

PART 11

FAIR DEALING BY DIRECTORS

Division 1 – Preliminary

11.1 Interpretation

In this Part, a reference to circumstances constituting a contravention –

- (a) is a reference to all the facts and other circumstances constituting the contravention; and
- (b) includes, in the case of a transaction or arrangement that, but for any fact or circumstances, would not be prohibited because of Subdivision 3 of Division 2, the fact or circumstances.

11.2 Connected entity

(1) In this Part, a reference to an entity connected with a director or past director of a company –

- (a) is a reference to –
 - (i) a member of the director's or past director's family;
 - (ii) a body corporate with which the director or past director is associated;
 - (iii) a person acting in the capacity as trustee of a trust specified in subsection (2), other than a trust for the purpose of an employees' share scheme or a pension scheme; or
 - (iv) a person acting in the capacity as partner of –
 - (A) the director or past director; or
 - (B) another person who, by virtue of subparagraph (i), (ii) or (iii), is an entity

connected with the director or past director; and

(b) excludes a person who is a director or past director, as the case may be, of the company.

(2) The trust is one –

(a) the beneficiaries of which include –

(i) the director or past director; or

(ii) a person who, by virtue of subsection (1)(a)(i) or (ii), is an entity connected with the director or past director; or

(b) the terms of which give a power to the trustees that may be exercised for the benefit of –

(i) the director or past director; or

(ii) a person who, by virtue of subsection (1)(a)(i) or (ii), is an entity connected with the director or past director.

(3) In this section –

“partner” (合夥人), in relation to another person, means a person who is a partner of that other person in a partnership within the meaning of the Partnership Ordinance (Cap. 38).

11.3 Family member of director or past director

(1) In this Part, a reference to a member of a director’s or past director’s family is a reference to –

(a) the director’s or past director’s spouse;

(b) any other person (whether of a different sex or the same sex) with whom the director or past director lives as a couple in an enduring family relationship;

(c) a child, step-child or adopted child of the director or past director;

- (d) a child, step-child or adopted child of a person falling within paragraph (b) who –
 - (i) is not a child, step-child or adopted child of the director or past director;
 - (ii) lives with the director or past director; and
 - (iii) has not attained the age of 18; or
- (e) a parent of the director or past director.

(2) In subsection (1), a reference to a child or step-child of a person includes an illegitimate child of the person.

(3) In this section –
“adopted” (領養) means adopted in any manner recognized by the law of Hong Kong.

11.4 Director or past director associated with, or controlling, body corporate

(1) For the purposes of this Part, a director or past director is associated with a body corporate if –

- (a) the director or past director, or any one or more of the entities connected with the director or past director, or the director or past director together with any one or more of the entities connected with the director or past director, are entitled to exercise, or control the exercise of, more than 30% of the voting power at any general meeting of that body corporate; or
- (b) the directors, or a majority of the directors, of that body corporate are accustomed to act in accordance with the directions or instructions of –
 - (i) the director or past director; or
 - (ii) an entity connected with the director or past director.

(2) In this section, a reference to voting power the exercise of which is controlled by a director or past director, or by an entity connected with a director or past director, includes voting power the exercise of which is controlled by a body corporate controlled by the director or past director or by the connected entity.

(3) For the purposes of this section, a director or past director, or an entity connected with a director or past director, controls a body corporate if the director or past director, or any one or more of the entities connected with the director or past director, or the director or past director together with any one or more of the entities connected with the director or past director, are entitled to exercise, or control the exercise of, more than 50% of the voting power at any general meeting of that body corporate.

(4) Despite section 11.2 –

- (a) a body corporate with which a director or past director is associated is not regarded as an entity connected with the director or past director for the purposes of subsection (1)(a) or (3) unless it also falls within section 11.2(1)(a)(iii) or (iv);
- (b) a trustee of a trust the beneficiaries of which include a body corporate with which a director or past director is associated is not, by reason only of that fact, regarded as an entity connected with the director or past director for the purposes of subsection (1)(a) or (3); and
- (c) a person acting in the capacity as partner of a body corporate with which a director or past director is associated is not, by reason only of that fact, regarded as an entity connected with the director or past director for the purposes of subsection (1)(a) or (3).

11.5 Company subject to more than one prohibition

(1) If a company is prohibited by more than one provision of this Part from doing something without the approval of the members of the company, or of the members of a holding company of the company, specified in each provision, the company is prohibited from doing the thing without all those approvals.

(2) For the purposes of subsection (1), a company is prohibited from doing something without the approval of the members of the company, or of the members of a holding company of the company, if the company is prohibited from doing the thing unless –

- (a) it has obtained that approval; or
- (b) the thing is conditional on that approval being obtained.

(3) Subsection (1) does not require a separate resolution for the purposes of each of the provisions.

11.6 Application to transaction or arrangement despite its governing law

For the purposes of this Part, it is immaterial whether or not the law (apart from this Ordinance) that governs a transaction or arrangement is the law of Hong Kong.

Division 2 – Loan, Quasi-loan and Credit Transaction

Subdivision 1 – Preliminary

11.7 Interpretation

- (1) In this Division –
- “director” (董事) includes a shadow director;
 - “guarantee” (擔保) includes indemnity;
 - “land” (土地) includes any estate or interest in land, buildings, messuages and tenements of any nature or kind;

“services” (服務) means anything other than goods or land.

(2) For the purposes of this Division, a body corporate is not regarded as a shadow director of any of its subsidiaries only because the directors, or a majority of the directors, of the subsidiary are accustomed to act in accordance with its direction or instructions.

11.8 Quasi-loan

(1) For the purposes of this Division, a person makes a quasi-loan to a director or an entity connected with a director if the person –

- (a) agrees to pay, or pays otherwise than in pursuance of an agreement, a sum for the director or connected entity –
 - (i) on terms that the director or connected entity (or another person on behalf of the director or connected entity) will reimburse the person; or
 - (ii) in circumstances giving rise to a liability on the director or connected entity to reimburse the person; or
- (b) agrees to reimburse, or reimburses otherwise than in pursuance of an agreement, expenditure incurred by another person for the director or connected entity –
 - (i) on terms that the director or connected entity (or another person on behalf of the director or connected entity) will reimburse the person; or
 - (ii) in circumstances giving rise to a liability on the director or connected entity to reimburse the person.

(2) For the purposes of this Division, if a person makes a quasi-loan to a director or an entity connected with a director, the director’s or connected entity’s liabilities under the quasi-loan include the liabilities of any other person

who has agreed to reimburse the person on the director's or connected entity's behalf.

11.9 Credit transaction

(1) For the purposes of this Division, a person enters into a credit transaction as creditor for a director or an entity connected with a director if the person –

- (a) supplies goods to the director or connected entity under a hire-purchase agreement;
- (b) sells goods or land to the director or connected entity under a conditional sale agreement;
- (c) leases or hires goods or leases land to the director or connected entity in return for periodical payments; or
- (d) otherwise supplies goods or services or disposes of land to the director or connected entity on the understanding that payment (whether in a lump sum or instalments or by way of periodical payments or otherwise) is to be deferred.

(2) In this section –

“conditional sale agreement” (有條件售賣協議) means an agreement for the sale of goods or land under which –

- (a) the purchase price or part of it is payable by instalments;
- (b) the property in the goods or land is to remain in the seller until the conditions regarding the payment of instalments, or other conditions, specified in the agreement are fulfilled; and
- (c) despite such reservation of property, the buyer is to be in possession of the goods or land prior to the fulfilment of those conditions;

“hire-purchase agreement” (租購協議) means an agreement for the bailment of goods under which the bailee may buy the goods, or under which the property in the goods will or may pass to the bailee.

11.10 Person for whom transaction or arrangement entered into

(1) In this Division, a reference to a director, or an entity connected with a director, for whom a transaction is entered into is –

- (a) in the case of a loan or quasi-loan, or a guarantee or security in connection with a loan or quasi-loan, a reference to the director or connected entity to whom the loan or quasi-loan is made; or
- (b) in the case of a credit transaction, or a guarantee or security in connection with a credit transaction, a reference to the director or connected entity to whom goods, land or services are supplied, sold, leased, hired or otherwise disposed of under the credit transaction.

(2) For the purposes of this Division, an arrangement is entered into for a director or an entity connected with a director if –

- (a) in the case of an arrangement mentioned in section 11.20(1)(a) or (2)(a), a company takes part in the arrangement under which another person enters into a transaction with the director or connected entity; or
- (b) in the case of an arrangement mentioned in section 11.20(1)(b) or (2)(b), a company enters into the arrangement in relation to any rights, obligations or liabilities under a transaction entered into by another person with the director or connected entity.

11.11 Prescribed approval of members

(1) For the purposes of this Division, a reference to the prescribed approval of the members of any company is a reference to an approval obtained by a resolution of those members –

- (a) that is passed before the company enters into the transaction or arrangement; and
- (b) in respect of which the requirements specified in subsection (2) are met.

(2) The requirements specified for the purposes of subsection (1)(b) are –

- (a) in the case of a written resolution, a memorandum setting out the matters specified in subsection (4) is sent to every member at or before the time at which the proposed resolution is sent to the member; or
- (b) in the case of a resolution at a meeting –
 - (i) a memorandum setting out the matters specified in subsection (4) is sent to every member together with the notice convening the meeting; and
 - (ii) if the company is a public company, the resolution is passed after disregarding every vote in favour of the resolution by a member specified in subsection (5).

(3) Subject to any provision of the company's articles, any accidental failure to send the memorandum to a member is to be disregarded for the purpose of determining whether the requirement specified in subsection (2)(a) or (b)(i) has been met.

