

文件的認證

36. 文件的認證

需要公司認證的文件或議事程序紀錄，可由公司的董事、秘書或其他獲授權的高級人員簽署，無須蓋上公司的法團印章。

[比照 1929 c. 23 s. 33 U.K.]

第 II 部

股本及債權證

招股章程

37. 招股章程日期的註明

由公司或代公司發出的招股章程須註明日期，而除非相反證明成立，否則該日期須視為該招股章程的刊登日期。

(由 1972 年第 78 號第 4 條修訂)

[比照 1929 c. 23 s. 34 U.K.]

38. 與招股章程細則有關的特別規定

(1) 除第 38A 條另有規定外，由公司或代公司發出的每份招股章程，必須以英文擬備及載有中文譯本或以中文擬備及載有英文譯本，並述明附表 3 第 I 部所指明的事項及列明該附表第 II 部所指明的報告，而上述第 I 及 II 部在符合該附表第 III 部所載條文的規定下具有效力。(由 1972 年第 78 號第 5 條代替。由 1995 年第 83 號第 5 條修訂)

(1A) 第 (1) 款適用的每份招股章程均必須載有附表 18 第 1 部指明的陳述。(由 1972 年第 78 號第 5 條增補。由 1995 年第 83 號第 5 條修訂；由 2004 年第 23 號第 56 條修訂；由 2004 年第 30 號第 2 條修訂)

(1B) 如發出的招股章程，不符合或是違反第 (1) 及 (1A) 款的規定，則有關公司及每名明知自己是發出招股章程其中一方的人，均可處罰款。(由 1972 年第 78 號第 5 條增補。由 1990 年第 7 號第 2 條修訂)

(2) 任何條件，如規定或約束公司的股份或債權證申請人免除有關人士遵從本條任何規定，或該條件本意是假作該等申請人知悉招股章程內沒有特別提述的任何合約、文件或事宜，均屬無效。

Authentication of Documents

36. Authentication of documents

A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorized officer of the company, and need not be under its common seal.

[cf. 1929 c. 23 s. 33 U.K.]

PART II

SHARE CAPITAL AND DEBENTURES

Prospectus

37. Dating of prospectus

A prospectus issued by or on behalf of a company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

(Amended 78 of 1972 s. 4)

[cf. 1929 c. 23 s. 34 U.K.]

38. Specific requirements as to particulars in prospectus

(1) Subject to the provisions of section 38A, every prospectus issued by or on behalf of a company must either be in the English language and contain a Chinese translation or be in the Chinese language and contain an English translation, and must state the matters specified in Part I of the Third Schedule and set out the reports specified in Part II of that Schedule, and the said Parts I and II shall have effect subject to the provisions contained in Part III of the said Schedule. (Replaced 78 of 1972 s. 5. Amended 83 of 1995 s. 5)

(1A) Every prospectus to which subsection (1) applies must contain a statement specified in Part 1 of the Eighteenth Schedule. (Added 78 of 1972 s. 5. Amended 83 of 1995 s. 5; 23 of 2004 s. 56; 30 of 2004 s. 2)

(1B) If any prospectus is issued which does not comply with or contravenes the requirements of subsections (1) and (1A), the company and every person who is knowingly a party to the issue thereof shall be liable to a fine. (Added 78 of 1972 s. 5. Amended 7 of 1990 s. 2)

(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(3) 除第 38A 條另有規定外，發出任何用以申請公司股份或債權證的表格，如非與符合本條規定的招股章程一起發出，即屬違法：（由 1972 年第 78 號第 5 條修訂）

但如能顯示該申請表格是與下列事項有關而發出的，則本款並不適用——

- (a) 真誠邀請某人訂立一份股份或債權證的包銷協議；
- (b) 與並非向公眾作出要約的股份或債權證有關者；或
- (c) 與附表 17 各部（第 1 部除外）一併理解的該附表第 1 部指明的要約。

（由 2004 年第 30 號第 2 條增補）

任何人如違反本款的條文，可處罰款。（由 1984 年第 6 號第 259 條修訂；由 1990 年第 7 號第 2 條修訂；由 2004 年第 30 號第 2 條修訂）

(3A) 本條並不阻止僅將招股章程的英文版本在英文報章刊登，或僅將招股章程的中文版本在中文報章刊登，同時亦不阻止與招股章程有關的申請表格連同招股章程一起在該報章刊登。（由 1984 年第 6 號第 22 條增補）

(4) 如本條任何規定不獲遵從或被違反，董事或其他對招股章程負責的人在下列情況下，不會因有關規定不獲遵從或被違反而招致任何法律責任——

- (a) 該人能證明自己對任何未有披露的事項並不知情；或
- (b) 該人能證明有關規定不獲遵從或被違反乃由於其本人誠實地犯了一項事實上的錯誤所致；或
- (c) 處理有關案件的法院，認為有關規定不獲遵從或被違反所關事項並不具關鍵性，或該法院於顧及此案的所有情況後，認為有關規定不獲遵從或被違反理應獲得寬宥：

但如招股章程內未載有關於附表 3 第 I 部第 19 段指明事項的陳述，則除非能證明有關董事或其他人對未披露的事項知情，否則該人不會因為招股章程內未載有該項陳述而招致任何法律責任。（由 1972 年第 78 號第 5 條修訂）

(5) 本條不適用於下列各項——

(3) Subject to the provisions of section 38A, it shall not be lawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section: (Amended 78 of 1972 s. 5)

Provided that this subsection shall not apply if it is shown that the form of application was issued— (Amended 30 of 2004 s. 2)

- (a) in connexion with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures;
- (b) in relation to shares or debentures which were not offered to the public; or
- (c) in connexion with an offer specified in Part 1 of the Seventeenth Schedule as read with the other Parts of that Schedule. (Added 30 of 2004 s. 2)

If any person acts in contravention of the provisions of this subsection, he shall be liable to a fine. (Amended 6 of 1984 s. 259; 7 of 1990 s. 2; 30 of 2004 s. 2)

(3A) This section shall not prevent the publication of the English version only of a prospectus in an English language newspaper or the Chinese version only in a Chinese language newspaper, nor the publication in such newspaper together with the prospectus of a form of application relating thereto. (Added 6 of 1984 s. 22)

(4) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

- (a) as regards any matter not disclosed, he proves that he was not cognisant thereof; or
- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
- (c) the non-compliance or contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial or was otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 19 of Part I of the Third Schedule, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed. (Amended 78 of 1972 s. 5)

(5) This section shall not apply—

- (a) 向現有的公司成員或債權證持有人發出有關該公司的股份或債權證的招股章程或申請表格，不論股份或債權證的申請人是否有為他人而放棄申請該等股份或債權證的權利；或
- (b) 發出在各方面是或將會在各方面均與以往發出並於當其時在認可證券市場上市的股份或債權證劃一的有關股份或債權證的招股章程或申請表格，（由 1984 年第 6 號第 259 條修訂；由 1987 年第 10 號第 11 條修訂；由 2002 年第 5 號第 407 條修訂）

但在符合前述的規定下，本條適用於在公司成立時或成立後發出的招股章程或申請表格。（由 1972 年第 78 號第 5 條代替）

(6) 本條並不局限或減輕任何人除本條之外亦會根據一般法律或本條例招致的任何法律責任。

(7) 現宣布藉本條適用的附表 3 條文，亦就向公眾作出的認購或購買某公司的債權證的要約或邀請而適用於提供擔保的法團。（由 2004 年第 30 號第 2 條代替）

(8) 在第 (7) 款中，“提供擔保的法團” (guarantor corporation) 就向公眾作出的認購或購買某公司的債權證的要約或邀請而言，指作出或同意作出以下擔保的法團——

- (a) 在該公司已因應或將會因應該要約或邀請而收取任何款項的情況下，對償還該等款項作出的擔保；
- (b) 對該公司在該債權證下或就該債權證所承擔的任何其他義務作出的擔保；或
- (c) 對任何符合以下說明的款額作出惠及該公司的擔保——
  - (i) 該公司有權獲取的；且
  - (ii) 一如有關招股章程所述，獲取該筆款額旨在令該公司能全面或局部解除其在該債權證下或就該債權證所承擔的任何義務。（由 2004 年第 30 號第 2 條增補）

[比照 1929 c. 23 s. 35 U.K.]

### 38A. 豁免某些人士及某些招股章程無需符合某些規定

(1) 凡擬藉公開發出招股章程或某類招股章程而將某公司的股份或債權證向公眾作出要約，監察委員會可應申請人的請求並在它認為合適的條件（如有的話）規限下，發出豁免證明書，豁免上述招股章程使其無需符合任何或所有有關條文的規定，但該

- (a) to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; or
- (b) to the issue of a prospectus or form of application relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being listed on a recognized stock market; (Amended 6 of 1984 s. 259; 10 of 1987 s. 11; 5 of 2002 s. 407)

but, subject as aforesaid, this section shall apply to a prospectus or a form of application whether issued on the formation of a company or subsequently. (Replaced 78 of 1972 s. 5)

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Ordinance apart from this section.

(7) It is hereby declared that the provisions of the Third Schedule applied by this section are also applied to a guarantor corporation in relation to an offer or invitation to the public to subscribe for or purchase debentures of a company. (Replaced 30 of 2004 s. 2)

(8) In subsection (7), “guarantor corporation” (提供擔保的法團), in relation to an offer or invitation to the public to subscribe for or purchase debentures of a company, means a corporation that guarantees or agrees to guarantee—

- (a) the repayment of any money received or to be received by the company in response to the offer or invitation;
- (b) any other obligations of the company under or in respect of the debentures; or
- (c) in favour of the company any amount—
  - (i) to which the company is entitled; and
  - (ii) receipt of which, as stated in the prospectus concerned, is intended to enable the company to wholly or partly discharge any of its obligations under or in respect of the debentures. (Added 30 of 2004 s. 2)

[cf. 1929 c. 23 s. 35 U.K.]

### 38A. Exemption of certain persons and prospectuses from compliance with certain requirements

(1) Where it is proposed to offer any shares in or debentures of a company to the public by a prospectus or class of prospectuses issued generally, there may, on the request of the applicant, and subject to such conditions (if any) as the Commission thinks fit, be issued by the Commission a certificate of exemption from compliance with any or all of the requirements

項豁免只可在下述情況下作出：監察委員會於顧及有關情況後，認為該項豁免並不會損害投資大眾的利益，而要求上述招股章程符合任何或所有該等規定——

- (a) 會是不相干的或會構成不適當的負擔；或
- (b) 在其他情況下是無需要或不適當的。(由 2004 年第 30 號第 2 條代替)
- (2) 不論是否已有第 (1) 款提述的請求提出，監察委員會可藉在憲報刊登的公告並在它認為合適的在該公告指明的條件(如有的話)規限下，豁免——

- (a) 某類公司；或
- (b) 公司發出的某類招股章程，

使其無需符合任何或所有有關條文的規定，但該項豁免只可在下述情況下作出：監察委員會於顧及有關情況後，認為該項豁免並不會損害投資大眾的利益，而要求該類公司或該類招股章程(視屬何情況而定)符合任何或所有該等規定——

- (c) 會是不相干的或會構成不適當的負擔；或
- (d) 在其他情況下是無需要或不適當的。(由 2004 年第 30 號第 2 條代替)
- (3) 凡監察委員會發出豁免證明書或在憲報刊登公告，根據本條豁免有關方面遵從第 38(1) 及 (3) 條所載與附表 3 有關的規定，該證明書或公告(視屬何情況而定)須明確指出是對附表 3 的所有規定具有效力，或是對該證明書或公告(視屬何情況而定)內所指附表 3 的某些規定具有效力。

(4) 在本條中，“有關條文”(relevant provisions)指下述任何條文——

- (a) 第 38(1)、(1A)、(3) 或 (7)、38D(3) 或 (4)、42(1) 或 (4)、44A(1)、(2) 或 (6) 或 44B(1) 或 (2) 條；或
- (b) 附表 20 第 1 部或附表 21 第 1 部。(由 2004 年第 30 號第 2 條增補)
- (5) 監察委員會可藉在憲報刊登的命令修訂第 (4) 款。(由 2004 年第 30 號第 2 條增補)
- (6) 監察委員會須藉聯機媒介，發表它認為適當的關於根據第 (1) 款批給豁免的詳情。(由 2004 年第 30 號第 2 條增補)
- (7) 凡監察委員會擬——

- (a) 根據第 (2) 款發出豁免公告；或
- (b) 根據第 (5) 款發出修訂命令，

它須以它認為適當的方式發表該擬發出的公告或命令的草擬本，以邀請公眾就該擬發出的公告或命令作出申述。(由 2004 年第 30 號第 2 條增補)

of the relevant provisions if, having regard to the circumstances, the Commission considers that the exemption will not prejudice the interest of the investing public and compliance with any or all of those requirements——

- (a) would be irrelevant or unduly burdensome; or
- (b) is otherwise unnecessary or inappropriate. (Replaced 30 of 2004 s. 2)

(2) Whether or not a request referred to in subsection (1) has been made, the Commission may, by notice published in the Gazette, and subject to such conditions (if any) as the Commission thinks fit and specified in the notice, exempt——

- (a) any class of companies; or
- (b) any class of prospectuses issued by companies,

from any or all of the requirements of the relevant provisions if, having regard to the circumstances, the Commission considers that the exemption will not prejudice the interest of the investing public and compliance with any or all of those requirements, in the case of that class of companies or prospectuses, as the case may be——

- (c) would be irrelevant or unduly burdensome; or
- (d) is otherwise unnecessary or inappropriate. (Replaced 30 of 2004 s. 2)

(3) Where exemption from compliance with section 38(1) and (3) in relation to the requirements of the Third Schedule is granted under this section, whether by the issue of a certificate of exemption or by a notice in the Gazette, the certificate or notice, as the case may be, shall be expressed to have effect with regard to all of the requirements of the Third Schedule or to such of them as are specified in the certificate or notice, as the case may be.

(4) In this section, “relevant provisions” (有關條文) means any of the provisions of——

- (a) section 38(1), (1A), (3) or (7), 38D(3) or (4), 42(1) or (4), 44A(1), (2) or (6) or 44B(1) or (2); or
- (b) Part 1 of the Twentieth Schedule or Part 1 of the Twenty-first Schedule. (Added 30 of 2004 s. 2)

(5) The Commission may, by order published in the Gazette, amend subsection (4). (Added 30 of 2004 s. 2)

(6) The Commission shall publish, by means of an on-line medium, such particulars of exemptions granted under subsection (1) as it considers appropriate. (Added 30 of 2004 s. 2)

(7) Where the Commission proposes to issue——

- (a) a notice of exemption under subsection (2); or
- (b) an amendment order under subsection (5),

it shall publish a draft of the proposed notice or order, in such manner as it considers appropriate, for the purpose of inviting representations on the proposed notice or order by the public. (Added 30 of 2004 s. 2)

(8) 凡監察委員會在根據第(7)款就該款所述的公告或命令發表草擬本後，發出該公告或命令，它須——

(a) 以它認為適當的方式發表報告，以概括用詞列出——

(i) 就該草擬本所作出的申述；及

(ii) 監察委員會對該等申述的回應；及

(b) (如該公告或命令經過修改，而監察委員會認為該等修改導致該公告或命令與草擬本有重大差異)以它認為適當的方式發表該等差異的細節。

(由 2004 年第 30 號第 2 條增補)

(9) 如監察委員會認為在有關個案的情況下——

(a) 第(7)及(8)款的適用是無需要或不適當的；或

(b) 為遵守第(7)及(8)款而涉及的任何延擱，並不符合——

(i) 投資大眾的利益；或

(ii) 公眾利益，

則第(7)及(8)款不適用。(由 2004 年第 30 號第 2 條增補)

(由 1992 年第 86 號第 3 條代替)

### 38B. 有關招股章程的廣告

(1) 除第(2)款另有規定外，任何人就某公司(不論是在香港或在香港以外成立為法團者)的股份或債權證——

(a) 以廣告方式刊登或安排以廣告方式刊登招股章程的任何摘錄或節本；或

(b) 刊登或安排刊登關於招股章程或擬議的招股章程的廣告，

不論是採用中文、英文或其他語文，均不屬合法。(由 2004 年第 30 號第 2 條代替)

(2) 即使第(1)款另有規定，下列各項不屬違反本條——

(a) 按照監察委員會根據第(2A)(a)款指明的規定刊登招股章程的摘錄或節本；(由 1992 年第 86 號第 4 條代替。由 2004 年第 30 號第 2 條修訂)

(b) 僅將招股章程的英文版本在英文報章刊登，或僅將其中文版本在中文報章刊登；

(8) Where the Commission issues a notice or order mentioned in subsection (7) after a draft is published under that subsection in relation to the notice or order, it shall—

(a) publish, in such manner as it considers appropriate, an account setting out in general terms—

(i) the representations made on the draft; and

(ii) the response of the Commission to the representations; and

(b) where the notice or order is issued with modifications which in the opinion of the Commission result in the notice or order being significantly different from the draft, publish, in such manner as it considers appropriate, details of the difference. (Added 30 of 2004 s. 2)

(9) Subsections (7) and (8) do not apply if the Commission considers, in the circumstances of the case, that—

(a) it is unnecessary or inappropriate that such subsections should apply; or

(b) any delay involved in complying with such subsections would not be—

(i) in the interest of the investing public; or

(ii) in the public interest. (Added 30 of 2004 s. 2)

(Replaced 86 of 1992 s. 3)

### 38B. Advertisements concerning prospectuses

(1) Subject to subsection (2), it shall not be lawful for any person to publish or cause to be published—

(a) by way of advertisement any extract from or abridged version of a prospectus; or

(b) an advertisement in relation to a prospectus or proposed prospectus,

whether in the English or Chinese language or in any other language in relation to shares or debentures of a company whether incorporated in or outside Hong Kong. (Replaced 30 of 2004 s. 2)

(2) Notwithstanding subsection (1)—

(a) the publication of an extract from or abridged version of a prospectus which is in accordance with such requirements as may have been specified by the Commission under subsection (2A)(a); (Replaced 86 of 1992 s. 4)

(b) the publication of the English version only of a prospectus in an English language newspaper or the Chinese version only in a Chinese language newspaper;

- (c) 刊登經監察委員會根據《證券及期貨條例》(第 571 章) 第 105 條認可的廣告、邀請書或文件；(由 1992 年第 86 號第 4 條增補。由 2002 年第 5 號第 407 條修訂；由 2004 年第 30 號第 2 條修訂)
- (d) 按照監察委員會在個別情況下根據第 (2A)(b) 款批准的規定，刊登招股章程的摘錄或節本；(由 1992 年第 86 號第 4 條增補。由 2004 年第 30 號第 2 條修訂)
- (e) 刊登符合下述條件的廣告——
  - (i) 該廣告符合附表 19 適用於該廣告的規定；及
  - (ii) 該廣告載有第 (2AA) 款所准許的資料；或 (由 2004 年第 30 號第 2 條增補)
- (f) 刊登符合下述條件的廣告——
  - (i) 該廣告所關乎的公司是一項根據《證券及期貨條例》(第 571 章) 第 104(1) 條獲認可的集體投資計劃；且
  - (ii) 該廣告已根據《證券及期貨條例》(第 571 章) 第 105 條獲認可。(由 2004 年第 30 號第 2 條增補)

(2AA) 為施行第 (2)(e)(ii) 款，監察委員會可應申請人的請求並按照根據第 38BA 條發表的指引，准許某廣告在該准許指明的條件規限下載有該准許指明的資料。(由 2004 年第 30 號第 2 條增補)

(2A) 監察委員會可——

- (a) 藉在憲報刊登公告，指明適用於某份招股章程或某類招股章程的摘錄或節本的刊登形式和方式的規定，以及指明適用於關乎該等摘錄或節本的刊登的任何其他事宜的規定；
- (b) 在個別個案中，指明適用於某份招股章程的摘錄或節本的刊登形式和方式的規定，以及批准適用於關乎該等摘錄或節本的刊登的任何其他事宜的規定。(由 1992 年第 86 號第 4 條增補。由 2004 年第 30 號第 2 條修訂)

(2B) 第 (2A) 款提述的招股章程指有關任何公司的股份或債權證的招股章程，不論該公司是在香港或在香港以外成立為法團。(由 1992 年第 86 號第 4 條增補)

(3) 任何人違反第 (1) 款，可處罰款。(由 1990 年第 7 號第 2 條修訂)

(由 1972 年第 78 號第 6 條增補)

- (c) the publication of an advertisement, invitation or document which has been authorized by the Commission under section 105 of the Securities and Futures Ordinance (Cap. 571); (Added 86 of 1992 s. 4. Amended 5 of 2002 s. 407)
- (d) the publication of an extract from or abridged version of a prospectus which is in accordance with such requirements as may have been authorized by the Commission under subsection (2A)(b) in that particular case; (Added 86 of 1992 s. 4)
- (e) the publication of an advertisement which—
  - (i) complies with the requirements of the Nineteenth Schedule applicable to the advertisement; and
  - (ii) contains such information as is permitted under subsection (2AA); or (Added 30 of 2004 s. 2)
- (f) the publication of an advertisement—
  - (i) in relation to a company which is a collective investment scheme authorized under section 104(1) of the Securities and Futures Ordinance (Cap. 571); and
  - (ii) which has been authorized under section 105 of the Securities and Futures Ordinance (Cap. 571), (Added 30 of 2004 s. 2)

shall not contravene this section. (Amended 30 of 2004 s. 2)

(2AA) For the purposes of subsection (2)(e)(ii), the Commission may, on the request of the applicant, and in accordance with the guidelines published under section 38BA, permit an advertisement to contain such information as is specified in the permission and subject to such conditions as are specified in the permission. (Added 30 of 2004 s. 2)

(2A) The Commission may—

- (a) by notice in the Gazette, specify requirements applicable to the form and manner of, and any other matters relating to, publication of an extract from or abridged version of a prospectus, or any class of prospectuses;
- (b) in any particular case, specify requirements applicable to and authorize the form and manner of, and any other matters relating to, publication of any extract from or abridged version of a prospectus. (Added 86 of 1992 s. 4. Amended 30 of 2004 s. 2)

(2B) A prospectus referred to in subsection (2A) means a prospectus relating to shares in or debentures of a company, whether incorporated in or outside Hong Kong. (Added 86 of 1992 s. 4)

(3) If any person acts in contravention of subsection (1), he shall be liable to a fine. (Amended 7 of 1990 s. 2)

(Added 78 of 1972 s. 6)

**38BA. 監察委員會可發表關乎第 38B(2) 條所指的刊登文件的指引**

(1) 監察委員會可就第 38B(2) 條所指的刊登文件形式和方式及關乎該等刊登文件的其他事宜，擬備和發表指引。

(2) 根據第 (1) 款發表的指引並非附屬法例。

(由 2004 年第 30 號第 2 條增補)

**38C. 發出載有專家陳述的招股章程須獲其同意**

(1) 邀請眾人認購公司股份或債權證的招股章程，如載有一項看來是由一名專家作出的陳述，則須符合下述規定始可發出——

(a) 該名專家已給予書面同意，同意發出一份載有一項在形式和文意上一如所載的陳述的招股章程，而且在該份招股章程交付註冊前未有撤回其書面同意；及

(b) 該招股章程載有一項陳述，說明該名專家已給予前述的同意及未有將其撤回。

(2) 如招股章程違反本條而發出，則有關公司及每名明知自己是發出招股章程其中一方的人，均可處罰款。(由 1990 年第 7 號第 2 條修訂)

(3) 在本條中，“專家”(expert)一詞包括工程師、估值師、會計師及其他由於其專業以致其所作的陳述具有權威性的人。

(由 1972 年第 78 號第 6 條增補)

[比照 1948 c. 38 s. 40 U.K.]

**38D. 招股章程的註冊**

(1) 任何公司不得發出或由他人代其發出招股章程，但如該招股章程符合本條例的規定，以及在其刊登當日或之前，已根據本條獲批准註冊，而處長亦已將一份上述的招股章程註冊，則不在此限。

(2) 每份招股章程均須——

(a) 在封面上陳述該章程的文本已按本條規定註冊，並且在緊接該陳述之後——

(i) 述明監察委員會及處長對該章程的內容概不負責；

**38BA. Commission may publish guidelines relating to publications falling within section 38B(2)**

(1) The Commission may prepare and publish guidelines in relation to the form and manner of, and any other matters relating to, publications falling within section 38B(2).

(2) Guidelines published under subsection (1) are not subsidiary legislation.

(Added 30 of 2004 s. 2)

**38C. Expert's consent to issue of prospectus containing statement by him**

(1) A prospectus inviting persons to subscribe for shares in or debentures of a company and including a statement purporting to be made by an expert shall not be issued unless—

(a) he has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to the issue thereof with the statement included in the form and context in which it is included; and

(b) a statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.

(2) If any prospectus is issued in contravention of this section the company and every person who is knowingly a party to the issue thereof shall be liable to a fine. (Amended 7 of 1990 s. 2)

(3) In this section the expression “expert” (專家) includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him.

(Added 78 of 1972 s. 6)

[cf. 1948 c. 38 s. 40 U.K.]

**38D. Registration of prospectus**

(1) No prospectus shall be issued by or on behalf of a company unless the prospectus complies with the requirements of this Ordinance and, on or before the date of its publication, its registration has been authorized under this section and a copy thereof has been registered by the Registrar.

(2) Every prospectus shall—

(a) on the face of it, state that a copy has been registered as required by this section and immediately after such statement—

(i) state that neither the Commission nor the Registrar takes any responsibility as to the contents of the prospectus;

- (ii) (如該章程獲或將會獲某認可交易所依據一項根據《證券及期貨條例》(第 571 章) 第 25 條作出的轉移令批准發出) 述明監察委員會、該交易所及處長對該章程的內容概不負責；或
- (iii) (如該章程獲或將會獲某認可控制人依據一項根據該條例第 68 條作出的轉移令批准發出) 述明監察委員會、該控制人及處長對該章程的內容概不負責；(由 2002 年第 5 號第 407 條代替)

(b) 在封面上指明本條規定須在該份如此註冊的招股章程上註明或隨附的任何文件，或在封面上提述各項載於該招股章程內並指明該等文件的陳述；及

(c) 符合行政長官會同行政會議所訂明的規定，或處長根據第 346 條所指明的規定，而該等規定是適用於須根據本部註冊的招股章程者。(由 1999 年第 23 號第 3 條修訂)

(3) 一項根據本條批准將招股章程註冊的申請，須以書面向監察委員會提出，申請書交付監察委員會時，須連同一份擬註冊的招股章程，並由在其內名列為公司董事或公司擬委任為董事的每一個人簽署，或由其以書面授權的代理人簽署——

- (a) 該招股章程並須註明或隨附任何人以專家身分對該招股章程的發出給予第 38C 條所規定的同意；及
- (b) 如屬公開發出的招股章程，則另須註明或隨附下述文件——

(i) 附表 3 第 17 段所規定須在招股章程內述明的合約文本；如合約並非以書面記錄者，則另須註明或隨附詳列該合約細則的備忘錄；如屬根據第 38A 條獲豁免符合第 38(1) 條規定的招股章程，而監察委員會就根據第 38A(1) 條所提出的請求，規定申請人須提交合約、合約副本或合約的備忘錄以供查閱，則另須註明或隨附該合約副本或該合約的備忘錄(視屬何情況而定)；

(ii) 如該招股章程向公眾作出售賣公司股份的要約，須註明或隨附售股人的姓名或名稱、地址及其他描述的列表；及

- (ii) where the prospectus is or is to be authorized for issue by a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance (Cap. 571), state that neither the Commission nor the recognized exchange company nor the Registrar takes any responsibility as to the contents of the prospectus; or
- (iii) where the prospectus is or is to be authorized for issue by a recognized exchange controller pursuant to a transfer order made under section 68 of that Ordinance, state that neither the Commission nor the recognized exchange controller nor the Registrar takes any responsibility as to the contents of the prospectus; (Replaced 5 of 2002 s. 407)

(b) on the face of it, specify or refer to statements included in the prospectus which specify, any documents required by this section to be endorsed on or attached to the copy so registered; and

(c) conform with such requirements as are prescribed by the Chief Executive in Council or specified by the Registrar under section 346 which are applicable to prospectuses to be registered under this Part. (Amended 23 of 1999 s. 3)

(3) An application for authorization for registration of a prospectus under this section shall be made in writing to the Commission and there shall be delivered to the Commission together with the application a copy of the prospectus proposed to be registered which has been signed by every person who is named therein as a director or proposed director of the company or by his agent authorized in writing and having endorsed thereon or attached thereto——

- (a) any consent to the issue of the prospectus required by section 38C from any person as an expert; and
- (b) in the case of a prospectus issued generally, also——

(i) a copy of any contract required by paragraph 17 of the Third Schedule to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof or, if in the case of a prospectus exempted under section 38A from compliance with the requirements of section 38(1), a contract or a copy thereof or a memorandum of a contract is required by the Commission to be available for inspection in connection with the request made under section 38A(1), a copy or, as the case may be, a memorandum of that contract;

(ii) where the prospectus offers shares in the company for sale to the public, a list of the names, addresses and descriptions of the vendor or vendors of the shares; and

(iii) 如作出附表 3 第 II 部所規定的報告的人，已在報告內作出，或在沒有提出任何理由的情況下已在報告內表明該附表第 42 段所述的任何調整，則須註明或隨附由該等人士簽署的書面陳述，列明該等調整及說明作出調整的理由。

(4) 凡第 (3)(b)(i) 款提述招股章程內規定須註明或隨附合約文本之處，而該合約完全或部分既非以中文亦非以英文撰寫，則須視作為提述合約的中文或英文譯本，或提述其內已收錄合約中既非以中文亦非以英文撰寫的部分的中文或英文譯本的合約文本（視屬何情況而定）；而該等譯本均按第 (10) 款所指的訂明方式核證為正確譯本。（由 1995 年第 83 號第 7 條修訂；由 2004 年第 30 號第 2 條修訂）

(5) 監察委員會可——

(a) 批准本條適用的招股章程由處長註冊；凡監察委員會如此批准，則須發出一份證明書——

(i) 核證監察委員會已如此批准；及

(ii) 指明即將註冊的一份招股章程規定須註明或隨附的文件；或

(b) 拒絕批准註冊。

(6) 監察委員會不得批准註冊與成立中公司有關的招股章程。

(7) 處長在下述情況下——

(a) 不得根據本條將招股章程註冊，除非該招股章程符合下列規定——

(i) 該招股章程已註上日期，而即將註冊的一份招股章程已按本條規定的方式簽署；

(ii) 該招股章程已附上根據第 (5) 款發出的證明書；

(iii) 該招股章程已註明或隨附所有在根據第 (5) 款發出的證明書內指明的文件；及

(iv) 該招股章程符合行政長官會同行政會議所訂明的規定，或處長根據第 346 條所指明的規定，而該等規定是適用於須根據本部註冊的招股章程的；及（由 1999 年第 23 號第 3 條修訂）

(b) 須將招股章程註冊，但該招股章程須符合 (a) 段第 (i)、(ii)、(iii) 及 (iv) 節的規定。

(iii) where the persons making any report required by Part II of the Third Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in paragraph 42 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(4) The references in subsection (3)(b)(i) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a language other than English or Chinese, be taken as references to a copy of a translation of the contract in either language or a copy embodying a translation in English or Chinese of the parts not in either language, as the case may be, being a translation certified in the prescribed manner under subsection (10) to be a correct translation. (Amended 83 of 1995 s. 7; 30 of 2004 s. 2)

(5) The Commission may—

(a) authorize the registration by the Registrar, of a prospectus to which this section applies and where the Commission so authorizes, the Commission shall issue a certificate—

(i) certifying that the Commission has done so; and

(ii) specifying the documents which are required to be endorsed on or attached to the copy of the prospectus to be registered; or

(b) refuse to authorize such registration.

(6) The Commission shall not authorize the registration of a prospectus which relates to an intended company.

(7) The Registrar—

(a) shall not register a prospectus under this section unless—

(i) it is dated and the copy thereof to be registered has been signed in the manner required by this section;

(ii) it is accompanied by a certificate issued under subsection (5);

(iii) it has endorsed thereon or attached thereto all the documents specified in the certificate issued under subsection (5); and

(iv) it conforms with such requirements as are prescribed by the Chief Executive in Council or specified by the Registrar under section 346 which are applicable to prospectuses to be registered under this Part; and (Amended 23 of 1999 s. 3)

(b) shall register a prospectus if subparagraphs (i), (ii), (iii) and (iv) of paragraph (a) are complied with in respect of that prospectus.

(8) 如招股章程發出時，未有註明或隨附規定的文件，或一份已註明或隨附規定的文件的招股章程未有獲得處長根據本條註冊，則有關公司及每名明知自己是發出招股章程其中一方的人，均可處罰款，如持續失實，則可由該招股章程發出日期起處按日計算的失實罰款，直至一份上述招股章程獲如此註冊為止，或直至招股章程註明或隨附規定的文件為止（視屬何情況而定）。

(9) 任何人如因某份招股章程被拒根據本條批准註冊而感到受屈，可向法院提出上訴，而法院可駁回上訴或命令監察委員會根據本條批准將該份招股章程註冊。

(10) 第(4)款所述的譯本——

(a) 須由該譯本的製備者核證為正確譯本；及

(b) 的製備者如已由第(i)或(ii)節所述的適當的人核證為他相信是有足夠能力將有關文件譯成英文或中文（視屬何情況而定），則該譯本須當作已按訂明方式核證——

(i) 如該譯本在香港以外製備——

(A) 製備該譯本所在的地方的公證人；

(B) 監察委員會指明的其他人；或

(C) 屬於監察委員會為施行本段藉在憲報刊登的公告指明的某類別人士的其他人；

(ii) 如該譯本在香港製備——

(A) 香港的公證人；

(B) 香港高等法院律師；

(C) 監察委員會指明的其他人；或

(D) 屬於監察委員會為施行本段藉在憲報刊登的公告指明的某類別人士的其他人。（由 2004 年第 30 號第 2 條增補）

(11) 根據第(10)(b)(i)(C)或(ii)(D)款刊登的公告並非附屬法例。（由 2004 年第 30 號第 2 條增補）

（由 1992 年第 86 號第 5 條代替）

39. (由 1984 年第 6 號第 23 條廢除)

(8) If a prospectus is issued without having endorsed thereon or attached thereto the required documents or without a copy thereof which has the required documents endorsed or attached having been registered under this section by the Registrar, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine and, for continued default, to a daily default fine from the date of the issue of the prospectus until a copy thereof is so registered or until the required documents are endorsed or attached, as the case may be.

(9) Any person aggrieved by the refusal to authorize the registration of a prospectus under this section may appeal to the court and the court may either dismiss the appeal or order that the registration of the prospectus be authorized by the Commission under this section.

(10) A translation mentioned in subsection (4) shall be—

(a) certified by the person making the translation as a correct translation; and

(b) deemed to be certified in the prescribed manner if the person making the translation has been certified, by the appropriate person mentioned in subparagraph (i) or (ii), as a person believed by that appropriate person to be competent to translate it into the English or Chinese language, as the case may be, that is to say—

(i) if the translation be made outside Hong Kong—

(A) a notary public in the place where the translation is made;

(B) such other person as may be specified by the Commission; or

(C) such other person belonging to a class of persons specified by the Commission, by notice published in the Gazette, for the purposes of this paragraph;

(ii) if the translation be made in Hong Kong—

(A) a notary public in Hong Kong;

(B) a solicitor of the High Court of Hong Kong;

(C) such other person as may be specified by the Commission; or

(D) such other person belonging to a class of persons specified by the Commission, by notice published in the Gazette, for the purposes of this paragraph. (Added 30 of 2004 s. 2)

(11) A notice published under subsection (10)(b)(i)(C) or (ii)(D) is not subsidiary legislation. (Added 30 of 2004 s. 2)

(Replaced 86 of 1992 s. 5)

39. (Repealed 6 of 1984 s. 23)

### 39A. 修訂由一份文件組成的招股章程

- (1) 凡——
  - (a) 某招股章程由一份文件組成；而
  - (b) 本部的條文適用於該招股章程，
 該招股章程只可按照附表 20 第 1 部的條文修訂。
- (2) 附表 20 第 1 部的條文可更改本部就任何招股章程或某類招股章程(兩者均可根據第(1)款修訂)所訂的條文的實施。
- (3) 如任何公司違反第(1)款，該公司以及其每名失責高級人員均可處罰款。
- (4) 為免生疑問，現宣布本條及附表 20 第 1 部並不適用於第 39B 條所適用的招股章程。

(由 2004 年第 30 號第 2 條增補)

### 39B. 招股章程可由超過一份文件組成等

- (1) 本部的條文適用的招股章程可按照附表 21 第 1 部的條文由超過一份文件組成。
- (2) 第(1)款適用的招股章程只可按照附表 21 第 1 部的條文修訂。
- (3) 附表 21 第 1 部的條文可更改本部就任何招股章程或某類招股章程(屬第(1)款所指或可根據第(2)款修訂者)所訂的條文的實施。
- (4) 如任何公司違反第(2)款，該公司以及其每名失責高級人員均可處罰款。

(由 2004 年第 30 號第 2 條增補)

### 39C. 呈交核證副本

凡任何不屬招股章程的文件(不論如何描述)根據第 37 至 44B 條的任何條文規定須由某公司呈交予處長，則向處長呈交符合以下條件的該文件的副本，即當作符合該規定——

- (a) 該副本已核證為該文件的真實副本；而
- (b) 該項核證由以下人士作出——

### 39A. Amendment of prospectus consisting of one document

- (1) A prospectus—
  - (a) consisting of one document; and
  - (b) to which the provisions of this Part are applicable,
 may only be amended in accordance with the provisions of Part 1 of the Twentieth Schedule.
- (2) The provisions of Part 1 of the Twentieth Schedule may alter the operation of a provision of this Part in relation to any prospectus, or class of prospectuses, which may be amended under subsection (1).
- (3) If any company contravenes subsection (1), the company and every officer of the company who is in default shall be liable to a fine.
- (4) For the avoidance of doubt, it is hereby declared that this section and Part 1 of the Twentieth Schedule do not apply to a prospectus to which section 39B applies.

(Added 30 of 2004 s. 2)

### 39B. Prospectus may consist of more than one document, etc.

- (1) A prospectus to which the provisions of this Part are applicable may consist of more than one document in accordance with the provisions of Part 1 of the Twenty-first Schedule.
- (2) A prospectus to which subsection (1) applies may only be amended in accordance with the provisions of Part 1 of the Twenty-first Schedule.
- (3) The provisions of Part 1 of the Twenty-first Schedule may alter the operation of a provision of this Part in relation to any prospectus, or class of prospectuses, which falls within subsection (1) or which may be amended under subsection (2).
- (4) If any company contravenes subsection (2), the company and every officer of the company who is in default shall be liable to a fine.

(Added 30 of 2004 s. 2)

### 39C. Submission of certified copies

Where any document (howsoever described), other than a prospectus, is required under any of the provisions of sections 37 to 44B inclusive to be submitted to the Registrar by a company, the requirement shall be deemed to be satisfied by the submission to the Registrar of a copy of the document certified——

- (a) to be a true copy of the document; and
- (b) by——

- (i) 該公司的一名董事或秘書，或該董事或秘書為此目的書面授權的一名該董事或秘書的代理人；
- (ii) 一名《法律執業者條例》(第 159 章) 第 2(1) 條所指的律師或《專業會計師條例》(第 50 章) 第 2 條所指的會計師；或 (由 2005 年第 10 號第 223 條修訂)
- (iii) 一名《法律執業者條例》(第 159 章) 第 2(1) 條所指的公證人。  
(由 2004 年第 30 號第 2 條增補)

#### 40. 就招股章程內錯誤陳述的民事法律責任

(1) 除本條條文另有規定外，凡招股章程邀請眾人認購公司的股份或債權證，而認購人基於對該招股章程的信賴而認購任何股份或債權證，則下述的人即有法律責任對認購人因招股章程內所載的任何不真實陳述而蒙受的損失或損害支付賠償——

- (a) 所有在該招股章程發出時身為該公司董事的人；
- (b) 所有批准將其本人的姓名列於並且已列於招股章程作為董事或已同意立即或經過一段時間後成為董事的人；
- (c) 所有身為該公司發起人的人；及
- (d) 所有批准發出該招股章程的人；

但若根據第 38C 條規定須取得某人的同意始可發出招股章程，而該人已給予該項同意，則該人並不會因給予該項同意而以招股章程的批准發出者身分須根據本款負上法律責任，但若該人就一項看來是由其以專家身分作出的不真實陳述而須根據本款負上法律責任，則屬例外。

(1A) 第 (1)(d) 款不適用於——

- (a) 監察委員會；
- (b) (如有關招股章程是由某認可交易所依據一項根據《證券及期貨條例》(第 571 章) 第 25 條作出的轉移令而批准的) 監察委員會及該交易所；或
- (c) (如有關招股章程是由某認可控制人依據一項根據該條例第 68 條作出的轉移令而批准的) 監察委員會及該控制人。(由 2002 年第 5 號第 407 條代替)

(2) 任何人如能證明下述各項，則無須根據第 (1) 款負上法律責任——

- (i) a director or secretary of the company or an agent of the director or secretary authorized in writing for the purpose by the director or secretary;
- (ii) a solicitor within the meaning of section 2(1) of the Legal Practitioners Ordinance (Cap. 159) or a certified public accountant within the meaning of section 2 of the Professional Accountants Ordinance (Cap. 50); or (Amended 10 of 2005 s. 223)
- (iii) a notary public within the meaning of section 2(1) of the Legal Practitioners Ordinance (Cap. 159).  
(Added 30 of 2004 s. 2)

#### 40. Civil liability for misstatements in prospectus

(1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in or debentures of a company, the following persons shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement included therein, that is to say—

- (a) every person who is a director of the company at the time of the issue of the prospectus;
- (b) every person who has authorized himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;
- (c) every person being a promoter of the company; and
- (d) every person who has authorized the issue of the prospectus;

Provided that where under section 38C the consent of a person is required to the issue of a prospectus and he has given that consent, he shall not by reason of his having given it be liable under this subsection as a person who has authorized the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert.

(1A) Subsection (1)(d) shall not apply—

- (a) to the Commission;
- (b) where the relevant prospectus is authorized by a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance (Cap. 571), to the Commission or the recognized exchange company; or
- (c) where the relevant prospectus is authorized by a recognized exchange controller pursuant to a transfer order made under section 68 of that Ordinance, to the Commission or the recognized exchange controller. (Replaced 5 of 2002 s. 407)

(2) No person shall be liable under subsection (1) if he proves—

- (a) 該人雖曾同意成為該公司董事，但在招股章程發出前已撤回同意，且該招股章程是未經其批准或同意而發出的；或
- (b) 該招股章程是在該人不知情或未經其同意的情況下發出的，而當該人察覺該招股章程發出時，已立即發出合理公告，表明該招股章程是在其不知情或未經其同意的情況下發出的；或
- (c) 在該招股章程發出後及在根據該章程作出分配前，當該人察覺該章程內載有任何不真實陳述時，已撤回其對發出招股章程所給予的同意，並就撤回以及撤回的原因發出合理公告；或
- (d) (i) 就每項看來並非是根據專家的權威意見、或並非根據官方公開文件或聲明的權限而作出的不真實陳述而言，該人有合理理由相信，以及直至分配股份或債權證（視屬何情況而定）時，仍相信該項陳述乃屬真實；及
- (ii) 就每項看來是屬專家所作陳述的不真實陳述，或每項載於看來是一份專家報告或估價文件或其摘錄內的不真實陳述而言，該項不真實陳述公正地表達該專家的陳述，或是該份報告或估價文件的正確及公正的文本或摘錄，而該人有合理理由相信，以及直至該招股章程發出時，仍相信作出該項陳述的人是有資格作出該項陳述的，而且作出該項陳述的人已給予按第 38C 條所規定有關發出該招股章程的同意，並且在將一份招股章程交付註冊前，或就被告所知，在根據該章程作出分配前，作出該項陳述的人並未撤回同意；及
- (iii) 就每項看來是屬公職人員所作陳述的不真實陳述，或每項載於看來是一份官方公開文件或其摘錄內的不真實陳述而言，該項不真實陳述是該項陳述或該份官方公開文件或其摘錄的正確及公正的表達；

但任何人如因給予上述第 38C 條規定其所須給予的同意而作為招股章程的批准發出者就一項看來是由其以專家身分作出的不真實陳述負上法律責任，則本款並不適用。

(3) 任何人如若非因本款即會因給予第 38C 條規定其所須給予的同意而作為招股章程的批准發出者就一項看來是由其以專家身分作出的不真實陳述根據第 (1) 款負上法律責任，如其能證明下述其中一項，則無須如此負上法律責任——（由 1997 年第 80 號第 102 條修訂）

- (a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
- (b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or
- (c) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor; or
- (d) that—
  - (i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and
  - (ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and that person had given the consent required by section 38C to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder; and
  - (iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document:

Provided that this subsection shall not apply in the case of a person liable, by reason of his having given a consent required of him by the said section 38C, as a person who has authorized the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert.

