

Contents

Table of Legislation and Guidelines xvii

Useful Websites xxx

Preface to the Eleventh Edition xxxii

About the Authors xxxiv

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 17

2.4 Shelf/Ready-made Companies 25

3 Post-incorporation Formalities 27

3.1 Complete the Articles of Association 27

3.2 Business Registration Certificate and Business Name 27

3.3 Miscellaneous 28

3.4 Matters to Be Attended to at the First Board Meeting 30

3.5 Matters to Be Attended to after the First Board Meeting 33

3.6 Significant Controllers Register 36

4 Share Capital and Financial Assistance for Purchase of Shares 39

4.1 Capital Structure 39

4.2 Issue of Shares for Cash and for Consideration Other Than in Cash 44

4.3 Permitted Commission 44

4.4 Provision of Financial Assistance by a Company for Purchase
of Its Own Shares 45

5 Methods of Raising Share Capital 53

- 5.1 Prospectus 54
- 5.2 Application for a Listing and Permission to Deal on the Main Board 56
- 5.3 Offer for Subscription / Public Issue 57
- 5.4 Rights Issue 68
- 5.5 Open Offer 77
- 5.6 Allotment of Shares Other Than by a Rights Issue, i.e., Issue of Shares under a General/Specific Mandate 78
- 5.7 Placing 83
- 5.8 Issue of Warrants/Options 87

6 Partly Paid Shares 92

- 6.1 Calls and Instalments 93
- 6.2 Sample Articles on Calls and the Making of Calls 93
- 6.3 Forfeiture of Shares 97
- 6.4 Sample Articles on Forfeiture of Shares 97

7 Alteration of Share Capital and Variation of Class Rights 102

- 7.1 Consolidation of Shares 103
- 7.2 Subdivision of Shares 106
- 7.3 Cancellation of Unissued Shares 110
- 7.4 Redenomination of Share Capital 112
- 7.5 Classification/Reclassification of Shares 113
- 7.6 Variation of Class Rights 115

8 Company Meetings 120

- 8.1 Types of Company Meetings 120
- 8.2 Requisites for a Valid Meeting 121
- 8.3 Board Meetings 121
- 8.4 Meetings of Members—for All Types of Companies 123
- 8.5 Shareholders' Resolution in Writing 131
- 8.6 General Meetings for Listed Companies 132
- 8.7 Adjournment of Meetings 134
- 8.8 Postponement of Meetings 134

9 Company Directors 135

- 9.1 Shadow Directors 135
- 9.2 Number of Directors 135

- 9.3 Qualification and Disqualification of Directors 136
- 9.4 Types of Directors 137
- 9.5 Appointment of Directors 139
- 9.6 Resignation of Directors 148
- 9.7 Removal of Directors 150
- 9.8 Vacation of Office by Other Means 154
- 9.9 Appointment of Alternate/Substitute Directors 154
- 9.10 Vacation of Office of Alternate Directors 155
- 9.11 Retirement of Directors in an Annual General Meeting 155
- 9.12 Financial Assistance to Directors 156
- 9.13 Exceptions to Prohibitions under Sections 500(1) to (3) 160
- 9.14 Remuneration of Directors 163
- 9.15 Payment for Loss of Office 164
- 9.16 Disclosure of Directors' Material Interests in Transaction, Arrangement or Contract 166
- 9.17 Ratification of Conduct by Director Involving Negligence 168
- 9.18 Directors' Statutory Duties under the Ordinance 169
- 9.19 Directors' Duties under the *Listing Rules* 170
- 9.20 Directors' Duties to Avoid Insider Dealing under Part XIV of the *Securities and Futures Ordinance* 172
- 9.21 Directors' Duties under the Hong Kong *Code on Takeovers and Mergers* 173

10 Company Secretary and Authorised Representative 174

- 10.1 Company Secretary 174
- 10.2 Duties of Company Secretary 175
- 10.3 Qualifications of Company Secretary 175
- 10.4 Dual Capacity of Company Secretary 177
- 10.5 Appointment to and Vacation of Office of Company Secretary 177
- 10.6 Authorised Representatives of Listed Companies 179

11 Auditors 180

- 11.1 Qualifications of Auditor 180
- 11.2 Appointment of Auditor 183
- 11.3 Termination of Auditor's Appointment 185
- 11.4 Resignation of Auditor 186
- 11.5 Removal of Auditor 188
- 11.6 Remuneration of Auditor 191

