

## **LEGISLATIVE COUNCIL BRIEF**

Companies Ordinance  
(Chapter 32)

### **COMPANIES (AMENDMENT) BILL 2002**

#### **INTRODUCTION**

At the meeting of the Executive Council on 15 January 2002, the Council **ADVISED** and the Chief Executive **ORDERED** that the Companies (Amendment) Bill 2002, at Annex, should be introduced into the Legislative Council to enhance shareholders' rights, clarify the requirements regarding directorships, and simplify the filing and procedural requirements.

#### **BACKGROUND AND ARGUMENT**

##### **Review of Companies Ordinance**

2. In February 2000, the Standing Committee on Company Law Reform (SCCLR) published a report on the recommendations of a consultancy report of the review of the Companies Ordinance (Ordinance). The SCCLR report contains recommendations on a range of legislative amendments to enhance shareholders' protection, update the requirements regarding directorships, simplify the requirements for registration of foreign companies and make structural changes to modernize the Ordinance. The Bill seeks to implement 17 of these recommendations. The other recommendations will be implemented in phases. The opportunity is also taken to simplify the filing requirements, to improve the charge registration procedures in the Ordinance and to make technical amendments to certain winding-up provisions.

## **SCCLR Recommendations**

### **(A) Shareholders' Rights**

#### **(a) Enforcing terms of memorandum and articles of association**

3. The memorandum of association of a company states the basic features of the company's constitution and the company's articles of association prescribe the regulations for the company. It is important that the company's affairs should be conducted constitutionally. Where this is not the case, every shareholder of the company should be able to enforce the terms of the memorandum and articles of association. While section 23 of the Ordinance provides that the terms of the memorandum and articles of association are binding on shareholders, it does not clearly spell out the right of shareholders to enforce those terms. The SCCLR recommends that the law should be amended to give every shareholder the right. We agree with the SCCLR's recommendation as this helps to clarify shareholders' rights in seeking to enforce the company's constitution.

#### **(b) Reducing threshold for shareholders' proposals**

4. Section 115A of the Ordinance provides that on request by holders of not less than 5% of the voting rights or not less than 100 shareholders holding shares on which there has been paid up an average sum of not less than \$2,000 per person, the company must circulate the requisitionists' proposal to shareholders entitled to notice of general meetings. Circulating proposals is an important channel for shareholders to make their views known to the company. Whilst recognising that the existing regime is sound, the SCCLR considers that the threshold is too high and recommends a reduction to 2.5% of the voting rights or 50 shareholders. We agree with the SCCLR's recommendation as this will help to enhance shareholder participation.

#### **(c) Removing directors by ordinary resolution**

5. At common law, directors can be entrenched by a provision in the articles of association of a company or if such articles do not contain a provision enabling the shareholders to remove a director before the expiry of his term of office. To remove such entrenched directors, shareholders must first amend the articles of association by special resolution to give themselves the right or to delete any entrenchment provisions. Section 157B of the Ordinance provides a more direct channel for removing a director by special resolution, obviating the need to amend the articles of

association. A special resolution has to be passed by a majority of not less than three-quarters of the votes cast at a shareholders' meeting. This threshold is higher than the simple majority required for an ordinary resolution. As entrenchment of directors is undesirable and shareholders should have an overriding right to remove directors, we accept the SCCLR's recommendation that the law should provide for the removal of directors by ordinary instead of special resolution.

#### **(d) Repealing right to resort to court under section 8 of Ordinance**

6. Section 8 of the Ordinance provides for a company to amend, by special resolution, the objects clause stipulated in its memorandum of association. It also allows shareholders holding not less than 5% in the nominal value of the company's issued share capital or any class thereof to apply to the court to annul such amendments. Such a provision may permit a minority to impede fundamental business decisions made on business grounds. To remedy this situation and given the fact that dissenting members of a public company can always sell their stake in the company, we agree with the SCCLR's recommendation that the right to resort to the court under section 8 of the Ordinance should be repealed as regards public companies.

#### **(B) Requirements Regarding Directorships**

7. A number of the SCCLR's recommendations seek to update the statutory requirements regarding directorships to promote good corporate governance in recognition of the changing landscape within which directors operate.

##### **(a) Making directors vicariously liable for acts and omissions of their alternates**

8. In Hong Kong, it is common for a company's articles of association to provide for the appointment of alternate directors whose primary function is to attend meetings. However, case law suggests that a director may not be responsible for his alternate's acts. The SCCLR recommends and we agree that, to improve corporate governance, it is desirable for the Ordinance to provide that a director should, unless otherwise stated in the company's articles of association, be vicariously responsible for the acts and omissions of his alternate except in relation to an offence.

**(b) Providing a statutory definition of ‘Shadow Director’**

9. The Ordinance recognises the concept of shadow directors, but the term ‘shadow director’ is not generally adopted and defined in the Ordinance. It is only defined, as a person in accordance with whose directions or instructions the directors are accustomed to act, in Part IVA of the Ordinance for the purpose of disqualification of directors (including shadow directors). Whilst the concept of shadow directors is sound, the SCCLR recommends that the Ordinance should be amended to define the term generally and to lower the threshold to include someone who can influence a majority of the directors. We agree with this recommendation.

**(c) Allowing companies to indemnify officers and auditors**

10. The ambit of a company’s liability to exempt or indemnify its officers or auditors is not clear. After further study, the SCCLR has recommended that section 165 of the Ordinance should state explicitly that provisions in a company’s articles or a contract granting exemptions or indemnities by a company to its officers or auditors against liability for negligence, default, breach of duty or breach of trust to the company or a related company are void. However, a company may, inter alia, indemnify its officers or auditors in defending any proceedings in which judgement is given in their favour or in which they are acquitted. We agree with this recommendation.

**(d) Allowing companies to insure directors and officers**

11. Under section 165 of the Ordinance, a company cannot purchase insurance for directors’ and officers’ liability in respect of any negligence, default, breach of duty or breach of trust of which the directors or officers may be guilty in relation to the company. To circumvent the prohibition, companies in practice re-imburse the directors and officers the insurance premiums payable by them for maintaining the liability insurance. This arrangement is not satisfactory. We agree with the SCCLR’s recommendation that a company should be allowed to obtain insurance for directors and officers to cover their liabilities to the company and other parties except for fraud, and the insurance cover could include the legal expenses incurred in defending any proceedings taken against them for negligence, default, breach of duty and breach of trust (including fraud).

**(e) Extending the statutory provisions to cover in generic terms**

### **provision of financial assistance to directors**

12. Section 157H of the Ordinance prohibits, with limited exceptions, a company from making loans to or providing security for loans to directors. This provision reflects the underlying principle that a company has little to gain from lending or providing financial assistance to a director who cannot obtain financing in the market on commercial terms on his own credit. Whilst recognising that the law is fundamentally sound, the SCCLR considers that this provision is unduly restrictive in that only loans and security for loans are covered. In Hong Kong, the term “loan” is narrowly defined to mean an advance of money to be repaid in the future. Such a definition is inadequate to cover modern forms of credit. The United Kingdom, for example, has amended its laws to extend the prohibition to credit-transactions and quasi-loans. To prevent directors from circumventing the current provisions, we agree with the SCCLR that the definition of ‘loan’ should be extended to embrace in generic terms the provision of financial assistance to directors.

### **(C) Technical Matters**

13. The SCCLR’s other recommendations covered by the Bill concern technical matters, i.e. permitting the formation of a company by one person; permitting a private company to have a minimum of one director; prohibiting the incorporation of a company limited by guarantee with a share capital; amending Table A in the First Schedule to the Ordinance to remove the directorial autonomy rule; defining the term ‘manager’ to which the definition of ‘officer’ refers; providing a time limit for the completion of transfers of shares of public companies; and providing that court approval is not required where the reduction of share capital consists of a redesignation of the par-value to a lower amount, subject to certain safeguards.

### **Amendments to Replace the Filing Requirements of Statutory Declarations or Affidavits Processed by the Companies Registry with Written Statements**

14. The Ordinance contains many provisions which require companies to file statutory declarations or affidavits in respect of certain matters pertaining to the company, for example, a statutory declaration of compliance with the requirements of the Ordinance on incorporation of a company, a statutory declaration of solvency in connection with the

voluntary winding up of a company and a statutory declaration of dormancy.

15. To simplify the statutory procedures and to make them more user-friendly, we propose to amend the provisions by replacing statutory declarations or affidavits with simple written statements. Any person making a false statement in such a written statement can be prosecuted under section 349 of the Ordinance. The same deterrent will also be imposed on the making of a false declaration. This proposal is more compatible with our objective of permitting the electronic filing of documents at the Companies Registry (the Registry) in due course, and is also in line with international developments.

### **Amendments to Simplify the Paper Work in Relation to Incorporation of Company, Change of Company Name and Other Filing Requirements**

16. The Ordinance requires companies to file documents with the Registry in relation to a whole host of activities including incorporation and change in company name. Companies are also required to notify the Registrar of Companies (the Registrar) where consolidation of share capital, conversion of shares, appointment of receivers, etc., occur. Although the Ordinance sets out the matters to be included in the documents/notifications to be filed with the Registrar, no standard forms have been specified in some cases. As a result, companies may be uncertain as to the exact format of the documents to be prepared and those to be filed with the Registry unless they are standardised.

17. To simplify the application procedures for the incorporation of a company, shorten the processing time and standardise the form of notifications, we propose to amend the Ordinance to introduce new procedures for the incorporation of a company and change of company name. In this connection, a specified form will be introduced containing a confirmatory statement of compliance in place of the current statutory declaration. We also propose to empower the Registrar to specify forms for an application to change a company name, notification of the appointment of a receiver, etc. To ensure that the documents filed are standardised, the Registrar will be given the discretion to refuse to register any form used that deviates from the one specified.

### **Amendments to Part III of the Ordinance to Streamline Requirements**

### **and Improve the Charge Registration System**

18. We propose to simplify and enhance the efficiency of the charge registration system. Section 83(2) of the Ordinance requires the Registrar to state in the charge certificate which he issues, the amount secured by the charge. Experience in the Registry indicates that 95% of the current charges are “all monies” charges, where the amount cannot be accurately stated. The Registrar is often presented with such verbose and legalistic descriptions of amounts secured that it is very difficult for him to interpret them and state the essence in the certificates of registration. The requirement therefore serves no real purpose and we propose to delete such a requirement. Interested parties can obtain more comprehensive information by searching the related documents, which are available at the Registry for public inspection.

19. We also propose to widen the scope of section 85 of the Ordinance, which provides for the release of part of the property from a charge, to include a release of the whole of a charge and releases of cases where the whole of the property charged has ceased to form part of the company’s property or undertaking. Such forms of full discharges are common nowadays but since section 85 of the Ordinance does not provide for their registration, some companies have difficulties in updating their charge records.

### **Amendments to the Winding-up Provisions in the Ordinance**

20. We have taken the opportunity to include two technical amendments to the winding-up provisions in the Ordinance. They are to increase the amount of minimum debt for which a petition for winding-up may be presented from \$5,000 to \$10,000 and to give the Financial Secretary power to prescribe a greater amount by regulation in the future. This brings the minimum amount of petitioning debt in line with that of the current bankruptcy law.

## THE BILL

21. **Clause 1** states the short title of the Bill and provides for its commencement. **Clause 2** defines the terms used in the Bill, including the terms “manager” and “shadow director”. **Clause 4** permits the formation of a company by one person and prohibits the incorporation of a company limited by guarantee with a share capital. **Clauses 5, 10 and 95** remove the right of dissenting shareholders of a public company to resort to the court to annul an alteration to the object clauses of the company’s memorandum.

22. **Clause 6** requires a company to file a statement in the specified form with the Registrar, instead of a statutory declaration of compliance with the requirements of the Ordinance under section 18(2) of the Ordinance. **Clause 7** requires a company that changes its name to file a notice in the specified form with the Registrar, instead of a copy of the special resolution, and requires the Registrar to issue a certificate of change of name instead of an altered certificate of incorporation.

23. **Clause 9** clarifies the contractual position of a company and its members in relation to each other and gives every member of the company a personal right to sue to enforce the terms of the memorandum and articles of association. **Clause 13** shortens the period for filing a return of allotments from eight weeks to one month, provides for the filing of a specified form and simplifies the filing requirements. **Clauses 14 to 17 and 19 to 23** replace the references in certain sections of the Ordinance to a statutory declaration by references to a statement in the specified form. **Clauses 24, 36, 52 and 72** provide for the use of a specified form under certain sections of the Ordinance.

24. **Clause 25** requires a company to give notice of an increase in share capital within 15 days after the increase takes effect and removes the requirement for a printed copy of the resolution to be filed with the Registrar. **Clauses 26(2), 27, 28(1) and 29** streamline the procedures relating to reduction of share capital and provide that court approval is not required where the reduction consists of a re-designation of the par-value to a lower amount, subject to certain specified conditions. **Clause 28(2)** provides for the Registrar to issue a certificate with his printed signature.

25. **Clause 31** provides a time-limit of ten business days for the completion of a transfer of shares by a public company. **Clause 32** makes clear that a certificate of registration of a charge may bear a printed signature of the Registrar and removes the requirement that the certificate state the amount secured by the charge.

26. **Clause 33** streamlines the procedure under section 85 of the Ordinance (which provides for the release of part of the property from a charge) and widens the scope of the section to cover releases of the whole of a charge and cases where the whole of the property charged has ceased to form part of the company's property or undertaking. **Clauses 35 and 81** include a requirement for receivers, managers and liquidators to provide their identity card or passport numbers to facilitate prosecution for breaches of this reporting requirement and to notify the Registrar of any change in the particulars filed with the Registrar.

27. **Clause 37** deletes the requirement for a company to enter the occupations or descriptions of members of the company in the company's register of members. **Clause 38** requires a company, the number of members of which falls to one or increases from one to two or more members, to record that fact in the company's register. **Clause 39** deletes the requirement that a company file a statutory declaration when applying for a licence to keep a branch register of members and provides for the application to be filed with the Registrar. **Clause 42** provides that one member constitutes a quorum for a meeting of a company having only one member.

28. **Clause 43** reduces the threshold for shareholders' proposals to 2.5% of voting rights or 50 members. **Clause 44** provides that a sole member of a company who takes any decision that has effect as if agreed by the company in general meeting shall provide the company with a written record of that decision. **Clause 45** excludes from the application of section 117(4)(a) of the Ordinance special resolutions effecting a change of company name, i.e. such resolutions need not be sent to the Register and recorded by him. **Clauses 46 and 47** clarify the reporting requirements, to provide for the use of specified forms, remove archaic terminology and widen the scope of the offence provisions to cover a failure to comply with sections 128(5A) or 129(5A) of the Ordinance.

29. **Clause 53** amends section 153 of the Ordinance (which requires every company to have at least two directors) to make it applicable only to public companies and removes spent provisions. It also adds a new section 153A which permits a private company to have only one director and deems certain persons to be a director in cases where a company has not filed a return under section 158 of the Ordinance (which concerns the register of directors and secretaries). **Clause 54** makes clear that an alternate director is the agent of the director who appoints him and provides that a director shall be vicariously liable for torts committed by his alternate. **Clause 55** provides that a written record of a decision of a sole director of a private company shall be sufficient evidence of that decision.

30. **Clause 56** prohibits a sole director of a private company and certain bodies corporate from being the secretary of the company. **Clause 57** provides that a director may be removed by an ordinary resolution instead of a special resolution, notwithstanding any provision in the company's constitution, and makes a technical change to the terminology used in section 157B(5) of the Ordinance. **Clauses 58, 59, 60 and 63** extend the prohibition against a company making a loan to a director, or providing a guarantee or security for such a loan, to cover more modern forms of credit and make consequential changes to the related reporting requirements. **Clause 61(1)(a)** provides for the use of a specified form under section 158(5) of the Ordinance (which requires a company to send to the Register a statement signed by a person who is first appointed as a director). **Clause 62** repeals an obsolete provision in section 158C(1)(a) of the Ordinance (which requires the Registrar to keep an index of directors).

31. **Clause 65** requires a company that has only one member, who is also a director of the company, to record in a written memorandum the terms of any oral contract that the company enters into with that member. **Clause 66** clarifies that a company cannot exempt or indemnify an officer or auditor of the company against any liability for wrongs done to the company or a related company. It also permits companies to purchase liability insurance for officers and auditors in certain specified circumstances. **Clause 68** makes a technical correction to the Chinese text of section 168H(1) of the Ordinance.

32. **Clause 69** provides for the winding up of a company that has no members and makes consequential amendments in connection with Clause 5. **Clauses 70 and 96** permits the increase in the minimum amount of debt below which a petition for winding-up cannot be presented from \$5,000 to \$10,000 or such greater amount as may be prescribed by the Financial Secretary. **Clause 74** allows a liquidator other than the Official Receiver to issue a certificate under section 226A of the Ordinance (which concerns dissolution of a company other than by order of the court) and provides for the use of a specified form.

33. **Clause 76** requires the director of a company to file a winding-up statement in the specified form, instead of a statutory declaration; requires a provisional liquidator to give notice of his appointment or of his ceasing to act to the Registrar in the specified form; provides for the case of a private company having only one director; and makes other technical changes. **Clauses 79(1) to (5)** replace the requirement for a statutory declaration by a requirement for a certificate of solvency in the specified form. **Clause 79(6)** provides for the case of a private company having only one director and deals with transitional matters. **Clause 86** replaces the requirement for an affidavit by a statement in writing as regards the statement of affairs required to be submitted to the receiver.