(4) The matters specified for the purposes of subsection (2)(a) and (b)(i) are –

- (a) in the case of a resolution for the purposes of section 11.16, 11.17 or 11.18 –

- (i) the nature of the transaction to be approved by the resolution;
 - (ii) the amount of the loan or quasi-loan;
 - (iii) the purpose for which the loan or quasi-loan is required; and
 - (iv) the extent of the company's liability under any transaction connected with the loan or quasi-loan;
 - (b) in the case of a resolution for the purposes of section 11.19 –
 - (i) the nature of the transaction to be approved by the resolution;
 - (ii) the amount and value of the credit transaction;
 - (iii) the purpose for which the goods, land or services supplied, sold, leased, hired or otherwise disposed of under the credit transaction are required; and
 - (iv) the extent of the company's liability under any transaction connected with the credit transaction;or
 - (c) in the case of a resolution for the purposes of section 11.20 –
 - (i) the matter that would have to be disclosed if the company were seeking approval of the transaction to which the arrangement relates;
 - (ii) the nature of the arrangement to be approved by the resolution; and
 - (iii) the extent of the company's liability under the arrangement.
- (5) The member specified for the purposes of subsection (2)(b)(ii) is –
- (a) in the case of a resolution for the purposes of section 11.16 or 11.17 –

- (i) one who is the director to whom the loan or quasi-loan is proposed to be made or was made; or
 - (ii) one who holds any shares in the company in trust for that director;
- (b) in the case of a resolution for the purposes of section 11.18 –
 - (i) one who is the connected entity to whom the loan or quasi-loan is proposed to be made or was made;
 - (ii) one who is the director with whom that entity is connected; or
 - (iii) one who holds any shares in the company in trust for that connected entity or director;
- (c) in the case of a resolution for the purposes of section 11.19 –
 - (i) one who is the director or connected entity for whom the credit transaction is proposed to be entered into or was entered into;
 - (ii) one who is the director with whom that entity is connected; or
 - (iii) one who holds any shares in the company in trust for the director specified in subparagraph (i) or (ii) or that connected entity; or
- (d) in the case of a resolution for the purposes of section 11.20 –
 - (i) one who is the director or connected entity for whom the arrangement is proposed to be entered into or was entered into;
 - (ii) one who is the director with whom that entity is connected; or

- (iii) one who holds any shares in the company in trust for the director specified in subparagraph (i) or (ii) or that connected entity.

(6) Subsection (2)(b)(ii) does not prevent a member specified in subsection (5) from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.

(7) In this section, a reference to a transaction to which an arrangement relates is –

- (a) in the case of an arrangement mentioned in section 11.20(1)(a) or (2)(a), a reference to the transaction entered into with a director or an entity connected with a director under the arrangement; or
- (b) in the case of an arrangement mentioned in section 11.20(1)(b) or (2)(b) in relation to any rights, obligations or liabilities under a transaction, a reference to the transaction.

(8) For the purposes of subsection (1)(a), it is irrelevant whether the resolution is passed before, on or after the commencement of this Division.

11.12 Value of transaction or arrangement etc.

(1) For the purposes of this Division –

- (a) the value of a transaction is determined in accordance with subsection (2); and
- (b) the value of any other relevant transaction or arrangement is the value of the transaction or arrangement determined in accordance with subsection (2) or (3), reduced by any amount by which the liabilities of the director, or the entity connected with a director, for whom the transaction or arrangement was entered into have been reduced.

(2) For the purposes of subsection (1) –

- (a) the value of a loan is the amount of its principal;
 - (b) the value of a quasi-loan is the amount, or maximum amount, that the person to whom the quasi-loan is made is liable to reimburse the person making the quasi-loan;
 - (c) the value of a credit transaction is the price that it is reasonable to expect could be obtained for goods, land or services to which the transaction relates if they had been supplied (at the time the transaction is entered into) in the ordinary course of business and on the same terms (apart from the price) as they have been supplied, or are to be supplied, under the transaction; and
 - (d) the value of a guarantee or security is the amount guaranteed or secured.
- (3) For the purposes of subsection (1)(b) –
- (a) the value of an arrangement mentioned in section 11.20(1)(a) or (2)(a) is the value of the transaction entered into with a director or an entity connected with a director under the arrangement; and
 - (b) the value of an arrangement mentioned in section 11.20(1)(b) or (2)(b) in relation to any rights, obligations or liabilities under a transaction is the value of the transaction.

(4) For the purposes of this Division, the value of a transaction or arrangement, or any other relevant transaction or arrangement, is regarded as exceeding \$750,000 if its value is not capable of being expressed as a specific sum of money –

- (a) whether because the amount of any liability arising under the transaction or arrangement is unascertainable, or for any other reason; and

- (b) whether or not any liability under the transaction or arrangement has been reduced.

11.13 Relevant transaction or arrangement

(1) A transaction or arrangement is a relevant transaction or arrangement for the purposes of an exception provision –

- (a) if it is entered into before, or at the same time as, the transaction in question; and
- (b) if –
 - (i) where the transaction in question is entered into for a director of the company or an entity connected with such a director, it is entered into for the director or connected entity by virtue of the exception provision by the company or a subsidiary of the company; or
 - (ii) where the transaction in question is entered into for a director of a holding company of the company or an entity connected with such a director, it is entered into for the director or connected entity by virtue of the exception provision by the holding company or a subsidiary of the holding company.

(2) Despite subsection (1), a transaction or arrangement is not a relevant transaction or arrangement for the purposes of an exception provision if –

- (a) it was entered into by a body corporate that, at the time it was entered into –
 - (i) was a subsidiary of the company entering into the transaction in question; or

- (ii) was a subsidiary of a holding company of that company; and
- (b) at the time the question arises as to whether the transaction in question falls within the exception provision, the body corporate is no longer such a subsidiary.
- (3) In this section –
“exception provision” (例外條文) means –
 - (a) section 11.21(1);
 - (b) section 11.21(2); or
 - (c) section 11.22.

11.14 Total exposure amount

- (1) In sections 11.25 and 11.26 –
“total exposure amount” (風險承擔總額) –
 - (a) in relation to a private company or a company limited by guarantee, means the aggregate of the following amounts –
 - (i) the amount of the transaction in question;
 - (ii) the aggregate of the amounts outstanding at the time that transaction is entered into, in respect of the principal and interest or otherwise, on every loan made by the company to a director of the company or of a holding company of the company (excluding the transaction in question, and any loan made with the prescribed approval mentioned in section 11.16 or by virtue of section 11.15, 11.21, 11.22, 11.23, 11.24, 11.27 or 11.28);
 - (iii) the aggregate of the amounts representing the maximum liability of the company at that time under every guarantee given by the company, and in respect of every security provided by the

company, in connection with any loan made by any person to a director of the company or of a holding company of the company (excluding the transaction in question, and any guarantee or security given or provided with the prescribed approval mentioned in section 11.16 or by virtue of section 11.15, 11.21, 11.22, 11.23, 11.24, 11.27 or 11.28);

(iv) the aggregate of the net amounts incurred or to be incurred by the company at that time under every arrangement specified in subsection (2) that is entered into by the company (excluding any arrangement entered into with the prescribed approval mentioned in section 11.20 or by virtue of section 11.15); or

(b) in relation to a public company, means the aggregate of the following amounts –

- (i) the amount of the transaction in question;
- (ii) the aggregate of the amounts outstanding at the time that transaction is entered into, in respect of the principal and interest or otherwise, on every loan and quasi-loan made by the company to, and every credit transaction entered into by the company as creditor for, a director of the company or of a holding company of the company, or an entity connected with such a director (excluding the transaction in question, and any loan, quasi-loan or credit transaction made or entered into with the prescribed approval mentioned in section 11.16, 11.17, 11.18 or 11.19 or by virtue of

section 11.15, 11.21, 11.22, 11.23, 11.24, 11.27 or 11.28);

(iii) the aggregate of the amounts representing the maximum liability of the company at that time under every guarantee given by the company, and in respect of every security provided by the company, in connection with any loan or quasi-loan made by any person to, or any credit transaction entered into by any person as creditor for, a director of the company or of a holding company of the company, or an entity connected with such a director (excluding the transaction in question, and any guarantee or security given or provided with the prescribed approval mentioned in section 11.16, 11.17, 11.18 or 11.19 or by virtue of section 11.15, 11.21, 11.22, 11.23, 11.24, 11.27 or 11.28);

(iv) the aggregate of the net amounts incurred or to be incurred by the company at that time under every arrangement specified in subsection (3) that is entered into by the company (excluding any arrangement entered into with the prescribed approval mentioned in section 11.20 or by virtue of section 11.15).

(2) An arrangement specified for the purposes of subsection (1)(a)(iv)

is –

(a) an arrangement under which –

(i) another person makes a questionable loan to a director of the company or of a holding company of the company; and

- (ii) that other person, in pursuance of the arrangement, has obtained or is to obtain any benefit from the company or an associated company of the company; or
 - (b) an arrangement for an assignment to the company, or assumption by the company, of any rights, obligations or liabilities under a questionable loan made by another person to a director of the company or of a holding company of the company.
- (3) An arrangement specified for the purposes of subsection (1)(b)(iv) is –
 - (a) an arrangement under which –
 - (i) another person makes a questionable loan or quasi-loan to, or enters into a questionable credit transaction as creditor for, a director of the company or of a holding company of the company, or an entity connected with such a director; and
 - (ii) that other person, in pursuance of the arrangement, has obtained or is to obtain any benefit from the company or an associated company of the company; or
 - (b) an arrangement for an assignment to the company, or assumption by the company, of any rights, obligations or liabilities under –
 - (i) a questionable loan or quasi-loan made by another person to a director of the company or of a holding company of the company, or an entity connected with such a director; or
 - (ii) a questionable credit transaction entered into by another person as creditor for a director of the

company or of a holding company of the company,
or an entity connected with such a director.

- (4) In this section –
- (a) a reference to a questionable loan or quasi-loan made by a person to a director of the company, or an entity connected with such a director, under an arrangement is a reference to a loan or quasi-loan, as the case may be, that, if it had been made by the company on the date of the arrangement, would have been prohibited by section 11.16(1), 11.17(1) or 11.18(1) or would have been so prohibited in the absence of sections 11.25 and 11.26;
 - (b) a reference to a questionable credit transaction entered into by a person as creditor for a director of the company, or an entity connected with such a director, under an arrangement is a reference to a credit transaction that, if it had been entered into by the company on the date of the arrangement, would have been prohibited by section 11.19(1) or would have been so prohibited in the absence of sections 11.25 and 11.26;
 - (c) a reference to a questionable loan or quasi-loan made by a person to a director of a holding company of the company, or an entity connected with such a director, under an arrangement is a reference to a loan or quasi-loan, as the case may be, that, if it had been made by the company on the date of the arrangement, would have been prohibited by section 11.16(2), 11.17(2) or 11.18(2) or would have been so prohibited in the absence of sections 11.25 and 11.26; and
 - (d) a reference to a questionable credit transaction entered into by a person as creditor for a director of a holding company

of the company, or an entity connected with such a director, under an arrangement is a reference to a credit transaction that, if it had been entered into by the company on the date of the arrangement, would have been prohibited by section 11.19(2) or would have been so prohibited in the absence of sections 11.25 and 11.26.

