

**《公司條例草案》委員會  
《公司條例草案》第 11 部—董事的公平處事  
委員會審議階段修正案**

下表載述政府當局就《公司條例草案》第 11 部(“董事的公平處事”)(第 475 至 536 條)擬議提出的委員會審議階段修正案。政府當局在擬訂這些修正案時，考慮了議員、各團體／代表及立法會法律顧問的意見。該等修正案的標示文本按數序排列，現載於附件以供參閱。在附件內的中文標示文本，只載有僅適用於中文版的修正案。有關附表 10(“過渡性條文及保留條文”)的修正案，我們稍後會一次過向法案委員會匯報。

本列表所採用的縮寫如下：

法案委員會：《公司條例草案》委員會

草案：《公司條例草案》

《公司條例》：《公司條例》(第 32 章)

修正案：委員會審議階段修正案

處長：公司註冊處處長

| 項目               | 有關事宜／<br>條文                 | 擬議的<br>委員會審議階段修正案               | 備註  |
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| <b>草案各部的一般修訂</b> |                             |                                 |   |
| 1                | 把向處長交付文件的時限由“14 日”修訂為“15 日” | 如須在“14 日”內向處長交付文件，時限應修訂為“15 日”。 | <ul style="list-style-type: none"> <li>• 部分法案委員會委員關注到，公司向處長交付某些文件作登記或通知之用，14 日的期限可能並不足夠，因為就一些文件而言，《公司條例》所訂的交付期限為 15 日。</li> <li>• 經檢討後，政府當局同意把草案相關條文所述的 14 日期限劃一</li> </ul> |

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|                    |                  |  | <p>延長至 15 日。請參閱立法會 CB(1)357/11-12(01)號文件“政府當局對委員在二零一一年十一月四日及十一日會議上提出有關第 4 及 5 部的事宜所作的回應”第 31 至 32 段。</p> <ul style="list-style-type: none"> <li>就第 11 部而言，我們建議據此修訂第 533(5)條。</li> </ul>  |
| <b>第 11 部的其他修訂</b> |                  |  |  |
| 2                  | 第 475 條<br>釋義    | <p>(I) 將“child (子女)”的定義擴闊至涵蓋領養子女，並收納“adopted (領養)”的定義。</p> <p>(II) 加入 “cohabitation relationship” 的定義，即 “means a relationship between 2 persons (whether of the same sex or of the opposite sex) who live together as a couple in an intimate relationship”。</p> | <ul style="list-style-type: none"> <li>這項草擬方式的修改旨在精簡條文。其他條文對領養子女的提述可予刪除。</li> <li>根據第 477(1)(b)條，與公司的董事有關連的實體涵蓋董事的家庭成員以外，而與該董事“如同在持久家庭關係中的情侶般生活”的人。為回應委員的提議，我們建議參考《家庭及同居關係暴力條例》(第 189 章)內的表述，對草案的表述作出修改。請參閱立法會 CB(1)1490/11-12(01)號文件“政府當局就二零一一年十二月二及九日會議採取關於《公司條例草案》第 11 部的跟進行動”第 2 及 3 段。</li> </ul> |
| 3                  | 第 477 條<br>有關連實體 | (I) 在第(1)(b)款以“a person who is in a cohabitation relationship with the director or former director”取代 “any other person (whether of a different sex or the same sex) with whom the offeror or  | <ul style="list-style-type: none"> <li>見上列第 2(II)項。</li> </ul>   |

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|    |   | member lives as a couple in an enduring family relationship”。 |  |
|    |   | (II) 在第(1)(c)、(1)(f)、(2)(a)及(2)(b)款刪除對(未成年)領養子女的提述。           | • 見上列第 2(I)項。                                    |
| 4  | 第 478 條<br>董事或前董事<br>的家庭成員                    | 刪除對領養子女的提述。   | • 見上列第 2(I)項。                                    |
| 5  | 第 479 條<br>與法人團體有<br>聯繫或控制法<br>人團體的董事<br>或前董事 | (I) 在標題中刪除“， or controlling, ”。                               | • 受董事控制的法人團體會在新的第 482A 條處理。第 479 條處理與董事有聯繫的法人團體。 |
|    |   | (II) 合併第(2)及(3)款。   | • 這項草擬方式的修改旨在精簡條文。                               |
|    |   | (III) 在第(4)(b)款刪除對未成年領養子女的提述。                                 | • 見上列第 2(I)項。                                    |
|    |   | (IV) 在中文版本第(1)(b)款以“過半數”取代“大部分”。                              | • 提出這項草擬方式的修改旨在使條文用詞與第 2 及 456 條一致。              |
| 6  | 第 481 條<br>適用於交易或<br>安排，而不論                   | 在中文版本中以“重要”取代“宏旨”。  | • 這項草擬方式的修改是因應立法會法律顧問的意見而提出的。                    |

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|    | 其管限法律為何   |  |   |
| 7  | 第 482 條<br>釋義                                     | 修訂中文版本的第(2)款如下 –<br>“(2)就本分部而言，某法人團體並不僅因其任何附屬公司的一眾董事或大部分董事慣於按照其指示或指令行事，而被視為該附屬公司的幕後董事縱使某法人團體的附屬公司的一眾董事或過半數董事，慣於按照該團體的指示或指令行事，該團體不會僅因此而視為其附屬公司的幕後董事。” | <ul style="list-style-type: none"> <li>提出這項草擬方式的修改旨在使條文用詞與第 456(6)條一致。</li> </ul>   |
| 8  | 第 482A 條<br>Body corporate controlled by director | 加入新條文。   | <ul style="list-style-type: none"> <li>為回應委員的提議，我們建議將第 491 條對不得向公司董事借出貸款等的禁止擴闊至涵蓋受董事控制的法人團體。請參閱立法會 CB(1)1490/11-12(01)號文件“政府當局就二零一一年十二月二及九日會議採取關於《公司條例草案》第 11 部的跟進行動”第 8 段。這新條文就受董事控制的法人團體作出定義。各相關條文會加入對受董事控制的法人團體的提述，以落實有關建議。</li> </ul> |
| 9  | 第 485 條<br>有交易或安排為之訂立的人                           | 加入對受董事控制的法人團體的提述。  | <ul style="list-style-type: none"> <li>見上列第 8 項。</li> </ul>   |
| 10 | 第 486 條   | (I) 在第(1)款“a company”後加入   | <ul style="list-style-type: none"> <li>提出這項技術修訂是為了釐清我們的原意。除訂立有關交易或安排</li> </ul>   |

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|    | 准               | <p>“that enters into a transaction or arrangement, or the members of a holding company of the company,”，並微調第(1)(a)款的草擬方式。</p> | <p>的公司外，我們的原意是條文亦會涵蓋其控權公司的決議(如有關公司是為控權公司的董事訂立有關交易或安排)。</p>   |
|    |                 | <p>(II) 在第(3)款以“omission”取代“failure”。</p>   | <ul style="list-style-type: none"> <li>這項草擬方式的修改旨在使草案條文的用詞一致。</li> </ul>                                 |
|    |                 | <p>(III) 在第(5)(a)和(d)及(7)款加入對受董事控制的法人團體的提述。</p>   | <ul style="list-style-type: none"> <li>見上列第8項。須注意的是，第(5)(a)(i)款對類似貸款的提述會被刪除，因其不適用於受董事控制的法人團體。</li> </ul> |
|    |                 | <p>(IV) 修訂中文版本的第(4)及(5)款如下 –<br/>“(如屬須為違反第...條的目的而通過的決議)...”</p>  | <ul style="list-style-type: none"> <li>提出這項草擬方式的修改旨在使條文的意思更為清晰。</li> </ul>                               |
|    |                 | <p>(V) 修訂中文版本的第(4)(c)(i)款如下 –<br/>“...批准<u>關乎有關安排所關乎</u>的交易...”</p>   | <ul style="list-style-type: none"> <li>提出這項草擬方式的修改旨在使條文的意思更為清晰。</li> </ul>                               |
| 11 | 第487條<br>交易或安排等 | <p>在第(1)(b)及(3)(a)款加入對受董事控制的法人團體的提述。</p>  | <ul style="list-style-type: none"> <li>見上列第8項。</li> </ul>  |

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|    | 的價值                    |  |  |
| 12 | 第 488 條<br>相關交易或安<br>排 | 將條文移至第 496 條。  | <ul style="list-style-type: none"> <li>這屬草擬方式的修改。這條文只適用於第 496 條，因此將其移至第 496 條對讀者而言較為方便。</li> </ul>   |
| 13 | 第 489 條<br>風險承擔總額      | (I) 在第 (1)(a) 款以 “a company that is not a specified company” 取代 “a private company or a company limited by guarantee”。 | <ul style="list-style-type: none"> <li>這項技術修訂旨在釐清我們的原意。私人公司或擔保有限公司如屬公眾公司的附屬公司，即屬指明公司，會被第 (1)(b) 款涵蓋。第 (1)(a) 款只涵蓋並非指明公司的公司。</li> </ul>   |
|    |                        | (II) 在第 (2)(b)、(2)(c)、(3)(b)、(3)(c)、(4)(a)、(4)(b)、(5)(a)、(5)(b)、(6)(a) 及 (6)(c) 款加入對受董事控制的法人團體的提述。                     | <ul style="list-style-type: none"> <li>見上列第 8 項。相應地，有關計算風險承擔總額的條文亦應涵蓋受董事控制的法人團體。</li> </ul>  |
|    |                        | (III) 將第 (3)(b)、(3)(c)、(5)(a)、(5)(b)、(6)(c) 及 (6)(d) 款的適用範圍擴闊至涵蓋與公司的控權公司的董事有關連的實體。                                     | <ul style="list-style-type: none"> <li>為回應委員的提議，我們建議將不得向指明公司的控權公司的董事借出貸款、類似貸款等的禁止擴闊至涵蓋與該等董事有關連的實體。請參閱立法會 CB(1)1490/11-12(01) 號文件“政府當局就二零一一年十二月二及九日會議採取關於《公司條例草案》第 11 部的跟進行動”第 8 段。相應地，有關計算風險承擔總額的條文亦應涵蓋與該等董事有關連的實體。</li> </ul> |
|    |                        | (IV) 在第 (6)(a) 款以 “493(1)” 取代 “493”，並在第 (6)(c) 款加入對  | <ul style="list-style-type: none"> <li>這些草擬方式的修改是因應對第 493 條提出的修正案而提出的。</li> </ul>  |

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|    |   | 第 493(2)條的提述。  |  |
| 14 | 第 491 條<br>公司不得向董事借出貸款等                 | 在標題、第(1)(a)、(1)(b)、(2)(a)及(2)(b)款加入對受董事控制的法人團體的提述。             | • 見上列第 8 項。  |
| 15 | 第 493 條<br>指明公司不得向有關連實體借出貸款或類似貸款等       | (I) 加入第(2)款以將不得向指明公司的控權公司的董事借出貸款、類似貸款等的禁止擴闊至涵蓋與該等董事有關連的實體。     | • 為回應委員的提議，我們建議將不得向指明公司的控權公司的董事借出貸款、類似貸款等的禁止擴闊至涵蓋與該等董事有關連的實體。請參閱立法會 CB(1)1490/11-12(01)號文件“政府當局就二零一一年十二月二及九日會議採取關於《公司條例草案》第 11 部的跟進行動”第 8 段。 |
|    |   | (II) 加入第(3)款以訂明有關訂明批准的規定的例外情況。                                 | • 提出這項修正案是為了使條文與其他相關條文(第 491(3)、492(3)、494(3)及 495(3))條一致。   |
| 16 | 第 494 條<br>指明公司不得以債權人身分為董事或有關連實體訂立信貸交易等 | 在第(2)款中加入對與公司的控權公司的董事有關連實體的提述。                                 | • 見上列第 15(I)項。   |
| 17 | 第 495 條<br>公司不得參與                       | (I) 在第(1)(a)、(1)(b)、(2)(a)、(2)(b)、(4)(a)及(4)(b)款加入對受公司董事或公司的控權 | • 見上列第 8 項。  |

