

# New Companies Ordinance

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## Subsidiary Legislation for Implementation of the new Companies Ordinance

### *Phase One Consultation Document*

September 2012

Financial Services and the Treasury Bureau  
[www.fstb.gov.hk](http://www.fstb.gov.hk)

Companies Registry  
[www.cr.gov.hk](http://www.cr.gov.hk)

## About This Document

This consultation document is published by the Financial Services and the Treasury Bureau and the Companies Registry to consult the public on the subsidiary legislation to be made for implementation of the new Companies Ordinance.

Please send your comments to us on or before 9 November 2012 by any of the following means –

Mail : “Public Consultation on Subsidiary Legislation for Implementation of the new Companies Ordinance”  
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For enquiries, please contact us at (852) 2867 5844 or by any of the means provided above.

The consultation paper is also available on the websites of the Financial Services and the Treasury Bureau ([http://www.fstb.gov.hk/fsb/co\\_rewrite/](http://www.fstb.gov.hk/fsb/co_rewrite/)) and the Companies Registry (<http://www.cr.gov.hk/>). Full text of the new Companies Ordinance is also available for viewing and downloading on the website of the Companies Registry.

Submissions will be received on the basis that we may freely reproduce and publish them, in whole or in part, in any form and use, adapt or develop any proposal put forward without seeking permission or providing acknowledgment of the party making the proposal.

Please note that names of respondents, their affiliation(s) and comments may be posted on the above websites or referred to in other documents we publish. If you do not wish your name and/or affiliation to be disclosed, please state so when making your submission. Any personal data submitted will only be used for purposes which are directly related to consultation purposes under this consultation paper. Such data may be transferred to other Government departments/agencies for the same purposes. Please contact us for access to or correction of personal data contained in your submission.

## **Preamble**

In mid-2006, the Government embarked on an extensive exercise to reform our company law with a view to enhancing Hong Kong's competitiveness as a major international business and financial centre. This involves a comprehensive rewrite of provisions relating to live companies in the existing Companies Ordinance (Cap.32) ("the existing CO"). On 12 July 2012, the Legislative Council passed the Companies Bill, which was subsequently published in the gazette on 10 August 2012 as the new Companies Ordinance (Ordinance No. 28 of 2012) ("the new CO").

Before the new CO commences operation, we need to put in place several pieces of subsidiary legislation to provide for various matters required for implementation of the new CO. Prior to making the subsidiary legislation, the Government would like to benefit from the advice of the general public, in particular investors, the business communities and relevant professions, on the key proposals and draft provisions of the proposed subsidiary legislation at the Annexes.

We intend to consult the public on the following pieces of subsidiary legislation –

- (a) Companies (Summary Financial Reports) Regulation
- (b) Companies (Directors' Report) Regulation
- (c) Companies (Specification of Names) Order
- (d) Companies (Non-Hong Kong Companies) Regulation
- (e) Company Records (Inspection and Provision of Copies) Regulation
- (f) Companies (Model Articles) Notice
- (g) Companies (Accounting Standards (Prescribed Body)) Regulation
- (h) Companies (Trading Disclosures) Regulation
- (i) Companies (Revision of Financial Statements and Reports) Regulation
- (j) Companies (Disclosure of Information about Benefits of Directors) Regulation

(k) Companies (Residential Addresses and Identification Numbers) Regulation

(l) Companies (Unfair Prejudice Proceedings) Rules

The consultation is to be conducted in two phases. Phase one (i.e. the current phase) covers items (a) to (g) above, whereas the second phase, to be launched later this year, will cover the remaining items.

We welcome members of the public to offer views and suggestions on the subsidiary legislation. To facilitate understanding of the proposed subsidiary legislation, we have included an overview of the requirements under both the existing CO and the new CO, and highlighted the key proposals in each chapter.

The deadline for responding to phase one of this consultation exercise is 9 November 2012. We will study the views received and prepare to make the subsidiary legislation in the first half of 2013. Upon completion of the necessary procedures, the subsidiary legislation will be brought into operation together with the new CO, tentatively in 2014.

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# Chapter 1

## Companies (Summary Financial Reports) Regulation ("C(SFR)R")

### *Present requirements*

- 1.1 Under the existing CO, sections 141CA to 141CG provide that a listed company may prepare its financial report in summary form (a "summary financial report") for sending to its members in place of the *relevant financial documents* (comprising the company's accounts, directors' report and auditor's report of the financial year concerned) from which the report is derived. The company has to send a *notification* to ascertain the intent of individual members, who may then indicate agreement to receive summary financial reports by giving a *notice of intent* to the company.
- 1.2 The forms and contents of the abovementioned (i) summary financial report, (ii) notification and (iii) notice of intent are stipulated in the Companies (Summary Financial Reports of Listed Companies) Regulation (Cap.32, subsidiary legislation M) ("Cap.32M"). The key requirements and features (with the relevant sections in Cap.32M) are summarised below –
  - (a) a summary financial report shall contain all the information and particulars included in the company's balance sheet, the profit and loss account and those in the directors' report as specified in section 129D(3) of Cap.32. It shall also set out the auditor's opinion, the particulars of important events and other specified information (*section 5*);
  - (b) a notification shall contain statements on the contents and function of a summary financial report, the effect of giving (and of not giving) a notice of intent and invite the member to give the notice. A card or document with postage prepaid shall be attached for use by the member for such purpose (*section 6*); and
  - (c) the effect of a notice received by the company in different scenarios, namely within or beyond a specified period upon sending of the notification, and before or after the first dispatch of the relevant financial documents (i.e. the company's accounts, directors' report and auditor's report), are also set out in the regulation (*sections 8 to 12*).

## *Requirements under the new CO*

- 1.3 The provisions relating to summary financial reports are retained in sections 437 to 446 of the new CO with several modifications highlighted below –
- (a) first, in addition to listed companies, companies not preparing simplified reports will also be eligible for preparation of summary financial reports;
  - (b) potential members<sup>1</sup> in addition to members of the company may also give notices of intent;
  - (c) an opt-out regime will be adopted, i.e. a member will receive a copy of the summary financial report in hard copy form by default if the member has not given a notice of intent to the company before a specified date;
  - (d) a member may also give a notice of revocation<sup>2</sup> or a notice of cessation of statutory election<sup>3</sup> to the company;
  - (e) to allow for greater flexibility, a company can offer to provide, and a member or potential member may choose to receive, the reporting documents<sup>4</sup> or summary financial reports in electronic form;
  - (f) the effect of a notice of intent received by the company before or after the first dispatch of the reporting documents has been simplified and streamlined; and

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<sup>1</sup> *Potential member* is defined in section 437 of the new CO to mean a person who is entitled, whether conditionally or unconditionally, to become a member of the company.

<sup>2</sup> A member or potential member may revoke the notice of intent given previously and indicate a new preference by giving a notice of revocation to the company.

<sup>3</sup> Statutory election refers to the case when a member or potential member is deemed to have elected to receive summary financial reports in hard copy form by default. A member or potential member may give the company a notice of cessation of statutory election to indicate a new preference.

<sup>4</sup> *Reporting documents* in respect of a financial year is defined in section 357(2) of the new CO to mean the financial statements, directors' report and auditor's report for the financial year. The coverage is roughly equivalent to *relevant financial documents* as in the existing CO except that "financial statements" are included in place of "accounts".

- (g) a member receiving a copy of the summary financial report may request the company to send a copy of the reporting documents for the financial year concerned.

### *The proposed subsidiary legislation*

- 1.4 Pursuant to sections 452(4) and 452(5) of the new CO, we propose to provide for the forms and contents of a summary financial report and the notification to members for ascertaining the members' intention to receive summary reports under the new CO regime in a piece of subsidiary legislation entitled Companies (Summary Financial Reports) Regulation ("C(SFR)R"). The C(SFR)R also covers the particulars to be included in and the effect of various notices (i.e. a notice of intent, a notice of revocation and a notice of cessation of statutory election).
- 1.5 The proposed C(SFR)R will mainly restate the provisions in Cap.32M, with suitable changes as necessary to reflect the new arrangements in relation to summary financial reports contained in sections 437 to 446 of the new CO (see paragraph 1.3 above). The provisions will also be aligned with other provisions on accounts and audits in Part 9 of the new CO, such as the statements to be made by the auditor in an auditor's report, the expanded coverage of directors' report, as well as the replacement of the terms "balance sheet" and "profit and loss account" with "statement of financial position" and "statement of comprehensive income" respectively.
- 1.6 Other than the above, we have generally preserved the existing arrangements in the proposed C(SFR)R as far as practicable.

### *The regulation in detail*

- 1.7 The proposed C(SFR)R comprises three parts, namely –
  - (a) *Part 1* of the regulation provides for the commencement of the regulation and the interpretation of the terms and expressions in the regulation.
  - (b) *Part 2* of the regulation provides for the information and statements that a summary financial report must contain.

The information must be derived from the reporting documents of the company to which the summary financial report relates.

- (c) *Part 3* of the regulation provides for the form and contents of a notification to members for ascertaining their intention to receive summary financial reports. It specifies the particulars to be included in, and the effect of, a notice of intent, a notice of revocation and a notice of cessation of statutory election. This Part also imposes requirements to provide prepaid postage on the card or document for sending a notice of intent.

- 1.8 A draft of the proposed C(SFR)R is attached at Annex 1 for views and comments.

## **Chapter 2**

### **Companies (Directors' Report) Regulation**

#### **("C(DR)R")**

#### *Present requirements*

- 2.1 Section 129D of the existing CO stipulates that a directors' report shall be attached to the company's balance sheet. The directors' report shall be approved by the board of directors and signed either by the chairman of the board meeting, or the company secretary, on behalf of the board.
- 2.2 A list of matters to be stated in a directors' report is prescribed in section 129D(3). These matters (some of which extend to subsidiary undertakings of the company as well) include the principal activities of the company, matters relating to shares issued, details about management contracts, arrangements and other contracts involving director's interest or benefits, donations and any other matters which are material for appreciation of the state of the company's affairs.

#### *Requirements under the new CO*

- 2.3 In the new CO, the provisions concerning the preparation and approval of a directors' report are restated in sections 388 and 391 respectively.
- 2.4 The requirements regarding the contents of a directors' report are provided for in various provisions in the new CO –
- (a) section 390 provides for the inclusion of information about the principal activities of the company;
  - (b) section 543 requires the disclosure of information on management contracts in a directors' report. The disclosure concerning contracts that involve director's interests will be required to be made in the notes to financial statements under section 383(1)(e) in accordance with the regulation to be made under section 452(2)<sup>5</sup>;

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<sup>5</sup> This refers to the Companies (Disclosure of Information about Benefits of Directors) Regulations which will be covered in the phase two consultation document.

- (c) section 470 imposes a new requirement for the disclosure in a directors' report of permitted indemnity provisions for the benefit of directors (including former directors) within a financial year;
- (d) a directors' report shall also consist of a new section on business review, the contents of which are provided in Schedule 5 to the new CO<sup>6</sup>; and
- (e) section 452(3) provides that any other matters to be contained in directors' report may be prescribed by subsidiary legislation.

### *The proposed subsidiary legislation*

2.5 We propose to make a piece of subsidiary legislation entitled the Companies (Directors' Report) Regulation ("C(DR)R") to provide for the information to be contained in the directors' report and to prescribe other requirements for the report.

2.6 The proposed C(DR)R will require a directors' report to include the following information –

- (a) directors' interests under certain arrangements entered into by the company or another company in the same corporate group : it is proposed to confine the directors' interests required to be included in a directors' report to those arrangements with the object of enabling directors of the company to acquire benefits by means of the acquisition of shares of a company or any other body corporate (*section 3*);
- (b) donations made by the company and its subsidiary undertakings : apart from restating the existing requirements, it is proposed that only donations of total amount of not less than \$10,000 (instead of currently \$1,000) by a company on its own or together with its subsidiary undertaking(s) will be required to be disclosed in a directors' report (*section 4*);
- (c) shares issued by the company : the existing requirement for particulars regarding the issue of shares to be included in a

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<sup>6</sup> Preparation of the business review section is not required if the company (i) prepares simplified reports; (ii) is a wholly owned subsidiary; or if (iii) a private company passes a special resolution to dispense with the need to do so.

directors' report is restated (*Section 5*) ;

- (d) equity-linked agreements entered into by the company : Considering that it is not uncommon nowadays for companies to issue investment products which are not shares but will end up with the issue of shares, we propose to expand the scope of disclosure to cover *equity-linked agreements* entered into by a company. A definition of the term equity-linked agreements, which aims to capture share options, employee share schemes and other relevant agreements, is also proposed in the draft C(DR)R (*Section 6*);
- (e) dividends recommended to be paid by the directors : this restates the existing requirement in section 129D of the existing CO (*section 7*);
- (f) reasons for the resignation of a director : if a director has resigned or declined to stand for re-election because of disagreement with the board of directors and gives the reason(s) in a notice, a directors' report shall contain a summary of such reasons so as to enhance transparency and corporate governance (*Section 8*) ; and
- (g) directors' permitted indemnity provision : this is added to correspond to the addition of a new disclosure requirement regarding permitted indemnity provisions in section 470 of the new CO as mentioned in paragraph 2.4(c) above so that failure to comply with the requirement will constitute an offence under section 388(6) or (7) of the new CO (*Section 9*).

2.7 We propose that items (e) and (f) shall not apply to companies that prepare simplified reports. Drawing reference to similar legislative requirements in the United Kingdom, we also propose not to retain the existing disclosure requirement concerning (i) the issue of debentures and (ii) arrangements for enabling directors to acquire benefits by means of the acquisition of debentures under section 129D(3)(h) and 129D(3)(k) of the existing CO.

*The Regulation in detail*

2.8 The proposed C(DR)R comprises nine sections –

- (a) *Sections 1 and 2* provide for the commencement of the regulation and the interpretation of the terms and expressions in the regulation respectively.
- (b) *Sections 3 to 9* provide for the information that is required to be contained in a directors' report, including the newly added requirements to provide information on equity-linked agreements entered into by the company, the reasons for the resignation of a director and the directors' permitted indemnity provision.

2.9 A draft of the provisions of the proposed C(DR)R is attached at Annex 2 for views and comments.

### **Chapter 3**

## **Companies (Specification of Names) Order**

### **(“C(SN)O”)**

#### *Present requirements*

- 3.1 Section 20 of the existing CO provides that prior approval is required should a company wish to register a name containing certain words or expressions.
- 3.2 The words and expressions, 24 in total, are set out in the Companies (Specification of Names) Order (Cap.32, subsidiary legislation E) (“Cap.32E”). The Chief Executive is empowered to make the Order pursuant to section 22B(1) of the existing CO.

#### *Requirements under the new CO*

- 3.3 The requirement for prior approval for company names containing certain words or expressions is reproduced in section 100(2)(b) of the new CO. Section 101 of the new CO empowers the Financial Secretary to make an Order specifying any word or expression for the above purpose.

#### *The proposed subsidiary legislation*

- 3.4 Pursuant to section 101 of the new CO, we propose to re-enact an Order that will serve the same purposes as Cap.32E. The title of the proposed Order will also be the Companies (Specification of Names) Order (“C(SN)O”)<sup>7</sup>.
- 3.5 It is proposed that ten of the terms in the Schedule to the existing Cap.32E will not be reproduced in the proposed C(SN)O as they are considered to be obsolete or no longer necessary. These include “Cooperative” and “合作”; “Building Society” and “建屋合作社”; “Mass Transit”, “Underground Railway”, “地下鐵路” and “地鐵”; and “Municipal” and “市政”.

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<sup>7</sup> For clarity of presentation, “Cap.32E” is used in this chapter to refer to the existing Order made under the existing CO; whereas “C(SN)O” is used to refer to the proposed Order to be made under the new CO.

3.6 Based on the feedback from relevant bureaux and departments, we also propose to add four words and expressions in the proposed C(SN)O –

- (a) “tourism board” and “旅遊發展局” are proposed to be added as there have been reported cases of unauthorised parties purporting to be the Hong Kong Tourism Board (“HKTB”) from time to time. The addition of both terms, coupled with retention of the existing terms “tourist association” and “旅遊協會”<sup>8</sup>, will serve as front protection against registration of company names resembling that of the HKTB.
- (b) “levy” and “徵費” are proposed to be added to guard against the registration of a company name that would suggest the company being a body responsible for any levies, such as the travel industry compensation levy.

#### *The Order in detail*

3.7 The proposed C(SN)O comprises two sections and a schedule. *Section 1* provides for the commencement of the Order. *Section 2* provides that a list of words and expressions for the purposes of section 100(2) of the new CO is at the Schedule to the Order. A total of 18 such words and expressions (14 of which are carried over from Cap.32E) are specified in *the Schedule*.

3.8 The list of words and expressions for the proposed C(SN)O is attached at [Annex 3](#) for views and comments.

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<sup>8</sup> The Hong Kong Tourism Board was re-constituted from (and has replaced) the Hong Kong Tourist Association in 2001.

## Chapter 4

### Companies (Non-Hong Kong Companies) Regulation ("C(NHKCs)R")

#### *Present requirements*

- 4.1 Non-Hong Kong companies ("NHKCs") are companies incorporated in a place outside Hong Kong that have established a place of business in Hong Kong. Part XI of the present CO contains provisions dealing with such companies in Hong Kong.
- 4.2 Sections 333, 334, 335 and 336 of the existing CO require an NHKC to –
- (a) apply to the Registrar of Companies ("Registrar") for registration within one month of the establishment of a place of business in Hong Kong and provide the particulars required for registration in a specified form, including the particulars of its directors, secretaries and authorized representative in Hong Kong (*section 333*);
  - (b) deliver certified copies of the instrument defining the constitution of the company, its certificate of incorporation, and the latest published accounts if the accounts are required to be published<sup>9</sup> ("supporting documents") (*section 333*);
  - (c) deliver annual returns (and a certified copy of the latest accounts if required) to the Registrar within 42 days after each anniversary of the date of registration (*sections 334 and 336*);
  - (d) provide certified translation of the supporting documents in English or Chinese where necessary (*sections 333 and 336*); and

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<sup>9</sup> An NHKC shall provide copies of its latest accounts if it is required by–

- (a) the law of the place of incorporation of the NHKC;
- (b) the law of any other place where the NHKC has registered as a company; or
- (c) the rules of any stock exchange or similar regulatory bodies in such jurisdictions

to publish its accounts or to deliver copies of its accounts to any person in whose office the accounts may be inspected by members of the public.

- (e) deliver returns in specified forms to the Registrar within one month of alteration of certain key particulars of the company, including the corporate name (*section 335*).
- 4.3 If the certificate of incorporation of an NHKC shows its name in either English or Chinese only, it may still apply to register its corporate names in both English and Chinese by complying with the requirements<sup>10</sup> currently set out in Companies Registry External Circular No. 1/2001.
- 4.4 Upon termination of the authorization of an authorized representative of an NHKC, section 333B requires the delivery of a notice in a specified form to the Registrar within one month of the date of the notice of the termination given by the NHKC or the authorised representative concerned. The notice to the Registrar shall be accompanied by a copy of the notice of termination (a certified translation shall be provided if necessary).
- 4.5 Under section 336A, an NHKC may also revise its published accounts if the accounts are found to be non-compliant with the laws of the jurisdiction or the rules of the stock exchange that require the publication of its accounts (see footnote 9). Section 20 of Cap.32N sets out the detailed requirements that apply to the revised accounts of the NHKC to be delivered to the Registrar. These provisions mirror the requirements for local companies.

#### *Requirements under the new CO*

- 4.6 Similar requirements relating to the registration of NHKCs are set out in Part 16 of the new CO. Section 776 requires a NHKC to apply for registration. Section 778 requires an NHKC to report the change of corporate name. Sections 788 and 789 provide that an NHKC must file annual returns and a certified copy of the latest published accounts with the Registrar. Section 790 provides that directors of a NHKC may revise the accounts. Section 791 stipulates the delivery of returns in the case of change of certain particulars of the company.

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<sup>10</sup> The NHKC must provide a certified translation in English or Chinese (as the case may be) of the relevant section of the certificate of incorporation (or its equivalent) which states the name of the company, the nature of the certificate and the date of issue of that certificate.

- 4.7 While the legal position is essentially the same as that in the existing CO, the detailed requirements are to be set out in subsidiary legislation. This is to facilitate the updating of these specific requirements to align with developments in overseas jurisdictions if necessary.

*The proposed subsidiary legislation*

- 4.8 We propose to make a consolidated piece of subsidiary legislation under sections 804 and 805 of the new CO, entitled the Companies (Non-Hong Kong Companies) Regulation (“C(NHKCs)R”), to prescribe the detailed requirements and matters in relation to NHKCs.
- 4.9 The proposed C(NHKC)R will provide the detailed requirements currently covered in sections 333, 333B, 334, 335 and 336 of the existing CO and Companies Registry External Circular No. 1/2001. It will also provide for requirements concerning the revision of accounts by NHKCs in section 336A of the existing CO and sections 20 to 21 of Cap.32N. The provisions will basically restate the current requirements.

*The Regulation in detail*

- 4.10 The proposed C(NHKCs)R comprises seven parts –
- (a) *Part 1* deals with preliminary matters, including the commencement of the Regulation and interpretation of the terms used.
  - (b) *Part 2* sets out the particulars and documents required for an application for registration of an NHKC.
  - (c) *Part 3* provides that certain applications or returns of a company may be accompanied by a certified translation of the relevant part of a certificate of incorporation, etc. showing the additional domestic names of an NHKC.
  - (d) *Part 4* sets out the documents required to accompany a notice of termination of authorization as an authorized representative of an NHKC.

- (e) *Part 5* sets out the particulars to be contained in, and the documents required to accompany, an annual return of an NHKC.
- (f) *Part 6* provides the requirements for delivery of revised accounts of an NHKC to the Registrar and the effect of the revision.
- (g) *Part 7* sets out the particulars of the changes of an NHKC (such as changes made to its constitution or directors) to be contained in a return required to be lodged under section 791 of the new CO. It also sets out the documents required to accompany the returns if there is any change to the NHKC's charter or constitution.

4.11 A draft of the proposed C(NHKCs)R is attached at Annex 4 for views and comments.

## Chapter 5

### Company Records (Inspection and Provision of Copies) Regulation ("CR(IPC)R")

#### *Present requirements*

- 5.1 The existing CO provides the rights to inspect (which under the common law includes a right to copy whilst inspecting) certain records which are required to be kept by companies under the CO. Copies of the records may also be provided in some cases<sup>11</sup>. Such records comprise registers, minutes, copies of resolutions and other documents required to be kept by the company under the existing CO.
- 5.2 While the requirements in respect of individual types of records vary, in general a company is required to (i) keep the records at its registered office or a place where the records are made up, (ii) make available the records for inspection upon request, and (iii) provide copies of the records upon request. Fees may be payable for the inspection or for the obtaining of the copies.
- 5.3 Apart from the above, the arrangement for inspection and provision of copies of records are subject to certain requirements, such as the time allowed for inspection<sup>12</sup>, the number of days within which a copy of the requested records should be sent, and the maximum fees payable<sup>13</sup>. In the existing CO, these requirements are prescribed individually for each type of record in the respective sections or schedules.

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<sup>11</sup> The rights to inspect and to obtain copies of individual types of records depend on the respective provisions. For example, the minutes of shareholders meetings are available for inspection but the minutes of directors meetings are not. There is no right to be provided with copies of the register of charges, registers of directors or secretary or management contracts whereas these records can be inspected on request.

<sup>12</sup> Usually not less than two hours on each business day.

<sup>13</sup> Usually \$1 or \$2 for each inspection and \$2 for every 100 words of a copy of a document.

### *Requirements under the new CO*

- 5.4 In the new CO, while the provisions concerning the rights to inspect and obtain copies of records are retained in the principal ordinance, the detailed provisions concerning the arrangement for inspection and provision of copies and related matters will be provided for by subsidiary legislation.
- 5.5 Part 12 of the new CO contains provisions that apply to all company records. The term “*company records*” is defined in section 654 to mean any register, index, agreement, memorandum, minutes or other document required by the new CO to be kept by a company, but does not include accounting records. Section 657 provides that detailed requirements concerning the inspection and provision of copies of company records may be prescribed by subsidiary legislation. In respect of non-Hong Kong companies (“NHKCs”), section 356 further provides that detailed requirements concerning the inspection and provision of copies of instruments creating charges and register of charges may be prescribed by subsidiary legislation.
- 5.6 The relocation of provisions concerning the detailed requirements from the principal ordinance to subsidiary legislation not only consolidates the arrangements for different types of company records, but also allows for the application of a consistent and comprehensive approach covering different types of company records, thus facilitating compliance by companies. This will also facilitate timely updating or refinement of the detailed arrangements in future to meet changing needs.
- 5.7 During the scrutiny of the Companies Bill by the Legislative Council, members were of the view that a company should be allowed to keep its company records at its registered office or any other place in Hong Kong. The new CO therefore reflects this and allows the company records to be kept at the registered office or a place prescribed by the subsidiary legislation, i.e. any place in Hong Kong.

### *The proposed subsidiary legislation*

- 5.8 We propose to enact one piece of subsidiary legislation, entitled the Company Records (Inspection and Provision of Copies) Regulation (“CR(IPC)R”), to provide for the matters referred to in sections 356

and 657 of the new CO.

5.9 The provisions in the existing CO only contain basic inspection rights without the detailed procedures. This results in uncertainty as to how these rights can be exercised. The proposed CR(IPC)R will introduce a comprehensive regime for the inspection of company records<sup>14</sup>. The key features of the regime are highlighted below –

- (a) any request for inspection of company records must be initiated by a written notice of inspection given to the company. Such a notice shall specify the type of records and the period covered, as well as the date and the time for inspection (*Section 5*);
- (b) the lead time for giving the notice of inspection is normally at least seven working days before the specified date of inspection. During the notice period for a general meeting, a class meeting or when any written resolution is being circulated, the lead time is shortened to at least two working days (*Section 6*);
- (c) the company must, within a prescribed timeframe, give a written notification to inform the person requesting inspection (“the requestor”) of the place for inspecting the company records (*Section 7*);
- (d) the company must allow at least two hours for the requestor to inspect the company records. The requestor may make copies of the company records in the course of inspection. The company is not required to assist the requestor in making these copies (*Sections 7 and 9*); and
- (e) the company must also inform the requestor when the record has been last updated in certain cases<sup>15</sup> (*Section 8*).

