

Published by
Pearson Education Asia Limited
18th Floor, Cornwall House
Taikoo Place, 979 King's Road
Hong Kong
Tel: (852) 3181 0000
and Associated Companies throughout the world

Website : www.pearson.com.hk
E-mail address : hkcs@pearson.com

© Pearson Education Asia Limited 2016

All rights reserved; no part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior written permission of the Publishers.

First published 1990
Second edition 1993
Third edition 1995
Fourth edition 1997
Fifth edition 2000
Sixth edition 2003
Seventh edition 2004
Eighth edition 2008
Ninth edition 2012

Produced by Pearson Education Asia Limited
SWTC/01

ISBN 978-988-233-027-6

Cover art: Close up view of the hands of business people taking notes in a meeting seated at a table

Acknowledgements

We are grateful to the following for permission to reproduce copyright photo: 123RF.com

Pearson is the world's leading learning company. Our education business combines 150 years of experience in publishing with the latest learning technology and online support.

We work in more than 70 countries. Courses are available as books, online and through multilingual packages, helping people learn whatever, wherever and however they choose.

In Hong Kong and Macau, Pearson is the leader in all education sectors, ranging from pre-school, primary, secondary and higher education through to adult learning and you may be familiar with some of our products – *Longman Elect*, *Longman Dictionary of Contemporary English* among others.

PEARSON

Contents

Table of Legislation and Guidelines xvii

Useful Websites xxx

Preface to the Tenth Edition xxxii

Acknowledgements xxxiv

About the Authors xxxvi

1 Introduction 1

Interpretation 1

2 Formation of a Company 10

2.1 Types of Business Organisations 10

2.2 Types of Companies 12

2.3 Incorporation of Companies 15

2.4 Shelf/Ready-made Companies 24

3 Post-incorporation Formalities 25

3.1 Overprinting of the Articles of Association 25

3.2 Business Registration Certificate and Business Name 25

3.3 Miscellaneous 26

3.4 Matters to Be Attended to at the First Board Meeting 28

3.5 Matters to Be Attended to after the First Board Meeting 30

4 Share Capital and Financial Assistance for Purchase of Shares 34

4.1 Capital Structure 34

4.2 Issue of Shares for Cash and for Consideration Other Than in Cash 38

4.3 Permitted Commission 38

4.4 Provision of Financial Assistance by a Company for Purchase of Its Own Shares 39

5 Methods of Raising Share Capital 47

- 5.1 Prospectus 48
- 5.2 Application for a Listing and Permission to Deal on the Main Board 50
- 5.3 Offer for Subscription / Public Issue 51
- 5.4 Rights Issue 57
- 5.5 Open Offer 63
- 5.6 Allotment of Shares Other Than by a Rights Issue, i.e., Issue of Shares under a General/Specific Mandate 64
- 5.7 Placing 68
- 5.8 Issue of Warrants/Options 71

6 Partly Paid Shares 76

- 6.1 Calls and Instalments 77
- 6.2 Sample Articles on Calls and the Making of Calls 77
- 6.3 Forfeiture of Shares 80
- 6.4 Sample Articles on Forfeiture of Shares 81

7 Alteration of Share Capital and Variation of Class Rights 85

- 7.1 Consolidation of Shares 86
- 7.2 Subdivision of Shares 88
- 7.3 Cancellation of Unissued Shares 91
- 7.4 Redenomination of Share Capital 93
- 7.5 Classification/Reclassification of Shares 94
- 7.6 Variation of Class Rights 96

8 Company Meetings 100

- 8.1 Types of Company Meetings 100
- 8.2 Requisites for a Valid Meeting 101
- 8.3 Board Meetings 101
- 8.4 Meetings of Members—for All Types of Companies 103
- 8.5 Shareholders' Resolution in Writing 110
- 8.6 General Meetings for Listed Companies 111
- 8.7 Adjournment of Meetings 112
- 8.8 Postponement of Meetings 113