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|  | 本意是規避第 491 至 494 條的安排                           | 公司的董事控制的法人團體的提述。  |  |
| (II) 在第(2)(a)、(2)(b)及(4)(b)款加入對與公司的控權公司的董事有關連實體的提述。        |   | • 見上列第 15(I)項。  |  |
| (III) 在第(4)(a)款以“493(1)”取代“493”，並在第(4)(b)款加入對第 493(2)條的提述。 |   | • 這是相應建議對第 493 條作出的修訂而提出的。見上列第 15(I)項。                        |  |
| 18   | 第 496 條<br>例外情況：價值不超過總資產或已催繳股本 5% 的貸款、類似貸款及信貸交易 | (I) 將對總資產的提述改為淨資產。  | • 委員關注若財務限額是以公司總資產計算，有關財務限額會過高，特別是對負債比率高的公司而言尤甚。這些修正案是為回應委員的關注而提出的。請參閱立法會 CB(1)1490/11-12(01)號文件“政府當局就二零一一年十二月二及九日會議採取關於《公司條例草案》第 11 部的跟進行動”第 12 及 13 段。 |
| (II) 加入第(3)及(4)款。  | • 這屬草擬方式的修改。這些條款由第 488 條移至第 496 條。              |   |  |
| 19   | 第 497 條<br>例外情況：公司業務支出                          | 將條文適用範圍擴闊至受公司董事或公司的控權公司的董事控制的法人團體，及與公司的控權公司的董事有關連的實體；並微調草擬方式。 | • 因應禁止的適用範圍被擴闊(見上列第 8 及 15(I)項)，有關的例外情況的適用範圍亦應擴闊。  |
| 20   | 第 500 條   | (I) 如公司的控權公司的董事及  | • 提出這些修正案是為回應委員的關注。請參閱立法會  |



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|    | 例外情況：居所貸款                 | 與其有關連的實體並非公司僱員，會被剔除於例外情況的適用範圍之外。  | CB(1)1490/11-12(01)號文件“政府當局就二零一一年十二月二及九日會議採取關於《公司條例草案》第 11 部的跟進行動”第 18 及 19 段。  |
| 21 | 第 501 條<br>例外情況：將貨物及土地出租等 | (I) 將條文適用範圍擴闊至受公司董事或公司的控權公司的董事控制的法人團體，及與公司的控權公司的董事有關連的實體。   | • 見上列第 18(I)項。  |
|    |                           | (II) 將對總資產的提述改為淨資產。   | • 見上列第 19 項。  |
| 22 | 第 503 條<br>例外情況：集團內部交易    | 加入對第 491 及 492 條的提述。  | • 提出這修正案旨在釐清我們的原意。我們的原意是重述《公司條例》第 157HA(1)條，該條並不將有關集團內部交易的例外情況的適用範圍限於禁止涉及有關連實體的貸款及類似交易的條文。有關集團內部交易的例外情況亦應適用於第 491 及 492 條的禁止。 |
| 23 | 第 504 條<br>違反的民事後果        | (I) 在第(1)(c)款以“other than the director, controlled body corporate, or connected entity for whom the transaction or arrangement was entered into”取代“who is not a party to the transaction or | • 這是因應團體／代表的意見而提出的技術修訂。原文並不足以涵蓋所有不知情者，因其只適用於“並非該項交易...其中一方”的人，而借款銀行不會屬有關用詞的涵蓋範圍之內。  |

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|----|-------------------------|---|--|
|    |                         | arrangement”。   |  |
|    |                         | (II) 在第(3)及(4)款中加入對受公司董事或公司的控權公司的董事控制的法人團體，及與公司的控權公司的董事有關連的實體的提述。 | • 這些修正案是因應禁止的適用範圍被擴闊(見上列第 8 及 15(I)項)而提出的。   |
|    |                         | (III) 在第(4)(b)款加入對第 491 條的提述。                                     | • 因應第 491 條下的禁止的適用範圍被擴闊(見上列第 14 項)，第(4)(b)款的抗辯亦應有對第 491 條的提述。                                      |
| 24 | 第 505 條<br>確認構成違反的交易或安排 | 在第(5)款中以“Subsections (2), (3) and (4) do”取代“This section does”。   | • 這項技術修訂旨在釐清我們的原意。請參閱立法會 CB(1)1490/11-12(01)號文件“政府當局就二零一一年十二月二及九日會議採取關於《公司條例草案》第 11 部的跟進行動”第 21 段。 |
| 25 | 第 506 條<br>第 505 條的補充條文 | (II) 在第(2)款以“omission”取代“failure”。                                | • 見上列第 10(II)項。  |
|    |                         | (II) 在第(4)(a)、(4)(d)及(6)(a)款加入受董事控制的法人團體的提述。                      | • 這些修正案是因應禁止的適用範圍被擴闊(見上列第 8 項)而提出的。須注意的是，第(4)(a)(i)款對類似貸款的提述會被刪除，因其不適用於受董事控制的法人團體。                 |
| 26 | 第 507 條<br>釋義           | 修訂中文版本的第(5)款如下 –<br>“(5)就本分部而言，某法人團體並不僅因其任何附屬公司的一眾董事或大部分董事慣於按照其指示 | • 見上列第 7 項。  |

| 項目 | 有關事宜／<br>條文  | 擬議的<br>委員會審議階段修正案   | 備註   |
|----|--|---|--|
|    |  | 或指令行事，而被視為該附屬公司的幕後董事縱使某法人團體的附屬公司的一眾董事或過半數董事，慣於按照該團體的指示或指令行事，該團體不會僅因此而視為其附屬公司的幕後董事。”                   |  |
| 27 | 第 509 條<br><br>成員或受影響<br>成員的訂明批准                         | (I) 在第(3)款以“omission”取代“failure”。<br><br>(II) 修訂中文版本的第(4)及(5)款如下 –<br><br>“(如屬須為違反第...條的目的而通過的決議)...” | <ul style="list-style-type: none"> <li>• 見上列第 10(II)項。</li> <li>• 見上列第 10(IV)項。</li> </ul> |
| 28 | 第 513 條<br><br>任何人不得在與轉讓公司業務或財產有關連的情況下，就失去職位而向董事或前董事作出付款 | 在中文版本的第(3)(a)款的“業務”後加入“或財產”。  | <ul style="list-style-type: none"> <li>• 這項草擬方式的修改是為了使條文的中文版本與英文版本一致。</li> </ul>           |
| 29 | 第 515 條  | 在中文版本的第(3)(b)款以“業務”   | <ul style="list-style-type: none"> <li>• 這項草擬方式的修改是為了使條文的用詞與第 513 條的用詞一致。</li> </ul>       |

| 項目 | 有關事宜／<br>條文          | 擬議的<br>委員會審議階段修正案   | 備註   |
|----|----------------------|---|--|
|    | 例外情況：付款以履行法律義務等      | 取代“企業”。   |  |
| 30 | 第 516 條<br>例外情況：小額付款 | 將財務限額提高至 100,000 元。   | <ul style="list-style-type: none"> <li>提出這項修正案是為了回應委員的關注。請參閱立法會 CB(1)1490/11-12(01)號文件“政府當局就二零一一年十二月二及九日會議採取關於《公司條例草案》第 11 部的跟進行動”第 24 段。</li> </ul> |
| 31 | 第 521 條<br>釋義        | <p>修訂中文版本的第(2)款如下 -</p> <p>“(2)就本分部而言，某法人團體並不僅因其任何附屬公司的一眾董事或大部分董事慣於按照其指示或指令行事，而被視為該附屬公司的幕後董事縱使某法人團體的附屬公司的一眾董事或過半數董事，慣於按照該團體的指示或指令行事，該團體不會僅因此而視為其附屬公司的幕後董事。”</p> | <ul style="list-style-type: none"> <li>見上列第 7 項。</li> </ul>  |
| 32 | 第 522 條<br>服務合約      | 在中文版本的第(1)款以“承諾親自”取代“親自承諾”。   | <ul style="list-style-type: none"> <li>這項草擬方式上的修訂旨在釐清我們的原意。“親自”是就履行服務而言，而非作出承諾。</li> </ul>   |
| 33 | 第 523 條<br>成員的訂明批    | 在第 (3) 款以“omission”取代“failure”。   | <ul style="list-style-type: none"> <li>見上列第 10(II)項。</li> </ul>  |

| 項目 | 有關事宜／<br>條文                         | 擬議的<br>委員會審議階段修正案   | 備註   |
|----|-------------------------------------|---|--|
|    | 准                                   |   |  |
| 34 | 第 529 條<br>向董事作出的<br>申報：程序          | (I) 在第 (4)(a) 及 (4)(b) 款 刪 除<br>“effective”。  | <ul style="list-style-type: none"> <li>這項技術修訂是因應委員的提議而提出的。一般通知的有效性受第 529(6)條管限。請參閱立法會 CB(1)1490/11-12(01)號文件“政府當局就二零一一年十二月二及九日會議採取關於《公司條例草案》第 11 部的跟進行動”第 27 段。</li> </ul> |
|    |                                     | (II) 加入第(6)(c)款。  | <ul style="list-style-type: none"> <li>這項技術修訂是因應委員的提議而提出的。</li> </ul>  |
| 35 | 第 533 條<br>披露管理合約                   | 刪除第(6)款中對第(2)款的提述。  | <ul style="list-style-type: none"> <li>這屬技術修訂。違反第 533(2)條的罪行會移至第 380 條，與其他有關董事報告的罪行的處理方法一致。</li> </ul>   |
| 36 | 第 535 條<br>與兼具董事身<br>分的唯一成員<br>訂立合約 | (I) 在第(2)款中訂明 15 日的期<br>限。  | <ul style="list-style-type: none"> <li>這項修正案是因應委員的提議而提出的。請參閱立法會 CB(1)1490/11-12(01)號文件“政府當局就二零一一年十二月二及九日會議採取關於《公司條例草案》第 11 部的跟進行動”第 31 段。委員提議有關期限應為 15 日。</li> </ul>       |
|    |                                     | (II) 修訂中文版本第(7)款如下 –<br><br>“(7) 就本分部而言，某法<br>人團體並不僅因其任何附屬<br>公司的一眾董事或大部分董<br>事慣於按照其指示或指令行<br>事，而被視為該附屬公司的幕<br>後董事縱使某法人團體的附<br>屬公司的一眾董事或過半數 | <ul style="list-style-type: none"> <li>見上列第 7 項。</li> </ul>  |

| 項目 | 有關事宜／<br>條文 | 擬議的<br>委員會審議階段修正案                          | 備註 |
|----|-------------|--|----|
|    |             | 董事，慣於按照該團體的指示或指令行事，該團體不會僅因此而視為其附屬公司的幕後董事。” |    |

財經事務及庫務局  
 公司註冊處  
 二零一二年五月十日

**475. Interpretation**

(1) In this Division—

~~*adopted* (領養) means adopted in any manner recognized by the law of Hong Kong;~~<sup>1</sup>

*child* (子女) includes a step-child, ~~and~~ an illegitimate child and a child adopted in any manner recognized by the law of Hong Kong<sup>1</sup>;

*cohabitation relationship* ( ) means a relationship between 2 persons (whether of the same sex or of the opposite sex) who live together as a couple in an intimate relationship;<sup>2</sup>

*director* (董事) includes a shadow director.

(2) In this Division, a reference to a minor child ~~or minor adopted child~~<sup>1</sup> is a reference to a child ~~or adopted child~~<sup>1</sup> who is under 18 years of age.