(3) A person who, apart from this subsection would under subsection (1) be liable, by reason of his having given a consent required of him by section 38C, as a person who has authorized the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert, shall not be so liable if he proves—

- (a) 該人根據第 38C 條對發出招股章程給予同意後，已在一份招股章程交付註冊前，書面撤回同意；或
- (b) 在一份招股章程交付註冊後及在根據該章程作出分配前，當該人察覺該項不真實陳述時，已書面撤回其同意，並就撤回以及撤回的原因發出合理公告；或
- (c) 該人有資格作出該項陳述，且有合理理由相信，以及直至分配股份或債權證（視屬何情況而定）時，其本人仍相信該項陳述乃屬真實。

(4) 凡——

- (a) 在招股章程內載有出任公司董事的人的姓名或名稱，或載有已同意成為公司董事的人的姓名或名稱，而該人卻並未同意成為董事或在招股章程發出前已撤回其同意，且並未批准或同意發出該招股章程；或
- (b) 根據第 38C 條規定須取得某人對發出招股章程的同意，但該人並未給予同意，或在招股章程發出前已撤回同意，

則該公司的董事（對發出招股章程不知情或並未給予同意者除外）以及任何其他批准發出招股章程的人，須彌償其姓名或名稱如前述般列入的人或其同意如前述般規定須予取得的人（視屬何情況而定），因其姓名或名稱被加插在招股章程內、或因招股章程載有一項看來是由其以專家身分作出的陳述（視屬何情況而定）而須負法律責任的一切損害賠償、費用及開支，或因就此向其提出的訴訟或法律程序作出辯護而須負法律責任的一切損害賠償、費用及開支：

但任何人如只因給予第 38C 條所規定的同意，讓一份看來是由其以專家身分作出的陳述載於招股章程內，則就本款而言，該人不當作曾批准發出招股章程。

(5) 就本條而言——

- (a) “發起人” (promoter) 一詞指曾是擬備招股章程工作中一方的發起人，或指曾是擬備該招股章程內載有不真實陳述的部分篇幅工作中一方的發起人；但該詞並不包括以專業身分為某些促使公司組成的人而行事者；及
- (b) “專家” (expert) 一詞的涵義與第 38C 條中該詞的涵義相同。

(6) 本條適用於第 38B(2) 條所指的刊登文件，猶如該刊登文件是招股章程一樣。  
(由 2004 年第 30 號第 2 條增補)

- (a) that, having given his consent under the said section 38C to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration; or
- (b) that, after delivery of a copy of the prospectus for registration and before allotment thereunder, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal, and of the reason therefor; or
- (c) that he was competent to make the statement and that he had reasonable ground to believe and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement was true.

(4) Where——

- (a) the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof; or
- (b) the consent of a person is required under section 38C to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus,

the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof shall be liable to indemnify the person named as aforesaid or whose consent was required as aforesaid, as the case may be, against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect thereof:

Provided that a person shall not be deemed for the purposes of this subsection to have authorized the issue of a prospectus by reason only of his having given the consent required by section 38C to the inclusion therein of a statement purporting to be made by him as an expert.

(5) For the purposes of this section——

- (a) the expression “promoter” (發起人) means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company; and
- (b) the expression “expert” (專家) has the same meaning as in section 38C.

(6) This section shall apply to a publication falling within section 38B(2) as if the publication were a prospectus. (Added 30 of 2004 s. 2)

(7) 現宣布就本條而言，“任何股份或債權證的認購人”(persons who subscribe for any shares or debentures) 包括附表 22 指明的人士。(由 2004 年第 30 號第 2 條增補)

(由 1972 年第 78 號第 7 條代替)  
[比照 1948 c. 38 s. 43 U.K.]

#### 40A. 就招股章程內錯誤陳述的刑事法律責任

(1) 凡在《1972 年公司(修訂)條例》†(1972 年第 78 號)生效\*後發出的招股章程內載有任何不真實陳述，則批准發出該招股章程的人，可處監禁及罰款，除非該人能證明該項陳述並不具關鍵性，或能證明其本人有合理的理由相信，並且直至該招股章程發出時仍相信該項陳述乃屬真實。(由 1990 年第 7 號第 2 條修訂)

(2) 任何人如只因給予第 38C 條所規定的同意，讓一份看來是由其以專家身分作出的陳述載於招股章程內，則就本條而言，該人不當作曾批准發出招股章程。

(3) 第(1)款不適用於——

- (a) 監察委員會；
- (b) (如有關招股章程是由某認可交易所依據一項根據《證券及期貨條例》(第 571 章)第 25 條作出的轉移令而批准的) 監察委員會及該交易所；或
- (c) (如有關招股章程是由某認可控制人依據一項根據該條例第 68 條作出的轉移令而批准的) 監察委員會及該控制人。(由 2002 年第 5 號第 407 條代替)

(4) 本條適用於第 38B(2) 條所指的刊登文件，猶如該刊登文件是招股章程一樣。(由 2004 年第 30 號第 2 條增補)

(由 1972 年第 78 號第 8 條增補)  
[比照 1948 c. 38 s. 44 U.K.]

#### 40B. 獲得損害賠償及賠償的權利不受影響

任何人均不會僅因——

- (a) 他持有或曾持有某公司的股份；或
- (b) 他有權利——

† “《1972 年公司(修訂)條例》”乃 “Companies (Amendment) Ordinance 1972” 之譯名。

\* 生效日期：1973 年 3 月 1 日。

(7) It is hereby declared that, for the purposes of this section, “persons who subscribe for any shares or debentures” (任何股份或債權證的認購人) includes persons specified in the Twenty-second Schedule. (Added 30 of 2004 s. 2)

(Replaced 78 of 1972 s. 7)  
[cf. 1948 c. 38 s. 43 U.K.]

#### 40A. Criminal liability for misstatements in prospectus

(1) Where a prospectus issued after the commencement\* of the Companies (Amendment) Ordinance 1972 (78 of 1972) includes any untrue statements, any person who authorized the issue of the prospectus shall be liable to imprisonment and a fine, unless he proves either that the statement was immaterial or that he had reasonable grounds to believe and did up to the time of the issue of the prospectus believe that the statement was true. (Amended 7 of 1990 s. 2)

(2) A person shall not be deemed for the purposes of this section to have authorized the issue of a prospectus by reason only of his having given the consent required by section 38C to the inclusion therein of a statement purporting to be made by him as an expert.

(3) Subsection (1) shall not apply——

- (a) to the Commission;
- (b) where the relevant prospectus is authorized by a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance (Cap. 571), to the Commission or the recognized exchange company; or
- (c) where the relevant prospectus is authorized by a recognized exchange controller pursuant to a transfer order made under section 68 of that Ordinance, to the Commission or the recognized exchange controller. (Replaced 5 of 2002 s. 407)

(4) This section shall apply to a publication falling within section 38B(2) as if the publication were a prospectus. (Added 30 of 2004 s. 2)

(Added 78 of 1972 s. 8)  
[cf. 1948 c. 38 s. 44 U.K.]

#### 40B. Right to damages and compensation not affected

A person is not debarred from obtaining damages or other compensation from a company by reason only of——

- (a) his holding or having held shares in the company; or
- (b) his having any right——

\* Commencement date: 1 March 1973.

- (i) 申請或認購股份；或
- (ii) 列入某公司關乎股份的登記冊內，

而被阻止獲得損害賠償或其他賠償。

(由 1997 年第 3 號第 10 條增補)

[比照 1985 c. 6 s. 111A U.K.]

#### 41. 載有發售股份或債權證要約的文件須當作為招股章程

(1) 凡公司分配或同意分配該公司任何股份或債權證，目的是向公眾作出全部或任何此等股份或債權證的發售要約，則任何藉以向公眾作出此項發售要約的文件，就各種目的而言，須當作為該公司發出的招股章程，而關於招股章程的內容及關於招股章程內就陳述或遺漏而須負的法律責任的所有成文法則及法律規則，或在其他方面與招股章程有關的所有成文法則及法律規則，均須據此而適用及具有效力，猶如已將該等股份或債權證向公眾作出認購要約，並猶如接受該等股份或債權證的發售要約的人，是該等股份或債權證的認購人一樣；但作出該項發售要約的人，就載於文件內的不真實陳述或就文件的其他方面而須負的法律責任(如有的話)，不會有所影響。

(2) 就本條例而言，如有以下情況，則除非相反證明成立，否則即為目的是向公眾作出股份或債權證的發售要約而分配或同意分配股份或債權證的證據——

(a) 股份或債權證或兩者之中任何部分的發售要約是在分配或同意分配後 6 個月內向公眾作出；或

(b) 在作出該項要約的日期，公司就該等股份或債權證所應收的全部代價，未曾收到。

(3) 第 38D 條由本條予以應用時，所具效力猶如作出上述要約的人是名列招股章程作為公司董事的人；而第 38 條由本條予以應用時，所具效力則猶如該條規定招股章程除須述明該條規定在招股章程述明的事項外，亦須述明——

(a) 公司就要約所指股份或債權證收到或會收到的代價淨額；及

(b) 已分配或將分配上述股份或債權證所根據的合約或其副本可供查閱的地點及時間。(由 1972 年第 78 號第 9 條修訂)

- (i) to apply or subscribe for shares; or
- (ii) to be included in the register of the company in respect of shares.

(Added 3 of 1997 s. 10)

[cf. 1985 c. 6 s. 111A U.K.]

#### 41. Document containing offer of shares or debentures for sale to be deemed prospectus

(1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of mis-statements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Ordinance, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown—

(a) that an offer of the shares or debentures or of any of them for sale to the public was made within 6 months after the allotment or agreement to allot; or

(b) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) Section 38D as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company, and section 38 as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

(a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and

(b) the place and time at which the contract under which the said shares or debentures have been or are to be allotted, or a copy thereof, may be inspected. (Amended 78 of 1972 s. 9)

(4) 凡作出與本條有關的要約的人是一間公司或商號，則上述文件只須由該公司 2 名董事或不少於半數的合夥人代表該公司或商號(視屬何情況而定)簽署，即屬足夠，而該等董事或合夥人亦可由其以書面授權的代理人代為簽署。

[比照 1929 c. 23 s. 38 U.K.]

#### 41A. 與招股章程有關的條文的釋義

(1) 就本部前述條文而言—— (由 2004 年第 30 號第 2 條修訂)

- (a) 載列於招股章程內的任何陳述，如就其載列形式及載列之處的文意而言，是具誤導性的，則須當作不真實陳述；及
- (b) 如某項陳述是載於招股章程內，或是載於該招股章程封面上的任何報告或備忘錄內，或是以提述方式收納於招股章程內或是與招股章程一併發出，則該項陳述須當作載列於招股章程內。

(2) 就第 40 及 40A 條而言，“不真實陳述”(untrue statement)就任何招股章程而言，包括該招股章程中的任何具關鍵性的遺漏。(由 2004 年第 30 號第 2 條增補)

(由 1972 年第 78 號第 10 條增補)

[比照 1948 c. 38 s. 46 U.K.]

#### 分配

#### 42. 除非接獲最低認購額，否則禁止分配

(1) 除第 38A 條另有規定外，公眾獲要約認購的公司股本不可予以分配，但如招股章程內所述的最低款額已獲認購(此款額乃有關公司的董事認為為了提供附表 3 第 I 部第 7 段所指明的事項而必須透過發行股本籌措者)，而在申請如此述明的款額時應繳付的款項已付予該公司及已由該公司收到，則屬例外。就本款而言，如該公司已真誠收到繳付該款項的支票，而該公司的董事並無理由懷疑該支票會不獲兌現，則該筆款項須當作已付予該公司及已由該公司收到。(由 1972 年第 78 號第 11 條修訂；由 1992 年第 86 號第 8 條修訂)

(2) 在計算招股章程內如此述明的款額時，須除去任何以非現金繳付的款額；而招股章程內如此述明的款額，在本條例中稱為最低認購額。

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by 2 directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorized in writing.

[cf. 1929 c. 23 s. 38 U.K.]

#### 41A. Interpretation of provisions relating to prospectuses

(1) For the purposes of the foregoing provisions of this Part—  
(Amended 30 of 2004 s. 2)

- (a) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and
- (b) a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

(2) For the purposes of sections 40 and 40A, “untrue statement” (不真實陳述), in relation to any prospectus, includes a material omission from the prospectus. (Added 30 of 2004 s. 2)

(Added 78 of 1972 s. 10)

[cf. 1948 c. 38 s. 46 U.K.]

#### Allotment

#### 42. Prohibition of allotment unless minimum subscription received

(1) Subject to section 38A, no allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors must be raised by the issue of share capital in order to provide for the matters specified in paragraph 7 in Part I of the Third Schedule has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company. For the purposes of this subsection, a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid. (Amended 78 of 1972 s. 11; 86 of 1992 s. 8)

(2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Ordinance referred to as the minimum subscription.

(3) 申請股份時就每股股份應繳付的款額，不得少於該股份面額的百分之五。

(4) 除第 38A 條另有規定外，在招股章程首次發出後 30 天屆滿時，如前述各項條件仍未獲遵從，則自股份申請人收到的款項，須立即全數無息退還申請人；倘在招股章程發出後 38 天內，仍有任何該等款項未如此退還，則該公司的董事須共同及各別負法律責任，將該等款項連同由第 38 天屆滿時開始按年息 8 釐計算的利息退還：(由 1992 年第 86 號第 8 條修訂)

但任何董事如能證明款項未予退還，並非因其不當行為或疏忽所致，則無須負法律責任。(由 1972 年第 78 號第 11 條代替)

(5) 任何條件，如規定或約束任何股份申請人免除有關人士遵從本條任何規定，即屬無效。

(6) 除第 (3) 款外，本條不適用於在首次分配向公眾作出要約認購的股份後所作出的股份分配。

[比照 1929 c. 23 s. 39 U.K.]

#### 43. 除非代替招股章程陳述書已交付處長，否則禁止在某些情況下作出分配

(1) 有股本公司在組成時如沒有發出招股章程，或雖已發出招股章程，卻沒有進而將向公眾作出要約認購的股份分配，則不得分配其股份或債權證，但如在首次分配股份或債權證前最少 3 天，已將一份代替招股章程陳述書交付處長註冊，則不在此限；該陳述書須由在其內名列為該公司的董事或該公司擬委任為董事的人簽署，或由其以書面授權的代理人簽署，而陳述書的格式及所列詳情須如附表 4 第 I 部所載，如屬該附表第 II 部所述的情況，則須列出該部所指明的報告，而上述第 I 及 II 部則在符合該附表第 III 部所載條文的規定下具有效力。

(2) 凡作出任何上述報告的人，已在報告內作出，或在沒有提出任何理由的情況下已在報告內表明該附表 4 第 5 段所述的任何調整，則每份根據第 (1) 款交付的代替招股章程陳述書，均須註明或隨附由該等人士簽署的書面陳述，列明該等調整及說明作出調整的理由。

(3) 本條不適用於私人公司，凡任何股份或債權證屬與附表 17 各部 (第 1 部除外) 一併理解的該附表第 1 部指明的要約的標的，則本條不適用於該股份或債權證的任何分配。(由 2004 年第 30 號第 2 條修訂)

(3) The amount payable on application on each share shall not be less than 5 per cent of the nominal amount of the share.

(4) Subject to section 38A, if the conditions aforesaid have not been complied with on the expiration of 30 days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within 38 days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of 8 per cent per annum from the expiration of the 38th day: (Amended 86 of 1992 s. 8)

Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part. (Replaced 78 of 1972 s. 11)

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) This section, except subsection (3), shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

[cf. 1929 c. 23 s. 39 U.K.]

#### 43. Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar

(1) A company having a share capital which does not issue a prospectus on its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least 3 days before the first allotment of either shares or debentures there has been delivered to the Registrar for registration a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorized in writing, in the form and containing the particulars set out in Part I of the Fourth Schedule and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) Every statement in lieu of prospectus delivered under subsection (1) shall, where the persons making any such report as aforesaid have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of the said Fourth Schedule, have endorsed thereon or attached thereto a written statement signed by those person setting out the adjustments and giving the reasons therefor.

(3) This section shall not apply to a private company or any allotment of shares or debentures the subject of an offer specified in Part 1 of the Seventeenth Schedule as read with the other Parts of that Schedule. (Amended 30 of 2004 s. 2)

(4) 公司如違反第(1)或(2)款，則公司及所有明知並故意授權或准許公司作出違反的公司董事，均可處罰款。(由1990年第7號第2條修訂)

(5) 凡根據第(1)款向處長交付的代替招股章程陳述書內，載有任何不真實陳述，則任何授權將該份代替招股章程陳述書交付註冊的人，除非能證明該項不真實陳述不具關鍵性，或能證明有合理理由相信，以及直至該份代替招股章程陳述書交付註冊時，仍相信該項不真實陳述乃屬真實，否則可處監禁及罰款。(由1990年第7號第2條修訂)

(6) 就本條而言——

- (a) 載列於代替招股章程陳述書內的任何陳述，如就其載列形式及載列之處的文意而言，是具誤導性的，則須當作為不真實陳述；及
- (b) 如某項陳述是載於代替招股章程陳述書內，或是載於該陳述書封面上的任何報告或備忘錄內，或是以提述方式收納於陳述書內，則該項陳述須當作載列於該陳述書內。

(6A) 就第(5)款而言，“不真實陳述”(untrue statement)就任何代替招股章程陳述書而言，包括該陳述書中的任何具關鍵性的遺漏。(由2004年第30號第2條增補)

(7) 行政長官會同行政會議可藉規例修訂附表4。(由1999年第23號第3條修訂)

(由1972年第78號第12條代替)  
[比照1948 c. 38 s. 48 U.K.]

#### 44. 不正當分配的后果

(1) 公司違反第42及43條的條文而向申請人作出的分配，可由申請人在該公司舉行法定大會後1個月內，但不得遲於1個月後，提出要求使其無效；如該公司無須舉行法定大會，或該項分配是在舉行法定大會後始行作出，則可在作出分配的日期後1個月內，但不得遲於1個月後提出，而即使該公司正進行清盤，亦可如此使其無效。

(2) 公司的任何董事，如明知而違反或准許或授權任何人違反上述各條中關於分配事宜的任何條文，即有法律責任分別賠償公司及獲分配者因此而可能蒙受或招致的任何損失、損害賠償或費用：

(4) If a company acts in contravention of subsection (1) or (2), the company and every director of the company who knowingly and wilfully authorizes or permits the contravention shall be liable to a fine. (Amended 7 of 1990 s. 2)

(5) Where a statement in lieu of prospectus delivered to the Registrar under subsection (1) includes any untrue statement, any person who authorized the delivery of the statement in lieu of prospectus for registration shall be liable to imprisonment and a fine, unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true. (Amended 7 of 1990 s. 2)

(6) For the purposes of this section—

- (a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and
- (b) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.

(6A) For the purposes of subsection (5), “untrue statement” (不真實陳述), in relation to a statement in lieu of prospectus, includes a material omission from the statement. (Added 30 of 2004 s. 2)

(7) The Chief Executive in Council may by regulation amend the Fourth Schedule. (Amended 23 of 1999 s. 3)

(Replaced 78 of 1972 s. 12)  
[cf. 1948 c. 38 s. 48 U.K.]

#### 44. Effect of irregular allotment

(1) An allotment made by a company to an applicant in contravention of the provisions of sections 42 and 43, shall be voidable at the instance of the applicant within 1 month after the holding of the statutory meeting of the company and not later, or, in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within 1 month after the date of the allotment, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes, or permits or authorizes the contravention of, any of the provisions of the said sections with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby:

但在分配日期起計 2 年屆滿後，不得提出追索該等損失、損害賠償或費用的法律程序。

[比照 1929 c. 23 s. 41 U.K.]

#### 44A. 股份及債權證的申請及分配

(1) 除非已屆招股章程首次公開發出的日期起計第 3 天的開始或該招股章程所指定的較後時間(如有的話)，否則不得依據該公開發出的招股章程將公司的股份或債權證作出分配，或就依據如此發出的招股章程而作出的申請採取任何程序。

上述第 3 天的開始或上述的較後時間，在本條例以下條文中，稱為“開立認購名單的時間”。

(2) 除第 38A 條另有規定外，不得在招股章程首次公開發出的日期起計 30 天後，始依據如此發出的招股章程將公司的股份或債權證作出分配。(由 1992 年第 86 號第 9 條修訂)

(3) 在第 (1) 及 (2) 款中，凡提述招股章程首次公開發出的日期，須解釋為提述該招股章程以報章廣告方式首次如此發出的日期：

但如該招股章程以其他方式首次公開發出後的第 3 天前，尚未以報章廣告方式如此發出，則上述提述須解釋為提述該招股章程以任何方式首次公開發出的日期。

(4) 某項分配的有效性，並不因本條中前述的任何條文被違反而受影響；但如有任何此等違反條文事，則有關公司及其每名失責高級人員均可處罰款。(由 1990 年第 7 號第 2 條修訂)

(5) 在本條應用於作出要約發售股份或債權證的招股章程時，前述各款在下述情況下具有效力：即凡提述分配之處以提述發售所取代，而凡提述公司及其每名失責高級人員之處，則以提述任何由其作出或經由其作出要約建議，而又明知並故意授權作出該項違反或准許該項違反的人所取代。

(6) 除非已至開立認購名單的時間後的第 5 天屆滿時，或某些根據第 40 條須就招股章程負責的人，在上述第 5 天屆滿前，發出公告，而公告的效力是在於根據該條

Provided that proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of 2 years from the date of the allotment.

[cf. 1929 c. 23 s. 41 U.K.]

#### 44A. Applications for, and allotment of, shares and debentures

(1) No allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus issued generally and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the 3rd day after that on which the prospectus is first so issued or such later time (if any) as may be specified in the prospectus.

The beginning of the said 3rd day or such later time as aforesaid is hereafter in this Ordinance referred to as “the time of the opening of the subscription lists”.

(2) Subject to section 38A, no allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus issued generally later than 30 days after the day on which the prospectus is first so issued. (Amended 86 of 1992 s. 9)

(3) In subsections (1) and (2), the references to the day on which the prospectus is first issued generally shall be construed as referring to the day on which it is first so issued as a newspaper advertisement:

Provided that, if it is not so issued as a newspaper advertisement before the 3rd day after that on which it is first so issued in any other manner, the said reference shall be construed as referring to the day on which it is first so issued in any manner.

(4) The validity of an allotment shall not be affected by any contravention of the foregoing provisions of this section but, in the event of any such contravention, the company and every officer of the company who is in default shall be liable to a fine. (Amended 7 of 1990 s. 2)

(5) In the application of this section to a prospectus offering shares or debentures for sale, the foregoing subsections shall have effect with the substitution of references to sale for references to allotment, and with the substitution for the reference to the company and every officer of the company who is in default of a reference to any person by or through whom the offer is made and who knowingly and wilfully authorizes or permits the contravention.

(6) An application for shares in or debentures of a company which is made in pursuance of a prospectus issued generally shall not be revocable until after the expiration of the 5th day after the time of the opening of the subscription lists, or the giving before the expiration of the said 5th day, by some person responsible under section 40 for the prospectus, of a public notice

免除或限制發出公告人的責任者，否則根據公開發出的招股章程而作出的公司股份或債權證的申請，不得予以撤銷。

(7) 就本條及第 44B 條而言，計算某一日期後的第 3 天或第 5 天時，在有關期間內出現的星期六或星期日或香港公眾假日，均不予計算；倘如此計算出來的第 3 天或第 5 天本身是星期六或星期日或香港公眾假日，則就上述兩條條文而言，須以隨後而並非是星期六或星期日或香港公眾假日的第一日取代。（由 1984 年第 6 號第 259 條修訂）

(由 1972 年第 78 號第 13 條增補)  
[比照 1948 c. 38 s. 50 U.K.]

#### 44B. 即將在證券交易所上市的股份或債權證的分配

(1) 凡公開發出或非公開發出的招股章程，載明已申請或會申請批准將藉其作出要約的股份或債權證，在任何證券交易所上市，如在首次發出該招股章程後的第 3 天前仍未提出批准申請，或在由結算認購名單日期起計的 3 個星期屆滿前，或在證券交易所或其代表於上述該 3 個星期內知會申請人的不超過 6 個星期的較長期限前，有關的批准已被拒絕，則就該招股章程提出的申請而作出的分配，不論於何時作出，均屬無效。（由 1984 年第 6 號第 259 條修訂）

(2) 凡未有如前述般提出批准申請，或有關批准已如前述般被拒絕，公司須立即將依據招股章程從申請人收到的所有款項，全數無息退還申請人；倘若在該公司有法律責任退還款項後 8 天內，仍有任何該等款項並未退還，則該公司的董事須共同及各別負法律責任，將該等款項連同由第 8 天屆滿時開始按年息 8 釐計算的利息退還：

但任何董事如能證明款項沒有退還，並非因其不當行為或疏忽所致，則無須負法律責任。

(3) 所有如前述般收到的款項，在該公司根據第 (2) 款仍可能有法律責任退還款項的期間內，須存於一個獨立的銀行戶口；如因沒有遵從本款的規定而構成失責，該公司及其每名失責高級人員均可處罰款。（由 1990 年第 7 號第 2 條修訂）

(4) 任何條件，如規定或約束任何股份或債權證申請人免除有關人士遵從本條任何規定，即屬無效。

having the effect under that section of excluding or limiting the responsibility of the person giving it.

(7) In reckoning for the purposes of this section and section 44B the 3rd or 5th day after another day, any intervening day which is a Saturday or Sunday or which is a general holiday in Hong Kong shall be disregarded, and if the 3rd or 5th day (as so reckoned) is itself a Saturday or Sunday or such a holiday there shall for the said purposes be substituted the 1st day thereafter which is none of them. (Amended 6 of 1984 s. 259)

(Added 78 of 1972 s. 13)  
[cf. 1948 c. 38 s. 50 U.K.]

#### 44B. Allotment of shares and debentures to be listed on stock exchange

(1) Where a prospectus, whether issued generally or not, states that application has been or will be made for permission for the shares or debentures offered thereby to be listed on any stock exchange, any allotment made on an application in pursuance of the prospectus shall, whenever made, be void if the permission has not been applied for before the 3rd day after the first issue of the prospectus or if the permission has been refused before the expiration of 3 weeks from the date of the closing of the subscription lists or such longer period not exceeding 6 weeks as may, within the said 3 weeks, be notified to the applicant for permission by or on behalf of the stock exchange. (Amended 6 of 1984 s. 259)

(2) Where the permission has not been applied for as aforesaid, or has been refused as aforesaid, the company shall forthwith repay without interest all money received from applicants in pursuance of the prospectus, and, if any such money is not repaid within 8 days after the company becomes liable to repay it, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of 8 per cent per annum from the expiration of the 8th day:

Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(3) All money received as aforesaid shall be kept in a separate bank account so long as the company may become liable to repay it under subsection (2); and, if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a fine. (Amended 7 of 1990 s. 2)

(4) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section shall be void.

(5) 就本條而言，如獲知會有關申請現時雖未獲批准，但將會獲得進一步考慮，則有關批准並不當作已被拒絕。

(6) 本條對下列各項具有效力——

- (a) 由包銷招股章程內作出要約的股份或債權證的人所同意承購該等股份或債權證，猶如該人已依據該招股章程申請該等股份或債權證一樣；及
- (b) 作出發售股份要約的招股章程，但須作下列變通——
  - (i) 凡提述分配之處，須以提述發售所取代；
  - (ii) 作出上述發售要約的人而非公司，根據第 (2) 款須有法律責任退回從申請人收到的款項，而對公司根據該款須負的法律責任的提述，亦須據此解釋；及
  - (iii) 在第 (3) 款中凡提述該公司及其每名失責高級人員之處，須以提述任何由其作出或經由其作出要約建議，而又明知並故意授權作出該項失責行為或准許該項失責行為出現的人所取代。

(由 1972 年第 78 號第 13 條增補)

[比照 1948 c. 38 s. 51 U.K.]

#### 45. 分配申報書

(1) 任何股份有限公司或有股本的擔保有限公司將其股份分配，該公司須於分配後 1 個月內，將下列文件交付處長註冊—— (由 2003 年第 28 號第 13 條修訂)

- (a) 具指明格式的中文或英文分配申報書，述明該項分配所包含股份的數目及面額、獲分配者的姓名或名稱及地址，以及就每股股份按股份面值或作為溢價所已繳付或到期應繳付的款項 (如有的話)；及 (由 1984 年第 6 號第 24 條代替。由 1995 年第 83 號第 8 條修訂；由 1997 年第 3 號第 11 條修訂)
- (b) 如屬以非現金全部或部分繳足股款而分配的股份，或屬以非現金或應以非現金全部或部分繳付溢價為代價而分配的股份，則須交付一份構成獲分配者對分配股份的所有權的書面合約的副本，並須連同與作出該項分配有關的任何銷售合約的副本、服務合約的副本，或其他代價合約的副本一併交付，而該等副本須由公司一名高級人員妥為核證為真實副本；除此之外，亦須交付一份申報書，述明如此分配的股份的數目及面額、此等股份被視為已繳足股款的程度、溢價被視為以非現金或應以非現金

(5) For the purposes of this section, permission shall not be deemed to be refused if it is intimated that the application for it, though not at present granted, will be given further consideration.

(6) This section shall have effect—

- (a) in relation to any shares or debentures agreed to be taken by a person underwriting an offer thereof by a prospectus as if he had applied therefor in pursuance of the prospectus; and
- (b) in relation to a prospectus offering shares for sale with the following modifications, that is to say—
  - (i) references to sale shall be substituted for references to allotment;
  - (ii) the persons by whom the offer is made, and not the company, shall be liable under subsection (2) to repay money received from applicants, and references to the company's liability under that subsection shall be construed accordingly; and
  - (iii) for the reference in subsection (3) to the company and every officer of the company who is in default there shall be substituted a reference to any person by or through whom the offer is made and who knowingly and wilfully authorizes or permits the default.

(Added 78 of 1972 s. 13)

[cf. 1948 c. 38 s. 51 U.K.]

#### 45. Return as to allotments

(1) Whenever a company limited by shares or a company limited by guarantee and having a share capital makes any allotment of its shares, the company shall within 1 month thereafter deliver to the Registrar for registration— (Amended 28 of 2003 s. 13)

- (a) a return of the allotments in the specified form, in English or Chinese, stating the number and nominal amount of the shares comprised in the allotment, the names and addresses of the allottees, and the amount, if any, paid or due and payable on each share whether on account of the nominal value of the share or by way of premium; and (Replaced 6 of 1984 s. 24. Amended 83 of 1995 s. 8; 3 of 1997 s. 11)
- (b) in the case of shares allotted as fully or partly paid up otherwise than in cash, or allotted in consideration of a premium paid or payable wholly or partly otherwise than in cash, a copy of a contract in writing constituting the title of the allottee to the allotment together with a copy of any contract for sale, or for services or other consideration in respect of which that allotment

全部或部分繳付的程度，以及分配此等股份所得的代價。(由 1975 年第 80 號第 2 條代替。由 2003 年第 28 號第 13 條修訂)

(1A) 即使第 (1) 款另有規定——

(a) 凡依據第 166 條所訂的某項債務償還安排計劃將股份分配而該等股份入帳列為以非現金全部或部分繳足股款的股份，若根據該條將一份批准該項計劃的法院命令正式文本交付處長，即屬充分遵從第 (1)(b) 款的規定；

(b) 凡在某項資本化行動中，將股份分配並入帳列為全部繳足股款的股份，有關公司若將一份批准作出該項分配的決議文本交付處長，即屬充分遵從第 (1)(b) 款的規定。(由 1984 年第 6 號第 24 條增補)

(2) 凡第 (1)(b) 款所述的合約並非以書面訂立，該公司須於作出分配後 1 個月內，將一份載有該款指明的合約細則並具指明格式的申報書，交付處長註冊。(由 2003 年第 28 號第 13 條代替)

(3) 如因沒有遵從本條的規定而構成失責，有關公司及其每名失責高級人員均可處失責罰款，如持續失責，則可處按日計算的失責罰款。(由 1984 年第 6 號第 24 條修訂；由 1990 年第 7 號第 2 條修訂)

但如因本條規定須交付的任何文件於作出分配後 1 個月內仍未交付處長而構成失責，則該公司或任何須對失責負法律責任的人，均可向法院申請寬免；法院如信納遺漏交付該文件乃屬意外或是出於無心，或信納給予寬免是公正公平的，則可作出命令，將交付文件的期限延展一段法院認為恰當的時間。(由 2003 年第 28 號第 13 條修訂)

[比照 1929 c. 23 s. 42 U.K.]

was made, such copies being duly certified by an officer of the company to be true copies, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, the extent to which premium paid or payable wholly or partly otherwise than in cash is to be treated as paid, and the consideration for which they have been allotted. (Replaced 80 of 1975 s. 2. Amended 28 of 2003 s. 13)

(1A) Notwithstanding subsection (1)—

(a) where shares are allotted credited as fully or partly paid up otherwise than in cash in pursuance of a scheme of arrangement under section 166, the delivery to the Registrar under that section of an office copy of the order of the court sanctioning the scheme shall be a sufficient compliance with the requirements of subsection (1)(b);

(b) where shares are allotted credited as fully paid up on a capitalization, the delivery by the company to the Registrar of a copy of the resolution authorizing the allotment shall be a sufficient compliance with the requirements of subsection (1)(b). (Added 6 of 1984 s. 24)

(2) Where such a contract as mentioned in subsection (1)(b) is not reduced to writing, the company shall within 1 month after the allotment deliver to the Registrar for registration a return in the specified form containing the particulars of the contract specified in that subsection. (Replaced 28 of 2003 s. 13)

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine and, for continued default, to a daily default fine: (Amended 6 of 1984 s. 24; 7 of 1990 s. 2)

Provided that, in case of default in delivering to the Registrar any document within 1 month after the allotment any document required to be delivered by this section, the company, or any person liable for the default, may apply to the court for relief, and the court, if satisfied that the omission to deliver the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the delivery of the document for such period as the court may think proper. (Amended 28 of 2003 s. 13)

[cf. 1929 c. 23 s. 42 U.K.]

## 佣金及折扣

46. 支付某些佣金的權力以及禁止支付  
所有其他佣金、折扣等

(1) 公司可向任何無條件或有條件認購或同意認購該公司股份的人，或向任何無條件或有條件促致認購或同意促致認購該公司股份的人，支付佣金作為代價，如——

- (a) 支付佣金乃有關章程細則許可者；及
- (b) 所支付或同意支付的佣金不超過發行股份價格的百分之十或有關章程細則許可支付的款額或比率，以款額較小者為準；及
- (c) 所支付或同意支付的佣金的款額或百分率——
  - (i) 如屬向公眾作出要約認購的股份，已在招股章程內披露；或
  - (ii) 如屬並非向公眾作出要約認購的股份，已在代替招股章程陳述書內披露，或在具指明格式並按簽署代替招股章程陳述書的方式同樣簽署的陳述書內披露，而且該陳述書已在支付佣金前交付處長註冊；此外，如有發出邀請認購股份而本身並非招股章程的通告或通知書，亦已在該通告或通知書內披露；及（由 1997 年第 3 號第 12 條修訂）
- (d) 有關人士為了佣金而同意無條件認購的股份數目，已按照上述方式予以披露。

(2) 除前文所述外，任何公司不得直接或間接運用其股份或資本款項以支付任何佣金、折扣或津貼予任何人，作為該人無條件或有條件認購或同意認購該公司股份的代價，或作為該人無條件或有條件促致或同意促致認購該公司股份的代價，不論如此運用的股份或款項是否計入該公司所取得的任何財產的買款內，或是計入為該公司進行的任何工作的合約價錢內，亦不論該等款項是從名義買款或合約價中支付，或是以其他方式將該等股份或款項如此運用。

(3) 本條並不影響任何公司支付在此之前該公司可合法支付的經紀費的權力。

## Commissions and Discounts

46. Power to pay certain commissions, and  
prohibition of payment of all other  
commissions, discounts, &c.

(1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company if—

- (a) the payment of the commission is authorized by the articles; and
- (b) the commission paid or agreed to be paid does not exceed 10 per cent of the price at which the shares are issued or the amount or rate authorized by the articles, whichever is the less; and
- (c) the amount or rate per cent of the commission paid or agreed to be paid is—
  - (i) in the case of shares offered to the public for subscription, disclosed in the prospectus; or
  - (ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the specified form signed in like manner as a statement in lieu of prospectus and delivered before the payment of the commission to the Registrar for registration, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice; and (Amended 3 of 1997 s. 12)
- (d) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in manner aforesaid.

(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

(4) 任何公司的賣主、發起人或其他收取該公司以金錢或股份形式支付的款項的人，有權並當作一向有權運用如此收取的款項或股份的任何部分以支付任何佣金，但此項佣金，如由該公司直接支付，乃根據本條本屬合法者始可支付。

(5) 如因沒有遵從本條中關於將具指明格式的陳述書交付處長的條文規定而構成失責，有關公司及其每名失責高級人員均可處罰款。(由 1950 年第 22 號附表修訂；由 1984 年第 6 號第 259 條修訂；由 1990 年第 7 號第 2 條修訂；由 1997 年第 3 號第 12 條修訂)

[比照 1929 c. 23 s. 43 U.K.]

47. (由 1974 年第 80 號第 3 條廢除)

公司為收購本身股份而提供資助

適用於所有公司的條文

#### 47A. 一般禁止提供資助

(1) 除第 47B 至 48 條另有規定外，凡任何人正進行收購或正建議收購某公司的股份，在該項收購行動進行之前或進行同時，該公司或其任何附屬公司均不可為該項收購行動而直接或間接給予資助。

(2) 除第 47B 至 48 條另有規定外，凡某人已收購某公司的股份，並且為該項收購行動(該人或任何其他)招致任何債務，該公司或其任何附屬公司均不可為減少或解除該項如此招致的債務而直接或間接給予資助。

(3) 任何公司如違反本條，可處罰款，而每名失責高級人員則可處監禁或罰款。

(由 1991 年第 77 號第 3 條增補)

[比照 1985 c. 6 s. 151 U.K.]

#### 47B. 定義

(1) 在第 47A 至 48 條中——

“分發”(distribution)具有第 79A 條給予該詞的涵義；

“可分發利潤”(distributable profits)就給予任何資助而言——

(4) A vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

(5) If default is made in complying with the provisions of this section relating to the delivery to the Registrar of the statement in the specified form, the company and every officer of the company who is in default shall be liable to a fine. (Amended 22 of 1950 Schedule; 6 of 1984 s. 259; 7 of 1990 s. 2; 3 of 1997 s. 12)

[cf. 1929 c. 23 s. 43 U.K.]

47. (Repealed 80 of 1974 s. 3)

Financial assistance by a company  
for acquisition of its own shares

Provisions applying to all companies

#### 47A. Financial assistance generally prohibited

(1) Subject to sections 47B to 48, where a person is acquiring or is proposing to acquire shares in a company, it is not lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of that acquisition before or at the same time as the acquisition takes place.

(2) Subject to sections 47B to 48, where a person has acquired shares in a company and any liability has been incurred (by that or any other person), for the purpose of that acquisition, it is not lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability so incurred.

(3) If a company acts in contravention of this section, it is liable to a fine, and every officer who is in default is liable to imprisonment or a fine.

(Added 77 of 1991 s. 3)

[cf. 1985 c. 6 s. 151 U.K.]

#### 47B. Definitions

(1) In sections 47A to 48—

“distributable profits”(可分發利潤), in relation to the giving of any financial assistance—

- (a) 指公司可從中將一筆與該項資助等值的款項合法地分發的該等利潤；及
- (b) 如該項資助是一項非現金資產或包括一項非現金資產，則包括假若該公司分發該項資產時即會根據第 79L 條成為可供分發的任何利潤；

“資助”(financial assistance) 指——

- (a) 藉饋贈而給予的資助；
- (b) 藉擔保、保證、彌償(就彌償人本身的疏忽或失責而作出的彌償除外)、責任解除或寬免而給予的資助；
- (c) 藉貸款協議或任何其他協議而給予的資助，且根據該等協議，給予資助的人的責任於協議另一方的責任按照協議仍未履行時須予履行；或藉貸款協議或上述其他協議的約務更替、或藉根據此等協議而產生的權利的轉讓而給予的資助；或
- (d) 由某公司所給予的任何其他資助，而該公司在給予該等資助時，會令其淨資產有關鍵性程度的減少，或由某間並無淨資產的公司所給予的任何其他資助。

(2) 在第 (1) 款“資助”(financial assistance) 的定義 (d) 段中，“淨資產”(net assets) 的涵義與第 157HA(15) 條中該詞的涵義相同。(由 2003 年第 28 號第 14 條修訂)

(3) 在第 47A 至 48 條中——

- (a) 凡提述某人招致某項債務之處，即包括該人藉訂立協議或安排(不論是否可強制執行，亦不論是否由該人獨自或連同他人訂立)或藉其他方法而改變該人的財務狀況；及
- (b) 凡提述某公司為減少或解除某人因收購股份而招致的一項債務而給予資助之處，即包括該公司給予資助以使該人的財務狀況完全或部分回復至與收購進行前一樣。

(由 1991 年第 77 號第 3 條增補)

[比照 1985 c. 6 s. 152 U.K.]

#### 47C. 第 47A 條並不禁止的交易

(1) 如屬以下情況，第 47A(1) 條並不禁止一間公司為收購其股份或其控股公司的股份而給予資助——

- (a) means those profits out of which the company could lawfully make a distribution equal in value to that assistance; and
- (b) includes, in a case where the financial assistance is or includes a non-cash asset, any profit which, if the company were to make a distribution of that asset, would under section 79L be available for that purpose;

“distribution”(分發) has the meaning given by section 79A;

“financial assistance”(資助) means——

- (a) financial assistance given by way of gift;
- (b) financial assistance given by way of guarantee, security or indemnity, other than an indemnity in respect of the indemnifier's own neglect or default, or by way of release or waiver;
- (c) financial assistance given by way of a loan or any other agreement under which any of the obligations of the person giving the assistance are to be fulfilled at a time when in accordance with the agreement any obligation of another party to the agreement remains unfulfilled, or by way of the novation of, or the assignment of rights arising under, a loan or such other agreement; or
- (d) any other financial assistance given by a company the net assets of which are thereby reduced to a material extent or which has no net assets.

(2) In paragraph (d) of the definition of “financial assistance” (資助) in subsection (1), “net assets” (淨資產) has the same meaning as in section 157HA(15). (Amended 28 of 2003 s. 14)

(3) In sections 47A to 48——

- (a) a reference to a person incurring a liability includes his changing his financial position by making an agreement or arrangement (whether enforceable or unenforceable, and whether made on his own account or with any other person) or by any other means; and
- (b) a reference to a company giving financial assistance for the purpose of reducing or discharging a liability incurred by a person for the purpose of the acquisition of shares includes its giving such assistance for the purpose of wholly or partly restoring his financial position to what it was before the acquisition took place.

(Added 77 of 1991 s. 3)

[cf. 1985 c. 6 s. 152 U.K.]

#### 47C. Transactions not prohibited by section 47A

(1) Section 47A(1) does not prohibit a company from giving financial assistance for the purpose of an acquisition of shares in it or its holding company if——

- (a) 該公司給予資助的主要目的，並非是為上述收購行動，或即使是為上述收購行動，亦僅屬該公司某些其他較大目的之附帶部分；及
- (b) 給予資助是真誠為了該公司的利益的。
- (2) 如屬以下情況，第 47A(2) 條並不禁止一間公司給予資助——
  - (a) 該公司給予資助的主要目的，並非是為減少或解除某人為收購該公司或其控股公司的股份而招致的任何債務，或即使是為減少或解除該債務，亦僅屬該公司某些其他較大目的之附帶部分；及
  - (b) 給予資助是真誠為了該公司的利益的。
- (3) 第 47A 條並不禁止——
  - (a) 以合法分派股息的形式將公司資產分發，或在公司的清盤過程中作出的分發；
  - (b) 紅股的分配；
  - (c) 由法院根據第 60 條作出命令所確認的公司資本的減少；
  - (d) 按照第 49 至 49S 條所作出的股份贖回或購買；
  - (e) 依據一項法院根據第 166 條所作出的命令而作出任何事情；
  - (f) 根據一項依據第 237 條所作的安排而作出任何事情；或
  - (g) 根據一項由公司與其債權人所訂立並憑藉第 254 條對該等債權人具約束力的債務償還安排而作出的任何事情。
- (4) 第 47A 條並不禁止——
  - (a) 任何公司在其通常業務運作中借出款項；而借出款項為公司通常業務的一部分；
  - (b) 任何公司按照在當其時有效的任何計劃而提供款項，以購買或認購該公司或其控股公司的全部繳付股款的股份，但必須是由該公司或其任何附屬公司的僱員（包括在該公司或其任何附屬公司擔任受薪工作或職位的董事）的受託人購買或認購，或所購買或認購的股份是會由該等僱員持有或是為該等僱員的利益而持有的；

- (a) the company's principal purpose in giving that assistance is not to give it for the purpose of any such acquisition, or the giving of the assistance for that purpose is but an incidental part of some larger purpose of the company; and
- (b) the assistance is given in good faith in the interests of the company.
- (2) Section 47A(2) does not prohibit a company from giving financial assistance if—
  - (a) the company's principal purpose in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of shares in the company or its holding company, or the reduction or discharge of any such liability is but an incidental part of some larger purpose of the company; and
  - (b) the assistance is given in good faith in the interests of the company.
- (3) Section 47A does not prohibit—
  - (a) a distribution of a company's assets by way of dividend lawfully made or a distribution made in the course of the company's winding up;
  - (b) the allotment of bonus shares;
  - (c) a reduction of capital confirmed by order of the court under section 60;
  - (d) a redemption or purchase of shares made in accordance with sections 49 to 49S;
  - (e) anything done in pursuance of an order of the court under section 166;
  - (f) anything done under an arrangement made in pursuance of section 237; or
  - (g) anything done under an arrangement made between a company and its creditors which is binding on the creditors by virtue of section 254.
- (4) Section 47A does not prohibit—
  - (a) where the lending of money is part of the ordinary business of the company, the lending of money by the company in the ordinary course of its business;
  - (b) the provision by a company in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company or of any subsidiary of the company, including any director holding a salaried employment or office in the company or any subsidiary of the company;

(c) 任何公司向真誠受僱於該公司的人(董事除外)作出貸款,目的是使該等人士能收購並以實益擁有的方式持有該公司或其控股公司的全部繳付股款的股份。

(5) 在第(4)(c)款中,凡提述董事之處,即包括提述——

(a) 該董事的配偶或任何子女或繼子女;

(b) 以任何信託的受託人(僱員股份計劃或退休金計劃的受託人除外)身分行事的人,而該項信託的受益人包括該董事、其配偶或其任何子女或繼子女,或該項信託的條款授予受託人一項可為該董事、其配偶或其任何子女或繼子女的利益而行使的權力;及

(c) 以該董事、其配偶、子女或繼子女或(b)段所提述的受託人的合夥人身分行事的人。

(6) 在第(5)款中,凡提述任何人的子女或繼子女之處,即包括提述該人的任何非婚生子女,但不包括提述任何年滿 18 歲的人。

(由 1991 年第 77 號第 3 條增補)

[比照 1985 c. 6 s. 153 U.K.]

