

PART 10

DIRECTORS AND SECRETARIES

Division 1 – Appointment, Removal and Resignation of Directors

Subdivision 1 – Requirement to have Directors

10.1 Public company and company limited by guarantee required to have at least 2 directors

- (1) This section applies to –
 - (a) a public company; and
 - (b) a company limited by guarantee.

(2) The company must have at least 2 directors.

(3) With effect from the date of incorporation of the company, the first directors of the company are the persons named as the directors in the application form submitted under section 3.1(1).⁵

(4) A person who is still deemed to be a director of the company under section 153(2) of the pre-amended predecessor Ordinance immediately before the commencement of this section continues to be deemed to be a director of the company as if section 19(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004) had not been enacted, until a notice of appointment of a director is given to the Registrar in accordance with section 12.112(1).

(5) If a power specified in subsection (6) is exercisable by a director under the company's articles where the number of directors is reduced below the number fixed as the necessary quorum of directors, the power is exercisable also where the number of directors is reduced below the number required by subsection (2).

⁵ A consultation draft of Part 3 will be published later.

(6) The power specified for the purposes of subsection (5) is a power to act for the purpose of –

- (a) increasing the number of directors; or
- (b) calling a general meeting of the company,

but not for any other purpose.

(7) In subsection (4) –

“pre-amended predecessor Ordinance” (修訂前的《前身條例》) means the predecessor Ordinance that was in force immediately before it was amended by section 19(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004).

10.2 Private company required to have at least one director

(1) A private company must have at least one director.

(2) With effect from the date of incorporation of a private company, the first directors of the company are the persons named as the directors in the application form submitted under section 3.1(1).

(3) A person who is still deemed to be a director of a private company under section 153A(2) of the pre-amended predecessor Ordinance immediately before the commencement of this section continues to be deemed to be a director of the company as if section 20(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004) had not been enacted, until a notice of appointment of a director is given to the Registrar in accordance with section 12.112(1).

(4) In subsection (3) –

“pre-amended predecessor Ordinance” (修訂前的《前身條例》) means the predecessor Ordinance that was in force immediately before it was amended by section 20(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004).

10.3 Nomination of reserve director of private company

(1) If a private company has only one member and that member is the sole director of the company, the company may in general meeting, despite anything in its articles, nominate a person (other than a body corporate) who has attained the age of 18 years as a reserve director of the company to act in the place of the sole director in the event of the sole director's death.

(2) The nomination of a person as a reserve director of a private company ceases to have effect if –

- (a) before the death of the director in respect of whom the person was nominated –
 - (i) the person resigns as reserve director in accordance with section 10.12; or
 - (ii) the company in general meeting revokes the nomination; or
- (b) the director in respect of whom the person was nominated ceases to be the sole member and sole director of the company for any reason other than the death of that director.

(3) If the nomination of a person as a reserve director of a private company ceases to have effect under subsection (2), the company must give notice to the Registrar in accordance with section 12.112(4).

(4) Subject to compliance with the conditions specified in subsection (5), in the event of the death of the director in respect of whom the reserve director is nominated, the reserve director is to be regarded as a director of the company for all purposes until –

- (a) a person is appointed as a director of the company in accordance with its articles; or
- (b) the reserve director resigns from the office of director in accordance with section 10.12,

whichever is the earlier.

- (5) The conditions specified for the purposes of subsection (4) are –
 - (a) the nomination of the reserve director has not ceased to have effect under subsection (2); and
 - (b) the reserve director is not prohibited by law nor disqualified from acting as a director of the company.

10.4 Restriction on body corporate being director

- (1) This section applies to –
 - (a) a public company;
 - (b) a private company that is a member of a group of companies of which a listed company is a member; and
 - (c) a company limited by guarantee.
- (2) A body corporate must not be appointed a director of the company.
- (3) An appointment made in contravention of subsection (2) is void.
- (4) Nothing in this section affects any liability of a body corporate under any provision of this Ordinance if it –
 - (a) purports to act as a director; or
 - (b) acts as a shadow director,

although it could not, by virtue of this section, be appointed as a director.

10.5 Requirement to have at least one director who is natural person

- (1) This section applies to a private company other than a private company that is a member of a group of companies of which a listed company is a member.
- (2) The company must have at least one director who is a natural person.
- (3) If on the commencement of this section –
 - (a) none of a company's directors are natural persons; and

(b) section 153A(1) of the predecessor Ordinance is complied with in relation to the company,
subsection (2) does not apply to the company until after the end of 6 months after the commencement of this section.