<sup>1</sup> Item 2(I) / 第 2(I)項

<sup>2</sup> Item 2(II) / 第 2(II)項

**477. Connected entity**

- (1) In this Part, a reference to an entity connected with a director or former director of a company is a reference to—
- (a) a member of the director's or former director's family;
  - (b) ~~any other person (whether of a different sex or the same sex) with whom the director or former director lives as a couple in an enduring family relationship~~ a person who is in a cohabitation relationship with the director or former director<sup>3</sup>;
  - (c) a minor child ~~or minor adopted child~~<sup>4</sup> of a person falling within paragraph (b) who—
    - (i) is not a child ~~or adopted child~~<sup>4</sup> of the director or former director; and
    - (ii) lives with the director or former director;
  - (d) a body corporate with which the director or former director is associated;
  - (e) a person acting in the capacity as trustee of a specified trust, other than a trust for the purpose of an employee share scheme or a pension scheme; or
  - (f) a person acting in the capacity as partner of—
    - (i) the director or former director;
    - (ii) the spouse of the director or former director;
    - (iii) a minor child ~~or minor adopted child~~<sup>4</sup> of the director or former director; or
    - (iv) another person who, by virtue of paragraph (e), is an entity connected with the director or former director.
- (2) For the purposes of subsection (1)(e), a trust is a specified trust—
- (a) if the beneficiaries of the trust include—
    - (i) the director or former director;
    - (ii) the spouse of the director or former director; or
    - (iii) a minor child ~~or minor adopted child~~<sup>4</sup> of the director or former director; or
  - (b) if—
    - (i) the terms of the trust give a power to the trustees that may be exercised for the benefit of—
      - (A) the director or former director;
      - (B) the spouse of the director or former director; or
      - (C) a minor child ~~or minor adopted child~~<sup>4</sup> of the director or former director; and
    - (ii) the director or former director knows that the director or former director, or the spouse, child ~~or adopted child~~<sup>4</sup>, is an object of the power.
- (3) In this section—
- employee share scheme** (僱員參股計劃) means a scheme for encouraging or facilitating the holding of shares in a company by or for the benefit of—
- (a) persons employed or formerly employed in good faith by that company or another company in the same group of companies; or
  - (b) the spouses, widows, widowers or minor children of persons referred to in paragraph (a);
- partner** (合夥人), in relation to another person, means a person who is a partner of that other person in a partnership within the meaning of the Partnership Ordinance (Cap. 38).

<sup>3</sup> Item 3(I) / 第 3(I)項

<sup>4</sup> Item 3(II) / 第 3(II)項



**478. Family member of director or former director**

In this Part, a reference to a member of a director's or former director's family is a reference to—

- (a) the spouse of the director or former director;
- (b) a child~~-or adopted child~~<sup>5</sup> of the director or former director; or
- (c) a parent of the director or former director.

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<sup>5</sup> Item 4 / 第 4 項

**479. Director or former director associated with ~~5~~<sup>6</sup> or controlling ~~6~~<sup>6</sup> body corporate**

- (1) For the purposes of this Part, a director or former director is associated with a body corporate if—
- (a) the director or former director, or any one or more of the entities specified in subsection (4), or the director or former director together with any one or more of those specified entities, are entitled to exercise, or control the exercise of, more than 30% of the voting power at any general meeting of that body corporate; or
  - (b) the directors, or a majority of the directors, of that body corporate are accustomed to act in accordance with the directions or instructions of—
    - (i) the director or former director; or
    - (ii) an entity connected with the director or former director.
- (2) In this section, a reference to voting power the exercise of which is controlled by a director or former director, or by an entity specified in subsection (4), includes voting power the exercise of which is controlled by another body corporate if the director or former director, or any one or more of the specified entities, or the director or former director together with any one or more of the specified entities, are entitled to exercise, or control the exercise of, more than 50% of the voting power at any general meeting of that other body corporate.~~controlled by the director or former director or by the specified entity.~~
- ~~(3) For the purposes of this section, a director or former director, or an entity specified in subsection (4), controls a body corporate if the director or former director, or any one or more of the specified entities, or the director or former director together with any one or more of the specified entities, are entitled to exercise, or control the exercise of, more than 50% of the voting power at any general meeting of that body corporate.<sup>7</sup>~~
- (4) The entity specified for the purposes of subsections (1) and; (2) ~~and (3)~~<sup>7</sup> is—
- (a) the spouse of the director or former director;
  - (b) a minor child ~~or minor adopted child~~<sup>8</sup> of the director or former director; or
  - (c) a person who, by virtue of section 477(1)(e), is an entity connected with the director or former director.

<sup>6</sup> Item 5(I) / 第 5(I)項

<sup>7</sup> Item 5(II) / 第 5(II)項

<sup>8</sup> Item 5(III) / 第 5(III)項

479. **與法人團體有聯繫或控制法人團體的董事或前董事** (Note: CSAs to this provision in the Chinese text do not include the CSA(s) in the English text. / 這條條文中文本的修正案並不包括英文本中的修正案。)

- (1) 就本部而言，如董事或前董事符合以下說明，即屬與法人團體有聯繫 —
  - (a) 該董事或前董事，或其中一個或多於一個第(4)款指明的實體，或該董事或前董事連同其中一個或多於一個該等實體，在該法人團體的任何成員大會上，有權行使多於 30% 表決權，或有權控制多於 30% 表決權的行使；或
  - (b) 該法人團體的一眾董事或大部分過半數<sup>9</sup>董事慣於按照以下的人的指示或指令行事 —
    - (i) 該董事或前董事；或
    - (ii) 與該董事或前董事有關連的實體。
- (2) 在本條中，提述受某董事或前董事或第(4)款指明的實體所控制行使的表決權，包括受該董事或前董事或受該實體所控制的法人團體控制行使的表決權。
- (3) 就本條而言，如某董事或前董事，或其中一個或多於一個第(4)款指明的實體，或該董事或前董事連同其中一個或多於一個該等實體，在某法人團體的任何成員大會上，有權行使多於 50% 表決權，或有權控制多於 50% 表決權的行使，則該董事、前董事或該等實體，即屬控制該法人團體。
- (4) 為施行第(1)、(2)及(3)款而指明的實體為 —
  - (a) 有關董事或前董事的配偶；
  - (b) 該董事或前董事的未成年子女或未成年領養子女；或
  - (c) 憑藉第 477(1)(e)條而屬與該董事或前董事有關連的實體的人。

<sup>9</sup> Item 5(IV) / 第 5(IV)項

**481. 適用於交易或安排，而不論其管限法律為何**

為施行本部，管限交易或安排的法律(除本條例所訂定外)是否香港法律無關宏旨<sup>10</sup>。

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<sup>10</sup> Item 6 / 第 6 項

482. 釋義

(1) 在本分部中 —

**土地** (land) 包括任何性質或種類的土地、建築物、宅院及物業單位的產業權或權益；

**服務** (services) 指貨物或土地以外的任何東西；

**指明公司** (specified company) 指 —

(a) 公眾公司；或

(b) 屬某公眾公司的附屬公司的私人公司或擔保有限公司；

**董事** (director) 包括幕後董事；

**擔保** (guarantee) 包括彌償。

(2) 就本分部而言，~~某法人團體並不僅因其任何附屬公司的一眾董事或大部分董事慣於按照其指示或指令行事，而被視為該附屬公司的幕後董事。縱使某法人團體的附屬公司的一眾董事或過半數董事，慣於按照該團體的指示或指令行事，該團體不會僅因此而視為其附屬公司的幕後董事。~~<sup>11</sup>

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<sup>11</sup> Item 7 / 第 7 項

**482A. Body corporate controlled by director**

(1) For the purposes of this Division, a body corporate is controlled by a director if—

(a) the director is entitled to exercise, or control the exercise of, more than 50% of the voting power at any general meeting of that body corporate; or

(b) the directors, or a majority of the directors, of that body corporate are accustomed to act in accordance with the directions or instructions of the director.

(2) In subsection (1), a reference to voting power the exercise of which is controlled by a director includes voting power the exercise of which is controlled by another body corporate if the director is entitled to exercise, or control the exercise of, more than 50% of the voting power at any general meeting of that other body corporate.<sup>12</sup>

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<sup>12</sup> Item 8 / 第 8 項

**485. Person for whom transaction or arrangement entered into**

- (1) In this Division, a reference to a director, a body corporate controlled by a director,<sup>13</sup> or an entity connected with a director, for whom a transaction is entered into is—
- (a) in the case of a loan or quasi-loan, or a guarantee or security in connection with a loan or quasi-loan, a reference to the director, controlled body corporate<sup>13</sup> or connected entity to whom the loan or quasi-loan is made; or
  - (b) in the case of a credit transaction, or a guarantee or security in connection with a credit transaction, a reference to the director or connected entity to whom goods, land or services are supplied, sold, leased, hired or otherwise disposed of under the credit transaction.
- (2) For the purposes of this Division, an arrangement is entered into for a director, a body corporate controlled by a director,<sup>13</sup> or an entity connected with a director if—
- (a) in the case of an arrangement mentioned in section 495(1)(a) or (2)(a), a company takes part in the arrangement under which another person enters into a transaction with the director, controlled body corporate<sup>13</sup> or connected entity; or
  - (b) in the case of an arrangement mentioned in section 495(1)(b) or (2)(b), a company enters into the arrangement in relation to any rights, obligations or liabilities under a transaction entered into by another person with the director, controlled body corporate<sup>13</sup> or connected entity.

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<sup>13</sup> Item 9 / 第 9 項

**486. Prescribed approval of members**

- (1) In this Division, a reference to the prescribed approval of the members of a company that enters into a transaction or arrangement, or the members of a holding company of the company,<sup>14</sup> is a reference to an approval obtained by a resolution of those members—
- (a) that is passed before ~~the company enters into~~ the transaction or arrangement is entered into<sup>14</sup>; and
- (b) in respect of which the requirements specified in subsection (2) are met.
- (2) The requirements specified for the purposes of subsection (1)(b) are—
- (a) that, in the case of a written resolution, a memorandum setting out the matters specified in subsection (4) is sent to every member at or before the time at which the proposed resolution is sent to the member; or
- (b) that, in the case of a resolution passed at a general meeting—
- (i) a memorandum setting out the matters specified in subsection (4) is sent to every member together with the notice convening the meeting; and
- (ii) if the company is a specified company, the resolution is passed after disregarding every vote in favour of the resolution by a member specified in subsection (5).
- (3) Subject to any provision of the company's articles, any accidental omission failure<sup>15</sup> to send the memorandum to a member is to be disregarded for the purpose of determining whether the requirement specified in subsection (2)(a) or (b)(i) has been met.
- (4) The matters specified for the purposes of subsection (2)(a) and (b)(i) are—
- (a) in the case of a resolution for the purposes of section 491, 492 or 493—
- (i) the nature of the transaction to be approved by the resolution;
- (ii) the amount of the loan or quasi-loan;
- (iii) the purpose for which the loan or quasi-loan is required; and
- (iv) the extent of the company's liability under any transaction connected with the loan or quasi-loan;
- (b) in the case of a resolution for the purposes of section 494—
- (i) the nature of the transaction to be approved by the resolution;
- (ii) the amount and value of the credit transaction;
- (iii) the purpose for which the goods, land or services supplied, sold, leased, hired or otherwise disposed of under the credit transaction are required; and
- (iv) the extent of the company's liability under any transaction connected with the credit transaction; or
- (c) in the case of a resolution for the purposes of section 495—
- (i) the matters that would have to be disclosed if the company were seeking approval of the transaction to which the arrangement relates;
- (ii) the nature of the arrangement to be approved by the resolution; and
- (iii) the extent of the company's liability under the arrangement.
- (5) The member specified for the purposes of subsection (2)(b)(ii) is—
- (a) in the case of a resolution for the purposes of section 491 or 492—
- (i) one who is the director-controlled body corporate<sup>16</sup> to whom the loan ~~or quasi-loan~~<sup>16</sup> is proposed to be made or was made;

<sup>14</sup> Item 10(I) / 第10(I)項

<sup>15</sup> Item 10(II) / 第10(II)項

<sup>16</sup> Item 10(III) / 第10(III)項



- ~~(ii) one who is the director—~~  
~~(A) who controls that body corporate; or~~  
~~(B) to whom the loan or quasi-loan is proposed to be made or was made; or<sup>17</sup>~~
- ~~or~~
- (iii) one who holds any shares in the company in trust for ~~that that controlled body corporate~~ or<sup>17</sup> director;
- (b) in the case of a resolution for the purposes of section 493—
- (i) one who is the connected entity to whom the loan or quasi-loan is proposed to be made or was made;
- (ii) one who is the director with whom that entity is connected; or
- (iii) one who holds any shares in the company in trust for that connected entity or director;
- (c) in the case of a resolution for the purposes of section 494—
- (i) one who is the director or connected entity for whom the credit transaction is proposed to be entered into or was entered into;
- (ii) one who is the director with whom that entity is connected; or
- (iii) one who holds any shares in the company in trust for the director specified in subparagraph (i) or (ii) or that connected entity; or
- (d) in the case of a resolution for the purposes of section 495—
- (i) one who is the ~~director~~ controlled body corporate,<sup>17</sup> or connected entity, for whom the arrangement is proposed to be entered into or was entered into;
- ~~(ii) one who is the director—~~  
~~(A) who controls that body corporate;~~  
~~(B) with whom that entity is connected; or~~  
~~(C) for whom the arrangement is proposed to be entered into or was entered into; or<sup>17</sup>~~
- ~~(ii) one who is the director with whom that entity is connected; or~~
- (iii) one who holds any shares in the company in trust for ~~the director specified in subparagraph (i) or (ii) or that~~ controlled body corporate, connected entity or director<sup>17</sup>.
- (6) Subsection (2)(b)(ii) does not prevent a member specified in subsection (5) from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.
- (7) In this section, a reference to a transaction to which an arrangement relates is—
- (a) in the case of an arrangement mentioned in section 495(1)(a) or (2)(a), a reference to the transaction entered into with a director, a body corporate controlled by a director,<sup>17</sup> or an entity connected with a director under the arrangement; or
- (b) in the case of an arrangement mentioned in section 495(1)(b) or (2)(b) in relation to any rights, obligations or liabilities under a transaction, a reference to the transaction.
- (8) For the purposes of subsection (1)(a), it is irrelevant whether the resolution is passed before, on or after the commencement date of this Division.

