

**COMPANIES ORDINANCE
(CHAPTER 622)**

ARRANGEMENT OF SECTIONS

Part 1

Preliminary

Division 1

Short Title and Commencement

1 Short title and commencement

Division 2

Interpretation of this Ordinance: General

- 2 Interpretation
- 3 Responsible person
- 4 Certified translation
- 5 Dormant company
- 6 Offering shares or debentures to public, etc.

Division 3

Interpretation of this Ordinance: Types of Companies

Subdivision 1

Limited Company and Unlimited Company

- 7 Limited company
- 8 Company limited by shares
- 9 Company limited by guarantee
- 10 Unlimited company

Subdivision 2

Private Company and Public Company

- 11 Private company
- 12 Public company

Division 4

**Interpretation of this Ordinance: Holding Company and
Subsidiary, and Parent Undertaking and Subsidiary Undertaking**

- 13 Holding company
- 14 Provisions supplementary to section 13

- 15 Subsidiary
- 16 Parent undertaking and subsidiary undertaking

Division 5

Application of this Ordinance

- 17 Application to existing company
- 18 Application to unlimited company registered in pursuance of former Companies Ordinance as limited company
- 19 Application to company registered, but not formed, under former Companies Ordinance

Part 2

Registrar of Companies and Companies Register

Division 1

Preliminary

- 20 Interpretation

Division 2

Registrar of Companies

- 21 Office of Registrar
- 22 Registrar's functions
- 23 Registrar may specify form
- 24 Registrar may issue guidelines
- 25 Registrar may authenticate document etc.
- 26 Fees payable to Registrar

Division 3

Companies Register

- 27 Registrar must keep records of companies
- 28 Provisions supplementary to section 27
- 29 Registrar not required to keep certain documents etc.
- 30 Registrar must keep Index of Company Names

Division 4

Registration of Document

Subdivision 1

Preliminary

- 31 Unsatisfactory document

- 32 Registrar may specify requirements (for section 31(1))
- 33 Registrar may agree to delivery by electronic means (for section 31(1))
- 34 Financial Secretary may make regulations requiring delivery by electronic means (for section 31(1))

Subdivision 2

Registrar's Powers to Refuse to Accept and to Register Document

- 35 Registrar may refuse to accept or register document
- 36 Registrar may withhold registration of document pending further particulars etc.
- 37 Appeal against Registrar's decision to refuse registration
- 38 Certain period to be disregarded for calculating daily penalty for failure to deliver document to Registrar

Division 5

Registrar's Powers in relation to Keeping Companies Register

- 39 Registrar may require company to resolve inconsistency with Companies Register
- 40 Registrar may require further information for updating etc.
- 41 Registrar may rectify typographical or clerical error in Companies Register
- 42 Registrar must rectify information on Companies Register on order of Court
- 43 Registrar may appear in proceedings for rectification
- 44 Registrar may annotate Companies Register

Division 6

Inspection of Companies Register

- 45 Registrar must make Companies Register available for public inspection
- 46 Registrar's certified true copy admissible as evidence

Division 7

Materials in Companies Register Unavailable for Public Inspection

Subdivision 1

General Protection

- 47 Interpretation
- 48 Information excluded from public inspection by law or court order
- 49 Registrar may withhold residential address and identification number from public inspection
- 50 Restriction on use or disclosure of withheld information
- 51 Permitted use or disclosure of withheld information by Registrar
- 52 Disclosure under order of Court

Subdivision 2

Protection of Residential Address and Identification Number Contained in Certain Documents

- 53 Interpretation
- 54 Registrar must not make residential address and identification number available for public inspection
- 55 Registrar may make protected address available for inspection
- 56 Provision supplementary to section 55
- 57 Restriction on use or disclosure of protected information
- 58 Permitted use or disclosure of protected information by Registrar
- 59 Disclosure under order of Court

Subdivision 3

Supplementary

- 60 Extent of prohibition

Division 8

Miscellaneous

- 61 Registrar may issue certificates in any manner
- 62 Registrar not responsible for verifying information
- 63 Immunity
- 64 Discrepancy between document and certified translation
- 65 Offence for destruction etc. of registers, books or documents

Part 3

Company Formation and Related Matters, and Re-registration of Company

Division 1

Company Formation

Subdivision 1

General Requirements for Formation

- 66 Types of companies
- 67 Formation of company
- 68 Content of incorporation form
- 69 Signing of incorporation form
- 70 Statement of compliance to be contained in incorporation form

Subdivision 2

Incorporation of Company

- 71 Issue of certificate of incorporation on registration

- 72 Conclusiveness of certificate of incorporation
- 73 Effect of incorporation
- 74 Delivery of director's written consent

Division 2

Company Articles

Subdivision 1

General

- 75 Articles prescribing regulations for company
- 76 Language of articles
- 77 Form of articles

Subdivision 2

Model Articles

- 78 Financial Secretary may prescribe model articles
- 79 Adoption of model articles
- 80 Application of model articles to limited company

Subdivision 3

Content and Effect of Articles

- 81 Company name
- 82 Company's objects
- 83 Members' liabilities
- 84 Liabilities or contributions of members of limited company
- 85 Capital and initial shareholdings
- 86 Effect of articles

