

PART 1

PRELIMINARY

Division 1 – Short Title and Commencement

1.1 Short title and commencement

(1) This Ordinance may be cited as the Companies Ordinance.

(2) This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

Division 2 – Interpretation of this Ordinance: General

1.2 Interpretation

(1) In this Ordinance –

“articles” (章程細則), in relation to a company, means the articles of association of the company;

“associated company” (有聯繫公司), in relation to a body corporate, means –

- (a) a subsidiary of the body corporate;
- (b) a holding company of the body corporate; or
- (c) a subsidiary of such a holding company;

“body corporate” (法人團體) –

- (a) includes –
 - (i) a company; and
 - (ii) a company incorporated outside Hong Kong; and
- (b) excludes a corporation sole;

“certified public accountant (practising)” (執業會計師) has the meaning given by section 2(1) of the Professional Accountants Ordinance (Cap. 50);

“company” (公司) means –

- (a) a company formed and registered under this Ordinance; or

(b) an existing company;

“constitution” (章程) –

(a) in relation to a company formed and registered under this Ordinance, means the company’s articles; or

(b) in relation to an existing company, means the company’s memorandum and articles;

“contributory” (分擔人), in relation to a company, means a person liable to contribute to the assets of the company in the event of its being wound up;

“court” (法院) means a court of competent jurisdiction of the Hong Kong Special Administrative Region and includes a magistrate;

“debenture” (債權證), in relation to a company, includes debenture stock, bonds and any other debt securities of the company, whether or not constituting a charge on the assets of the company;

“director” (董事) includes any person occupying the position of director (by whatever name called);

“document” (文件) includes –

(a) a summons, notice, order and any other legal process; and

(b) a register;

“electronic record” (電子紀錄) means a record generated in digital form by an information system, which can be –

(a) transmitted within an information system or from one information system to another; and

(b) stored in an information system or other medium;

“existing company” (原有公司) means a company formed and registered under a former Companies Ordinance;

“former Companies Ordinance” (《舊有公司條例》) means –

(a) the Companies Ordinance 1865 (1 of 1865);

(b) the Companies Ordinance 1911 (58 of 1911); or

(c) the predecessor Ordinance;

“founder member” (創辦成員) –

- (a) in relation to a company formed and registered under this Ordinance, means a person who signs on the company’s articles for the purposes of section 3.1(1)(a);¹ or
- (b) in relation to an existing company, means a person who subscribed to or signed on the company’s memorandum;

“group of companies” (公司集團) means any 2 or more bodies corporate one of which is the holding company of the other or others;

“incorporation form” (法團成立表格), in relation to a company formed and registered under this Ordinance, means the application form on which an application under section 3.1(1) is made;

“Index of Company Names” (《公司名稱索引》) means the index of names kept under section 2.10;

“information system” (資訊系統) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

“listed company” (上市公司) means a company that has any of its shares listed on a recognized stock market;

“manager” (經理), in relation to a company –

- (a) means a person who performs managerial functions in relation to the company under the directors’ immediate authority; and
- (b) excludes –

¹ A consultation draft of Part 3 will be published later.

- (i) a receiver or manager of the company's property;
and
- (ii) a special manager of the company's estate or business appointed under section 216 of the Companies (Winding Up Provisions) Ordinance (Cap. 32);²

“member” (成員), in relation to a company, means –

- (a) a founder member of the company; or
- (b) a person who agrees to become a member of the company and whose name is entered, as a member, in the company's register of members;

“memorandum” (章程大綱), in relation to an existing company, means the memorandum of association of the company;

“non-Hong Kong company” (非香港公司) means a company incorporated outside Hong Kong that –

- (a) establishes a place of business in Hong Kong on or after the commencement of Part 16; or
- (b) has established a place of business in Hong Kong before that commencement and continues to have a place of business in Hong Kong at that commencement;

“officer” (高級人員), in relation to a body corporate, includes a director, manager or secretary of the body corporate;

“ordinary resolution” (普通決議) – see section 12.18;

“predecessor Ordinance” (《前身條例》) means the Companies Ordinance (Cap. 32) as in force from time to time before [*the date on which Cap. 32, other than the winding-up provisions, is repealed*];

² Provisional title of Cap. 32 after it is consequentially amended by the new Companies Ordinance. It is subject to change.