<sup>17</sup> Item 10(III) / 第10(III)項

486. 成員的訂明批准 (Note: CSAs to this provision in the Chinese text do not include the CSA(s) in the English text.  
/ 這條條文中文本的修正案並不包括英文本中的修正案。)

- (1) 在本分部中，提述某公司的成員的訂明批准，即提述藉該等成員的符合以下說明的決議取得的批准 —
  - (a) 在公司訂立有關交易或安排之前通過；及
  - (b) 第(2)款指明的規定就該項決議獲符合。
- (2) 為施行第(1)(b)款而指明的規定是 —
  - (a) (如屬書面決議)一份列出第(4)款指明的事項的備忘錄，在建議決議送交每名成員之時或之前，已送交該成員；或
  - (b) (如屬成員大會上通過的決議) —
    - (i) 一份列出第(4)款指明的事項的備忘錄，連同召開該大會的通知書，已送交每名成員；及
    - (ii) (如有關公司屬指明公司)在不理會第(5)款指明的成員對該項決議所投的每一贊成票的情況下，該項決議仍獲通過。
- (3) 除公司的章程細則的任何條文另有規定外，就斷定是否符合第(2)(a)或(b)(i)款指明的規定而言，任何因意外而未有將備忘錄送交成員的情況，須不予理會。
- (4) 為施行第(2)(a)及(b)(i)款而指明的事項 —
  - (a) (如屬須為違反第 491、492 或 493 條的目的<sup>18</sup>而通過的決議)如下 —
    - (i) 有待以該項決議批准的交易的性質；
    - (ii) 有關貸款或類似貸款的款額；
    - (iii) 該項貸款或類似貸款需作何用途；及
    - (iv) 有關公司在任何與該項貸款或類似貸款有關連的交易下的法律責任的範圍；
  - (b) (如屬須為違反第 494 條的目的<sup>18</sup>而通過的決議)如下 —
    - (i) 有待以該項決議批准的交易的性質；
    - (ii) 有關信貸交易的款額及價值；
    - (iii) 根據該項信貸交易提供、出售、出租、租賃或以其他方式處置的貨物、土地或服務需作何用途；及
    - (iv) 有關公司在任何與該項信貸交易有關連的交易下的法律責任的範圍；或
  - (c) (如屬須為違反第 495 條的目的<sup>18</sup>而通過的決議)如下 —
    - (i) 假使有關公司尋求批准關乎有關安排所關乎<sup>19</sup>的交易便會須披露的事項；
    - (ii) 有待以該項決議批准的安排的性質；及
    - (iii) 有關公司在該項安排下的法律責任的範圍。
- (5) 為施行第(2)(b)(ii)款而指明的成員 —
  - (a) (如屬須為違反第 491 或 492 條的目的<sup>18</sup>而通過的決議)是符合以下說明的成員 —
    - (i) 屬身為有關貸款或類似貸款的建議借出對象或實際借出對象的董事；或
    - (ii) 以信託形式，為該董事持有該公司任何股份；
  - (b) (如屬須為違反第 493 條的目的<sup>18</sup>而通過的決議)是符合以下說明的成員 —

<sup>18</sup> Item 10(IV) / 第 10(IV)項

<sup>19</sup> Item 10(V) / 第 10(V)項

- (i) 屬獲有關貸款或類似貸款的建議借出對象或實際借出對象的有關連實體；
  - (ii) 屬與該實體有關連的董事；或
  - (iii) 以信託形式，為該有關連實體或董事持有該公司任何股份；
- (c) (如屬須為違反第 494 條的目的<sup>20</sup>而通過的決議)是符合以下說明的成員 —
- (i) 屬有關信貸交易已經或建議為之訂立的董事或有關連實體；
  - (ii) 屬與該實體有關連的董事；或
  - (iii) 以信託形式，為第(i)或(ii)節指明的董事或該有關連實體持有該公司任何股份；或
- (d) (如屬須為違反第 495 條的目的<sup>20</sup>而通過的決議)是符合以下說明的成員 —
- (i) 屬有關安排已經或建議為之訂立的董事或有關連實體；
  - (ii) 屬與該實體有關連的董事；或
  - (iii) 以信託形式，為第(i)或(ii)節指明的董事或該有關連實體持有該公司任何股份。
- (6) 第(2)(b)(ii)款並不阻止第(5)款指明的成員出席任何考慮有關決定的會議，或被計入該會議的法定人數，或參與該會議的程序。
- (7) 在本條中，提述某項安排所關乎的交易 —
- (a) (如屬第 495(1)(a)或(2)(a)條所述的安排)即提述根據該項安排與董事或與董事有關連的實體訂立的交易；或
  - (b) (如屬第 495(1)(b)或(2)(b)條所述的關乎某項交易下的任何權利、義務或法律責任的安排)即提述該項交易。
- (8) 為施行第(1)(a)款，有關決議是在本分部的生效日期之前、當日或之後通過，並不相干。

<sup>20</sup> Item 10(IV) / 第 10(IV)項

**487. Value of transaction or arrangement etc.**

- (1) For the purposes of this Division—
  - (a) the value of a transaction is to be determined in accordance with subsection (2); and
  - (b) the value of any other relevant transaction or arrangement is the value of the transaction or arrangement determined in accordance with subsection (2) or (3), reduced by any amount by which the liabilities of the director, the body corporate controlled by a director,<sup>21</sup> or the entity connected with a director, for whom the transaction or arrangement was entered into have been reduced.
- (2) For the purposes of subsection (1)—
  - (a) the value of a loan is the amount of its principal;
  - (b) the value of a quasi-loan is the amount, or maximum amount, that the person to whom the quasi-loan is made is liable to reimburse the person making the quasi-loan;
  - (c) the value of a credit transaction is the price that it is reasonable to expect could be obtained for goods, land or services to which the transaction relates if they had been supplied (at the time the transaction is entered into) in the ordinary course of business and on the same terms (apart from the price) as they have been supplied, or are to be supplied, under the transaction; and
  - (d) the value of a guarantee or security is the amount guaranteed or secured.
- (3) For the purposes of subsection (1)(b)—
  - (a) the value of an arrangement mentioned in section 495(1)(a) or (2)(a) is the value of the transaction entered into with a director, a body corporate controlled by a director,<sup>21</sup> or an entity connected with a director under the arrangement; and
  - (b) the value of an arrangement mentioned in section 495(1)(b) or (2)(b) in relation to any rights, obligations or liabilities under a transaction is the value of the transaction.

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<sup>21</sup> Item 11 / 第 11 項

**488. Relevant transaction or arrangement**

- ~~(1) A transaction or arrangement is a relevant transaction or arrangement for the purposes of an exception provision—~~
- ~~(a) if it is entered into before, or at the same time as, the transaction in question; and~~
  - ~~(b) if—~~
    - ~~(i) where the transaction in question is entered into for a director of the company or an entity connected with such a director, it is entered into for the director or connected entity by virtue of the exception provision by the company or a subsidiary of the company; or~~
    - ~~(ii) where the transaction in question is entered into for a director of a holding company of the company, it is entered into for the director by virtue of the exception provision by the holding company or a subsidiary of the holding company.~~
- ~~(2) Despite subsection (1), a transaction or arrangement is not a relevant transaction or arrangement for the purposes of an exception provision if—~~
- ~~(a) it was entered into by a body corporate that, at the time it was entered into—~~
    - ~~(i) was a subsidiary of the company entering into the transaction in question; or~~
    - ~~(ii) was a subsidiary of a holding company of that company; and~~
  - ~~(b) at the time the question arises as to whether the transaction in question falls within the exception provision, the body corporate is no longer such a subsidiary.~~
- ~~(3) In this section—~~
- ~~**exception provision** (例外條文) means—~~
- ~~(a) section 496(1); or~~
  - ~~(b) section 497.<sup>22</sup>~~

<sup>22</sup> Item 12 / 第 12 項

**489. Total exposure amount**

(1) In sections 500 and 501—

*total exposure amount* (風險承擔總額) means—

- (a) in relation to ~~a private company or a company limited by guarantee company that is not a specified company~~<sup>23</sup>, the aggregate of the amounts specified in subsection (2); or
  - (b) in relation to a specified company, the aggregate of the amounts specified in subsection (3).
- (2) The amounts specified for the purposes of paragraph (a) of the definition of *total exposure amount* in subsection (1) are—
- (a) the amount of the transaction in question;
  - (b) the aggregate of the amounts outstanding at the time that transaction is entered into, in respect of the principal and interest or otherwise, on every loan made by the company to a director of the company or of a holding company of the company, or to a body corporate controlled by such a director<sup>24</sup> (excluding the transaction in question, and any loan made with the prescribed approval mentioned in section 491 or by virtue of section 490, 496, 497, 498, 499, 502 or 503);
  - (c) the aggregate of the amounts representing the maximum liability of the company at that time under every guarantee given by the company, and in respect of every security provided by the company, in connection with any loan made by any person to a director of the company or of a holding company of the company, or to a body corporate controlled by such a director<sup>24</sup> (excluding the transaction in question, and any guarantee or security given or provided with the prescribed approval mentioned in section 491 or by virtue of section 490, 496, 497, 498, 499, 502 or 503); and
  - (d) the aggregate of the net amounts incurred or to be incurred by the company at that time under every arrangement specified in subsection (4) that is entered into by the company (excluding any arrangement entered into with the prescribed approval mentioned in section 495 or by virtue of section 490).
- (3) The amounts specified for the purposes of paragraph (b) of the definition of *total exposure amount* in subsection (1) are—
- (a) the amount of the transaction in question;
  - (b) the aggregate of the amounts outstanding at the time that transaction is entered into, in respect of the principal and interest or otherwise, on every loan and quasi-loan made by the company to, and every credit transaction entered into by the company as creditor for, a director of the company or of a holding company of the company,<sup>25</sup> or a body corporate controlled by such a director,<sup>24</sup> or an entity connected with such a director, ~~or a director of a holding company of the company~~<sup>25</sup> (excluding the transaction in question, and any loan, quasi-loan or credit transaction made or entered into with the prescribed approval mentioned in section 491, 492, 493 or 494 or by virtue of section 490, 496, 497, 498, 499, 502 or 503);
  - (c) the aggregate of the amounts representing the maximum liability of the company at that time under every guarantee given by the company, and in respect of every security provided by the company, in connection with any loan or quasi-loan made by any person to, or any credit transaction entered into by any person as creditor for, a director of the company or of a holding company of the company,<sup>25</sup> or a body corporate controlled by such a director,<sup>24</sup> or<sup>24</sup> an entity connected with such a director, ~~or a director of a holding company of the company~~<sup>25</sup> (excluding the transaction in question, and any guarantee or security given or provided with the prescribed approval mentioned in section 491, 492, 493 or 494 or by virtue of section 490, 496, 497, 498, 499, 502 or 503); and

