets, and the difference between the new and original depreciation charge, will be treated as a realized profit respectively.

Meaning of "fixed asset"

The meaning of "fixed asset" is not expressly set out in the new Ordinance. Reference must therefore be made to the common law. In *Ammonia Soda Co Ltd v Chamberlain* [1918] 1 Ch 266, Swinfen Eady LJ explained the difference between fixed assets and current assets at 286-7:

292.02

"...What is fixed capital? That which a company retains, in the shape of assets upon which the subscribed capital has been expended, and which assets either themselves produce income, independent of any further action by the company, or being retained by the company are made use of to produce income or gain profits. A trust company formed to acquire and hold stocks, shares, and securities, and from time to time to divide the dividends and income arising therefrom, is an instance of the former. A manufacturing company acquiring or erecting works with machinery and plant is an instance of the latter. In these cases the capital is fixed in the sense of being invested in assets intended to be retained by the company more or less permanently and used in producing an income. What is circulating capital? It is a portion of the subscribed capital of the company intended to be

721. Minority shareholders' right to be bought out by repurchasing company

(1) This section applies if the holder of any shares requires the repurchasing company to buy back the shares under Section 718.

(2) Unless the Court makes an order under subsection (3), the repurchasing company is entitled and bound to buy back the shares on the terms of the general offer or on other terms as agreed between that holder and the repurchasing company.

(3) The Court may, on application by the holder or repurchasing company, order that the repurchasing company is entitled and bound to buy back the shares on the terms specified in the order.

(4) For the purposes of subsection (2), if the general offer falls within Section 720(5), the terms of the general offer are to be regarded as including the particulars and statements included in the notice for the purposes of that section.

COMMENTARY

Overview

721.01 If the repurchasing company is required to buy back the minority shares, the repurchasing company is entitled and is bound to buy back the shares on the terms of the general offer or on other terms as agreed between that shareholder and the repurchasing company, unless the Court makes an order specifying terms.

Equivalent Provisions in CO

721.02 This section is comparable to regulation 8 of Companies (Forms) Regulations (Cap. 32B) and paragraphs 11 and 13 of 13th Schedule of the CO.

Part 14

REMEDIES FOR PROTECTION OF COMPANIES' OR MEMBERS' INTERESTS

- Division 1** Preliminary
- Division 2** Remedies for Unfair Prejudice to Members' Interests
- Division 3** Remedies for Others' Conduct in relation to Companies etc.
- Division 4** Derivative Action for Remedies for Misconduct against Companies etc.
- Division 5** Members' Inspection of Company's Records

Brief Overview of Part 14

Introduction

Part 14 of the Companies Ordinance restates with improved drafting and some extensions the following provisions in the predecessor CO relating to the remedies available for protection of companies' or members' interests:

- Section 168A of CO (the unfair prejudice remedy) which is now in Division 2 of Part 14 of the Companies Ordinance; and
- Sections 168BC to 168BK of CO (statutory derivative action) which is now in Division 3 of Part 14 of the Companies Ordinance,

Differences with previous regime

The main differences from the previous regime are:

- (i) The scope of the unfair prejudice remedy is extended to cover proposed acts and omissions.
Section 168A(1) of the CO provides that a member of a company may petition to the court for the company to be wound up

if the affairs of the company are being or have been conducted in a manner unfairly prejudicial to the interests of the members generally or of some part of the members. There was uncertainty as to whether, under Section 168A(1) of the CO, a member can bring an action for unfair prejudice if a course of action is only at the proposal stage, or if there is only a threat to do or not to do something.

The Companies Ordinance now extends the scope of the unfair prejudice remedy to cover proposed acts and omissions:

- Sections 722 to 727 restate the unfair prejudice remedy provisions under Section 168A of the CO.
- Section 724(1)(b) provides that the court may exercise the power to grant remedies under these sections if there is any actual or proposed act or omission of the company (including one done or made on behalf of the company) which is or would be prejudicial to the interests of the members.
- The remedies that may be granted by the court under Section 725 are therefore extended to cover an order restraining the proposed act or requiring the doing of an act that the company has proposed to omit to do.

- (ii) The court's discretion in granting relief in cases of unfair prejudice is enhanced.

Section 168A(2) of the CO provided that orders made by the court (other than for payment of damages and interest) must be "with a view to bringing to an end the matters complained of". This prevents the court from granting a remedy which does not meet that requirement. This phrase has not been included in Section 725.

In order to enhance the court's discretion in granting relief in cases of unfair prejudice, Section 725 further provides that the Court may make any order that it thinks fit for giving relief in respect of the matter complained of.

The rule in Foss v Harbottle

At the outset we should remind ourselves of the rule in *Foss v Harbottle* (1843) 2 Hare 461, 67 ER 189: 'if there is a wrong done to a company, only the company itself has the right to sue and not its shareholders'. There are two limbs to the rule: (i) the proper plaintiff rule, that is where there is a wrong to the company than it is the proper plaintiff; and (ii) the irregularity principle, under which members cannot sue for a mere irregularity which can be cured

by a general meeting¹. Historically this has limited the ability of shareholders to seek remedies. Statute and case law has evolved to provide means of redress.

Exceptions to rule in Foss v Harbottle

The rule in *Foss v Harbottle* poses difficulties to the minority shareholders in particular because the decision for suing on behalf of the company will usually be dominated by the majority. For this reason, the minority members may not normally be able to sue for wrongs done to the company and neither can they complain about irregularities in the conduct of its internal affairs.

Common law derivative action

A common law exception to the rule in *Foss v Harbottle* is a derivative action. Under a derivative action, where there is a wrong to the company, but it does not institute proceedings, the shareholder can sue in the name of the company and recover damages on its behalf. In general a common law derivative action can be brought: (i) in respect of *ultra vires* or illegal conduct; and (ii) when there is a fraud on the company². Fraud on the company, commonly known as fraud on the minority, involves abuse or misuse of power, e.g. property or advantage monopolized for advantage of majority to exclusion of minority, and does not cover a case of negligence. See *World One Investments Ltd v Chow Cheuk Lap* [2013] 3 HKLRD 701 (derivative action not properly constituted as substance of plaintiff's claim was negligence). A plaintiff also has to plead and show control of the company by the wrongdoers such as to enable them to stifle any proposed action against them. See *Waddington Ltd v Chan Chun Hoo* (2008) 11 HKCFAR 370

Statutory exceptions

Apart from the common law remedy for shareholders, there are the following statutory protections:

- Under Section 168BC of Part IVAA of the CO (statutory derivative action) which is now Division 4 of Part 14 of the Companies Ordinance;

¹ Lo & Qu "Law of Companies in Hong Kong" (Sweet & Maxwell, 2013) paras.10.009-10.014

² Lo & Qu "Law of Companies in Hong Kong" (Sweet & Maxwell, 2013) paras.10.016-10.029 for the principles on a derivative action.