Subdivision 4

Alteration of Articles

- 87 Company may alter articles
- 88 Alteration by special resolution or ordinary resolution
- 89 Alteration of company's objects
- 90 Alteration of certain articles by existing company
- 91 Application to Court to cancel alteration
- 92 Certain alterations not binding on members
- 93 Company must incorporate alteration into articles
- 94 Alteration affecting status of private company
- 95 Alteration affecting status of public company
- 96 Notifying Registrar of alteration by order of Court
- 97 Copies of articles to be provided to members

Subdivision 5

Miscellaneous

- 98 Conditions of memorandum of association of existing company to be regarded as provisions of articles
- 99 Articles of company limited by guarantee

Division 3

Company Name

Subdivision 1

Restriction on Company Name

- 100 Company must not be registered by certain names
- 101 Financial Secretary may specify word or expression for section 100(2)(b)

Subdivision 2

Limited Company Name with "Limited" as Last Word etc.

- 102 Limited company must not be registered without "Limited" as last word of name etc.
- 103 Registrar's licence to dispense with "Limited" etc.
- 104 Terms and conditions of licence
- 105 Effect of licence
- 106 Revocation of licence

Subdivision 3

Change of Company Name

- 107 Company may change name by special resolution
- 108 Registrar may direct company to change same or similar name etc.
- 109 Registrar may direct company to change misleading or offensive name etc.
- 110 Registrar may change company name in case of failure to comply with direction

Subdivision 4

Supplementary Provision

- 111 Determining whether name is same as or similar to another name

Division 4

Membership

- 112 Members of company
- 113 Members of holding company
- 114 Notifying Registrar of increase in number of members of company limited by guarantee

Division 5

Capacity and Powers of Company

- 115 Company's capacity etc.
- 116 Company's exercise of powers limited by articles
- 117 Transaction or act binds company despite limitation in articles etc.
- 118 Transaction or act involving directors or their associates is voidable
- 119 Section 117 not to apply to certain cases
- 120 No constructive notice of matters disclosed in articles etc.

Division 6

Contracts of Company

- 121 Contracts made by or on behalf of company
- 122 Contracts made before company's incorporation
- 123 Bills of exchange and promissory notes

Division 7

Execution of Documents

Subdivision 1

Company Seal

- 124 Company may have common seal etc.
- 125 Official seal for use abroad
- 126 Official seal for sealing share certificates etc.

Subdivision 2

Execution Requirements

- 127 Execution of documents by company
- 128 Execution of deeds by company
- 129 Execution of deeds or other documents by attorney for company

Division 8

Re-registration of Unlimited Company as Company Limited by Shares

- 130 Unlimited company may apply for re-registration as company limited by shares
- 131 Application for re-registration
- 132 Issue of fresh certificate of incorporation
- 133 Winding up of company re-registered as company limited by shares

Part 4

Share Capital

Division 1

Nature of Shares

- 134 Nature and transferability of shares
- 135 No nominal value
- 136 Numbering of shares
- 137 Share certificate to be proof of title in the absence of contrary evidence
- 138 Repeal of power to issue stock
- 139 Repeal of power to issue share warrants

Division 2

Allotment and Issue of Shares

- 140 Exercise by directors of power to allot shares or grant rights
- 141 Allotment of shares or grant of rights with company approval
- 142 Return of allotment
- 143 Registration of allotment
- 144 Issue of share certificate on allotment
- 145 Order of Court for delivery of share certificate
- 146 Validation by Court of issue or allotment

Division 3

Commissions and Expenses

- 147 General prohibition of commissions, discounts and allowances
- 148 Permitted commissions
- 149 Capital may be applied in writing off certain expenses and commission

Division 4

Transfer and Transmission of Shares

Subdivision 1

Transfer of Shares

- 150 Requirement for instrument of transfer
- 151 Registration of transfer or refusal of registration
- 152 Order of Court for registration
- 153 Transfer by personal representative
- 154 Certification of transfer
- 155 Issue of share certificate on transfer
- 156 Order of Court for delivery of share certificate
- 157 Compensation regarding forged share transfers

Subdivision 2

Transmission of Shares by Operation of Law

- 158 Registration or refusal of registration
- 159 Order of Court for registration
- 160 Pre-emption rights in relation to transmission by law

Subdivision 3

General

- 161 Evidence of grant of probate etc.

Division 5

Replacement of Listed Companies' Lost Share Certificates

- 162 Interpretation
 163 Application for new certificate
 164 Publication requirements
 165 Issue of new certificate
 166 Public notice of issue of new certificate
 167 Orders of Court for rectification of the register
 168 Liability if rectification cannot be ordered
 169 Applicant to pay expenses

Division 6

Alteration of Share Capital

- 170 Permitted alteration of share capital
 171 Notice of alteration of share capital
 172 Redenomination of share capital
 173 Notice of redenomination
 174 Reconversion of stock into shares
 175 Notice of reconversion

Division 7

Classes of Shares and Class Rights

Subdivision 1

Companies having a Share Capital

- 176 Application of Subdivision
 177 Rights attached to shares
 178 Classes of shares
 179 Description of shares of different classes
 180 Varying class rights
 181 Notifying class members of variation
 182 Disallowance or confirmation of variation by Court
 183 Delivery of order of Court to Registrar
 184 Notifying Registrar of variation