12 Change of Company's Name, Objects Clauses, Articles of Association, and Registered Office 192

- 12.1 Change of Company Name and Name Swaps 192
- 12.2 Alteration of Objects Clauses 195
- 12.3 Alteration of Articles of Association 198
- 12.4 Change of Registered Office 200

13 Bank Accounts 201

- 13.1 Open a Bank Account 201
- 13.2 Change the Bank Signatories 202
- 13.3 Close a Bank Account 203

14 Common Seal, Securities Seal, and Official Seal 204

- 14.1 Common Seal 204
- 14.2 Securities Seal 205
- 14.3 Official/Branch Seal 206

15 Transfer of Shares 208

- 15.1 Forms of Restriction on Share Transfers 209
- 15.2 Procedures 210
- 15.3 Section 45—Relief for Intra-group Transfer / Sale of Shares 213
- 15.4 Nominee Shareholders 215

16 Transmission of Shares 217

- 16.1 On the Death of a Member 217
- 16.2 By Operation of Law 218
- 16.3 Refusal to Register a Share Transfer by Transmission 219

17 Share Certificates 220

- 17.1 Issue of Share Certificates 220
- 17.2 Replacement of Lost Share Certificates 222

18 Registration of Documents 227

- 18.1 Power of Attorney 227
- 18.2 Enduring Power of Attorney 228
- 18.3 Death Certificate 230
- 18.4 Probate or Letters of Administration 230

- 18.5 Marriage Certificate 231
- 18.6 Decree of Divorce 231
- 18.7 Certificate of Change of Name 232
- 18.8 Deed Poll 232
- 18.9 Court Order 232
- 18.10 Change of Address 233

19 Loan Capital / Debentures 234

- 19.1 Borrowing Power of a Company 235
- 19.2 Borrowing Power of Directors 235
- 19.3 Types of Secured Borrowings 235
- 19.4 Types of Debentures 236
- 19.5 Procedures 239
- 19.6 Provisions of Guarantee or Collateral Security for the Performance of Obligation by a Third Party 242

20 Registration of Charges 244

- 20.1 Specified Charges Defined in Section 334 of the Ordinance 245
- 20.2 Registration Procedures 247
- 20.3 Registration of Charges Existing on Property Acquired 249
- 20.4 Charges Created by Non-Hong Kong Companies or Charges Existing on Property Acquired by Non-Hong Kong Companies 250
- 20.5 Extension of the Time for Registration and Rectification of the Register of Charges 250
- 20.6 Release of Charges 251

21 Notifiable Transactions and Connected Transactions 252

- 21.1 Definition of "Transaction" 253
- 21.2 Publication of Announcement 255
- 21.3 Circular 257
- 21.4 Shareholders' Approval 258
- 21.5 Percentage Ratios / Size Tests 260
- 21.6 Share Transaction 265
- 21.7 Discloseable Transaction 265
- 21.8 Major Transaction—Major Acquisition and Major Disposal/Realisation 266
- 21.9 Very Substantial Acquisition 268

- 21.10 Very Substantial Disposal/Realisation 269
- 21.11 Reverse Takeover 271
- 21.12 Extreme Transaction 279
- 21.13 Summary of Notification, Publication and Shareholders' Approval Requirements of Notifiable Transactions 283
- 21.14 Connected Transactions 284
- 21.15 Continuing Connected Transactions 286
- 21.16 Types of Connected Transactions 289
- 21.17 Exempt Connected Transactions and Exempt Continuing Connected Transactions 290
- 21.18 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 294
- 21.19 Connected Transactions and Continuing Connected Transactions Subject to Reporting, Annual Review (for Continuing Connected Transactions), and Independent Shareholders' Approval Requirements 295
- 21.20 Definitions 296

22 Securities and Futures Ordinance—Part XV Disclosure of Interests 304

- 22.1 Disclosable Interests and Exempt Interests 305
- 22.2 Duty of Substantial Shareholders 312
- 22.3 Disclosable Interest Acquired by Connected Persons / Deemed Interests of Substantial Shareholders 314
- 22.4 Checklist for Initial Notification by Substantial Shareholders 315
- 22.5 Checklist for Subsequent Notification by Substantial Shareholders 315
- 22.6 Duty of Directors and Chief Executives 316
- 22.7 Disclosable Interest Acquired by Connected Persons / Deemed Interests of Directors and Chief Executives 318
- 22.8 Checklist for Initial Notification by Directors and Chief Executives 319
- 22.9 Checklist for Subsequent Notification by Directors and Chief Executives 320
- 22.10 Computation of Percentage of Interests and Short Positions 320
- 22.11 Time and Manner of Notification 321
- 22.12 Investigation of Shareholders' Interest under Section 329 of the *Securities and Futures Ordinance* 323
- 22.13 Definitions 324