11.15 Preservation of effect of members' unanimous consent

(1) If, under a provision of this Division, a transaction or arrangement must not be entered into without the prescribed approval of any company's members, the provision does not prohibit the transaction or arrangement from being entered into with the unanimous consent of those members that is given before it is entered into.

(2) If, under a provision of this Division, a transaction or arrangement may be entered into with only the prescribed approval of any company's members, the provision does not preclude the transaction or arrangement from being entered into with the unanimous consent of those members that is given before it is entered into.

(3) For the purposes of subsection (1) or (2), it is irrelevant whether the unanimous consent is given before, on or after the commencement of this Division.

Subdivision 2 – Prohibitions

11.16 Company must not make loan etc. to director

(1) Without the prescribed approval of its members, a company must not –

- (a) make a loan to a director of the company; or
- (b) give a guarantee or provide security in connection with a loan made by any person to such a director.

- (2) Without the prescribed approval of its members and the prescribed approval of the holding company's members, a company must not –
- (a) make a loan to a director of a holding company of the company; or
 - (b) give a guarantee or provide security in connection with a loan made by any person to such a director.
- (3) Despite subsection (2) –
- (a) a company may enter into the transaction with only the prescribed approval of its members if the holding company is incorporated outside Hong Kong; and
 - (b) a company may enter into the transaction with only the prescribed approval of the holding company's members if it is a wholly owned subsidiary of the holding company, and the holding company is incorporated in Hong Kong.

11.17 Public company must not make quasi-loan etc. to director

- (1) Without the prescribed approval of its members, a public company must not –
- (a) make a quasi-loan to a director of the company; or
 - (b) give a guarantee or provide security in connection with a quasi-loan made by any person to such a director.
- (2) Without the prescribed approval of its members and the prescribed approval of the holding company's members, a public company must not –
- (a) make a quasi-loan to a director of a holding company of the company; or
 - (b) give a guarantee or provide security in connection with a quasi-loan made by any person to such a director.
- (3) Despite subsection (2) –

- (a) a public company may enter into the transaction with only the prescribed approval of its members if the holding company is incorporated outside Hong Kong; and
- (b) a public company may enter into the transaction with only the prescribed approval of the holding company's members if it is a wholly owned subsidiary of the holding company, and the holding company is incorporated in Hong Kong.

11.18 Public company must not make loan or quasi-loan etc. to connected entity

(1) Without the prescribed approval of its members, a public company must not –

- (a) make a loan or quasi-loan to an entity connected with a director of the company; or
- (b) give a guarantee or provide security in connection with a loan or quasi-loan made by any person to an entity connected with such a director.

(2) Without the prescribed approval of its members and the prescribed approval of the holding company's members, a public company must not –

- (a) make a loan or quasi-loan to an entity connected with a director of a holding company of the company; or
- (b) give a guarantee or provide security in connection with a loan or quasi-loan made by any person to an entity connected with such a director.

(3) Despite subsection (2) –

- (a) a public company may enter into the transaction with only the prescribed approval of its members if the holding company is incorporated outside Hong Kong; and
- (b) a public company may enter into the transaction with only the prescribed approval of the holding company's

members if it is a wholly owned subsidiary of the holding company, and the holding company is incorporated in Hong Kong.

11.19 Public company must not enter into credit transaction etc. as creditor for director or connected entity

(1) Without the prescribed approval of its members, a public company must not –

- (a) enter into a credit transaction as creditor for –
 - (i) a director of the company; or
 - (ii) an entity connected with such a director; or
- (b) give a guarantee or provide security in connection with a credit transaction entered into by any person as creditor for such a director or an entity connected with such a director.

(2) Without the prescribed approval of its members and the prescribed approval of the holding company's members, a public company must not –

- (a) enter into a credit transaction as creditor for –
 - (i) a director of a holding company of the company; or
 - (ii) an entity connected with such a director; or
- (b) give a guarantee or provide security in connection with a credit transaction entered into by any person as creditor for such a director or an entity connected with such a director.

(3) Despite subsection (2) –

- (a) a public company may enter into the transaction with only the prescribed approval of its members if the holding company is incorporated outside Hong Kong; and
- (b) a public company may enter into the transaction with only the prescribed approval of the holding company's members if it is a wholly owned subsidiary of the holding

company, and the holding company is incorporated in Hong Kong.

11.20 Company must not take part in arrangement purporting to circumvent sections 11.16 to 11.19

(1) Without the prescribed approval of its members, a company must not –

- (a) take part in an arrangement under which –
 - (i) another person enters into a questionable transaction with a director of the company, or an entity connected with such a director; and
 - (ii) that other person, in pursuance of the arrangement, has obtained or is to obtain any benefit from the company or an associated company of the company; or
- (b) arrange for an assignment to the company, or assumption by the company, of any rights, obligations or liabilities under a questionable transaction entered into by another person with a director of the company, or an entity connected with such a director.

(2) Without the prescribed approval of its members and the prescribed approval of the holding company's members, a company must not –

- (a) take part in an arrangement under which –
 - (i) another person enters into a questionable transaction with a director of a holding company of the company, or an entity connected with such a director; and
 - (ii) that other person, in pursuance of the arrangement, has obtained or is to obtain any

benefit from the company or an associated company of the company; or

- (b) arrange for an assignment to the company, or assumption by the company, of any rights, obligations or liabilities under a questionable transaction entered into by another person with a director of a holding company of the company, or an entity connected with such a director.
- (3) Despite subsection (2) –

 - (a) a company may enter into the arrangement with only the prescribed approval of its members if the holding company is incorporated outside Hong Kong; and
 - (b) a company may enter into the arrangement with only the prescribed approval of the holding company’s members if it is a wholly owned subsidiary of the holding company, and the holding company is incorporated in Hong Kong.
- (4) In this section –

 - (a) a reference to a questionable transaction entered into by a person with a director of the company, or an entity connected with such a director, under an arrangement is a reference to a transaction that, if it had been entered into by the company on the date of the arrangement, would have been prohibited by section 11.16(1), 11.17(1), 11.18(1) or 11.19(1) or would have been so prohibited in the absence of Subdivision 3; and
 - (b) a reference to a questionable transaction entered into by a person with a director of a holding company of the company, or an entity connected with such a director, under an arrangement is a reference to a transaction that, if it had been entered into by the company on the date of the arrangement, would have been prohibited by section

11.16(2), 11.17(2), 11.18(2) or 11.19(2) or would have been so prohibited in the absence of Subdivision 3.

Subdivision 3 – Exceptions to Subdivision 2

11.21 Exception for small loan, quasi-loan and credit transaction

(1) A company is not prohibited by section 11.16, 11.17 or 11.18 from making a loan or quasi-loan, or giving a guarantee or providing security in connection with a loan or quasi-loan, if the aggregate of the value of the transaction in question, and the value of any other relevant transaction or arrangement, does not exceed \$150,000.

(2) A company is not prohibited by section 11.19 from entering into a credit transaction, or giving a guarantee or providing security in connection with a credit transaction, if the aggregate of the value of the transaction in question, and the value of any other relevant transaction or arrangement, does not exceed \$200,000.

11.22 Exception for expenditure on company business

(1) If the condition specified in subsection (2) is satisfied, a company is not prohibited by section 11.16, 11.17, 11.18 or 11.19 from entering into any transaction –

(a) to provide a director of the company or of a holding company of the company, or an entity connected with such a director, with funds to meet expenditure incurred or to be incurred by the director or connected entity, as the case may be –

- (i) for the purposes of the company; or
- (ii) for the purpose of enabling the director or connected entity, as the case may be, to properly perform duties as an officer of the company; or

(b) to enable such a director, or an entity connected with such a director, to avoid incurring such expenditure.

(2) The condition is that the aggregate of the value of the transaction in question, and the value of any other relevant transaction or arrangement, does not exceed \$750,000.

11.23 Exception for expenditure on defending proceedings etc.

(1) If the condition specified in subsection (2) is satisfied, a company is not prohibited by section 11.16, 11.17, 11.18 or 11.19 from entering into any transaction –

(a) to provide a director of the company or of a holding company of the company with funds to meet expenditure incurred or to be incurred by the director –

(i) in defending any criminal or civil proceedings in connection with any alleged negligence, default, breach of duty or breach of trust by the director in relation to the company or an associated company of the company; or

(ii) in connection with an application for relief under section 358 of the predecessor Ordinance or section 20.10 or 20.11;¹⁰ or

(b) to enable such a director to avoid incurring such expenditure.

(2) The condition is that the transaction in question is entered into on the terms –

(a) that the funds are to be repaid, or any liability of the company incurred in relation to that transaction is to be discharged, if –

¹⁰ A consultation draft of Part 20 will be published later.

- (i) the director is convicted in the proceedings;
 - (ii) judgment is given against the director in the proceedings; or
 - (iii) the court refuses to grant the director relief on the application; and
 - (b) that the funds are to be so repaid, or such liability is to be so discharged, not later than the date when the conviction, judgment or refusal of relief becomes final.
- (3) For the purposes of subsection (2), 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.
- (4) For the purposes of subsection (3)(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.

11.24 Exception for expenditure in connection with investigation or regulatory action

- (1) If the condition specified in subsection (2) is satisfied, a company is not prohibited by section 11.16, 11.17, 11.18 or 11.19 from entering into any transaction –
- (a) to provide a director of the company or of a holding company of the company with funds to meet expenditure incurred or to be incurred by the director in putting up a defence in an investigation, or against any action taken or proposed to be taken, by a regulatory authority in connection with any alleged misconduct by the director in

relation to the company or an associated company of the company; or

(b) to enable such a director to avoid incurring such expenditure.

(2) The condition is that the transaction in question is entered into on the terms –

(a) that the funds are to be repaid, or any liability of the company incurred in relation to that transaction is to be discharged, if the director is found in the investigation or action to have committed the misconduct; and

(b) that the funds are to be so repaid, or such liability is to be so discharged, not later than the date when the finding becomes final.

