

COMPANIES (AMENDMENT) ORDINANCE 2003**CONTENTS**

Section	Page
1. Short title and commencement	A1133
2. Interpretation	A1133
3. Registrar to specify forms	A1137
4. Mode of forming incorporated company	A1137
5. Mode in which and extent to which objects may be altered	A1137
6. Conclusiveness of certificate of incorporation	A1139
7. Change of name	A1139
8. Specification of names by Chief Executive	A1141
9. Effect of memorandum and articles	A1141
10. Power to alter conditions in memorandum which could have been contained in articles	A1141
11. Subheading repealed	A1143
12. Liability for debts where business carried on without minimum number of members	A1143
13. Return as to allotments	A1143
14. Definitions	A1145
15. Relaxation of section 47A for unlisted companies	A1145
16. Directors' statement under section 47E	A1145
17. Special resolution under section 47E	A1147
18. Time for giving financial assistance under section 47E	A1147
19. Requirements for listed company to purchase own shares	A1147
20. Availability of profits for purposes of section 49I	A1147
21. Conditions for payment out of capital	A1147
22. Procedure for special resolution under section 49K	A1149
23. Publicity for proposed payment out of capital	A1149
24. Power for Chief Executive in Council to modify certain sections	A1149
25. Notice to Registrar of consolidation of share capital, conversion of shares into stock, &c.	A1151
26. Notice of increase of capital	A1151
27. Special resolution for reduction of share capital	A1151
28. Application to court for confirming order, objections by creditors and settlement of list of objecting creditors	A1153
29. Registration of order and minute of reduction	A1153
30. Section added	
61A. Registration of special resolution, minute and statement where court confirmation is not required	A1153
31. Variation of rights attached to special classes of shares	A1155

Section	Page
32. Duties of company with respect to issue of certificates	A1155
33. Interpretation	A1157
34. Register of charges to be kept by Registrar	A1157
35. Section substituted	
85. Entries of satisfaction and release of property from charge	A1159
36. Extension of time for registration, and rectification of register of charges	A1159
37. Section substituted	
87. Notice to Registrar of appointment of receiver or manager, or of mortgagee taking possession, etc.	A1161
38. Registered office of company	A1163
39. Register of members	A1163
40. Section added	
95A. Statement that company has only one member	A1163
41. Power of company to keep branch register	A1165
42. Annual return to be made by company	A1165
43. General provisions as to annual returns	A1165
44. General provisions as to meetings and votes	A1165
45. Section added	
114AA. Quorum where company has only one member	A1165
46. Circulation of members' resolutions, etc.	A1167
47. Section added	
116BC. Written record where company has only one member	A1167
48. Registration and copies of certain resolutions and agreements	A1167
49. Particulars to be shown in company's accounts in relation to subsidiaries	A1169
50. Particulars to be shown in company's accounts in relation to companies not being subsidiaries whose shares it holds	A1171
51. Particulars to be shown in subsidiary company's accounts in relation to its ultimate holding company	A1173
52. Signing of balance sheet	A1173
53. Resignation of auditor	A1173
54. Power of inspector to call for director's accounts	A1173
55. Notice to Registrar	A1173
56. Sections substituted	
153. Directors of companies other than private companies	A1175
153A. Directors of private companies	A1175
57. Section added	
153B. Directors vicariously liable for acts of alternates, etc.	A1179
58. Section added	
153C. Written record of decision of sole director of private company	A1181

Section	Page
59. Secretary	A1181
60. Removal of directors	A1183
61. Resignation of director or secretary	A1183
62. Sections substituted	
157H. Prohibition of loans, etc., to directors and other persons	A1183
157HA. Excepted transactions	A1191
63. Civil consequences of transactions contravening section 157H	A1201
64. Section substituted	
157J. Criminal penalties for contravention of section 157H	A1203
65. Register of directors and secretaries	A1205
66. Duty to make disclosure for purposes of section 158	A1207
67. Registrar to keep an index of directors	A1209
68. Section substituted	
161B. Particulars in accounts of loans to officers, etc.	A1209
69. Further provisions relating to loans to officers, etc. of authorized financial institutions	A1227
70. Section added	
161BB. Further provisions relating to quasi-loans and credit transactions, etc.	A1229
71. General duty to make disclosure for purposes of sections 161 and 161B	A1231
72. Section added	
162B. Contracts with sole member who is also a director	A1233
73. Section substituted	
165. Provisions as to liability of officers and auditors	A1235
74. Section substituted	
168C. Interpretation	A1237
75. Duty of court to disqualify unfit directors of insolvent companies	A1237
76. Circumstances in which company may be wound up by court	A1237
77. Definition of inability to pay debts	A1239
78. Provisions as to applications for winding up	A1239
79. Provisions where person other than Official Receiver is appointed liquidator	A1241
80. Powers of liquidator	A1241
81. Dissolution of company otherwise than by order of court	A1241
82. Circumstances in which company may be wound up voluntarily	A1241
83. Section substituted	
228A. Special procedure for voluntary winding up of company in case of inability to continue its business	A1243
84. Commencement of voluntary winding up	A1249
85. Subheading amended	A1249