- Sections 152FA to 152FE (members' inspection of company records) which is now Division 5 of Part 14 of the Companies Ordinance; and
- Section 350B (the statutory injunction remedy) which is now Division 4 of Part 14 of the Companies Ordinance.

PART 14

REMEDIES FOR PROTECTION OF COMPANIES' OR MEMBERS' INTERESTS

Division 1 Preliminary

722. Interpretation

- (1) In this Part—
company (公司) includes a non-Hong Kong company.
- (2) In this Part, 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.

COMMENTARY

Overview

722.01 This section sets out the definition of the term "company" in Part 14.

The term "company" is defined in Section 2(1) to mean "a company formed and registered under the Companies Ordinance or an existing company."³ Section 722(1) further expands the definition of the term "company" to include a non-Hong Kong company.⁴

If a company does not have articles then the instrument constituting or defining the constitution of the company will be treated as articles for Part 14 (Section 722(2)).

Equivalent Provisions in CO

722.02 There is no equivalent provision in the CO.

³ For definition of existing company see section 2(1).

⁴ For definition of a non-Hong Kong company see section 2(1).

Division 2 Remedies for Unfair Prejudice to Members' Interests

723. Interpretation

- (1) In this Division, a reference to a member of a company includes—
- (a) the personal representative of a person who, immediately before the person's death, was a member of the company; and
 - (b) a trustee of, or a person beneficially interested in, the shares of the company by virtue of the will or intestacy of another person who, immediately before that other person's death, was a member of the company.
- (2) In this Division, a reference to a past member of a company includes the personal representative of a person who, immediately before the person's death, was a past member of the company.
- (3) For the purposes of this Division, a person is not a past member of a company unless—
- (a) the person was, but is no longer, a member of the company; and
 - (b) the person ceased to be such a member on or after 15 July 2005.

COMMENTARY

Overview

This section sets out the definition of member of a company in Division 2 of Part 14.

Section 112 of the predecessor CO provided that a member is a person who agreed to become a member and whose name was entered in the register of members of the company, and this included the founder members who are deemed to have agreed to become members. Sections 723(1) and 723(2) now expand the meaning of member to include:

- personal representatives of a deceased member;
- trustee of or person beneficially interested in the share by the will or intestacy of a deceased member; and
- personal representative of a past member.

A past member of a company is a person who is no longer a member of the company since 15 July 2005.

company must *within 7 days* after the decision of the directors for revision deliver to the Registrar for registration:

- a warning statement,
- in the specified form,

that the financial statements *will be so revised*.

The company and every responsible person² commits an offence for failure to file the said warning statement within the specified time limit.

Revision regulation prescribed in Cap. 622F

The Financial Secretary has, pursuant to Section 450 of the Companies Ordinance, on 19 March 2013 made this Cap. 622F Companies (Revision of Financial Statements and Reports) Regulation (the “Revision Regulation”), which was further amended by the Companies (Revision of Financial Statements and Reports) (Amendment) Regulation 2013 for the detailed requirements and arrangements.

Accordingly, note that:

- this Cap. 622F Revision Regulation largely restates the old Companies (Revision of Accounts and Reports) Regulation (Cap.32N); and
- took effect upon the commencement of Section 450 of the new Companies Ordinance (3 March 2014).

The Revision Regulation comprises of the following six parts:

Parts	Matters
1	Definitions
2	Revised statements of financial position, revised directors' reports and revised summary financial reports - contents
3	Revised statements of financial position, revised directors' reports and revised summary financial reports - requirements of the approval and signature
4	Revised statements of financial position, revised directors' reports and revised summary financial reports - effects
5	Auditor's report on revised financial statements
6	Company's obligations to inform of the revisions made to the company's financial statements or directors' reports

² Responsible person is defined in section 3 of the Companies Ordinance.

The Parts of the Regulation summarizes the following principles:

Part 1 contains preliminary provisions. Section 2 of this Part 1 defines or otherwise explains certain expressions used in the Regulation;

Part 2 provides for the contents required to be included in revised financial statements, revised directors' reports and revised summary financial reports;

Part 3 sets out the requirements relating to the approval and signature of revised statements of financial position, revised directors' reports and revised summary financial reports;

Part 4 states that, from the date of revision onwards, the Ordinance has effect with respect to the revised financial statements, revised directors' reports and revised summary financial reports;

Part 5 provides for the preparation of an auditor's report on revised financial statements; and

Part 6 imposes obligations on a company to inform relevant parties of the revisions made to the company's financial statements or directors' reports.

In summary, Section 449 of the new Companies Ordinance provides that a company may voluntarily revise its financial statements and make necessary consequential revisions to the summary financial reports and the directors' reports. The Financial Secretary has, pursuant to Section 450 of the Companies Ordinance, on 19 March 2013 made Cap. 622F Companies (Revision of Financial Statements and Reports) Regulation, which was amended by the Companies (Revision of Financial Statements and Reports) (Amendment) Regulation 2013 for the detailed requirements and arrangements.

As previously stated, Cap. 622F basically restates the repealed Companies (Revision of Accounts and Reports) Regulation (Cap.32N) with necessary modifications to align the above mentioned requirements and arrangement with the provisions on accounts and audit in accordance with Part 9 of the new Companies Ordinance.

COMPANIES (REVISION OF FINANCIAL STATEMENTS AND REPORTS) REGULATION (CAP. 622F)

PART 1 PRELIMINARY

1. Commencement

This Regulation comes into operation on the same day on which Section 450 of the Companies Ordinance (Cap.622) comes into operation.

