

Bills Committee on Companies Bill

“Notes” and “Examples” in the Companies Bill

INTRODUCTION

The Companies Bill contains 37 notes located at the foot of various provisions. In the paper on the Use of Notes in the Companies Bill submitted in May 2011¹, the Administration explained that the purposes of these notes can be classified into 3 broad categories, namely –

- (A) to draw readers’ attention to other relevant provisions of the Bill (25 notes fall within this category) (“*category A*”);
- (B) to provide readers with factual information which is available elsewhere (5 notes fall within this category) (“*category B*”); and
- (C) to provide examples of the situations in which the relevant provision applies or to illustrate how it will work in practice (7 notes fall within this category) (“*category C*”).

2. Clause 2(6) of the Companies Bill provides that:

“(6) A note located in the text of this Ordinance is provided for information only and has no legislative effect.”

The effect of clause 2(6) is further explained in the note on Modernisation of Drafting annexed to the paper on Overall Policies of the Companies Ordinance Rewrite submitted by the Administration on 7 March 2011².

3. In the paper on follow-up actions for the meetings held on 4 and 11 November 2011 relating to Part 4 and Part 5³, the Administration proposes to amend notes containing examples (category C) to “Examples”. An “Example” (no longer being a “Note”) will, therefore, not be covered by clause 2(6) and will be construed together with the provision to which it is attached and be given legal effect accordingly.

¹ LC Paper No. CB(1)2133/10-11(01)

² LC Paper No. CB(1)1522/10-11(02)

³ LC Paper No. CB(1)357/11-12(01)

Other notes (category A and category B) will remain subject to clause 2(6).

4. The Legislative Council Panel on Administration of Justice and Legal Services (AJLS Panel) was briefed on the use of reader aids such as notes and examples in legislation at the meeting on 15 December 2009. The AJLS Panel was briefed again on 23 May 2011 on the use of examples and notes in legislation with a specific focus on the Companies Bill.

5. This paper seeks to –
- (a) brief members on the general approach on the use of examples in the Companies Bill;
 - (b) further explain the use of notes in the Companies Bill; and
 - (c) brief members on the amendments proposed by the Administration in relation to these notes and examples.

GENERAL APPROACH ON USE OF EXAMPLES IN COMPANIES BILL

Use of examples in Hong Kong legislation

6. The use of examples in legislation is not new in Hong Kong. An example usually appears in the body of a provision. For instance, in section 52 of the Evidence Ordinance (Cap. 8), an example is given in subsection (2)(a) in this way:

“(a) published works dealing with matters of a public nature (for example, histories, scientific works, dictionaries and maps) are admissible as evidence of facts of a public nature stated therein;”

7. It is not the only way to provide examples in legislation. The Schedule to the Widows and Orphans Pension Ordinance (Cap. 94) contains examples which give readers a step-by-step guidance for the calculation of pensions (see extract at **Annex A**). Different ways of providing examples can also be found in, for instance, section 28(2)(b) of the Trade Marks Rules (Cap. 559A), section 29C(4) of the Stamp Duty Ordinance (Cap. 117) and section 3 of the Occupiers Liability Ordinance (Cap. 314). Extracts of the provisions are set out in **Annex B** for reference.

8. In a paper submitted by the Law Drafting Division of the Department of Justice in May 2011 for the meeting of AJLS Panel on 23 May 2011⁴, it is stated that:

“27. An example may be located at the end of a paragraph or of a subsection or of a section or in a note to a paragraph, subsection or section. They could be collated and included in a Schedule of Examples. They should be capable of being inserted wherever is likely to be most convenient to the reader. The use that may be made of them depends not on their location but on the status that they are accorded in the particular item of legislation.”

9. Questions may be raised as to whether examples set out in a provision are exhaustive. The opinion of the Court of Appeal in the case *Hsu Li Yun v. the Incorporated Owners of Yuen Fat Building [2000] 1 HKLRD 900* was that they were not exhaustive.

Hsu Li Yun's case

10. Section 3(2) of the Occupiers Liability Ordinance (Cap. 314) provides that the “*common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that visitors will be reasonably safe in using the premises*”. Section 3(3) of that Ordinance provides:

“(3) *The circumstances relevant for the present purpose include the degree of care, and of want of care, which would ordinarily be looked for in such a visitor, so that (for example) in proper cases –*

- (a) *an occupier must be prepared for children to be less careful than adults; and*
- (b) *an occupier may expect that a person, in the exercise of his calling, will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so.*”

11. In relation to these examples, Keith JA (as he then was) said in the judgment of the *Hsu Li Yun's case*:

⁴ LC Paper No. CB(2)1781/10-11(01)

“..... but it must not be overlooked that section 3(3)(b) is expressly described as an example. It is simply one of the circumstances which might affect the degree of care owed to a particular visitor. There will inevitably be other circumstances in which the degree of care owed to a particular visitor might be affected”⁵

12. Accordingly, examples set out in that provision are merely examples and are not exhaustive.

Reasons for change in approach (from “Notes” to “Examples”)

13. As mentioned above, using examples is not a new suggestion. They have been used in the laws of Hong Kong for decades. In a paper prepared by the Administration for the meeting of the AJLS Panel on 15 December 2009⁶, it is stated that, where appropriate, the use of reader aids such as examples and notes would be encouraged. This view was repeated at the AJLS Panel meeting in May 2011.

14. Notes that contain examples are, by nature, examples. They were put under “Notes” because at the time of the Bill’s introduction issues raised at the Bills Committee on the Motor Vehicle Idling (Fixed Penalty) Bill about the use of examples had been referred to the AJLS Panel. Pending the deliberation of the AJLS Panel, an example that was considered useful in assisting readers to understand a provision in the Companies Bill was put under a “Note” to which clause 2(6) applies, instead of being an “Example” on its own. Although it is proper to include examples in notes and give them no legislative effect (by virtue of clause 2(6)), it would be more helpful to readers to set them out as an “Example” by themselves rather than include them in notes.

15. This matter was subsequently discussed at the AJLS Panel on 23 May 2011 and the AJLS Panel did not express any objection in principle to using examples in legislation. However, the Panel did caution against extensive reliance on them.

16. The Administration has carefully considered the views of the Bills Committee on the Motor Vehicle Idling (Fixed Penalty) Bill, the

⁵ [2000] 1 HKLRD 900 at p.905

⁶ LC Paper No. CB(2)512/09-10(04)

AJLS Panel and the Bills Committee on the Companies Bill. The crux of the concern is the legal effect of examples, rather than the use of them. As such, the Administration proposes to follow the established practice of not expressly providing for the legal effect of examples in legislation. An example of a provision enacted as part of the law forms part of the context in which the provision must be interpreted. In other words, “example” will be given their ordinary meaning and corresponding status as an example.

Format for examples

17. If the proposal to change notes containing examples into “Examples” is accepted by Members, these Examples will be set out at the foot of the provision as follows:

155. Pre-emption rights in relation to transmission by law

- (1) This section applies if a company’s articles give a member or class of members of the company a right of pre-emption or right to purchase shares in the company on the occurrence of an event that constitutes a transmission of the right to the shares by operation of law.

Example—

Transmission of the right to shares on the death or bankruptcy of a shareholder.

18. Setting out an example at the foot of a provision is consistent with the format used in setting out Notes.

19. Separating an example from the body of a provision can improve the readability of the provision concerned. Take the example in section 52(2)(a) of the Evidence Ordinance (set out in paragraph 6 above) as an example. Readers have to read the example before they finish the provision itself. The flow of the text is thus disrupted. If this example were set out at the foot of the provision, readers would have been able to finish the text of the provision and grasp the concept without being side-tracked.

20. As mentioned in paragraph 8 above, the use that may be made of an example does not depend on its location. An example located at the foot of a provision has the same status as examples currently contained in Hong Kong legislation in other formats.

USE OF NOTES IN COMPANIES BILL

21. Like the use of examples, the use of notes in legislation is not new in Hong Kong. Precedents can be found in section 15 of the Legislative Council Ordinance (Cap. 542) and section 2(1) of the Food Safety Ordinance (Cap. 612).

22. In the paper submitted for the meeting of AJLS Panel on 23 May 2011⁷, it is stated that:

“33. The use of notes in legislation is another hallmark of plain language drafting. In providing signpost or other factual information they assist readers to more quickly understand the scheme of legislation and gain a complete picture of it. Like other reader aids their use should be encouraged.”

23. In the context of the Companies Bill, the benefits of the use of notes to readers are more obvious. The Gazette version of the Bill (in 2 languages) has over 2 000 pages. The Bill contains 21 Parts and 10 Schedules which consist of over 1 000 provisions. For a Bill of this length, navigating through the provisions will certainly require more effort. If two related provisions are far away from each other (for example, clause 130 and Schedule 10), readers will have to go through many pages before they see the other provision. A signpost can thus lead readers to that other provision more quickly.

24. Another reason for the particular usefulness of notes in the context of the Companies Bill is that it has a wide spectrum of prospective readers. The Bill concerns all companies ranging from listed companies to private companies with only one shareholder. It affects directors, shareholders and anyone who has dealing with a company. Bearing these readers, being general readers, in mind, this extra step to add notes in the Bill is worth taking.

