

新《公司條例》

為推行新《公司條例》而制訂的附屬法例

第一期 諮詢文件

二〇一二年九月

財經事務及庫務局

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關於本文件

本諮詢文件由財經事務及庫務局和公司註冊處發出，就推行新《公司條例》配套的附屬法例徵詢公眾意見。

請在二零一二年十一月九日前以下列方式向我們提出你的意見：

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如對本文件有任何問題，可以致電(852) 2867 5844 或透過上述任何方式與我們聯絡。

本諮詢文件也載於財經事務及庫務局的網站(網址：http://www.fstb.gov.hk/fsb/co_rewrite/)和公司註冊處的網站(網址：<http://www.cr.gov.hk/>)。新《公司條例》的全文已上載至公司註冊處網站，供公眾瀏覽和下載。

我們可隨時以任何形式複製及公開所接獲的意見書的全部或部分內容，以及使用、修改或進一步闡釋所提出的任何建議，而無須向提出建議者徵求批准或作出致謝。

提出意見者的姓名及所屬機構的名稱及其意見，可能會載於上述網站，或在我們所發表的其他文件中提述。如你不願意公開你的姓名及／或所屬機構的名稱，請在提出意見時說明。所提交的個人資料，只會用於與根據本諮詢文件所作諮詢直接有關的用途。該等資料可能會轉交其他政府部門／機構作相同用途。如欲查閱或更正意見書所載的個人資料，請聯絡我們。

序言

二零零六年年中，政府展開全面重寫公司法的工作，從而提升香港作為主要國際商業和金融中心的競爭力。這包括重寫在現有《公司條例》(第 32 章)中有關現存公司的條文。於二零一二年七月十二日，立法會通過《公司條例草案》，而該草案及後於二零一二年八月十日刊憲成為新《公司條例》(2012 年第 28 號條例)。

在新條例生效前，當局會制定配套的附屬法例，以訂明落實新條例的有關事宜。在訂立附屬法例前，政府希望聽取公眾，尤其是投資者、商界及相關專業人士，就我們的主要建議和刊載於各附件的附屬法例擬稿提出的意見。

我們希望就以下附屬法例諮詢公眾 —

- (a) 公司(財務摘要報告)規例
- (b) 公司(董事報告)規例
- (c) 公司(指明名稱)令
- (d) 公司(非香港公司)規例
- (e) 公司紀錄(查閱及提供文本)規例
- (f) 公司(章程細則範本)公告
- (g) 公司(會計準則(訂明團體))規例
- (h) 公司(營業披露)規例
- (i) 公司(修訂財務報表及報告)規例
- (j) 公司(披露董事利益資料)規例
- (k) 公司(住址及身分識別號碼)規例
- (l) 公司(不公平地損害呈請)法律程序規則

公眾諮詢將會分兩階段進行。首階段(即現階段)會涵蓋上述(a)至(g)項，而今年稍後進行的第二階段諮詢，則會涵蓋其餘的附屬法例。

我們歡迎公眾就附屬法例提供意見和建議。為讓公眾方便了解建議的附屬法例，我們概括闡釋了現行和新《公司條例》下的有關規定，並在每章撮述主要建議內容。

首階段公眾諮詢期將於二零一二年十一月九日結束。我們會參考所收集的意見，以期於二零一三年上半年訂立附屬法例。完成有關程序後，各附屬法例將暫定於二零一四年與新《公司條例》一併生效。

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第一章

《公司(財務摘要報告)規例》

現行規定

- 1.1 根據現行《公司條例》第 141CA 至 141CG 條的規定，上市公司可以摘要形式擬備財務報告(財務摘要報告)，以代替據以擬備該報告的有關財務文件(包括有關財政年度的公司帳目、董事報告及核數師報告)，送交其成員。公司須發出通告，以確定個別成員的意願；而成員可向公司發出意願通知書，以示同意收取財務摘要報告。
- 1.2 上述(i)財務摘要報告、(ii)通告及(iii)意願通知書的格式及內容，在《公司(上市公司的財務摘要報告)規例》(第 32 章附屬法例 M)(第 32M 章)中訂明，主要的規定及重點(註明第 32M 章的相關條文)概述如下：
- (a) 財務摘要報告須載有公司的資產負債表及損益表中的資料和詳情，以及第 32 章第 129D(3)條所指明董事報告須包括的所有資料和詳情；同時也須載述核數師的意見、重要事件的詳情及其他指明的資料。(第 5 條)
 - (b) 通告須載有關於財務摘要報告的內容和作用的陳述、說明發出(及不發出)意願通知書的效力，以及邀請成員發出通知書。通告須附有預付郵資的卡片或文件，以供成員發出通知書。(第 6 條)
 - (c) 規例並載述公司在不同情況下接獲的通知書的效力。情況包括在送交通告後的指明期間或之後，或在發送有關財務文件(即公司帳目、董事報告及核數師報告)的首日之前或之後接獲通知書。(第 8 至 12 條)

新《公司條例》的規定

1.3 新《公司條例》第 437 至 446 條保留有關財務摘要報告的條文，並作出一些修訂，要點如下：

- (a) 首先，除上市公司外，其他不擬備簡明報告的公司也可擬備財務摘要報告；
- (b) 除公司的成員外，潛在成員¹也可發出意向通知；
- (c) 採用“選擇不接收機制”，即如果成員沒有在指明日期前，向公司發出意向通知，則預設安排是該成員會收到財務摘要報告的印本；
- (d) 成員也可向公司發出撤銷通知²或取消法定選擇的通知³；
- (e) 為使有關安排更靈活變通，成員或潛在成員也可選擇收取電子形式的報告文件⁴或財務摘要報告，而公司亦可主動提供該等文件；
- (f) 精簡有關在公司發送報告文件的首日前或之後收到的意向通知所具效力的條文；以及
- (g) 成員在收到財務摘要報告後，可要求公司提供有關財政年度的報告文件。

¹ 根據新《公司條例》第 437 條，潛在成員指有權(不論是有條件或無條件地)成為公司成員的人。

² 成員或潛在成員可向公司發出撤銷通知，以撤銷先前發出的意向通知和示明新的選擇。

³ 法定選擇指成員或潛在成員被預設為選擇收取採用印本形式的財務摘要報告。成員或潛在成員可向公司發出取消法定選擇的通知，以示明新的選擇。

⁴ 根據新《公司條例》第 357(2)條，關乎某財政年度的報告文件指關乎該財政年度的財務報表、董事報告和核數師報告，涵蓋範圍與現行《公司條例》中的有關財務文件大致相同，惟在定義中加入“財務報表”以取代“帳目”。

擬議附屬法例

- 1.4 根據新《公司條例》第 452(4)及 452(5)條，我們建議制訂名為《公司(財務摘要報告)規例》(規例)的附屬法例，為財務摘要報告及公司向成員發出的知會(用以確定成員在新《公司條例》下對收取摘要報告的意向)的格式及內容訂定條文。規例也述明各項通知(即意向通知、撤銷通知及取消法定選擇的通知)須載有的詳情及效力。
- 1.5 擬議規例主要重述第 32M 章的條文，並按需要適當修改，以反映新《公司條例》第 437 至 446 條所載有關財務摘要報告的新安排(見上文第 1.3 段)。條文也力求與新《公司條例》第 9 部其他有關帳目及審計的條文一致，例如核數師在其報告內須作出的陳述、董事報告經擴大的涵蓋範圍，以及分別以“財務狀況表”及“全面收益表”的字眼取代“資產負債表”及“損益表”。
- 1.6 除此之外，我們已在切實可行的範圍內，在擬議規例中大致保留各項現有安排。

規例詳情

- 1.7 擬議規例有三部分：
- (a) 第 1 部訂明規例的生效日期及詞語和詞句的釋義。
 - (b) 第 2 部訂明財務摘要報告須載有的資料及陳述。資料須來自財務摘要報告所關乎的公司報告文件。
 - (c) 第 3 部為公司向成員發出的知會(用以確定成員對收取財務摘要報告的意向)的格式和內容訂定條文，並述明意向通知、撤銷通知和取消法定選擇的通知須載有的詳情及效力。這部分又規定，公司須提供預付郵資的卡片或文件，以供成員發出意向通知。
- 1.8 擬議規例擬稿載於附件 1 (只附有英文版)，以徵詢意見。

第二章

《公司(董事報告)規例》

現行規定

- 2.1 現行《公司條例》第 129D 條規定，公司的資產負債表須隨附董事報告。董事報告須經董事局批准，並由董事局會議的主席或公司秘書代表董事局簽署。
- 2.2 第 129D(3)條訂明董事報告須述明的事項。這些事項(有些也涉及公司的附屬企業)包括公司的主要活動、與已發行股份有關的事宜、涉及董事的利害關係或利益的管理合約、安排和其他合約的詳情、捐款，以及對了解公司事務具關鍵性的其他事項。