Subdivision 2

Companies without a Share Capital

- 185 Application of Subdivision
 186 Rights of members
 187 Classes of members

- 188 Varying class rights
 189 Notifying class members of variation
 190 Disallowance or confirmation of variation by Court
 191 Delivery of order of Court to Registrar
 192 Notifying Registrar of variation

Subdivision 3

General

- 193 Variation includes abrogation

Division 8

Supplementary and Miscellaneous

Subdivision 1

Relief from Share Capital Requirements

- 194 Interpretation
 195 Group reconstruction relief
 196 Merger relief
 197 Merger relief: meaning of 90% equity holding
 198 Relief may be reflected in company's statement of financial position
 199 Regulations

Subdivision 2

Miscellaneous

- 200 Provision for different amounts to be paid on shares
 201 Statement of capital
 202 Notice of paid up capital

Part 5

Transactions in relation to Share Capital

Division 1

Preliminary

- 203 Interpretation

Division 2

Solvency Test

- 204 Application of Division
 205 Solvency test
 206 Solvency statement
 207 Offences regarding solvency statement
 208 Power to modify solvency test by regulation

Division 3

Reduction of Share Capital

Subdivision 1

General Provisions

- 209 Application of Division
- 210 Permitted reductions of share capital
- 211 Procedure for a company to reduce its share capital
- 212 Offence if share capital is reduced in contravention of Division
- 213 Liability of members following reduction of share capital
- 214 Reserves arising from reductions of share capital

Subdivision 2

Reduction of Share Capital by Special Resolution Supported by Solvency Statement

- 215 Special resolution for reduction of share capital
- 216 Solvency statement for reduction of share capital
- 217 Special resolution: exercise of voting rights
- 218 Public notice of reduction of share capital
- 219 Inspection of special resolution and solvency statement
- 220 Application to Court by members or creditors
- 221 Power of Court to adjourn proceedings
- 222 Power of Court to confirm or cancel special resolution
- 223 Company to deliver copy of order of Court to Registrar
- 224 Registration of return if no application to Court
- 225 Registration of return if application to Court

Subdivision 3

Reduction of Share Capital Confirmed by Court

- 226 Special resolution and application to Court for confirmation of reduction of share capital
- 227 Creditors entitled to object to reduction of share capital
- 228 Offence in connection with creditors list
- 229 Order of Court confirming reduction of share capital
- 230 Registration of order, minute and return
- 231 Certification of registration
- 232 Liability to creditors omitted from list of creditors

Division 4

Share Redemptions and Buy-backs

Subdivision 1

Preliminary

- 233 Application of Division

Subdivision 2

Redeemable Shares

- 234 Issue of redeemable shares
- 235 Terms, conditions and manner of redemption

Subdivision 3

Share Buy-backs

- 236 General power of company to buy back its own shares
- 237 Retention and inspection of share buy-back contracts

Subdivision 4

Share Buy-backs: Listed Companies

- 238 Share buy-back under general offer
- 239 Share buy-back on recognized stock market or approved stock exchange
- 240 Share buy-back otherwise than under section 238 or 239
- 241 Exemptions
- 242 No assignment of right to buy back own shares
- 243 Release of right to buy back own shares

Subdivision 5

Share Buy-backs: Unlisted Companies

- 244 Share buy-back under contract
- 245 Resolution authorizing contract: disclosure of contract details
- 246 Resolution authorizing contract: exercise of voting rights
- 247 Variation of authorized contract
- 248 Resolution authorizing variation: disclosure of details of variation
- 249 Resolution authorizing variation: exercise of voting rights
- 250 No assignment of right to buy back own shares
- 251 Release of right to buy back own shares
- 252 Resolution authorizing release: disclosure of details of release
- 253 Resolution authorizing release: exercise of voting rights
- 254 Variation of release of right to buy back own shares
- 255 Resolution authorizing variation of release: disclosure of details of variation
- 256 Resolution authorizing variation of release: exercise of voting rights

Subdivision 6

Payment for Share Redemptions and Buy-backs

- 257 Payment for redemption or buy-back
- 258 Special resolution for payment out of capital
- 259 Solvency statement for payment out of capital
- 260 Special resolution: exercise of voting rights
- 261 Public notice of payment out of capital
- 262 Inspection of special resolution and solvency statement
- 263 Application to Court by members or creditors
- 264 Power of Court to adjourn proceedings

exemption: sub-s (2). For the powers of the Commission see generally the Securities and Futures Ordinance (Cap 571) Part II.

242. No assignment of right to buy back own shares

The following rights of a listed company are not capable of being assigned—

- (a) rights under a general offer authorized under section 238;
- (b) rights under a buy-back on a recognized stock market or on an approved stock exchange authorized under section 239;
- (c) rights under a contract authorized under section 240.

[242.01] History

This section is derived from s 49F(1) of the former Companies Ordinance (Cap 32).

For the equivalent provision in the UK, see Companies Act 2006 s 704.

[242.02] Overview

This section makes it clear that the rights of a company in respect of buybacks under s 238, 239 or 240 are not capable of being assigned. Rights in respect of off-market buy-backs are, however, capable of being released: see s 243.

