

## PART 12

### COMPANY ADMINISTRATION AND PROCEDURE

#### Division 1 – Resolutions and Meetings

##### Subdivision 1 – Preliminary

#### 12.1 Interpretation

(1) In this Division –

“circulation date” (傳閱日期), in relation to a written resolution or a proposed written resolution, means –

- (a) the date on which copies of the resolution are sent to eligible members in accordance with section 12.7; or
- (b) if copies are sent to eligible members on different days, the first of those days;

“electronic address” (電子地址) means any sequence or combination of letters, characters, numbers or symbols of any language or, any number, used for the purposes of sending or receiving a document or information by electronic means.

(2) For the purposes of this Division –

- (a) in relation to a proposed written resolution, the eligible members are the members who would have been entitled to vote on the resolution on the circulation date of the resolution; and
- (b) if the persons entitled to vote on the resolution change during the course of the day that is the circulation date of the resolution, the eligible members are the persons entitled to vote on the resolution at the time that the first copy of the resolution is sent to a member for agreement.

(3) Nothing in this Division affects any Ordinance or rule of law as to –

- (a) things done otherwise than by passing a resolution;
- (b) circumstances in which a resolution is or is not to be regarded as having been passed; or
- (c) cases in which a person is precluded from alleging that a resolution has not been duly passed.

### **Subdivision 2 – Written Resolution**

#### **12.2 Written resolution**

(1) Anything that may be done by a resolution of a company in general meeting may be done, without a meeting and without any previous notice being required, by a written resolution of the members of the company.

(2) Anything that may be done by a resolution of a meeting of a class of members of a company may be done, without a meeting and without any previous notice being required, by a written resolution of that class of members of the company.

(3) If a resolution is required under any Ordinance to be passed as an ordinary resolution or a special resolution, the resolution may be passed as a written resolution; and a reference in any Ordinance to an ordinary resolution or a special resolution includes a written resolution.

(4) A reference in any Ordinance to the date of passing of a resolution or the date of a meeting is, in relation to a written resolution, the date on which the written resolution is passed under section 12.10.

(5) A written resolution of a company has effect as if passed by –

- (a) the company in general meeting; or
- (b) a meeting of the relevant class of members of the company, as the case may be, and a reference in any Ordinance to a meeting at which a resolution is passed or to members voting in favour of a resolution is to be construed accordingly.

- (6) This section does not apply to –
  - (a) a resolution removing an auditor before the end of the auditor’s term of office; or
  - (b) a resolution removing a director before the end of the director’s term of office.

### **12.3 Power to propose written resolution**

- (1) A resolution may be proposed as a written resolution by –
  - (a) the directors of a company; or
  - (b) the members of a company representing not less than the requisite percentage of the total voting rights of all the members entitled to vote on the resolution.

(2) The requisite percentage mentioned in subsection (1)(b) is 2.5% or a lower percentage specified for this purpose in the company’s articles.

### **12.4 Company’s duty to circulate written resolution proposed by directors**

If the directors of a company have proposed a resolution as a written resolution under section 12.3(1)(a), the company must circulate the resolution.

### **12.5 Members’ power to request circulation of written resolution**

(1) The members of a company may request the company to circulate a resolution that –

- (a) may properly be moved; and
- (b) is proposed as a written resolution under section 12.3(1)(b).

(2) If the members request a company to circulate a resolution, they may request the company to circulate with the resolution a statement of not more than 1 000 words on the subject matter of the resolution.

## **12.6 Company's duty to circulate written resolution proposed by members**

(1) A company must circulate a resolution proposed as a written resolution under section 12.3(1)(b) and any statement mentioned in section 12.5(2) if it has received requests that it do so from the members of the company representing not less than the requisite percentage of the total voting rights of all the members entitled to vote on the resolution.

(2) The requisite percentage mentioned in subsection (1) is 2.5% or a lower percentage specified for this purpose in the company's articles.

(3) A request –

- (a) may be sent to the company in hard copy form or in electronic form;
- (b) must identify the resolution and any statement mentioned in section 12.5(2); and
- (c) must be authenticated by the person or persons making it.

## **12.7 Circulation of written resolution**

(1) If a company is required under section 12.4 or 12.6 to circulate a resolution proposed as a written resolution, the company must send at its own expense to every eligible member and every other member (if any) who is not an eligible member –

- (a) a copy of the resolution; and
- (b) if so required under section 12.5(2), a copy of a statement mentioned in that section.

(2) The company may comply with subsection (1) –

- (a) by sending copies at the same time (so far as reasonably practicable) to all members in hard copy form or in electronic form or by making the copies available on a website;

- (b) if it is possible to do so without undue delay, by sending the same copy to each member in turn (or different copies to each of a number of members in turn); or
- (c) by sending copies to some members in accordance with paragraph (a) and sending a copy or copies to other members in accordance with paragraph (b).

(3) The company must send the copies (or if copies are sent to members on different days, the first of those copies) not more than 21 days after it becomes subject to the requirement under subsection (1) to send the copies.

(4) If the company sends a copy of a proposed written resolution or statement by making it available on a website, the copy is not validly sent for the purposes of this Subdivision unless the copy is available on the website throughout the period –

- (a) beginning on the circulation date; and
- (b) ending on the date on which the resolution lapses under section 12.12.

(5) The company must ensure that the copy of the proposed written resolution sent to an eligible member is accompanied by guidance as to –

- (a) how to signify agreement to the resolution under section 12.10; and
- (b) the date by which the resolution must be passed if it is not to lapse under section 12.12.

(6) If a company contravenes subsection (1), (3) or (5), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5.

(7) The validity of the resolution, if passed, is not affected by a contravention of subsection (1), (3) or (5).

### **12.8 Application not to circulate accompanying statement**

(1) A company is not required to circulate a statement mentioned in section 12.5(2) if, on an application by the company or another person who claims to be aggrieved, the Court of First Instance is satisfied that the rights given by that section are being abused.

(2) The Court of First Instance may order the members who requested the circulation of the statement to pay the whole or part of the company's costs on an application under subsection (1), even if they are not parties to the application.

### **12.9 Company's duty to notify auditor of proposed written resolution**

(1) If a company is required to send a resolution to a member of the company under section 12.7, it must, on or before the circulation date, send to the auditor of the company (if more than one auditor, to everyone of them) –

- (a) a copy of the resolution; and
- (b) a copy of any other document relating to the resolution that is required to be sent to a member of the company under that section.

(2) The copies may be sent to the auditor or auditors of the company in hard copy form or in electronic form.

(3) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.

(4) The validity of the resolution, if passed, is not affected by a contravention of subsection (1).

### **12.10 Procedure for signifying agreement to proposed written resolution**

(1) A written resolution is passed when all eligible members have signified their agreement to it.

(2) A member signifies agreement to a proposed written resolution when the company receives from the member (or from someone acting on the member's behalf) a document –

- (a) identifying the resolution to which it relates; and
- (b) indicating the member's agreement to the resolution.

(3) The document –

- (a) may be sent to the company in hard copy form or in electronic form; and
- (b) must be authenticated by the member or by someone acting on the member's behalf.

(4) A member's agreement to a written resolution, once signified, may not be revoked.

**12.11 Agreement signified by eligible members who are joint holders of shares**

(1) If –

- (a) 2 or more eligible members are joint holders of shares of a company; and
- (b) the senior holder has signified his or her agreement to a proposed written resolution,

then the other joint holder or holders are to be regarded as having signified their agreement to the proposed written resolution for the purposes of section 12.10(1).

(2) For the purposes of this section, the senior holder of a share is determined by the order in which the names of the joint holders appear in the register of members of the company.

(3) Subsections (1) and (2) have effect subject to any provision of the company's articles.

### **12.12 Period for agreeing to proposed written resolution**

(1) A proposed written resolution lapses if it is not passed before the end of –

- (a) the period specified for this purpose in the company's articles; or
- (b) if none is specified, the period of 28 days beginning on the circulation date.

(2) The agreement of a member to a proposed written resolution is ineffective if signified after the end of that period.

### **12.13 Company's duty to notify members and auditor that written resolution has been passed**

(1) If a resolution of a company is passed as a written resolution, the company must, within 15 days after the resolution is passed, send a copy of the written resolution to –

- (a) every member of the company; and
- (b) the auditor of the company (if more than one auditor, to everyone of them).

(2) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.

### **12.14 Sending document relating to written resolution by electronic means**

If a company has given an electronic address in any document containing or accompanying a proposed written resolution, it is to be regarded as having agreed that any document or information relating to that resolution may be sent by electronic means to that address (subject to any conditions or limitations specified in the document).

### **12.15 Relationship between this Subdivision and provisions of company's articles**

(1) A provision of a company's articles is void in so far as it would have the effect that a resolution that is required by or otherwise provided for in an Ordinance could not be proposed and passed as a written resolution.

(2) Nothing in this Subdivision affects any provision of a company's articles authorizing the company to pass a resolution without a meeting, otherwise than in accordance with this Subdivision.

(3) Subsection (2) applies only if the resolution has been agreed to by all the members of the company who are entitled to vote on the resolution.

### **12.16 Application and saving**

(1) This Subdivision applies to resolutions for which the circulation date is on or after the commencement of this Subdivision.

(2) Sections 116B (except subsections (7), (8), (9) and (10)), 116BA and 116BB of the predecessor Ordinance continue to apply to resolutions sent or circulated to any relevant member before the commencement of this Subdivision.

(3) In this section –  
“relevant member” (有關成員) means a member whose signature is required by section 116B(1) of the predecessor Ordinance.

## **Subdivision 3 – Resolutions at Meetings**

### **12.17 Resolution at general meeting**

(1) A resolution of the members of a company is validly passed at a general meeting if –

- (a) notice of the meeting and of the resolution is given;
- (b) the meeting is held and conducted; and
- (c) the resolution is passed,

in accordance with this Subdivision and Subdivisions 4, 5, 6, 7, 8 and 9 (and, if relevant, Subdivision 10) and the company's articles.

(2) If a provision of this Ordinance –

- (a) requires a resolution of a company, or of the members (or of a class of members) of a company; and
- (b) does not specify what kind of resolution is required,

what is required is an ordinary resolution unless the company's articles require a higher majority (or unanimity).

### **12.18 Ordinary resolution**

(1) An ordinary resolution of the members (or of a class of members) of a company means a resolution that is passed by a simple majority.

(2) A resolution passed at a general meeting on a show of hands is passed by a simple majority if it is passed by a simple majority of –

- (a) the members who (being entitled to do so) vote in person on the resolution; and
- (b) the persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.

(3) A resolution passed on a poll taken at a general meeting is passed by a simple majority if it is passed by members representing a simple majority of the total voting rights of all the members who (being entitled to do so) vote in person or by proxy on the resolution.

(4) Anything that may be done by an ordinary resolution may also be done by a special resolution.

### **12.19 Special resolution**

(1) A special resolution of the members (or of a class of members) of a company means a resolution that is passed by a majority of at least 75%.

(2) A resolution passed at a general meeting on a show of hands is passed by a majority of at least 75% if it is passed by at least 75% of –

- (a) the members who (being entitled to do so) vote in person on the resolution; and
- (b) the persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.

(3) A resolution passed on a poll taken at a general meeting is passed by a majority of at least 75% if it is passed by members representing at least 75% of the total voting rights of all the members who (being entitled to do so) vote in person or by proxy on the resolution.

(4) If a resolution is passed at a general meeting –

(a) the resolution is not a special resolution unless the notice of the meeting included the text of the resolution and specified the intention to propose the resolution as a special resolution; and

(b) if the notice of the meeting so specified, the resolution may only be passed as a special resolution.

(5) A reference to an extraordinary resolution of a company or of a meeting of any class of members of a company –

(a) contained in any Ordinance that was enacted or document that existed before 31 August 1984; and

(b) deemed, in relation to a resolution passed or to be passed on or after that date, to be a special resolution of the company or meeting under section 116(5) of the predecessor Ordinance,

continues to be deemed to be such a special resolution of the company or meeting.

## **12.20 Application and saving**

(1) This Subdivision applies to resolutions (other than written resolutions) –

(a) of which notice is given on or after the commencement of this Subdivision; or

(b) that are proposed at a meeting of which notice is given on or after the commencement of this Subdivision, other than a meeting convened in accordance with a requisition made

before the commencement of this Subdivision under section 113 of the predecessor Ordinance.

(2) The predecessor Ordinance (including section 116) continues to apply to resolutions (other than written resolutions) –

(a) of which notice was given before the commencement of this Subdivision; or

(b) that are proposed at a meeting –

(i) of which notice was given before the commencement of this Subdivision; or

(ii) that is convened in accordance with a requisition made before the commencement of this Subdivision under section 113 of the predecessor Ordinance.