新《公司條例》的規定

- 2.3 在新《公司條例》中，有關擬備和批准董事報告的條文，分別在第 388 和 391 條中重述。
- 2.4 有關董事報告內容的規定，載於新《公司條例》的多條條文：
- (a) 第 390 條規定，須包括有關公司主要活動的資料；
 - (b) 第 543 條規定，董事報告須披露管理合約的資料。如屬涉及董事利害關係的合約，則根據第 383(1)(e)條須按照根據第 452(2)制訂的規例在財務報表的附註中披露資料⁵；
 - (c) 第 470 條新增一項規定，訂明董事報告須披露在有關財政年度內惠及董事(包括前董事)的獲准許彌償條文；

⁵ 這規例是將會包括在第二階段諮詢文件的(j)公司(披露董事利益資料)規例。

- (d) 董事報告並須加入業務審視，這個新增部分的內容已在新條例附表 5 中訂明⁶；以及
- (e) 第 452(3)條規定，須載於董事報告的其他事項可藉附屬法例訂明。

擬議附屬法例

2.5 我們建議訂立名為《公司(董事報告)規例》(規例)的附屬法例，為董事報告所須載述的資料訂定條文，並訂明其他規定。

2.6 擬議規例規定董事報告須包括下列資料：

- (a) 董事在公司或同一企業集團的另一公司訂立的某些安排中的利害關係：我們建議，董事報告所須載述的董事利害關係，只限於涉及令公司董事得益的收購公司或任何其他法人團體的股份的安排(第 3 條)；
- (b) 公司及其附屬企業的捐款：除重述現行規定外，我們還建議，公司本身或聯同附屬企業的捐款總額如不少於 10,000 元(而非現時所訂的 1,000 元)，董事報告才須予以披露(第 4 條)；
- (c) 公司發行的股份：重述董事報告須載有發行股份的詳情的現行規定(第 5 條)；
- (d) 公司訂立的權益掛鈎協議：現時，不少公司發行的投資產品雖然不是股份，但最終卻涉及股份發行，情況十分普遍。有鑑於此，我們建議把這類協議的涵蓋範圍擴大至包括公司訂立的權益掛鈎協議。權益掛鈎協議(範圍旨在涵蓋股份認購權計劃、僱員參股計劃及其他相關安排)一詞的擬議定義，也載於規例擬稿(第 6 條)；

⁶ 公司如(i)擬備簡明報告；(ii)屬全資附屬公司；或(iii)屬私人公司，且通過特別決議免除擬備業務審視，便無須擬備這部分。

- (e) 董事建議支付的股息：重述現行《公司條例》第 129D 條的現有規定(第 7 條)；
- (f) 董事辭職的原因：如董事因與董事局意見不合而辭職或拒絕再次參選，並發出通知述明原因，則董事報告須概述該等原因，以助提升透明度和企業管治(第 8 條)；以及
- (g) 惠及董事的獲准許彌償條文：加入這項，是為了配合上文第 2.4(c)段所述，即新《公司條例》第 470 條新增關於披露獲准許彌償條文的規定，令未能遵守此條文的規定在新《公司條例》第 388(6)或(7)條下構成罪行(第 9 條)。

2.7 我們也建議，第(e)及(f)項不適用於擬備簡明報告的公司。在參考英國可資比較的法例後，我們亦建議現有關於(i)債權證發行和(ii)在現行《公司條例》第 129D(3)(h)和 129D(3)(k)條涉及令公司董事得益的獲得債權證之安排的披露要求不予保留。

規例詳情

2.8 擬議規例包括九條條文：

- (a) 第 1 及 2 條分別訂明規例的生效日期及詞語和詞句的釋義。
- (b) 第 3 至 9 條訂明董事報告所須載述的資料，包括按新增規定提供公司所訂立權益掛鈎協議的資料、董事辭職的原因，以及惠及董事的獲准許彌償條文。

2.9 擬議規例的條文擬稿載於附件 2 (只附有英文版)，以徵詢意見。

第三章

《公司(指明名稱)令》

現行規定

- 3.1 現行《公司條例》第 20 條訂明，公司如欲以包含某些字或詞的名稱註冊，須經事先批准。
- 3.2 這些字詞共有 24 個，載列於《公司(指明名稱)令》(第 32 章附屬法例 E)(第 32E 章)。現行《公司條例》第 22B(1)條賦權行政長官訂立該命令。

新《公司條例》的規定

- 3.3 公司名稱如包含命令所指明的字或詞，須獲事先批准的規定，載於新《公司條例》第 100(2)(b)條。第 101 條賦權財政司司長為指明任何字或詞而訂立命令。

擬議附屬法例

- 3.4 根據新《公司條例》第 101 條，我們建議再制定與第 32E 章作用相同的命令。擬議命令亦名為《公司(指明名稱)令》(命令)⁷。
- 3.5 經檢討現行清單後，我們建議第 32E 章附表中的十個名詞因不合時宜或沒有必要而不會載於擬議命令，包括“Cooperative”和“合作”；“Building Society”和“建屋合作社”；“Mass Transit”、“Underground Railway”、“地下鐵路”和“地鐵”；以及“Municipal”和“市政”。
- 3.6 基於相關決策局及部門的意見，我們擬把四個字詞加入上述清單：
- (a) 建議加入“tourism board”和“旅遊發展局”，因為不時出現一些個案，有未獲授權的機構自稱香港旅遊

⁷ 為求清晰，本章所提及的“第 32E 章”指根據現行《公司條例》訂立的現有命令，而“命令”則指根據新《公司條例》訂立的擬議命令。

發展局(旅發局)。加入這些字詞，配合保留現有的“tourist association”和“旅遊協會”⁸，可防有人以與旅發局相近的公司名稱註冊。

- (b) 建議加入“levy”和“徵費”，以防有人以看來是負責徵費(例如旅遊業賠償基金徵費)的機構名稱為公司註冊。

命令詳情

- 3.7 擬議命令包括兩條條文及一個附表。第 1 條訂明命令的生效日期。第 2 條訂明，為施行新《公司條例》第 100(2)條而指明的字詞，載列於命令的附表。這些字詞共有 18 個(其中 14 個來自第 32E 章)，在附表中加以指明。
- 3.8 建議列入擬議命令的字詞清單載於附件 3，以徵詢意見。

⁸ 香港旅遊發展局在二零零一年透過重組香港旅遊協會而成，並已取代後者。

第四章

《公司(非香港公司)規例》

現行規定

- 4.1 非香港公司指在香港以外地方成立為法團，並在香港設立營業地點的公司。現行《公司條例》第 XI 部載有關於這類公司的條文。
- 4.2 現行《公司條例》第 333、334、335 及 336 條規定非香港公司必須：
- (a) 在其於香港設立營業地點後的一個月內，向公司註冊處處長(處長)申請註冊，並在指明表格內提供註冊所需詳情，包括董事、秘書和香港獲授權代表的詳情(第 333 條)；
 - (b) 交付下述文件的經核證副本：界定公司組織的文書、公司註冊證書，以及最近期發表的帳目(如須發表)⁹ (證明文件)(第 333 條)；
 - (c) 在其註冊日期的每個周年日後的 42 天內，向處長交付周年申報表(也須按要求交付最近期帳目的經核證副本)(第 334 及 336 條)；
 - (d) 在有需要時，提供證明文件的經核證中文或英文譯本(第 333 及 336 條)；以及
 - (e) 在公司某些主要詳情(包括法人名稱)有所更改後的一個月內，向處長交付符合指明格式的申報表(第 335 條)。

⁹ 如以下法律或規章規定非香港公司必須發表其帳目，或把帳目的文本交付某人，而公眾人士可在該人的辦事處查閱帳目，則有關公司須提供最近期帳目的副本：

- (a) 非香港公司成立為法團所在地方的法律；
- (b) 其他該非香港公司註冊為公司的地方的法律；或
- (c) 在有關司法管轄區內的證券交易所或類似監管機構的規章。

- 4.3 即使非香港公司的公司註冊證書只載有其中文或英文名稱，該公司仍可按照《公司註冊處對外通告第 1/2001 號》的現行規定¹⁰，申請以中文及英文登記其法人名稱。
- 4.4 第 333B 條規定，非香港公司獲授權代表的授權一經終止，該公司或有關獲授權代表須在發出終止通知的日期起計一個月內，向處長交付符合指明格式的通知，並附上終止通知的副本(如有需要，須提供經核證譯本)。
- 4.5 根據第 336A 條，非香港公司根據有關司法管轄區的法律或證券交易所的規章發表帳目(見註 9)後，如發現帳目不符合該等法律或規章，也可修訂已發表的帳目。有關非香港公司須向處長交付經修訂帳目的詳細規定，載於第 32N 章第 20 條。這些條文與適用於本地公司的規定相同。

