

Bills Committee on Companies Bill
Committee Stage Amendments to the Companies Bill
Part 4 – Share Capital

The table below sets out the proposed Committee Stage Amendments (CSAs) in relation to Part 4 (“Share Capital”) (clauses 129 to 197) of the Companies Bill. In preparing the CSAs, the Administration has taken account of, *inter alia*, the views of Members, delegations and the Legislative Council Legal Adviser. Marked-up copy of the proposed CSAs in numerical order is at [Annex](#) for reference. The marked-up Chinese provisions in the Annex only contain CSAs solely applicable to the Chinese text. CSAs to Schedule 10 (“Transitional and Saving Provisions”) will be reported to the Bills Committee later in one go.

A list of abbreviations used in this table is as follows:

Bills Committee: Bills Committee on Companies Bill

CB: Companies Bill

CO: Companies Ordinance (Cap 32)

CSA: Committee Stage Amendment

FS: Financial Secretary

LegCo: Legislative Council

LDL: Law Drafting Division of the Department of Justice

LSHK: Law Society of Hong Kong

Registrar: Registrar of Companies

SFC: Securities and Futures Commission

UKCA 2006: Companies Act 2006 of the United Kingdom

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
General amendments across CB			
1	Add “for registration” as appropriate	In CB, documents delivered to the Registrar for registration are subject to the requirement of the provisions of	<ul style="list-style-type: none"> • Insofar as Part 4 is concerned, we propose to amend clauses 178(1), 179(1), 186(1), 196(1) and the Note under clause 166(4) pursuant to this item.

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		clauses 29 to 36. These documents will also form part of the Companies Register (clause 26). When a provision requires a person to deliver a document, “for registration” will be added if it is intended that the document is one that these provisions apply.	
2	Change “14 days” to “15 days” for delivery of documents to the Registrar	Where a document has to be delivered to the Registrar within “14 days”, the time limit should be changed to “15 days”.	<ul style="list-style-type: none"> • Some Bills Committee Members were concerned that the 14-day period may be insufficient for companies to deliver certain documents to the Registrar for registration or notification, as the delivery period for some of the documents was 15 days in CO. • Upon review, the Administration agreed to extend the 14-day period to 15 days for the relevant provisions in CB. Please see paragraphs 31 to 32 of LegCo Paper No. CB(1)357/11-12(01) “Administration’s response to issues raised by members at the meetings on 4 and 11 November 2011 in relation to Part 4 and Part 5”. • Insofar as Part 4 is concerned, we propose to amend clauses 178(1) and 186(1) pursuant to this item.
3	Delete the relevant provisions to effect abolition of capital duty	FS announced in his 2012-13 Budget Speech on 1 February 2012 to abolish capital duty levied on local companies. CSAs have to be introduced to effect the proposal under CB.	<ul style="list-style-type: none"> • Insofar as Part 4 is concerned, we propose the following CSAs pursuant to this item: <ul style="list-style-type: none"> (a) <u>Remove clause 137(3)</u> Clause 137(3) states that “capital duty” as prescribed by regulations made under clause 897 is payable for any increase of issued share capital when the return of allotment is registered with the Registrar. (b) <u>Remove clause 144(2)</u> Clause 144(2) provides that the “capital duty” paid shall be included as a share issue expense, which may be written off against the share capital of a

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			<p>company under clause 144(1).</p> <p>(c) <u>Remove clause 166(3)</u> Clause 166(3) states that “capital duty” as prescribed by regulations made under clause 897 is payable for any increase of issued share capital when the notice of alteration of share capital is registered with the Registrar.</p> <ul style="list-style-type: none"> • For reference, clauses 62(1)(c) and 126(1)(b) of Part 3, clause 265 of Part 5, clause 897(3) and (4) of Part 20 and sections 17(2), 27 and 28(2) of Schedule 10 will also be removed to effect abolition of capital duty under CB.
4	Amend the Notes in CB as appropriate	CB currently contains 37 Notes. Upon review, we consider that some Notes have to be deleted or amended while some new Notes should be added.	<ul style="list-style-type: none"> • Detailed proposals are set out in the LegCo Paper No. CB(1)1295/11-12(02) ““Notes” and “Examples” in the Companies Bill” discussed on 10 April 2012. Members endorsed part of the proposals for Part 4, but considered that the Administration should exercise caution to avoid unintended legal effect for some. We agree. Having considered Members’ views, we will not delete the Note under clause 155, and propose to modify the proposed “Example(s)” under clauses 175 and 183 to make them clearer and more concise, as follows: <p><u>Clause 175</u> <u>Note</u><u>Example</u>— <u>For example</u>, aA company could make an agreement with the holders of shares in a class that imposes <u>greater</u> restrictions on the variation of class rights <u>than those in the company’s articles or in this section</u>.</p> <p><u>Clause 183</u> <u>Note</u><u>Example</u>— <u>For example</u>, aA company could make an agreement with the members of a class that imposes <u>greater</u> restrictions on the variation of class rights <u>than those in the company’s articles or in this section</u>.</p> <ul style="list-style-type: none"> • Apart from the above, insofar as Part 4 is concerned, as endorsed by the Bills Committee, the Notes under clauses 130, 133 and 165 will be retained with