<sup>23</sup> Item 13(I) / 第 13(I)項

<sup>24</sup> Item 13(II) / 第 13(II)項

<sup>25</sup> Item 13(III) / 第 13(III)項

- (d) the aggregate of the net amounts incurred or to be incurred by the company at that time under every arrangement specified in subsection (5) that is entered into by the company (excluding any arrangement entered into with the prescribed approval mentioned in section 495 or by virtue of section 490).
- (4) An arrangement specified for the purposes of subsection (2)(d) is—
- (a) an arrangement under which—
- (i) another person makes a questionable loan to—  
~~\_\_\_\_\_~~ (A) a director of the company or of a holding company of the company; or  
(B) a body corporate controlled by such a director<sup>26</sup>; and
- (ii) that other person, pursuant to the arrangement, has obtained or is to obtain any benefit from the company or an associated company of the company; or
- (b) an arrangement for an assignment to the company, or assumption by the company, of any rights, obligations or liabilities under a questionable loan made by another person to—  
~~\_\_\_\_\_~~ (A) a director of the company or of a holding company of the company; or  
(B) a body corporate controlled by such a director<sup>26</sup>.
- (5) An arrangement specified for the purposes of subsection (3)(d) is—
- (a) an arrangement under which—
- (i) another person makes a questionable loan or quasi-loan to, or enters into a questionable credit transaction as creditor for—  
~~\_\_\_\_\_~~ (A) a director of the company or of a holding company of the company;<sup>27</sup>  
(B) a body corporate controlled by such a director<sup>26</sup>; or  
~~\_\_\_\_\_~~ (C) an entity connected with such a director, or a director of a holding company of the company<sup>27</sup>; and
- (ii) that other person, pursuant to the arrangement, has obtained or is to obtain any benefit from the company or an associated company of the company; or
- (b) an arrangement for an assignment to the company, or assumption by the company, of any rights, obligations or liabilities under—
- (i) a questionable loan or quasi-loan made by another person to—  
~~\_\_\_\_\_~~ (A) a director of the company or of a holding company of the company;<sup>27</sup>  
(B) a body corporate controlled by such a director; or<sup>26</sup>  
~~\_\_\_\_\_~~ (C) an entity connected with such a director, or a director of a holding company of the company<sup>27</sup>; or
- (ii) a questionable credit transaction entered into by another person as creditor for—  
~~\_\_\_\_\_~~ (A) a director of the company or of a holding company of the company; or<sup>27</sup>  
~~\_\_\_\_\_~~ (B) an entity connected with such a director, or a director of a holding company of the company<sup>27</sup>.
- (6) In this section—
- (a) a reference to a questionable loan or quasi-loan made by a person to a director of the company, a body corporate controlled by such a director,<sup>26</sup> or an entity connected with such a director, under an arrangement is a reference to a loan or quasi-loan (as the case may be) that, if it had been made by the company on the date of the arrangement, would have been prohibited by section 491(1), 492(1) or 493(1)<sup>28</sup> or would have been so prohibited in the absence of sections 500 and 501;

<sup>26</sup> Item 13(II) / 第 13(II)項

<sup>27</sup> Item 13(III) / 第 13(III)項

<sup>28</sup> Item 13(IV) / 第 13(IV)項

- (b) a reference to a questionable credit transaction entered into by a person as creditor for a director of the company, or an entity connected with such a director, under an arrangement is a reference to a credit transaction that, if it had been entered into by the company on the date of the arrangement, would have been prohibited by section 494(1) or would have been so prohibited in the absence of sections 500 and 501;
- (c) a reference to a questionable loan or quasi-loan made by a person to a director of a holding company of the company, a body corporate controlled by such a director<sup>29</sup>, or an entity connected with such a director,<sup>30</sup> under an arrangement is a reference to a loan or quasi-loan (as the case may be) that, if it had been made by the company on the date of the arrangement, would have been prohibited by section 491(2), ~~or~~ 492(2) or 493(2)<sup>31</sup> or would have been so prohibited in the absence of sections 500 and 501; and
- (d) a reference to a questionable credit transaction entered into by a person as creditor for a director of a holding company of the company, or an entity connected with such a director,<sup>30</sup> under an arrangement is a reference to a credit transaction that, if it had been entered into by the company on the date of the arrangement, would have been prohibited by section 494(2) or would have been so prohibited in the absence of sections 500 and 501.

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<sup>29</sup> Item 13(II) / 第 13(II)項

<sup>30</sup> Item 13(III) / 第 13(III)項

<sup>31</sup> Item 13(IV) / 第 13(IV)項



491. **Company must not make loan etc. to director or body corporate controlled by director**<sup>32</sup>

- (1) Without the prescribed approval of its members, a company must not—
- (a) make a loan to—
    - (i) -a director of the company; or
    - (ii) a body corporate controlled by such a director; or<sup>32</sup>
  - (b) give a guarantee or provide security in connection with a loan made by any person to—
    - (i) a director of the company; or
    - (ii) a body corporate controlled by such a director. ~~such a director.~~<sup>32</sup>
- (2) Without the prescribed approval of its members and the prescribed approval of the holding company's members, a company must not—
- (a) make a loan to—
    - (i) -a director of a holding company of the company; or
    - (ii) a body corporate controlled by such a director; or<sup>32</sup>
  - (b) give a guarantee or provide security in connection with a loan made by any person to—
    - (i) a director of a holding company of the company; or
    - (ii) a body corporate controlled by such a director. ~~such a director.~~<sup>32</sup>
- (3) Despite subsection (2)—
- (a) a company may enter into the transaction with only the prescribed approval of its members if the holding company is incorporated outside Hong Kong; and
  - (b) a company may enter into the transaction with only the prescribed approval of the holding company's members if it is a wholly owned subsidiary of the holding company, and the holding company is incorporated in Hong Kong.

<sup>32</sup> Item 14 / 第 14 項

**493. Specified company must not make loan or quasi-loan etc. to connected entity**

(1) Without the prescribed approval of its members, a specified company must not—

- (a) make a loan or quasi-loan to an entity connected with a director of the company; or
- (b) give a guarantee or provide security in connection with a loan or quasi-loan made by any person to an entity connected with such a director.

(2) Without the prescribed approval of its members and the prescribed approval of the holding company's members, a specified company must not—

- (a) make a loan or quasi-loan to an entity connected with a director of a holding company of the company; or
- (b) give a guarantee or provide security in connection with a loan or quasi-loan made by any person to an entity connected with such a director.<sup>33</sup>

(3) Despite subsection (2)—

- (a) a specified company may enter into the transaction with only the prescribed approval of its members if the holding company is incorporated outside Hong Kong; and
- (b) a specified company may enter into the transaction with only the prescribed approval of the holding company's members if it is a wholly owned subsidiary of the holding company, and the holding company is incorporated in Hong Kong.<sup>34</sup>

<sup>33</sup> Item 15(I) / 第 15(I)項

<sup>34</sup> Item 15(II) / 第 15(II)項

**494. Specified company must not enter into credit transaction etc. as creditor for director or connected entity**

- (1) Without the prescribed approval of its members, a specified company must not—
- (a) enter into a credit transaction as creditor for—
    - (i) a director of the company; or
    - (ii) an entity connected with such a director; or
  - (b) give a guarantee or provide security in connection with a credit transaction entered into by any person as creditor for such a director or an entity connected with such a director.
- (2) Without the prescribed approval of its members and the prescribed approval of the holding company's members, a specified company must not—
- (a) enter into a credit transaction as creditor for—
    - ~~(i) a director of a holding company of the company; or~~
    - (ii) an entity connected with such a director; or<sup>35</sup>
  - (b) give a guarantee or provide security in connection with a credit transaction entered into by any person as creditor for such a director or an entity connected with such a director.<sup>35</sup>
- (3) Despite subsection (2)—
- (a) a specified company may enter into the transaction with only the prescribed approval of its members if the holding company is incorporated outside Hong Kong; and
  - (b) a specified company may enter into the transaction with only the prescribed approval of the holding company's members if it is a wholly owned subsidiary of the holding company, and the holding company is incorporated in Hong Kong.

<sup>35</sup> Item 16 / 第 16 項

**495. Company must not take part in arrangement purporting to circumvent sections 491 to 494**

- (1) Without the prescribed approval of its members, a company must not—
- (a) take part in an arrangement under which—
    - (i) another person enters into a questionable transaction with a director of the company, a body corporate controlled by such a director,<sup>36</sup> or an entity connected with such a director; and
    - (ii) that other person, pursuant to the arrangement, has obtained or is to obtain any benefit from the company or an associated company of the company; or
  - (b) arrange for an assignment to the company, or assumption by the company, of any rights, obligations or liabilities under a questionable transaction entered into by another person with—
    - (i) a director of the company;<sup>37</sup>
    - (ii) a body corporate controlled by such a director,<sup>36</sup> or
    - (iii) an entity connected with such a director.
- (2) Without the prescribed approval of its members and the prescribed approval of the holding company's members, a company must not—
- (a) take part in an arrangement under which—
    - (i) another person enters into a questionable transaction with a director of a holding company of the company, a body corporate controlled by such a director,<sup>36</sup> or an entity connected with such a director,<sup>37</sup>; and
    - (ii) that other person, pursuant to the arrangement, has obtained or is to obtain any benefit from the company or an associated company of the company; or
  - (b) arrange for an assignment to the company, or assumption by the company, of any rights, obligations or liabilities under a questionable transaction entered into by another person with—
    - (i) a director of a holding company of the company;
    - (ii) a body corporate controlled by such a director; or<sup>36</sup>
    - (iii) an entity connected with such a director.<sup>37</sup>
- (3) Despite subsection (2)—
- (a) a company may enter into the arrangement with only the prescribed approval of its members if the holding company is incorporated outside Hong Kong; and
  - (b) a company may enter into the arrangement with only the prescribed approval of the holding company's members if it is a wholly owned subsidiary of the holding company, and the holding company is incorporated in Hong Kong.
- (4) In this section—
- (a) a reference to a questionable transaction entered into by a person with a director of the company, a body corporate controlled by such a director,<sup>36</sup> or an entity connected with such a director, under an arrangement is a reference to a transaction that, if it had been entered into by the company on the date of the arrangement, would have been prohibited by section 491(1), 492(1), 493(1)<sup>38</sup> or 494(1) or would have been so prohibited in the absence of Subdivision 3; and
  - (b) a reference to a questionable transaction entered into by a person with a director of a holding company of the company, a body corporate controlled by such a director,<sup>36</sup> or an entity connected with such a director,<sup>37</sup> under an arrangement is a reference to a transaction that, if it had been entered into by the company on the date of the arrangement, would have been

<sup>36</sup> Item 17(I) / 第 17(I)項

<sup>37</sup> Item 17(II) / 第 17(II)項

<sup>38</sup> Item 17(III) / 第 17(III)項

| prohibited by section 491(2), 492(2), 493(2)<sup>39</sup> or 494(2) or would have been so prohibited in the absence of Subdivision 3.

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<sup>39</sup> Item 17(III) / 第 17(III)項

**496. Exception for loan, quasi-loan and credit transaction of value not exceeding 5% of nettotal<sup>40</sup> assets or called-up share capital**

- (1) A company is not prohibited by section 491, 492, 493 or 494 from making a loan or quasi-loan, entering into a credit transaction or giving a guarantee or providing security in connection with a loan, quasi-loan or credit transaction, if the aggregate of the value of the transaction in question, and the value of any other relevant transaction or arrangement, does not exceed 5% of—
- (a) the value of the company's nettotal<sup>40</sup> assets as determined by reference to the relevant financial statements of the company; or
- (b) if no such relevant financial statements have been prepared, the amount of the company's called-up share capital.
- (2) In this section, a reference to the relevant financial statements of a company is—
- (a) a reference to the company's annual financial statements or annual consolidated financial statements prepared under Part 9 that were most recently sent to its members under section 421; or
- (b) if no such annual financial statements or annual consolidated financial statements have been sent since the commencement date of section 421, a reference to the company's accounts prepared under section 122 of the predecessor Ordinance that were most recently sent to its members under section 129G of that Ordinance.