新《公司條例》的規定

- 4.6 與非香港公司的註冊有關的類似規定，載於新《公司條例》第 16 部。第 776 條規定非香港公司必須申請註冊。第 778 條規定，非香港公司的法團名稱如有更改，必須申報。第 788 及 789 條訂明，非香港公司必須向處長提交周年申報表及最近發表帳目的經核證副本。第 790 條訂明董事可修改帳目。第 791 條規定，公司的某些詳情如有更改，必須交付申報表。
- 4.7 有關上述事宜的法律規定基本上與現行《公司條例》相同，而詳細的規定會載於附屬法例，以便在有需要時修訂這些具體規定，配合海外司法管轄區的發展。

¹⁰ 公司註冊證書(或同等文件)述明公司名稱、證書性質及簽發日期的有關部分，非香港公司須提供中文或英文的經核證譯本(視屬何情況而定)。

擬議附屬法例

- 4.8 我們建議根據新《公司條例》第 804 及 805 條，訂立名為《公司(非香港公司)規例》(規例)的綜合附屬法例，訂明有關非香港公司的詳細規定及其他事宜。
- 4.9 現行《公司條例》第 333、333B、334、335 及 336 條，以及《公司註冊處對外通告第 1/2001 號》現時詳列的規定，會載於擬議規例。此外，現行《公司條例》第 336A 條及第 32N 章第 20 至 21 條載有非香港公司修訂帳目的規定，這些規定也會在擬議規例中訂明。有關條文基本上重述現行規定。

規例詳情

- 4.10 擬議規例包括以下七部：
- (a) 第 1 部為導言，載有規例的生效日期和用語的釋義。
 - (b) 第 2 部述明非香港公司申請註冊所須提交的詳情及文件。
 - (c) 第 3 部訂明，非香港公司提交某些申請或申報表時，須附上公司註冊證明書等文件中載有該公司其他本土名稱有關部分的經核證譯本。
 - (d) 第 4 部述明在交付非香港公司獲授權代表的授權終止通知時所須隨附的文件。
 - (e) 第 5 部述明非香港公司周年申報表所須載列的詳情和隨附的文件。
 - (f) 第 6 部訂明非香港公司向處長交付經修訂帳目的規定，以及修訂的效力。
 - (g) 第 7 部就非香港公司須根據新《公司條例》第 791 條提交的申報表，述明當中所須載有的更改(例如公司組織或董事的更改)詳情。這部分也述明非香

港公司的憲章或組織如有更改，有關的申報表所須隨附的文件。

- 4.11 擬議規例的擬稿載於附件 4 (只附有英文版)，以徵詢意見。

第五章

《公司紀錄(查閱及提供文本或副本)規例》

現行規定

- 5.1 現行《公司條例》訂明有關查閱公司在現行《公司條例》必須備存的部份紀錄之權利(在普通法中包含在查閱過程中複印的權利)。在特定情況下¹¹，公司可能需要提供有關紀錄之副本。該等紀錄包括現行《公司條例》規定公司必須備存的登記冊、會議紀錄、決議文本及其他文件。
- 5.2 雖然有關每類紀錄的規定各有不同，但公司一般必須(i)在其註冊辦公室或製作紀錄的地方備存紀錄；(ii)在接獲要求後提供紀錄以供查閱；以及(iii)在接獲要求後提供紀錄的副本。要求查閱紀錄或索取副本的人(下稱“提請人”)或就此須繳付費用。
- 5.3 除此之外，有關查閱紀錄和提供副本的安排須受若干規定所規限，例如可供查閱的時間¹²、送交所要求紀錄的副本的期限，以及須繳付費用的最高限額¹³。就現行《公司條例》而言，這些規定在有關查閱每類紀錄的條文或附表內訂明。

新《公司條例》的規定

- 5.4 在新《公司條例》中，就查閱紀錄和取得副本的權利而言，有關條文雖仍載於主體條例，但有關查閱紀錄和提供文本或副本的安排及相關詳細事宜，則由附屬法例規定。

¹¹ 查閱每類公司紀錄和取得副本之權利取決於個別條文。例如股東會議紀錄可供查閱，惟董事會議紀錄則不能供查閱之用。雖然押記登記冊、董事及秘書登記冊和管理合約可在提請人提出下供查閱之用，但提請人並沒有取得此等紀錄副本之權利。

¹² 在每個營業日通常不少於 2 小時。

¹³ 查閱紀錄通常每次 1 元或 2 元，複製文件則通常每 100 字 2 元。

- 5.5 新《公司條例》第 12 部載有適用於所有公司紀錄的特定條文。根據第 654 條所載的定義，*公司紀錄*指新《公司條例》所規定公司必須備存的登記冊、索引、協議、備忘錄、會議紀錄或其他文件，但不包括會計紀錄。第 657 條述明，有關查閱公司紀錄和提供副本或文本的詳細規定，可藉附屬法例訂明。就非香港公司而言，第 356 條進一步訂明，與查閱及提供設立押記的文書及押記登記冊的副本或文本有關的詳細規定，也可藉附屬法例訂明。
- 5.6 把載述詳細規定的條文由主體條例移至附屬法例，既可整合有關各類公司紀錄的安排，又可以一致而全面的方法處理該等紀錄，利便公司遵從規定。此舉也方便日後適時修訂或改進有關的詳細安排，以切合時宜。
- 5.7 此外，在立法會審議《公司條例草案》期間，有議員認為，應容許公司在其註冊辦事處或香港的任何其他地方備存公司紀錄。有鑑於此，新《公司條例》採納這個建議，且容許公司在其註冊辦事處或附屬法例訂明的地方(即香港任何地方)備存公司紀錄。

擬議附屬法例

- 5.8 我們建議制訂名為《公司紀錄(查閱及提供文本或副本)規例》(規例)的附屬法例，為新《公司條例》第 356 及 657 條所述事宜訂定條文。
- 5.9 現行《公司條例》只賦予查閱文本或副本之基本權利，但沒有訂明相關的詳細程序。因此，在查閱文本或副本權利的行使上，存在不確定性。擬議規例會訂立全面的制度，以規管有關查閱公司紀錄¹⁴的事宜。制度的要點如下：

¹⁴ 就查閱在新《公司條例》下需作登記之設立押記的文書及押記登記冊而言，擬議制度也適用於註冊非香港公司。另見上文第 5.5 段。

- (a) 任何人士如要求查閱公司紀錄，必須以書面向公司發出查閱通知。通知須指明紀錄的類別和涵蓋期間，以及查閱日期和時間(第 5 條)。
- (b) 通常，查閱通知須在指明查閱日期前最少七個工作日發出，而在舉行成員大會或某類別成員的會議的通知期內，或在書面決議傳閱期間，通知期會縮短至最少兩個工作日(第 6 條)。
- (c) 公司必須在訂明時限內發出書面通知，告知提請人在何處查閱公司紀錄(第 7 條)。
- (d) 公司必須給予提請人最少兩小時的時間，用以查閱公司紀錄。提請人在查閱的過程中可複印公司紀錄，但公司無須協助(第 7 及 9 條)。
- (e) 公司也須在某些情況下¹⁵把最近一次修訂紀錄的時間告知提請人(第 8 條)。

5.10 我們也建議訂定條文，述明有關要求和提供公司紀錄¹⁶的文本或副本的詳細安排。條文的要點如下：

- (a) 公司須限時向提請人提供所要求紀錄的文本或副本，時限劃一為七日(第 13 條)。
- (b) 新《公司條例》第 655 條訂明，公司紀錄可以印本或電子形式備存；為求一致，提請人可選取印本或電子形式(如有提供)的公司紀錄文本或副本(第 14 條)。

5.11 我們建議把查閱公司紀錄費用的最高限額修訂，劃一為每次 50 元。至於提供文本或副本，我們建議把費用劃一，登記冊每 100 個記項 50 元，其他文件每 100 個字 2 元(第 11 和 16 條及附表)。

¹⁵ 這項規定適用於查閱債權證持有人登記冊、成員登記冊、成員索引、董事登記冊或公司秘書登記冊的情況。

¹⁶ 在此附屬法例下，公司記錄包括信託契據和其他保證發行債權證的文件。

- 5.12 我們建議，在大多數情況下，把違反規例條文的刑罰劃一為第 4 級罰款¹⁷。
- 5.13 提請人如果提出查閱紀錄或提供文本或副本的要求但未能如願，則可向原訟法庭申請飭令公司或相關人士 (i) 立即讓其查閱有關紀錄，(ii) 容許提請人在查閱過程中製作有關紀錄之副本，或 (iii) 提供有關文本之副本。
- 5.14 就董事登記冊和公司秘書登記冊而言，第 644 及 651 條訂明，公司可保留董事、備任董事或公司秘書的通居住址和身分識別號碼，不提供予公眾查閱。擬議規例會訂明保留部份身分識別號碼的方式(第 17 條)。
- 5.15 為實施上文第 5.7 段的建議，我們會在擬議規例中訂明，在適用情況下，就備存公司紀錄訂明的地方指在香港的任何地方。擬議規例亦會訂明公司可指定在香港的任何地方，進行公司紀錄的查閱。