34. **Clause 87** repeals section 303A of the Ordinance (which empowers the Registrar to take an affidavit). **Clause 88** amends section 305 of the Ordinance (which concerns the inspection, production and evidence of documents kept by the Registrar) to take account of documents that are filed with the Registrar in electronic form or that are stored in electronic form. **Clause 89** provides that documents required to be signed by the Registrar may instead be authenticated in a manner determined by the Registrar. **Clauses 91 and 92** remove the requirement to provide details of members' occupations to the Registrar. **Clause 93** corrects a spelling error and replaces the requirement for a statutory declaration by a requirement for a statement in writing under section 314 of the Ordinance (which concerns authentication of statements of existing companies). **Clauses 94 and 97** allow a certificate issued by the Registrar to bear a printed signature. **Clause 98** replaces the requirement for a statutory declaration by a requirement for a statement in writing under section 333B(1) of the Ordinance (which concerns the termination of registration of an authorized representative).

35. **Clause 99** repeals an obsolete provision in section 333C(1)(a) of the Ordinance (which concerns the keeping of an index of directors of oversea companies by the Registrar). **Clause 101** removes the requirement for a statutory declaration by a company on its dormancy and simplifies the procedure for a company to become dormant. **Clauses 102, 103 and 105** facilitate the delivery, processing and storage of information in electronic form. **Clause 104** amends section 348 of the Ordinance (which gives the Registrar the power to refuse to register or accept for registration documents) to take account of documents that are in electronic form and allows the Registrar to refuse to register or accept for registration forms that deviate from the forms specified by the Registrar under section 2A of the Ordinance (which empowers the Registrar to specify forms). **Clause 106** amends section 348D of the Ordinance (which concerns the power of the Registrar to keep records in non-documentary form) to take account of documents and records that are in electronic form.

36. **Clauses 108(a), (b) and (e)** amend certain cross-references in the First Schedule to the Ordinance. **Clause 108(c)** amends regulation 1 of Part I of Table A in the First Schedule to the Ordinance to take account of electronic communications and to remove obsolete provisions. **Clause 108(d)** amends regulation 82 of Part I of Table A to remove the directorial autonomy rule. **Clause 109** amends cross-references in the Eighth Schedule to the Ordinance and make consequential amendments to that Schedule in connection with Clauses 7 and 33. **Clause 110** amends certain cross-references in the Tenth Schedule to the Ordinance. **Clause 111** amends certain cross-references in the Eleventh Schedule to the Ordinance. **Clauses 114 and 115** repeal the Companies (Requirement for Documents) Regulation, which is obsolete, and the Companies Ordinance (Fee for Taking Affidavit, Affirmation or Declaration) Notice as a consequence of Clause 87.

37. The other clauses cover amendments to different sections of the Ordinance as a consequence of the above clauses, except that **Clauses 116 to 124** make consequential amendments to other enactments.

## **PUBLIC CONSULTATION**

38. Public consultation on the consultancy report mentioned in paragraph 2 above was carried out for 11 months during the period from 1997 to 1998. In March 2001, we consulted the Legislative Council Panel on Financial Affairs on the proposed legislative amendments. Members of the Panel did not object to the proposals.

## **BASIC LAW IMPLICATIONS**

39. The Department of Justice advises that the Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

## **HUMAN RIGHTS IMPLICATIONS**

40. The Department of Justice advises that the Bill is consistent with the human rights provisions of the Basic Law.

## **BINDING EFFECT OF THE LEGISLATION**

41. The Bill does not affect the current binding effect of the existing provisions of the Ordinance.

## **FINANCIAL AND STAFFING IMPLICATIONS**

42. The proposals in the Bill seek to improve the operational effectiveness and efficiency of the administration of company law and corporate governance by amending the specified sections in the Ordinance. Since they are mainly technical in nature and will not generate additional workload for the Registry or Financial Services Bureau, the Bill will have no additional financial or staffing implications for the Government.

## **ECONOMIC IMPLICATIONS**

43. The proposed changes will make our company law more business-friendly and ensure that the Ordinance continues to provide Hong Kong with the commercial legal infrastructure commensurate with its status as a major international commercial centre.

44. The proposed extension of prohibition on companies to cover modern forms of credit means that companies have to disclose more information on the details of loans in the accounts to be laid out at the general meetings. This proposal is nevertheless expected to constitute little compliance burden on companies.

45. The introduction of new specified forms by the Registry will help ease the compliance burden on companies. So will the implementation of electronic filing, storage and processing of records at the Registry under the Registry's Strategic Change Plan, which is expected to be completed by end 2004. This will obviate the need to send staff to the Registry to conduct filing and searches physically, although staff will still be needed in the office to conduct such activities electronically. Consequently, some of the outdoor clerks employed by solicitors and company secretarial firms may be saved, while the work demand on some of the indoor clerks may correspondingly be more. Yet, to some extent, this is already happening after the introduction of the Companies Registry On-line Public Search System in September 2000.

## **LEGISLATIVE TIMETABLE**

46. The legislative timetable is as follows –

Publication in the Gazette	18 January 2002
First Reading and commencement of Second Reading debate	30 January 2002
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

## **PUBLICITY**

47. A press release will be issued on 17 January 2002 and a spokesman will be available to handle media enquiries.

## **ENQUIRIES**

48. For enquiries, please call Mr L W TING, Assistant Secretary for Financial Services (Companies) at 2527 5543.

**Financial Services Bureau**  
**17 January 2002**  
**(C2/1/55(2001) Pt 9)**

# COMPANIES (AMENDMENT) BILL 2002

## CONTENTS

Clause		Page
1.	Short title and commencement	1
2.	Interpretation	1
3.	Registrar to specify forms	3
4.	Mode of forming incorporated company	3
5.	Mode in which and extent to which objects may be altered	4
6.	Conclusiveness of certificate of incorporation	5
7.	Change of name	5
8.	Specification of names by Chief Executive	6
9.	Effect of memorandum and articles	6
10.	Power to alter conditions in memorandum which could have been contained in articles	6
11.	Subheading repealed	7
12.	Liability for debts where business carried on without minimum number of members	7
13.	Return as to allotments	7
14.	Relaxation of section 47A for unlisted companies	8
15.	Directors' statement under section 47E	8
16.	Special resolution under section 47E	9
17.	Time for giving financial assistance under section 47E	9
18.	Requirements for listed company to purchase own shares	10
19.	Availability of profits for purposes of section 49I	10
20.	Conditions for payment out of capital	10
21.	Procedure for special resolution under section 49K	11
22.	Publicity for proposed payment out of capital	11

23.	Power for Chief Executive in Council to modify certain sections	11
24.	Notice to Registrar of consolidation of share capital, conversion of shares into stock, & c.	12
25.	Notice of increase of capital	12
26.	Special resolution for reduction of share capital	12
27.	Application to court for confirming order, objections by creditors and settlement of list of objecting creditors	13
28.	Registration of order and minute of reduction	13
29.	Section added	
	61A. Registration of special resolution, minute and statement where court confirmation is not required	14
30.	Variation of rights attached to special classes of shares	15
31.	Duties of company with respect to issue of certificates	15
32.	Register of charges to be kept by Registrar	16
33.	Section substituted	
	85. Entries of satisfaction and release of property from charge	16
34.	Extension of time for registration, and rectification of register of charges	17
35.	Section substituted	
	87. Notice to Registrar of appointment of receiver or manager, or of mortgagee taking possession, etc.	18
36.	Registered office of company	19
37.	Register of members	19
38.	Section added	
	95A. Statement that company has only one member	20
39.	Power of company to keep branch register	20
40.	General provisions as to annual returns	21

41.	General provisions as to meetings and votes	21
42.	Section added	
	114AA. Quorum where company has only one member	21
43.	Circulation of members' resolutions, etc.	21
44.	Section added	
	116BC. Written record where company has only one member	21
45.	Registration and copies of certain resolutions and agreements	22
46.	Particulars to be shown in company's accounts in relation to subsidiaries	22
47.	Particulars to be shown in company's accounts in relation to companies not being subsidiaries whose shares it holds	24
48.	Particulars to be shown in subsidiary company's accounts in relation to its ultimate holding company	25
49.	Signing of balance sheet	25
50.	Resignation of auditor	26
51.	Power of inspector to call for director's accounts	26
52.	Notice to Registrar	26
53.	Section substituted	
	153. Directors of companies other than private companies	26
	153A. Directors of private companies	27
54.	Section added	
	153B. Directors vicariously liable for acts of alternates, etc.	28
55.	Section added	
	153C. Written record of decision of sole director of private company	29
56.	Secretary	29
57.	Removal of directors	30
58.	Section substituted	

	157H. Prohibition of loans, etc., to directors and other persons	30
	157HA. Excepted transactions	35
59.	Civil consequences of transactions contravening section 157H	41
60.	Section substituted	
	157J. Criminal penalties for contravention of section 157H	43
61.	Register of directors and secretaries	44
62.	Registrar to keep an index of directors	44
63.	Section substituted	
	161B. Particulars in accounts of loans to officers, etc.	45
64.	Further provisions relating to loans to officers, etc. of authorized financial institutions	55
65.	Section added	
	162B. Contracts with sole member who is also a director	56
66.	Section substituted	
	165. Provisions as to liability of officers and auditors	56
67.	Section substituted	
	168C. Interpretation	58
68.	Duty of court to disqualify unfit directors of insolvent companies	58
69.	Circumstances in which company may be wound up by court	58
70.	Definition of inability to pay debts	60
71.	Provisions as to applications for winding up	60
72.	Provisions where person other than Official Receiver is appointed liquidator	60
73.	Powers of liquidator	60
74.	Dissolution of company otherwise than by order of court	60
75.	Circumstances in which company may be wound up voluntarily	61
76.	Section substituted	

	228A. Special procedure for voluntary winding up of company in case of inability to continue its business	61
77.	Commencement of voluntary winding up	66
78.	Subheading amended	66
79.	Certificate of solvency in case of proposal to wind up voluntarily	67
80.	Duty of liquidator to call creditors' meeting in case of insolvency	68
81.	Section substituted	
	253. Notice by liquidator of his appointment or ceasing to act	69
82.	Interest on debts	70
83.	Extortionate credit transactions	70
84.	Offences by officers of companies in liquidation	70
85.	Provisions as to information where receiver or manager is appointed	70
86.	Special provisions as to statement submitted to receiver	70
87.	Taking of affidavits, etc.	71
88.	Inspection, production and evidence of documents kept by Registrar	71
89.	Section added	
	305A. Authentication of documents by the Registrar	72
90.	Companies capable of being registered	72
91.	Requirements for registration by joint stock companies	72
92.	Requirements for registration by other than joint stock companies	73
93.	Authentication of statements of existing companies	73
94.	Certificate of registration of existing companies	73
95.	Power to substitute memorandum and articles for deed of settlement	73

96.	Winding up of unregistered companies	74
97.	Documents etc. to be delivered to Registrar by companies which establish a place of business in Hong Kong	74
98.	Termination of registration of authorized representative	74
99.	Registrar to keep an index of directors of oversea companies	75
100.	Interpretation of Part XI	75
101.	Dormant companies	75
102.	Documents delivered to Registrar to conform to certain requirements	76
103.	Power of Registrar to accept information in different forms	77
104.	Section substituted	
	348. Power of Registrar to refuse to register certain documents	77
105.	Disposal of documents	78
106.	Section substituted	
	348D. Power of Registrar to keep records	78
107.	Provision for punishment and offence	79
108.	First Schedule amended	79
109.	Table of Fees to be paid to the Registrar of Companies	81
110.	Accounts	81
111.	Accounts of certain private companies under section 141D	82
112.	Punishment of offences under this Ordinance	82

## **Consequential and Miscellaneous Amendments**

### **The Rules of the High Court**

113.	The Companies Ordinance	87
------	-------------------------	----

### **Companies (Requirements for Documents) Regulation**

114.	Repeal	87
------	--------	----

### **Companies Ordinance (Fee for Taking Affidavit, Affirmation or Declaration) Notice**

115.	Repeal	87
------	--------	----

### **Companies (Winding-up) Rules**

116.	Heading repealed	87
117.	Notice of appointment of liquidator	88
118.	Disposal of moneys received after execution	88
119.	Forms	88

### **Companies (Reports on Conduct of Directors) Regulation**

120.	Return by office-holder	88
------	-------------------------	----

### **Stamp Duty Ordinance**

121.	Charging of, liability for, and recovery of stamp duty	88
------	---	----

**Stock Exchanges Unification Ordinance**

122.	Insolvency of existing exchange	88
------	---------------------------------	----

**Securities (Disclosure of Interests)  
Ordinance**

123.	Interpretation	89
------	----------------	----

**Securities and Futures (Clearing Houses)  
Ordinance**

124.	Right of relevant office-holder to recover certain amounts arising from certain transactions	89
------	--	----

A BILL

To

Amend the Companies Ordinance.

Enacted by the Legislative Council.

**1. Short title and commencement**

(1) This Ordinance may be cited as the Companies (Amendment) Ordinance 2002.

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

**2. Interpretation**

(1) Section 2(1) of the Companies Ordinance (Cap. 32) is amended –

(a) in the definition of “annual return”, by repealing “, in the case of a company having a share capital, under section 107, and, in the case of a company not having a share capital, under section 108” and substituting “under section 107”;

(b) by adding –

““certificate of solvency” (有償債能力證明書) means a certificate issued under section 233;

“image record” (影像紀錄) means a record produced using the imaging method and, where the context permits, includes a record in a legible form;

“imaging method” (影像處理方法) means a method by which documents in a legible form or in the form of microfilm are scanned by a scanner and the information recorded therein is

converted into electronic images, which are then stored on electronic storage media capable of being retrieved and reproduced in a legible form;

“manager” (經理), in relation to a company, means a person occupying a position under the immediate authority of the board of directors but does not include –

- (a) a receiver or manager of the property of the company; or
- (b) a special manager of the estate or business of the company appointed under section 216;

“record” (紀錄) includes not only a written record but any record conveying information or instructions by any other means whatsoever;

“shadow director” (影子董事), in relation to a company, means a person in accordance with whose directions or instructions the directors or a majority of the directors of the company are accustomed to act;”.

(2) Section 2(2) is repealed and the following substituted –

“(2) A person shall not be considered to be a shadow director of a company by reason only that the directors or a majority of the directors of the company act on advice given by him in a professional capacity.”.

(3) Section 2 is amended by adding –

“(12) Any provision of this Ordinance that refers (in whatever words) to –

- (a) the subscribers of the memorandum of association of a company;
- (b) the members or shareholders of a company;
- (c) a majority of members or shareholders of a company;
- or
- (d) a specified number or percentage of members or shareholders of a company,

shall, unless the context otherwise requires, apply with necessary modifications in relation to a company the memorandum of association of which has only one subscriber or that has only one person as a member or shareholder, as the case may be.

(13) Any provision of this Ordinance that refers (in whatever words) to –

- (a) the directors of a company;
- (b) the board of directors of a company;
- (c) a majority of the directors of a company; or
- (d) a specified number or percentage of the directors of a company,

shall, unless the context otherwise requires, apply with necessary modifications in relation to a private company that has only one director.”.

### **3. Registrar to specify forms**

Section 2A(3) is repealed.

### **4. Mode of forming incorporated company**

(1) Section 4(1) is amended by repealing “2 or more persons, associated for any lawful purpose may, by subscribing their names” and substituting “one or more persons may, for any lawful purpose, by subscribing his or their name or names”.

(2) Section 4 is amended by adding –

“(4) With effect from the commencement of section 4(2) of the Companies (Amendment) Ordinance 2002 ( of 2002), a company cannot be formed as, or become, a company limited by guarantee with a share capital.”.

**5. Mode in which and extent to which objects may be altered**

(1) Section 8(1) is amended by repealing the proviso and substituting –

“Provided that, where a private company passes such a resolution, an application may be made to the court in accordance with subsections (2) to (5) for the alteration to be cancelled, and if such an application is made, the alteration shall not have effect except in so far as it is confirmed by the court.”.

(2) Section 8(7) is amended –

(a) by repealing “a company” and substituting “a private company”;

(b) in paragraph (b)(ii), by repealing “annulling” and substituting “cancelling”.

(3) Section 8 is amended by adding –

“(7A) Where a company (not being a private company) passes a resolution altering its objects, it shall, within 15 days after the date on which the resolution was passed, deliver to the Registrar a printed copy of its memorandum as altered and certified as correct by an officer of the company.”.

(4) Section 8(8) is amended by adding “or (7A)” after “(7)”.

(5) Section 8 is amended by adding –

“(10) In relation to a resolution for altering the conditions of a company’s memorandum with respect to the objects of the company that is passed by a company (whether a private company or not) after the commencement of the Companies (Amendment) Ordinance 1984 (6 of

1984) and before the commencement of section 5 of the Companies (Amendment) Ordinance 2002 ( of 2002), the provisions of this section in force immediately before the commencement of section 5 of the Companies (Amendment) Ordinance 2002 ( of 2002) shall continue to have effect as if section 5 of that Ordinance had not been enacted.”.

**6. Conclusiveness of certificate of incorporation**

Section 18(2) is repealed and the following substituted –

“(2) A statement in the specified form, certifying the company’s compliance with all or any of the requirements referred to in subsection (1) and signed by a subscriber to the memorandum or a person named in the articles as a director or secretary of the company, shall be produced to the Registrar, and the Registrar may accept such a statement as sufficient evidence of compliance.”.

**7. Change of name**

(1) Section 22 is amended by adding –

“(1A) Where a company passes a special resolution changing its name, it shall, within 15 days after the passing of the resolution, give notice in the specified form of the change of its name to the Registrar.