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<sup>14</sup> The proposed regime also applies to registered NHKCs in respect of inspection of instruments creating any charges required to be registered under the new CO and the register of charges. See also paragraph 5.5 above.

<sup>15</sup> This applies to the inspection of a register of debenture holders, a register of members, an index of members, a register of directors or a register of company secretaries.

- 5.10 We also propose to introduce provisions concerning the detailed arrangements for the request for and the provision of copies of company records<sup>16</sup>. Salient features are –
- (a) the timeframe within which the company must provide the requestor with a copy of the requested company records will be standardised as seven days (*Section 13*); and
  - (b) in line with section 655 of the new CO, which provides that company records may be kept in hard copy form or electronic form, a requestor may opt to obtain copies of the company records either in hard copy form or electronic form (if available) (*Section 14*).
- 5.11 The maximum fees payable for inspection of company records are proposed to be revised and standardised at \$50 for each inspection. As regards the provision of copies, the fees payable are proposed to be standardised at \$50 for each 100 entries in a register, or \$2 for each 100 words in the case of other documents (*Sections 11 and 16 and the Schedule*).
- 5.12 The penalty for contravention of the provisions in the regulation is proposed to be aligned at a fine of level 4 in most cases<sup>17</sup>.
- 5.13 In the case of non-compliance with a request for inspection or provision of copies, the requestor may apply to the Court to compel the company or relevant parties to (i) allow an immediate inspection; (ii) allow making of a copy during inspection; or (iii) provide copies of the records concerned.
- 5.14 For the registers of directors and company secretaries, sections 644 and 651 provide that a company may withhold the usual residential address and the identification number of a director, a reserve director or a company secretary. The proposed CR(IPC)R will prescribe the manner for withholding part of the identification number (*Section 17*).

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<sup>16</sup> Company records in this context include a trust deed or any other document securing the issue of debentures.

<sup>17</sup> This aligns with the offences in the principal ordinance for failing to keep company records. An exception is the failure to provide copies of the requested company records in the requested form in accordance with the relevant provisions. This attracts a fine at level 3 instead, which is the same as a similar offence under section 837 of the new CO.

5.15 To give effect to the suggestion mentioned in paragraph 5.7 above, it will be prescribed in the proposed CR(IPC)R that, where applicable, the place prescribed for the keeping of company records is any place in Hong Kong. It will also provide that the company may specify any one place in Hong Kong at which inspection of company records may take place.

### *The Regulation in detail*

5.16 The proposed CR(IPC)R is divided into five parts –

- (a) *Part 1* provides for commencement of the Regulation.
- (b) *Part 2* prescribes a place where a company may keep its company records. The place is prescribed to be any place in Hong Kong.
- (c) *Part 3* provides for the inspection of company records. Section 5 sets out the contents of a notice of inspection to be given by a requestor. Section 6 states the length of the notice period required for making an inspection.
- (d) Section 7 requires a company to notify the requestor of the place where the inspection may take place and to make the company records available for inspection. Section 8 imposes an obligation on a company to inform the requestor of the most recent date (if any) on which alterations were made to the company records.
- (e) Under section 9, a company is obliged to allow a person to make a copy of company records in the course of inspection.
- (f) *Part 4* provides for the obligation of a company to provide copies of company records (including trust deeds or any other document securing the issue of debentures). Section 13 states the period within which a company must provide such copies. Section 14 provides for the rights of a person requesting for a copy of company records to require the copy to be provided in electronic or hard copy form.
- (g) *Part 5* provides for the extent to which a company may withhold certain particulars mentioned in sections 644(1)(b) and 651(1) of the Ordinance from public inspection.

- (h) *The Schedule* prescribes the fees payable for an inspection or a copy of company records.
- (i) The requirements in paragraphs (b), (c), (d) and (e) apply to non-Hong Kong companies.

5.17 A draft of the proposed CR(IPC)R is attached at Annex 5 for views and comments.

## Chapter 6 Companies (Model Articles) Notice ("C(MA)N")

### *Present requirements*

- 6.1 Every company incorporated in Hong Kong under the existing CO should have a set of rules, known as its *articles of association* ("articles"), which regulate the internal management of the company (section 9 and 11 of the existing CO). The articles are the principal source of the shareholders' rights, containing the terms of the contract which govern their relationship with one another and with the company; and by which each member of the company is bound.
- 6.2 Standard articles of association have always been set out in the existing CO for companies that do not have their own special articles expressly excluding or modifying the statutory model. They are provided in Schedule 1 to the existing CO –
- (a) *Table A* provides the standard articles for companies limited by shares. Part 1 contains provisions applicable to a company limited by shares not being a private company whereas Part 2 is applicable to a private company limited by shares;
  - (b) *Tables C and D* provide the standard articles of association for companies limited by guarantee without a share capital and with a share capital<sup>18</sup> respectively; and
  - (c) *Table E* provides the standard articles for unlimited companies having a capital.

### *Requirements under the new CO*

- 6.3 Division 2 of Part 3 of the new CO provides for matters relating to articles. A company will continue to be required to have articles, printed in English or Chinese and divided into numbered paragraphs, to prescribe the regulations for the company. Under

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<sup>18</sup> Formation of companies limited by guarantee having a share capital has been prohibited since 2004.

the new CO, the memorandum of association is abolished. For existing companies, the provisions of their memorandum of association will be deemed to be articles; whereas for companies to be formed under the new CO, any applicable provisions previously required to be set out in the memorandum will now be set out in the articles<sup>19</sup>.

- 6.4 Section 78 of the new CO empowers the Financial Secretary to prescribe model articles (“MA”) for companies. A company may adopt any or all of the provisions of the MA as its articles. Section 80 clarifies that on the incorporation of a limited company, the MA prescribed for the type of company to which the company belongs and that are for the time being in force, so far as applicable, form part of the company’s articles if the company’s articles do not exclude or modify the MA.

### *The proposed MA*

#### *Overview and stylistic changes*

- 6.5 We intend to prescribe the MA for the following three types of companies –
- (a) public companies limited by shares;
  - (b) private companies limited by shares; and
  - (c) companies limited by guarantee.
- 6.6 The MA will be provided in separate schedules to a piece of proposed subsidiary legislation, entitled the Companies (Model Articles) Notice (“C(MA)N”). Compared with the tables in the existing CO, the proposed MA for (a) are similar in scope to those in Table A but with clearer layout and drafting. The MA for (b) are simplified and shorter version of (a). Those for (c) are a modified version of (b).
- 6.7 The MA have been substantially re-organised for clarity, coherence and ease of reference. Articles concerning similar matters will be grouped together under several broad headings. The broad topics will be covered in the following sequence –

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<sup>19</sup> The mandatory articles are specified in sections 81 to 85 of the new CO.

- (a) directors and company secretary, and in particular how directors are to make decisions;
  - (b) members' rights and the proceedings of general meetings;
  - (c) shares and distributions (not applicable to the MA for companies limited by guarantee); and
  - (d) miscellaneous matters, including communications to and by the company.
- 6.8 In terms of drafting, headings are provided for each article and the articles, as far as practicable, are presented in short paragraphs for enhanced readability.

*Schedule 1 – Public companies limited by shares*

- 6.9 The MA for public companies limited by shares are the most comprehensive. Major changes as compared to Table A in the existing CO are highlighted in the following paragraphs.
- 6.10 Regarding directors and how they make decisions, the proposed MA include the following new provisions or changes –
- (a) *Convening of directors' meetings* : the procedures for calling a directors' meeting and in what circumstances the directors will be deemed to be participating in such a meeting are amended, specifically to cater for dispersed meetings made possible through communication technologies (articles 7 and 8);
  - (b) *Quorum* : while the default quorum will remain to be two, we propose that the directors may no longer fix a quorum less than two (article 9);
  - (c) *Conflicts of interest* : several changes as follows –
    - (i) in addition to contracts and proposed contracts, the scope of declarable director's interests will be expanded to cover transactions, arrangements as well as proposed transactions and arrangements of material interest in line with section 536 of the new CO (article 15(1));

- (ii) in accordance with article 86(2) of Table A, a director shall in general not vote on matters where the director is interested. Table A nevertheless grant exemptions to allow a director to vote on a contract by a director to subscribe for or underwrite shares or debentures of the company, or a contract or arrangement with any other company where the director will have an interest only as an officer of the company or as the holder of shares or other securities of the company. We propose not to retain these exemptions such that directors would also be prohibited from voting on these matters (article 15(3));
- (iii) on the other hand, we propose to permit directors to vote on arrangements for the benefit of both employees and directors (including former directors) which are not more favourable to directors (article 15(3)(c));
- (iv) it will be specified that the director chairing a meeting will not be entitled to a casting vote if the director is not to be counted as participating in the decision-making process, e.g. when there is conflict of interest (article 13);
- (d) *Directors' written resolutions* : procedures for proposing written resolutions by directors are added (article 16);
- (e) *Further rules by directors* : it will be provided that directors may make any rules about how they make decisions collectively (article 21);
- (f) *Appointments and rotation of directors* : changes include –
  - (i) new articles are added to provide for the retirement and appointment of directors by rotation where a company has dispensed with the holding of annual general meetings pursuant to section 613 of the new CO (articles 22 and 31);
  - (ii) the manner to deal with a composite resolution for the appointment of multiple directors is now provided in the MA (article 24);

- (iii) the timeframe for the sending of the notices relating to proposed appointment of directors has been revised to at least seven days before the date of meeting (as compared to within three to 21 days in Table A) (article 23(10));
- (g) *Alternate directors* : articles concerning the appointment, removal, termination of alternate directors and their rights and responsibilities are added (articles 28 to 30);
- (h) *Directors' expenses* : Table A currently provides for reimbursement of expenses for attendance at meetings only. The ambit of reimbursable expenses is proposed to be broadened to cover expenses incurred in connection with the exercising of powers or discharging of responsibilities in relation to the company (article 27); and
- (i) *Insurance and indemnity* : relevant requirements in sections 468 and 469 of the new CO are reproduced in the model articles for completeness (articles 33 and 34).

6.11 Regarding the making of decisions by members at general meetings, the major changes, as compared to Table A, include –

- (a) *Notice of general meetings* : the requirements on the contents and timeframe of a notice have been revised to align with those provided for in the new CO (article 37);
- (b) *Non-members at general meetings* : non-members or members otherwise entitled to exercise the rights of members in relation to general meetings will be entitled to attend and speak at a general meeting if so permitted by the chairperson of the general meeting. One of the reasons for the proposal is to cater for the situation where directors are not necessarily shareholders of the company and accordingly do not have an automatic right to attend and speak at a general meeting (article 43);
- (c) *Poll* : it will be provided that a poll may be demanded in advance of a general meeting (article 47(1));
- (d) *Proxies* : arrangements relating to the appointment and revocation of proxies, as well as their effects, validity and the delivery of relevant notices will be elaborated (articles 51 to 55);

- (e) *Amendments to proposed resolutions* : an article is added to provide that resolutions may be amended, and to prescribe the manner for proposing amendments (article 56); and
- (f) *Class meetings* : subject to modifications, articles relating to general meetings apply to class meetings (article 58).

6.12 The articles concerning shares of the company generally follow those in Table A with some amendments such as –

- (a) *Fees* : Members will be entitled to be issued with share certificates on allotment or transfer their shares free-of-charge instead of being required to pay a small fee of \$5 (articles 62 and 79);
- (b) *Partly-paid shares* : the matters that may be prescribed in a call notice, the effects of forfeiture of a share and the procedures for forfeiture are set out in greater detail (articles 68, 75 and 76);
- (c) *Surrender of shares* : an article is added to provide for the surrender of shares which, when adopted in lieu of enforcement of a call payment, can simplify the settlement process (article 77); and
- (d) *Transfer and transmission of shares* : a company will have to return the instrument of transfer (together with the notice of refusal) which it refuses to register a transfer of shares unless in the case of suspected fraud. Provisions dealing with refusal of transfer by directors are modified to reflect the position in the new CO. Transmittees will also be bound by prior notices given to members in respect of shares to which such transmittees are entitled (articles 79 and 86).

6.13 Major changes relating to the articles concerning share capital, dividends and distributions are highlighted below –

- (a) *Payment of dividends and distributions* : payment by bank transfer is now expressly provided for in the MA (article 91);
- (b) *Deductions in respect of sum owed* : article 120 in Table A is considerably improved to provide for how dividends or other sums payable in respect of shares may be deducted for the lien enforcement against a member (article 92);

- (c) *Interest* : article 123 in Table A provides that dividends shall not bear interest. This is relaxed to permit a company not to pay interest unless otherwise provided by the terms of issue of shares or the provisions of shareholder agreements (article 93);
  - (d) *Unclaimed distributions and waiver* : articles are prescribed for dealing with unclaimed dividends and distributions, and for members to waive their entitlement (articles 94 and 96);
  - (e) *Capitalization of profits* : a company is currently permitted in Table A to capitalize its profits through issuing new shares. Following section 170 of the new CO, it will be clarified that a company may capitalize profits with or without an issue of new shares (article 97); and
  - (f) *No-par regime* : various provisions have been amended to reflect the abolition of par value of shares under the new CO regime.
- 6.14 In addition, the articles concerning communication to and by a company have been updated to align with the general principles in the new CO. On the other hand, the articles on accounts and audit in Table A will not be reproduced in the MA as such requirements have been set out in Part 9 of the new CO.

#### *Schedule 2 – Private companies limited by shares*

- 6.15 The MA for private companies limited by shares are considerably simpler, reflecting how small companies operate. Specifically, some of the articles relating to alternate directors, procedures for dealing with written resolutions, the retirement of directors by rotation, managing directors and partly-paid shares will be omitted.
- 6.16 For articles carried over from the MA for public companies limited by shares, they are largely identical save for modifications and adaptations as appropriate, such as providing for the case of sole directorship which is not permitted for public companies.

*Schedule 3 – Companies limited by guarantee*

- 6.17 Unlike the current Table C which only provides the forms of the memorandum and articles of association for a company limited by guarantee, the proposed C(MA)N will provide comprehensive MA for this type of company. However, the MA will be simple and concise taking into account the fact that most companies limited by guarantee in Hong Kong are small to medium in size.
- 6.18 In respect of matters relating to directors and general meetings, the coverage of MA for companies limited by guarantee will be comparable to those for private companies limited by shares.
- 6.19 Unique to this set of MA are articles 26 and 27, which provide for the admission and termination of membership of a company limited by guarantee.

*The Notice in detail*

- 6.20 The proposed C(MA)N comprises the following three schedules –
- (a) *Schedule 1* prescribes the MA for public companies limited by shares;
  - (b) *Schedule 2* prescribes the MA for private companies limited by shares; and
  - (c) *Schedule 3* prescribes the MA for companies limited by guarantee.
- 6.21 For these schedules, *Part 1* provides for interpretation of words and expressions. *Part 2* consists of articles relating to directors and company secretary. *Part 3* consists of articles on how members make decisions, particularly in general meetings. For Schedules 1 and 2, *Part 4* sets out the arrangements relating to shares and distributions. *Part 5* consists of miscellaneous articles. For Schedule 3, there are no articles on shares and distributions while the miscellaneous articles constitute *Part 4* instead.
- 6.22 The drafts of the proposed Schedules 1, 2 and 3 are attached at Annexes 6A, 6B and 6C for views and comments.

## Chapter 7

### Companies (Accounting Standards (Prescribed Body)) Regulation ("C(AS(PB))R")

#### *Present requirements*

- 7.1 Under the existing CO, the accounts of a company must meet the requirements as set out in Schedule 10 that comprise a detailed list of items to be disclosed. For companies which prepare their accounts in simplified form pursuant to section 141D, the disclosure requirements as set out in Schedule 11 apply to the balance sheet instead. The Chief Executive in Council may amend the Schedules from time to time.
- 7.2 The accounts of a company must also comply with the reporting standards issued by the Hong Kong Institute of Certified Public Accountants ("HKICPA")<sup>20</sup>, i.e. the Hong Kong Financial Reporting Standards ("HKFRSs"), the Hong Kong Financial Reporting Standard for Private Entities ("HKFRS for PE") or the Small and Medium-sized Entity Financial Reporting Standard ("SME- FRS").

#### *Requirements under the new CO*

- 7.3 As accounting practices and requirements are constantly evolving in line with international development, the disclosure requirements applicable to financial statements will be streamlined under the new CO regime. Specifically, to avoid potential conflict between Schedule 10 in the present CO and HKFRSs (and between Schedule 11 in the present CO and SME-FRS), both Schedules will be repealed while the reporting standards issued by the HKICPA will be given indirect statutory recognition through section 380(4)(b) and 380(8) of the new CO, which stipulates that the financial statements of a company must comply with the applicable statements of standard accounting practices ("*accounting standards*") issued or specified by a body prescribed by subsidiary

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<sup>20</sup> There is no express provision in the present CO which requires accounts to be prepared in compliance with the accounting standards. However, under the Professional Accountants Ordinance ("PAO"), Cap.50, certified public accountants (including auditors) are required to observe the professional standards of the HKICPA. Section 18A of the PAO provides that the Council of the HKICPA is responsible for promulgating accounting and auditing standards in Hong Kong.

legislation (i.e. the HKICPA). This displaces the need to stipulate the detailed disclosure requirements for financial statements in our legislation.

- 7.4 Schedule 4 to the new CO further stipulates that a company is required to state in its financial statements whether the financial statements have been prepared in accordance with the applicable accounting standards, and to give the particulars of, and the reasons for, any material departure from those standards<sup>21</sup>.

#### *The proposed subsidiary legislation*

- 7.5 Pursuant to section 452(1), we propose to make a piece of subsidiary legislation, entitled the Companies (Accounting Standards (Prescribed Body)) Regulation (“C(AS(PB))R”) to prescribe the HKICPA as the body for the issuance or specification of accounting standards.

#### *The Regulation in detail*

- 7.6 The proposed C(AS(PB))R comprises two sections. *Section 1* provides that the regulation will commence on the same day as the new CO. *Section 2* prescribes HKICPA as the body for the purpose of section 380(8)(a) of the new CO, which effectively means that financial statements must comply with the accounting standards issued or specified by the HKICPA.

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<sup>21</sup> Schedule 4 also retains a small number of public interest disclosure requirements derived from paragraphs 9(1)(c) and 15 of Schedule 10 and paragraph 5 of Schedule 11 of the existing CO.

# Annexes

附件

# **Annex 1**

**Companies (Summary Financial  
Reports) Regulation**

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# Companies (Summary Financial Reports) Regulation

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## **Companies (Summary Financial Reports) Regulation**

(Made by the Secretary for Financial Services and the Treasury under section 452(4) and (5) of the Companies Ordinance (28 of 2012))

### **Part 1**

#### **Preliminary**

##### **1. Commencement**

This Regulation comes into operation on the day appointed for the commencement of the Companies Ordinance (28 of 2012).

##### **2. Interpretation**

(1) In this Regulation—

***annual consolidated financial statements*** (周年綜合財務報表) means the consolidated statements required to be prepared under section 379(2) of the Ordinance;

***annual financial statements*** (周年財務報表) means the statements required to be prepared under section 379(1) of the Ordinance;

***auditor's report*** (核數師報告) means the report required to be prepared under section 405 of the Ordinance;

***directors' report*** (董事報告) means—

(a) the report required to be prepared under section 388(1) of the Ordinance; or

(b) the consolidated report required to be prepared under section 388(2) of the Ordinance;

***financial statements*** (財務報表) means annual financial statements or annual consolidated financial statements;

**potential member** (潛在成員), in relation to a company, means a person who is entitled, whether conditionally or unconditionally, to become a member of the company;

**reporting exemption** (提交報告的豁免) means a reporting exemption within the meaning of Division 2 of Part 9 of the Ordinance;

**summary financial report** (財務摘要報告) means a financial report prepared under section 439 of the Ordinance.

- (2) In this Regulation, a reference to the reporting documents for a financial year is a reference to all of the following—
- (a) the financial statements for the financial year;
  - (b) the directors' report for the financial year;
  - (c) the auditor's report on those financial statements.
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## Part 2

### Summary Financial Report

#### 3. Form and contents of summary financial report: general

- (1) A summary financial report for a financial year of a company must contain the information derived from the reporting documents for the financial year of the company.
- (2) A summary financial report for a financial year of a company must contain—
  - (a) all the information and particulars included in the company's statement of financial position and statement of comprehensive income;
  - (b) all the information and particulars included in the company's consolidated statement of financial position and consolidated statement of comprehensive income;
  - (c) all the information and particulars—
    - (i) included in the directors' report of the company as specified in section 390 of the Ordinance;
    - (ii) disclosed under the Companies (Directors' Report) Regulation (L.N. of 2012); and
    - (iii) disclosed under section [ ] of the Companies (Disclosure of Information about Benefits of Directors) Regulation (L.N. of 2012) in relation to a director's material interest in a contract.

**4. Form and contents of summary financial report: auditor's report and opinion**

- (1) If the auditor's report of a company contains a statement that, in the auditor's opinion, the financial statements for a financial year of the company have not been properly prepared in compliance with the Ordinance, and in particular, a true and fair view of the financial position and financial performance of the company has not been given, a summary financial report for that financial year must contain—
- (a) that statement;
  - (b) in the case of annual financial statements of a company that does not fall within the reporting exemption for that financial year, a statement that a true and fair view has not been given of—
    - (i) the financial position of the company as at the end of that financial year; and
    - (ii) the financial performance of the company for that financial year,as required by section 380(1) of the Ordinance; and
  - (c) in the case of annual consolidated financial statements of a company that does not fall within the reporting exemption for that financial year, a statement that a true and fair view has not been given of—
    - (i) the financial position of the company, and all its subsidiary undertakings, as a whole as at the end of that financial year; and
    - (ii) the financial performance of the company, and all its subsidiary undertakings, as a whole for that financial year,as required by section 380(2) of the Ordinance.

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- (2) If the auditor's report of a company contains a statement that, in the auditor's opinion, the information in a directors' report for a financial year for which the financial statements are prepared is not consistent with the financial statements for the financial year, a summary financial report for that financial year must contain that statement.
- (3) If the auditor's report for a financial year of a company contains—
- (a) a statement that, in the auditor's opinion—
    - (i) adequate accounting records have not been kept by the company; or
    - (ii) the company's financial statements are not in agreement with its accounting records in any material respect;
  - (b) a statement that the auditor has failed to obtain all the information or explanations that, to the best of the auditor's knowledge and belief, are necessary and material for the purpose of the audit;
  - (c) (if the financial statements of the company do not comply with section 383(1) of the Ordinance or the Companies (Disclosure of Information about Benefits of Directors) Regulation (L.N. of 2012)) a statement giving the particulars that are required to be, but have not been, contained in the financial statements as required by that section or that Regulation,
- a summary financial report for that financial year must contain that statement.
- (4) A summary financial report for a financial year of a company must—
- (a) contain a statement from the company's auditor as to whether the auditor's report for that financial year is

qualified or otherwise modified, or includes a reference to any matter to which the auditor drew attention by way of emphasis without qualifying the report; and

- (b) (if the auditor's report is qualified or otherwise modified) set out the full auditor's report and any further material necessary for the understanding of the qualification or other modification.
- (5) A summary financial report of a company must contain an opinion from the company's auditor as to whether—
- (a) the report is consistent with the reporting documents from which it is derived; and
  - (b) the report complies with the requirements of this Part.

**5. Form and contents of summary financial report: other matters**

- (1) A summary financial report for a financial year of a company must contain the particulars of all important events that—
- (a) have occurred since the end of that financial year; and
  - (b) have affected the company and (if applicable) the group of companies to which the company belongs.
- (2) A summary financial report for a financial year of a company must contain—
- (a) the information prescribed in the Companies (Disclosure of Information about Benefits of Directors) Regulation (L.N. of 2012), in relation to loans, quasi-loans and other dealings in favour of directors of a company that must be disclosed pursuant to section 383(1)(d) of the Ordinance; or
  - (b) the statement prescribed in that Regulation for the purpose of section 383(3) of the Ordinance.
- (3) For the purpose of subsection (2), that subsection is complied with if either of the following paragraph is complied with—

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- (a) if the information prescribed in the Companies (Disclosure of Information about Benefits of Directors) Regulation (L.N. of 2012) for the purpose of section 383(1)(d) of the Ordinance is contained in the notes to the financial statements for a financial year of a company, the summary financial report for that financial year of the company must include that information;
  - (b) if the information mentioned in section 383(1)(d) of the Ordinance is shown in a statement in the financial statements for a financial year of a company, in compliance with the requirements under the Companies (Disclosure of Information about Benefits of Directors) Regulation (L.N. of 2012) prescribed for the purpose of section 383(3) of the Ordinance, the summary financial report for that financial year of the company must include that statement.
- (4) In the case of a company that is not required to prepare annual consolidated financial statements, a summary financial report of the company must contain, in a prominent position (but not necessarily on the front cover) of the report, a statement to the effect that—
- (a) the report only gives a summary of the information and particulars contained in the reporting documents of the company from which it is derived; and
  - (b) a member of the company may obtain from the company free of charge a copy of the reporting documents if a request is made on or before the specified date.
- (5) In the case of a company that is required to prepare annual consolidated financial statements, a summary financial report of the company must contain, in a prominent position (but not necessarily on the front cover) of the report, a statement to the effect that—

- 
- (a) the report only gives a summary of the information and particulars contained in the reporting documents of the company and its subsidiary undertakings, from which the report is derived; and
  - (b) a member of the company may obtain from the company free of charge a copy of the reporting documents if a request is made on or before the specified date.
- (6) A summary financial report must contain, in a prominent position (but not necessarily on the front cover) of the report, a statement about how a member of the company may obtain from the company free of charge a copy of the reporting documents from which the report is derived pursuant to subsections (4) and (5).
- (7) A summary financial report must contain any other information necessary to ensure that the report is consistent with the reporting documents for the financial year in question.
- (8) In this section—
- specified date* (指明日期)—
- (a) if a company is required to hold an annual general meeting in accordance with section 610 of the Ordinance in respect of a financial year, means the day immediately before the expiry of a period of 6 months after the date of the annual general meeting on which a copy of the reporting documents is to be laid;
  - (b) if a copy of the reporting documents is laid at a general meeting subsequent to an annual general meeting, means the day immediately before the expiry of a period of 6 months after the date of the subsequent meeting; or
  - (c) if, by virtue of section 612(2) of the Ordinance, a company is not required to hold an annual general

meeting in accordance with section 610 of the Ordinance in respect of a financial year, means the day immediately before the expiry of a period of 6 months after the date on which a copy of the reporting documents is sent under section 430(3) of the Ordinance.