規例詳情

- 5.16 擬議規例分為以下五部：
- (a) 第 1 部訂明規例的生效日期。
 - (b) 第 2 部訂明公司可備存公司紀錄的地方，而該地方指在香港的任何地方。
 - (c) 第 3 部就查閱公司紀錄一事作出規定。第 5 條列明提請人所發出的查閱通知須包括的內容。第 6 條述明提出查閱要求所需的通知期。
 - (d) 第 7 條規定，公司須通知提請人可在何處查閱公司紀錄，並提供該等紀錄以供查閱。第 8 條規定公司有責任告知提請人最近一次修改公司紀錄的日期(如有的話)。

¹⁷ 這和主體條例中未能備存公司紀錄的罰則一致。如未能按照有關條文採用所要求的形式提供公司紀錄的文本或副本，則與新《公司條例》第 837 條類似罪行一樣，處以第 3 級罰款。

- (e) 根據第 9 條的規定，公司須容許查閱公司紀錄的人在過程中複印紀錄。
- (f) 第 4 部規定公司有責任提供公司紀錄(包括保證發行債權證的信託契據或其他文件)的文本或副本。第 13 條述明公司須提供該等文本或副本的期限。第 14 條訂明，要求取用公司紀錄的人有權要求紀錄以電子或印本形式提供。
- (g) 第 5 部訂明，公司可保留條例第 644(1)(b) 及 651(1)條所述的某些詳情，不提供予公眾查閱，並述明保留範圍。
- (h) 附表訂明查閱公司紀錄或要求提供文本或副本須繳付的費用。
- (i) 上述 (b), (c), (d) 及 (e) 段之規定均適用於非香港公司。

5.17 擬議規例擬稿載於附件 5 (只附有英文版)，以徵詢意見。

第六章

《公司(章程細則範本)公告》

現行規定

- 6.1 公司如根據現行《公司條例》在香港成立為法團，便須備有一套規則，即*組織章程細則(章程細則)*，以規管公司的內部管理事宜(現行《公司條例》第 9 和 11 條)。股東的權利主要源自章程細則，當中所載的合約條款管限各股東及股東與公司之間的關係，對公司每名成員也具約束力。
- 6.2 現行《公司條例》載有標準組織章程細則；若公司沒有特別章程細則明確地排除或修改法定範本，該範本則適用於該公司。這些章程細則載於現行《公司條例》附表 1：
- (a) A 表訂明股份有限公司的標準章程細則。第一部分載有適用於非私人公司的股份有限公司的規定，而第二部分則適用於私人股份有限公司；
 - (b) C 表及 D 表分別訂明無股本及有股本¹⁸的擔保有限公司組織章程細則的標準格式；以及
 - (c) E 表訂明有股本的無限公司的標準章程細則。

新《公司條例》的規定

- 6.3 新《公司條例》第 3 部第 2 分部訂明與章程細則有關的事宜。根據條文，公司仍須備有以中文或英文印刷的章程細則，並分成順序編號的段落，以訂明公司的規例。在新《公司條例》下，組織章程大綱現予廢除，以往涵蓋的內容改為載於章程細則。現存公司的章程大綱將會被認為是其章程細則。根據新《公司條

¹⁸ 自二零零四年起，法例禁止公司成立為有股本的擔保有限公司。

例》成立的公司以往任何需要在章程大綱列明的條文，現會在細則中列明¹⁹。

- 6.4 新《公司條例》第 78 條賦權財政司司長為公司訂明章程細則範本。公司可採納範本的任何或全部條文，作為章程細則。第 80 條闡明，在有限公司成立為法團時，只要該公司的章程細則沒有排除或修改章程細則範本，則為該公司所屬公司類別而訂明並在當其時有效的章程細則範本，在適用範圍內，構成該公司的章程細則的一部分。

擬議章程細則範本

概要及草擬方式的改動

- 6.5 我們擬為下列三類公司分別訂明章程細則範本：

- (a) 公眾股份有限公司；
- (b) 私人股份有限公司；以及
- (c) 擔保有限公司。

- 6.6 章程細則範本會以附表形式載於名為《公司(章程細則範本)公告》(公告)的擬議附屬法例。與現行《公司條例》的列表比較，上列(a)項的擬議章程細則範本的涵蓋範圍和 A 表類近，惟編排和草擬方式將更清晰。上列(b)項的擬議章程細則範本為(a)項的簡短版，而(c)項則是由(b)項改寫而成。

- 6.7 擬議章程細則範本的編排會大幅改動，不但條理更為清晰，而且易於參照。關乎同類事宜的章程細則會按數個大標題歸類並排，所涵蓋的課題依次為：

- (a) 董事及公司秘書，特別是董事如何作出決定；
- (b) 成員權利及成員大會議事程序；

¹⁹ 新《公司條例》第 81 至 85 條指明有關強制性條文。

(c) 股份及分派(不適用於擔保有限公司的章程細則範本); 以及

(d) 雜項事宜，包括公司與外間的通訊。

6.8 就草擬方式而言，每條細則均設有標題，而在可行的範圍內，會分段列出，方便閱讀。

附表 1 — 公眾股份有限公司

6.9 公眾股份有限公司的章程細則範本是最為詳盡的。與現行《公司條例》A 表比較，這套範本的主要改動於下文各段概述。

6.10 關於董事和他們如何作出決定，擬議章程細則範本會載有以下各項新規定或改動：

(a) *召開董事會議*：更改召開董事會議的程序，以及在什麼情況下董事會被當作參與會議，這是為了特別配合借助通訊科技，分散在不同地方舉行會議的安排。有關規定也適用於成員大會(第 7 及 8 條)；

(b) *法定人數*：法定人數會仍然預設為 2 人，我們建議董事不可將法定人數指定為 2 人以下(第 9 條)；

(c) *利益衝突*：數項改動如下 —

(i) 擴大董事所須申報利害關係的範圍，除了合約和建議訂立的合約外，也與新《公司條例》第 536 條一樣，包括董事在當中具有相當分量利害關係的交易和安排，以及建議訂立的交易和安排(第 15(1)條)；

(ii) 根據 A 表第 86(2)條的規定，董事一般不得就有利益衝突的事宜表決。董事若訂立有關認購或包銷公司股份或債權證的合約，或與其他公司訂立合約或安排，而他在當中具有利害關係只因他是公司的高級人員或公司股份或其他證券的持有人，在 A 表下則會獲得豁免，可就有關合約或安排表決。我們建議不予保留這些

豁免，以禁止董事就這些事宜表決(第 15(3)條)；

(iii) 另一方面，我們建議准許董事就為僱員和董事(包括前董事)的利益而訂立的安排表決，但有關安排不得對董事較為有利(第 15(3)(c)條)；

(iv) 章程細則會指明，擔任會議主席的董事在不能參與決策過程的情況下(例如出現利益衝突)，就無權投決定票(第 13 條)；

(d) *董事的書面決議*：闡述與董事提出書面決議有關的事宜(第 16 條)；

(e) *董事另訂規則*：訂明董事可就如何集體作出決定訂立規則(第 21 條)；

(f) *董事的委任與輪換*：改動包括 —

(i) 加入細則，訂明根據新《公司條例》第 613 條在公司免除舉行周年成員大會的情況下，有關董事的輪換與退任的規定(第 22 及 31 條)；

(ii) 對於如何處理有關委任多名董事的綜合決議，章程細則範本現有所規定(第 24 條)；

(iii) 送交與董事的委任建議有關的通知，時限修訂為會議日期前最少七日(A 表則規定在 3 至 21 日內)(第 23(10)條)；

(g) *候補董事*：加入細則，訂明有關候補董事的委任、罷免和免任的規定及他們的權責(第 28 至 30 條)；

(h) *董事的開支*：A 表現時規定只有出席會議的開支可獲發還。現建議擴大可獲發還開支的範圍，以包括董事在行使關乎公司的權力或履行職責的情況下所招致的開支(第 27 條)；以及

- (i) *保險及彌償*：新《公司條例》第 468 及 469 條的相關規定載於章程細則範本，使內容更詳盡完整(第 33 至 34 條)。

6.11 與 A 表比較，有關成員在成員大會上作出決定的主要改動包括：

- (a) *成員大會的通知*：有關通知內容及送交時限的規定已予修訂，與新《公司條例》所訂者一致(第 37 條)；
- (b) *非成員出席成員大會*：如成員大會的主席批准，並非成員的人或其他可行使有關成員大會的權利的成員，可出席大會並在會上發言。這個建議的其中一個原因是由於董事並非一定是公司股東，故不會自動享有出席成員大會和發言的權利(第 43 條)；
- (c) *投票*：訂明可在成員大會召開前要求投票表決(第 47(1)條)；
- (d) *代表*：闡述有關委任和撤銷代表的安排、相關安排的效力和有效性，以及相關通知的交付事宜(第 51 至 55 條)；
- (e) *修訂建議的決議*：加入細則，訂明決議可予修訂及提出修訂的方式(第 56 條)；以及
- (f) *某類別成員的會議*：經修訂後，關乎成員大會的細則也適用於某類別成員的會議(第 58 條)。