(3) A transaction or arrangement is a relevant transaction or arrangement for the purposes of subsection (1)—

(a) if it is entered into before, or at the same time as, the transaction in question; and

(b) if—

(i) where the transaction in question is entered into for a director of the company, a body corporate controlled by such a director, or an entity connected with such a director, it is entered into for the director, controlled body corporate or connected entity by the company or a subsidiary of the company as permitted by subsection (1); or

(ii) where the transaction in question is entered into for a director of a holding company of the company, a body corporate controlled by such a director, or an entity connected with such a director, it is entered into for the director, controlled body corporate or connected entity by the holding company or a subsidiary of the holding company as permitted by subsection (1).<sup>41</sup>

(4) Despite subsection (3), a transaction or arrangement is not a relevant transaction or arrangement for the purposes of subsection (1) if—

(a) it was entered into by a body corporate that, at the time it was entered into—

(i) was a subsidiary of the company entering into the transaction in question; or

(ii) was a subsidiary of a holding company of that company; and

(b) at the time the question arises as to whether the transaction in question falls within subsection (1), the body corporate is no longer such a subsidiary.<sup>41</sup>

<sup>40</sup> Item 18(I) / 第 18(I)項

<sup>41</sup> Item 18(II) / 第 18(II)項

**497. Exception for expenditure on company business**

~~(1) A company is not prohibited by section 491, 492, 493 or 494 from entering into any transaction to provide—~~

~~(a) to provide a director of the company or of a holding company of the company;<sup>42</sup>~~

~~(b) a body corporate controlled by such a director;<sup>42</sup> or~~

~~(c) an entity connected with such a director, or a director of a holding company of the company, with funds to meet expenditure specified in subsection (2) or to avoid incurring such expenditure incurred or to be incurred by the director or connected entity (as the case may be)—<sup>42</sup>~~

~~(2) The expenditure is one incurred or to be incurred by the director, controlled body corporate or connected entity (as the case may be)—<sup>42</sup>~~

~~(i)(a) for the purposes of the company; or~~

~~(ii)(b) for the purpose of enabling the director, controlled body corporate<sup>42</sup> or connected entity (as the case may be) to properly perform duties as an officer of the company;<sup>42</sup> ~~or~~~~

~~(b) to enable a director of the company or an entity connected with such a director, or a director of a holding company of the company, to avoid incurring such expenditure;<sup>42</sup>~~

<sup>42</sup> Item 19 / 第 19 項

**500. Exception for home loan**

- (1) If the conditions specified in subsection (2) are satisfied, a company is not prohibited by section 491, 492, 493 or 494 from entering into any transaction—
- (a) for the purpose of facilitating the purchase of any residential premises for use as the only or main residence of—
    - (i) a director of the company ~~or of a holding company of the company;~~<sup>43</sup>
    - (ii) an employee of the company who is ~~a director of a holding company of the company;~~<sup>43</sup>
    - (iii) an employee of the company who is an entity connected with a director of the company or of a holding company of the company;<sup>43</sup>
  - (b) for the purpose of improving any residential premises so used; or
  - (c) in substitution for any transaction entered into by any other person for a purpose specified in paragraph (a) or (b).
- (2) The conditions are—
- (a) that, at the time the transaction in question is entered into, the total exposure amount does not exceed 10% of—
    - (i) the value of the company's ~~net~~<sup>44</sup> assets as determined by reference to the relevant financial statements of the company; or
    - (ii) if no such relevant financial statements have been prepared, the amount of the company's called-up share capital;
  - (b) that the company ordinarily enters into transactions for a purpose specified in subsection (3) on terms no less favourable than those on which the transaction in question is entered into;
  - (c) that a valuation report on the residential premises is made and signed by a professionally qualified valuation surveyor, who is subject to the discipline of a professional body, within 3 months before the date on which the transaction in question is entered into; and
  - (d) that the transaction in question is secured by a legal mortgage on the land comprising the residential premises.
- (3) The purpose specified for the purposes of subsection (2)(b) is—
- (a) to facilitate the purchase of any residential premises for use as the only or main residence of an employee of the company;
  - (b) to improve any residential premises so used; or
  - (c) to substitute for any transaction entered into by any other person for a purpose specified in paragraph (a) or (b).
- (4) In this section—
- residential premises** (住用處所) means any residential premises together with any land to be occupied or enjoyed with the premises.
- (5) In this section, a reference to the relevant financial statements of a company is—
- (a) a reference to the company's annual financial statements or annual consolidated financial statements prepared under Part 9 that were most recently sent to its members under section 421; or
  - (b) if no such annual financial statements or annual consolidated financial statements have been sent since the commencement date of section 421, a reference to the company's accounts prepared under section 122 of the predecessor Ordinance that were most recently sent to its members under section 129G of that Ordinance.

<sup>43</sup> Item 20(I) / 第 20(I)項

<sup>44</sup> Item 20(II) / 第 20(II)項



**501. Exception for leasing goods and land etc.**

- (1) If the conditions specified in subsection (2) are satisfied, a company is not prohibited by section 491, 492, 493 or 494 from leasing or hiring goods or leasing land to—
- ~~(a) a director of the company or of a holding company of the company;~~<sup>45</sup>
  - ~~(b) a body corporate controlled by such a director;~~<sup>45</sup> or
  - ~~(c) an entity connected with such a director, or a director of a holding company of the company~~<sup>45</sup>.
- (2) The conditions are—
- (a) that, at the time the transaction in question is entered into, the total exposure amount does not exceed 10% of—
    - (i) the value of the company's ~~net~~<sup>46</sup> assets as determined by reference to the relevant financial statements of the company; or
    - (ii) if no such relevant financial statements have been prepared, the amount of the company's called-up share capital; and
  - (b) that the terms of the transaction in question are not more favourable than what is reasonable to expect the company to have offered, if the goods had been leased or hired, or the land had been leased, on the open market, to a person unconnected with the company.
- (3) In this section, a reference to the relevant financial statements of a company is—
- (a) a reference to the company's annual financial statements or annual consolidated financial statements prepared under Part 9 that were most recently sent to its members under section 421; or
  - (b) if no such annual financial statements or annual consolidated financial statements have been sent since the commencement date of section 421, a reference to the company's accounts prepared under section 122 of the predecessor Ordinance that were most recently sent to its members under section 129G of that Ordinance.

<sup>45</sup> Item 21(I) / 第 21(I)項

<sup>46</sup> Item 21(II) / 第 21(II)項

**503. Exception for intra-group transaction**

If a company is a member of a group of companies, the company is not prohibited by section [491, 492](#),<sup>47</sup> 493 or 494 from—

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

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<sup>47</sup> Item 22 / 第 22 項

**504. Civil consequences of contravention**

- (1) If a company enters into a transaction in contravention of section 491, 492, 493 or 494, or enters into an arrangement in contravention of section 495, the transaction or arrangement is voidable at the company's instance unless—
  - (a) restitution of any money or other asset that was the subject matter of the transaction or arrangement is no longer possible;
  - (b) the company has been indemnified for any loss or damage resulting from the transaction or arrangement; or
  - (c) a person ~~who is not other than the director, controlled body corporate, or connected entity for whom the transaction or arrangement was entered into a party to the transaction or arrangement~~<sup>48</sup> acquired rights in good faith, for value, and without actual notice of the contravention, and those rights would be affected by the avoidance.
- (2) Whether or not the transaction or arrangement has been avoided, each of the persons specified in subsection (3) is liable—
  - (a) to account to the company for any gain that the person has made, directly or indirectly, by the transaction or arrangement; and
  - (b) jointly and severally with any other person so liable under this section, to indemnify the company for any loss or damage resulting from the transaction or arrangement.
- (3) The persons are—
  - (a) a director of the company, or of a holding company of the company, for whom the company entered into the transaction or arrangement;
  - (b) ~~a body corporate controlled by such a director, or~~<sup>49</sup> an entity connected with ~~such~~ a director ~~of the company~~<sup>49</sup>, for whom the company entered into the transaction or arrangement;
  - (c) the director of the company; ~~who controls such a body corporate or~~<sup>49</sup> with whom such an entity is connected;
  - (ca) the director of a holding company of the company who controls such a body corporate or with whom such an entity is connected;<sup>49</sup> and
  - (d) any other director of the company who authorized the transaction or arrangement.
- (4) Despite subsection (2)—
  - (a) the ~~controlled body corporate or~~<sup>49</sup> connected entity specified in subsection (3)(b) is not liable if the ~~controlled body corporate or~~<sup>49</sup> connected entity establishes that, at the time the transaction or arrangement was entered into, ~~the connected entity it~~<sup>49</sup> was not aware of the circumstances constituting the contravention;
  - (b) the director specified in subsection (3)(c) ~~or (ca)~~<sup>49</sup> is not liable if the director establishes that the director took all reasonable steps to secure the company's compliance with section ~~491,~~<sup>50</sup> 493, 494 or 495 (as the case may be); and
  - (c) a director specified in subsection (3)(d) is not liable if the director establishes that, at the time the transaction or arrangement was entered into, the director was not aware of the circumstances constituting the contravention.
- (5) This section does not exclude the operation of any other Ordinance or rule of law by virtue of which the transaction or arrangement may be called into question or any liability to the company may arise.

<sup>48</sup> Item 23(I) / 第 23(I)項

<sup>49</sup> Item 23(II) / 第 23(II)項

<sup>50</sup> Item 23(III) / 第 23(III)項

**505. Affirmation of contravening transaction or arrangement**

- (1) Despite section 504, a transaction or arrangement may no longer be avoided under that section if, within a reasonable period after it is entered into, the transaction or arrangement is affirmed.
- (2) If a transaction or arrangement contravenes Subdivision 2 because it was entered into without the prescribed approval of the company's members, the affirmation of the transaction or arrangement must be obtained by a resolution of the company's members.
- (3) If a transaction or arrangement contravenes Subdivision 2 because it was entered into without the prescribed approval of the holding company's members, the affirmation of the transaction or arrangement must be obtained by a resolution of the holding company's members.
- (4) If a transaction or arrangement contravenes Subdivision 2 because it was entered into without the prescribed approval of the company's members and the prescribed approval of the holding company's members, the affirmation of the transaction or arrangement must be obtained—
  - (a) by a resolution of the company's members; and
  - (b) by a resolution of the holding company's members.
- (5) ~~This section does~~ **Subsections (2), (3) and (4) do**<sup>51</sup> not affect the validity of a company's or holding company's decision to affirm a transaction or arrangement if it is taken by unanimous consent of the company's or holding company's members.