**6. Other requirements in relation to form of summary financial report**

Subject to the provisions of this Regulation, a company may specify any other requirements in relation to the form of its summary financial report that the company thinks fit.

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## Part 3

### Notification and Notice of Intent, etc.

**7. Form and contents of notification for seeking member's intent on receiving summary financial report**

- (1) For the purposes of section 442(2) of the Ordinance, the notification to be sent by a company to a member or potential member must—
  - (a) state the financial year to which the notification relates; and
  - (b) include a general statement about the contents and function of a summary financial report.
- (2) The notification must contain a statement to the effect that a summary financial report only gives a summary of the information and particulars contained in the reporting documents from which it is derived.
- (3) The notification must contain a statement to the effect that the person to whom the notification is addressed may send a notice of intent to the company informing the company as to whether—
  - (a) the person wishes to receive from the company a copy of the reporting documents—
    - (i) in hard copy form; or
    - (ii) (if the company has given an option to request the copy to be sent in electronic form or by making it available on a website) in electronic form or by making it available on the company's website;

- 
- (b) the person wishes to receive from the company, instead of a copy of the reporting documents specified in paragraph (a), a copy of the summary financial report—
    - (i) in hard copy form; or
    - (ii) (if the company has given an option to request the copy to be sent in electronic form or by making it available on a website) in electronic form or by making it available on the company’s website; or
  - (c) the person does not wish to receive any copies of the documents and report specified in paragraphs (a) and (b) at all.
- (4) The notification must contain a statement to the effect that a notice of intent may be in the form and sent in the manner that is specified in the notification.
  - (5) The notification must contain a statement that if a notice of intent is to have effect in relation to the financial year to which the notification relates, the card or document mentioned in section 10 must be received by the company at least 28 days before the specified date.
  - (6) The notification must contain a statement about the effect of a notice of intent for a financial year, that is—
    - (a) if the notice of intent is received by the company at least 28 days before the specified date, the notice of intent has effect in relation to that financial year, and every subsequent financial year, until it ceases to have effect by virtue of section 442(7) of the Ordinance;
    - (b) if the notice of intent is received by the company less than 28 days before the specified date—
      - (i) the notice of intent has effect in relation to every financial year subsequent to that financial year

- until it ceases to have effect by virtue of section 442(7) of the Ordinance; and
- (ii) the member or potential member who gives the notice of intent is to be regarded as—
    - (A) having requested a copy of the summary financial report for the financial year; and
    - (B) having requested the summary financial report to be sent by the company in hard copy form; and
  - (c) if a member or potential member does not give the company a notice of intent in response to the notification before the specified date, the member or potential member is to be regarded as—
    - (i) having requested a copy of the summary financial report for the financial year and every subsequent financial year; and
    - (ii) having requested the summary financial report to be sent by the company in hard copy form,until the statutory election ceases to have effect by virtue of section 442(9) of the Ordinance.

(7) In this section—

*specified date* (指明日期) means the first date on which a copy of the reporting documents for a financial year is sent to a member under section 430 of the Ordinance.

**8. Additional provisions as to contents of notification under section 7**

- (1) The notification under section 7 must contain—
  - (a) a statement specifying that a notice of intent may be revoked by giving the company a written notice of revocation under section 442(7)(b) of the Ordinance;

- (b) a statement specifying the particulars of the notice of revocation required under section 443(1), (2) and (4) of the Ordinance; and
  - (c) a statement specifying the effect of the notice of revocation in relation to the financial year to which it relates, that is—
    - (i) if the notice of revocation is received by the company at least 28 days before the specified date, the notice has effect in relation to that financial year, and every subsequent financial year;
    - (ii) if the notice of revocation is received by the company less than 28 days before the specified date, the notice has effect in relation to every financial year subsequent to that financial year.
- (2) The notification under section 7 must contain—
- (a) a statement specifying that if a notice of intent is not given to the company before the date specified in section 442(8) of the Ordinance, a written notice of cessation of statutory election may be given to the company under section 442(9)(b) of the Ordinance;
  - (b) a statement specifying the particulars of the notice of cessation of statutory election required under section 443(3) of the Ordinance; and
  - (c) a statement specifying the effect of the notice of cessation of statutory election in relation to the financial year to which it relates, that is—
    - (i) if the notice of cessation of statutory election is received by the company at least 28 days before the specified date, the notice has effect in relation to that financial year, and every subsequent financial year;

- (ii) if the notice of cessation of statutory election is received by the company less than 28 days before the specified date, the notice has effect in relation to every financial year subsequent to that financial year.

(3) In this section—

*specified date* (指明日期) means the first date on which a copy of the reporting documents for the financial year to which a notice of revocation or a notice of cessation of statutory election (as the case may be) relates is sent to a member under section 430 of the Ordinance.

**9. Company may include other information in notification**

Sections 7 and 8 do not prohibit a company from including in its notification any other information that the company thinks fit.

**10. Notification attached with card or document**

A notification under section 7 must have attached to it a card or document that may be used by a member or potential member for the purposes of sending a notice of intent to the company.

**11. Postage**

- (1) The card or document mentioned in section 10 must be provided with postage prepaid that is sufficient to enable a member or potential member to use it for sending in Hong Kong a notice of intent to the company without having to pay the relevant postage fee if—
  - (a) a notification under section 7 is in paper form; and
  - (b) the address of the member or potential member to which the notification is to be sent is an address in Hong Kong.
- (2) Despite subsection (1), the company is not required to pay the postage in respect of the return of the card or document if—

- (a) the address of a member to which a notification is sent, in accordance with the company's articles, is not within Hong Kong; or
- (b) the address of a potential member to which a notification is sent, in accordance with the contractual provisions under which the potential member is entitled (conditionally or unconditionally) to become a member, is not in Hong Kong.

Secretary for Financial Services and  
the Treasury

2012

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# **Annex 2**

**Companies (Directors' Report)  
Regulation**

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## **Companies (Directors' Report) Regulation**

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## Companies (Directors' Report) Regulation

(Made by the Secretary for Financial Services and the Treasury under section 452(3) of the Companies Ordinance (28 of 2012))

### 1. Commencement

This Regulation comes into operation on the day appointed for the commencement of the Companies Ordinance (28 of 2012).

### 2. Interpretation

(1) In this Regulation—

**annual consolidated financial statements** (周年綜合財務報表) means the consolidated statements required to be prepared under section 379(2) of the Ordinance;

**directors' report** (董事報告) means—

- (a) the report required to be prepared under section 388(1) of the Ordinance; or
- (b) the consolidated report required to be prepared under section 388(2) of the Ordinance;

**financial statements** (財務報表) means annual financial statements or annual consolidated financial statements;

**holding company** (控股公司) means a holding company within the meaning of section 13 of the Ordinance;

**reporting exemption** (提交報告的豁免) means a reporting exemption within the meaning of Division 2 of Part 9 of the Ordinance;

**subsidiary undertaking** (附屬企業) means a subsidiary undertaking within the meaning of section 16 of and Schedule 1 to the Ordinance.

- (2) Sections 5, 6, 7, 8 and 9 have effect in relation to a directors' report as if a reference to the company were a reference to—
  - (a) the company; and
  - (b) the subsidiary undertakings included in the annual consolidated financial statements for the financial year.

### **3. Directors' interests**

- (1) The directors' report of a company for a financial year must contain a statement that complies with subsection (3) if at the end of the financial year there subsists arrangements—
  - (a) to which the company or the company's subsidiary undertaking or holding company or a subsidiary undertaking of the company's holding company is a party; and
  - (b) whose objects are, or one of whose objects is, to enable directors of the company to acquire benefits by means of the acquisition of shares in the company or any other body corporate.
- (2) The directors' report of a company for a financial year must contain a statement that complies with subsection (3) if at any time in the financial year there have subsisted arrangements—
  - (a) to which the company or the company's subsidiary undertaking or holding company or a subsidiary undertaking of the company's holding company was a party; and
  - (b) whose objects were, or one of whose objects was, to enable directors of the company to acquire benefits by means of the acquisition of shares in the company or any other body corporate.
- (3) The statement must—

- (a) explain the effect of the arrangements referred to in subsection (1) or (2); and
  - (b) give the names of the persons who at any time in that financial year were directors of the company and held, or whose nominees held, shares acquired in pursuance of the arrangements.
- (4) In this section—  
*shares* (股份) has the meaning given by section 1 of Schedule 1 to the Ordinance.

#### 4. Donations

- (1) If a company (not being the wholly owned subsidiary of a company incorporated in Hong Kong)—
- (a) has no subsidiary undertakings; and
  - (b) has in a financial year made donations for charitable or other purposes to a total amount of not less than \$10,000,
- the directors' report of the company for the financial year must state the total amount of those donations.
- (2) If—
- (a) a company (not being the wholly owned subsidiary of a company incorporated in Hong Kong) has subsidiary undertakings; and
  - (b) the company either on its own or together with its subsidiary undertakings have in a financial year made donations for charitable or other purposes to a total amount of not less than \$10,000,
- the directors' report of the company for the financial year must state the total amount of those donations.

- (3) Despite subsections (1) and (2), the directors' report for a financial year need not comply with those subsections if the company falls within the reporting exemption for the financial year.
- (4) The Financial Secretary may, by notice published in the Gazette, amend the amount of donations specified in subsections (1) and (2).
- (5) For the purposes of subsections (1) and (2)—  
***wholly owned subsidiary*** (全資附屬公司) is to be construed in accordance with section 357(3) of the Ordinance.

## 5. Shares issued

If, in any financial year of a company, the company has issued any shares, the directors' report of the company for the financial year must state—

- (a) the reason for making the issue;
- (b) the classes of shares issued; and
- (c) for each class of shares, the number of shares issued and the consideration received by the company for the issue.

## 6. Equity-linked agreements

- (1) If, in any financial year of a company, the company has entered into an equity-linked agreement, the directors' report of the company for the financial year must state—
  - (a) the reason for entering into the agreement;
  - (b) the nature and terms of the agreement including, where applicable—
    - (i) the conditions that must be met before the company issues any shares;

- (ii) the conditions that must be met before a third party may require the company to issue any shares; and
    - (iii) any monetary or other consideration that the company has received or will receive under the agreement;
  - (c) the classes of shares issued under the agreement; and
  - (d) for each class of shares, the number of shares that have been issued under the agreement.
- (2) If, at the end of a financial year of a company, there subsists an equity-linked agreement entered into by the company, the directors' report of the company for the financial year must state—
- (a) the classes of shares that may be issued under the agreement;
  - (b) for each class of shares, the number of shares that may be issued under the agreement;
  - (c) any monetary or other consideration that the company has received or will receive for the issue of shares; and
  - (d) any other conditions or terms that remain to be met before the shares are issued.
- (3) In this section—
- equity-linked agreement*** (股票掛鈎協議)—
- (a) means—
    - (i) an agreement that will or may result in the company issuing shares; or
    - (ii) an agreement requiring the company to enter into the agreement specified in subparagraph (i); and
  - (b) includes—
    - (i) an option to subscribe for shares;

- (ii) an agreement for the issue of securities that are convertible into, or entitle the holder to subscribe for, shares in the company;
- (iii) an employee share scheme; and
- (iv) a share option scheme; but
- (c) does not include—
  - (i) an agreement to subscribe for shares in a company that is entered into pursuant to the company's offer of its shares to the public; and
  - (ii) an agreement to subscribe for shares in a company that is entered into pursuant to an offer made to the members of the company in proportion to their shareholdings;

*offer* (要約) includes an invitation to the public to subscribe for shares of a company.

#### **7. Recommended dividend**

- (1) The directors' report of a company must state the amount (if any) that the directors recommend should be paid by way of dividend for a financial year.
- (2) Subsection (1) does not apply in respect of a company that falls within the reporting exemption for the financial year.

#### **8. Reasons for resignation etc.**

- (1) If a director of a company—
  - (a) has resigned or given notice declining to stand for re-election during a financial year because of disagreement with the board of directors of the company; and
  - (b) has given a notice of the reasons for disagreement to the company,

the directors' report of the company must contain a summary of the reasons for disagreement with the board of directors of the company.

- (2) Subsection (1) does not apply in respect of a company that falls within the reporting exemption for the financial year.

## 9. Permitted indemnity provision

- (1) If, when a directors' report of a company is approved in a financial year in accordance with section 391(1)(a) of the Ordinance, a permitted indemnity provision is in force for the benefit of one or more directors of the company, or of its associated company, the directors' report for that financial year must contain a statement that the permitted indemnity provision is in force as required by section 470 of the Ordinance.
- (2) If, at any time during a financial year of a company, a permitted indemnity provision was in force for the benefit of one or more persons who were then directors, of the company, or of its associated company, the directors' report for that financial year must contain a statement that the permitted indemnity provision was in force as required by section 470 of the Ordinance.
- (3) In this section—

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

  - (a) provides for indemnity against liability incurred by a director of the company to a third party; and
  - (b) meets the requirements specified in section 469(2) of the Ordinance;

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

Secretary for Financial Services and  
the Treasury

2012

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# **Annex 3**

**List of Words and Expressions for  
the Proposed Companies  
(Specification of Names) Order**

Annex 3 –List of Words and Expressions for the Proposed  
Companies (Specification of Names) Order

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chamber of commerce

kaifong

levy

savings

tourism board

tourist association

trust

trustee

受託

受託人

信託

旅遊協會

旅遊發展局

商會

街坊

徵費

儲蓄

總商會

# **Annex 4**

**Companies (Non-Hong Kong  
Companies) Regulation**

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# Companies (Non-Hong Kong Companies) Regulation

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## **Companies (Non-Hong Kong Companies) Regulation**

(Made by the Secretary for Financial Services and the Treasury under sections 804 and 805 of the Companies Ordinance (28 of 2012))

### **Part 1**

#### **Preliminary**

**1. Commencement**

This Regulation comes into operation on the day appointed for the commencement of the Companies Ordinance (28 of 2012).

**2. Interpretation**

In this Regulation—

*authorized representative* (獲授權代表) has the meaning given by section 774(1) of the Ordinance;

*certified copy* (經核證副本) has the meaning given by section 775 of the Ordinance;

*certified translation* (經核證譯本) has the meaning given by section 4 of the Ordinance;

*domestic name* (本土名稱) has the meaning given by section 774(1) of the Ordinance;

*place of business* (營業地點) has the meaning given by section 774(1) and (3) of the Ordinance;

*responsible person* (責任人) has the meaning given by section 3 of the Ordinance.

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## Part 2

### Particulars and Documents Required for Application for Registration

#### 3. Particulars to be contained in application for registration

- (1) The particulars, prescribed for the purposes of section 776(4)(b) of the Ordinance to be contained in an application for registration of a non-Hong Kong company, are—
  - (a) the name of the company;
  - (b) the place of incorporation of the company;
  - (c) the date on which the company established its place of business in Hong Kong;
  - (d) with respect to each director of the company—
    - (i) the director's date of appointment;
    - (ii) if the director is a natural person—
      - (A) the present forename and surname, former forename or surname (if any), and aliases (if any);
      - (B) the usual residential address and a correspondence address; and
      - (C) the number of the identity card (if any) or, if the director does not have an identity card, the number and issuing country of any passport held by the director; and
    - (iii) if the director is a body corporate, its corporate name, registered number in Hong Kong (if any) and the address of its registered or principal office;

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- (e) with respect to each company secretary of the company (or, if there are joint company secretaries, with respect to each of them)—
    - (i) the company secretary's date of appointment;
    - (ii) if the company secretary is a natural person—
      - (A) the present forename and surname, former forename or surname (if any), and any aliases (if any);
      - (B) the correspondence address; and
      - (C) the number of the identity card (if any) or, if the company secretary does not have an identity card, the number and issuing country of any passport held by the company secretary; and
    - (iii) if the company secretary is a body corporate, its corporate name, registered number in Hong Kong (if any) and the address of its registered or principal office;
  - (f) the address of—
    - (i) the principal place of business of the company in Hong Kong;
    - (ii) the principal place of business (if any) of the company in the place of its incorporation; and
    - (iii) the registered office (or its equivalent) of the company in the place of its incorporation.
- (2) The details of a proposed authorized representative, required for the purposes of section 776(4)(c) of the Ordinance to be contained in an application for registration of a non-Hong Kong company, are—
- (a) the name and address of the authorized representative;

- (b) the date on which the authorized representative was authorized; and
  - (c) if the authorized representative is a natural person, the number of the identity card (if any), or if the authorized representative does not have an identity card, the number and issuing country of any passport held by the representative.
- (3) For the purposes of subsection (1)(e), if all the partners in a firm are joint company secretaries of a non-Hong Kong company, the name and principal office of the firm may be substituted for the particulars mentioned in that subsection.
- (4) In this section—
- forename* (名字) includes a Christian or given name;
- 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;
- surname* (姓氏), for a person usually known by a title different from the person's surname, means that title.
- (5) For the purposes of this section, a correspondence address must not be a post office box number.
- (6) In this section, a reference to a former forename or surname is to be construed in accordance with sections 643(6) and 650(5) of the Ordinance.

#### 4. Documents to accompany application for registration

- (1) The documents, prescribed for the purposes of section 776(4)(d) of the Ordinance to accompany an application for registration of a non-Hong Kong company, are—

- (a) a certified copy of the charter, statutes or memorandum (including articles, if any) of the company or any other instruments defining the company's constitution or, if the charter, statutes, memorandum or the other instruments is in a language other than English or Chinese, a certified translation of the charter, statutes, memorandum or instruments in English or Chinese;
- (b) a certified copy of the company's certificate of incorporation and, if the certificate is in a language other than English or Chinese, a certified translation of the certificate in English or Chinese;
- (c) if the law of the place of incorporation of the company requires the company to publish its accounts or to deliver copies of its accounts to any person in whose office they may be inspected as of right by members of the public, a certified copy of the latest published accounts of the company that comply with that law;
- (d) if—
  - (i) the law of the place of incorporation of the company does not impose the requirement referred to in paragraph (c); but
  - (ii) the law of any other jurisdiction where the company is registered as a company, or the rules of any stock exchange or similar regulatory bodies in that jurisdiction impose that requirement,  
a certified copy of the latest published accounts of the company that comply with any of the laws or rules that may be chosen by the company; and
- (e) if none of the following laws or rules impose the requirement referred to in paragraph (c), a statement in the specified form specifying that fact—

- (i) the law of the place of incorporation of the company;
    - (ii) the law of any other jurisdiction where the company is registered as a company, or the rules of any stock exchange or similar regulatory bodies in that jurisdiction.
  - (2) For the purposes of subsection (1)(b), if it is shown to the satisfaction of the Registrar that it is not the practice under the law of the place where a non-Hong Kong company claims to be incorporated to issue a certificate of incorporation, the company must deliver to the Registrar other evidence of incorporation that the Registrar considers sufficient.
  - (3) For the purposes of subsection (1)(c) and (d), if the accounts required to be provided are in a language other than English or Chinese, the company must deliver to the Registrar a certified translation of the accounts in English or Chinese for registration instead of the certified copy of the accounts in the original language.
  - (4) For the purposes of subsection (1)(c) and (d), if—
    - (a) a non-Hong Kong company has been incorporated for less than 18 months prior to the date of delivery of the specified form required under section 776(4)(a) of the Ordinance; and
    - (b) the accounts that the company is required to publish have not been made up,a statement in the specified form specifying that fact must be delivered to the Registrar for registration instead of the certified copy of the latest published accounts of the company.
-

## Part 3

### Certified Translation of Domestic Name

#### 5. Contents of certified translation for purposes of sections 777(2)(b) and 779(3)(b) of the Ordinance

- (1) For the purposes of section 777(2)(b) of the Ordinance, if the Registrar allows a name which is a certified translation of a domestic name of a non-Hong Kong company to be registered as an additional corporate name, the application referred to in that section must be accompanied by a certified translation, in English or Chinese, of the relevant part of the company's certificate of incorporation (or its equivalent) which states—
    - (a) the domestic name of the company;
    - (b) the nature of that certificate; and
    - (c) the date of issue of that certificate.
  - (2) For the purposes of section 779(3)(b) of the Ordinance, if the Registrar allows a name which is a certified translation of a new domestic name of a registered non-Hong Kong company to be registered as an additional corporate name, the return referred to in that section must be accompanied by a certified translation, in English or Chinese, of the relevant part of the company's certificate of change of name (or its equivalent) that states—
    - (a) the new domestic names of the company;
    - (b) the nature of that certificate; and
    - (c) the date of issue of that certificate.
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## **Part 4**

### **Notice of Termination of Authorized Representative**

#### **6. Documents to accompany notice of termination**

The document, prescribed for the purposes of section 787(5)(b) of the Ordinance to accompany a notification under that section, is—

- (a) a copy of the notice of termination of authorization as an authorized representative of a registered non-Hong Kong company, given to the company or the authorized representative, as the case may be; or
  - (b) a certified translation of the notice of termination in English or Chinese if it is in a language other than English or Chinese.
-

## Part 5

### Particulars and Documents Required in respect of Annual Return

#### 7. Particulars to be contained in annual return

- (1) The particulars, prescribed for the purposes of section 788(2)(b) of the Ordinance to be contained in an annual return of a registered non-Hong Kong company, are—
  - (a) the date of the annual return, which must be the date of the most recent anniversary of the date of registration of the company under—
    - (i) Part 16 of the Ordinance; or
    - (ii) Part XI of the predecessor Ordinance;
  - (b) the place of incorporation of the company;
  - (c) the name of the company in Hong Kong;
  - (d) the date of registration of the company and its registered number under—
    - (i) Part 16 of the Ordinance; or
    - (ii) Part XI of the predecessor Ordinance;
  - (e) the address of the principal place of business of the company in Hong Kong;
  - (f) the respective addresses of the principal place of business (if any) and the registered office (or its equivalent) of the company in the place of its incorporation;
  - (g) all the particulars with respect to each person who, at the date of the annual return, is a director, the company secretary (or, if there are joint company secretaries, with

- respect to each of them) or an authorized representative of the company that are required by this Regulation and the Ordinance to be delivered to the Registrar for registration;
- (h) for a company to which section 789 of the Ordinance applies, a statement specifying that the latest published accounts of the company are delivered to the Registrar under that section together with the annual return;
  - (i) for a company to which section 789 of the Ordinance does not apply, a statement specifying that fact;
  - (j) if the company has been incorporated for less than 18 months prior to the date of delivery of the annual return under section 788(1) of the Ordinance, and the accounts of the company that are required to be published have not been made up, a statement in the specified form specifying that fact;
  - (k) if the company has a share capital, the particulars relating to the authorized share capital (if any) and issued share capital (or their equivalents) of the company; and
  - (l) the particulars and the total amount of the indebtedness of the company in respect of all mortgages and charges that are required to be registered with the Registrar under—
    - (i) Part 8 of the Ordinance; or
    - (ii) Part III of the predecessor Ordinance.
- (2) For the purposes of subsection (1)(g), if all the partners in a firm are joint company secretaries of a registered non-Hong Kong company, the name and principal office of the firm may be substituted for the particulars mentioned in that subsection.

- 
- (3) If a director is a natural person, the particulars as required under subsection (1)(g) do not include—
- (a) an address contained in the register of directors as the usual residential address of the director; and
  - (b) the full number of the identity card or passport of the director.
- (4) If a company secretary is a natural person, the particulars as required under subsection (1)(g) do not include the full number of the identity card or passport of the company secretary.
- (5) If an authorized representative is a natural person, the particulars as required under subsection (1)(g) do not include the full number of the identity card or passport of the authorized representative.
-

## Part 6

### Revision of Accounts under Section 790 of the Ordinance

#### 8. Interpretation

(1) In this Part—

**original accounts** (原有帳目) means the accounts that are the subject of revision by revised accounts;

**regulatory requirement** (規管性規定) has the meaning given by section 790(2) of the Ordinance;

**revised accounts** (經修改帳目) means—

- (a) for a revision under section 790 of the Ordinance by replacement, the accounts replacing the original accounts for the purposes of the revision; or
- (b) for a revision under that section by a supplementary note, the original accounts together with the supplementary note for the purposes of the revision.

(2) In this Part—

- (a) a reference to revision of any accounts of a registered non-Hong Kong company by replacement means revision by the preparation of a replacement set of accounts in substitution for the accounts of the company; and
- (b) a reference to revision of any accounts of a registered non-Hong Kong company by a supplementary note means revision by the preparation of a note indicating revisions made to the accounts of the company.

- (3) This Part is not to be construed as affecting any right accrued, or any obligation or liability incurred, in relation to any original accounts of a registered non-Hong Kong company.

**9. Company to deliver revised accounts to Registrar**

- (1) If the directors of a registered non-Hong Kong company have caused the accounts of the company to be revised under section 790 of the Ordinance, the company must comply with subsection (2) or (3) within 28 days after whichever is the earlier of the following—
- (a) the date when the revised accounts of the company are published;
  - (b) the date when copies of the revised accounts of the company are delivered to any person in whose office the revised accounts may be inspected as of right by members of the public.
- (2) In the case of a revision of the original accounts of a registered non-Hong Kong company by replacement, the company must—
- (a) cause to be made in a prominent position in the revised accounts of the company—
    - (i) a statement specifying that the revised accounts replace the original accounts of the company for the financial year specified in the statement; and
    - (ii) a statement specifying—
      - (A) the respects in which the original accounts did not, as appears to the directors of the company, comply with the regulatory requirement; and

- 
- (B) the material revisions to the original accounts that are made under section 790 of the Ordinance; and
- (b) deliver to the Registrar for registration—
- (i) a certified copy of the revised accounts that comply with the regulatory requirement; or
  - (ii) if the revised accounts are in a language other than English or Chinese, a certified translation of the revised accounts, in English or Chinese, that comply with the regulatory requirement.
- (3) In the case of a revision of the original accounts of a registered non-Hong Kong company by a supplementary note, the company must—
- (a) cause to be made in a prominent position in the supplementary note a statement specifying that the note—
    - (i) revises in certain respects the original accounts of the company; and
    - (ii) is to be treated as forming part of the original accounts; and
  - (b) deliver to the Registrar for registration—
    - (i) a certified copy of the supplementary note that complies with the regulatory requirement; or
    - (ii) if the supplementary note is in a language other than English or Chinese, a certified translation of the supplementary note, in English or Chinese, that complies with the regulatory requirement.
- (4) If a registered non-Hong Kong company contravenes subsection (1), (2) or (3), the company, every responsible person of the company, and every agent of the company who authorizes or permits the contravention, commits 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.