## 上市公司

### 47D. 對上市公司的特別限制

(1) 就上市公司而言,只有在淨資產不會因給予資助而減少的情況下,或如淨資產會因此而減少,亦只有在引致資產減少的資助是從可分發利潤中獲得提供的情況下,第 47C(4)條始許可給予資助。

(2) 就此目的而言,下述定義適用——

(a) “淨資產”(net assets)指公司資產總額超出公司負債總額的款額(以公司緊接給予資助前公司的會計紀錄所述明的資產額及負債額計算);

(b) “負債”(liabilities)包括為相當可能會招致或確定會招致但款額或產生日期仍未確定的負債或損失作出準備而合理地需要保留的款額。

(由 1991 年第 77 號第 3 條增補)

[比照 1985 c. 6 s. 154 U.K.]

(c) the making by a company of loans to persons (other than directors) employed in good faith by the company with a view to enabling those persons to acquire fully paid shares in the company or its holding company to be held by them by way of beneficial ownership.

(5) References in subsection (4)(c) to a director shall include references to—

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

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

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

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

(Added 77 of 1991 s. 3)

[cf. 1985 c. 6 s. 153 U.K.]

## Listed Companies

### 47D. Special restriction for listed companies

(1) In the case of a listed company, section 47C(4) authorizes the giving of financial assistance only if the company has net assets which are not thereby reduced or, to the extent that those assets are thereby reduced, if the assistance is provided out of distributable profits.

(2) For this purpose the following definitions apply—

(a) “net assets” (淨資產) means the amount by which the aggregate of the company's assets exceeds the aggregate of its liabilities (taking the amount of both assets and liabilities to be as stated in the company's accounting records immediately before the financial assistance is given);

(b) “liabilities” (負債) includes any amount retained as reasonably necessary for the purpose of providing for any liability or loss which is either likely to be incurred, or certain to be incurred but uncertain as to the amount or as to the date on which it will arise.

(Added 77 of 1991 s. 3)

[cf. 1985 c. 6 s. 154 U.K.]

## 非上市公司

## 47E. 對非上市公司放寬第 47A 條

(1) 如在給予資助方面本條下列條文及第 47F 至 48 條的條文獲遵從，而所涉及的股份收購在現時或以前是一項非上市公司的股份收購，或該非上市公司是另一間非上市公司的附屬公司時，所涉及的股份收購在現時或以前是一項該另一間非上市公司的股份收購，則第 47A 條並不禁止非上市公司在上述情況下給予資助。(由 2000 年第 32 號第 48 條修訂)

(2) 該項資助，只有在公司的淨資產不會因給予資助而減少的情況下，或如淨資產會因此而減少，亦只有在引致資產減少的資助是從可分發利潤中獲得提供的情況下，始可給予，而就本款的釋義而言，第 47D(2) 條適用。

(3) 凡所涉及的股份收購在現時或以前是一項某附屬公司的控股公司的股份收購，如該附屬公司亦是一間上市公司的附屬公司，且該上市公司本身是上述控股公司的附屬公司時，則本條並不准許該附屬公司給予資助。

(4) 除非建議給予資助的公司是全資附屬公司，否則根據本條給予資助一事，須由該公司在大會上藉特別決議批准。

(5) 凡公司給予資助所涉及的股份收購，在現時或以前是一項其控股公司的股份收購，則該控股公司以及同時屬上述給予資助的公司的控股公司及首述控股公司的附屬公司的任何其他公司(但屬全資附屬公司者則除外)，亦須在大會上藉特別決議批准該項資助。

(6) 建議給予資助的公司的過半數董事，須在給予資助前作出符合第 47F 條的規定的陳述書，而凡收購或將收購的股份是該公司的控股公司的股份，則該控股公司的過半數董事以及同時屬上述給予資助的公司的控股公司及首述控股公司的附屬公司的任何其他公司的過半數董事，亦須作出同樣的陳述書。(由 1997 年第 3 號第 13 條修訂；由 2003 年第 28 號第 15 條修訂)

(7) 如一項按照第 116B 條的規定而獲贊同(或建議如此贊同)的決議是給予第(4)或(5)款所指的批准的，則第 47G(11)(a) 條並不就該項決議而適用，但須將第(6)款提述的陳述書——(由 2003 年第 28 號第 15 條修訂)

(a) 提供予按照第 116B 條規定須簽署(或由他人代表簽署)該項決議的每名成員；並且

## Unlisted Companies

## 47E. Relaxation of section 47A for unlisted companies

(1) Section 47A does not prohibit an unlisted company from giving financial assistance in a case where the acquisition of shares in question is or was an acquisition of shares in the company or, if it is a subsidiary of another unlisted company, in that other company if the following provisions of this section, and sections 47F to 48, are complied with as respects the giving of that assistance.

(2) The financial assistance may only be given if the company has net assets which are not thereby reduced or, to the extent that they are reduced, if the assistance is provided out of distributable profits and section 47D(2) applies for the interpretation of this subsection.

(3) This section does not permit financial assistance to be given by a subsidiary, in a case where the acquisition of shares in question is or was an acquisition of shares in its holding company, if it is also a subsidiary of a listed company which is itself a subsidiary of that holding company.

(4) Unless the company proposing to give the financial assistance is a wholly-owned subsidiary, the giving of assistance under this section shall be approved by special resolution of the company in general meeting.

(5) Where the financial assistance is to be given by the company in a case where the acquisition of shares in question is or was an acquisition of shares in its holding company, that holding company and any other company which is both the company's holding company and a subsidiary of that other holding company (except, in any case, a company which is a wholly-owned subsidiary) shall also approve by special resolution in general meeting the giving of the financial assistance.

(6) A majority of the directors of the company proposing to give the financial assistance and, where the shares acquired or to be acquired are shares in its holding company, a majority of the directors of that company and of any other company which is both the company's holding company and a subsidiary of that other holding company shall before the financial assistance is given make a statement complying with section 47F. (Amended 3 of 1997 s. 13; 28 of 2003 s. 15)

(7) In relation to a resolution agreed to, or proposed to be agreed to, in accordance with section 116B giving approval under subsection (4) or (5), section 47G(11)(a) shall not apply, but the statement referred to in subsection (6) shall be supplied— (Amended 28 of 2003 s. 15)

(a) to each member by whom, or on whose behalf, the resolution is required to be signed in accordance with section 116B; and

- (b) 在提供該項決議予有關成員簽署之時或之前提供予該成員。 (由 2000 年第 46 號第 4 條增補)

[比照 1985 c. 6 Sch. 15A, Pt. II, item 4, U.K.]

(由 1991 年第 77 號第 3 條增補)

[比照 1985 c. 6 s. 155 U.K.]

#### 47F. 第 47E 條所訂的董事陳述書

- (1) 第 47E(6) 條提述的陳述書須具指明格式及由董事簽署，並須述明—— (由 2003 年第 28 號第 16 條修訂)

- (a) 上述資助所採取的形式；
- (b) 將獲給予上述資助的人的姓名或名稱及地址； (由 2003 年第 28 號第 16 條修訂)
- (c) 公司意欲該等人士將上述資助作何用途；
- (d) 作出陳述書的董事，已就公司在緊接建議給予資助的日期後的初步情況，得出結論，認為公司並無理由屆時無能力償付其債項；以及認為—— (由 2003 年第 28 號第 16 條修訂)
  - (i) 如公司擬在該日期起計 12 個月內開始清盤，公司由開始清盤日期起計 12 個月內，有能力悉數償付其債項；或
  - (ii) 在任何其他情況下，公司在緊接該日期後一年內，有能力償付其到期的債項。

(2) 就第 (1)(d) 款而言，董事在公司是否無能力償付其債項的問題上作出結論時，須考慮的債務 (包括或有及預期的債務)，與根據第 177 條須考慮的有關債務相同。

(3) 由公司過半數董事根據第 47E(6) 條作出的陳述書須在作出後 15 天內交付處長。 (由 2003 年第 28 號第 16 條代替)

(4) 如任何公司未有遵從第 (3) 款的規定，該公司及每名失責高級人員均可處罰款，如持續失責，則可處按日計算的失責罰款。

(5) 根據第 47E(6) 條作出陳述書的公司董事，如無合理理由支持在該陳述書中所表達的意見，可處監禁或罰款。 (由 2003 年第 28 號第 16 條修訂)

(由 1991 年第 77 號第 3 條增補)

[比照 1985 c. 6 s. 156 U.K.]

- (b) at or before the time at which the resolution is supplied to the member for signature. (Added 46 of 2000 s. 4)

[cf. 1985 c. 6 Sch. 15A, Pt. II, item 4, U.K.]

(Added 77 of 1991 s. 3)

[cf. 1985 c. 6 s. 155 U.K.]

#### 47F. Directors' statement under section 47E

- (1) The statement referred to in section 47E(6) shall be in the specified form, shall be signed by the directors and shall state— (Amended 28 of 2003 s. 16)

- (a) the form which such assistance is to take;
- (b) the names and addresses of the persons to whom such assistance is to be given; (Amended 28 of 2003 s. 16)
- (c) the purpose for which the company intends those persons to use such assistance;
- (d) that the directors making the statement have formed the opinion, as regards the company's initial situation immediately following the date on which the assistance is proposed to be given, that there will be no ground on which it could then be found to be unable to pay its debts; and either— (Amended 28 of 2003 s. 16)
  - (i) if it is intended to commence the winding up of the company within 12 months of that date, that the company will be able to pay its debts in full within 12 months of the commencement of the winding up; or
  - (ii) in any other case, that the company will be able to pay its debts as they fall due during the year immediately following that date.

(2) In forming their opinion for purposes of subsection (1)(d), the directors shall take into account the same liabilities (including contingent and prospective liabilities) as would be relevant under section 177 to the question whether the company is unable to pay its debts.

(3) A statement made by a majority of a company's directors under section 47E(6) shall be delivered to the Registrar within 15 days after it is made. (Replaced 28 of 2003 s. 16)

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

(5) A director of a company who makes a statement under section 47E(6) without having reasonable grounds for the opinion expressed in it is liable to imprisonment or a fine. (Amended 28 of 2003 s. 16)

(Added 77 of 1991 s. 3)

[cf. 1985 c. 6 s. 156 U.K.]

## 47G. 第 47E 條所訂的特別決議

(1) 第 47E 條規定公司就批准給予資助一事通過的特別決議，須在公司過半數董事就給予該項資助而作出第 47E(6) 條所規定的陳述書的日期通過，或在緊接該日期後 30 天內通過。(由 2003 年第 28 號第 17 條修訂)

(2) 上述決議通過後，以下人士可向法院提出取消該決議的申請——

(a) 持有總額不少於 10% 的公司已發行股本面值或任何類別的已發行股本面值的人；或

(b) 如公司並非股份有限公司，則公司成員中不少於 10% 的成員，但有關申請不得由已同意或已表決贊成該決議的人提出。

(3) 申請須在該決議通過後 28 天內提出，並可由有權提出該項申請的人為此目的而以書面委任的其中一人或多於一人代其提出。

(4) 如有人提出此項申請，公司須隨即以具指明格式的通知書將此事通知處長。(由 1997 年第 3 號第 14 條修訂)

(5) 法院在聆訊該項申請時，須作出命令以取消或確認該決議，並可——

(a) 按其認為合適的條款及條件作出上述命令及(如其認為適合)將法律程序押後，以使有關方面作出令法院滿意的安排，購買持異議的成員的權益；及

(b) 作出其認為合宜的指示及命令，以便作出或執行該等安排。

(6) 法院如認為適合，法院的命令可就公司購買其任何成員的股份及就公司的股本據此減少一事作出規定，並可對公司的章程大綱及章程細則就上述規定作出所需的相應修改。

(7) 公司須在法院作出命令起計 15 天內，或在法院隨時藉命令指示的較長期限內，將法院命令的正式文本一份交付處長。

(8) 如法院的命令規定公司不可對其章程大綱或章程細則作出任何修改或任何指明的修改，則公司即無權在未有法院的許可下，作出違反該項規定的修改。

## 47G. Special resolution under section 47E

(1) A special resolution required by section 47E to be passed by a company approving the giving of financial assistance shall be passed on the date on which a majority of the directors of that company make the statement required by section 47E(6) in connection with the giving of that assistance, or within 30 days immediately following that date. (Amended 28 of 2003 s. 17)

(2) Where such a resolution has been passed, an application may be made to the court for the cancellation of the resolution——

(a) by the holders of not less in the aggregate than 10% in nominal value of the company's issued share capital or any class of it; or

(b) if the company is not limited by shares, by not less than 10% of the company's members,

but the application shall not be made by a person who has consented to or voted in favour of the resolution.

(3) The application shall be made within 28 days after the passing of the resolution and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) If such an application is made, the company shall forthwith give notice in the specified form of that fact to the Registrar. (Amended 3 of 1997 s. 14)

(5) On the hearing of the application, the court shall make an order either cancelling or confirming the resolution and——

(a) may make that order on such terms and conditions as it thinks fit, and may (if it thinks fit) adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members; and

(b) may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.

(6) The court's order may, if the court thinks fit, provide for the purchase by the company of the shares of any of its members and for the reduction accordingly of the company's capital, and may make such alterations in the company's memorandum and articles as may be required in consequence of that provision.

(7) The company shall, within 15 days from the making of the court's order, or within such longer period as the court may at any time by order direct, deliver to the Registrar an office copy of the order.

(8) If the court's order requires the company not to make any, or any specified, alteration in its memorandum or articles, the company shall not then have power without the leave of the court to make any such alteration in breach of the requirement. (Amended 80 of 1997 s. 102)

(9) 憑藉一項根據本條所作出的命令而對章程大綱或章程細則作出的修改，如並非由公司藉決議作出，所具效力猶如藉決議妥為作出的一樣；而本條例則據此適用於經如此修改的章程大綱或章程細則。

(10) 未有遵從第(4)或(7)款的規定的公司及任何失責高級人員，均可處罰款，如持續失責，則可處按日計算的失責罰款。

(11) 就第 47E 條而言，公司所通過的特別決議並無效力——

(a) 但如在通過該決議的大會上，備有第 47E(6) 條所規定的陳述書，供與會的公司成員查閱者則除外；(由 2003 年第 28 號第 17 條修訂)

(b) 如法院應根據本條提出的申請將該特別決議取消。

(由 1991 年第 77 號第 3 條增補)

[比照 1985 c. 6 ss. 54 & 157 U.K.]

#### 48. 根據第 47E 條給予資助的時間

(1) 本條適用於某段時間，而在該段時間之前或之後，一間公司不可依據第 47E 條給予資助。

(2) 凡該條規定須通過特別決議始批准給予資助，則不得在下列日期起計的 4 個星期屆滿前給予該項資助——

(a) 該特別決議通過的日期；或

(b) 凡有多於一項該等決議獲通過，則最後一項決議通過的日期，除非有權在通過該決議的公司大會上表決的每名成員，均表決贊成該決議(如多於一項決議，則贊成每項決議)。

(3) 如有任何根據第 47G 條就取消上述決議的申請提出，則在該申請獲最終裁定前，不得給予資助，但法院作出其他命令則除外。

(4) 該項資助不得在下列日期起計的 3 個月屆滿後給予——

(a) 建議給予資助的公司的過半數董事根據第 47E(6) 條作出陳述書的日期；或 (由 2003 年第 28 號第 18 條代替)

(b) 如公司是一間附屬公司，而其過半數董事以及其任何控股公司的過半數董事均作出上述陳述書，則為作出最早一項陳述書的日期，(由 2003 年第 28 號第 18 條代替)

(9) An alteration in the memorandum or articles made by virtue of an order under this section, if not made by resolution of the company, is of the same effect as if duly made by resolution; and this Ordinance applies accordingly to the memorandum or articles as so altered.

(10) A company which fails to comply with subsection (4) or (7), and any officer who is in default, is liable to a fine and, for continued default, to a daily default fine.

(11) A special resolution passed by a company is not effective for purposes of section 47E—

(a) unless the statement required by section 47E(6) is available for inspection by members of the company at the meeting at which the resolution is passed; (Amended 28 of 2003 s. 17)

(b) if it is cancelled by the court on an application under this section.

(Added 77 of 1991 s. 3)

[cf. 1985 c. 6 ss. 54 & 157 U.K.]

#### 48. Time for giving financial assistance under section 47E

(1) This section applies as to the time before and after which financial assistance may not be given by a company in pursuance of section 47E.

(2) Where a special resolution is required by that section to be passed approving the giving of the assistance, the assistance shall not be given before the expiry of the period of 4 weeks beginning with—

(a) the date on which the special resolution is passed; or

(b) where more than one such resolution is passed, the date on which the last of them is passed,

unless for that resolution (or, if more than one, each of them), every member of the company which passed the resolution who is entitled to vote at general meetings of the company voted in favour of the resolution.

(3) If application for the cancellation of any such resolution is made under section 47G, the financial assistance shall not be given before the final determination of the application unless the court otherwise orders.

(4) The assistance shall not be given after the expiry of the period of 3 months beginning with—

(a) the date on which the majority of the directors of the company proposing to give the assistance made their statement under section 47E(6); or (Replaced 28 of 2003 s. 18)

(b) where that company is a subsidiary and both a majority of its directors and a majority of the directors of any of its holding companies made such a statement, the date on which the earliest of the statements was made, (Replaced 28 of 2003 s. 18)

但如法院應根據第 47G 條提出的申請而作出其他命令，則不在此限。

(由 1991 年第 77 號第 3 條代替)

[比照 1985 c. 6 s. 158 U.K.]

提述向公眾作出股份或債權證  
要約之處的解釋

48A. 提述向公眾作出股份或債權證要約之處的解釋

(1) 在本條例中，除所載的條文有相反規定外，凡提述向公眾作出股份或債權證要約之處，須解釋為包括提述向任何部分公眾作出該等股份或債權證的要約，不論該部分公眾是因作為有關公司的成員或債權證持有人，或因作為發出招股章程的客戶，或以任何其他形式而被選出的；在符合前述的規定下，在本條例或在公司章程細則內，凡提述邀請公眾認購股份或債權證之處，亦須作類似的解釋。

(2) 第 (1) 款不得視作規定將下述要約或邀請視為向公眾作出，該等要約或邀請為在任何情況下，均可恰當地被認為並非旨在直接或間接導致股份或債權證可供並非接獲該項要約或邀請的人認購或購買者，或在其他情況下，可恰當地被認為作出及接獲該項要約或邀請的人本身的業務者，而尤其是——

(a) 公司章程細則中關於禁止邀請公眾認購股份或債權證的條文，不得視作禁止向公司成員或債權證持有人作出可恰當地被認為如前述情況的邀請；及

(b) 本條例中有關私人公司的條文，須據此解釋。

(3) 為免生疑問，現宣布附表 17 的條文不得解釋為損害本條的概括性。(由 2004 年第 30 號第 2 條增補)

(由 1972 年第 78 號第 14 條增補)

[比照 1948 c. 38 s. 55 U.K.]

溢價股份、可贖回優先股及  
折扣股份的發行

(由 1974 年第 80 號第 5 條代替)

48B. 發行股份時取得的溢價的運用

(1) 凡公司不論以現金溢價或其他溢價發行股份，均須將一筆與該等股份的溢價總額或總值相等的款額撥入一項名為“股份溢價帳”的帳項，而本條例中有關公司減

unless the court, on an application under section 47G, otherwise orders.

(Replaced 77 of 1991 s. 3)

[cf. 1985 c. 6 s. 158 U.K.]

Construction of References to offering Shares or  
Debentures to the Public

48A. Construction of references to offering  
shares or debentures to the public

(1) Any reference in this Ordinance to offering shares or debentures to the public shall, subject to any provision to the contrary contained therein, be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner, and references in this Ordinance or in a company's articles to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be similarly construed.

(2) Subsection (1) shall not be taken as requiring any offer or invitation to be treated as made to the public if it can properly be regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving it, and in particular—

(a) a provision in a company's articles prohibiting invitations to the public to subscribe for shares or debentures shall not be taken as prohibiting the making to members or debenture holders of an invitation which can properly be regarded as aforesaid; and

(b) the provisions of this Ordinance relating to private companies shall be construed accordingly.

(3) For the avoidance of doubt, it is hereby declared that the provisions of the Seventeenth Schedule shall not be construed to prejudice the generality of this section. (Added 30 of 2004 s. 2)

(Added 78 of 1972 s. 14)

[cf. 1948 c. 38 s. 55 U.K.]

Issue of Shares at Premium, Redeemable Preference  
Shares, and Shares at Discount

(Replaced 80 of 1974 s. 5)

48B. Application of premiums received on issue of shares

(1) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on

少股本的條文，除本條另有規定外，均屬適用，猶如該股份溢價帳是公司的繳足款股本一樣。

(2) 凡股份是以非現金作代價而發行，公司董事在顧及一切有關資料後，估計該代價的價值超過就如此發行股份而入帳列為繳足股款的款額時，則該等股份須當作為以溢價發行，而該溢價相等於上述估值與如此發行股份而入帳列為繳足股款的款額兩者的差額。

(3) 即使第(1)款有任何規定，公司可將股份溢價帳運用於——

(a) 繳足公司未發行股份的股款，而該等股份乃即將以全部繳付股款的紅股的形式發行予公司成員者；或 (由 1999 年第 30 號第 4 條修訂)

(b) 沖銷——

(i) 公司的開辦費用；或

(ii) 公司發行股份的開支、就發行股份而支付的佣金或容許的折扣。

(由 1999 年第 30 號第 4 條修訂)

(c) (由 1999 年第 30 號第 4 條廢除)†

(4) 就第(3)款而言，發行股份的開支，須當作包括由公司在註冊時或在其後每次增加名義股本時根據附表 8 支付並歸因於發行股份面額的有關部分的從價費。

(5) 凡公司在《1974 年公司 (修訂) (第 4 號) 條例》\* (1974 年第 80 號) 生效前以溢價發行任何股份，本條即屬適用，猶如該等股份乃在該條例生效後發行的一樣：

但溢價中如有任何部分款項的運用方式，使該部分款項在該條例生效時並不構成附表 10 所指公司儲備的可辨別部分，則在釐定列入股份溢價帳內的款額時，該部分款項不得計算在內。

(6) 第 48C 及 48D 條就本條的規定給予寬免，而凡在該兩條中提述發行公司，即提述如本條所述般發行股份的公司。(由 1999 年第 30 號第 4 條增補)

(由 1974 年第 80 號第 6 條增補)

[比照 1948 c. 38 s. 56 U.K.]

† 見本條例末處的註 1。

\* “《1974 年公司 (修訂) (第 4 號) 條例》”乃 “Companies (Amendment) (No. 4) Ordinance 1974” 之譯名。

those shares shall be transferred to an account, to be called “the share premium account”, and the provisions of this Ordinance relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the share premium account were paid-up share capital of the company.

(2) Where shares are issued for a consideration other than cash and the value of the consideration, as estimated by the directors having regard to all relevant information, is in excess of the amount credited as paid up on the shares so issued, the shares shall be deemed to have been issued at a premium equal to the difference between the value so estimated and the amount credited as paid up on the shares so issued.

(3) The share premium account may, notwithstanding anything in subsection (1), be applied by the company—

(a) in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares; or (Amended 30 of 1999 s. 4)

(b) in writing off—

(i) the preliminary expenses of the company; or

(ii) the expenses of, or the commission paid or discount allowed on, any issue of shares of the company. (Amended 30 of 1999 s. 4)

(c) (Repealed 30 of 1999 s. 4)†

(4) For the purposes of subsection (3), the expenses of the issue of any shares shall be deemed to include such portion of the ad valorem fee paid under the Eighth Schedule by the company upon its registration or upon any increase thereafter in its nominal share capital as is attributable to the nominal amount of the shares issued.

(5) Where a company has before the commencement of the Companies (Amendment) (No. 4) Ordinance 1974 (80 of 1974) issued any shares at a premium, this section shall apply as if the shares had been issued after the commencement of that Ordinance:

Provided that any part of the premiums which has been so applied that it does not at the commencement of that Ordinance form an identifiable part of the company's reserves within the meaning of the Tenth Schedule shall be disregarded in determining the sum to be included in the share premium account.

(6) Sections 48C and 48D give relief from the requirements of this section, and in those sections references to the issuing company are to the company issuing shares as mentioned in this section. (Added 30 of 1999 s. 4)

(Added 80 of 1974 s. 6)

[cf. 1948 c. 38 s. 56 U.K.]

† See Note 1 at the end of this Ordinance.

## 合併寬免

## 48C. 合併寬免

(1) 除第 48D(6) 條所指不適用的個案外，本條於以下情況適用：發行公司已依據一項安排取得另一公司最少百分之九十的股份的權益，該項安排規定分配發行公司的權益股份，而分配發行條款是，獲分配的股份的代價須藉下列方式提供——

(a) 將該另一公司的權益股份發行予或轉讓予發行公司；或

(b) 取消任何並非由發行公司持有的該另一公司的權益股份。

(2) 如依據上述安排，以收購或取消上述另一公司的權益股份，作為分配發行公司權益股份的代價，而發行公司的權益股份是以溢價發行的，則第 48B 條不適用於該等股份的溢價。

(3) 凡上述安排亦規定分配發行公司的任何股份，而分配發行條款是，該等股份的代價須藉將上述另一公司的非權益股份發行予或轉讓予發行公司而提供；或藉取消任何並非由發行公司持有的該另一公司的非權益股份而提供，則第 (2) 款的寬免規定引伸適用於依據該項安排而按該等條款分配的發行公司的任何股份。

(4) 在符合第 (5) 款的規定下，如由於依據第 (1) 款所述的安排收購或取消另一公司的權益股份，以致發行公司持有該另一公司的權益股份（不論該等股份是否全部或部分依據該項安排而收購得來），而發行公司所持有該等股份的總面值，相等於或多於該另一公司的權益股本面值的百分之九十，則就本條而言，發行公司即視作已依據該項安排取得該另一公司最少百分之九十的股份的權益。

(5) 凡上述另一公司的權益股本分為不同類別的股份，則除非分別就每一類別的股份而言，第 (1) 款的規定均已符合，否則本條並不適用。

(6) 由發行公司的控股公司或附屬公司持有的股份、或由發行公司的控股公司的一間附屬公司持有的股份、又或由該等控股公司或附屬公司的代名人持有的股份，均就本條而言視為由發行公司持有。

(7) 就本條而言，以下定義就任何公司及其股份和資本而適用——

## Merger Relief

## 48C. Merger relief

(1) With the exception made by section 48D(6), this section applies where the issuing company has secured at least a 90 per cent equity holding in another company in pursuance of an arrangement providing for the allotment of equity shares in the issuing company on terms that the consideration for the shares allotted is to be provided—

(a) by the issue or transfer to the issuing company of equity shares in the other company; or

(b) by the cancellation of any such shares not held by the issuing company.

(2) If the equity shares in the issuing company allotted in pursuance of the arrangement in consideration for the acquisition or cancellation of equity shares in the other company are issued at a premium, section 48B does not apply to the premiums on those shares.

(3) Where the arrangement also provides for the allotment of any shares in the issuing company on terms that the consideration for those shares is to be provided by the issue or transfer to the issuing company of non-equity shares in the other company or by the cancellation of any such shares in that company not held by the issuing company, relief under subsection (2) extends to any shares in the issuing company allotted on those terms in pursuance of the arrangement.

(4) Subject to subsection (5), the issuing company is to be regarded for the purposes of this section as having secured at least a 90 per cent equity holding in another company in pursuance of such an arrangement as is mentioned in subsection (1) if in consequence of an acquisition or cancellation of equity shares in that company (in pursuance of that arrangement) it holds equity shares in that company (whether all or any of those shares were acquired in pursuance of that arrangement, or not) of an aggregate nominal value equal to 90 per cent or more of the nominal value of that company's equity share capital.

(5) Where the equity share capital of the other company is divided into different classes of shares, this section does not apply unless the requirements of subsection (1) are satisfied in relation to each of those classes of shares taken separately.

(6) Shares held by a company which is the issuing company's holding company or subsidiary, or a subsidiary of the issuing company's holding company, or by its or their nominees, are to be regarded for the purposes of this section as held by the issuing company.

(7) In relation to a company and its shares and capital, the following definitions apply for the purposes of this section—

“安排”(arrangement)指任何協議、計劃或安排，包括根據第 166 條認許的債務償還安排或根據第 237 條認許的安排；

“權益股份”(equity shares)指該公司已發行股本所包含的股份(在該股本中，如部分在分派利潤或資本時無權分享超過某一指明數額之數，則該部分不計算在該股本內)；

“非權益股份”(non-equity shares)指不包含於上述股本中的任何類別的股份。

(由 1999 年第 30 號第 5 條增補)

#### 48D. 就集團重整而給予的寬免

(1) 本條於以下情況適用：發行公司——

- (a) 是另一公司(“控股公司”)的全資附屬公司；及
- (b) 分配股份予控股公司或予控股公司的另一全資附屬公司，該項分配的代價是將另一公司(“出讓人公司”)的非現金資產轉讓予發行公司，而出讓人公司是一公司集團的成員，該集團則包含控股公司及其所有全資附屬公司。

(2) 凡以上述轉讓作為分配發行公司股份的代價，而該等股份是以溢價發行的，則發行公司無須按第 48B 條的規定將超出最低溢價值的款額撥入股份溢價帳。

(3) 在第 (2) 款中，“最低溢價值”(the minimum premium value)指為分配的股份付出的代價底值超出該等股份總面值的款額(如有的話)。

(4) 就第 (3) 款而言，為分配的股份付出的代價底值，即所轉讓的資產底值超出發行公司所承擔出讓人公司的債務底值的款額，而發行公司是以承擔該等債務作為所轉讓的資產的代價一部分的。

(5) 就第 (4) 款而言——

(a) 所轉讓的資產底值須視為——

- (i) 出讓人公司為該等資產所需付的成本；或
- (ii) 在緊接有關轉讓前出讓人公司的會計紀錄所述明的該等資產的款額，

兩者以較少者為準；及

(b) 所承擔的債務底值須視為在緊接有關轉讓前出讓人公司的會計紀錄所述明的該等債務的款額。

“arrangement”(安排) means any agreement, scheme or arrangement, including an arrangement sanctioned under section 166 or 237;

“equity shares”(權益股份) means shares comprised in the company's issued share capital (excluding any part of such capital which carries no right to participate beyond a specified amount in a distribution of either profits or capital);

“non-equity shares”(非權益股份) means shares (of any class) not so comprised.  
(Added 30 of 1999 s. 5)

#### 48D. Relief in respect of group reconstructions

(1) This section applies where the issuing company—

- (a) is a wholly-owned subsidiary of another company (“the holding company”); and
- (b) allots shares to the holding company or to another wholly-owned subsidiary of the holding company in consideration for the transfer to the issuing company of assets other than cash, being assets of any company (“the transferor company”) which is a member of the group of companies which comprises the holding company and all its wholly-owned subsidiaries.

(2) Where the shares in the issuing company allotted in consideration for the transfer are issued at a premium, the issuing company is not required by section 48B to transfer any amount in excess of the minimum premium value to the share premium account.

(3) In subsection (2), “the minimum premium value” (最低溢價值) means the amount (if any) by which the base value of the consideration for the shares allotted exceeds the aggregate nominal value of those shares.

(4) For the purpose of subsection (3), the base value of the consideration for the shares allotted is the amount by which the base value of the assets transferred exceeds the base value of any liabilities of the transferor company assumed by the issuing company as part of the consideration for the assets transferred.

(5) For the purpose of subsection (4)—

- (a) the base value of the assets transferred is to be taken as—
  - (i) the cost of those assets to the transferor company; or
  - (ii) the amount at which those assets are stated in the transferor company's accounting records immediately before the transfer, whichever is the less; and
- (b) the base value of the liabilities assumed is to be taken as the amount at which they are stated in the transferor company's accounting records immediately before the transfer.

(6) 在屬本條適用範圍內的個案中，第 48C 條不適用。

(由 1999 年第 30 號第 5 條增補)

[比照 1985 c. 6 s. 132 U.K.]

#### 48E. 補充第 48C 及 48D 條的條文

(1) 如某公司所發行的股份的溢價或部分溢價因憑藉第 48C 或 48D 條而沒有撥入該公司的股份溢價帳中，則在釐定載入該公司資產負債表中為所發行的股份而提供的股份或其他代價的款額時，亦無須將代表該溢價或部分溢價的對應款額計算在內。

(2) 凡在第 48C、48D 及 48F 條及本條中提述 (不論以何種方式表達) ——

(a) 某公司收購另一公司的股份；及

(b) 將股份發行予或分配予或轉讓予某公司，或由某公司將股份轉讓，

即分別包括由該公司的代名人收購任何該等股份，及將任何該等股份發行予或分配予或 (視屬何情況而定) 轉讓予該等代名人，或由該等代名人將任何該等股份轉讓；而在第 48D 條中提述轉讓股份的公司，亦須據此解釋。

(3) 凡在第 48C、48D 及 48F 條及本條中提述轉讓公司股份，即包括轉讓就該等股份而獲列入公司的成員登記冊的權利。

(4) 在第 48C 及 48D 條及本條中，“公司” (company) 包括任何法人團體，但對發行公司的提述則除外。

(由 1999 年第 30 號第 5 條增補)

[比照 1985 c. 6 s. 133 U.K.]

#### 48F. 擴大或限制就第 48B 條給予的寬免的條文

(1) 財政司司長可訂立規例，為以下事宜訂定他覺得適當的條文——

(a) 寬免任何公司使其無須遵從第 48B 條中關於溢價 (現金溢價除外) 的規定；或

(b) 對第 48C 至 48E 條所訂的無須遵從該等規定的寬免，加以限制或以其他方式變通。

(2) 根據本條訂立的規例可就不同個案或不同類別的個案訂定不同的條文，並可載有財政司司長認為合適的附帶條文及補充條文。

(6) Section 48C does not apply in a case falling within this section.

(Added 30 of 1999 s. 5)

[cf. 1985 c. 6 s. 132 U.K.]

#### 48E. Provisions supplementary to sections 48C and 48D

(1) An amount corresponding to one representing the premiums or part of the premiums on shares issued by a company which by virtue of section 48C or 48D is not included in the company's share premium account may also be disregarded in determining the amount at which any shares or other consideration provided for the shares issued is to be included in the company's balance sheet.

(2) References in sections 48C, 48D and 48F and this section (however expressed) to—

(a) the acquisition by a company of shares in another company; and

(b) the issue or allotment of shares to, or the transfer of shares to or by, a company,

include (respectively) the acquisition of any of those shares by, and the issue or allotment or (as the case may be) the transfer of any of those shares to or by, nominees of that company; and the reference in section 48D to the company transferring the shares is to be construed accordingly.

(3) References in sections 48C, 48D and 48F and this section to the transfer of shares in a company include the transfer of a right to be included in the company's register of members in respect of those shares.

(4) In sections 48C and 48D and this section, “company” (公司), except in references to the issuing company, includes any body corporate.

(Added 30 of 1999 s. 5)

[cf. 1985 c. 6 s. 133 U.K.]

#### 48F. Provision for extending or restricting relief from section 48B

(1) The Financial Secretary may make regulations to make such provision as appears to him to be appropriate—

(a) for relieving companies from the requirements of section 48B in relation to premiums other than cash premiums; or

(b) for restricting or otherwise modifying any relief from those requirements provided by sections 48C to 48E.

(2) Regulations made under this section may make different provision for different cases or classes of case and may contain such incidental and supplementary provisions as the Financial Secretary thinks fit.

(3) 除非事先將規例的草案提交立法會，並且獲立法會藉決議批准，否則不得根據本條訂立任何規例，而《釋義及通則條例》(第 1 章)第 34 條並不適用於該等規例。

(由 1999 年第 30 號第 5 條增補)

[比照 1985 c. 6 s. 134 U.K.]

#### 可贖回股份；公司購買本身股份

#### 與贖回及購買有關的一般規定

#### 49. 發行可贖回股份的權力

(1) 在符合第 49 至 49S 條的規定下，任何股份有限公司或有股本的擔保有限公司，如其章程細則許可，可發行須贖回的股份，或發行可由公司或股東選擇贖回的股份。

(2) 當公司的已發行股份中，並無不可贖回的股份時，公司不可發行可贖回股份。

(3) 可贖回股份除非已繳全部股款，否則不可贖回；而贖回條款須訂定贖回時必須付款。(由 2000 年第 32 號第 48 條修訂)

(由 1991 年第 77 號第 4 條代替)

[比照 1985 c. 6 s. 159 U.K.]

#### 49A. 贖回股份方面的融資等

(1) 除第 (2) 款及第 49I 及 49P(4) 條另有規定外——

(a) 可贖回股份只可從公司的可分發利潤中撥款贖回，或從為贖回的目的而發行新股份所得收益中撥款贖回；及

(b) 贖回時所須付的任何溢價，須從公司的可分發利潤中撥款支付。

(2) 如可贖回股份原先是以溢價發行，則在將其贖回時所須付的任何溢價，可從為贖回股份的目的而發行新股份所得收益中撥款支付，支付的最高款額相等於——

(a) 公司在發行經贖回的股份時所取得的溢價總額；或

(b) 公司的股份溢價帳當時的款額(包括就發行新股份的溢價轉入該帳項的款項在內)，

(3) No regulations shall be made under this section unless a draft of them has been laid before and approved by resolution of the Legislative Council and section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to such regulations.

(Added 30 of 1999 s. 5)  
[cf. 1985 c. 6 s. 134 U.K.]

#### Redeemable shares; Purchase by a company of its own shares

#### Redemption and purchase generally

#### 49. Power to issue redeemable shares

(1) Subject to sections 49 to 49S, a company limited by shares or limited by guarantee and having a share capital may, if authorized to do so by its articles, issue shares which are to be redeemed or are liable to be redeemed at the option of the company or the shareholder.

(2) No redeemable shares may be issued at a time when there are no issued shares of the company which are not redeemable.

(3) Redeemable shares may not be redeemed unless they are fully paid; and the terms of redemption shall provide for payment on redemption.

(Replaced 77 of 1991 s. 4)  
[cf. 1985 c. 6 s. 159 U.K.]

#### 49A. Financing etc. of redemption

(1) Subject to subsection (2) and to sections 49I and 49P(4) —

(a) redeemable shares may only be redeemed out of distributable profits of the company or out of the proceeds of a fresh issue of shares made for the purposes of the redemption; and

(b) any premium payable on redemption shall be paid out of distributable profits of the company.

(2) If the redeemable shares were issued at a premium, any premium payable on their redemption may be paid out of the proceeds of a fresh issue of shares made for the purposes of the redemption, up to an amount equal to—

(a) the aggregate of the premiums received by the company on the issue of the shares redeemed; or

(b) the current amount of the company's share premium account (including any sum transferred to that account in respect of premiums on the new shares),

上述二者以較小的款額為準；而在該情況下，公司的股份溢價帳須減去一筆為數相當於（或總數相當於）憑藉本款從發行新股份所得收益中撥出的任何付款。

(3) 除第 49 至 49S 條另有規定外，股份的贖回可按公司章程細則所訂定的條款及方式實行。

(4) 根據本條贖回的股份，須視為在贖回時已經取消，而公司的已發行股本額亦須據此減少，減少數額相等於該等已贖回股份的面值；但公司贖回股份之舉，不得被視作減少公司的法定股本額。

(5) 在不損害第 (4) 款的原則下及除第 (6) 款另有規定外，如公司即將贖回股份，則公司有權發行股份，其面值可達即將贖回的股份的面值，猶如該等即將贖回的股份從未發行一樣。

(6) 如在贖回現有股份前發行新股份，則除非該等現有股份在該等新股份發行後 1 個月內贖回，否則該等新股份，就附表 8 而言，須當作未曾根據第 (5) 款發行。

(由 1991 年第 77 號第 4 條增補)

[比照 1985 c. 6 s. 160 U.K.]

#### 49B. 公司購買本身股份的權力

(1) 在符合第 49、49A、49BA、49C、49E、49F、49G、49H、49P、49Q、49R 及 49S 條的規定下，任何上市公司，如其章程細則許可，均可購買本身的股份（包括任何可贖回股份）。

(2) 在符合第 49 至 49S 條的規定下，任何非上市股份有限公司或有股本的非上市擔保有限公司，如其章程細則許可，均可購買本身的股份（包括任何可贖回股份）。

(3) 第 49 及第 49A 條適用於任何公司根據本條購買本身股份的情況，一如該兩條適用於可贖回股份的贖回，但購買的條款及方式無需按第 49A(3) 條所規定由章程細則決定。

(4) 即使第 (1) 及 (2) 款另有規定，在符合第 49、49A、49F、49G、49H、49I(4) 及 (5)、49P、49Q、49R 及 49S 條的規定下，但屬於或不屬於從可分發利潤或從發行新股份所得收益中撥款購買本身股份的情況除外，任何上市公司及非上市股份有限公司或有股本的非上市擔保有限公司，如其章程細則許可，均可購買本身的股份（包括任何可贖回股份），以——

(a) 就任何債項或申索作出和解或妥協；

whichever is the less; and in that case the amount of the company's share premium account shall be reduced by a sum corresponding (or by sums in the aggregate corresponding) to the amount of any payment made by virtue of this subsection out of the proceeds of the issue of the new shares.

(3) Subject to sections 49 to 49S, redemption of shares may be effected on such terms and in such manner as may be provided by the company's articles.

(4) Shares redeemed under this section shall be treated as cancelled on redemption, and the amount of the company's issued share capital shall be diminished by the nominal value of those shares accordingly; but the redemption of shares by a company is not to be taken as reducing the amount of the company's authorized share capital.

(5) Without prejudice to subsection (4) and subject to subsection (6), where a company is about to redeem shares, it has power to issue shares up to the nominal value of the shares to be redeemed as if those shares had never been issued.

(6) Where new shares are issued before the redemption of existing shares, the new shares shall be deemed, so far as relates to the Eighth Schedule, not to have been issued under subsection (5) unless the existing shares are redeemed within 1 month of the issue of the new shares.

(Added 77 of 1991 s. 4)  
[cf. 1985 c. 6 s. 160 U.K.]

#### 49B. Power of company to purchase own shares

(1) Subject to sections 49, 49A, 49BA, 49C, 49E, 49F, 49G, 49H, 49P, 49Q, 49R and 49S, a listed company may, if authorized to do so by its articles, purchase its own shares (including any redeemable shares).

(2) Subject to sections 49 to 49S, an unlisted company limited by shares or limited by guarantee and having a share capital may, if authorized to do so by its articles, purchase its own shares (including any redeemable shares).

(3) Sections 49 and 49A apply to the purchase by a company under this section of its own shares as they apply to the redemption of redeemable shares, save that the terms and manner of purchase need not be determined by the articles as required by section 49A(3).

(4) Notwithstanding subsections (1) and (2) but subject to sections 49, 49A, 49F, 49G, 49H, 49I(4) and (5), 49P, 49Q, 49R and 49S, except that such purchases may be made either out of or otherwise than out of its distributable profits or the proceeds of a fresh issue of shares, a listed company and an unlisted company limited by shares or limited by guarantee and having a share capital may, if authorized to do so by its articles, purchase its own shares (including any redeemable shares) in order to—

(a) settle or compromise a debt or claim;

- (b) 消除不足一股的股份或零碎的權利；如屬上市公司，則消除碎股；
- (c) 履行下述協議，該協議為根據公司先前已在大會上批准的僱員股份計劃，公司具有購買股份的選擇權或有義務購買股份；或
- (d) 遵從法院根據第 8(4)、47G(5) 或 168A(2) 條所作出的命令。 (由 1995 年第 13 號第 2 條修訂)

(5) 在第 (4)(b) 款中，“碎股”(odd lot of shares) 指股份數目小於批准在認可證券市場買賣的通常數目的公司股份。 (由 2002 年第 5 號第 407 條修訂)

(6) 如公司根據本條購買本身的股份後，會導致公司不再有任何成員持有可贖回股份以外的股份，則公司不可根據本條購買本身的股份。

(由 1991 年第 77 號第 4 條增補)

[比照 1985 c. 6 s. 162 U.K.]