(1B) If a company fails to comply with subsection (1A), the company and every officer of the company who is in default is liable to a fine and, for continued default, to a daily default fine.”.

(2) Section 22(7) is repealed and the following substituted –

“(7) Where a company gives notice of a change of its name to the Registrar under subsection (1A), the Registrar shall, subject to section 20 –

- (a) enter the new name on the register in place of the former name; and
- (b) issue a certificate of change of name,

and the change of name shall have effect from the date on which the certificate is issued.”.

#### **8. Specification of names by Chief Executive**

Section 22B(3) is amended by repealing “a copy of the special resolution under section 22(1) changing the company’s name” and substituting “the notice of change of name required by section 22(1A)”.

#### **9. Effect of memorandum and articles**

Section 23(1) is repealed and the following substituted –

“(1) Subject to the provisions of this Ordinance, the memorandum and articles shall, when registered, have effect as a contract under seal –

(a) between the company and each member; and

(b) between a member and each other member,

and shall be deemed to contain covenants on the part of the company and of each member to observe all the provisions of the memorandum and articles.

(1A) Without limiting the generality of subsection (1), the memorandum and articles shall, when registered, be enforceable by the company against each member and by a member against the company and against each other member.”.

#### **10. Power to alter conditions in memorandum which could have been contained in articles**

(1) Section 25A(1) is amended by repealing the proviso and substituting –

“Provided that, where a private company passes such a resolution, an application may be made to the court for the alteration to be cancelled, and if such an application is made, the alteration shall not have effect except in so far as it is confirmed by the court.”.

(2) Section 25A(3) is repealed and the following substituted –

“(3) Where a private company passes a resolution under this section altering any condition contained in its memorandum, subsections (2)(a), (3), (4), (7) and (8) of section 8 shall apply in relation to the alteration and to any application made under this section in the same manner as they apply in relation to alterations and to applications made under section 8.

(3A) Where a company (not being a private company) passes a resolution under this section altering any condition contained in its memorandum, subsections (7A) and (8) of section 8 shall apply in relation to the alteration made under this section in the same manner as they apply in relation to alterations made under section 8.”.

(3) Section 25A is amended by adding –

“(5) In relation to a resolution for altering any condition contained in a company’s memorandum that is passed by a company (whether a private company or not) under this section before the commencement of section 10 of the Companies (Amendment) Ordinance 2002 ( of 2002), the provisions of this section in force immediately before that commencement shall continue to have effect as if section 10 of that Ordinance had not been enacted.”.

#### **11. Subheading repealed**

The subheading immediately before section 31 is repealed.

#### **12. Liability for debts where business carried on without minimum number of members**

Section 31 is repealed.

#### **13. Return as to allotments**

(1) Section 45(1) is amended –

(a) by repealing “8 weeks” and substituting “1 month”;

- (b) in paragraph (a), by repealing “names, addresses and the occupations or descriptions” and substituting “names and addresses”;
- (c) in paragraph (b), by repealing “contract in writing constituting the title of the allottee to the allotment together with any contract for sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped” and substituting “copy of a contract in writing constituting the title of the allottee to the allotment together with a copy of any contract for sale, or for services or other consideration in respect of which that allotment was made, such copies being duly certified by an officer of the company to be true copies”.

(2) Section 45(2) is repealed and the following substituted –

“(2) Where such a contract as mentioned in subsection (1)(b) is not reduced to writing, the company shall within 1 month after the allotment deliver to the Registrar for registration a return in the specified form containing the particulars of the contract specified in that subsection.”.

(3) Section 45(3) is amended, in the proviso, by repealing “8 weeks” and substituting “1 month”.

#### **14. Relaxation of section 47A for unlisted companies**

(1) Section 47E(6) is amended by repealing “statutory declaration in the specified form” and substituting “statement”.

(2) Section 47E(7) is amended by repealing “declaration” and substituting “statement”.

#### **15. Directors’ statement under section 47E**

(1) Section 47F(1) is amended –

- (a) by repealing “A statutory declaration made by a majority of a company’s directors under section 47E(6)” and substituting “The statement referred to in section 47E(6) shall be in the specified form, shall be signed by the directors and”;
  - (b) in paragraph (b), by repealing “names, addresses and occupations” and substituting “names and addresses”;
  - (c) in paragraph (d), by repealing “declaration” and substituting “statement”.
- (2) Section 47F(3) is repealed and the following substituted –
- “(3) A statement made by a majority of a company’s directors under section 47E(6) shall be delivered to the Registrar within 15 days after it is made.”.
- (3) Section 47F(5) is amended by repealing “statutory declaration under section 47E” and substituting “statement under section 47E(6)”.

#### **16. Special resolution under section 47E**

- (1) Section 47G(1) is amended by repealing “the directors of that company make the statutory declaration required by that section” and substituting “a majority of the directors of that company make the statement required by section 47E(6)”.
- (2) Section 47G(11)(a) is amended by repealing “declaration made in compliance with section 47E(6) by the directors of the company” and substituting “statement required by section 47E(6)”.

#### **17. Time for giving financial assistance under section 47E**

- Section 48(4)(a) and (b) is repealed and the following substituted –
- “(a) the date on which the majority of the directors of the company proposing to give the assistance made their statement under section 47E(6); or

- (b) where that company is a subsidiary and both a majority of its directors and a majority of the directors of any of its holding companies made such a statement, the date on which the earliest of the statements was made,”.

**18. Requirements for listed company to purchase own shares**

Section 49BA(10)(b) is repealed and the following substituted –

- “(b) a shadow director.”.

**19. Availability of profits for purposes of section 49I**

Section 49J(6) is amended by repealing “statutory declaration” and substituting “statement”.

**20. Conditions for payment out of capital**

(1) Section 49K(3) is amended by repealing “statutory declaration” and substituting “statement”.

(2) Section 49K(5) is amended –

- (a) by repealing “statutory declaration shall be in the specified form and” and substituting “statement shall be in the specified form, shall be signed by the directors and shall”;
- (b) in paragraphs (b) and (c), by repealing “the declaration” and substituting “the statement”.

(3) Section 49K(6) is amended –

- (a) by repealing “makes a declaration” and substituting “signs a statement”;
- (b) by repealing “the declaration” and substituting “the statement”.

**21. Procedure for special resolution under section 49K**

(1) Section 49L(1) is amended by repealing “statutory declaration” and substituting “statement”.

(2) Section 49L(4) is amended by repealing “statutory declaration” and substituting “directors’ statement”.

**22. Publicity for proposed payment out of capital**

(1) Section 49M(1) is amended –

(a) in paragraph (b), by repealing “49L” and substituting “49K”;

(b) in paragraph (c), by repealing “statutory declaration of the directors and the” and substituting “directors’ statement and”.

(2) Section 49M(4) is amended by repealing “statutory declaration of the directors” and substituting “directors’ statement”.

(3) Section 49M(5) is amended by repealing “statutory declaration” and substituting “directors’ statement”.

(4) Section 49M(7) is amended by repealing “declaration or report, the court may by order compel an immediate inspection of that declaration” and substituting “directors’ statement or auditors’ report, the court may by order compel an immediate inspection of that statement”.

**23. Power for Chief Executive in Council to modify certain sections**

(1) Section 49Q(1)(d) is amended by repealing “statutory declaration” and substituting “statement”.

(2) Section 49Q(1)(e) is amended by repealing “that declaration” and substituting “the directors’ statement”.

**24. Notice to Registrar of consolidation of share capital, conversion of shares into stock, & c.**

Section 54(1) is amended by repealing “Registrar of Companies specifying, as the case may be, the shares consolidated, divided, converted, subdivided, redeemed or cancelled, or the stock re-converted” and substituting “Registrar in the specified form, specifying the shares consolidated, divided, converted, subdivided, redeemed or cancelled, or the stock re-converted, as the case may be”.

**25. Notice of increase of capital**

(1) Section 55(1) is amended by adding “, subject to subsection (1A),” after “it shall”.

(2) Section 55 is amended by adding –

“(1A) Where the increase in the share capital of the company takes effect on a date after the date on which the resolution authorizing the increase is passed, the notice referred to in subsection (1) shall be given to the Registrar within 15 days after the increase takes effect.”.

(3) Section 55(2) is amended by repealing “, and there shall be forwarded to the Registrar together with the notice a printed copy of the resolution authorizing the increase”.

**26. Special resolution for reduction of share capital**

(1) Section 58(1C) is amended by repealing “and subsection (1D)”.

(2) Section 58 is amended by adding –

“(3) Confirmation by the court of a reduction of the share capital of a company is not required under subsection (1) if the following conditions are satisfied –

- (a) the company has only one class of shares;
- (b) all issued shares are fully paid-up;
- (c) the reduction is distributed equally to all shares; and

- (d) the reduction is credited to the share premium account of the company.”.

**27. Application to court for confirming order, objections by creditors and settlement of list of objecting creditors**

Section 59 is amended by adding –

“(4) This section does not apply to a reduction of the share capital of a company for which, by virtue of section 58(3), confirmation by the court is not required.”.

**28. Registration of order and minute of reduction**

(1) Section 61(1) is amended by repealing “The Registrar, on production to him of an order of the court confirming the reduction of the share capital of a company” and substituting “In the case of a reduction of the share capital of a company that is subject to confirmation by the court under section 58, the Registrar, on production to him of an order of the court confirming the reduction of the share capital of the company”.

(2) Section 61(4) is repealed and the following substituted –

“(4) The Registrar shall issue a certificate, with his signature or printed signature, certifying the registration of the order and minute, and the certificate shall be conclusive evidence that all the requirements of this Ordinance with respect to the reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.”.

**29. Section added**

The following is added –

**“61A. Registration of special resolution, minute and statement where court confirmation is not required**

(1) Where a company has passed a resolution for reducing share capital under section 58 and, by virtue of section 58(3), confirmation of the reduction by the court is not required, the Registrar, on production to him of a copy of the resolution certified as correct by an officer of the company and the delivery to him of –

- (a) a copy of a minute, certified as correct by an officer of the company, showing with respect to the share capital of the company, as altered by the resolution, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount, if any, at the date of the registration deemed to be paid up on each share; and
- (b) a statement in the specified form signed by an officer of the company, certifying the company’s compliance with section 58(3),

shall register the resolution, minute and statement.

(2) On the registration of the resolution, minute and statement, and not before, the resolution for reducing share capital shall take effect.

(3) Notice of the registration shall be published in such manner as the Registrar may direct.

(4) The Registrar shall issue a certificate, with his signature or printed signature, certifying the registration of the resolution, minute and statement, and the certificate shall be conclusive evidence that all the requirements of this Ordinance with respect to the reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

(5) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum, and shall be valid and alterable as if it had been originally contained in the memorandum.

(6) The substitution of any such minute for part of the memorandum of the company shall be deemed to be an alteration of the memorandum within the meaning of section 27.”.

**30. Variation of rights attached to special classes of shares**

Section 63A(6) is amended by adding “, 114AA” after “114A”.

**31. Duties of company with respect to issue of certificates**

(1) Section 70(1) is repealed and the following substituted –

“(1) Every company shall, within 2 months after the allotment of any of its shares, debentures or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock so allotted, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

(1A) Every company (other than a private company) shall, within 10 business days after the date on which a transfer of any of its shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock so transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

(1B) Every private company shall, within 2 months after the date on which a transfer of any of its shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock so transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.”.

(2) Section 70(3) is amended by adding “, (1A) or (1B)” after “subsection (1)”.

(3) Section 70 is amended by adding –

“(4) In this section –

“business day” (營業日) means any day on which the Unified Exchange is open for the business of dealing in securities;

“transfer” (轉讓書) means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.”.

### **32. Register of charges to be kept by Registrar**

Section 83(2) is repealed and the following substituted –

“(2) The Registrar shall issue a certificate, with his signature or printed signature, certifying the registration of any charge registered in pursuance of this Part, and the certificate shall be conclusive evidence that all the requirements of this Part with respect to registration have been complied with.”.

### **33. Section substituted**

Section 85 is repealed and the following substituted –

#### **“85. Entries of satisfaction and release of property from charge**

(1) The Registrar may, with respect to any registered charge, on evidence being given to his satisfaction in accordance with this section that the debt for which the charge was given has been paid or satisfied in whole or in part, enter on the register a memorandum of satisfaction in whole or in part.

(2) The Registrar may, with respect to any registered charge, on evidence being given to his satisfaction in accordance with this section that the whole or any part of the property or undertaking charged has been

released from the charge or has ceased to form part of the company's property or undertaking, enter on the register a memorandum of that fact.

(3) The evidence referred to in subsections (1) and (2) shall be given in the specified form, which shall –

- (a) contain such particulars with respect to the debt, charge, property or undertaking in question as may be specified by the Registrar;
- (b) contain a statement certifying the fact of satisfaction, release or cessation, as the case may be; and
- (c) be signed –
  - (i) where the specified form is submitted to the Registrar on behalf of a company, by a director or officer of the company or, in the case of an oversea company, by a person authorized to accept service of process and notices on its behalf who is registered under section 333(1)(c); or
  - (ii) in any other case, by the mortgagee or person entitled to the charge.

(4) Where the Registrar enters a memorandum of satisfaction in whole under subsection (1), he shall, if required and upon payment of the prescribed fee, endorse the words “satisfaction entered” or the expression in Chinese “已清償” upon the instrument creating the charge.”.

#### **34. Extension of time for registration, and rectification of register of charges**

Section 86(1) is amended by repealing “memorandum of satisfaction” and substituting “memorandum under section 85”.

**35. Section substituted**

Section 87 is repealed and the following substituted –

**“87. Notice to Registrar of appointment of receiver or manager, or of mortgagee taking possession, etc.**

(1) If any person appoints a receiver or manager of the property of a company under the powers contained in any instrument, or obtains an order for the appointment of such a receiver or manager, he shall, within 7 days after the date of the appointment, give notice of that fact to the Registrar, which notice shall include with respect to the person so appointed the following particulars –

- (a) his name;
- (b) his address; and
- (c) the number of his identity card (if any) or, in the absence of such number, the number and issuing country of any passport held by him.

(2) If any person enters into possession of the property of a company as mortgagee, he shall, within 7 days after the date of his entering into possession, give notice of that fact to the Registrar, which notice shall include with respect to that person the following particulars –

- (a) where that person is an individual, the particulars referred to in subsection (1); or
- (b) where that person is a body corporate, its corporate name and the address of its registered or principal office.

(3) The Registrar shall, on payment of the prescribed fee, enter a notice given under subsection (1) or (2) in the register of charges.

(4) Where –

- (a) any person appointed receiver or manager of the property of a company, and in respect of whom notice

is required to be given under subsection (1), ceases to act as receiver or manager; or

- (b) any person who has entered into possession of the property of a company as mortgagee, and in respect of whom notice is required to be given under subsection (2), goes out of possession of the property,

that person shall, within 7 days after ceasing to act as receiver or manager or after going out of possession, as the case may be, give notice of that fact to the Registrar, and the Registrar shall enter a notice given under this subsection in the register of charges.

(5) If any change occurs in the particulars given in a notice under subsection (1) or (2), the person in respect of whom that notice is given shall, within 14 days after the date of the change, give notice of that change to the Registrar, unless that person has previously given notice to the Registrar under subsection (4).

(6) Every notice given to the Registrar under this section shall be in the specified form.

(7) If any person makes default in complying with the requirements of this section, he shall be liable to a fine and, for continued default, to a daily default fine.

(8) In this section, “manager” (經理人) does not include a special manager of the estate or business of a company appointed under section 216.”.

### **36. Registered office of company**

Section 92(2) is amended by adding “in the specified form” after “given”.

### **37. Register of members**

Section 95(1)(a) is amended by repealing “, and the occupations or descriptions,”.

**38. Section added**

The following is added –

**“95A. Statement that company has only one member**

(1) If the number of members of a company falls to one, there shall upon the occurrence of that event be entered in the company’s register of members –

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

(2) If the membership of a company increases from one to 2 or more members, there shall upon the occurrence of that event be entered in the company’s register of members a statement that the company has ceased to have only one member, together with the date on which that event occurred.

(3) If a company makes default in complying with this section, the company and every officer of the company who is in default is liable to a fine and, for continued default, to a daily default fine.”.

**39. Power of company to keep branch register**

Section 103(1) is amended, in the proviso, by repealing paragraph (a) and substituting –

- “(a) a company wishing to apply for such a licence shall make an application in writing to the Chief Executive, to be filed with the Registrar, which application shall include sufficient evidence to satisfy the Chief Executive that a substantial part of the business of the company is transacted at or near the place where it desires to keep such register;”.

**40. General provisions as to annual returns**

Section 109(5) is amended by repealing “any person in accordance with whose directions or instructions the directors of the company are accustomed to act” and substituting “a shadow director”.

**41. General provisions as to meetings and votes**

Section 114A(1) is amended by adding “114AA,” before “155B”.

**42. Section added**

The following is added –

**“114AA. Quorum where company has only one member**

Notwithstanding any provision to the contrary in the articles of a company, if the company has only one member, one member present in person or by proxy shall be a quorum of a meeting of the company.”.

**43. Circulation of members’ resolutions, etc.**

Section 115A(2) is amended –

- (a) in paragraph (a), by repealing “one-twentieth” and substituting “one-fortieth”;
- (b) in paragraph (b), by repealing “100” and substituting “50”.

**44. Section added**

The following is added –

**“116BC. Written record where company has only one member**

(1) Where a company has only one member and that member takes any decision that may be taken by the company in general meeting or that has effect as if agreed by the company in general meeting, he shall (unless that decision is taken by way of a written resolution) provide the company with a written record of that decision within 30 days after the decision is made.