- (5) If a person is convicted of an offence under subsection (4), 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.
- (6) A person who contravenes an order under subsection (5) 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.

**10. Effect of revision after delivery of revised accounts to Registrar**

- (1) If a registered non-Hong Kong company complies with section 9 with respect to any of its revised accounts, Part 16 of the Ordinance has effect with respect to the revised accounts as if the revised accounts were, as from the date of their registration with the Registrar, the accounts of the company in place of the original accounts.
  - (2) Without limiting subsection (1), if, as at the date of registration of the revised accounts of a registered non-Hong Kong company for a financial year with the Registrar, section 789 of the Ordinance has yet to be complied with, the revised accounts are, as from that date, the accounts of the company for that financial year for the purposes of that section.
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## Part 7

### Change of Registered Particulars

**11. Particulars to be contained in a return under section 791 of the Ordinance**

The particulars, prescribed for the purposes of section 791(3)(b) of the Ordinance to be contained in a return under that section in relation to a registered non-Hong Kong company, are—

- (a) the particulars of the company specified in section 791(2) of the Ordinance that have been changed;
- (b) the new particulars after the change; and
- (c) the date on which the change is made.

**12. Documents to accompany a return under section 791 of the Ordinance**

If there is any change in the instruments specified in section 791(2)(a) of the Ordinance in relation to a registered non-Hong Kong company, the documents, prescribed for the purposes of section 791(3)(c) of the Ordinance to accompany a return under that section, are—

- (a) a certified copy of the charter, statutes or memorandum (including articles, if any) of the company or any other instruments defining the company's constitution after the change; or
- (b) if the charter, statutes or memorandum (including articles, if any) of the company or any other instruments defining the company's constitution is in a language other than English or Chinese, a certified translation of the charter, statutes, memorandum or instruments in English or Chinese.

Secretary for Financial Services and  
the Treasury

2012

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# **Annex 5**

**Company Records (Inspection and  
Provision of Copies) Regulation**

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# **Company Records (Inspection and Provision of Copies) Regulation**

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## **Company Records (Inspection and Provision of Copies) Regulation**

(Made by the Financial Secretary under sections 356 and 657 of the  
Companies Ordinance (28 of 2012))

### **Part 1**

#### **Preliminary**

**1. Commencement**

This Regulation comes into operation on the day appointed for the commencement of the Companies Ordinance (28 of 2012).

**2. Interpretation**

In this Regulation—

*company records* (公司紀錄)—

(a) in Parts 2 and 3—

(i) in relation to a company, means company records as defined by section 654 of the Ordinance; or

(ii) in relation to a registered non-Hong Kong company, means any copy kept by the company under section 351(2) of the Ordinance or any register of charges kept by the company under section 353(1) of the Ordinance; and

(b) in Part 4, means—

(i) company records as defined by section 654 of the Ordinance; or

(ii) a trust deed or any other document securing the issue of debentures.

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## **Part 2**

### **Place for Keeping Company Records**

#### **3. Place for keeping company records**

The place prescribed for the purposes of keeping company records under sections 219(1), 237(2), 245(2)(b)(i), 248(2)(b)(i), 252(2)(b)(i), 255(2)(b)(i), 262(1), 309(1)(b), 351(1) and (2), 352(1)(b), 353(1)(b), 385(1)(b), 471(2), 543(3), 619(1), 628(1), 641(3) and 648(3) of the Ordinance is any place in Hong Kong.

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## Part 3

### Inspection of Company Records

#### 4. Interpretation

In this Part—

**notice of inspection** (查閱通知) means a notice of inspection given under section 5(1);

**requested company records** (所要求公司紀錄), in relation to a notice of inspection, means the company records identified in the notice for the purposes of section 5(2)(a);

**specified date** (指明日期), in relation to a notice of inspection, means the date specified in the notice for the purposes of section 5(2)(b);

**working day** (工作日) means a day that is not—

- (a) a general holiday; or
- (b) a Saturday.

#### 5. Notice of inspection

- (1) A person's request for inspection of any company records of a company or registered non-Hong Kong company is to be made by giving a written notice of inspection to the company or registered non-Hong Kong company.
- (2) The notice of inspection must—
  - (a) identify the company records that the person wishes to inspect by reference to the type of the records and the date on which the records were made or the period covered by the records;
  - (b) specify the date on which the person wishes to inspect the requested company records; and

- (c) specify the time on that date at which the person wishes to start inspecting the requested company records.
- (3) For the purposes of subsection (2)(b), the specified date must not be—
- (a) in the case of a company—
    - (i) a general holiday;
    - (ii) if the requested company records are any register of debenture holders (within the meaning of Part 7 of the Ordinance), a day on which the register is closed under section 311 of the Ordinance; or
    - (iii) if the requested company records are any register of members or index of members' names, a day on which the register is closed under section 632 of the Ordinance; and
  - (b) in the case of a registered non-Hong Kong company, a general holiday.
- (4) For the purposes of subsection (2)(c), the specified time on a day must be any time at or after 9 a.m. and at or before 5 p.m. on that day.
- (5) In this section—

***request for inspection*** (查閱要求) means a request under any of the following provisions of the Ordinance—

- (a) section 310(1), (2) or (3);
- (b) section 355(1), (2) or (3);
- (b) section 386(1);
- (c) section 472(1);
- (d) section 544(1);
- (e) section 620(1);
- (f) section 631(1) or (2);

- (g) section 642(1) or (2);
- (h) section 649(1) or (2).

**6. Notice period for inspection**

- (1) A notice of inspection must be given—
  - (a) in the case of a company—
    - (i) where the notice is given to the company during the notice period for a general meeting or class meeting or during the period when any written resolution is circulated by the company, at least 2 working days (or less if the company so agrees) before the specified date; and
    - (ii) in any other case, at least 7 days (or less if the company so agrees) before the specified date; and
  - (b) in the case of a registered non-Hong Kong company, at least 7 days (or less if the company so agrees) before the specified date.
- (2) Subsection (1)(a)(i) applies only if the notice period for inspection begins and ends during the notice period for the general meeting or class meeting, or during the period of the circulation of the written resolution, as the case may be.

**7. Making company records available for inspection**

- (1) After receiving from a person a notice of inspection in respect of which sections 5 and 6 are complied with and the payment of the fee prescribed in Part 1 of the Schedule (if applicable), the company or registered non-Hong Kong company must—
  - (a) specify any one place in Hong Kong at which the inspection may take place; and
  - (b) notify the person in writing of that place—

- (i) if section 6(1)(a)(i) applies, at least 1 working day before the specified date; or
- (ii) if section 6(1)(a)(ii) or (b) applies, within 4 days after the date of receipt of the notice of inspection.

**Note—**

Please also see section 657(5)(b) of the Ordinance which provides that nothing in any provision of the Ordinance or in the regulations made under section 657 of the Ordinance is to be construed as preventing a company from charging a lesser fee than that prescribed or none at all.

- (2) The company or registered non-Hong Kong company must also make the requested company records available for the person's inspection—
  - (a) on the specified date;
  - (b) at the place notified to the person under subsection (1)(b); and
  - (c) for at least 2 hours beginning with the time specified in the notice for the purposes of section 5(2)(c).
- (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.
- (4) If a registered non-Hong Kong 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.
- (5) If subsection (1) or (2) is contravened, the Court may, on application by the person referred to in subsection (1), by order compel the company or registered non-Hong Kong company to allow an immediate inspection of the requested company records.

**8. Providing information on inspection of company records**

- (1) When a person inspects any company records kept by a company under section 308, 627, 630, 641 or 648 of the Ordinance, the company must inform the person of the most recent date (if any) on which alterations were made to those records.
- (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.

**9. Making copy of company records during inspection**

- (1) A company or registered non-Hong Kong company must allow a person inspecting any company records under section 7 to make a copy of the whole or any part of those records in the course of inspection.
- (2) To avoid doubt, the company is not required to assist the person to make any copy of company records.
- (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 4.
- (4) If a registered non-Hong Kong 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.
- (5) If subsection (1) is contravened, the Court may, on application by the person referred to in that subsection, by order compel the company or registered non-Hong Kong company to allow the person to make a copy of the whole or any part of the company records in the course of inspection.

**10. Consequences of contravening requirements as to inspection of company records owing to other person's default**

If the requested company records are kept at the office of a person other than the company or registered non-Hong Kong company, and by reason of any default of that other person, the company or registered non-Hong Kong company contravenes section 7(2) or 9(1), then the power of the Court under section 7(5) or 9(5) extends to the making of an order against that other person and that other person's officers and other employees (if any).

**11. Inspection fees**

The fee payable in respect of an inspection described in column 2 of Part 1 of the Schedule is the fee prescribed in column 3 of that Part opposite the inspection.

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## Part 4

### Provision of Copy Company Records by Company

#### 12. Interpretation

In this Part—

*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;

*request* (要求) means a request under any of the following provisions of the Ordinance—

- (a) section 310(4) or (5);
- (b) section 386(2);
- (c) section 472(2);
- (d) section 544(2);
- (e) section 620(2);
- (f) section 631(3);
- (g) section 642(3);
- (h) section 649(3).

#### 13. Provision of copy company records

- (1) After receiving from a person a request for a copy of any company records and the payment of the fee prescribed in Part 2 of the Schedule, the company must, within 7 days after the date of receipt of the request and payment (whichever is the later), provide the copy to the person.

**Note—**

Please also see section 657(5)(b) of the Ordinance which provides that nothing in any provision of the Ordinance or in the regulations made under section 657 of the Ordinance is to be construed as preventing a company from charging a lesser fee than that prescribed or none at all.

- (2) The company, when providing a copy of any company records kept under section 308, 627, 630, 641 or 648 of the Ordinance, must inform the person of the most recent date (if any) on which alterations were made to those records.
- (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.
- (4) If subsection (1) is contravened, the Court may, on application by the person referred to in that subsection, by order direct the company to provide the person with a copy, in electronic form (unless the company keeps the company records in hard copy form only) or in hard copy form, of the whole or any part of the company records.

**14. Right to copy in electronic form or in hard copy form**

- (1) A person who makes a request for a copy of company records kept by a company may require the company to provide the copy in electronic form.
- (2) A person who makes a request for a copy of company records kept by a company may require the company to provide the copy in hard copy form.
- (3) If a requirement is made under subsection (1), the company must provide the copy in any electronic form that it thinks fit unless it keeps the company records in hard copy form only.
- (4) If a requirement is made under subsection (2), the company must provide the copy in hard copy form.

- (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 3.
- (6) If subsection (3) or (4) is contravened, the Court may, on application by the person who made the requirement, by order direct the company to provide the person with a copy, in electronic form or in hard copy form as requested by the person, of the whole or any part of the company records.

**15. Consequences of contravening requirements as to provision of company records owing to other person’s default**

If the company records kept by a company are 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 13(1) or 14(3) or (4), then the power of the Court under section 13(4) or 14(6) extends to the making of an order against that other person and that other person’s officers and other employees (if any).

**16. Fees for provision of copy**

The fee payable in respect of a request under a section the reference to which is set out in column 2 of Part 2 of the Schedule for a copy of the company records set out in column 3 of that Part opposite the reference, is—

- (a) any reasonable costs incurred by the company in delivering the copy to the person requesting it; and
  - (b) the fee prescribed in column 4 of that Part opposite the reference.
-

## Part 5

### Protection of Certain Particulars in Register of Directors or Register of Company Secretaries from Public Inspection

**17. Extent to which company may exercise its power under section 644(1)(b) or 651(1) of the Ordinance**

- (1) For the purposes of section 644(2) of the Ordinance, a company may only exercise its power under section 644(1)(b) of the Ordinance to the extent that the first part of a number mentioned in section 644(1)(b) of the Ordinance must not be withheld.
  - (2) For the purposes of section 651(2) of the Ordinance, a company may only exercise its power under section 651(1) of the Ordinance to the extent that the first part of a number mentioned in section 651(1) of the Ordinance must not be withheld.
  - (3) In subsections (1) and (2), *the first part of a number* means—
    - (a) if the number comprises an even number of alphanumeric characters, the part that begins with the first of those characters and consists of half the total number of those characters; and
    - (b) if the number comprises an odd number of alphanumeric characters, the part that begins with the first of those characters and ends with the character in the middle of the sequence.
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**Schedule**

[ss. 7, 11, 13  
& 16]

**Fees**

**Part 1**

**Fees Payable for Inspection of Company Records**

**Division 1**

**Fees Payable to Company**

Item	Inspection	Fee
		\$
1.	Inspection of register of debenture holders under section 310(3) of the Ordinance	50
2.	Inspection under section 355(3)(a) of the Ordinance of any copy kept under section 351(1)(a) of the Ordinance	50
3.	Inspection under section 355(3)(b) of the Ordinance of register of charges kept under section 352(1) of the Ordinance	50
4.	Inspection of register of members or index of members' names under section 631(2) of the Ordinance	50

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5.	Inspection of register of directors under section 642 (2) of the Ordinance	50
6.	Inspection of register of company secretaries under section 649(2) of the Ordinance	50

## **Division 2**

### **Fees Payable to Registered Non-Hong Kong Company**

Item	Inspection	Fee \$
1.	Inspection under section 355(3)(a) of the Ordinance of any copy kept under section 351(2)(a) of the Ordinance	50
2.	Inspection under section 355(3)(b) of the Ordinance of register of charges kept under section 353(1) of the Ordinance	50

## **Part 2**

### **Fees Payable to Company for Copy Company Records**

Item	Relevant section of the Ordinance	Company records	Fee
1.	310(4)	Register of debenture	\$50 for each 100 entries (or any part

Item	Relevant section of the Ordinance	Company records holders	Fee
2.	310(5)	Trust deed or any other document securing issue of debentures	\$2 for each 100 words (or any part of those 100 words)
3.	386(2)	Register kept under section 384 of the Ordinance	\$50 for each 100 entries (or any part of those 100 entries)
4.	472(2)	Permitted indemnity provision or written memorandum kept under section 471 of the Ordinance	\$2 for each 100 words (or any part of those 100 words)
5.	544(2)	Contract or written memorandum kept under section 543 of the Ordinance	\$2 for each 100 words (or any part of those 100 words)
6.	620(2)	Records kept under section 618 of the Ordinance	\$2 for each 100 words (or any part of those 100 words)
7.	631(3)	Register of members or index of members' names	\$50 for each 100 entries (or any part

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Item	Relevant section of the Ordinance	Company records	Fee of those 100 entries)
8.	642(3)	Register of directors	\$50 for each 100 entries (or any part of those 100 entries)
9.	649(3)	Register of company secretaries	\$50 for each 100 entries (or any part of those 100 entries)

Secretary for Financial Services and  
the Treasury

2012

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# **Annex 6**

**Companies (Model Articles) Notice**

## **Companies (Model Articles) Notice**

(Made by the Secretary for Financial Services and the Treasury under section 78 of the Companies Ordinance (28 of 2012))

**1. Commencement**

This Notice comes into operation on the day appointed for the commencement of the Companies Ordinance (28 of 2012).

**2. Model Articles for public companies limited by shares**

Schedule 1 to this Notice prescribes the model articles for public companies limited by shares.

**3. Model Articles for private companies limited by shares**

Schedule 2 to this Notice prescribes the model articles for private companies limited by shares.

**4. Model Articles for companies limited by guarantee**

Schedule 3 to this Notice prescribes the model articles for companies limited by guarantee.

**5. Saving**

This Notice does not affect—

- (a) Table A in the First Schedule to the Companies Ordinance 1865 (1 of 1865), as in force from time to time, so far as it applies to any existing company;
- (b) Table A in the First Schedule to the Companies Ordinance 1911 (58 of 1911), as in force from time to time, so far as it applies to any existing company;

- 
- (c) Table A in the First Schedule to the predecessor Ordinance, so far as it applies to any existing company; and
  - (d) the articles of any existing company limited by guarantee, whether or not the existing company has a share capital.
-

**Schedule 1**

[s. 2]

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## Part 1

### Interpretation

#### 1. Interpretation

(1) In the articles—

*alternate* ( ) or *alternate director* ( ) means a person appointed by a director as an alternate under article 28;

*appointor* ( )—see article 28(1);

*articles* ( ) means the articles of association of the company;

*associated company* ( ) means—

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

*call* ( )—see article 68(1);

*call notice* ( )—see article 68(1);

*distribution recipient* ( ) means, in respect of a share in respect of which a dividend or other sum is payable—

- (a) the holder of the share;
- (b) if the share has two or more joint holders, whichever of them is named first in the register of members; or

(c) if the holder is no longer entitled to the share by reason of death or bankruptcy or otherwise by operation of law, the transmittee;

**fully paid** ( ), in relation to a share, means the price at which the share was issued has been fully paid to the company;

**holder** ( ), in relation to a share, means the person whose name is entered in the register of members as the holder of the share;

**Ordinance** ( ) means the Companies Ordinance (28 of 2012);

**paid** ( ) means paid or credited as paid;

**partly paid** ( ), in relation to a share, means that no part of the price at which the share was issued remains unpaid;

**proxy notice** ( )—see article 51;

**transmittee** ( ) means a person entitled to a share by reason of the death or bankruptcy of a member or otherwise by operation of law.

- (2) Other words or expressions used in the articles have the same meaning as in the Ordinance as in force on the date the articles become binding on the company.
- (3) A reference in articles 12 and 15 to an entity connected with a director is a reference to an entity connected with a director within the meaning of section 486 of the Ordinance.
- (4) For the purposes of the articles, a document is authenticated if it is authenticated in any way in which section 828(5) or 829(3) of the Ordinance provides for documents or information to be authenticated for the purposes of the Ordinance.

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## **Part 2**

### **Directors and Company Secretary**

#### **Division 1—Directors’ Powers and Responsibilities**

##### **2. Directors’ general authority**

- (1) Subject to the Ordinance and the articles, the business and affairs of the company are managed by the directors, who may exercise all the powers of the company.
- (2) An alteration of the articles does not invalidate any prior act of the directors that would have been valid if the alteration had not been made.
- (3) The powers given by this article are not limited by any other power given to the directors by the articles.
- (4) A meeting of the directors at which a quorum is present may exercise all powers exercisable by the directors.

##### **3. Members’ reserve power**

- (1) The members may, by special resolution, direct the directors to take, or refrain from taking, specified action.
- (2) The special resolution does not invalidate anything that the directors have done before the passing of the resolution.

##### **4. Directors may delegate**

- (1) Subject to the articles, the directors may delegate any of the powers that are conferred on them under the articles—
  - (a) to any person or committee;
  - (b) by any means (including by power of attorney);
  - (c) to any extent and without any territorial limit;

- (d) in relation to any matter; and
  - (e) on any terms and conditions,  
they think fit.
- (2) If the directors so specify, the delegation may authorize further delegation of the directors' powers by any person to whom they are delegated.
  - (3) The directors may revoke the delegation in whole or in part, or revoke or alter its terms and conditions.

**5. Committees**

- (1) The directors may make rules providing for the conduct of business of the committees to which they have delegated any of their powers.
- (2) The committees must comply with the rules.

**Division 2—Decision-making by Directors**

**6. Directors to take decision collectively**

A decision of the directors may be taken—

- (a) at a directors' meeting; or
- (b) in the form of a directors' written resolution.

**7. Calling directors' meeting**

- (1) Any director may call a directors' meeting.
- (2) The company secretary must call a directors' meeting if a director so requests.
- (3) A directors' meeting is called by giving notice of the meeting to the directors.
- (4) Notice of a directors' meeting must indicate—
  - (a) its proposed date and time;

- (b) where it is to take place; and
  - (c) if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
- (5) Notice of a directors' meeting must be given to each director, but need not be in writing.
- (6) Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the company not more than 7 days after the date on which the meeting is held. If such a notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

**8. Participation in directors' meetings**

- (1) Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when—
- (a) the meeting has been called and takes place in accordance with the articles; and
  - (b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- (2) In determining whether directors are participating in a directors' meeting, it is irrelevant where a director is and how they communicate with each other.
- (3) If all the directors participating in a directors' meeting are not in the same place, they may decide that the meeting is to be regarded as taking place wherever any of them is.

**9. Quorum for directors' meetings**

- (1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- (2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it must not be less than 2, and unless otherwise fixed it is 2.

**10. Meetings where total number of directors less than quorum**

- (1) This article applies if the total number of directors for the time being is less than the quorum for directors' meetings.
- (2) If there is only one director, that director may appoint sufficient directors to make up a quorum or call a general meeting to do so.
- (3) If there is more than one director—
  - (a) a directors' meeting may take place, if it is called in accordance with the articles and at least 2 directors participate in it, with a view to appointing sufficient directors to make up a quorum or calling a general meeting to do so; and
  - (b) if a directors' meeting is called but only one director attends at the appointed date and time to participate in it, that director may appoint sufficient directors to make up a quorum or call a general meeting to do so.

**11. Chairing of directors' meeting**

- (1) The directors may appoint a director to chair their meetings.
- (2) The person so appointed for the time being is known as the chairperson.

- (3) The directors may appoint other directors as deputy or assistant chairpersons to chair directors' meetings in the chairperson's absence.
- (4) The directors may terminate the appointment of the chairperson, deputy or assistant chairperson at any time.
- (5) If neither the chairperson nor any director appointed generally to chair directors' meetings in the chairperson's absence is participating in a meeting within 10 minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

**12. Voting at directors' meeting: general rules**

- (1) Subject to the articles, a decision is taken at a directors' meeting by a majority of the votes of the participating directors.
- (2) Subject to the articles, each director participating in a directors' meeting has one vote.
- (3) Subject to the articles, if a director or an entity connected with the director is in any way, directly or indirectly, interested in an actual or proposed contract, transaction or arrangement with the company—
  - (a) that director and that director's alternate may not vote on any proposal relating to it; but
  - (b) this does not preclude the alternate from voting in relation to that contract, transaction or arrangement on behalf of another appointor who does not have such an interest.

**13. Chairperson's casting vote at directors' meetings**

- (1) If the numbers of votes for and against a proposal are equal, the chairperson or other director chairing the directors' meeting has a casting vote.

- (2) But this does not apply if, in accordance with the articles, the chairperson or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

**14. Alternates voting at directors' meetings**

A director who is also an alternate director has an additional vote on behalf of each appointor who—

- (a) is not participating in a directors' meeting; and
- (b) would have been entitled to vote if they were participating in it.

**15. Conflicts of interest**

- (1) If a director or an entity connected with the director is in any way, directly or indirectly, interested in a transaction, arrangement or contract, or a proposed transaction, arrangement or contract, with the company that is significant in relation to the company's business, and the director's or the entity's interest is material, the director must declare the nature and extent of the director's or the entity's interest to the other directors in accordance with section 536 of the Ordinance.
- (2) A director must not vote in respect of the transaction, arrangement or contract or the proposed transaction, arrangement or contract in which the director or an entity connected with the director is so interested, and if the director does so, the vote must not be counted, nor must the director be counted in the quorum present at the meeting.
- (3) Paragraph (2) does not apply to—
- (a) any arrangement for giving any director any security or indemnity in respect of money lent by the director to or

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- obligations undertaken by the director for the benefit of the company;
- (b) any arrangement for the giving by the company of any security to a third party in respect of a debt or obligation of the company for which the director has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security; or
  - (c) any arrangement pursuant to which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries, which do not provide special benefits for directors or former directors.
- (4) A director may hold any other office or place of profit under the company (other than the office of auditor) in conjunction with the office of director for a period and on terms (as to remuneration or otherwise) that the directors determine.
- (5) A director or intending director is not disqualified by the office of director from contracting with the company—
- (a) with regard to the tenure of the other office or place of profit mentioned in paragraph (4); or
  - (b) as vendor, purchaser or otherwise.
- (6) The contract mentioned in paragraph (5) or any contract or arrangement entered into by or on behalf of the company in which any director is in any way interested is not liable to be avoided.
- (7) A director who has entered into a contract mentioned in paragraph (5) or is interested in a contract or arrangement mentioned in paragraph (6) is not liable to account to the company for any profit realized by the contract or arrangement by reason of—
- (a) the director holding the office; or

- (b) the fiduciary relation established by the office.
- (8) Paragraph (4), (5), (6) or (7) only applies if the director has declared the nature and extent of the director's interest under the paragraph to the other directors in accordance with section 536 of the Ordinance.
- (9) A director of the company may be a director or other officer of, or otherwise interested in, any company promoted by the company or in which the company may be interested as shareholder or otherwise.
- (10) Subject to the Ordinance, the director is not accountable to the company for any remuneration or other benefits received by the director as a director or officer of, or from the director's interest in, the other company unless the company otherwise directs.

**16. Proposing directors' written resolutions**

- (1) Any director may propose a directors' written resolution.
- (2) The company secretary must propose a directors' written resolution if a director so requests.
- (3) A directors' written resolution is proposed by giving notice of the proposed resolution to the directors.
- (4) Notice of a proposed directors' written resolution must indicate—
  - (a) the proposed resolution; and
  - (b) the time by which it is proposed that the directors should adopt it.
- (5) Notice of a proposed directors' written resolution must be given in writing to each director.
- (6) Any decision which a person giving notice of a proposed directors' written resolution takes regarding the process of

adopting that resolution must be taken reasonably in good faith.

**17. Adoption of directors' written resolutions**

- (1) A proposed directors' written resolution is adopted when all the directors who would have been entitled to vote on the resolution at a directors' meeting have signed one or more copies of it.
- (2) Paragraph (1) only applies if those directors would have formed a quorum at the directors' meeting.
- (3) It is immaterial whether any director signs the resolution before or after the time by which the notice proposed that it should be adopted.
- (4) The company secretary must ensure that the company keeps a written record of all directors' written resolutions for at least 10 years from the date of their adoption.

**18. Effect of directors' written resolutions**

- (1) If a directors' written resolution has been adopted, it is as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.
- (2) Paragraph (1) does not apply in relation to any transaction, arrangement (not being an arrangement specified in article 15(3)) or contract in which a director is interested, unless the number of directors signing the resolution who are not interested in the transaction, arrangement or contract would have formed a quorum of directors if a meeting had been held for the purpose of considering the transaction, arrangement or contract.