“recognized stock market” (認可證券市場) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

“Register” (登記冊) means the records kept under section 2.8;

“registered non-Hong Kong company” (註冊非香港公司) means a non-Hong Kong company that is registered in the Register as a registered non-Hong Kong company;

“Registrar” (處長) means the person who is appointed to be the Registrar of Companies under section 2.2(1);

“reserve director” (備任董事), in relation to a private company, means a person nominated as a reserve director of the company under section 10.3(1);

“Secretary” (局長) means the Secretary for Financial Services and the Treasury;

“shadow director” (幕後董事), in relation to a body corporate, means a person in accordance with whose directions or instructions (excluding advice given in a professional capacity) the directors, or a majority of the directors, of the body corporate are accustomed to act;

“share” (股份) –

- (a) means a share in a company’s share capital; and
- (b) if any of the company’s shares is converted into stock, includes stock;

“special resolution” (特別決議) – see section 12.19;

“specified form” (指明格式) means the form specified under section 2.5;

“undertaking” (企業) means –

- (a) a body corporate;
- (b) a partnership; or
- (c) an unincorporated association carrying on a trade or business, whether for profit or not;

“written resolution” (書面決議) – see section 12.10.

- (2) In this Ordinance –

- (a) a reference to a company being registered by a name, or to registration of a company under this Ordinance, includes the company being restored to the Register under Part 15; and
 - (b) a reference to this Ordinance includes any subsidiary legislation made under this Ordinance.
- (3) For the purposes of this Ordinance –
 - (a) a document or information is sent or supplied in hard copy form if it is sent or supplied –
 - (i) in paper copy form; or
 - (ii) in a similar form capable of being read;
 - (b) a document or information is sent or supplied in electronic form if it is sent or supplied –
 - (i) by electronic means; or
 - (ii) by any other means while in electronic form; and
 - (c) a document or information is sent or supplied by electronic means if it is sent or supplied in the form of an electronic record to an information system.

1.3 Responsible person

- (1) This section applies –
 - (a) where a provision of this Ordinance provides that a responsible person of a company or non-Hong Kong company commits an offence if there is –
 - (i) a contravention of this Ordinance, or of a requirement, direction, condition or order; or
 - (ii) a failure to comply with a requirement, direction, condition or order; or
 - (b) where this Ordinance empowers a person to make subsidiary legislation that will contain such a provision.

(2) For the purposes of the provision, a person is a responsible person of a company or non-Hong Kong company if the person –

- (a) is an officer or shadow director of the company or non-Hong Kong company; and
- (b) authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention or failure.

(3) For the purposes of the provision, a person is also a responsible person of a company or non-Hong Kong company if –

- (a) the person is an officer or shadow director of a body corporate that is an officer or shadow director of the company or non-Hong Kong company;
- (b) the body corporate authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention or failure; and
- (c) the person authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention or failure.

1.4 Certified translation

(1) For the purposes of this Ordinance, a translation made in Hong Kong of a document is a certified translation if –

- (a) it is certified as a correct translation of the document by the translator; and
- (b) a person specified in subsection (3) certifies that in that person's belief the translator is competent in translating the document into English or Chinese (as the case may be).