#### 49BA. 上市公司購買本身股份的規定

- (1) 上市公司可——
  - (a) 在符合第 (2)、(3) 及 (7) 款的規定下，根據一項公開要約購買本身的股份；
  - (b) 在符合第 (2)、(3) 及 (4) 款的規定下，在認可證券市場或任何核准證券交易所購買本身的股份；
  - (c) 在符合第 (5) 及 (6) 款的規定下，不在認可證券市場或任何核准證券交易所，亦可不根據 (a) 段所提述的公開要約購買本身的股份。 (由 2002 年第 5 號第 407 條修訂)
- (2) 上市公司不得——
  - (a) 根據第 (1)(a) 款作出公開要約，除非建議的公開要約經由公司在大會上批准；或
  - (b) 根據第 (1)(b) 款在認可證券市場或任何核准證券交易所購買本身的股份，除非建議的購買經由公司在大會上批准。 (由 2002 年第 5 號第 407 條修訂)
- (3) 上市公司為施行第 (2) 款而召開大會時，會議通知書須附有下列文件——
  - (a) 如屬根據第 (1)(a) 款作出的公開要約——
    - (i) 載有建議的公開要約的文件文本一份；及

- (b) eliminate a fractional share or fractional entitlement or in the case of a listed company, an odd lot of shares;
- (c) fulfil an agreement in which the company has an option or is obliged to purchase shares under an employee share scheme which had previously been approved by the company in general meeting; or
- (d) comply with an order of the court under section 8(4), 47G(5) or 168A(2). (Amended 13 of 1995 s. 2)

(5) In subsection (4)(b), an “odd lot of shares” (碎股) means a number of shares in the company less than the usual number authorized for trading on a recognized stock market. (Amended 5 of 2002 s. 407)

(6) A company may not under this section purchase its shares if as a result of the purchase there would no longer be any member of the company holding shares other than redeemable shares.

(Added 77 of 1991 s. 4)  
[cf. 1985 c. 6 s. 162 U.K.]

#### 49BA. Requirements for listed company to purchase own shares

- (1) A listed company may purchase its own shares—
  - (a) subject to subsections (2), (3) and (7), under a general offer;
  - (b) subject to subsections (2), (3) and (4), on a recognized stock market or on an approved stock exchange;
  - (c) subject to subsections (5) and (6), otherwise than on a recognized stock market or on an approved stock exchange, and otherwise than under a general offer referred to in paragraph (a). (Amended 5 of 2002 s. 407)
- (2) A listed company shall not—
  - (a) make a general offer under subsection (1)(a) unless the proposed general offer is authorized by the company in general meeting; or
  - (b) purchase any of its own shares on a recognized stock market or on an approved stock exchange under subsection (1)(b), unless the proposed purchase is authorized by the company in general meeting. (Amended 5 of 2002 s. 407)
- (3) A listed company shall include together with the notice of any general meeting called for the purpose of subsection (2)—
  - (a) in the case of a general offer under subsection (1)(a)—
    - (i) a copy of the document containing the proposed general offer; and

- (ii) 由公司董事簽署的陳述書一份，而其所載的詳情，使一個合理的人，能就該項建議的公開要約的實況，得出一個確切而正當的結論；及
- (b) 如屬根據第 (1)(b) 款作出的購買，一份建議購買條款的備忘錄。
- (4) 任何公司根據第 (2)(b) 款在大會上給予的批准，有效期在公司下一次周年大會的日期屆滿，此有效期並可由公司在該周年大會上予以延展，直至公司下一次周年大會的日期為止。
- (5) 任何上市公司不得根據第 (1)(c) 款購買本身的任何股份，但如該項建議的購買由公司藉一項特別決議批准則除外，而第 49D(4) 條適用於該項決議，一如其適用於根據該款所作出的決議。
- (6) 上市公司為施行第 (5) 款而召開任何會議時，會議通知書須附有下列文件——
- 如有關建議購買協議為書面形式，則附有該建議購買協議的副本一份；或
  - 如該建議購買協議並非為書面形式，則附有有關該建議購買協議的條款的備忘錄一份；及
  - 由公司董事簽署的陳述書一份；董事在簽署陳述書前，已對持有該建議購買協議所涉股份的公司成員，進行妥善而努力的查訊，而該份陳述書所載的詳情，使一個合理的人，能就該建議購買協議的實況，得出一個確切而正當的結論。
- (7) 如屬根據第 (1)(a) 款作出的公開要約，公司的某名成員倘根據第 168B 條可被強迫將其股份出售，則——
- 公司須委任一名獨立投資顧問，就該項建議的公開要約的實況，向受強制出售影響的成員提供意見；及
  - 該項建議的公開要約須由公司藉一項特別決議批准，而就此項特別決議，有關股東並無作出表決，且就此而言——
    - 就應否通過該項決議的問題上，有關股東須被視為作出表決一事，不僅在於他有否以投票方式表決，亦在於他有否以投票以外的方式就該項決議作出表決；
    - 即使公司的章程細則有任何規定，公司的任何成員均可要求就該問題以投票方式表決；及

- (ii) a statement, signed by the directors of the company, containing such particulars as would enable a reasonable person to form as a result thereof a valid and justifiable opinion as to the merits of the proposed general offer; and
- (b) in the case of a purchase under subsection (1)(b), a memorandum of the terms of the proposed purchase.
- (4) An authorization given by a company in general meeting under subsection (2)(b) shall be valid for the period expiring on the date of the next annual general meeting of the company and such period may be extended by the company at such annual general meeting until the date of the next annual general meeting of the company.
- (5) A listed company shall not make a purchase of any of its shares under subsection (1)(c) unless the proposed purchase has been authorized by a special resolution of the company and section 49D(4) shall apply to such a resolution as it applies to a resolution under that subsection.
- (6) A listed company shall include together with the notice of any meeting called for the purpose of subsection (5)—
- where the proposed purchase agreement is in writing, a copy of the proposed purchase agreement; or
  - where the proposed purchase agreement is not in writing, a memorandum of the terms of the proposed purchase agreement; and
  - a statement, signed by the directors of the company, after having made due and diligent inquiry of the members of the company holding the shares to which the proposed purchase agreement relates, containing such particulars as would enable a reasonable person to form as a result thereof a valid and justifiable opinion as to the merits of the proposed purchase agreement.
- (7) If, in the case of a general offer under subsection (1)(a), a member of the company may be compelled to dispose of his shares under section 168B—
- the company shall appoint an independent investment adviser to advise members who may be affected by the compulsory disposal on the merits of the proposed general offer; and
  - the proposed general offer shall be authorized by a special resolution of the company, on which no relevant shareholder votes and for this purpose—
    - a relevant shareholder shall be regarded as voting not only if he votes on a poll on the question whether the resolution shall be passed, but also if he votes on the resolution otherwise than on a poll;
    - notwithstanding anything in the company's articles, any member of the company may demand a poll on that question; and

(iii) 由有關股東的代表表決及提出要求以投票方式表決，等同由有關股東自行表決及自行提出要求。

(8) 任何人不得根據第 (7) 款獲委任為投資顧問，除非該人是一名根據《證券及期貨條例》(第 571 章) 第 V 部獲發牌經營就證券提供意見或就機構融資提供意見的業務的法團或獲註冊經營該等業務的認可財務機構，而且—— (由 2002 年第 5 號第 407 條修訂)

(a) 既非作出公開要約的公司或與其有關連的公司的成員、高級人員或僱員；亦非

(b) 與作出公開要約的公司有關連的公司。

(9) 就本條而言——

“公開要約”(general offer) 指向公司的全體成員或向持有公司某一類別股份的全體成員作出的要約(在上述要約屬違反當地法律的地區內居住的成員除外)，而要約的條款就所有上述股份或就每一類別的股份而言，均屬相同；

“有關股東”(relevant shareholder) 指附表 13 中“有關股東”的描述所適用的人；

“有關連的公司”(related company) 就某間公司而言，指該公司的附屬公司或控股公司，或指該公司的控股公司的附屬公司；

“核准證券交易所”(approved stock exchange) 指——

(a) 監察委員會；及

(b) (如有關的股份是在某認可證券市場上市的) 營辦該市場的認可交易所，為本條的施行藉憲報公告而核准的證券交易所。 (由 2002 年第 5 號第 407 條增補)

(10) 當第 2(1) 條中“高級人員”(officer) 的定義引伸而適用於第 (8) 款時，“董事”(director) 包括——

(a) 任何不論職稱為何而擔任董事職位的人；及

(b) 影子董事。 (由 2003 年第 28 號第 19 條代替)

(11) 監察委員會可按其認為合適的條件，豁免任何上市公司受本條的任何條文所規限。

(12) 監察委員會可——

(a) 以給予豁免的條件未獲遵從為理由，或以監察委員會認為合適的其他理由，暫時中止或撤回根據第 (11) 款給予的豁免；或

(b) 更改根據第 (11) 款所施加的任何條件。

(由 1991 年第 77 號第 4 條增補。由 1992 年第 86 號第 10 條修訂；由 2002 年第 5 號第 407 條修訂)

(iii) a vote and a demand for a poll by a person as proxy for a relevant shareholder are the same (respectively) as a vote and demand by a relevant shareholder.

(8) A person shall not be appointed as an investment adviser under subsection (7) unless he is a corporation licensed to carry on, or an authorized financial institution registered for carrying on, a business in advising on securities or advising on corporate finance under Part V of the Securities and Futures Ordinance (Cap. 571) and is neither— (Amended 5 of 2002 s. 407)

(a) a member, officer or employee of the company making the general offer or of a related company thereof; nor

(b) a related company of the company making the general offer.

(9) For the purposes of this section—

“approved stock exchange” (核准證券交易所) means a stock exchange approved, by notice published in the Gazette, for the purposes of this section by—

(a) the Commission; and

(b) the recognized exchange company that operates the recognized stock market on which the shares concerned are listed; (Added 5 of 2002 s. 407)

“general offer” (公開要約) means an offer to all members of a company or to all members holding shares of a particular class in a company, other than any members residing in a jurisdiction where such an offer is contrary to the laws of that jurisdiction, on terms which are the same in relation to all such shares or in relation to the shares of each class;

“related company” (有關連的公司) in relation to a company, means any company that is the company's subsidiary or holding company or a subsidiary of that company's holding company;

“relevant shareholder” (有關股東) means a person to whom the description “relevant shareholder” in the Thirteenth Schedule applies.

(10) In the application of the definition of “officer” (高級人員) in section 2(1) to subsection (8), “director” (董事) includes—

(a) any person occupying the position of director, by whatever name called; and

(b) a shadow director. (Replaced 28 of 2003 s. 19)

(11) The Commission may exempt any listed company from any of the provisions of this section, subject to such conditions as it thinks fit.

(12) The Commission may—

(a) suspend or withdraw an exemption granted under subsection (11) on the ground that the conditions subject to which the exemption was granted have not been complied with or on such other ground as the Commission thinks fit; or

(b) vary any condition imposed under subsection (11).

(Added 77 of 1991 s. 4. Amended 86 of 1992 s. 10; 5 of 2002 s. 407)

## 49C. 除買價外須從可分發利潤中撥款支付的項目

任何公司以下述項目作為代價而支付的款項，須從其可分發利潤中撥款支付——

- (a) 獲取有關根據第 49B 條准許購買本身股份的權利；
- (b) 獲取有關依據一項根據第 49E 條認可的合約而購買本身股份的權利；
- (c) 更改對一項根據第 49B 條准許的合約，或更改一項根據第 49D 或 49E 條認可的合約；或
- (d) 解除公司根據某項合約購買本身股份的責任，而該合約是根據第 49B 條准許或根據第 49D 或 49E 條認可的。

(由 1991 年第 77 號第 4 條增補)

[比照 1985 c. 6 s. 168 U.K.]

## 49D. 非上市公司作出購買的權限

(1) 非上市公司只可根據一項按照本條或根據第 49E 條事先獲得認可的合約購買本身的股份。

(2) 在訂立建議的合約前，合約內的條款須獲公司藉特別決議批准；而本條對該項權限及授予該項權限的決議適用。

(3) 非上市公司可藉特別決議，將訂立合約以購買本身股份的權限更改、撤銷或不時重訂。

(4) 根據第 (3) 款授予、更改、撤銷或重訂權限的特別決議，在下列情況中並無效力：持有與該項決議有關的股份的公司成員，行使該等股份所附有的表決權，就該項決議進行表決，而假若該等成員不曾如此表決，則該項決議不會獲通過，並且就此而言——

- (a) 持有與該項決議有關的股份的成員，不僅在就該項決議應否通過的問題上以投票方式表決，會被視為行使該等股份所附有的投票權，而且在就該項決議以投票以外的方式表決，亦被視為行使該等表決權；
- (b) 即使公司的章程細則有任何規定，公司的任何成員均可要求就該問題以投票方式表決；及
- (c) 由某名成員的代表表決及提出要求以投票方式表決，等同由該名成員自行表決及自行提出要求。

## 49C. Payments apart from purchase price to be made out of distributable profits

A payment made by a company in consideration of—

- (a) acquiring any right with respect to the purchase of its own shares permitted under section 49B;
- (b) acquiring any right with respect to the purchase of its own shares in pursuance of a contract approved under section 49E;
- (c) the variation of a contract permitted under section 49B or approved under section 49D or 49E; or
- (d) the release of any of the company's obligations with respect to the purchase of any of its own shares under a contract permitted under section 49B or approved under section 49D or 49E,

shall be made out of the company's distributable profits.

(Added 77 of 1991 s. 4)

[cf. 1985 c. 6 s. 168 U.K.]

## 49D. Authority for purchase by unlisted company

(1) An unlisted company may only purchase its own shares under a contract approved in advance in accordance with this section or under section 49E.

(2) The terms of the proposed contract shall be authorized by a special resolution of the company before the contract is entered into; and this section applies with respect to that authority and to resolutions conferring it.

(3) The authority to enter into a contract to purchase an unlisted company's own shares may be varied, revoked or from time to time renewed by special resolution of the company.

(4) A special resolution to confer, vary, revoke or renew authority under subsection (3) is not effective if any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares in voting on the resolution and the resolution would not have been passed if he had not done so and for this purpose—

- (a) a member who holds shares to which the resolution relates is regarded as exercising the voting rights carried by those shares not only if he votes in respect of them on a poll on the question whether the resolution shall be passed, but also if he votes on the resolution otherwise than on a poll;
- (b) notwithstanding anything in the company's articles, any member of the company may demand a poll on that question; and
- (c) a vote and a demand for a poll by a person as proxy for a member are the same respectively as a vote and a demand by the member.

(5) 就本條而言，根據第(3)款授予、更改、撤銷或重訂權限的特別決議並無效力，除非備有(如建議的合約屬書面形式)合約的一份副本，或(如非屬書面形式)一份載有該項合約的條款的書面備忘錄——

(a) 在公司的註冊辦事處供公司成員查閱，為期不少於 15 天，而最後一天須是通過該項決議的會議日期；及

(b) 在該次會議上供公司成員查閱。

如此備供查閱的合約條款備忘錄，須載列持有與該合約有關的股份的成員姓名或名稱；而如此備供查閱的合約副本，須附連一份書面備忘錄，指明任何該等未有在合約本文內出現的姓名或名稱。

(6) 非上市公司只在公司藉特別決議批准後，始可同意對一項如此獲批准的現有合約作出更改；而第(3)、(4)及(5)款適用於建議的更改的權限，一如其適用於建議的合約的權限，但原來合約的一份副本或(按情況所需)一份合約條款備忘錄，亦須連同以前作出的任何更改，按照第(5)款備供查閱。

(7) 如一項按照第 116B 條的規定而獲贊同(或建議如此贊同)的決議是——

(a) 根據第(2)款授予權限以購買有關公司的股份的；

(b) 根據第(3)款更改、撤銷或重訂權限的；或

(c) 根據第(6)款授予權限以更改一份購買有關公司的股份的合約的，

則——

(i) 第(4)款並不就該項決議而適用，但就第 116B(1)條而言，持有該項決議所關乎的股份的成員不得被視為有權出席和表決的成員；

(ii) 第(5)款並不就該項決議而適用，但須將該款提述的文件以及(在該款憑藉第(6)款而適用的情況下)第(6)款提述的其他文件——

(A) 提供予按照第 116B 條規定須簽署(或由他人代表簽署)該項決議的每名成員；並且

(B) 在提供該項決議予有關成員簽署之時或之前提供予該成員。(由 2000 年第 46 號第 5 條增補)

(5) A special resolution to confer, vary, revoke or renew authority under subsection (3) is not effective for the purposes of this section unless (if the proposed contract is in writing) a copy of the contract or (if not) a written memorandum of its terms is available for inspection by members of the company both—

(a) at the company's registered office for not less than 15 days ending with the date of the meeting at which the resolution is passed; and

(b) at the meeting itself.

A memorandum of contract terms so made available shall include the names of any members holding shares to which the contract relates; and a copy of the contract so made available shall have annexed to it a written memorandum specifying any such names which do not appear in the contract itself.

(6) An unlisted company may agree to a variation of an existing contract so approved, but only if the variation is authorized by a special resolution of the company before it is agreed to; and subsections (3), (4) and (5) apply to the authority for a proposed variation as they apply to the authority for a proposed contract, save that a copy of the original contract or (as the case may require) a memorandum of its terms, together with any variations previously made, shall also be available for inspection in accordance with subsection (5).

(7) In relation to a resolution agreed to, or proposed to be agreed to, in accordance with section 116B—

(a) conferring authority to make a purchase of the company's shares under subsection (2);

(b) varying, revoking or renewing an authority under subsection (3); or

(c) conferring authority to vary a contract for a purchase of the company's shares under subsection (6),

then—

(i) subsection (4) shall not apply but, for the purposes of section 116B(1), a member holding shares to which the resolution relates shall not be regarded as a member who would be entitled to attend and vote;

(ii) subsection (5) shall not apply but the documents referred to in that subsection and, where that subsection applies by virtue of subsection (6), the further documents referred to in subsection (6), shall be supplied—

(A) to each member by whom, or on whose behalf, the resolution is required to be signed in accordance with section 116B; and

(B) at or before the time at which the resolution is supplied to the member for signature. (Added 46 of 2000 s. 5)

(8) 如第 (3) 至 (6) 款憑藉第 49E(3) 或 49F(2) 條而適用於一項按照第 116B 條的規定而獲贊同 (或建議如此贊同) 的決議，則第 (7) 款亦就該項決議具有效力。(由 2000 年第 46 號第 5 條增補)

[比照 1985 c. 6 Sch. 15A, Pt. II, item 5, U.K.]

(由 1991 年第 77 號第 4 條增補)

[比照 1985 c. 6 s. 164 U.K.]

#### 49E. 訂立待確定購買合約的權限

(1) 待確定購買合約是指由某間公司訂立而內容與其任何股份有關的合約，而——

(a) 該合約並不構成一項相當於購買該等股份的合約；但

(b) 該公司可 (受條件規限下) 根據該合約而有權或有責任購買該等股份。

(2) 上市公司依據待確定購買合約購買本身的股份，只可在該建議的待確定購買合約在訂立前已事先由公司藉一項特別決議批准的情況下進行；而第 49BA(5) 及 (6) 條適用於批准建議的待確定購買合約，一如適用於根據第 49BA (1)(c) 條批准訂立建議的購買合約。

(3) 非上市公司依據待確定購買合約購買本身的股份，只可在該項合約在訂立前已事先由公司藉一項特別決議批准的情況下進行；而第 49D(3)、(4)、(5) 及 (6) 條適用於該合約及其條款。

(由 1991 年第 77 號第 4 條增補)

[比照 1985 c. 6 s. 165 U.K.]

#### 49F. 轉讓或放棄公司購買本身股份的權利

(1) 公司在—項根據第 49D 或 49E 條認可的合約下所具的權利，或在—項根據第 49BA 或 49E 條批准的合約下所具的權利，均不能轉讓。

(2) 非上市公司為放棄其在—項根據第 49D 或 49E 條批准的合約下所具的權利而訂立的協議乃屬無效，除非該項放棄權利協議的條款在訂立前已事先由公司藉一項特別決議認可；而第 49D(3)、(4)、(5) 及 (6) 條適用於對建議的放棄權利協議的批准，一如適用於批准對現有合約作出建議的更改的情況。

(8) Subsection (7) shall also have effect in relation to a resolution agreed to, or proposed to be agreed to, in accordance with section 116B in relation to which the provisions of subsections (3) to (6) apply by virtue of section 49E(3) or 49F(2). (Added 46 of 2000 s. 5)

[cf. 1985 c. 6 Sch. 15A, Pt. II, item 5, U.K.]

(Added 77 of 1991 s. 4)

[cf. 1985 c. 6 s. 164 U.K.]

#### 49E. Authority for contingent purchase contract

(1) A contingent purchase contract is a contract entered into by a company and relating to any of its shares—

(a) which does not amount to a contract to purchase those shares; but

(b) under which the company may (subject to any conditions) become entitled or obliged to purchase those shares.

(2) A listed company may only make a purchase of its own shares in pursuance of a contingent purchase contract if the proposed contingent purchase contract is authorized in advance by a special resolution of the company before the contract is entered into, and section 49BA(5) and (6) applies to authorization for a proposed contingent purchase contract as to authorization for a proposed purchase agreement under section 49BA(1)(c).

(3) An unlisted company may only make a purchase of its own shares in pursuance of a contingent purchase contract if the contract is approved in advance by a special resolution of the company before the contract is entered into; and section 49D(3), (4), (5) and (6) applies to the contract and its terms.

(Added 77 of 1991 s. 4)

[cf. 1985 c. 6 s. 165 U.K.]

#### 49F. Assignment or release of company's right to purchase own shares

(1) The rights of a company under a contract approved under section 49D or 49E or authorized under section 49BA or 49E are not capable of being assigned.

(2) An agreement by an unlisted company to release its rights under a contract approved under section 49D or 49E is void unless the terms of the release agreement are approved in advance by a special resolution of the company before the agreement is entered into; and section 49D(3), (4), (5) and (6) applies to approval for a proposed release agreement as to authority for a proposed variation of an existing contract.

(3) 上市公司為放棄其在一項根據第 49BA(1)(a) 或 (c) 條或根據第 49E 條批准的合約下所具的權利而訂立的協議乃屬無效，除非該項放棄權利協議的條款在訂立前已事先由公司藉一項特別決議批准；而第 49BA(5) 及 (6) 條適用於對建議的放棄權利協議的批准，一如適用於根據第 49BA(1)(c) 條批准訂立建議的購買協議的情況。

(由 1991 年第 77 號第 4 條增補)

[比照 1985 c. 6 s. 167 U.K.]

#### 49G. 公司披露購買本身股份事宜

(1) 根據本條例購買股份的公司，須在該等股份交付公司的日期起計 14 天內，將一份申報表交付處長註冊；該份申報表須具有指明格式，並就所購買的每一類別的股份，述明其數目及面值，以及該等股份交付公司的日期。(由 1997 年第 3 號第 15 條修訂)

(2) 如屬上市公司，該份申報表亦須述明——

(a) 該公司就該等股份所支付的總款額；及

(b) 就所購買的每一類別股份所支付的最高及最低價格。

(3) 有關在不同日期並根據不同合約交付公司的股份的詳情，可載列於單一份申報表內呈交處長；而在此情況下，根據第 (2)(a) 款所規定須述明的款額，為該公司就該份申報表有關的全部股份所支付的總款額。

(4) 凡公司訂立根據第 49BA(1)(c)、49D 或 49E 條認可的合約，該公司須在其註冊辦事處備存——

(a) (如合約屬書面形式) 該合約的副本一份；及

(b) (如合約並非屬書面形式) 該合約條款的備忘錄一份，

備存期由該合約協定時開始，由依據該合約完成購買所有股份的日期或(視屬何情況而定)由該合約以其他方式終結的日期起計算 10 年的期間結束為止。

(5) 規定備存的每份合約副本及合約條款備忘錄，須在營業時間內(須受公司於大會上所施加的合理限制所規限，但每天可供查閱的時間不得少於 2 小時)供下列人士免費查閱——

(a) 該公司的任何成員；及

(b) 如公司屬上市公司，任何其他人士。

(6) 如因沒有將本條所規定的任何申報表交付處長而構成失責，有關公司的每名失責高級人員均可處罰款，如持續失責，則可處按日計算的失責罰款。

(3) An agreement by a listed company to release its rights under a contract authorized under section 49BA(1)(a) or (c) or under section 49E is void unless the terms of the release agreement are authorized in advance by a special resolution of the company before the agreement is entered into; and section 49BA(5) and (6) applies to authorization for a proposed release agreement as to authorization for a proposed purchase agreement under section 49BA(1)(c).

(Added 77 of 1991 s. 4)

[cf. 1985 c. 6 s. 167 U.K.]

#### 49G. Disclosure by company of purchase of own shares

(1) Within the period of 14 days beginning with the date on which any shares purchased by a company under this Ordinance are delivered to it, the company shall deliver to the Registrar for registration a return in the specified form stating with respect to shares of each class purchased the number and nominal value of those shares and the date on which they were delivered to the company. (Amended 3 of 1997 s. 15)

(2) In the case of a listed company, the return shall also state—

(a) the aggregate amount paid by the company for the shares; and

(b) the maximum and minimum prices paid in respect of shares of each class purchased.

(3) Particulars of shares delivered to the company on different dates and under different contracts may be included in a single return to the Registrar; and in such a case the amount required to be stated under subsection (2)(a) is the aggregate amount paid by the company for all the shares to which the return relates.

(4) Where a company enters into a contract approved under section 49BA(1)(c), 49D or 49E, the company shall keep at its registered office—

(a) if the contract is in writing, a copy of it; and

(b) if not, a memorandum of its terms,

from the conclusion of the contract until the end of the period of 10 years beginning with the date on which the purchase of all the shares in pursuance of the contract is completed or (as the case may be) the date on which the contract otherwise determines.

(5) Every copy and memorandum so required to be kept shall, during business hours (subject to such reasonable restrictions as the company may in general meeting impose, provided that not less than 2 hours in each day are allowed for inspection), be open to inspection without charge—

(a) by any member of the company; and

(b) if it is a listed company, by any other person.

(6) If default is made in delivering to the Registrar any return required by this section, every officer of the company who is in default is liable to a fine and, for continued default, to a daily default fine.

(7) 如因沒有遵從第(4)款的規定而構成失責，或如有關人士被拒絕根據第(5)款的規定查閱上述文件，有關公司及每名失責高級人員均可處罰款，如持續失責，則可處按日計算的失責罰款。

(8) 如屬有關人士被拒絕根據第(5)款的規定查閱合約副本或合約條款備忘錄的情況，法院可藉命令強迫有關公司立即將該等文件供有關人士查閱。

(9) 任何公司根據第(4)款備存任何合約副本或(視屬何情況而定)合約條款備忘錄的義務，只要適用於該合約，即適用於該合約的任何更改。

(由 1991 年第 77 號第 4 條增補)

[比照 1985 c. 6 s. 169 U.K.]

#### 49H. 資本贖回儲備

(1) 凡公司根據本條例全部從其利潤中撥款贖回或購買本身的股份，則公司的已發行股本額在取消所贖回或購買的股份時按照第 49A(4) 條減少的款額，須撥入一項名為“資本贖回儲備”(the capital redemption reserve)的儲備之內。

(2) 如股份乃全部或部分從發行新股份所得收益中撥款贖回或購買，而該等收益的總額小於所贖回或購買的股份的總面值，則兩者的差額須撥入資本贖回儲備。

(3) 如公司除運用發行新股份所得收益外，並且根據第 49I 條從資本中撥款支付，以贖回或購買本身的股份，則第(2)款並不適用。

(4) 本條例所載有關公司股本減少的條文，適用情況猶如資本贖回儲備為公司的繳足股本一樣，但公司可將該儲備運用於繳足其尚未發行的股份的股款，而該等股份乃即將分配予公司成員作為全部繳付股款的紅股者。

(由 1991 年第 77 號第 4 條增補)

[比照 1985 c. 6 s. 170 U.K.]

從資本中撥款贖回或購買本身股份  
(只限於私人公司)

#### 49I. 私人公司從資本中撥款贖回或購買本身股份的權力

(1) 在符合第 49I 至 49O 條的規定下，任何私人股份有限公司或任何有股本的私人擔保有限公司，如其章程細則許可，均可從公司的可分發利潤或發行新股份所得收

(7) If default is made in complying with subsection (4), or if an inspection required under subsection (5) is refused, the company and every officer who is in default is liable to a fine and, for continued default, to a daily default fine.

(8) In the case of a refusal of an inspection required under subsection (5) of a copy or memorandum, the court may by order compel an immediate inspection of it.

(9) The obligation of a company under subsection (4) to keep a copy of any contract or (as the case may be) a memorandum of its terms applies to any variation of the contract so long as it applies to the contract.

(Added 77 of 1991 s. 4)

[cf. 1985 c. 6 s. 169 U.K.]

#### 49H. The capital redemption reserve

(1) Where under this Ordinance shares of a company are redeemed or purchased wholly out of the company's profits, the amount by which the company's issued share capital is diminished in accordance with section 49A(4) on cancellation of the shares redeemed or purchased shall be transferred to a reserve, called "the capital redemption reserve" (資本贖回儲備).

(2) If the shares are redeemed or purchased wholly or partly out of the proceeds of a fresh issue and the aggregate amount of those proceeds is less than the aggregate nominal value of the shares redeemed or purchased, the amount of the difference shall be transferred to the capital redemption reserve.

(3) Subsection (2) does not apply if the proceeds of the fresh issue are applied by the company in making a redemption or purchase of its own shares in addition to a payment out of capital under section 49I.

(4) The provisions of this Ordinance relating to the reduction of a company's share capital apply as if the capital redemption reserve were paid-up share capital of the company, except that the reserve may be applied by the company in paying up its unissued shares to be allotted to members of the company as fully paid bonus shares.

(Added 77 of 1991 s. 4)

[cf. 1985 c. 6 s. 170 U.K.]

Redemption or purchase of own shares out  
of capital (private companies only)

#### 49I. Power of private companies to redeem or purchase own shares out of capital

(1) Subject to sections 49I to 49O, a private company limited by shares or limited by guarantee and having a share capital may, if so authorized by its

益以外的資金中，撥款支付其根據第 49A 或（視屬何情況而定）49B 條贖回或購買本身股份所需的款項。

(2) 在本條中，凡提述從資本中撥款支付之處，即指（在符合第 (6) 款的規定下）如此撥款支付，不論該項支付除按本條外是否會被視為是從資本中撥款支付。

(3) 公司（如按照本條例獲得批准）在從資本中撥款贖回或購買本身股份方面所可支付的款額，連同以下兩項計算——

(a) 公司任何可動用的利潤；及

(b) 公司為贖回或購買本身股份而發行新股份所得收益，須相等於贖回價或購買價；而根據本款所容許的付款額，在第 49S 條中稱為“容許資本付款額”。

(4) 在符合第 (6) 款的規定下，如用作贖回或購買股份的容許資本付款額小於該等股份的面額，則兩者的差額須撥入公司的資本贖回儲備。

(5) 在符合第 (6) 款的規定下，如容許資本付款額大於所贖回或購買的股份的面額，則——

(a) 公司的任何資本贖回儲備、股份溢價帳或全部繳款股本的款額；及

(b) 相當於當其時列於公司所保存的任何價值重估儲備內貸方的未實現利潤的款額，

可減少一項金額，而該金額不超過（或減少多於一項金額而其總額不超過）容許資本付款額超出該等股份面額之數。

(6) 如公司在贖回或購買本身股份時，除根據本條從資本中撥款支付外，亦運用發行新股份所得收益支付，則在第 (4) 及 (5) 款中凡提述容許資本付款額之處，須解釋為提述該項付款額及該等收益的總額。

(由 1991 年第 77 號第 4 條增補)

[比照 1985 c. 6 s. 171 U.K.]

#### 49J. 就第 49I 條而言利潤的可動用性

(1) 在第 49I(3)(a) 條中提述公司可動用的利潤之處，即指第 IIA 部所指的公司的可供分發的利潤；但就該條而言，關於一間公司是否有如此可動用的利潤的問題以及

articles, make a payment in respect of the redemption or purchase under section 49A or (as the case may be) section 49B, of its own shares otherwise than out of its distributable profits or the proceeds of a fresh issue of shares.

(2) References in this section to payment out of capital are (subject to subsection (6)) to any payment so made, whether or not it would be regarded apart from this section as a payment out of capital.

(3) The payment which may (if authorized in accordance with this Ordinance) be made by a company out of capital in respect of the redemption or purchase of its own shares is such an amount as, taken together with—

(a) any available profits of the company; and

(b) the proceeds of any fresh issue of shares made for the purposes of the redemption or purchase,

is equal to the price of redemption or purchase; and the payment permissible under this subsection is referred to in section 49S as the “permissible capital payment”.

(4) Subject to subsection (6), if the permissible capital payment for shares redeemed or purchased is less than their nominal amount, the amount of the difference shall be transferred to the company's capital redemption reserve.

(5) Subject to subsection (6), if the permissible capital payment is greater than the nominal amount of the shares redeemed or purchased—

(a) the amount of any capital redemption reserve, share premium account or fully paid share capital of the company; and

(b) any amount representing unrealised profits of the company for the time being standing to the credit of any revaluation reserve maintained by the company,

may be reduced by a sum not exceeding (or by sums not in the aggregate exceeding) the amount by which the permissible capital payment exceeds the nominal amount of the shares.

(6) Where the proceeds of a fresh issue are applied by a company in making any redemption or purchase of its own shares in addition to a payment out of capital under this section, the references in subsections (4) and (5) to the permissible capital payment are to be read as referring to the aggregate of that payment and those proceeds.

(Added 77 of 1991 s. 4)

[cf. 1985 c. 6 s. 171 U.K.]

#### 49J. Availability of profits for purposes of section 49I

(1) The reference in section 49I(3)(a) to available profits of the company is to the company's profits which are available for distribution (within the meaning of Part IIA); but the question whether a company has any profits so available and the amount of any such profits are to be determined for purposes

此等利潤的款額，須按照第 (2)、(3)、(4)、(5) 及 (6) 款而非按照第 79F、79G、79H、79I、79J 及 79K 條予以釐定。

(2) 在符合第 (3) 款的規定下，上述問題須參照下列各項而予以決定——

- (a) 利潤、虧損、資產及負債；
- (b) 折舊準備、資產減值準備及應付債務的保留金；及
- (c) 股本及儲備 (包括不可分發的儲備)；

而以上各項乃一如用作釐定容許資本付款額的有關帳目內所述明者。

(3) 就此目的而言，有關帳目指在釐定容許資本付款額的期限內的任何結算日期所擬備的帳目，而為使人能夠就第 (2)(a) 至 (c) 款所述的任何項目的款額作出合理判斷，該等帳目乃屬必需者。

(4) 為釐定容許資本付款額，按照第 (2) 及 (3) 款所釐定公司的可動用利潤額 (如有利潤的話)，得視為已減去公司在有關帳目的日期後並在釐定該付款額的期限結束前所合法地作出分發的款額。

(5) 在第 (4) 款中提述公司合法地作出的分發，包括——

- (a) 在第 47D 或 47E 條所述的情況下，從可分發利潤中合法地撥款給予的資助；
- (b) 公司就購買本身的任何股份而合法地支付的款項 (並非從可分發利潤中合法地撥款支付者除外)；及
- (c) 公司合法地支付第 49C(1) 條所指明的任何種類的款項。

(6) 在本條中提述釐定容許資本付款額的期限，即指為期 3 個月的期限，而期末的一天為董事按照第 49K(3) 條作出看來是指明該付款額的陳述書的日期。 (由 2003 年第 28 號第 20 條修訂)

(由 1991 年第 77 號第 4 條增補)  
[比照 1985 c. 6 s. 172 U.K.]

#### 49K. 有關從資本中撥款的條件

(1) 除第 49O 條所指的任何法院命令另有規定外，任何私人公司從資本中撥款贖回或購買本身的股份，均不合法，除非符合本條與第 49L 及 49M 條的規定。

of that section in accordance with subsections (2), (3), (4), (5) and (6), instead of sections 79F, 79G, 79H, 79I, 79J and 79K.

(2) Subject to subsection (3), that question is to be determined by reference to—

- (a) profits, losses, assets and liabilities;
- (b) provisions for depreciation, diminution in value of assets and retentions to meet liabilities; and

(c) share capital and reserves (including undistributable reserves), as stated in the relevant accounts for determining the permissible capital payment.

(3) The relevant accounts for this purpose are such accounts, prepared as at any date within the period for determining the amount of the permissible capital payment, as are necessary to enable a reasonable judgment to be made as to the amounts of any of the items mentioned in subsection (2)(a) to (c).

(4) For purposes of determining the amount of the permissible capital payment, the amount of the company's available profits (if any) determined in accordance with subsections (2) and (3) is treated as reduced by the amount of any distributions lawfully made by the company after the date of the relevant accounts and before the end of the period for determining the amount of that payment.

(5) The reference in subsection (4) to distributions lawfully made by the company includes—

- (a) financial assistance lawfully given out of distributable profits in a case falling within section 47D or 47E;
- (b) any payment lawfully made by the company in respect of the purchase by it of any shares in the company (except a payment lawfully made otherwise than out of distributable profits); and
- (c) a payment of any description specified in section 49C(1) lawfully made by the company.

(6) Reference in this section to the period for determining the amount of the permissible capital payment is to the period of 3 months ending with the date on which the statement of the directors purporting to specify the amount of that payment is made in accordance with section 49K(3). (Amended 28 of 2003 s. 20)

(Added 77 of 1991 s. 4)  
[cf. 1985 c. 6 s. 172 U.K.]

#### 49K. Conditions for payment out of capital

(1) Subject to any order of the court under section 49O, a payment out of capital by a private company for the redemption or purchase of its own shares is not lawful unless the requirements of this section and sections 49L and 49M are satisfied.

(2) 從資本中撥款須經公司藉特別決議批准。

(3) 公司董事須作出陳述書，指明有關股份的容許資本付款額，並且述明在對公司的事務及前景作出詳盡查訊後，已得出下列的結論——（由 2003 年第 28 號第 21 條修訂）

- (a) 關於公司在緊接建議從資本中撥款支付的日期後的初步情況，其結論是公司並無理由屆時無能力償付其債項；及
- (b) 關於公司在緊接該日期後 1 年的前景，在顧及董事在該年內管理公司業務方面的意向，及認為公司在該年內可獲供給的財政資源的款額及性質後，其結論是公司在該年全年能作為營業中的機構繼續經營業務（並且據此有能力償付到期的債項）。

(4) 就第 (3)(a) 款而言，董事在公司是否無能力償付其債項的問題上作出結論時，須考慮的債務（包括或有及預期的債務），與根據第 177 條須考慮的有關債務相同。

(5) 董事的陳述書須具指明格式及由董事簽署，並須載有處長所指明的關於公司業務性質的資料，並須附連一份由公司核數師致董事的報告書，報告書須述明——（由 1997 年第 3 號第 16 條修訂；由 2003 年第 28 號第 21 條修訂）

- (a) 核數師已對公司的事務狀況作出查訊；
- (b) 依核數師看來，在該陳述書中指明為有關股份的容許資本付款額的款額，乃按照第 49I 及 49J 條所恰當釐定者；及
- (c) 核數師不察覺有任何事情顯示董事在該陳述書中就第 (3) 款所述的任何事項所得出的結論，在所有情況下均屬不合理。（由 2003 年第 28 號第 21 條修訂）

(6) 根據本條簽署陳述書的董事，如無合理的理由支持在陳述書中所得出的結論，可處監禁或罰款，或監禁加罰款。（由 2003 年第 28 號第 21 條修訂）

(7) 如一項按照第 116B 條的規定而獲贊同（或建議如此贊同）的決議是給予第 (2) 款所指的批准的，則——

(2) The payment out of capital shall be approved by a special resolution of the company.

(3) The company's directors shall make a statement specifying the amount of the permissible capital payment for the shares in question and stating that, having made full inquiry into the affairs and prospects of the company, they have formed the opinion— (*Amended 28 of 2003 s. 21*)

- (a) as regards its initial situation immediately following the date on which the payment out of capital is proposed to be made, that there will be no grounds on which the company could then be found unable to pay its debts; and
- (b) as regards its prospects for the year immediately following that date, that, having regard to their intentions with respect to the management of the company's business during that year and to the amount and character of the financial resources which will in their view be available to the company during that year, the company will be able to continue to carry on business as a going concern (and will accordingly be able to pay its debts as they fall due) throughout that year.

(4) In forming their opinion for purposes of subsection (3)(a), the directors shall take into account the same liabilities (including prospective and contingent liabilities) as would be relevant under section 177 to the question whether a company is unable to pay its debts.

(5) The directors' statement shall be in the specified form, shall be signed by the directors and shall contain such information with respect to the nature of the company's business as may be specified by the Registrar, and shall in addition have annexed to it a report addressed to the directors by the company's auditors stating that— (*Amended 3 of 1997 s. 16; 28 of 2003 s. 21*)

- (a) they have inquired into the company's state of affairs;
- (b) the amount specified in the statement as the permissible capital payment for the shares in question is in their view properly determined in accordance with sections 49I and 49J; and
- (c) they are not aware of anything to indicate that the opinion expressed by the directors in the statement as to any of the matters mentioned in subsection (3) is unreasonable in all the circumstances. (*Amended 28 of 2003 s. 21*)

(6) A director who signs a statement under this section without having reasonable grounds for the opinion expressed in the statement is liable to imprisonment or a fine, or both. (*Amended 28 of 2003 s. 21*)

(7) In relation to a resolution agreed to, or proposed to be agreed to, in accordance with section 116B giving approval under subsection (2), then—

- (a) 第 49L(2) 條並不就該項決議而適用，但就第 116B(1) 條而言，持有該項決議所關乎的股份的成員不得被視為有權出席和表決的成員；
- (b) 第 49L(4) 條並不就該項決議而適用，但須將該款提述的文件——
- (i) 提供予按照第 116B 條規定須簽署 (或由他人代表簽署) 該項決議的每名成員；並且
  - (ii) 在提供該項決議予有關成員簽署之時或之前提供予該成員。 (由 2000 年第 46 號第 6 條增補)

[比照 1985 c. 6 Sch. 15A, Pt. II, item 6, U.K.]

(由 1991 年第 77 號第 4 條增補)

[比照 1985 c. 6 s. 173 U.K.]

#### 49L. 第 49K 條所指的特別決議的程序

(1) 第 49K 條所規定的決議，須於董事作出該條所規定的陳述書當日，或在緊接該日的 1 個星期內予以通過；而從資本中作出的撥款，不得早於該項決議通過日期之後 5 個星期，亦不得遲於該日期之後 7 個星期作出。 (由 2003 年第 28 號第 22 條修訂)

(2) 該項決議在下述情況中並無效力：持有與該項決議有關的股份的公司成員，行使該等股份所附有的表決權，就該項決議進行表決；而假若該等成員不曾如此表決，則該項決議不會獲通過。

(3) 就第 (2) 款而言，持有該等股份的成員，不僅在就該項決議應否通過的問題上以投票方式表決，會被視為行使該等股份所附有的表決權，而且在就該項決議以投票以外的方式表決，亦被視為行使該等表決權；而且不論公司的章程細則有任何規定，公司的任何成員，均可要求以投票方式表決該問題。

(4) 除非備有第 49K 條所規定的董事陳述書及核數師報告書，供公司成員在該項決議通過的會議上查閱，否則該項決議並無效力。 (由 2003 年第 28 號第 22 條修訂)

(5) 就本條而言，由某名成員的代表表決及提出要求以投票方式表決，分別等同由該名成員自行表決及自行提出要求。

(由 1991 年第 77 號第 4 條增補)

[比照 1985 c. 6 s. 174 U.K.]

- (a) section 49L(2) shall not apply but, for the purposes of section 116B(1), a member holding shares to which the resolution relates shall not be regarded as a member who would be entitled to attend and vote;
- (b) section 49L(4) shall not apply but the documents referred to in that section shall be supplied—
- (i) to each member by whom, or on whose behalf, the resolution is required to be signed in accordance with section 116B; and
  - (ii) at or before the time at which the resolution is supplied to the member for signature. (Added 46 of 2000 s. 6)
- [cf. 1985 c. 6 Sch. 15A, Pt. II, item 6, U.K.]
- (Added 77 of 1991 s. 4)
- [cf. 1985 c. 6 s. 173 U.K.]

#### 49L. Procedure for special resolution under section 49K

(1) The resolution required by section 49K shall be passed on, or within the week immediately following, the date on which the directors make the statement required by that section; and the payment out of capital shall be made no earlier than 5 nor more than 7 weeks after the date of the resolution. (Amended 28 of 2003 s. 22)

(2) The resolution is ineffective if any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares in voting on the resolution and the resolution would not have been passed if he had not done so.