(2) If the member fails to comply with subsection (1), he shall be liable to a fine and, for continued default, to a daily default fine.

(3) Failure by the member to comply with subsection (1) shall not affect the validity of any decision referred to in that subsection.”.

**45. Registration and copies of certain resolutions and agreements**

Section 117(4)(a) is amended by adding “, other than special resolutions to change the name of a company passed under section 22(1)” after “special resolutions”.

**46. Particulars to be shown in company’s accounts in relation to subsidiaries**

(1) Section 128(1) is repealed and the following substituted –

“(1) Subject to the provisions of this section, where, at the end of its financial year, a company has subsidiaries, there shall be shown in the accounts of the company laid before it in general meeting, or in a statement annexed to those accounts, the following particulars with respect to each subsidiary –

- (a) the subsidiary’s name;
- (b) the country in which it is incorporated;
- (c) in relation to shares of each class of the subsidiary held by the company, the identity of the class and the proportion of the nominal value of the issued shares of that class represented by the shares held; and
- (d) with reference to the proportion of the nominal value of the issued shares of a class represented by the shares held by the company, the extent (if any) to which it consists of shares held by, or by a nominee for, a subsidiary of the company and the extent (if

any) to which it consists of shares held by, or by a nominee for, the company itself.”.

- (2) Section 128(2) is amended –
- (a) in paragraph (a), by adding “and” at the end;
  - (b) in paragraph (b), by repealing “; and” and substituting a full stop;
  - (c) by repealing paragraph (c).

- (3) Section 128(5)(a) and (b) is repealed and the following substituted –

“(a) there shall be added to the particulars, if any, given in compliance with subsection (1) the information that the particulars deal only with subsidiaries carrying on businesses of the kind referred to in subsection (4); and

- (b) the particulars, if any, given in compliance with subsection (1), together with those which, but for the fact that advantage is so taken, would have to be so given, shall be set out in a statement in the specified form, which shall be sent to the Registrar at the same time as the annual return first made by the company after its accounts have been laid before it in general meeting is sent to the Registrar.”.

- (4) Section 128(5A)(a) and (b) is repealed and the following substituted –

“(a) there shall be added to the particulars, if any, given in compliance with subsection (1) the information that the particulars deal only with subsidiaries carrying on businesses of the kind referred to in subsection (4); and

- (b) the particulars, if any, given in compliance with subsection (1), together with those which, but for the fact that advantage is so taken, would have to be so given, shall be set out in a statement in the specified form, which shall be sent to the Registrar within 42 days after its accounts have been laid before it in general meeting.”.

(5) Section 128(6) is amended by repealing “to annex particulars to a return” and substituting “or (5A)”.

**47. Particulars to be shown in company’s accounts in relation to companies not being subsidiaries whose shares it holds**

(1) Section 129(1) is amended by repealing “stated in, or in a note on, or statement annexed to, the accounts of the company laid before it in general meeting” and substituting “shown in the accounts of the company laid before it in general meeting, or in a statement annexed to those accounts, the following particulars”.

(2) Section 129(2) is amended –

(a) by repealing “or included”;

(b) by repealing “stated in, or in a note on, or statement annexed to, those accounts” and substituting “shown in those accounts, or in a statement annexed to those accounts, the following particulars”.

(3) Section 129(4) is amended by adding “or (2)” after “subsection (1)”.

(4) Section 129(5)(a) and (b) is repealed and the following substituted –

“(a) there shall be added to the particulars, if any, given in compliance with subsection (1) or (2) the information that the particulars deal only with bodies carrying on businesses of the kind referred to in subsection (4); and

(b) the particulars, if any, given in compliance with subsection (1) or (2), together with those which, but for the fact that advantage is so taken, would have to be so given, shall be set out in a statement in the specified form, which shall be sent to the Registrar at the same time as the annual return first made by the company after its accounts have been laid before it in general meeting is sent to the Registrar.”.

(5) Section 129(5A)(a) and (b) is repealed and the following substituted –

- “(a) there shall be added to the particulars, if any, given in compliance with subsection (1) or (2) the information that the particulars deal only with bodies carrying on businesses of the kind referred to in subsection (4); and
- (b) the particulars, if any, given in compliance with subsection (1) or (2), together with those which, but for the fact that advantage is so taken, would have to be so given, shall be set out in a statement in the specified form, which shall be sent to the Registrar within 42 days after its accounts have been laid before it in general meeting.”.

(6) Section 129(6) is amended by repealing “to annex particulars to a return” and substituting “or (5A)”.

**48. Particulars to be shown in subsidiary company’s accounts in relation to its ultimate holding company**

Section 129A(1) is repealed and the following substituted –

“(1) Subject to subsection (2), where, at the end of its financial year, a company is the subsidiary of another body corporate, there shall be shown in the accounts of the company laid before it in general meeting, or in a statement annexed to those accounts, the following particulars –

- (a) the name of the body corporate regarded by the directors as being the company’s ultimate holding company; and
- (b) if known to the directors, the country in which it is incorporated.”.

**49. Signing of balance sheet**

Section 129B(1) is amended by adding “or, in the case of a private company having only one director, by the sole director” after “the directors”.

**50. Resignation of auditor**

Section 140A(3)(b), (4) and (6)(b) is amended by repealing “subsection (2)(b)” and substituting “subsection (2)(a)(ii)”.

**51. Power of inspector to call for director’s accounts**

Section 145B(b) is amended by repealing “161B(1), (2) or (4)” and substituting “161B”.

**52. Notice to Registrar**

Section 151 is amended by repealing “notice in writing under his hand of such appointment or of such submission, as the case may be” and substituting “notice of such appointment or submission, as the case may be, in the specified form”.

**53. Section substituted**

Section 153 is repealed and the following substituted –

**“153. Directors of companies other than private companies**

(1) Every company (not being a private company) shall have at least 2 directors.

(2) If a company (not being a private company) has not at any time sent to the Registrar under section 158 a return containing the names of at least 2 directors of the company and one or more individuals are named as subscribers in the list of subscribers to the memorandum of the company, each of the following shall, until the return is so sent, be deemed to be a director of the company –

(a) where one individual only is so named in the memorandum, that individual; or

(b) where 2 or more individuals are so named in the memorandum, the first 2 individuals so named in the order in which the names appear in the memorandum.

(3) Subject to subsection (4), if any company (not being a private company) makes default in complying with subsection (1), the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine.

(4) Where the number of directors of a company (not being a private company) is reduced below 2 by reason of the office of any director being vacated, the company or any officer of the company shall not be liable for any default in respect thereof under this section unless the default continues for a period of 2 months beginning on the day on which the office is vacated.

(5) Any power exercisable by a director under the articles of a company (not being a private company) in a case where the number of directors is reduced below the number fixed as the necessary quorum of directors, being a power to act for the purpose of increasing the number of directors or of summoning a general meeting of the company but not for any other purpose, shall be exercisable also in a case where the number of directors is reduced below the number required by subsection (1).

### **153A. Directors of private companies**

(1) Every private company shall have at least one director.

(2) If a private company has not at any time sent to the Registrar under section 158 a return containing the name of at least one director of the company, the following shall, until the return is so sent, be deemed to be a director of the company –

(a) if the company is not a member of a group of companies of which a listed company is a member, the

person whose name appears first in the list of subscribers to the memorandum of the company; or

- (b) if paragraph (a) does not apply to the company and one or more individuals are named as subscribers in the list of subscribers to the memorandum of the company –
  - (i) where one individual only is so named in the memorandum, that individual; or
  - (ii) where 2 or more individuals are so named in the memorandum, the first individual so named.

(3) Subject to subsection (4), if any private company makes default in complying with subsection (1), the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine.

(4) Where the number of directors of a private company is reduced to zero by reason of the office of any director being vacated, the company or any officer of the company shall not be liable for any default in respect thereof under this section unless the default continues for a period of 2 months beginning on the day on which the office is vacated.”.

#### **54. Section added**

The following is added –

**“153B. Directors vicariously liable for acts of alternates, etc.**

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

- (a) an alternate director so appointed shall be deemed to be the agent of the director who appoints him; and

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

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

#### **55. Section added**

The following is added –

**“153C. Written record of decision of sole director of private company**

Where any provision of this Ordinance refers (in whatever words) to a decision of the directors of a company taken at a meeting of the directors or to a decision of the directors that has effect as if agreed by them at a meeting of the directors, then, in the case of a private company having only one director, a written record of the decision shall be sufficient evidence of the decision having been taken for the purposes of that provision, unless the articles of the company contain any provision to the contrary, whether express or implied.”.

#### **56. Secretary**

(1) Section 154(1) is amended by repealing “, who may be one of the directors”.

(2) Section 154 is amended by adding –

“(1A) Subject to subsections (1B) and (4), a director of a company may be the secretary of the company.

(1B) The director of a private company having only one director shall not also be the secretary of the company.”.

(3) Section 154 is amended by adding –

“(4) No private company having only one director shall have as secretary of the company a body corporate the sole director of which is the sole director of the private company.”.

#### **57. Removal of directors**

(1) Section 157B(1) is amended by repealing “special resolution” and substituting “ordinary resolution”.

(2) Section 157B is amended by adding –

“(1A) Special notice is required of a resolution to remove a director or to appoint somebody in place of a director so removed at the meeting at which he is removed.”.

(3) Section 157B(5) is amended by repealing “term of office” and substituting “period of office”.

#### **58. Section substituted**

Section 157H is repealed and the following substituted –

##### **“157H. Prohibition of loans, etc., to directors and other persons**

(1) Subject to section 157HA, a company shall not, directly or indirectly –

- (a) make a loan or quasi-loan to a director of the company or of its holding company;
- (b) enter into a credit transaction as creditor for a director of the company or of its holding company;
- (c) enter into a guarantee or provide any security in connection with –
  - (i) a loan or quasi-loan made by any person to a director of the company or of its holding company; or

- (ii) a credit transaction entered into by any person as creditor for such a director; or
- (d) if any one or more of the directors of the company holds (jointly or severally or directly or indirectly) a controlling interest in another company –
  - (i) make a loan or quasi-loan to that other company;
  - (ii) enter into a credit transaction as creditor for that other company; or
  - (iii) enter into a guarantee or provide any security in connection with a loan or quasi-loan made by any person to that other company or in connection with a credit transaction entered into by any person as creditor for that other company.

(2) A company must not arrange to assume or take an assignment of rights, obligations or liabilities under a transaction that would have contravened subsection (1) if the company had entered into it.

(3) If a company enters into an arrangement in contravention of subsection (2), then for the purposes of this section the company is to be treated as having entered into the transaction in question on the date of that arrangement.

(4) A company must not take part in an arrangement by or under which –

- (a) another person enters into a transaction or arrangement that would have contravened subsection (1) or (2) if the company had entered into it; and

(b) the other person has obtained or is to obtain a benefit from the company or its holding company or a subsidiary of the company or its holding company.

(5) In the application of subsection (1) to –

(a) a company in the case of which shares are listed on the Unified Exchange; or

(b) a company that is a member of a group of companies of which a company referred to in paragraph (a) is a member,

references in that subsection to a director shall include references to –

(i) the spouse or any child or step-child of such director;

(ii) a person acting in his capacity as the trustee (other than as trustee under an employees' share scheme or a pension scheme) of any trust the beneficiaries of which include the director, his spouse or any of his children or step-children or the terms of which confer a power on the trustees that may be exercised for the benefit of the director, his spouse or any of his children or step-children; and

(iii) a person acting in his capacity as partner of that director or of his spouse, child or step-child, or of any trustee referred to in paragraph (ii).

(6) References in subsection (5) to the child or step-child of any person shall include a reference to any illegitimate child of that person, but shall not include a reference to any person who has attained the age of 18 years.

(7) In this section –

“company” (公司) means –

- (a) a company within the meaning of section 2; or
- (b) any other body corporate –
  - (i) incorporated in Hong Kong under an Ordinance; and
  - (ii) in the case of which shares are listed on the Unified Exchange,

but does not include an authorized financial institution;

“credit transaction” (信貸交易) means a transaction between one party (“the creditor”) and another party (“the borrower”) under which the creditor –

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

“director” (董事) includes a shadow director;

“guarantee” (擔保) includes indemnity, and cognate expressions are to be construed accordingly;

“quasi-loan” (類似貸款) means –

- (a) a transaction under which one party (“the creditor”) agrees to pay, or pays otherwise than under an agreement, a sum for another (“the borrower”) –
  - (i) on terms that the borrower (or a person on his behalf) will reimburse the creditor; or
  - (ii) in circumstances giving rise to a liability on the borrower to reimburse the creditor; or
- (b) a transaction under which one party (“the creditor”) agrees to reimburse, or reimburses otherwise than under an agreement, expenditure incurred by another for another (“the borrower”) –
  - (i) on terms that the borrower (or a person on his behalf) will reimburse the creditor; or
  - (ii) in circumstances giving rise to a liability on the borrower to reimburse the creditor;

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

- (8) For the purposes of this section –
  - (a) a person “makes a quasi-loan to” or “enters into a credit transaction as creditor for” a person if the first-mentioned person is the creditor and the second-mentioned person is the borrower under the quasi-loan or credit transaction, as the case may be; and

- (b) the liabilities of a borrower under a quasi-loan include the liabilities of any person who has agreed to reimburse the creditor on behalf of the borrower.

**157HA. Excepted transactions**

(1) Nothing in section 157H shall be construed as prohibiting a company that is a member of a group of companies from –

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

(2) Nothing in section 157H shall be construed as prohibiting a private company (other than a private company that is a member of a group of companies of which a company in the case of which shares are listed on the Unified Exchange is a member) from doing anything that has been approved by the company in general meeting.

(3) Subject to this section, nothing in section 157H shall be construed as prohibiting a company from –

- (a) entering into any transaction to provide any of its directors with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company; or
- (b) entering into any transaction –

- (i) for the purpose of facilitating the purchase of the whole or part of any residential premises, together with any land to be occupied and enjoyed therewith, for use as the only or main residence of a director of the company;
- (ii) for the purpose of improving any residential premises so used or any land occupied and enjoyed therewith; or
- (iii) in substitution for any transaction entered into by any person for the benefit of a director of the company and falling within subparagraph (i) or (ii).

(4) Subsection (3)(a) operates in relation to a transaction described in that subsection only if either of the following conditions is satisfied –

- (a) the transaction in question is entered into with the prior approval of the company given at a general meeting at which the purpose of the expenditure incurred or to be incurred by the director concerned and the amount of the transaction are disclosed; or
- (b) the transaction is entered into on the condition that, if the approval of the company is not so given at or before the next following annual general meeting, any liability falling on any person in connection with the transaction shall be discharged within 6 months from the conclusion of that meeting.

(5) Subsection (3)(b) operates in relation to a transaction described in that subsection only if the following conditions are satisfied –

- (a) the company in question ordinarily enters into transactions of that description for its employees on

terms no less favourable than those on which the transaction in question is entered into;

- (b) the amount of the transaction does not exceed 80 per cent of the value of the residential premises, or the part thereof, in question and any land to be occupied and enjoyed therewith, as stated in a valuation report that complies with paragraph (c);
- (c) the valuation report is made and signed by a professionally qualified valuation surveyor, who is subject to the discipline of a professional body, not earlier than 3 months prior to the date on which the transaction is entered into; and
- (d) the transaction is secured by a legal mortgage on the land comprising the residential premises, or the part thereof, in question and any land to be occupied and enjoyed therewith.

(6) Subject to this section, nothing in section 157H shall be construed as prohibiting a company from –

- (a) making a loan or quasi-loan to any person;
- (b) entering into a credit transaction as creditor for any person; or
- (c) entering into a guarantee or providing any security in connection with –
  - (i) a loan or quasi-loan made by any person to another person; or
  - (ii) a credit transaction entered into by any person as creditor for another person,

if the ordinary business of that company includes the entering into of transactions of that description.

(7) Subsection (6) operates in relation to a transaction described in that subsection only if the following conditions are satisfied –

- (a) the transaction in question is entered into by the company in the ordinary course of its business; and
- (b) the amount of the transaction is not greater, and the terms of the transaction are not more favourable, in the case of the person with or in respect of whom the transaction is entered into, than that amount or those terms that it is reasonable to expect the company to have offered to or in respect of a person of the same financial standing as that person but who is unconnected with the company.

(8) Subsection (6) does not authorize a company to –

- (a) make a loan or quasi-loan to, or enter into a credit transaction as creditor for, any director of the company or of its holding company;
- (b) where any one or more of the directors of the company holds (jointly or severally or directly or indirectly) a controlling interest in another company, make a loan or quasi-loan to, or enter into a credit transaction as creditor for, that other company; or
- (c) enter into a guarantee or provide any security in connection with a loan or quasi-loan made by any person to, or a credit transaction entered into by any person as creditor for, any such director or other company,

if, at the time the transaction is entered into, the aggregate of the following amounts exceeds \$500,000 –

- (i) the amount of the transaction in question;

- (ii) the amount outstanding at that time in respect of principal on all loans and quasi-loans made by the company to, and all credit transactions entered into by the company as creditor for, the director or other company concerned by virtue of subsection (6) (excluding loans, quasi-loans and credit transactions constituting the transaction in question); and
- (iii) the amount representing the maximum liability of the company at that time under all guarantees and all security entered into or provided by the company in connection with any loans or quasi-loans made by any person to, or any credit transactions entered into by any person as creditor for, the director or other company concerned by virtue of subsection (6) (excluding guarantees or security constituting the transaction in question).