(Omitted as spent—E.R. 1 of 2014)

financial statements will be deemed to have replaced the original one from the date of the revision.⁴

F10.02 **Equivalent Provision in CO**

This provision is comparable to Sections 9(1) and 9(2) of the repealed Companies (Revision of Accounts and Reports) Regulation (Cap.32N).

11. Effect of revised directors' report

(1) On the directors of a company approving a revised directors' report of the company, and complying with section 5(2) or (3) (as the case may be) and section 5(4), the Ordinance has effect with respect to the revised directors' report as if the revised directors' report were, as from the date of revision, the directors' report of the company in place of the original directors' report.

(2) Without limiting subsection (1), if, as at the date of revision, any of the following provisions has yet to be complied with by the company, the revised directors' report is, as from that date, the directors' report of the company for the financial year concerned for the purposes of that provision—

- (a) where a copy of the original financial statements was sent to a member under section 430(1) of the Ordinance—
 - (i) section 429(1) of the Ordinance;
 - (ii) section 435(1) of the Ordinance;
 - (iii) section 662 of the Ordinance; or
- (b) where a copy of the original financial statements was sent to a member under section 430(3) of the Ordinance—
 - (i) section 435(1) of the Ordinance;
 - (ii) section 662 of the Ordinance.

COMMENTARY

Overview

F11.01 Under Article 11 of the Revised Regulation, if the revised directors' reports have been properly complied with this Regulation, the revised directors' reports will be deemed to have replaced the original one from the date of revision.⁵

⁴ For definition of date of revision see section 2 of Companies (Revision of Financial Statements and Reports) Regulation (Cap 622F).

⁵ For definition of date of revision see section 2 of Companies (Revision of Financial Statements and Reports) Regulation (Cap 622F).

Equivalent Provision in CO

This provision is comparable to Sections 9(3) and 9(4) of the repealed Companies (Revision of Accounts and Reports) Regulation (Cap.32N).

F11.02

12. Effect of revised of summary financial report

(1) On the directors of a company approving a revised summary financial report of the company, and complying with section 6(2) or (3) (as the case may be) and section 6(4), the Ordinance has effect with respect to the revised summary financial report as if the revised summary financial report were, as from the date of revision, the summary financial report of the company in place of the original summary financial report.

(2) Without limiting subsection (1), the revised summary financial report is, as from the date of revision, the summary financial report of the company for the financial year concerned for the purposes of section 446(1) and (2) of the Ordinance.

COMMENTARY

Overview

Under Article 12 of the Revised Regulation, if the revised summary financial report has been properly complied with in accordance to this Regulation, the revised summary financial report will be deemed to have replaced the original one from the date of revision.⁶

F12.01

Equivalent Provision in CO

This provision is comparable to Sections 9(5) and 9(6) of the repealed Companies (Revision of Accounts and Reports) Regulation (Cap.32N).

F12.02

PART 5

AUDITOR'S REPORT ON REVISED FINANCIAL STATEMENTS

13. Auditor's report on revised financial statements

(1) Subject to subsection (2), the current auditor of a company must prepare a report for the members of the company on any revised financial statements of the company.

⁶ For definition of date of revision see section 2 of Companies (Revision of Financial Statements and Reports) Regulation (Cap. 622F).

- (b) while a director of the company—
- (i) the person's services as a director of a subsidiary undertaking of the company; or
 - (ii) the person's other services in connection with the management of the affairs of the company or a subsidiary undertaking of the company;

retirement benefits (退休利益), in relation to a person—

- (a) includes—
- (i) any lump sum, allowance, gratuity, periodical payment or other like benefit, any other property, or any other benefit whether in cash or otherwise—
 - (A) given or to be given on or after the retirement or death of the person (including any annuity or other benefit paid or payable under any insurance policy on or after the retirement or death of the person);
 - (B) given or to be given in anticipation of the retirement of the person; or
 - (C) given or to be given in connection with the person's service rendered before the retirement or death of the person; and (L.N. 76 of 2013)
 - (ii) any benefit paid or to be paid under the Mandatory Provident Fund Schemes Ordinance (Cap 485); but
- (b) excludes—
- (i) any benefit which has been or is to be afforded solely because of the person's personal injury (including any incapacity or death caused by such injury) by accident arising out of and in the course of employment; and
 - (ii) any retirement gift of a value (or, in the case of a retirement gift made otherwise than in cash, an estimated money value) not exceeding \$5,000;

retirement benefits scheme (退休利益計劃) means a scheme for the provision of retirement benefits, and includes—

- (a) a recognized occupational retirement scheme as defined by section 2 of the Inland Revenue Ordinance (Cap 112);
- (b) a mandatory provident fund scheme as defined by that section; and
- (c) a retirement insurance scheme;

retirement insurance scheme (退休保險計劃)—

- (a) means a scheme for the provision of insurance coverage—
- (i) on or after the retirement or death of a person; or
 - (ii) in connection with a person's service rendered before the retirement or death of the person; but (L.N. 76 of 2013)

- (b) excludes a scheme for the provision of insurance coverage for a person's personal injury (including any incapacity or death caused by such injury) by accident arising out of and in the course of employment.
- (2) In this Part, a reference to a director—
- (a) for the purposes of section 5, includes a former director; and
 - (b) for the purposes of section 6, includes a former director and shadow director.
- (3) For the purposes of subsection (2)(b), a reference to a shadow director is to be construed subject to section 516(5) of the Ordinance.
- (4) In this Part, a reference to a subsidiary undertaking of a company—
- (a) in relation to a person who, while a director of the company, is or was also a director of any other undertaking by virtue of the company's nomination (whether direct or indirect), includes that other undertaking, whether or not that other undertaking is or was in fact a subsidiary undertaking of the company;
 - (b) for the purposes of section 7, is a reference to a subsidiary undertaking of the company at the time the qualifying services of the person concerned are or were rendered; and
 - (c) in paragraph (b) of the definition of qualifying services in subsection (1)—
 - (i) for the purposes of sections 4, 5 and 7, is a reference to a subsidiary undertaking of the company at the time the qualifying services of the person concerned are or were rendered; and
 - (ii) for the purposes of section 6, is a reference to a subsidiary undertaking of the company immediately before the loss of office as a director of the company.