Section	Page
86. Certificate of solvency in case of proposal to wind up voluntarily	A1249
87. Duty of liquidator to call creditors' meeting in case of insolvency	A1253
88. Section substituted	
253. Notice by liquidator of his appointment or ceasing to act	A1253
89. Interest on debts	A1255
90. Extortionate credit transactions	A1255
91. Offences by officers of companies in liquidation	A1255
92. Provisions as to information where receiver or manager is appointed	A1255
93. Special provisions as to statement submitted to receiver	A1255
94. Taking of affidavits, etc.	A1257
95. Inspection, production and evidence of documents kept by Registrar	A1257
96. Section added	
305A. Authentication of documents by the Registrar	A1259
97. Companies capable of being registered	A1259
98. Requirements for registration by joint stock companies	A1259
99. Requirements for registration by other than joint stock companies	A1259
100. Section substituted	
314. Authentication of statements of existing companies	A1259
101. Certificate of registration of existing companies	A1261
102. Power to substitute memorandum and articles for deed of settlement	A1261
103. Winding up of unregistered companies	A1261
104. Documents etc. to be delivered to Registrar by companies which establish a place of business in Hong Kong	A1263
105. Termination of registration of authorized representative	A1263
106. Registrar to keep an index of directors of oversea companies	A1263
107. Interpretation of Part XI	A1263
108. Dormant companies	A1263
109. Documents delivered to Registrar to conform to certain requirements	A1265
110. Power of Registrar to accept information in different forms	A1265
111. Section substituted	
348. Power of Registrar to refuse to register certain documents	A1267
112. Disposal of documents	A1267
113. Section substituted	
348D. Power of Registrar to keep records	A1267
114. Provision for punishment and offence	A1269
115. First Schedule amended	A1269
116. Table of Fees to be paid to the Registrar of Companies	A1271
117. Accounts	A1273

Section		Page
118.	Accounts of certain private companies under section 141D	A1273
119.	Punishment of offences under this Ordinance.....	A1273
Consequential and Miscellaneous Amendments		
The Rules of the High Court		
120.	The Companies Ordinance	A1281
Companies (Requirements for Documents) Regulation		
121.	Repeal	A1283
Companies Ordinance (Fee for Taking Affidavit, Affirmation or Declaration) Notice		
122.	Repeal	A1283
Companies (Winding-up) Rules		
123.	Heading repealed	A1283
124.	Notice of appointment of liquidator	A1283
125.	Disposal of moneys received after execution	A1283
126.	Forms	A1283
Companies (Reports on Conduct of Directors) Regulation		
127.	Return by office-holder	A1285
Stamp Duty Ordinance		
128.	Charging of, liability for, and recovery of stamp duty	A1285
Securities and Futures Ordinance		
129.	Right of relevant office-holder to recover certain amounts arising from certain transactions	A1285

HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 28 OF 2003

L.S.TUNG Chee-hwa
Chief Executive
10 July 2003

An Ordinance 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 2003.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury 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 who, under the immediate authority of the board of directors, exercises managerial functions 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;

“reserve director” (備任董事) means a person nominated as a reserve director of a private company under section 153A(6);

“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—

“(10) 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.

(11) 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 2003 (28 of 2003), 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 2003 (28 of 2003), the provisions of this section in force immediately before the commencement of section 5 of the Companies (Amendment) Ordinance 2003 (28 of 2003) 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 2003 (28 of 2003), 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. Definitions

Section 47B(2) is amended by repealing “157H(1)” and substituting “157HA(15)”.

15. 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”.

16. 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)”.

17. 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)”.

18. 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.”.

19. Requirements for listed company to purchase own shares

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

“(b) a shadow director.”.

20. Availability of profits for purposes of section 49I

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

21. 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”.

22. 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”.

23. 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”.

24. 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”.

25. 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”.

26. 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”.

27. 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 sole purpose of the reduction is to re-designate the nominal value of the shares of the company to a lower amount and the following conditions are satisfied—

(a) the company has only one class of shares;

(b) all issued shares are fully paid-up and the amount of the net assets of the company is not less than its paid-up share capital;

(c) the reduction applies to and affects all shares equally;

(d) the amount arising from the reduction is not less than an amount representing the difference between the amount of the company’s fully paid-up share capital immediately before the reduction and the amount of its fully paid-up share capital immediately after the reduction; and

(e) the amount arising from the reduction is credited to the share premium account of the company.

(4) In this section, “net assets” (淨資產), in relation to a company, has the same meaning as in section 157HA(15).”.

28. 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.”.

29. 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.”.

30. 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 that the conditions set out in section 58(3)(a), (b), (c), (d) and (e) have been satisfied,

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.”.

31. Variation of rights attached to special classes of shares

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

32. 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 a recognized stock market 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.”.