(9) Subsections (3) and (6) do not authorize a company to enter into a transaction if, at the time the transaction is entered into, the aggregate of the following amounts –

- (a) the amount of the transaction in question;
- (b) the amount outstanding at that time, in respect of principal and interest or otherwise, on all loans and quasi-loans made by the company to, and all credit transactions entered into by the company as creditor for, any of its directors (excluding loans, quasi-loans and credit transactions made or entered into by virtue of subsection (1) or (2) or constituting the transaction in question); and
- (c) the amount representing the maximum liability of the company at that time under all guarantees entered into

by the company, and in respect of all security provided by the company, in connection with any loans or quasi-loans made by any person to, or any credit transactions entered into by any person as creditor for, any of its directors (excluding guarantees and security entered into or provided by virtue of subsection (1) or (2) or constituting the transaction in question),

exceeds 5 per cent of the amount of the company's net assets as shown in the latest balance sheet laid before the company in general meeting.

(10) A reference in this section to the amount of a transaction entered into by a company shall be construed as a reference to –

- (a) where the transaction consists of a loan, quasi-loan or credit transaction, the principal amount of that loan, quasi-loan or credit transaction;
- (b) where the transaction consists of a guarantee, the amount representing the maximum liability of the company under that guarantee; and
- (c) where the transaction consists of the provision of any security, the amount representing the maximum liability of the company in respect of that security.

(11) A reference in this section to the principal amount of a quasi-loan or credit transaction shall be construed as a reference to the total amount payable by the borrower, excluding any amount payable as interest, as a penalty or as compensation or damages for a breach of the transaction.

(12) In this section, “net assets” (淨資產), in relation to a company, means the aggregate of the company's assets less the aggregate of its liabilities, and for the purposes of this definition, “liabilities” (負債) includes any provision within the meaning of the Tenth Schedule except to

the extent that that provision is taken into account in calculating the value of any asset of the company.

(13) All other terms and expressions used in this section have the same meaning as in section 157H except that section 157H(5) shall not apply in relation to the references to a director in subsection (3) of this section insofar as that subsection applies in respect of a director of –

- (a) a company in the case of which shares are listed on the Unified Exchange; or
- (b) a company that is a member of a group of companies of which a company referred to in paragraph (a) is a member.”.

**59. Civil consequences of transactions contravening section 157H**

(1) Section 157I(1) is repealed and the following substituted –

“(1) A person who receives from a company a sum paid in pursuance of a transaction or arrangement entered into in contravention of section 157H(1), (2) or (4) shall be liable to repay that sum to the company forthwith, except where he is not a director of the company or of its holding company and he shows that, at the time the transaction or arrangement was entered into, he did not know the relevant circumstances.”.

(2) Section 157I(2) is amended by repealing “157H(2)” and substituting “157H(1), (2) or (4)”.

(3) Section 157I(3) to (6) is repealed and the following substituted –

“(3) Subsection (2) –

- (a) shall not apply to a guarantee entered into or any security provided by the company in connection with a loan or quasi-loan made by any person to, or a credit transaction entered into by any person as creditor for, a person who is not a director of the

company or of its holding company if it is shown that, at the time the guarantee was entered into or the security provided, the person to whom the guarantee was given or the security provided, as the case may be, did not know the relevant circumstances; and

- (b) shall not affect an interest in any property that has been passed by the company to any person by way of security provided in connection with any transaction or arrangement.

(4) Without prejudice to any liability imposed on directors of companies otherwise than by this subsection, a director of a company that has entered into a transaction or arrangement in contravention of section 157H(1), (2) or (4) shall be liable –

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

if –

- (i) he knowingly and wilfully authorized or permitted the transaction or arrangement to be entered into;
- (ii) the transaction or arrangement consists of the making of a loan or quasi-loan to, or the entering into of a credit transaction as creditor for, that director or a person connected with him; or
- (iii) the transaction or arrangement consists in the giving of any guarantee or the provision of any security in connection with a loan or quasi-loan made by any

person to, or a credit transaction entered into by any person as creditor for, that director or a person connected with him.

(5) Without prejudice to subsections (1) to (4), section 157H(1), (2) and (4) shall not of itself invalidate any transaction or arrangement entered into in contravention of that section.

(6) In this section, “the relevant circumstances” (有關情況), in relation to a contravention of section 157H(1), (2) or (4), means all the facts and other circumstances constituting that contravention including, in the case of a transaction or arrangement which but for any fact or circumstance would be authorized by any provision of section 157HA, that fact or circumstance.”.

#### **60. Section substituted**

Section 157J is repealed and the following substituted –

##### **“157J. Criminal penalties for contravention of section 157H**

(1) Where a company enters into a transaction or arrangement in contravention of section 157H(1), (2) or (4), the following persons shall, subject to subsection (2), be guilty of an offence –

- (a) if the transaction or arrangement is entered into in contravention of section 157H(1)(a), (b) or (c), the company;
- (b) any director of the company who wilfully authorized or permitted the transaction or arrangement to be entered into; and
- (c) any person who knowingly procured the company to enter into the transaction or arrangement.

(2) A person shall not be guilty of an offence under this section if he shows that, at the time the transaction or arrangement was entered into, he did not know the relevant circumstances.

(3) A person guilty of an offence under this section shall be liable to imprisonment and a fine.

(4) In this section –  
 “director” (董事) includes a shadow director;  
 “the relevant circumstances” (有關情況), in relation to a contravention of section 157H(1), (2) or (4), means all the facts and other circumstances constituting that contravention including, in the case of a transaction or arrangement which but for any fact or circumstance would be authorized by any provision of section 157HA, that fact or circumstance.”.

#### **61. Register of directors and secretaries**

(1) Section 158(5) is amended –  
 (a) by repealing “in writing” and substituting “in the specified form”;  
 (b) by adding “or 153A(2)” after “153(2)”.

(2) Section 158(6)(a) is amended by adding “or 153A(2)” after “153(2)”.

(3) Section 158(10)(a) is amended by repealing “person in accordance with whose directions or instructions the directors of a company are accustomed to act” and substituting “shadow director”.

#### **62. Registrar to keep an index of directors**

Section 158C(1)(a) is amended by repealing “, as from a date to be appointed by the Registrar by notice in the Gazette,”.

**63. Section substituted**

Section 161B is repealed and the following substituted –

**“161B. Particulars in accounts of loans to officers, etc.**

(1) The accounts that, under this Ordinance, are to be laid before a company in general meeting shall, subject to this section, contain the following particulars of every relevant transaction entered into by the company after the commencement of section 63 of the Companies (Amendment) Ordinance 2002 ( of 2002) –

- (a) the name of the borrower;
- (b) if this subsection applies to a relevant transaction –
  - (i) by reason of the fact that the borrower is connected with a director of the company or of its holding company; or
  - (ii) where the borrower is a body corporate, by reason of the fact that a director of the company or a person connected with him has held (jointly or severally or directly or indirectly) a controlling interest therein,the name of that director;
- (c) the terms of the relevant transaction, including the amounts payable thereunder (whether in a lump sum or instalments or by way of periodical payments or otherwise), the rate of interest, if any, and the security therefor, if any;
- (d) the amount outstanding on the relevant transaction, in respect of principal and interest or otherwise, at the beginning and at the end of the company’s financial year and the maximum amount so outstanding during that financial year; and

- (e) the amount, if any, that, having fallen due, has not been paid and the amount of any provision (within the meaning of the Tenth Schedule) made in respect of any failure or anticipated failure by the borrower to pay the whole or any part of the principal amount of the relevant transaction or any other amount owing under that transaction.

(2) The accounts referred to in subsection (1) shall contain the particulars specified in subsection (3) of every guarantee entered into and of every security provided by the company in respect of which the following conditions are satisfied –

- (a) the guarantee was entered into, or the security provided, by the company in connection with a relevant transaction entered into by any person after the commencement of section 63 of the Companies (Amendment) Ordinance 2002 ( of 2002); and
- (b) the liability of the company in respect of the guarantee or security has not been discharged before the beginning of the financial year.

(3) The particulars referred to in subsection (2) are –

- (a) in respect of the relevant transaction in connection with which the guarantee is entered into or the security provided, the name of the borrower and, if subsection (2) applies to the guarantee or security –
  - (i) by reason of the fact that the borrower is connected with a director of the company or of its holding company; or
  - (ii) where the borrower is a body corporate, by reason of the fact that a director of the company or a person connected with him has

- held (jointly or severally or directly or indirectly) a controlling interest therein,  
the name of that director;
- (b) the maximum liability of the company under the guarantee or in respect of the security both at the beginning and at the end of the financial year; and
  - (c) any amount paid and any liability incurred by the company for the purpose of fulfilling the guarantee or discharging the security (including any loss incurred by the company by reason of the enforcement of the guarantee or security).

(4) As respects any transaction referred to in this subsection that is entered into after the commencement of section 63 of the Companies (Amendment) Ordinance 2002 ( of 2002) by a subsidiary of a company to which section 124 applies, group accounts prepared by the company under that section (or, where group accounts are not so prepared by virtue of subsection (2) of that section, the accounts of the company prepared under section 122) shall contain particulars showing –

- (a) the principal amount of any loan or quasi-loan made by the subsidiary to, or any credit transaction entered into by the subsidiary as creditor for, an officer of the company (whether or not he was an officer at the time the loan, quasi-loan or credit transaction was made or entered into), and –
  - (i) the name of the officer;
  - (ii) the terms of the loan, quasi-loan or credit transaction, including the amounts payable thereunder (whether in a lump sum or instalments or by way of periodical

- payments or otherwise), the rate of interest, if any, and the security therefor, if any;
- (iii) the amount outstanding on the loan, quasi-loan or credit transaction, in respect of principal and interest or otherwise, at the beginning and at the end of the company's financial year and the maximum amount so outstanding during that financial year; and
  - (iv) the amount, if any, that, having fallen due, has not been paid and the amount of any provision (within the meaning of the Tenth Schedule) made in respect of any failure or anticipated failure by the officer to pay the whole or any part of the principal amount of the transaction in question or any other amount owing under that transaction; and
- (b) the principal amount of any loan or quasi-loan made by any person to, or any credit transaction entered into by any person as creditor for, an officer of the company (whether or not he was an officer at the time the loan, quasi-loan or credit transaction was made or entered into) under a guarantee entered into or on a security provided by the subsidiary and in respect of which the liability of the subsidiary has not been discharged before the beginning of the company's financial year, and –
- (i) the name of the officer;
  - (ii) the maximum liability of the subsidiary under the guarantee or in respect of the

security both at the beginning and at the end of the financial year; and

- (iii) any amount paid and any liability incurred by the subsidiary for the purpose of fulfilling the guarantee or discharging the security (including any loss incurred by the subsidiary by reason of the enforcement of the guarantee or security),

being a loan, quasi-loan or credit transaction that either is made or entered into during the company's financial year or, if made or entered into before it, is outstanding at any time during that financial year.

(5) Except as provided in subsections (6) and (7), this section shall not require the inclusion in accounts prepared by a company that is, or is the holding company of, an authorized financial institution of particulars of –

- (a) any loan or quasi-loan made by the authorized financial institution to any person;
- (b) any credit transaction entered into by the authorized financial institution as creditor for any person; or
- (c) any guarantee entered into or security provided by the authorized financial institution in connection with a loan or quasi-loan made to, or a credit transaction entered into for, any person,

if, but only if, either of the following conditions is satisfied –

- (i) the principal amount of the loan, quasi-loan or credit transaction or the amount guaranteed or secured is not greater, and the terms of the transaction in question are not more favourable, in the case of that person, than that amount or those terms that it is reasonable to expect the authorized financial institution to have

offered to or in respect of a person of the same financial standing as that person but who is unconnected with the authorized financial institution; or

- (ii) where the transaction in question does not fall within paragraph (i), the aggregate of the following amounts does not exceed \$10,000,000 or an amount equivalent to 10 per cent of the paid up capital and reserves of the authorized financial institution, whichever is the lower –
  - (A) the maximum amount outstanding, in respect of principal and interest or otherwise, during the financial year on all loans and quasi-loans made by the authorized financial institution to, and on all credit transactions entered into by the authorized financial institution as creditor for, that person (excluding loans, quasi-loans and credit transactions falling within paragraph (i)); and
  - (B) the amount representing the maximum liability of the authorized financial institution during the financial year under all guarantees entered into and in respect of all security provided by the authorized financial institution in connection with loans or quasi-loans made by any person to, or credit transactions entered into by any person as creditor for, that person (excluding guarantees and security falling within paragraph (i)).

(6) In the case of a company that is an authorized financial institution, the accounts of the company shall contain a statement showing –

- (a) the aggregate of the following amounts as at the end of the financial year –
  - (i) the amount outstanding, in respect of principal and interest or otherwise, on every relevant transaction entered into by the company after the commencement of section 63 of the Companies (Amendment) Ordinance 2002 ( of 2002); and
  - (ii) the amount representing the maximum liability of the company under all guarantees entered into, and in respect of all security provided, by that company in connection with any relevant transaction entered into by any person after the commencement of that section; and
- (b) the maximum aggregate of the amounts referred to in paragraph (a) that obtained at any time during the financial year.

(7) In the case of a company that is the holding company of an authorized financial institution, the accounts (or, if group accounts are required to be prepared under section 124 dealing with the authorized financial institution, the group accounts) of the company shall contain a statement showing –

- (a) the aggregate of the following amounts as at the end of the financial year –
  - (i) the amount outstanding, in respect of principal and interest or otherwise, on every loan and quasi-loan made by the authorized financial institution to, and every credit transaction entered into by the authorized financial

institution as creditor for, an officer of the company (whether or not he was an officer at the time the loan, quasi-loan or credit transaction was made or entered into) after the commencement of section 63 of the Companies (Amendment) Ordinance 2002 ( of 2002); and

(ii) the amount representing the maximum liability of the authorized financial institution under all guarantees entered into, and in respect of all security provided, by that authorized financial institution in connection with any loan or quasi-loan made by any person to, or any credit transaction entered into by any person as creditor for, an officer of the company (whether or not he was an officer at the time the loan, quasi-loan or credit transaction was made or entered into) after the commencement of that section; and

(b) the maximum aggregate of the amounts referred to in paragraph (a) that obtained at any time during the financial year.

(8) This section shall not require the inclusion in accounts of particulars of any loan or quasi-loan made by a company or a subsidiary thereof to, or any credit transaction entered into by a company or a subsidiary thereof as creditor for, an employee of the company or subsidiary, as the case may be, if –

(a) the principal amount of the loan, quasi-loan or credit transaction does not exceed \$100,000;

- (b) the loan, quasi-loan or credit transaction is certified by the directors of the company or subsidiary, as the case may be, to have been made or entered into in accordance with any practice adopted or about to be adopted by the company or subsidiary with respect to such transactions;
- (c) the loan, quasi-loan or credit transaction is not made or entered into by the company under a guarantee from or on a security provided by a subsidiary of the company; and
- (d) the loan, quasi-loan or credit transaction is not made or entered into by a subsidiary of the company under a guarantee from or on a security provided by the company or any other subsidiary of the company.

(9) If in the case of any of the accounts referred to in this section the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report thereon, so far as they are reasonably able to do so, a statement giving the required particulars.

(10) In this section and in sections 161BA and 161C, “company” (公司) means –

- (a) a company within the meaning of section 2; or
- (b) any other body corporate incorporated in Hong Kong under an Ordinance.

(11) In this section, “relevant transaction” (有關交易), in relation to a company, means a loan or quasi-loan made to, or a credit transaction entered into for –

- (a) a person who, whether or not he was an officer of the company or a director of its holding company at the

time the loan, quasi-loan or credit transaction was made or entered into, is such an officer or director at any time during the financial year in respect of which the accounts are made up; or

- (b) a body corporate in which a director of the company, at any time during the financial year, held (jointly or severally or directly or indirectly) a controlling interest, whether or not such controlling interest was so held at the time the loan, quasi-loan or credit transaction was made or entered into,

being a loan, quasi-loan or credit transaction that either is made or entered into during that financial year or, if made or entered into before it, is outstanding at any time during that financial year.

(12) In this section, “relevant transaction” (有關交易), in relation to a company referred to in section 157H(5)(a) or (b), also includes a loan or quasi-loan made to, or a credit transaction entered into for –

- (a) a person connected with a director of the company at any time during the financial year when the loan, quasi-loan or credit transaction is outstanding, whether or not he was such a person at the time the loan, quasi-loan or credit transaction was made or entered into;
- (b) a person connected with a director of the company’s holding company at any such time, whether or not he was such a person at the time the loan, quasi-loan or credit transaction was made or entered into; or
- (c) a body corporate in which a person referred to in paragraph (a), at any time during the financial year, held (jointly or severally or directly or indirectly) a controlling interest, whether or not such controlling

interest was so held at the time the loan, quasi-loan or credit transaction was made or entered into, being a loan, quasi-loan or credit transaction that either is made or entered into during that financial year or, if made or entered into before it, is outstanding at any time during that financial year.

(13) References in subsections (4) and (8) to a subsidiary of a company shall be taken as referring to a subsidiary at the end of the company's financial year (whether or not it was a subsidiary at the date of the transaction in question).

(14) In the case of any loan made, guarantee entered into or security provided before the commencement of section 63 of the Companies (Amendment) Ordinance 2002 ( of 2002), the accounts for any financial year of a company shall contain in respect of –

- (a) any such loan outstanding at the end of the financial year; or
- (b) any such guarantee or security in respect of which the liability of the company or a subsidiary thereof has not been discharged before the beginning of the financial year,

the particulars that, but for that section, would have had to be contained in the accounts under the provisions of section 161B of this Ordinance in force immediately before the commencement of that section.