6.12 關於公司股份的細則，大致上沿用 A 表的規定，但作出一些修訂，例如：

- (a) *收費*：成員有權免費獲發股份證明書和轉讓股份證明書，無須支付小額費用五元(第 62 及 79 條)；
- (b) *部分已繳股款的股份*：闡述催繳股款通知可訂明的事宜、沒收股份的效力，以及沒收股份後的程序(第 68、75 及 76 條)；

- (c) *交出股份*：加入關於交出股份的細則；若用以代替催繳股款，可簡化解決程序(第 77 條)；以及
- (d) *轉讓和傳轉股份*：公司如拒絕登記轉讓文書，除非懷疑事涉欺詐，否則須把文書(連同拒絕通知)退還。關於董事拒絕股份轉讓的條文，也會作更改以反映新《公司條例》的條文。就傳轉的股份而言，如有關成員曾獲發關於該等股份的通知，則獲傳轉股份的人也須受先前的通知所約束(第 79 及 86 條)。

6.13 關於股本、股息及分派的細則，主要改動如下：

- (a) *股息的支付及分派*：透過銀行轉帳付款的方法在本章程細則範本中訂明(第 91 條)；
- (b) *就欠款所作的扣減*：大幅改善 A 表第 120 條，訂明公司如對成員強制執行留置權，則應如何從向其分派的股息或公司股份有關的其他原因而應於現時繳付予公司的款項中作出扣減(第 92 條)；
- (c) *利息*：A 表第 123 條訂明，股息不產生利息。這項規定現予放寬，容許公司無須支付利息，在發行股份的條款或任何股東協議中另作規定除外(第 93 條)；
- (d) *無人領取的分派及放棄分派*：訂明細則，處理無人領取的股息和分派及成員放棄權利的事宜(第 94 及 96 條)；
- (e) *利潤資本化*：A 表現時准許公司透過發行新股把利潤資本化。跟新《公司條例》第 170 條一樣，章程細則範本中訂明，容許公司在無須發行新股的情況下把利潤資本化(第 97 條)；以及
- (f) *無面值股份制度*：多條條文已予修訂，以反映在新《公司條例》下廢除股份面值的安排。

6.14 此外，關於公司與外間的通訊的細則已予修訂，與新《公司條例》的一般原則一致。另一方面，章程細則

範本不會載述 A 表有關帳目及審計的細則，因為有關規定已在新《公司條例》第 9 部中列明。

附表 2 — 私人股份有限公司

- 6.15 私人股份有限公司的章程細則範本簡短得多，反映小型公司的運作模式。具體而言，與候補董事、書面決議處理程序、董事輪換卸任、常務董事及部分已繳股款股份有關的一些細則會略去。
- 6.16 有些細則取材自公眾股份有限公司的章程細則範本，除適當的修訂和修改外，內容大致相同。修訂例子包括就公司只有一名董事的情況訂定條文，而法例是禁止公眾公司只有一名董事的。

附表 3 — 擔保有限公司

- 6.17 現時，C 表只訂明擔保有限公司組織章程大綱及章程細則的格式，而擬議公告則會就這類公司制訂完備的章程細則範本。不過，由於香港的擔保有限公司以中小型居多，這套範本會力求簡潔。
- 6.18 就有關董事和成員大會的內容而言，擔保有限公司的章程細則範本與私人股份有限公司的範本相近。
- 6.19 這套範本的獨特之處，在於第 26 及 27 條就擔保有限公司接納某人為成員和終止某人的成員資格訂定條文。

公告詳情

- 6.20 擬議公告包括以下三個附表：
- (a) 附表 1 訂明公眾股份有限公司的章程細則範本；
 - (b) 附表 2 訂明私人股份有限公司的章程細則範本；以及
 - (c) 附表 3 訂明擔保有限公司的章程細則範本。

- 6.21 就上述附表而言，第 1 部訂明詞語和詞句的釋義。第 2 部載有關於董事和公司秘書的細則。第 3 部載有關於成員如何作出決定(特別是在成員大會上)的細則。關於附表 1 及 2，第 4 部列明與股份和分派有關的安排，第 5 部載有雜項細則。附表 3 沒有關於股份和分派的細則，而雜項細則改為載於第 4 部。
- 6.22 擬議附表 1、2 及 3 的擬稿載於附件 6A、6B 及 6C (只附有英文版)，以徵詢意見。

第七章

《公司(會計準則(訂明團體))規例》

現行規定

- 7.1 根據現行《公司條例》，公司帳目必須符合附表 10 的規定，披露當中詳列的項目。公司如依據第 141D 條擬備簡明帳目，則附表 11 所載的披露規定適用於其資產負債表。行政長官會同行政會議可不時修訂該兩個附表。
- 7.2 公司帳目也須符合香港會計師公會(公會)所發出的報告準則²⁰，即《香港財務報告準則》、《私營企業香港財務報告準則》或《中小企財務報告準則》。

新《公司條例》的規定

- 7.3 由於會計實務和規定因應國際發展而不斷改變，我們會在新《公司條例》的制度下，精簡適用於財務報表的披露規定。具體而言，為免現行《公司條例》附表 10 與《香港財務報告準則》(及現行《公司條例》附表 11 與《中小企財務報告準則》)可能出現抵觸，這兩個附表會予廢除，而公會所發出的報告準則，則會藉新《公司條例》第 380(4)(b)及 380(8)條間接獲得法定認可。條文訂明，公司的財務報表必須符合由附屬法例所訂明的團體(即香港會計師公會)發出或指明的適用標準會計實務說明(會計準則)。這樣，我們便無須在法例中詳列關於財務報表的披露規定。

²⁰ 現行《公司條例》並無訂明公司須按照會計準則擬備帳目。不過，根據《專業會計師條例》(第 50 章)的規定，會計師(包括核數師)須遵守公會所訂的專業標準。該條例第 18A 條規定，香港的會計及核數準則由公會理事會負責頒布。

- 7.4 新《公司條例》附表 4 又規定，公司須在財務報表中述明報表是否已按照適用的會計準則擬備；如與這些準則有事關重要的偏離，便須交代詳情及原因²¹。

擬議附屬法例

- 7.5 根據第 452(1)條，我們建議訂立名為《公司(會計準則(訂明團體))規例》(規例)的附屬法例，訂明香港會計師公會是負責發出或指明會計準則的團體。

規例詳情

- 7.6 擬議規例包括兩條條文。第 1 條訂明，規例會與新《公司條例》同日生效。第 2 條訂明，香港會計師公會是新《公司條例》第 380(8)(a)條所指的團體，意即財務報表必須符合公會所發出或指明的會計準則。

²¹ 附表 4 也保留少數涉及公眾利益的披露規定，這些規定來自現行《公司條例》附表 10 第 9(1)(c)和 15 段及附表 11 第 5 段。

Annexes

附件

Annex 1

**Companies (Summary Financial
Reports) Regulation**

Companies (Summary Financial Reports) Regulation

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Companies (Summary Financial Reports) Regulation

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

Part 1

Preliminary

1. Commencement

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

2. Interpretation

(1) In this Regulation—

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

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

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

directors' report (董事報告) means—

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

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

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

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

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

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

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

Part 2

Summary Financial Report

3. Form and contents of summary financial report: general

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

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

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

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

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

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

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

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

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

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

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

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

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

Part 3

Notification and Notice of Intent, etc.