33. Interpretation

Section 79A(1) is amended, in the definition of “net assets”, by repealing “157H(1)” and substituting “157HA(15)”.

34. 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.”.

35. Section substituted

Section 85 is repealed and the following substituted—

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

(1) The Registrar may, on application under this section, where he is satisfied that the debt for which a registered 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, on application under this section, where he is satisfied that the whole or any part of the property or undertaking subject to a registered charge 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) An application under this section shall be made in the specified form and be accompanied by such evidence as the Registrar may require.

(4) The specified form referred to in subsection (3) shall contain—

(a) such particulars with respect to the debt, charge, property or undertaking in question as may be specified by the Registrar; and

(b) a statement certifying the fact of payment, satisfaction, release or cessation, as the case may be.

(5) The specified form referred to in subsection (3) shall be signed by—

(a) where it is submitted to the Registrar on behalf of a company—

(i) a director or officer of the company;

(ii) a solicitor of the High Court acting on behalf of the company; or

(iii) in the case of an oversea company, a person authorized to accept service of process and notices on its behalf who is registered under section 333(1)(c); or

(b) in any other case, by the mortgagee or person entitled to the charge.

(6) 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.”.

36. 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”.

37. 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.”.

38. Registered office of company

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

39. Register of members

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

40. 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.”.

41. 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;”.

42. Annual return to be made by company

Section 107(2)(i) is amended by repealing “as are by this Ordinance required to be contained with respect to directors and the secretary respectively” and substituting “or a reserve director of the company as are by this Ordinance required to be contained with respect to them”.

43. 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”.

44. General provisions as to meetings and votes

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

45. 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.”.

46. 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”.

47. 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 and 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 agreed in accordance with section 116B) provide the company with a written record of that decision within 7 days after the decision is made.

(2) Where the member provides the company with a written record of a decision in accordance with subsection (1), that record shall be sufficient evidence of the decision having been taken by the member.

(3) A company shall cause a record of all written records provided to the company in accordance with this section to be entered into a book kept for that purpose in the same way as minutes of proceedings of a general meeting of the company.

(4) Section 120 shall apply to a record made in accordance with subsection (3) as that section applies to the minutes of proceedings of any general meeting of a company.

(5) 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.

(6) If a company fails to comply with subsection (3), 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.

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

48. 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”.

49. 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)”.

50. 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)”.

51. 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.”.

52. 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”.

53. Resignation of auditor

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

54. Power of inspector to call for director’s accounts

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

55. 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”.

56. Sections 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 subsections (4) and (5), 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) Subject to subsection (5), 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.

(5) Where the number of directors of a private company having only one director is reduced to zero by reason of the death of that director and the deceased director was, at the date of death, the sole member of the company, 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 4 months beginning on the date of the grant of probate of the will, or of letters of administration of the estate, of the deceased director.

(6) Where a private company has only one member and that member is the sole director of the company, the company may in general meeting, notwithstanding anything in its articles, nominate a person (other than a body corporate) who has attained the age of 18 years as a reserve director of the company to act in the place of the sole director in the event of his death. Where the company nominates a reserve director, it shall send to the Registrar particulars of the nomination in accordance with section 158(4), (4A) and (4B).

(7) The nomination of a person as a reserve director of a private company ceases to be valid if—

- (a) before the death of the director in respect of whom he was nominated—
 - (i) he resigns as reserve director in accordance with section 157D; or
 - (ii) the company in general meeting revokes the nomination; or
- (b) the director in respect of whom he was nominated ceases to be the sole member and sole director of the company for any reason other than the death of that director.

(8) Subject to compliance with the conditions set out in subsection (9), in the event of the death of the director in respect of whom the reserve director is nominated, the reserve director shall be deemed to be a director of the company for all purposes until such time as—

- (a) a person is appointed as a director of the company in accordance with its articles; or
- (b) he resigns from his office of director in accordance with section 157D,

whichever is the earlier.

(9) The conditions referred to in subsection (8) are—

- (a) the nomination of the reserve director has not ceased to be valid under subsection (7); and
- (b) the reserve director is not prohibited by law from acting as a director of the company.”.

57. 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.”.

58. Section added

The following is added—

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

(1) Where a private company has only one director and that director takes any decision that may be taken in a meeting of the directors and that has effect as if agreed in a meeting of the directors, he shall (unless that decision is taken by way of a resolution in writing) provide the company with a written record of that decision within 7 days after the decision is made.

(2) Where the director provides the company with a written record of a decision in accordance with subsection (1), that record shall be sufficient evidence of the decision having been taken by the director.

(3) A company shall cause a record of all written records provided to the company in accordance with this section to be entered into a book kept for that purpose in the same way as minutes of proceedings of a meeting of the directors.

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

(5) If a company fails to comply with subsection (3), 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.

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

59. 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.”

60. 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”.

61. Resignation of director or secretary

Section 157D is amended by adding—

“(4) In this section, “director” (董事) includes a reserve director and a person deemed to be a director under section 153A(8).”.