COMMENTARY

Overview

The totality of Part 2 of the Directors Disclosure Regulation deals with disclosure in the notes to the company's financial statements information about directors' emoluments, retirement benefits, payments in respect of termination of directors' services, and consideration paid to third parties for directors' services.

Article 3 provides for the definitions of the most frequent terms used and applied to in this Part 2 of the Regulation.

G3.01

COMMENTARY

Overview

- G12.01 Article 12 of the Directors Disclosure Regulation allows directors to apportion any payment between the matters in respect of which the payment is made or receivable in the manner that the directors think fit.

PART 3

DISCLOSURE OF LOANS, QUASI-LOANS AND OTHER DEALINGS IN FAVOUR OF DIRECTORS

Division 1 Interpretation

13. Interpretation of Part 3

- (1) In this Part—
authorized financial institution (認可財務機構) means an authorized institution within the meaning of section 2 of the Banking Ordinance (Cap 155);
credit transaction (信貸交易) has the meaning given by section 494 of the Ordinance;
guarantee (擔保) means a guarantee as defined by section 491(1) of the Ordinance;
holding company (控股公司) includes a parent undertaking that is a company;
quasi-loan (類似貸款) has the meaning given by section 493 of the Ordinance;
specified company (指明公司) means a specified company as defined by section 491(1) of the Ordinance;
transaction (交易) means—
 (a) any loan, quasi-loan or credit transaction; or
 (b) any guarantee or security in connection with any loan, quasi-loan or credit transaction.

(2) In this Part, a reference to a director includes a shadow director.

(3) For the purposes of subsection (2), a reference to a shadow director is to be construed subject to section 491(2) of the Ordinance.

(4) In this Part, a reference to a subsidiary undertaking of a company is a reference to such a subsidiary undertaking at the end of the company's financial year, whether or not it was in fact a subsidiary undertaking of the company on the date of the transaction in question.

(5) In this Part, a reference to a controlled body corporate, in relation to a director, is a reference to a body corporate controlled by the director within the meaning of section 492 of the Ordinance.

(6) In this Part, a reference to a loan, quasi-loan or credit transaction, or a guarantee or security in connection with a loan, quasi-loan or credit transaction, includes—

- (a) any arrangement under which the loan or quasi-loan is made or the credit transaction is entered into, or under which the guarantee is given or security is provided; and
- (b) any arrangement for an assignment or assumption of any rights, obligations or liabilities under the loan, quasi-loan or credit transaction or under the guarantee or security.

(7) In this Part, a reference to a person for whom a transaction is entered into has the meaning given by section 495 of the Ordinance and, for the purposes of this subsection, a reference to an arrangement in subsection (2) of that section is a reference to an arrangement referred to in subsection (6)(a) or (b).

COMMENTARY

Overview

Article 13 of the Directors Disclosure Regulation sets out all the definition of the applicable terms referred to and utilized in Part 3 of this Regulation.

The term "quasi-loan" is defined in the Section 493 of the new Ordinance. For example, a company provides a quasi-loan to a director where the company agrees to make credit card repayments owed by the director to a credit card provider on terms that the director will reimburse the company.

The term "credit transaction" is defined in the Section 494 of the new Ordinance. An example of a credit transaction is an agreement where the company supplies the director with goods, with the director to make payments for the goods by way of installments.

14. Application of Part 3

- (1) This Part applies to a transaction that—
 (a) was entered into during the financial year concerned; or
 (b) subsisted at any time during that year.
- (2) This Part applies whether or not the transaction is prohibited under Division 2 of Part 11 of the Ordinance.

- (b) an arrangement for the company to give any security to a third party in respect of a debt or obligation of the company for which the director has assumed responsibility wholly or in part under a guarantee or indemnity or by the deposit of a security;
- (c) an arrangement under which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries, which do not provide special benefits for directors or former directors; or
- (d) an arrangement to subscribe for or underwrite shares.

(7) A reference in this article to an entity connected with a director has the meaning given by section 486 of the Ordinance.

(8) A reference in this article (except in paragraphs (6)(d) and (9)) to a transaction, arrangement or contract includes a proposed transaction, arrangement or contract.

(9) In this article—

arrangement to subscribe for or underwrite shares (認購或包銷股份安排) means -

- (a) a subscription or proposed subscription for shares or other securities of the company;
- (b) an agreement or proposed agreement to subscribe for shares or other securities of the company; or
- (c) an agreement or proposed agreement to underwrite any of those shares or securities.

16. Supplementary provisions as to conflicts of interest

(1) A director may hold any other office or position of profit under the company (other than the office of auditor) in conjunction with the office of director for a period and on terms (as to remuneration or otherwise) that the directors determine.

(2) A director or intending director is not disqualified by the office of director from contracting with the company—

- (a) with regard to the tenure of the other office or position of profit mentioned in paragraph (1); or
- (b) as vendor, purchaser or otherwise.

(3) The contract mentioned in paragraph (2) or any transaction, arrangement or contract entered into by or on behalf of the company in which any director is in any way interested is not liable to be avoided.

(4) A director who has entered into a contract mentioned in paragraph (2) or is interested in a transaction, arrangement or contract mentioned in paragraph (3) is not liable to account to the company for any profit realized by the transaction, arrangement or contract by reason of—

- (a) the director holding the office; or
- (b) the fiduciary relation established by the office.

(5) Paragraph (1), (2), (3) or (4) only applies if the director has declared the nature and extent of the director's interest under the paragraph to the other directors in accordance with section 536 of the Ordinance.

(6) A director of the company may be a director or other officer of, or be otherwise interested in—

- (a) any company promoted by the company; or
- (b) any company in which the company may be interested as shareholder or otherwise.

(7) Subject to the Ordinance, the director is not accountable to the company for any remuneration or other benefits received by the director as a director or officer of, or from the director's interest in, the other company unless the company otherwise directs.

17. Proposing directors' written resolutions

(1) Any director may propose a directors' written resolution.

(2) The company secretary must propose a directors' written resolution if a director requests it.

(3) A directors' written resolution is proposed by giving notice in writing of the proposed resolution to each director.