(3) For purposes of subsection (2), a member who holds such shares is to be regarded as exercising the voting rights carried by them in voting on the resolution not only if he votes in respect of them on a poll on the question whether the resolution shall be passed, but also if he votes on the resolution otherwise than on a poll; and, notwithstanding anything in a company's articles, any member of the company may demand a poll on that question.

(4) The resolution is ineffective unless the directors' statement and auditors' report required by section 49K are available for inspection by members of the company at the meeting at which the resolution is passed. (Amended 28 of 2003 s. 22)

(5) For purposes of this section a vote and a demand for a poll by a person as proxy for a member are the same (respectively) as a vote and demand by the member.

(Added 77 of 1991 s. 4)

[cf. 1985 c. 6 s. 174 U.K.]

## 49M. 有關建議從資本中撥款的公布

(1) 緊接有關從資本中撥款的決議通過的日期後一個星期內，公司須安排在憲報刊登公告——

- (a) 述明公司已批准從資本中撥款，以贖回或購買、或以贖回及購買的方式（視屬何情況而定）收購本身的股份；
- (b) 指明有關股份的容許資本付款額，以及第 49K 條所指通過決議的日期；（由 2003 年第 28 號第 23 條修訂）
- (c) 述明公司的註冊辦事處備有該條所規定的董事陳述書及核數師報告書，可供查閱；及（由 2003 年第 28 號第 23 條修訂）
- (d) 述明公司的任何債權人，在緊接該項有關從資本中撥款的決議通過的日期後 5 個星期內，可隨時根據第 49N 條向法院申請作出命令禁止該項撥款。

(2) 公司亦須在緊接該項決議通過的日期後的一個星期內，安排將一份與第 (1) 款所規定作用相同的公告，在為施行第 71A 條而發出的名單內所指明的一份英文報章及一份中文報章各刊登一次，或以書面向每一名債權人發出具上述作用的通知。

(3) 在本條中凡提述首次公告日期之處，即指公司首次刊登第 (1) 款所規定的公告的日期，或首次刊登第 (2) 款所規定的公告或發出第 (2) 款所規定的通知書的日期（以較早的日期為準）。

(4) 公司須在不遲於首次公告日期，將第 49K 條所規定的董事陳述書文本及核數師報告書文本各一份交付處長。（由 2003 年第 28 號第 23 條修訂）

(5) 董事陳述書及核數師報告書——（由 2003 年第 28 號第 23 條修訂）

- (a) 須在首次公告日期開始，至有關從資本中撥款的決議通過日期後 5 個星期的整段期間內，存放於公司的註冊辦事處；及
- (b) 須在該段期間內任何一日的營業時間內，免費供任何公司成員或公司債權人查閱。

(6) 如有關人士被拒絕根據第 (5) 款的規定查閱上述文件，有關公司及每名失責高級人員均可處罰款，如持續失責，則可處按日計算的失責罰款。

## 49M. Publicity for proposed payment out of capital

(1) Within the week immediately following the date of the resolution for payment out of capital the company shall cause to be published in the Gazette a notice—

- (a) stating that the company has approved a payment out of capital for the purpose of acquiring its own shares by redemption or purchase or both (as the case may be);
- (b) specifying the amount of the permissible capital payment for the shares in question and the date of the resolution under section 49K; (*Amended 28 of 2003 s. 23*)
- (c) stating that the directors' statement and auditors' report required by that section are available for inspection at the company's registered office; and (*Amended 28 of 2003 s. 23*)
- (d) stating that any creditor of the company may at any time within the 5 weeks immediately following the date of the resolution for payment out of capital apply to the court under section 49N for an order prohibiting the payment.

(2) Within the week immediately following the date of the resolution the company shall also either cause a notice to the same effect as that required by subsection (1) to be published once in each of an English language newspaper and a Chinese language newspaper specified in the list issued for the purposes of section 71A or give notice in writing to that effect to each of its creditors.

(3) References in this section to the first notice date are to the day on which the company first publishes the notice required by subsection (1) or first publishes or gives the notice required by subsection (2) (whichever is the earlier).

(4) Not later than the first notice date the company shall deliver to the Registrar a copy of the directors' statement and of the auditors' report required by section 49K. (*Amended 28 of 2003 s. 23*)

(5) The directors' statement and auditors' report— (*Amended 28 of 2003 s. 23*)

- (a) shall be kept at the company's registered office throughout the period beginning with the first notice date and ending 5 weeks after the date of the resolution for payment out of capital; and
- (b) shall during business hours on any day during that period be open to the inspection of any member or creditor of the company without charge.

(6) If an inspection required under subsection (5) is refused, the company and every officer who is in default is liable to a fine and, for continued default, to a daily default fine.

(7) 如屬有關人士被拒絕根據第 (5) 款的規定查閱董事陳述書或核數師報告書的情況，法院可藉命令強迫有關公司立即將該陳述書或報告書供有關人士查閱。(由 2003 年第 28 號第 23 條修訂)

(由 1991 年第 77 號第 4 條增補)

[比照 1985 c. 6 s. 175 U.K.]

#### 49N. 公司成員或債權人提出反對

(1) 凡私人公司通過一項特別決議，為施行本條例而批准從資本中撥款贖回或購買本身的任何股份，則——

(a) 任何公司成員(已同意或已表決贊成該項決議的成員除外)；及

(b) 任何公司債權人，

均可在該項決議通過的日期起計 5 個星期內，向法院申請取消該項決議。

(2) 上述申請可由有權提出申請的人為此目的以書面委任的其中一人或多於一人代其提出。

(3) 如有人提出申請，公司須——

(a) 隨即將該項事實按指明格式向處長發出通知書；及 (由 1997 年第 3 號第 17 條修訂)

(b) 在法院聆訊該項申請而作出任何命令起計 15 天內，或在法院藉命令而指示的較長期限內，交付處長該項命令的正式文本一份。

(4) 未有遵從第 (3) 款的規定的公司及任何失責高級人員，均可處罰款，如持續失責，則可處按日計算的失責罰款。

(由 1991 年第 77 號第 4 條增補)

[比照 1985 c. 6 s. 176 U.K.]

#### 49O. 法院對根據第 49N 條提出的申請所具有的權力

(1) 法院在聆訊根據第 49N 條提出的申請時，如認為適合，可將法律程序押後，以使有關方面作出令法院滿意的安排，購買持異議的成員的權益或保障持異議的債權人(視屬何情況而定)；此外，法院亦可作出其認為合宜的指示及命令，以便作出或執行該等安排。

(2) 在不損害法院根據第 (1) 款所具權力的原則下，法院須按其認為合適的條款及條件，作出一項確認或取消該項決議的命令；如法院確認該項決議，則法院尤其可藉命令，將該項決議內所指明的任何日期或期限更改或延展，或將第 49 至 49S 條中

(7) In the case of refusal of an inspection required under subsection (5) of a directors' statement or auditors' report, the court may by order compel an immediate inspection of that statement or report. (Amended 28 of 2003 s. 23)

(Added 77 of 1991 s. 4)

[cf. 1985 c. 6 s. 175 U.K.]

#### 49N. Objections by company's members or creditors

(1) Where a private company passes a special resolution approving for purposes of this Ordinance any payment out of capital for the redemption or purchase of any of its shares—

(a) any member of the company other than one who consented to or voted in favour of the resolution; and

(b) any creditor of the company, may within 5 weeks of the date on which the resolution was passed apply to the court for cancellation of the resolution.

(2) The application may be made on behalf of the persons entitled to make it by such one or more of their number as they may appoint in writing for the purpose.

(3) If an application is made, the company shall—

(a) forthwith give notice in the specified form of that fact to the Registrar; and (Amended 3 of 1997 s. 17)

(b) within 15 days from the making of any order of the court on the hearing of the application, or such longer period as the court may by order direct, deliver an office copy of the order to the Registrar.

(4) A company which fails to comply with subsection (3), and any officer who is in default, is liable to a fine and for continued default, to a daily default fine.

(Added 77 of 1991 s. 4)

[cf. 1985 c. 6 s. 176 U.K.]

#### 49O. Powers of court on application under section 49N

(1) On the hearing of an application under section 49N the court may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the court's satisfaction for the purchase of the interests of dissentient members or for the protection of dissentient creditors (as the case may be); and the court may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.

(2) Without prejudice to its powers under subsection (1), the court shall make an order on such terms and conditions as it thinks fit either confirming or cancelling the resolution; and, if the court confirms the resolution, it may in

任何適用於贖回或購買與該項決議有關的股份的條文內所指明的任何日期或期限更改或延展。

(3) 如法院認為適合，法院的命令可就公司購買其任何成員的股份及就公司的資本據此減少一事作出訂定，並可對公司的章程大綱及章程細則作出因上述訂定而需作出的修改。

(4) 如法院的命令規定公司不得對其章程大綱或章程細則作出任何修改或任何指明的修改，則公司無權在未有法院的許可下，作出違反該項規定的修改。

(5) 憑藉一項根據本條所作出的命令而對章程大綱或章程細則作出的修改，如並非由公司藉決議作出，所具效力與猶如是藉決議妥為作出的一樣；而本條例則據此適用於經如此修改的章程大綱或章程細則。

(由 1991 年第 77 號第 4 條增補)

[比照 1985 c. 6 s. 177 U.K.]

#### 補充

#### 49P. 公司沒有贖回或購買股份的後果

(1) 如任何公司在《1991 年公司 (修訂) 條例》† (1991 年第 77 號) 生效 \* 當日或生效後——

(a) 曾以須贖回或可贖回股份的條款發行股份；或

(b) 曾同意購買本身的任何股份，

則本條即具效力。

(2) 公司無須就其未有贖回或未有購買任何該等股份負損害賠償的法律責任。

(3) 第 (2) 款以不損害股份持有人的任何權利為原則，但不包括股份持有人就公司未有贖回或購買上述股份起訴公司以索取損害賠償的權利；但如公司證明不能從可分發利潤中撥款支付贖回或購買有關股份的成本，則法院不得發出命令，強制公司履行贖回或購買股份的條款。

(4) 公司如清盤，且在清盤開始時，仍有任何股份未贖回或購買，則可針對公司強制執行贖回或購買股份的條款；而股份在根據本款贖回或購買時，即被視為予以取消。

† “1991 年公司 (修訂) 條例”乃 “Companies (Amendment) Ordinance 1991” 之譯名。

\* 生效日期：1991 年 9 月 1 日。

particular by order alter or extend any date or period of time specified in the resolution or in any provision in sections 49 to 49S which applies to the redemption or purchase of shares to which the resolution refers.

(3) The court's order may, if the court thinks fit, provide for the purchase by the company of the shares of any of its members and for the reduction accordingly of the company's capital, and may make such alterations in the company's memorandum and articles as may be required in consequence of that provision.

(4) If the court's order requires the company not to make any, or any specified, alteration in its memorandum or articles, the company shall not then have power without leave of the court to make any such alteration in breach of the requirement. (Amended 80 of 1997 s. 102)

(5) An alteration in the memorandum or articles made by virtue of an order under this section, if not made by resolution of the company, is of the same effect as if duly made by resolution; and this Ordinance applies accordingly to the memorandum or articles as so altered.

(Added 77 of 1991 s. 4)

[cf. 1985 c. 6 s. 177 U.K.]

#### Supplementary

#### 49P. Effect of company's failure to redeem or purchase

(1) This section has effect where a company has, on or after the commencement\* of the Companies (Amendment) Ordinance 1991 (77 of 1991)—

(a) issued shares on terms that they are or are liable to be redeemed; or

(b) agreed to purchase any of its own shares.

(2) The company is not liable in damages in respect of any failure on its part to redeem or purchase any of the shares.

(3) Subsection (2) is without prejudice to any right of the holder of the shares other than his right to sue the company for damages in respect of its failure; but the court shall not grant an order for specific performance of the terms of redemption or purchase if the company shows that it is unable to meet the costs of redeeming or purchasing the shares in question out of distributable profits.

(4) If the company is wound up and at the commencement of the winding up any of the shares have not been redeemed or purchased, the terms of redemption or purchase may be enforced against the company; and when shares are redeemed or purchased under this subsection, they are treated as cancelled.

\* Commencement date: 1 September 1991.

- (5) 第 (4) 款不適用於以下情況——
- 如有關條款訂定贖回或購買股份的日期是在清盤開始的日期之後；或
  - 公司在須贖回或購買股份的日期起至清盤開始之日的一段期間內，假若不能在任何時候合法地作出價值與須予贖回或購買的股份價格相等的分發。
- (6) 公司就任何股份支付其根據第 (4) 款有法律責任支付的款額前，須優先支付——
- 公司的所有其他債項及債務（成員以成員身分被欠的債項及債務除外）；
  - 如其他股份附有權利（不論是有關資本或有關收入方面的權利），而該等權利較前述的股份所附帶的有關資本的權利優先，則公司須優先支付為履行該等優先權利而須付的款項，
- 但在該項條文的規限下，任何上述款額均須較下述款項優先支付：即履行公司成員作為成員的權利（不論是有關資本或有關收入方面的權利）而須付予成員的款項。
- (7) 凡憑藉由第 264 條引申而適用的《破產條例》（第 6 章）第 71 條，公司債權人只在公司償付所有其他債項後，始有權收取任何利息，則就第 (6) 款而言，公司的債項及債務包括支付該項利息的法律責任。

(由 1991 年第 77 號第 4 條增補)  
[比照 1985 c. 6 s. 178 U.K.]

#### 49Q. 行政長官會同行政會議對某些條文作出變通的權力

- (1) 行政長官會同行政會議可藉訂立規例而就下述任何事項對第 49 至 49S 條作出變通——
- 公司購買本身股份所需的權限；
  - 公司放棄其下述權利所需的權限：公司根據某項合約購買本身股份的權利，或根據某項合約公司可能（在任何條件的規限下）有權或有責任購買本身股份的權利；
  - 公司按照第 49G(1) 條交付處長的申報表所須載列的資料；

- (5) Subsection (4) does not apply if—
- the terms provided for the redemption or purchase to take place at a date later than that of the commencement of the winding up; or
  - during the period beginning with the date on which the redemption or purchase was to have taken place and ending with the commencement of the winding up the company could not at any time have lawfully made a distribution equal in value to the price at which the shares were to have been redeemed or purchased.
- (6) There shall be paid in priority to any amount which the company is liable under subsection (4) to pay in respect of any shares—
- all other debts and liabilities of the company (other than any due to members in their character as such);
  - if other shares carry rights (whether as to capital or as to income) which are preferred to the rights as to capital attaching to the first-mentioned shares, any amount due in satisfaction of those preferred rights,
- but, subject to that, any such amount shall be paid in priority to any amounts due to members in satisfaction of their rights (whether as to capital or income) as members.
- (7) Where by virtue of section 71 of the Bankruptcy Ordinance (Cap. 6) as applied by section 264, a creditor of a company is entitled to payment of any interest only after payment of all other debts of the company, the company's debts and liabilities for purposes of subsection (6) include the liability to pay that interest.

(Added 77 of 1991 s. 4)  
[cf. 1985 c. 6 s. 178 U.K.]

#### 49Q. Power for Chief Executive in Council to modify certain sections

- (1) The Chief Executive in Council may by regulations modify sections 49 to 49S with respect to any of the following matters—
- the authority required for a purchase by a company of its own shares;
  - the authority required for the release by a company of its rights under a contract for the purchase of its own shares or a contract under which the company may (subject to any conditions) become entitled or obliged to purchase its own shares;
  - the information to be included in a return delivered by a company to the Registrar in accordance with section 49G(1);

- (d) 第 49K 條所指的董事陳述書中所處理的事項；而該份陳述書目的是在表明董事在適當顧及公司的財務狀況及前景後，對公司建議從資本中撥款的能力所得出的結論；及 (由 2003 年第 28 號第 24 條修訂)
- (e) 該條所規定須附連於董事陳述書的核數師報告書的內容。 (由 2003 年第 28 號第 24 條修訂)
- (2) 行政長官會同行政會議亦可藉如此訂立的規例，訂定其覺得適當的條文 (包括對第 49 至 49S 條作出變通)——
- (a) 完全或部分免除公司遵從第 49I(3)(a) 條的規定，而在根據該條釐定容許資本付款額時，則須顧及任何可動用的利潤；或
- (b) 准許在行政長官會同行政會議覺得適當的程度下應用公司的股份溢價帳，提供資金以支付贖回或購買公司本身的任何股份時所須付的溢價。
- (3) 根據本條訂立的規例——
- (a) 可對第 49 至 49S 條及第 79J(2) 及 (3) 及 79M 條，作出行政長官會同行政會議覺得合理地必需的進一步變通，而該等變通乃根據憑藉第 (1) 或 (2) 款訂立的規例所訂立的任何條文所引致；
- (b) 可就不同個案或不同類別的個案訂立不同的條文；及
- (c) 可載有行政長官會同行政會議認為合適的進一步相應條文，以及行政長官會同行政會議認為合適的附帶及補充條文。
- (4) 除非事先將規例的草案提交立法會，並且獲立法會藉決議批准，否則不得根據本條訂立任何規例，而《釋義及通則條例》(第 1 章) 第 34 條並不適用於該等規例。  
(由 1991 年第 77 號第 4 條增補。由 1999 年第 23 號第 3 條修訂)  
[比照 1985 c. 6 s. 179 U.K.]

- (d) the matters to be dealt with in the statement of the directors under section 49K with a view to indicating their opinion of their company's ability to make a proposed payment out of capital with due regard to its financial situation and prospects; and (Amended 28 of 2003 s. 24)
- (e) the contents of the auditors' report required by that section to be annexed to the directors' statement. (Amended 28 of 2003 s. 24)
- (2) The Chief Executive in Council may also by regulations so made make such provision (including modification of sections 49 to 49S) as appears to him to be appropriate—
- (a) for wholly or partly relieving companies from the requirement of section 49I(3)(a) that any available profits shall be taken into account in determining the amount of the permissible capital payment under that section; or
- (b) for permitting a company's share premium account to be applied, to any extent appearing to the Chief Executive in Council to be appropriate, in providing for the premiums payable on redemption or purchase by the company of any of its own shares.
- (3) Regulations under this section—
- (a) may make such further modification of sections 49 to 49S and sections 79J(2) and (3) and 79M as appears to the Chief Executive in Council to be reasonably necessary in consequence of any provision made under such regulations by virtue of subsection (1) or (2);
- (b) may make different provision for different cases or classes of case; and
- (c) may contain such further consequential provisions, and such incidental and supplementary provisions, as the Chief Executive in Council thinks fit.
- (4) No regulations shall be made under this section unless a draft of them has been laid before and approved by resolution of the Legislative Council and section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to such regulations.  
(Added 77 of 1991 s. 4. Amended 23 of 1999 s. 3)  
[cf. 1985 c. 6 s. 179 U.K.]

49R. 在第 49 至 49S 條下產生的過渡情況；  
以及保留條文

(1) 任何公司在《1991 年公司 (修訂) 條例》†(1991 年第 77 號) 生效 \* 前所發行的優先股，如非因第 49 條由該條例廢除則本可根據該條被贖回的，均須按照經該條例修訂的本條例條文予以贖回。

(2) 如屬第 49 及 49A 條憑藉本條適用的情況，則即使本條例的任何條文已由《1991 年公司 (修訂) 條例》†(1991 年第 77 號) 所廢除，在贖回時須付的任何溢價，可從股份溢價帳中而非從利潤中撥款支付，或部分從該帳項及部分從利潤中撥款支付(但如從利潤中撥款支付，則須符合經該條例修訂的本條例條文)。

(3) 任何公司在《1991 年公司 (修訂) 條例》†(1991 年第 77 號) 生效 \* 前，為施行已廢除的第 49 條而設立的資本贖回儲備基金，現須稱為該公司的資本贖回儲備，並視為猶如已經為施行第 49H 條而設立一樣；據此，在任何成文法則或任何公司的章程細則內，或在任何其他文書內，凡提述某間公司的資本贖回儲備基金之處，均須解釋為提述該公司的資本贖回儲備。

(由 1991 年第 77 號第 4 條增補)  
[比照 1985 c. 6 s. 180 U.K.]

49S. 適用於第 49 至 49R 條的定義

(1) 在第 49 至 49R 條中——  
“可分發利潤”(distributable profits) 就某間公司作出任何付款而言，指該公司可合法地從中撥款作分發(第 79B(2) 條所指的分發)的利潤，而該項分發與該項付款的價值相等；

“容許資本付款額”(permissible capital payment) 指第 49I 條所准許的付款。

(2) 在第 49 至 49R 條中，凡提述“從資本中撥款支付”(payment out of capital) 之處，均須按照第 49I 條解釋。

(由 1991 年第 77 號第 4 條增補)  
[比照 1985 c. 6 s. 181 U.K.]

† “《1991 年公司 (修訂) 條例》” 乃 “Companies (Amendment) Ordinance 1991” 之譯名。

\* 生效日期：1991 年 9 月 1 日。

49R. Transitional cases arising under  
sections 49 to 49S; and savings

(1) Any preference shares issued by a company before the commencement\* of the Companies (Amendment) Ordinance 1991 (77 of 1991) which could but for the repeal by that Ordinance of section 49 have been redeemed under that section are subject to redemption in accordance with the provisions of this Ordinance as amended by that Ordinance.

(2) In a case to which sections 49 and 49A apply by virtue of this section, any premium payable on redemption may, notwithstanding the repeal by the Companies (Amendment) Ordinance 1991 (77 of 1991) of any provision of this Ordinance, be paid out of the share premium account instead of out of profits, or partly out of that account and partly out of profits (but subject to the provisions of this Ordinance as amended by that Ordinance so far as payment is out of profits).

(3) Any capital redemption reserve fund established before the commencement\* of the Companies (Amendment) Ordinance 1991 (77 of 1991) by a company for the purposes of the repealed section 49 is to be known as the company's capital redemption reserve and be treated as if it had been established for the purposes of section 49H; and accordingly, a reference in any enactment or in the articles of any company, or in any other instrument, to a company's capital redemption reserve fund is to be construed as a reference to the company's capital redemption reserve.

(Added 77 of 1991 s. 4)  
[cf. 1985 c. 6 s. 180 U.K.]

49S. Definitions for sections 49 to 49R

(1) In sections 49 to 49R—  
“distributable profits” (可分發利潤), in relation to the making of any payment by a company, means those profits out of which it could lawfully make a distribution (within the meaning given by section 79B(2)) equal in value to the payment;

“permissible capital payment” (容許資本付款額) means the payment permitted by section 49I.

(2) In sections 49 to 49R, references to “payment out of capital” (從資本中撥款支付) are to be construed in accordance with section 49I.

(Added 77 of 1991 s. 4)  
[cf. 1985 c. 6 s. 181 U.K.]

\* Commencement date: 1 September 1991.

## 50. 按折扣發行股份的權力

(1) 在符合本條所訂定的條文下，公司可按折扣發行公司原已發行的某一類別的股份：

但——

- (a) 按折扣發行股份一事，必須藉在公司大會上所通過的決議批准，並須獲法院認許；
- (b) 該項決議必須指明該等股份發行所按的最高折扣率；
- (c) 發行日期與公司有權開始營業的日期，相隔的時間必須不少於 1 年；
- (d) 按折扣發行的股份，必須在法院認許該次發行的日期後 1 個月內發行，或在法院所容許的延展時限內發行。

(2) 凡公司已通過決議批准按折扣發行股份，可向法院申請一項命令認許該次發行，而法院應上述申請，在顧及有關個案的所有情況而認為恰當時，可按其認為合適的條款及條件，作出命令認許該次發行。

(3) 每份與發行此等股份有關的招股章程，必須載有此等股份發行時所容許的折扣詳情，或載有有關在招股章程發出當日該項折扣有多少未予沖銷的詳情。如因沒有遵從本款的規定而構成失責，有關公司及其每名失責高級人員均可處罰款，如持續失責，則可處按日計算的失責罰款。（由 1974 年第 80 號第 8 條修訂；由 1990 年第 7 號第 2 條修訂）

[比照 1929 c. 23 s. 47 U.K.]

## 與股本有關的雜項條文

## 51. 公司安排就股份以不同款額支付的權力

任何公司，如其章程細則許可，可作出下述任何一項或多於一項事情——

- (a) 就股份的發行作出安排，讓股東以不同的款額及按不同的付款時間，繳付就其股份所催繳的股款；
- (b) 接受任何成員就其所持有的任何股份所繳付的全部或部分尚未繳付的股款，雖然公司未曾催繳該等股款的任何部分；

## 50. Power to issue shares at a discount

(1) Subject as provided in this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued:

Provided that—

- (a) the issue of the shares at a discount must be authorized by resolution passed in general meeting of the company, and must be sanctioned by the court;
- (b) the resolution must specify the maximum rate of discount at which the shares are to be issued;
- (c) not less than 1 year must at the date of the issue have elapsed since the date on which the company was entitled to commence business;
- (d) the shares to be issued at a discount must be issued within 1 month after the date on which the issue is sanctioned by the court or within such extended time as the court may allow.

(2) Where a company has passed a resolution authorizing the issue of shares at a discount, it may apply to the court for an order sanctioning the issue, and on any such application the court, if, having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.

(3) Every prospectus relating to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the prospectus. If default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine. (Amended 80 of 1974 s. 8; 7 of 1990 s. 2)

[cf. 1929 c. 23 s. 47 U.K.]

## Miscellaneous Provisions as to Share Capital

## 51. Power of company to arrange for different amounts being paid on shares

A company, if so authorized by its articles, may do any one or more of the following things—

- (a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;
- (b) accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;

- (c) 如某些股份的繳足股款額大於其他股份，可根據每股股份的繳足股款額按比例支付股息。

[比照 1929 c. 23 s. 48 U.K.]

## 52. 有限公司保留的法律責任

有限公司可藉特別決議決定其股本中任何尚未催繳的部分均不能催繳，但公司正在清盤或為了配合公司清盤的目的，則屬例外；因此公司該部分的股本，除有前述的情況及為了配合前述的目的外，否則不能催繳。

[比照 1929 c. 23 s. 49 U.K.]

## 53. 股份有限公司更改股本的權力

(1) 任何股份有限公司或有股本的擔保有限公司，如其章程細則許可，可對其章程大綱所訂的條件作如下修改，亦即公司可——

- (a) 藉發行其認為合宜數額的新股份而將公司的股本增加；
  - (b) 將公司的全部或任何股本合併及拆分為款額較其現有股份為大的股份；
  - (c) 將所有或任何已繳足股款的股份轉換為股額，然後將股額再轉換為任何面額的已繳足股款的股份；
  - (d) 將股份或其中任何部分，再拆分為款額較章程大綱所訂定的為小的股份；然而，在作此項再拆分時，每一股縮小股份的已付股款與未付股款（如有的話）的比例，須與該縮小股份所得自的原先股份的比例一樣；
  - (e) 將該等截至有關決議通過當日尚未被任何人承購或同意承購的股份取消，並且按如此被取消股份的款額將股本的款額減少。
- (2) 本條所授予的權力，必須由公司在大會上行使。
- (3) 依據本條所作的股份取消，不得當作為本條例所指的股本減少。

[比照 1929 c. 23 s. 50 U.K.]

- (c) pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

[cf. 1929 c. 23 s. 48 U.K.]

## 52. Reserve liability of limited company

A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

[cf. 1929 c. 23 s. 49 U.K.]

## 53. Power of company limited by shares to alter its share capital

(1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorized by its articles, may alter the conditions of its memorandum as follows, that is to say, it may—

- (a) increase its share capital by new shares of such amount as it thinks expedient;
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- (c) convert all or any of its paid-up shares into stock, and re-convert that stock into paid-up shares of any denomination;
- (d) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
- (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section must be exercised by the company in general meeting.

(3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Ordinance.

[cf. 1929 c. 23 s. 50 U.K.]

## 54. 將股本合併、股份轉換為股額等事宜通知處長

## (1) 如任何有股本的公司——

- (a) 曾將其股本合併及拆分為款額較其現有股份為大的股份；或
- (b) 曾將任何股份轉換為股額；或
- (c) 曾將股額再轉換為股份；或
- (d) 曾將其股份或其中任何部分再拆分；或
- (e) 曾贖回任何可贖回的優先股；或
- (f) 曾將任何股份取消，但並非與第 58 條所指的股本減少有關，

則公司須於事後 1 個月內，按指明格式將有關事宜通知處長，指明經合併、拆分、轉換、再拆分、贖回或取消的股份，或再被轉換的股額（視屬何情況而定）。（由 2003 年第 28 號第 25 條修訂）

(2) 如因沒有遵從本條的規定而構成失責，有關公司及其每名失責高級人員均可處罰款，如持續失責，則可處按日計算的失責罰款。（由 1990 年第 7 號第 2 條修訂）

[比照 1929 c. 23 s. 51 U.K.]

## 55. 關於股本增加的通知

(1) 任何有股本公司，不論其股份是否已轉換為股額，凡已將其股本增加至超過註冊資本，則除第 (1A) 款另有規定外，該公司須於批准該項增加的決議通過後 15 天內，將該項增加通知處長，而處長須予以記錄。

(1A) 如公司股本增加的生效日期，是在批准該項增加的決議的通過日期之後的，第 (1) 款提述的通知須在股本增加生效後 15 天內向處長作出。（由 2003 年第 28 號第 26 條增補）

(2) 如前述股發出的通知書，須具有指明格式，而其內容則須包括處長就受影響類別股份所指明的詳情，以及已發行或即將發行的新股份所須符合的條件。（由 1997 年第 3 號第 18 條修訂）

(3) 如因沒有遵從本條的規定而構成失責，有關公司及其每名失責高級人員均可處罰款，如持續失責，則可處按日計算的失責罰款。（由 1990 年第 7 號第 2 條修訂）

（由 2003 年第 28 號第 26 條修訂）

[比照 1929 c. 23 s. 52 U.K.]

## 54. Notice to Registrar of consolidation of share capital, conversion of shares into stock, &amp;c.

## (1) If a company having a share capital has—

- (a) consolidated and divided its share capital into shares of larger amount than its existing shares; or
- (b) converted any shares into stock; or
- (c) re-converted stock into shares; or
- (d) subdivided its shares or any of them; or
- (e) redeemed any redeemable preference shares; or
- (f) cancelled any shares, otherwise than in connexion with a reduction of share capital under section 58,

it shall within 1 month after so doing give notice thereof to the Registrar in the specified form, specifying the shares consolidated, divided, converted, subdivided, redeemed or cancelled, or the stock re-converted, as the case may be. (Amended 28 of 2003 s. 25)

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine. (Amended 7 of 1990 s. 2)

[cf. 1929 c. 23 s. 51 U.K.]

## 55. Notice of increase of capital

(1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, it shall, subject to subsection (1A), within 15 days after the passing of the resolution authorizing the increase, give to the Registrar notice of the increase, and the Registrar shall record the increase.

(1A) Where the increase in the share capital of the company takes effect on a date after the date on which the resolution authorizing the increase is passed, the notice referred to in subsection (1) shall be given to the Registrar within 15 days after the increase takes effect. (Added 28 of 2003 s. 26)

(2) The notice to be given as aforesaid shall be in the specified form and include such particulars as may be specified by the Registrar with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued. (Amended 3 of 1997 s. 18)

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine. (Amended 7 of 1990 s. 2)

(Amended 28 of 2003 s. 26)

[cf. 1929 c. 23 s. 52 U.K.]

## 56. 無限公司於重新註冊時訂定後備股本的權力

任何有股本的無限公司，可藉公司根據第 19 條重新註冊為有限公司的有關決議，作出下述兩項或其中一項事情——（由 1984 年第 6 號第 25 條修訂）

- (a) 增加每股股份的面額，從而增加其股本的面額，但須符合以下條件：除公司正在清盤及為了配合公司清盤的目的外，否則所增加的資本完全不能催繳；
- (b) 訂定公司未催繳股本的其中指明部分，除公司正在清盤及為了配合公司清盤的目的外，否則不能催繳。

[比照 1929 c. 23 s. 53 U.K.]

## 57. 公司在某些情況從資本中撥款支付利息的權力

如公司發行股份的目的是籌措資金以支付工程或建築物的建築費用，或支付工業裝置的費用，而此等建設在一段長時間內是無利可圖的，則公司可就當其時在有關期間已繳足股款的股本支付利息，但須受本條所述的條件及限制所規限；如此以利息形式支付的款項可由資本撥付，作為建造該項工程或建築物，或安裝工業裝置的部分成本：

但——

- (a) 除非章程細則許可或藉特別決議批准，否則不得作出上述付款；
- (b) 事前未獲法院認許，則不論是否章程細則許可或藉特別決議批准，均不得作出上述付款；
- (c) 法院在認許上述付款前，可委任一名人士，就有關個案的情況作出查訊及向法院作出報告，費用由公司支付；而法院在作出該項委任前，可要求公司就查訊費用的支付提供保證；
- (d) 該項付款只可就法院所決定的期間作出，而不論在任何情況下，該段期間不得延展至超逾該工程或建築物已實際上完成，或該工業裝置已實際安裝的半年度過後的下一個半年度的完結日期；

## 56. Power of unlimited company to provide for reserve share capital on re-registration

An unlimited company having a share capital may, by its resolution for re-registration as a limited company under section 19, do either or both of the following things, namely— (Amended 6 of 1984 s. 25)

- (a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;
- (b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

[cf. 1929 c. 23 s. 53 U.K.]

## 57. Power of company to pay interest out of capital in certain cases

Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the sum so paid by way of interest to capital as part of the cost of construction of the work or building, or the provision of plant:

Provided that—

- (a) no such payment shall be made unless it is authorized by the articles or by special resolution;
- (b) no such payment, whether authorized by the articles or by special resolution, shall be made without the previous sanction of the court;
- (c) before sanctioning any such payment the court may, at the expense of the company, appoint a person to inquire and report to them as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry;
- (d) the payment shall be made only for such period as may be determined by the court, and that period shall in no case extend beyond the close of the half year next after the half year during which the works or buildings have been actually completed or the plant provided;

- (e) 不論在任何情況下，利率不得超過年息 8 釐；（由 1984 年第 6 號第 26 條代替）
- (f) 利息的支付，不得作為減少與該項利息支付有關的股份的已繳足股款。  
（由 1974 年第 80 號第 9 條修訂）  
[比照 1929 c. 23 s. 54 U.K.]

#### 57A. 無表決權股份及具有不同表決權的股份

(1) 公司股本如分為不同類別的股份，而其中某個類別的股份（被稱為優先股或有優先權的股份者除外），其持有人在公司的大會中並無權表決，則該類別股份的說明稱號須包括“無表決權”的文字，而此等文字須清楚地載於公司所發出的任何股票、招股章程或董事報告書上。

(2) 公司的股本如分為不同類別的股份，則公司所發出的每張股票，均須在顯眼位置載有一項聲明，述明公司的股本乃分為不同類別的股份；而該項聲明須指明各類股份的面值以及所附帶的表決權。

(3) 如因沒有遵從第 (1) 或 (2) 款的規定而構成失責，有關公司及其每名失責高級人員均可處罰款，如持續失責，則可處按日計算的失責罰款。（由 1990 年第 7 號第 2 條修訂）

(4) 本條並不適用於任何公司在《1984 年公司（修訂）條例》†（1984 年第 6 號）生效\* 前所發出的任何股票、招股章程或報告書。

（由 1984 年第 6 號第 27 條增補）

#### 57B. 董事分配股份需經公司批准

(1) 即使公司的章程大綱或章程細則有任何規定，董事如事前未經公司在大會上批准，不得行使公司在分配股份方面的任何權力：

但公司如根據一項按比例向其成員作出的要約，將其股份分配予公司的成員（就此而言，不包括該項要約未為成員地址所在地的法律所准許的任何成員），則無需事前獲得上述的批准。

† “《1984 年公司（修訂）條例》”乃“Companies (Amendment) Ordinance 1984”之譯名。

\* 生效日期：1984 年 8 月 31 日。

- (e) the rate of interest shall in no case exceed 8 per cent per annum; (*Replaced 6 of 1984 s. 26*)
- (f) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid.  
(*Amended 80 of 1974 s. 9*)  
[*cf. 1929 c. 23 s. 54 U.K.*]

#### 57A. Non voting shares and shares with different voting rights

(1) In the case of a company the share capital of which is divided into different classes of shares and includes a class of shares (other than preference or preferred shares so described) the holders of which are not entitled to vote at general meetings of the company, the descriptive title of the shares of that class shall include the words “non-voting” and those words shall appear legibly on any share certificate, prospectus or directors’ report issued by the company.

(2) In the case of a company the share capital of which is divided into different classes of shares, every share certificate issued by the company shall contain in a prominent position a statement that its share capital is divided into different classes of shares; and such statement shall specify in respect of the shares of each class the nominal value thereof and the voting rights attached thereto.

(3) If default is made in complying with subsection (1) or (2), the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine. (*Amended 7 of 1990 s. 2*)

(4) This section shall not apply to any share certificate, prospectus or report issued by a company before the commencement\* of the Companies (Amendment) Ordinance 1984 (6 of 1984).

(*Added 6 of 1984 s. 27*)

#### 57B. Approval of company required for allotment of shares by directors

(1) Notwithstanding anything in a company’s memorandum or articles, the directors shall not without the prior approval of the company in general meeting exercise any power of the company to allot shares:

Provided that no such prior approval shall be required in relation to the allotment of shares in the company under an offer made pro rata by the company to the members of the company, excluding for that purpose any member whose address is in a place where such offer is not permitted under the law of that place.

\* Commencement date: 31 August 1984.

(2) 為配合本條而給予的批准，可局限於該項權力的特別行使，亦可適用於該項權力的一般行使；而上述批准可不附帶條件或可受條件規限。

(3) 為配合本條而給予的批准須持續有效至——

(a) 在給予該項批准的日期以後接着舉行的周年大會結束為止；或

(b) 法律規定須於該日期以後舉行下屆周年大會的期限屆滿為止，以較早者為準；但任何批准均可由公司提前在大會上撤銷或更改。

(4) 即使一項為配合本條而給予的批准已告失效，如有關股份乃董事依據在該項批准仍然生效時所作出或批出的要約、協議或選擇權而分配，而該項批准所授權董事作出或批出的要約、協議或選擇權，是會規定或可能規定該等股份在該項批准的有效期限屆滿後始分配的，則董事仍可分配股份。

(5) (由 2000 年第 46 號第 7 條廢除)

(6) 任何董事如明知而故意違反本條，或准許或授權他人違反本條，可處監禁及罰款。(由 1990 年第 7 號第 2 條修訂)

(7) 如公司分配股份予在章程大綱內簽署的股份認購人，而該等股份是該等人藉簽署章程大綱而同意承購的，則上述股份分配的有效性並不受本條影響，而本條亦不規定上述分配必須獲得批准。

(8) 本條不適用於——

(a) 在《1984 年公司(修訂)條例》†(1984 年第 6 號)生效\*之後接着舉行的周年大會開始前；或

(b) 在法律規定須於該條例生效之後舉行下屆周年大會的期限屆滿前，(以較早者為準)由公司所作出的任何股份分配。

(9) 本條不適用於任何公司依據其於《1984 年公司(修訂)條例》†(1984 年第 6 號)生效\*前作出或批出的要約、協議或選擇權而作出的任何股份分配。

(由 1984 年第 6 號第 27 條增補)

[比照 1980 c. 22 s. 14 U.K.]

† “《1984 年公司(修訂)條例》”乃 “Companies (Amendment) Ordinance 1984” 之譯名。

\* 生效日期：1984 年 8 月 31 日。

(2) Approval for the purposes of this section may be confined to a particular exercise of that power or may apply to the exercise of that power generally; and any such approval may be unconditional or subject to conditions.

(3) Any approval for the purposes of this section shall continue in force until—

(a) the conclusion of the annual general meeting commencing next after the date on which the approval was given; or

(b) the expiration of the period within which the next annual general meeting after that date is required by law to be held,

whichever is the earlier; but any approval may be previously revoked or varied by the company in general meeting.

(4) The directors may allot shares notwithstanding that an approval for the purposes of this section has ceased to be in force if the shares are allotted in pursuance of an offer, agreement or option made or granted by them while the approval was in force and they were authorized by the approval to make or grant an offer, agreement or option which would or might require shares to be allotted after the expiration of the approval.

(5) (Repealed 46 of 2000 s. 7)

(6) Any director who knowingly and wilfully contravenes, or permits or authorizes the contravention of, this section shall be liable to imprisonment and a fine. (Amended 7 of 1990 s. 2)

(7) Nothing in this section shall affect the validity of any allotment of shares or require approval for the allotment to the subscribers of a company's memorandum of shares in the company which, by subscribing the memorandum, they have agreed to take.

(8) This section shall not apply to any allotment of shares made by a company before—

(a) the beginning of the annual general meeting commencing next after the commencement\* of the Companies (Amendment) Ordinance 1984 (6 of 1984); or

(b) the expiration of the period within which the next annual general meeting after the commencement of that Ordinance is required by law to be held,

whichever is the earlier.

(9) This section shall not apply to any allotment of shares made by a company in pursuance of an offer, agreement or option made or granted by the company before the commencement\* of the Companies (Amendment) Ordinance 1984 (6 of 1984).

(Added 6 of 1984 s. 27)

[cf. 1980 c. 22 s. 14 U.K.]

\* Commencement date: 31 August 1984.

## 57C. 使不恰當地發行的股份變成有效

如公司本意是發行或分配股份，而該等股份的產生、發行或分配，由於本條例或任何其他條例的任何條文、或公司的章程大綱或章程細則的任何條文、或由於其他原因而無效，或該項發行或分配的條款與上述任何條文抵觸或不獲上述任何條文許可，則法院應公司或任何該等股份持有人或承按人或公司債權人提出的申請，並信納就所有情況而言如下述般作出命令是公正公平，可作出一項命令，使該等股份的發行或分配變成有效，或確認該等股份發行或分配的條款，或兩者兼備，而該項命令的正式文本一經提交處長，該等股份即須當作已按其發行或分配條款有效地發行或分配。

(由 1984 年第 6 號第 27 條增補)

## 股本的減少

## 58. 有關股本減少的特別決議

(1) 以獲得法院確認為前提，任何股份有限公司或有股本的擔保有限公司，如其章程細則許可，可藉特別決議以任何方式將其股本減少，並且在不損害前述權力的概括性的原則下，尤其可——

- (a) 終絕或減少本身任何股份在有關的未繳足款股本上的法律責任；或
- (b) 將任何已虧損或不能以可動用資產代表的繳足款股本取消，不論會否終絕或減少本身任何股份的法律責任；或
- (c) 將超過公司所需的任何繳足款股本清付，不論會否終絕或減少本身任何股份的法律責任，

並且於必需時，可藉減少其股本額及股份數額而據此修改其章程大綱。

(1A) 除本條例有所規定外，任何股份有限公司或有股本的擔保有限公司，均不得以任何方式購買或認購本身的任何股份或減少其股本；而本款對此適用，猶如公司的任何股份溢價帳或資本贖回儲備基金均為公司的繳足款股本一樣。(由 1984 年第 6 號第 28 條增補)

## 57C. Validation of shares improperly issued

Where a company has purported to issue or allot shares and the creation, issue or allotment of those shares was invalid by reason of any provision of this or any other Ordinance, or of the memorandum or articles of the company or otherwise, or the terms of issue or allotment were inconsistent with or unauthorized by any such provision, the court may, upon application made by the company or by a holder or mortgagee of any of those shares or by a creditor of the company, and upon being satisfied that in all the circumstances it is just and equitable so to do, make an order validating the issue or allotment of those shares or confirming the terms of issue or allotment thereof, or both, and upon an office copy of the order being lodged with the Registrar those shares shall be deemed to have been validly issued or allotted upon the terms of the issue or allotment thereof.

(Added 6 of 1984 s. 27)

## Reduction of Share Capital

## 58. Special resolution for reduction of share capital

(1) Subject to confirmation by the court, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorized by its articles, by special resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may—

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
- (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or
- (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company,

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(1A) Except as provided in this Ordinance, no company limited by shares or limited by guarantee and having a share capital shall purchase or subscribe for any shares in the company or reduce its share capital in any way; and this subsection shall apply as if any share premium account or capital redemption reserve fund of a company were paid up share capital of the company.  
(Added 6 of 1984 s. 28)

(1B) 如公司本意是違反第 (1A) 款，則——

- (a) 公司可處罰款；
- (b) 每名失責高級人員皆可處監禁及罰款；及
- (c) 附表 13 所指的有關股東，如明知而准許第 (1A) 款遭違反，可處監禁及罰款。(由 1991 年第 77 號第 5 條增補)

(1C) 在符合第 168A 條的規定下，如公司根據第 49 至 49S 條購買本身的任何股份，該項購買並不僅因為任何該等條文的規定不獲遵從而告無效。(由 1991 年第 77 號第 5 條增補。由 2003 年第 28 號第 27 條修訂)

(1D) 即使第 (1C) 款有所規定，一項違反第 49B(6) 條的規定的購買乃屬無效。(由 1991 年第 77 號第 5 條增補)

(2) 本條所指的特別決議，在本條例中稱為股本減少決議。

(3) 如減少公司的股本的唯一目的，是將該公司的股份面值重新指定為一個較低額，則如符合以下條件，該項股本減少無需按第 (1) 款規定獲得法院確認——

- (a) 該公司只有一種類別的股份；
- (b) 所有已發行股份均已全部繳足股款及該公司的淨資產的款額不少於其繳足款股本；
- (c) 該項減少同樣適用於所有股份及對所有股份有同樣的影響；
- (d) 從該項減少所產生的款額，不少於緊接該項減少之前該公司的已全部繳足款股本與緊接該項減少之後其已全部繳足款股本之間的差額；及
- (e) 從該項減少所產生的款額是記入該公司的股份溢價帳的貸方的。(由 2003 年第 28 號第 27 條增補)

(4) 在本條中，“淨資產”(net assets) 就一間公司而言，所具的涵義與第 157HA(15) 條中該詞的涵義相同。(由 2003 年第 28 號第 27 條增補)

[比照 1929 c. 23 s. 55 U.K.; 比照 1985 c. 6 s. 143 U.K.]