62. Sections substituted

Section 157H is repealed and the following substituted—

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

(1) The prohibitions in this section are subject to the exceptions in section 157HA.

(2) A company shall not, directly or indirectly—

(a) make a loan to a director of the company or of its holding company;

(b) enter into a guarantee or provide any security in connection with a loan made by any other person to such a director; or

(c) 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 to that other company; or

(ii) enter into a guarantee or provide any security in connection with a loan made by any person to that other company.

(3) A relevant company shall not—

(a) make a quasi-loan to a director of the company or of its holding company;

(b) enter into a guarantee or provide any security in connection with a quasi-loan made by any other person to such a director; or

- (c) 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 quasi-loan to that other company; or
 - (ii) enter into a guarantee or provide any security in connection with a quasi-loan made by any other person to that other company.
- (4) A relevant company shall not—
 - (a) enter into a credit transaction as creditor for a director of the company or of its holding company;
 - (b) enter into a guarantee or provide any security in connection with a credit transaction entered into by any other person as creditor for such a director; or
 - (c) 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) enter into a credit transaction as creditor for that other company; or
 - (ii) enter into a guarantee or provide any security in connection with a credit transaction entered into by any other person as creditor for that other company.
- (5) A company shall not arrange for the assignment to it, or the assumption by it, of any rights, obligations or liabilities under a transaction that, if it had been entered into by the company, would have contravened subsection (2), (3) or (4).
- (6) If a company enters into an arrangement in contravention of subsection (5), 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.
- (7) A company shall not take part in any arrangement whereby—
 - (a) another person enters into a transaction or arrangement that, if it had been entered into by the company, would have contravened subsection (2), (3), (4) or (5); and
 - (b) that other person, in pursuance of the arrangement, has obtained or is to obtain any benefit from the company or its holding company or a subsidiary of the company or its holding company.
- (8) In the application of subsections (2), (3) and (4) to—
 - (a) a company that has any of its shares listed on a recognized stock market; 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).

(9) References in subsection (8) 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.

(10) In this section—

“company” (公司) means—

- (a) a company within the meaning of section 2; or
- (b) any other body corporate that is incorporated in Hong Kong under an Ordinance and that has any of its shares listed on a recognized stock market,

but does not include an authorized financial institution;

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

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

“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 to the borrower under a hire-purchase agreement;
- (b) sells goods or land to the borrower under a conditional sale agreement;
- (c) leases or hires goods or leases land to the borrower in return for periodical payments; or

- (d) 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;
- “hire-purchase agreement” (租購協議) means an agreement for the bailment of goods under which the bailee may buy the goods, or under which the property in the goods will or may pass to the bailee;
- “land” (土地) includes any estate or interest in land, buildings, messuages and tenements of any nature or kind whatsoever;
- “quasi-loan” (類似貸款) means—
- (a) a transaction under which one party (“the creditor”) agrees to pay, or pays otherwise than in pursuance of 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 in pursuance of 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;
- “relevant company” (有關公司) means a company within the meaning of this subsection but does not include a private company other than a relevant private company;
- “relevant private company” (有關私人公司) means a private company that is a member of a group of companies of which a company that has any of its shares listed on a recognized stock market is a member;
- “services” (服務) means anything other than goods or land.
- (11) 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;

- (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; and
- (c) a body corporate is not to be treated as a shadow director of any of its subsidiaries by reason only that the directors or a majority of the directors of the subsidiary are accustomed to act in accordance with its directions or instructions.

157HA. Excepted transactions

(1) Section 157H does not prohibit 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) Section 157H does not prohibit a private company (not being a relevant private company) from doing anything that has been approved by the company in general meeting.

(3) Subject to this section, a company is not prohibited by section 157H 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;
- (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); or

(c) leasing or hiring goods or leasing land to a director of the company on terms not more favourable than the terms it is reasonable to expect the company to have offered, if the goods had been leased or hired or the land had been leased on the open market, to a person who is unconnected with the company.

(4) The exception specified in 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) The exception specified in 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, a company is not prohibited by section 157H(2) from entering into a transaction described in that section if the ordinary business of that company includes the entering into of transactions of that description.

(7) Subject to this section, a relevant company is not prohibited by section 157H(3) or (4) from entering into a transaction described in that section if the ordinary business of that company includes the entering into of transactions of that description.

(8) The exceptions specified in subsections (6) and (7) operate 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 or relevant company, as the case may be, 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 or relevant company, as the case may be, 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 or relevant company.

(9) Subsections (6) and (7) do not authorize a company or relevant company, as the case may be, to enter into a transaction described in section 157H(2), (3) or (4) if, at the time the transaction is entered into, the relevant amount exceeds \$750,000.