(3) If notice of a meeting is given over more than one day, it is to be regarded for the purposes of this section as given on the first of those days.

(4) If copies of a requisition are deposited on more than one day, the references in this section to the date on which the requisition is made are to be construed as references to the first day on which the copies deposited are sufficient to require the company to act.

#### **Subdivision 4 – Calling Meetings**

##### **12.21 Directors’ power to call general meeting**

The directors of a company may call a general meeting of the company.

##### **12.22 Members’ power to request directors to call general meeting**

(1) The members of a company may request the directors to call a general meeting of the company.

(2) The directors are required to call a general meeting if the company has received requests to do so from members of the company representing at

least 5% of the total voting rights of all the members having a right to vote at general meetings.

- (3) A request –
  - (a) must state the general nature of the business to be dealt with at the meeting; and
  - (b) may include the text of a resolution that may properly be moved and is intended to be moved at the meeting.
- (4) Requests may consist of several documents in like form.
- (5) A request –
  - (a) may be sent to the company in hard copy form or in electronic form; and
  - (b) must be authenticated by the person or persons making it.

### **12.23 Directors' duty to call general meeting requested by members**

(1) Directors required under section 12.22 to call a general meeting must call a meeting within 21 days after the date on which they become subject to the requirement.

(2) A meeting called under subsection (1) must be held on a date not more than 28 days after the date of the notice convening the meeting.

(3) If the requests received by the company identify a resolution that may properly be moved and is intended to be moved at the meeting, the notice of the meeting must include notice of the resolution.

(4) The business that may be dealt with at the meeting includes a resolution of which notice has been included in the notice of meeting in accordance with subsection (3).

(5) If the resolution is to be proposed as a special resolution, the directors are to be regarded as not having duly called the meeting unless the notice of the meeting includes the text of the resolution and specifies the intention to propose the resolution as a special resolution.

**12.24 Members' power to call general meeting at company's expense**

- (1) If the directors –
  - (a) are required under section 12.22 to call a general meeting; and
  - (b) do not do so in accordance with section 12.23,

the members who requested the meeting, or any of them representing more than one half of the total voting rights of all of them, may themselves call a general meeting.

(2) If the requests received by the company identify a resolution that may properly be moved and is intended to be moved at the meeting, the notice of the meeting must include notice of the resolution.

(3) The meeting must be called for a date not more than 3 months after the date on which the directors become subject to the requirement to call a meeting.

(4) The meeting must be called in the same manner, as nearly as possible, as that in which that meeting is required to be called by the directors of the company.

(5) The business that may be dealt with at the meeting includes a resolution of which notice has been included in the notice of meeting in accordance with subsection (2).

(6) Any reasonable expenses incurred by the members requesting the meeting by reason of the failure of the directors duly to call a meeting must be reimbursed by the company.

(7) Any sum so reimbursed must be retained by the company out of any sum due or to become due from the company by way of fees or other remuneration in respect of the services of the directors who were in default.

**12.25 Members' power to call general meeting when there is no director etc.**

(1) If at any time a company does not have any director or does not have sufficient directors capable of acting to form a quorum, any director, or any 2 or more members of the company representing at least 10% of the total voting rights of all the members having a right to vote at general meetings, may call a general meeting in the same manner, as nearly as possible, as that in which that meeting may be called by the directors of the company.

(2) Subsection (1) has effect in so far as the articles of the company do not make other provision in that behalf.

**12.26 Power of Court of First Instance to order meeting**

- (1) This section applies if for any reason it is impracticable –
- (a) to call a general meeting of a company in any manner in which general meetings of that company may be called; or
  - (b) to conduct the meeting in the manner prescribed by the company's articles or this Ordinance.

(2) The Court of First Instance may, either of its own motion or on application –

- (a) by a director of the company; or
- (b) by a member of the company who would be entitled to vote at the meeting,

order a general meeting of the company to be called, held and conducted in any manner the Court of First Instance thinks fit.

(3) If the order is made, the Court of First Instance may give any ancillary or consequential directions that it thinks expedient.

(4) Directions given under subsection (3) may include a direction that one member of the company present at the meeting in person or by proxy is to be regarded as constituting a quorum.

(5) A general meeting called, held and conducted in accordance with an order under subsection (2) is to be regarded for all purposes as a general meeting of the company duly called, held and conducted.

(6) The legal personal representative of a deceased member of a company is to be regarded in all respects, for the purposes of this section, as a member of the company having the same rights with respect to attending and voting at a meeting of the company as the deceased member would, if living, have had.

### **12.27 Application and saving**

(1) Sections 12.22, 12.23 and 12.24 apply in relation to requests made on or after the commencement of those sections.

(2) Section 113 of the predecessor Ordinance continues to apply in relation to requisitions made before the commencement of sections 12.22, 12.23 and 12.24.

(3) Section 12.25 applies in relation to a meeting of which notice is given on or after the commencement of that section.

(4) Section 114A(1)(b) of the predecessor Ordinance continues to apply in relation to a meeting of which notice was given before the commencement of section 12.25.

(5) If notice of a meeting is given over more than one day, it is to be regarded for the purposes of this section as given on the first of those days.

(6) If requests are made or copies of a requisition are deposited on more than one day, the references in this section to the date on which the request or requisition is made are to be construed as references to the first day on which the requests made or copies deposited are sufficient to require the company to act.

## **Subdivision 5 – Notice of Meetings**

### **12.28 Notice required of general meeting**

(1) A general meeting of a company (other than an adjourned meeting) must be called by notice of –

- (a) in the case of an annual general meeting, at least 21 days; and
- (b) in any other case –
  - (i) if the company is a limited company, at least 14 days; and
  - (ii) if the company is an unlimited company, at least 7 days.

(2) If the company's articles require a longer period of notice than that specified in subsection (1), a general meeting of a company (other than an adjourned meeting) must be called by notice of that longer period.

(3) A general meeting of a company is to be regarded, despite the fact that it is called by shorter notice than that specified in subsection (1) or in the company's articles, as having been duly called if it is so agreed –

- (a) in the case of an annual general meeting, by all the members entitled to attend and vote at the meeting; and
- (b) in any other case, by a majority in number of the members having the right to attend and vote at the meeting, being a majority together representing at least 95% of the total voting rights at the meeting of all the members.

### **12.29 Manner in which notice to be given**

(1) Notice of a general meeting of a company must be given –

- (a) in hard copy form or in electronic form; or
- (b) by making the notice available on a website,

or partly by one of those means and partly by another.

(2) If a company has given an electronic address in a notice calling a meeting, it is to be regarded as having agreed that any document or information relating to proceedings at the meeting may be sent by electronic means to that address (subject to any conditions or limitations specified in the notice).

### **12.30 Publication of notice of general meeting on website**

(1) Without limiting Part 18, notice of a general meeting is not validly given by a company by making it available on a website unless it is given in accordance with this section.

(2) When the company notifies a member of the availability of the notice on the website, the notification must –

- (a) state that it concerns a notice of a company meeting;
- (b) specify the place, date and time of the meeting; and
- (c) in the case of an annual general meeting, state that it is an annual general meeting.

(3) The notice must be available on the website throughout the period beginning on the date of that notification and ending on the conclusion of the meeting.

### **12.31 Persons entitled to receive notice of general meeting**

(1) Notice of a general meeting of a company must be sent to –

- (a) every member of the company; and
- (b) every director.

(2) In subsection (1), the reference to a member includes any person who is entitled to a share in consequence of the death or bankruptcy of a member, if the company has been notified of that person's entitlement.

(3) Subsections (1) and (2) have effect subject to any provision of the company's articles.

(4) In the case of a listed company, notice of a general meeting of the company must be sent to every member not entitled to vote at the meeting at the same time and in the same manner as notice of the meeting is sent to members who are so entitled.

(5) A company is only required to comply with subsection (4) if the company is required to send notice of a general meeting of the company to members who are entitled to vote at the general meeting.

(6) Despite subsection (4), if a meeting is called at any time by shorter notice than that specified in section 12.28(1) or in the company's articles, subsection (4) is to be regarded as having been complied with if the notice required to be sent under that subsection is sent as soon as practicable after that time.

### **12.32 Duty to give notice of general meeting to auditor**

(1) If notice of a general meeting of a company or any other document relating to the general meeting is required to be sent to a member, the company must send a copy of it to its auditor (if more than one auditor, to everyone of them) at the same time as the notice or the other document is sent to the member.

(2) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.

### **12.33 Contents of notice of general meeting**

(1) A company must ensure that notice of a general meeting of the company –

- (a) specifies the date and time of the meeting;
- (b) specifies the place of the meeting (and if the meeting is to be held in 2 or more places, the principal place of the meeting and the other place or places of the meeting);

- (c) states the general nature of the business to be dealt with at the meeting;
- (d) in the case of a notice calling an annual general meeting, states that the meeting is an annual general meeting; and
- (e) if a resolution is intended to be moved at the meeting –
  - (i) includes notice of the resolution; and
  - (ii) (where the company is not a wholly owned subsidiary) includes or is accompanied by a statement containing the information and explanation, if any, that is reasonably necessary to indicate the purpose of the resolution.

(2) Subsection (1)(a), (b) and (c) has effect subject to any provision of the company's articles.

(3) Subsection (1)(e) does not apply in relation to a resolution of which –

- (a) notice has been included in the notice of meeting under section 12.23(3) or 12.24(2); or
- (b) notice has been given under section 12.78.

(4) If a company contravenes subsection (1)(e), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.

(5) The validity of a resolution, if passed at a general meeting of a company, is not affected by a contravention of subsection (1)(e).

(6) Subsection (5) does not affect any rule of common law or of equity or any other Ordinance, as regards the validity of a resolution.

(7) In subsection (1)(e) –

“wholly owned subsidiary” (全資附屬公司) has the meaning given by section 9.13(10).<sup>16</sup>

### **12.34 Resolution requiring special notice**

(1) If by any provision of this Ordinance special notice is required of a resolution, the resolution is not effective unless notice of the intention to move it has been given to the company at least 28 days before the meeting at which it is moved.

(2) The company must, if practicable, give its members notice of the resolution at the same time and in the same manner as it gives notice of the meeting.

(3) If that is not practicable, the company must give its members notice of the resolution at least 14 days before the meeting –

(a) by advertisement in a newspaper circulating generally in Hong Kong; or

(b) in any other manner allowed by the company’s articles.

(4) If, after notice of the intention to move the resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice is to be regarded as having been properly given, though not given within the time required.

### **12.35 Accidental failure to give notice of meeting or resolution**

(1) If a company gives notice of –

(a) a general meeting; or

(b) a resolution intended to be moved at a general meeting,

any accidental failure to give notice to, or any non-receipt of notice by, any person entitled to receive notice must be disregarded for the purpose of determining whether notice of the meeting or resolution is duly given.

---

<sup>16</sup> A consultation draft of Part 9 will be published later.

(2) Except in relation to notice given under section 12.23, 12.24 or 12.79, subsection (1) has effect subject to any provision of the company's articles.

### **12.36 Application and saving**

(1) Sections 12.28, 12.29, 12.30, 12.31, 12.32 and 12.33 apply in relation to meetings of which notice is given on or after the commencement of those sections.

(2) The predecessor Ordinance (including sections 111(1), 114, 114A, 141(7) and 155B) continues to apply in relation to a meeting of which notice was given before the commencement of sections 12.28, 12.31 and 12.33.

(3) If notice of a meeting is given over more than one day, it is to be regarded for the purposes of subsections (1) and (2) as given on the first of those days.

(4) Section 12.34 applies in relation to resolutions for which special notice is required if notice of the intention to move the resolution is given to the company on or after the commencement of that section.

(5) Section 116C of the predecessor Ordinance continues to apply to resolutions for which special notice is required if notice of the intention to move the resolution was given to the company before the commencement of section 12.34.

(6) Section 12.35 applies to meetings or resolutions of which notice is given on or after the commencement of that section.

(7) The reference in subsection (6) to cases in which notice is given on or after the commencement of section 12.35 includes cases in which notice would be regarded as so given if section 12.35 applied.

## Subdivision 6 – Members’ Statements

### 12.37 Members’ power to request circulation of statement

(1) The members of a company may request the company to circulate, to members of the company entitled to receive notice of a general meeting, a statement of not more than 1 000 words with respect to –

- (a) a matter mentioned in a proposed resolution to be dealt with at that meeting; or
- (b) other business to be dealt with at that meeting.

(2) A company is required to circulate the statement if it has received requests to do so from –

- (a) members representing at least 2.5% of the total voting rights of all the members who have a relevant right to vote; or
- (b) at least 50 members who have a relevant right to vote and hold shares in the company on which there has been paid up an average sum, per member, of at least \$2,000.