(3) For the purposes of subsection (2) –

(a) a finding subject to review –

(i) if no application for review has been made, becomes final at the end of the period for making an application for review; or

(ii) if an application for review has been made, becomes final when the review, or any further review, is disposed of;

(b) a finding subject to appeal –

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

(ii) if appealed against, becomes final when the appeal, or any further appeal, is disposed of; and

(c) a finding not subject to review or appeal becomes final when it is made.

(4) For the purposes of subsection (3)(a)(ii) or (b)(ii), a review or appeal is disposed of if –

- (a) it is determined, and the period for bringing any further review or appeal has ended; or
 - (b) it is abandoned or otherwise ceases to have effect.
- (5) In this section –
- “misconduct” (不當行為) means negligence, default, breach of duty or breach of trust.

11.25 Exception for home loan

(1) If the conditions specified in subsection (2) are satisfied, a company is not prohibited by section 11.16, 11.17, 11.18 or 11.19 from entering into any transaction –

- (a) for the purpose of facilitating the purchase of any residential premises for use as the only or main residence of –
 - (i) a director of the company or of a holding company of the company; or
 - (ii) an employee of the company who is an entity connected with such a director;
 - (b) for the purpose of improving any residential premises so used; or
 - (c) in substitution for any transaction entered into by any other person for a purpose specified in paragraph (a) or (b).
- (2) The conditions are –
- (a) that, at the time the transaction in question is entered into, the total exposure amount does not exceed 5% of –
 - (i) the value of the company’s net assets as determined by reference to its most recent annual financial statement prepared in accordance with Part 9;¹¹ or

¹¹ A consultation draft of Part 9 will be published later.

- (ii) if no annual financial statement has been prepared, the amount of the company's called-up share capital;
 - (b) that the company ordinarily enters into transactions for a purpose specified in subsection (3) on terms no less favourable than those on which the transaction in question is entered into;
 - (c) that a valuation report on the residential premises is made and signed by a professionally qualified valuation surveyor, who is subject to the discipline of a professional body, within 3 months before the date on which the transaction in question is entered into;
 - (d) that the amount of the transaction in question does not exceed 80% of the value of the residential premises as stated in the valuation report; and
 - (e) that the transaction in question is secured by a legal mortgage on the land comprising the residential premises.
- (3) The purpose specified for the purposes of subsection (2)(b) is –
- (a) to facilitate the purchase of any residential premises for use as the only or main residence of an employee of the company;
 - (b) to improve any residential premises so used; or
 - (c) to substitute for any transaction entered into by any other person for a purpose specified in paragraph (a) or (b).

(4) In this section –
“residential premises” (住用處所) means any residential premises together with any land to be occupied or enjoyed with the premises.

(5) In this section, an annual financial statement is a company's most recent annual financial statement if the time for sending it out to members of the company is most recent.

11.26 Exception for leasing goods and land etc.

(1) If the conditions specified in subsection (2) are satisfied, a company is not prohibited by section 11.16, 11.17, 11.18 or 11.19 from leasing or hiring goods or leasing land to a director of the company or of a holding company of the company, or an entity connected with such a director.

(2) The conditions are –

- (a) that, at the time the transaction in question is entered into, the total exposure amount does not exceed 5% of the amount of the company's net assets as shown in the latest balance sheet laid before the company in general meeting; and
- (b) that the terms of the transaction in question are not more favourable than what is reasonable to expect the company to have offered, if the goods had been leased or hired, or the land has been leased, on the open market, to a person unconnected with the company.

11.27 Exception for transaction entered in ordinary course of business

(1) A company is not prohibited by section 11.16, 11.17 or 11.18 from making a loan or quasi-loan, or giving a guarantee or providing security in connection with a loan or quasi-loan, if –

- (a) the company's ordinary business includes the making of loans or quasi-loans, or the giving of guarantees or provision of securities in connection with loans or quasi-loans, as the case may be;
- (b) the loan, quasi-loan, guarantee or security is made, given or provided by the company in the ordinary course of its business; and
- (c) the amount of the loan or quasi-loan, guarantee or security is not greater, and the terms of it are not more favourable,

than what is reasonable to expect the company to have offered to a person of the same financial standing but unconnected with the company.

(2) A company is not prohibited by section 11.19 from entering into a credit transaction, or giving a guarantee or providing security in connection with a credit transaction, if –

- (a) the company's ordinary business includes the entering into of credit transactions, or the giving of guarantees or provision of securities in connection with credit transactions, as the case may be;
- (b) the credit transaction, guarantee or security is entered into, given or provided by the company in the ordinary course of its business; and
- (c) the amount of the credit transaction, guarantee or security is not greater, and the terms of it are not more favourable, than what is reasonable to expect the company to have offered to a person of the same financial standing but unconnected with the company.

11.28 Exception for intra-group transaction

If a company is a member of a group of companies, the company is not prohibited by section 11.18 or 11.19 from –

- (a) making a loan or quasi-loan to, or entering into a credit transaction as creditor for, a body corporate that is a member of the group; or
- (b) giving a guarantee or providing security in connection with –
 - (i) a loan or quasi-loan made by any person to such a body corporate; or

- (ii) a credit transaction entered into by any person as creditor for such a body corporate.

Subdivision 4 – Consequences of Contravention

11.29 Civil consequences of contravention

(1) If a company enters into a transaction in contravention of section 11.16, 11.17, 11.18 or 11.19, or enters into an arrangement in contravention of section 11.20, the transaction or arrangement is voidable at the company's instance unless –

- (a) restitution of any money or other asset that was the subject matter of the transaction or arrangement is no longer possible;
- (b) the company has been indemnified for any loss or damage resulting from the transaction or arrangement; or
- (c) a person who is not a party to the transaction or arrangement acquired rights in good faith, for value, and without actual notice of the contravention, and those rights would be affected by the avoidance.

(2) Whether or not the transaction or arrangement has been avoided, each of the persons specified in subsection (3) is liable –

- (a) to account to the company for any gain that the person has made, directly or indirectly, by the transaction or arrangement; and
- (b) jointly and severally with any other person so liable under this section, to indemnify the company for any loss or damage resulting from the transaction or arrangement.

(3) The persons are –

- (a) a director of the company, or of a holding company of the company, for whom the company entered into the transaction or arrangement;

- (b) an entity connected with such a director, for whom the company entered into the transaction or arrangement;
 - (c) the director of the company, or of a holding company of the company, with whom such an entity is connected; and
 - (d) any other director of the company who authorized the transaction or arrangement.
- (4) Despite subsection (2) –
 - (a) the connected entity specified in subsection (3)(b) is not liable if the connected entity establishes that, at the time the transaction or arrangement was entered into, the connected entity did not know the circumstances constituting the contravention;
 - (b) the director specified in subsection (3)(c) is not liable if the director establishes that the director took all reasonable steps to secure the company’s compliance with section 11.18, 11.19 or 11.20, as the case may be; and
 - (c) a director specified in subsection (3)(d) is not liable if the director establishes that, at the time the transaction or arrangement was entered into, the director did not know the circumstances constituting the contravention.

(5) This section does not exclude the operation of any other Ordinance or rule of law by virtue of which the transaction or arrangement may be called in question or any liability to the company may arise.

11.30 Affirmation of contravening transaction or arrangement

(1) Despite section 11.29, a transaction or arrangement may no longer be avoided under that section if, within a reasonable period after it is entered into, the transaction or arrangement is affirmed.

(2) If a transaction or arrangement contravenes Subdivision 2 because it was entered into without the prescribed approval of the company’s members,

the transaction or arrangement must be affirmed by the company by a resolution of those members.

(3) If a transaction or arrangement contravenes Subdivision 2 because it was entered into without the prescribed approval of the holding company's members, the transaction or arrangement must be affirmed by the holding company by a resolution of those members.

(4) If a transaction or arrangement contravenes Subdivision 2 because it was entered into without the prescribed approval of the company's members and the prescribed approval of the holding company's members, the transaction or arrangement must be affirmed –

(a) by the company by a resolution of the company's members; and

(b) by the holding company by a resolution of the holding company's members.

(5) This section does not affect the validity of a company's or holding company's decision to affirm a transaction or arrangement if it is taken by unanimous consent of the company's or holding company's members.

11.31 Provisions supplementary to section 11.30

(1) The following requirements must be met in relation to a resolution of the members of any company under section 11.30 –

(a) in the case of a written resolution, a memorandum setting out the matters specified in subsection (3) is sent to every member at or before the time at which the proposed resolution is sent to the member; or

(b) in the case of a resolution at a meeting –

(i) a memorandum setting out the matters specified in subsection (3) is sent to every member together with the notice convening the meeting; and

- (ii) if the company is a public company, the resolution is passed after disregarding every vote in favour of the resolution by a member specified in subsection (4).

(2) Subject to any provision of the company's articles, any accidental failure to send the memorandum to a member is to be disregarded for the purpose of determining whether the requirement specified in subsection (1)(a) or (b)(i) has been met.

(3) The matters specified for the purposes of subsection (1)(a) and (b)(i) are –

(a) in the case of a resolution for the purpose of a contravention of section 11.16, 11.17 or 11.18 –

- (i) the nature of the transaction to be affirmed by the resolution;
- (ii) the amount of the loan or quasi-loan;
- (iii) the purpose for which the loan or quasi-loan is required; and
- (iv) the extent of the company's liability under any transaction connected with the loan or quasi-loan;

(b) in the case of a resolution for the purpose of a contravention of section 11.19 –

- (i) the nature of the transaction to be affirmed by the resolution;
 - (ii) the amount and value of the credit transaction;
 - (iii) the purpose for which the goods, land or services supplied, sold, leased, hired or otherwise disposed of under the credit transaction are required; and
 - (iv) the extent of the company's liability under any transaction connected with the credit transaction;
- or

- (c) in the case of a resolution for the purpose of a contravention of section 11.20 –
 - (i) the matter that would have to be disclosed if the company were seeking affirmation of the transaction to which the arrangement relates;
 - (ii) the nature of the arrangement to be affirmed by the resolution; and
 - (iii) the extent of the company’s liability under the arrangement.
- (4) The member specified for the purposes of subsection (1)(b)(ii) is –
 - (a) in the case of a resolution for the purpose of a contravention of section 11.16 or 11.17 –
 - (i) one who is the director to whom the loan or quasi-loan is proposed to be made or was made;
 - (ii) one who is any other director of the company who authorized the loan or quasi-loan; or
 - (iii) one who holds any shares in the company in trust for the director specified in subparagraph (i) or (ii);
 - (b) in the case of a resolution for the purpose of a contravention of section 11.18 –
 - (i) one who is the connected entity to whom the loan or quasi-loan is proposed to be made or was made;
 - (ii) one who is the director with whom that entity is connected;
 - (iii) one who is any other director of the company who authorized the loan or quasi-loan; or
 - (iv) one who holds any shares in the company in trust for the director specified in subparagraph (ii) or (iii) or that connected entity;

- (c) in the case of a resolution for the purpose of a contravention of section 11.19 –
 - (i) one who is the director or connected entity for whom the credit transaction is proposed to be entered into or was entered into;
 - (ii) one who is the director with whom that entity is connected;
 - (iii) one who is any other director of the company who authorized the credit transaction; or
 - (iv) one who holds any shares in the company in trust for the director specified in subparagraph (i), (ii) or (iii) or that connected entity; or
- (d) in the case of a resolution for the purpose of a contravention of section 11.20 –
 - (i) one who is the director or connected entity for whom the arrangement is proposed to be entered into or was entered into;
 - (ii) one who is the director with whom that entity is connected;
 - (iii) one who is any other director of the company who authorized the arrangement; or
 - (iv) one who holds any shares in the company in trust for the director specified in subparagraph (i), (ii) or (iii) or that connected entity.