(2) For the purposes of this Ordinance, a translation made in a place outside Hong Kong of a document is a certified translation if –

- (a) in the case of a translator specified in subsection (4), it is certified as a correct translation of the document by the translator; or
 - (b) in the case of any other translator –
 - (i) it is certified as a correct translation of the document by the translator; and
 - (ii) a person specified in subsection (5) certifies that in that person’s belief the translator is competent in translating the document into English or Chinese (as the case may be).
- (3) The person specified for the purposes of subsection (1)(b) is –
 - (a) a notary public practising in Hong Kong;
 - (b) a solicitor practising in Hong Kong;
 - (c) a certified public accountant (practising);
 - (d) a consular officer in Hong Kong; or
 - (e) a professional company secretary practising in Hong Kong.
- (4) The translator specified for the purposes of subsection (2)(a) is a translator appointed by a court of law of the place.
- (5) The person specified for the purposes of subsection (2)(b)(ii) is –
 - (a) a notary public practising in the place;
 - (b) a lawyer practising in the place;
 - (c) a professional accountant practising in the place;
 - (d) an officer of a court of law duly authorized by the law of the place to certify documents for any judicial or other legal purpose;
 - (e) a consular officer in the place;
 - (f) a professional company secretary practising in the place;
 - or
 - (g) any other natural person specified by the Registrar.

(6) The Secretary may, by order published in the Gazette, amend subsections (3), (4) and (5).

1.5 Dormant company

(1) For the purposes of Parts 9³ and 12, if a qualified private company passes a special resolution specified in subsection (2), and the resolution is delivered to the Registrar, the company is a dormant company as from the date mentioned in subsection (2)(a) as declared by the resolution.

(2) The special resolution is one –

(a) declaring that the qualified private company will become dormant as from –

(i) the date of delivery of that resolution to the Registrar; or

(ii) a later date specified in that resolution; and

(b) authorizing the directors to deliver that resolution to the Registrar.

(3) For the purposes of subsection (2)(a), a qualified private company is regarded as dormant during any period in which there is no accounting transaction in relation to the company.

(4) For the purposes of Parts 9 and 12, a qualified private company ceases to be a dormant company if it passes a special resolution declaring that the company intends to enter into an accounting transaction, and the resolution is delivered to the Registrar.

(5) In this section –

“accounting transaction” (會計交易), in relation to a qualified private company, means a transaction that is required by Part 9 to be entered in the company’s accounting records, excluding a transaction arising from the payment of any fee that the company is required by an Ordinance to pay;

³ A consultation draft of Part 9 will be published later.

“qualified private company” (合資格私人公司) means a private company that is not a company specified in subsection (6).

(6) A company specified for the purposes of the definition of “qualified private company” in subsection (5) is –

- (a) an authorized institution as defined by section 2(1) of the Banking Ordinance (Cap. 155);
- (b) an insurer as defined by section 2(1) and (2) of the Insurance Companies Ordinance (Cap. 41);
- (c) a corporation licensed under Part V of the Securities and Futures Ordinance (Cap. 571) to carry on a business in any regulated activity as defined by section 1 of Part 1 of Schedule 1 to that Ordinance;
- (d) an associated entity, within the meaning of Part VI of the Securities and Futures Ordinance (Cap. 571), of a corporation mentioned in paragraph (c);
- (e) an approved trustee as defined by section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);
- (f) a company registered as a trust company under Part VIII of the Trustee Ordinance (Cap. 29);
- (g) a company having a subsidiary that falls within paragraph (a), (b), (c), (d), (e) or (f); or
- (h) a company that fell within paragraph (a), (b), (c), (d), (e), (f) or (g) at any time during the 5 years immediately before the special resolution is passed.

(7) The Financial Secretary may, by order published in the Gazette, amend subsection (6).

Division 3 – Interpretation of this Ordinance: Types of Companies

Subdivision 1 – Limited Company and Unlimited Company

1.6 Limited company

For the purposes of this Ordinance, a company is a limited company if it is a company limited by shares or by guarantee.

1.7 Company limited by shares

For the purposes of this Ordinance, a company is a company limited by shares if the liability of its members is limited by the company's constitution to any amount unpaid on the shares held by the members.

1.8 Company limited by guarantee

(1) For the purposes of this Ordinance, a company is a company limited by guarantee if –

- (a) it does not have a share capital; and
- (b) the liability of its members is limited by the company's constitution to the amount that the members undertake, by that constitution, to contribute to the assets of the company in the event of its being wound up.