243. Release of right to buy back own shares

- (1) An agreement by a listed company to release its rights under a contract authorized under section 240 or under a general offer authorized under section 238 is void unless the terms of the release agreement are authorized in advance by special resolution.
- (2) Section 240(3), (4), (5) and (6) applies to the authorization for a proposed release agreement as it applies to the authorization for a proposed contract under section 240.

[243.01] History

This section is derived from s 49F(3) of the former Companies Ordinance (Cap 32).

For the equivalent provision in the UK, see Companies Act 2006, s 700.

[243.02] Overview

Rights in respect of off-market buy-backs are capable of being released, if that release is approved in advance by a special resolution. Otherwise the release is void.

The requirements in relation to notice and the provisions on voting in s 240(3), (4), (5), (6) apply to the authorisation of a proposed release agreement.

[1805]–[1850] Special resolution

As to special resolutions generally, see s 564. (See also the notes to s 240).

Subdivision 5

Share Buy-backs: Unlisted Companies

244. Share buy-back under contract

- (1) An unlisted company may buy back its own shares under a contract that is authorized in advance by special resolution.
- (2) A contract may take the form of a contingent buy-back contract.
- (3) The authorization for a contract may be varied, revoked or from time to time renewed by special resolution.
- (4) A special resolution conferring, varying, revoking or renewing the authorization for a contract is subject to sections 245 and 246.

[244.01] History

This section is derived from ss 49D and 49E of the former Companies Ordinance (Cap 32).

For the equivalent provision in the UK, see Companies Act 2006, s 694.

[244.02] Overview

Section 244 gives an unlisted company authority to buy back its own shares only in accordance with a contract approved by special resolution in accordance with ss 245 and 246. Any variation, revocation or renewal of the authority to enter into a contract to buy back its own shares by an unlisted company also requires a special resolution.

The rights of a company under a contract approved under this section are not capable of being assigned (s 250), but may be released: s 251.

[244.03] Unlisted company

For the definition, see s 2(1).

[244.04] Special resolution

As to special resolutions generally, see s 564. As to the use of the written resolution procedure instead of passing a resolution at a meeting, see ss 548–561.

[244.05] Contingent buy-back contract

Subsection (2) makes provision for authorising contingent buy-back contracts. It is derived from s 49E of the former Companies Ordinance (Cap 32). For the meaning of 'contingent buy-back contract', see s 203(1).

245. Resolution authorizing contract: disclosure of contract details

- (1) This section applies in relation to a special resolution to confer, vary, revoke or renew the authorization for a contract under section 244.
- (2) A copy of the proposed contract (if it is in writing) or a memorandum setting out its terms (if it is not) must be made available to members—
 - (a) in the case of a written resolution, by being sent to every member of the company at or before the time when the proposed resolution is sent to them; or
 - (b) in the case of a resolution proposed at a meeting, by being made available for inspection by members of the company—
 - (i) at the company's registered office or at a place prescribed by regulations made under

- section 657, for a period of not less than 15 days ending on the date of the meeting; and
- (ii) at the meeting.
- (3) A memorandum referred to in subsection (2) must include the names of members holding shares to which the proposed contract relates.
- (4) A copy of a proposed contract made available under subsection (2) must have annexed to it a memorandum specifying any of those names that do not appear in the proposed contract.
- (5) The special resolution is not effective if the requirements of this section are not complied with.

[245.01] History

This section is derived from s 49D(5), (7) of the former Companies Ordinance (Cap 32).

For the equivalent provision in the UK, see Companies Act 2006, s 696.

[245.02] Overview

The importance of compliance with the requirements as to display and inspection of the contract or written memorandum of its terms as well as the requisite details as to the holders of shares proposed to be bought must not be overlooked since failure to comply renders the special resolution ineffective: see sub-s (5).

[245.03] Special resolution, written resolutions

See the notes to s 244.

[245.04] Registered office or place prescribed by regulations

As to the registered office, see s 658. As to the regulations made under s 657, see the Company Records (Inspection and Provision of Copies) Regulation. Under s 3 of that Regulation, the prescribed place is 'a place in Hong Kong'. Accordingly, the proposed contract or memorandum of its terms can be made available for inspection at the registered office or at any other place in Hong Kong.

246. Resolution authorizing contract: exercise of voting rights

- (1) This section applies to a special resolution to confer, vary, revoke or renew the authorization for a contract under section 244.

- (2) If the special resolution is proposed as a written resolution, a member holding shares to which the resolution relates is not an eligible member for the purposes of Subdivision 2 of Division 1 of Part 12 (written resolution) in respect of those shares.
- (3) If the special resolution is proposed at a meeting, the resolution is not effective if—
- any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares; and
 - the resolution would not have been passed if the member had not done so.
- (4) For the purposes of subsection (3)—
- a member holding shares to which the resolution relates is to be regarded as exercising the voting rights carried by those shares not only if the member votes in respect of them on a poll on the question whether the resolution should be passed but also if the member votes on the resolution otherwise than on a poll;
 - any member of the company may demand a poll on that question; and
 - a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.
- (5) The special resolution is not effective if a demand for a poll referred to in subsection (4)(b) is refused.

[246.01] History

This section is derived from s 49D(4), (7) of the former Companies Ordinance (Cap 32).

For the equivalent provision in the UK, see Companies Act 2006, s 695.