(5) Subsection (1)(b)(ii) does not prevent a member specified in subsection (4) from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.

(6) In this section, a reference to a transaction to which an arrangement relates is –

- (a) in the case of an arrangement mentioned in section 11.20(1)(a) or (2)(a), a reference to the transaction entered into with a director or an entity connected with a director under the arrangement; or
- (b) in the case of an arrangement mentioned in section 11.20(1)(b) or (2)(b) in relation to any rights, obligations or liabilities under a transaction, a reference to the transaction.

Division 3 – Payment for Loss of Office

Subdivision 1 – Preliminary

11.32 Interpretation

(1) In this Division –

“affected member” (受影響成員) means –

- (a) a holder of the shares to which the takeover offer relates; or
- (b) a holder of shares of the same class as any of the shares to which the takeover offer relates;

“director” (董事) includes a shadow director;

“takeover offer” (收購要約) means a takeover offer within the meaning of Part 13.¹²

(2) In this Division –

- (a) a reference to payment, compensation or consideration includes benefits otherwise than in cash; and
- (b) a reference to loss of office as a director excludes loss of a person’s status as a shadow director.

¹² A consultation draft of Part 13 will be published later.

(3) In section 11.34 and Subdivisions 2 and 3, a reference to a payment to a director or past director includes –

- (a) a payment to an entity connected with the director or past director; and
- (b) a payment to a person at the direction of, or for the benefit of –
 - (i) the director or past director; or
 - (ii) an entity connected with the director or past director.

(4) In section 11.34 and Subdivisions 2 and 3, a reference to a payment by a person includes a payment by another person at the direction of, or on behalf of, the person.

(5) For the purposes of this Division, a body corporate is not regarded as a shadow director of any of its subsidiaries only because the directors, or a majority of the directors, of the subsidiary are accustomed to act in accordance with its direction or instructions.

11.33 Payment for loss of office

(1) In this Division, a reference to a payment for loss of office made to a director or past director of a company is a reference to a payment made to the director or past director –

- (a) by way of compensation for loss of office as director of the company;
- (b) by way of compensation for loss, while director of the company or in connection with ceasing to be director of it, of –
 - (i) any other office or employment in connection with the management of the affairs of the company; or

- (ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company;
 - (c) as consideration for or in connection with the retirement from the office as director of the company; or
 - (d) as consideration for or in connection with the retirement, while director of the company or in connection with ceasing to be director of it, from –
 - (i) any other office or employment in connection with the management of the affairs of the company; or
 - (ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company.
- (2) If, in connection with a transfer mentioned in section 11.38 or 11.39 –
- (a) the price to be paid to a director or past director of the company specified in subsection (3) for any shares in the company exceeds the price that could at the time have been obtained by other holders of like shares; or
 - (b) any valuable consideration is given to a director or past director of the company specified in subsection (3) by a person other than the company,

the excess, or (as the case may be) the money value of the consideration, is regarded as a payment for loss of office for the purposes of sections 11.38 and 11.39.

- (3) The director or past director of the company is –
- (a) one who is or was to cease to hold office in connection with the transfer; or
 - (b) one who is or was to cease to be the holder of either of the following offices in connection with the transfer –
 - (i) any other office or employment in connection with the management of the affairs of the company;
 - (ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company.

(4) Subsection (1)(a) or (b) applies to a loss of office occurring on or after the commencement of this Division.

(5) Subsection (1)(c) or (d) applies to a retirement occurring on or after the commencement of this Division.

(6) For the purposes of subsections (4) and (5), a loss of office or retirement occurs –

- (a) in the case of a directorship, when the person ceases to be a director;
- (b) in the case of any other office, when the person ceases to hold the office; or
- (c) in the case of an employment, when the employment comes to an end.

11.34 Prescribed approval of members or affected members

(1) For the purposes of this Division, a reference to the prescribed approval of the members or affected members of any company is a reference to an approval obtained by a resolution of those members or affected members –

- (a) that is passed before the payment for loss of office is made; and
 - (b) in respect of which the requirements specified in subsection (2) are met.
- (2) The requirements specified for the purposes of subsection (1)(b) are –
 - (a) in the case of a written resolution, a memorandum setting out the particulars of the payment is sent to every member or affected member, as the case may be, at or before the time at which the proposed resolution is sent to the member or affected member; or
 - (b) in the case of a resolution at a meeting –
 - (i) a memorandum setting out the particulars of the payment is sent to every member or affected member, as the case may be, together with the notice convening the meeting; and
 - (ii) if the company is a public company, the resolution is passed after disregarding every vote in favour of the resolution by a member or affected member, as the case may be, specified in subsection (4) or (5).
- (3) Subject to any provision of the company's articles, any accidental failure to send the memorandum to a member or affected member, as the case may be, is to be disregarded for the purpose of determining whether the requirement specified in subsection (2)(a) or (b)(i) has been met.
- (4) In the case of a resolution for the purposes of section 11.37 or 11.38, the member specified for the purposes of subsection (2)(b)(ii) is –
 - (a) one who is the director or past director to whom the payment for loss of office is proposed to be made;

- (b) one who is the proposed recipient of the payment for loss of office and who is not the director or past director specified in paragraph (a); or
- (c) one who holds any shares in the company in trust for that director, past director or recipient.

(5) In the case of a resolution for the purposes of section 11.39, the affected member specified for the purposes of subsection (2)(b)(ii) is –

- (a) one who is the director or past director to whom the payment for loss of office is proposed to be made;
- (b) one who is the proposed recipient of the payment for loss of office and who is not the director or past director specified in paragraph (a);
- (c) one who makes the takeover offer;
- (d) one who is an associate of the person making the takeover offer; or
- (e) one who holds any shares in the company in trust for –
 - (i) that director, past director or recipient;
 - (ii) the maker of the takeover offer specified in paragraph (c); or
 - (iii) the associate.

(6) Subsection (2)(b)(ii) does not prevent a member or affected member, as the case may be, specified in subsection (4) or (5) from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.

(7) In this section –
“associate” (有聯繫者), in relation to a person making a takeover offer, means
an associate of the person within the meaning of Part 13.¹³

¹³ A consultation draft of Part 13 will be published later.

(8) For the purposes of subsection (1)(a), it is irrelevant whether the resolution is passed before, on or after the commencement of this Division.

11.35 Preservation of effect of members' or affected members' unanimous consent

(1) If, under a provision of this Division, a transaction must not be entered into without the prescribed approval of any company's members or affected members, the provision does not prohibit the transaction from being entered into with the unanimous consent of those members or affected members that is given before it is entered into.

(2) If, under a provision of this Division, a transaction may be entered into with only the prescribed approval of any company's members or affected members, the provision does not preclude the transaction from being entered into with the unanimous consent of those members or affected members that is given before it is entered into.

(3) For the purposes of subsection (1) or (2), it is irrelevant whether the unanimous consent is given before, on or after the commencement of this Division.

11.36 This Division does not affect operation of other Ordinance or law

This Division does not affect the operation of any other Ordinance or rule of law requiring disclosure to be made with respect to –

- (a) any payment for loss of office mentioned in section 11.37, 11.38 or 11.39; or
- (b) any other like payment made or to be made to a director or past director of a company.

Subdivision 2 – Prohibitions

11.37 Company must not make payment for loss of office to director or past director

(1) Without the prescribed approval of its members, a company must not make a payment for loss of office to a director or past director of the company.

(2) Without the prescribed approval of its members and the prescribed approval of the holding company's members, a company must not make a payment for loss of office to a director or past director of a holding company of the company.

(3) Despite subsection (2) –

(a) a company may enter into the transaction with only the prescribed approval of its members if the holding company is incorporated outside Hong Kong; and

(b) a company may enter into the transaction with only the prescribed approval of the holding company's members if it is a wholly owned subsidiary of the holding company, and the holding company is incorporated in Hong Kong.

11.38 Person must not make payment for loss of office to director or past director in connection with transfer of company's undertaking or property

(1) Without the prescribed approval of the company's members, a person must not make a payment for loss of office to a director or past director of a company in connection with a transfer of the whole or any part of the undertaking or property of the company.

(2) Without the prescribed approval of the company's members and the prescribed approval of the subsidiary's members, a person must not make a payment for loss of office to a director or past director of a company in

connection with a transfer of the whole or any part of the undertaking or property of a subsidiary of the company.

(3) For the purposes of this section, a payment is presumed, except in so far as the contrary is shown, to be made in connection with a transfer of any undertaking or property of a company if it is made in pursuance of an arrangement –

(a) entered into as part of the agreement for the transfer, or within one year before or 2 years after that agreement; and

(b) to which the company, or any person to whom the transfer is made, is privy.

(4) Despite subsection (2), a person may enter into the transaction with only the prescribed approval of the company's members if the subsidiary is incorporated outside Hong Kong or is a wholly owned subsidiary of the company.

11.39 Person must not make payment for loss of office to director or past director in connection with transfer of shares resulting from takeover offer

(1) Without the prescribed approval of the affected members, a person must not make a payment for loss of office to a director or past director of a company in connection with a transfer of shares in the company, or in a subsidiary of the company, resulting from a takeover offer.