9 Company Directors 114

- 9.1 Shadow Directors 114
- 9.2 Number of Directors 114

- 9.3 Qualification and Disqualification of Directors 115
- 9.4 Types of Directors 116
- 9.5 Appointment of Directors 118
- 9.6 Resignation of Directors 125
- 9.7 Removal of Directors 127
- 9.8 Vacation of Office by Other Means 131
- 9.9 Appointment of Alternate/Substitute Directors 131
- 9.10 Vacation of Office of Alternate Directors 132
- 9.11 Retirement of Directors in an Annual General Meeting 132
- 9.12 Financial Assistance to Directors 133
- 9.13 Exceptions to Prohibitions under Sections 500(1) to (3) 137
- 9.14 Remuneration of Directors 140
- 9.15 Payment for Loss of Office 140
- 9.16 Disclosure of Directors' Material Interests in Transaction, Arrangement or Contract 143
- 9.17 Ratification of Conduct by Director Involving Negligence 145
- 9.18 Directors' Statutory Duties under the Ordinance 145
- 9.19 Directors' Duties under the *Listing Rules* 146
- 9.20 Directors' Duties on Disclosure of Interests in Securities under Part XV of the *Securities and Futures Ordinance* 148
- 9.21 Directors' Duties to Avoid Insider Dealing under Part XIV of the *Securities and Futures Ordinance* 148
- 9.22 Disclosure of Inside Information / Price-sensitive Information under Rule 13.09 and the *Securities and Futures Ordinance* 149
- 9.23 Directors' Duties under the Hong Kong *Code on Takeovers and Mergers* 149

10 Company Secretary 150

- 10.1 Duties 151
- 10.2 Qualifications 151
- 10.3 Dual Capacity 152
- 10.4 Appointment to and Vacation of Office 152

11 Auditors 154

- 11.1 Qualifications of Auditor 154
- 11.2 Appointment of Auditor 154
- 11.3 Termination of Auditor's Appointment 156
- 11.4 Resignation of Auditor 157
- 11.5 Removal of Auditor 158
- 11.6 Remuneration of Auditor 161

12 Change of Company's Name, Objects Clauses, Articles of Association, and Registered Office 162

- 12.1 Change of Company Name and Name Swaps 162
- 12.2 Alteration of Objects Clauses 165
- 12.3 Alteration of Articles of Association 167
- 12.4 Change of Registered Office 169

13 Bank Accounts 171

- 13.1 Open a Bank Account 171
- 13.2 Change the Bank Signatories 172
- 13.3 Close a Bank Account 173

14 Common Seal, Securities Seal, and Official Seal 174

- 14.1 Common Seal 174
- 14.2 Securities Seal 175
- 14.3 Official/Branch Seal 176

15 Transfer of Shares 177

- 15.1 Forms of Restriction on Share Transfers 177
- 15.2 Procedures 178
- 15.3 Section 45—Relief for Intra-group Transfer / Sale of Shares 181
- 15.4 Nominee Shareholders 183

16 Transmission of Shares 185

- 16.1 On the Death of a Member 185
- 16.2 By Operation of Law 186
- 16.3 Refusal to Register a Share Transfer by Transmission 187

17 Share Certificates 188

- 17.1 Issue of Share Certificates 188
- 17.2 Replacement of Lost Share Certificates 189

18 Registration of Documents 195

- 18.1 Power of Attorney 195
- 18.2 Death Certificate 196
- 18.3 Probate or Letters of Administration 197
- 18.4 Marriage Certificate 197

- 18.5 Decree of Divorce 198
- 18.6 Certificate of Change of Name 198
- 18.7 Deed Poll 198
- 18.8 Court Order 199
- 18.9 Change of Address 199

19 Loan Capital / Debentures 200

- 19.1 Borrowing Power of a Company 201
- 19.2 Borrowing Power of Directors 201
- 19.3 Types of Secured Borrowings 201
- 19.4 Types of Debentures 202
- 19.5 Procedures 205
- 19.6 Provisions of Guarantee or Collateral Security for the Performance of Obligation by a Third Party 208

20 Registration of Charges 210

- 20.1 Specified Charges Defined in Section 334 of the Ordinance 211
- 20.2 Registration Procedures 213
- 20.3 Registration of Charges Existing on Property Acquired 215
- 20.4 Charges Created by Non-Hong Kong Companies or Charges Existing on Property Acquired by Non-Hong Kong Companies 216
- 20.5 Extension of the Time for Registration and Rectification of the Register of Charges 216
- 20.6 Release of Charges 217