(3) In subsection (2), a “relevant right to vote” (相關表決權利) means –

- (a) in relation to a statement with respect to a matter mentioned in a proposed resolution, a right to vote on that resolution at the meeting to which the requests relate; and
- (b) in relation to any other statement, a right to vote at the meeting to which the requests relate.

(4) A request –

- (a) may be sent to the company in hard copy form or in electronic form;
- (b) must identify the statement to be circulated;

- (c) must be authenticated by the person or persons making it; and
- (d) must be received by the company at least 7 days before the meeting to which it relates.

**12.38 Company's duty to circulate members' statement**

(1) A company that is required under section 12.37 to circulate a statement must send a copy of it to each member of the company entitled to receive notice of the meeting –

- (a) in the same manner as the notice of the meeting; and
- (b) at the same time as, or as soon as reasonably practicable after, it gives notice of the meeting.

(2) Subsection (1) has effect subject to sections 12.39(2) and 12.40.

(3) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5.

**12.39 Expenses of circulating members' statement**

(1) The expenses of the company in complying with section 12.38 need not be paid by the members who requested the circulation of the statement if –

- (a) the meeting to which the requests relate is an annual general meeting of the company; and
- (b) requests sufficient to require the company to circulate the statement are received in time to enable the company to send a copy of the statement at the same time as it gives notice of the meeting.

(2) Otherwise –

- (a) the expenses of the company in complying with section 12.38 must be paid by the members who requested the circulation of the statement unless the company resolves otherwise; and
- (b) unless the company has previously so resolved, it is not bound to comply with that section unless there is deposited with or tendered to it, not later than 7 days before the meeting, a sum reasonably sufficient to meet its expenses in doing so.

**12.40 Application not to circulate members' statement**

(1) A company is not required to circulate a statement under section 12.38 if, on an application by the company or another person who claims to be aggrieved, the Court of First Instance is satisfied that the rights given by section 12.37 are being abused.

(2) The Court of First Instance may order the members who requested the circulation of the statement to pay the whole or part of the company's costs on an application under subsection (1), even if they are not parties to the application.

**12.41 Application and saving**

(1) This Subdivision applies to requests made on or after the commencement of this Subdivision.

(2) Section 115A of the predecessor Ordinance, in so far as it relates to the circulation of any statement in relation to an annual general meeting, continues to apply in relation to requisitions made to a company under section 115A(1)(b) of the predecessor Ordinance before the commencement of this Subdivision.

(3) If requests are made or copies of a requisition are deposited on more than one day, the references in this section to the date on which the request

or requisition is made are to be construed as references to the first day on which the requests made or copies deposited are sufficient to require the company to act.

### **Subdivision 7 – Procedure at Meetings**

#### **12.42 Meeting at 2 or more places**

(1) A company may hold a general meeting at 2 or more places using any audio-visual technology that enables the members of the company to exercise their right to speak and vote at the meeting.

(2) Subsection (1) has effect subject to any provision of the company's articles.

#### **12.43 Quorum at meeting**

(1) If a company has only one member, that member present in person or by proxy is a quorum of a general meeting of the company.

(2) If that member of the company is a body corporate, that member present by its corporate representative is also a quorum of a general meeting of the company.

(3) Subject to subsection (1) and the provisions of a company's articles, 2 members present in person or by proxy is a quorum of a general meeting of the company.

(4) If a member of the company is a body corporate, that member present by its corporate representative counts towards a quorum of a general meeting of the company.

(5) In this section –  
“corporate representative” (法團代表) means a person authorized under section 12.68 to act as the representative of the body corporate.

#### **12.44 Chairperson of meeting**

(1) A member may be elected to be the chairperson of a general meeting by a resolution of the company passed at the meeting.

(2) Subsection (1) is subject to any provision of the company's articles that states who may or who may not be chairperson.

#### **12.45 Resolution passed at adjourned meeting**

If a resolution is passed at an adjourned meeting of a company, the resolution is for all purposes to be regarded as having been passed on the date on which it was in fact passed, and is not to be regarded as having been passed on any earlier date.

#### **12.46 Application and saving**

(1) This Subdivision applies to meetings of which notice is given on or after the commencement of this Subdivision.

(2) The predecessor Ordinance (including sections 114A(1)(c) and (d), 114AA and 118) continues to apply to meetings of which notice was given before the commencement of this Subdivision.

(3) If notice of a meeting is given over more than one day, it is to be regarded for the purposes of this section as given on the first of those days.

### **Subdivision 8 – Voting at Meetings**

#### **12.47 General rules on votes**

(1) On a vote on a resolution on a show of hands at a general meeting –

- (a) every member present in person has one vote; and
- (b) every proxy present who has been duly appointed by a member entitled to vote on the resolution has one vote.

(2) If a member appoints more than one proxy, the proxies so appointed are not entitled to vote on the resolution on a show of hands.

(3) On a vote on a resolution on a poll taken at a general meeting –

- (a) in the case of a company having a share capital –
  - (i) every member present in person has one vote for each share held by him or her; and

(ii) every proxy present who has been duly appointed by a member has one vote for each share held by that member; and

(b) in the case of a company not having a share capital –

(i) every member present in person has one vote; and

(ii) every proxy present who has been duly appointed by a member entitled to vote on the resolution has one vote.

(4) Subsections (1), (2) and (3) have effect subject to any provision of the company's articles.

(5) If any shares in a company are held in trust for the company, those shares do not, for so long as they are so held, confer any right to vote at a general meeting of the company.

#### **12.48 Votes of joint holders of shares**

(1) In the case of joint holders of shares of a company, only the vote of the senior holder who votes (and any proxies duly authorized by the senior holder) may be counted by the company.

(2) For the purposes of this section, the senior holder of a share is determined by the order in which the names of the joint holders appear in the register of members of the company.

(3) Subsections (1) and (2) have effect subject to any provision of the company's articles.

#### **12.49 Declaration by chairperson on show of hands**

(1) On a vote on a resolution at a general meeting on a show of hands, a declaration by the chairperson that the resolution –

(a) has or has not been passed; or

(b) passed by a particular majority,

is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(2) An entry in respect of the declaration in minutes of the meeting recorded in accordance with section 12.82 is also conclusive evidence of that fact without the proof.

(3) This section does not have effect if a poll is demanded in respect of the resolution before or on the declaration under subsection (1) (and the demand is not subsequently withdrawn).

### **12.50 Right to demand poll**

(1) A provision of a company's articles is void in so far as it would have the effect of excluding the right to demand a poll at a general meeting on any question other than –

- (a) the election of the chairperson of the meeting; or
- (b) the adjournment of the meeting.

(2) A provision of a company's articles is void in so far as it would have the effect of making ineffective a demand for a poll at a general meeting on any question other than those specified in subsection (1)(a) and (b), which is made –

- (a) by at least 5 members having the right to vote at the meeting;
- (b) by a member or members representing at least 5% of the total voting rights of all the members having the right to vote at the meeting; or
- (c) by the chairperson of the meeting.

(3) The appointment of a proxy to vote on a matter at a general meeting of a company authorizes the proxy to demand, or join in demanding, a poll on that matter.

(4) In applying subsection (2), a demand by a proxy counts –

- (a) for the purposes of subsection (2)(a), as a demand by the member; and
- (b) for the purposes of subsection (2)(b), as a demand by a member representing the voting rights that the proxy is authorized to exercise.

### **12.51 Chairperson's duty to demand poll**

If, before or on the declaration of the result on a show of hands at a general meeting, the chairperson of the meeting knows from the proxies received by the company that the result on a show of hands will be different from that on a poll, the chairperson must demand a poll.

### **12.52 Voting on poll**

On a poll taken at a general meeting of a company, a member entitled to more than one vote need not, if the member votes –

- (a) use all the votes; or
- (b) cast all the votes the member uses in the same way.

### **12.53 Company's duty to record result of poll in minutes of general meeting**

(1) In respect of a resolution decided on a poll taken at a general meeting of a company, the company must record in the minutes of proceedings of the general meeting –

- (a) the result of the poll;
- (b) the total number of votes that could be cast on the resolution;
- (c) the number of votes in favour of the resolution; and
- (d) the number of votes against the resolution.

(2) If a company contravenes subsection (1), 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.

**12.54 Place where voting document must be kept available for inspection**

(1) This section applies in relation to any record or document relating to a vote cast at a general meeting on a resolution, including –

- (a) the instrument appointing a proxy to vote at the meeting; and
- (b) if a poll is taken at the meeting, the voting paper relating to the poll.

(2) A company must keep the record or document available for inspection at –

- (a) the company's registered office; or
- (b) a prescribed place.

(3) A company must –

- (a) retain the record or document for at least 7 years from the date on which the vote is cast; and
- (b) keep the record or document available for inspection during that time.

(4) A company must notify the Registrar of the place, or any change in the place, at which the record or document is kept for the purpose of this section. The notice must be given to the Registrar in the specified form within 14 days after the record or document is first kept at that place or within 14 days after the change (as the case may be).

(5) Subsection (4) does not apply in relation to any record or document that has been kept at the registered office of the company at all times since it came into existence.

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

**12.55 Right of member to inspect voting document**

The record or document to which section 12.54 applies must be open to inspection by any member of the company without charge.<sup>17</sup>

**12.56 Saving for provisions of articles as to determination of entitlement to vote**

Nothing in this Subdivision affects –

- (a) any provision of a company’s articles –
  - (i) requiring an objection to a person’s entitlement to vote on a resolution to be made in accordance with the articles; and
  - (ii) for the determination of the objection to be final and conclusive; or
- (b) the grounds on which such a determination may be questioned in legal proceedings.

**12.57 Application and saving**

(1) This Subdivision applies to meetings of which notice is given on or after the commencement of this Subdivision.

(2) The predecessor Ordinance (including sections 114A(1)(e), 114D, 114E and 116(2)) continues to apply to meetings of which notice was given before the commencement of this Subdivision.

(3) If notice of a meeting is given over more than one day, it is to be regarded for the purposes of this section as given on the first of those days.

---

<sup>17</sup> Regulation will be made under clause 12.125 to make provision as to the time, duration and manner of inspection.

## **Subdivision 9 – Proxies and Corporate Representatives**

### **12.58 Right to appoint proxy**

(1) Subject to subsection (2), a member of a company is entitled to appoint another person (whether a member or not) as a proxy to exercise all or any of the member's rights to attend and to speak and vote at a general meeting of the company.

(2) In the case of a company limited by guarantee, the company's articles may require that a proxy must be a member of the company and if the company's articles so require, a member of the company may only appoint another member as a proxy.

(3) In the case of a company having a share capital, a member of the company may appoint separate proxies to represent respectively the number of the shares held by the member that is specified in their instruments of appointment.

### **12.59 Notice of meeting to contain statement of rights etc.**

(1) A company must ensure that in a notice calling a general meeting of the company, there must appear, with reasonable prominence, a statement informing the member of –

- (a) the rights under section 12.58(1) and (3); and
- (b) the requirement under section 12.58(2).

(2) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.

(3) A contravention of subsection (1) does not affect the validity of the meeting or of anything done at the meeting.

### **12.60 Notice required of appointment of proxy etc.**

(1) This section applies to –

- (a) the appointment of a proxy; and
- (b) any document necessary to show the validity of, or otherwise relating to, the appointment of a proxy.

(2) A provision of the company's articles is void in so far as it would have the effect of requiring the appointment or document to be received by the company or another person earlier than the following time –

- (a) in the case of a general meeting or adjourned general meeting, 48 hours before the time for holding the meeting or adjourned meeting;
- (b) in the case of a poll taken more than 48 hours after it was demanded, 24 hours before the time appointed for the taking of the poll;
- (c) in the case of a poll taken not more than 48 hours after it was demanded, the time at which it was demanded.

(3) In calculating the periods mentioned in subsection (2), no account is to be taken of any part of a day that is –

- (a) a public holiday; or
- (b) a black rainstorm warning day or gale warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).

### **12.61 Sending documents relating to proxies in electronic form**

- (1) If a company has given an electronic address in –
  - (a) an instrument of proxy issued by the company in relation to a general meeting; or
  - (b) an invitation to appoint a proxy issued by the company in relation to the meeting,

it is to be regarded as having agreed that any document or information relating to proxies for that meeting may be sent by electronic means to that address (subject to any conditions or limitations specified in the instrument or invitation).

- (2) In subsection (1), documents relating to proxies include –
  - (a) the appointment of a proxy in relation to a general meeting;
  - (b) any document necessary to show the validity of, or otherwise relating to, the appointment of a proxy; and
  - (c) notice of the termination of the authority of a proxy.