**19. Validity of acts of meeting of directors**

The acts of any meeting of directors or of a committee of directors or the acts of any person acting as a director are valid as if the directors or the person had been duly appointed as a director and was qualified to be a director, despite the fact that it is afterwards discovered that—

- (a) there was a defect in the appointment of any of the directors or of the person as a director;
- (b) they or any of them were not qualified to be a director or were disqualified from being a director;
- (c) they or any of them had ceased to hold office as a director; or
- (d) they or any of them were not entitled to vote on the matter in question.

**20. Record of decisions to be kept**

The directors must ensure that the company keeps a written record of every decision taken by the directors for at least 10 years from the date of the decision.

**21. Directors' discretion to make further rules**

Subject to the articles, the directors may make any rule that they think fit about how they take decisions, and about how the rules are to be recorded or communicated to directors.

**Division 3—Appointment of Directors**

**22. Appointment and retirement of directors**

- (1) A person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—
  - (a) by ordinary resolution; or

- (b) by a decision of the directors.
- (2) A director appointed under paragraph (1)(a) is subject to article 23.
- (3) If the company has dispensed with the holding of annual general meetings, a director appointed under paragraph (1)(a) must retire from office at the first annual general meeting to be held under section 613(5) or 614(2) of the Ordinance.
- (4) An appointment under paragraph (1)(b) may only be made for the purpose of—
  - (a) filling a casual vacancy; or
  - (b) appointing a director as an addition to the existing directors if the total number of directors does not exceed the number fixed in accordance with the articles.
- (5) A director appointed under paragraph (1)(b) must—
  - (a) retire at the annual general meeting next following the appointment; or
  - (b) if the company has dispensed with the holding of annual general meetings or is not required to hold annual general meetings, retire before the end of 6 months after the end of the company's accounting reference period by reference to which the financial year in which the director was appointed is to be determined.

**23. Retirement of directors by rotation**

- (1) At the first annual general meeting, all the directors must retire from office.
- (2) At the annual general meeting in every subsequent year, one-third of the directors for the time being or, if their number is not 3 or a multiple of 3, then the number nearest one-third, must retire from office.

- (3) The directors to retire in every year must be those who have been longest in office since their last appointment or reappointment.
- (4) As between persons who became directors on the same day, those to retire must be determined by lot, unless they otherwise agree among themselves.
- (5) A retiring director is eligible for reappointment.
- (6) At the annual general meeting at which a director retires, the company may fill the vacated office by appointing a person to it.
- (7) If the company does not appoint a person to the vacated office and the retiring director has not given notice to the company of the intention to decline reappointment to the office, the retiring director is regarded as having been reappointed to the office unless—
  - (a) at the meeting at which the director retires, it is expressly resolved not to fill the vacated office; or
  - (b) a resolution for the reappointment of the director has been put to the meeting and lost.
- (8) A person is not eligible for appointment to the office of director at any general meeting unless—
  - (a) the person is a director retiring at the meeting;
  - (b) the person is recommended by the directors for appointment to the office; or
  - (c) a member qualified to attend and vote at the meeting has sent to the company a notice of the member's intention to propose the person for appointment to the office, and the person has also sent to the company a notice of the person's willingness to be appointed.

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- (9) The notice of the member's intention to propose the person for appointment to the office and the notice of the person's willingness to be appointed must be—
    - (a) sent to the company in hard copy form or in electronic form and received by the company, at least 7 days before the date of the general meeting; and
    - (b) authenticated by the member.
  - (10) The company may—
    - (a) by ordinary resolution increase or reduce the number of directors; and
    - (b) determine in what rotation the increased or reduced number is to go out of office.

**24. Composite resolution**

If proposals are under consideration concerning the appointment of 2 or more directors to offices or employments with the company or any body corporate in which the company is interested—

- (a) the proposals may be divided and considered in relation to each director separately; and
- (b) each of the directors concerned is entitled to vote (if the director is not for another reason precluded from voting) and be counted in the quorum in respect of each resolution except that concerning the director's own appointment.

**25. Termination of director's appointment**

A person ceases to be a director if the person—

- (a) ceases to be a director under any provision of the Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) or is prohibited from being a director by law;

- (b) becomes bankrupt or makes any arrangement or composition with the person's creditors generally;
- (c) becomes of unsound mind;
- (d) resigns the office of director by notice in writing of the resignation in accordance with section 464(5) of the Ordinance; or
- (e) for more than 6 months has been absent without permission of the directors from meetings of the directors held during that period.

**26. Directors' remuneration**

- (1) Directors' remuneration must be determined by the company at a general meeting.
- (2) A director's remuneration may—
  - (a) take any form; and
  - (b) include any arrangements in connection with the payment of a retirement benefit to or in respect of that director.
- (3) Directors' remuneration accrues from day to day.

**27. Directors' expenses**

The company may pay any travelling, hotel and other expenses properly incurred by directors in connection with their attendance at—

- (a) meetings of directors or committees of directors;
- (b) general meetings; or
- (c) separate meetings of the holders of any class of shares or of debentures of the company,

or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

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## Division 4—Alternate Directors

### 28. Appointment and removal of alternates

- (1) A director (*appointor*) may appoint as an alternate any other director, or any other person approved by resolution of the directors, to—
  - (a) exercise that director’s powers; and
  - (b) carry out that director’s responsibilities,in relation to the taking of decisions by the directors in the absence of the alternate’s appointor.
- (2) An appointment or removal of an alternate by the alternate’s appointor must be effected—
  - (a) by notice to the company; or
  - (b) in any other manner approved by the directors.
- (3) The notice must be authenticated by the appointor.
- (4) The notice must—
  - (a) identify the proposed alternate; and
  - (b) if it is a notice of appointment, contain a statement authenticated by the proposed alternate indicating the proposed alternate’s willingness to act as the alternate of the director giving the notice.
- (5) If an alternate is removed by resolution of the directors, the company must as soon as practicable give notice of the removal to the alternate’s appointor.

### 29. Rights and responsibilities of alternate directors

- (1) An alternate director has the same rights, in relation to any directors’ meeting or directors’ written resolution, as the alternate’s appointor.
- (2) Except as the articles specify otherwise, alternate directors—

- (a) are deemed for all purposes to be directors;
  - (b) are liable for their own acts and omissions;
  - (c) are subject to the same restrictions as their appointors;  
and
  - (d) are deemed to be agents of or for their appointors.
- (3) A person who is an alternate director but not a director—
- (a) may be counted as participating for the purposes of determining whether a quorum is participating (but only if that person’s appointor is not participating); and
  - (b) may sign a written resolution (but only if it is not signed or to be signed by that person’s appointor).
- (4) No alternate may be counted as more than one director for the purposes mentioned in paragraph (3).
- (5) An alternate director is not entitled to receive any remuneration from the company for serving as an alternate director except any part of the alternate’s appointor’s remuneration that the appointor may direct by notice in writing made to the company.

**30. Termination of alternate directorship**

- (1) An alternate director’s appointment as an alternate terminates—
- (a) if the alternate’s appointor revokes the appointment by notice to the company in writing specifying when it is to terminate;
  - (b) on the occurrence in relation to the alternate of any event which, if it occurred in relation to the alternate’s appointor, would result in the termination of the appointor’s appointment as a director;
  - (c) on the death of the alternate’s appointor; or

- (d) when the alternate's appointor's appointment as a director terminates.
- (2) Paragraph (1)(d) does not apply if the appointor retires by rotation at a general meeting and is then reappointed or is regarded as having been reappointed as a director at the same general meeting, and in such a case, the alternate director's appointment as an alternate continues after the reappointment.
- (3) If the alternate was not a director when appointed as an alternate, the alternate's appointment as an alternate terminates if—
  - (a) the approval under article 28(1) is withdrawn or revoked; or
  - (b) the company by an ordinary resolution passed at a general meeting terminates the appointment.

### **Division 5—Managing Directors**

#### **31. Appointment of managing directors and termination of appointment**

- (1) The directors may—
  - (a) from time to time appoint one or more of them to the office of managing director for a period and on terms they think fit; and
  - (b) subject to the terms of any agreement entered into in any particular case, revoke the appointment.
- (2) A director appointed to the office of managing director is not, while holding the office, subject to retirement by rotation. While holding the office, the director must also not be taken into account in determining the rotation of retirement of directors.

- (3) If the company has dispensed with the holding of annual general meetings, a director appointed to the office of managing director is not, while holding the office, required to retire from office at the first annual general meeting to be held under section 613(5) or 614(2) of the Ordinance.
- (4) The appointment as a managing director is automatically terminated if the managing director ceases to be a director for any reason.
- (5) The directors may determine a managing director's remuneration, whether by way of salary, commission or participation in profits, or partly in one way and partly in the other.

**32. Powers of managing directors**

- (1) The directors may entrust to and confer on a managing director any of the powers exercisable by them on terms and conditions and with restrictions they think fit, either collaterally with or to the exclusion of their own powers.
- (2) The directors may from time to time revoke, withdraw, alter or vary all or any of those powers.

**Division 6—Directors' Indemnity and Insurance**

**33. Indemnity**

- (1) A director or former director of the company may be indemnified out of the company's assets against any liability incurred by the director to a person other than the company or an associated company of the company in connection with any negligence, default, breach of duty or breach of trust in relation to the company or associated company (as the case may be) if the indemnity does not cover—
  - (a) any liability of the director to pay—

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- (i) a fine imposed in criminal proceedings; or
  - (ii) a sum payable by way of a penalty in respect of non-compliance with any requirement of a regulatory nature; or
  - (b) any liability incurred by the director—
    - (i) in defending criminal proceedings in which the director is convicted;
    - (ii) in defending civil proceedings brought by the company, or an associated company of the company, in which judgment is given against the director;
    - (iii) in defending civil proceedings brought on behalf of the company by a member of the company or of an associated company of the company, in which judgment is given against the director;
    - (iv) in defending civil proceedings brought on behalf of an associated company of the company by a member of the associated company or by a member of an associated company of the associated company, in which judgment is given against the director; or
    - (v) in connection with an application for relief under section 903 or 904 of the Ordinance in which the Court refuses to grant the director relief.
  - (2) A reference in paragraph (1)(b) to a conviction, judgment or refusal of relief is to the final decision in the proceedings.
  - (3) For the purposes of paragraph (2), a conviction, judgment or refusal of relief—
    - (a) if not appealed against, becomes final at the end of the period for bringing an appeal; or

- (b) if appealed against, becomes final when the appeal, or any further appeal, is disposed of.
- (4) For the purposes of paragraph (3)(b), an appeal is disposed of if—
  - (a) it is determined, and the period for bringing any further appeal has ended; or
  - (b) it is abandoned or otherwise ceases to have effect.

**34. Insurance**

The directors may decide to purchase and maintain insurance, at the expense of the company, for a director of the company, or a director of an associated company of the company, against—

- (a) any liability to any person attaching to the director in connection with any negligence, default, breach of duty or breach of trust (except for fraud) in relation to the company or associated company (as the case may be); or
- (b) any liability incurred by the director in defending any proceedings (whether civil or criminal) taken against the director for any negligence, default, breach of duty or breach of trust (including fraud) in relation to the company or associated company (as the case may be).

**Division 7—Company Secretary**

**35. Appointment and removal of company secretary**

- (1) The directors may appoint a company secretary for a term, at a remuneration and on conditions they think fit.
- (2) The directors may remove a company secretary appointed by them.

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## **Part 3**

### **Decision-making by Members**

#### **Division 1—Organization of General Meetings**

##### **36. General meeting**

- (1) Subject to sections 611, 612 and 613 of the Ordinance, the company must, in respect of each financial year of the company, hold a general meeting as its annual general meeting in accordance with section 610 of the Ordinance.
- (2) The directors may, if they think fit, call a general meeting.
- (3) If the directors are required to call a general meeting under section 566 of the Ordinance, they must call it in accordance with section 567 of the Ordinance.
- (4) If the directors do not call a general meeting in accordance with section 567 of the Ordinance, 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.

##### **37. Notice of general meetings**

- (1) An annual general meeting must be called by notice of at least 21 days in writing.
- (2) A general meeting of the company other than an annual general meeting must be called by notice of at least 14 days in writing.
- (3) The notice is exclusive of the day on which it is served or deemed to be served and of the day for which it is given.
- (4) The notice must—
  - (a) specify the date and time of the meeting;

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- (b) specify 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) state 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, state that the meeting is an annual general meeting;
  - (e) if a resolution (whether or not a special resolution) is intended to be moved at the meeting—
    - (i) include notice of the resolution; and
    - (ii) include or is accompanied by a statement containing the information and explanation, if any, that is reasonably necessary to indicate the purpose of the resolution;
  - (f) if a special resolution is intended to be moved at the meeting, specify the intention and include the text of the special resolution; and
  - (g) contain a statement specifying a member's right to appoint a proxy under section 596(1) and (3) of the Ordinance.
- (5) Paragraph (4)(e) does not apply in relation to a resolution of which—
- (a) notice has been included in the notice of meeting under section 567(3) or 568(2) of the Ordinance; or
  - (b) notice has been given under section 615 of the Ordinance.
- (6) Despite the fact that a general meeting of the company is called by shorter notice than that specified in this article, it is regarded 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 entitled 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.

**38. Persons entitled to receive notice of general meeting**

- (1) Notice of a general meeting must be given to—
  - (a) every member; and
  - (b) every director.
- (2) In paragraph (1), the reference to a member includes a transmittee, if the company has been notified of the transmittee's entitlement to a share.
- (3) If notice of a general meeting or any other document relating to the general meeting is required to be given to a member, the company must give 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 given to the member.

**39. Accidental failure to give notice of general meeting**

Any accidental failure to give notice to, or any non-receipt of notice of a general meeting by, any person entitled to receive notice does not invalidate the proceedings at the meeting.

**40. Attendance and speaking at general meetings**

- (1) A person is able to exercise the right to speak at a general meeting when the person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions that the person has on the business of the meeting.

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- (2) A person is able to exercise the right to vote at a general meeting when—
    - (a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
    - (b) that person's vote can be taken into account in determining whether or not those resolutions are passed at the same time as the votes of all the other persons attending the meeting.
  - (3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
  - (4) In determining attendance at a general meeting, it is immaterial whether any 2 or more members attending it are in the same place as each other.
  - (5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have rights to speak and vote at the meeting, they are able to exercise them.

**41. Quorum for general meetings**

No business other than the appointment of the chairperson of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

**42. Chairing general meetings**

- (1) The chairperson, if any, of the board of directors must preside as chairperson at a general meeting of the company.
- (2) If there is no chairperson of the board of directors, or if the chairperson is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act or has given notice to the company of the intention not to attend the

meeting, the directors present must elect one of them to be the chairperson of the meeting.

- (3) If at any meeting no director is willing to act as chairperson or if no director is present within 15 minutes after the time appointed for holding the meeting, the members present must choose one of them to be the chairperson of the meeting.
- (4) A proxy may be elected to be the chairperson of a general meeting by a resolution of the company passed at the meeting.

**43. Attendance and speaking by non-members**

The chairperson of a general meeting may permit other persons who are not—

- (a) members of the company; or
- (b) otherwise entitled to exercise the rights of members in relation to general meetings,

to attend and speak at a general meeting.

**44. Adjournment**

- (1) If within half an hour from the time appointed for holding a general meeting a quorum is not present, the meeting must—
  - (a) if called on the request of members, be dissolved; and
  - (b) in any other case, be adjourned to the same day in the next week, at the same time and place, or to another day and at another time and place the directors determine.
- (2) If at the adjourned meeting, a quorum is not present within half an hour from the time appointed for holding the meeting, the members present is a quorum.
- (3) The chairperson may adjourn a general meeting at which a quorum is present if—
  - (a) the meeting consents to an adjournment; or

- (b) it appears to the chairperson that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.
- (4) The chairperson must adjourn a general meeting if directed to do so by the meeting.
- (5) When adjourning a general meeting, the chairperson must specify the time and place to which it is adjourned.
- (6) No business may be transacted at an adjourned general meeting other than the business left unfinished at the general meeting from which the adjournment took place.
- (7) If a general meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- (8) If a general meeting is adjourned for less than 30 days, it is not necessary to give any notice of the adjourned meeting.

## **Division 2—Voting at General Meetings**

### **45. General rules on voting**

- (1) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles.
- (2) If there is an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded, is entitled to a second or casting vote.
- (3) On a vote on a resolution on a show of hands at a general meeting, 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.

- (4) An entry in respect of the declaration in minutes of the meeting is also conclusive evidence of that fact without the proof.

**46. Errors and disputes**

- (1) No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and a vote not disallowed at the meeting is valid.
- (2) Any objection must be referred to the chairperson of the meeting whose decision is final.

**47. Demanding a poll**

- (1) A poll on a resolution may be demanded—
  - (a) in advance of the general meeting where it is to be put to the vote; or
  - (b) at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.
- (2) A poll may be demanded by—
  - (a) the chairperson of the meeting;
  - (b) by at least 2 members present in person or by proxy; or
  - (c) by any member or members present in person or by proxy and representing at least 5% of the total voting rights of all the members having the right to vote at the meeting.
- (3) The instrument appointing a proxy is regarded as conferring authority to demand or join in demanding a poll.

- (4) A demand for a poll may be withdrawn.

**48. Number of votes a member has**

- (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) every member present in person has one vote for each share held by him or her; and
  - (b) every proxy present who has been duly appointed by a member has one vote for each share held by that member.
- (4) This article has effect subject to any rights or restrictions attached to any shares or class of shares.

**49. Votes of joint holders of shares**

- (1) In the case of joint holders of shares, only the vote of the most senior holder who votes (and any proxies duly authorized by the holder) may be counted.
- (2) For the purposes of this article, the seniority of a 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.

**50. Votes of mentally incapacitated members**

- (1) A mentally incapacitated member may vote, whether on a show of hands or on a poll, by the member's committee, receiver, guardian or other person in the nature of a committee, receiver or guardian appointed by the Court.
- (2) The committee, receiver, guardian or other person may, on a poll, vote by proxy.
- (3) In this article—

*mentally incapacitated member* ( ) means a member who is found under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing his or her property and affairs.

**51. Content of proxy notices**

- (1) Proxies may only validly be appointed by a notice in writing (*proxy notice*) that—
  - (a) states the name and address of the member appointing the proxy;
  - (b) identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed;
  - (c) is authenticated, or is signed on behalf of the member appointing the proxy; and
  - (d) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.
- (2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

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- (3) If the company requires or allows a proxy notice to be delivered to it in electronic form, it may require the delivery to be properly protected by a security arrangement it specifies.
  - (4) A proxy notice may specify how the proxy appointed under it is to vote (or that the proxy is to abstain from voting) on one or more resolutions dealing with any business to be transacted at a general meeting.
  - (5) Unless a proxy notice indicates otherwise, it must be regarded as—
    - (a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and
    - (b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

**52. Execution of appointment of proxy on behalf of member appointing the proxy**

If a proxy notice is not authenticated, it must be accompanied by written evidence of the authority of the person who executed the appointment to execute it on behalf of the member appointing the proxy.

**53. Delivery of proxy notice and notice revoking appointment of proxy**

- (1) A proxy notice does not take effect unless it is received by the company—
  - (a) in the case of a general meeting or adjourned meeting, not less than 48 hours before the time appointed for holding the meeting or adjourned meeting; and

- (b) in the case of a poll taken more than 48 hours after it was demanded, not less than 24 hours before the time appointed for the taking of the poll.
- (2) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- (3) A notice revoking the appointment only takes effect if it is received by the company—
  - (a) in the case of a general meeting or adjourned general meeting, not less than 48 hours before the time appointed for holding the meeting or adjourned meeting; and
  - (b) in the case of a poll taken more than 48 hours after it was demanded, not less than 24 hours before the time appointed for the taking of the poll.

**54. 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, the voting right attached to the shares in respect of which the proxy is appointed.
- (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 proxy notice has been delivered to the company by or on behalf of that member.

**55. Effect of proxy votes in case of death, mental incapacity, etc. of member appointing the proxy**

- (1) A vote given in accordance with the terms of a proxy notice is valid despite—
  - (a) the previous death or mental incapacity of the member appointing the proxy;
  - (b) the revocation of the appointment of the proxy or of the authority under which the appointment of the proxy is executed; or
  - (c) the transfer of the share in respect of which the proxy is appointed.
- (2) Paragraph (1) does not apply if notice in writing of the death, mental incapacity, revocation or transfer is received by the company—
  - (a) in the case of a general meeting or adjourned general meeting, not less than 48 hours before the time appointed for holding the meeting or adjourned meeting; and
  - (b) in the case of a poll taken more than 48 hours after it was demanded, not less than 24 hours before the time appointed for the taking of the poll.
- (3) In this article—

*mental incapacity* ( ) has the meaning given by section 2(1) of the Mental Health Ordinance (Cap. 136).

**56. Amendments to proposed resolutions**

- (1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—
  - (a) notice of the proposed amendment is given to the company secretary in writing by a person entitled to vote at the general meeting at which it is to be proposed at

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- least 48 hours before the meeting is to take place (or a later time the chairperson of the meeting determines); and
- (b) the proposed amendment does not, in the reasonable opinion of the chairperson of the meeting, materially alter the scope of the resolution.
- (2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if—
- (a) the chairperson of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and
  - (b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- (3) If the chairperson of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairperson’s error does not invalidate the vote on that resolution unless the Court otherwise orders.

### **Division 3—Restrictions on Members’ Rights**

**57. No voting of shares on which money owed to company**

A member is not entitled to vote at any general meeting unless all calls or other sums presently payable by the member in respect of shares in the company have been paid.

### **Division 4—Application of Rules to Class Meetings**

**58. Class meetings**

The provisions of the articles relating to general meetings apply, with any necessary modifications, to meetings of the holders of any class of shares.

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## **Part 4**

### **Shares and Distributions**

#### **Division 1—Issue of Shares**

##### **59. Powers to issue different classes of shares**

- (1) Without affecting any special rights previously conferred on the holders of any existing shares or class of shares, the company may issue shares with—
  - (a) preferred, deferred or other special rights; or
  - (b) any restrictions, whether in regard to dividend, voting, return of capital or otherwise, that the company may from time to time by ordinary resolution determine.
- (2) Subject to Division 4 of Part 5 of the Ordinance, the company may issue shares on the terms that they are to be redeemed, or liable to be redeemed at the option of the company or the holders of the shares.
- (3) The directors may determine the terms, conditions and manner of redemption of the shares.

##### **60. Payment of commissions on subscription for shares**

- (1) If the conditions in paragraph (2) are satisfied, the company may pay a commission to a person under section 148 of the Ordinance.
- (2) The conditions are that—
  - (a) the commission paid or agreed to be paid does not exceed 10% of the price at which the shares in respect of which the commission is paid are issued;
  - (b) if those shares are offered to the public for subscription, the company, before making the payment, discloses the

rate or amount of the commission in the prospectus for the public offer, as required under paragraph 7(a)(ii) in Part I of the Third Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); and

- (c) if those shares are not offered to the public for subscription, the company, before making the payment, discloses the rate or amount of the commission in any circular or notice issued by the company inviting subscriptions for those shares, as required under section 148(2)(c)(ii) of the Ordinance.
- (3) The commission may be paid in cash, or in fully paid or partly paid shares, or partly in one way and partly in the other.
- (4) The company may also on any issue of shares pay a brokerage that is lawful.

### **Division 2—Interests in Shares**

#### **61. Company not bound by less than absolute interests**

- (1) Except as required by law, no person is to be recognized by the company as holding any share on any trust.
- (2) Except as otherwise required by law or the articles, the company is not in any way to be bound by or recognize any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.
- (3) Paragraph (2) applies even though the company has notice of the interest.

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### **Division 3—Shares Certificates**

#### **62. Certificates to be issued except in certain cases**

- (1) The company must issue each member, free of charge, with one or more certificates in respect of the shares that the member holds, within 2 months after allotment or lodgment of transfer, or within any other period that the conditions of issue provide.
- (2) No certificate may be issued in respect of shares of more than one class.
- (3) If more than one person holds a share, only one certificate may be issued in respect of it.

#### **63. Contents and execution of share certificates**

- (1) A certificate must specify—
  - (a) in respect of how many shares, of what class, it is issued;
  - (b) the amount paid up on them; and
  - (c) any distinguishing numbers assigned to them.
- (2) A certificate must—
  - (a) have affixed to it the company's common seal or the company's official seal under section 126 of the Ordinance; or
  - (b) be otherwise executed in accordance with the Ordinance.

#### **64. Consolidated share certificates**

- (1) A member may request the company, in writing, to replace—
  - (a) the member's separate certificates with a consolidated certificate; or

- (b) the member's consolidated certificate with 2 or more separate certificates representing the proportion of the shares that the member specifies.
- (2) A consolidated certificate must not be issued unless any certificates that it is to replace have first been returned to the company for cancellation.
- (3) Separate certificates must not be issued unless the consolidated certificate that they are to replace has first been returned to the company for cancellation.

**65. Replacement share certificates**

- (1) If a certificate issued in respect of a member's shares is defaced, damaged, lost or destroyed, that member is entitled to be issued with a replacement certificate in respect of the same shares.
- (2) A member exercising the right to be issued with a replacement certificate—
  - (a) may at the same time exercise the right to be issued with a single certificate, separate certificates or a consolidated certificate;
  - (b) must return the certificate that is to be replaced to the company if it is defaced or damaged; and
  - (c) must comply with the conditions as to evidence, indemnity and the payment of a reasonable fee the directors decide.

**Division 4—Partly Paid Shares**

**66. Company's lien over partly paid shares**

- (1) The company has a first and paramount lien on any share that is partly paid for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share.

- (2) The company also has a first and paramount lien on any share that is partly paid standing registered in the name of a single person for all moneys presently payable by the person or the person's estate to the company.
- (3) The company's lien on a share extends to any dividend payable in respect of that share.
- (4) The directors may at any time declare any share to be wholly or in part exempt from this article.