#### 59. 向法院申請發出確認命令、債權人提出反對及 議定提出反對的債權人列表

(1) 公司如已通過一項股本減少決議，則可藉呈請書向法院申請一項命令，確認該項股本減少。

(1B) If a company purports to act in contravention of subsection (1A),—

- (a) the company is liable to a fine;
- (b) every officer who is in default is liable to imprisonment and a fine; and
- (c) a relevant shareholder within the meaning given in the Thirteenth Schedule who knowingly permits the contravention of subsection (1A) is liable to imprisonment and a fine. (Added 77 of 1991 s. 5)

(1C) Subject to section 168A, if a company purchases any shares in itself under sections 49 to 49S, no such purchase shall be void by reason only of a failure to comply with any of those provisions. (Added 77 of 1991 s. 5. Amended 28 of 2003 s. 27)

(1D) Notwithstanding subsection (1C), a purchase which contravenes section 49B(6) is void. (Added 77 of 1991 s. 5)

(2) A special resolution under this section is in this Ordinance referred to as a resolution for reducing share capital.

(3) Confirmation by the court of a reduction of the share capital of a company is not required under subsection (1) if the sole purpose of the reduction is to re-designate the nominal value of the shares of the company to a lower amount and the following conditions are satisfied—

- (a) the company has only one class of shares;
- (b) all issued shares are fully paid-up and the amount of the net assets of the company is not less than its paid-up share capital;
- (c) the reduction applies to and affects all shares equally;
- (d) the amount arising from the reduction is not less than an amount representing the difference between the amount of the company's fully paid-up share capital immediately before the reduction and the amount of its fully paid-up share capital immediately after the reduction; and
- (e) the amount arising from the reduction is credited to the share premium account of the company. (Added 28 of 2003 s. 27)

(4) In this section, “net assets” (淨資產), in relation to a company, has the same meaning as in section 157HA(15). (Added 28 of 2003 s. 27)

[cf. 1929 c. 23 s. 55 U.K.; 1985 c. 6 s. 143 U.K.]

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

(1) Where a company has passed a resolution for reducing share capital, it may apply by petition to the court for an order confirming the reduction.

(2) 凡建議的股本減少涉及減輕未繳款股本的法律責任，或涉及付款予任何持有繳足款股本的股東，或如在其他情況下法院如此指示，則除第(3)款另有規定外，下述條文具有效力——

- (a) 公司所有債權人，如在法院指定的日期有權向該公司追討任何債項或提出任何申索，而假若該日期是公司開始清盤的日期，該等債項或申索是會獲法院接納為針對公司的證據，則該等債權人即有權反對該項減少；
- (b) 法院須議定一份列表，列出如此有權提出反對的債權人，並須就此目的而盡可能無須規定債權人提出申請而確定該等債權人的姓名或名稱、其債項或申索的性質及款額；法院亦可刊登公告，規定未有名列該列表的債權人在某天或某段期間內，要求將其姓名或名稱列入該列表，或被排除於就股本減少提出反對的權利之外；
- (c) 凡任何名列該列表的債權人的債項或申索未獲清償或尚未終結，而該債權人並不同意該項股本減少，則如法院認為適合，可免除該名債權人的同意，條件是公司須依法院指示，撥出下述款額以保證償付該人的債項或申索——
  - (i) 如公司承認該債項或申索的全數，或雖不承認卻願為此而提供款項，則撥出該債項或申索的全數；
  - (ii) 如公司既不承認該債項或申索的全數，又不願為此而提供款項，或如該筆款額是或有的或是未經確定的，則由法院釐定某個款額，而該款額是法院作出猶如該公司正由法院清盤時所作的相似查訊及判定後釐定的。

(3) 凡建議的股本減少涉及減輕未繳款股本的法律責任，或涉及付款予任何持有繳足款股本的股東，則法院經顧及有關個案的任何特殊情況後，如認為恰當，可作出指示，規定第(2)款不適用於某類別或某些類別的債權人。

(4) 本條不適用於憑藉第 58(3)條無需獲得法院確認的公司股本減少。(由 2003 年第 28 號第 28 條增補)

[比照 1929 c. 23 s. 56 U.K.]

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the court so directs, the following provisions shall have effect, subject nevertheless to subsection (3)—

- (a) every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction;
- (b) the court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction;
- (c) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the court may direct, the following amount—
  - (i) if the company admits the full amount of the debt or claim, or, though not admitting it is willing to provide for it, then the full amount of the debt or claim;
  - (ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court.

(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if having regard to any special circumstances of the case it thinks proper so to do, direct that subsection (2) shall not apply as regards any class or any classes of creditors.

(4) This section does not apply to a reduction of the share capital of a company for which, by virtue of section 58(3), confirmation by the court is not required. (Added 28 of 2003 s. 28)

[cf. 1929 c. 23 s. 56 U.K.]

## 60. 確認股本減少的命令以及法院作出此項命令的權力

(1) 就根據第 59 條有權反對股本減少的債權人而言，如法院信納該債權人已同意股本減少，或其債項或申索已獲清償或已告終結，或已獲給予保證，則法院可作出一項命令，按其認為合適的條款及條件，確認該項股本減少。

(2)-(3) (由 1984 年第 6 號第 29 條廢除)

[比照 1929 c. 23 s. 57 U.K.]

## 61. 將有關股本減少的命令及紀錄註冊

(1) 如公司減少股本而根據第 58 條該項股本減少需獲得法院確認，在法院確認該公司股本減少的命令呈交處長，以及該項命令的文本及一份經法院認可的紀錄交付處長時，而該份紀錄說明該公司的股本經該項命令修改後的股本額、分成的股份數目、每股股份的款額及每股股份於登記當日被當作已繳足的款額(如有的話)，處長則須將該項命令及紀錄註冊。(由 2003 年第 28 號第 29 條修訂)

(2) 於該項命令及紀錄已予註冊後，而並非於註冊前，該項經如此註冊的命令所確認的股本減少決議，即告生效。

(3) 有關註冊的公告，須以法院指示的方式刊登。

(4) 處長須發出一份有其簽署或印刷簽署的證明書，核證有關命令及紀錄已予註冊，而該證明書即為以下事實的確證：本條例中一切有關股本減少的規定已獲遵從，而公司的股本為該份紀錄所述者。(由 2003 年第 28 號第 29 條代替)

(5) 有關紀錄一經註冊，即當作已取代章程大綱的相應部分，且屬有效及可予修改者，猶如該紀錄原已載於該份章程大綱內一樣。

(6) 將此等紀錄如前述般取代公司部分的章程大綱，須當作第 27 條所指對章程大綱的一項修改。

[比照 1929 c. 23 s. 58 U.K.]

## 60. Order confirming reduction and powers of court on making such order

(1) The court, if satisfied, with respect to every creditor of the company who under section 59 is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

(2)-(3) (Repealed 6 of 1984 s. 29)

[cf. 1929 c. 23 s. 57 U.K.]

## 61. Registration of order and minute of reduction

(1) In the case of a reduction of the share capital of a company that is subject to confirmation by the court under section 58, the Registrar, on production to him of an order of the court confirming the reduction of the share capital of the company, and the delivery to him of a copy of the order and of a minute approved by the court, showing with respect to the share capital of the company, as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount, if any, at the date of the registration deemed to be paid up on each share, shall register the order and minute. (Amended 28 of 2003 s. 29)

(2) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

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

(4) The Registrar shall issue a certificate, with his signature or printed signature, certifying the registration of the order and minute, and the certificate shall be conclusive evidence that all the requirements of this Ordinance with respect to the reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute. (Replaced 28 of 2003 s. 29)

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

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

[cf. 1929 c. 23 s. 58 U.K.]

# 61A. 在無需法院確認的情況下將有關股本減少的特別決議、紀錄及陳述書註冊

(1) 凡公司已根據第 58 條通過一項股本減少的決議，而憑藉第 58(3) 條該項股本減少無需獲得法院確認，則在一份由該公司一名高級人員核證為正確的該項決議的副本呈交處長以及以下各項交付處長時——

(a) 一份由該公司一名高級人員核證為正確的紀錄的副本，說明該公司的股本經該項決議修改後的股本額、分成的股份數目、每股股份的款額及於登記當日就每股股份當作已繳足的款額(如有的話)；及

(b) 一份具指明格式並由公司一名高級人員簽署的陳述書，核證第 58(3)(a)、(b)、(c)、(d) 及 (e) 條所列的條件已獲符合，

處長須將該項決議、紀錄及陳述書註冊。

(2) 股本減少的決議於有關決議、紀錄及陳述書註冊後(並非於註冊前)即告生效。

(3) 關於註冊的公告須以處長指示的方式刊登。

(4) 處長須發出一份有其簽署或印刷簽署的證明書，核證該項決議、紀錄及陳述書已予註冊，而該證明書即為以下事實的確證：本條例中一切有關股本減少的規定已獲遵從，而公司的股本為該份紀錄所述者。

(5) 有關紀錄一經註冊，即當作已取代章程大綱的相應部分，並屬有效及可予修改，猶如該紀錄原已載於章程大綱內一樣。

(6) 以上述紀錄取代公司的章程大綱的一部分，須當作第 27 條所指的對章程大綱的修改。

(由 2003 年第 28 號第 30 條增補)

# 62. 公司成員就減少股份所承擔的法律責任

(1) 如屬股本減少，公司過去或現在的成員，無須就以下任何股份的催繳股款或供款事宜承擔法律責任：催繳或分擔的款額為超過紀錄所訂定的股份款額與該股份的

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

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

(a) a copy of a minute, certified as correct by an officer of the company, showing with respect to the share capital of the company, as altered by the resolution, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount, if any, at the date of the registration deemed to be paid up on each share; and

(b) a statement in the specified form signed by an officer of the company, certifying that the conditions set out in section 58(3)(a), (b), (c), (d) and (e) have been satisfied,

shall register the resolution, minute and statement.

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

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

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

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

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

(Added 28 of 2003 s. 30)

# 62. Liability of members in respect of reduced shares

(1) In the case of a reduction of share capital, a member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of

已繳款額之間的差額者，或超過紀錄所訂定的股份款額與當作為該股份的已繳付的減少款額（如有的話）之間的差額者（視屬何情況而定）：

但就任何債項或申索有權反對股本減少的債權人，如因對該項股本減少的法律程序或因對該等法律程序有關其申索的性質及對其申索的影響不知曉，以致未有名列債權人列表，而公司於股本減少後屬本條例的條文（就由法院作出的清盤而言）所指的無能力償付該債權人的債項或申索的公司，則——

- (a) 所有在該項股本減少命令及紀錄註冊當日身為公司成員的人，均有法律責任分擔提供款項償付該債項或申索，供款額不超過假若公司已在上述日期之前一日開始清盤該人會有法律責任供付的款額；及
  - (b) 如公司清盤，法院應任何上述債權人的申請及接獲債權人如前述般不知曉一事的證明時，如認為適合，可據此就有法律責任須如此分擔提供款項的人議定一份列表，並向列表上經議定載入的分擔人作出及執行催繳，以及作出及執行命令，猶如該等分擔人是一宗清盤案中的普通分擔人一樣。
- (2) 本條並不影響分擔人彼此之間的權利。

[比照 1929 c. 23 s. 59 U.K.]

### 63. 有關隱瞞債權人姓名或名稱的罰則

公司的任何高級人員如——

- (a) 故意隱瞞任何有權反對股本減少的債權人的姓名或名稱；或
- (b) 故意就任何債權人的債項或申索的性質或款額作失實陳述；或
- (c) 協助、教唆或參與前述的隱瞞或失實陳述，

即屬犯罪，可處監禁及罰款。

(由 1984 年第 6 號第 30 條代替。由 1990 年第 7 號第 2 條修訂)

[比照 1948 c. 38 s. 71 U.K.]

the share as fixed by the minute and the amount paid, or the reduced amount, if any, which is to be deemed to have been paid, on the share, as the case may be:

Provided that, if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Ordinance with respect to winding up by the court, to pay the amount of his debt or claim, then— (Amended L.N. 587 of 1995)

- (a) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and
- (b) if the company is wound up, the court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(2) Nothing in this section shall affect the rights of the contributories among themselves.

[cf. 1929 c. 23 s. 59 U.K.]

### 63. Penalty for concealing name of creditor

If any officer of the company—

- (a) wilfully conceals the name of any creditor entitled to object to the reduction; or
- (b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or
- (c) aids, abets or is privy to any such concealment or misrepresentation as aforesaid,

he shall be guilty of an offence and liable to imprisonment and a fine.

(Replaced 6 of 1984 s. 30. Amended 7 of 1990 s. 2)

[cf. 1948 c. 38 s. 71 U.K.]

## 股東權利的更改

## 63A. 特殊類別股份所附權利的更改

(1) 凡一間公司的股本分為不同類別的股份，而特別權利並非藉章程大綱附於任何此等類別股份，而且章程細則並無訂定關於更改該等權利的條文，則章程細則須當作載有條文，規定除獲得持有面值四分之三有關類別的已發行股份的股東書面同意外，或除獲得該類別股份持有人獨立舉行的大會上通過一項特別決議認許外，不得更改上述權利。

(2) 凡一間公司的股本分為不同類別的股份，而特別權利乃藉章程大綱附於任何此等類別股份，而且在公司成立為法團時，章程細則載有關於更改該等權利的條文，則即使章程大綱內並沒有提述該等權利可以此方式更改，該等權利仍可按照當其時有效的章程細則予以更改。

(3) 凡一間公司的股本分為不同類別的股份，而特別權利乃藉章程大綱附於任何此等類別股份，而且章程大綱及章程細則並無載有關於更改該等權利的條文，則如公司的全體成員同意更改該等權利，該等權利即可予以更改。

(4) 凡一間公司的章程細則載有或憑藉本條而當作載有一項關於更改附於任何類別股份的權利的條文，則該等權利除按照該項條文外，不得以其他方式予以更改。

(5) 任何條文如憑藉本條被當作載於一間公司的章程細則內，均可予修改，方式如同該項條文事實上載於章程細則內；但對一項關於更改附於某一類別股份的權利的條文所作的任何修改（而該項條文乃載於或憑藉本條而當作載於一間公司的章程細則內），或將任何此等條文加插在一間公司的章程細則內，本身須被視為對該等權利作出的一項更改。

(6) 第 114、114A、114AA 及 115A 條及與大會有關的章程細則條文，在適用的範圍內，適用於憑藉本條或其他條文規定須舉行的任何與更改附於某一類別股份的權利有關的股東會議，但須作必需的變通後及在符合下述情況時始如此適用——（由 2003 年第 28 號第 31 條修訂）

## Variation of Shareholders' Rights

## 63A. Variation of rights attached to special classes of shares

(1) Where, in the case of a company the share capital of which is divided into different classes of shares, special rights are attached to any such class of shares otherwise than by the memorandum and the articles do not provide for the variation of those rights, the articles shall be deemed to contain provision that such rights shall not be varied except with the consent in writing of the holders of three-fourths in nominal value of the issued shares of the class in question or with the sanction of a special resolution passed at a separate general meeting of the holders of that class.

(2) Where, in the case of a company the share capital of which is divided into different classes of shares, special rights are attached to any such class of shares by the memorandum and provision for the variation of those rights is, at the time of the company's incorporation, contained in the articles, those rights shall be capable of variation in accordance with the articles as for the time being in force, even if no reference is made in the memorandum to their variation in that manner.

(3) Where, in the case of a company the share capital of which is divided into different classes of shares, special rights are attached to any such class of shares by the memorandum and the memorandum and articles do not contain provision with respect to the variation of the rights, those rights may be varied if all the members of the company agree to the variation.

(4) Where the articles of a company contain, or by virtue of this section are deemed to contain, a provision for the variation of the rights attached to any class of shares, those rights shall not be capable of variation otherwise than in accordance with that provision.

(5) Any provision deemed by virtue of this section to be contained in a company's articles shall be subject to alteration in like manner as a provision in fact contained therein; but any alteration of a provision for the variation of the rights attached to a class of shares which is, or by virtue of this section is deemed to be, contained in a company's articles or the insertion of any such provision into a company's articles shall itself be treated as a variation of those rights.

(6) Sections 114, 114A, 114AA and 115A and the provisions of the articles relating to general meetings shall, so far as applicable, apply in relation to any meeting of shareholders required by virtue of this section or otherwise to take place in connexion with the variation of the rights attached to a class of shares, and shall so apply with the necessary modifications and subject to the following— (Amended 28 of 2003 s. 31)

(a) 任何此等會議，但不包括延會，所需的法定人數，是 2 名持有面值最少三分之一的有關類別的已發行股份的人或其代表，而延會所需的法定人數，則是 1 名持有有關類別的股份的人或其代表；

(b) 任何親自或委派代表出席會議的有關類別股份的持有人，均可要求以投票方式進行表決。

(7) 凡一間公司的章程細則憑藉第 (1) 款而當作載有一項關於更改附於某一類別股份的權利的條文，第 64 條即屬適用，猶如該條適用於章程細則事實上載有該項條文一樣。

(8) 在本條中及在公司章程細則所載的任何與更改附於某一類別股份的權利有關的條文中，除章程細則有關條文的文意另有所指外，凡提述更改該等權利之處，即包括提述廢止該等權利。

(9) 第 (4) 款不得解釋為減損法院根據第 166、167 或 168A 條所具的權力。

(由 1984 年第 6 號第 31 條增補)

[比照 1980 c. 22 s. 32 U.K.]

#### 64. 特殊類別股份持有人的權利

(1) 如一間公司的股本分為不同類別的股份，而章程大綱或章程細則訂有條文，在指明比例的該類別已發行股份持有人同意下，或在該等股份持有人於獨立舉行的會議上通過決議認許下，許可更改附於公司任何類別股份的權利，而附於此等類別股份的權利於任何時間依據上述條文被更改，則合共持有面值不少於百分之十的該類別已發行股份的人，可向法院申請取消該項更改；凡有人提出此等申請，該項更改即不具效力，除非與直至法院加以確認。(由 1984 年第 6 號第 32 條修訂)

(1A) 本條並不影響任何公司成員根據第 168A 條以呈請方式向法院提出申請的權利。(由 1984 年第 6 號第 32 條增補)

(2) 根據本條提出的申請，必須在有關股東給予同意後或在有關決議通過後 28 天內(視屬何情況而定)向法院提出，並且可由有權提出申請的股東為此目的以書面委任的其中一人或多於一人代其提出。(由 1984 年第 6 號第 32 條修訂)

(a) the necessary quorum at any such meeting other than an adjourned meeting shall be 2 persons holding or representing by proxy at least one-third in nominal value of the issued shares of the class in question, and at an adjourned meeting 1 person holding shares of the class in question or his proxy;

(b) any holder of shares of the class in question present in person or by proxy may demand a poll.

(7) Section 64 shall apply where a company's articles are by virtue of subsection (1) deemed to contain a provision for the variation of the rights attached to a class of shares as it applies where the articles in fact contain such a provision.

(8) In this section and, except where the context otherwise requires, in any provision for the variation of the rights attached to a class of shares contained in a company's articles, references to the variation of those rights shall include references to their abrogation.

(9) Nothing in subsection (4) shall be construed as derogating from the powers of the court under section 166, 167 or 168A.

(Added 6 of 1984 s. 31)

[cf. 1980 c. 22 s. 32 U.K.]

#### 64. Rights of holders of special classes of shares

(1) If in the case of a company, the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorizing the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than 10 per cent in nominal value of the issued shares of that class may apply to the court to have the variation cancelled, and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the court. (Amended 6 of 1984 s. 32)

(1A) Nothing in this section shall affect the right of any member of the company to apply to the court by petition under section 168A. (Added 6 of 1984 s. 32)

(2) An application under this section must be made within 28 days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose. (Amended 6 of 1984 s. 32)

(3) 法院應此等申請，在聽取申請人及任何其他向法院申請陳詞而法院覺得其於該申請中有利害關係的人的陳詞後，在顧及該案的所有情況下，如信納該項更改會不公平地損害申請人所代表類別的股東，則可拒准該項更改，但如法院並不如此信納，則須確認該項更改。

(4) 法院就此等申請所作的決定，即為最終決定。

(5) 公司須於法院就此等申請作出命令後 21 天內，向處長遞送該命令的文本一份；如因沒有遵從本條文而構成失責，公司及其每名失責高級人員均可處罰款，如持續失責，則可處按日計算的失責罰款。（由 1984 年第 6 號第 32 條修訂；由 1990 年第 7 號第 2 條修訂）

(6) 在本條中，“更改”(variation) 包括廢止，而“被更改”(varied) 須據此解釋。  
[比照 1929 c. 23 s. 61 U.K.]

#### 64A. 與特殊類別股份持有人的權利有關的文件須送交處長存檔

凡股本分為不同類別股份的公司，須將下列文件送交處長存檔——

(a) 任何將權利附於公司任何類別股份的文件或決議文本一份，而該文件或決議文本在其他情況下是並非本條例規定須如此送交存檔的；

(b)-(c) (由 2000 年第 46 號第 8 條廢除)

(由 1984 年第 6 號第 33 條增補)

#### 股份及債權證的轉讓，所有權證據

#### 65. 股份的性质

公司任何成員在公司所持的股份或其他權益，均為非土地產業，可按公司章程細則所訂定的方式轉讓，而不屬於土地產業性質。

(由 1984 年第 6 號第 34 條代替)  
[比照 1948 c. 38 s. 73 U.K.]

#### 65A. 股份的編號

(1) 除第 (2) 及 (3) 款另有規定外，有股本公司的每股股份，均須以適當的號碼加以識別。

(3) On any such application the court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

(4) The decision of the court on any such application shall be final.

(5) The company shall within 21 days after the making of an order by the court on any such application forward a copy of the order to the Registrar, and, if default is made in complying with this provision, the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine. (Amended 6 of 1984 s. 32; 7 of 1990 s. 2)

(6) In this section, “variation” (更改) includes abrogation and “varied” (被更改) shall be construed accordingly.

[cf. 1929 c. 23 s. 61 U.K.]

#### 64A. Documents relating to rights of holders of special classes of shares to be filed with Registrar

Every company the share capital of which is divided into different classes of shares shall deliver to the Registrar for filing—

(a) a copy of any document or resolution attaching rights to any class of shares in the company which is not otherwise required by this Ordinance to be so filed;

(b)-(c) (Repealed 46 of 2000 s. 8)

(Added 6 of 1984 s. 33)

#### Transfer of Shares and Debentures, Evidence of Title

#### 65. Nature of shares

The shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the articles of the company, and shall not be of the nature of real estate.

(Replaced 6 of 1984 s. 34)

[cf. 1948 c. 38 s. 73 U.K.]

#### 65A. Numbering of shares

(1) Subject to subsections (2) and (3), each share in a company having a share capital shall be distinguished by its appropriate number.

(2) 如在任何時候，公司的全部已發行股份或公司某一類別的全部已發行股份，已全部繳足股款，並且在各方面均享有同等權益，則該等股份只要保持全部繳足股款及在各方面與當時所有已發行並已全部繳足股款的相同類別股份享有同等權益的狀況，此後便無需具有一個識別號碼。

(3) 凡公司發行新股份，所按條款為新股份在一段為期不超過 12 個月的期間內，在各方面與該公司的所有現有股份或所有某一類別的現有股份享有同等權益，則該等新股份及相應的現有股份只要是全部繳足股款及享有同等權益的，即無需具有識別號碼，但該等新股份的股票如未予編號，則須加上適當的文字或適當地印明。

(由 1984 年第 6 號第 34 條增補)

[比照 1948 c. 38 s. 74 U.K.]

#### 66. 除非出示轉讓文書否則不得登記轉讓

即使公司的章程細則載有任何條文，公司不可登記公司股份或公司債權證的轉讓，但公司已獲交付一份妥善的轉讓文書則除外：

但對於任何已藉法律的施行而獲轉讓擁有公司的任何股份或債權證的權利的人，本條並不損害公司將該人登記為股東或債權證持有人的權力。

[比照 1929 c. 23 s. 63 U.K.]

#### 67. 由遺產代理人作出轉讓

一間公司任何已故成員的股份或其他權益，如由該已故成員的遺產代理人作出有關轉讓，則雖然該遺產代理人並非公司的成員，該項轉讓仍屬有效，猶如該遺產代理人在簽立該份轉讓文書時是公司的成員一樣。

[比照 1929 c. 23 s. 64 U.K.]

#### 68. 應出讓人請求登記轉讓

公司應任何股份或權益的出讓人提出的申請，須將受讓人的姓名或名稱記錄在公司的成員登記冊，記錄方式及所須符合的條件，猶如有關記錄申請是由受讓人提出的一樣。

[比照 1929 c. 23 s. 65 U.K.]

(2) If at any time all the issued shares in a company, or all the issued shares therein of a particular class, are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number, so long as it remains fully paid up and ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

(3) Where new shares are issued by a company on the terms that, within a period not exceeding 12 months, they will rank *pari passu* for all purposes with all the existing shares, or all the existing shares of a particular class, in the company, neither the new shares nor the corresponding existing shares need have distinguishing numbers so long as all of them are fully paid up and rank *pari passu* but the share certificates of the new shares shall, if not numbered, be appropriately worded or enfaced.

(Added 6 of 1984 s. 34)

[cf. 1948 c. 38 s. 74 U.K.]

#### 66. Transfer not to be registered except on production of instrument of transfer

Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company:

Provided that nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

[cf. 1929 c. 23 s. 63 U.K.]

#### 67. Transfer by personal representative

A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer.

[cf. 1929 c. 23 s. 64 U.K.]

#### 68. Registration of transfer at request of transferor

On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

[cf. 1929 c. 23 s. 65 U.K.]

## 69. 拒絕登記轉讓通知書

(1) 公司如拒絕登記任何股份或債權證的轉讓，須在有關的轉讓文書提交公司的日期後 2 個月內，將一份拒絕登記的通知書送交出讓人及受讓人。(由 1984 年第 6 號第 35 條修訂)

(1A) 凡公司拒絕就某人已藉法律的施行而獲傳轉的股份，登記該人為成員，該人有權請求公司提供一份拒絕理由陳述書，如公司在該項請求提出後 28 天內未有提供該份陳述書，則公司須在有關期限屆滿時，立即登記該宗轉讓：

但任何成員如根據章程細則有權享有有關股份的認購優先權或購買權，則該等權利不受本款影響。(由 1984 年第 6 號第 35 條增補)

(1B) 凡公司拒絕登記任何股份的轉讓，受讓人可向法院申請由公司登記該宗轉讓；法院如信納該項申請有充分根據，即可拒准該項拒絕登記事，並可命令公司立即登記該宗轉讓。(由 1984 年第 6 號第 35 條增補)

(2) 如因沒有遵從本條的規定或任何根據本條作出的命令而構成失責，有關公司及其每名失責高級人員均可處罰款，如持續失責，則可處按日計算的失責罰款。(由 1984 年第 6 號第 35 條代替。由 1990 年第 7 號第 2 條修訂)

[比照 1929 c. 23 s. 66 U.K.]

## 69A. 轉讓的證明

(1) 任何公司對其股份或債權證的任何轉讓文書所作出的證明，須視作為該公司對基於信賴該項證明而行事的人作出一項表示，即該公司已獲出示文件，而該等文件表面顯示，該等股份或債權證的表面所有權屬於姓名或名稱載於該份轉讓文書的出讓人；但該項證明不得視作為就該名出讓人對該等股份或債權證具有任何所有權的一項表示。

(2) 凡任何人基於對一間公司疏忽地作出的虛假證明的信賴而行事，該公司須對該人負法律責任，猶如該項證明是欺詐地作出的一樣。

(3) 就本條而言——

(a) 轉讓文書如載有“certificate lodged”等文字或意思如此的英文或中文文字，須當作為經證明的轉讓文書；(由 1997 年第 3 號第 19 條修訂)

## 69. Notice of refusal to register transfer

(1) If a company refuses to register a transfer of any shares or debentures, the company shall, within 2 months after the date on which the transfer was lodged with the company, send to the transferor and the transferee notice of the refusal. (Amended 6 of 1984 s. 35)

(1A) Where a company refuses to register any person as a member in respect of shares which have been transmitted to him by operation of law, that person shall be entitled to call on the company to furnish a statement of the reasons for the refusal, and, if the company fails to furnish such statement within a period of 28 days after the request therefor, the company shall, on the expiration of that period, register the transfer forthwith:

Provided that nothing in this subsection shall affect the rights of any member under the articles whereby he is entitled to any rights of pre-emption over, or rights of purchasing, the shares in question. (Added 6 of 1984 s. 35)

(1B) Where a company refuses to register a transfer of any shares, the transferee may apply to the court to have the transfer registered by the company; and the court may, if it is satisfied that the application is well founded, disallow the refusal and order that the transfer be registered forthwith by the company. (Added 6 of 1984 s. 35)

(2) If default is made in complying with this section or any order made thereunder, the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine. (Replaced 6 of 1984 s. 35. Amended 7 of 1990 s. 2)

[cf. 1929 c. 23 s. 66 U.K.]

## 69A. Certification of transfers

(1) The certification by a company of any instrument of transfer of shares in or debentures of the company shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a prima facie title to the shares or debentures in the transferor named in the instrument of transfer, but not as a representation that the transferor has any title to the shares or debentures.

(2) Where any person acts on the faith of a false certification by a company made negligently, the company shall be under the same liability to him as if the certification had been made fraudulently.

(3) For the purposes of this section—

(a) an instrument of transfer shall be deemed to be certificated if it bears the words “certificate lodged” or words in English or in Chinese to the like effect; (Amended 3 of 1997 s. 19)

- (b) 如有以下情況，轉讓文書須當作由公司作出證明——
- 發出該文書的人是一名獲授權代表該公司發出經證明的轉讓文書的人，或是一名具有表面權限，以代理人身分代表該公司發出經證明的轉讓文書的人；及
  - 該份證明書是由一名獲授權代表公司證明轉讓的人簽署，或由一名具有表面權限，以代理人身分代表公司證明轉讓的人簽署，或是由公司或如此獲授權或具有此項表面權限的法人團體的一名高級人員或受僱人簽署；
- (c) 如有以下情況，證明書須當作已由某人簽署——
- 該份證明書看來是藉該人的簽署或簡簽（不論是否手書）予以認證的；及
  - 沒有證據顯示該簽署或簡簽並非由其本人加於該處，亦非由獲授權使用該簽署或簡簽以代表該公司證明有關轉讓的人加於該處，或並非由具有表面權限以代理人身分使用該簽署或簡簽以代表該公司證明有關轉讓的人加於該處。

(由 1984 年第 6 號第 36 條增補)  
[比照 1948 c. 38 s. 79 U.K.]

#### 70. 公司在發出股票方面的職責

(1) 每間公司須於分配其任何股份、債權證或債權股證後 2 個月內，完成及準備交付所有被分配的股份的票、債權證及債權股證，但如該等股份、債權證或債權股證的發行條件另有規定則除外。(由 2003 年第 28 號第 32 條代替)

(1A) 每間公司(私人公司除外)須於其任何股份、債權證或債權股證的轉讓書提交該公司的日期後 10 個營業日內，完成及準備交付所有被轉讓的股份的票、債權證及債權股證，但如該等股份、債權證或債權股證的發行條件另有規定則除外。(由 2003 年第 28 號第 32 條增補)

(1B) 每間私人公司須於其任何股份、債權證或債權股證的轉讓書提交該公司的日期後 2 個月內，完成及準備交付所有被轉讓的股份的票、債權證及債權股證，但如該等股份、債權證或債權股證的發行條件另有規定則除外。(由 2003 年第 28 號第 32 條增補)

- (b) the certification of an instrument of transfer shall be deemed to be made by a company if—
- the person issuing the instrument is a person authorized, or having apparent authority as agent, to issue certificated instruments of transfer on the company's behalf; and
  - the certification is signed by a person authorized, or having apparent authority as agent, to certify transfers on the company's behalf or by any officer or servant either of the company or of a body corporate so authorized or having such apparent authority;
- (c) a certification shall be deemed to be signed by any person if—
- it purports to be authenticated by his signature or initials (whether handwritten or not); and
  - it is not shown that the signature or initials was or were placed there neither by himself nor by any person authorized, or having apparent authority as agent, to use the signature or initials for the purpose of certifying transfers on the company's behalf.

(Added 6 of 1984 s. 36)  
[cf. 1948 c. 38 s. 79 U.K.]

#### 70. Duties of company with respect to issue of certificates

(1) Every company shall, within 2 months after the allotment of any of its shares, debentures or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock so allotted, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide. (Replaced 28 of 2003 s. 32)

(1A) Every company (other than a private company) shall, within 10 business days after the date on which a transfer of any of its shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock so transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide. (Added 28 of 2003 s. 32)

(1B) Every private company shall, within 2 months after the date on which a transfer of any of its shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock so transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide. (Added 28 of 2003 s. 32)

(2) 如因沒有遵從本條的條文而構成失責，有關公司及其每名失責高級人員均可處罰款，如持續失責，則可處按日計算的失責罰款。（由 1984 年第 6 號第 37 條代替。由 1990 年第 7 號第 2 條修訂）

(3) 任何如因沒有遵從第 (1)、(1A) 或 (1B) 款的條文而構成失責的公司，如獲送達一份要求就上述失責行為作出補救的通知書，但在通知書送達後 10 天內仍未作出更正，法院可應有權收取該等股票或債權證的人所提出的申請，作出一項命令，指示該公司及其任何高級人員，在該項命令所指明的期限內，作出上述更正，而此項命令可訂定該項申請的所有訟費及附帶費用，須由該公司或其屬下任何對有關失責行為負責的高級人員負擔。（由 2003 年第 28 號第 32 條修訂）

(4) 在本條中——

“營業日”(business day) 指認可證券市場開放進行證券交易業務的日子；

“轉讓書”(transfer) 指一份妥為加蓋印花並且在其他方面有效的轉讓書，但不包括該公司因任何理由而有權拒絕登記而未予登記的轉讓書。（由 2003 年第 28 號第 32 條增補）

[比照 1929 c. 23 s. 67 U.K.]

## 71. 股票是所有權的證據

任何股票，經蓋上公司法團印章或蓋上公司根據第 73A 條所備存的印章，並指明某成員所持有的任何股份，即為該名成員對該等股份的所有權的表面證據。

(由 1984 年第 6 號第 38 條修訂)

[比照 1929 c. 23 s. 68 U.K.]

### 71A. 遺失股票補發程序

(1) 任何人士，如為某公司的股份登記持有人，或為聲稱有權就某公司的股份而將其姓名或名稱記錄在該公司成員登記冊的人，可在關於該等股份的股票（在本條中稱為“原有股票”）似是已經遺失時，按指明格式向該公司申請就該等股份（在本條中稱為“有關股份”）發出新股票。（由 1997 年第 3 號第 20 條修訂）

(2) 根據本條向公司申請發出新股票，須附上由申請人作出的法定聲明一份，述明提出申請的理由，尤其須述明——

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine. (Replaced 6 of 1984 s. 37. Amended 7 of 1990 s. 2)

(3) If any company on whom a notice has been served requiring the company to make good any default in complying with the provisions of subsection (1), (1A) or (1B) fails to make good the default within 10 days after the service of the notice, the court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default. (Amended 28 of 2003 s. 32)

(4) In this section—

“business day” (營業日) means any day on which a recognized stock market is open for the business of dealing in securities;

“transfer” (轉讓書) means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register. (Added 28 of 2003 s. 32)

[cf. 1929 c. 23 s. 67 U.K.]

## 71. Certificate to be evidence of title

A certificate, under the common seal of the company or the seal kept by the company under section 73A, specifying any shares held by any member, shall be prima facie evidence of the title of the member to the shares.

(Amended 6 of 1984 s. 38)

[cf. 1929 c. 23 s. 68 U.K.]

### 71A. Procedure for replacement of lost certificate

(1) Any person who is a registered holder of shares in a company or who claims to be entitled to have his name entered in the register of members of a company in respect of shares in that company may, if it appears that the certificate (in this section referred to as the “original certificate”) relating to the shares is lost, apply to the company in the specified form for a new certificate in respect of such shares (in this section referred to as the “relevant shares”). (Amended 3 of 1997 s. 20)

(2) An application to a company under this section for a new certificate shall be accompanied by a statutory declaration made by the applicant stating the grounds upon which the application is made and, in particular—

- (a) 原有股票最後由申請人管有的時間，以及該人在何情況下不再管有該股票；
  - (b) 申請人曾否就有關股份簽立任何轉讓書（不論是否留空待填）；
  - (c) 並無其他人有權就有關股份將其姓名或名稱記錄在公司成員登記冊；及
  - (d) 其他按情況所需的詳情，以便核實提出申請所據的理由。
- (3) 在第 (4) 款的規限下，凡有人根據本條向公司申請發出新股票，而公司亦擬根據本條發出此股票，則公司須刊登一項具指明格式的公告以發表其意向，公告如下——（由 1997 年第 3 號第 20 條修訂）

- (a) 如該項申請由有關股份的登記持有人提出，或經其同意由他人提出，兩種情況中不論屬何者，如有關股份的最近價值並不超過 \$20,000，則該項公告須在一份英文報章及一份中文報章分別刊登一次，而該兩份報章須為政務司司長為施行本條而發出並在憲報刊登的報章名單內的指明報章；（由 1985 年第 67 號法律公告修訂；由 1989 年第 242 號法律公告修訂；由 1997 年第 362 號法律公告修訂）
- (b) 如該項申請並非由有關股份的登記持有人提出，且在未經該人同意下提出，或如有關股份的最近價值超過 \$20,000，則該公告須連續 3 個月每月在憲報刊登一次，

且就本款而言，有關股份的“最近價值”（latest value）指在該項申請提出前，按公司同一類別的股份在有關的認可證券市場最後錄得的買價計算的價值。（由 2002 年第 5 號第 407 條修訂）

(4) 根據第 (3) 款擬刊登的公告，須於下述規定獲遵從後始可刊登，否則即使已予刊登，就本款而言亦屬無效——

- (a) 公司已將該公告的文本一份交付有關的認可證券市場，而該市場的授權人員已以書面向公司證實該文本正按照第 (5) 款展示；（由 2002 年第 5 號第 407 條修訂）
- (b) 凡有關公告關於一項由他人在未經有關股份的登記持有人的同意下提出的申請，則——
  - (i) 公司已將該公告的文本一份送達該名登記持有人，送達方法是以掛號郵遞方式送往該人在公司成員登記冊所載的最後登記地址；及

- (a) when the original certificate was last in the applicant's possession and how he ceased to have possession thereof;
- (b) whether the applicant has executed any transfer in respect of the relevant shares, in blank or otherwise;
- (c) that no other person is entitled to have his name entered in the register of members of the company in respect of the relevant shares; and
- (d) such other particulars as the case may require in order to verify the grounds upon which the application is made.

(3) Subject to subsection (4), where an application is made to a company under this section for a new certificate, the company shall, if it intends to issue such certificate under this section, publish a notice in the specified form advertising its intention to do so, as follows— (Amended 3 of 1997 s. 20)

- (a) if the application is made by the registered holder of the relevant shares or by a person other than the registered holder with his consent and in either case the latest value of the relevant shares does not exceed \$20,000, the notice shall be published once in, respectively, an English language newspaper and a Chinese language newspaper specified in a list of newspapers issued for the purposes of this section by the Chief Secretary for Administration and published in the Gazette; (Amended L.N. 67 of 1985; L.N. 242 of 1989; L.N. 362 of 1997)
- (b) if the application is made by a person other than the registered holder of the relevant shares without his consent or the latest value of the relevant shares exceeds \$20,000, the notice shall be published in the Gazette once in each of 3 consecutive months,

and for the purposes of this subsection “latest value” (最近價值), in relation to the relevant shares, means the value thereof calculated at the last recorded price paid for shares in the company of the same class, prior to the application, at the recognized stock market concerned. (Amended 5 of 2002 s. 407)

(4) A notice which it is proposed to publish under subsection (3) shall not be published until, and any publication thereof shall not be valid for the purposes of this section unless, the following requirements are first complied with—

- (a) the company has delivered a copy of the notice to the recognized stock market concerned and an authorized officer thereof has certified to the company in writing that such copy is being exhibited in accordance with subsection (5); (Amended 5 of 2002 s. 407)
- (b) where the notice relates to an application made by a person other than the registered holder of the relevant shares without the consent of the registered holder—
  - (i) the company has served a copy of the notice on the registered holder by sending it by registered post to his last address appearing in the register of members of the company; and

(ii) 由該公告送達的日期起計 3 個月期間已屆滿。

(5) 每所認可證券市場均須在該市場內撥出一個顯眼的地方，用以張貼及展示根據第 (4)(a) 款交付該市場的所有公告的文本，並須在該地方持續展示該等文本，為期不少於——（由 2002 年第 5 號第 407 條修訂）

(a)（如屬第 (3)(a) 款所提述的申請）1 個月；

(b)（如屬第 (3)(b) 款所提述的申請）3 個月。

(6) 公司不得根據本條發出新股票，除非——

(a) 公司已根據第 (3) 款刊登公告將發出新股票的意向發表，並且——

(i)（如屬根據第 (3)(a) 款刊登的公告）在公告最近一次有效刊登後，不少於 1 個月的期間已屆滿；或

(ii)（如屬根據第 (3)(b) 款刊登的公告）在公告首次有效刊登後，不少於 3 個月的期間已屆滿；及

(b) 公司未有接獲就有關股份提出的任何其他申索的通知；及

(c) 如申請發出新股票的人並非有關股份的登記持有人，則——

(i) 有關股份的轉讓文書已根據第 66 條交付公司；或

(ii) 在未經登記持有人同意而提出申請的情況下，如該文書並未根據第 66 條交付公司，而申請人亦未能促使該文書根據第 66 條交付公司，公司已就有關股份安排一份轉讓文書由公司委任的人代表登記持有人及由該名申請人代表自己簽立。

(7) 公司凡根據本條發出新股票，須立即將原有股票取消，並在公司的成員登記冊內作出按情況所需的記項，以記錄上述的發出及取消事宜；此外，如新股票是發給有關股份的登記持有人以外的人，則公司根據第 (6)(c)(ii) 款安排簽立的轉讓文書，就以該人的名義登記有關股份的目的而言，須當作是根據第 66 條妥為交付公司的轉讓文書。

(ii) a period of 3 months has expired since the date of service of such copy.

(5) Each recognized stock market shall set aside a conspicuous place therein for posting and exhibiting all copies of notices delivered to it under subsection (4)(a), and shall keep every such copy exhibited in such place for a period of not less than— (Amended 5 of 2002 s. 407)

(a) in the case of an application referred to in subsection (3)(a), 1 month;

(b) in the case of an application referred to in subsection (3)(b), 3 months.

(6) A company shall not issue a new certificate under this section unless—

(a) the company has published a notice under subsection (3) advertising its intention to do so and—

(i) in the case of a notice published under subsection (3)(a), a period of not less than 1 month from the latest valid publication thereof has expired; or

(ii) in the case of a notice published under subsection (3)(b), a period of not less than 3 months from the first valid publication thereof has expired; and

(b) the company has not received notice of any other claim in respect of the relevant shares; and

(c) where the applicant for the new certificate is a person other than the registered holder of the relevant shares—

(i) an instrument of transfer in respect of the relevant shares is delivered to the company under section 66; or

(ii) if, in the case of an application made without the consent of the registered holder, such instrument has not been delivered, and the applicant is unable to procure its delivery, to the company under section 66, the company has caused an instrument of transfer in respect of the relevant shares to be executed on behalf of the registered holder by any person appointed by the company and on his own behalf by the applicant.

(7) Where a company issues a new certificate under this section, it shall forthwith cancel the original certificate and make such entry in the register of members of the company as the case may require in order to record such issue and cancellation and, where the new certificate is issued to a person other than the registered holder of the relevant shares, any instrument of transfer caused to be executed by the company under subsection (6)(c)(ii) shall, for the purpose of registering the relevant shares in the name of that person, be deemed to be an instrument of transfer duly delivered to the company under section 66.