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

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

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

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

(7) In this section—

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

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

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

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

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

(3) In this section—

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

9. Company may include other information in notification

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

10. Notification attached with card or document

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

11. Postage

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

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

Secretary for Financial Services and
the Treasury

2012

Annex 2

**Companies (Directors' Report)
Regulation**

Companies (Directors' Report) Regulation

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Companies (Directors' Report) Regulation

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

1. Commencement

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

2. Interpretation

(1) In this Regulation—

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

directors' report (董事報告) means—

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

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

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

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

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

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

3. Directors' interests

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

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

4. Donations

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

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

5. Shares issued

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

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

6. Equity-linked agreements

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

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

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

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

7. Recommended dividend

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

8. Reasons for resignation etc.

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

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

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

9. Permitted indemnity provision

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

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

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

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

Secretary for Financial Services and
the Treasury

2012

Annex 3

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

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

chamber of commerce

kaifong

levy

savings

tourism board

tourist association

trust

trustee

受託

受託人

信託

旅遊協會

旅遊發展局

商會

街坊

徵費

儲蓄

總商會

Annex 4

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

Companies (Non-Hong Kong Companies) Regulation

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Companies (Non-Hong Kong Companies) Regulation

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

Part 1

Preliminary

1. Commencement

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

2. Interpretation

In this Regulation—

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

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

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

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

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

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

Part 2

Particulars and Documents Required for Application for Registration

3. Particulars to be contained in application for registration

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

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

- (b) the date on which the authorized representative was authorized; and
 - (c) if the authorized representative is a natural person, the number of the identity card (if any), or if the authorized representative does not have an identity card, the number and issuing country of any passport held by the representative.
- (3) For the purposes of subsection (1)(e), if all the partners in a firm are joint company secretaries of a non-Hong Kong company, the name and principal office of the firm may be substituted for the particulars mentioned in that subsection.
- (4) In this section—
- forename* (名字) includes a Christian or given name;
- residential address* (住址)—
- (a) does not include an address at a hotel unless the person to whom it relates is stated, for the purposes of this section, to have no other permanent address; and
 - (b) does not include a post office box number;
- surname* (姓氏), for a person usually known by a title different from the person's surname, means that title.
- (5) For the purposes of this section, a correspondence address must not be a post office box number.
- (6) In this section, a reference to a former forename or surname is to be construed in accordance with sections 643(6) and 650(5) of the Ordinance.

4. Documents to accompany application for registration

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

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

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

Part 3

Certified Translation of Domestic Name

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

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

Part 4

Notice of Termination of Authorized Representative

6. Documents to accompany notice of termination

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

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

Part 5

Particulars and Documents Required in respect of Annual Return

7. Particulars to be contained in annual return

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

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

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

Part 6

Revision of Accounts under Section 790 of the Ordinance

8. Interpretation

(1) In this Part—

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

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

revised accounts (經修改帳目) means—

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

(2) In this Part—

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

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

9. Company to deliver revised accounts to Registrar

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

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

and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

- (5) If a person is convicted of an offence under subsection (4), the magistrate may, in addition to any penalty that may be imposed, order that the person must, within a time specified in the order, do the act that the person has failed to do.
- (6) A person who contravenes an order under subsection (5) commits an offence and is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

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

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

Part 7

Change of Registered Particulars

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

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

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

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

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

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

Secretary for Financial Services and
the Treasury

2012

Annex 5

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

Company Records (Inspection and Provision of Copies) Regulation

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Company Records (Inspection and Provision of Copies) Regulation

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

Part 1

Preliminary

1. Commencement

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

2. Interpretation

In this Regulation—

company records (公司紀錄)—

(a) in Parts 2 and 3—

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

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

(b) in Part 4, means—

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

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

Part 2

Place for Keeping Company Records

3. Place for keeping company records

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

Part 3

Inspection of Company Records

4. Interpretation

In this Part—

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

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

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

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

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

5. Notice of inspection

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

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

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

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

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

6. Notice period for inspection

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

7. Making company records available for inspection

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

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

Note—

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

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

8. Providing information on inspection of company records

- (1) When a person inspects any company records kept by a company under section 308, 627, 630, 641 or 648 of the Ordinance, the company must inform the person of the most recent date (if any) on which alterations were made to those records.
- (2) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

9. Making copy of company records during inspection

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

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

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

11. Inspection fees

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

Part 4

Provision of Copy Company Records by Company

12. Interpretation

In this Part—

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

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

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

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

13. Provision of copy company records

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

Note—

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

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

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

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

- (5) If a company contravenes subsection (3) or (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.
- (6) If subsection (3) or (4) is contravened, the Court may, on application by the person who made the requirement, by order direct the company to provide the person with a copy, in electronic form or in hard copy form as requested by the person, of the whole or any part of the company records.

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

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

16. Fees for provision of copy

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

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

Part 5

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

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

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

[ss. 7, 11, 13
& 16]

Fees

Part 1

Fees Payable for Inspection of Company Records

Division 1

Fees Payable to Company

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

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

Division 2

Fees Payable to Registered Non-Hong Kong Company

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

Part 2

Fees Payable to Company for Copy Company Records

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

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

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

Secretary for Financial Services and
the Treasury

2012

Annex 6

Companies (Model Articles) Notice

Companies (Model Articles) Notice

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

1. Commencement

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

2. Model Articles for public companies limited by shares

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

3. Model Articles for private companies limited by shares

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

4. Model Articles for companies limited by guarantee

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

5. Saving

This Notice does not affect—

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

-
- (c) Table A in the First Schedule to the predecessor Ordinance, so far as it applies to any existing company; and
 - (d) the articles of any existing company limited by guarantee, whether or not the existing company has a share capital.
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Schedule 1

[s. 2]

Model Articles for Public Companies Limited by Shares**Contents**

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Part 1

Interpretation

1. Interpretation

(1) In the articles—

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

appointor ()—see article 28(1);

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

associated company () means—

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

call ()—see article 68(1);

call notice ()—see article 68(1);

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

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

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

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

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

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

paid () means paid or credited as paid;

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

proxy notice ()—see article 51;

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

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

Part 2

Directors and Company Secretary

Division 1—Directors’ Powers and Responsibilities

2. Directors’ general authority

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

3. Members’ reserve power

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

4. Directors may delegate

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

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

5. Committees

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

Division 2—Decision-making by Directors

6. Directors to take decision collectively

A decision of the directors may be taken—

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

7. Calling directors' meeting

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

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

8. Participation in directors' meetings

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

9. Quorum for directors' meetings

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

10. Meetings where total number of directors less than quorum

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

11. Chairing of directors' meeting

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

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

12. Voting at directors' meeting: general rules

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

13. Chairperson's casting vote at directors' meetings

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

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

14. Alternates voting at directors' meetings

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

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

15. Conflicts of interest

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

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

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

16. Proposing directors' written resolutions

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

adopting that resolution must be taken reasonably in good faith.

17. Adoption of directors' written resolutions

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

18. Effect of directors' written resolutions

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

19. Validity of acts of meeting of directors

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

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

20. Record of decisions to be kept

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

21. Directors' discretion to make further rules

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

Division 3—Appointment of Directors

22. Appointment and retirement of directors

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

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

23. Retirement of directors by rotation

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

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

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

24. Composite resolution

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

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

25. Termination of director’s appointment

A person ceases to be a director if the person—

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

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

26. Directors' remuneration

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

27. Directors' expenses

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

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

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

Division 4—Alternate Directors

28. Appointment and removal of alternates

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

29. Rights and responsibilities of alternate directors

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

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

30. Termination of alternate directorship

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

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

Division 5—Managing Directors

31. Appointment of managing directors and termination of appointment

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

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

32. Powers of managing directors

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

Division 6—Directors' Indemnity and Insurance

33. Indemnity

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

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

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

34. Insurance

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

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

Division 7—Company Secretary

35. Appointment and removal of company secretary

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

Part 3

Decision-making by Members

Division 1—Organization of General Meetings

36. General meeting

- (1) Subject to sections 611, 612 and 613 of the Ordinance, the company must, in respect of each financial year of the company, hold a general meeting as its annual general meeting in accordance with section 610 of the Ordinance.
- (2) The directors may, if they think fit, call a general meeting.
- (3) If the directors are required to call a general meeting under section 566 of the Ordinance, they must call it in accordance with section 567 of the Ordinance.
- (4) If the directors do not call a general meeting in accordance with section 567 of the Ordinance, the members who requested the meeting, or any of them representing more than one half of the total voting rights of all of them, may themselves call a general meeting.

37. Notice of general meetings

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

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

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

38. Persons entitled to receive notice of general meeting

- (1) Notice of a general meeting must be given to—
 - (a) every member; and
 - (b) every director.
- (2) In paragraph (1), the reference to a member includes a transmittee, if the company has been notified of the transmittee's entitlement to a share.
- (3) If notice of a general meeting or any other document relating to the general meeting is required to be given to a member, the company must give a copy of it to its auditor (if more than one auditor, to everyone of them) at the same time as the notice or the other document is given to the member.

39. Accidental failure to give notice of general meeting

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

40. Attendance and speaking at general meetings

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

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

41. Quorum for general meetings

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

42. Chairing general meetings

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

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

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

43. Attendance and speaking by non-members

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

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

to attend and speak at a general meeting.

44. Adjournment

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

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

Division 2—Voting at General Meetings

45. General rules on voting

- (1) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles.
- (2) If there is an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded, is entitled to a second or casting vote.
- (3) On a vote on a resolution on a show of hands at a general meeting, a declaration by the chairperson that the resolution—
 - (a) has or has not been passed; or
 - (b) passed by a particular majority,

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

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

46. Errors and disputes

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

47. Demanding a poll

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

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

48. Number of votes a member has

- (1) On a vote on a resolution on a show of hands at a general meeting—
 - (a) every member present in person has one vote; and
 - (b) every proxy present who has been duly appointed by a member entitled to vote on the resolution has one vote.
- (2) If a member appoints more than one proxy, the proxies so appointed are not entitled to vote on the resolution on a show of hands.
- (3) On a vote on a resolution on a poll taken at a general meeting—
 - (a) every member present in person has one vote for each share held by him or her; and
 - (b) every proxy present who has been duly appointed by a member has one vote for each share held by that member.
- (4) This article has effect subject to any rights or restrictions attached to any shares or class of shares.