(2) Subsection (1)(a) does not apply if the company was formed as, or became, a company limited by guarantee under a former Companies Ordinance before 13 February 2004.

1.9 Unlimited company

For the purposes of this Ordinance, a company is an unlimited company if –

- (a) it has a share capital; and
- (b) there is no limit on the liability of its members.

Subdivision 2 – Private Company and Public Company

1.10 Private company

(1) For the purposes of this Ordinance, a company is a private company if –

- (a) it has a share capital; and
- (b) its articles –
 - (i) restrict a member’s right to transfer shares;
 - (ii) limit the number of members to 50; and
 - (iii) prohibit any invitation to the public to subscribe for any shares or debentures of the company.

(2) In subsection (1)(b)(ii) –
“member” (成員) excludes –

- (a) a member who is an employee of the company; and
- (b) a person who was a member while being an employee of the company and who continues to be a member after ceasing to be such an employee.

(3) For the purposes of this section, 2 or more persons who hold shares in a company jointly are regarded as one member.

1.11 Public company

(1) For the purposes of this Ordinance, a company is a public company if –

- (a) it has a share capital;
- (b) its articles do not –
 - (i) restrict a member’s right to transfer shares;
 - (ii) limit the number of members to 50; or
 - (iii) prohibit any invitation to the public to subscribe for any shares or debentures of the company; and
- (c) it is not a company limited by guarantee.

(2) In subsection (1)(b)(ii) –

“member” (成員) excludes –

- (a) a member who is an employee of the company; and
 - (b) a person who was a member while being an employee of the company and who continues to be a member after ceasing to be such an employee.
- (3) For the purposes of this section, 2 or more persons who hold shares in a company jointly are regarded as one member.

Division 4 – Interpretation of this Ordinance: Holding Company and Subsidiary

1.12 Holding company

(1) For the purposes of this Ordinance, a body corporate is a holding company of another body corporate if –

- (a) it controls the composition of that other body corporate’s board of directors;
- (b) it controls more than half of the voting rights in that other body corporate; or
- (c) it holds more than half of that other body corporate’s issued share capital.

(2) For the purposes of this Ordinance, a body corporate is also a holding company of another body corporate if it is a holding company of a body corporate that is that other body corporate’s holding company.

(3) For the purposes of subsection (1)(a), a body corporate controls the composition of another body corporate’s board of directors if it has power to appoint or remove all, or a majority, of that other body corporate’s directors without any other person’s consent.

(4) For the purposes of subsection (3), a body corporate has the power to make such an appointment if –

- (a) without the exercise of the power in a person's favour by the body corporate, the person cannot be appointed as a director of that other body corporate; or
- (b) it necessarily follows from a person being a director or other officer of the body corporate that the person is appointed as a director of that other body corporate.

(5) In subsection (1)(c), a reference to a body corporate's issued share capital excludes any part of it that carries no right to participate beyond a specified amount in a distribution of profits or capital.

1.13 Provisions supplementary to section 1.12

(1) For the purposes of this Division –

- (a) if any share is held, or any power is exercisable, by a body corporate in a fiduciary capacity, the share or power is regarded as not being held or exercisable by the body corporate; and
- (b) subject to subsections (2) and (3), if any share is held, or any power is exercisable, by a subsidiary of a body corporate, or by a person as nominee for a body corporate or such a subsidiary, the share or power is regarded as being held or exercisable by the body corporate.

(2) For the purposes of this Division, any share in another body corporate held, or any power in relation to another body corporate exercisable, by a person by virtue of a debenture of that other body corporate, or of a trust deed for securing an issue of such a debenture, is regarded as not being held or exercisable by the person.