(8) 每間根據本條發出新股票的公司，須在新股票發出的日期起計 14 天內，在憲報刊登具指明格式的公告，藉此公布該新股票已予發出以及原有股票已被取消，而公司亦須將公告的文本一份交付有關的認可證券市場。（由 1997 年第 3 號第 20 條修訂；由 2002 年第 5 號第 407 條修訂）

(9) 凡公司未有刊登第 (8) 款所規定的公告，公司及其每名失責高級人員均可處罰款，如持續失責，則可處按日計算的失責罰款。（由 1990 年第 7 號第 2 條修訂）

(10) 凡有新股票由公司根據本條發出，下列條文即屬適用——

- (a) 除本款另有規定外，本條並不影響法院根據第 100 條作出命令的權力；該命令的作出，乃為有利於任何聲稱對有關股份享有權利的人，而針對獲發給新股票的人，或針對任何其後就有關股份而名列公司成員登記冊的人；但此等命令不得為針對任何真誠購買人而作出；
- (b) 在法院根據第 100 條作出命令，針對獲發給新股票的人的情況下，或針對任何其後就有關股份而名列公司成員登記冊的人的情況下，法院不得命令公司支付損害賠償，而公司亦無須對因發出新股票或取消原有股票而引致任何人蒙受的任何損害，負上其他法律責任；
- (c) 凡任何人（在本段中稱為“申索人”）如非因本款則有權就有關股份或其任何部分而名列公司成員登記冊者——
  - (i) 公司無須就發出新股票或取消原有股票所引致申索人蒙受的任何損害而負上法律責任，但公司被證明曾有欺騙成分的作為則除外；
  - (ii) 如有關股份或其任何部分是由一名真誠購買人向獲發給新股票的人購買的，則後者須按如此購買的股份在購買當日的價值，對申索人負上作出損害賠償的法律責任；

(8) Every company which issues a new certificate under this section shall, not later than 14 days from the date of issue of the new certificate, give public notice of the issue thereof and of the cancellation of the original certificate by publishing a notice in the Gazette in the specified form and the company shall deliver a copy of the notice to the recognized stock market concerned. (Amended 3 of 1997 s. 20; 5 of 2002 s. 407)

(9) Where a company fails to publish a notice as required by subsection (8), the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine. (Amended 7 of 1990 s. 2)

(10) Where a new certificate is issued by a company under this section, the following shall apply—

- (a) save as otherwise provided in this subsection, nothing in this section shall affect the power of the court to make an order under section 100 in favour of any person claiming to be entitled to the relevant shares as against the person to whom the new certificate is issued or any person whose name is subsequently entered in the register of members of the company in respect of the relevant shares, but no such order shall be made as against a bona fide purchaser;
- (b) in any case where the court makes an order under section 100 as against the person to whom the new certificate is issued or any person whose name is subsequently entered in the register of members of the company in respect of the relevant shares, the court shall not order the payment of damages by the company and the company shall not otherwise be liable for any damage sustained by reason of the issue of the new certificate or the cancellation of the original certificate;
- (c) where any person (in this paragraph referred to as “the claimant”) would have been entitled but for this subsection to have his name entered in the register of members of the company in respect of the relevant shares or any of them—
  - (i) except where the company is shown to have acted deceitfully, the company shall not be liable for any damage sustained by the claimant by reason of the issue of the new certificate or the cancellation of the original certificate;
  - (ii) the person to whom the new certificate is issued shall, where the relevant shares or any of them are purchased from him by a bona fide purchaser, be liable in damages to the claimant for the value of the shares so purchased as at the date of purchase;

(iii) 如有關股份或其任何部分是由一名真誠購買人向任何其他其後就有關股份或其任何部分而名列公司成員登記冊的人購買的，則獲發給新股票的人及該其他人均須按如此購買的股份在購買當日的價值對申索人共同及各別負上作出損害賠償的法律責任。

(11) 任何人如根據本條向公司申請發給新股票或取消原有股票，一切與申請有關的費用須由申請人負擔，而公司可拒絕就該項申請採取任何行動，直至公司信納有關人士已為支付該等費用作出合理準備為止。

(12) 在本條中——

“公司”(company)指一間公司而該公司的股份是在認可證券市場上市的；(由 2002 年第 5 號第 407 條修訂)

“真誠購買人”(bona fide purchaser)就任何有關股份而言，指下述任何人——

(a) 在不知悉售賣人的所有權欠妥的情況下真誠地付出價值購買該等股份的人；

(b) 於他人在不知悉售賣人的所有權欠妥的情況下真誠地付出價值購買該等股份後，成為對該等股份享有權利的人；

“登記持有人”(registered holder)就公司的股份而言，指任何就該等股份而名列公司成員登記冊的人；

“新股票”(new certificate)指根據本條發出用以代替原有股票的股票。

(由 1979 年第 69 號第 2 條增補。由 1987 年第 10 號第 11 條修訂)

## 72. 有關遺囑認證書批給的證據

即使公司的章程細則有任何規定，公司如獲出示文件在法律上足以證明關於某死者遺產的遺囑認證書或遺產管理書已批給某人，則公司須接受該文件為有關批給的充分證據。

(由 1984 年第 6 號第 39 條修訂)

[比照 1929 c. 23 s. 69 U.K.]

(iii) the person to whom the new certificate is issued and any other person (other than a bona fide purchaser) whose name is subsequently entered in the register of members of the company in respect of the relevant shares or any of them shall, where the relevant shares or any of them are purchased from such other person by a bona fide purchaser, be jointly and severally liable in damages to the claimant for the value of the shares so purchased as at the date of purchase.

(11) All expenses relating to an application under this section for the issue of a new certificate or the cancellation of an original certificate by any company shall be borne by the applicant, and the company may refuse to take any step in respect of the application until it is satisfied that reasonable provision for the payment of such expenses has been made.

(12) In this section—

“bona fide purchaser”(真誠購買人), in relation to any relevant shares, means any of the following—

(a) a person who purchases such shares in good faith for value and without notice of any defect in the title of the seller;

(b) a person who becomes entitled to such shares at any time after the purchase thereof by any other person in good faith for value and without notice of any defect in the title of the seller;

“company”(公司) means a company in the case of which shares are listed on a recognized stock market; (Amended 5 of 2002 s. 407)

“new certificate”(新股票) means a certificate issued under this section in replacement of an original certificate;

“registered holder”(登記持有人), in relation to shares in a company, means any person whose name is entered in the register of members of that company in respect of such shares.

(Added 69 of 1979 s. 2. Amended 10 of 1987 s. 11)

## 72. Evidence of grant of probate

The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate of a deceased person having been granted to some person shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of the grant.

(Amended 6 of 1984 s. 39)

[cf. 1929 c. 23 s. 69 U.K.]

73. 持有人認股權證的發行及效果

(1) 股份有限公司，如其章程細則許可，可就任何全部繳足股款的股份發行認購權證，認購權證須蓋上公司的法團印章，並述明其持有人有權認購其內指明的股份，而公司亦可發出息票或以其他方式，作為提供支付認購權證所包括的股份的未來股息。

(2) 前述的認購權證，在本條例中稱為認股權證。

(3) 認股權證的持有人，有權認購認股權證內指明的股份，而該等股份可藉該認購權證的交付而轉讓。

[比照 1929 c. 23 s. 70 U.K.]

73A. 用於股票蓋印等的正式印章

(1) 一間公司可備有按該公司法團印章複製而成並在印面附加“securities”一字或“證券”一詞或該字及該詞的正式印章一枚，用以在該公司所發行的證券上蓋印，及用以在設定或證明如此發行的證券的文件上蓋印。(由 1997 年第 3 號第 21 條修訂)

(2) 一間公司如在《1984 年公司 (修訂) 條例》†(1984 年第 6 號)生效\*前成立為法團，並且備有第 (1) 款所述的正式印章，可使用該印章在該款所述的證券及文件上蓋印，而不論在任何組成或規管該公司的文書中有任何規定，亦不論在該條例生效前所訂立任何關於蓋上該印章的證券或文件的文書中有任何規定。

(由 1984 年第 6 號第 40 條增補)

[比照 1976 c. 47 s. 2 U.K.]

74. 就偽造轉讓書所引起的損失作出賠償的權力

(1) 每間有股本公司，均有權從其資金中撥款，以現金賠償因依據一份偽造的轉讓書，或依據在一份偽造授權書下訂立的轉讓書所進行的公司股份轉讓而產生的損失。凡公司的股份或股額已因合併或其他原因成為另一間公司的股份或股額，則該另一間公司同樣具有本條所訂的權力，與原本的公司假若繼續營業時會具有的權力相同。

(2) 公司可藉保險、資本儲備或累積收入而提供一項基金，以應付此等賠償申索。

† “《1984 年公司 (修訂) 條例》”乃 “Companies (Amendment) Ordinance 1984” 之譯名。  
\* 生效日期：1984 年 8 月 31 日。

73. Issue and effect of share warrants to bearer

(1) A company limited by shares, if so authorized by its articles, may, with respect to any fully paid-up shares, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares included in the warrant.

(2) Such a warrant as aforesaid is in this Ordinance termed a share warrant.

(3) A share warrant shall entitle the bearer thereof to the shares therein specified, and the shares may be transferred by delivery of the warrant.

[cf. 1929 c. 23 s. 70 U.K.]

73A. Official seals for sealing share certificates etc.

(1) A company may have, for use for sealing securities issued by the company and for sealing documents creating or evidencing securities so issued, an official seal which is a facsimile of the common seal of the company with the addition on its face of the word “securities” or the expression in Chinese “證券” or both such word and expression. (Amended 3 of 1997 s. 21)

(2) A company which was incorporated before the commencement\* of the Companies (Amendment) Ordinance 1984 (6 of 1984) and which has such an official seal as is mentioned in subsection (1) may use the seal for sealing such securities and documents as are there mentioned notwithstanding anything in any instrument constituting or regulating the company or in any instrument made before such commencement which relates to any securities or documents if they are sealed with that seal.

(Added 6 of 1984 s. 40)

[cf. 1976 c. 47 s. 2 U.K.]

74. Power to make compensation for losses from forged transfers

(1) Every company having a share capital shall have power to make compensation by a cash payment out of its funds for any loss arising from a transfer of any shares in the company in pursuance of a forged transfer or of a transfer under a forged power of attorney, and, where the shares or stock of a company have by amalgamation or otherwise become the shares or stock of another company, that other company shall have the same power under this section as the original company would have had if it had continued.

(2) Every company may provide, by insurance or reservation of capital or accumulation of income, a fund to meet claims for such compensation.

\* Commencement date: 31 August 1984.

(3) 為提供上述的賠償，公司可以其財產作保證而進行借貸。

(4) 為施行本條，公司可就本身的股份的轉讓，或就轉讓該等股份所依據的授權書，施加公司認為必需的合理限制，以防止因偽造而產生的損失。

(5) 凡公司根據本條賠償任何人因偽造而產生的損失，在不損害任何其他權利及補救的情況下，公司在針對須對有關損失負責的人所具有的權利及補救，與該名已獲賠償的人會具有的相同。

(由 1984 年第 6 號第 40 條增補)

[比照 1891 c. 43 s. 1 U.K.; 比照 1892 c. 36 s. 4 U.K.]

#### 與債權證有關的特別條文

##### 74A. 公司的債權證持有人登記冊

(1) 任何公司如發行一系列不可藉交付而轉讓的債權證或債權股證，均須備存有關該等債權證或債權股證持有人的中文或英文登記冊，並須將下述詳情記入冊內—— (由 1995 年第 83 號第 9 條修訂)

(a) 持有人的姓名或名稱及地址、以及其職業或描述，以及一項有關每名持有人所持債權證或債權股證的數額的陳述； (由 1995 年第 83 號第 9 條修訂)

(b) 每名人士以此等債權證或債權股證持有人的身分記入該登記冊內的日期；

(c) 任何人不再是任何此等債權證或債權股證的持有人的日期。

(2) 公司的債權證持有人登記冊須於下述地方備存——

(a) 公司的註冊辦事處；或

(b) 如該登記冊的編製工作是在公司的註冊辦事處以外的另一個辦事處進行，則於該另一個辦事處備存；或

(c) 如公司與他人作出安排，由該人代公司編製該登記冊，則於該人進行該項工作的辦事處備存，

然而該登記冊不得備存於香港以外的地方。

(3) 每間公司均須將公司根據本條規定而備存登記冊的地點，以及就該地點的任何更改，按指明格式向處長送交通知書。 (由 1997 年第 3 號第 22 條修訂)

(3) For the purpose of providing such compensation, any company may borrow on the security of its property.

(4) A company may, for the purposes of this section, impose such reasonable restrictions on the transfer of shares in the company, or with respect to powers of attorney for the transfer thereof, as it may deem necessary for guarding against losses arising from forgery.

(5) Where a company compensates any person under this section for any loss arising from forgery, the company shall, without prejudice to any other rights or remedies, have the same rights and remedies against the person liable for the loss as the person compensated would have had.

(Added 6 of 1984 s. 40)

[cf. 1891 c. 43 s. 1 U.K.; 1892 c. 36 s. 4 U.K.]

#### Special Provisions as to Debentures

##### 74A. Company's register of debenture holders

(1) Any company which issues a series of debentures or debenture stock not transferable by delivery shall keep a register, either in English or Chinese, of the holders of such debentures or debenture stock, and shall enter therein the following particulars— (Amended 83 of 1995 s. 9)

(a) the names and addresses, and the occupations or descriptions, of the holders and a statement of the amount of such debentures or debenture stock held by each holder; (Amended 83 of 1995 s. 9)

(b) the date at which each person was entered in the register as the holder of such debentures or debenture stock;

(c) the date at which any person ceased to be a holder of any such debentures or debenture stock.

(2) The register of holders of debentures of a company shall be kept—

(a) at the registered office of the company; or

(b) if the work of making it up is done at an office of the company other than the registered office of the company, at that other office; or

(c) if the company arranges with some other person for the making up of the register to be undertaken on behalf of the company by that other person, at the office of that other person at which the work is done,

so, however, that it shall not be kept at a place outside Hong Kong.

(3) Every company shall send notice to the Registrar in the specified form of the place where the register required to be kept by the company under this section is kept, and of any change in that place. (Amended 3 of 1997 s. 22)

(4) 如公司因沒有遵從第(1)或(2)款的規定而構成失責，或因沒有遵從第(3)款的規定而構成失責達 14 天，公司及其每名失責高級人員均可處罰款，如持續失責，則可處按日計算的失責罰款。

(由 1984 年第 6 號第 41 條增補。由 1990 年第 7 號第 2 條修訂)  
[比照 1948 c. 38 s. 86 U.K.]

74B. 關於債權證持有人登記冊格式的文書的條文解釋

公司如在任何文書中訂立任何條文，規定公司的債權證持有人登記冊須以可閱形式備存，須解釋為規定該登記冊——

- (a) 以可閱形式備存；或
- (b) 以非可閱形式備存但能以可閱形式複製。

(由 1984 年第 6 號第 41 條增補)  
[比照 1976 c. 47 s. 3(2) U.K.]

75. 查閱債權證持有人登記冊以及要求取得該登記冊及信託契據或其他文件副本的權利

(1) 公司的每本債權證持有人登記冊，除於妥為閉封的時候之外(但須受公司在大會上所施加的合理限制所規限，使每天可供查閱的時間不得少於 2 小時)，須供該等債權證的登記持有人或公司的股份持有人免費查閱，以及供任何其他人在繳付 \$1 或公司所訂明的較少款項後查閱。

(2) 任何人可在繳費後，要求取得公司債權證持有人登記冊或其中任何部分的副本，收費按所需複製副本的字數計算，每 100 字(不足 100 字者亦算作 100 字)收取 \$2 或收取公司所訂明的較少款項；公司須於接獲該項要求 20 天內，將副本遞送予提出該項要求的人。

(3) 任何人如要求取得保證發行債權證的信託契據或其他文件的副本，公司須於接獲該項要求 20 天內，於收費後將該副本遞送予該人；如屬印製的信託契據或其他文件，所收取的款項為 \$4 或公司所訂明的較少款項，而倘若該信託契據或其他文件未經印製，則按所需複製副本的字數計算，每 100 字(不足 100 字者亦算作 100 字)收取 \$2。

(4) Where a company makes default in complying with subsection (1) or (2) or makes default for 14 days in complying with subsection (3), the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine.

(Added 6 of 1984 s. 41. Amended 7 of 1990 s. 2)  
[cf. 1948 c. 38 s. 86 U.K.]

74B. Construction of provision of instrument relating to form of register of debenture holders

Any provision of an instrument made by a company which requires a register of holders of debentures of the company to be kept in a legible form shall be construed as requiring the register to be kept either—

- (a) in a legible form; or
- (b) in a non-legible form capable of being reproduced in a legible form.

(Added 6 of 1984 s. 41)  
[cf. 1976 c. 47 s. 3(2) U.K.]

75. Rights of inspection of register of debenture holders and to copies of register and trust deed or other document

(1) Every register of holders of debentures of a company shall, except when duly closed (but subject to such reasonable restrictions as the company may in general meeting impose, so that no less than 2 hours in each day shall be allowed for inspection), be open to the inspection of the registered holder of any such debentures or any holder of shares in the company without fee, and of any other person on payment of \$1 or such less sum as may be prescribed by the company.

(2) Any person may require a copy of the register of the holders of debentures of the company or any part thereof on payment of \$2 or such less sum as may be prescribed by the company for every 100 words or fractional part thereof required to be copied, and such copy shall be forwarded by the company to the person requiring it within 20 days of the receipt by the company of the request.

(3) A copy of any trust deed or other document for securing any issue of debentures shall be forwarded to any person requiring it within 20 days of the receipt by the company of the request, on payment in the case of a printed trust deed or other document of the sum of \$4 or such less sum as may be prescribed by the company, or where the trust deed or other document has not been printed, on payment of \$2 for every 100 words or fractional part thereof required to be copied.

(4) 公司如拒絕讓人查閱上述登記冊，或拒絕將副本遞送，或未有於接獲有關取得該副本的要求 20 天內將該副本遞送，則公司及其每名失責高級人員均可處罰款，如持續失責，則可處按日計算的失責罰款。（由 1990 年第 7 號第 2 條修訂）

(5) 凡公司如前述般失責，法院可藉命令強迫有關公司立即將該登記冊供有關人士查閱，或指示公司立即將所要求的副本送交要求取得該等副本的人。

(6) 就本條而言，登記冊如根據第 99 條閉封，即須當作已妥為閉封。

(由 1984 年第 6 號第 42 條代替)

[比照 1948 c. 38 s. 87 U.K.]

#### 75A. 債權證持有人會議

(1) 凡屬——

(a) 構成公司所發行的一系列享有同等權益的債權證中的一部分的債權證；  
或

(b) 債權股證，

而該等債權證或保證該等債權證或債權股證的信託契據或其他文件，就舉行債權證或債權股證持有人會議一事訂定條文，則在如此訂立的條文的規限下，第 113、114B、114C、114D(2) 及 114E 條適用於此等會議及該等債權證或債權股證持有人，一如適用於公司的會議及公司的成員。

(2) 第 (1) 款所提及各條在憑藉該款而應用時，作必需的變通後即具效力，猶如第 113(1) 條提述其中所述的成員之處，均代以提述債權證或債權股證的持有人一樣，而該等持有人有權行使的表決權，乃不少於所有在會議上有權表決的持有人合共持有的表決權的十分之一。

(由 1984 年第 6 號第 43 條增補)

#### 75B. 受託人對債權證持有人所負的法律責任

(1) 在本條的規限下，載於保證債權證發行的信託契據內的任何條文，或載於與由信託契據所保證的債權證持有人所訂合約內的任何條文，如豁免受託人因未有表現出其身為受託人所須有的謹慎及努力以致違反信託而須負的法律責任，或彌償受託人因上述情況違反信託而須負的法律責任，則在顧及信託契據中授予受託人權力、權限或酌情決定權的條文後，有上述效果的條文均屬無效。

(4) If inspection is refused, or a copy is refused or not forwarded within 20 days after the request therefor is received, the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine. (Amended 7 of 1990 s. 2)

(5) Where a company is in default as aforesaid, the court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the person requiring them.

(6) For the purposes of this section, a register shall be deemed to be duly closed if it is closed under section 99.

(Replaced 6 of 1984 s. 42)

[cf. 1948 c. 38 s. 87 U.K.]

#### 75A. Meetings of debenture holders

(1) Where in the case of—

(a) debentures forming part of a series issued by a company and ranking *pari passu* with the other debentures of that series; or

(b) debenture stock,

the debentures or the trust deed or other document securing the debentures or stock provide for the holding of meetings of holders of debentures or stock, then subject to any provision so made, sections 113, 114B, 114C, 114D(2) and 114E shall apply in relation to such meetings and to the holders of the debentures or stock as they apply in relation to meetings of the company and members of the company.

(2) The sections mentioned in subsection (1) shall, in their application by virtue of that subsection, have effect with the necessary modifications and as if for the reference in section 113(1) to the members there mentioned there were substituted a reference to holders of the debentures or stock entitled to exercise not less than one-tenth of the total voting rights of all holders having the right to vote at the meeting.

(Added 6 of 1984 s. 43)

#### 75B. Liability of trustees for debenture holders

(1) Subject to this section, any provision contained in a trust deed for securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from or indemnifying him against liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.

- (2) 第(1)款不會使下述解除書或條文失效——
- (a) 就一名受託人在獲發給責任解除書前的作為或不作為，從其他方面有效地發出的責任解除書；或
- (b) 使此等責任解除書得以在下述情況發出的條文——
- (i) 在一次為有關目的而召開的會議中，獲持有價值不少於四分之三的債權證的大多數親自出席或委任代表(如准許委任代表的話)出席並表決的持有人同意；及
- (ii) 責任解除書乃針對特定的作為或不作為而發出，或於受託人死亡時或不再擔任受託人時發出。
- (3) 第(1)款在以下方面並無效用——
- (a) 使在《1984年公司(修訂)條例》†(1984年第6號)生效\*時任何有效的條文失效，只要當時有權享有該條文的利益或其後根據第(4)款獲給予該條文的利益的人仍是有關契據的受託人；或
- (b) 剝奪任何人於上述條文有效時就其作為或不作為而獲豁免，或就該等作為或不作為獲得彌償的權利。
- (4) 當信託契據的任何受託人仍有權享有第(3)款所保留的條文的利益時，該條文的利益可藉一項決議而給予——
- (a) 契據的所有現時及未來受託人；或
- (b) 契據的任何指名受託人或擬委任為受託人的人，
- 而該項決議須在一次按照該契據條文為此而召開的會議中，或如該契據並未訂定召開會議的條文，則在一次以法院批准的方式為此而召開的會議中，獲持有價值不少於四分之三的債權證的大多數親自出席或委任代表(如准許委任代表的話)出席會議的持有人通過。

(由1984年第6號第43條增補)  
[比照1948 c. 38 s. 88 U.K.]

## 76. 永久債權證

即使衡平法有相反規定，載於任何債權證或載於任何保證債權證的契據內的條件(不論此等債權證或契據是在本條例生效之前或之後發行或簽立的)，不得僅以該等債權證因該項條件而不可贖回或只在某宗或有事件發生時始可贖回為理由而無效，不論該事件發生的可能性如何低，亦不得僅以該等債權證在某段期限屆滿時始可贖回為理由而無效，不論該段期限如何長久。

[比照1929 c. 23 s. 74 U.K.]

† “《1984年公司(修訂)條例》”乃“Companies (Amendment) Ordinance 1984”之譯名。  
\* 生效日期：1984年8月31日。

- (2) Subsection (1) shall not invalidate—
- (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or
- (b) any provision enabling such a release to be given—
- (i) on the agreement thereto of a majority of not less than three-fourths in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and
- (ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.
- (3) Subsection (1) shall not operate—
- (a) to invalidate any provision in force at the commencement\* of the Companies (Amendment) Ordinance 1984 (6 of 1984) so long as any person then entitled to the benefit of that provision or afterwards given the benefit thereof under subsection (4) remains a trustee of the deed in question; or
- (b) to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force.
- (4) While any trustee of a trust deed remains entitled to the benefit of a provision saved by subsection (3), the benefit of that provision may be given either—
- (a) to all trustees of the deed, present and future; or
- (b) to any named trustees or proposed trustees thereof, by a resolution passed by a majority of not less than three-fourths in value of the debenture holders present in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose in accordance with the provisions of the deed or, if the deed makes no provision for summoning meetings, a meeting summoned for the purpose in any manner approved by the court.

(Added 6 of 1984 s. 43)  
[cf. 1948 c. 38 s. 88 U.K.]

## 76. Perpetual debentures

A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the commencement of this Ordinance shall not be invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

[cf. 1929 c. 23 s. 74 U.K.]

\* Commencement date: 31 August 1984.

## 77. 就某些情況重新發行已贖回債權證的權力

(1) 凡公司在本條例生效之前或之後已贖回以往所發行的任何債權證，則——

- (a) 除非在章程細則或公司所訂立的任何合約內，載有任何明訂或隱含的相反條文；或
- (b) 除非公司已通過一項表明此意的決議或藉其他作為，將其取消該等債權證的意向宣告，

否則公司具有藉重新發行相同的債權證或藉發行其他取代的債權證兩種方式重新發行該等債權證的權力，而且亦須當作一向具有此項權力。

(2) 在第(6)款的規限下，在公司將已贖回的債權證重新發行時，有權享有該等債權證的利益的人，享有而且亦須當作一向享有同樣的優先權，猶如該等債權證從未被贖回一樣。

(3) (由 1974 年第 80 號第 10 條廢除)

(4) 凡公司在本條例生效之前或之後存放任何債權證以保證不時從往來帳戶或在其他帳戶獲得貸款，則該等債權證在仍然如此存放時，不得僅因公司之帳戶已停止出現借差而當作已被贖回。

(5) 公司根據一項本條所給予的權力，或根據當作已由公司管有的權力，重新發行一項債權證，或發行另一項作為取代的債權證，則不論該項重新發行或發行是在本條例生效之前或之後進行，就印花稅而言，須視為新債權證的發行，但就任何限制發行債權證的款額或數目的條文而言，則不得視為新債權證的發行：

但任何人如以根據本條重新發行並看似已妥為加蓋印花的債權證作為保證而貸出款項，可在任何為強制執行其保證的法律程序中，提出該債權證作為證據，而無須就該債權證繳付印花稅或任何罰款，除非該人已知悉或如非由於疏忽則可能已發覺該債權證並未妥為加蓋印花；但在此情況下，公司須負責繳付恰當的印花稅及罰款。

(6) 凡任何債權證在本條例生效前已贖回，並且在該生效日期後重新發行，則該等債權證的重新發行，對於假若原來制定的《1911 年公司條例》\* (1911 年第 58 號) 第 106 條而非本條已在本條例中制定的話，任何人則會根據或憑藉本條例生效前所設定

## 77. Power to re-issue redeemed debentures on certain cases

(1) Where either before or after the commencement of this Ordinance a company has redeemed any debentures previously issued, then—

- (a) unless any provision to the contrary, whether express or implied, is contained in the articles or in any contract entered into by the company; or
- (b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

the company shall have, and shall be deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

(2) Subject to subsection (6), on a re-issue of redeemed debentures the person entitled to the debentures shall have, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.

(3) (*Repealed 80 of 1974 s. 10*)

(4) Where a company has either before or after the commencement of this Ordinance deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(5) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the commencement of this Ordinance, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

(6) Where any debentures which have been redeemed before the commencement of this Ordinance are re-issued subsequently to that date, the re-issue of the debentures shall not prejudice and shall be deemed never to have prejudiced any right or priority which any person would have had under or by virtue of any mortgage or charge created before the commencement of this

\* “《1911 年公司條例》”乃“Companies Ordinance 1911”之譯名。

的按揭或押記而享有的任何權利或優先權並無損害，而且當作從來對該等權利或優先權並無損害。

(由 1984 年第 6 號第 44 條修訂)  
[比照 1929 c. 23 s. 75 U.K.]

78. 強制履行認購債權證的合約

一份為承購公司的債權證及就該等債權證付款而與公司訂立的合約，可藉強制履行令予以執行。

[比照 1929 c. 23 s. 76 U.K.]

79. 從受浮動押記所規限的資產中撥款償還某些較根據押記提出的申索為優先的債項

(1) 凡有接管人被委任代表某間公司的任何債權證持有人，而該等債權證由一項押記所保證，且該項押記是以浮動押記方式設定的，或如該等債權證持有人或其代表已接管該項押記中包括的任何財產或受該項押記所規限的任何財產，而該公司當時又並非正進行清盤，則在每宗清盤中根據第 V 部有關優先付款的條文較所有其他債項獲優先償還的債項，須按照第 265 條所訂的優先權，從接管人或以前述方式接管資產的其他人所收到手中的任何資產中撥款償還，且較任何就該等債權證的本金或利息所提出的申索獲得優先處理。(由 1987 年第 10 號第 3 條修訂)

(1A) 在施行第 V 部的條文時，第 265 條須作如下解釋：有關在清盤令或清盤決議生效前或藉該清盤令或清盤決議的效力而於僱傭工作終止時成為須付的累算的假日薪酬的條文，乃猶如有關在委任該名接管人之前或在前述接管資產之前，或藉該項委任或該等接管的效力而於僱傭工作終止時成為須付的該等薪酬的條文一樣。(由 1984 年第 6 號第 45 條增補)

(2) 上述第 V 部的條文所提及期間，由委任接管人的日期或前述接管資產的日期起計算(視屬何情況而定)。

(2A) 凡第 (2) 款所提述的日期是早於《1984 年公司(修訂)條例》†(1984 年第 6 號)的生效日期\*，第 (1) 及 (2) 款即具效力；但任何提述第 V 部條文之處，均須代以

† “《1984 年公司(修訂)條例》”乃“Companies (Amendment) Ordinance 1984”之譯名。

\* 生效日期：1984 年 8 月 31 日。

Ordinance, if section 106 of the Companies Ordinance 1911 (58 of 1911), as originally enacted, had been enacted in this Ordinance instead of this section.  
(Amended 6 of 1984 s. 44)  
[cf. 1929 c. 23 s. 75 U.K.]

78. Specific performance of contracts to subscribe for debentures

A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.  
[cf. 1929 c. 23 s. 76 U.K.]

79. Payment of certain debts out of assets subject to floating charge in priority to claims under the charge

(1) Where a receiver is appointed on behalf of the holders of any debentures of a company secured by a charge which, as created, was a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts, which in every winding-up are under the provisions of Part V relating to preferential payments to be paid in priority to all other debts, shall, according to their respective priorities under section 265, be paid out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures. (Amended 10 of 1987 s. 3)

(1A) In the application of the provisions of Part V, section 265 shall be construed as if the provision for payment of accrued holiday remuneration becoming payable on the termination of employment before or by the effect of the winding-up order or resolution were a provision for payment of such remuneration becoming payable on the termination of employment before or by the effect of the appointment of the receiver or possession being taken as aforesaid. (Added 6 of 1984 s. 45)

(2) The periods of time mentioned in the said provisions of Part V shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(2A) Where the date referred to in subsection (2) occurred before the commencement\* of the Companies (Amendment) Ordinance 1984 (6 of 1984), subsections (1) and (2) shall have effect with the substitution, for references to the provisions of Part V, of references to the provisions which, by virtue of

\* Commencement date: 31 August 1984.

提述憑藉第 265(7) 條被當作在該條內所提及的情況下仍然生效的條文，而且第 (1A) 款並不適用。(由 1984 年第 6 號第 45 條增補)

(3) 根據本條所支付的任何款項，須盡可能從公司可供予一般債權人的資產中扣除。

(由 1984 年第 6 號第 45 條修訂)

[比照 1929 c. 23 s. 78 U.K.]

## 第 IIA 部

### 利潤及資產的分發

#### 79A. 釋義

(1) 在本部中——

“已催繳股本”(called up share capital) 就一間公司而言，指該公司的股本中相等於已催繳股款的總額(不論該等已催繳股款是否已經繳付)，連同任何不用催繳的繳足款股本以及根據章程細則、有關股份分配的條款或任何其他就該等股份而付款的安排在一個指明的未來日期繳付的任何股本，而“未催繳股本”(uncalled share capital) 須據此解釋；

“分發”(distribution) 指公司向其成員作出的任何種類的資產分發，不論該項分發是以現金或以其他方式作出，但以下列方式作出的分發除外——

- (a) 發行作為全部或部分繳付股款的紅股的股份；
- (b) 按照第 49 至 49S 條從資本(包括發行新股份所得收益)中，或從未實現利潤中，撥款贖回或購買公司本身的任何股份；
- (c) 藉終絕或減少公司任何成員就公司的未繳足款股本中的股份所承擔的法律責任而減少股本，或藉清付繳足款股本而減少股本；及
- (d) 公司於清盤時向其成員作出的資產分發；

“指定日期”(appointed day) 指根據《1991 年公司(修訂)條例》†(1991 年第 77 號)所訂本部的生效日期\*；

“淨資產”(net assets) 就一間公司而言，所具的涵義與第 157HA(15) 條中該詞的涵義相同；(由 2003 年第 28 號第 33 條修訂)

† “《1991 年公司(修訂)條例》”乃“Companies (Amendment) Ordinance 1991”之譯名。

\* 生效日期：1991 年 9 月 1 日。

section 265(7) are deemed to remain in force in the case therein mentioned, and subsection (1A) shall not apply. (Added 6 of 1984 s. 45)

(3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

(Amended 6 of 1984 s. 45)

[cf. 1929 c. 23 s. 78 U.K.]

## PART IIA

### DISTRIBUTION OF PROFITS AND ASSETS

#### 79A. Interpretation

(1) In this Part—

“appointed day” (指定日期) means the date of commencement\* of this Part under the Companies (Amendment) Ordinance 1991 (77 of 1991);

“called up share capital” (已催繳股本), in relation to a company, means so much of its share capital as equals the aggregate amount of the calls made on its shares (whether or not those calls have been paid), together with any share capital paid up without being called and any share capital to be paid on a specified future date under the articles, the terms of allotment of the relevant shares or any other arrangements for payment of those shares and “uncalled share capital” (未催繳股本) is to be construed accordingly;

“capitalisation” (資本化), in relation to a company's profits, means any of the following operations (whenever carried out)—

- (a) applying the profits in wholly or partly paying up unissued shares in the company to be allotted to members of the company as fully or partly paid bonus shares; or
- (b) transferring the profits to capital redemption reserve;

“distribution” (分發) means every description of distribution of a company's assets to its members, whether in cash or otherwise, except distribution by way of—

- (a) an issue of shares as fully or partly paid bonus shares;
- (b) the redemption or purchase of any of the company's own shares out of capital (including the proceeds of any fresh issue of shares) or out of unrealised profits in accordance with sections 49 to 49S;

\* Commencement date: 1 September 1991.

## 340. 罰則

如任何海外公司未有遵從本部的任何條文，該公司及其每名授權或准許失責行為的高級人員或代理人，均可處罰款，如持續失責，則可處按日計算的失責罰款。

(由 1984 年第 6 號第 235 條代替。由 1990 年第 7 號第 2 條修訂)

[比照 1948 c. 38 s. 414 U.K.]

## 341. 第 XI 部的釋義

就本部而言——

“招股章程”(prospectus) 具有的涵義，與該詞用於根據本條例成立為法團的公司時所具有的涵義相同；

“秘書”(secretary) 包括以任何職稱擔任秘書職位的人；(由 1984 年第 6 號第 236 條增補)

“核證”(certified) 指按訂明方式核證為真正副本或正確譯本；

“董事”(director) 包括影子董事；(由 2003 年第 28 號第 107 條代替)

“營業地點”(place of business) 包括股份過戶處或股份登記處，以及任何用作製造或儲存任何貨品的地方，但不包括該公司不用作處理任何產生法律義務的業務的地點。(由 1984 年第 6 號第 236 條修訂)

[比照 1929 c. 23 s. 352 U.K.]

## 第 XII 部

## 對股份發售及股份發售要約的限制

## 342. 招股章程日期的註明以及其內所載的詳情

(1) 除第 342A 條另有規定外，任何人不可在香港發出、傳閱或分發任何要約認購或購買在香港以外成立為法團的公司的股份或債權證的招股章程，不論該公司是否已在香港設立營業地點，除非該招股章程已註明日期(除非相反證明成立，否則該日期須視為該招股章程的刊登日期)，並且——(由 1992 年第 86 號第 12 條修訂；由 2004 年第 30 號第 2 條修訂)

(a) 載有關於下列事宜的詳情——

(i) 組織該公司或界定該公司的組織的文書；

## 340. Penalties

If any oversea company fails to comply with any of the provisions of this Part the company, and every officer or agent of the company who authorizes or permits the default, shall be liable to a fine and, for continued default, to a daily default fine.

(Replaced 6 of 1984 s. 235. Amended 7 of 1990 s. 2)

[cf. 1948 c. 38 s. 414 U.K.]

## 341. Interpretation of Part XI

For the purposes of this Part—

“certified” (核證) means certified in the prescribed manner to be a true copy or a correct translation;

“director” (董事) includes a shadow director; (Replaced 28 of 2003 s. 107)

“place of business” (營業地點) includes a share transfer or share registration office and any place used for the manufacture or warehousing of any goods, but does not include a place not used by the company to transact any business which creates legal obligations; (Amended 6 of 1984 s. 236)

“prospectus” (招股章程) has the same meaning as when used in relation to a company incorporated under this Ordinance;

“secretary” (秘書) includes any person occupying the position of secretary by whatever name called. (Added 6 of 1984 s. 236)

[cf. 1929 c. 23 s. 352 U.K.]

## PART XII

RESTRICTIONS ON SALE OF SHARES AND  
OFFERS OF SHARES FOR SALE342. Dating of prospectus and particulars  
to be contained therein

(1) Subject to section 342A, it shall not be lawful for any person to issue, circulate or distribute in Hong Kong any prospectus offering for subscription or purchase shares in or debentures of a company incorporated outside Hong Kong, whether the company has or has not established a place of business in Hong Kong unless the prospectus is dated (which date shall, unless the contrary is proved, be taken as the date of publication of the prospectus) and— (Amended 86 of 1992 s. 12; 30 of 2004 s. 2)

(a) contains particulars with respect to the following matters—

(i) the instrument constituting or defining the constitution of the company;

世，或已不再居於香港，或拒絕代表公司接受送達法律程序文件或通知書，或因任何原因不能送達文件，則文件可以下述方式送達該公司——

- (a) 將文件留在該公司在香港所設立的任何營業地點，或以郵遞方式送交該公司在香港所設立的任何營業地點；或
- (b) 如該公司在香港不再設有營業地點——
  - (i) 以掛號郵遞方式將文件送交該公司成立為法團的地方的註冊辦事處，並以掛號郵遞方式將文件的副本送交該公司成立為法團的地方的主要營業地點（如有的話），其地址乃分別為根據第 333(1)(c) 條所登記者；或
  - (ii) 如並沒有如此登記的地址，則將文件留在該公司於以往 3 年內曾在香港設有營業地點的地方，或以郵遞方式送往該地方。

(由 1984 年第 6 號第 235 條代替)  
[比照 1948 c. 38 s. 412 U.K.]

### 339. 海外公司在香港不再有營業地點時須發出通知

任何海外公司如在香港不再設有營業地點，須立即將此事實通知處長，而由如此發出通知之日起，該公司交付文件予處長的義務即告終止。

(由 1984 年第 6 號第 235 條代替)  
[比照 1948 c. 38 s. 413(2) U.K.]

### 339A. 海外公司的名稱自登記冊中刪去等

(1) 處長在接獲根據本部註冊的海外公司的代理人所發出關於公司已被解散的通知書時，須將該公司的名稱自海外公司登記冊中刪去。

(2) 凡處長有合理理由相信某間根據本部註冊的海外公司在香港已不再設有營業地點，本條例中與不營運公司自登記冊中剔除名稱有關的條文，經作出所需的修改後，可據此引伸及適用。

(由 1984 年第 6 號第 235 條增補)

company—

- (a) by leaving it at or sending it by post to any place of business established by the company in Hong Kong; or
- (b) if the company no longer has a place of business in Hong Kong—
  - (i) by sending it by registered post to its registered office, and a copy thereof by registered post to its principal place of business (if any), in the place of its incorporation at the respective addresses thereof registered under section 333(1)(c); or
  - (ii) if no such addresses have been registered, by leaving it at or sending it by post to any place in Hong Kong at which the company has had a place of business within the previous 3 years.

(Replaced 6 of 1984 s. 235)  
[cf. 1948 c. 38 s. 412 U.K.]

### 339. Notice to be given when overseas company ceases to have a place of business in Hong Kong

If any overseas company ceases to have a place of business in Hong Kong, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease.

(Replaced 6 of 1984 s. 235)  
[cf. 1948 c. 38 s. 413(2) U.K.]

### 339A. Removal etc. of name of overseas company from register

(1) The Registrar shall, on receipt of notice from an agent of an overseas company registered under this Part that the company has been dissolved, remove the name of the company from the register of overseas companies.

(2) Where the Registrar has reasonable cause to believe that an overseas company registered under this Part has ceased to have a place of business in Hong Kong, the provisions of this Ordinance relating to the striking off the register of companies of the names of defunct companies shall, with such adaptations as are necessary, extend and apply accordingly.

(Added 6 of 1984 s. 235)

- (ii) 該公司成立為法團所憑藉或根據的成文法則或具成文法則效力的條文；
- (iii) 可供查閱上述文書、成文法則或條文或其副本及按訂明方式核證的中文或英文譯本(如原文既非以中文亦非以英文撰寫)的香港地址；(由 1995 年第 83 號第 19 條修訂)
- (iv) 該公司成立為法團的日期及國家；
- (v) 該公司是否已在香港設立營業地點；如已設立，其在香港的主要辦事處的地址；
- (b) 除本條條文另有規定外，該招股章程乃以英文擬備及載有中文譯本或以中文擬備及載有英文譯本，並述明附表 3 第 I 部所指明的事項及列明該附表第 II 部所指明的報告，但須符合該附表第 III 部所載條文的規定；(由 1995 年第 83 號第 19 條修訂)

但如屬在公司有權開始營業日期翌日起計多於 2 年後發行的招股章程，(a)(i)、(ii) 及 (iii) 段的條文即不適用，而為施行本款而應用附表 3 第 I 部時，其第 5 段乃在凡提述章程細則之處以提述公司的有關組織文書所取代的情況下有效。(由 1984 年第 6 號第 259 條修訂)

(2) 任何條件，如規定或約束股份或債權證申請人免除有關人士遵從憑藉第 (1)(a) 或 (b) 款而施加的任何規定，或該條件本意是假作該等申請人知悉招股章程內沒有特別提述的任何合約、文件或事宜，均屬無效。

(2A) 第 (1) 款適用的每份招股章程，均必須載有附表 18 第 2 部指明的陳述。(由 2004 年第 30 號第 2 條增補)

(3) 除第 342A 條另有規定外，任何人不可在香港向任何人發出任何用以申請第 (1) 款所述的公司的股份或債權證的表格，除非該表格與符合本部規定的招股章程一起發出，而且在香港發出該表格並不違反第 342B 條的條文：(由 1984 年第 6 號第 259 條修訂；由 1992 年第 86 號第 12 條修訂)

但如能顯示該申請表格是與下列事項有關而發出的，則本款並不適用——

- (ii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;
- (iii) an address in Hong Kong where the said instrument, enactments or provisions, or copies thereof, and if the same are in a language other than English or Chinese a translation thereof in English or Chinese certified in the prescribed manner, can be inspected; (Amended 83 of 1995 s. 19)
- (iv) the date on which and the country in which the company was incorporated;
- (v) whether the company has established a place of business in Hong Kong, and, if so, the address of its principal office in Hong Kong;
- (b) subject to the provisions of this section, is either in the English language and contains a Chinese translation or in the Chinese language and contains an English translation, and states the matters specified in Part I of the Third Schedule and sets out the reports specified in Part II of that Schedule, subject always to the provisions contained in Part III of that Schedule: (Amended 83 of 1995 s. 19)

Provided that the provisions of paragraph (a)(i), (ii) and (iii) shall not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business, and, in the application of Part I of the Third Schedule for the purposes of this subsection, paragraph 5 thereof shall have effect with the substitution, for the reference to the articles, of a reference to the constitution of the company. (Amended 6 of 1984 s. 259)

(2) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement imposed by virtue of subsection (1)(a) or (b), or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(2A) Every prospectus to which subsection (1) applies must contain a statement specified in Part 2 of the Eighteenth Schedule. (Added 30 of 2004 s. 2)

(3) Subject to section 342A, it shall not be lawful for any person to issue to any person in Hong Kong a form of application for shares in or debentures of such a company as is mentioned in subsection (1) unless the form is issued with a prospectus which complies with this Part and the issue whereof in Hong Kong does not contravene the provisions of section 342B: (Amended 6 of 1984 s. 259; 86 of 1992 s. 12)

Provided that this subsection shall not apply if it is shown that the form of application was issued— (Amended 30 of 2004 s. 2)

- (a) 真誠邀請某人訂立一份股份或債權證的包銷協議； (由 2004 年第 30 號第 2 條修訂)
- (b) 與並非向公眾作出要約的股份或債權證有關者；或 (由 2004 年第 30 號第 2 條修訂)
- (c) 與附表 17 各部 (第 1 部除外) 一併理解的該附表第 1 部指明的要約。 (由 2004 年第 30 號第 2 條增補)

(4) 如第 (1)(a) 及 (b) 款所訂的任何規定不獲遵從或被違反，董事或其他對招股章程負責的人在下列情況下，不會因有關規定不獲遵從或被違反而招致任何法律責任——

- (a) 該人能證明自己對任何未有披露的事項並不知情；或
- (b) 該人能證明有關規定不獲遵從或被違反乃由於其本人誠實地犯了一項事實上的錯誤所致；或
- (c) 處理有關案件的法院，認為有關規定不獲遵從或被違反所關事項並不具關鍵性，或該法院於顧及此案的所有情況後，認為有關規定不獲遵從或被違反理應獲得寬宥；

但如招股章程內未載有關於附表 3 第 19 段所載事項的陳述，則除非能證明有關董事或其他人對未披露的事項知情，否則該人不會因為招股章程內未載有該項陳述而招致任何法律責任。

(5) 本條不適用於下列各項——

- (a) 向現有的公司成員或債權證持有人發出有關該公司的股份或債權證的招股章程或申請表格，不論股份或債權證的申請人是否有為他人而放棄申請該等股份或債權證的權利；或
- (b) 發出在各方面是或將會在各方面均與以往發出並於當其時在認可證券市場上市的股份或債權證劃一的有關股份或債權證的招股章程或申請表格； (由 1984 年第 6 號第 259 條修訂；由 1987 年第 10 號第 11 條修訂；由 2002 年第 5 號第 407 條修訂)

但在符合前述的規定下，本條適用於在公司成立時或成立後發出的招股章程或申請表格。

(6) 本條並不局限或減輕任何人除本條之外亦會根據一般法律或本條例招致的任何法律責任。

- (a) in connexion with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; (Amended 30 of 2004 s. 2)
- (b) in relation to shares or debentures which were not offered to the public; or (Amended 30 of 2004 s. 2)
- (c) in connexion with an offer specified in Part 1 of the Seventeenth Schedule as read with the other Parts of that Schedule. (Added 30 of 2004 s. 2)

(4) In the event of non-compliance with or contravention of any of the requirements imposed by subsection (1)(a) and (b), a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

- (a) as regards any matter not disclosed, he proves that he was not cognisant thereof; or
- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
- (c) the non-compliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused;

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 19 of the Third Schedule, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) This section shall not apply—

- (a) to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; or
- (b) to the issue of a prospectus or a form of application relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being listed on a recognized stock market; (Amended 6 of 1984 s. 259; 10 of 1987 s. 11; 5 of 2002 s. 407)

but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Ordinance apart from this section.