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			modifications as set out in the LegCo Paper No. CB(1)1295/11-12(02).
Other amendments specific to Part 4			
5	Clause 135 Exercise by directors of power to allot shares or grant rights	Amend clause 135(4) so that a director who “knowingly contravenes, or authorizes or permits a contravention of,” clause 135 commits an offence.	<ul style="list-style-type: none"> • This CSA is proposed in response to Members’ suggestion at the Bills Committee meeting on 4 November 2011. • Members suggested that the <i>mens rea</i> of “knowingly” should be stated expressly in clause 135(4), to bring clause 135(4) in line with the provision for a similar offence under section 549(4) of UKCA 2006 which provides that “A director who knowingly contravenes, or permits or authorizes a contravention of, this section commits an offence”. • Please see paragraphs 3 to 6 of the LegCo Paper CB(1)357/11-12(01) <i>“Administration’s response to issues raised by members at the meetings on 4 and 11 November 2011 in relation to Part 4 and Part 5”</i>.
6	Clause 137 Return of allotment	Amend clause 137 so that the clause only applies to a “limited company” (as defined under clause 6).	<ul style="list-style-type: none"> • Under section 45(1) of CO, “a company limited by shares or a company limited by guarantee and having a share capital” must deliver a return of allotment to the Registrar for registration. • Under clause 137(1), a “company” must deliver a return of allotment to the Registrar for registration. A “company” includes an “unlimited company”. This is not the intention and the clause should be amended to restate the CO position.
7	Clause 141 Validation by Court of issue or allotment	Amend the heading of the clause in the Chinese text from “原訟法庭認可發行或配發” to “原訟法庭認可使發行或配發有效” to achieve consistency with clause 141(2).	<ul style="list-style-type: none"> • This CSA is proposed in response to the LegCo Legal Adviser’s suggestion. • “Validation” is rendered as “使 … 變成有效” in the heading of section 57C of CO, whereas the same word is rendered as “認可” in the heading of clause 141, even though clause 141(2) renders “validating” as “使 … 有效”. A consistent rendition should be adopted.

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8	Clause 143 Permitted commissions	Remove clause 143(2)(c).	<ul style="list-style-type: none"> • Clause 143(2)(c) seeks to restates section 46(1)(c)(i) and (d) of CO. • Section 46(1)(c)(i) and (d) of CO requires the disclosure of certain information in the prospectus relating to commission to any person in consideration of his subscription (or agreement to subscribe) for shares in the company. • In consultation with SFC, it is noted that there are currently adequate safeguards under paragraphs 14 and 15 of Part I of the Third Schedule pursuant to section 38(1) and 342(1) of CO to ensure disclosure in a prospectus of details relating to payment of commissions. • As such, clause 143(2)(c), which restates section 46(1)(c)(i) and (d) of CO, is unnecessary and should be deleted.
9	Clause 150 Issue of share certificate on transfer	Amend the definition of “營業日 (business day)” in clause 150(5) as “指認可證券市場營業進行證券交易業務的日子”.	<ul style="list-style-type: none"> • This CSA is proposed in response to the LegCo Legal Adviser’s suggestion to improve clarity.
10	Clause 153 Registration or refusal of registration	Change the words “獲傳轉股份的權利” in clause 153(1) to “獲傳轉獲得股份的權利”.	<ul style="list-style-type: none"> • This CSA is proposed in response to LegCo Legal Adviser’s observation. • Legal Adviser noted that there are different Chinese renditions for the same expression “right to shares”, as follows: <ul style="list-style-type: none"> * 獲得股份的權利 (clause 145) * 股份的權利 (clause 153(1)) * 股份權利 (clause 155(2)) • Upon review, we consider that the consistent rendition in clauses 145, 153(1) and 155(2) should be “獲得股份的權利” because the provisions are about