(3) For the purposes of this Division, any share held, or any power exercisable, by a body corporate or a subsidiary of a body corporate, or by a person as nominee for a body corporate or such a subsidiary, is regarded as not being held or exercisable by the body corporate or subsidiary if –

- (a) the ordinary business of the body corporate or subsidiary includes the lending of money; and
- (b) the share or power is held or exercisable by way of security only for the purpose of a transaction entered into in the ordinary course of that business.

(4) In subsection (1)(b), a reference to a body corporate or subsidiary excludes a body corporate or subsidiary that is concerned only in a fiduciary capacity.

1.14 Subsidiary

For the purposes of this Ordinance, a body corporate is a subsidiary of another body corporate if that other body corporate is a holding company of it.

Division 5 – Interpretation of this Ordinance: Parent Undertakings and Subsidiary Undertakings

1.15 Interpretation

In this Division –

“shares” (股份) –

- (a) in relation to an undertaking having a share capital, means the allotted shares;
- (b) in relation to an undertaking having capital in a form other than share capital, means the right to share in the capital of the undertaking; or
- (c) in relation to an undertaking not having a capital, means –
 - (i) the interest giving a right to share in the profits, or liability to contribute to the losses, of the undertaking; or
 - (ii) the interest giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of its being wound up.

1.16 Parent undertaking

(1) For the purposes of this Ordinance, an undertaking is a parent undertaking of another undertaking if –

- (a) in the case where both undertakings are bodies corporate, it is a holding company of that other undertaking; or
- (b) in any other case –
 - (i) it holds a majority of the voting rights in that other undertaking;
 - (ii) it is a member of that other undertaking and has the right to appoint or remove a majority of that other undertaking's board of directors; or
 - (iii) it is a member of that other undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in that other undertaking.

(2) For the purposes of this Ordinance, an undertaking is also a parent undertaking of another undertaking if it has the right to exercise a dominant influence over that other undertaking by virtue of –

- (a) the provisions contained in the constitution, or an equivalent constitutional document, of that other undertaking; or
- (b) a contract in writing that –
 - (i) is of a kind authorized by the constitution, or an equivalent constitutional document, of that other undertaking; and
 - (ii) is permitted by the law under which that other undertaking is established.

(3) In subsection (1)(b), a reference to the voting rights in an undertaking is –

- (a) in the case of an undertaking having a share capital, a reference to the rights given to the members in respect of their shares; or
- (b) in the case of an undertaking not having a share capital –
 - (i) if the undertaking is required to hold general meetings at which matters are decided by the exercise of voting rights, a reference to the rights given to the members to vote at the general meetings on all matters or on substantially all matters; or
 - (ii) if the undertaking is not required to hold such general meetings, a reference to the rights under the undertaking's constitution to direct the undertaking's overall policy or to alter the terms of that constitution.

(4) For the purposes of subsection (1)(b), an undertaking is a member of another undertaking if –

- (a) a person acting on behalf of it, or of any of its subsidiary undertakings, holds shares in that other undertaking; or
- (b) any of its subsidiary undertakings is a member of that other undertaking.

(5) For the purposes of subsection (1)(b)(ii), a reference to the right to appoint or remove a majority of a board of directors is a reference to the right to appoint or remove directors holding a majority of the voting rights at meetings of the directors on all matters or on substantially all matters.

(6) For the purposes of subsection (5) –

- (a) in determining whether an undertaking has the right to appoint or remove a director, a right that is exercisable only with another person's consent is to be disregarded unless only the undertaking has the right; and

- (b) an undertaking has the right to appoint a director if –
 - (i) it necessarily follows from a person’s appointment as a director of the undertaking that the person is appointed to the board; or
 - (ii) the directorship is held by the undertaking itself.
- (7) For the purposes of subsection (2), an undertaking does not have any right to exercise a dominant influence over another undertaking unless –
 - (a) it has a right to give directions with respect to the operating and financial policies of that other undertaking; and
 - (b) that other undertaking’s directors are, or a majority of them is, obliged to comply with the directions, whether or not the directions are for that other undertaking’s benefit.