21 Notifiable Transactions and Connected Transactions 218

- 21.1 Definition of "Transaction" 219
- 21.2 Publication of Announcement 220
- 21.3 Circular 222
- 21.4 Shareholders' Approval 223
- 21.5 Percentage Ratios / Size Tests 224
- 21.6 Share Transaction 228
- 21.7 Discloseable Transaction 229
- 21.8 Major Transaction—Major Acquisition and Major Disposal/Realisation 229
- 21.9 Very Substantial Acquisition 231
- 21.10 Very Substantial Disposal/Realisation 232

- 21.11 Reverse Takeover 234
- 21.12 Summary of Notification, Publication and Shareholders' Approval Requirements of Notifiable Transactions 240
- 21.13 Connected Transactions 241
- 21.14 Continuing Connected Transactions 243
- 21.15 Types of Connected Transactions 245
- 21.16 Exempt Connected Transactions and Exempt Continuing Connected Transactions 246
- 21.17 Connected Transactions or Continuing Connected Transactions Subject to the Reporting and Annual Review (for Continuing Connected Transactions) Requirements Only, i.e., Exempt from the Independent Shareholders' Approval Requirements 251
- 21.18 Connected Transactions and Continuing Connected Transactions Subject to Reporting, Annual Review (for Continuing Connected Transactions), and Independent Shareholders' Approval Requirements 251
- 21.19 Definitions 252

22 Securities and Futures Ordinance—Part XV Disclosure of Interests 260

- 22.1 Disclosable Interests and Exempt Interests 261
- 22.2 Duty of Substantial Shareholders 266
- 22.3 Disclosable Interest Acquired by Connected Persons / Deemed Interests of Substantial Shareholders 267
- 22.4 Checklist for Initial Notification by Substantial Shareholders 268
- 22.5 Checklist for Subsequent Notification by Substantial Shareholders 268
- 22.6 Duty of Directors and Chief Executives 269
- 22.7 Disclosable Interest Acquired by Connected Persons / Deemed Interests of Directors and Chief Executives 271
- 22.8 Checklist for Initial Notification by Directors and Chief Executives 272
- 22.9 Checklist for Subsequent Notification by Directors and Chief Executives 273
- 22.10 Computation of Percentage of Interests and Short Positions 273
- 22.11 Time and Manner of Notification 274
- 22.12 Definitions 275

23 Dividends 282

- 23.1 Payment of an Interim Dividend 283
- 23.2 Preliminary Announcement of Interim Results 285
- 23.3 Final Dividends 286

24 Company Accounts, Directors' Report, and Business Review 287

- 24.1 Financial Year / Accounting Reference Period 287
- 24.2 Company Accounts 288
- 24.3 Reporting Exemption / Simplified Financial Statements 291
- 24.4 Summary Financial Report 295
- 24.5 Adoption of Audited Accounts 296
- 24.6 Right to Receive Audited Accounts 297
- 24.7 Preservation of Accounting Records 298
- 24.8 Directors' Report 298
- 24.9 Business Review 300
- 24.10 Company Accounts and Directors' Reports of Listed Companies 301
- 24.11 Corporate Governance Report 303
- 24.12 Interim Reports 307
- 24.13 Quarterly Reports 311

25 Annual General Meeting 312

- 25.1 Period for Holding Annual General Meetings 312
- 25.2 Circumstances under Which Companies Are Not Required to Hold Annual General Meetings 313
- 25.3 Businesses of Annual General Meeting 314
- 25.4 Procedures for Holding an Annual General Meeting 314
- 25.5 Annual Return 322

26 Redemption of Redeemable Shares and Share Buy-back 326

- 26.1 Redemption of Redeemable Shares 326
- 26.2 Share Buy-back / Repurchase of Shares 334
- 26.3 Rights of the Company and Minority Shareholders in Case of a Successful Share Buy-back by General Offer 354

27 Reduction of Share Capital 357

- 27.1 Forms of Reduction of Capital 357
- 27.2 Methods of Reduction of Share Capital 358
- 27.3 Reduction of Share Capital by Special Resolution Supported by Solvency Statement 358
- 27.4 Reduction of Share Capital by Special Resolution Confirmed by Court 363