⁷ LC Paper No. CB (2)1781/10-11(01)

AMENDMENTS IN RELATION TO EXAMPLES AND NOTES IN COMPANIES BILL

25. As set out above, the Administration proposes to amend notes containing examples (category C) to “Examples”. After reviewing each example, we propose to delete a few examples that are no longer required either because the provision in which it is included is to be deleted or the provision itself is sufficiently clear. The detailed proposal is contained in **Annex C**.

26. Regarding other notes (category A and category B), the Administration, after considering the view of the Bills Committee, is of the view that some of them can be deleted (see **Annex D**). The remaining notes are considered useful to readers while some of them should be amended to make them more helpful. The detailed proposal is contained in **Annex E**.

27. The Administration has also identified a few provisions that will benefit from the addition of notes. The proposed additional notes are contained in **Annex F**. The list of these provisions may change as the Administration is still reviewing the Bill in response to various issues raised at the Bills Committee. The Administration will report to the Bills Committee any change to this list in due course.

**Law Drafting Division
Department of Justice
13 March 2012**

Note 4.— The Tables and Instructions set forth in this Schedule shall apply—

- (a) to the pension, if any, in respect of every officer who commenced to contribute before, and was still a contributor on, the 1st day of July 1959, for the purpose of calculating variations when the amount of his contributions rises or falls on or after that date; and
- (b) to the pension, if any, of every officer, being an officer who commenced to contribute before, and was still a contributor on, the 1st day of July 1959, who on the 30th day of June 1959 was a widower, for the purpose of calculating variations consequent upon his re-marriage on or after the 1st day of July 1959, if he re-marries on or after that date.

Note 5.— Notwithstanding Note 2, 3 or 4, where the amount of the part of a pension, if any, (including all variations consequent upon the rise or fall in the amount of any contribution or upon re-marriage) purchased by contributions falling due on or before 30 November 1967, when calculated on and in accordance with the Tables and Instructions set forth in this Schedule, is less than the amount of any such part calculated on and in accordance with the pension tables and rules for calculating pensions in force on 30 June 1959, the difference between the two amounts shall be added to the registered pension, if any, as at 30 November 1967, calculated on and in accordance with the Tables and Instructions set forth in this Schedule. (*Added 7 of 1971 s. 2*)

Note 6.— Notwithstanding Note 2, 3 or 4, where a pension calculated on and in accordance with the pension tables and rules for calculating pensions in force on 30 June 1959 and payable before 1 December 1967 is greater than it would be if it were calculated on and in accordance with the Tables and Instructions set forth in this Schedule, that pension shall continue to be calculated on and in accordance with the pension tables and rules for calculating pensions in force on 30 June 1959. (*Added 7 of 1971 s. 2*)

SECTION A—CONTRIBUTOR WHO COMMENCED TO CONTRIBUTE WHILE A BACHELOR OR WHILE A WIDOWER WITHOUT ANY CHILD OF PENSIONABLE AGE.

Note 1.— In this section—

- “first wife” (首任妻子), in the case of an officer who commenced to contribute while a widower without any child of pensionable age, means the first wife married by such officer after his commencing to contribute; and
- “marriage” (婚姻·結婚), in the case of an officer who commenced to contribute while a widower without any child of pensionable age, means the first marriage of such officer after his commencing to contribute.

Note 2.— No registered pension is to be recorded unless and until the contributor marries.

I—FIRST WIFE'S PROSPECTIVE PENSION

The registered pension to be recorded on marriage is found by adding together the two amounts calculated in accordance with the following rules I(a) and I(b), respectively—

(a) *Pension in consideration of the contributions paid before marriage.*

RULE I(a)— Increase each contribution by 50 per cent (being Government's contribution); then accumulate the contributions (so increased) at $3\frac{1}{2}$ per cent, compound interest, with yearly rests at each 31st December; and then multiply the result by the quantity found from Table A corresponding to the respective ages next birthday of the husband and wife at the date of marriage.

The product gives the registered pension on account of the contributions paid before marriage.

(b) *Pension in consideration of the annual contribution current at the date of marriage.*

RULE I(b)— Increase the amount of the current annual contribution (which is obtained by multiplying by 12 the amount of the last monthly contribution) by 50 per cent (being Government's contribution); then turn to the section of Table B which contains in the heading the age next birthday of the husband at the date of completion of his period of contribution, or, where completion of the period of contribution occurs on his attaining the age of 65 years without his having contributed for 35 successive years, turn to the last section of Table B, and multiply the amount of the current annual contribution (so increased) by the quantity found from that section corresponding to the respective ages next birthday of the husband and wife at the date of marriage.



The product gives the registered pension on account of the annual contribution current at the date of marriage.

EXAMPLE—

Officer born on	31st July 1932
Officer commenced to contribute on	1st April 1958
Officer married on	30th June 1962
Annual contribution, 1st April 1958 to 31st December 1960	\$400
Annual contribution, 1st January 1961 to date of marriage	\$500
Date of completion of contribution period	1st April 1993
Wife born on	31st August 1942
Officer's age next birthday at date of marriage	30
Officer's age next birthday at completion of contribution period	61
Wife's age next birthday at date of marriage	20

Application of rule I(a)

Increase and accumulation of contributions paid before marriage—

1st April 1958 to 31st December 1958	\$300 increased by 50% to	\$ 450.00
Contributions during 1959	\$400 increased by 50% to	\$ 600.00
One year's interest at $3\frac{1}{2}\%$ on \$450		\$ 15.75
		<u>\$1,065.75</u>
Contributions during 1960.....	\$400 increased by 50% to	\$ 600.00
One year's interest at $3\frac{1}{2}\%$ on \$1,065.75		\$ 37.30
		<u>\$1,703.05</u>
Contributions during 1961	\$500 increased by 50% to	\$ 750.00
One year's interest at $3\frac{1}{2}\%$ on \$1,703.05		\$ 59.61
		<u>\$2,512.66</u>
Contribution from 1st January 1962 to 30th June 1962 (i.e. date of marriage)	\$250 increased by 50% to	\$ 375.00
Half-year's interest at $3\frac{1}{2}\%$ on \$2,512.66		\$ 43.97
		<u><u>\$2,931.63</u></u>

Quantity found from Table A—

Husband	30	} .264
Wife*	20	

Then the registered pension in consideration of contributions paid before marriage
 = \$2,931.63 × .264
 = \$773.95

Application of rule I(b)

Annual contribution current at date of marriage	\$500
Current annual contribution increased by 50%	\$750

Quantity found from Table B, section for officers aged 61 next birthday at completion of period of contribution—

Husband	30	} 4.81
Wife*	20	

Then the registered pension in consideration of annual contribution current at marriage
 = \$750 × 4.81
 = \$3,607.50

Total registered pension to be recorded on the contributor marrying—

By rule I(a)	\$ 773.95
By rule I(b)	\$3,607.50
Total	<u>\$4,381.45</u>

- (c) *Variations of pension consequent on increments to, and decrements from, the current annual contribution while the contributor is married to his first wife.*

RULE I(c)—Increase the amount of the increment to, or the decrement from, the current annual contribution (which is obtained by multiplying by 12 the amount of the last monthly contribution) by 50 per cent; then turn to the section of Table B which contains in the heading the age next birthday of the husband at the date of completion of his period of contribution, or, where completion of the period of contribution occurs on his attaining the age of 65 years without his having contributed for 35 successive years, turn to the last section of Table B, and multiply the amount of the increment or decrement (so increased) by the quantity found from that section corresponding to the respective ages next birthday of the husband and wife at the date of the variation of the contribution.

The product gives the amount to be added to the registered pension consequent on the increment to the current annual contribution, or, as the case may be, the amount to be deducted from the registered pension consequent on the decrement from the current annual contribution.

The cessation of the contribution from any cause, other than by reason of the death of the contributor, before the completion of the full period of contribution must be regarded as a decrement from the current annual contribution equal to the amount of such current annual contribution.



EXAMPLE—

Assume particulars as in example subjoined to rules I(a) and I(b).

Annual contribution increases on 31st May 1967 from \$500 to	\$700
Annual contribution decreases on 30th April 1972 from \$700 to	\$600

* *Note*—Where the age is not given in the Tables, proceed as illustrated in the general examples given in section F.

CAP. 94 *Widows and Orphans Pension*

Annual contribution ceases on 31st March 1977.

31st May 1967, increment to current annual contribution \$200
 Increase of the increment (50%) \$300

Quantity found from Table B, section for officers aged 61 next birthday at completion of period of contribution—

Husband 35 } 3.85
 Wife* 25 }

Then amount to be added to the registered pension = $\$300 \times 3.85$
 = \$1,155.00

Registered pension at marriage (see example subjoined to rules I(a) and I(b) \$4,381.45
 Add \$1,155.00
 Registered pension at 31st May 1967 \$5,536.45

30th April 1972, decrement from current annual contribution \$100
 Increase of the decrement (50%) \$150

Quantity found from Table B, section for officers aged 61 next birthday at completion of period of contribution—

Husband 40 } 2.99
 Wife* 30 }

Then amount to be deducted from the registered pension = $\$150 \times 2.99$
 = \$448.50

Registered pension at 31st May 1967 \$5,536.45
 Deduct \$ 448.50
 Registered pension at 30th April 1972 \$5,087.95

31st March 1977, cessation of contribution regarded as decrement from current annual contribution \$600
 Increase of the decrement (50%) \$900

Quantity found from Table B, section for officers aged 61 next birthday at completion of period of contribution—

Husband 45 } 2.20
 Wife* 35 }

Then amount to be deducted from the registered pension = $\$900 \times 2.20$
 = \$1,980.00

Registered pension at 30th April 1972 \$5,087.95
 Deduct \$1,980.00
 Registered pension at 31st March 1977 \$3,107.95

* Note—Where the age is not given in the Tables, proceed as illustrated in the general examples given in section F.