[246.02] Overview

The effect of s 246 is to invalidate a special resolution to confer, vary, revoke or renew authority for a buy-back of own shares by an unlisted company under s 244 under certain circumstances. If a member whose shares are to be bought back under that resolution votes on it, using any of the votes on those shares, and the resolution would not have been passed without his so doing, the resolution is invalid: sub-s (3). In the event of a members' written resolution, a member holding

shares to which the resolution relates is not to be regarded as a member who would be entitled to vote: see sub-s (2) and the definition of 'eligible member' in s 547(2).

[246.03] Votes on a poll

See the notes to s 238.

247. Variation of authorized contract

- (1) An unlisted company may agree to a variation of a contract authorized under section 244 if the variation agreement is authorized in advance by special resolution.
- (2) The authorization for a variation agreement may be varied, revoked or from time to time renewed by special resolution.
- (3) A special resolution conferring, varying, revoking or renewing the authorization for a variation agreement is subject to sections 248 and 249.

[247.01] History

This section is derived from s 49D(6) of the former Companies Ordinance (Cap 32).

For the equivalent provision in the UK, see Companies Act 2006, s 697.

[247.02] Overview

While s 244(3) allows for variation of the authorisation for a buy-back contract by an unlisted company, s 247 provides for the requirements in order for a company to agree to a variation of any buy-back contract that has been authorised under s 244. The variation agreement must be authorised by special resolution in compliance with ss 248 and 249.

[247.03] Special resolution

See the notes to s 244.

248. Resolution authorizing variation: disclosure of details of variation

- (1) This section applies in relation to a special resolution to confer, vary, revoke or renew the authorization for a variation agreement under section 247.
- (2) A copy of the proposed variation agreement (if it is in writing)

or a memorandum giving details of the proposed variation agreement (if it is not) must be made available to members—

- (a) in the case of a written resolution, by being sent to every member of the company at or before the time when the proposed resolution is sent to them; or
 - (b) in the case of a resolution proposed at a meeting, by being made available for inspection by members of the company—
 - (i) at the company's registered office or at a place prescribed by regulations made under section 657, for a period of not less than 15 days ending on the date of the meeting; and
 - (ii) at the meeting.
- (3) There must also be made available to members in accordance with subsection (2) a copy of the original contract or memorandum, together with any variations previously made.
 - (4) A memorandum referred to in subsection (2) must include the names of members holding shares to which the proposed variation agreement relates.
 - (5) A copy of a proposed variation agreement made available under subsection (2) must have annexed to it a memorandum specifying any of those names that do not appear in the proposed variation agreement.
 - (6) The special resolution is not effective if the requirements of this section are not complied with.

[248.01] History

This section is derived from s 49D(5), (6), (7) of the former Companies Ordinance (Cap 32).

For the equivalent provision in the UK, see Companies Act 2006, s 699.

[248.02] Overview

This section sets out certain requirements for disclosure to members in relation to a proposed resolution under s 247 (variation of a buy-back contract by an unlisted company). The requirements are equivalent to those imposed in relation to a proposed resolution for authorisation of a buy-back contract under s 245. (See the notes to s 245). Instead of applying those requirements by reference (as was the case under s 49D(6) of the former Companies Ordinance (Cap 32)), this section expressly sets out the requirements in relation to the resolution authorising the variation.

249. Resolution authorizing variation: exercise of voting rights

- (1) This section applies to a special resolution to confer, vary, revoke or renew the authorization for a variation agreement under section 247.
- (2) If the special resolution is proposed as a written resolution, a member holding shares to which the resolution relates is not an eligible member for the purposes of Subdivision 2 of Division 1 of Part 12 (written resolution) in respect of those shares.
- (3) If the special resolution is proposed at a meeting, the resolution is not effective if—
 - (a) any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares; and
 - (b) the resolution would not have been passed if the member had not done so.

For the purposes of subsection (3)—

 - (a) a member holding shares to which the resolution relates is to be regarded as exercising the voting rights carried by those shares not only if the member votes in respect of them on a poll on the question whether the resolution should be passed but also if the member votes on the resolution otherwise than on a poll;
 - (b) any member of the company may demand a poll on that question; and
 - (c) a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.
- (5) The special resolution is not effective if a demand for a poll referred to in subsection (4)(b) is refused.

[249.01] History

This section is derived from s 49D(4), (6), (7) of the former Companies Ordinance (Cap 32).

For the equivalent provision in the UK, see Companies Act 2006, s 698.

[249.02] Overview

This section sets out restrictions on the exercise of voting rights by interested members in relation to a resolution under s 247 (variation of a buy-back contract by an unlisted company). The requirements are equivalent to those imposed in relation to a resolution for authorisation of a buy-back contract under s 246. (See the notes to s 246). Instead of applying those requirements by reference (as was the case under s 49D(6) of the former Companies Ordinance (Cap 32)), this section expressly sets out the requirements in relation to the resolution authorising the variation.

250. No assignment of right to buy back own shares

The rights of an unlisted company under a contract authorized under section 244 (as varied from time to time under section 247) are not capable of being assigned.

[250.01] History

This section is derived from s 49F(1) of the former Companies Ordinance (Cap 32).

For the equivalent provision in the UK, see Companies Act 2006 s 704.