(7) 現宣布藉本條適用的附表 3 條文，亦就向公眾作出的認購或購買在香港以外成立為法團的公司的債權證的要約或邀請而適用於提供擔保的法團。(由 2004 年第 30 號第 2 條增補)

(8) 在第 (7) 款中，“提供擔保的法團”(guarantor corporation)就向公眾作出的認購或購買在香港以外成立為法團的公司的債權證的要約或邀請而言，指作出或同意作出以下擔保的法團——

- (a) 在該公司已因應或將會因應該要約或邀請而收取任何款項的情況下，對償還該等款項作出的擔保；
- (b) 對該公司在該債權證下或就該債權證所承擔的任何其他義務作出的擔保；或
- (c) 對符合以下說明的任何款額作出惠及該公司的擔保——
  - (i) 該公司有權獲取的；且
  - (ii) 一如有關招股章程所述，獲取該筆款額旨在令該公司能全面或局部解除其在該債權證下或就該債權證所承擔的任何義務。(由 2004 年第 30 號第 2 條增補)

(由 1972 年第 78 號第 18 條代替)

[比照 1948 c. 38 s. 417 U.K.]

#### 342A. 豁免某些人士及某些招股章程無需符合某些規定

(1) 凡擬藉公開發出招股章程或某類招股章程而將某間在香港以外成立為法團的公司(不論該公司已否在香港設立營業地點)的股份或債權證向公眾作出要約，監察委員會可應申請人的請求並在它認為合適的條件(如有的話)規限下，發出豁免證明書，豁免上述招股章程使其無需符合任何或所有有關條文的規定，但該項豁免只可在下述情況下作出：監察委員會於顧及有關情況後，認為該項豁免並不會損害投資大眾的利益，而要求上述招股章程符合任何或所有該等規定——

- (a) 會是不相干的或會構成不適當的負擔；或
  - (b) 在其他情況下是無需要或不適當的。(由 2004 年第 30 號第 2 條代替)
- (2) 不論是否已有第 (1) 款提述的請求提出，監察委員會可藉在憲報刊登的公告並在它認為合適的在該公告指明的條件(如有的話)規限下，豁免——
- (a) 某類公司；或
  - (b) 公司發出的某類招股章程，

(7) It is hereby declared that the provisions of the Third Schedule applied by this section are also applied to a guarantor corporation in relation to an offer or invitation to the public to subscribe for or purchase debentures of a company incorporated outside Hong Kong. (Added 30 of 2004 s. 2)

(8) In subsection (7), “guarantor corporation” (提供擔保的法團), in relation to an offer or invitation to the public to subscribe for or purchase debentures of a company incorporated outside Hong Kong, means a corporation that guarantees or agrees to guarantee—

- (a) the repayment of any money received or to be received by the company in response to the offer or invitation;
- (b) any other obligations of the company under or in respect of the debentures; or
- (c) in favour of the company any amount—
  - (i) to which the company is entitled; and
  - (ii) receipt of which, as stated in the prospectus concerned, is intended to enable the company to wholly or partly discharge any of its obligations under or in respect of the debentures. (Added 30 of 2004 s. 2)

(Replaced 78 of 1972 s. 18.)

[cf. 1948 c. 38 s. 417 U.K.]

#### 342A. Exemption of certain persons and prospectuses from compliance with certain requirements

(1) Where it is proposed to offer any shares in or debentures of a company incorporated outside Hong Kong (whether the company has or has not established a place of business in Hong Kong) to the public by a prospectus or class of prospectuses issued generally, there may, on the request of the applicant, and subject to such conditions (if any) as the Commission thinks fit, be issued by the Commission a certificate of exemption from compliance with any or all of the requirements of the relevant provisions if, having regard to the circumstances, the Commission considers that the exemption will not prejudice the interest of the investing public and compliance with any or all of those requirements—

- (a) would be irrelevant or unduly burdensome; or
- (b) is otherwise unnecessary or inappropriate. (Replaced 30 of 2004 s. 2)

(2) Whether or not a request referred to in subsection (1) has been made, the Commission may, by notice published in the Gazette, and subject to such conditions (if any) as the Commission thinks fit and specified in the notice, exempt—

- (a) any class of companies; or
- (b) any class of prospectuses issued by companies,

使其無需符合任何或所有有關條文的規定，但該項豁免只可在下述情況下作出：監察委員會於顧及有關情況後，認為該項豁免並不會損害投資大眾的利益，而要求該類公司或該類招股章程（視屬何情況而定）符合任何或所有該等規定——

- (c) 會是不相干的或會構成不適當的負擔；或
- (d) 在其他情況下是無需要或不適當的。（由 2004 年第 30 號第 2 條代替）
- (3) 凡監察委員會發出豁免證明書或在憲報刊登公告，根據本條豁免有關方面遵照第 342(1) 及 (3) 條所載與附表 3 有關的規定，該證明書或公告（視屬何情況而定）須明確指出是對附表 3 的所有規定具有效力，或是對該證明書或公告（視屬何情況而定）內所指明附表 3 的某些規定具有效力。
- (4) 在本條中，“有關條文”（relevant provisions）指下述任何條文——
  - (a) 第 44A(1)、(2) 或 (6)、44B(1) 或 (2)、342(1)、(2A)、(3) 或 (7) 或 342C(3) 或 (4) 條；或
  - (b) 附表 20 第 2 部或附表 21 第 2 部。（由 2004 年第 30 號第 2 條增補）
- (5) 監察委員會可藉在憲報刊登的命令修訂第 (4) 款。（由 2004 年第 30 號第 2 條增補）
- (6) 監察委員會須藉聯機媒介，發表它認為適當的關於根據第 (1) 款批給豁免的詳情。（由 2004 年第 30 號第 2 條增補）
- (7) 凡監察委員會擬——
  - (a) 根據第 (2) 款發出豁免公告；或
  - (b) 根據第 (5) 款發出修訂命令，
 它須以它認為適當的方式發表該擬發出的公告或命令的草擬本，以邀請公眾就該擬發出的公告或命令作出申述。（由 2004 年第 30 號第 2 條增補）
- (8) 凡監察委員會在根據第 (7) 款就該款所述的公告或命令發表草擬本後，發出該公告或命令，它須——
  - (a) 以它認為適當的方式發表報告，以概括用詞列出——
    - (i) 就該草擬本所作出的申述；及
    - (ii) 監察委員會對該等申述的回應；及
  - (b) (如該公告或命令經過修改，而監察委員會認為該等修改導致該公告或命令與草擬本有重大差異) 以它認為適當的方式發表該等差異的細節。（由 2004 年第 30 號第 2 條增補）

from any or all of the requirements of the relevant provisions if, having regard to the circumstances, the Commission considers that the exemption will not prejudice the interest of the investing public and compliance with any or all of those requirements, in the case of that class of companies or prospectuses, as the case may be—

- (c) would be irrelevant or unduly burdensome; or
- (d) is otherwise unnecessary or inappropriate. (Replaced 30 of 2004 s. 2)
- (3) Where exemption from compliance with section 342(1) and (3) in relation to the requirements of the Third Schedule is granted under this section, whether by the issue of a certificate of exemption or by a notice in the Gazette, the certificate or notice, as the case may be, shall be expressed to have effect with regard to all of the requirements of the Third Schedule or to such of them as are specified in the certificate or notice, as the case may be.
- (4) In this section, “relevant provisions” (有關條文) means any of the provisions of—
  - (a) section 44A(1); (2) or (6), 44B(1) or (2), 342(1), (2A), (3) or (7) or 342C(3) or (4); or
  - (b) Part 2 of the Twentieth Schedule or Part 2 of the Twenty-first Schedule. (Added 30 of 2004 s. 2)
- (5) The Commission may, by order published in the Gazette, amend subsection (4). (Added 30 of 2004 s. 2)
- (6) The Commission shall publish, by means of an on-line medium, such particulars of exemptions granted under subsection (1) as it considers appropriate. (Added 30 of 2004 s. 2)
- (7) Where the Commission proposes to issue—
  - (a) a notice of exemption under subsection (2); or
  - (b) an amendment order under subsection (5),
 it shall publish a draft of the proposed notice or order, in such manner as it considers appropriate, for the purpose of inviting representations on the proposed notice or order by the public. (Added 30 of 2004 s. 2)
- (8) Where the Commission issues a notice or order mentioned in subsection (7) after a draft is published under that subsection in relation to the notice or order, it shall—
  - (a) publish, in such manner as it considers appropriate, an account setting out in general terms—
    - (i) the representations made on the draft; and
    - (ii) the response of the Commission to the representations; and
  - (b) where the notice or order is issued with modifications which in the opinion of the Commission result in the notice or order being significantly different from the draft, publish, in such manner as it considers appropriate, details of the difference. (Added 30 of 2004 s. 2)

(9) 如監察委員會認為在有關個案的情況下——

- (a) 第 (7) 及 (8) 款的適用是無需要或不適當的；或
- (b) 為遵守第 (7) 及 (8) 款而涉及的任何延擱，並不符合——
  - (i) 投資大眾的利益；或
  - (ii) 公眾利益，

則第 (7) 及 (8) 款不適用。(由 2004 年第 30 號第 2 條增補)  
(由 1992 年第 86 號第 13 條代替)

### 342B. 與分配及專家同意有關的條文

(1) 在下述情況下，任何人不可在香港發出、傳閱或分發任何要約認購或購買在香港以外成立為法團的公司的股份或債權證的招股章程，不論該公司是否已在香港設立營業地點——(由 1984 年第 6 號第 259 條修訂；由 2004 年第 30 號第 2 條修訂)

- (a) 凡招股章程載有一項看來是由一名專家作出的陳述，而該名專家未有給予書面同意，同意發出一份載有一項在形式和文意上一如所載的陳述的招股章程，或在該份招股章程交付註冊前已撤回其書面同意，或在該招股章程內並未載有一項陳述，說明該名專家已給予前述的同意及未有將其撤回；或
- (b) 如有申請依據招股章程提出，而該招股章程並不具有下述的效果：即令所有有關人士均受第 44A 條(已根據第 342A 條獲豁免遵從者除外)及第 44B 條的所有適用條文(懲罰性條文除外)所約束。(由 1992 年第 86 號第 14 條修訂)

(1A) (由 2004 年第 30 號第 2 條廢除)

(2) 在本條中，“專家”(expert)一詞包括工程師、估值師、會計師及其他由於其專業以致其所作的陳述具有權威性的人，而就本條而言，如某項陳述是載於招股章程內，或是載於該招股章程封面上的任何報告或備忘錄內，或是以提述方式將其收納於招股章程內，或是以提述方式與該招股章程一起發出，則該項陳述須當作是載列於該招股章程內。

(由 1972 年第 78 號第 18 條增補)  
[比照 1948 c. 38 s. 419 U.K.]

(9) Subsections (7) and (8) do not apply if the Commission considers, in the circumstances of the case, that—

- (a) it is unnecessary or inappropriate that such subsections should apply; or
  - (b) any delay involved in complying with such subsections would not be—
    - (i) in the interest of the investing public; or
    - (ii) in the public interest. (Added 30 of 2004 s. 2)
- (Replaced 86 of 1992 s. 13)

### 342B. Provisions as to expert's consent, and allotment

(1) It shall not be lawful for any person to issue, circulate or distribute in Hong Kong any prospectus offering for subscription or purchase shares in or debentures of a company incorporated outside Hong Kong, whether the company has or has not established a place of business in Hong Kong—(Amended 6 of 1984 s. 259; 30 of 2004 s. 2)

- (a) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or
- (b) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions (other than penal provisions) of sections 44A (except insofar as exemption from compliance has been granted under section 342A) and 44B so far as applicable. (Amended 86 of 1992 s. 14)

(1A) (Repealed 30 of 2004 s. 2)

(2) In this section the expression “expert” (專家) includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him, and for the purposes of this section a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

(Added 78 of 1972 s. 18)  
[cf. 1948 c. 38 s. 419 U.K.]

## 342C. 招股章程的註冊

(1) 任何要約認購或購買在香港以外成立為法團的公司的股份或債權證的招股章程(不論該公司是否已在香港設立營業地點),均不得在香港發出、傳閱或分發,但如該招股章程符合本條例的規定,以及在其於香港刊登、傳閱或分發當日或之前,已根據本條獲批准註冊,而處長亦已將一份上述的招股章程註冊,則不在此限。(由 2004 年第 30 號第 2 條修訂)

(2) 每份招股章程均須——

(a) 在封面上陳述一份上述招股章程已按本條規定註冊,並且在緊接該陳述之後,述明監察委員會及處長對該招股章程的內容概不負責,如該招股章程獲得或將會獲得認可交易所依據根據《證券及期貨條例》(第 571 章)第 25 條作出的轉移令而授權發出,則述明監察委員會、認可交易所及處長對該招股章程的內容概不負責;(由 2004 年第 30 號第 2 條修訂)

(b) 在封面上指明本條規定須在該份如此註冊的招股章程上註明或隨附的任何文件,或在封面上提述各項載於該招股章程內並指明該等文件的陳述;及

(c) 符合行政長官會同行政會議所訂明的規定,或處長根據第 346 條所指明的規定,而該等規定是適用於須根據本部註冊的招股章程者。(由 1999 年第 23 號第 3 條修訂)

(3) 一項根據本條批准將招股章程註冊的申請,須以書面向監察委員會提出,申請書交付監察委員會時,須連同一份擬註冊的招股章程,而該招股章程已獲公司的管治團體的 2 名成員或獲其以書面授權的代理人核證已獲該管治團體藉決議批准,此外——

(a) 該招股章程並須註明或隨附任何人以專家身分對該招股章程的發出給予第 342B 條所規定的同意;及

(b) 如屬公開發出的招股章程,則另須註明或隨附下述文件——

(i) 附表 3 第 17 段規定須在招股章程內述明的合約文本;如合約並非以書面記錄者,則另須註明或隨附詳列該合約細則的備忘錄;如屬根據第 342A 條獲豁免符合第 342(1) 條規定的招股章程,而監察委員會

## 342C. Registration of prospectus

(1) No prospectus offering for subscription or purchase shares in or debentures of a company incorporated outside Hong Kong (whether the company has or has not established a place of business in Hong Kong) shall be issued, circulated or distributed in Hong Kong unless the prospectus complies with the requirements of this Ordinance and, on or before the date of its publication, circulation or distribution in Hong Kong, its registration has been authorized under this section and a copy thereof has been registered by the Registrar. (Amended 30 of 2004 s. 2)

(2) Every prospectus shall—

(a) on the face of it, state that a copy has been registered as required by this section and, immediately after such statement, state that neither the Commission nor the Registrar takes any responsibility as to the contents of the prospectus or, where the prospectus is or is to be authorized for issue by a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance (Cap. 571), state that neither the Commission nor the recognized exchange company nor the Registrar takes any responsibility as to the contents of the prospectus; (Amended 30 of 2004 s. 2)

(b) on the face of it, specify or refer to statements included in the prospectus which specify, any documents required by this section to be endorsed on or attached to the copy so registered; and

(c) conform with such requirements as are prescribed by the Chief Executive in Council or specified by the Registrar under section 346 which are applicable to prospectuses to be registered under this Part. (Amended 23 of 1999 s. 3)

(3) An application for authorization for registration of a prospectus under this section shall be made in writing to the Commission and there shall be delivered to the Commission together with the application a copy of the prospectus proposed to be registered which has been certified by 2 members of the governing body of the company or by their agents authorized in writing as having been approved by resolution of the governing body and having endorsed thereon or attached thereto—

(a) any consent to the issue of the prospectus required by section 342B from any person as an expert; and

(b) in the case of a prospectus issued generally, also—

(i) a copy of any contract required by paragraph 17 of the Third Schedule to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof or, if in the case of a prospectus exempted under section 342A from compliance

就根據第 342A(1) 條所提出的請求，規定申請人提交合約、合約副本或合約的備忘錄以供查閱，則另須註明或隨附該合約副本或該合約的備忘錄（視屬何情況而定）；

- (ii) 如該招股章程向公眾作出售賣公司股份的要約，須註明或隨附售股人的姓名或名稱、地址及其他描述的列表；及
- (iii) 如作出附表 3 第 II 部所規定的報告的人，已在報告內作出，或在沒有提出任何理由的情況下已在報告內表明該附表第 42 段所述的任何調整，則須註明或隨附由該等人士簽署的書面陳述，列明該等調整及說明作出調整的理由。

(4) 凡第 (3)(b)(i) 款提述招股章程內規定須註明或隨附合約文本之處，而該合約完全或部分既非以中文亦非以英文撰寫，則須視作為提述合約的中文或英文譯本，或提述其內已收錄合約中既非以中文亦非以英文撰寫的部分的中文或英文譯本的合約文本（視屬何情況而定）；而該等譯本均按第 (9) 款所指的訂明方式核證為正確譯本。  
(由 1995 年第 83 號第 20 條修訂；由 2004 年第 30 號第 2 條修訂)

(5) 監察委員會可——

(a) 批准本條適用的招股章程由處長註冊；凡監察委員會如此批准，則須發出一份證明書——

(i) 核證監察委員會已如此批准；及

(ii) 指明即將註冊的一份招股章程規定須註明或隨附的文件；或

(b) 拒絕批准註冊。

(6) 監察委員會不得批准註冊與成立中公司有關的招股章程。

(7) 處長在下述情況下——

(a) 不得根據本條將招股章程註冊，除非該招股章程符合下列規定——

(i) 該招股章程已註上日期，而即將註冊的一份招股章程已按本條規定的方式核證；

(ii) 該招股章程已附上根據第 (5) 款發出的證明書；

(iii) 該招股章程已註明或隨附所有在根據第 (5) 款發出的證明書內指明的文件；及

(iv) 該招股章程符合行政長官會同行政會議所訂明的規定，或處長根據第 346 條所指明的規定，而該等規定是適用於須根據本部註冊的招股章程的；及 (由 1999 年第 23 號第 3 條修訂)

with the requirements of section 342(1), a contract or a copy thereof or a memorandum of a contract is required by the Commission to be available for inspection in connection with the request made under section 342A(1), a copy or, as the case may be, a memorandum of that contract;

(ii) where the prospectus offers shares in the company for sale to the public, a list of the names, addresses and descriptions of the vendor or vendors of the shares; and

(iii) where the persons making any report required by Part II of the Third Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in paragraph 42 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(4) The references in subsection (3)(b)(i) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a language other than English or Chinese, be taken as references to a copy of a translation of the contract in either language or a copy embodying a translation in English or Chinese of the parts not in either language, as the case may be, being a translation certified in the prescribed manner under subsection (9) to be a correct translation. (Amended 83 of 1995 s. 20; 30 of 2004 s. 2)

(5) The Commission may——

(a) authorize the registration by the Registrar, of a prospectus to which this section applies and where the Commission so authorizes, the Commission shall issue a certificate——

(i) certifying that the Commission has done so; and

(ii) specifying the documents which are required to be endorsed on or attached to the copy of the prospectus to be registered; or

(b) refuse to authorize such registration.

(6) The Commission shall not authorize the registration of a prospectus which relates to an intended company.

(7) The Registrar——

(a) shall not register a prospectus under this section unless——

(i) it is dated and the copy thereof to be registered has been certified in the manner required by this section;

(ii) it is accompanied by a certificate issued under subsection (5);

(iii) it has endorsed thereon or attached thereto all the documents specified in the certificate granted under subsection (5); and

(iv) it conforms with such requirements as are prescribed by the Chief Executive in Council or specified by the Registrar under section 346 which are applicable to prospectuses to be registered under this Part; and (Amended 23 of 1999 s. 3)

(b) 須將招股章程註冊，但該招股章程須符合 (a) 段第 (i)、(ii)、(iii) 及 (iv) 節的規定。

(8) 任何人如因某份招股章程被拒根據本條批准註冊而感到受屈，可向法院提出上訴，而法院可駁回上訴或命令監察委員會根據本條批准將該份招股章程註冊。

(9) 第 (4) 款所述的譯本——

(a) 須由該譯本的製備者核證為正確譯本；及

(b) 的製備者如已由第 (i) 或 (ii) 節所述的適當的人核證為他相信是有足夠能力將有關文件譯成英文或中文 (視屬何情況而定)，則該譯本須當作已按訂明方式核證——

(i) 如該譯本在香港以外製備——

(A) 製備該譯本所在的地方的公證人；

(B) 監察委員會指明的其他人；或

(C) 屬於監察委員會為施行本段藉在憲報刊登的公告指明的某類別人士的其他人；

(ii) 如該譯本在香港製備——

(A) 香港的公證人；

(B) 香港高等法院律師；

(C) 監察委員會指明的其他人；或

(D) 屬於監察委員會為施行本段藉在憲報刊登的公告指明的某類別人士的其他人。 (由 2004 年第 30 號第 2 條增補)

(10) 根據第 (9)(b)(i)(C) 或 (ii)(D) 款刊登的公告並非附屬法例。 (由 2004 年第 30 號第 2 條增補)

(由 1992 年第 86 號第 15 條代替)

342CA. 修訂由一份文件組成的招股章程

(1) 凡——

(a) 某招股章程由一份文件組成；而

(b) 本部的條文適用於該招股章程，

(b) shall register a prospectus if subparagraphs (i), (ii), (iii) and (iv) of paragraph (a) are complied with in respect of that prospectus.

(8) Any person aggrieved by the refusal to authorize the registration of a prospectus under this section may appeal to the court and the court may either dismiss the appeal or order that the registration of the prospectus be authorized by the Commission under this section.

(9) A translation mentioned in subsection (4) shall be—

(a) certified by the person making the translation as a correct translation; and

(b) deemed to be certified in the prescribed manner if the person making the translation has been certified, by the appropriate person mentioned in subparagraph (i) or (ii), as a person believed by that appropriate person to be competent to translate it into the English or Chinese language, as the case may be, that is to say—

(i) if the translation be made outside Hong Kong—

(A) a notary public in the place where the translation is made;

(B) such other person as may be specified by the Commission; or

(C) such other person belonging to a class of persons specified by the Commission, by notice published in the Gazette, for the purposes of this paragraph;

(ii) if the translation be made in Hong Kong—

(A) a notary public in Hong Kong;

(B) a solicitor of the High Court of Hong Kong;

(C) such other person as may be specified by the Commission; or

(D) such other person belonging to a class of persons specified by the Commission, by notice published in the Gazette, for the purposes of this paragraph. (Added 30 of 2004 s. 2)

(10) A notice published under subsection (9)(b)(i)(C) or (ii)(D) is not subsidiary legislation. (Added 30 of 2004 s. 2)

(Replaced 86 of 1992 s. 15)

342CA. Amendment of prospectus consisting of one document

(1) A prospectus—

(a) consisting of one document; and

(b) to which the provisions of this Part are applicable,

該招股章程只可按照附表 20 第 2 部的條文修訂。

(2) 附表 20 第 2 部的條文可更改本部就任何招股章程或某類招股章程(兩者均可根據第(1)款修訂)所訂的條文的實施。

(3) 如任何公司違反第(1)款,該公司以及其每名失責高級人員均可處罰款。

(4) 為免生疑問,現宣布本條及附表 20 第 2 部並不適用於第 342CB 條所適用的招股章程。

(由 2004 年第 30 號第 2 條增補)

### 342CB. 招股章程可由超過一份文件組成等

(1) 本部的條文適用的招股章程可按照附表 21 第 2 部的條文由超過一份文件組成。

(2) 第(1)款適用的招股章程只可按照附表 21 第 2 部的條文修訂。

(3) 附表 21 第 2 部的條文可更改本部就任何招股章程或某類招股章程(屬第(1)款所指或可根據第(2)款修訂者)所訂的條文的實施。

(4) 如任何公司違反第(2)款,該公司以及其每名失責高級人員均可處罰款。

(由 2004 年第 30 號第 2 條增補)

### 342CC. 呈交核證副本

凡任何不屬招股章程的文件(不論如何描述)根據本部的規定須由在香港以外成立為法團的公司呈交予處長,則向處長呈交符合以下條件的該文件的副本,即當作符合該規定——

(a) 該副本已核證為該文件的真實副本;而

(b) 該項核證由以下人士作出——

(i) 該公司的管治團體的一名成員;

(ii) 該公司的秘書;

(iii) 該公司的管治團體的一名成員或秘書為此目的以書面授權的一名該成員或秘書的代理人;

may only be amended in accordance with the provisions of Part 2 of the Twentieth Schedule.

(2) The provisions of Part 2 of the Twentieth Schedule may alter the operation of a provision of this Part in relation to any prospectus, or class of prospectuses, which may be amended under subsection (1).

(3) If any company contravenes subsection (1), the company and every officer of the company who is in default shall be liable to a fine.

(4) For the avoidance of doubt, it is hereby declared that this section and Part 2 of the Twentieth Schedule do not apply to a prospectus to which section 342CB applies.

(Added 30 of 2004 s. 2)

### 342CB. Prospectus may consist of more than one document, etc.

(1) A prospectus to which the provisions of this Part are applicable may consist of more than one document in accordance with the provisions of Part 2 of the Twenty-first Schedule.

(2) A prospectus to which subsection (1) applies may only be amended in accordance with the provisions of Part 2 of the Twenty-first Schedule.

(3) The provisions of Part 2 of the Twenty-first Schedule may alter the operation of a provision of this Part in relation to any prospectus, or class of prospectuses, which falls within subsection (1) or which may be amended under subsection (2).

(4) If any company contravenes subsection (2), the company and every officer of the company who is in default shall be liable to a fine.

(Added 30 of 2004 s. 2)

### 342CC. Submission of certified copies

Where any document (howsoever described), other than a prospectus, is required under this Part to be submitted to the Registrar by a company incorporated outside Hong Kong, the requirement shall be deemed to be satisfied by the submission to the Registrar of a copy of the document certified——

(a) to be a true copy of the document; and

(b) by——

(i) a member of the governing body of the company;

(ii) the secretary of the company;

(iii) an agent of a member of the governing body or of the secretary of the company, authorized in writing for the purpose by the member or secretary;

(iv) 一名《法律執業者條例》(第 159 章) 第 2(1) 條所指的律師或《專業會計師條例》(第 50 章) 第 2 條所指的會計師；或 (由 2005 年第 10 號第 224 條修訂)

(v) 一名《法律執業者條例》(第 159 章) 第 2(1) 條所指的公證人。  
(由 2004 年第 30 號第 2 條增補)

#### 342D. 違反第 342 至 342C 條的罰則

任何人明知違反第 342 至 342C 條的任何條文而負責發出、傳閱或分發招股章程，或負責發出股份或債權證申請表格，均可處罰款。

(由 1972 年第 78 號第 18 條增補。由 1990 年第 7 號第 2 條修訂)  
[比照 1948 c. 38 s. 421 U.K.]

#### 342E. 就招股章程內錯誤陳述的民事法律責任

第 40 條可引伸而適用於在香港發出、傳閱或分發的每份要約認購或購買在香港以外成立為法團的公司的股份或債權證的招股章程 (不論該公司是否已在香港設立營業地點)，但提述第 38C 條之處均以提述第 342B 條所取代。

(由 1972 年第 78 號第 18 條增補。由 1984 年第 6 號第 259 條修訂；由 2004 年第 30 號第 2 條修訂)

[比照 1948 c. 38 s. 422 U.K.]

#### 342F. 就招股章程內錯誤陳述的刑事法律責任

(1) 凡在《1992 年公司 (修訂) 條例》† (1992 年第 86 號) 生效 \* 後在香港發出、傳閱或分發，而與在香港以外成立為法團的公司的股份或債權證有關的招股章程 (不論該公司是否已在香港設立營業地點)，載有任何不真實陳述，則批准在香港發出、傳閱或分發該招股章程的人，可處監禁及罰款，除非該人能證明該項陳述並不具關鍵性，或能證明其本人有合理的理由相信，並且直至該招股章程在香港發出、傳閱或分發時仍相信該項陳述乃屬真實。

† “《1992 年公司 (修訂) 條例》”乃 “Companies (Amendment) Ordinance 1992” 之譯名。

\* 生效日期：1993 年 2 月 1 日——見 1993 年第 19 號法律公告。

(iv) a solicitor within the meaning of section 2(1) of the Legal Practitioners Ordinance (Cap. 159) or a certified public accountant within the meaning of section 2 of the Professional Accountants Ordinance (Cap. 50); or (Amended 10 of 2005 s. 224)

(v) a notary public within the meaning of section 2(1) of the Legal Practitioners Ordinance (Cap. 159).

(Added 30 of 2004 s. 2)

#### 342D. Penalty for contravention of sections 342 to 342C

Any person who is knowingly responsible for the issue, circulation or distribution of a prospectus, or for the issue of a form of application for shares or debentures, in contravention of any of the provisions of sections 342 to 342C shall be liable to a fine.

(Added 78 of 1972 s. 18. Amended 7 of 1990 s. 2)  
[cf. 1948 c. 38 s. 421 U.K.]

#### 342E. Civil liability for misstatements in prospectus

Section 40 shall extend to every prospectus offering for subscription or purchase shares in or debentures of a company incorporated outside Hong Kong which is issued, circulated or distributed in Hong Kong, whether the company has or has not established a place of business in Hong Kong, with the substitution, for references to section 38C, of references to section 342B.

(Added 78 of 1972 s. 18. Amended 6 of 1984 s. 259; 30 of 2004 s. 2)  
[cf. 1948 c. 38 s. 422 U.K.]

#### 342F. Criminal liability for misstatements in prospectus

(1) Where a prospectus relating to shares in or debentures of a company incorporated outside Hong Kong (whether the company has or has not established a place of business in Hong Kong) which is issued, circulated or distributed in Hong Kong after the commencement\* of the Companies (Amendment) Ordinance 1992 (86 of 1992) includes any untrue statements, any person who authorized the issue, circulation or distribution of the prospectus in Hong Kong shall be liable to imprisonment and a fine, unless he proves either that the statement was immaterial or that he had reasonable grounds to believe and did up to the time of the issue, circulation or distribution of the prospectus in Hong Kong believe that the statement was true.

\* Commencement date: 1 February 1993—see L.N. 19 of 1993.

(2) 任何人如只因給予第 342B 條所規定的同意，讓一份看來是由其以專家身分作出的陳述載於招股章程內，則就本條而言，該人不當作曾批准發出招股章程。

(3) 第 (1) 款不適用於——

- (a) 監察委員會；
- (b) (如有關招股章程是由某認可交易所依據一項根據《證券及期貨條例》(第 571 章) 第 25 條作出的轉移令而批准的) 監察委員會及該交易所；或
- (c) (如有關招股章程是由某認可控制人依據一項根據該條例第 68 條作出的轉移令而批准的) 監察委員會及該控制人。(由 2002 年第 5 號第 407 條代替)

(由 1992 年第 86 號第 16 條增補)

### 343. 與招股章程有關的條文的釋義

(1) 凡就在香港以外成立為法團的公司的股份或債權證向公眾作出要約發售，假若有關公司是本條例所指的公司則該要約所據的文件本會憑藉第 41 條當作是招股章程者，為施行本條例本部的規定，該份文件須當作是該公司所發出的招股章程。(由 1984 年第 6 號第 259 條修訂)

(2) 就本條例本部而言，認購或發售股份或債權證的要約，如向通常業務是以委託人或代理人的身分購買或售賣股份或債權證的人作出，則不得當作是向公眾作出的要約。

(2A) 就第 342E 及 342F 條而言，“不真實陳述”(untrue statement) 就任何招股章程而言，包括該招股章程中的任何具關鍵性的遺漏。(由 2004 年第 30 號第 2 條增補)

(2B) 就本部的條文而言，載列於招股章程內的任何陳述如就其載列形式及載列之處的文意而言，是具誤導性的，則須當作不真實陳述。(由 2004 年第 30 號第 2 條增補)

(3) 在本部中，“股份”(shares) 及“債權證”(debentures) 各詞所具有的涵義，與其用於一間根據本條例成立為法團的公司時所具有的涵義相同。(由 2004 年第 30 號第 2 條修訂)

(由 1972 年第 78 號第 18 條代替)

[比照 1948 c. 38 s. 423 U.K.]

344. (由 1974 年第 12 號第 150 條廢除)

(2) A person shall not be deemed for the purposes of this section to have authorized the issue of a prospectus by reason only of his having given the consent required by section 342B to the inclusion therein of a statement purporting to be made by him as an expert.

(3) Subsection (1) shall not apply—

- (a) to the Commission;
- (b) where the relevant prospectus is authorized by a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance (Cap. 571), to the Commission or the recognized exchange company; or
- (c) where the relevant prospectus is authorized by a recognized exchange controller pursuant to a transfer order made under section 68 of that Ordinance, to the Commission or the recognized exchange controller. (Replaced 5 of 2002 s. 407)

(Added 86 of 1992 s. 16)

### 343. Interpretation of provisions as to prospectuses

(1) Where any document by which any shares in or debentures of a company incorporated outside Hong Kong are offered for sale to the public would, if the company concerned had been a company within the meaning of this Ordinance, have been deemed by virtue of section 41 to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this Part of this Ordinance, a prospectus issued by the company. (Amended 6 of 1984 s. 259)

(2) An offer of shares or debentures for subscription or sale to any person whose ordinary business is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this Part of this Ordinance. (Amended 30 of 1999 s. 31)

(2A) For the purposes of sections 342E and 342F, “untrue statement” (不真實陳述), in relation to a prospectus, includes a material omission from the prospectus. (Added 30 of 2004 s. 2)

(2B) For the purposes of the provisions of this Part, a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included. (Added 30 of 2004 s. 2)

(3) In this Part the expressions “shares” (股份) and “debentures” (債權證) have the same meanings as when used in relation to a company incorporated under this Ordinance. (Amended 30 of 2004 s. 2)

(Replaced 78 of 1972 s. 18)

[cf. 1948 c. 38 s. 423 U.K.]

344. (Repealed 12 of 1974 s. 150)

## 第 XIA 部

## 不活動公司

## 344A. 不活動公司

## (1) 公司可通過一項特別決議——

- (a) 宣布由該項特別決議交付處長之日起或由該項特別決議中所指明的較後日期起，公司將處於不活動狀態；
- (b) 授權公司董事將該項特別決議交付處長；及
- (c) 宣布在公司恢復活動前，公司董事須向處長交付另一份特別決議，宣布公司擬訂立一項有關會計交易。(由 2003 年第 28 號第 108 條代替)

## (2) (由 2003 年第 28 號第 108 條廢除)

(3) 就本條而言，根據第 (1) 款通過的特別決議一經交付，有關公司由特別決議如此交付之日起即當作為不活動公司；如該項決議指明一個該公司開始處於不活動狀態的較後日期，則該公司由該較後日期起即當作為不活動公司。(由 2003 年第 28 號第 108 條修訂)

(4) 根據第 (3) 款當作為不活動公司的公司，獲豁免遵從第 107 至 111、122 至 134、140A 至 141 及 141C 至 141D 條的規定。(由 1999 年第 30 號第 32 條修訂)

(5) 第 (1)(c) 款提述的另一份特別決議一經交付處長，公司即不再根據第 (3) 款當作是不活動的。(由 2003 年第 28 號第 108 條修訂)

(6) 如某公司在介乎其根據第 (3) 款當作已成為不活動公司之日，與第 (1)(c) 款提述的另一份特別決議交付處長之日之間的一段期間內，訂立一項有關會計交易，則——(由 2003 年第 28 號第 108 條修訂)

## PART XIA

## DORMANT COMPANIES

## 344A. Dormant companies

## (1) A company may pass a special resolution—

- (a) declaring that the company will become dormant either as from the date of delivery of the special resolution to the Registrar or as from a later date as is specified in the special resolution;
- (b) authorizing the directors of the company to deliver to the Registrar the special resolution; and
- (c) declaring that prior to the company ceasing to be dormant, the directors of the company shall deliver to the Registrar a further special resolution, declaring that the company intends to enter into a relevant accounting transaction. (Replaced 28 of 2003 s. 108)

## (2) (Repealed 28 of 2003 s. 108)

(3) Upon delivery of the special resolution passed under subsection (1), the company shall be deemed to be a dormant company for the purposes of this section as from the date of such delivery or, if the resolution specifies a later date for commencement of the company becoming dormant, as from that later date. (Amended 28 of 2003 s. 108)

(4) A company which is deemed to be a dormant company under subsection (3) is exempt from complying with the requirements of sections 107 to 111, 122 to 134, 140A to 141 and 141C to 141D. (Amended 30 of 1999 s. 32)

(5) A company shall cease to be deemed to be dormant under subsection (3) upon delivery to the Registrar of the further special resolution referred to in subsection (1)(c). (Amended 28 of 2003 s. 108)

(6) If, during the period between the date on which a company is deemed under subsection (3) to have become a dormant company and the date on which the further special resolution referred to in subsection (1)(c) is delivered to the Registrar, a company enters into a relevant accounting transaction then— (Amended 28 of 2003 s. 108)

- (a) 第 (4) 款所授予的豁免由該項有關會計交易訂立之日起即告停止；及
- (b) 任何知道或應已知道該項有關會計交易的公司股東以及公司全體董事，均須對該公司因該項有關會計交易而引起的任何債項或債務，承擔個人法律責任。
- (7) 在第 (6) 款中，“董事”(director) 就一間公司而言，包括影子董事。(由 2003 年第 28 號第 108 條修訂)
- (8) 本條不適用於——
- (a) 非私人公司的公司；或
- (b) 在附表 16 中指明為本條不適用的公司。(由 1999 年第 30 號第 32 條代替)
- (9) 在本條中——
- (a) 一間公司如在任何一段期間並沒有任何有關會計交易發生，該公司在該段期間即為不活動；
- (b) “有關會計交易”(relevant accounting transaction) 指第 121 條規定須記入公司帳簿的交易(但繳付任何條例規定公司繳付的費用而產生的交易不計在內)。
- (第 XIIA 部由 1993 年第 10 號第 6 條增補)

## 第 XIII 部

## 雜項條文

## 禁止多於 20 名成員的合夥

## 345. 禁止多於 20 名成員的合夥

(1) 由多於 20 人組成的公司、社團或合夥，如其組成目的是經營任何旨在獲取收益或讓其個別成員獲取收益的業務，即不得組成，但如該公司、社團或合夥乃根據本條例註冊為公司，或依據某一條例組成，則不在此限。(由 1984 年第 6 號第 239 條修訂；由 1998 年第 25 號第 2 條修訂)

- (a) the exemption conferred by subsection (4) shall cease as from the date of the relevant accounting transaction; and
- (b) any shareholder of the company who knew or ought to have known about the relevant accounting transaction and all directors of the company shall be personally liable for any debt or liability of the company arising out of the relevant accounting transaction.
- (7) In subsection (6), “director” (董事), in relation to a company, includes a shadow director. (Amended 28 of 2003 s. 108)
- (8) This section does not apply to—
- (a) a company that is not a private company; or
- (b) a company specified in the Sixteenth Schedule as a company to which this section does not apply. (Replaced 30 of 1999 s. 32)
- (9) In this section—
- (a) a company is dormant during any period in which no transaction occurs which is, for the company, a relevant accounting transaction;
- (b) “relevant accounting transaction” (有關會計交易) means a transaction which is required by section 121 to be entered in the company's books of account (disregarding any transaction which arises from the payment of any fee which the company is required to pay by any Ordinance).
- (Part XIIA added 10 of 1993 s. 6)

## PART XIII

## MISCELLANEOUS

## Prohibition of Partnerships with more than Twenty Members

## 345. Prohibition of partnerships with more than 20 members

(1) No company, association, or partnership consisting of more than 20 persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Ordinance, or is formed in pursuance of some other Ordinance. (Amended 6 of 1984 s. 239; 25 of 1998 s. 2)

## (2) 本條不適用於下述的合夥——

- (a) 以經營律師所從事的業務為目的，並且由每名均有資格根據《執業律師條例》(第 159 章) 以律師身分行事的人所組成者；
- (b) 以經營會計師事務所的業務為目的，而該事務所是根據《專業會計師條例》(第 50 章) 註冊的；(由 2000 年第 46 號第 38 條代替。由 2004 年第 23 號第 56 條修訂)
- (c) (由 2002 年第 5 號第 407 條廢除)
- (d) 以從事行政長官會同行政會議訂立的規例所指明的專業、職業或業務為目的，並且由符合該等規例所訂明的條件的人所組成者。(由 1978 年第 51 號第 8 條增補。由 1999 年第 23 號第 3 條修訂)

(3) 就本條而言，一個法人團體須視為單一人，而任何非屬法團的團體的人數須視為與組成該團體的人數相同。(由 1978 年第 51 號第 8 條增補)

[比照 1929 c. 23 s. 357 U.K.]

## 與文件及處置文件有關的條文

## 346. 交付處長的文件須符合某些規定

## (1) 除本條例另有規定外，每份根據本條例交付處長的文件——

- (a) 須以中文或英文撰寫，或須隨附一份按訂明方式核證為該文件的正確譯本的中文或英文譯本；
- (b) 須能以可閱形式重現；及
- (c) 須符合處長為下述目的而指明的其他規定：確保同類文件符合標準格式，並使處長能夠製作該文件的副本或影像紀錄及製作和備存該文件所載的資料的紀錄。(由 2003 年第 28 號第 109 條代替)

(1A) 處長可為第 (1)(c) 款的目的，就不同文件或不同類別的文件指明不同的規定。(由 2003 年第 28 號第 109 條增補)

## (2) This section shall not apply to a partnership formed—

- (a) for the purpose of carrying on practice as solicitors and consisting of persons each of whom is a solicitor qualified to act as such under the Legal Practitioners Ordinance (Cap. 159);
- (b) for the purpose of carrying on practice as a firm of certified public accountants and such firm is registered under the Professional Accountants Ordinance (Cap. 50); (Replaced 46 of 2000 s. 38. Amended 23 of 2004 s. 56)
- (c) (Repealed 5 of 2002 s. 407)
- (d) for the purpose of carrying on a profession, vocation or business specified in regulations made by the Chief Executive in Council and consisting of persons who satisfy any conditions imposed by those regulations. (Added 51 of 1978 s. 8. Amended 23 of 1999 s. 3)

(3) For the purposes of this section, a body corporate shall be treated as a single person and any body unincorporate shall be treated as being the same number of persons as those who comprise it. (Added 51 of 1978 s. 8)

[cf. 1929 c. 23 s. 357 U.K.]

## Provisions relating to Documents and Disposal thereof

## 346. Documents delivered to Registrar to conform to certain requirements

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

- (a) be in the English or Chinese language or be accompanied by a translation of the document into English or Chinese, being a translation certified in the prescribed manner to be a correct translation;
- (b) be capable of being reproduced in a legible form; and
- (c) comply with such other requirements as the Registrar may specify for the purpose of securing that documents of the same kind are of a standard form and of enabling him to make copies or image records of the document and to make and keep records of the information contained in it. (Replaced 28 of 2003 s. 109)

(1A) For the purpose of subsection (1)(c), the Registrar may specify different requirements for different documents or classes of documents. (Added 28 of 2003 s. 109)