### **12.62 Company-sponsored invitations to appoint proxies**

(1) A company must not, for the purposes of a general meeting of the company, issue at its expense invitations to members to appoint as proxy a specified person or a number of specified persons unless the invitations are issued to all members entitled to be sent a notice of the meeting and to vote at the meeting by proxy.

- (2) Subsection (1) is not contravened if –
  - (a) there is issued to a member at that member's request a form of appointment naming the proxy or a list of persons willing to act as proxy; and
  - (b) the form or list is available on request to all members entitled to vote at the meeting by proxy.

(3) If a company contravenes subsection (1), every responsible person of the company, commit an offence, and each is liable to a fine at level 3.

### **12.63 Requirement as to instrument of proxy issued by company**

(1) This section applies to an instrument of proxy issued to a member of a company by the company for use by the member for appointing a proxy to attend and vote at a general meeting of the company.

(2) The instrument of proxy must be such as to enable the member, according to the member's intention, to instruct the proxy to vote in favour of or

against (or, in default of instructions, to exercise the proxy's discretion in respect of) each resolution dealing with any business to be transacted at the meeting.

#### **12.64 Chairing meeting by proxy**

(1) A proxy may be elected to be the chairperson of a general meeting by a resolution of the company passed at the meeting.

(2) Subsection (1) is subject to any provision of the company's articles that states who may or who may not be chairperson.

#### **12.65 Company-sponsored proxy's duty to vote in the way specified in appointment of proxy**

(1) This section applies to a person who is named by a company as a proxy, whether the nomination is made in –

- (a) an instrument of proxy issued by the company in relation to a general meeting; or
- (b) an invitation to appoint a proxy issued by the company in relation to the meeting.

(2) If the person has been duly appointed as a proxy by a member entitled to vote at the meeting, that person must, subject to section 12.47 –

- (a) vote as a proxy –
  - (i) on a show of hands; or
  - (ii) on a poll; and
- (b) vote in the way specified by the member in the appointment of proxy.

(3) If the person has been duly appointed as a proxy by 2 or more members entitled to vote at the meeting and the members specify different ways to vote in their appointment of proxy, the proxy –

- (a) must vote on a show of hands in the way specified by the member or members representing a simple majority of the

total voting rights that the proxy is authorized to exercise at the meeting; and

(b) if there is no majority, must not vote on a show of hands.

(4) A person who knowingly and wilfully contravenes subsection (2) or (3) commits an offence and is liable to a fine at level 3.

### **12.66 Notice required of termination of proxy's authority**

(1) This section applies to notice that the authority of a person to act as proxy is terminated ("notice of termination").

(2) The termination of the authority of a person to act as proxy does not affect –

(a) whether there is a quorum at a general meeting (irrespective of whether the proxy has been counted in deciding the question);

(b) the validity of anything the person does as chairperson of a general meeting; or

(c) the validity of a poll demanded by the person at a general meeting,

unless the company receives notice of the termination before the commencement of the meeting.

(3) The termination of the authority of a person to act as proxy does not affect the validity of a vote given by that person unless the company receives notice of the termination –

(a) before the commencement of the meeting or adjourned meeting at which the vote is given; or

(b) in the case of a poll taken more than 48 hours after it is demanded, before the time appointed for the taking of the poll.

(4) If the company's articles require or permit members to give notice of termination to a person other than the company, the references in subsections (2) and (3) to the company receiving notice have effect as if they were –

- (a) references to that person; or
- (b) references to the company or that person,

as the case requires.

(5) Subsections (2) and (3) have effect subject to any provision of the company's articles that has the effect of requiring notice of termination to be received by the company or another person at a time earlier than that specified in those subsections.

(6) Subsection (5) is subject to subsection (7).

(7) A provision of the company's articles is void in so far as it would have the effect of requiring notice of termination to be received by the company or another person earlier than the following time –

- (a) in the case of a general meeting or adjourned general meeting, 48 hours before the time for holding the meeting or adjourned meeting;
- (b) in the case of a poll taken more than 48 hours after it was demanded, 24 hours before the time appointed for the taking of the poll;
- (c) in the case of a poll taken not more than 48 hours after it was demanded, the time at which it was demanded.

(8) In calculating the periods mentioned in subsections (3)(b) and (7), no account is to be taken of any part of a day that is –

- (a) a public holiday; or
- (b) a black rainstorm warning day or gale warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).

**12.67 Effect of member's voting in person on proxy's authority**

(1) A proxy's authority in relation to a resolution is to be regarded as revoked if the member who has appointed the proxy –

(a) attends in person the general meeting at which the resolution is to be decided; and

(b) exercises, in relation to that resolution –

(i) the voting right attached to the shares in respect of which the proxy is appointed; or

(ii) if the company does not have a share capital, the voting right the member is entitled to exercise.

(2) A member who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid appointment of a proxy has been delivered to the company by or on behalf of that member.

**12.68 Representation of body corporate at meetings**

(1) A body corporate may by resolution of its directors or other governing body –

(a) if it is a member of a company, authorize any person it thinks fit to act as its representative at any meeting of the company; and

(b) if it is a creditor (including a holder of debentures) of a company, authorize any person it thinks fit to act as its representative at any meeting of any creditors of the company held under the provisions of –

(i) this Ordinance; or

(ii) any debenture or trust deed or other instrument.

(2) A person authorized under subsection (1) is entitled to exercise the same powers on behalf of the body corporate which the person represents as that

body corporate could exercise if it were an individual member, creditor, or holder of debentures, of the company.

**12.69 Representation of recognized clearing house at meetings**

(1) A recognized clearing house within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571) may, if it or its nominee is a member of a company, authorize any person or persons it thinks fit to act as its representative or representatives, at any meeting of the company.

(2) If more than one person is authorized under subsection (1), the authorization must specify the number and class of shares in respect of which each person is so authorized.

(3) A person authorized under subsection (1) is entitled to exercise the same powers on behalf of the recognized clearing house (or its nominee) as that clearing house (or its nominee) could exercise if it were an individual member of the company.

**12.70 Saving for more extensive rights given by articles**

Nothing in this Subdivision prevents a company's articles from giving more extensive rights to members or proxies than are given by this Subdivision.

**12.71 Application and saving**

(1) This Subdivision applies to meetings of which notice is given on or after the commencement of this Subdivision.

(2) The predecessor Ordinance (including sections 114C and 115) continues to apply to meetings of which notice was given before the commencement of this Subdivision.

(3) If notice of a meeting is given over more than one day, it is to be regarded for the purposes of this section as given on the first of those days.

## **Subdivision 10 – Annual General Meetings**

### **12.72 Interpretation**

In this Subdivision –

“accounting reference period” (會計參照期) has the meaning given by section 9.6.

### **12.73 Requirement to hold annual general meeting**

(1) Subject to subsections (2) and (3), a company must, in respect of each financial year of the company, hold a general meeting as its annual general meeting within the following period (in addition to any other meetings held during the period) –

- (a) in the case of a private company or a company limited by guarantee, 9 months after the end of its accounting reference period by reference to which the financial year is to be determined; and
- (b) in the case of any other company, 6 months after the end of its accounting reference period by reference to which the financial year is to be determined.

(2) If the accounting reference period mentioned in subsection (1) is the first accounting reference period of the company and is longer than 12 months, the company must hold a general meeting as its annual general meeting within the following period –

- (a) in the case of a private company or a company limited by guarantee –
  - (i) 9 months after the anniversary of the company’s incorporation; or
  - (ii) 3 months after the end of that accounting reference period, whichever is the later; and

- (b) in the case of any other company –
  - (i) 6 months after the anniversary of the company's incorporation; or
  - (ii) 3 months after the end of that accounting reference period,whichever is the later.

(3) If a company has by a directors' resolution under section 9.7 or a notice given to the Registrar under that section, shortened an accounting reference period, the company must hold a general meeting as its annual general meeting within the following period –

- (a) in the case of a private company or a company limited by guarantee –
  - (i) 9 months after the end of the shortened accounting reference period; or
  - (ii) 3 months after the shortening of the accounting reference period takes effect,whichever is the later; and
- (b) in the case of any other company –
  - (i) 6 months after the end of the shortened accounting reference period; or
  - (ii) 3 months after the shortening of the accounting reference period takes effect,whichever is the later.

(4) A private company mentioned in subsections (1), (2) and (3) does not include a private company that is, at any time during the financial year, a subsidiary of a public company.

(5) If for any reason the Court of First Instance thinks fit to do so, it may, on an application made before the end of the period otherwise allowed for holding an annual general meeting in respect of a financial year of a company, by order extend that period by a further period specified in the order.

(6) If the period otherwise allowed for holding an annual general meeting in respect of a financial year of a company has been extended under subsection (5), the company must hold a general meeting as its annual general meeting within the period as so extended.

(7) If a company contravenes subsection (1), (2), (3) or (6), the Court of First Instance may, on application by any member of the company –

(a) call, or direct the calling of, a general meeting of the company; and

(b) give any ancillary or consequential directions that the Court of First Instance thinks expedient, including –

(i) a direction modifying or supplementing, in relation to the calling, holding and conducting of the meeting, the operation of the company's articles; and

(ii) a direction that one member of the company present in person or by proxy is to be regarded as constituting a meeting.

(8) Subject to any directions of the Court of First Instance, a general meeting held under subsection (7) is to be regarded as an annual general meeting of the company in respect of the financial year in respect of which the company has failed to hold an annual general meeting in accordance with this section.

(9) If a company contravenes subsection (1), (2), (3) or (6), or contravenes a direction given under subsection (7), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5.

#### **12.74 Exemption of dormant company from requirement to hold annual general meeting**

(1) A company that is a dormant company under section 1.5(1) is exempt from complying with section 12.73.

(2) If, during the period between the date on which a company becomes a dormant company under section 1.5(1) and the date on which the company ceases to be a dormant company under section 1.5(4), the company enters into an accounting transaction as defined in section 1.5(5), then –

- (a) the exemption under subsection (1) ceases as from the date of the accounting transaction; and
- (b) any shareholder of the company who knew or ought to have known about the accounting transaction and all directors of the company are personally liable for any debt or liability of the company arising out of the accounting transaction.

(3) In subsection (2)(b) –  
“director” (董事) includes a shadow director.

#### **12.75 Circumstances in which company not required to hold annual general meeting**

(1) A company is not required to hold an annual general meeting in accordance with section 12.73 if –

- (a) everything that is required or intended to be done at the meeting (by resolution or otherwise) is done by a written resolution; and
- (b) a copy of each document (including any account or record) that under this Ordinance would otherwise be required to be laid before the company at the meeting or otherwise produced at the meeting is provided to each member, on or before the circulation date of the written resolution.

(2) A company is also not required to hold an annual general meeting in accordance with section 12.73 if –

- (a) the company has only one member; or

(b) the company has by resolution passed in accordance with section 12.76(1) dispensed with the holding of the annual general meeting and has not revoked the resolution under section 12.77(1), and no member of the company has required the holding of the annual general meeting under section 12.76(5).

(3) If a company is not required to hold an annual general meeting under subsection (1) or (2) in respect of a financial year, the directors of the company are not required to lay the company's annual financial statement, the directors' report and a directors' remuneration report before the company in accordance with section 9.50 in respect of that financial year.

#### **12.76 Dispensation with annual general meeting**

(1) A company may, by resolution passed in accordance with subsection (3), dispense with the holding of annual general meetings in accordance with section 12.73.

(2) A resolution mentioned in subsection (1) may be passed by a written resolution or at a general meeting.

(3) Despite any other provision of this Ordinance, a resolution mentioned in subsection (1) is only to be regarded as passed if it has been passed by all members of the company who –

(a) are entitled to vote on the resolution on the date of the resolution; or

(b) in the case of a written resolution, are entitled to vote on the resolution on the circulation date of the resolution.

(4) A resolution under subsection (1) –

(a) has effect for –

(i) the financial year in respect of which the period specified in section 12.73 for holding an annual

general meeting of the company has not expired;  
and

(ii) subsequent financial years; and

(b) does not affect any liability already incurred by reason of default in holding an annual general meeting.

(5) If an annual general meeting would be required to be held in respect of a financial year but for this section, and the meeting has not been held, any member of the company may, by notice to the company not later than 3 months before the end of the period within which the company would be required to hold an annual general meeting in respect of that financial year but for this section, require the holding of an annual general meeting in respect of that financial year.

(6) A notice mentioned in subsection (5) must be given in hard copy form or in electronic form.

(7) If a notice mentioned in subsection (5) is given, section 12.73 applies in respect of the financial year to which the notice relates.

### **12.77 Revocation of resolution dispensing with annual general meeting**

(1) A company may revoke a resolution mentioned in section 12.76(1) by passing an ordinary resolution to that effect.