**67. Enforcement of company's lien**

- (1) Subject to this article, the company may sell a share in a manner the directors think fit if—
  - (a) a notice enforcing a lien (*lien enforcement notice*) has been issued in respect of that share; and
  - (b) the person to whom the notice was issued has failed to comply with it.
- (2) A lien enforcement notice—
  - (a) may only be issued in respect of a share on which the company has a lien, in respect of which a sum is presently payable;
  - (b) must specify the share concerned;
  - (c) must require payment of the sum within 14 days of the notice;
  - (d) must be issued to the holder of the share or to the person entitled to it by reason of the holder's death, bankruptcy or otherwise; and
  - (e) must state the company's intention to sell the share if the notice is not complied with.
- (3) To give effect to the sale of shares under this article, the directors may authorize any person to transfer the shares to

the purchaser, and the purchaser is to be registered as the holder of those shares.

- (4) The purchaser is not bound to see to the application of the purchase money, and the purchaser's title to the shares is not affected by any irregularity in or invalidity of the process leading to the sale.
- (5) The net proceeds of the sale (after payment of the costs of sale and any other costs of enforcing the lien) must be applied—
  - (a) first, in payment of so much of the sum for which the lien exists as was payable at the date of the lien enforcement notice;
  - (b) second, to the person entitled to the shares at the date of the sale, but only after the certificate for the shares sold has been surrendered to the company for cancellation or a suitable indemnity has been given for any lost certificates, and subject to a lien equivalent to the company's lien on the shares before the sale for any money payable in respect of the shares after the date of the lien enforcement notice.
- (6) A statutory declaration by a director or the company secretary that the declarant is a director or the company secretary and that a share has been sold to satisfy the company's lien on a specified date—
  - (a) is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share; and
  - (b) subject to compliance with any other formalities of transfer required by the articles or by law, constitutes a good title to the share.

**68. Call notices**

- (1) Subject to the articles and the terms on which shares are allotted, the directors may send a notice (*call notice*) to a

member requiring the member to pay the company a specified sum of money (*call*) that is payable in respect of shares that the member holds at the date when the directors decide to send the call notice.

- (2) A call notice—
  - (a) may not require a member to pay a call that exceeds the total sum unpaid on that member's shares;
  - (b) must specify when and how any call to which it relates is to be paid; and
  - (c) may permit or require the call to be paid by instalments.
- (3) A member must comply with the requirements of a call notice, but no member is obliged to pay any call before 14 days have passed since the notice was sent.
- (4) Before the company has received any call due under a call notice, the directors may, by a further notice in writing to the member in respect of whose shares the call is made—
  - (a) revoke the call notice wholly or in part; or
  - (b) specify a later time for payment than is specified in the call notice.

**69. When call deemed to be made**

A call is deemed to have been made at the time when the resolution of the directors authorizing the call was passed.

**70. Liability to pay calls**

- (1) Liability to pay a call is not extinguished or transferred by transferring the shares in respect of which it is required to be paid.
- (2) Joint holders of a share are jointly and severally liable to pay all calls in respect of that share.

- (3) Subject to the terms on which shares are allotted, the directors may, when issuing shares, provide that call notices sent to the holders of those shares may require them—
  - (a) to pay calls that are not the same; or
  - (b) to pay calls at different times.

**71. When call notice need not be issued**

- (1) A call notice need not be issued in respect of sums that are specified, in the terms on which a share is issued, as being payable to the company in respect of that share—
  - (a) on allotment;
  - (b) on the occurrence of a particular event; or
  - (c) on a date fixed by or in accordance with the terms of issue.
- (2) But if the due date for payment of such a sum has passed and it has not been paid, the holder of the share concerned is treated in all respects as having failed to comply with a call notice in respect of that sum, and is liable to the same consequences as regards the payment of interest and forfeiture.

**72. Failure to comply with call notice: automatic consequences**

- (1) If a member is liable to pay a call or instalment of a call and fails to do so by the date specified for its payment, the member must, until the call or instalment is paid, pay the company interest on the call or instalment from that date at the rate not exceeding 10% per annum, as determined by the directors.
- (2) The directors may waive the payment of the interest wholly or in part.

**73. Notice of intended forfeiture**

- (1) If a member is liable to pay a call or instalment of a call and fails to do so by the date specified for its payment, the directors may, for so long as any part of the call or instalment remains unpaid, serve a notice on the member requiring payment of so much of the call or instalment as is unpaid, together with any interest that may have accrued.
- (2) The notice must—
  - (a) specify a further date (not before the end of 14 days after the date of service of the notice) on or before which the payment required by the notice is to be made;
  - (b) state how that payment is to be made; and
  - (c) state that if the notice is not complied with, the shares in respect of which the call was made will be liable to be forfeited.

**74. Directors' power to forfeit shares**

If the requirements of the notice of intended forfeiture under article 73 is not complied with, the shares in respect of which the call was made may, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

**75. Effect of forfeiture**

- (1) Subject to the articles, the forfeiture of a share extinguishes—
  - (a) all interests in that share, and all claims and demands against the company in respect of it; and
  - (b) all other rights and liabilities incidental to the share as between the person whose share it was prior to the forfeiture and the company.
- (2) If a person's shares have been forfeited—

- (a) the company must send that person a notice that forfeiture has occurred and record it in the register of members;
- (b) that person ceases to be a member in respect of those shares;
- (c) that person must surrender the certificate for the shares forfeited to the company for cancellation;
- (d) that person remains liable to the company for all sums payable by that person under the articles at the date of forfeiture in respect of those shares, including any interest (whether accrued before or after the date of forfeiture); and
- (e) the directors may waive payment of those sums wholly or in part or enforce payment without any allowance for the value of the shares at the time of forfeiture or for any consideration received on their disposal.

**76. Procedure following forfeiture**

- (1) If a forfeited share is to be disposed of by being transferred, the company may receive the consideration for the transfer and the directors may authorize any person to execute the instrument of transfer.
- (2) A statutory declaration by a director or the company secretary that the declarant is a director or the company secretary and that a share has been forfeited on a specified date—
  - (a) is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share; and
  - (b) subject to compliance with any other formalities of transfer required by the articles or by law, constitutes a good title to the share.

- (3) A person to whom a forfeited share is transferred is not bound to see to the application of the consideration (if any) nor is that person's title to the share affected by any irregularity in or invalidity of the process leading to the forfeiture or transfer of the share.
- (4) If the company sells a forfeited share, the person who held it prior to its forfeiture is entitled to receive from the company the proceeds of the sale, net of any commission, and excluding any amount that—
  - (a) was, or would have become, payable; and
  - (b) had not, when that share was forfeited, been paid by that person in respect of that share.
- (5) Despite paragraph (4), no interest is payable to such a person in respect of the proceeds and the company is not required to account for any money earned on them.

**77. Surrender of shares**

- (1) A member may surrender any share—
  - (a) in respect of which the directors may issue a notice of intended forfeiture under article 73;
  - (b) that the directors may forfeit; or
  - (c) that has been forfeited.
- (2) The directors may accept the surrender of such a share.
- (3) The effect of surrender on a share is the same as the effect of forfeiture on that share.
- (4) A share that has been surrendered may be dealt with in the same way as a share that has been forfeited.

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## **Division 5—Transfer and Transmission of Shares**

### **78. Transfers of shares**

- (1) Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of both the transferor and the transferee.
- (2) No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.
- (3) The company may retain any instrument of transfer that is registered.
- (4) The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.

### **79. Power of directors to refuse transfer of shares**

- (1) The directors may refuse to register the transfer of a share if—
  - (a) the share is not fully paid;
  - (b) the transfer is not lodged at the company's registered office or another place the directors have appointed;
  - (c) the transfer is not accompanied by the certificate for the shares to which it relates, or other evidence the directors reasonably require to show the transferor's right to make the transfer, or evidence of the right of someone other than the transferor to make the transfer on the transferor's behalf;
  - (d) the transfer is in respect of more than one class of share;  
or
  - (e) the transfer is in favour of more than 4 transferees.
- (2) If the directors refuse to register the transfer of a share—

- 
- (a) the transferor or transferee may request a statement of the reasons for the refusal; and
  - (b) the instrument of transfer must be returned to the transferor or transferee who lodged the transfer unless the directors suspect that the proposed transfer may be fraudulent.
- (3) The instrument of transfer must be returned in accordance with paragraph (2)(b) together with a notice of refusal within 2 months after the date on which the transfer was lodged with the company.
- (4) If a request is made under paragraph (2)(a), the directors must, within 28 days after receiving the request—
- (a) send the transferor or transferee who made the request a statement of the reasons for the refusal; or
  - (b) register the transfer.

**80. Power of directors to suspend registration of transfer of shares**

The directors may suspend the registration of a transfer of a share—

- (a) for any period or periods not exceeding 30 days in each year; or
- (b) if the period of 30 days for closing the register of members is extended in respect of that year under section 632(3) of the Ordinance, for not more than that extended period.

**81. Transmission of shares**

- (1) If a member dies, the company may only recognize the following person or persons as having any title to a share of that deceased member—
- (a) if the deceased was a joint holder of the share, the surviving holder or holders of the share; and

- (b) if the deceased was a sole holder of the share, the legal personal representative of the deceased.
- (2) Nothing in the articles releases the estate of a deceased member from any liability in respect of a share that had been jointly held by that member with other persons.

**82. Transmittees' rights**

- (1) If a transmittee produces evidence of entitlement to the share as the directors properly require, the transmittee may, subject to the articles, choose to become the holder of the share or to have the share transferred to another person.
- (2) The directors have the same right to refuse or suspend the registration as they would have had in the case of a transfer of the share by the holder before the transmission.
- (3) A transmittee is entitled to the same dividends and other advantages to which the transmittee would be entitled if the transmittee were the holder of the share, except that the transmittee is not, before being registered as a member in respect of the share, entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.
- (4) The directors may at any time give notice requiring a transmittee to choose to become the holder of the share or to have the share transferred to another person.
- (5) If the notice is not complied with within 90 days of the notice being given, the directors may withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

**83. Exercise of transmitters' rights**

- (1) If a transmitter chooses to become the holder of a share, the transmitter must notify the company in writing of the choice.
- (2) Within 2 months after receiving the notification, the directors must—
  - (a) register the transmitter as the holder of the share; or
  - (b) send the transmitter a notice of refusal of registration.
- (3) If the directors refuse registration, the transmitter may request a statement of the reasons for the refusal.
- (4) If the transmitter makes a request under paragraph (3), the directors must, within 28 days after receiving the request—
  - (a) send the transmitter a statement of the reasons; or
  - (b) register the transmitter as the holder of the share.
- (5) If the transmitter chooses to have the share transferred to another person, the transmitter must execute an instrument of transfer in respect of it.
- (6) All the limitations, restrictions and other provisions of the articles relating to the right to transfer and the registration of transfer of shares apply to the notice under paragraph (1) or the transfer under paragraph (5), as if the transmission had not occurred and the transfer were a transfer made by the holder of the share before the transmission.

**84. Transmitters bound by prior notices**

If a notice is given to a member in respect of shares and a transmitter is entitled to those shares, the transmitter is bound by the notice if it was given to the member before the transmitter's name has been entered in the register of members.

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## **Division 6—Alteration and Reduction of Share Capital, Share Buy-backs and Allotment of Shares**

### **85. Alteration of share capital**

The company may by ordinary resolution alter its share capital in any one or more of the ways set out in section 170 of the Ordinance.

### **86. Reduction of share capital**

The company may by special resolution reduce its share capital in accordance with Division 3 of Part 5 of the Ordinance.

### **87. Share buy-backs**

The company may buy back its own shares (including any redeemable shares) in accordance with Division 4 of Part 5 of the Ordinance.

### **88. Allotment of shares**

The directors must not exercise any power conferred on them to allot shares in the company without the prior approval of the company at a general meeting if the approval is required by section 141 of the Ordinance.

## **Division 7—Distributions**

### **89. Procedure for declaring dividends**

- (1) The company may at a general meeting declare dividends, but a dividend must not exceed the amount recommended by the directors.
- (2) The directors may from time to time pay to the members interim dividends that appear to the directors to be justified by the profits of the company.

- (3) No dividend may be paid otherwise than out of the profits in accordance with Part 6 of the Ordinance.
- (4) The directors may, before recommending any dividend, set aside out of the profits of the company any sums they think proper as a reserve or reserves that—
  - (a) must, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied; and
  - (b) pending such an application may, at the discretion of the directors, either be employed in the business of the company or be invested in any investments (other than shares of the company) that the directors think fit.
- (5) The directors may also without placing the sums to reserve carry forward any profits that they think prudent not to divide.

**90. Calculation of dividends**

- (1) Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends must be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid.
- (2) All dividends must be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid.
- (3) But if any share is issued on terms providing that it ranks for dividend as from a particular date, that share ranks for dividend accordingly.
- (4) For the purposes of this article, no amount paid or credited as paid on a share in advance of calls is treated as paid on the share.

**91. Payment of dividends and other distributions**

- (1) If a dividend or other sum that is a distribution is payable in respect of a share, it must be paid by one or more of the following means—
- (a) transferring to a bank account specified by the distribution recipient either in writing or as the directors may otherwise decide;
  - (b) sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors may otherwise decide;
  - (c) sending a cheque made payable to the specified person by post to the specified person at the address the distribution recipient has specified either in writing or as the directors may otherwise decide; or
  - (d) any other means of payment as the directors agree with the distribution recipient either in writing or by other means the directors decide.

(2) In this article—

*specified person* ( ) means a person specified by the distribution recipient either in writing or as the directors may otherwise decide.

**92. Deductions from distributions in respect of sums owed to the company**

- (1) This article applies if—
- (a) a share is subject to the company's lien under article 66;  
and

- (b) the directors are entitled to issue a lien enforcement notice under article 67 in respect of it.
- (2) The directors may, instead of issuing the lien enforcement notice, deduct from any dividend or other sum payable in respect of the share any sum of money that is payable to the company in respect of that share to the extent that they are entitled to require payment under the lien enforcement notice.
- (3) Money so deducted must be used to pay any of the sums payable in respect of that share.
- (4) The company must notify the distribution recipient in writing of—
  - (a) the fact and amount of the deduction;
  - (b) any non-payment of a dividend or other sum payable in respect of a share resulting from the deduction; and
  - (c) how the money deducted has been applied.

**93. No interest on distributions**

The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by—

- (a) the terms on which the share was issued; or
- (b) the provisions of another agreement between the holder of that share and the company.

**94. Unclaimed distributions**

- (1) All dividends or other sums that are—
  - (a) payable in respect of shares; and
  - (b) unclaimed after having been declared or become payable,may be invested or otherwise made use of by the directors for the benefit of the company until claimed.

- (2) The payment of the dividends or other sum into a separate account does not make the company a trustee in respect of it.
- (3) A distribution recipient is no longer entitled to a dividend or other sum and it ceases to remain owing by the company, if—
  - (a) 12 years have passed from the date on which the dividend or other sum became due for payment; and
  - (b) the distribution recipient has not claimed it.

**95. Non-cash distributions**

- (1) Subject to the terms of issue of the share in question, the company may by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).
- (2) For the purposes of paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, if any difficulty arises regarding the distribution—
  - (a) fixing the value of any assets;
  - (b) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and
  - (c) vesting any assets in trustees.

**96. Waiver of distributions**

- (1) Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by executing to the company a deed to that effect.
- (2) But if—
  - (a) the share has more than one holder; or

- (b) more than one person is entitled to the share, whether by reason of the death or bankruptcy of one or more joint holders, or otherwise,

the deed is not effective unless it is expressed to be executed by all the holders or persons otherwise entitled to the share.

### **Division 8—Capitalization of Profits**

#### **97. Capitalization of profits**

- (1) The company may by ordinary resolution on the recommendation of the directors capitalize profits.
- (2) If the capitalization is to be accompanied by the issue of shares or debentures, the directors may apply the sum capitalized in the proportions in which the members would be entitled if the sum was distributed by way of dividend.
- (3) To the extent necessary to adjust the rights of the members among themselves if shares or debentures become issuable in fractions, the directors may make any arrangements they think fit, including the issuing of fractional certificates or the making of cash payments or adopting a rounding policy.

## **Part 5**

### **Miscellaneous Provisions**

#### **Division 1—Communications to and by Company**

#### **98. Means of communication to be used**

- (1) Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which Part 18 of the Ordinance provides for

documents or information to be sent or supplied by or to the company for the purposes of the Ordinance.

- (2) Subject to the articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such a notice or document for the time being.
- (3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

**99. Failure to notify contact details**

- (1) If—
  - (a) the company sends two consecutive documents to a member over a period of at least 12 months; and
  - (b) each of those documents is returned undelivered, or the company receives notification that it has not been delivered,

that member ceases to be entitled to receive notices from the company.

- (2) A member who has ceased to be entitled to receive notices from the company becomes entitled to receive those notices again by sending the company—
  - (a) an address to be recorded in the register of members; or
  - (b) if the member has agreed that the company should use a means of communication other than sending things to such an address, the information that the company needs to use that means of communication effectively.

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## **Division 2—Administrative Arrangements**

### **100. Company seals**

- (1) A common seal may only be used by the authority of the directors.
- (2) A common seal must be a metallic seal.
- (3) Subject to paragraph (2), the directors may decide by what means and in what form a common seal or official seal (whether for use outside Hong Kong or for sealing securities) is to be used.
- (4) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least 1 director of the company and 1 authorized person.
- (5) For the purposes of this article, an authorized person is—
  - (a) any director of the company;
  - (b) the company secretary; or
  - (c) any person authorized by the directors for the purpose of signing documents to which the common seal is applied.
- (6) If the company has an official seal for use outside Hong Kong, it may only be affixed to a document if its use on that document, or documents of a class to which it belongs, has been authorized by a decision of the directors.
- (7) If the company has an official seal for sealing securities, it may only be affixed to securities by the company secretary or a person authorized to apply it to securities by the company secretary.

**101. No right to inspect accounts and other records**

A person is not entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a member, unless the person is authorized to do so by—

- (a) an enactment;
- (b) an order under section 740 of the Ordinance; or
- (c) the directors or an ordinary resolution of the company.

**102. Auditor's insurance**

(1) The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of an auditor of the company, or an auditor of the associated company, against—

- (a) any liability to any person attaching to the auditor in connection with any negligence, default, breach of duty or breach of trust (except for fraud) occurring in the course of performance of the duties of auditor in relation to the company or associated company (as the case may be); or
- (b) any liability incurred by the auditor in defending any proceedings (whether civil or criminal) taken against the auditor for any negligence, default, breach of duty or breach of trust (including fraud) occurring in the course of performance of the duties of auditor in relation to the company or associated company (as the case may be).

(2) In this article, a reference to performance of the duties of auditor includes the performance of the duties specified in section 415(6)(a) and (b) of the Ordinance.

**103. Winding up**

(1) If the company is wound up, the liquidator—

- (a) may, with the required sanction, divide amongst the members in specie or kind the whole or any part of the assets of the company (whether they consist of property of the same kind or not) and may, for this purpose, set a value the liquidator thinks fair on any property to be so divided; and
  - (b) may determine how the division is to be carried out as between the members or different classes of members.
- (2) The liquidator may, with the required sanction, vest the whole or part of those assets in trustees on any trust for the benefit of the contributories that the liquidator, with the required sanction, thinks fit, but a member must not be compelled to accept any shares or other securities on which there is any liability.
- (3) In this article—
- required sanction*** ( ) means the sanction of a special resolution of the company and any other sanction required by the Ordinance.
-

**Schedule 2**

[s. 3]

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## Part 1

### Interpretation

#### 1. Interpretation

(1) In the articles—

*articles* ( ) means the articles of association of the company;

*associated company* ( ) means—

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

***distribution recipient*** ( ) means, in respect of a share in respect of which a dividend or other sum is payable—

- (a) the holder of the share;
- (b) if the share has two or more joint holders, whichever of them is named first in the register of members; or
- (c) if the holder is no longer entitled to the share by reason of death or bankruptcy or otherwise by operation of law, the transmittee;

***fully paid*** ( ), in relation to a share, means the price at which the share was issued has been fully paid to the company;

***holder*** ( ), in relation to a share, means the person whose name is entered in the register of members as the holder of the share;

***Ordinance*** ( ) means the Companies Ordinance (28 of 2012);

***paid*** ( ) means paid or credited as paid;

***proxy notice*** ( )—see article 43;

***transmittee*** ( ) means a person entitled to a share by reason of the death or bankruptcy of a member or otherwise by operation of law.

- (2) Other words or expressions used in the articles have the same meaning as in the Ordinance as in force on the date the articles become binding on the company.
- (3) For the purposes of the articles, a document is authenticated if it is authenticated in any way in which section 828(5) or 829(3) of the Ordinance provides for documents or information to be authenticated for the purposes of the Ordinance.

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## Part 2

### Private Company

#### 2. Company is private company

- (1) The company is a private company and accordingly—
  - (a) a member's right to transfer shares is restricted in the manner specified in this article;
  - (b) the number of members of the company is limited to 50; and
  - (c) any invitation to the public to subscribe for any shares or debentures of the company is prohibited.
- (2) The directors may in their discretion refuse to register the transfer of a share.
- (3) In paragraph (1)(a)—

*member* ( ) 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.
- (4) For the purposes of this article, 2 or more persons who hold shares in the company jointly are to be regarded as one member.

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## **Part 3**

### **Directors and Company Secretary**

#### **Division 1—Directors’ Powers and Responsibilities**

##### **3. Directors’ general authority**

- (1) Subject to the Ordinance and the articles, the business and affairs of the company are managed by the directors, who may exercise all the powers of the company.
- (2) An alteration of the articles does not invalidate any prior act of the directors that would have been valid if that alteration had not been made.
- (3) The powers given by this article are not limited by any other power given to the directors by the articles.
- (4) A meeting of the directors at which a quorum is present may exercise all powers exercisable by the directors.

##### **4. Members’ reserve power**

- (1) The members may, by special resolution, direct the directors to take, or refrain from taking, specified action.
- (2) The special resolution does not invalidate anything that the directors have done before the passing of the resolution.

##### **5. Directors may delegate**

- (1) Subject to the articles, the directors may delegate any of the powers that are conferred on them under the articles—
  - (a) to any person or committee;
  - (b) by any means (including by power of attorney);
  - (c) to any extent and without any territorial limit;

- (d) in relation to any matter; and
  - (e) on any terms and conditions,  
they think fit.
- (2) If the directors so specify, the delegation may authorize further delegation of the directors' powers by any person to whom they are delegated.
  - (3) The directors may revoke the delegation in whole or in part, or revoke or alter its terms and conditions.

**6. Committees**

- (1) The directors may make rules providing for the conduct of business of the committees to which they have delegated any of their powers.
- (2) The committees must comply with the rules.

**Division 2—Decision-making by Directors**

**7. Directors to take decision collectively**

- (1) The general rule about decision-making by directors is that any decision of the directors must be either a majority decision at a meeting or a decision taken in accordance with article 8.
- (2) If—
  - (a) the company only has one director; and
  - (b) no provision of the articles requires it to have more than one director,the general rule does not apply, and the director may take decisions without regard to any of the provisions of the articles relating to directors' decision-making.

**8. Unanimous decisions**

- (1) A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other (either directly or indirectly) by any means that they share a common view on a matter.
- (2) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.
- (3) References in this article to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting.
- (4) A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at a directors' meeting.

**9. Calling directors' meeting**

- (1) Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorizing the company secretary to give such a notice.
- (2) Notice of a directors' meeting must indicate—
  - (a) its proposed date and time;
  - (b) where it is to take place; and
  - (c) if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
- (3) Notice of a directors' meeting must be given to each director, but need not be in writing.

**10. Participation in directors' meetings**

- (1) Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when—
  - (a) the meeting has been called and takes place in accordance with the articles; and
  - (b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- (2) In determining whether directors are participating in a directors' meeting, it is irrelevant where a director is and how they communicate with each other.
- (3) If all the directors participating in a directors' meeting are not in the same place, they may decide that the meeting is to be regarded as taking place wherever any of them is.

**11. Quorum for directors' meetings**

- (1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- (2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors and unless otherwise fixed it is 2.

**12. Meetings where total number of directors less than quorum**

If the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than a decision—

- (a) to appoint further directors; or
- (b) to call a general meeting so as to enable the members to appoint further directors.

**13. Chairing of directors' meeting**

- (1) The directors may appoint a director to chair their meetings.
- (2) The person so appointed for the time being is known as the chairperson.
- (3) The directors may terminate the appointment of the chairperson at any time.
- (4) If the chairperson is not participating in a directors' meeting within 10 minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

**14. Chairperson's casting vote at directors' meetings**

- (1) If the numbers of votes for and against a proposal are equal, the chairperson or other director chairing the directors' meeting has a casting vote.
- (2) But this does not apply if, in accordance with the articles, the chairperson or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

**15. Conflicts of interest**

- (1) If a director is in any way, directly or indirectly, interested in a transaction, arrangement or contract, or a proposed transaction, arrangement or contract, with the company that is significant in relation to the company's business, and the director's interest is material, the director must declare the nature and extent of the director's interest to the other directors in accordance with section 536 of the Ordinance.
- (2) A director must not vote in respect of the transaction, arrangement or contract or the proposed transaction, arrangement or contract in which the director is so interested, and if the director does so, the vote must not be counted, nor

must the director be counted in the quorum present at the meeting.

- (3) Paragraph (2) does not apply to—
  - (a) any arrangement for giving any director any security or indemnity in respect of money lent by the director to or obligations undertaken by the director for the benefit of the company;
  - (b) any arrangement for the giving by the company of any security to a third party in respect of a debt or obligation of the company for which the director has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security; or
  - (c) any arrangement pursuant to which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries, which do not provide special benefits for directors or former directors.
- (4) A director may hold any other office or place of profit under the company (other than the office of auditor) in conjunction with the office of director for a period and on terms (as to remuneration or otherwise) that the directors determine.
- (5) A director or intending director is not disqualified by the office of director from contracting with the company—
  - (a) with regard to the tenure of the other office or place of profit mentioned in paragraph (4); or
  - (b) as vendor, purchaser or otherwise.
- (6) The contract mentioned in paragraph (5) or any contract or arrangement entered into by or on behalf of the company in which any director is in any way interested is not liable to be avoided.