49. Votes of joint holders of shares

- (1) In the case of joint holders of shares, only the vote of the most senior holder who votes (and any proxies duly authorized by the holder) may be counted.
- (2) For the purposes of this article, the seniority of a holder of a share is determined by the order in which the names of the joint holders appear in the register of members of the company.

50. Votes of mentally incapacitated members

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

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

51. Content of proxy notices

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

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

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

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

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

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

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

54. Effect of member’s voting in person on proxy’s authority

- (1) A proxy’s authority in relation to a resolution is to be regarded as revoked if the member who has appointed the proxy—
 - (a) attends in person the general meeting at which the resolution is to be decided; and
 - (b) exercises, in relation to that resolution, the voting right attached to the shares in respect of which the proxy is appointed.
- (2) A member who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that member.

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

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

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

56. Amendments to proposed resolutions

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

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

Division 3—Restrictions on Members’ Rights

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

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

Division 4—Application of Rules to Class Meetings

58. Class meetings

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

Part 4

Shares and Distributions

Division 1—Issue of Shares

59. Powers to issue different classes of shares

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

60. Payment of commissions on subscription for shares

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

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

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

Division 2—Interests in Shares

61. Company not bound by less than absolute interests

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

Division 3—Shares Certificates

62. Certificates to be issued except in certain cases

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

63. Contents and execution of share certificates

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

64. Consolidated share certificates

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

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

65. Replacement share certificates

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

Division 4—Partly Paid Shares

66. Company's lien over partly paid shares

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

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

67. Enforcement of company's lien

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

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

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

68. Call notices

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

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

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

69. When call deemed to be made

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

70. Liability to pay calls

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

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

71. When call notice need not be issued

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

72. Failure to comply with call notice: automatic consequences

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

73. Notice of intended forfeiture

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

74. Directors' power to forfeit shares

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

75. Effect of forfeiture

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

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

76. Procedure following forfeiture

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

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

77. Surrender of shares

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

Division 5—Transfer and Transmission of Shares

78. Transfers of shares

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

79. Power of directors to refuse transfer of shares

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

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

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

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

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

81. Transmission of shares

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

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

82. Transmittees' rights

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

83. Exercise of transmitters' rights

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

84. Transmitters bound by prior notices

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

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

85. Alteration of share capital

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

86. Reduction of share capital

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

87. Share buy-backs

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

88. Allotment of shares

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

Division 7—Distributions

89. Procedure for declaring dividends

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

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

90. Calculation of dividends

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

91. Payment of dividends and other distributions

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

- (2) In this article—

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

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

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

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

93. No interest on distributions

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

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

94. Unclaimed distributions

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

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

95. Non-cash distributions

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

96. Waiver of distributions

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

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

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

Division 8—Capitalization of Profits

97. Capitalization of profits

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

Part 5

Miscellaneous Provisions

Division 1—Communications to and by Company

98. Means of communication to be used

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

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

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

99. Failure to notify contact details

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

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

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

Division 2—Administrative Arrangements

100. Company seals

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

101. No right to inspect accounts and other records

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

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

102. Auditor's insurance

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

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

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

103. Winding up

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

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

[s. 3]

Model Articles for Private Companies Limited by Shares**Contents**

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Part 1

Interpretation

1. Interpretation

(1) In the articles—

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

associated company () means—

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

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

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

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

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

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

paid () means paid or credited as paid;

proxy notice ()—see article 43;

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

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

Part 2

Private Company

2. Company is private company

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

member () excludes—

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

Part 3

Directors and Company Secretary

Division 1—Directors’ Powers and Responsibilities

3. Directors’ general authority

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

4. Members’ reserve power

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

5. Directors may delegate

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

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

6. Committees

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

Division 2—Decision-making by Directors

7. Directors to take decision collectively

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

8. Unanimous decisions

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

9. Calling directors' meeting

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

10. Participation in directors' meetings

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

11. Quorum for directors' meetings

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

12. Meetings where total number of directors less than quorum

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

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

13. Chairing of directors' meeting

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

14. Chairperson's casting vote at directors' meetings

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

15. Conflicts of interest

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

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

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

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

16. Validity of acts of meeting of directors

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

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

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

17. Record of decisions to be kept

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

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

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

19. Directors' discretion to make further rules

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

Division 3—Appointment of Directors

20. Appointment and retirement of directors

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

21. Composite resolution

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

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

22. Termination of director's appointment

A person ceases to be a director if the person—

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

23. Directors' remuneration

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

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

24. Directors' expenses

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

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

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

Division 4—Directors' Indemnity and Insurance

25. Indemnity

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

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

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

26. Insurance

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

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

Division 5—Company Secretary

27. Appointment and removal of company secretary

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

Part 4

Decision-making by Members

Division 1—Organization of General Meetings

28. General meeting

- (1) Subject to sections 611, 612 and 613 of the Ordinance, the company must, in respect of each financial year of the company, hold a general meeting as its annual general meeting in accordance with section 610 of the Ordinance.
- (2) The directors may, if they think fit, call a general meeting.
- (3) If the directors are required to call a general meeting under section 566 of the Ordinance, they must call it in accordance with section 567 of the Ordinance.
- (4) If the directors do not call a general meeting in accordance with section 567 of the Ordinance, the members who requested the meeting, or any of them representing more than one half of the total voting rights of all of them, may themselves call a general meeting.

29. Notice of general meetings

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

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

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

30. Persons entitled to receive notice of general meeting

- (1) Notice of a general meeting must be given to—
 - (a) every member; and
 - (b) every director.
- (2) In paragraph (1), the reference to a member includes a transmittee, if the company has been notified of the transmittee's entitlement to a share.
- (3) If notice of a general meeting or any other document relating to the general meeting is required to be given to a member, the company must give a copy of it to its auditor (if more than one auditor, to everyone of them) at the same time as the notice or the other document is given to the member.

31. Accidental failure to give notice of general meeting

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

32. Attendance and speaking at general meetings

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

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

33. Quorum for general meetings

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

34. Chairing general meetings

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

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

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

35. Attendance and speaking by non-members

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

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

to attend and speak at a general meeting.

36. Adjournment

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

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

Division 2—Voting at General Meetings

37. General rules on voting

- (1) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles.
- (2) If there is an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded, is entitled to a second or casting vote.
- (3) On a vote on a resolution on a show of hands at a general meeting, a declaration by the chairperson that the resolution—
 - (a) has or has not been passed; or
 - (b) passed by a particular majority,

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

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

38. Errors and disputes

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

39. Demanding a poll

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

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

40. Number of votes a member has

- (1) On a vote on a resolution on a show of hands at a general meeting—
- (a) every member present in person has one vote; and
 - (b) every proxy present who has been duly appointed by a member entitled to vote on the resolution has one vote.
- (2) If a member appoints more than one proxy, the proxies so appointed are not entitled to vote on the resolution on a show of hands.
- (3) On a vote on a resolution on a poll taken at a general meeting—
- (a) every member present in person has one vote for each share held by him or her; and
 - (b) every proxy present who has been duly appointed by a member has one vote for each share held by that member.
- (4) This article has effect subject to any rights or restrictions attached to any shares or class of shares.

41. Votes of joint holders of shares

- (1) In the case of joint holders of shares, only the vote of the most senior holder who votes (and any proxies duly authorized by the holder) may be counted.
- (2) For the purposes of this article, the seniority of a holder of a share is determined by the order in which the names of the joint holders appear in the register of members of the company.

42. Votes of mentally incapacitated members

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

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

43. Content of proxy notices

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

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

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

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

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

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

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

46. Effect of member's voting in person on proxy's authority

- (1) A proxy's authority in relation to a resolution is to be regarded as revoked if the member who has appointed the proxy—
 - (a) attends in person the general meeting at which the resolution is to be decided; and
 - (b) exercises, in relation to that resolution, the voting right attached to the shares in respect of which the proxy is appointed.
- (2) A member who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that member.