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<sup>51</sup> Item 24 / 第 24 項

**506. Provisions supplementary to section 505**

- (1) The following requirements must be met in relation to a resolution of the members of any company under section 505—
  - (a) in the case of a written resolution, a memorandum setting out the matters specified in subsection (3) is sent to every member at or before the time at which the proposed resolution is sent to the member; or
  - (b) in the case of a resolution passed at a general meeting—
    - (i) a memorandum setting out the matters specified in subsection (3) is sent to every member together with the notice convening the meeting; and
    - (ii) if the company is a specified company, the resolution is passed after disregarding every vote in favour of the resolution by a member specified in subsection (4).
- (2) Subject to any provision of the company's articles, any accidental ~~omission failure~~<sup>52</sup> to send the memorandum to a member is to be disregarded for the purpose of determining whether the requirement specified in subsection (1)(a) or (b)(i) has been met.
- (3) The matters specified for the purposes of subsection (1)(a) and (b)(i) are—
  - (a) in the case of a resolution for the purpose of a contravention of section 491, 492 or 493—
    - (i) the nature of the transaction to be affirmed by the resolution;
    - (ii) the amount of the loan or quasi-loan;
    - (iii) the purpose for which the loan or quasi-loan is required; and
    - (iv) the extent of the company's liability under any transaction connected with the loan or quasi-loan;
  - (b) in the case of a resolution for the purpose of a contravention of section 494—
    - (i) the nature of the transaction to be affirmed by the resolution;
    - (ii) the amount and value of the credit transaction;
    - (iii) the purpose for which the goods, land or services supplied, sold, leased, hired or otherwise disposed of under the credit transaction are required; and
    - (iv) the extent of the company's liability under any transaction connected with the credit transaction; or
  - (c) in the case of a resolution for the purpose of a contravention of section 495—
    - (i) the matters that would have to be disclosed if the company were seeking affirmation of the transaction to which the arrangement relates;
    - (ii) the nature of the arrangement to be affirmed by the resolution; and
    - (iii) the extent of the company's liability under the arrangement.
- (4) The member specified for the purposes of subsection (1)(b)(ii) is—
  - (a) in the case of a resolution for the purpose of a contravention of section 491 or 492—
    - (i) one who is the ~~director-controlled body corporate~~<sup>53</sup> to whom the loan ~~or quasi-loan~~<sup>53</sup> is proposed to be made or was made;  
(ia) one who is the director—  
(A) who controls that body corporate; or  
(B) to whom the loan or quasi-loan is proposed to be made or was made;<sup>53</sup>
    - (ii) one who is any other director of the company who authorized the loan or quasi-loan; or

<sup>52</sup> Item 25(I) / 第 25(I)項

<sup>53</sup> Item 25(II) / 第 25(II)項

- (iii) one who holds any shares in the company in trust for the director specified in subparagraph ~~(i)~~(ia) or (ii) or that controlled body corporate<sup>54</sup>;
- (b) in the case of a resolution for the purpose of a contravention of section 493—
- (i) one who is the connected entity to whom the loan or quasi-loan is proposed to be made or was made;
  - (ii) one who is the director with whom that entity is connected;
  - (iii) one who is any other director of the company who authorized the loan or quasi-loan; or
  - (iv) one who holds any shares in the company in trust for the director specified in subparagraph (ii) or (iii) or that connected entity;
- (c) in the case of a resolution for the purpose of a contravention of section 494—
- (i) one who is the director or connected entity for whom the credit transaction is proposed to be entered into or was entered into;
  - (ii) one who is the director with whom that entity is connected;
  - (iii) one who is any other director of the company who authorized the credit transaction; or
  - (iv) one who holds any shares in the company in trust for the director specified in subparagraph (i), (ii) or (iii) or that connected entity; or
- (d) in the case of a resolution for the purpose of a contravention of section 495—
- (i) one who is the ~~director~~controlled body corporate,<sup>54</sup> or connected entity, for whom the arrangement is proposed to be entered into or was entered into;
  - ~~(ii) one who is the director—~~
    - ~~(A) who controls that body corporate;~~
    - ~~(B) with whom that entity is connected; or~~
    - ~~(C) for whom the arrangement is proposed to be entered into or was entered into;~~<sup>54</sup>
  - ~~(ii) one who is the director with whom that entity is connected;~~
  - (iii) one who is any other director of the company who authorized the arrangement; or
  - (iv) one who holds any shares in the company in trust for the director specified in subparagraph ~~(i)~~, (ii) or (iii) or that controlled body corporate or<sup>54</sup> connected entity.
- (5) Subsection (1)(b)(ii) does not prevent a member specified in subsection (4) from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.
- (6) In this section, a reference to a transaction to which an arrangement relates is—
- (a) in the case of an arrangement mentioned in section 495(1)(a) or (2)(a), a reference to the transaction entered into with a director, a body corporate controlled by a director,<sup>54</sup> or an entity connected with a director under the arrangement; or
  - (b) in the case of an arrangement mentioned in section 495(1)(b) or (2)(b) in relation to any rights, obligations or liabilities under a transaction, a reference to the transaction.

<sup>54</sup> Item 25(II) / 第 25(II)項

507. 釋義

(1) 在本分部中 —

**收購要約** (takeover offer) 指第 678 條所界定的收購要約；

**受影響成員** (affected member) 指 —

- (a) 收購要約的目標股份的持有人；或
- (b) 與收購要約的目標股份屬相同類別的股份的持有人；

**董事** (director) 包括幕後董事。

(2) 在本分部中 —

- (a) 提述付款、賠償或代價，包括非現金利益；及
- (b) 提述失去董事職位，不包括某人失去作為幕後董事的地位。

(3) 在第 508 條及第 2 及 3 次分部中，提述向董事或前董事作出的付款，包括 —

- (a) 向與該董事或前董事有關連的實體作出的付款；及
- (b) 應以下的人的指示或為以下的人的利益而向某人作出的付款 —
  - (i) 該董事或前董事；或
  - (ii) 與該董事或前董事有關連的實體。

(4) 在第 508 條及第 2 及 3 次分部中，提述由某人作出的付款，包括由另一人應該人的指示或代表該人作出的付款。

(5) 就本分部而言，某法人團體並不僅因其任何附屬公司的一眾董事或大部分董事慣於按照其指示或指令行事，而被視為該附屬公司的幕後董事。縱使某法人團體的附屬公司的一眾董事或過半數董事，慣於按照該團體的指示或指令行事，該團體不會僅因此而視為其附屬公司的幕後董事。<sup>55</sup>

<sup>55</sup> Item 26 / 第 26 項

**509. Prescribed approval of members or affected members**

- (1) In this Division, a reference to the prescribed approval of the members or affected members of a company is a reference to an approval obtained by a resolution of those members or affected members—
  - (a) that is passed before the payment for loss of office is made; and
  - (b) in respect of which the requirements specified in subsection (2) are met.
- (2) The requirements specified for the purposes of subsection (1)(b) are—
  - (a) that, in the case of a written resolution, a memorandum setting out the particulars of the payment is sent to every member or affected member (as the case may be) at or before the time at which the proposed resolution is sent to the member or affected member; or
  - (b) that, in the case of a resolution passed at a general meeting—
    - (i) a memorandum setting out the particulars of the payment is sent to every member or affected member (as the case may be) together with the notice convening the meeting; and
    - (ii) if the company is a public company, the resolution is passed after disregarding every vote in favour of the resolution by a member or affected member (as the case may be) specified in subsection (4) or (5).
- (3) Subject to any provision of the company's articles, any accidental **omissionfailure**<sup>56</sup> to send the memorandum to a member or affected member (as the case may be) is to be disregarded for the purpose of determining whether the requirement specified in subsection (2)(a) or (b)(i) has been met.
- (4) In the case of a resolution for the purposes of section 512 or 513, the member specified for the purposes of subsection (2)(b)(ii) is—
  - (a) one who is the director or former director to whom the payment for loss of office is proposed to be made;
  - (b) one who is the proposed recipient of the payment for loss of office and who is not the director or former director specified in paragraph (a); or
  - (c) one who holds any shares in the company in trust for that director, former director or recipient.
- (5) In the case of a resolution for the purposes of section 514, the affected member specified for the purposes of subsection (2)(b)(ii) is—
  - (a) one who is the director or former director to whom the payment for loss of office is proposed to be made;
  - (b) one who is the proposed recipient of the payment for loss of office and who is not the director or former director specified in paragraph (a);
  - (c) one who makes the takeover offer;
  - (d) one who is an associate of the person making the takeover offer; or
  - (e) one who holds any shares in the company in trust for—
    - (i) that director, former director or recipient;
    - (ii) the maker of the takeover offer specified in paragraph (c); or
    - (iii) the associate.
- (6) Subsection (2)(b)(ii) does not prevent a member or affected member (as the case may be) specified in subsection (4) or (5) from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.
- (7) In this section—

**associate** (有聯繫者), in relation to a person making a takeover offer, means an associate of the person as defined by section 658.

<sup>56</sup> Item 27(I) / 第 27(I)項



- (8) For the purposes of subsection (1)(a), it is irrelevant whether the resolution is passed before, on or after the commencement date of this Division.

509. **成員或受影響成員的訂明批准** (Note: CSAs to this provision in the Chinese text do not include the CSA(s) in the English text. / 這條條文中文本的修正案並不包括英文文本中的修正案。)

- (1) 在本分部中，提述某公司的成員或受影響成員的訂明批准，即提述藉該等成員或受影響成員的符合以下說明的決議取得的批准 —
  - (a) 在就失去職位作出付款之前通過；及
  - (b) 第(2)款指明的規定就該項決議獲符合。
- (2) 為施行第(1)(b)款而指明的規定是 —
  - (a) (如屬書面決議)一份列出付款的詳情的備忘錄，在建議決議送交每名成員或受影響成員(視屬何情況而定)之時或之前，已送交該成員或受影響成員；或
  - (b) (如屬成員大會上通過的決議) —
    - (i) 一份列出付款的詳情的備忘錄，連同召開該大會的通知書，已送交每名成員或受影響成員(視屬何情況而定)；及
    - (ii) (如有關公司屬公眾公司)在不理會第(4)或(5)款指明的成員或受影響成員(視屬何情況而定)對該項決議所投的每一贊成票的情況下，該項決議仍獲通過。
- (3) 除公司的章程細則的任何條文另有規定外，就斷定是否符合第(2)(a)或(b)(i)款指明的規定而言，任何因意外而未有將備忘錄送交成員或受影響成員(視屬何情況而定)的情況，須不予理會。
- (4) 如屬須為施行第 512 或 513 條的目的<sup>57</sup>而通過的決議，則為施行第(2)(b)(ii)款而指明的成員是符合以下說明的成員 —
  - (a) 屬建議就失去職位獲得付款的董事或前董事；
  - (b) 屬就失去職位而作出的付款的建議收款人而非(a)段指明的董事或前董事；或
  - (c) 以信託形式，為該董事、前董事或收款人持有該公司任何股份。
- (5) 如屬須為施行第 514 條的目的<sup>57</sup>而通過的決議，則為施行第(2)(b)(ii)款而指明的受影響成員是符合以下說明的成員 —
  - (a) 屬建議就失去職位獲得付款的董事或前董事；
  - (b) 屬就失去職位而作出的付款的建議收款人而非(a)段指明的董事或前董事；
  - (c) 作出有關收購要約；
  - (d) 屬作出有關收購要約的人的有聯繫者；或
  - (e) 以信託形式，為以下的人持有該公司任何股份 —
    - (i) 該董事、前董事或收款人；
    - (ii) 作出(c)段指明的收購要約的人；或
    - (iii) 有關的有聯繫者。
- (6) 第(2)(b)(ii)款並不阻止第(4)或(5)款指明的成員或受影響成員(視屬何情況而定)出席任何考慮有關決定的會議，或被計入該會議的法定人數，或參與該會議的程序。
- (7) 在本條中 —

**有聯繫者** (associate)就作出收購要約的人而言，指第 658 條所界定的該人的有聯繫者。
- (8) 為施行第(1)(a)款，有關決議是在本分部的生效日期之前、當日或之後通過，並不相干。

<sup>57</sup> Item 27(II) / 第 27(II)項

**513. 任何人不得在與轉讓公司業務或財產有關連的情況下，就失去職位而向董事或前董事作出付款**

- (1) 任何人未獲公司成員的訂明批准，不得在與轉讓該公司的業務或財產的全部或任何部分有關連的情況下，就失去職位而向該公司的董事或前董事作出付款。
- (2) 任何人未獲公司成員的訂明批准及該公司的附屬公司的成員的訂明批准，不得在與轉讓該公司的附屬公司的業務或財產的全部或任何部分有關連的情況下，就失去職位而向該公司的董事或前董事作出付款。
- (3) 就本條而言，如某項付款是 —
  - (a) 依據一項作為轉讓公司業務或財產<sup>58</sup>的協議的一部分而訂立的安排作出的，或是在該協議訂立之前的一年內作出的，或是在該協議訂立之後的 2 年內作出的；及
  - (b) 依據一項該公司或任何受轉讓人參與的安排作出的，  
則除非證明情況相反，該項付款須推定為在與該項轉讓有關連的情況下作出。
- (4) 儘管有第(2)款的規定，如有關附屬公司是在香港以外地方成立為法團的，或屬有關公司的全資附屬公司，任何人可只獲該公司成員的訂明批准而訂立有關交易。