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			registering a person as a member or pre-emption right to acquire shares.
11	Clause 155 Pre-emption rights in relation to transmission by law	Change the words “股份權利” in clause 155(2) to “ <u>獲得股份的權利</u> ”.	<ul style="list-style-type: none"> This CSA is proposed in response to Legal Adviser’s observation. Please see the remarks under Item 10 in respect of clause 153.
12	Clause 156 Evidence of grant of probate etc.	Change the words “股份權利” in clause 156 to “ <u>獲得股份的權利</u> ”.	<ul style="list-style-type: none"> Please see the remarks under Item 10 in respect of clause 153.
13	Clause 157 Interpretation	Move the definition of “website (網站)” in clause 159(7) to clause 157 with amendments.	<ul style="list-style-type: none"> The definition of “website” is used in clauses 159, 160 and 161. It should be placed under clause 157 so that it would apply to Division 5 instead of just clause 159. The definition is now applicable to Division 5, thus needs to be amended to disapply its application to the recognized exchange company as the recognized exchange company itself might not be subject to the listing rules’ requirements.
14	Clause 159 Publication requirements	(I) Substitute “recognized exchange company” for “recognized stock market” as it appears as a legal person in clauses 159(4)(a) and (b) and (5).	<ul style="list-style-type: none"> Both terms are defined in clause 2(1) of CB. The definition of “recognized stock market” is the same as that under the Securities and Futures Ordinance (Cap 571), namely, a stock market operated by a recognized exchange company. There is a difference between an exchange company and a stock market in that an exchange company operates both stock market and futures market, while a stock market can only act through an exchange company. As such, it is more sensible to adopt the term “recognized exchange company” where it appears as a legal person.

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		(II) Amend clause 159(5) to provide for an option for the recognized exchange company to publish the notice it received under clause 159(4)(a) either on its website or a conspicuous place on the premises on which the stock market operates.	<ul style="list-style-type: none"> • This CSA is introduced in response to LSHK's proposal which was endorsed by Members. Please see paragraph 7 and 8 of the LegCo Paper No. CB(1)357/11-12(01) "<i>Follow-up actions for the meetings held on 4 and 11 November 2011 relating to Part 4 and Part 5</i>". • Clause 159(5) requires that a recognized stock exchange market must exhibit, in a conspicuous place on the premises on which the stock market operates, a notice received from a listed company for issuing a new share certificate to replace a lost certificate under clause 159(4)(a). • LSHK submitted (vide LegCo Paper No. CB(1)1805/10-11(02)) that this requirement was out-dated and suggested that the notice should instead be required to be published on a dedicated webpage of the Hong Kong Exchanges and Clearing Ltd's website. • Under this CSA, the notice will be required to be published on the recognized exchange company's website or a conspicuous place on the premise on which the stock market operates for one month or three months as required under clause 159(5)(a) or (b) respectively.
		(III) Amend clause 159(5)(a) and (b) to make it clear that the notice requirement is one month for notice only required to be published under clause 159(2)(a) and three months for notice also required to be published under clause 159(2)(b).	<ul style="list-style-type: none"> • The intent is for clause 159(5)(a) to cover notices that are only required to be published under clause 159(2)(a) and for clause 159(5)(b) to cover notices that are required to be published under clause 159(2)(b). • With the current wording of clause 159(5)(a) "for a notice published under subsection (2)(a)", ambiguity may arise as a notice required to be published on the company's website (under clause 159(2)(a)) may also be required to be published in the Gazette (under clause 159(2)(b)) if either of the conditions in clause 159(2)(b)(i) and (ii) is met.
		(IV) Add a new clause 159(5)(A) to deal with unavoidable breakdown of the	<ul style="list-style-type: none"> • This clause is similar to clause 160(4) which deals with unavoidable breakdown of the website.