(10) For the purpose of subsection (9), “relevant amount” (有關款額)—

- (a) in relation to a company that at the time of the transaction in question is subject to the prohibition in section 157H(2) but is not subject to the prohibitions in section 157H(3) and (4), means the aggregate of the following amounts—
 - (i) the amount of the transaction in question;
 - (ii) the amount outstanding at that time in respect of principal on all loans made by the company by virtue of subsection (6) to the director or other company concerned (excluding 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 by virtue of subsection (6) in connection with any loans made by any person to the director or other company concerned (excluding the transaction in question); and

- (b) in relation to a company that at the time of the transaction in question is subject to the prohibitions in section 157H(2), (3) and (4), means the aggregate of the following amounts—
- (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) or (7) (excluding 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 by virtue of subsection (6) or (7) 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 (excluding the transaction in question).

(11) Subsections (3), (6) and (7) do not authorize a company to enter into a transaction if, at the time the transaction is entered into, the relevant amount 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.

(12) For the purpose of subsection (11), "relevant amount" (有關款額)—

- (a) in relation to a company that at the time of the transaction in question is subject to the prohibition in section 157H(2) but is not subject to the prohibitions in section 157H(3) and (4), means the aggregate of the following amounts—
- (i) the amount of the transaction in question;
 - (ii) the amount outstanding at that time, in respect of principal and interest or otherwise, on all loans made by the company to any of its directors (excluding the transaction in question and any loans made by virtue of subsection (1) or (2)); and
 - (iii) 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 made by any person to any of its directors (excluding the transaction in question and any guarantees or security entered into or provided by virtue of subsection (1) or (2)); and

- (b) in relation to a company that at the time of the transaction in question is subject to the prohibitions in section 157H(2), (3) and (4), means the aggregate of the following amounts—
- (i) the amount of the transaction in question;
 - (ii) 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 the transaction in question and any loans, quasi-loans or credit transactions made or entered into by virtue of subsection (1) or (2)); and
 - (iii) 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 the transaction in question and any guarantees or security entered into or provided by virtue of subsection (1) or (2)).

(13) 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.

(14) 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.

(15) 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.

(16) All other terms and expressions used in this section have the same meaning as in section 157H subject to the following exceptions—

- (a) for the purposes of subsection (3) of this section, “director” (董事) does not include a shadow director; and
- (b) section 157H(8) 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—
 - (i) a company that has any of its shares listed on a recognized stock market; or
 - (ii) a company that is a member of a group of companies of which a company referred to in paragraph (a) is a member.”.

63. 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 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”.

(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 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 shall not of itself invalidate any transaction or arrangement entered into in contravention of that section.

(6) In this section—

“company” (公司) has the same meaning as in section 157H(10);

“director” (董事), except in subsection (3), includes a shadow director;

“the relevant circumstances” (有關情況), in relation to a contravention of section 157H, 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.”.

64. 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 in contravention of section 157H(2), (3) or (4), the following persons shall, subject to subsection (2), be guilty of an offence—

- (a) if the transaction is entered into in contravention of section 157H(2)(a) or (b), (3)(a) or (b) or (4)(a) or (b), the company;

- (b) any director of the company who wilfully authorized or permitted the transaction to be entered into; and
- (c) any person who knowingly procured the company to enter into the transaction.

(1A) Where a company enters into an arrangement in contravention of section 157H(5) or (7), the following persons shall, subject to subsection (2), be guilty of an offence—

- (a) if the arrangement is entered into in connection with a transaction described in section 157H(2)(a) or (b), (3)(a) or (b) or (4)(a) or (b), the company;
- (b) any director of the company who wilfully authorized or permitted the arrangement to be entered into; and
- (c) any person who knowingly procured the company to enter into the 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—

“company” (公司) has the same meaning as in section 157H(10);

“director” (董事) includes a shadow director;

“the relevant circumstances” (有關情況), in relation to a contravention of section 157H, 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.”.

65. Register of directors and secretaries

(1) Section 158 is amended by adding—

“(2B) Where the company is a private company having only one member and that member is the sole director of the company, the register shall contain the following particulars with respect to the reserve director of the company (if any)—

- (a) his present forename and surname and any former forename or surname;
- (b) any alias;
- (c) his usual residential address; and
- (d) 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) Section 158(4) is repealed and the following substituted—

“(4) The company shall—

- (a) within 14 days from the appointment of the first directors of the company otherwise than by virtue of section 153(2) or 153A(2), send to the Registrar a return in the specified form containing the particulars specified in the register; and
- (b) within 14 days from the occurrence of any change in the company’s directors, reserve director (if any), secretary or joint secretaries (if any) or in any of the particulars contained in the register, send to the Registrar a notification in the specified form of the change and of the date on which it occurred.

(4A) The company shall, within 14 days from the appointment of a person as a director, secretary or joint secretary of the company or the nomination of a person as a reserve director of the company, send to the Registrar a notification in the specified form containing all such particulars with respect to that person as are required to be contained in the register with respect to him.

(4B) Subsection (4A) does not apply to an appointment or nomination the relevant particulars of which have been stated in a return or notification sent to the Registrar under subsection (4).”.

(3) Section 158(5) is amended—

- (a) by repealing “writing” and substituting “the specified form”;
- (b) by adding “or 153A(2)” after “153(2)”.