(2) For the purposes of this section, a payment is presumed, except in so far as the contrary is shown, to be made in connection with a transfer of any shares in a company if it is made in pursuance of an arrangement –

(a) entered into as part of the agreement for the transfer, or within one year before or 2 years after that agreement; and

(b) to which the company, or any person to whom the transfer is made, is privy.

(3) Despite subsection (1), a person may enter into the transaction without the prescribed approval of a body corporate's affected members if the body corporate is incorporated outside Hong Kong.

(4) For the purposes of this section, the prescribed approval of the affected members of a payment is regarded as being obtained if –

- (a) a quorum is not present at a meeting to consider the resolution in respect of which the requirement specified in section 11.34(2)(b)(i) is met;
- (b) the meeting is adjourned to a later date; and
- (c) a quorum is not present at the adjourned meeting.

Subdivision 3 – Exceptions to Subdivision 2

11.40 Exception for payments in discharge of legal obligation etc.

(1) A person is not prohibited by Subdivision 2 from making a payment in good faith –

- (a) in discharge of an existing legal obligation;
- (b) by way of damages for breach of an existing legal obligation;
- (c) by way of settlement or compromise of any claim arising in connection with a person's office or employment; or
- (d) by way of pension in respect of past services.

(2) For the purposes of subsection (1), if part of a payment falls within that subsection and part of it does not, the payment is to be regarded as if those parts were separate payments.

(3) In this section –
“existing legal obligation” (現存法律義務) –

- (a) in relation to a payment falling within section 11.37 and made by a company, means an obligation of the company, or an associated company of it, that was not entered into in

connection with, or in consequence of, the event giving rise to the payment for loss of office; or

- (b) in relation to a payment falling within section 11.38 or 11.39 and made by a person in connection with a transfer of any undertaking, property or shares, means an obligation of the person that was not entered into for the purpose of, in connection with, or in consequence of, the transfer;

“pension” (退休金) includes any superannuation allowance, superannuation gratuity or similar payment.

(4) For the purposes of the definition of “existing legal obligation” in subsection (3), if a payment falls within both sections 11.37 and 11.38 or within both sections 11.37 and 11.39, it is regarded as falling within section 11.37 but not within section 11.38 or 11.39.

11.41 Exception for small payment

(1) A company is not prohibited by section 11.37 from making a payment to a director or past director if the aggregate of the amount or value of the payment, and the amount or value of any other payment for loss of office made by the company or a subsidiary of the company to the director or past director in connection with the same event, does not exceed \$20,000.

(2) A company is not prohibited by section 11.38 or 11.39 from making a payment to a director or past director in connection with a transfer of any undertaking or property of, or shares in, the company or a subsidiary of the company if the aggregate of the amount or value of the payment, and the amount or value of any other payment for loss of office made by the company or a subsidiary of the company to the director or past director in connection with the transfer, does not exceed \$20,000.

(3) A subsidiary of a company is not prohibited by section 11.38 or 11.39 from making a payment to a director or past director in connection with a

transfer of any undertaking or property of, or shares in, the company or a subsidiary of the company if the aggregate of the amount or value of the payment, and the amount or value of any other payment for loss of office made by the company, or the subsidiary making the payment, to the director or past director in connection with the transfer, does not exceed \$20,000.

Subdivision 4 – Consequences of Contravention

11.42 Interpretation

For the purposes of this Division –

- (a) unless the court directs otherwise, a payment is regarded as being made in contravention of section 11.38 if it is made in contravention of both sections 11.37 and 11.38; and
- (b) unless the court directs otherwise, a payment is regarded as being made in contravention of section 11.39 if it is made in contravention of both sections 11.37 and 11.39.

11.43 Civil consequences of contravention of section 11.37

If a payment is made by a company in contravention of section 11.37 –

- (a) the payment is held by the recipient in trust for the company; and
- (b) any director of the company who authorized the payment is jointly and severally liable to indemnify the company for any loss resulting from the payment.

11.44 Civil consequences of contravention of section 11.38

(1) This section applies if a payment is made in connection with a transfer of any undertaking or property of a company, or a subsidiary of a company, in contravention of section 11.38.

(2) The payment is held by the recipient in trust for the company or subsidiary.

(3) If the payment is made by or on behalf of the company, any director of the company who authorized the payment is jointly and severally liable to indemnify the company for any loss resulting from the payment.

(4) If the payment is made by or on behalf of the subsidiary, any director of the subsidiary who authorized the payment is jointly and severally liable to indemnify the subsidiary for any loss resulting from the payment.

11.45 Civil consequences of contravention of section 11.39

(1) This section applies if a payment is made in connection with a transfer of shares in a company, or a subsidiary of a company, resulting from a takeover offer in contravention of section 11.39.

(2) The payment is held by the recipient in trust for those who have sold their shares as a result of the offer made.

(3) The recipient must bear the expenses in distributing that sum amongst those who have sold their shares.

(4) If the payment is made by or on behalf of the company, any director of the company who authorized the payment is jointly and severally liable to indemnify the company for any loss resulting from the payment.

(5) If the payment is made by or on behalf of the subsidiary, any director of the subsidiary who authorized the payment is jointly and severally liable to indemnify the subsidiary for any loss resulting from the payment.

Division 4 – Directors’ Service Contract

11.46 Interpretation

(1) In this Division –
“director” (董事) includes a shadow director.

(2) For the purposes of this Division, a body corporate is not regarded as a shadow director of any of its subsidiaries only because the directors, or a majority of the directors, of the subsidiary are accustomed to act in accordance with its direction or instructions.

11.47 Service contract

(1) In this Division, a reference to a service contract of a director of a company –

- (a) is a reference to a contract under which –
 - (i) the director undertakes personally to perform services, as director or otherwise, for the company or for a subsidiary of the company; or
 - (ii) services, as director or otherwise, that the director undertakes personally to perform are made available by a third party to the company or to a subsidiary of the company; and
- (b) includes the terms of a person's appointment as director of the company.

(2) In this Division, a reference to a service contract of a director of a company is not restricted to a contract for the performance of services outside the scope of a director's ordinary duties.

11.48 Prescribed approval of members

(1) For the purposes of this Division, a reference to the prescribed approval of the members of any company is a reference to an approval obtained by a resolution of those members –

- (a) that is passed before the company agrees to the provision; and
- (b) in respect of which the requirements specified in subsection (2) are met.

(2) The requirements specified for the purposes of subsection (1)(b) are –

(a) in the case of a written resolution, a memorandum setting out the proposed service contract (incorporating the provision in question) is sent to every member at or before the time at which the proposed resolution is sent to the member; or

(b) in the case of a resolution at a meeting –

(i) a memorandum setting out the proposed service contract (incorporating the provision in question) is sent to every member together with the notice convening the meeting; and

(ii) if the company is a public company, the resolution is passed after disregarding every vote in favour of the resolution by a member specified in subsection (4).

(3) Subject to any provision of the company's articles, any accidental failure to send the memorandum to a member is to be disregarded for the purpose of determining whether the requirement specified in subsection (2)(a) or (b)(i) has been met.

(4) The member specified for the purposes of subsection (2)(b)(ii) is –

(a) one who is the director with whom the service contract is proposed to be entered into; or

(b) one who holds any shares in the company in trust for that director.

(5) Subsection (2)(b)(ii) does not prevent a member specified in subsection (4) from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.

(6) For the purposes of subsection (1)(a), it is irrelevant whether the resolution is passed before, on or after the commencement of this Division.

11.49 Preservation of effect of members' unanimous consent

(1) If, under section 11.50(1) or (2), any provision must not be agreed to without the prescribed approval of any company's members, that section does not prohibit the provision from being agreed to with the unanimous consent of those members that is given before it is agreed to.

(2) If, under section 11.50(3), any provision may be agreed to with only the prescribed approval of any company's members, that section does not preclude the provision from being agreed to with the unanimous consent of those members that is given before it is agreed to.

(3) For the purposes of subsection (1) or (2), it is irrelevant whether the unanimous consent is given before, on or after the commencement of this Division.

11.50 Company must not agree to director's long-term employment

(1) Without the prescribed approval of its members, a company must not agree to any provision under which the guaranteed term of the employment of a director of the company with the company exceeds or may exceed 3 years.

(2) Without the prescribed approval of its members and the prescribed approval of the holding company's members, a company must not agree to any provision under which the guaranteed term of the employment of a director of a holding company of the company within the group consisting of the holding company and its subsidiaries exceeds or may exceed 3 years.

(3) Despite subsection (2) –

(a) a company may agree to the provision with only the prescribed approval of its members if the holding company is incorporated outside Hong Kong; and

(b) a company may agree to the provision with only the prescribed approval of the holding company's members if

it is a wholly owned subsidiary of the holding company,
and the holding company is incorporated in Hong Kong.

(4) In this section –

“employment” (僱用) means any employment under a director’s service contract.

(5) In this section, a reference to the guaranteed term of a director’s employment is a reference to –

- (a) the period (if any) during which the employment –
 - (i) is to continue, or may be continued, otherwise than at the instance of the company (whether under the original contract or under a new contract entered into in pursuance of it); and
 - (ii) cannot be terminated by the company by notice, or can be so terminated only in specified circumstances;
- (b) in the case of employment terminable by the company by notice, the period of notice required to be given; or
- (c) in the case of employment having a period within paragraph (a) and a period within paragraph (b), the aggregate of those periods.

(6) For the purposes of this section, if, more than 6 months before the end of the guaranteed term of a director’s employment, the company enters into a further service contract otherwise than in pursuance of a right given, by or under the original contract, to the other party to it, the guaranteed term of the employment under the further contract is regarded as including the unexpired period of the guaranteed term of the employment under the original contract.

(7) For the purposes of subsection (6), it is irrelevant whether the original contract is entered into before, on or after the commencement of this Division.

11.51 Civil consequences of contravention of section 11.50

If a company agrees to a provision in contravention of section 11.50 –

- (a) the provision is void to the extent of the contravention; and
- (b) the contract is to be regarded as containing a term entitling the company to terminate it at any time by giving reasonable notice.

11.52 Copy of contract or memorandum to be available for inspection

(1) A company must keep the following available for inspection at its registered office or at a prescribed place –

- (a) a copy of the service contract of every director of the company or of a subsidiary of the company;
- (b) if the contract is not in writing, a written memorandum setting out the terms of the contract.