23 Dividends 330

- 23.1 Forms of Dividends 331
- 23.2 Payment of an Interim Dividend 332
- 23.3 Preliminary Announcement of Interim Results 334
- 23.4 Final Dividends 335
- 23.5 Special Dividends 336

24 Company Accounts, Directors' Report, and Business Review 337

- 24.1 Financial Year / Accounting Reference Period 337
- 24.2 Financial Statements 339
- 24.3 Reporting Exemption / Simplified Financial Statements 342
- 24.4 Summary Financial Report 350
- 24.5 Adoption of Audited Accounts 350
- 24.6 Right to Receive Audited Accounts 352
- 24.7 Preservation of Accounting Records 352
- 24.8 Directors' Report 352
- 24.9 Business Review 354
- 24.10 Company Accounts and Directors' Reports of Listed Companies 356
- 24.11 Corporate Governance Report 358
- 24.12 Interim Reports 362
- 24.13 Quarterly Reports 367

25 Annual General Meeting 368

- 25.1 Period for Holding Annual General Meetings 368
- 25.2 Circumstances under Which Companies Are Not Required to Hold Annual General Meetings 370
- 25.3 Businesses of Annual General Meeting 371
- 25.4 Procedures for Holding an Annual General Meeting 371
- 25.5 Annual Return 380

26 Redemption of Redeemable Shares and Share Buy-back 385

- 26.1 Redemption of Redeemable Shares 385
- 26.2 Share Buy-back / Repurchase of Shares 394
- 26.3 Rights of the Company and Minority Shareholders in Case of a Successful Share Buy-back by General Offer 415

27 Reduction of Share Capital 419

- 27.1 Forms of Reduction of Capital 419
- 27.2 Methods of Reduction of Share Capital 420
- 27.3 Reduction of Share Capital by Special Resolution Supported by Solvency Statement 420
- 27.4 Reduction of Share Capital by Special Resolution Confirmed by Court 426

28 Schemes of Arrangement 429

- 28.1 Uses of a Scheme of Arrangement 429
- 28.2 Procedures for a Debt Restructuring Scheme for Listed Companies 431
- 28.3 Procedures for a Scheme Involving Capital Reorganisation and Change of Domicile for Listed Companies 434
- 28.4 Procedures for a Scheme Involving a Takeover or Merger for Listed Companies 434
- 28.5 Procedures for a Privatisation Scheme 436

29 Takeovers and Mergers, and Amalgamation of Group Companies 438

- 29.1 By Agreement with the Individual Members of the Company Being Acquired 438
- 29.2 By Mandatory/General Offer 439
- 29.3 Rights of the Offeror and Minority Shareholders of the Offeree Company in the Case of a Successful Takeover Offer 446
- 29.4 Amalgamation of Wholly-owned Companies within the Same Group / Court-free Statutory Amalgamation 449

30 Dissolution of a Company 457

- 30.1 Deregistration of Defunct Solvent Companies under Section 750 of the Ordinance 457
- 30.2 Types of Winding-up 459
- 30.3 Voluntary Winding-up 460
- 30.4 Matters Applicable to Every Mode of a Voluntary Winding-up 474
- 30.5 Compulsory Winding-up 476
- 30.6 Consequences of the Commencement of Compulsory Winding-up 481
- 30.7 Appointment and Powers of Liquidator 482
- 30.8 Committee of Inspection 484
- 30.9 Diagram Showing Modes of Liquidation 486

31 Non-Hong Kong Companies 487

- 31.1 Place of Business 487
- 31.2 Initial Registration 488
- 31.3 Certification of Documents 491
- 31.4 Translation of Documents 492
- 31.5 Subsequent Changes—Filing Requirements 493
- 31.6 Registration and Release of Charges 496
- 31.7 Annual Obligations 497
- 31.8 Special Provision Regarding the Use of Company's Name in Hong Kong 498
- 31.9 Liquidation 499
- 31.10 Cessation of Place of Business 500