10.6 Direction requiring company to appoint director

(1) If it appears to the Registrar that a company is in contravention of section 10.1(2), 10.2(1) or 10.5(2), the Registrar may direct the company to appoint a director or directors in compliance with that section.

(2) The direction must specify –

- (a) the statutory requirement of which the company appears to be in contravention;
- (b) the period within which the company must comply with the direction; and
- (c) the consequences of failing to comply with it.

(3) The company must comply with the direction by –

- (a) making the necessary appointment or appointments before the end of the period specified in the direction; and
- (b) giving notice of the appointment or appointments to the Registrar in accordance with section 12.112(1).

(4) If a company contravenes a direction under this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.

Subdivision 2 – Appointment of Directors

10.7 Minimum age for appointment as director

(1) A person must not be appointed a director of a company unless at the time of appointment the person has attained the age of 18 years.

(2) An appointment made in contravention of subsection (1) is void.

(3) Nothing in this section affects any liability of a person under any provision of this Ordinance if the person –

(a) purports to act as a director; or

(b) acts as a shadow director,

although the person could not, by virtue of this section, be appointed as a director.

10.8 Appointment of directors to be voted on individually

(1) This section applies to –

(a) a public company; and

(b) a company limited by guarantee.

(2) At a general meeting of the company, a motion for the appointment of 2 or more persons as directors of the company by a single resolution must not be made, unless a resolution that it should be so made has first been agreed to by the meeting without any vote being given against it.

(3) A resolution moved in contravention of subsection (2) is void, whether or not its being so moved was objected to at the time.

(4) Despite the fact that the resolution is void, no provision (whether contained in a company's articles or in any contract with the company or otherwise) for the automatic reappointment of retiring directors in default of another appointment applies.

(5) For the purposes of this section, a motion for approving a person's appointment, or for nominating a person for appointment, is regarded as a motion for the appointment of the person.

10.9 Validity of acts of director

(1) The acts of a person acting as a director are valid despite the fact that it is afterwards discovered –

- (a) that there was a defect in the appointment of the person as a director;
 - (b) that the person was not qualified to hold office as a director or was disqualified from holding office as a director;
 - (c) that the person had ceased to hold office as a director; or
 - (d) that the person was not entitled to vote on the matter in question.
- (2) Subsection (1) applies even if –
- (a) the appointment of the person as a director is void under section 10.4(3) or 10.7(2); or
 - (b) the resolution for the appointment of the person as a director is void under section 10.8(3).
- (3) Subsection (1) applies to acts done on or after the commencement of this section.
- (4) Section 157 of the predecessor Ordinance continues to apply to acts done before the commencement of this section.

Subdivision 3 – Removal and Resignation of Directors

10.10 Resolution to remove director

(1) A company may by ordinary resolution remove a director before the end of the director's term of office, despite anything in its constitution or in any agreement between it and the director.

(2) Subsection (1) does not, if the company is a private company, authorize the removal of a director holding office for life on the commencement of the Companies (Amendment) Ordinance 1984 (6 of 1984).

(3) Subsections (4), (5), (6), (7) and (8) apply in relation to a removal of a director by resolution, irrespective of whether the removal by resolution is under subsection (1) or otherwise.

(4) Special notice is required of a resolution –

- (a) to remove a director; or
- (b) to appoint somebody in place of a director so removed at the meeting at which the director is removed.

(5) A vacancy created by the removal of a director, if not filled at the meeting at which the director is removed, may be filled as a casual vacancy.

(6) A person appointed director in place of a removed director is to be regarded, for the purpose of determining the time at which that person or any other director is to retire, as if that person had become director on the day on which the person removed was last appointed a director.

(7) On a resolution to remove a director before the end of the director's term of office, no share may, on a poll, carry a greater number of votes than it would carry in relation to the generality of matters to be voted on at a general meeting of the company.

(8) If a share carries special voting rights (that is to say, rights different from those carried by other shares of the same nominal value) in relation to some matters but not others, the reference in subsection (7) to the generality of matters to be voted on at a general meeting of the company is to be construed as a reference to the matters in relation to which the share carries no special voting rights.

(9) This section is not to be regarded as depriving a person of compensation or damages payable to the person in respect of the termination of –

- (a) the person's appointment as director; or
- (b) any appointment terminating with that as director.

10.11 Director's right to protest against removal

(1) On receipt of notice of a resolution under section 10.10(4) to remove a director, the company must forthwith send a copy of the notice to the director concerned.