28 Schemes of Arrangement 366

- 28.1 Uses of a Scheme of Arrangement 366
- 28.2 Procedures for a Debt Restructuring Scheme for Listed Companies 368
- 28.3 Procedures for a Scheme Involving Capital Reorganisation and Change of Domicile for Listed Companies 371
- 28.4 Procedures for a Scheme Involving a Takeover or Merger for Listed Companies 371
- 28.5 Procedures for a Privatisation Scheme 372

29 Takeovers and Mergers, and Amalgamation of Group Companies 374

- 29.1 By Agreement with the Individual Members of the Company Being Acquired 374
- 29.2 By Mandatory/General Offer 375
- 29.3 Rights of the Offeror and Minority Shareholders of the Offeree Company in the Case of a Successful Takeover Offer 381
- 29.4 Amalgamation of Wholly-owned Companies within the Same Group 384

30 Dissolution of a Company 390

- 30.1 Deregistration of Defunct Solvent Companies under Section 750 of the Ordinance 390
- 30.2 Winding-up 392

31 Non-Hong Kong Companies 414

- 31.1 Place of Business 414
- 31.2 Initial Registration 414
- 31.3 Certification of Documents 418
- 31.4 Translation of Documents 418
- 31.5 Subsequent Changes—Filing Requirements 419
- 31.6 Registration and Release of Charges 422
- 31.7 Annual Obligations 423
- 31.8 Special Provision Regarding the Use of Company's Name in Hong Kong 424
- 31.9 Liquidation 425
- 31.10 Cessation of Place of Business 425

32 Liberian Companies 426

- 32.1 Articles of Incorporation 426
- 32.2 Bylaws 428

- 32.3 Share Capital 428
- 32.4 Shareholders' Meetings 429
- 32.5 Directors and Voluntary Filing with LISCOR Office 431
- 32.6 Board Meetings 432
- 32.7 Officers 433
- 32.8 Resident Agent 433
- 32.9 Corporate Seal 434
- 32.10 Registered Office 434
- 32.11 Books of Accounts, Minutes, and Register of Shareholders 434
- 32.12 Matters to Be Attended to after Incorporation 434
- 32.13 Annual Registration Fee 435
- 32.14 Amendment of the Articles of Incorporation 435
- 32.15 Amendment of the Bylaws 437
- 32.16 Sale, Lease, Exchange, or Other Disposition of Corporate Assets 437
- 32.17 Mortgage or Pledge of Property 437
- 32.18 Merger, Consolidation, and Re-domicile into Liberia 437
- 32.19 Dissolution 439

33 Panamanian Companies 442

- 33.1 Articles of Incorporation and Bylaws 442
- 33.2 Shares 444
- 33.3 Shareholders and Shareholders' Meetings 445
- 33.4 Directors and Directors' Meetings 446
- 33.5 Officers 447
- 33.6 Resident Agent 447
- 33.7 Disclosure of Beneficial Ownership 447
- 33.8 Corporate Seal 448
- 33.9 Registered Address 448
- 33.10 Statutory Books 448
- 33.11 Matters to Be Attended to after Incorporation 448
- 33.12 Annual Registration Fee 449
- 33.13 Registration Requirements 449
- 33.14 Amendment of the Articles of Incorporation 450
- 33.15 Amendment of the Bylaws 450
- 33.16 Registration of Charges 450
- 33.17 Sale, Lease, or Disposal of Corporate Assets 451
- 33.18 Change of Domicile 451
- 33.19 Dissolution 452