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		website.	
		(V) Move the definition of “website (網站)” in clause 159(7) to clause 157 (“Interpretation”).	<ul style="list-style-type: none"> Please see the remarks under Item 13 in respect of clause 157.
15	Clause 160 Issue of new certificate	Remove clause 160(5) which sets out the definition of “website (網站)” as “...has the meaning given by section 159(7)”.	<ul style="list-style-type: none"> This CSA is proposed as the term “website (網站)” will be defined under clause 157. Please see the remarks under Item 13 in respect of clause 157.
16	Clause 161 Public notice of issue of new certificate	<p>(I) Amend clause 161(1) to reflect the following intention:</p> <p>(a) in all cases under clause 161, the company must make the notice available on the company’s website throughout a period of at least 7 days. If (and only if) the company was required to publish a notice in the Gazette pursuant to clause 159(2)(b) before the new share certificate was issued, then the company is also required to publish the section 161 notice in the Gazette pursuant to the requirement currently set out under clause 161(1)(a). It is sufficient that the 7-day period begins during the 14-day period. A provision similar to clause</p>	<ul style="list-style-type: none"> This CSA is introduced in response to LSHK’s proposal. Under clause 159(2), a listed company which intends to issue a replacement certificate is not required to publish a notice in the Gazette if the value of the shares is below \$200,000. LSHK (vide LegCo Paper No. CB(1)1805/10-11(02)) proposed that such exemption from publishing a notice in the Gazette should also apply to the requirement to publish public notice of issue of a new certificate under clause 161(1)(a). Please see page 13 of LegCo Paper No. CB(1)339/11-12(01) “Administration’s Response to Deputations’ Views”.

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		<p>160(4) (which deals with unavoidable breakdown of the website) is also added; and</p> <p>(b) the requirement to deliver the notice to the recognized exchange company will still apply in all cases (clause 161(1)(b)).</p>	
		<p>(II) Substitute “recognized exchange company” for “recognized stock market” as it appears as a legal person in clause 161(1)(b).</p>	<ul style="list-style-type: none"> • Please see the remarks under Item 14(I) in respect of clauses 159(4)(a) and (b) and (5).
17	Clause 165 Permitted alteration of share capital	<p>Amend clause 165 so that the clause only applies to a “limited company” (as defined under clause 6).</p>	<ul style="list-style-type: none"> • Under section 53(1) of CO, “a company limited by shares or a company limited by guarantee and having a share capital” may alter its share capital in accordance with section 53. • Under clause 165(1) of CB, a “company” may alter its share capital in accordance with clause 165. A “company” includes an “unlimited company”, which means that an unlimited company will also be governed by clause 165. This is not the intention and the clause should be amended to restate the CO position. • The reference to “a company” under clause 166 (“Notice of alteration of share capital”) of CB need not be amended because clause 166(1) already limits the application of clause 166 to an alteration made under clause 165.
18	Clause 167 Redenomination	<p>(I) Amend clause 167 so that the clause only applies to a “limited company” (as defined under clause 6).</p>	<ul style="list-style-type: none"> • Clause 167 is a new provision not found in CO and based on section 622(1) of UKCA 2006. It should only govern “limited company” but not “unlimited company”. The clause should be amended to reflect this intention.

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	of share capital	(II) Amend “For this purpose” in clause 167(5) to “For the purposes of this section.	<ul style="list-style-type: none"> This CSA is proposed in response to the LegCo Legal Adviser’s suggestion. The LegCo Legal Adviser noted that there are different uses in CB of (a) “For this purpose” in clause 167(5); (b) “For that purpose” in clause 222(5); and (c) “For the purposes of this section” in clause 192(4). The Legal Adviser considered that the drafting should be consistent as far as practicable.
19	Clause 173 Classes of shares	Amend “...有關股份所附帶的權利並不僅因該事宜 ...” in clause 173(2) to “...有關股份所附帶的權利不會僅因該事宜 ...”.	<ul style="list-style-type: none"> This CSA is proposed in response to LegCo Legal Adviser’s comment on a similar Chinese rendition in clause 207(2).
20	Clause 174 Description of shares of different classes	Amend clause 174 to remove the requirements to state the words “non voting”, or the Chinese characters “無表決權”, in prospectus and directors’ report under clause 174(2)(b).	<ul style="list-style-type: none"> Clause 174(2) is derived from section 57A(1) of CO. Section 57A(1) of CO requires that if a company has shares which carry no voting rights at general meetings, the company must ensure that this is described in any share certificate, prospectus or directors’ report issued by the company. <p><u>Disclosure in prospectus</u></p> <ul style="list-style-type: none"> In consultation with SFC, it is noted that there are adequate safeguards under the Third Schedule (paragraph 20 of Part I) to CO to ensure disclosure in a prospectus of details relating to non-voting shares, the requirement under section 57A(1) in respect of prospectus essentially overlaps with the similar requirement under the Third Schedule. As such, the reference to “prospectus” in clause 174(2)(b), which restates a similar requirement under section 57A(1) of CO is not necessary. <p><u>Disclosure in directors’ report</u></p> <ul style="list-style-type: none"> With regard to the disclosure requirement in directors’ report, it is noted that CB will introduce a requirement to register notice/ return with a statement of capital in clause 196(3)(a), under which particulars of any voting rights attached to shares in a class are required to be disclosed in the statement of capital. As such, it is not