(4) Section 158 is amended by adding—

“(5A) Where a person is nominated as a reserve director of a private company, the company shall, within 14 days from the nomination, send to the Registrar a statement in the specified form, signed by such person, that he has accepted his nomination and that he has attained the age of 18 years.”.

(5) Section 158(6) is repealed.

(6) Section 158(8) is amended by repealing “(3), (4) or (5)” and substituting “(2B), (3), (4), (4A), (5) or (5A)”.

(7) 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”.

66. Duty to make disclosure for purposes of section 158

Section 158B(1) is amended by adding “, reserve director” after “director”.

67. Registrar to keep an index of directors

- (1) Section 158C(1)(a) is repealed and the following substituted—
- “(a) The Registrar shall keep and maintain an index of every person who is a director of a company or a reserve director of a private company.”.
- (2) Section 158C(1)(b) is amended by adding “or reserve director” after “director” where it twice appears.

68. 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 68 of the Companies (Amendment) Ordinance 2003 (28 of 2003)—

- (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) In the case of relevant transactions that consist of quasi-loans or credit transactions, there may be included in the accounts of the company, in lieu of the particulars required to be included under subsection (1), a statement showing, with respect to each borrower in relation to whom particulars are required to be given under that subsection—

- (a) the name of that person;
- (b) if subsection (1)(b) applies in respect of any such relevant transaction of which that person is the borrower, the name of the relevant director;
- (c) the aggregate of the amounts outstanding on all such relevant transactions of which that person is the borrower, in respect of principal and interest or otherwise, at the beginning and at the end of the company's financial year; and
- (d) the aggregate of the amounts, if any, that, having fallen due, have not been paid and the aggregate of the amounts of any provision (within the meaning of the Tenth Schedule) made in respect of any failure or anticipated failure by that person to pay the whole or any part of the principal amount of any such relevant transaction or any other amount owing under it.

(3) The accounts referred to in subsection (1) shall, subject to this section, contain the particulars specified in subsection (4) 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 68 of the Companies (Amendment) Ordinance 2003 (28 of 2003); 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.

(4) The particulars referred to in subsection (3) 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 (3) 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).

(5) In the case of guarantees entered into or security provided in connection with relevant transactions that consist of quasi-loans or credit transactions, there may be included in the accounts of the company, in lieu of the particulars required to be included under subsections (3) and (4), a statement showing, with respect to each borrower in relation to whom particulars are required to be given under those subsections—

- (a) the name of that person;
- (b) if subsection (3) applies to any such guarantee or security for a reason given in subsection (4)(a), the name of the relevant director;
- (c) the maximum liability of the company, both at the beginning and at the end of the financial year, under all guarantees entered into, and in respect of all security provided, by the company in connection with all such relevant transactions of which that person is the borrower; and
- (d) the aggregate of the amounts paid and of all liabilities incurred by the company for the purpose of fulfilling the guarantees or discharging the security referred to in paragraph (c) (including the aggregate of all losses incurred by the company by reason of the enforcement of such guarantees or security).

(6) As respects any transaction referred to in this subsection that is entered into after the commencement of section 68 of the Companies (Amendment) Ordinance 2003 (28 of 2003) 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, subject to this section, 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, a director or other officer of the company (whether or not he was a director or other officer of the company at the time the loan, quasi-loan or credit transaction was made or entered into), and—
 - (i) the name of the director or 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 director or 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, a director or other officer of the company (whether or not he was a director or other officer of the company 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 director or 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.

(7) In the case of quasi-loans and credit transactions, there may be included in the accounts or group accounts of the company, in lieu of the particulars required to be included under subsection (6), a statement showing, with respect to each director or other officer in relation to whom particulars are required to be given under that subsection—

- (a) the name of that person;
- (b) the aggregate of the principal amounts of all quasi-loans made by the subsidiary to, and all credit transactions entered into by the subsidiary as creditor for, that person;
- (c) the aggregate of the amounts outstanding on all such quasi-loans and credit transactions, in respect of principal and interest or otherwise, at the beginning and at the end of the company's financial year;
- (d) the aggregate of the amounts, if any, that, having fallen due, have not been paid and the aggregate of the amounts of any provision (within the meaning of the Tenth Schedule) made in respect of any failure or anticipated failure by that person to pay the whole or any part of the principal amount of any such quasi-loan or credit transaction or any other amount owing under it;
- (e) the aggregate of the principal amounts of all quasi-loans made by any person to, and all credit transactions entered into by any person as creditor for, that person under all guarantees entered into and all 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;
- (f) the maximum liability of the subsidiary, both at the beginning and at the end of the financial year, under the guarantees and security referred to in paragraph (e); and

- (g) the aggregate of the amounts paid and of all liabilities incurred by the subsidiary for the purpose of fulfilling the guarantees or discharging the security referred to in paragraph (e) (including the aggregate of all losses incurred by the subsidiary by reason of the enforcement of such guarantees or security).