(2) If a resolution mentioned in section 12.76(1) is revoked or otherwise ceases to have effect, the company –

(a) is required to hold an annual general meeting in accordance with section 12.73; but

(b) is not required to hold an annual general meeting in respect of a financial year that, but for this paragraph, would be required to be held within 3 months after the resolution ceases to have effect.

(3) Subsection (2) does not affect any obligation of the company to hold an annual general meeting in respect of a financial year in accordance with a notice given under section 12.76(5).

### **12.78 Members' power to request circulation of resolution for annual general meeting**

(1) If a company is required to hold an annual general meeting under section 12.73, the members of the company may request the company to give, to members of the company entitled to receive notice of the annual general meeting, notice of a resolution that may properly be moved and is intended to be moved at that meeting.

(2) A company must give notice of a resolution if it has received requests that it do so from –

- (a) the members of the company representing at least 2.5% of the total voting rights of all the members who have a right to vote on the resolution at the annual general meeting to which the requests relate; or
- (b) at least 50 members who –
  - (i) have a right to vote on the resolution at the annual general meeting to which the requests relate; and
  - (ii) hold shares in the company on which there has been paid up an average sum, per member, of at least \$2,000.

(3) A request –

- (a) may be sent to the company in hard copy form or in electronic form;
- (b) must identify the resolution of which notice is to be given;
- (c) must be authenticated by the person or persons making it; and
- (d) must be received by the company not later than –

- (i) 6 weeks before the annual general meeting to which the requests relate; or
- (ii) if later, the time at which notice is given of that meeting.

**12.79 Company's duty to circulate resolution for annual general meeting**

(1) A company that is required under section 12.78 to give notice of a resolution must send a copy of it at the company's own expense to each member of the company entitled to receive notice of the annual general meeting –

- (a) in the same manner as the notice of the meeting; and
- (b) at the same time as, or as soon as reasonably practicable after, it gives notice of the meeting.

(2) The business that may be dealt with at an annual general meeting includes a resolution of which notice is given in accordance with subsection (1).

(3) For the purposes of subsection (2), notice is to be regarded as having been given in accordance with subsection (1) despite the accidental omission to give notice to one or more members.

(4) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5.

**12.80 Application and saving**

(1) The repeal of section 115A of the predecessor Ordinance does not affect its application in relation to a requisition under section 115A(1)(a) of the predecessor Ordinance made to a company before the repeal.

(2) In the case of an existing company required to hold an annual general meeting under section 12.73 –

- (a) section 111 of the predecessor Ordinance continues to apply to determine the date by which the company must

hold its first annual general meeting after the commencement of section 12.73; and

(b) section 12.73 applies in relation to subsequent annual general meetings.

(3) The repeal of section 111(2), (3), (4) and (5) of the predecessor Ordinance does not affect its operation in relation to a company if an application under section 111(2) of the predecessor Ordinance was made before the commencement of section 12.73.

(4) Sections 12.78 and 12.79 apply to requests made on or after the commencement of those sections.

(5) Section 115A of the predecessor Ordinance, in so far as it relates to giving notice of a resolution in relation to an annual general meeting, continues to apply in relation to requisitions made to a company under section 115A(1)(a) of the predecessor Ordinance before the commencement of sections 12.78 and 12.79.

(6) If requests are made or copies of a requisition are deposited on more than one day, the references in this section to the date on which the request or requisition is made are to be construed as references to the first day on which the requests made or copies deposited are sufficient to require the company to act.

### **Subdivision 11 – Records of Resolutions and Meetings**

#### **12.81 Written record where company has only one member**

(1) This section applies if a company has only one member and that member takes any decision that –

(a) may be taken by the company in general meeting; and

(b) has effect as if agreed by the company in general meeting.

(2) The member must, unless the decision is taken by way of a written resolution, provide the company with a written record of that decision within 7 days after the decision is made.

(3) A person who contravenes subsection (2) commits an offence and 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) does not affect the validity of any decision mentioned in that subsection.

### **12.82 Records of resolutions and meetings, etc.**

(1) A company must keep records comprising –

- (a) copies of all resolutions of members passed otherwise than at general meetings;
- (b) minutes of all proceedings of general meetings; and
- (c) all written records provided to the company in accordance with section 12.81(2).

(2) A company must keep the records under subsection (1) for at least 20 years from the date of the resolution, meeting or decision, as the case may be.

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

### **12.83 Place where records must be kept available for inspection**

(1) A company must keep the records mentioned in section 12.82 available for inspection at –

- (a) the company's registered office; or
- (b) a prescribed place.

(2) A company must notify the Registrar of the place, or any change in the place, at which the records mentioned in section 12.82 are kept for the

purpose of this section. The notice must be given to the Registrar in the specified form within 14 days after the records are first kept at that place or within 14 days after the change (as the case may be).

(3) Subsection (2) does not apply in relation to records that have been kept at the registered office of the company –

- (a) at all times since they came into existence; or
- (b) if they were in existence on 31 August 1984, at all times since then.

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

#### **12.84 Right to inspect and request copy**

(1) The records required to be kept by a company under section 12.82 must be open to inspection by any member of the company without charge.<sup>18</sup>

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

(3) The company must provide the member with the copy within a prescribed period after the request and 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 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues; and

---

<sup>18</sup> Regulation will be made under clause 12.125 to make provision as to the time, duration and manner of inspection.

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

### **12.85 Records as evidence of resolutions etc.**

(1) If the record of a resolution of members passed otherwise than at a general meeting is kept under section 12.82(1)(a) and purports to be signed by a director of the company or secretary of the company, then –

- (a) the record is evidence of the passing of the resolution; and
- (b) until the contrary is proved, the requirements of this Ordinance with respect to those proceedings are to be regarded as having been complied with.

(2) The minutes of proceedings of a general meeting, if purporting to be signed by the chairperson of that meeting or by the chairperson of the next general meeting, are evidence of the proceedings.

(3) If the record of the minutes of proceedings of a general meeting of a company is kept under section 12.82(1)(b), then, until the contrary is proved –

- (a) the meeting is to be regarded as having been duly held and convened;
- (b) all proceedings at the meeting are to be regarded as having been duly taken place; and
- (c) all appointments of directors, managers or liquidators made at the meeting are to be regarded as valid.

(4) If a company has only one member and that member provides the company with a written record of a decision in accordance with section 12.81(2), the record is sufficient evidence of the decision having been taken by the member.

### **12.86 Registration of and requirements relating to certain resolutions, etc.**

(1) This section applies to –

- (a) a special resolution, other than a special resolution to change the name of a company passed under section 3.41;<sup>19</sup>
- (b) a resolution agreed to by all the members of a company that, if not so agreed to, would not have been effective for its purpose unless passed as a special resolution;
- (c) a resolution or agreement agreed to by all the members of a class that, if not so agreed to, would not have been effective for its purpose unless passed by some particular majority or otherwise in some particular manner;
- (d) a resolution or agreement that effectively binds all the members of a class though not agreed to by all those members;
- (e) a resolution requiring a company to be wound up voluntarily, passed under section 228(1)(a) of the Companies (Winding Up Provisions) Ordinance (Cap. 32);<sup>20</sup>
- (f) a resolution varying any matter or provision in the articles of a company that is expressly authorized by the articles to be varied by ordinary resolution;
- (g) an order of the Court of First Instance (which alters a company's constitution) a copy of which is required to be delivered to the Registrar under section 3.30(2)(a).

(2) The company must send a copy of the resolution or agreement to the Registrar within 15 days after it is passed or made.

---

<sup>19</sup> A consultation draft of Part 3 will be published later.

<sup>20</sup> Provisional title of Cap. 32 after it is consequentially amended by the new Companies Ordinance. It is subject to change.

(3) The Registrar must keep a record of the copy of the resolution or agreement sent under subsection (2).

(4) If the company's articles have been registered under this Ordinance or any former Companies Ordinance, the company must ensure that a copy of the resolution, agreement or order of the Court of First Instance that is for the time being in force is embodied in or annexed to every copy of the articles issued, as the case may be –

(a) after the passing of the resolution; or

(b) after the making of the agreement or the order of the Court of First Instance.

(5) If the company's articles have not been registered under this Ordinance or any former Companies Ordinance, the company must send a copy of the resolution, agreement or order of the Court of First Instance that is for the time being in force to any member at that member's request, without charge.

(6) If the resolution or agreement is not in writing, a reference to a copy of the resolution or agreement in subsections (2), (3), (4) and (5) is to be construed as a written memorandum setting out the terms of the resolution or agreement.

(7) 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.

(8) If a company contravenes subsection (4) or (5), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.

(9) For the purposes of subsections (7) and (8), a liquidator of the company is to be regarded as an officer of the company.

## **12.87 Application and saving**

(1) Sections 12.81, 12.82, 12.83, 12.84 and 12.85 apply in relation to resolutions passed, meetings held or decisions taken on or after the commencement of those sections.

(2) The predecessor Ordinance (including sections 116B(7), (8), (9) and (10), 116BC, 119, 119A and 120) continues to apply in relation to resolutions passed, meetings held or decisions taken before the commencement of sections 12.81, 12.82, 12.83, 12.84 and 12.85.

(3) Section 12.86 (except subsections (4) and (5)) applies in relation to resolutions passed, agreements and orders made on or after the commencement of that section.

(4) Section 117(1), (5) and (7) of the predecessor Ordinance continues to apply in relation to resolutions passed and agreements made, but not forwarded to the Registrar, before the commencement of section 12.86 (except subsections (4) and (5)).

(5) Section 12.86(4), (7), (8) and (9) applies in relation to a company's articles issued on or after the commencement of that section.

(6) Section 117(2), (6) and (7) of the predecessor Ordinance continues to apply in relation to a company's articles registered before the commencement of section 12.86(4).

(7) Section 12.86(5), (7), (8) and (9) applies if the request is received by the company on or after the commencement of that section.

(8) Section 117(3), (6) and (7) of the predecessor Ordinance continues to apply if the request is received by the company before the commencement of section 12.86(5).

## **Subdivision 12 – Application to Class Meetings**

### **12.88 Application to class meetings of companies with share capital**

(1) Subject to subsections (2) and (3), this Division (except Subdivision 10) applies, with necessary modifications, in relation to a meeting of holders of shares in a class of a company's shares as it applies in relation to a general meeting.

(2) Sections 12.22, 12.23, 12.24, 12.26 and 12.32 do not apply in relation to a meeting of holders of shares in a class of a company's shares.

(3) In addition to those sections mentioned in subsection (2), sections 12.43 and 12.50 do not apply in relation to a meeting in connection with the variation of the rights attached to shares in a class (a "variation of class rights meeting").

(4) The quorum for a variation of class rights meeting is –

(a) in the case of a meeting other than an adjourned meeting, 2 persons present in person or by proxy together holding at least one-third of the total voting rights of holders of shares in the class; and

(b) in the case of an adjourned meeting, one person present in person or by proxy holding any shares in the class.

(5) For the purposes of subsection (4), if a person is present by proxy, that person is regarded as holding only the shares in respect of which the proxy is authorized to exercise voting rights.

(6) At a variation of class rights meeting, any holder of shares in the class who is present in person or by proxy may demand a poll.

(7) For the purposes of this section –

(a) any amendment of a provision in a company's articles for the variation of the rights attached to shares in a class, or the insertion of such a provision into the articles, is itself to be regarded as a variation of those rights; and

- (b) a reference to the variation of the rights attached to shares in a class includes the abrogation of those rights.

**12.89 Application to class meetings of companies without share capital**

(1) Subject to subsections (2) and (3), this Division (except Subdivision 10) applies, with necessary modifications, in relation to a meeting of a class of members of a company without a share capital as it applies in relation to a general meeting.

(2) Sections 12.22, 12.23, 12.24, 12.26 and 12.32 do not apply in relation to a meeting of a class of members.

(3) In addition to those sections mentioned in subsection (2), sections 12.43 and 12.50 do not apply in relation to a meeting in connection with the variation of the rights of a class of members (a “variation of class rights meeting”).

(4) The quorum for a variation of class rights meeting is –

- (a) in the case of a meeting other than an adjourned meeting, 2 members of the class present in person or by proxy together representing at least one-third of the total voting rights of members of the class; and
- (b) in the case of an adjourned meeting, one member of the class present (in person or by proxy).

(5) At a variation of class rights meeting, any member present in person or by proxy may demand a poll.

(6) For the purposes of this section –

- (a) any amendment of a provision in a company’s articles for the variation of the rights of a class of members, or the insertion of such a provision into the articles, is itself to be regarded as a variation of those rights; and
- (b) a reference to the variation of the rights of a class of members includes the abrogation of those rights.