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			<p>necessary to require the disclosure of similar information in the directors' report.</p> <ul style="list-style-type: none"> • Furthermore, voting rights attached to a class of shares does not appear to fall within the kind of management information which requires specific disclosure in a director's report.
21	Clause 178 Delivery of order of Court to Registrar	Amend clause 178(1) to require the delivery of an “office copy” of the Court order to the Registrar.	<ul style="list-style-type: none"> • It is noted that in other CB provisions (e.g. clauses 218, 225(1)(b), 261, 675(6), 715(4), etc.), the copy of a Court order to be delivered to the Registrar is usually required to be an “office copy”. Therefore, it is proposed that “copy” should be changed to “office copy”.
22	Clause 186 Delivery of order of Court to Registrar	Amend clause 186(1) to require the delivery of an “office copy” of the Court order to the Registrar.	<ul style="list-style-type: none"> • Please see the remarks under Item 21 in respect of clause 178.
23	Clause 194 Regulations	Amend “...對本次分部所提供的寬免 ...” in clause 194(1) to “...對本次分部所 <u>給予</u> 的寬免 ...”.	<ul style="list-style-type: none"> • This CSA is proposed by LDD to improve drafting.

Financial Services and the Treasury Bureau

Companies Registry

13 April 2012

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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 abolition of¹ nominal value.

¹ Item 4／第 4 項

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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 to² the reconversion of stock into shares.

² Item 4／第 4 項

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

- (1) Except in accordance with section 136, the directors of a company must not exercise any power—
 - (a) to allot shares in the company; or
 - (b) to grant rights to subscribe for, or to convert any security into, shares in the company.
- (2) Subsection (1) does not apply to—
 - (a) an allotment of shares, or grant of rights, under an offer made to the members of the company in proportion to their shareholdings;
 - (b) an allotment of shares, or grant of rights, on a bonus issue of shares to the members of the company in proportion to their shareholdings;
 - (c) an allotment to a founder member of a company of shares that the member, by signing the company's articles, has agreed to take; or
 - (d) an allotment of shares made in accordance with a grant of a right to subscribe for, or to convert any security into, shares if the right was granted in accordance with an approval under section 136.
- (3) For the purposes of subsection (2)(a), the offer is not required to be made to any member whose address is in a place where the offer is not permitted under the law of that place.
- (4) A director commits an offence if the director knowingly contravenes, or authorizes or permits a contravention of, this section.³
 - (a) contravenes this section; or

³ Item 5／第 5 項

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- (b) ~~authorizes or permits, participates in, or fails to take all reasonable steps to prevent, a contravention of this section.~~⁴
- (5) A director who commits an offence under subsection (4) is liable to a fine at level 5 and to imprisonment for 6 months.
- (6) Nothing in this section or section 136 affects the validity of an allotment or other transaction.

⁴ Item 5／第 5 項

137. Return of allotment

- (1) Within one month after an allotment of shares, a limited⁵ company must deliver to the Registrar for registration a return of the allotment that complies with subsection (2).
- (2) A return—
 - (a) must be in the specified form;
 - (b) must include a statement of capital as at the date of the allotment that complies with section 196;
 - (c) must state—
 - (i) the number of shares allotted;
 - (ii) the name and address of each allottee; and
 - (iii) if the company's issued share capital is increased as a result of the allotment, the amount of the increase;
 - (d) for any shares allotted for consideration (whether wholly or partly cash consideration or non-cash consideration)—
 - (i) must state the amount paid or regarded as paid on each share and the amount (if any) remaining unpaid or regarded as remaining unpaid on each share;
 - (ii) in the case of an allotment wholly or partly for non-cash consideration under an arrangement made under Division 2 of Part 13, must contain particulars of the order of the Court sanctioning the arrangement; and

⁵ Item 6／第 6 項

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- (iii) in any other case of an allotment wholly or partly for non-cash consideration, must contain particulars of the contract for sale, or for services or other consideration in respect of which the shares were allotted; and
- (e) for any shares allotted credited as fully paid up (whether on or without a capitalization)—
 - (i) must state the amount regarded as paid on each share; and
 - (ii) must contain particulars of the resolution authorizing the capitalization or allotment.