(8) Except as provided in subsections (9) and (10), 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)).

(9) 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 68 of the Companies (Amendment) Ordinance 2003 (28 of 2003); 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.

(10) 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, a director or other officer of the company (whether or not he was a director or other officer of the company at the time the loan, quasi-loan or credit transaction was made or

entered into) after the commencement of section 68 of the Companies (Amendment) Ordinance 2003 (28 of 2003); 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, a director or other officer of the company (whether or not he was a director or other officer of the company 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.

(11) 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.

(12) 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.

(13) In this section and in sections 161BA, 161BB 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.

(14) 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 a director or other 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.

(15) In this section, “relevant transaction” (有關交易), in relation to a company referred to in section 157H(8)(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.

(16) For the purposes of this section, a person is connected with a director of a company if, but only if, he is—

- (a) that director's spouse, child or step-child;
- (b) 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; or
- (c) a person acting in his capacity as partner of that director or of any person who by virtue of paragraph (a) or (b) is connected with that director,

and in this subsection a reference 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.

(17) References in subsections (6), (7) and (11) 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).

(18) In the case of any loan made, guarantee entered into or security provided before the commencement of section 68 of the Companies (Amendment) Ordinance 2003 (28 of 2003), 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.

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

69. Further provisions relating to loans to officers, etc. of authorized financial institutions

(1) Section 161BA(1) and (2) is amended by repealing “161B(4A)” and substituting “161B(8)”.

(2) Section 161BA(7) is amended by adding “該” before “公司” where it secondly and thirdly appears.

(3) In the Chinese text, section 161BA(8) is repealed and the following substituted—

“(8) 就本條所訂的任何罪行而言——

(a) 凡該罪行包括沒有採取合理步驟以確保公司遵從本條的規定，在任何就該罪行而針對某人提起的法律程序中，如該人能證明他有合理理由相信而又確實相信，一名合資格而又可靠的人，已獲委以確保該等規定獲遵從的職責並處於能夠執行該項職責的景況，即可以此作為免責辯護；及

(b) 除非處理該案的法院認為該人故意犯該罪行，否則該人不得因上述罪行而被判處監禁。”

(4) Section 161BA(10) is amended by repealing “公司接獲該項要求翌日起計” and substituting “自公司接獲該項要求之日的翌日起計的”。

(5) In the Chinese text, section 161BA(11) and (12) is repealed and the following substituted—

“(11) 如根據本條進行查閱的要求遭拒絕，或根據本條所要求的副本沒有在恰當的期限內送交，則有關公司及其每名失責高級人員均可處罰款，如持續失責，則可處按日計算的失責罰款。

(12) 如有上述拒絕或失責情況，法院可藉命令強迫將有關陳述書立即供查閱，或指示將所要求的副本送交要求取得該等副本的人。”

70. Section added

The following is added—

“161BB. Further provisions relating to quasi-loans and credit transactions, etc.

(1) Where a company includes in its accounts (including group accounts) in respect of a financial year a statement referred to in section 161B(2), (5) or (7), the company shall enter in a register to be maintained by it for the purpose of this section those particulars that would, but for section 161B(2), (5) or (7), be required by section 161B to be shown in its accounts in respect of that financial year, which particulars shall be retained in the register for a period of 10 years.

(2) The register referred to in subsection (1) shall be kept at the same place as the company's register of members.

(3) If any person being a director of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he shall be liable on conviction to imprisonment and a fine.

(4) As respects an offence under this section—

- (a) in any proceedings against a person in respect of such an offence consisting of a failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that those requirements were complied with and was in a position to discharge that duty; and
- (b) a person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

(5) The register referred to in subsection (1) shall be made available for inspection during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than 2 hours in each day be allowed for inspection) by any member of the company, without charge.

(6) Any member of the company may require a copy of the register referred to in subsection (1), or any part thereof, on payment of 25 cents, or such less sum as the company may prescribe, for every 100 words or fractional part thereof required to be copied. The company shall cause any copy so required by any member to be sent to that member within a period of 10 days commencing on the day next after the day on which the requirement is received by the company.

(7) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period, 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.

(8) In the case of any such refusal or default, the court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the member requiring them.”.

71. General duty to make disclosure for purposes of sections 161 and 161B

(1) Section 161C(1) is repealed and the following substituted—

“(1) It shall be the duty of any director of a company to give notice in writing to the company of such matters relating to himself as may be necessary for the purposes of section 161 and of section 161B except so far as it relates to—

- (a) loans or quasi-loans made, by the company or by any other person under a guarantee from or on a security provided by the company, to an officer of the company; or

(b) credit transactions entered into by the company as creditor for an officer of the company, or entered into by any other person as creditor for an officer of the company under a guarantee from or on a security provided by the company.”.

(2) Section 161C is amended by adding—

“(2A) It shall be the duty of any shadow director of a company and any person who has at any time during the preceding 5 years been a shadow director of the company to give notice in writing to the company of such matters relating to himself as may be necessary for the purposes of section 161B.”.