(2) A company must –

- (a) retain the copy or memorandum for at least one year after the date of termination or expiry of the contract; and
- (b) keep the copy or memorandum available for inspection during that time.

(3) 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).

(4) If a company contravenes subsection (1), (2) or (3), 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.

(5) In this section, a reference to a service contract includes a variation of the contract.

(6) For the purposes of subsection (1), it is irrelevant whether the service contract is entered into before, on or after the commencement of this Division.

11.53 Right of member to inspect and request copy

(1) A copy of a service contract or a written memorandum required to be kept by a company under section 11.52 must be open to inspection by any member of the company without charge.¹⁴

(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 service contract 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 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 service contract includes a variation of the contract.

¹⁴ Regulation will be made under clause 12.125 to make provision as to the time, duration and manner of inspection.

Division 5 – Substantial Property Transaction

11.54 Interpretation

(1) In this Division –
“director” (董事) includes a shadow director.

(2) For the purposes of this Division, a body corporate is not regarded as a shadow director of any of its subsidiaries only because the directors, or a majority of the directors, of the subsidiary are accustomed to act in accordance with its direction or instructions.

11.55 Non-cash asset

- (1) In this Division –
- (a) a reference to a non-cash asset is a reference to any property or interest in property, other than cash; and
 - (b) a reference to an acquisition of a non-cash asset includes –
 - (i) the creation or extinction of an estate or interest in, or a right over, any property; and
 - (ii) the discharge of a liability of any person, other than a liability for a liquidated sum.
- (2) In subsection (1)(a) –
“cash” (現金) includes currency other than Hong Kong currency.

11.56 Substantial non-cash asset

- (1) In this Division, a reference to a substantial non-cash asset is –
- (a) in relation to an arrangement entered into by a private company or a company limited by guarantee, a reference to a non-cash asset the value of which, as at the time the arrangement is entered into –
 - (i) exceeds 10% of the company’s asset value and is over \$100,000; or
 - (ii) exceeds \$1,500,000; or

- (b) in relation to an arrangement entered into by a public company, a reference to a non-cash asset the value of which, as at the time the arrangement is entered into –
 - (i) exceeds 10% of the company's asset value and is over \$750,000; or
 - (ii) exceeds \$10,000,000.
- (2) For the purposes of this Division –
 - (a) an arrangement involving more than one non-cash asset; or
 - (b) an arrangement that is one of a series involving non-cash assets,

is to be regarded as if the arrangement involved a non-cash asset of a value equal to the aggregate value of all the non-cash assets involved in the arrangement or the series.

- (3) In this section, a reference to a company's asset value at any time is –
 - (a) a reference to the value of the company's net assets as determined by reference to its most recent annual financial statement prepared in accordance with Part 9;¹⁵ or
 - (b) if no annual financial statement has been prepared, a reference to the amount of the company's called-up share capital.

(4) In this section, an annual financial statement is a company's most recent annual financial statement if the time for sending it out to members of the company is most recent.

11.57 Prescribed approval of members

(1) For the purposes of this Division, a reference to the prescribed approval of the members of any company is a reference to an approval obtained

¹⁵ A consultation draft of Part 9 will be published later.

by a resolution of those members in respect of which the requirements specified in subsection (2) are met.

(2) The requirements specified for the purposes of subsection (1) are –

(a) in the case of a written resolution, a memorandum setting out the matters specified in subsection (4) is sent to every member at or before the time at which the proposed resolution is sent to the member; or

(b) in the case of a resolution at a meeting –

(i) a memorandum setting out the matters specified in subsection (4) is sent to every member together with the notice convening the meeting; and

(ii) if the company is a public company, the resolution is passed after disregarding every vote in favour of the resolution by a member specified in subsection (5).

(3) Subject to any provision of the company's articles, any accidental failure to send the memorandum to a member is to be disregarded for the purpose of determining whether the requirement specified in subsection (2)(a) or (b)(i) has been met.

(4) The matters specified for the purposes of subsection (2)(a) and (b)(i) are the particulars of the arrangement, including its nature, the substantial non-cash asset involved, and the parties to it.

(5) The member specified for the purposes of subsection (2)(b)(ii) is –

(a) one who is the director, or the entity connected with a director –

(i) who acquires or is to acquire from the company a substantial non-cash asset under the arrangement;
or

(ii) from whom the company acquires or is to acquire a substantial non-cash asset under the arrangement;

(b) one who is the director with whom that entity is connected; or

(c) one who holds any shares in the company in trust for the director specified in paragraph (a) or (b) or that connected entity.

(6) Subsection (2)(b)(ii) does not prevent a member specified in subsection (5) from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.

(7) For the purposes of subsection (1), it is irrelevant whether the resolution is passed before, on or after the commencement of this Division.

11.58 Preservation of effect of members' unanimous consent

(1) If, under section 11.59(1) or (2), an arrangement must not be entered into unless the prescribed approval of any company's members has been obtained, that section does not prohibit the arrangement from being entered into with the unanimous consent of those members that is given before it is entered into.

(2) If, under section 11.59(4), an arrangement may be entered into with only the prescribed approval of any company's members, that section does not preclude the arrangement from being entered into with the unanimous consent of those members that is given before it is entered into.

(3) For the purposes of subsection (1) or (2), it is irrelevant whether the unanimous consent is given before, on or after the commencement of this Division.

11.59 Company must not acquire substantial non-cash asset from director etc.

- (1) A company must not enter into an arrangement under which –
- (a) a director of the company, or an entity connected with such a director, acquires or is to acquire from the company, directly or indirectly, a substantial non-cash asset; or
 - (b) the company acquires or is to acquire a substantial non-cash asset, directly or indirectly, from such a director or an entity connected with such a director,

unless the company has obtained the prescribed approval of its members, or the arrangement is conditional on the prescribed approval of its members being obtained.

(2) A company must not enter into an arrangement specified in subsection (3) unless –

- (a) the company has obtained –
 - (i) the prescribed approval of its members; and
 - (ii) the prescribed approval of the holding company's members; or
- (b) the arrangement is conditional on both of the following approval being obtained –
 - (i) the prescribed approval of its members;
 - (ii) the prescribed approval of the holding company's members.

(3) The arrangement specified for the purposes of subsection (2) is an arrangement under which –

- (a) a director of a holding company of the company, or an entity connected with such a director, acquires or is to acquire from the company, directly or indirectly, a substantial non-cash asset; or

- (b) the company acquires or is to acquire a substantial non-cash asset, directly or indirectly, from such a director or an entity connected with such a director.
- (4) Despite subsection (2)(a) –
 - (a) if the holding company is incorporated outside Hong Kong or is being wound up (except where the winding up is a members' voluntary winding up), a company may enter into the arrangement even though the company has obtained only the prescribed approval of its members; and
 - (b) if the company is a wholly owned subsidiary of the holding company, and the holding company is incorporated in Hong Kong, a company may enter into the arrangement even though the company has obtained only the prescribed approval of the holding company's members.

(5) If a company enters into an arrangement that is conditional on the prescribed approval mentioned in subsection (1) or (2) being obtained, it is not subject to any liability because of a failure to obtain that approval.

(6) Subsections (1) and (2) do not apply to an arrangement entered into by a company that is being wound up unless the winding up is a members' voluntary winding up.

(7) Subsections (1) and (2) do not apply to a transaction so far as it relates to –

- (a) anything to which a director is entitled under the service contract; or
 - (b) a payment for loss of office to a director within the meaning of Division 3.
- (8) Subsections (1) and (2) do not apply to –
 - (a) a transaction between a company and another person in the capacity of a member of the company;

- (b) a transaction between a holding company and its wholly owned subsidiary; or
- (c) a transaction between 2 wholly owned subsidiaries of the same holding company.

11.60 Civil consequences of contravention of section 11.59

(1) If a company enters into an arrangement in contravention of section 11.59, the arrangement, and any transaction entered into in pursuance of the arrangement (whether by the company or any other person), is voidable at the company's instance unless –

- (a) restitution of any money or other asset that was the subject matter of the arrangement or transaction is no longer possible;
- (b) the company has been indemnified for any loss or damage resulting from the arrangement or transaction; or
- (c) a person who is not a party to the arrangement or transaction acquired rights in good faith, for value, and without actual notice of the contravention, and those rights would be affected by the avoidance.

(2) Whether or not the arrangement or transaction has been avoided, each of the persons specified in subsection (3) is liable –

- (a) to account to the company for any gain that the person has made, directly or indirectly, by the arrangement or transaction; and
- (b) jointly and severally with any other person so liable under this section, to indemnify the company for any loss or damage resulting from the arrangement or transaction.

(3) The persons are –

- (a) a director of the company, or an entity connected with such a director –

- (i) who acquires or is to acquire from the company a substantial non-cash asset under the arrangement;
or
 - (ii) from whom the company acquires or is to acquire a substantial non-cash asset under the arrangement;
 - (b) the director with whom such an entity is connected; and
 - (c) any other director of the company who authorized the arrangement or transaction.
- (4) Despite subsection (2) –
- (a) the connected entity specified in subsection (3)(a) is not liable if the connected entity establishes that, at the time the arrangement was entered into, the connected entity did not know the circumstances constituting the contravention;
 - (b) the director specified in subsection (3)(b) is not liable if the director establishes that the director took all reasonable steps to secure the company’s compliance with section 11.59; and
 - (c) a director specified in subsection (3)(c) is not liable if the director establishes that, at the time the arrangement or transaction was entered into, the director did not know the circumstances constituting the contravention.

(5) This section does not exclude the operation of any other Ordinance or rule of law by virtue of which the arrangement or transaction may be called in question or any liability to the company may arise.

11.61 Affirmation of contravening arrangement or transaction

(1) Despite section 11.60, an arrangement, or a transaction entered into by the company in pursuance of an arrangement, may no longer be avoided under that section if, within a reasonable period after it is entered into, the arrangement or transaction is affirmed.

(2) If an arrangement contravenes section 11.59 because it was entered into without the prescribed approval of the company's members, the arrangement, or a transaction entered into by the company in pursuance of the arrangement, must be affirmed by the company by a resolution of those members.