(2) The director (whether or not a member of the company) is entitled to be heard on the resolution at the meeting at which the resolution is voted on.

(3) If notice is given of a resolution under section 10.10(4) to remove a director, and the director concerned makes with respect to it representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company must, unless the representations are received by it too late for it to do so –

(a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company).

(4) If a copy of the representations is not sent as required by subsection (3) because they were received too late or because of the company's default, the director may (without prejudice to the right to be heard orally) require that the representations must be read out at the meeting.

(5) Copies of the representations need not be sent and the representations need not be read out at the meeting if, on application either by the company or by any other person who claims to be aggrieved, the Court of First Instance is satisfied that the rights given by this section are being abused.

(6) The Court of First Instance may order the company's costs on an application under subsection (5) to be paid in whole or in part by the director, despite the fact that the director is not a party to the application.

(7) Subsection (5) applies if the representations are received by the company on or after the commencement of this section.

(8) Section 157B(4) of the predecessor Ordinance continues to apply if the representations are received by the company before the commencement of this section.

10.12 Resignation of director

(1) A director of a company may, unless it is otherwise provided in the articles of the company or by any agreement with the company, resign as director at any time.

(2) If a director of a company resigns, the company must give notice of the resignation to the Registrar in the manner required by section 12.112(4) for giving notice of any change in its directors.

(3) Despite subsection (2), if the director resigning has reasonable grounds for believing that the company will not give the notice, notice must be given in the specified form by the director resigning.

(4) The notice required to be given under subsection (3) must state –

(a) whether the director resigning is required by the articles of the company or by any agreement with the company to give notice of resignation to the company; and

(b) if notice is so required, whether the notice has been given in accordance with the requirement.

(5) If notice of the resignation of a director of a company is required to be given by the articles of the company or by any agreement with the company, the resignation does not have effect unless the director gives notice in writing of the resignation –

(a) in accordance with the requirement;

(b) by leaving it at the registered office of the company; or

(c) by sending it to the company in hard copy form or in electronic form.

(6) In this section –

“director” (董事) includes a reserve director and a person regarded as a director under section 10.3(4).

Division 2 – Directors’ Duty of Care, Skill and Diligence

10.13 Duty to exercise reasonable care, skill and diligence

(1) A director of a company must exercise reasonable care, skill and diligence.

(2) Reasonable care, skill and diligence mean the care, skill and diligence that would be exercised by a reasonably diligent person with –

(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company; and

(b) the general knowledge, skill and experience that the director has.

(3) The duty specified in subsection (1) is owed by a director of a company to the company.

(4) The duty specified in subsection (1) has effect in place of the common law rules and equitable principles as regards the duty to exercise reasonable care, skill and diligence, owed by a director of a company to the company.

(5) This section applies to a shadow director as it applies to a director.

10.14 Civil consequences of breach of duty to exercise reasonable care, skill and diligence

Without affecting other provisions of this Ordinance, the consequences of breach (or threatened breach) of the duty specified in section 10.13(1) are the same as would apply if the common law rules or equitable principles that section 10.13(1) replaces applied.

Division 3 – Directors’ Liabilities

10.15 Interpretation

In this Division –

“permitted indemnity provision” (獲准許的彌償條文), in relation to a company, means a provision that –

- (a) provides for indemnity against liability incurred by a director of the company to a third party; and
- (b) meets the requirements specified in section 10.18(2);

“third party” (第三者), in relation to a company, means a person other than the company or an associated company.

10.16 Avoidance of provision relieving director from liability

(1) A provision that purports to exempt a director of a company (to any extent) from any liability that would otherwise attach to the director in connection with any negligence, default, breach of duty or breach of trust in relation to the company is void.

(2) A provision by which a company directly or indirectly provides an indemnity (to any extent) for a director of the company, or of an associated company, against any liability attaching to the director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or the associated company, of which he, she or it is a director, is void.

(3) Subsection (2) is subject to sections 10.17 and 10.18.

(4) This section applies to any provision, whether contained in a company’s articles or in any contract with the company or otherwise.

10.17 Provision of insurance

(1) Section 10.16(2) does not prevent a company from purchasing and maintaining for a director of the company, or of an associated company,

insurance against any liability mentioned in that subsection except liability arising from any fraudulent act or fraudulent omission of the director.

(2) Despite the exception in subsection (1), the company may purchase and maintain for the director insurance against any liability incurred by the director in defending any proceedings, whether civil or criminal, taken against the director for any negligence, default, breach of duty or breach of trust in relation to the company or the associated company, of which he, she or it is a director.