(4) Notice of a proposed directors' written resolution must indicate—

- (a) the proposed resolution; and
- (b) the time by which it is proposed that the directors should adopt it.

(5) Any decision which a person giving notice of a proposed directors' written resolution takes regarding the process of adopting the resolution must be taken reasonably in good faith.

18. Adoption of directors' written resolutions

(1) A proposed directors' written resolution is adopted when all the directors who would have been entitled to vote on the resolution at a directors' meeting have signed one or more copies of it.

81. Power of directors to refuse transfer of shares

- (1) The directors may refuse to register the transfer of a share if—
 - (a) the share is not fully paid;
 - (b) the instrument of transfer is not lodged at the company's registered office or another place that the directors have appointed;
 - (c) the instrument of transfer is not accompanied by the certificate for the share to which it relates, or other evidence the directors reasonably require to show the transferor's right to make the transfer, or evidence of the right of someone other than the transferor to make the transfer on the transferor's behalf; or
 - (d) the transfer is in respect of more than one class of shares.
- (2) If the directors refuse to register the transfer of a share—
 - (a) the transferor or transferee may request a statement of the reasons for the refusal; and
 - (b) the instrument of transfer must be returned to the transferor or transferee who lodged it unless the directors suspect that the proposed transfer may be fraudulent.
- (3) The instrument of transfer must be returned in accordance with paragraph (2)(b) together with a notice of refusal within 2 months after the date on which the instrument of transfer was lodged with the company.
- (4) If a request is made under paragraph (2)(a), the directors must, within 28 days after receiving the request—
 - (a) send the transferor or transferee who made the request a statement of the reasons for the refusal; or
 - (b) register the transfer.

82. Power of directors to suspend registration of transfer of shares

- The directors may suspend the registration of a transfer of a share—
- (a) for any period or periods not exceeding 30 days in each year; or
 - (b) if the period of 30 days for closing the register of members is extended in respect of that year under section 632(3) of the Ordinance, for not more than that extended period.

83. Transmission of shares

- (1) If a member dies, the company may only recognize the following person or persons as having any title to a share of the deceased member—

- (a) if the deceased member was a joint holder of the share, the surviving holder or holders of the share; and
 - (b) if the deceased member was a sole holder of the share, the legal personal representative of the deceased member.
- (2) Nothing in these articles releases the estate of a deceased member from any liability in respect of a share that had been jointly held by the deceased member with other persons.

84. Transmittees' rights

(1) If a transmittee produces evidence of entitlement to the share as the directors properly require, the transmittee may, subject to these articles, choose to become the holder of the share or to have the share transferred to another person.

(2) The directors have the same right to refuse or suspend the registration as they would have had if the holder had transferred the share before the transmission.

(3) A transmittee is entitled to the same dividends and other advantages to which the transmittee would be entitled if the transmittee were the holder of the share, except that the transmittee is not, before being registered as a member in respect of the share, entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

(4) The directors may at any time give notice requiring a transmittee to choose to become the holder of the share or to have the share transferred to another person.

(5) If the notice is not complied with within 90 days of the notice being given, the directors may withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

85. Exercise of transmittees' rights

(1) If a transmittee chooses to become the holder of a share, the transmittee must notify the company in writing of the choice.

(2) Within 2 months after receiving the notice, the directors must—

- (a) register the transmittee as the holder of the share; or
- (b) send the transmittee a notice of refusal of registration.

(3) If the directors refuse registration, the transmittee may request a statement of the reasons for the refusal.

Interest for the dividend payable can be paid if:

- a term on which the share was issued; or
- the provisions of another agreement between the holder of the share and the company.

Subsequent Article 98 of Schedule 1 is another new provision where distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by executing a deed of waiver in favour of the company.

(viii) Capitalization of profits

With regards to capitalization of profits, the directors (with the authority of an ordinary resolution) were permitted under the predecessor CO to capitalize reserves or profits and then apply the sum capitalized in paying up unissued shares or debentures of the company. Here under Article 99 of Schedule 1: (i) capitalization of profits without the issue of shares is still allowed; and (ii) to the extent necessary to adjust the rights of the members among themselves where the shares or debentures become issuable in fractions, the directors are now also allowed to make any arrangement they think fit. This includes the issuing of fractional certificates, the making of cash payments, or even adopting a rounding policy in regards these sums.

Part 5 of Schedule 1: Miscellaneous Provisions

Communications to and by the company

SchH1.05

Articles 100 and 101 of Schedule 1 are new provisions and provide for the means of communication to and by a company. Article 100 provides that: (i) subject to the company's model articles, anything sent or supplied by or to the company under its articles may be sent or supplied in any way in which Part 18 of the new Ordinance provides for such documents or information to be sent or supplied by or to the company for the purpose of the new Ordinance; and (ii) subject to the company's articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being. Article 101 of Schedule 1 has also been added to provide that a member will lose his entitlement to receive company notices if two consecutive documents are returned undelivered within 12 months. But such member will again be entitled to receive such notices by providing a new address to be recorded in the register of members, or giving the company the necessary information for communication by another method of communication.

Administrative Arrangements

Inspection of accounts and other records

Article 103 of Schedule 1, which is new, provides that a person is not entitled to inspect any of the company's accounting or other records or documents merely by virtue of him being a member, *unless* the person is authorized to do so by:

- an enactment;²
- an order under section 740³ of the Companies Ordinance;
- the directors; or
- an ordinary resolution of the company.

If a newly formed company has not included the model article then Article 103 of Schedule 1 will be part of its articles. When the articles are registered they are deemed to be a contract under seal between the members and the company and can be enforced as such (Section 86 of the new Ordinance).

Note that there are only four circumstances as set out in the above list which permit a member to inspect the documents. But what if a member obtains a court order in the course of his set of court proceedings, and in accordance with that order, the member requests an inspection of the documents? That request would be outside the four circumstances set out in the above. Could the opposing party rely on this section to limit the exercise of that court order? That apparently needs further clarification.

Auditor's insurance

With regard to administrative matters, Article 104 of Schedule 1 now allows a company to take out insurance for an auditor or auditor of associated company against such liability. This is in tune with Section 415 of the new Ordinance, which provides that the directors may decide if they so wish to purchase and maintain insurance (at the expense of the company), for an auditor of the company or of an associated company, against any liabilities which may occur in the course of performing their duties as an auditor in relation to the company or associated company.