1.17 Provisions supplementary to section 1.16

- (1) For the purposes of this Division, a right held by a subsidiary undertaking of another undertaking is regarded as being held by that other undertaking.
- (2) For the purposes of this Division –
 - (a) without limiting paragraph (b), a right that is exercisable only in certain circumstances is taken into account –
 - (i) only when the circumstances have arisen and for so long as they continue to exist; or
 - (ii) only when the circumstances are within the control of the person having the right; and
 - (b) a right that is normally exercisable but is temporarily incapable of being exercised continues to be taken into account.
- (3) For the purposes of this Division –

- (a) a right held by a person in a fiduciary capacity is regarded as not being held by the person; and
- (b) a right held by a person as nominee for another is regarded as being held by that other.

(4) For the purposes of this Division, a right is regarded as being held by a person as nominee for another if it is exercisable only on the instructions, or with the consent, of that other.

(5) For the purposes of this Division, a right attached to shares held by way of security is regarded as being held by the person providing the security –

- (a) if, except where the right is exercised for the purpose of preserving the value of the security or of realizing the security, it is exercisable only in accordance with that person's instructions; or
- (b) if –
 - (i) the shares are held in connection with the granting of loans as part of normal business activities; and
 - (ii) except where the right is exercised for the purpose of preserving the value of the security or of realizing the security, it is exercisable only in that person's interests.

(6) Subsections (3) and (5) do not require a right held by a parent undertaking to be regarded as being held by any of its subsidiary undertakings.

(7) For the purposes of subsection (5), a right is regarded as being exercisable in accordance with the instructions, or in the interests, of an undertaking if it is exercisable in accordance with the instructions, or in the interests, as the case may be, of any group undertaking of the undertaking.

(8) In this section, an undertaking is a group undertaking of another undertaking if –

- (a) it is a parent or subsidiary undertaking of that other undertaking; or

- (b) it is a subsidiary undertaking of any parent undertaking of that other undertaking.

1.18 Parent company

For the purposes of this Ordinance, a parent company is a parent undertaking that is a company.

1.19 Subsidiary undertaking

(1) For the purposes of this Ordinance, an undertaking is a subsidiary undertaking of another undertaking if that other undertaking is a parent undertaking of it.

(2) For the purposes of this Ordinance, an undertaking is also a subsidiary undertaking of another undertaking if a parent undertaking of it is a subsidiary undertaking of that other undertaking.

1.20 Financial Secretary may amend this Division

The Financial Secretary may, by order published in the Gazette, amend this Division.

Division 6 – Application of this Ordinance

1.21 Application to existing company

(1) This Ordinance applies to an existing company, in the same manner as if –

- (a) in the case of a company limited by guarantee, the company had been formed and registered under this Ordinance as a company limited by guarantee;
- (b) in the case of a limited company other than a company limited by guarantee, the company had been formed and registered under this Ordinance as a company limited by shares; or

(c) in the case of a company other than a limited company, the company had been formed and registered under this Ordinance as an unlimited company.

(2) In such application, a reference in this Ordinance to the date of registration is to be read as the date on which the company was registered under a former Companies Ordinance.

1.22 Application to unlimited company registered in pursuance of former Companies Ordinance as limited company

(1) This Ordinance applies to an unlimited company registered as a limited company in pursuance of the predecessor Ordinance or section 58 of the Companies Ordinance 1911 (58 of 1911), in the same manner as it applies to an unlimited company registered under this Ordinance as a limited company.

(2) In such application, a reference in this Ordinance to the date of registration is to be read as the date on which the company was registered in pursuance of the predecessor Ordinance or section 58 of the Companies Ordinance 1911 (58 of 1911).

1.23 Application to company registered, but not formed, under former Companies Ordinance

(1) This Ordinance applies to a company registered, but not formed, under a former Companies Ordinance, in the same manner as it applies to an eligible company registered under Part 17.

(2) In such application, a reference in this Ordinance to the date of registration is to be read as the date on which the company was registered under the former Companies Ordinance.