Annex B

Chapter:	559A	TRADE MARKS RULES	Gazette Number	Version Date
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Rule:	28	Request to merge applications (s. 51(1)(b) of the Ordinance) (Form T4)	L.N. 30 of 2003; L.N. 31 of 2003	04/04/2003
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(1) An applicant who has filed separate applications for registration of a trade mark may, at any time before particulars of any of those applications have been published under rule 15, file a request on the specified form to merge those applications into a single application.

(2) The Registrar shall merge the applications that are the subject of the request into a single application if he is satisfied that all of the applications-

- (a) are in respect of the same trade mark;
- (b) claim the same protection under the Ordinance (for example, for protection as a collective mark);
- (c) bear the same filing date; and
- (d) are, at the time of the request, in the name of the same person.

Chapter:	117	STAMP DUTY ORDINANCE	Gazette Number	Version Date
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Section:	29C	Chargeable agreements for sale	14 of 2011	30/06/2011
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- (1) (Repealed L.N. 90 of 1999 and 44 of 1999 s. 19)
- (2) A chargeable agreement for sale is chargeable with stamp duty even if-
- (a) it does not contain the matters specified in section 29B(5); or
 - (b) it has not been executed by all persons who are required by section 29B(1) to execute it,
- or both, but the Collector may refuse to stamp the agreement. (Replaced 14 of 2011 s. 7)
- (3) For the avoidance of doubt, it is hereby declared that if-
- (a) a chargeable agreement for sale is made in respect of immovable property; and
 - (b) another chargeable agreement for sale is made in respect of all or any part of the property (whether by the vendor or purchaser under the first-mentioned agreement, or both) before a conveyance on sale of the property or that part of the property is made in pursuance of the first-mentioned agreement,
- then (subject to the notes to head 1(1A) and (1B) in the First Schedule and to section 29F) each agreement is chargeable with stamp duty. (Amended 14 of 2011 s. 7)
- (4) The principle in subsection (3) applies, with necessary modifications, if there is a series of more than 2 chargeable agreements for sale in respect of the same, or any part of the same, immovable property; for example-
- (a) if a purchaser under a chargeable agreement for sale makes a chargeable agreement for a sub-sale, and the sub-purchaser makes a further chargeable agreement for a sub-sale; or
 - (b) if a chargeable agreement for sale is cancelled and replaced by a chargeable agreement for sale made by the vendor and a second purchaser, and that other agreement is cancelled and replaced by a chargeable agreement for sale made by the vendor and a third purchaser,
- then (subject to the notes to head 1(1A) and (1B) in the First Schedule and to section 29F) each agreement is chargeable with stamp duty. (Amended 14 of 2011 s. 7)
- (5) If-
- (a) a chargeable agreement for sale is made in respect of immovable property; and
 - (b) another chargeable agreement for sale is made in respect of all or any part of the property (whether by the vendor or purchaser under the first-mentioned agreement, or both) before a conveyance on sale of the property or that part of the property is made in pursuance of the first-mentioned agreement; and
 - (c) under the second-mentioned agreement-
 - (i) the purchasers are a person named in the first-mentioned agreement as a purchaser and another person who is not so named; or
 - (ii) the purchaser is one, or the purchasers are some, (but not all) of the persons named in the first-mentioned agreement as the purchasers,
 the second-mentioned agreement shall be chargeable with stamp duty as if it were a conveyance on sale executed in pursuance of the first-mentioned agreement for sale and section 29D(4) or (5) (as is appropriate) shall apply accordingly.
- (5A) (a) Notwithstanding any other provisions of this Part, an agreement for sale to which head 1(1A) or (1B) in the First Schedule would, apart from this subsection, apply shall, subject to paragraph (b), not be regarded as an agreement for sale to which that head applies if the agreement is cancelled, annulled or rescinded or is otherwise not performed.
- (b) Where an agreement for sale described in paragraph (a) is cancelled, annulled or rescinded or is otherwise not performed by reason of the occurrence of a specified

event described in subsection (5AA), despite paragraph (a), the agreement continues to be regarded as an agreement for sale to which head 1(1A) or (1B) in the First Schedule applies. (Added L.N. 90 of 1999 and 44 of 1999 s. 19. Amended 14 of 2011 s. 7)

(5AA) In relation to an agreement for sale made in respect of immovable property (*first agreement*), there is occurrence of a specified event if-

- (a) another agreement for sale is made by the purchaser under the first agreement in which the purchaser makes a nomination or gives a direction that-
 - (i) transfers, or gives a power to transfer, any benefit of the purchaser in respect of the property or any part of the property under the first agreement; or
 - (ii) authorizes another person to take a conveyance of the property or any part of the property or to execute such a conveyance in favour of a third party, other than a nomination made, or a direction given, in favour of a person who is to be a trustee for the purchaser in respect of the property or the part of the property, or in favour of a person who is a parent, spouse or child of the purchaser (or, only in so far as it relates to special stamp duty, a person who is a parent, spouse, child, brother or sister of the purchaser), whether or not also in favour of the purchaser; or
- (b) another agreement for sale is made in respect of the property or any part of the property-
 - (i) between the vendor under the first agreement and a party introduced, directly or indirectly, to the vendor by the purchaser under the first agreement; or
 - (ii) under the direction of or upon the request of the purchaser. (Added 14 of 2011 s. 7)

(5B) (a) Subject to paragraph (b), if any monies have been paid under this Ordinance, whether by way of stamp duty or penalty, in respect of an agreement for sale as an agreement for sale to which head 1(1A) or (1B) in the First Schedule applies, but the agreement is under subsection (5A)(a) not regarded as an agreement for sale to which that head applies, the Collector must refund the monies paid. (Replaced 14 of 2011 s. 7)

- (b) In relation to an agreement for sale described in paragraph (a), no monies shall be refunded under paragraph (a) unless-
 - (i) an application has been made to the Collector-
 - (A) where the agreement has been cancelled, annulled or rescinded, within 2 years after the agreement has been cancelled, annulled or rescinded, as the case may be; or
 - (B) where the agreement has otherwise not been performed, within 2 years after the date agreed under the agreement as the date of completion of the sale and purchase, or (in its absence) the date of conveyance, of the immovable property subject to the agreement (whether the date is determined by reference to the happening of an event or otherwise); and
 - (ii) such evidence, by statutory declaration or otherwise, in support of the application as the Collector may require has been produced to the Collector.

(c) Where any monies paid in respect of an agreement for sale are refunded under paragraph (a), the Collector may cancel- (Amended 21 of 2003 s. 14)

- (a) the stamp, if any, denoting payment of the monies on the agreement; or
- (b) the stamp certificate, where applicable, denoting payment of the monies in respect of the agreement. (Added L.N. 90 of 1999 and 44 of 1999 s. 19. Amended 21 of 2003 s. 14)

(6) (Repealed L.N. 90 of 1999 and 44 of 1999 s. 19)

(7) Where a chargeable agreement for sale consists of 2 or more instruments, the principal instrument only shall be chargeable with stamp duty and the other instruments shall not be chargeable with stamp duty.

(8) For the purposes of this Ordinance, the consideration for an agreement for sale shall be deemed to be the aggregate of the amounts and values referred to in section 29B(5)(i) and (j).

- (9) For the purpose of ascertaining the manner in which a chargeable agreement for sale is chargeable with stamp duty, sections 22, 23 and 24 shall operate as if any reference in those sections-
- (a) to a conveyance on sale were a reference to a chargeable agreement for sale;
 - (b) to a transferee were a reference to the purchaser under a chargeable agreement for sale;
 - (c) to the property conveyed were a reference to the immovable property subject to a chargeable agreement for sale.
- (10) Where under a chargeable agreement for sale-
- (a) the exchange of any immovable property for any other immovable property; or
 - (b) the partition of an immovable property,
- is agreed to, and any consideration is paid or given, or agreed to be paid or given, for equality, the agreement for sale shall, subject to section 29F, be charged with the same stamp duty as a chargeable agreement for sale for the consideration, and with that stamp duty only.

Chapter:	314	OCCUPIERS LIABILITY ORDINANCE	Gazette Number	Version Date
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Section:	3	Extent of occupier's ordinary duty		30/06/1997
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(1) An occupier of premises owes the same duty, the "common duty of care", to all his visitors, except in so far as he is free to and does extend, restrict, modify or exclude his duty to any visitor or visitors by agreement or otherwise.

(2) The common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.

(3) The circumstances relevant for the present purpose include the degree of care, and of want of care, which would ordinarily be looked for in such a visitor, so that (for example) in proper cases-

- (a) an occupier must be prepared for children to be less careful than adults; and
- (b) an occupier may expect that a person, in the exercise of his calling, will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so.

(4) In determining whether the occupier of premises has discharged the common duty of care to a visitor, regard is to be had to all the circumstances, so that (for example)-

- (a) where damage is caused to a visitor by a danger of which he had been warned by the occupier, the warning is not to be treated without more as absolving the occupier from liability, unless in all the circumstances it was enough to enable the visitor to be reasonably safe; and
- (b) where damage is caused to a visitor by a danger due to the faulty execution of any work of construction, maintenance or repair by an independent contractor employed by the occupier, the occupier is not to be treated without more as answerable for the danger if in all the circumstances he had acted reasonably in entrusting the work to an independent contractor and had taken such steps (if any) as he reasonably ought in order to satisfy himself that the contractor was competent and that the work had been properly done.