[250.02] Overview

This section makes it clear that the rights of a company in respect of a buy-back contract under s 244 are not capable of being assigned. The rights are, however, capable of being released: see s 251.

251. Release of right to buy back own shares

- (1) An agreement by an unlisted company to release its rights under a contract authorized under section 244 (as varied from time to time under section 247) is void unless the terms of the release agreement are authorized in advance by special resolution.
- (2) The authorization for a release agreement may be varied, revoked or from time to time renewed by special resolution.
- (3) A special resolution conferring, varying, revoking or renewing the authorization for a release agreement is subject to sections 252 and 253.

[251.01] History

This section is derived from ss 49F(2) and 49D(3) of the former Companies Ordinance (Cap 32).

For the equivalent provision in the UK, see Companies Act 2006, s 700.

[251.02] Overview

Rights of an unlisted company under a buy-back contract authorized under s 244 are capable of being released, if that release is approved in advance by a special resolution. Otherwise the release is void.

The requirements in relation to notice and the provisions on voting in ss 252 and 253 apply to the special resolution for authorisation of a release.

[251.03] Special resolution

As to special resolutions generally, see s 564. See also the notes to s 240.

252. Resolution authorizing release: disclosure of details of release

- (1) This section applies in relation to a special resolution to confer, vary, revoke or renew the authorization for a release agreement under section 251.
- (2) A copy of the proposed release agreement (if it is in writing) or a memorandum giving details of the proposed release agreement (if it is not) must be made available to members—
 - (a) in the case of a written resolution, by being sent to every member of the company at or before the time when the proposed resolution is sent to them; or
 - (b) in the case of a resolution proposed at a meeting, by being made available for inspection by members of the company—
 - (i) at the company's registered office or at a place prescribed by regulations made under section 657, for a period of not less than 15 days ending on the date of the meeting; and
 - (ii) at the meeting.
- (3) There must also be made available to members in accordance with subsection (2) a copy of the original contract or memorandum, together with any variations previously made.

- reflects that difference in entitlement to dividend; and
- (c) but for the difference in the value of consideration, the terms of the offer would be the same in relation to all the shares concerned.
- (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—
- (a) the law of a place outside Hong Kong precludes an offer of consideration in the form specified in the terms of the offer, or precludes it except after compliance by the repurchasing company with conditions with which the repurchasing company is unable to comply or that the repurchasing company regards as unduly onerous;
- (b) consideration in another form is offered to a person to whom an offer of consideration in the specified form is so precluded;
- (c) the person is able to receive consideration in the other form that is of substantially equivalent value, and
- (d) but for the difference in the form of consideration, the terms of the offer would be the same in relation to all the shares concerned.
- (6) Despite subsection (1), a general offer may include, among the shares to which it relates, shares that will be allotted after the date of the offer but before a date specified in the offer.

[707.01] History

This section is derived from s 49BA(9) of the former Companies Ordinance (Cap 32); cf s 689 of Cap 622.

[707.02] Overview

The section sets out the circumstances in which a company's offer to buy back shares will constitute a general offer.

As to general offers for a buy-back, see also s 238.

If there is a non-tendering member (see s 711), and the repurchasing company

acquires, under the general offer, at least 90% of the shares to which the offer relates, the repurchasing company may compulsorily acquire the shares of the remaining shares of minority shareholders pursuant to s 712. The repurchasing company may also be required by the minority shareholders to buy out their shares: s 718.

708. Non-communication etc. does not prevent offer from being general offer

- (1) Even though an offer to buy back shares is not communicated to a holder of shares, that does not prevent the offer from being a general offer for the purposes of this Division if—
- (a) no Hong Kong address for the holder is registered in the repurchasing company's register of members;
- (b) the offer was not communicated to the holder in order not to contravene the law of a place outside Hong Kong; and
- (c) either—
- (i) the offer is published in the Gazette; or
- (ii) the offer can be inspected, or a copy of it obtained, at a place in Hong Kong or on a website, and a notice is published in the Gazette specifying the address of that place or website.
- (2) It is not to be inferred from subsection (1) that an offer that is not communicated to a holder of shares cannot be a general offer for the purposes of this Division unless the conditions specified in paragraphs (a), (b) and (c) of that subsection are satisfied.
- (3) Even though it is impossible or more difficult for a person, by reason of the law of a place outside Hong Kong, to accept an offer to buy back shares, that does not prevent the offer from being a general offer for the purposes of this Division.
- (4) It is not to be inferred from subsection (3) that an offer that is impossible, or more difficult, for certain persons to accept cannot be a general offer for the purposes of this Division unless the reason for the impossibility or difficulty is the one mentioned in that subsection.

[708.01] History

This is a new section. It is derived from the UK Companies Act 2006, s 978. Cf s 690 of Cap 622.

[708.02] Overview

Notwithstanding that a buy back offer is not communicated to a holder of shares, it may still be considered a general offer if the conditions set out in subs (1)(a) to (c) are fulfilled.