34 British Virgin Islands Business Companies—Companies Limited by Shares 453

- 34.1 Types of Business Companies 453
- 34.2 Incorporation of Business Companies—Companies Limited by Shares 454
- 34.3 Memorandum and Articles of Association: Company Name, Corporate Capacity, and Powers 455
- 34.4 Issue of Shares 456
- 34.5 Share Certificates 459
- 34.6 Shareholders 459
- 34.7 General Meetings 460
- 34.8 Directors 461
- 34.9 Officers 465
- 34.10 Directors'/Board Meetings 465
- 34.11 Registered Agent 466
- 34.12 Common Seal 468
- 34.13 Registered Office 469
- 34.14 Statutory Books 469
- 34.15 Matters to Be Attended to after Incorporation 471
- 34.16 Annual Obligations 472
- 34.17 Registration of Charges and Priorities of Charges 473
- 34.18 Mortgages and Charges of Shares by Shareholders 474
- 34.19 Distribution and Dividend 475
- 34.20 Alteration of Memorandum and Articles of Association: Change of Company Name and Increase of Capital 476
- 34.21 Redemption, Repurchase, and Acquisition of Shares 477
- 34.22 Share Transfer 480
- 34.23 Merger and Consolidation 481
- 34.24 Disposition of Assets, Forced Redemption of Minority Shares, and Arrangement 482
- 34.25 Schemes of Arrangement 483
- 34.26 Change of Domicile / Deregistration and Re-registration 484
- 34.27 Striking-off 486
- 34.28 Liquidation/Winding-up of a Solvent Company 487

35 Bermuda Companies—Exempted Companies 491

- 35.1 Types of Companies 491
- 35.2 Incorporation of Companies under the *Companies Act 1981* 492

- 35.3 Memorandum of Association: Company Name, Objects, and Powers 494
- 35.4 Bye-laws 495
- 35.5 Share Capital, Share Premium, Redeemable Preference Shares, Contributed Surplus, and Dividends 496
- 35.6 Shareholders and Shareholders' Meetings 497
- 35.7 Disclosure of Beneficial Ownership 499
- 35.8 Directors, Secretary, and Resident Representatives 500
- 35.9 Directors and Directors' Meetings 500
- 35.10 Secretary and Officers 501
- 35.11 Resident Representative 502
- 35.12 Common Seal 502
- 35.13 Registered Office 503
- 35.14 Statutory Books 503
- 35.15 Matters to Be Attended to after Incorporation 504
- 35.16 Subsequent Changes 506
- 35.17 Alteration of Objects Clauses and Powers 507
- 35.18 Change of Name 508
- 35.19 Amendment of Bye-laws 509
- 35.20 Alteration of Share Capital 509
- 35.21 Share Issues and Transfers 510
- 35.22 Reduction of Capital (Including Share Premium) 511
- 35.23 Redemption and Repurchase of Shares 511
- 35.24 Registration of Charges 513
- 35.25 Release of Charges 514
- 35.26 Change of Registered Office 514
- 35.27 Closure of Register of Members 514
- 35.28 Issue of Prospectus 514
- 35.29 Annual Obligations for Exempted Companies 515
- 35.30 Amalgamation or Merger of Exempted Company and Foreign Corporation, and Continuation as a Foreign Corporation 517
- 35.31 Continuance into Bermuda and Discontinuance from Bermuda 519
- 35.32 Liquidation 521

36 PRC Companies 526

- 36.1 Types of Companies 527
- 36.2 Company Name and Objects 527
- 36.3 Limited Liability Companies 528
- 36.4 Joint Stock Limited Companies 538

- 36.5 Financial Statements and Auditors 550
- 36.6 Dividends and Reserve Funds 551
- 36.7 Subsequent Changes 552
- 36.8 Annual Requirements 559
- 36.9 Liquidation 559
- 36.10 Branch Office 562
- 36.11 Branch of Foreign Companies 563

37 Listing of Securities on the Singapore Exchange—Catalist Board 565

- 37.1 Advantages and Disadvantages of Seeking a Catalist Listing on the Singapore Exchange 566
- 37.2 Procedure for Seeking a Catalist Listing on the Singapore Exchange 566
- 37.3 Restrictions on Issue of Shares and Convertible Securities 572
- 37.4 Share Buy-back 574
- 37.5 Notifiable Transactions 575
- 37.6 Interested Person Transactions 580
- 37.7 Sale of Property Units to Interested Persons and Directors' Relatives 585
- 37.8 Continuing Obligations 586
- 37.9 Change of Auditors 591
- 37.10 Annual Report 591
- 37.11 Interim Results 592
- 37.12 Quarterly Results 592
- 37.13 Announcement of Dividends 592
- 37.14 Announcement of Book Close Period 593