(5) The common duty of care does not impose on an occupier any obligation to a visitor in respect of risks willingly accepted as his by the visitor (the question whether a risk was so accepted to be decided on the same principles as in other cases in which one person owes a duty of care to another).

(6) For the purposes of this section, persons who enter premises for any purpose in the exercise of a right conferred by law are to be treated as permitted by the occupier to be there for that purpose, whether they in fact have his permission or not.

[cf. 1957 c.31 s.2 U.K.]

Annex C

This Annex contains proposals regarding the notes set out in the following provisions:

Clause	Proposal
155	The Note to become an Example
175	The Note to become an Example
183	The Note to become an Example
205	The Note to become Examples
207	Delete the Note
346	Delete the Note
Sch. 10, s. 27	Delete the Note

Note: Other Committee Stage Amendments that may be made to the provisions above are not reflected in this Annex.

155. Pre-emption rights in relation to transmission by law

- (1) This section applies if a company's articles give a member or class of members of the company a right of pre-emption or right to purchase shares in the company on the occurrence of an event that constitutes a transmission of the right to the shares by operation of law.

NoteExample—

~~For example, t~~Transmission of the right to shares on the death or bankruptcy of a shareholder.

- (2) If this section applies, the registration as a member of the company of the person to whom the right to the shares is transmitted is subject to the right of pre-emption or right to purchase shares contained in the articles and that right may be enforced against the person.

Reason for providing the example

General readers may find it difficult to understand the meaning of “*transmission*” and “*by operation of law*”.

175. Varying class rights

- (1) Rights attached to shares in a class of shares in a company may be varied only—
 - (a) in accordance with provisions in the company’s articles for the variation of those rights; or
 - (b) if there are no such provisions, with the consent of holders of shares in that class given in accordance with this section.
- (2) Subsection (1) is without prejudice to any other restrictions on the variation of the rights.

NoteExample—

~~For example, a~~A company could make an agreement with the holders of shares in a class that imposes greater restrictions on the variation of class rights than those in the company’s articles or in this section.

- (3) The consent required for the purposes of this section is—
 - (a) written consent of holders representing at least 75% of the total voting rights of holders of shares in the class; or
 - (b) a special resolution passed at a separate general meeting of holders of shares in the class sanctioning the variation.
- (4) A variation takes effect—
 - (a) if no application is made under section 177 for it to be disallowed, at the end of the period in which applications may be made under that section; or
 - (b) if an application is made within that period, at the time the application is withdrawn or finally determined (unless the variation is disallowed).
- (5) Any amendment of a provision in a company’s articles for the variation of the rights attached to shares in a class, or the insertion of any such provision into the articles, is itself to be regarded as a variation of those rights.
- (6) Nothing in this section affects the Court’s powers under sections 664, 665 and 714.

Reason for providing the example

Clause 175(1) provides for the restrictions on the variation of rights attached to shares. Then, in clause 175(2), it mentions “any other restrictions”. Readers may wonder what these “other” restrictions are.

183. Varying class rights

- (1) Rights of a class of members of a company that does not have a share capital may be varied only—
 - (a) in accordance with provisions in the company’s articles for the variation of those rights; or
 - (b) if there are no such provisions, with the consent of the members of that class given in accordance with this section.
- (2) Subsection (1) is without prejudice to any other restrictions on the variation of the rights.

Note~~Example~~—

~~For example, a~~A company could make an agreement with the members of a class that imposes greater restrictions on the variation of class rights than those in the company’s articles or in this section.

- (3) The consent required for the purposes of this section is—
 - (a) written consent of at least 75% of the members in the class; or
 - (b) a special resolution passed at a separate general meeting of the members in the class sanctioning the variation.
- (4) A variation takes effect—
 - (a) if no application is made under section 185 for it to be disallowed, at the end of the period in which applications may be made under that section; or
 - (b) if an application is made within that period, at the time the application is withdrawn or finally determined (unless the variation is disallowed).
- (5) Any amendment of a provision in a company’s articles for the variation of the rights of a class of members, or the insertion of any such provision into the articles, is itself to be regarded as a variation of those rights.
- (6) Nothing in this section affects the Court’s powers under sections 664, 665 and 714.

Reason for providing the example

Clause 183(1) provides for the restrictions on the variation of rights of a class of members of a company. Then, in clause 183(2), it mentions “any other restrictions”. Readers may wonder what these “other” restrictions are.

205. Permitted reductions of share capital

- (1) A company may, in accordance with the procedure specified in section 206, reduce its share capital under this Division in any way.

Note **Examples**—

For example—

1. A company may extinguish or reduce the liability on any of its shares in respect of share capital not paid up.
2. A company may, either with or without extinguishing or reducing liability on any of its shares—
 - (a) cancel any paid-up share capital that is lost or unrepresented by available assets; or
 - (b) repay any paid-up share capital in excess of the company's wants.
- (2) However, a company must not reduce its share capital if, as a result of the reduction, there would no longer be any member of the company holding shares other than redeemable shares.
- (3) This Division is subject to any provision of a company's articles that prohibits or restricts the reduction of the company's share capital.

Reason for providing the examples

Clause 205(1) restates section 58(1) of the Companies Ordinance (Cap. 32) ("CO"). Section 58(1) of the CO provides that the company concerned "*may reduce its share capital in any way*" and then goes on to provide that share capital may "*in particular, without prejudice to the generality of the foregoing power*" be reduced in the ways set out in subsection (1)(a), (b) and (c) of the CO. The scenarios set out in subsection (1)(a), (b) and (c) of the CO are not exhaustive. They are examples on how share capital may be reduced although the words "for example" are not used. The provision is in fact the same as the clause 205(1). Clause 205(1) does not change the way in which share capital may be reduced merely by moving subsection (1)(a), (b) and (c) to an Examples. Setting them out as Examples has the added benefit of improving the readability of the provision.

207. Offence if share capital is reduced in contravention of Division

- (1) If a company reduces its share capital in contravention of this Division, the company, and every responsible person of the company, commit an offence and each is liable—
 - (a) on conviction on indictment to a fine of \$1,250,000 and to imprisonment for 5 years; or
 - (b) on summary conviction to a fine of \$150,000 and to imprisonment for 12 months.
- (2) An offence is not committed under this section in relation to a reduction of share capital by a company only because one or more directors of the company commit an offence under section 202 in making a solvency statement for the purposes of the reduction of share capital.
- (3) An offence is not committed under this section if the reduction of share capital occurs as a result of a share redemption or buy-back in accordance with Division 4 or as otherwise provided in this Ordinance.

Note—

~~For example, a reduction of share capital could occur as a result of an order of the Court under Part 13.~~

Reason for deleting the example

Readers should have no difficulty in understanding the meaning of “*as otherwise provided in this Ordinance*”.

346. Rectification of registered particulars

- (1) The Court may, on application by the company or registered non-Hong Kong company or by a person interested in the charge, order that—
 - (a) an omission or misstatement of any particular in any of the following be rectified—
 - (i) a statement of the particulars of a charge, or any accompanying instrument, delivered for registration under—
 - (A) Division 2 or 3;
 - (B) section 80 or 82 of the predecessor Ordinance, or that section by virtue of section 91 of that Ordinance, having a continuing effect under section 64(4)(a), 65(4)(a), 66(4) or 67(4) of Schedule 10; or
 - (C) section 91(5) of the predecessor Ordinance having a continuing effect under section 68(4) of Schedule 10;
 - (ii) a statement of the particulars of an issue of debentures, or a statement of the particulars of commission, allowance or discount, delivered for registration under—
 - (A) Division 4;
 - (B) section 80 or 82 of the predecessor Ordinance, or that section by virtue of section 91 of that Ordinance, having a continuing effect under section 64(4)(a), 65(4)(a), 66(4) or 67(4) of Schedule 10; or
 - (C) section 91(5) of the predecessor Ordinance having a continuing effect under section 68(4) of Schedule 10;
 - (iii) a notification, or any accompanying instrument, under section 344;
 - (iv) a memorandum under section 85 of the predecessor Ordinance; or
 - (b) an omission or misstatement of any of the following be rectified—
 - (i) any particular with respect to a charge delivered for registration before the commencement date of this section under section 80, 82 or 91(5) of the predecessor Ordinance;

- (ii) any particular with respect to a charge delivered for registration under section 80, 82 or 91(5) of the predecessor Ordinance having a continuing effect under section 64(2), 65(2), 66(2), 67(2) or 68(2) of Schedule 10.
- (2) The Court may make an order under subsection (1) on any terms and conditions that the Court thinks just and expedient.
- (3) The Court must not make an order unless the Court is satisfied that—
 - (a) the omission or misstatement—
 - (i) was accidental;
 - (ii) was due to inadvertence or to some other sufficient cause; or
 - (iii) is not of a nature to prejudice the position of creditors or members of the company or registered non-Hong Kong company; or
 - (b) it is just and equitable to grant the relief on other grounds.
- (4) The Court may make an order to rectify an omission or misstatement of any particular in any accompanying instrument mentioned in subsection (1)(a)(i) or (iii) to the extent as permitted by common law rules and equitable principles.