(3) If an arrangement contravenes section 11.59 because it was entered into without the prescribed approval of the holding company's members, the arrangement, or a transaction entered into by the company in pursuance of the arrangement, must be affirmed by the holding company by a resolution of those members.

(4) If an arrangement contravenes section 11.59 because it was entered into without the prescribed approval of the company's members and the prescribed approval of the holding company's members, the arrangement, or a transaction entered into by the company in pursuance of the arrangement, must be affirmed –

(a) by the company by a resolution of the company's members; and

(b) by the holding company by a resolution of the holding company's members.

(5) This section does not affect the validity of a company's or holding company's decision to affirm an arrangement or transaction if it is taken by unanimous consent of the company's or holding company's members.

11.62 Provisions supplementary to section 11.61

(1) The following requirements must be met in relation to a resolution of the members of any company under section 11.61 –

(a) in the case of a written resolution, a memorandum setting out the matters specified in subsection (3) is sent to every member at or before the time at which the proposed resolution is sent to the member; or

- (b) in the case of a resolution at a meeting –
 - (i) a memorandum setting out the matters specified in subsection (3) is sent to every member together with the notice convening the meeting; and
 - (ii) if the company is a public company, the resolution is passed after disregarding every vote in favour of the resolution by a member specified in subsection (4).

(2) Subject to any provision of the company's articles, any accidental failure to send the memorandum to a member is to be disregarded for the purpose of determining whether the requirement specified in subsection (1)(a) or (b)(i) has been met.

(3) The matters specified for the purposes of subsection (1)(a) and (b)(i) are the particulars of the arrangement or transaction, including its nature, the substantial non-cash asset involved, and the parties to it.

(4) The member specified for the purposes of subsection (1)(b)(ii) is –

- (a) one who is the director, or the entity connected with a director –
 - (i) who acquires or is to acquire from the company a substantial non-cash asset under the arrangement; or
 - (ii) from whom the company acquires or is to acquire a substantial non-cash asset under the arrangement;
- (b) one who is the director with whom that entity is connected;
- (c) one who is any other director of the company who authorized the arrangement or transaction; or
- (d) one who holds any shares in the company in trust for the director specified in paragraph (a), (b) or (c) or that connected entity.

(5) Subsection (1)(b)(ii) does not prevent a member specified in subsection (4) from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.

Division 6 – Material Interests in Transaction, Arrangement or Contract

11.63 Director must declare material interests

(1) If a director of a company is in any way, directly or indirectly, interested in a transaction, arrangement or contract, or a proposed transaction, arrangement or contract, with the company that is significant in relation to the company's business, and the director's interest is material, the director must declare the nature and extent of the director's interest to the other directors.

(2) If an entity connected with a director of a public company is in any way, directly or indirectly, interested in a transaction, arrangement or contract, or a proposed transaction, arrangement or contract, with the company that is significant in relation to the company's business, and the connected entity's interest is material, the director must declare the nature and extent of the connected entity's interest to the other directors.

(3) If a declaration made under this section proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.

(4) A declaration of interest in a transaction, arrangement or contract that has been entered into must be made as soon as reasonably practicable. A declaration of interest in a proposed transaction, arrangement or contract must be made before the company enters into the transaction, arrangement or contract. Failure to comply with this requirement does not affect the underlying duty to make the declaration.

(5) This section does not require a director to declare an interest –

(a) if the director is not aware of the interest or the transaction, arrangement or contract in question; or

- (b) if, or to the extent that, the interest concerns the terms of the director's service contract that have been or are to be considered by –
 - (i) a meeting of the directors; or
 - (ii) a committee of the directors appointed for the purpose under the company's constitution.

(6) For the purposes of subsection (5)(a), a director is regarded as being aware of matters of which the director ought reasonably to be aware.

(7) This section does not affect the operation of any other Ordinance or rule of law restricting a director of a company from having any interest in a transaction, arrangement or contract with the company.

11.64 Declaration to directors

- (1) A declaration to directors under section 11.63 must be –
 - (a) made at a directors' meeting;
 - (b) made by notice in writing and sent by the director to the other directors; or
 - (c) made by general notice by the director to the other directors.
- (2) A notice for the purposes of subsection (1)(b) –
 - (a) must be sent –
 - (i) in hard copy form; or
 - (ii) if the recipient has agreed to receive it in electronic form, in the electronic form so agreed; and
 - (b) must be sent –
 - (i) by hand or by post; or
 - (ii) if the recipient has agreed to receive it by electronic means, by the electronic means so agreed.

(3) If a declaration to directors under section 11.63 is made by notice in writing –

- (a) the making of the declaration is to be regarded as forming part of the proceedings at the next directors' meeting after the notice is given; and
- (b) section 10.31 applies as if the declaration had been made at that meeting.

(4) A general notice by a director for the purposes of subsection (1)(c) is a notice to the effect that –

- (a) the director –
 - (i) has an interest (as member, officer, employee or otherwise) in a body corporate or firm specified in the notice; and
 - (ii) is to be regarded as interested in any transaction, arrangement or contract that may, after the effective date of the notice, be made with the specified body corporate or firm; or
- (b) the director –
 - (i) is connected with a person specified in the notice (other than a body corporate or firm); and
 - (ii) is to be regarded as interested in any transaction, arrangement or contract that may, after the effective date of the notice, be made with the specified person.

(5) A general notice must state –

- (a) the nature and extent of the director's interest in the specified body corporate or firm; or
- (b) the nature of the director's connection with the specified person.

- (6) A general notice is not effective unless –
 - (a) it is given at a directors' meeting; or
 - (b) the director takes reasonable steps to secure that it is brought up and read at the next directors' meeting after it is given.

11.65 Declaration to directors in case of company with sole director

(1) If a declaration to directors under section 11.63 is required of a sole director of a company that is required to have more than one director –

- (a) the declaration must be recorded in writing;
- (b) the making of the declaration is to be regarded as forming part of the proceedings at the next directors' meeting after the notice is given; and
- (c) section 10.31 applies as if the declaration had been made at that meeting.

(2) This section does not affect the operation of section 11.69.

11.66 Application to shadow director

(1) Subject to subsections (2), (3) and (4), the provisions of this Division relating to the duty of a director to declare an interest under section 11.63 apply to a shadow director in the same manner as they apply to a director.

(2) Section 11.64(1)(a) and (6) does not apply to a shadow director.

(3) A general notice by a shadow director for the purposes of section 11.64(1)(c) is not effective unless it is given by notice in writing and sent by the shadow director to the other directors.

(4) A notice for the purposes of subsection (3) –

- (a) must be sent –
 - (i) in hard copy form; or

- (ii) if the recipient has agreed to receive it in electronic form, in the electronic form so agreed; and
- (b) must be sent –
 - (i) by hand or by post; or
 - (ii) if the recipient has agreed to receive it by electronic means, by the electronic means so agreed.

11.67 Offence

- (1) A director or shadow director who contravenes section 11.63(1) or (2) commits an offence and is liable to a fine at level 6.
- (2) If a person is charged under subsection (1) for contravening section 11.63(2), it is a defence to establish that the person took all reasonable steps to secure compliance with that section.

Division 7 – Miscellaneous

11.68 Disclosure of management contract

- (1) This section applies if –
 - (a) a company enters into a contract by which a person undertakes the management and administration of the whole or any substantial part of any business of the company; and
 - (b) the contract is not a contract of service with any director of the company or any person engaged in the full-time employment of the company.
- (2) The directors' report for any year in which the contract is in force must include –
 - (a) a statement of the existence and duration of the contract; and

(b) the name of every director and shadow director interested in the contract, and the nature and extent of the interest.

(3) The company must keep the following available for inspection at its registered office or at a prescribed place –

(a) a copy of the contract;

(b) if the contract is not in writing, a written memorandum setting out the terms of the contract.

(4) The company must –

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

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

(5) 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).

(6) If subsection (2), (3), (4) or (5) is contravened, 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.

11.69 Contract with sole member who is also director

(1) This section applies if –

(a) a company having only one member enters into a contract with the member;

(b) the member is also a director of the company; and

(c) the contract is not entered into in the ordinary course of the company's business.

(2) Unless the contract is in writing, the company must ensure that the terms of the contract are set out in a written memorandum kept at the place where the books containing the minutes of the directors' meetings are kept.

(3) If a company contravenes subsection (2), 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.

(4) A contravention of subsection (2) in relation to a contract does not affect the validity of the contract.

(5) This section does not exclude the operation of any other Ordinance or rule of law applying to contracts between a company and a director of the company.

(6) In this section –
“director” (董事) includes a shadow director.

11.70 Financial Secretary may amend certain sums

(1) Subject to subsection (2), the Financial Secretary may, by order published in the Gazette, amend any provision of this Part by substituting for any sum of money specified in the provision a sum specified in the order.

(2) An order under this section may not be made to amend the amount of a fine.

(3) An order under this section does not have effect in relation to anything done or not done before the order comes into operation.

(4) Proceedings in respect of any liability incurred before an order under this section comes into operation may be continued or instituted as if the order had not been made.

**11.71 Transitional and saving arrangements for
Division 2**

- (1) This section applies if –
- (a) before the commencement of Division 2, a company entered into a transaction specified in section 157HA(3)(a) of the predecessor Ordinance;
 - (b) the transaction was entered into on the condition specified in section 157HA(4)(b) of the predecessor Ordinance; and
 - (c) that condition has not been satisfied before the commencement of Division 2.

(2) If the company has dispensed with the holding of annual general meeting in accordance with section 12.76, the specified condition continues to apply as if it provided –

- (a) that the approval of the company is required on or before the last date on which the company would otherwise have been required to hold an annual general meeting; and
- (b) that any liability falling on any person in connection with the transaction must be discharged within 6 months after that date if that approval is not forthcoming.

**11.72 Transitional and saving arrangements for
Division 3**

(1) Despite the repeal of sections 163, 163A, 163B, 163C and 163D of the predecessor Ordinance, those sections continue to apply in relation to a loss of office or retirement specified in those sections that occurs before the commencement of Division 3.

(2) For the purposes of this section, a loss of office or retirement occurs –

- (a) in the case of a directorship, when the person ceases to be a director; or

- (b) in the case of any other office, when the person ceases to hold the office.

11.73 Transitional and saving arrangements for section 11.69

Despite the repeal of section 162B of the predecessor Ordinance, that section continues to apply in relation to a contract specified in that section and entered into before the commencement of section 11.69.