32 British Virgin Islands Business Companies—Companies Limited by Shares 501

- 32.1 Types of Business Companies 501
- 32.2 Incorporation of Business Companies—Companies Limited by Shares 502
- 32.3 Memorandum and Articles of Association: Company Name, Corporate Capacity, and Powers 503
- 32.4 Issue of Shares 505
- 32.5 Share Certificates 507
- 32.6 Shareholders 507
- 32.7 General Meetings 508
- 32.8 Directors 509
- 32.9 Officers 514
- 32.10 Directors'/Board Meetings 514
- 32.11 Registered Agent 515
- 32.12 Common Seal 517
- 32.13 Registered Office 518
- 32.14 Statutory Books 518
- 32.15 Matters to Be Attended to after Incorporation and Disclosure of Beneficial Ownership 521
- 32.16 Annual Obligations, Certificate of Good Standing and Economic Substance Requirements 523
- 32.17 Registration of Charges and Priorities of Charges 525
- 32.18 Mortgages and Charges of Shares by Shareholders 527
- 32.19 Distribution and Dividend 528

- 32.20 Alteration of Memorandum and Articles of Association: Change of Company Name and Increase of Capital 528
- 32.21 Redemption, Repurchase, and Acquisition of Shares 530
- 32.22 Share Transfer 532
- 32.23 Merger and Consolidation 533
- 32.24 Disposition of Assets, Forced Redemption of Minority Shares, and Arrangement 535
- 32.25 Schemes of Arrangement 536
- 32.26 Change of Domicile / Deregistration and Re-registration 537
- 32.27 Striking-off 539
- 32.28 Liquidation/Winding-up of a Solvent Company 540

33 Bermuda Companies—Exempted Companies 545

- 33.1 Types of Companies 545
- 33.2 Incorporation of Companies under the *Companies Act 1981* 546
- 33.3 Economic Substance Requirements 548
- 33.4 Memorandum of Association: Company Name, Objects, and Powers 550
- 33.5 Bye-laws 550
- 33.6 Share Capital, Share Premium, Redeemable Preference Shares, Contributed Surplus, and Dividends 551
- 33.7 Shareholders and Shareholders' Meetings 553
- 33.8 Disclosure of Beneficial Ownership 556
- 33.9 Requirements for Officers or Representatives in Bermuda 558
- 33.10 Directors and Directors' Meetings 558
- 33.11 Secretary and Officers 560
- 33.12 Resident Representative 560
- 33.13 Common Seal 561
- 33.14 Registered Office 561
- 33.15 Statutory Books 561
- 33.16 Matters to Be Attended to after Incorporation 562
- 33.17 Subsequent Changes 565
- 33.18 Alteration of Objects Clauses and Powers 565
- 33.19 Change of Name 567
- 33.20 Amendment of Bye-laws 567
- 33.21 Alteration of Share Capital 568
- 33.22 Share Issues and Transfers 568
- 33.23 Reduction of Capital (Including Share Premium) 570
- 33.24 Redemption and Repurchase of Shares 570

- 33.25 Registration of Charges 572
- 33.26 Release of Charges 573
- 33.27 Change of Registered Office 573
- 33.28 Closure of Register of Members 573
- 33.29 Issue of Prospectus 573
- 33.30 Annual Obligations for Exempted Companies 574
- 33.31 Amalgamation or Merger of Exempted Company and Foreign Corporation, and Continuation as a Foreign Corporation 576
- 33.32 Continuance into Bermuda, Change of Domicile to Bermuda, and Discontinuance from Bermuda 578
- 33.33 Liquidation 581

34 PRC Companies 585

- 34.1 Types of Companies 586
- 34.2 Company Name and Objects, and Party Committee 587
- 34.3 Limited Liability Companies 588
- 34.4 Joint Stock Limited Companies / Companies Limited by Shares 598
- 34.5 Financial Statements and Auditors 610
- 34.6 Dividends and Reserve Funds 611
- 34.7 Subsequent Changes 612
- 34.8 Annual Requirements 619
- 34.9 Liquidation 619
- 34.10 Branch Office 622
- 34.11 Branch of Foreign Companies 623