## **12.90 Application and saving**

(1) This Subdivision applies to meetings in relation to which the provisions applied by this Subdivision have effect.

(2) Section 63A(6) of the predecessor Ordinance continues to apply to meetings of which notice was given before the commencement of this Subdivision.

(3) If notice of a meeting is given over more than one day, it is to be regarded for the purposes of this section as given on the first of those days.

## **Division 2 – Registers**

### **Subdivision 1 – Register of Members**

#### **12.91 Interpretation**

In this Subdivision –  
“branch register” (登記支冊) means, except in section 12.107, a branch register of members kept under section 12.102.

#### **12.92 Register of members**

(1) A company must keep in the English or Chinese language a register of its members.

(2) A company must enter in the register of its members –

(a) the names and addresses of the members;

(b) the date on which each person was entered in the register as a member; and

(c) the date on which any person ceased to be a member.

(3) In the case of a company having a share capital, the company must enter in the register of its members, with the names and addresses of the members, a statement of –

(a) the shares held by each member, distinguishing each share by its number so long as the share has a number; and

(b) the amount paid or agreed to be considered as paid on the shares of each member.

(4) A company must enter in the register of its members the particulars required under subsections (2) and (3) within 2 months after the company has received notice of the particulars concerned.

(5) In the case of a person mentioned in subsection (2)(c), all entries in the register relating to that person on the date on which the person ceased to be a member may be destroyed after the end of a period of 20 years from that date.

(6) A company must retain a copy of any details that were included in its register of members immediately before the commencement of subsection (5) until –

(a) 20 years after the commencement of that subsection; or

(b) if earlier, 20 years after the member concerned ceased to be a member.

(7) If a company contravenes subsection (1), (4) or (6), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

### **12.93 Place where register must be kept available for inspection**

(1) A company must keep the register of its members available for inspection at –

(a) the company's registered office; or

(b) a prescribed place.

(2) A company must notify the Registrar of the place, or any change in the place, at which the register of its members is kept for the purpose of this section. The notice must be given to the Registrar in the specified form within 14 days after the register is first kept at that place or within 14 days after the change (as the case may be).

(3) Subsection (2) does not apply in relation to a register of members that has been kept at the registered office of the company –

- (a) at all times since it came into existence; or
- (b) if it was in existence on 31 August 1984, at all times since then.

(4) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

#### **12.94 Statement that company has only one member**

(1) If the number of members of a company falls to one, the company must, on the occurrence of that event, enter in the register of its members –

- (a) a statement that it has only one member; and
- (b) the date on which it became a company having only one member.

(2) If the membership of a company increases from one to 2 or more members, the company must, on the occurrence of that event, enter in the register of its members –

- (a) a statement that it has ceased to have only one member; and
- (b) the date on which that event occurred.

(3) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

### **12.95 Index of members**

(1) A company having more than 50 members must keep an index of the names of the members of the company, unless the register of its members is in a form that constitutes in itself an index.

(2) The company must make any necessary alteration in the index within 7 days after the date on which any alteration is made in the register of its members.

(3) The company must ensure that the index contains, in respect of each member, a sufficient indication to enable the account of that member in the register to be readily found.

(4) The company must keep the index at the same place as the register of its members at all times.

(5) If a company contravenes subsection (1), (2), (3) or (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

### **12.96 Right to inspect and request copy**

(1) Except when the register of members of a company is closed under section 12.98, the register and the index of members' names must be open to inspection –

(a) by any member of the company without charge; and

(b) by any other person on payment of a prescribed fee.<sup>21</sup>

(2) A person is entitled, on request and on payment of a prescribed fee, to be provided with a copy of –

(a) the register of members of a company or the index of members' names; or

(b) any part of the register or index.

---

<sup>21</sup> Regulation will be made under clause 12.125 to make provision as to the time, duration and manner of inspection.

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

(4) When a person inspects the register, or the company provides the person with a copy of the register or any part of it, the company must inform the person of the most recent date (if any) on which alterations were made to the register.

(5) When a person inspects the index of members' names, or the company provides the person with a copy of the index or any part of it, the company must inform the person whether there is any alteration to the register that is not reflected in the index.

(6) If a company contravenes subsection (3), (4) or (5), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

(7) If a company contravenes subsection (3), the Court of First Instance may by order direct that the copy be provided to the person requesting it.

(8) The Court of First Instance must not make an order under subsection (7) if it is satisfied that the rights given by subsection (2) are being abused.

**12.97 Consequences of contravening requirements as to register owing to other person's default**

If the register of members of a company is kept at the office of a person other than the company, and by reason of any default of that other person, the company contravenes section 12.96(3), then the power of the Court of First Instance under section 12.96(7) extends to the making of an order against that other person and that other person's officers and other employees.

## **12.98 Power to close register of members**

(1) A company may, on giving notice in accordance with subsection (2), close for any time or times not exceeding in the whole 30 days in each year, the register of members of the company or the part of the register relating to members holding shares of any class.

(2) A notice for the purposes of subsection (1) –

(a) if the company is a listed company, must be given –

(i) in accordance with the listing rules applicable to the stock market; or

(ii) by advertisement in a newspaper circulating generally in Hong Kong; and

(b) in the case of any other company, must be given by advertisement in a newspaper circulating generally in Hong Kong.

(3) The period of 30 days mentioned in subsection (1) may be extended in respect of any year in relation to the register (or any part of the register) of members of a company, by a resolution passed in that year.

(4) The period of 30 days mentioned in subsection (1) must not be extended beyond 60 days in any year.

(5) A company must, on demand, provide any person seeking to inspect a register or part of a register that is closed under this section with a certificate signed by the secretary of the company stating the period for which, and by whose authority, it is closed.

(6) If a company contravenes subsection (5), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.

(7) In subsection (2) –

“listing rules” (《上市規則》) means the rules made under section 23 of the Securities and Futures Ordinance (Cap. 571) by a recognized exchange company that govern the listing of securities on a stock market it operates.

## **12.99 Power of Court of First Instance to rectify register**

- (1) If –
- (a) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or
  - (b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

a person aggrieved, or any member of the company, or the company, may apply to the Court of First Instance for rectification of the register.

(2) If an application is made under subsection (1), the Court of First Instance may –

- (a) refuse the application; or
- (b) subject to section 4.35,<sup>22</sup> order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(3) Subject to section 4.35, on an application under subsection (1) the Court of First Instance –

- (a) may decide any question relating to the title of any person who is a party to the application to have the person's name entered in or omitted from the register, whether the question arises –
  - (i) between members or alleged members; or
  - (ii) between members or alleged members on the one hand and the company on the other hand; and
- (b) generally may decide any question necessary or expedient to be decided for rectification of the register.

---

<sup>22</sup> A consultation draft of Part 4 will be published later.

(4) In the case of a company required by this Ordinance to send a list of its members to the Registrar, the Court of First Instance, when making an order for rectification of the register, must by its order direct notice of the rectification to be given to the Registrar.

#### **12.100 Trusts not to be entered in register**

No notice of any trust (whether expressed, implied or constructive) may be –

- (a) entered in the register of members of a company; or
- (b) receivable by the Registrar.

#### **12.101 Register to be evidence**

(1) In the absence of evidence to the contrary, the register of members is proof of any matters that are by this Ordinance required or authorized to be inserted in it.

(2) If in any proceedings under this Ordinance it is sought to challenge the accuracy of any entry in the register of members by evidence of any transaction, the evidence is not admissible for that purpose unless the transaction occurred not more than 20 years prior to the commencement of the proceedings.

#### **12.102 Branch register of members**

(1) A company having a share capital may, if it transacts business in a place outside Hong Kong, cause to be kept there a branch register of its members resident there if it is authorized to do so by its articles.

(2) A company that begins to keep a branch register must give to the Registrar a notice in the specified form within 14 days after doing so, stating the address where the branch register is kept.

(3) A company that keeps a register of members under a licence issued under section 103 of the predecessor Ordinance and continues to keep the register after the expiration of the licence must give to the Registrar a notice in

the specified form within 14 days after the expiration, stating the address where the register is kept.

(4) If a company contravenes subsection (2) or (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

### **12.103 Keeping of branch register**

(1) A branch register must be kept in the same manner in which the company's register of members (in this section called the principal register) is by this Ordinance required to be kept.

(2) A company that keeps a branch register may only close the branch register in the same manner in which the principal register is closed under section 12.98 except that the advertisement before closing the register must be inserted in some newspaper circulating in the place in which the branch register is kept.

(3) A company that keeps a branch register must –

- (a) transmit to its registered office a copy of every entry in its branch register as soon as may be after the entry is made; and
- (b) cause to be kept at the place where the company's principal register is kept a duplicate of its branch register duly entered up from time to time.

(4) A duplicate of a branch register is to be regarded for all the purposes of this Ordinance as part of the principal register.

(5) Subject to the provisions of this Ordinance, a company may by its articles make any provision that it thinks fit respecting the keeping of branch registers.

(6) If a company contravenes subsection (3), the company, and every responsible person of the company, commit an offence, and each is liable to a

fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

#### **12.104 Transactions in shares registered in branch register**

(1) The shares registered in a branch register of a company must be distinguished from those registered in the register of members of the company.

(2) No transaction with respect to any shares registered in a branch register may, during the continuance of that registration, be registered in any other register.

#### **12.105 Discontinuance of branch register**

(1) A company may discontinue to keep a branch register.

(2) If a company discontinues keeping a branch register, all the entries in that register must be transferred to –

- (a) some other branch register kept in the same place outside Hong Kong by the company; or
- (b) the company's register of members.

#### **12.106 Duty to notify Registrar of discontinuance etc. of branch register**

(1) A company keeping a branch register must give to the Registrar a notice in the specified form of –

- (a) any change in the address where the branch register is kept, within 14 days after the change; and
- (b) if the company discontinues keeping the branch register, the discontinuance and the register to which all the entries have been transferred, within 14 days after the discontinuance.

(2) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a

fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

#### **12.107 Provisions as to branch registers of non-Hong Kong companies kept in Hong Kong**

If under the law in force in any place outside Hong Kong, companies incorporated under that law have power to keep in Hong Kong branch registers of their members resident in Hong Kong, the Financial Secretary may by order direct that –

- (a) those branch registers must be kept at a place in Hong Kong as specified in the order;
- (b) sections 12.96 and 12.99, subject to any modifications and adaptations specified in the order, apply to and in relation to those branch registers kept in Hong Kong as they apply to and in relation to the registers of members.

#### **12.108 Application and saving**

(1) The power given by section 12.92(5) is exercisable on or after the commencement of that section, whenever the period of 20 years specified in that section expires.

(2) Section 12.96(4) and (5) applies if a person –

- (a) inspects a company's register of members or index of members' names on or after the commencement of that section; or
- (b) is provided by a company on or after the commencement of that section with a copy of the company's register of members or any part of it,

whether the person's request to inspect, or be provided with a copy, was made before, on or after the commencement of that section.

(3) Section 12.101(2) applies to causes of action arising on or after the commencement of that section.

(4) The time limit for causes of action arising before the commencement of section 12.101(2) is –

- (a) 20 years from the commencement of section 12.101(2); or
- (b) 30 years (as provided by section 102(2) of the predecessor Ordinance) from the date on which the cause of action arose,

whichever expires first.

(5) Subsection (4) does not affect any lesser period of limitation.

## **Subdivision 2 – Register of Directors**

### **12.109 Register of directors**

(1) A company must keep in the English or Chinese language a register of its directors.

(2) A company must enter in the register of its directors the required particulars specified in section 12.111 of each person who is a director or reserve director (if any) of the company.

(3) A company must keep the register of its directors available for inspection at –

- (a) the company's registered office; or
- (b) a prescribed place.

(4) A company must notify the Registrar of the place, or any change in the place, at which the register of its directors is kept for the purpose of this section. The notice must be given to the Registrar in the specified form within 14 days after the register is first kept at that place or within 14 days after the change (as the case may be).

(5) Subsection (4) does not apply in relation to a register of directors that has been kept at the registered office of the company –

- (a) at all times since it came into existence; or

(b) if it was in existence on 31 August 1984, at all times since then.

(6) If a company contravenes subsection (1), (2), (3) or (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

#### **12.110 Right to inspect and request copy**

(1) The register of directors of a company must be open to inspection –

(a) by any member of the company without charge; and

(b) by any other person on payment of a prescribed fee.<sup>23</sup>

(2) A person is entitled, on request and on payment of a prescribed fee, to be provided with a copy of the register of directors or any part of it.

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

(4) When a person inspects the register, or the company provides the person with a copy of the register or any part of it, the company must inform the person of the most recent date (if any) on which alterations were made to the register.