² The term enactment is defined in section 3 of Interpretation and General Clauses Ordinance (Cap. 1 laws of Hong Kong) to mean means:

- (a) any ordinance enacted by the Legislative Council;
- (b) any ordinance adopted by virtue of Article 160 of the Basic Law as a law of the Hong Kong Special Administrative Region;
- (c) any subsidiary legislation made under any such ordinance except any such subsidiary legislation which has pursuant to Article 160 of the Basic Law been declared to be in contravention of the Basic Law; and
- (d) any provision or provisions of any such ordinance or subsidiary legislation.

³ Section 740 provides the court with powers to make an order for inspection of company records on an application by certain members.

Division 4—Transfer and Transmission of Shares**63. Transfer of shares**

(1) Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of both the transferor and the transferee.

(2) No fee may be charged by the company for registering any instrument of transfer or other document relating to or affecting the title to any share.

(3) The company may retain any instrument of transfer that is registered.

(4) The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.

64. Power of directors to refuse transfer of shares

(1) Without limiting article 2(2), the directors may refuse to register the transfer of a share if—

- (a) the instrument of transfer is not lodged at the company's registered office or another place that the directors have appointed;
- (b) the instrument of transfer is not accompanied by the certificate for the share to which it relates, or other evidence the directors reasonably require to show the transferor's right to make the transfer, or evidence of the right of someone other than the transferor to make the transfer on the transferor's behalf; or
- (c) the transfer is in respect of more than one class of shares.

(2) If the directors refuse to register the transfer of a share under paragraph (1) or article 2(2)—

- (a) the transferor or transferee may request a statement of the reasons for the refusal; and
- (b) the instrument of transfer must be returned to the transferor or transferee who lodged it unless the directors suspect that the proposed transfer may be fraudulent.

(3) The instrument of transfer must be returned in accordance with paragraph (2)(b) together with a notice of refusal within 2 months after the date on which the instrument of transfer was lodged with the company.

(4) If a request is made under paragraph (2)(a), the directors must, within 28 days after receiving the request—

- (a) send the transferor or transferee who made the request a statement of the reasons for the refusal; or
- (b) register the transfer.

65. Transmission of shares

If a member dies, the company may only recognize the following person or persons as having any title to a share of the deceased member—

- (a) if the deceased member was a joint holder of the share, the surviving holder or holders of the share; and
- (b) if the deceased member was a sole holder of the share, the legal personal representative of the deceased member.

66. Transmittees' rights

(1) If a transmittee produces evidence of entitlement to the share as the directors properly require, the transmittee may, subject to these articles, choose to become the holder of the share or to have the share transferred to another person.

(2) The directors have the same right to refuse or suspend the registration as they would have had if the holder had transferred the share before the transmission.

(3) A transmittee is entitled to the same dividends and other advantages to which the transmittee would be entitled if the transmittee were the holder of the share, except that the transmittee is not, before being registered as a member in respect of the share, entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

(4) The directors may at any time give notice requiring a transmittee to choose to become the holder of the share or to have the share transferred to another person.

(5) If the notice is not complied with within 90 days of the notice being given, the directors may withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

67. Exercise of transmittees' rights

(1) If a transmittee chooses to become the holder of a share, the transmittee must notify the company in writing of the choice.

3. Members' reserve power

(1) The members may, by special resolution, direct the directors to take, or refrain from taking, specified action.

(2) The special resolution does not invalidate anything that the directors have done before the passing of the resolution.

4. Directors may delegate

(1) Subject to these articles, the directors may, if they think fit, delegate any of the powers that are conferred on them under these articles—

- (a) to any person or committee;
- (b) by any means (including by power of attorney);
- (c) to any extent and without territorial limit;
- (d) in relation to any matter; and
- (e) on any terms and conditions.

(2) If the directors so specify, the delegation may authorize further delegation of the directors' powers by any person to whom they are delegated.

- (3) The directors may—
- (a) revoke the delegation wholly or in part; or
 - (b) revoke or alter its terms and conditions.

5. Committees

(1) The directors may make rules providing for the conduct of business of the committees to which they have delegated any of their powers.

(2) The committees must comply with the rules.

Division 2—Decision-taking by Directors**6. Directors to take decision collectively**

A decision of the directors may only be taken—

- (a) by a majority of the directors at a meeting; or
- (b) in accordance with article 7.

7. Unanimous decisions

(1) A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other (either directly or indirectly) by any means that they share a common view on a matter.

(2) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.

(3) A reference in this article to eligible directors is a reference to directors who would have been entitled to vote on the matter if it had been proposed as a resolution at a directors' meeting.

(4) A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at a directors' meeting.

8. Calling directors' meetings

(1) Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorizing the company secretary to give such notice.

(2) Notice of a directors' meeting must indicate—

- (a) its proposed date and time; and
- (b) where it is to take place.

(3) Notice of a directors' meeting must be given to each director, but need not be in writing.

9. Participation in directors' meetings

(1) Subject to these articles, directors participate in a directors' meeting, or part of a directors' meeting, when—

- (a) the meeting has been called and takes place in accordance with these articles; and
- (b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

(2) In determining whether directors are participating in a directors' meeting, it is irrelevant where a director is and how they communicate with each other.

(3) If all the directors participating in a directors' meeting are not in the same place, they may regard the meeting as taking place wherever any one of them is.

10. Quorum for directors' meetings

(1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.

- (d) for a notice calling an annual general meeting, state that the meeting is an annual general meeting;
 - (e) if a resolution (whether or not a special resolution) is intended to be moved at the meeting—
 - (i) include notice of the resolution; and
 - (ii) include or be accompanied by a statement containing any information or explanation that is reasonably necessary to indicate the purpose of the resolution;
 - (f) if a special resolution is intended to be moved at the meeting, specify the intention and include the text of the special resolution; and
 - (g) contain a statement specifying a member's right to appoint a proxy under section 596(1) of the Ordinance.
- (5) Paragraph (4)(e) does not apply in relation to a resolution of which—
- (a) notice has been included in the notice of the meeting under section 567(3) or 568(2) of the Ordinance; or
 - (b) notice has been given under section 615 of the Ordinance.
- (6) Despite the fact that a general meeting is called by shorter notice than that specified in this article, it is regarded as having been duly called if it is so agreed—
- (a) for an annual general meeting, by all the members entitled to attend and vote at the meeting; and (b) in any other case, by a majority in number of the members entitled to attend and vote at the meeting, being a majority together representing at least 95% of the total voting rights at the meeting of all the members.