Note—

~~Rectification may be ordered if the instrument failed accurately to record the intention of the parties.~~

Reason for deleting the example

Readers should have no difficulty in understanding the meaning of “*as permitted by common law rules and equitable principles*”.

Schedule 10

~~27. Fee exemption for existing companies that increase their issued share capital~~

- ~~(1) This section applies to an existing company that, at the relevant time, has paid the required fees under paragraphs (a), (b) and (ba) (if applicable) of Part I of the Eighth Schedule to the predecessor Ordinance calculated by reference to the company's nominal share capital or increases in the company's nominal share capital.~~
- ~~(2) A fee is not payable by the company under section 137(3) or 166(3) in respect of so much of an increase in its issued share capital after the relevant time that, together with any other increases in its issued share capital after the relevant time, does not exceed the difference between the company's registered share capital at the relevant time and the nominal value of its issued share capital at the relevant time.~~

~~Note—~~

~~For example, a company registered before the commencement date of this section had a registered share capital (otherwise known as its authorized share capital) of \$1,000,000 immediately before that commencement date. The nominal value of the company's issued share capital immediately before that commencement date was \$250,000. A fee is not payable by the company under section 137(3) for registration of a return of an allotment showing an increase in issued share capital, or under section 166(3) for registration of a notice of alteration of share capital showing an increase in issued share capital, in respect of so much of the increase that, together with any previous increases since that commencement date, does not exceed \$750,000 (\$1,000,000 — \$250,000). For example:~~

- ~~(a) the company increases its share capital by allotting shares of \$250,000: the increase does not exceed \$750,000, and so no fee is payable under section 137(3);~~
 - ~~(b) the company subsequently increases its share capital by \$300,000 without allotting shares: the increase, together with that in (a), is \$550,000 (\$250,000 + \$300,000) which does not exceed \$750,000, and so no fee is payable under section 166(3);~~
 - ~~(c) the company subsequently increases its share capital by allotting shares of \$600,000: the increase, together with those in (a) and (b), is \$1,150,000 (\$250,000 + \$300,000 + \$600,000) which exceeds \$750,000, so a fee is payable under section 137(3) in respect of that part of the increase that exceeds \$750,000, that is, \$400,000;~~
 - ~~(d) fees would be payable under section 137(3) or 166(3) (as applicable) in respect of any subsequent increases in the company's issued share capital.~~
- ~~(3) In this section—~~
- ~~**relevant time** (有關時間) means—~~
- ~~(a) for an existing company formed and registered before the commencement date of this section, the time immediately before that commencement date;~~

~~(b) for any other existing company, the time of registration of the company.~~

Reason for deleting the example

Clause 27 of Schedule 10 will be deleted, as part of the proposal for the abolition of capital duty under the CB. The Administration has consulted the Legislative Council Panel on Financial Affairs on 2 March 2012 and has obtained Members' support to effect abolition of capital duty under the CO and the CB. For the CO, the Order amending Schedule 8 to the CO to effect abolition of capital duty will be gazetted on 16 March 2012 and tabled at the Legislative Council for negative vetting on 21 March 2012. Subject to the necessary legislative process, the Order will take effect on 1 June 2012. For the CB, we will introduce CSAs to the relevant provisions to effect the same.

Annex D

This Annex contains proposals regarding the notes set out in the following provisions:

Clause	Proposal
Sch. 10, s. 15	Delete the Note with amendment to Sch. 10, s. 15
Sch. 10, s. 39	Delete the Note with amendment to Sch. 10, s. 39
Sch. 10, s. 45	Delete the Note with amendment to Sch. 10, s. 45
Sch. 10, s. 46	Delete the Note with amendment to Sch. 10, s. 46
198	Delete the Note
266	Delete the Note
218	Delete the Note
225	Delete the Note
261	Delete the Note
285	Delete the Note
279	Delete the Note
280	Delete the Note
281	Delete the Note
237	Delete the Note
253	Delete the Note
272	Delete the Note with amendment to clause 272
420	Delete the Note with amendment to clause 420
534	Delete the Note
710	Delete the Note

Note: Other Committee Stage Amendments that may be made to the provisions above are not reflected in this Annex.

Schedule 10

15. Exercise by directors of power to allot shares or grant rights

Section 135 does not apply to an allotment of shares by a company on or after the commencement date of that section in accordance with an offer, agreement or option made or granted by the company before ~~the commencement date of the Companies (Amendment) Ordinance 1984 (6 of 1984).~~31 August 1984.

Note—

~~The commencement date of the Companies (Amendment) Ordinance 1984 (6 of 1984) was 31 August 1984—see L.N. 247 of 1984.~~

Reason for deleting the note

The information can be set out in the provision itself.

Schedule 10

39. Use of amount standing to credit of share premium account

- (1) Despite section 38 of this Schedule, a company may, on or after the commencement date of section 130, use the amount that was standing to the credit of its share premium account immediately before that commencement date to—
 - (a) pay up, in accordance with an agreement made before that commencement date, shares that are to be issued on or after that commencement date to members of the company as fully paid bonus shares;
 - (b) write off—
 - (i) the preliminary expenses of the company incurred before that commencement date; or
 - (ii) the expenses incurred, commission paid, or discount allowed, before that commencement date, in respect of any issue of shares in the company; or
 - (c) provide for the premium payable on redemption of redeemable preference shares issued before ~~the commencement date of the Companies (Amendment) Ordinance 1991 (77 of 1991)~~ 1 September 1991.

Note—

~~The commencement date of the Companies (Amendment) Ordinance 1991 (77 of 1991) was 1 September 1991—see L.N. 283 of 1991.~~

- (2) Despite section 38 of this Schedule, if redeemable shares issued by a company on or after ~~the commencement date of the Companies (Amendment) Ordinance 1991 (77 of 1991)~~ 1 September 1991 but before the commencement date of section 130 are redeemed on or after the commencement date of section 130, any premium payable on their redemption may be paid out of the proceeds of a fresh issue of shares made for the purpose of the redemption, up to an amount equal to the lesser of—
 - (a) the aggregate of the premiums received by the company on the issue of the shares redeemed;
 - (b) the amount that was standing to the credit of the company's share premium account immediately before the commencement date of section 130 less any amounts already applied under subsection (1) or this subsection.
- (3) If an amount is paid under subsection (2), the remaining amount available for the purposes of subsection (1) or (2) must be reduced by a corresponding amount.

Reason for deleting the note

The information can be set out in the provision itself.

Schedule 10

45. Redeemable shares issued before commencement date

Any redeemable preference shares issued before ~~the commencement date of the Companies (Amendment) Ordinance 1991 (77 of 1991)~~ 1 September 1991 and any redeemable shares issued on or after that date but before the commencement date of section 229 may be redeemed in accordance with this Ordinance.

Note—

~~The commencement date of the Companies (Amendment) Ordinance 1991 (77 of 1991) was 1 September 1991—see L.N. 283 of 1991.~~

Reason for deleting the note

The information can be set out in the provision itself.

Schedule 10

46. Effect of company's failure to redeem or buy back

Sections 267 and 268 do not apply to any redeemable preference shares issued before ~~the commencement date of the Companies (Amendment) Ordinance 1991 (77 of 1991).~~ 1 September 1991.

Note—

~~The commencement date of the Companies (Amendment) Ordinance 1991 (77 of 1991) was 1 September 1991—see L.N. 283 of 1991.~~

Reason for deleting the note

The information can be set out in the provision itself.

198. Interpretation

distributable profits (可分派利潤), in relation to the making of a payment by a company, means those profits out of which the company could lawfully make a distribution equal in value to the payment;

Note—

~~Division 2 of Part 6 contains prohibitions and restrictions on a company in making distributions.~~

Reason for deleting the note

Part 6 applies generally to the distribution of profits and assets. There is no need to specifically draw readers' attention to it here.

266. Return of share redemption or buy-back

- (1) A company that redeems or buys back any shares under this Division must, within 14 days after the date on which the shares are delivered to the company, deliver a return to the Registrar for registration.
- (2) The return—
 - (a) must be in the specified form;
 - (b) must state, for the shares of each class redeemed or bought back—
 - (i) the number of shares; and
 - (ii) the date on which they were delivered to the company;
 - (c) must include a statement of capital, as at the time immediately after the redemption or buy-back, that complies with section 196;
 - (d) in the case of a listed company, must also state, for the shares of each class redeemed or bought back—
 - (i) the maximum and minimum prices paid in respect of the shares; and
 - (ii) the aggregate amount paid by the company for the shares; and
 - (e) in the case of a redemption or buy-back financed by a payment out of capital, must also state particulars of the payment including the date and amount of the payment.

Note—

~~If the redemption or buy-back results in an alteration of the company's articles, the company is also required to notify the Registrar of the alteration within 14 days after it takes effect (see section 83).~~

- (3) Details of shares delivered to the company on different dates and under different contracts may be included in a single return. If this is done, the amount required to be stated under subsection (2)(d)(ii) is the aggregate amount paid by the company for all the shares to which the return relates.
- (4) If the company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.

Reason for deleting the note

A redemption or buy-back will not alter the articles unless the company chooses to include the details of its issued shares in the articles. Even so, this is uncommon.

218. Company to deliver copy of order of Court to Registrar

- (1) Within 14 days after the making of an order by the Court under section 217, or within any longer period ordered by the Court, the company must deliver an office copy of the order to the Registrar for registration.