(5) If a company contravenes subsection (3) or (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

(6) If a company contravenes subsection (3), the Court of First Instance may by order direct that the copy be provided to the person requesting it.

---

<sup>23</sup> Regulation will be made under clause 12.125 to make provision as to the time, duration and manner of inspection.

(7) The Court of First Instance must not make an order under subsection (6) if it is satisfied that the rights given by subsection (2) are being abused.

### **12.111 Particulars of directors to be registered**

(1) If a company is a private company (other than one that is a member of a group of companies of which a listed company is a member), the register of its directors must contain the following particulars with respect to each director –

- (a) if the director is a natural person –
  - (i) the present forename and surname, former forename or surname (if any), and aliases (if any);
  - (ii) the usual residential address; and
  - (iii) the number of the identity card or, if the director does not have an identity card, the number and issuing country of any passport held by the director; and
- (b) if the director is a body corporate, the corporate name and the address of its registered or principal office.

(2) If a company is a public company, a company limited by guarantee, or a private company that is a member of a group of companies of which a listed company is a member, the register of its directors must contain the following particulars with respect to each director –

- (a) the present forename and surname, former forename or surname (if any), and aliases (if any);
- (b) the usual residential address; and
- (c) the number of the identity card or, if the director does not have an identity card, the number and issuing country of any passport held by the director.

(3) If a company is a private company having only one member and that member is the sole director of the company, the register of its directors must contain the following particulars with respect to the reserve director of the company (if any) –

- (a) the present forename and surname, former forename or surname (if any), and aliases (if any);
- (b) the usual residential address; and
- (c) the number of the identity card or, if the director does not have an identity card, the number and issuing country of any passport held by the director.

(4) In this section –

“forename” (名字) includes a Christian or given name;

“identity card” (身分證) means an identity card issued under the Registration of Persons Ordinance (Cap. 177);

“residential address” (住址) –

- (a) does not include an address at a hotel unless the person to whom it relates is stated, for the purposes of this section, to have no other permanent address; and
- (b) does not include a post office box number unless the number is coupled with a residential address;

“surname” (姓氏), for a person usually known by a title different from the person’s surname, means that title.

(5) In this section, a reference to a former forename or surname does not include –

- (a) in relation to a person –
  - (i) a forename or surname that was changed or ceased to be used before the person attained the age of 18 years; and

- (ii) a forename or surname that has been changed or ceased to be used for a period of at least 20 years;
- (b) in relation to a person usually known by a title different from the person's surname, the name by which the person was known before the adoption of or succession to the title; and
- (c) in relation to a married woman, the name or surname by which she was known before the marriage.

(6) The Financial Secretary may, by order published in the Gazette, amend subsection (1), (2), (3), (4) or (5).

#### **12.112 Duty to notify Registrar of appointment and change**

(1) If a person is appointed as director of a company otherwise than under section 10.1(3) or (4) or section 10.2(2) or (3), the company must, within 14 days after the appointment, give to the Registrar a notice in the specified form containing –

- (a) the director's particulars specified in the register of its directors; and
- (b) if the person is a natural person, a statement, authenticated by the person, that he or she has accepted the appointment and has attained the age of 18 years.

(2) The company must, within 14 days after the nomination of a person as a reserve director of the company, give to the Registrar a notice in the specified form containing all the particulars with respect to that person that are required to be contained in the register of its directors.

(3) If a person is nominated as a reserve director of a private company, the company must, within 14 days after the nomination, give to the Registrar a statement in the specified form, authenticated by the person, that the person has accepted the nomination and has attained the age of 18 years.

(4) If a person ceases to be a director or reserve director of a company or there is any change in the particulars contained in the register of directors of a company, the company must, within 14 days after the cessation or change, give to the Registrar a notice in the specified form –

(a) specifying the cessation or change and the date on which it occurred; and

(b) containing other matters that are specified in the form.

(5) If a company contravenes subsection (1), (2), (3) or (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

#### **12.113 Duty of director to make disclosure**

(1) A director of a company must give notice to the company of matters relating to the director that are required for the purposes of sections 12.111 and 12.112.

(2) A reserve director of a company must give notice to the company of matters relating to the reserve director that are required for the purposes of sections 12.111 and 12.112.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable to a fine at level 4.

#### **12.114 Registrar to keep an index of directors**

(1) The Registrar must keep an index of every person who is a director of a company or a reserve director of a private company.

(2) The particulars contained in the index must, in respect of each director or reserve director, include –

(a) the name and address of the director or reserve director;

(b) the latest particulars sent to the Registrar in respect of the director or reserve director; and

(c) the name of each company of which the director or reserve director can be identified as a director or reserve director.

(3) The index kept under this section must be open to the inspection of any person on payment of a prescribed fee.

### **12.115 Application and saving**

(1) On or after the commencement of section 12.109, the register of directors and secretaries kept by a company under section 158(1) of the predecessor Ordinance, in so far as it relates to the company's directors or reserve directors, is to be regarded as a register of directors kept under and for the purposes of section 12.109.

(2) An existing company need not comply with any provision of this Ordinance requiring the company's register of directors to contain particulars additional to those required by the predecessor Ordinance until the earlier of –

(a) the date to which the company makes up its first annual return made up to a date on or after the commencement of section 12.111; and

(b) the last date to which the company should have made up that return.

(3) Subsection (2) does not apply in relation to a director of whom particulars are first registered on or after the commencement of section 12.111 (whether the director was appointed before, on or after that commencement).

(4) Subsection (2) ceases to apply in relation to a director whose registered particulars fall to be altered on or after the commencement of section 12.111 (whether the change occurred before, on or after that commencement).

(5) Subsections (2), (3) and (4) do not affect the particulars required to be included in the company's annual return.

(6) On the commencement of section 12.111, an existing company must remove from its register of directors any entry relating to a shadow director.

(7) Section 12.112 applies as if the shadow director had ceased to be a director on the commencement of section 12.111.

(8) The removal by an existing company from its register of directors on or after the commencement of section 12.111 of particulars required by the predecessor Ordinance but not required by this Ordinance does not give rise to any duty to notify the Registrar under section 12.112.

(9) Section 12.112 applies in relation to –

(a) a change among a company's directors or reserve directors;

or

(b) a change in the particulars contained in the register,

occurring on or after the commencement of section 12.111.

(10) Section 158 of the predecessor Ordinance continues to apply in relation to a change occurring before the commencement of section 12.111.

### **Subdivision 3 – Register of Secretaries**

#### **12.116 Register of secretaries**

(1) A company must keep in the English or Chinese language a register of its secretaries.

(2) A company must enter in the register of its secretaries the required particulars specified in section 12.118 of a person who is, or persons who are the secretary or joint secretaries of the company.

(3) A company must keep the register of its secretaries available for inspection at –

(a) the company's registered office; or

(b) a prescribed place.

(4) A company must notify the Registrar of the place, or any change in the place, at which the register of its secretaries is kept for the purpose of this section. The notice must be given to the Registrar in the specified form within 14 days after the register is first kept at that place or within 14 days after the change (as the case may be).

(5) Subsection (4) does not apply in relation to a register of secretaries that has been kept at the registered office of the company –

- (a) at all times since it came into existence; or
- (b) if it was in existence on 31 August 1984, at all times since then.

(6) If a company contravenes subsection (1), (2), (3) or (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

### **12.117 Right to inspect and request copy**

(1) The register of secretaries of a company must be open to the inspection –

- (a) of any member of the company without charge; and
- (b) of any other person on payment of a prescribed fee.<sup>24</sup>

(2) A person is entitled, on request and on payment of a prescribed fee, to be provided with a copy of the register of secretaries or any part of it.

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

(4) When a person inspects the register, or the company provides the person with a copy of the register or any part of it, the company must inform the person of the most recent date (if any) on which alterations were made to the register.

(5) If a company contravenes subsection (3) or (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

---

<sup>24</sup> Regulation will be made under clause 12.125 to make provision as to the time, duration and manner of inspection.

(6) If a company contravenes subsection (3), the Court of First Instance may by order direct that the copy be provided to the person requesting it.

(7) The Court of First Instance must not make an order under subsection (6) if it is satisfied that the rights given by subsection (2) are being abused.

### **12.118 Particulars of secretaries to be registered**

(1) The register of secretaries of a company must contain the following particulars with respect to the secretary or, if there are joint secretaries, with respect to each of them –

- (a) if the secretary is a natural person –
  - (i) the present forename and surname, former forename or surname (if any), and aliases (if any);
  - (ii) the correspondence address; and
  - (iii) the number of the identity card or, if the secretary or joint secretary does not have an identity card, the number and issuing country of any passport held by the secretary or joint secretary; and
- (b) if the secretary is a body corporate, the corporate name and the address of its registered or principal office.

(2) If all the partners in a firm are joint secretaries of a company, the name and principal office of the firm may be stated instead of the particulars mentioned in subsection (1)(a) or (b).

(3) In this section –  
“forename” (名字) includes a Christian or given name;  
“identity card” (身分證) means an identity card issued under the Registration of Persons Ordinance (Cap. 177);  
“surname” (姓氏), for a person usually known by a title different from the person’s surname, means that title.

(4) For the purposes of subsection (1)(a)(ii), a correspondence address must be a place in Hong Kong and must not be a post office box number.

(5) In this section, a reference to a former forename or surname does not include –

- (a) in relation to a person –
  - (i) a forename or surname that was changed or ceased to be used before the person attained the age of 18 years; and
  - (ii) a forename or surname that has been changed or ceased to be used for a period of at least 20 years;
- (b) in relation to a person usually known by a title different from the person's surname, the name by which the person was known before the adoption of or succession to the title; and
- (c) in relation to a married woman, the name or surname by which she was known before the marriage.

(6) The Financial Secretary may, by order published in the Gazette, amend subsection (1), (2), (3), (4) or (5).

### **12.119 Duty to notify Registrar of appointment and change**

(1) If a person or persons are appointed as secretary or joint secretaries of a company otherwise than under section 10.24(2) or (3), the company must, within 14 days after the appointment, give to the Registrar a notice in the specified form containing –

- (a) the secretary's or joint secretaries' particulars specified in the register of its secretaries; and
- (b) if the person or any of the persons is a natural person, a statement, authenticated by the person, that he or she has accepted the appointment.

(2) If a person ceases to be a secretary of the company or there is any change in the particulars contained in the register of secretaries of a company, the company must, within 14 days after the cessation or change, give to the Registrar a notice in the specified form –

(a) specifying the cessation or change and the date on which it occurred; and

(b) containing other matters that are specified in the form.

(3) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

#### **12.120 Duty of secretary to make disclosure**

(1) A secretary of a company must give notice to the company of matters relating to the secretary that are required for the purposes of sections 12.118 and 12.119.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 4.

#### **12.121 Application and saving**

(1) On or after the commencement of section 12.116, the register of directors and secretaries kept by a company under section 158(1) of the predecessor Ordinance, in so far as it relates to the company's secretaries or joint secretaries, is to be regarded as a register of secretaries kept under and for the purposes of section 12.116.

(2) An existing company need not comply with any provision of this Ordinance requiring the company's register of secretaries to contain particulars additional to those required by the predecessor Ordinance until the earlier of –

(a) the date to which the company makes up its first annual return made up to a date on or after the commencement of section 12.118; and

(b) the last date to which the company should have made up that return.

(3) Subsection (2) does not apply in relation to a secretary of whom particulars are first registered on or after the commencement of section 12.118 (whether the secretary was appointed before, on or after that commencement).

(4) Subsection (2) ceases to apply in relation to a secretary whose registered particulars fall to be altered on or after the commencement of section 12.118 (whether the change occurred before, on or after that commencement).

(5) Subsections (2), (3) and (4) do not affect the particulars required to be included in the company's annual return.

(6) In the case of an existing company –

(a) the relevant existing address of a secretary is to be regarded, on or after the commencement of section 12.118, as the correspondence address of the secretary; and

(b) an entry in the company's register of secretaries stating the relevant existing address is to be regarded, on or after the commencement of section 12.118, as complying with the requirement to state a correspondence address.

(7) The relevant existing address is the address that immediately before the commencement of section 12.118 appeared in the company's register of directors and secretaries as the usual residential address of the secretary or joint secretary.

(8) A notification of a change of a relevant existing address occurring before the commencement of section 12.118 that is received by the company on or after that commencement is to be regarded as being a notification of a change of correspondence address.

(9) The operation of subsections (6), (7) and (8) does not give rise to any duty to notify the Registrar under section 12.119.

(10) The removal by an existing company from its register of secretaries on or after the commencement of section 12.118 of particulars

required by the predecessor Ordinance but not required by this Ordinance does not give rise to any duty to notify the Registrar under section 12.119.