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

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

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

48. Amendments to proposed resolutions

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

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

Division 3—Application of Rules to Class Meetings

49. Class meetings

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

Part 5

Shares and Distributions

Division 1—Issue of Shares

50. All shares to be fully paid up

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

51. Powers to issue different classes of shares

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

Division 2—Interests in Shares

52. Company not bound by less than absolute interests

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

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

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

Division 3—Shares Certificates

53. Certificates to be issued except in certain cases

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

54. Contents and execution of share certificates

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

55. Consolidated share certificates

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

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

56. Replacement share certificates

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

Division 4—Transfer and Transmission of Shares

57. Transfers of shares

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

58. Power of directors to refuse transfer of shares

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

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

59. Transmission of shares

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

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

60. Transmittees' rights

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

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

61. Exercise of transmittees' rights

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

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

62. Transmittees bound by prior notices

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

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

63. Alteration of share capital

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

64. Reduction of share capital

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

65. Share buy-backs

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

66. Allotment of shares

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

Division 6—Distributions

67. Procedure for declaring dividends

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

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

68. Payment of dividends and other distributions

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

69. No interest on distributions

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

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

70. Unclaimed distributions

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

71. Non-cash distributions

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

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

72. Waiver of distributions

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

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

Division 7—Capitalization of Profits

73. Capitalization of profits

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

Part 6

Miscellaneous Provisions

Division 1—Communications to and by Company

74. Means of communication to be used

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

Division 2—Administrative Arrangements

75. Company seals

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

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

76. No right to inspect accounts and other records

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

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

77. Auditor's insurance

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

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

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

78. Winding up

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

[s. 4]

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Part 1

Interpretation

1. Interpretation

- (1) In the articles—

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

associated company () means—

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

proxy notice ()—see article 42;

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

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

Part 2

Directors and Company Secretary

Division 1—Directors’ Powers and Responsibilities

2. Directors’ general authority

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

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

3. Members' reserve power

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

4. Directors may delegate

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

5. Committees

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

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

Division 2—Decision-making by Directors

6. Directors to take decisions collectively

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

7. Unanimous decisions

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

8. Calling directors' meeting

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

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

9. Participation in directors' meetings

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

10. Quorum for directors' meetings

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

11. Meetings where total number of directors less than quorum

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

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

12. Chairing of directors' meeting

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

13. Chairperson's casting vote at directors' meetings

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

14. Conflicts of interest

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

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

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

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

15. Validity of acts of meeting of directors

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

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

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

16. Record of decisions to be kept

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

17. Directors' discretion to make further rules

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

Division 3—Appointment of Directors

18. Appointment and retirement of directors

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

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

19. Composite resolution

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

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

20. Termination of director’s appointment

A person ceases to be a director if the person—

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

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

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

21. Directors' remuneration

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

22. Directors' expenses

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

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

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

Division 4—Directors' Indemnity and Insurance

23. Indemnity

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

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

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

24. Insurance

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

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

Division 5—Company Secretary

25. Appointment and removal of company secretary

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

Part 3

Members

Division 1—Becoming and Ceasing to be Member

26. Application for membership

A person may become a member of the company only if—

- (a) that person has completed an application for membership in a form approved by the directors; and
- (b) the directors have approved the application.

27. Termination of membership

- (1) A member may withdraw from membership of the company by giving 7 days' notice to the company in writing.
- (2) Membership is not transferable.
- (3) A person's membership terminates when that person dies or ceases to exist.

Division 2—Organization of General Meetings

28. General meeting

- (1) Subject to sections 611, 612 and 613 of the Ordinance, the company must, in respect of each financial year of the company, hold a general meeting as its annual general meeting in accordance with section 610 of the Ordinance.
- (2) The directors may, if they think fit, call a general meeting.
- (3) If the directors are required to call a general meeting under section 566 of the Ordinance, they must call it in accordance with section 567 of the Ordinance.
- (4) If the directors do not call a general meeting in accordance with section 567 of the Ordinance, the members who requested the meeting, or any of them representing more than one half of the total voting rights of all of them, may themselves call a general meeting.

29. Notice of general meetings

- (1) An annual general meeting must be called by notice of at least 21 days in writing.

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- (2) A general meeting of the company other than an annual general meeting must be called by notice of at least 14 days in writing.
 - (3) The notice is exclusive of the day on which it is served or deemed to be served and of the day for which it is given.
 - (4) The notice must—
 - (a) specify the date and time of the meeting;
 - (b) specify the place of the meeting (and if the meeting is to be held in 2 or more places, the principal place of the meeting and the other place or places of the meeting);
 - (c) state the general nature of the business to be dealt with at the meeting;
 - (d) in the case of a notice calling an annual general meeting, state that the meeting is an annual general meeting;
 - (e) if a resolution (whether or not a special resolution) is intended to be moved at the meeting—
 - (i) include notice of the resolution; and
 - (ii) include or is accompanied by a statement containing the information and explanation, if any, that is reasonably necessary to indicate the purpose of the resolution;
 - (f) if a special resolution is intended to be moved at the meeting, specify the intention and include the text of the special resolution; and
 - (g) contain a statement specifying a member's right to appoint a proxy under section 596(1) and (3) of the Ordinance.
 - (5) Despite the fact that a general meeting of the company is called by shorter notice than that specified in this article, it is regarded as having been duly called if it is so agreed—

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

30. Persons entitled to receive notice of general meeting

- (1) Notice of a general meeting must be given to—
 - (a) every member; and
 - (b) every director.
- (2) If notice of a general meeting or any other document relating to the general meeting is required to be given to a member, the company must give a copy of it to its auditor (if more than one auditor, to everyone of them) at the same time as the notice or the other document is given to the member.

31. Accidental failure to give notice of general meeting

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

32. Attendance and speaking at general meetings

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

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

33. Quorum for general meetings

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

34. Chairing general meetings

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

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

35. Attendance and speaking by non-members

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

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

to attend and speak at a general meeting.

36. Adjournment

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

the meeting or ensure that the business of the meeting is conducted in an orderly manner.

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

Division 3—Voting at General Meetings

37. General rules on voting

- (1) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles.
- (2) If there is an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded, is entitled to a second or casting vote.
- (3) On a vote on a resolution on a show of hands at a general meeting, a declaration by the chairperson that the resolution—
 - (a) has or has not been passed; or
 - (b) passed by a particular majority,

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

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

38. Errors and disputes

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

39. Demanding a poll

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

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

40. Number of votes a member has

- (1) On a vote on a resolution on a show of hands at a general meeting—
- (a) every member present in person has one vote; and
 - (b) every proxy present who has been duly appointed by a member entitled to vote on the resolution has one vote.
- (2) If a member appoints more than one proxy, the proxies so appointed are not entitled to vote on the resolution on a show of hands.
- (3) On a vote on a resolution on a poll taken at a general meeting—
- (a) every member present in person has one vote; and
 - (b) every proxy present who has been duly appointed by a member entitled to vote on the resolution has one vote.

41. Votes of mentally incapacitated members

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

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

42. Content of proxy notices

- (1) Proxies may only validly be appointed by a notice in writing (*proxy notice*) that—
 - (a) states the name and address of the member appointing the proxy;
 - (b) identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed;
 - (c) is authenticated, or is signed on behalf of the member appointing the proxy; and
 - (d) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.
- (2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- (3) If the company requires or allows a proxy notice to be delivered to it in electronic form, it may require the delivery to be properly protected by a security arrangement it specifies.
- (4) A proxy notice may specify how the proxy appointed under it is to vote (or that the proxy is to abstain from voting) on one or more resolutions dealing with any business to be transacted at a general meeting.
- (5) Unless a proxy notice indicates otherwise, it must be regarded as—
 - (a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and
 - (b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

43. Execution of appointment of proxy on behalf of member appointing the proxy

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

44. Delivery of proxy notice and notice revoking appointment of proxy

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

45. Effect of member’s voting in person on proxy’s authority

- (1) A proxy’s authority in relation to a resolution is to be regarded as revoked if the member who has appointed the proxy—
 - (a) attends in person the general meeting at which the resolution is to be decided; and
 - (b) exercises, in relation to that resolution, the voting right attached to the shares in respect of which the proxy is appointed.
- (2) A member who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that member.

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

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

(3) In this article—

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

47. Amendments to proposed resolutions

(1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—

(a) notice of the proposed amendment is given to the company secretary in writing by a person entitled to vote at the general meeting at which it is to be proposed at least 48 hours before the meeting is to take place (or a later time the chairperson of the meeting determines); and

(b) the proposed amendment does not, in the reasonable opinion of the chairperson of the meeting, materially alter the scope of the resolution.

(2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if—

(a) the chairperson of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and

(b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

(3) If the chairperson of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairperson's error does not invalidate the vote on that resolution unless the Court otherwise orders.

Part 4

Miscellaneous Provisions

Division 1—Communications to and by Company

48. Means of communication to be used

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

Division 2—Administrative Arrangements

49. Company seals

- (1) A common seal may only be used by the authority of the directors.
- (2) A common seal must be a metallic seal.
- (3) Subject to paragraph (2), the directors may decide by what means and in what form a common seal is to be used.

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

50. No right to inspect accounts and other records

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

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

51. Auditor's insurance

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

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

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

Financial Secretary

2013