709. Shares to which general offer relates

- (1) For the purposes of this Division, if, after a general offer is made but before the end of the offer period, the repurchasing company buys back, or contracts unconditionally to buy back, any of the shares to which the offer relates but does not do so by virtue of acceptances of the offer, those shares are not to be regarded as shares to which the offer relates. This subsection has effect subject to subsection (2).
- (2) For the purposes of this Division, those shares are to be regarded as shares to which the general offer relates, and the repurchasing company is to be regarded as having bought them back or contracted to buy them back by virtue of acceptances of that offer, if—
 - (a) the value of the consideration for which the shares are bought back, or contracted to be bought back, at the time of the buy-back or contract, does not exceed the value of the consideration specified in the terms of that offer; or
 - (b) those terms are subsequently revised so that when the revision is announced, the value of the consideration for which the shares are bought back, or contracted to be bought back, at the time of the buy-back or contract, no longer exceeds the value of the consideration specified in those terms.
- (3) For the purposes of this Division, shares that an associate of the repurchasing company, or a nominee on the repurchasing company's behalf, holds, or has contracted, unconditionally or subject to conditions being satisfied, to buy back, whether at the date of the general offer or subsequently, are not to be

regarded as shares to which that offer relates, even if that offer extends to those shares. This subsection has effect subject to subsection (4).

- (4) For the purposes of this Division, where, after a general offer is made but before the end of the offer period, an associate of the repurchasing company, or a nominee on the repurchasing company's behalf, buys back, or contracts unconditionally to buy back, any of the shares to which the offer relates, the shares are to be regarded as shares to which the offer relates if—
 - (a) the value of the consideration for which the shares are bought back, or contracted to be bought back, at the time of the buy-back or contract, does not exceed the value of the consideration specified in the terms of the offer; or
 - (b) those terms are subsequently revised so that when the revision is announced, the value of the consideration for which the shares are bought back, or contracted to be bought back, at the time of the buy-back or contract, no longer exceeds the value of the consideration specified in those terms.
- (5) For the purposes of this Division, the shares held by a nontendering member are not to be regarded as shares to which the general offer relates, even if that offer extends to those shares.

[709.01] History

This is a new provision. Cf s 691 of Cap 622.

[709.02] Overview

The section provides clarification of 'shares to which a general offer relates' which was not previously dealt with in the former Companies Ordinance (Cap 32).

710. Revised offer not to be regarded as fresh offer

For the purposes of this Division, a revision of the terms of an offer to buy back shares is not to be regarded as the making of a fresh offer if—

- (a) the terms of the offer make provision for—
 - (i) their revision; and

- (ii) acceptances on the previous terms to be treated as acceptances on the revised terms; and
- (b) the revision is made in accordance with that provision.

[710.01] History

This is a new section. Cf s 692 of Cap 622.

[710.02] Overview

Under the former Companies Ordinance (Cap 32), there was no provision on revised offers to provide for unexpected changes of circumstances after the making of an offer. As a result, an offeror who wished to revise his offer had to make a fresh share buy-back offer and address the acceptances received under the old offer. Section 710 allows a revision of the terms of the offer without the need for a fresh offer if the terms of the original offer make provision for their revision and treat existing acceptances as acceptances on the revised terms.

711. Member may give notice that member will not tender shares for buy-back under general offer

- (1) A member of a repurchasing company may, on or before the date on which notice of an authorizing meeting of the company is given, give notice to every other member of the company that the member will not tender any shares held by the member to be bought back by the company under the general offer.
- (2) A non-tendering member is not entitled to tender any shares held by the member to be bought back by the repurchasing company under the general offer even if that offer extends to those shares.
- (3) In this section—

authorizing meeting (授權會議), in relation to a repurchasing company, means a meeting of the company called for the purpose of authorizing a general offer that the company intends to make.

[711.01] History

This section is derived from the Thirteenth Schedule, Part 1 paras 1 to 3 of the former Companies Ordinance (Cap 32).

[711.02] Overview

Under this section, a member may give notice to all other members that they will not tender any of his shares for repurchase by the company. A member who has given such a notice under s 711 is referred to as a 'non-tendering member': see s 705(1). This term replaces the term 'relevant shareholder' that was used in the Thirteenth Schedule of the former CO (Cap 32).

For the requirements in relation to a general offer for a buy-back where a member has given notice under s 711, see s 238(3)–(6).

As to the 'authorizing meeting', see s 238.

Subdivision 2 'Squeeze-out'

712. Repurchasing company may give notice to buy out minority shareholders

- (1) This section applies if a member or members of the repurchasing company has or have given notice under section 711 that the member or members will not tender any shares to be bought back by that company under a general offer.
- (2) If, in the case of a general offer that does not relate to shares of different classes, the repurchasing company has, by virtue of acceptances of the offer, bought back, or contracted unconditionally to buy back, at least 90% in number of the shares to which the offer relates, the repurchasing company may give notice to the holder of any other shares to which the offer relates that it desires to buy back those shares.
- (3) If, in the case of a general offer that relates to shares of different classes, the repurchasing company has, by virtue of acceptances of the offer, bought back, or contracted unconditionally to buy back, at least 90% in number of the shares of any class to which the offer relates, the repurchasing company may give notice to the holder of any other shares of that class to which the offer relates that it desires to buy back those shares.