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<sup>58</sup> Item 28 / 第 28 項

515. 例外情況：付款以履行法律義務等

- (1) 第 2 次分部並不禁止任何人真誠地作出付款 —
  - (a) 以履行現存法律義務；
  - (b) 作為違反現存法律義務的損害賠償；
  - (c) 作為在與終止某人的職位或受僱工作有關連的情況下產生的申索的和解或妥協；或
  - (d) 作為過去服務的退休金。
- (2) 就第(1)款而言，如付款的一部分屬該款所指者而另一部分不屬該款所指者，該項付款須在猶如該等部分為各別的付款的情況下看待。
- (3) 在本條中 —

**退休金** (pension) 包括任何離職津貼、離職酬金或類似的付款；

**現存法律義務** (existing legal obligation) —

- (a) 就屬第 512 條所指者並由某公司作出的付款而言，指該公司或其有聯繫公司的義務，而該義務並非在與引致就失去職位而付款的事件有關連的情況下訂立，亦非由於該事件以致訂立；或
  - (b) 就屬第 513 或 514 條所指者及由某人在與任何**企業業務**<sup>59</sup>、財產或股份的轉讓有關連的情況下作出的付款而言，指該人的義務，而該義務並非為該項轉讓的目的訂立或就該項轉讓訂立，亦非由於該項轉讓以致訂立。
- (4) 就第(3)款中**現存法律義務**的定義而言，如某項付款兼屬第 512 及 513 條或兼屬第 512 及 514 條所指者，則該項付款須視為屬第 512 條所指者但不屬第 513 或 514 條所指者。

<sup>59</sup> Item 29 / 第 29 項

**516. Exception for small payment**

- (1) A company is not prohibited by section 512 from making a payment to a director or former director if the aggregate of the amount or value of the payment, and the amount or value of any other payment for loss of office made by the company or a subsidiary of the company to the director or former director in connection with the same event, does not exceed \$~~100,000~~20,000<sup>60</sup>.
- (2) A company is not prohibited by section 513 or 514 from making a payment to a director or former director in connection with a transfer of any undertaking or property of, or shares in, the company or a subsidiary of the company if the aggregate of the amount or value of the payment, and the amount or value of any other payment for loss of office made by the company or a subsidiary of the company to the director or former director in connection with the transfer, does not exceed \$~~100,000~~20,000<sup>60</sup>.
- (3) A subsidiary of a company is not prohibited by section 513 or 514 from making a payment to a director or former director in connection with a transfer of any undertaking or property of, or shares in, the company or a subsidiary of the company if the aggregate of the amount or value of the payment, and the amount or value of any other payment for loss of office made by the company, or the subsidiary making the payment, to the director or former director in connection with the transfer, does not exceed \$~~100,000~~20,000<sup>60</sup>.

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<sup>60</sup> Item 30 / 第 30 項

521. 釋義

(1) 在本分部中 —

**董事** (director) 包括幕後董事。

(2) 就本分部而言，~~某法人團體並不僅因其任何附屬公司的一眾董事或大部分董事慣於按照其指示或指令行事，而被視為該附屬公司的幕後董事。縱使某法人團體的附屬公司的一眾董事或過半數董事，慣於按照該團體的指示或指令行事，該團體不會僅因此而視為其附屬公司的幕後董事。~~<sup>61</sup>

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<sup>61</sup> Item 31 / 第 31 項

**522. 服務合約**

- (1) 在本分部中，提述公司的某董事的服務合約 —
  - (a) 即提述符合以下說明的合約 —
    - (i) 根據該合約，該董事親自承諾親自<sup>62</sup>以董事或其他身分，為該公司或該公司的附屬公司履行服務；或
    - (ii) 根據該合約，該董事親自承諾親自<sup>62</sup>以董事或其他身分履行的服務，須由第三者向該公司或該公司的附屬公司提供；及
  - (b) 包括委任某人為該公司的董事的委任條款。
- (2) 在本分部中，提述公司的某董事的服務合約，並不局限於履行在董事一般職務範圍以外的服務的合約。

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<sup>62</sup> Item 32 / 第 32 項

**523. Prescribed approval of members**

- (1) In this Division, a reference to the prescribed approval of the members of a company is a reference to an approval obtained by a resolution of those members—
  - (a) that is passed before the company agrees to the provision; and
  - (b) in respect of which the requirements specified in subsection (2) are met.
- (2) The requirements specified for the purposes of subsection (1)(b) are—
  - (a) that, in the case of a written resolution, a memorandum setting out the proposed service contract (incorporating the provision in question) is sent to every member at or before the time at which the proposed resolution is sent to the member; or
  - (b) that, in the case of a resolution passed at a general meeting—
    - (i) a memorandum setting out the proposed service contract (incorporating the provision in question) is sent to every member together with the notice convening the meeting; and
    - (ii) if the company is a public company, the resolution is passed after disregarding every vote in favour of the resolution by a member specified in subsection (4).
- (3) Subject to any provision of the company's articles, any accidental omissionfailure<sup>63</sup> to send the memorandum to a member is to be disregarded for the purpose of determining whether the requirement specified in subsection (2)(a) or (b)(i) has been met.
- (4) The member specified for the purposes of subsection (2)(b)(ii) is—
  - (a) one who is the director with whom the service contract is proposed to be entered into; or
  - (b) one who holds any shares in the company in trust for that director.
- (5) Subsection (2)(b)(ii) does not prevent a member specified in subsection (4) from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.
- (6) For the purposes of subsection (1)(a), it is irrelevant whether the resolution is passed before, on or after the commencement date of this Division.

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<sup>63</sup> Item 33 / 第 33 項



**529. Declaration to directors: procedures**

- (1) A declaration to directors under section 527 must be—
  - (a) made at a directors' meeting;
  - (b) made by notice in writing and sent by the director to the other directors; or
  - (c) made by general notice by the director to the other directors.
- (2) A notice for the purposes of subsection (1)(b)—
  - (a) must be sent—
    - (i) in hard copy form; or
    - (ii) if the recipient has agreed to receive it in electronic form, in the electronic form so agreed; and
  - (b) must be sent—
    - (i) by hand or by post; or
    - (ii) if the recipient has agreed to receive it by electronic means, by the electronic means so agreed.
- (3) If a declaration to directors under section 527 is made by notice in writing—
  - (a) the making of the declaration is to be regarded as forming part of the proceedings at the next directors' meeting after the notice is given; and
  - (b) section 472 applies as if the declaration had been made at that meeting.
- (4) A general notice by a director for the purposes of subsection (1)(c) is a notice to the effect that—
  - (a) the director—
    - (i) has an interest (as member, officer, employee or otherwise) in a body corporate or firm specified in the notice; and
    - (ii) is to be regarded as interested in any transaction, arrangement or contract that may, after the **effective**<sup>64</sup>-date of the notice, be entered into with the specified body corporate or firm; or
  - (b) the director—
    - (i) is connected with a person specified in the notice (other than a body corporate or firm); and
    - (ii) is to be regarded as interested in any transaction, arrangement or contract that may, after the **effective**<sup>64</sup>-date of the notice, be entered into with the specified person.
- (5) A general notice must state—
  - (a) the nature and extent of the director's interest in the specified body corporate or firm; or
  - (b) the nature of the director's connection with the specified person.
- (6) A general notice is not effective unless—
  - (a) it is given at a directors' meeting;~~or~~
  - (b) the director takes all reasonable steps to secure that it is brought up and read at the next directors' meeting after it is given; or
  - (c) it is given by notice in writing and sent by the director to the other directors<sup>65</sup>.

<sup>64</sup> Item 34(I) / 第 34(I)項

<sup>65</sup> Item 34(II) / 第 34(II)項

**533. Disclosure of management contract**

- (1) This section applies if—
  - (a) a company enters into a contract by which a person undertakes the management and administration of the whole or any substantial part of any business of the company; and
  - (b) the contract is not a contract of service with any director of the company or any person engaged in the full-time employment of the company.
- (2) The directors' report for any year in which the contract is in force must include—
  - (a) a statement of the existence and duration of the contract; and
  - (b) the name of every director and shadow director interested in the contract, and the nature and extent of the interest.
- (3) The company must keep the following available for inspection at its registered office or at a place prescribed by regulations made under section 648—
  - (a) a copy of the contract;
  - (b) if such a contract is not in writing, a written memorandum setting out the terms of the contract.
- (4) The company—
  - (a) must retain the copy or memorandum for at least one year after the date of termination or expiry of the contract; and
  - (b) must keep the copy or memorandum available for inspection during that time.
- (5) If the copy or memorandum is kept available for inspection at a place other than the company's registered office, the company must deliver to the Registrar for registration a notice, in the specified form, of the place, or any change in the place, at which the copy or memorandum is kept. The notice must be delivered to the Registrar within 1514<sup>66</sup> days after the copy or memorandum is first kept at that place or within 1514<sup>66</sup> days after the change (as the case may be).
- (6) If subsection ~~(2)~~,<sup>67</sup>(3), (4) or (5) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (7) In this section—

**directors' report** (董事報告) means—

  - (a) the report required to be prepared under section 380(1); or
  - (b) the consolidated report required to be prepared under section 380(2).

<sup>66</sup> Item 1 / 第 1 項

<sup>67</sup> Item 35 / 第 35 項

**535. Contract with sole member who is also director**

- (1) This section applies if—
  - (a) a company having only one member enters into a contract with the member;
  - (b) the member is also a director of the company; and
  - (c) the contract is not entered into in the ordinary course of the company's business.
- (2) Unless the contract is in writing, the company must ensure that—
  - (a) the terms of the contract are set out in a written memorandum **within 15 days from the entering into of the contract; and**
  - (b) the memorandum is<sup>68</sup> kept at the place where the books containing the minutes of the directors' meetings are kept.
- (3) If a company contravenes subsection (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (4) A contravention of subsection (2) in relation to a contract does not affect the validity of the contract.
- (5) This section does not exclude the operation of any other Ordinance or rule of law applying to contracts between a company and a director of the company.
- (6) In this section—

**director** (董事) includes a shadow director.
- (7) For the purposes of this section, a body corporate is not to be regarded as a shadow director of any of its subsidiaries by reason only that the directors, or a majority of the directors, of the subsidiary are accustomed to act in accordance with its directions or instructions.

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<sup>68</sup> Item 36(I) / 第 36(I)項

535. **與兼具董事身分的唯一成員訂立合約** (Note: CSAs to this provision in the Chinese text do not include the CSA(s) in the English text. / 這條條文中文本的修正案並不包括英文本中的修正案。)

- (1) 如有以下情況，本條適用 —
  - (a) 只有一名成員的公司與該成員訂立合約；
  - (b) 該成員亦是該公司的董事；及
  - (c) 該合約並非在該公司的通常業務運作中訂立的。
- (2) 除非有關合約是以書面訂立的，否則有關公司須確保該合約的條款於一份書面備忘錄列明，而該備忘錄須備存於備存載有董事會議紀錄的簿冊的地方。
- (3) 如某公司違反第(2)款，該公司及其每名責任人均屬犯罪，可各處第 3 級罰款，如有關罪行是持續的罪行，則可就該罪行持續期間的每一日，另各處罰款\$300。
- (4) 就某合約違反第(2)款，並不影響該合約的有效性。
- (5) 本條不得理解為排除適用於公司與其董事訂立的合約的任何其他條例或法律規則的實施。
- (6) 在本條中 —

**董事** (director) 包括幕後董事。

- (7) 就本條而言，某法人團體並不僅因其任何附屬公司的一眾董事或大部分董事慣於按照其指示或指令行事，而被視為該附屬公司的幕後董事。縱使某法人團體的附屬公司的一眾董事或過半數董事，慣於按照該團體的指示或指令行事，該團體不會僅因此而視為其附屬公司的幕後董事。<sup>69</sup>

<sup>69</sup> Item 36(II) / 第 36(II)項