(15) Unless the context otherwise requires, the terms and expressions used in this section shall be construed in accordance with sections 157H and 157HA.”.

#### **64. Further provisions relating to loans to officers, etc. of authorized financial institutions**

Section 161BA(1) and (2) is amended by repealing “161B(4A)” and substituting “161B(5)”.

**65. Section added**

The following is added –

**“162B. Contracts with sole member who is also a director**

(1) Subject to subsection (2), where a company having only one member enters into a contract with that member and that member is also a director of the company, the company shall, unless the contract is in writing, ensure that the terms of the contract are set out in a written memorandum within 7 days after the contract is made, which memorandum shall be kept at the same place where the books containing the minutes of the meetings of the directors are kept.

(2) Subsection (1) does not apply to contracts entered into in the ordinary course of the company’s business.

(3) If a company fails to comply with subsection (1), the company and every officer of the company who is in default is liable to a fine and, for continued default, to a daily default fine.

(4) Subject to subsection (5), nothing in this section shall be construed as excluding the operation of any other enactment or rule of law applying to contracts between a company and a director of that company.

(5) Failure by the company to comply with subsection (1) shall not affect the validity of any contract.

(6) For the purposes of this section, where the sole member of the company is a shadow director, he shall be treated as a director.”.

**66. Section substituted**

Section 165 is repealed and the following substituted –

**“165. Provisions as to liability of officers and auditors**

(1) Any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any officer of the company or any person employed by the company as

auditor from, or indemnifying him against, any liability to the company or a related company that by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company or related company shall, subject to subsections (2) to (4), be void.

(2) A company may indemnify any officer of the company, or any person employed by the company as auditor, against any liability incurred by him –

- (a) in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted; or
- (b) in connection with any application under section 358 in which relief is granted to him by the court.

(3) A company may purchase and maintain for any officer of the company, or any person employed by the company as auditor –

- (a) insurance against any liability to the company, a related company or any other party in respect of any negligence, default, breach of duty or breach of trust (save for fraud) of which he may be guilty in relation to the company or a related company; and
- (b) insurance against any liability incurred by him in defending any proceedings, whether civil or criminal, taken against him for any negligence, default, breach of duty or breach of trust (including fraud) of which he may be guilty in relation to the company or a related company.

(4) Nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision as is mentioned in subsection (1) was in force.

(5) In this section, “related company” (有關連的公司), in relation to a company, means any company that is the company’s subsidiary or holding company or a subsidiary of that company’s holding company.”.

**67. Section substituted**

Section 168C is repealed and the following substituted –

**“168C. Interpretation**

(1) In this Part, “company” (公司) means –

- (a) a company within the meaning of section 2; or
- (b) an unregistered company within the meaning of Part X (other than a partnership, whether limited or not, or an association) –
  - (i) wherever incorporated;
  - (ii) carrying on business in Hong Kong or which has carried on business in Hong Kong; and
  - (iii) which is capable of being wound up under this Ordinance.

(2) In the application to this Part of the definition of “shadow director” in section 2(1), the word “company” (公司) in that definition has the same meaning as in subsection (1).”.

**68. Duty of court to disqualify unfit directors of insolvent companies**

Section 168H(1) is amended by repealing “可” and substituting “必須”.

**69. Circumstances in which company may be wound up by court**

(1) Section 177(1)(c) is repealed and the following substituted –

“(c) the company has no members;”.

(2) Section 177(2)(b) is repealed and the following substituted –

“(b) that throughout a period of not less than 6 months ending on the date of the winding-up petition the company has not had –

- (i) in the case of a private company, at least one director;  
or
- (ii) in the case of a company not being a private company, at least 2 directors; or”.

(3) Section 177(3) is amended by repealing the proviso and substituting –

“Provided that, where a private company passes such a resolution, an application may be made to the court for the alteration to be cancelled, and if such an application is made, the alteration shall not have effect except in so far as it is confirmed by the court.”.

(4) Section 177(4) is repealed and the following substituted –

“(4) Where a private company passes a resolution under this section altering the conditions contained in its memorandum, subsections (2)(a), (3), (4), (7) and (8) of section 8 shall apply in relation to the alteration and to any application made under this section in the same manner as they apply in relation to alterations and to applications made under section 8.

(5) Where a company (not being a private company) passes a resolution under this section altering the conditions contained in its memorandum, subsections (7A) and (8) of section 8 shall apply in relation to the alteration made under this section in the same manner as they apply in relation to alterations made under section 8.

(6) In relation to a resolution for altering the conditions of a company’s memorandum that is passed by a company (whether a private company or not) under this section before the commencement of section 69 of the Companies (Amendment) Ordinance 2002 ( of 2002), the provisions of this section in force immediately before that commencement

shall continue to have effect as if section 69 of that Ordinance had not been enacted.”.

**70. Definition of inability to pay debts**

(1) Section 178(1)(a) is amended by repealing “exceeding \$5,000 then due” and substituting “then due equal to or exceeding the specified amount”.

(2) Section 178 is amended by adding –

“(3) For the purpose of subsection (1)(a), “specified amount” (指定款額) means the amount of \$10,000 or, where an amount is prescribed under subsection (4), the prescribed amount.

(4) The Financial Secretary may, by regulation, prescribe an amount greater than \$10,000 for the purposes of subsection (3).”.

**71. Provisions as to applications for winding up**

Section 179(1) is amended, in the proviso, by repealing paragraph (a)(i) and substituting –

“(i) the company has no members; or”.

**72. Provisions where person other than Official Receiver is appointed liquidator**

Section 195(a) is amended by repealing “notify his appointment to the Registrar” and substituting “give notice of his appointment to the Registrar in the specified form”.

**73. Powers of liquidator**

Section 199(6)(a) is amended by repealing “, or shadow director within the meaning of section 168C,” and substituting “or shadow director”.

**74. Dissolution of company otherwise than by order of court**

(1) Section 226A(1) is amended by repealing “the Official Receiver may deliver to the Registrar a certificate, signed by the Official Receiver,” and

substituting “the Official Receiver or the liquidator may deliver to the Registrar a certificate in the specified form, signed by the Official Receiver or the liquidator, as the case may be,”.

(2) Section 226A(2) is amended, in the proviso, by adding “or the liquidator” after “Official Receiver”.

(3) Section 226A(3) is repealed and the following substituted –

“(3) The Official Receiver or the liquidator who has obtained an order under subsection (2) shall, within 7 days after the making of the order, deliver an office copy of the order to the Registrar for registration.”.

**75. Circumstances in which company may be wound up voluntarily**

Section 228(1)(d) is amended by repealing “make and deliver to the Registrar a statutory declaration” and substituting “deliver to the Registrar a winding-up statement”.

**76. Section substituted**

Section 228A is repealed and the following substituted –

**“228A. Special procedure for voluntary winding up of company in case of inability to continue its business**

(1) The directors of a company or, in the case of a company having more than 2 directors, the majority of the directors, may, if they have formed the opinion that the company cannot by reason of its liabilities continue its business, resolve at a meeting of the directors and deliver to the Registrar a statement in the specified form (the “winding-up statement”), signed by one of the directors, certifying that a resolution has been passed to the effect that –

- (a) the company cannot by reason of its liabilities continue its business;

- (b) they consider it necessary that the company be wound up and that the winding up should be commenced under this section because it is not reasonably practicable for it to be commenced under another section of this Ordinance; and
- (c) meetings of the company and of its creditors will be summoned for a date not later than 28 days after the delivery of the winding-up statement to the Registrar.

(2) The resolution referred to in subsection (1) and the winding-up statement shall specify the reasons in support of the consideration mentioned in paragraph (b) of that subsection.

(3) A winding-up statement shall have no effect for the purposes of this Ordinance unless it is delivered to the Registrar for registration within 7 days after the date on which it is made.

(4) Any director of a company signing a winding-up statement without having reasonable grounds –

- (a) for the opinion that the company cannot by reason of its liabilities continue its business; or
- (b) to consider that the winding up of the company should be commenced under this section because it is not reasonably practicable for it to be commenced under another section of this Ordinance,

shall be liable to a fine and imprisonment.

(5) Where a winding-up statement is delivered to the Registrar –

- (a) the winding up of the company shall commence at the time of the delivery of that statement;
- (b) the directors shall forthwith appoint a person to be provisional liquidator in the winding up; and

(c) the directors shall cause meetings of the company and of its creditors to be summoned for a date not later than 28 days after the delivery of that statement.

(6) A director who fails to comply with subsection (5)(b) or (c) shall be liable to a fine.

(7) Where the directors of a company fail to comply with subsection (5)(c), the provisional liquidator appointed under subsection (5)(b) may summon meetings of the company and of its creditors.

(8) No person shall be appointed as a provisional liquidator under subsection (5)(b) unless –

- (a) he has consented in writing to such appointment; and
- (b) he is a solicitor, or a professional accountant under the Professional Accountants Ordinance (Cap. 50).

(9) Not later than 14 days after the appointment of a provisional liquidator under subsection (5)(b), the directors shall give notice in the Gazette of –

- (a) the commencement of the winding up of the company by the delivery to the Registrar of the winding-up statement and the date of such delivery; and
- (b) the appointment of the provisional liquidator and his name and address.

(10) A provisional liquidator appointed under subsection (5)(b) shall, within 14 days after the date of his appointment, deliver to the Registrar for registration a notice of his appointment in the specified form, which notice shall include the following particulars –

- (a) his name;
- (b) his address; and
- (c) the number of his identity card (if any) or, in the absence of such number, the number and issuing country of any passport held by him.

(11) A person appointed as a provisional liquidator under subsection (5)(b) who ceases to act as such shall, within 21 days after the date of his ceasing to act –

- (a) publish in the Gazette a notice of that fact; and
- (b) deliver to the Registrar for registration a notice of that fact in the specified form.

(12) If any change occurs in the particulars given in a notice delivered to the Registrar under subsection (10), the provisional liquidator shall, within 14 days after the date of the change, deliver to the Registrar for registration a notice of that change in the specified form, unless he has previously given notice to the Registrar under subsection (11).

(13) A person who fails to comply with subsection (10), (11) or (12) shall be liable to a fine and, for continued default, to a daily default fine.

(14) A provisional liquidator appointed under subsection (5)(b) shall –

- (a) unless a liquidator is sooner appointed, hold office until a meeting of the creditors of the company summoned under this section or, if that meeting is adjourned, any adjourned meeting, may allow;
- (b) take into his custody or under his control all the property and things in action to which the company is or appears to be entitled; and
- (c) be entitled, out of the funds of the company, to such remuneration as the committee of inspection or, if there is no such committee, the creditors, may fix and to reimbursement of expenses properly incurred by him, but he shall not be liable, and no civil action or other proceedings shall lie against him, in respect of acts properly done by him.

(15) A provisional liquidator appointed under subsection (5)(b) shall, for the period of his appointment, have the like powers and be subject to the like duties as a liquidator in a creditors' voluntary winding up, and, accordingly, all the powers of the directors shall cease during that period except so far as may be necessary for the purpose of enabling the directors to comply with this section or where the provisional liquidator sanctions the continuance thereof for any other purpose.

(16) Notwithstanding subsection (15), a provisional liquidator appointed under subsection (5)(b) shall not have power to sell any property to which the company is or appears to be entitled, except where such sale is made in the course of carrying on business in accordance with section 231, unless –

- (a) the property is of a perishable nature or likely to deteriorate if kept; or
- (b) the court, on the application of the provisional liquidator, orders the sale of the property.

(17) In relation to every winding up commenced under this section –

- (a) section 241 shall apply to a meeting of the creditors of the company summoned under this section as it applies to a meeting of the creditors of a company summoned under that section except that –
  - (i) for the words “at which the resolution for voluntary winding up is to be proposed” in subsection (1) of that section there shall be substituted the words “of the company”;
  - (ii) the sending of the notices by post and the advertisement of the meeting of creditors required by subsections (1) and (2) of that section respectively shall occur at least 7 days before the meeting of creditors, and the

requirement in subsection (1) of that section as to simultaneous sending of notices shall not apply; and

(iii) subsection (5) of that section shall be omitted;

(b) subject to paragraph (a), sections 241 to 248 shall apply as they apply in relation to a creditors' voluntary winding up.

(18) In the case of a private company having only one director, the sole director may –

(a) pass the resolution referred to in subsection (1) and sign the record of it in the minute book; and

(b) make the winding-up statement required under subsection (1).

(19) In relation to a statutory declaration made under section 228A of this Ordinance before the commencement of section 76 of the Companies (Amendment) Ordinance 2002 ( of 2002), the provisions of section 228A of this Ordinance in force immediately before that commencement shall continue to have effect as if section 76 of that Ordinance had not been enacted.”.

#### **77. Commencement of voluntary winding up**

Section 230 is amended by repealing “228A(3)(a)” and substituting “228A(5)(a)”.

#### **78. Subheading amended**

The subheading before section 233 is amended by repealing “**Declaration**” and substituting “**Certificate**”.

**79. Certificate of solvency in case of proposal to wind up voluntarily**

- (1) Section 233(1) is amended –
  - (a) by repealing “make a statutory declaration” and substituting “issue a certificate in the specified form (the “certificate of solvency”), signed by the directors,”;
  - (b) by repealing “the declaration” and substituting “the certificate of solvency”.
- (2) Section 233(1A) is repealed and the following substituted –

“(1A) A certificate of solvency may be issued by the directors of the company other than at a meeting of the directors if, but only if, before the certificate is issued, a resolution has been passed by the directors authorizing the certificate to be issued.”.
- (3) Section 233(2) is amended –
  - (a) by repealing “declaration made as aforesaid” and substituting “certificate of solvency”;
  - (b) in paragraph (a), by repealing “is made” and substituting “is issued”;
  - (c) in paragraph (b), by repealing “making of the declaration” and substituting “issuing of the certificate”.
- (4) Section 233(3) is amended –
  - (a) by repealing “making a declaration” and substituting “signing a certificate of solvency”;
  - (b) by repealing “in the declaration” where it twice appears and substituting “in the certificate”;
  - (c) by repealing “making of the declaration” and substituting “issuing of the certificate”.
- (5) Section 233(4) is amended –
  - (a) by repealing “declaration has been made” and substituting “certificate of solvency has been issued”;

(b) by repealing “declaration has not been made” and substituting “certificate of solvency has not been issued”.

(6) Section 233 is amended by adding –

“(6) In the case of a private company having only one director, the sole director may issue a certificate of solvency by recording the certificate and signing the record of it in the company’s minute book; and recording and signing the certificate shall be deemed to satisfy the requirement under subsection (1) that the certificate be issued at a meeting of the directors.

(7) Notwithstanding subsections (1) and (2), any declaration of solvency made in connection with a winding up commenced on or after the date of commencement of the Companies (Amendment) Ordinance 1984 (6 of 1984) but not completed before the date of commencement of section 79(6) of the Companies (Amendment) Ordinance 2002 ( of 2002) shall, if it has been effective for the purposes of this Ordinance before the latter date, continue to have effect for those purposes on and after that date, and –

- (a) such winding up shall be deemed to be a members’ voluntary winding up within the meaning of this section; and
- (b) subsection (3) shall apply in relation to any such declaration or winding up as if it were a certificate of solvency.”.

**80. Duty of liquidator to call creditors’ meeting in case of insolvency**

Section 237A(1) is amended by adding “certificate or” before “declaration”.

**81. Section substituted**

Section 253 is repealed and the following substituted –

**“253. Notice by liquidator of his appointment or ceasing to act**

(1) The liquidator shall, within 21 days after the date of his appointment –

- (a) publish in the Gazette a notice of his appointment; and
- (b) deliver to the Registrar for registration a notice of his appointment in the specified form, which notice shall include the following particulars –

- (i) his name;
- (ii) his address; and
- (iii) the number of his identity card (if any) or, in the absence of such number, the number and issuing country of any passport held by him.

(2) A person appointed as a liquidator who ceases to act as such shall, within 21 days after the date of his ceasing to act –

- (a) publish in the Gazette a notice of that fact; and
- (b) deliver to the Registrar for registration a notice of that fact in the specified form.

(3) If any change occurs in the particulars given in a notice delivered to the Registrar under subsection (1)(b), the liquidator shall, within 14 days after the date of the change, deliver to the Registrar for registration a notice of that change in the specified form, unless he has previously given notice to the Registrar under subsection (2)(b).

(4) A person who fails to comply with subsection (1), (2) or (3) shall be liable to a fine and, for continued default, to a daily default fine.

(5) This section does not apply to a provisional liquidator appointed under section 228A(5)(b).”.

**82. Interest on debts**

Section 264A(2)(b) is amended by repealing “228A(3)(a)” and substituting “228A(5)(a)”.

**83. Extortionate credit transactions**

Section 264B(2)(b) is amended by repealing “228A(3)(a)” and substituting “228A(5)(a)”.

**84. Offences by officers of companies in liquidation**

Section 271(3) is amended by repealing everything after “includes” and substituting “a shadow director.”.

**85. Provisions as to information where receiver or manager is appointed**

Section 300A(1) is amended –

- (a) in paragraph (b), by adding “(the “statement of affairs”)” after “company”;
- (b) in paragraph (c), by repealing “said statement” and substituting “statement of affairs”.

**86. Special provisions as to statement submitted to receiver**

(1) Section 300B(1) is amended by repealing “statement as to the affairs of a company” and substituting “statement of affairs”.