72. 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—

(a) subject to paragraph (b), where the sole member of a company is a shadow director, that member shall be treated as a director of the company;

- (b) a body corporate is not to be treated as a shadow director of any of its subsidiaries by reason only that the directors or a majority of the directors of the subsidiary are accustomed to act in accordance with its directions or instructions.”.

73. 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.”.

74. 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).”.

75. Duty of court to disqualify unfit directors of insolvent companies

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

76. 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 76 of the Companies (Amendment) Ordinance 2003 (28 of 2003), the provisions of this section in force immediately before that commencement shall continue to have effect as if section 76 of that Ordinance had not been enacted.”.

77. 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” (指明款額) 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 any amount for the purposes of subsection (3).”.

78. 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”.

79. 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”.

80. 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”.

81. 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.”.

82. 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”.

83. 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 83 of the Companies (Amendment) Ordinance 2003 (28 of 2003), the provisions of section 228A of this Ordinance in force immediately before that commencement shall continue to have effect as if section 83 of that Ordinance had not been enacted.”.

84. Commencement of voluntary winding up

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

85. Subheading amended

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

86. 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 86(6) of the Companies (Amendment) Ordinance 2003 (28 of 2003) 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 the declaration were a certificate of solvency.”.

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

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

88. 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).”.

89. Interest on debts

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

90. Extortionate credit transactions

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

91. Offences by officers of companies in liquidation

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

92. 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”.

93. 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”.

94. Taking of affidavits, etc.

Section 303A is repealed.

95. 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).”.

96. 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.”.

97. Companies capable of being registered

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

**98. Requirements for registration by
joint stock companies**

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

**99. 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”.

100. Section substituted

Section 314 is repealed and the following substituted—

**“314. Authentication of statements of
existing companies**

The lists of members and directors and any other particulars relating to the company required to be delivered to the Registrar shall be verified by a statement in writing signed by—

- (a) in the case of a company having only one director, the sole director or a principal officer of the company; and
- (b) in any other case, any 2 or more directors or other principal officers of the company.”.

101. 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”.

102. 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.”.

103. 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” (指明款額) 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 any amount for the purposes of subsection (5).”.

104. 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”.

105. 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”.

106. 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,”.

107. Interpretation of Part XI

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

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

108. 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.”.

109. 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.”.

110. 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.

111. 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.”.

112. Disposal of documents

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

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

113. 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.”.

114. 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”.

115. 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 if the person to whom the

communication is given consents to it being given to him in that form.

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 such lawful electronic means and in such manner as may be agreed by the company in general meeting.

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”.

116. 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”.

117. 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]”.

118. 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)”.

119. 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) in the entry relating to section 161C(3), in the second column, by adding “or shadow director” after “Director”;
 - (l) by repealing the entry relating to section 228A(2);
 - (m) by repealing the entry relating to section 228A(3A) (relating to subsection (3)(b));
 - (n) by repealing the entry relating to section 228A(3A) (relating to subsection (3)(c));
 - (o) by repealing the entry relating to section 228A(4B);
 - (p) 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”;
 - (q) in the entry relating to section 237A(3), in the second column, by repealing “declaration made” and substituting “certificate of solvency issued”;
 - (r) 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(5)	Sole member failing to provide the company with a written record of his decision	Summary	level 3	\$300
116BC(6)	Company failing to enter record of written record of decision provided in accordance with section 116BC	Summary	level 3	\$300
153A(3)	Private company failing to have at least one director	Summary	level 3	\$300
153C(4)	Sole director failing to provide the company with a written record of his decision	Summary	level 3	\$300
153C(5)	Company failing to enter record of written record of decision provided in accordance with section 153C	Summary	level 3	\$300
161BB(3)	Director failing to take all reasonable steps to ensure the company keeps a register of particulars relating to quasi-loans and credit transactions, etc.	Summary	level 5 and 6 months	—
161BB(7)	Company failing to permit inspection or to send a copy as required of the register of particulars relating to quasi-loans and credit transactions, etc.	Summary	level 3	\$300
162B(3)	Company having one member who is also a director failing to set out in a written memorandum the terms of a contract with that member	Summary	level 3	\$300

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 sub- section (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 sub- section (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 sub- section (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 sub- section (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 sub- section (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 sub- section (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 sub- section (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 sub- section (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 sub- section (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 sub- section (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 sub- section (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

120. 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

121. Repeal

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

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

122. Repeal

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

Companies (Winding-up) Rules

123. 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.

124. Notice of appointment of liquidator

Rule 46 is repealed.

125. Disposal of moneys received after execution

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

126. Forms

The Appendix is amended by repealing Form 28.

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

127. 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

**128. 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”.

Securities and Futures Ordinance

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

Section 51(3) of the Securities and Futures Ordinance (Cap. 571) is amended, in the definition of “prescribed event”, in paragraph (b), by repealing “statutory declaration” and substituting “statement in the specified form”.