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- (7) A director who has entered into a contract mentioned in paragraph (5) or is interested in a contract or arrangement mentioned in paragraph (6) is not liable to account to the company for any profit realized by the contract or arrangement by reason of—
    - (a) the director holding the office; or
    - (b) the fiduciary relation established by the office.
  - (8) Paragraph (4), (5), (6) or (7) only applies if the director has declared the nature and extent of the director's interest under the paragraph to the other directors in accordance with section 536 of the Ordinance.
  - (9) A director of the company may be a director or other officer of, or otherwise interested in, any company promoted by the company or in which the company may be interested as shareholder or otherwise.
  - (10) Subject to the Ordinance, the director is not accountable to the company for any remuneration or other benefits received by the director as a director or officer of, or from the director's interest in, the other company unless the company otherwise directs.

**16. Validity of acts of meeting of directors**

The acts of any meeting of directors or of a committee of directors or the acts of any person acting as a director are valid as if the directors or the person had been duly appointed as a director and was qualified to be a director, despite the fact that it is afterwards discovered that—

- (a) there was a defect in the appointment of any of the directors or of the person as a director;
- (b) they or any of them were not qualified to be a director or were disqualified from being a director;

- (c) they or any of them had ceased to hold office as a director; or
- (d) they or any of them were not entitled to vote on the matter in question.

**17. Record of decisions to be kept**

The directors must ensure that the company keeps a written record of every unanimous or majority decision taken by the directors for at least 10 years from the date of the decision.

**18. Written record of decision of sole director of private company**

- (1) If the company has only one director and the director takes any decision that—
  - (a) may be taken in a meeting of directors; and
  - (b) has effect as if agreed in a meeting of directors,the director must (unless that decision is taken by way of a resolution in writing) provide the company with a written record of that decision within 7 days after the decision is made.
- (2) The company must keep a written record provided to it in accordance with paragraph (1) for at least 10 years from the date of the decision.

**19. Directors' discretion to make further rules**

Subject to the articles, the directors may make any rule that they think fit about how they take decisions, and about how the rules are to be recorded or communicated to directors.

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### **Division 3—Appointment of Directors**

#### **20. Appointment and retirement of directors**

- (1) A person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—
  - (a) by ordinary resolution; or
  - (b) by a decision of the directors.
- (2) Unless otherwise specified in the appointment, a director appointed under paragraph (1)(a) holds office for an unlimited period of time.
- (3) An appointment under paragraph (1)(b) may only be made for the purpose of—
  - (a) filling a casual vacancy; or
  - (b) appointing a director as an addition to the existing directors if the total number of directors does not exceed the number fixed in accordance with the articles.
- (4) A director appointed under paragraph (1)(b) must—
  - (a) retire at the annual general meeting next following the appointment; or
  - (b) if the company has dispensed with the holding of annual general meetings or is not required to hold annual general meetings, retire before the end of 9 months after the end of the company's accounting reference period by reference to which the financial year in which the director was appointed is to be determined.

#### **21. Composite resolution**

If proposals are under consideration concerning the appointment of 2 or more directors to offices or employments with the company or any body corporate in which the company is interested—

- (a) the proposals may be divided and considered in relation to each director separately; and
- (b) each of the directors concerned is entitled to vote (if the director is not for another reason precluded from voting) and be counted in the quorum in respect of each resolution except that concerning the director's own appointment.

**22. Termination of director's appointment**

A person ceases to be a director if the person—

- (a) ceases to be a director under any provision of the Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) or is prohibited from being a director by law;
- (b) becomes bankrupt or makes any arrangement or composition with the person's creditors generally;
- (c) becomes of unsound mind;
- (d) resigns the office of director by notice in writing of the resignation in accordance with section 464(5) of the Ordinance; or
- (e) for more than 6 months has been absent without permission of the directors from meetings of the directors held during that period.

**23. Directors' remuneration**

- (1) Directors' remuneration must be determined by the company at a general meeting.
- (2) A director's remuneration may—
  - (a) take any form; and

- (b) include any arrangements in connection with the payment of a retirement benefit to or in respect of that director.
- (3) Directors' remuneration accrues from day to day.

**24. Directors' expenses**

The company may pay any travelling, hotel and other expenses properly incurred by directors in connection with their attendance at—

- (a) meetings of directors or committees of directors;
- (b) general meetings; or
- (c) separate meetings of the holders of any class of shares or of debentures of the company,

or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

**Division 4—Directors' Indemnity and Insurance**

**25. Indemnity**

- (1) A director or former director of the company may be indemnified out of the company's assets against any liability incurred by the director to a person other than the company or an associated company of the company in connection with any negligence, default, breach of duty or breach of trust in relation to the company or associated company (as the case may be) if the indemnity does not cover—
  - (a) any liability of the director to pay—
    - (i) a fine imposed in criminal proceedings; or
    - (ii) a sum payable by way of a penalty in respect of non-compliance with any requirement of a regulatory nature; or

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- (b) any liability incurred by the director—
    - (i) in defending criminal proceedings in which the director is convicted;
    - (ii) in defending civil proceedings brought by the company, or an associated company of the company, in which judgment is given against the director;
    - (iii) in defending civil proceedings brought on behalf of the company by a member of the company or of an associated company of the company, in which judgment is given against the director;
    - (iv) in defending civil proceedings brought on behalf of an associated company of the company by a member of the associated company or by a member of an associated company of the associated company, in which judgment is given against the director; or
    - (v) in connection with an application for relief under section 903 or 904 of the Ordinance in which the Court refuses to grant the director relief.
  - (2) A reference in paragraph (1)(b) to a conviction, judgment or refusal of relief is to the final decision in the proceedings.
  - (3) For the purposes of paragraph (2), a conviction, judgment or refusal of relief—
    - (a) if not appealed against, becomes final at the end of the period for bringing an appeal; or
    - (b) if appealed against, becomes final when the appeal, or any further appeal, is disposed of.
  - (4) For the purposes of subsection (3)(b), an appeal is disposed of if—

- (a) it is determined, and the period for bringing any further appeal has ended; or
- (b) it is abandoned or otherwise ceases to have effect.

**26. Insurance**

The directors may decide to purchase and maintain insurance, at the expense of the company, for a director of the company, or a director of an associated company of the company, against—

- (a) any liability to any person attaching to the director in connection with any negligence, default, breach of duty or breach of trust (except for fraud) in relation to the company or associated company (as the case may be); or
- (b) any liability incurred by the director in defending any proceedings (whether civil or criminal) taken against the director for any negligence, default, breach of duty or breach of trust (including fraud) in relation to the company or associated company (as the case may be).

**Division 5—Company Secretary**

**27. Appointment and removal of company secretary**

- (1) The directors may appoint a company secretary for a term, at a remuneration and on conditions they think fit.
- (2) The directors may remove a company secretary appointed by them.

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## **Part 4**

### **Decision-making by Members**

#### **Division 1—Organization of General Meetings**

##### **28. General meeting**

- (1) Subject to sections 611, 612 and 613 of the Ordinance, the company must, in respect of each financial year of the company, hold a general meeting as its annual general meeting in accordance with section 610 of the Ordinance.
- (2) The directors may, if they think fit, call a general meeting.
- (3) If the directors are required to call a general meeting under section 566 of the Ordinance, they must call it in accordance with section 567 of the Ordinance.
- (4) If the directors do not call a general meeting in accordance with section 567 of the Ordinance, 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.

##### **29. Notice of general meetings**

- (1) An annual general meeting must be called by notice of at least 21 days in writing.
- (2) A general meeting of the company other than an annual general meeting must be called by notice of at least 14 days in writing.
- (3) The notice is exclusive of the day on which it is served or deemed to be served and of the day for which it is given.
- (4) The notice must—
  - (a) specify the date and time of the meeting;

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- (b) specify 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) state 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, state that the meeting is an annual general meeting;
  - (e) if a resolution (whether or not a special resolution) is intended to be moved at the meeting—
    - (i) include notice of the resolution; and
    - (ii) include or is accompanied by a statement containing the information and explanation, if any, that is reasonably necessary to indicate the purpose of the resolution;
  - (f) if a special resolution is intended to be moved at the meeting, specify the intention and include the text of the special resolution; and
  - (g) contain a statement specifying a member’s right to appoint a proxy under section 596(1) and (3) of the Ordinance.
- (5) Paragraph (4)(e) does not apply in relation to a resolution of which—
- (a) notice has been included in the notice of meeting under section 567(3) or 568(2) of the Ordinance; or
  - (b) notice has been given under section 615 of the Ordinance.
- (6) Despite the fact that a general meeting of the company is called by shorter notice than that specified in this article, it is regarded 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 entitled 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.

**30. Persons entitled to receive notice of general meeting**

- (1) Notice of a general meeting must be given to—
  - (a) every member; and
  - (b) every director.
- (2) In paragraph (1), the reference to a member includes a transmittee, if the company has been notified of the transmittee's entitlement to a share.
- (3) If notice of a general meeting or any other document relating to the general meeting is required to be given to a member, the company must give 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 given to the member.

**31. Accidental failure to give notice of general meeting**

Any accidental failure to give notice to, or any non-receipt of notice of a general meeting by, any person entitled to receive notice does not invalidate the proceedings at the meeting.

**32. Attendance and speaking at general meetings**

- (1) A person is able to exercise the right to speak at a general meeting when the person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions that the person has on the business of the meeting.

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- (2) A person is able to exercise the right to vote at a general meeting when—
    - (a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
    - (b) that person's vote can be taken into account in determining whether or not those resolutions are passed at the same time as the votes of all the other persons attending the meeting.
  - (3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
  - (4) In determining attendance at a general meeting, it is immaterial whether any 2 or more members attending it are in the same place as each other.
  - (5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have rights to speak and vote at the meeting, they are able to exercise them.

**33. Quorum for general meetings**

No business other than the appointment of the chairperson of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

**34. Chairing general meetings**

- (1) The chairperson, if any, of the board of directors must preside as chairperson at a general meeting of the company.
- (2) If there is no chairperson of the board of directors, or if the chairperson is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act or has given notice to the company of the intention not to attend the

meeting, the directors present must elect one of them to be chairperson of the meeting.

- (3) If at any meeting no director is willing to act as chairperson or if no director is present within 15 minutes after the time appointed for holding the meeting, the members present must choose one of them to be the chairperson of the meeting.
- (4) A proxy may be elected to be the chairperson of a general meeting by a resolution of the company passed at the meeting.

**35. Attendance and speaking by non-members**

The chairperson of a general meeting may permit other persons who are not—

- (a) members of the company; or
- (b) otherwise entitled to exercise the rights of members in relation to general meetings,

to attend and speak at a general meeting.

**36. Adjournment**

- (1) If within half an hour from the time appointed for holding a general meeting a quorum is not present, the meeting must—
  - (a) if called on the request of members, be dissolved; and
  - (b) in any other case, be adjourned to the same day in the next week, at the same time and place, or to another day and at another time and place the directors determine.
- (2) If at the adjourned meeting, a quorum is not present within half an hour from the time appointed for holding the meeting, the members present is a quorum.
- (3) The chairperson may adjourn a general meeting at which a quorum is present if—
  - (a) the meeting consents to an adjournment; or

- (b) it appears to the chairperson that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.
- (4) The chairperson must adjourn a general meeting if directed to do so by the meeting.
- (5) When adjourning a general meeting, the chairperson must specify the time and place to which it is adjourned.
- (6) No business may be transacted at an adjourned general meeting other than the business left unfinished at the general meeting from which the adjournment took place.
- (7) If a general meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- (8) If a general meeting is adjourned for less than 30 days, it is not necessary to give any notice of the adjourned meeting.

## **Division 2—Voting at General Meetings**

### **37. General rules on voting**

- (1) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles.
- (2) If there is an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded, is entitled to a second or casting vote.
- (3) On a vote on a resolution on a show of hands at a general meeting, 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.

- (4) An entry in respect of the declaration in minutes of the meeting is also conclusive evidence of that fact without the proof.

**38. Errors and disputes**

- (1) No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and a vote not disallowed at the meeting is valid.
- (2) Any objection must be referred to the chairperson of the meeting whose decision is final.

**39. Demanding a poll**

- (1) A poll on a resolution may be demanded—
  - (a) in advance of the general meeting where it is to be put to the vote; or
  - (b) at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.
- (2) A poll may be demanded by—
  - (a) the chairperson of the meeting;
  - (b) by at least 2 members present in person or by proxy; or
  - (c) by any member or members present in person or by proxy and representing at least 5% of the total voting rights of all the members having the right to vote at the meeting.
- (3) The instrument appointing a proxy is regarded as conferring authority to demand or join in demanding a poll.

- (4) A demand for a poll may be withdrawn.

**40. Number of votes a member has**

- (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) every member present in person has one vote for each share held by him or her; and
  - (b) every proxy present who has been duly appointed by a member has one vote for each share held by that member.
- (4) This article has effect subject to any rights or restrictions attached to any shares or class of shares.

**41. Votes of joint holders of shares**

- (1) In the case of joint holders of shares, only the vote of the most senior holder who votes (and any proxies duly authorized by the holder) may be counted.
- (2) For the purposes of this article, the seniority of a 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.

**42. Votes of mentally incapacitated members**

- (1) A mentally incapacitated member may vote, whether on a show of hands or on a poll, by the member's committee, receiver, guardian or other person in the nature of a committee, receiver or guardian appointed by the Court.
- (2) The committee, receiver, guardian or other person may, on a poll, vote by proxy.
- (3) In this article—

*mentally incapacitated member* ( ) means a member who is found under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing his or her property and affairs.

**43. Content of proxy notices**

- (1) Proxies may only validly be appointed by a notice in writing (*proxy notice*) that—
  - (a) states the name and address of the member appointing the proxy;
  - (b) identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed;
  - (c) is authenticated, or is signed on behalf of the member appointing the proxy; and
  - (d) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.
- (2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

- (3) If the company requires or allows a proxy notice to be delivered to it in electronic form, it may require the delivery to be properly protected by a security arrangement it specifies.
- (4) A proxy notice may specify how the proxy appointed under it is to vote (or that the proxy is to abstain from voting) on one or more resolutions dealing with any business to be transacted at a general meeting.
- (5) Unless a proxy notice indicates otherwise, it must be regarded as—
  - (a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and
  - (b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

**44. Execution of appointment of proxy on behalf of member appointing the proxy**

If a proxy notice is not authenticated, it must be accompanied by written evidence of the authority of the person who executed the appointment to execute it on behalf of the member appointing the proxy.

**45. Delivery of proxy notice and notice revoking appointment of proxy**

- (1) A proxy notice does not take effect unless it is received by the company—
  - (a) in the case of a general meeting or adjourned meeting, not less than 48 hours before the time appointed for holding the meeting or adjourned meeting; and

- (b) in the case of a poll taken more than 48 hours after it was demanded, not less than 24 hours before the time appointed for the taking of the poll.
- (2) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- (3) A notice revoking the appointment only takes effect if it is received by the company—
  - (a) in the case of a general meeting or adjourned general meeting, not less than 48 hours before the time appointed for holding the meeting or adjourned meeting; and
  - (b) in the case of a poll taken more than 48 hours after it was demanded, not less than 24 hours before the time appointed for the taking of the poll.

**46. 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, the voting right attached to the shares in respect of which the proxy is appointed.
- (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 proxy notice has been delivered to the company by or on behalf of that member.

**47. Effect of proxy votes in case of death, mental incapacity, etc. of member appointing the proxy**

- (1) A vote given in accordance with the terms of a proxy notice is valid despite—
  - (a) the previous death or mental incapacity of the member appointing the proxy;
  - (b) the revocation of the appointment of the proxy or of the authority under which the appointment of the proxy is executed; or
  - (c) the transfer of the share in respect of which the proxy is appointed.
- (2) Paragraph (1) does not apply if notice in writing of the death, mental incapacity, revocation or transfer is received by the company—
  - (a) in the case of a general meeting or adjourned meeting, not less than 48 hours before the time appointed for holding the meeting or adjourned meeting; and
  - (b) in the case of a poll taken more than 48 hours after it was demanded, not less than 24 hours before the time appointed for the taking of the poll.
- (3) In this article—

*mental incapacity* ( ) has the meaning given by section 2(1) of the Mental Health Ordinance (Cap. 136).

**48. Amendments to proposed resolutions**

- (1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—
  - (a) notice of the proposed amendment is given to the company secretary in writing by a person entitled to vote at the general meeting at which it is to be proposed at least 48 hours before the meeting is to take place (or a

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- later time the chairperson of the meeting determines);  
and
- (b) the proposed amendment does not, in the reasonable opinion of the chairperson of the meeting, materially alter the scope of the resolution.
- (2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if—
- (a) the chairperson of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and
  - (b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- (3) If the chairperson of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairperson’s error does not invalidate the vote on that resolution unless the Court otherwise orders.

### **Division 3—Application of Rules to Class Meetings**

#### **49. Class meetings**

The provisions of the articles relating to general meetings apply, with any necessary modifications, to meetings of the holders of any class of shares.

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## **Part 5**

### **Shares and Distributions**

#### **Division 1—Issue of Shares**

**50. All shares to be fully paid up**

No share is to be issued unless the share is fully paid.

**51. Powers to issue different classes of shares**

- (1) Without affecting any special rights previously conferred on the holders of any existing shares or class of shares, the company may issue shares with—
  - (a) preferred, deferred or other special rights; or
  - (b) any restrictions, whether in regard to dividend, voting, return of capital or otherwise, that the company may from time to time by ordinary resolution determine.
- (2) Subject to Division 4 of Part 5 of the Ordinance, the company may issue shares on the terms that they are to be redeemed, or liable to be redeemed at the option of the company or the holders of the shares.
- (3) The directors may determine the terms, conditions and manner of redemption of the shares.

#### **Division 2—Interests in Shares**

**52. Company not bound by less than absolute interests**

- (1) Except as required by law, no person is to be recognized by the company as holding any share on any trust.
- (2) Except as otherwise required by law or the articles, the company is not in any way to be bound by or recognize any

interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.

- (3) Paragraph (2) applies even though the company has notice of the interest.

### **Division 3—Shares Certificates**

#### **53. Certificates to be issued except in certain cases**

- (1) The company must issue each member, free of charge, with one or more certificates in respect of the shares that the member holds, within 2 months after allotment or lodgment of transfer, or within any other period that the conditions of issue provide.
- (2) No certificate may be issued in respect of shares of more than one class.
- (3) If more than one person holds a share, only one certificate may be issued in respect of it.

#### **54. Contents and execution of share certificates**

- (1) A certificate must specify—
  - (a) in respect of how many shares, of what class, it is issued;
  - (b) the fact that the shares are fully paid;
  - (c) the amount paid up on them; and
  - (d) any distinguishing numbers assigned to them.
- (2) A certificate must—
  - (a) have affixed to it the company's common seal; or
  - (b) be otherwise executed in accordance with the Ordinance.

#### **55. Consolidated share certificates**

- (1) A member may request the company, in writing, to replace—

- (a) the member's separate certificates with a consolidated certificate; or
  - (b) the member's consolidated certificate with 2 or more separate certificates representing the proportion of the shares that the member specifies.
- (2) A consolidated certificate must not be issued unless any certificates that it is to replace have first been returned to the company for cancellation.
- (3) Separate certificates must not be issued unless the consolidated certificate that they are to replace has first been returned to the company for cancellation.

**56. Replacement share certificates**

- (1) If a certificate issued in respect of a member's shares is defaced, damaged, lost or destroyed, that member is entitled to be issued with a replacement certificate in respect of the same shares.
- (2) A member exercising the right to be issued with a replacement certificate—
- (a) may at the same time exercise the right to be issued with a single certificate, separate certificates or a consolidated certificate;
  - (b) must return the certificate that is to be replaced to the company if it is defaced or damaged; and
  - (c) must comply with the conditions as to evidence, indemnity and the payment of a reasonable fee the directors decide.

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## **Division 4—Transfer and Transmission of Shares**

### **57. Transfers of shares**

- (1) Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of both the transferor and the transferee.
- (2) No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.
- (3) The company may retain any instrument of transfer that is registered.
- (4) The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.

### **58. Power of directors to refuse transfer of shares**

- (1) The directors may refuse to register the transfer of a share if—
  - (a) the transfer is not lodged at the company's registered office or another place the directors have appointed;
  - (b) the transfer is not accompanied by the certificate for the shares to which it relates, or other evidence the directors reasonably require to show the transferor's right to make the transfer, or evidence of the right of someone other than the transferor to make the transfer on the transferor's behalf;
  - (c) the transfer is in respect of more than one class of share;  
or
  - (d) the transfer is in favour of more than 4 transferees.
- (2) If the directors refuse to register the transfer of a share—

- (a) the transferor or transferee may request a statement of the reasons for the refusal; and
  - (b) the instrument of transfer must be returned to the transferor or transferee who lodged the transfer unless the directors suspect that the proposed transfer may be fraudulent.
- (3) The instrument of transfer must be returned in accordance with paragraph (2)(b) together with a notice of refusal within 2 months after the date on which the transfer was lodged with the company.
- (4) If a request is made under paragraph (2)(a), the directors must, within 28 days after receiving the request—
- (a) send the transferor or transferee who made the request a statement of the reasons for the refusal; or
  - (b) register the transfer.

**59. Transmission of shares**

If a member dies, the company may only recognize the following person or persons as having any title to a share of that deceased member—

- (a) if the deceased was a joint holder of the share, the surviving holder or holders of the share; and
- (b) if the deceased was a sole holder of the share, the legal personal representative of the deceased.

**60. Transmittees' rights**

- (1) If a transmittee produces evidence of entitlement to the share as the directors properly require, the transmittee may, subject to the articles, choose to become the holder of the share or to have the share transferred to another person.

- (2) The directors have the same right to refuse or suspend the registration as they would have had in the case of a transfer of the share by the holder before the transmission.
- (3) A transmittee is entitled to the same dividends and other advantages to which the transmittee would be entitled if the transmittee were the holder of the share, except that the transmittee is not, before being registered as a member in respect of the share, entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.
- (4) The directors may at any time give notice requiring a transmittee to choose to become the holder of the share or to have the share transferred to another person.
- (5) If the notice is not complied with within 90 days of the notice being given, the directors may withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

**61. Exercise of transmittees' rights**

- (1) If a transmittee chooses to become the holder of a share, the person must notify the company in writing of the choice.
- (2) Within 2 months after receiving the notification, the directors must—
  - (a) register the transmittee as the holder of the share; or
  - (b) send the transmittee a notice of refusal of registration.
- (3) If the directors refuse registration, the transmittee may request a statement of the reasons for the refusal.
- (4) If the transmittee makes a request under paragraph (3), the directors must, within 28 days after receiving the request—
  - (a) send the transmittee a statement of the reasons; or

- (b) register the transmittee as the holder of the share.
- (5) If the transmittee chooses to have the share transferred to another person, the transmittee must execute an instrument of transfer in respect of it.
- (6) All the limitations, restrictions and other provisions of the articles relating to the right to transfer and the registration of transfer of shares apply to the notice under paragraph (1) or the transfer under paragraph (5), as if the transmission had not occurred and the transfer were a transfer made by the holder of the share before the transmission.

**62. Transmittees bound by prior notices**

If a notice is given to a member in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was given to the member before the transmittee's name has been entered in the register of members.

**Division 5—Alteration and Reduction of Share Capital,  
Share Buy-backs and Allotment of Shares**

**63. Alteration of share capital**

The company may by ordinary resolution alter its share capital in any one or more of the ways set out in section 170(2)(a), (b), (c), (d), (e) and (f)(i) of the Ordinance, and subsections (3), (4), (5), (6), (7) and (8) of section 170 of the Ordinance apply accordingly.

**64. Reduction of share capital**

The company may by special resolution reduce its share capital in accordance with Division 3 of Part 5 of the Ordinance.

**65. Share buy-backs**

The company may buy back its own shares (including any redeemable shares) in accordance with Division 4 of Part 5 of the Ordinance.

**66. Allotment of shares**

The directors must not exercise any power conferred on them to allot shares in the company without the prior approval of the company at a general meeting if the approval is required by section 141 of the Ordinance.

### **Division 6—Distributions**

**67. Procedure for declaring dividends**

- (1) The company may at a general meeting declare dividends, but a dividend must not exceed the amount recommended by the directors.
- (2) The directors may from time to time pay to the members interim dividends that appear to the directors to be justified by the profits of the company.
- (3) No dividend may be paid otherwise than out of the profits in accordance with Part 6 of the Ordinance.
- (4) The directors may, before recommending any dividend, set aside out of the profits of the company any sums they think proper as a reserve or reserves that—
  - (a) must, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied; and
  - (b) pending such an application may, at the discretion of the directors, either be employed in the business of the company or be invested in investments (other than shares of the company) that the directors think fit.

- (5) The directors may also without placing the sums to reserve carry forward any profits that they think prudent not to divide.

**68. Payment of dividends and other distributions**

- (1) If a dividend or other sum that is a distribution is payable in respect of a share, it must be paid by one or more of the following means—
- (a) transferring to a bank account specified by the distribution recipient either in writing or as the directors may otherwise decide;
  - (b) sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors may otherwise decide;
  - (c) sending a cheque made payable to the specified person by post to the specified person at the address the distribution recipient has specified either in writing or as the directors may otherwise decide;
  - (d) any other means of payment as the directors agree with the distribution recipient either in writing or by other means the directors decide.
- (2) In this article—
- specified person* ( ) means a person specified by the distribution recipient either in writing or as the directors may otherwise decide.

**69. No interest on distributions**

The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by—

- (a) the terms on which the share was issued; or
- (b) the provisions of another agreement between the holder of that share and the company.

**70. Unclaimed distributions**

- (1) All dividends or other sums that are—
  - (a) payable in respect of shares; and
  - (b) unclaimed after having been declared or become payable,  
may be invested or otherwise made use of by the directors for the benefit of the company until claimed.
- (2) The payment of the dividends or other sum into a separate account does not make the company a trustee in respect of it.
- (3) A distribution recipient is no longer entitled to a dividend or other sum and it ceases to remain owing by the company, if—
  - (a) 12 years have passed from the date on which the dividend or other sum became due for payment; and
  - (b) the distribution recipient has not claimed it.

**71. Non-cash distributions**

- (1) Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).
- (2) For the purposes of paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, if any difficulty arises regarding the distribution—
  - (a) fixing the value of any assets;

- (b) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and
- (c) vesting any assets in trustees.

**72. Waiver of distributions**

- (1) Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by executing to the company a deed to that effect.
- (2) But if—
  - (a) the share has more than one holder; or
  - (b) more than one person is entitled to the share, whether by reason of the death or bankruptcy of one or more joint holders, or otherwise,

the deed is not effective unless it is expressed to be executed by all the holders or persons otherwise entitled to the share.