10.18 Permitted indemnity provision

(1) Section 10.16(2) does not apply to a provision for indemnity against liability incurred by the director to a third party if the requirements specified in subsection (2) are met in relation to the provision.

- (2) The provision must not provide any indemnity against –
- (a) any liability of the director to pay –
 - (i) a fine imposed in criminal proceedings; or
 - (ii) a sum payable by way of a penalty in respect of non-compliance with any requirement of a regulatory nature; or
 - (b) any liability incurred by the director –
 - (i) in defending criminal proceedings in which the director is convicted;
 - (ii) in defending civil proceedings brought by the company, or an associated company, in which judgment is given against the director; or
 - (iii) in connection with an application for relief under section 358 of the predecessor Ordinance or

section 20.10 or 20.11⁶ in which the Court of First Instance refuses to grant the director relief.

(3) A reference in subsection (2)(b) to a conviction, judgment or refusal of relief is to the final decision in the proceedings.

(4) For the purposes of subsection (3), a conviction, judgment or refusal of relief –

(a) if not appealed against, becomes final at the end of the period for bringing an appeal; or

(b) if appealed against, becomes final when the appeal, or any further appeal, is disposed of.

(5) For the purposes of subsection (4)(b), an appeal is disposed of if –

(a) it is determined, and the period for bringing any further appeal has ended; or

(b) it is abandoned or otherwise ceases to have effect.

10.19 Permitted indemnity provision to be disclosed in directors' report

(1) If, when a directors' report of a company is approved in accordance with section 9.20,⁷ a permitted indemnity provision (whether made by the company or otherwise) is in force for the benefit of one or more directors of the company, the report must state that the provision is in force.

(2) If, at any time during the financial year to which a directors' report of a company relates, a permitted indemnity provision (whether made by the company or otherwise) was in force for the benefit of one or more persons who were then directors of the company, the report must state that the provision was in force.

⁶ A consultation draft of Part 20 will be published later.

⁷ A consultation draft of Part 9 will be published later.

(3) If, when a directors' report of a company is approved in accordance with section 9.20, a permitted indemnity provision made by the company is in force for the benefit of one or more directors of an associated company, the report of the first-mentioned company must state that the provision is in force.

(4) If, at any time during the financial year to which a directors' report of a company relates, a permitted indemnity provision made by the company was in force for the benefit of one or more persons who were then directors of an associated company, the report must state that the provision was in force.

(5) In this section –
“directors' report” (董事報告) means the report required to be prepared under section 9.16(1).

10.20 Place where copy of permitted indemnity provision must be kept available for inspection

(1) This section has effect if a permitted indemnity provision is made for a director of a company, and applies –

- (a) to that company (whether the provision is made by that company or an associated company); and
- (b) if the provision is made by an associated company, to that associated company.

(2) A company to which this section applies must keep the following available for inspection at its registered office or at a prescribed place –

- (a) a copy of the permitted indemnity provision; or
- (b) if the provision is not in writing, a written memorandum setting out the terms of the provision.

(3) The company must –

- (a) retain the copy or memorandum for at least one year after the date of termination or expiry of the provision; and

(b) keep the copy or memorandum available for inspection during that time.

(4) If the copy or memorandum is kept available for inspection at a place other than the company's registered office, the company must notify the Registrar of the place, or any change in the place, at which the copy or memorandum is kept. The notice must be given to the Registrar in the specified form within 14 days after the copy or memorandum is first kept at that place or within 14 days after the change (as the case may be).

(5) If a company contravenes subsection (2), (3) or (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

(6) In this section, a reference to a permitted indemnity provision includes a variation of the provision.

10.21 Right of member to inspect and request copy

(1) A copy of a permitted indemnity provision or a written memorandum required to be kept by a company under section 10.20 must be open to inspection by any member of the company without charge.⁸

(2) A member of the company is entitled, on request and on payment of a prescribed fee, to be provided with a copy of the provision or memorandum.

(3) The company must provide the member with the copy within a prescribed period after the request and the prescribed fee are received by the company.

(4) If a company contravenes subsection (3) –

(a) the company, and every responsible person of the company, commit an offence, and each is liable to a fine at

⁸ Regulation will be made under clause 12.125 to make provision as to the time, duration and manner of inspection.

level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues; and

(b) the Court of First Instance may by order direct that the copy be provided to the person requesting it.

(5) In this section, a reference to a permitted indemnity provision includes a variation of the provision.