(2) Section 300B(2) is amended –

- (a) by repealing “said statement” and substituting “statement of affairs required by section 300A”;
- (b) by repealing “affidavit of” and substituting “statement in writing signed by”;
- (c) by repealing “the statement” where it twice appears and substituting “the statement of affairs”.

- (3) Section 300B(3) is amended –
- (a) by repealing “statement and affidavit” where it first appears and substituting “statement of affairs required by section 300A or the written statement required by subsection (2)”;
  - (b) by repealing “statement and affidavit” where it secondly appears and substituting “statement of affairs or written statement”.
- (4) Section 300B(4) is amended by repealing “and for references to an affidavit of references to a statutory declaration”.

**87. Taking of affidavits, etc.**

Section 303A is repealed.

**88. Inspection, production and evidence of documents kept by Registrar**

- (1) Section 305(1) is amended –
- (a) in paragraph (a)(i), by adding “, in such form as the Registrar considers appropriate,” after “copy”;
  - (b) by repealing paragraph (b)(i) and (ii) and substituting –
    - “(i) a certificate of the incorporation of any company;
    - (ii) a certificate of the change of name of any company;
    - (iii) a copy of or extract from any document kept by the Registrar; or
    - (iv) a copy, in such form as the Registrar considers appropriate, of any information contained in any record kept by the Registrar.”.
- (2) Section 305(3) is amended by repealing “under the hand of the Registrar” and substituting “by the Registrar”.

(3) Section 305 is amended by adding –

“(3A) The Registrar may, on payment of the fee required to be paid under section 304(1), certify any copy of or extract from a document, or any copy of information contained in a record, that is furnished to any person under this section.

(3B) Anything that is authorized to be certified by the Registrar under this Ordinance or any other Ordinance may be certified by him in such manner as he considers appropriate.”.

(4) Section 305 is amended by adding –

“(5) In subsection (1), “document” (文件) includes information in a form accepted by the Registrar under section 347(1).”.

#### **89. Section added**

The following is added –

##### **“305A. Authentication of documents by the Registrar**

Where any document is required by this Ordinance to be signed by the Registrar or to have his printed signature, it may instead be authenticated in such manner as may be determined by him.”.

#### **90. Companies capable of being registered**

Section 310(1) is amended by repealing “2 or more” and substituting “one or more”.

#### **91. Requirements for registration by joint stock companies**

Section 312(a) is amended by repealing “names, addresses, and occupations” and substituting “names and addresses”.

**92. Requirements for registration by other than joint stock companies**

Section 313(a) is amended by repealing “names, addresses, and occupations” and substituting “names and addresses”.

**93. Authentication of statements of existing companies**

Section 314 is amended by repealing “verified by a statutory declaration of” and substituting “verified by a statement in writing signed by”.

**94. Certificate of registration of existing companies**

Section 318 is amended by repealing “certify under his hand” and substituting “issue a certificate, with his signature or printed signature, certifying”.

**95. Power to substitute memorandum and articles for deed of settlement**

Section 323(2) is repealed and the following substituted –

“(2) The provisions of section 8 with respect to applications to the court for the cancellation of alterations to the objects of a private company and matters consequential on the passing of resolutions for such alterations shall, so far as applicable, apply to an alteration made under this section by a company that, had it been formed under this Ordinance, would be a private company, subject to the following modifications –

- (a) there shall be substituted for the printed copy of the altered memorandum required to be delivered to the Registrar a printed copy of the substituted memorandum and articles; and
- (b) on the delivery to the Registrar of a printed copy of the substituted memorandum and articles or on the date when the alteration is no longer liable to be cancelled

by order of the court, whichever last occurs, the substituted memorandum and articles shall apply to the company in the same manner as if it were a private company registered under this Ordinance with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.”.

**96. Winding up of unregistered companies**

(1) Section 327(4)(a) is amended by repealing “exceeding \$5,000 then due” and substituting “then due equal to or exceeding the specified amount”.

(2) Section 327 is amended by adding –

“(5) For the purpose of subsection (4)(a), “specified amount” (指定款額) means the amount of \$10,000 or, where an amount is prescribed under subsection (6), the prescribed amount.

(6) The Financial Secretary may, by regulation, prescribe an amount greater than \$10,000 for the purposes of subsection (5).”.

**97. Documents etc. to be delivered to Registrar by companies which establish a place of business in Hong Kong**

Section 333(3) is amended by repealing “certify under his hand” and substituting “issue a certificate, with his signature or printed signature, certifying”.

**98. Termination of registration of authorized representative**

Section 333B(1) is amended –

(a) by repealing “statutory declaration that” and substituting “statement in writing signed by that person declaring that”;

- (b) by repealing “the statutory declaration” where it twice appears and substituting “the written statement”.

**99. Registrar to keep an index of directors of oversea companies**

Section 333C(1)(a) is amended by repealing “, as from a date to be appointed by the Chief Executive in Council by notice in the Gazette,”.

**100. Interpretation of Part XI**

Section 341 is amended by repealing the definition of “director” and substituting –

““director” (董事) includes a shadow director;”.

**101. Dormant companies**

- (1) Section 344A(1) is repealed and the following substituted –
  - “(1) A company may pass a special resolution –
    - (a) declaring that the company will become dormant either as from the date of delivery of the special resolution to the Registrar or as from a later date as is specified in the special resolution;
    - (b) authorizing the directors of the company to deliver to the Registrar the special resolution; and
    - (c) declaring that prior to the company ceasing to be dormant, the directors of the company shall deliver to the Registrar a further special resolution, declaring that the company intends to enter into a relevant accounting transaction.”.
- (2) Section 344A(2) is repealed.
- (3) Section 344A(3) is amended –
  - (a) by repealing “statutory declaration made” and substituting “special resolution passed”;

(b) by repealing “the declaration” and substituting “the resolution”.

(4) Section 344A(5) is amended by repealing “statutory declaration referred to in subsection (1)(a)(ii)” and substituting “special resolution referred to in subsection (1)(c)”.

(5) Section 344A(6) is amended by repealing “statutory declaration referred to in subsection (1)(a)(ii)” and substituting “special resolution referred to in subsection (1)(c)”.

(6) Section 344A(7) is amended by repealing everything after “includes” and substituting “a shadow director.”.

## **102. Documents delivered to Registrar to conform to certain requirements**

Section 346(1) is repealed and the following substituted –

“(1) Subject to this Ordinance, every document delivered to the Registrar under this Ordinance shall –

- (a) be in the English or Chinese language or be accompanied by a translation of the document into English or Chinese, being a translation certified in the prescribed manner to be a correct translation;
- (b) be capable of being reproduced in a legible form; and
- (c) comply with such other requirements as the Registrar may specify for the purpose of securing that documents of the same kind are of a standard form and of enabling him to make copies or image records of the document and to make and keep records of the information contained in it.

(1A) For the purpose of subsection (1)(c), the Registrar may specify different requirements for different documents or classes of documents.”.

**103. Power of Registrar to accept information in different forms**

(1) Section 347(1) is repealed and the following substituted –

“(1) Where a document is required to be delivered to the Registrar under any provision of this Ordinance, the Registrar may, if he thinks fit, accept the information in question in any form approved by him.”.

(2) Section 347(2) is amended by repealing “material” and substituting “information”.

(3) Section 347(3) is repealed.

**104. Section substituted**

Section 348 is repealed and the following substituted –

**“348. Power of Registrar to refuse to register certain documents**

(1) The Registrar may refuse to register or accept for registration any document delivered to him under this Ordinance if it appears to him that –

- (a) the document is manifestly unlawful or ineffective;
- (b) the document is incomplete or altered; or
- (c) any signature on the document, or digital signature accompanying the document, is incomplete or altered.

(2) Without limiting the generality of subsection (1), where any form is specified under section 2A for use in relation to any purpose of this Ordinance, the Registrar may refuse to register or accept for registration any form used for that purpose that deviates from the form so specified.

(3) Any person aggrieved by a decision of the Registrar under subsection (1) or (2) may, within 42 days of the decision, appeal to the court against the decision and the court may, subject to subsection (4), make such order as it may deem just, including an order as to costs.

(4) Where an order as to costs is made against the Registrar under subsection (3), such costs shall be payable out of the general revenue and the Registrar shall not be liable personally therefor.

(5) In this section, “delivered” (交付) includes sent, forwarded, produced or given.”.

#### **105. Disposal of documents**

Section 348B(b) is repealed and the following substituted –

“(b) microfilmed or recorded by the imaging method or any other method.”.

#### **106. Section substituted**

Section 348D is repealed and the following substituted –

##### **“348D. Power of Registrar to keep records**

(1) The records kept by the Registrar may be kept in any form the Registrar thinks fit.

(2) Where the information contained in a document is recorded by the Registrar, any duty imposed on the Registrar under any law to file, register or keep the document shall be treated as having been discharged.

(3) Where the Registrar keeps a record of a document in a form that differs from the form in which the document was originally delivered to, or originally generated by, the Registrar, the record of that document shall be presumed, unless the contrary is shown, to accurately represent the information contained in the document as originally delivered or generated.

(4) In this section, “delivered” (交付) includes sent, forwarded, produced or given.”.

### 107. Provision for punishment and offence

Section 351(2) is amended by repealing “person in accordance with whose directions or instructions the directors of the company are accustomed to act” and substituting “shadow director of the company”.

### 108. First Schedule amended

The First Schedule is amended –

- (a) by repealing “FIRST SCHEDULE” and substituting –  
“FIRST SCHEDULE [ss. 2, 4, 14  
& 360]”;
- (b) in Table A, within the square brackets, by repealing “11, 114A” and substituting “2, 11, 114A, 322”;
- (c) in Table A, in Part I, by repealing regulation 1 and substituting –  
“1. In these regulations –  
“Ordinance” (本條例) means the Companies Ordinance (Cap. 32);  
“seal” (印章) means the common seal of the company;  
“secretary” (秘書) means any person appointed to perform the duties of the secretary of the company.

Expressions used in these regulations referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form.

Wherever any provision of these regulations (except a provision for the appointment of a proxy)

requires that a communication as between the company, its directors or members be effected in writing, the requirement may be satisfied by the communication being given in the form of an electronic record.

Wherever any provision of these regulations requires that a meeting of the company, its directors or members be held, the requirement may be satisfied by the meeting being held by electronic means.

Unless the context otherwise requires, words or expressions used in these regulations shall have the same meaning as in the Ordinance or any statutory modification thereof in force at the date at which these regulations become binding on the company.”;

- (d) in Table A, in Part I, by repealing regulation 82 and substituting –

“82. Subject to the provisions of the Ordinance, the memorandum and articles and to any directions given by special resolution, the business and affairs of the company shall be managed by the directors, who may exercise all the powers of the company. No alteration of the memorandum or articles and no such direction shall invalidate any prior act of the directors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this regulation shall not be limited by any special power given to the directors by the articles, and a meeting of the

directors at which a quorum is present may exercise all powers exercisable by the directors.”;

- (e) in Table B, within the square brackets, by adding “4,” before “14”.

### **109. Table of Fees to be paid to the Registrar of Companies**

The Eighth Schedule is amended –

- (a) within the square brackets, by adding “19, 48B, 49A, 168R, 177,” before “304”;
- (b) in Part V –
  - (i) in paragraph (d)(i), by adding “or change of name” after “certificate of incorporation”;
  - (ii) in paragraph (d)(ii), by repealing “a copy or extract of any other document or part of any other document” and substituting “a copy of or extract from any document, or a copy of information contained in a record”;
  - (iii) in paragraph (e), by repealing “a copy or extract of any document” and substituting “anything under section 305”;
  - (iv) in paragraph (f)(iv), by repealing “of satisfaction”;
  - (v) by repealing paragraph (h);
  - (vi) in paragraph (n), by repealing “special resolution for change of name” and substituting “notification of change of company name”;
  - (vii) in paragraph (o), by repealing “incorporation on”.

### **110. Accounts**

The Tenth Schedule is amended by repealing “TENTH SCHEDULE” and substituting –

“TENTH SCHEDULE

[ss. 48B, 79F, 79H,  
79K, 79O, 123,  
126, 129D, 141,  
157HA, 161B  
& 360]”.

**111. Accounts of certain private companies  
under section 141D**

The Eleventh Schedule is amended –

- (a) by repealing “ELEVENTH SCHEDULE” and substituting –  
“ELEVENTH SCHEDULE [ss. 141D  
& 360]”;
- (b) in paragraph 5, by repealing “provisos (b) and (c) to  
section 48(1)” and substituting “section 47C(4)(b) and (c)”.

**112. Punishment of offences under this  
Ordinance**

(1) The Twelfth Schedule is amended –

- (a) in the entry relating to section 47F(4), in the second  
column, by repealing “statutory declaration under section  
47E” and substituting “statement made by directors under  
section 47E(6)”;
- (b) in the entry relating to section 47F(5), in the second  
column, by repealing “making statutory declaration under  
section 47E” and substituting “signing a statement made  
under section 47E(6)”;
- (c) in the entry relating to section 49K(6), in the second  
column, by repealing “making statutory declaration” and  
substituting “signing a statement”;

- (d) in the entry relating to section 49M(6), in the second column, by repealing “statutory declaration” and substituting “directors’ statement”;
- (e) in the entry relating to section 70(2), in the second column, by repealing “on allotment” and substituting “or debentures on allotment or transfer”;
- (f) in the entry relating to section 87(3) –
  - (i) in the first column, by repealing “87(3)” and substituting “87(7)”;
  - (ii) in the second column, by repealing “appointing, etc., a receiver or manager, etc.,” and substituting “appointing or ceasing to act as receiver or manager, or entering into or going out of possession as mortgagee, etc.”;
- (g) in the entry relating to section 128(6), in the second column, by repealing “annex particulars to a return taking advantage of section 128(4)” and substituting “satisfy obligation imposed under section 128(5) or (5A)”;
- (h) in the entry relating to section 129(6), in the second column, by repealing “annex particulars to a return taking advantage of section 129(4)” and substituting “satisfy obligation imposed under section 129(5) or (5A)”;
- (i) in the entry relating to section 153(3), in the second column, by adding “(not being a private company)” after “Company”;
- (j) in the entry relating to section 157J(3), in the second column, by repealing “loan, etc.” and substituting “transaction or arrangement”;
- (k) by repealing the entry relating to section 228A(2);

- (l) by repealing the entry relating to section 228A(3A) (relating to subsection (3)(b));
  - (m) by repealing the entry relating to section 228A(3A) (relating to subsection (3)(c));
  - (n) by repealing the entry relating to section 228A(4B);
  - (o) in the entry relating to section 233(3), in the second column –
    - (i) by repealing “declaring” and substituting “signing a certificate”;
    - (ii) by repealing “declaration” and substituting “certificate”;
  - (p) in the entry relating to section 237A(3), in the second column, by repealing “declaration made” and substituting “certificate of solvency issued”;
  - (q) by repealing the entry relating to section 253(2).
- (2) The Twelfth Schedule is amended by adding –
- |          |  |         |         |       |
|----------|--|---------|---------|-------|
| “22(1B)  | Company failing to give the Registrar notice of change of company name               | Summary | level 3 | \$300 |
| 95A(3)   | Company failing to enter the required statement in the company’s register of members | Summary | level 4 | \$700 |
| 116BC(2) | Sole member failing to provide the company with a written record of his decision     | Summary | level 3 | \$300 |
| 153A(3)  | Private company failing to have at least one director                                | Summary | level 3 | \$300 |
| 162B(3)  | Company having one member who is also a director failing to set out in a             | Summary | level 3 | \$300 |

	written memorandum the terms of a contract with that member			
228A(4)	Director signing a winding-up statement without having reasonable grounds for the opinion that the company cannot by reason of its liabilities continue its business, or to consider that the winding up should be commenced under section 228A because it is not reasonably practicable for it to be commenced under another section of the Ordinance	Summary	level 5 and 6 months	–
228A(6) (relating to subsection (5)(b))	Director failing to appoint a provisional liquidator forthwith after delivery of winding-up statement to the Registrar	Summary	level 5	–
228A(6) (relating to subsection (5)(c))	Director failing to cause meetings of the company or creditors to be summoned within 28 days after delivery of winding-up statement	Summary	level 5	–
228A(13) (relating to subsection (10))	Provisional liquidator failing to deliver to the Registrar the notice of appointment required under section 228A(10)	Summary	level 3	\$200
228A(13) (relating to subsection (11)(a))	Person ceasing to act as provisional liquidator failing to publish in the Gazette the notice required under section 228A(11)(a)	Summary	level 3	\$200

228A(13) (relating to subsection (11)(b))	Person ceasing to act as provisional liquidator failing to deliver to the Registrar the notice required under section 228A(11)(b)	Summary	level 3	\$200
228A(13) (relating to subsection (12))	Provisional liquidator failing to deliver to the Registrar the notice of change of particulars required under section 228A(12)	Summary	level 3	\$200
253(4) (relating to subsection (1)(a))	Liquidator failing to publish in the Gazette the notice of appointment required under section 253(1)(a)	Summary	level 3	\$300
253(4) (relating to subsection (1)(b))	Liquidator failing to deliver to the Registrar the notice of appointment required under section 253(1)(b)	Summary	level 3	\$300
253(4) (relating to subsection (2)(a))	Person ceasing to act as liquidator failing to publish in the Gazette the notice required under section 253(2)(a)	Summary	level 3	\$300
253(4) (relating to subsection (2)(b))	Person ceasing to act as liquidator failing to deliver to the Registrar the notice required under section 253(2)(b)	Summary	level 3	\$300
253(4) (relating to subsection (3))	Liquidator failing to deliver to the Registrar the notice of change of particulars required under section 253(3)	Summary	level 3	\$300".