**Division 7—Capitalization of Profits**

**73. Capitalization of profits**

- (1) The company may by ordinary resolution on the recommendation of the directors capitalize profits.
- (2) If the capitalization is to be accompanied by the issue of shares or debentures, the directors may apply the sum capitalized in the proportions in which the members would be entitled if the sum was distributed by way of dividend.
- (3) To the extent necessary to adjust the rights of the members among themselves if shares or debentures become issuable in fractions, the directors may make any arrangements they think fit, including the issuing of fractional certificates or the making of cash payments or adopting a rounding policy.

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## **Part 6**

### **Miscellaneous Provisions**

#### **Division 1—Communications to and by Company**

##### **74. Means of communication to be used**

- (1) Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which Part 18 of the Ordinance provides for documents or information to be sent or supplied by or to the company for the purposes of the Ordinance.
- (2) Subject to the articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such a notice or document for the time being.
- (3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

#### **Division 2—Administrative Arrangements**

##### **75. Company seals**

- (1) A common seal may only be used by the authority of the directors.
- (2) A common seal must be a metallic seal.
- (3) Subject to paragraph (2), the directors may decide by what means and in what form a common seal or official seal (whether for use outside Hong Kong or for sealing securities) is to be used.

- (4) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least 1 director of the company and 1 authorized person.
- (5) For the purposes of this article, an authorized person is—
  - (a) any director of the company;
  - (b) the company secretary; or
  - (c) any person authorized by the directors for the purpose of signing documents to which the common seal is applied.

**76. No right to inspect accounts and other records**

A person is not entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a member, unless the person is authorized to do so by—

- (a) an enactment;
- (b) an order under section 740 of the Ordinance; or
- (c) the directors or an ordinary resolution of the company.

**77. Auditor's insurance**

- (1) The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of an auditor of the company, or an auditor of the associated company, against—
  - (a) any liability to any person attaching to the auditor in connection with any negligence, default, breach of duty or breach of trust (except for fraud) occurring in the course of performance of the duties of auditor in relation to the company or associated company (as the case may be); or
  - (b) any liability incurred by the auditor in defending any proceedings (whether civil or criminal) taken against the

auditor for any negligence, default, breach of duty or breach of trust (including fraud) occurring in the course of performance of the duties of auditor in relation to the company or associated company (as the case may be).

- (2) In this article, a reference to performance of the duties of auditor includes the performance of the duties specified in section 415(6)(a) and (b) of the Ordinance.

**78. Winding up**

- (1) If the company is wound up, the liquidator—
- (a) may, with the required sanction, divide amongst the members in specie or kind the whole or any part of the assets of the company (whether they consist of property of the same kind or not) and may, for this purpose, set a value the liquidator thinks fair on any property to be so divided; and
  - (b) may determine how the division is to be carried out as between the members or different classes of members.
- (2) The liquidator may, with the required sanction, vest the whole or part of those assets in trustees on trust for the benefit of the contributories that the liquidator, with the required sanction, thinks fit, but a member must not be compelled to accept any shares or other securities on which there is any liability.
- (3) In this article—
- required sanction*** ( ) means the sanction of a special resolution of the company and any other sanction required by the Ordinance
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**Schedule 3**

[s. 4]

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**Part 1**

**Interpretation**

**1. Interpretation**

- (1) In the articles—

*articles* ( ) means the articles of association of the company;

*associated company* ( ) means—

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

*proxy notice* ( )—see article 42;

*Ordinance* ( ) means the Companies Ordinance (28 of 2012).

- (2) Other words or expressions used in the articles have the same meaning as in the Ordinance as in force on the date the articles become binding on the company.
- (3) For the purposes of the articles, a document is authenticated if it is authenticated in any way in which section 828(5) or 829(3) of the Ordinance provides for documents or information to be authenticated for the purposes of the Ordinance.

## **Part 2**

### **Directors and Company Secretary**

#### **Division 1—Directors’ Powers and Responsibilities**

##### **2. Directors’ general authority**

- (1) Subject to the Ordinance and the articles, the business and affairs of the company are managed by the directors, who may exercise all the powers of the company.
- (2) An alteration of the articles does not invalidate any prior act of the directors that would have been valid if the alteration had not been made.

- (3) The powers given by this article are not limited by any other power given to the directors by the articles.
- (4) A meeting of the directors at which a quorum is present may exercise all powers exercisable by the directors.

**3. Members' reserve power**

- (1) The members may, by special resolution, direct the directors to take, or refrain from taking, specified action.
- (2) The special resolution does not invalidate anything that the directors have done before the passing of the resolution.

**4. Directors may delegate**

- (1) Subject to the articles, the directors may delegate any of the powers that are conferred on them under the articles—
  - (a) to any person or committee;
  - (b) by any means (including by power of attorney);
  - (c) to any extent and without any territorial limit;
  - (d) in relation to any matter; and
  - (e) on any terms and conditions, they think fit.
- (2) If the directors so specify, the delegation may authorize further delegation of the directors' powers by any person to whom they are delegated.
- (3) The directors may revoke the delegation in whole or in part, or revoke or alter its terms and conditions.

**5. Committees**

- (1) The directors may make rules providing for the conduct of business of the committees to which they have delegated any of their powers.

- (2) The committees must comply with the rules.

## **Division 2—Decision-making by Directors**

### **6. Directors to take decisions collectively**

The general rule about decision-making by directors is that any decision of the directors must be either a majority decision at a meeting or a decision taken in accordance with article 7.

### **7. Unanimous decisions**

- (1) A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other (either directly or indirectly) by any means that they share a common view on a matter.
- (2) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.
- (3) References in this article to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting.
- (4) A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at a directors' meeting.

### **8. Calling directors' meeting**

- (1) Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorizing the company secretary to give such a notice.
- (2) Notice of any directors' meeting must indicate—
  - (a) its proposed date and time;

- (b) where it is to take place; and
  - (c) if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
- (3) Notice of a directors' meeting must be given to each director, but need not be in writing.

**9. Participation in directors' meetings**

- (1) Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when—
- (a) the meeting has been called and takes place in accordance with the articles; and
  - (b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- (2) In determining whether directors are participating in a directors' meeting, it is irrelevant where a director is and how they communicate with each other.
- (3) If all the directors participating in a directors' meeting are not in the same place, they may decide that the meeting is to be regarded as taking place wherever any of them is.

**10. Quorum for directors' meetings**

- (1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- (2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it must not be less than 2, and unless otherwise fixed it is 2.

**11. Meetings where total number of directors less than quorum**

If the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than a decision—

- (a) to appoint further directors; or
- (b) to call a general meeting so as to enable the members to appoint further directors.

**12. Chairing of directors' meeting**

- (1) The directors may appoint a director to chair their meetings.
- (2) The person so appointed for the time being is known as the chairperson.
- (3) The directors may terminate the appointment of the chairperson at any time.
- (4) If the chairperson is not participating in a directors' meeting within 10 minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

**13. Chairperson's casting vote at directors' meetings**

- (1) If the numbers of votes for and against a proposal are equal, the chairperson or other director chairing the directors' meeting has a casting vote.
- (2) But this does not apply if, in accordance with the articles, the chairperson or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

**14. Conflicts of interest**

- (1) If a director is in any way, directly or indirectly, interested in a transaction, arrangement or contract, or a proposed

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transaction, arrangement or contract, with the company that is significant in relation to the company's business, and the director's interest is material, the director must declare the nature and extent of the director's interest to the other directors in accordance with section 536 of the Ordinance.

- (2) A director must not vote in respect of the transaction, arrangement or contract or the proposed transaction, arrangement or contract in which the director is so interested, and if the director does so, the vote must not be counted, nor must the director be counted in the quorum present at the meeting.
- (3) Paragraph (2) does not apply to—
  - (a) any arrangement for giving any director any security or indemnity in respect of money lent by the director to or obligations undertaken by the director for the benefit of the company;
  - (b) any arrangement for the giving by the company of any security to a third party in respect of a debt or obligation of the company for which the director has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security; or
  - (c) any arrangement pursuant to which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries, which do not provide special benefits for directors or former directors.
- (4) A director may hold any other office or place of profit under the company (other than the office of auditor) in conjunction with the office of director for a period and on terms (as to remuneration or otherwise) that the directors determine.
- (5) A director or intending director is not disqualified by the office of director from contracting with the company—

- 
- (a) with regard to the tenure of the other office or place of profit mentioned in paragraph (4); or
  - (b) as vendor, purchaser or otherwise.
- (6) The contract mentioned in paragraph (5) or any contract or arrangement entered into by or on behalf of the company in which any director is in any way interested is not liable to be avoided.
- (7) A director who has entered into a contract mentioned in paragraph (5) or is interested in a contract or arrangement mentioned in paragraph (6) is not liable to account to the company for any profit realized by the contract or arrangement by reason of—
- (a) the director holding the office; or
  - (b) the fiduciary relation established by the office.
- (8) Paragraph (4), (5), (6) or (7) only applies if the director has declared the nature and extent of the director's interest under the paragraph to the other directors in accordance with section 536 of the Ordinance.
- (9) A director of the company may be a director or other officer of, or otherwise interested in, any company promoted by the company or in which the company may be interested as shareholder or otherwise.
- (10) Subject to the Ordinance, the director is not accountable to the company for any remuneration or other benefits received by the director as a director or officer of, or from the director's interest in, the other company unless the company otherwise directs.

**15. Validity of acts of meeting of directors**

The acts of any meeting of directors or of a committee of directors or the acts of any person acting as a director are valid as if the

directors or the person had been duly appointed as a director and was qualified to be a director, despite the fact that it is afterwards discovered that—

- (a) there was a defect in the appointment of any of the directors or of the person as a director;
- (b) they or any of them were not qualified to be a director or were disqualified from being a director;
- (c) they or any of them had ceased to hold office as a director; or
- (d) they or any of them were not entitled to vote on the matter in question.

**16. Record of decisions to be kept**

The directors must ensure that the company keeps a written record of every unanimous or majority decision taken by the directors for at least 10 years from the date of the decision.

**17. Directors' discretion to make further rules**

Subject to the articles, the directors may make any rule that they think fit about how they take decisions, and about how the rules are to be recorded or communicated to directors.

**Division 3—Appointment of Directors**

**18. Appointment and retirement of directors**

- (1) A person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—
  - (a) by ordinary resolution; or
  - (b) by a decision of the directors.
- (2) An appointment under paragraph (1)(b) may only be made for the purpose of—

- (a) filling a casual vacancy; or
  - (b) appointing a director as an addition to the existing directors if the total number of directors does not exceed the number fixed in accordance with the articles.
- (3) A director appointed under paragraph (1)(b) must—
- (a) retire at the annual general meeting next following the appointment; or
  - (b) if the company has dispensed with the holding of annual general meetings or is not required to hold annual general meetings, retire before the end of 9 months after the end of the company’s accounting reference period by reference to which the financial year in which the director was appointed is to be determined.

**19. Composite resolution**

If proposals are under consideration concerning the appointment of 2 or more directors to offices or employments with the company or any body corporate in which the company is interested—

- (a) the proposals may be divided and considered in relation to each director separately; and
- (b) each of the directors concerned is entitled to vote (if the director is not for another reason precluded from voting) and be counted in the quorum in respect of each resolution except that concerning the director’s own appointment.

**20. Termination of director’s appointment**

A person ceases to be a director if the person—

- (a) ceases to be a director under any provision of the Ordinance or the Companies (Winding Up and

Miscellaneous Provisions) Ordinance (Cap. 32) or is prohibited from being a director by law;

- (b) becomes bankrupt or makes any arrangement or composition with the person's creditors generally;
- (c) becomes of unsound mind;
- (d) resigns the office of director by notice in writing of the resignation in accordance with section 464(5) of the Ordinance;
- (e) for more than 6 months has been absent without permission of the directors from meetings of the directors held during that period; or
- (f) is directly or indirectly interested in any contract (being a contract of significance in relation to the company's business) with the company and, if the person's interest in the contract is material, fails to declare the nature of the interest in the manner required by section 536 of the Ordinance.

**21. Directors' remuneration**

- (1) Directors' remuneration must be determined by the company at a general meeting.
- (2) A director's remuneration may—
  - (a) take any form; and
  - (b) include any arrangements in connection with the payment of a retirement benefit to or in respect of that director.
- (3) Directors' remuneration accrues from day to day.

**22. Directors' expenses**

The company may pay any travelling, hotel and other expenses properly incurred by directors in connection with their attendance at—

- (a) meetings of directors or committees of directors;
- (b) general meetings; or
- (c) separate meetings of the holders of debentures of the company,

or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

**Division 4—Directors' Indemnity and Insurance**

**23. Indemnity**

(1) A director or former director of the company may be indemnified out of the company's assets against any liability incurred by the director to a person other than the company or an associated company of the company in connection with any negligence, default, breach of duty or breach of trust in relation to the company or associated company (as the case may be) if the indemnity does not cover—

- (a) any liability of the director to pay—
  - (i) a fine imposed in criminal proceedings; or
  - (ii) a sum payable by way of a penalty in respect of non-compliance with any requirement of a regulatory nature; or
- (b) any liability incurred by the director—
  - (i) in defending criminal proceedings in which the director is convicted;

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- (ii) in defending civil proceedings brought by the company, or an associated company of the company, in which judgment is given against the director;
  - (iii) in defending civil proceedings brought on behalf of the company by a member of the company or of an associated company of the company, in which judgment is given against the director;
  - (iv) in defending civil proceedings brought on behalf of an associated company of the company by a member of the associated company or by a member of an associated company of the associated company, in which judgment is given against the director; or
  - (v) in connection with an application for relief under section 903 or 904 of the Ordinance in which the Court refuses to grant the director relief.
- (2) A reference in paragraph (1)(b) to a conviction, judgment or refusal of relief is to the final decision in the proceedings.
  - (3) For the purposes of paragraph (2), a conviction, judgment or refusal of relief—
    - (a) if not appealed against, becomes final at the end of the period for bringing an appeal; or
    - (b) if appealed against, becomes final when the appeal, or any further appeal, is disposed of.
  - (4) For the purposes of subsection (3)(b), an appeal is disposed of if—
    - (a) it is determined, and the period for bringing any further appeal has ended; or
    - (b) it is abandoned or otherwise ceases to have effect.

**24. Insurance**

The directors may decide to purchase and maintain insurance, at the expense of the company, for a director of the company, or a director of an associated company of the company, against—

- (a) any liability to any person attaching to the director in connection with any negligence, default, breach of duty or breach of trust (except for fraud) in relation to the company or associated company (as the case may be); or
- (b) any liability incurred by the director in defending any proceedings (whether civil or criminal) taken against the director for any negligence, default, breach of duty or breach of trust (including fraud) in relation to the company or associated company (as the case may be).

**Division 5—Company Secretary**

**25. Appointment and removal of company secretary**

- (1) The directors may appoint a company secretary for a term, at a remuneration and on conditions they think fit.
- (2) The directors may remove a company secretary appointed by them.

**Part 3**

**Members**

**Division 1—Becoming and Ceasing to be Member**

**26. Application for membership**

A person may become a member of the company only if—

- (a) that person has completed an application for membership in a form approved by the directors; and
- (b) the directors have approved the application.

**27. Termination of membership**

- (1) A member may withdraw from membership of the company by giving 7 days' notice to the company in writing.
- (2) Membership is not transferable.
- (3) A person's membership terminates when that person dies or ceases to exist.

**Division 2—Organization of General Meetings**

**28. General meeting**

- (1) Subject to sections 611, 612 and 613 of the Ordinance, the company must, in respect of each financial year of the company, hold a general meeting as its annual general meeting in accordance with section 610 of the Ordinance.
- (2) The directors may, if they think fit, call a general meeting.
- (3) If the directors are required to call a general meeting under section 566 of the Ordinance, they must call it in accordance with section 567 of the Ordinance.
- (4) If the directors do not call a general meeting in accordance with section 567 of the Ordinance, 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.

**29. Notice of general meetings**

- (1) An annual general meeting must be called by notice of at least 21 days in writing.

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- (2) A general meeting of the company other than an annual general meeting must be called by notice of at least 14 days in writing.
  - (3) The notice is exclusive of the day on which it is served or deemed to be served and of the day for which it is given.
  - (4) The notice must—
    - (a) specify the date and time of the meeting;
    - (b) specify 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) state 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, state that the meeting is an annual general meeting;
    - (e) if a resolution (whether or not a special resolution) is intended to be moved at the meeting—
      - (i) include notice of the resolution; and
      - (ii) include or is accompanied by a statement containing the information and explanation, if any, that is reasonably necessary to indicate the purpose of the resolution;
    - (f) if a special resolution is intended to be moved at the meeting, specify the intention and include the text of the special resolution; and
    - (g) contain a statement specifying a member's right to appoint a proxy under section 596(1) and (3) of the Ordinance.
  - (5) Despite the fact that a general meeting of the company is called by shorter notice than that specified in this article, it is regarded 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 entitled 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.

**30. Persons entitled to receive notice of general meeting**

- (1) Notice of a general meeting must be given to—
  - (a) every member; and
  - (b) every director.
- (2) If notice of a general meeting or any other document relating to the general meeting is required to be given to a member, the company must give 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 given to the member.

**31. Accidental failure to give notice of general meeting**

Any accidental failure to give notice to, or any non-receipt of notice of a general meeting by, any person entitled to receive notice does not invalidate the proceedings at the meeting.

**32. Attendance and speaking at general meetings**

- (1) A person is able to exercise the right to speak at a general meeting when the person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.
- (2) A person is able to exercise the right to vote at a general meeting when—

- (a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
  - (b) that person's vote can be taken into account in determining whether or not those resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- (3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
  - (4) In determining attendance at a general meeting, it is immaterial whether any 2 or more members attending it are in the same place as each other.
  - (5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have rights to speak and vote at the meeting, they are able to exercise them.

**33. Quorum for general meetings**

No business other than the appointment of the chairperson of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

**34. Chairing general meetings**

- (1) The chairperson, if any, of the board of directors must preside as chairperson at a general meeting of the company.
- (2) If there is no chairperson of the board of directors, or if the chairperson is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act or has given notice to the company of the intention not to attend the meeting, the directors present must elect one of them to be the chairperson of the meeting.

- (3) If at any meeting no director is willing to act as chairperson or if no director is present within 15 minutes after the time appointed for holding the meeting, the members present must choose one of them to be the chairperson of the meeting.
- (4) A proxy may be elected to be the chairperson of a general meeting by a resolution of the company passed at the meeting.

**35. Attendance and speaking by non-members**

The chairperson of a general meeting may permit other persons who are not—

- (a) members of the company; or
- (b) otherwise entitled to exercise the rights of members in relation to general meetings,

to attend and speak at a general meeting.

**36. Adjournment**

- (1) If within half an hour from the time appointed for holding a general meeting a quorum is not present, the meeting must—
  - (a) if called on the request of members, be dissolved; and
  - (b) in any other case, be adjourned to the same day in the next week, at the same time and place, or to another day and at another time and place the directors determine.
- (2) If at the adjourned meeting, a quorum is not present within half an hour from the time appointed for holding the meeting, the members present is a quorum.
- (3) The chairperson may adjourn a general meeting at which a quorum is present if—
  - (a) the meeting consents to an adjournment; or
  - (b) it appears to the chairperson that an adjournment is necessary to protect the safety of any person attending

the meeting or ensure that the business of the meeting is conducted in an orderly manner.

- (4) The chairperson must adjourn a general meeting if directed to do so by the meeting.
- (5) When adjourning a general meeting, the chairperson must specify the time and place to which it is adjourned.
- (6) No business may be transacted at an adjourned general meeting other than the business left unfinished at the general meeting from which the adjournment took place.
- (7) If a general meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- (8) If a general meeting is adjourned for less than 30 days, it is not necessary to give any notice of the adjourned meeting.

### **Division 3—Voting at General Meetings**

#### **37. General rules on voting**

- (1) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles.
- (2) If there is an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded, is entitled to a second or casting vote.
- (3) On a vote on a resolution on a show of hands at a general meeting, 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.

- (4) An entry in respect of the declaration in minutes of the meeting is also conclusive evidence of that fact without the proof.

**38. Errors and disputes**

- (1) No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and a vote not disallowed at the meeting is valid.
- (2) Any objection must be referred to the chairperson of the meeting whose decision is final.

**39. Demanding a poll**

- (1) A poll on a resolution may be demanded—
  - (a) in advance of the general meeting where it is to be put to the vote; or
  - (b) at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.
- (2) A poll may be demanded by—
  - (a) the chairperson of the meeting;
  - (b) by at least 2 members present in person or by proxy; or
  - (c) by any member or members present in person or by proxy and representing at least 5% of the total voting rights of all the members having the right to vote at the meeting.
- (3) The instrument appointing a proxy is regarded as conferring authority to demand or join in demanding a poll.

- (4) A demand for a poll may be withdrawn.

**40. Number of votes a member has**

- (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) 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.

**41. Votes of mentally incapacitated members**

- (1) A mentally incapacitated member may vote, whether on a show of hands or on a poll, by the member's committee, receiver, guardian or other person in the nature of a committee, receiver or guardian appointed by the Court.
- (2) The committee, receiver, guardian or other person may, on a poll, vote by proxy.
- (3) In this article—

***mentally incapacitated member*** ( ) means a member who is found under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing his or her property and affairs.

**42. Content of proxy notices**

- (1) Proxies may only validly be appointed by a notice in writing (*proxy notice*) that—
  - (a) states the name and address of the member appointing the proxy;
  - (b) identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed;
  - (c) is authenticated, or is signed on behalf of the member appointing the proxy; and
  - (d) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.
- (2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- (3) If the company requires or allows a proxy notice to be delivered to it in electronic form, it may require the delivery to be properly protected by a security arrangement it specifies.
- (4) A proxy notice may specify how the proxy appointed under it is to vote (or that the proxy is to abstain from voting) on one or more resolutions dealing with any business to be transacted at a general meeting.
- (5) Unless a proxy notice indicates otherwise, it must be regarded as—
  - (a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and
  - (b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

**43. Execution of appointment of proxy on behalf of member appointing the proxy**

If a proxy notice is not authenticated, it must be accompanied by written evidence of the authority of the person who executed the appointment to execute it on behalf of the member appointing the proxy.

**44. Delivery of proxy notice and notice revoking appointment of proxy**

- (1) A proxy notice does not take effect unless it is received by the company—
  - (a) in the case of a general meeting or adjourned meeting, not less than 48 hours before the time appointed for holding the meeting or adjourned meeting; and
  - (b) in the case of a poll taken more than 48 hours after it was demanded, not less than 24 hours before the time appointed for the taking of the poll.
- (2) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- (3) A notice revoking the appointment only takes effect if it is received by the company—
  - (a) in the case of a general meeting or adjourned general meeting, not less than 48 hours before the time appointed for holding the meeting or adjourned meeting; or
  - (b) in the case of a poll taken more than 48 hours after it is demanded, not less than 24 hours before the time appointed for taking the poll.

**45. 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, the voting right attached to the shares in respect of which the proxy is appointed.
- (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 proxy notice has been delivered to the company by or on behalf of that member.

**46. Effect of proxy votes in case of death, mental incapacity, etc. of member appointing the proxy**

- (1) A vote given in accordance with the terms of a proxy notice is valid despite—
  - (a) the previous death or mental incapacity of the member appointing the proxy; or
  - (b) the revocation of the appointment of the proxy or of the authority under which the appointment of the proxy is executed.
- (2) Paragraph (1) does not apply if notice in writing of the death, mental incapacity or revocation is received by the company—
  - (a) in the case of a general meeting or adjourned meeting, not less than 48 hours before the time appointed for holding the meeting or adjourned meeting; and
  - (b) in the case of a poll taken more than 48 hours after it was demanded, not less than 24 hours before the time appointed for the taking of the poll.

(3) In this article—

*mental incapacity* ( ) has the meaning given by section 2(1) of the Mental Health Ordinance (Cap. 136).

**47. Amendments to proposed resolutions**

(1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—

(a) notice of the proposed amendment is given to the company secretary in writing by a person entitled to vote at the general meeting at which it is to be proposed at least 48 hours before the meeting is to take place (or a later time the chairperson of the meeting determines); and

(b) the proposed amendment does not, in the reasonable opinion of the chairperson of the meeting, materially alter the scope of the resolution.

(2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if—

(a) the chairperson of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and

(b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

(3) If the chairperson of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairperson's error does not invalidate the vote on that resolution unless the Court otherwise orders.

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## **Part 4**

### **Miscellaneous Provisions**

#### **Division 1—Communications to and by Company**

##### **48. Means of communication to be used**

- (1) Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which Part 18 of the Ordinance provides for documents or information to be sent or supplied by or to the company for the purposes of the Ordinance.
- (2) Subject to the articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such a notice or document for the time being.
- (3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

#### **Division 2—Administrative Arrangements**

##### **49. Company seals**

- (1) A common seal may only be used by the authority of the directors.
- (2) A common seal must be a metallic seal.
- (3) Subject to paragraph (2), the directors may decide by what means and in what form a common seal is to be used.

- (4) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least 1 director of the company and 1 authorized person.
- (5) For the purposes of this article, an authorized person is—
  - (a) any director of the company;
  - (b) the company secretary; or
  - (c) any person authorized by the directors for the purpose of signing documents to which the common seal is applied.

**50. No right to inspect accounts and other records**

A person is not entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a member, unless the person is authorized to do so by—

- (a) an enactment;
- (b) an order under section 740 of the Ordinance; or
- (c) the directors or an ordinary resolution of the company.

**51. Auditor's insurance**

- (1) The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of an auditor of the company, or an auditor of the associated company, against—
  - (a) any liability to any person attaching to the auditor in connection with any negligence, default, breach of duty or breach of trust (except for fraud) occurring in the course of performance of the duties of auditor in relation to the company or associated company (as the case may be); or
  - (b) any liability incurred by the auditor in defending any proceedings (whether civil or criminal) taken against the

auditor for any negligence, default, breach of duty or breach of trust (including fraud) occurring in the course of performance of the duties of auditor in relation to the company or associated company (as the case may be).

- (2) In this article, a reference to performance of the duties of auditor includes the performance of the duties specified in section 415(6)(a) and (b) of the Ordinance.

Financial Secretary

2013

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