10.22 Ratification of conduct by director amounting to negligence, etc.

(1) This section applies to the ratification by a company of conduct by a director amounting to negligence, default, breach of duty or breach of trust in relation to the company.

(2) The decision of the company to ratify the conduct must be made by resolution of the members of the company.

(3) If the resolution is proposed at a meeting, a decision of the company to ratify the conduct is not made unless the resolution is passed after disregarding every vote in favour of the resolution by a member who –

- (a) is a director in respect of whose conduct the ratification is sought;
- (b) is an entity connected with that director; or
- (c) holds any shares in the company in trust for that director or entity.

(4) Subsection (3) does not prevent a member specified in that subsection from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.

(5) For the purposes of this section –

- (a) “conduct” (行為) includes acts and omissions;
- (b) “director” (董事) includes a past director;
- (c) a shadow director is regarded as a director; and

- (d) a reference to an entity connected with a director has the meaning given by section 11.2 except that subsection (1)(b) of that section does not apply.
- (6) Nothing in this section affects –
 - (a) the validity of a decision taken by unanimous consent of the members of the company; or
 - (b) any power of the directors to agree not to sue, or to settle or release a claim made by them on behalf of the company.
- (7) This section does not affect –
 - (a) any other Ordinance or rule of law imposing additional requirements for valid ratification; or
 - (b) any rule of law as to acts that are incapable of being ratified by the company.

10.23 Application and saving

(1) Sections 10.16, 10.17, 10.18 and 10.19 apply to any provision made on or after the commencement of those sections.

(2) Section 165 of the predecessor Ordinance, so far as it relates to directors, continues to apply in relation to any provision to which it applied immediately before the commencement of sections 10.16, 10.17, 10.18 and 10.19.

(3) Sections 10.20 and 10.21 apply to a permitted indemnity provision made on or after the commencement of those sections.

(4) Section 10.22 applies to conduct by a director on or after the commencement of that section.

Division 4 – Appointment and Resignation of Secretaries

10.24 Company required to have secretary

- (1) A company must have a secretary.

(2) With effect from the date of incorporation of a company, the first secretary of the company is the person named as the secretary in the application form submitted under section 3.1(1).

(3) If the name of a firm is specified in the application form under section 3.5(3)(c), all partners of the firm as at the date of the application form are the first joint secretaries of the company.

(4) A secretary of a company must –

(a) if an individual, ordinarily reside in Hong Kong;

(b) if a body corporate, have its registered office or a place of business in Hong Kong.

(5) Anything required or authorized to be done by or to the secretary may be done –

(a) if the office is vacant or there is for any other reason no secretary capable of acting, by or to any assistant or deputy secretary; or

(b) if there is no assistant or deputy secretary capable of acting, by or to any officer of the company authorized generally or specially in that behalf by the directors.

10.25 Circumstances under which director may not be secretary

(1) Subject to subsections (2) and (3), a director of a company may be a secretary of the company.

(2) The director of a private company having only one director must not also be a secretary of the company.

(3) No private company having only one director may have as secretary of the company a body corporate the sole director of which is the sole director of the private company.

10.26 Direction requiring company to appoint secretary

(1) If it appears to the Registrar that a company is in contravention of section 10.24(1) or (4) or 10.25(2) or (3), the Registrar may direct the company to appoint a secretary in compliance with that section.

(2) The direction must specify –

(a) the statutory requirement of which the company appears to be in contravention;

(b) the period within which the company must comply with the direction; and

(c) the consequences of failing to comply with it.

(3) The company must comply with the direction by –

(a) making the necessary appointment before the end of the period specified in the direction; and

(b) giving notice of the appointment to the Registrar in the manner required by section 12.119(1) for giving notice of any change in its secretary or joint secretaries.

(4) If a company contravenes a direction under this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.

10.27 Resignation of secretary

(1) A secretary of a company may, unless it is otherwise provided in the articles of the company or by any agreement with the company, resign as secretary at any time.

(2) If a secretary of a company resigns, the company must give notice of the resignation to the Registrar in the manner required by section 12.119(1) for giving notice of any change in its secretary or joint secretaries.

(3) Despite subsection (2), if the secretary resigning has reasonable grounds for believing that the company will not give the notice, notice must be given in the specified form by the secretary resigning.

- (4) The notice required to be given under subsection (3) must state –
- (a) whether the secretary resigning is required by the articles of the company or by any agreement with the company to give notice of resignation to the company; and
 - (b) if notice is so required, whether the notice has been given in accordance with the requirement.