36. Persons entitled to receive notice of general meetings

- (1) Notice of a general meeting must be given to—
 - (a) every member; and
 - (b) every director.
- (2) If notice of a general meeting or any other document relating to the meeting is required to be given to a member, the company must give a copy of it to its auditor (if more than one auditor, to everyone of them) at the same time as the notice or the other document is given to the member.

37. Accidental omission to give notice of general meetings

Any accidental omission to give notice of a general meeting to, or any non-receipt of notice of a general meeting by, any person entitled to receive notice does not invalidate the proceedings at the meeting.

38. Attendance and speaking at general meetings

- (1) A person is able to exercise the right to speak at a general meeting when the person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions that the person has on the business of the meeting.
- (2) A person is able to exercise the right to vote at a general meeting when—
 - (a) the person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
 - (b) the person's vote can be taken into account in determining whether or not those resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- (3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
- (4) In determining attendance at a general meeting, it is immaterial whether any 2 or more members attending it are in the same place as each other.
- (5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have rights to speak and vote at the meeting, they are able to exercise them.

39. Quorum for general meetings

- (1) Two members present in person or by proxy constitute a quorum at a general meeting.
- (2) No business other than the appointment of the chairperson of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

40. Chairing general meetings

- (1) If the chairperson (if any) of the board of directors is present at a general meeting and is willing to preside as chairperson at the meeting, the meeting is to be presided over by him or her.
- (2) The directors present at a general meeting must elect one of themselves to be the chairperson if—
 - (a) there is no chairperson of the board of directors;
 - (b) the chairperson is not present within 15 minutes after the time appointed for holding the meeting;

In this Article 2, the definition of “company” as referred to herein is the same as that of Section 2(1) of the new Ordinance. This definition of “company” in Section 2(1) of the new Ordinance means: (i) a company formed and registered under this Ordinance, or (ii) an “existing company” which means a company formed and registered under the predecessor CO.

The definition of an “unfair prejudice petition” means: a petition presented to the Court of First Instance by a member, or a past member, of a company under either: (i) Sections 724(1) or 724(3) of the new Ordinance; or (ii) by the Financial Secretary under Section 879(3) of the new Ordinance.

3. Application

(1) If an unfair prejudice petition does not include seeking an order to wind up the company under section 177(1) or 327(3) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) as an alternative remedy (alternative application)—

- (a) these Rules apply to the petition; and
- (b) the petition must be in the form set out in the Schedule (with any necessary modifications that the circumstances may require).

(2) If the petition includes an alternative application—

- (a) the Winding-up Provisions (with any necessary modifications that the circumstances may require) apply to the petition;
- (b) these Rules, so far as not inconsistent with the Winding-up Provisions, also apply to the petition; and
- (c) the petition must be in the form set out in Form 2 in the Appendix to the Companies (Winding-up) Rules (Cap 32 sub. leg. H).

(3) If the alternative application is not proceeded with under an order of the Court—

- (a) the Winding-up Provisions cease to apply to the petition; and
- (b) these Rules continue to apply to the petition.

(4) The cessation of the application of the Winding-up Provisions does not affect their previous application to the petition or anything duly done or suffered under the Winding-up Provisions in respect of the petition.

(5) The rules and practice of the High Court for regulating the ordinary civil procedure of the court, so far as may be applicable and not inconsistent with these Rules, also apply to the petition where—

- (a) these Rules apply to the petition under subrule (1)(a); or
- (b) the Winding-up Provisions have ceased to apply to the petition under subrule (3)(a).

COMMENTARY

Overview

Article 3 of Cap. 622L relates to the application of the Rules to an unfair prejudice petition, in particular in the case where a petitioner seeks an order to wind up the company in the same petition. This Rule also specifies the form of a petition.

In addition, Article 3 also clarifies and sets out the relationship between these Rules and the rules and practice of the High Court for regulating the ordinary civil procedure of the court. This provision corresponds to O. 102 of the Rules of the High Court with regard to the petition as the originating process and other aspects of the procedure on an unfair prejudice application.

The rules and practice of the High Court (O. 102) will apply to the petition under this Regulation as prescribed where:

- the Rules apply to the petition under Article 3(1)(a); *or*
- the Winding-up Provisions cease to apply to the petition under Article 3(3)(a).²

L3.01

Whether unfair prejudice petition includes seeking an order to wind up the company ² as an alternative application?	No	Yes	Provisions which apply to the petition	Form of petition
	• the Rules	• Winding-up Provisions apply to proceedings in a winding up by the Court; and	the Rules, so far as not inconsistent with the Winding-up Provisions also apply to the petition	Schedule to the Rules Form 2 in the Appendix to the Companies (Winding-up) Provisions (Cap.32H)

² See sections 177(1) or 327(3) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32).

國家。如該人並非香港身分證持有人，亦沒有任何國家的護照，則請在有關的空格內填上「無」。

22. 如董事屬法人團體，請註明其註冊辦事處或主要辦事處的地址。如屬非香港地址，請同時申報「國家／地區」一欄。本處不接納「轉交」地址或郵政信箱號碼。

有股本公司的成員詳情 (第 13 項)

23. 如公司屬有股本的公司，請於附表一(適用於非上市公司)或附表二(適用於上市公司)申報公司成員的詳情。

公司紀錄 (第 14 項)

24. 公司紀錄指《公司條例》規定公司須備存的登記冊、索引、協議、備忘錄、會議紀錄或其他文件，但不包括會計紀錄。

《董事責任指引》

25. 所有公司董事均應閱讀公司註冊處編製的《董事責任指引》，並熟悉該指引所概述的董事一般責任。公司應把該指引發給董事參考。該指引可於公司註冊處網頁 (www.cr.gov.hk) 閱覽或下載，印文本亦可於香港金鐘道 66 號金鐘道政府合署 13 和 14 樓公司註冊處的詢問處索取。