Note—

~~If the order of the Court makes an alteration to the company's articles, the company is also required to notify the Registrar of the alteration under section 91.~~

- (2) If the company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

Reason for deleting the note

The requirement under clause 91 applies generally to orders by the Court. There is no need to specifically draw readers' attention to it here.

225. Registration of order, minute and return

- (1) If—
 - (a) the Court makes an order under section 224 confirming the reduction of share capital; and
 - (b) within 14 days after the making of the order, or within any longer period ordered by the Court, the company delivers to the Registrar—
 - (i) an office copy of the order;
 - (ii) a minute that complies with subsection (2) and that is approved by the Court; and
 - (iii) a return that complies with subsection (3),the Registrar must register the order, minute and return.

Note—

~~If the order of the Court makes an alteration to the company's articles, the company is also required to notify the Registrar of the alteration under section 91.~~

- (2) The minute must state, with respect to the company's share capital as altered by the order—
 - (a) the amount of the share capital;
 - (b) the total number of issued shares in the company;
 - (c) the amount of each share; and
 - (d) the amount paid up and the amount (if any) remaining unpaid on each share.
- (3) The return—
 - (a) must be in the specified form;
 - (b) must contain particulars of the reduction of share capital (by reference to the order or minute, or otherwise); and
 - (c) must include a statement of capital, as at the time immediately after the reduction of share capital, that complies with section 196.
- (4) The special resolution, as confirmed by the order, takes effect on registration of the order, minute and return by the Registrar.
- (5) Notice of the registration must be published in the manner directed by the Court.

Reason for deleting the note

The requirement under clause 91 applies generally to orders by the Court. There is no need to specifically draw readers' attention to it here.

261. Company to deliver copy of order of Court to Registrar

- (1) Within 14 days after the making of an order by the Court under section 260, or within any longer period ordered by the Court, the company must deliver an office copy of the order to the Registrar for registration.

Note—

~~If the order of the Court makes an alteration to the company's articles, the company is also required to notify the Registrar of the alteration under section 91.~~

- (2) If the company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

Reason for deleting the note

The requirement under clause 91 applies generally to orders by the Court. There is no need to specifically draw readers' attention to it here.

285. Company to deliver copy of order of Court to Registrar

- (1) Within 14 days after the making of an order by the Court under section 284, or within any longer period ordered by the Court, the company must deliver an office copy of the order to the Registrar for registration.

Note—

~~If the order of the Court makes an alteration to the company's articles, the company is also required to notify the Registrar of the alteration under section 91.~~

- (2) If the company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

Reason for deleting the note

The requirement under clause 91 applies generally to orders by the Court. There is no need to specifically draw readers' attention to it here.

279. Financial assistance not exceeding 5% of shareholders funds

- (1) A company may give financial assistance for the purpose of the acquisition of a share in the company or its holding company or for the purpose of reducing or discharging a liability incurred for such an acquisition if—
 - (a) the directors resolve, before the assistance is given, that—
 - (i) the company should give the assistance;
 - (ii) giving the assistance is in the best interests of the company; and
 - (iii) the terms and conditions under which the assistance is to be given are fair and reasonable to the company;
 - (b) on the same day that the directors pass the resolution, the directors who vote in favour of it make a solvency statement that complies with Division 2 in relation to the giving of the assistance;
 - (c) the aggregate amount of the assistance and any other financial assistance given under this section that has not been repaid does not exceed 5% of the aggregate amount received by the company in respect of the issue of shares and the reserves of the company (as that aggregate amount is disclosed in the most recent audited financial statements of the company);
 - (d) the company receives fair value in connection with the giving of the assistance; and
 - (e) the assistance is given not more than 12 months after the day on which the solvency statement is made under paragraph (b).
- (2) The resolution of the directors under subsection (1)(a) must set out in full the grounds for their conclusions as to the matters referred to in subsection (1)(a)(i), (ii) and (iii).
- (3) A reference in subsection (1)(c) to any other financial assistance given under this section that has not been repaid includes the amount of any financial assistance given in the form of a guarantee or security for which the company remains liable at the time the financial assistance in question is given.
- (4) Within 15 days after giving financial assistance under this section, the company must send to each member of the company a copy of the solvency statement made under subsection (1)(b) and a notice containing the following information—
 - (a) the class and number of shares in respect of which the assistance was given;
 - (b) the consideration paid or payable for those shares;

- (c) the name of the person receiving the assistance and, if a different person, the name of the beneficial owner of those shares;
- (d) the nature, the terms and, if quantifiable, the amount of the assistance.
- (5) If the company contravenes subsection (4), 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.

Note—

~~If the giving of financial assistance by a company would result in a reduction in the company's share capital, the company must also comply with Division 3.~~

Reason for deleting the note

It is not common for the financial assistance to involve a reduction of capital. There is no need to specifically mention Division 3 here.

280. Financial assistance with approval of all members

- (1) A company may give financial assistance for the purpose of the acquisition of a share in the company or its holding company or for the purpose of reducing or discharging a liability incurred for such an acquisition if—
 - (a) the directors resolve, before the assistance is given, that—
 - (i) the company should give the assistance;
 - (ii) giving the assistance is in the best interests of the company; and
 - (iii) the terms and conditions under which the assistance is to be given are fair and reasonable to the company;
 - (b) on the same day that the directors pass the resolution, the directors who vote in favour of it make a solvency statement that complies with Division 2 in relation to the giving of the assistance;
 - (c) the giving of the assistance is approved by written resolution of all members of the company before the assistance is given; and
 - (d) the assistance is given not more than 12 months after the day on which the solvency statement is made under paragraph (b).
- (2) The resolution of the directors under subsection (1)(a) must set out in full the grounds for their conclusions as to the matters referred to in subsection (1)(a)(i), (ii) and (iii).

Note—

~~If the giving of financial assistance by a company would result in a reduction in the company's share capital, the company must also comply with Division 3.~~

Reason for deleting the note

It is not common for the financial assistance to involve a reduction of capital. There is no need to specifically mention Division 3 here.

281. Financial assistance by ordinary resolution

- (1) A company may give financial assistance for the purpose of the acquisition of a share in the company or its holding company or for the purpose of reducing or discharging a liability incurred for such an acquisition if—
 - (a) the directors resolve, before the assistance is given, that—
 - (i) the company should give the assistance;
 - (ii) giving the assistance is in the best interests of the company and is of benefit to those members of the company not receiving the assistance; and
 - (iii) the terms and conditions under which the assistance is to be given are fair and reasonable to the company and to those members not receiving the assistance;
 - (b) on the same day that the directors pass the resolution, the directors who vote in favour of it make a solvency statement that complies with Division 2 in relation to the giving of the assistance;
 - (c) the company sends to each member of the company a copy of the solvency statement made under paragraph (b) and a notice containing the following information—
 - (i) the nature and terms of the assistance and the name of the person to whom it will be given;
 - (ii) if it will be given to a nominee for another person, the name of that other person;
 - (iii) the text of the resolution of the directors;
 - (iv) any further information and explanation that would be necessary for a reasonable member to understand the nature of the assistance and the implications of giving it for the company and the members;
 - (d) the giving of the assistance is approved by resolution of the company before the assistance is given; and
 - (e) the assistance is given—
 - (i) not less than 28 days after the day on which the resolution is passed under paragraph (d); and
 - (ii) not more than 12 months after the day on which the solvency statement is made under paragraph (b).
- (2) The notice and copy of the solvency statement must be sent to each member under subsection (1)(c) at least 14 days before the day on which the resolution under subsection (1)(d) is proposed and may accompany notice of the meeting at which the resolution will be proposed.

- (3) Despite subsection (1)(e)(i), if an application is made to the Court under section 282 in relation to the giving of financial assistance under this section, the financial assistance must not be given until the application is finally determined, unless the Court orders otherwise.
- (4) The resolution of the directors under subsection (1)(a) must set out in full the grounds for their conclusions as to the matters referred to in subsection (1)(a)(i), (ii) and (iii).

Note—

~~If the giving of financial assistance by a company would result in a reduction in the company's share capital, the company must also comply with Division 3.~~

Reason for deleting the note

It is not common for the financial assistance to involve a reduction of capital. There is no need to specifically mention Division 3 here.

237. No assignment of right to buy back own shares

The following rights of a listed company are not capable of being assigned—

- (a) rights under a general offer authorized under section 233;
- (b) rights under a buy-back on a recognized stock market or on an approved stock exchange authorized under section 234;
- (c) rights under a contract authorized under section 235.

Note—

~~A contract authorized under section 235 includes a contingent buy-back contract authorized under that section (see section 235(2)).~~

Reason for deleting the note

Paragraph (c) is not difficult to understand. Also, given the proximity of clauses 235 and 237, this note does not seem to be necessary.

253. Special resolution for payment out of capital

- (1) Subject to section 252(3), a company may make a payment out of capital in respect of the redemption or buy-back of its own shares by special resolution in accordance with this Subdivision.
- (2) Subject to section 258, the payment out of capital and the redemption or buy-back must be made no earlier than 5 weeks and no later than 7 weeks after the date of the special resolution.

Note—

~~The Court has power to alter or extend this period (see section 260).~~

Reason for deleting the note

The power of the Court under clause 260 applies generally to a date or period specified in any provision of Division 5 of Part 5. There is no need to specifically draw readers' attention to it here.