## **Consequential and Miscellaneous Amendments**

### **The Rules of the High Court**

#### **113. The Companies Ordinance**

Order 102 of the Rules of the High Court (Cap. 4 sub. leg.) is amended –

- (a) by repealing rule 2(3);
- (b) in rule 5(1)(a) and (b), by adding “private” before “company’s”;
- (c) by repealing rule 6(3).

### **Companies (Requirements for Documents) Regulation**

#### **114. Repeal**

The Companies (Requirements for Documents) Regulation (Cap. 32 sub. leg.) is repealed.

### **Companies Ordinance (Fee for Taking Affidavit, Affirmation or Declaration) Notice**

#### **115. Repeal**

The Companies Ordinance (Fee for Taking Affidavit, Affirmation or Declaration) Notice (Cap. 32 sub. leg.) is repealed.

### **Companies (Winding-up) Rules**

#### **116. Heading repealed**

The Companies (Winding-up) Rules (Cap. 32 sub. leg.) is amended by repealing the heading “NOTICE OF APPOINTMENT OF LIQUIDATOR” before rule 46.

**117. Notice of appointment of liquidator**

Rule 46 is repealed.

**118. Disposal of moneys received after execution**

Rule 207(1) and (2) is amended by repealing “declaration” and substituting “winding-up statement”.

**119. Forms**

The Appendix is amended by repealing Form 28.

**Companies (Reports on Conduct of Directors)  
Regulation****120. Return by office-holder**

Section 3(4)(c) of the Companies (Reports on Conduct of Directors) Regulation (Cap. 32 sub. leg.) is amended by repealing “declaration of solvency by” and substituting “certificate of solvency issued by”.

**Stamp Duty Ordinance****121. Charging of, liability for, and recovery of  
stamp duty**

Section 4(7) of the Stamp Duty Ordinance (Cap. 117) is amended by repealing “prescribed particulars” where it twice appears and substituting “return”.

**Stock Exchanges Unification Ordinance****122. Insolvency of existing exchange**

Section 32 of the Stock Exchanges Unification Ordinance (Cap. 361) is amended by repealing “declaration of solvency has been made” and substituting “certificate of solvency has been issued”.

## **Securities (Disclosure of Interests) Ordinance**

### **123. Interpretation**

(1) Section 2(1) of the Securities (Disclosure of Interests) Ordinance (Cap. 396) is amended, in paragraph (b) of the definition of “associated corporation”, by repealing “stated in, or in a note on, or statement annexed to, the accounts” and substituting “given in the accounts, or in a statement annexed to the accounts,”.

- (2) Section 2(3) is amended –
- (a) by repealing “stated in, or in a note on, or statement annexed to, the accounts” and substituting “given in the accounts, or in a statement annexed to the accounts,”;
  - (b) by repealing “so stated,” and substituting “so given”.

## **Securities and Futures (Clearing Houses) Ordinance**

### **124. Right of relevant office-holder to recover certain amounts arising from certain transactions**

Section 11(2) of the Securities and Futures (Clearing Houses) Ordinance (Cap. 420) is amended, in the definition of “prescribed event”, in paragraph (b), by repealing “statutory declaration” and substituting “statement in the specified form”.

## **Explanatory Memorandum**

The main purpose of this Bill is to implement recommendations made in “The Report of the Standing Committee on Company Law Reform on the Recommendations of a Consultancy Report of the Review of the Hong Kong Companies Ordinance” dated February 2000 (“the SCCLR report”). The SCCLR report contains recommendations on a wide range of legislative proposals made by the

consultants to modernize the Companies Ordinance (Cap. 32) (“the principal Ordinance”). The Bill seeks to implement 17 of the Standing Committee’s recommendations and to make other improvements to the principal Ordinance.

2. Clause 1 states the short title of the Bill and provides for its commencement.
3. Clause 2(1)(a) amends the definition of “annual return” in section 2(1) by repealing an obsolete reference to section 108. Clause 2(1)(b) adds the following new definitions –
  - (a) “certificate of solvency” (relating to the amendments made to section 233 (clause 79));
  - (b) “image record” and “imaging method” (relating to the amendment made to section 348B(b) (clause 105));
  - (c) “manager” (recommendation 73 of the SCCLR report);
  - (d) “record” (relating to the new definition of “image record” and the amendments made to sections 305, 348B(b) and 348D (clauses 88, 105 and 106));
  - (e) “shadow director” (recommendations 70 and 71 of the SCCLR report).
4. Clause 2(2), which amends section 2(2), is a consequential amendment related to the addition of the new definition of “shadow director”. Other consequential amendments related to the addition of that definition are found in the following clauses –
  - (a) clause 18, which amends section 49BA(10)(b);
  - (b) clause 40, which amends section 109(5);
  - (c) clause 61(3), which amends section 158(10)(a);
  - (d) clause 67, which amends section 168C;
  - (e) clause 84, which amends section 271(3);
  - (f) clause 100, which amends section 341;
  - (g) clause 101(6), which amends section 344A(7);
  - (h) clause 107, which amends section 351(2).
5. Clause 2(3) adds new sections 2(12) and (13) which are related to the amendments made to sections 4(1) and 153 (clauses 4 and 53).

6. Clause 3 repeals section 2A(3) as a consequence of the new section 348(2) (clause 104).
7. Clause 4(1) amends section 4(1) to permit the formation of a company by one person (recommendation 20 of the SCCLR report). Clause 4(2) adds new section 4(4) which prohibits the incorporation of a company limited by guarantee with a share capital (recommendation 40 of the SCCLR report).
8. Clauses 5, 10 and 95 amend sections 8, 25A and 323 respectively to remove the right of dissenting shareholders of a public company to resort to the court to cancel an alteration to the conditions of the company's memorandum of association (recommendation 102 of the SCCLR report).
9. Clause 6 amends section 18(2) to require a company to file a statement in the specified form with the Registrar, instead of a statutory declaration.
10. Clause 7 amends section 22 to require a company that changes its name to file a notice in the specified form with the Registrar, instead of a copy of the special resolution, and to require the Registrar to issue a certificate of change of name instead of an altered certificate of incorporation.
11. Clause 8 makes a consequential amendment to section 22B(3) in connection with the amendments made to sections 22 and 305 (clauses 7 and 88).
12. Clause 9 amends section 23(1) to clarify the contractual position of a company and its members in relation to each other and to give every member of a company a personal right to sue to enforce the terms of the memorandum and articles of association (recommendation 92 of the SCCLR report).
13. Clauses 11 and 12 repeal section 31 and the subheading preceding it as a consequence of the amendment made to section 4(1) (clause 4).
14. Clause 13 amends section 45 to shorten the period for filing a return of allotments from 8 weeks to 1 month, to provide for the filing of a specified form and to simplify the filing requirements.
15. Clauses 14 to 17 and 19 to 23 amend sections 47E, 47F, 47G, 48, 49J, 49K, 49L, 49M and 49Q respectively to replace the references in those sections to a statutory declaration by references to a statement in the specified form. Those clauses

also make consequential amendments to the relevant sections and other technical changes.

16. Clauses 24, 36, 52 and 72 amend sections 54(1), 92(2), 151 and 195(a) respectively to provide for the use of a specified form under those sections.

17. Clause 25(1) and (2) amends section 55 to require a company to give notice of an increase in share capital within 15 days after the increase takes effect. Clause 25(3) amends section 55(2) to remove the requirement for a printed copy of the resolution to be filed with the Registrar.

18. Clauses 26(2), 27 and 28(1) amend sections 58, 59 and 61 respectively, and clause 29 adds new section 61A, in order to streamline the procedures relating to the reduction of share capital and to provide that court approval is not required where the reduction consists of a re-designation of the par-value to a lower amount, subject to certain specified conditions (recommendation 117 of the SCCLR report). Clause 26(1) makes a minor correction to section 58(1C). Clause 28(2) amends section 61(4) to provide for the Registrar to issue a certificate with his printed signature.

19. Clauses 30 and 41 make consequential amendments to section 63A(6) and 114A(1) respectively in connection with the new section 114AA (clause 42).

20. Clause 31 amends section 70 to change the time-limit for the completion of a transfer of shares by a public company from 2 months to 10 business days (recommendation 86 of the SCCLR report).

21. Clause 32 amends section 83(2) to make clear that a certificate of registration of a charge may bear a printed signature of the Registrar and to remove the requirement that the certificate state the amount secured by the charge.

22. Clause 33 amends section 85 to streamline the procedure under that section and to widen the scope of the section to cover releases of the whole of a charge and cases where the whole of the property charged has ceased to form part of the company's property or undertaking.

23. Clause 34 makes a consequential amendment to section 86(1) in connection with the amendment made to section 85 (clause 33).

24. Clauses 35 and 81 amend sections 87 and 253 respectively to include a requirement for receivers, managers and liquidators to provide their identity card or

passport numbers and to notify the Registrar of any change in the particulars filed with the Registrar.

25. Clause 37 deletes the requirement in section 95(1)(a) for a company to enter the occupations or descriptions of members of the company in the company's register of members.

26. Clause 38 adds new section 95A which requires a company the number of members of which falls to one or increases from one to two or more members to record that fact in the company's register.

27. Clause 39 amends section 103(1) to delete the requirement that a company file a statutory declaration when applying for a licence to keep a branch register of members and to provide for the application to be filed with the Registrar.

28. Clause 42 adds new section 114AA which provides that one member constitutes a quorum for a meeting of a company having only one member.

29. Clause 43 amends section 115A(2) to reduce the threshold for shareholders' proposals to 2½% of voting rights or 50 members (recommendation 82 of the SCCLR report).

30. Clause 44 adds new section 116BC which provides that a sole member of a company who takes any decision that has effect as if agreed by the company in general meeting shall provide the company with a written record of that decision.

31. Clause 45 amends section 117(4)(a) to exclude from the application of that section special resolutions effecting a change of company name.

32. Clauses 46 and 47 amend sections 128 and 129 respectively to clarify the reporting requirements, to provide for the use of specified forms, to remove archaic terminology and to widen the scope of the offence provisions to cover a failure to comply with section 128(5A) or 129(5A).

33. Clause 48 makes a consequential amendment to section 129A(1) in connection with the amendments made to sections 128 and 129 (clauses 46 and 47).

34. Clause 49 makes consequential amendments to section 129B(1) in connection with the amendment made to section 153 (clause 53).

35. Clause 50 corrects a cross-reference in section 140A(3)(b), (4) and (6)(b).

36. Clauses 51 and 64 make consequential amendments to sections 145B(b) and 161BA(1) and (2) respectively in connection with the amendment made to section 161B (clause 63).

37. Clause 53 amends section 153 to make it applicable only to public companies and to remove spent provisions. It also adds new section 153A, which permits a private company to have only one director (recommendation 22 of the SCCLR report) and deems certain persons to be a director in cases where a company has not filed a return under section 158.

38. Clause 54 adds section 153B, which makes clear that an alternate director is the agent of the director who appoints him and provides that a director shall be vicariously liable for torts committed by his alternate (recommendation 56 of the SCCLR report).

39. Clause 55 adds section 153C, which provides that a written record of a decision of a sole director of a private company shall be sufficient evidence of that decision.

40. Clause 56 amends section 154 to prohibit a sole director of a private company and certain bodies corporate from being the secretary of the company.

41. Clause 57(1) and (2) amends section 157B(1) and (2) to provide that a director may be removed by an ordinary resolution instead of a special resolution, notwithstanding any provision in the company's constitution (recommendation 48 of the SCCLR report). Clause 57(3) makes a technical change to the terminology used in section 157B(5).

42. Clauses 58, 59, 60 and 63 amend sections 157H, 157I, 157J and 161B respectively to extend the prohibition against a company making a loan to a director, or providing a guarantee or security for such a loan, to cover more modern forms of credit and to make consequential changes to the related reporting requirements (recommendation 65 of the SCCLR report).

43. Clause 61(1)(a) amends section 158(5) to provide for the use of a specified form under that section. Clause 61(1)(b) and (2) make consequential amendments to section 158(5) and 158(6)(a) in connection with the amendment made to section 153 (clause 53).

44. Clause 62 repeals an obsolete provision in section 158C(1)(a).

45. Clause 65 adds new section 162B which requires a company that has only one member, who is also a director of the company, to record in a written memorandum the terms of any oral contract that the company enters into with that member.

46. Clause 66 amends section 165 to clarify the scope of indemnities for directors and to permit companies to purchase liability insurance for officers and auditors in certain specified circumstances (recommendations 75 and 76 of the SCCLR report).

47. Clause 68 makes a technical correction to the Chinese text of section 168H(1).

48. Clause 69 amends section 177 to provide for the winding up of a company that has no members and makes consequential amendments in connection with the amendment made to section 8 (clause 5).

49. Clauses 70 and 96 amend sections 178 and 327 respectively to permit the increase in the minimum amount of debt below which a petition for winding-up cannot be presented from \$5,000 to \$10,000 or such greater amount as may be prescribed by the Financial Secretary.

50. Clause 71 makes a consequential amendment to section 179(1) in connection with the amendment made to section 4(1) (clause 4).

51. Clause 73 makes a consequential amendment to section 199(6)(a) in connection with the amendment made to section 168C (clause 67).

52. Clause 74 amends section 226A to allow a liquidator to issue a certificate under that section and to provide for the use of a specified form.

53. Clauses 75, 77, 82 and 83 make consequential amendments to sections 228(1)(d), 230, 264A(2)(b) and 264B(2)(b) respectively in connection with the amendments made to section 228A (clause 76).

54. Clause 76 amends section 228A –
- (a) to require the directors of a company to file a winding-up statement in the specified form, instead of a statutory declaration;
  - (b) to require a provisional liquidator to give notice of his appointment or of his ceasing to act to the Registrar in the specified form;
  - (c) to provide for the case of a private company having only one director;
  - (d) to make other technical changes.
55. Clause 78 makes a consequential amendment to the subheading before section 233 in connection with the amendments made to that section by clause 79.
56. Clause 79(1) to (5) amends section 233 to replace the requirement for a statutory declaration by a requirement for a certificate of solvency in the specified form. Clause 79(6) adds new section 233(6) to provide for the case of a private company having only one director and new section 233(7) to deal with transitional matters.
57. Clause 80 makes a consequential amendment to section 237A(1) in connection with the amendments made to section 233 (clause 79).
58. Clause 85 makes a consequential amendment to section 300A(1) in connection with the amendments made to section 300B (clause 86).
59. Clause 86 amends section 300B to replace the requirement for an affidavit by a requirement for a statement in writing.
60. Clause 87 repeals section 303A.
61. Clause 88 amends section 305 to take account of documents that are filed with the Registrar in electronic form or that are stored in electronic form. The new section 305(1)(b)(ii) is added as a consequence of the amendments made to section 22(7) (clause 7).
62. Clause 89 adds new section 305A which provides that documents required to be signed by the Registrar may instead be authenticated in a manner determined by the Registrar.

63. Clause 90 makes a consequential amendment to section 310(1) in connection with the amendment made to section 4(1) (clause 4).
64. Clauses 91 and 92 amend sections 312(a) and 313(a) respectively to remove the requirement to provide details of members' occupations.
65. Clause 93 amends section 314 to correct a spelling error and to replace the requirement for a statutory declaration by a requirement for a statement in writing.
66. Clauses 94 and 97 amend sections 318 and 333(3) respectively to allow a certificate issued by the Registrar to bear a printed signature.
67. Clause 98 amends section 333B(1) to replace the requirement for a statutory declaration by a requirement for a statement in writing.
68. Clause 99 repeals an obsolete provision in section 333C(1)(a).
69. Clause 101 amends section 344A to remove the requirement for a statutory declaration and to simplify the procedure for a company to become dormant.
70. Clauses 102, 103 and 105 amend sections 346, 347 and 348B(b) respectively to facilitate the delivery, processing and storage of information in electronic form.
71. Clause 104 amends section 348 to take account of documents that are in electronic form and to allow the Registrar to refuse to register or accept for registration forms that deviate from the forms specified by the Registrar under section 2A.
72. Clause 106 amends section 348D to take account of documents and records that are in electronic form.
73. Clause 108(a), (b) and (e) amends certain cross-references in the First Schedule. Clause 108(c) amends regulation 1 of Part I of Table A in the First Schedule to take account of electronic communications and to remove obsolete provisions. Clause 108(d) amends regulation 82 of Part I of Table A to remove the directorial autonomy rule (recommendation 42 of the SCCLR report).
74. Clause 109 amends certain cross-references in the Eighth Schedule and makes consequential amendments to that Schedule in connection with the amendments made to sections 22 and 85 (clauses 7 and 33).
75. Clause 110 amends certain cross-references in the Tenth Schedule.
76. Clause 111 amends certain cross-references in the Eleventh Schedule.

77. Clause 112 makes consequential amendments to the Twelfth Schedule.
78. Clause 113 makes a consequential amendment to rule 5(1)(a) and (b) of Order 102 of the Rules of the High Court (Cap. 4 sub. leg.) and repeals rules 2(3) and 6(3), which are obsolete.
79. Clause 114 repeals the Companies (Requirements for Documents) Regulation (Cap. 32 sub. leg.), which is obsolete.
80. Clause 115 repeals the Companies Ordinance (Fee for Taking Affidavit, Affirmation or Declaration) Notice (Cap. 32 sub. leg.) as a consequence of the repeal of section 303A (clause 87).
81. Clauses 116 to 124 make consequential amendments to other enactments.