非上市公司的成員詳情 (附表一)

26. (a) 每類別股份的已發行總數必須與申報表第 10 項中所申報該類別股份的已發行股份總數相同。
- (b) 如成員的詳情有任何更改，請在「備註」一欄內相關之處說明(例如：更改地址、更改名稱等)。
- (c) 如公司股本的結構有任何更改，例如：某一類別股份轉換為另一類別股份、已發行的股份被公司沒收等，請在「備註」一欄內相關之處說明(例如：'A' 股於 XXXX 年 XX 月 XX 日轉換為 'B' 股、股份於 XXXX 年 XX 月 XX 日被沒收等)。
- (d) 如公司備存成員登記支冊，而該登記支冊所載記項的詳情與需要載於周年申報表內的事項有關，而且該周年申報表是在該等記項的文本送抵該公司的註冊辦事處之後交付處長，請申報有關的詳情。

上市公司的成員詳情 (附表二)

27. 上市公司須於附表二提供的成員詳情，僅限於周年申報表的結算日期當日持有該公司任何類別股份中的 5% 或多於 5% 發行股本的成員的詳情。

ANNUAL RETURN

For the purposes of section 662 of Companies Ordinance (Cap. 622)

Notes for Completion of Form NAR1

Introduction

1. Every company incorporated in Hong Kong must make an annual return which should be delivered to the Registrar of Companies (the Registrar) for registration. It is the duty of the director(s) and the company secretary to ensure that the return accurately reflects the affairs of the company as at the date to which the return is made up.
2. Please fill in all particulars and complete all items consistently in either Chinese or English. Traditional Chinese characters should be used if the form is completed in Chinese. Please note that handwritten forms may be rejected by the Companies Registry.
3. Please complete the Presentor's Reference. Unless the presentor needs to raise a specific issue for the attention of the Companies Registry, no covering letter is required.

Deadline for Delivery of this Form

4. **This form must be delivered to the Registrar for registration within 42 days after the date to which the return is made up** by post or in person to "The Companies Registry, 14th floor, Queensway Government Offices, 66 Queensway, Hong Kong". If the form is delivered by post but the Registrar has not received it, the form will not be regarded as having been delivered to the Registrar in satisfaction of the relevant provision of the Companies Ordinance. Regardless of the types of companies, **late submission will be subject to payment of a higher registration fee.**

Fee

5. This form must be delivered with the correct registration fee. A form which is not delivered with the correct fee will be rejected by the Companies Registry. The registration fee payable will be calculated according to the resubmission date of the form. Please refer to the information pamphlet on 'Price Guide to Main Services' for the correct fee payable. If the fee is paid by cheque, the cheque should be crossed and issued in Hong Kong Dollars payable to 'Companies Registry'. Please do not send cash.

16. If all the partners in a firm are joint company secretaries of the company, please state the name of the firm in the box for name of Company Secretary (Body Corporate).
17. If the company secretary is a body corporate, the address of its registered or principal office in **Hong Kong** should be given. Non-Hong Kong addresses, 'care of' addresses or post office box numbers are not acceptable.

Directors (Section 12)

18. Please state the capacity(ies) of the director(s). In the case of an alternate director, please state the name(s) of the principal director(s) to whom he or she or it is the alternate.
19. Please provide the **usual residential address** of a director or reserve director who is a natural person. If a non-Hong Kong address is given, please also complete the box for 'Country / Region'. 'Care of' addresses or post office box numbers are not acceptable.
20. Please provide the email address of the director or reserve director, if any, to facilitate electronic communication. If there are any subsequent changes in the email address, please notify the Companies Registry by completing Form ND2B or ND7.
21. The Hong Kong Identity Card number or, in the absence of which, the number and issuing country of the passport of a director or reserve director who is a natural person should be given. If he or she holds neither a Hong Kong Identity Card nor a passport, please state 'Nil' in the boxes provided.
22. If the director is a body corporate, the address of its registered or principal office should be given. If a non-Hong Kong address is given, please also complete the box for 'Country / Region'. 'Care of' addresses or post office box numbers are not acceptable.

Particulars of Member(s) of a Company Having a Share Capital (Section 13)

23. For a company having a share capital, details of members should be attached to this return. For non-listed companies, please complete Schedule 1. For listed companies, Schedule 2 should be used.

Company Records (Section 14)

24. Company records mean any register, index, agreement, memorandum, minutes or other document required by the Companies Ordinance to be kept by a company, but do not include accounting records.

'A Guide on Directors' Duties'

25. All directors of the company are advised to read 'A Guide on Directors' Duties' published by the Companies Registry and acquaint themselves with the general duties of directors outlined in the Guide. Companies should provide copies of the Guide to their directors for information and reference. The Guide is accessible on the Companies Registry's website (www.cr.gov.hk). Hard copies are also available at the information counters of the Companies Registry on the 13th and 14th floors of the Queensway Government Offices, 66 Queensway, Hong Kong.

Particulars of Member(s) of a Non-listed Company (Schedule 1)

26. (a) For each class of shares, the total number of issued shares for the class must agree with the total number of issued shares for that class as reported in Section 10 of the return.
- (b) If there have been any changes in the particulars of the member(s), please indicate the changes in the 'Remarks' column against the related entry (e.g. change of address, change of name etc.).
- (c) If there have been any changes in the structure of the share capital of the company, e.g. conversion of one class of shares into shares of another class, forfeiture of issued shares etc., please indicate the changes in the 'Remarks' column against the related entry (e.g. 'A' shares converted to 'B' shares on dd / mm / yyyy, shares forfeited on dd / mm / yyyy etc.).
- (d) If the company keeps a branch register of members and the particulars of the entries in that register relate to matters which are required to be contained in the annual return, particulars of the entries in that register should be included in the annual return if copies of those entries have been received at the registered office of the company before the annual return is delivered to the Registrar.

Particulars of Member(s) of a Listed Company (Schedule 2)

27. The particulars of members of a listed company to be provided in Schedule 2 are limited to those relating to members who held 5% or more of the issued shares in any class of the company's shares as at the date to which the return is made up.