35 Listing of Securities on the Singapore Exchange—Catalist Board 625

- 35.1 Advantages and Disadvantages of Seeking a Catalist Listing on the Singapore Exchange 626
- 35.2 Procedure for Seeking a Catalist Listing on the Singapore Exchange 626
- 35.3 Board of Directors, Board Committees and Corporate Governance 633
- 35.4 Restrictions on Issue of Shares, Convertible Securities and Company Warrants 638
- 35.5 Share Buy-back 641
- 35.6 Significant Transactions 641
- 35.7 Interested Person Transactions 647
- 35.8 Sale of Property Units to Interested Persons and Directors' Relatives 653

- 35.9 Continuing Obligations 654
- 35.10 Auditors 661
- 35.11 Annual Results Announcement, Annual Report and Sustainability Report 662
- 35.12 Interim Results 662
- 35.13 Quarterly Results 663
- 35.14 Dividends 663
- 35.15 Announcement of Record Date 664

36 Corporate Governance Matters 665

- 36.1 Independent Non-executive Directors 667
- 36.2 Audit Committee 669
- 36.3 Nomination Committee 672
- 36.4 Remuneration Committee 674
- 36.5 *Corporate Governance Code* 675
- 36.6 Corporate Governance Report 682
- 36.7 Environmental, Social and Governance Report 684
- 36.8 Disclosure of Price-sensitive/Inside Information by Listed Companies 690
- 36.9 Disclosure of Specific Information 694
- 36.10 Directors' Service Contracts 698
- 36.11 Pre-emptive Rights and General Mandate 699
- 36.12 Backdoor Listing Through Large Scale Issue of Securities 701
- 36.13 Restrictions on Disposals or Distribution in Specie 702
- 36.14 Cash Companies 703
- 36.15 Trading Halt and Cancellation of Listing 705
- 36.16 Fundamental Change in Principal Activities of Newly Listed Companies 707
- 36.17 Minimum Public Holdings 707
- 36.18 Suspension on Failure to Publish Timely Financial Information 708
- 36.19 Corporate Communications to Non-registered Holders of Securities 709
- 36.20 Supply of Corporate Communications by Electronic Means 710
- 36.21 Corporate Governance for Pre-revenue Biotech Companies 711
- 36.22 Corporate Governance for Companies with Weighted Voting Rights Structure 713

37 Listing of Securities on the GEM / Second Board of the Stock Exchange 717

- 37.1 Types of Securities 717
- 37.2 Qualification for Listing 718
- 37.3 Prospectus Requirements 719
- 37.4 Corporate Governance 720
- 37.5 Restrictions on Disposal of Securities on Controlling Shareholders 722
- 37.6 Issue of New Securities within Six Months of Listing 723
- 37.7 Continuing Obligations 724
- 37.8 Transfer of Listing to the Main Board 726

38 Cayman Islands Companies—Exempted Companies 728

- 38.1 Public Inspection 729
- 38.2 Incorporation of Companies 729
- 38.3 Company Name, Objects, Powers, and Articles of Association 730
- 38.4 Issue of Shares and Dividends 731
- 38.5 Shareholders and Shareholders' Meetings 732
- 38.6 Disclosure of Beneficial Ownership 733
- 38.7 Directors and Alternate Directors, and Directors' Meetings 735
- 38.8 Common Seal 736
- 38.9 Registered Office 736
- 38.10 Statutory Books 736
- 38.11 Matters to Be Attended to after Incorporation 738
- 38.12 Subsequent Changes 739
- 38.13 Alteration of Memorandum and Articles of Association 739
- 38.14 Change of Company Name 739
- 38.15 Alteration of Authorised Capital, i.e., Increase, Subdivide, Consolidate, and Cancel Unissued Shares 740
- 38.16 Share Issues and Transfers 741
- 38.17 Reduction of Capital 741
- 38.18 Surrender of Shares, Repurchase of Shares, Redemption of Shares and Treasury Shares 743
- 38.19 Annual Obligations and Economic Substance Requirements 745
- 38.20 Mergers and Consolidation 747
- 38.21 Change of Domicile / Deregistration 752
- 38.22 Removal of Defunct Companies 754
- 38.23 Liquidation/Winding-up 755

Appendices

- 1 Company Secretary's Checklist for Holding a Board Meeting 758
- 2 Company Secretary's Checklist for Holding an Annual General Meeting of a Listed Company 761
- 3 Sample Documents 768
- 4 List of Prescribed Forms 773
- 5 Useful Information Available on the Website of the Hong Kong Stock Exchange 785

Index 808

<http://www.pbookshop.com>