(11) Section 12.119 applies in relation to –

(a) a change among a company’s secretaries; or

(b) a change in the particulars contained in the register,

occurring on or after the commencement of section 12.118.

(12) Section 158 of the predecessor Ordinance continues to apply in relation to a change occurring before the commencement of section 12.118.

### **Division 3 – Company Records**

#### **12.122 Meaning of “company records”**

In this Division –

“company records” (公司紀錄) means any register, index, agreement, memorandum, minutes or other document required by this Ordinance to be kept by a company, but does not include accounting records.

#### **12.123 Form of company records**

(1) A company must adequately record for future reference the information required to be contained in any company records.

(2) Subject to subsection (1), company records may be –

(a) kept in hard copy form or in electronic form; and

(b) arranged in the manner that the directors of the company think fit.

(3) If the records are kept in electronic form, the company must ensure that they are capable of being reproduced in hard copy form.

(4) If any company records required by this Ordinance to be kept by a company are kept by the company by recording the information in question in electronic form, any duty imposed on the company under this Ordinance to allow inspection of, or to provide a copy of the company records or any part of

the company records is to be regarded as a duty to allow inspection of, or to provide, a reproduction of –

- (a) the recording in hard copy form; or
- (b) the relevant part of the recording in hard copy form.

(5) If a company contravenes subsection (1) 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.

(6) In this section –

“in electronic form” (電子形式) means in the form of an electronic record;

“in hard copy form” (印本形式) means in a paper form or similar form capable of being read.

#### **12.124 Duty to take precautions against falsification**

(1) If company records are kept otherwise than by making entries in a bound book, a company must –

- (a) take adequate precautions to guard against falsification; and
- (b) take adequate steps to facilitate the discovery of the falsification.

(2) If a company contravenes subsection (1), 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.

#### **12.125 Regulations about keeping and inspection of company records and provision of copies**

(1) The Financial Secretary may make regulations to –

- (a) provide for the obligations of a company that is required by any provision of this Ordinance –
    - (i) to keep any company records;
    - (ii) to keep available for inspection any company records; or
    - (iii) to provide copies of any company records;
  - (b) prescribe the fees payable in respect of company records; and
  - (c) prescribe any other thing that is required or permitted to be prescribed under this Ordinance in respect of company records.
- (2) The regulations may –
  - (a) prescribe places other than a company’s registered office at which company records are required to be kept;
  - (b) make provision as to the time, duration and manner of inspection, including the circumstances in which and the extent to which the copying of information is permitted in the course of inspection;
  - (c) define what may be required of the company as regards the nature, extent and manner of extracting or presenting any information for the purposes of inspection or the provision of copies; and
  - (d) make provision as to the time within which a copy of company records must be provided.
- (3) Regulations made under subsection (2)(a) may, in relation to a provision of this Ordinance requiring a company to keep any company records –
  - (a) prescribe a place –
    - (i) by reference to the company’s principal place of business or the place at which the company keeps any other records; or

- (ii) in any other way;
  - (b) provide that that provision is not complied with by keeping company records at a place prescribed in the regulations unless conditions prescribed in the regulations are met;
  - (c) prescribe more than one place in relation to that provision; and
  - (d) provide that that provision is not complied with by keeping company records at a place prescribed in the regulations unless all the company's records subject to that provision are kept there.
- (4) Regulations made under subsection (1), (2) or (3) may provide that –
- (a) if a company contravenes any of the regulations made under subsection (1), (2) or (3), an offence is committed by –
    - (i) the company; and
    - (ii) every responsible person of the company;
  - (b) a person who commits an offence mentioned in paragraph (a) is liable to a fine not exceeding level 5 and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for each day during which the offence continues;
  - (c) the Court of First Instance may, in prescribed circumstances, by order compel an immediate inspection of company records or direct that a copy of company records be sent to a person entitled to be provided with the copy;
  - (d) if company records are kept at the office of a person other than the company concerned, an order mentioned in

paragraph (c) may be made against that other person and that other person's officers and other employees; and

(e) the Court of First Instance must not make an order mentioned in paragraph (c) if it is satisfied that the rights of inspecting company records or the rights to be provided with a copy of company records are being abused.

(5) Nothing in any provision of this Ordinance or in the regulations made under this section is to be construed as preventing a company –

(a) from providing more extensive facilities than are required by the regulations; or

(b) if a fee may be charged, from charging a lesser fee than that prescribed or none at all.

#### **Division 4 – Registered Office and Publication of Company Names**

##### **12.126 Registered office of company**

(1) A company must have a registered office in Hong Kong to which all communications and notices may be addressed.

(2) The intended address of a company's registered office stated in the incorporation form registered in respect of the company is to be regarded as the address of its registered office with effect from the date of its incorporation until a notice of change in respect of the address is given to the Registrar under subsection (3).

(3) If the address of a company's registered office is changed, the company must give a notice of the change in the specified form to the Registrar within 14 days after the change.

(4) The Registrar must record the change a notice of which is given under subsection (3).

(5) The inclusion in the annual return of a company of a statement as to the address of its registered office does not satisfy the obligation imposed by subsection (3).

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

#### **12.127 Requirement to disclose company name, etc.**

(1) The Financial Secretary may make regulations to require companies –

- (a) to display prescribed information in prescribed locations;
- (b) to state prescribed information in prescribed descriptions of documents or communications; and
- (c) to provide prescribed information on request to those they deal with in the course of their business.

(2) The regulations –

- (a) may in prescribed circumstances require disclosure of the name of the company; and
- (b) may make provision as to the manner in which any prescribed information is to be displayed, stated or provided.

(3) The regulations may provide that, for the purposes of any requirement to disclose a company's name, any variation between a word or words required to be part of the name and a permitted abbreviation of that word or those words (or vice versa) is to be disregarded.

#### **12.128 Criminal consequences of failure to make required disclosures**

Regulations made under section 12.127 may provide that –

- (a) if a company contravenes any of the regulations made under that section, an offence is committed by –
  - (i) the company; and
  - (ii) every responsible person of the company;
- (b) if any person who is acting on behalf of the company contravenes any of the regulations made under that section, an offence is committed by that person; and
- (c) a person who commits an offence mentioned in paragraph (a) or (b) is liable to a fine not exceeding level 3 and, in the case of a continuing offence, to a further fine not exceeding \$300 for each day during which the offence continues.

#### **12.129 Civil consequence of failure to make required disclosures**

If an officer of a company or a person on its behalf signs or authorizes to be signed on behalf of the company, any bill of exchange, promissory note, endorsement, cheque or order for money or goods in which the company's name is not mentioned in the manner as required by regulations made under section 12.127, that officer or person is personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount of it (unless it is duly paid by the company).

### **Division 5 – Annual Return**

#### **12.130 Requirement to deliver annual return**

(1) A private company must in respect of every year (except the year of its incorporation) deliver to the Registrar an annual return specified in subsection (5) within 42 days after the company's return date.

(2) The company's return date is, in respect of a particular year, the anniversary of the date of the company's incorporation in that year.

(3) A public company or a company limited by guarantee must in respect of every financial year deliver to the Registrar an annual return specified in subsection (5) within 42 days after the company's return date.

(4) The company's return date is, in respect of a particular financial year –

(a) if the company is a public company, the date that is 6 months after the company's accounting reference date; and

(b) if the company is a company limited by guarantee, the date that is 9 months after the company's accounting reference date.

(5) An annual return under this section must –

(a) comply with the requirements under section 12.132; and

(b) be authenticated by a director or secretary of the company.

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

(7) If a person is convicted of an offence under subsection (6), the magistrate may, in addition to any penalty that may be imposed, order that the person must, within a time specified in the order do the act that the person has failed to do.

(8) A person who contravenes an order under subsection (7) commits an offence and is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

(9) In this section –

“accounting reference date” (會計參照日) has the meaning given by section 9.7.

**12.131 Exemption of dormant company from requirement to deliver annual return**

(1) A company that is a dormant company under section 1.5(1) is exempt from complying with section 12.130.

(2) If, during the period between the date on which a company becomes a dormant company under section 1.5(1) and the date on which the company ceases to be a dormant company under section 1.5(4), the company enters into an accounting transaction as defined in section 1.5(5), then –

- (a) the exemption under subsection (1) ceases as from the date of the accounting transaction; and
- (b) any shareholder of the company who knew or ought to have known about the accounting transaction and all directors of the company are personally liable for any debt or liability of the company arising out of the accounting transaction.

(3) In subsection (2)(b) –  
“director” (董事) includes a shadow director.

**12.132 Contents of annual return**

(1) A company’s annual return under section 12.130 must –

- (a) be in the specified form; and
- (b) contain, with respect to the company, the particulars specified in the form.

(2) Without limiting section 2.5, the Registrar may, for the purposes of this section, specify different forms or particulars in relation to different types of companies.

(3) Without limiting subsection (1), an annual return under section 12.130 must –

- (a) contain the information specified in the Schedule; and

(b) be accompanied by the documents specified in that Schedule.

(4) The Registrar may, by order published in the Gazette, amend the Schedule.

### **12.133 Application and saving**

(1) This Division and the Schedule apply to annual returns made up to a date on or after the commencement of this Division and the Schedule.

(2) Sections 107 and 109 of the predecessor Ordinance continue to apply to annual returns made up to a date before the commencement of this Division and the Schedule.

(3) A reference in this Ordinance to a company's last return, or to a return delivered in accordance with this Division, is to be construed as including (so far as necessary to ensure the continuity of the law) a return made up to a date before the commencement of this Division and the Schedule, or forwarded to the Registrar in accordance with the predecessor Ordinance.

## SCHEDULE

[ss. 12.132 &  
12.133]

### INFORMATION TO BE CONTAINED IN ANNUAL RETURN AND DOCUMENTS BY WHICH ANNUAL RETURN MUST BE ACCOMPANIED

#### PART 1

#### INFORMATION TO BE CONTAINED IN ANNUAL RETURN

1. An annual return under section 12.130(1) or (3) must contain the following information in respect of the company –

- (a) the company name, its registered number and business name (if any);
- (b) the type of company;
- (c) the address of the registered office of the company;

- (d) the date of the return;
- (e) particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges that –
  - (i) are required to be registered with the Registrar under this Ordinance; or
  - (ii) would have been required to be so registered if created after 1 January 1912;
- (f) in the case of a company having a share capital –
  - (i) particulars relating to members and share capital of the company; and
  - (ii) if the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the amount of stock held by each of the existing members;
- (g) in the case of a company not having a share capital, except for a company registered with an unlimited number of members, the number of members of the company;
- (h) if any company records are kept at a place other than the company's registered office, the address of that place and the records that are kept there;
- (i) particulars with respect to –
  - (i) the persons who at the date of the return are the directors of the company; and
  - (ii) any person who at that date is a secretary of the company or a reserve director of the company, that are by this Ordinance required to be contained with respect to them in the register of directors and register of secretaries of a company.

2. In the case of a listed company, the particulars relating to members as required under section 1(f)(i) of this Schedule are limited to those relating to members who held 5% or more of the issued shares in any class of the company's shares at any time since the return date of the last annual return.

3. In the case of a company that keeps a branch register of members in accordance with section 12.102(1), the particulars of the entries in that register need not be included in the annual return if copies of those entries have not been received at the registered office of the company. Those particulars must, so far as they relate to matters that are required to be contained in the annual return, be included in the next annual return after copies of those entries are received at the registered office of the company.

## PART 2

### ADDITIONAL INFORMATION TO BE CONTAINED IN ANNUAL RETURN OF PRIVATE COMPANY

1. An annual return under section 12.130(1) must also contain the following information in respect of the private company –

- (a) a statement authenticated by a director or secretary of the company that the company has not –
  - (i) since the date of the last return; or
  - (ii) in the case of a first return, since the date of the incorporation of the company,  
issued any invitation to the public to subscribe for any shares or debentures of the company; and
- (b) if the annual return discloses the fact that the number of members of the company exceeds 50, a statement authenticated by a director or secretary of the company that the excess consists wholly of persons who, under

section 1.10(2), are excluded in the calculation of the number of members of the company.

### PART 3

#### DOCUMENTS BY WHICH ANNUAL RETURN OF PUBLIC COMPANY OR COMPANY LIMITED BY GUARANTEE MUST BE ACCOMPANIED

1. An annual return under section 12.130(3) must be accompanied by –
  - (a) copies of the documents required to be sent to every member of the company under section 9.52, certified by a director or secretary of the company to be true copies; and
  - (b) if any of the documents mentioned in paragraph (a) is in a language other than English or Chinese, a certified translation (to be annexed to that document) in English or Chinese of the document.