(5) If notice of the resignation of a secretary of a company is required to be given by the articles of the company or by any agreement with the company, the resignation does not have effect unless the secretary gives notice in writing of the resignation –

- (a) in accordance with the requirement;
- (b) by leaving it at the registered office of the company; or
- (c) by sending it to the company in hard copy form or in electronic form.

Division 5 – Miscellaneous Provisions Relating to Directors and Secretaries

10.28 Director vicariously liable for acts of alternate etc.

(1) If the articles of a company authorize a director to appoint an alternate director to act in place of the director, then, unless the articles contain any provision to the contrary, whether express or implied –

- (a) an alternate director so appointed is to be regarded as the agent of the director who appoints the alternate director; and

(b) a director who appoints an alternate director is vicariously liable for any tort committed by the alternate director while acting in the capacity of alternate director.

(2) Nothing in subsection (1)(b) affects the personal liability of an alternate director for any act or omission.

10.29 Avoidance of acts done by person in dual capacity as director and secretary

(1) A provision requiring or authorizing a thing to be done by or to a director and a secretary of a company is not satisfied by its being done by or to the same person acting –

(a) both as director and secretary; or

(b) both as director and in place of the secretary.

(2) This section applies to any provision of this Ordinance or in a company's articles.

10.30 Provisions as to undischarged bankrupt acting as director

(1) A person who is an undischarged bankrupt must not act as director of, or directly or indirectly take part or be concerned in the management of, a company, except with the leave of the court by which the person was adjudged bankrupt.

(2) A person who contravenes subsection (1) commits an offence and is liable –

(a) on conviction on indictment to a fine of \$700,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine of \$150,000 and to imprisonment for 12 months.

(3) The court must not give leave for the purposes of this section unless notice of intention to apply for it has been served on the Official Receiver.

(4) If the Official Receiver is of opinion that it is contrary to the public interest that an application under subsection (3) should be granted, the Official Receiver must attend the hearing of, and oppose the granting of, the application.

(5) In subsection (1) –
“company” (公司) has the meaning given by section 168C(1) of the Companies (Winding Up Provisions) Ordinance (Cap. 32).⁹

10.31 Minutes of directors’ meetings

(1) A company must cause minutes of all proceedings at meetings of its directors to be recorded.

(2) A company must keep the records under subsection (1) for at least 20 years from the date of the meeting.

(3) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

10.32 Minutes as evidence

(1) Minutes recorded in accordance with section 10.31, if purporting to be signed by the chairman of the meeting or by the chairman of the next directors’ meeting, are evidence of the proceedings at the meeting.

(2) If minutes have been recorded in accordance with section 10.31 of the proceedings at a meeting of directors, then, until the contrary is proved –

- (a) the meeting is to be regarded as duly held and convened;
- (b) all proceedings at the meeting are to be regarded to have duly taken place; and
- (c) all appointments at the meeting are to be regarded as valid.

(3) Subsection (2)(c) is subject to sections 10.4(3) and 10.7(2).

⁹ Provisional title of Cap. 32 after it is consequentially amended by the new Companies Ordinance. It is subject to change.

10.33 Written record of decision of sole director of private company

(1) If a private company has only one director and the director takes any decision that –

- (a) may be taken in a meeting of directors; and
- (b) has effect as if agreed in a meeting of directors,

the director must (unless that decision is taken by way of a resolution in writing) provide the company with a written record of that decision within 7 days after the decision is made.

(2) If the director provides the company with a written record of a decision in accordance with subsection (1), that record is sufficient evidence of the decision having been taken by the director.

(3) A company must keep a written record provided to the company in accordance with subsection (1) for at least 20 years from the date on which the written record is so provided.

(4) A director who contravenes subsection (1) commits an offence.

(5) If a company contravenes subsection (3), the company, and every responsible person of the company, commit an offence.

(6) A person who commits an offence under subsection (4) or (5) is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

(7) A contravention of subsection (1) by a director does not affect the validity of any decision mentioned in that subsection.

10.34 Application and saving

(1) Sections 10.31 and 10.32 apply to meetings of directors held on or after the commencement of those sections.

(2) Section 119 of the predecessor Ordinance continues to apply to meetings of directors held before the commencement of sections 10.31 and 10.32.

(3) Section 10.33 applies to decisions taken on or after the commencement of that section.

(4) Section 153C of the predecessor Ordinance continues to apply to decisions taken before the commencement of section 10.33.