272. ~~Consequences of failing~~ Failure to comply with Division does not affect validity of financial assistance, etc.

If a company gives financial assistance in contravention of this Division, the validity of the financial assistance and of any contract or transaction connected with it is not affected only because of the contravention.

~~Note—~~

~~Offences may be committed by the company and a responsible person of the company for contravention of certain provisions of this Division (see for example section 271(4)).~~

Reason for deleting the note

Clause 272 does not affect the legal effect of clause 271(4). There is no need to specifically remind readers of clause 271(4). The heading of this clause is amended to better reflect the content of this clause.

420. Directors must lay financial statements etc. before company in general meeting

- (1) ASubject to subsection (1A), company's directors must, in respect of each financial year, lay before the company in annual general meeting, or in any other general meeting directed by the Court, a copy of the reporting documents for the financial year within the period specified in section 422.

Note—

~~See the exception in section 602(3).~~

(1A) If a company is not required to hold an annual general meeting under section 602 in respect of a financial year, the company's directors are not required to lay a copy of the reporting document in accordance with subsection (1) in respect of that financial year.

- (2) If a company's directors contravene subsection (1), every person who at the end of the specified period was a director of the company commits an offence and is liable to a fine of \$300,000.
- (3) If a company's directors wilfully contravene subsection (1), every person who at the end of the specified period was a director of the company commits an offence and is liable to a fine of \$300,000 and to imprisonment for 12 months.
- (4) If a person is charged with an offence under subsection (2)—
- (a) it is a defence to establish that the person took all reasonable steps to secure compliance with subsection (1); and
- (b) it is not a defence to establish that the financial statements or report was not in fact prepared as required by this Ordinance.

Reason for deleting the note

Clause 602(3) can be more appropriately moved to clause 420 (i.e. the proposed clause 420(1A)). Consequentially, there is no need to have the note. A corresponding CSA will be proposed to delete clause 602(3).

534. Right of member to inspect and request copy

- (1) A copy of a contract or a written memorandum required to be kept by a company under section 533 must be open to inspection by any member of the company without charge.

Note—

~~Regulations may be made under section 648 to make provision as to the time, duration and manner of inspection.~~

- (2) A member of the company is entitled, on request and on payment of a prescribed fee, to be provided with a copy of the contract or memorandum.
- (3) The company must provide the member with the copy within a prescribed period after the request and the prescribed fee are received by the company.
- (4) If a company contravenes subsection (3)—
 - (a) 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; and
 - (b) the Court may by order direct that the copy be provided to the person requesting it.
- (5) In this section, a reference to a contract includes a variation of the contract.

Reason for deleting the note

The power under clause 648 applies generally to matters under this Ordinance. There is no need to specifically draw readers' attention to it here.

710. Minority shareholders' right to be bought out by repurchasing company

- (1) This section applies if the holder of any shares requires the repurchasing company to buy back the shares under section 707.
- (2) Unless the Court makes an order under subsection (3), the repurchasing company is entitled and bound to buy back the shares on the terms of the general offer or on other terms as agreed between that holder and the repurchasing company.
- (3) The Court may, on application by the holder or repurchasing company, order that the repurchasing company is entitled and bound to buy back the shares on the terms specified in the order.
- (4) For the purposes of subsection (2)—
 - (a) if the general offer falls within section 709(5), the terms of the general offer are to be regarded as including the particulars and statements included in the notice for the purposes of that section; and
 - (b) if—
 - (i) the consideration offered to, or chosen by, the holder of the shares is not cash, and the repurchasing company is no longer able to provide it; or
 - (ii) the consideration offered to, or chosen by, the holder of the shares was to have been provided by a third party who is no longer bound or able to provide it, the consideration is to be regarded as consisting of an amount of cash, payable by the repurchasing company, that, at the date when that holder requires the repurchasing company to buy back the shares under section 707, is equivalent to the consideration offered or chosen.

Note—

~~Further provisions on share acquisition after a general offer for share buy-back are contained in Division 4 of Part 5.~~

Reason for deleting the note

Division 4 of Part 5 contains the core provisions on buy-back. This note gives an impression that Division 4 of Part 5 is supplementary to clause 710. In any event, there is no need to specifically mention Division 4 of Part 5 here.

Annex E

This Annex contains proposals regarding the notes set out in the following provisions:

Clause	Proposal
2	Retain the Note without amendment
130	Retain the Note with amendment
133	Retain the Note with amendment
169	Retain the Note without amendment
162	Retain the Note without amendment
165	Retain the Note with amendment
166	Retain the Note without amendment
219	Retain the Note with amendment
220	Retain the Note with amendment
231	Retain the Note without amendment
Sch. 10, s. 34	Retain the Note without amendment

Note: Other Committee Stage Amendments that may be made to the provisions above are not reflected in this Annex.

2. Interpretation

articles (章程細則), in relation to a company, means the articles of association of the company;

Note—

Please also see section 93. A condition of an existing company's memorandum of association is to be regarded as a provision of the company's articles.

Reason for providing the note

“Section 93” (i.e. clause 93 of the CB) provides that a condition that was contained in the memorandum of association (“MA”) of an existing company is to be regarded as a provision of the company's articles on the commencement of Division 2 of Part 3. Readers coming across references to “articles” may not be aware that a condition contained in the MA becomes a provision of the articles on the commencement of that Division. A note informing readers of this fact is helpful. The definition of “articles” is an appropriate location for adding the note.

130. No nominal value

- (1) Shares in a company have no nominal value.
- (2) This section applies to shares issued before the commencement date of this section as well as shares issued on or after that date.

Note—

Division 2 of Part 4 of Schedule 10 contains transitional provisions relating to the ~~introduction of shares having no nominal value~~abolition of nominal value.

Reason for providing the note

Clause 130 provides that shares in a company have no nominal value. Readers will likely be interested in knowing the impact of this provision on the operation of a company that has issued shares having nominal value before the commencement of this provision. In fact, during the examination of this clause at the Bills Committee, Members also asked for the same information. The answer is to be found in Division 2 of Part 4 of Schedule 10. A note drawing readers' attention to that Division would be helpful.

Reason for the proposed amendment

The heading of Division 2 of Part 4 of Schedule 10 is "Transitional Provisions relating to Abolition of Nominal Value". The amendment seeks to achieve consistency between the note in clause 130 and the heading of that Division.

133. Repeal of power to issue stock

A company does not have power to convert its shares into stock.

Note—

Sections 169 and 170 contain provisions ~~for~~relating to the reconversion of stock into shares.

Reason for providing the note

Clause 133 provides that a company does not have power to convert its shares into stock. Clauses 169 and 170 concern the reconversion of stock into shares. These 3 clauses are put under different Divisions but they are related to the same subject matter. A note in clause 133 can help reader locate the other 2 clauses.

Reason for the proposed amendment

To better reflect the content of “sections 169 and 170”.

169. Reconversion of stock into shares

- (1) A company that has converted paid up shares into stock (before the repeal by this Ordinance of the power to do so) may, by resolution of the company, reconvert that stock into paid up shares.

Note—

Section 133 repeals the power of a company to convert its shares into stock.

- (2) A resolution under this section may authorize a company to exercise the power to reconvert stock—
 - (a) on more than one occasion;
 - (b) at a specified time or in specified circumstances.

Reason for providing the note

Clause 169 concern the reconversion of stock into shares. Clause 133 provides that a company does not have power to convert its shares into stock. The clauses are put under different Divisions but they are related to the same subject matter. A note in clause 169 can help reader locate the other clause.

162. Orders of Court for rectification of the register

- (1) Subject to this section, if a listed company issues a new certificate in respect of shares, nothing in this Division affects the power of the Court to make an order under section 624 in favour of a person claiming to be entitled to the shares as against—
 - (a) the person to whom the new certificate is issued; or
 - (b) a person whose name is subsequently entered in the register of members of the company in respect of the shares.
- (2) The Court must not make an order under section 624 as against a person referred to in subsection (1)(b) if that person is a genuine purchaser of the shares.
- (3) If the Court makes an order under section 624 as against the person to whom the new certificate is issued or a person whose name is subsequently entered in the register of members of the company in respect of the shares—
 - (a) the Court must not order the payment of damages by the company; and
 - (b) the company is not otherwise liable for any damage caused by the issue of the new certificate or cancellation of the original certificate in accordance with this Division.

Note—

Section 624 gives the Court power to make an order for rectification of the register of members of a company.

Reason for providing the note

Clause 162 mentions “section 624” 3 times. A note summarizing the content of that section 624 will give readers a general idea of what that section is about.

165. Permitted alteration of share capital

- (1) A company may alter its share capital in any one or more of the ways set out in subsection (2).
- (2) The company may—
 - (a) increase its share capital by allotting and issuing new shares in accordance with this Part;
 - (b) increase its share capital without allotting and issuing new shares, if the funds or other assets for the increase are provided by the members of the company;
 - (c) capitalize its profits, with or without allotting and issuing new shares;
 - (d) allot and issue bonus shares with or without increasing its share capital;
 - (e) convert all or any of its shares into a larger or smaller number of shares;
 - (f) cancel shares—
 - (i) that, at the date the resolution for cancellation is passed, have not been taken or agreed to be taken by any person; or
 - (ii) that have been forfeited.
- (3) A company may alter its share capital as referred to in subsection (2)(e) or (f) only by resolution of the company.