38 Corporate Governance Matters 594

- 38.1 Independent Non-executive Directors 595
- 38.2 Audit Committee 598
- 38.3 Nomination Committee 600
- 38.4 Remuneration Committee 601
- 38.5 *Corporate Governance Code* 603
- 38.6 Corporate Governance Report 610
- 38.7 Disclosure of Price-sensitive/Inside Information by Listed Companies 611
- 38.8 Disclosure of Specific Information 614

- 38.9 Directors' Service Contracts 617
- 38.10 Pre-emptive Rights and General Mandate 618
- 38.11 Minimum Public Holdings 620
- 38.12 Suspension on Failure to Publish Timely Financial Information 621
- 38.13 Corporate Communications to Non-registered Holders of Securities 621
- 38.14 Supply of Corporate Communications by Electronic Means 622

39 Listing of Securities on the Growth Enterprise Market / Second Board of the Stock Exchange 623

- 39.1 Types of Securities 623
- 39.2 Qualification for Listing 624
- 39.3 Prospectus Requirements 625
- 39.4 Corporate Governance 626
- 39.5 Restrictions on Disposal of Securities on Controlling Shareholders 628
- 39.6 Issue of New Securities within Six Months of Listing 629
- 39.7 Continuing Obligations 630
- 39.8 Transfer of Listing to the Main Board 631

40 Cayman Islands Companies—Exempted Companies 635

- 40.1 Types of Companies 635
- 40.2 Incorporation of Companies 636
- 40.3 Company Name, Objects, Powers, and Articles of Association 637
- 40.4 Issue of Shares and Dividends 638
- 40.5 Shareholders and Shareholders' Meetings 639
- 40.6 Disclosure of Beneficial Ownership 641
- 40.7 Directors and Directors' Meetings 641
- 40.8 Common Seal 641
- 40.9 Registered Office 642
- 40.10 Statutory Books 642
- 40.11 Matters to Be Attended to after Incorporation 643
- 40.12 Subsequent Changes 644
- 40.13 Alteration of Memorandum and Articles of Association 644
- 40.14 Change of Company Name 645
- 40.15 Alteration of Authorised Capital, i.e., Increase, Subdivide, Consolidate, and Cancel Unissued Shares 646
- 40.16 Share Issues and Transfers 646
- 40.17 Reduction of Capital 647

- 40.18 Surrender of Shares, Repurchase of Shares, Redemption of Shares and Treasury Shares 649
- 40.19 Annual Obligations for Exempted Companies 651
- 40.20 Mergers and Consolidation 651
- 40.21 Change of Domicile / Deregistration 656
- 40.22 Removal of Defunct Companies 657
- 40.23 Liquidation/Winding-up 658

Appendices

- 1 Company Secretary's Checklist for Holding a Board Meeting 661
- 2 Company Secretary's Checklist for Holding an Annual General Meeting of a Listed Company 664
- 3 Sample Documents 669
- 4 List of Prescribed Forms 674
- 5 Useful Information Available on the Website of the Hong Kong Stock Exchange 685

Index 705

Table of Legislation and Guidelines

A Guide on Directors' Duties (Companies Registry)	125	s 50 s 53	510 496
Air Navigation (Hong Kong) Order 1993	216	s 54 s 55 s 57	496 513 513
Banking Ordinance	1-2, 12, 254, 291, 378	s 59 s 62 s 66	514 503 514
s 2(1)	14	ss 71-71A	515
s 46	414	ss 71-79	497
Bankruptcy Ordinance		s 74	498
s 51B	412	s 79	499
Bermuda Companies Act 1981	491	s 83	502
s 2A(4)	498	s 87(3)(a)	515
ss 4A-24A	492	ss 87A-87B	516
ss 7-11	494	s 89	497
s 9	494	ss 89(3)-(5)	498
s 10	508	ss 91-96	500
s 12	507	s 92	501
s 13	495	s 93	501
ss 25-26	514	s 104B	518-519
s 40	496	ss 104B-106	517
s 42	496	s 104B(2)(a)	518
ss 42-42A	511	s 104B(2)(b)	518
s 42B(1)	512	s 104D(4)	517
s 43	496	s 107	519
s 45	509	ss 113-126	491
s 46	511	ss 127-132B	492
s 46(2)	511	s 130	500
s 47(7)	509		