- (4) If, in the case of a general offer that does not relate to shares of different classes, the repurchasing company has, by virtue of acceptances of the offer, bought back, or contracted unconditionally to buy back, less than 90% in number of the shares to which the offer relates, the repurchasing company may apply to the Court for an order authorizing it to give notice to the holder of any other shares to which the offer relates that it desires to buy back those shares.
- (5) If, in the case of a general offer that relates to shares of different classes, the repurchasing company has, by virtue of acceptances of the offer, bought back, or contracted unconditionally to buy back, less than 90% in number of the shares of any class to which the offer relates, the repurchasing company may apply to the Court for an order authorizing it to give notice to the holder of any other shares of that class to which the offer relates that it desires to buy back those shares.
- (6) The Court may, on application under subsection (4) or (5), make the order if it is satisfied that—
- after reasonable enquiry, the repurchasing company has been unable to trace one or more of the persons holding shares to which the general offer relates;
 - had the person, or all those persons, accepted the general offer, the repurchasing company would have, by virtue of acceptances of that offer, bought back, or contracted unconditionally to buy back, at least 90% in number of the shares, or the shares of any class, to which that offer relates; and
 - the consideration offered is fair and reasonable.
- (7) The Court must not make the order unless it is satisfied that it is just and equitable to do so having regard to all the circumstances and, in particular, to the number of holders of shares who have been traced but who have not accepted the general offer.
- (8) If the Court makes an order authorizing the repurchasing company to give notice to the holder of any shares, the repurchasing company may give notice to that holder.

[712.01] History

This section is derived from the Thirteenth Schedule, Part 1 paras 1 and 2 of the former Companies Ordinance (Cap 32). Cf s 693 of Cap 622.

[712.02] Overview

The section provides that where a repurchasing company has obtained the requisite threshold (90% of shares to which the offer relates) in a general offer, it may give notice to dissenting minority shareholders, that it intends to buy back those remaining shares. The section only applies if there is a member (referred to as a non-tendering member) who has given notice under s 711 that he will not tender any shares to be bought back by the company: subs (1). The compulsory acquisition by the repurchasing company of the shares of the minority shareholders enables the non-tendering member to obtain full control of the company following the buy-back.

For the meaning of 'shares to which the offer relates', see s 709. The shares held by the non-tendering member are not to be regarded as shares to which the offer relates (s 709(5)), and hence are disregarded in determining whether the repurchasing company has bought back at least 90% of the shares.

The section also provides a procedure for the company to apply to the Court of First Instance (s 2(1)) for squeeze out notices where the relevant threshold has not been obtained. Application to the Court is made by originating summons: RHC O 102, r 2(1) and (2); with supporting affidavit. For claim form and witness statements, see (UK) 8(6) *Atkin's Court Forms*, 2nd edn (2010 Issue), pp 861–866.

Under the former CO (Cap 32), there was no procedure for an offeror to apply for a Court order authorizing the giving of squeeze out notices for those buy-back offers which failed to achieve the relevant threshold for giving of such notices because of untraceable shareholders related to the offer. Subsections (4) to (8) now provide for the mechanism which will apply if the offeror has been unable to trace the relevant shareholders after reasonable enquiry. The consideration offered must be fair and reasonable and the Court may not make an order unless it considers that it is just and equitable to do so having regard, in particular, to the number of shareholders who have been traced but have not accepted the offer.

713. Notice to minority shareholders

- (1) A notice to a holder of shares under section 712—
- must be given in the specified form; and
 - must be given to the holder before whichever is the earlier of the following—

- (i) the end of the period of 3 months beginning on the day after the end of the offer period of the general offer;
 - (ii) the end of the period of 6 months beginning on the date of the general offer.
- (2) The notice must be given to the holder of shares—
- (a) by delivering it personally to that holder in Hong Kong;
 - (b) by sending it by registered post to that holder to—
 - (i) an address of that holder in Hong Kong registered in the books of the company; or
 - (ii) if there is no such address, an address in Hong Kong supplied by that holder to the company for the giving of notice to that holder; or
 - (c) in the manner directed by the Registrar on an application made under subsection (3).
- (3) The repurchasing company may apply to the Registrar for directions regarding the manner in which the notice is to be given to a holder of shares if—
- (a) there is no address of the holder in Hong Kong registered in the books of the company; and
 - (b) the holder has not supplied to the company an address in Hong Kong for the giving of notice to the holder.
- (4) If the general offer gives the holder of shares a choice of consideration, the notice—
- (a) must give particulars of the choices;
 - (b) must state that the holder may, within 2 months after the date of the notice, indicate the holder's choice by a letter sent to the repurchasing company at an address specified in the notice; and
 - (c) must state which consideration specified in the offer will apply if the holder does not indicate a choice.

[713.01] History

This section is derived from the Thirteenth Schedule, Part 1 paras 4 and 7 of the former Companies Ordinance (Cap 32); and the former Companies (Forms) Regulations (Cap 32B), para 8. Cf s 694 of Cap 622

[713.02] Overview

The section sets out the requirements for giving of a squeeze out notice under s 712.

The notice must be given in the specified form NRE3.

The notice may be given by personal delivery or registered post or in the manner as directed by the Registrar if directions are sought: subs (2) and (3).

For the content of the notice, see subs (4).

713. Repurchasing company's right to buy out minority shareholders

- (1) This section applies if a notice is given under section 712 to the holder of any shares.
- (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.
- (3) The Court may, on application by the holder made within 2 months after the date on which the notice was given, order that—
 - (a) the repurchasing company is not entitled and bound to buy back the shares; or
 - (b) 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 713(4), 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.