Note—
Sections 135 and 136 contain provisions requiring a resolution of the company may also be required for an allotment of shares. Those sections may be relevant for alteration of share capital referred to in subsection (2)(a), (c) or (d)—see sections 135 and 136.
- (4) A resolution referred to in subsection (3) may authorize the company to exercise the power—
 - (a) on more than one occasion;
 - (b) at a specified time or in specified circumstances.
- (5) Any amount remaining unpaid on shares being converted under subsection (2)(e) is to be divided equally among the replacement shares.
- (6) If shares are cancelled under subsection (2)(f), the company must reduce its share capital by the amount of the shares cancelled.
- (7) For the purposes of Part 5, a cancellation of shares under this section is not a reduction of share capital.
- (8) A company's articles may exclude or restrict the exercise of a power conferred by this section.

Reason for providing the note

Clause 165(3) only requires a resolution in respect of an alteration of share capital referred to in subclause (2)(e) or (f). It does not require a resolution in respect of an alteration of share capital referred to in subclause (2)(a), (b), (c) and (d). In fact, in certain circumstances, an alteration of share capital referred to in subclause (2)(a), (c) and (d) also falls within clauses 135 and 136. This note serves as a signpost to bring readers to clauses 135 and 136.

Reason for the proposed amendment

To improve the drafting of the note.

166. Notice of alteration of share capital

- (1) Within one month after altering its share capital under section 165, a company must deliver a notice to the Registrar for registration in relation to the alteration of share capital.
- (2) The notice—
 - (a) must be in the specified form;
 - (b) if the company's issued share capital is increased by the alteration, must state the amount of the increase; and
 - (c) must include a statement of capital as at the date of the alteration that complies with section 196.
- (3) If the company's issued share capital is increased by the alteration, a fee prescribed by regulations made under section 897 is payable for registration of the notice.
- (4) A company is not required to deliver a notice under this section in relation to an alteration of share capital involving an allotment of shares.

Note—

For an allotment of shares, section 137 requires a company to deliver a return of the allotment to the Registrar.

- (5) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

Reason for providing the note

To remind readers that, in the case of an alteration of share capital involving an allotment of shares, clause 137 is still applicable.

219. Registration of return if no application to Court

(1) If—

- (a) no application is made under section 215 in respect of the special resolution for reduction of share capital; and
- (b) the company delivers a return that complies with subsection (2) to the Registrar no earlier than 5 weeks and no later than 7 weeks after the date of the special resolution,

the Registrar must register the return.

Notes—

~~1.—Under section 210(2), the special resolution and the reduction of share capital take effect when the return is registered by the Registrar (see section 210(2)).~~

~~2.—The company is also required to deliver a copy of the special resolution to the Registrar within 14 days after it is passed (see section 612).~~

~~3.—If the company's articles are altered by the special resolution, the company is also required to notify the Registrar of the alteration within 14 days after it takes effect (see section 83).~~

(2) The return—

- (a) must be in the specified form;
- (b) must contain particulars of the reduction of share capital; and
- (c) must include a statement of capital, as at the time immediately after the reduction of share capital, that complies with section 196.

Reason for providing the note

Clause 210 provides that a reduction of share capital and special resolution for it take effect when the return under clause 219 or 220 in relation to the reduction is registered by the Registrar. It is useful to remind readers of clause 210.

Reason for the proposed amendment

Clauses 612 and 83 apply generally to special resolution and alteration of articles under the Bill. There is no need to specifically draw readers' attention to them here.

220. Registration of return if application to Court

- (1) If—
- (a) an application is made under section 215 in respect of the special resolution for reduction of share capital;
 - (b) either—
 - (i) the Court makes an order under section 217 confirming the special resolution; or
 - (ii) the proceedings on the application are ended without determination by the Court (for example, by the withdrawal of the application); and
 - (c) the company delivers to the Registrar a return that complies with subsection (2)—
 - (i) within 14 days after the making of the order, or within any longer period ordered by the Court; or
 - (ii) within 14 days after the proceedings are ended without determination by the Court or, if there are more than one such proceedings, the last of them are so ended,
- the Registrar must register the return.

Notes—

~~1. Under section 210(2), the special resolution and the reduction of share capital take effect when the return is registered by the Registrar (see section 210(2)).~~

~~2. The company is also required to deliver a copy of the special resolution to the Registrar within 14 days after it is passed (see section 612) and deliver an office copy of the order of the Court to the Registrar within 14 days after the making of the order, or within any longer period ordered by the Court (see section 218).~~

- (2) The return—
- (a) must be in the specified form;
 - (b) must contain particulars of the reduction of share capital; and
 - (c) must include a statement of capital, as at the time immediately after the reduction of share capital, that complies with section 196.

Reason for providing the note

Clause 210 provides that a reduction of share capital and special resolution for it take effect when the return under clause 219 or 220 in relation to the reduction is registered by the Registrar. It is useful to remind readers of clause 210 here.

Reason for the proposed amendment

Clause 612 applies generally to special resolution. There is no need to specifically draw readers' attention to it here.

Given the proximity of clauses 218 and 220, it does not seem to be necessary to point readers to clause 218.

231. General power of company to buy back its own shares

- (1) Subject to subsections (2) and (3) and Subdivision 6, a company may buy back its own shares in accordance with—
 - (a) for a listed company, Subdivision 4;
 - (b) for an unlisted company, Subdivision 5.
- (2) A company's articles may prohibit or restrict a buy-back by the company of its own shares.
- (3) A company must not buy back its own shares if, as a result of the buy-back, there would no longer be any member of the company holding shares other than redeemable shares.

Note—

Section 262(5) provides that a buy-back that contravenes subsection (3) is void.

Reason for providing the note

Clause 262(5) contains a cross reference to clause 231(3). A note drawing readers' attention to clause 262(5) can help readers locate a related provision more quickly.

Schedule 10

34. Payment of interest out of capital

- (1) Section 57 of the predecessor Ordinance, as in force immediately before its repeal, continues to apply to the payment of interest by a company if the special resolution under paragraph (a) of the proviso to that section authorizing the payment was passed before the repeal, regardless of when the sanction of the court for the payment is obtained.
- (2) Without limiting subsection (1), the company may charge interest to capital in accordance with section 57 of the predecessor Ordinance if—
 - (a) interest was paid by a company in accordance with that section before its repeal, but not charged to capital; or
 - (b) interest is paid by a company after the repeal in accordance with a special resolution passed under paragraph (a) of the proviso to that section before the repeal, regardless of when the sanction of the court for the payment is obtained.

Note—

Paragraph (b) of the proviso to section 57 of the predecessor Ordinance requires the sanction of the court to be obtained before the payment is made.

Reason for providing the note

The note reminds readers of a requirement under the predecessor Ordinance.

Annex F

This Annex contains proposals to add notes to the following provisions:

Clause	Proposal
738	Add a new note to the clause
883	Add a new note to the clause

Note: Other Committee Stage Amendments that may be made to the provisions above are not reflected in this Annex.

738. Application for deregistration

- (1) A company, or a director or member of a company, may apply to the Registrar for deregistration of the company.
- (2) An application must not be made unless, at the time of the application—
 - (a) all the members agree to the deregistration;
 - (b) the company has not commenced operation or business, or has not been in operation or carried on business during the 3 months immediately before the application;
 - (c) the company has no outstanding liabilities;
 - (d) the company is not a party to any legal proceedings; and
 - (e) the company's assets do not consist of any immovable property situate in Hong Kong.
- (3) An application—
 - (a) must be in the specified form;
 - (b) must be accompanied by the prescribed fee; and
 - (c) must be accompanied by a written notice from the Commissioner of Inland Revenue stating that the Commissioner has no objection to the company being deregistered.
- (4) If the applicant is a company, it must nominate in the application a natural person to be given notice of the deregistration.
- (5) The applicant must give the Registrar any further information that the Registrar may request in connection with an application.
- (6) The Registrar may assume without inquiry that any information given in connection with an application is true unless it is proved to the Registrar's satisfaction, in an objection to the deregistration or otherwise, that the information is false.
- (7) A person who, in connection with an application, knowingly or recklessly gives any information to the Registrar that is false or misleading in a material particular commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$300,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

Note—

Please see also section 861 which empowers the Registrar to require the production of records or documents, and the provision of information or explanation in respect of the records or documents, for the purpose of enquiring into whether any act that would constitute an offence under this subsection has been done.

Reason for providing the note

Clause 861 applies specifically to an act done under clause 738. It is appropriate to draw readers' attention to clause 861.

883. Offence for false statement

- (1) A person commits an offence if, in any return, report, financial statements, certificate or other document, required by or for the purposes of any provision of this Ordinance, the person knowingly or recklessly makes a statement that is misleading, false or deceptive in any material particular.

Note—

Please see also section 861 which empowers the Registrar to require the production of records or documents, and the provision of information or explanation in respect of the records or documents, for the purpose of enquiring into whether any act that would constitute an offence under this subsection has been done.

- (2) A person who commits an offence under subsection (1) is liable—
 - (a) on conviction on indictment to a fine of \$300,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (3) This section does not affect the operation of—
 - (a) Part V of the Crimes Ordinance (Cap. 200); or
 - (b) section 19, 20 or 21 of the Theft Ordinance (Cap. 210).

Reason for providing the note

Clause 861 applies specifically to an act done under clause 883. It is appropriate to draw readers' attention to clause 861.