(3) ~~If a company's issued share capital is increased as a result of an allotment, a fee prescribed by regulations made under section 897 is payable for registration of the return.⁶~~

- (4) If a limited⁷ 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.
- (5) If a limited⁸ company fails to deliver a return that complies with subsection (2) within one month after an allotment of shares, the Court may, on application by the company or a responsible person of the company, extend the period for delivery of the return by a period determined by the Court.
- (6) The Court may extend a period under subsection (5) only if it is satisfied—

⁶ Item 3／第 3 項

⁷ Item 6／第 6 項

⁸ Item 6／第 6 項

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- (a) that failure to deliver the return was accidental or due to inadvertence; or
 - (b) that it is just and equitable to extend the period.
- (7) If the Court extends the period for delivery of a return, any liability already incurred by the company or a responsible person of the company for an offence under subsection (4) is extinguished and subsection (1) has effect as if the reference to one month were a reference to the extended period.

141. 原訟法庭使認可發行或配發有效⁹

- (1) 如公司本意是發行股份或配發股份，而—
 - (a) 該項發行或配發因任何理由而屬無效，或可能因任何理由而屬無效；或
 - (b) 該項發行或配發的條款—
 - (i) 抵觸本條例或任何其他條例，或不獲本條例或任何其他條例批准；或
 - (ii) 抵觸公司的章程細則，或不獲公司的章程細則批准，
- 則本條適用。
- (2) 有關公司、該公司的債權人或任何有關股份的持有人或承接人，均可向原訟法庭申請一項命令，使有關發行或配發有效，或確認有關發行或配發的條款。
- (3) 原訟法庭如信納作出第(2)款所指的命令是公正公平的，可作出該命令。
- (4) 在上述命令的正式文本交付處長時，該命令自本意進行的發行或配發之時起具有效力。

⁹ Item 7／第 7 項

143. Permitted commissions

- (1) If the conditions in subsection (2) are satisfied, a company may pay a commission to a person in consideration of the person—
 - (a) subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the company; or
 - (b) procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the company.
- (2) The conditions are that—
 - (a) the payment of the commission is authorized by the company's articles;
 - (b) the commission paid or agreed to be paid does not exceed the lesser of—
 - (i) 10% of the price at which the shares are issued;
 - (ii) the amount or rate authorized by the articles; and
 - (c) ~~if any of the shares are offered to the public for subscription, the prospectus for the public offer discloses~~
~~(i) the amount or rate of the commission; and~~
~~(ii) the number of shares (if any) that persons have agreed for a commission to subscribe for absolutely; and~~¹⁰
 - (d) if the shares are not offered to the public for subscription, the company, before making the payment—
 - (i) delivers to the Registrar for registration a notice in the specified form disclosing the amount or rate of

¹⁰ Item 8／第 8 項

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the commission and the number of shares (if any) that persons have agreed for a commission to subscribe for absolutely; and

- (ii) discloses the amount or rate of the commission and the number of shares (if any) that persons have agreed for a commission to subscribe for absolutely in any circular or notice issued by the company inviting subscriptions for the shares.
- (3) A vendor to, promoter of, or other person who receives payment in money or shares from, a company may apply any part of the money or shares so received in payment of any commission the payment of which directly by the company would be permitted by this section.
- (4) If a company contravenes the condition referred to in subsection (2)(d)(i), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

144. Capital may be applied in writing off certain expenses and commission

- (1) A company may apply its share capital in writing off—
 - (a) the preliminary expenses of the company;
 - (b) any commission paid under section 143 or under section 46 of the predecessor Ordinance; or
 - (c) any other expenses of any issue of shares in the company.
- (2) ~~For the purposes of subsection (1)(c), the expenses of any issue of shares in a company include the portion attributable to the shares issued of any fee paid by or in respect of the company under section 62(1)(c) or 137(3).~~¹¹

¹¹ Item 3／第 3 項

150. 在轉讓後發出股份證明書

- (1) 公司須在第(2)款指明的限期內，製成被轉讓的該公司任何股份的股份證明書，以及備妥該等股份證明書以供交付。
- (2) 就—
 - (a) 私人公司而言，上述限期是向該公司提交有關轉讓書的日期後的 2 個月；
 - (b) 任何其他公司而言，上述限期是向該公司提交有關轉讓書的日期後的 10 個營業日。
- (3) 如—
 - (a) 有關股份的發行條件另有規定；
 - (b) 沒有就轉讓繳付印花稅；
 - (c) 轉讓屬無效；或
 - (d) 有關公司有權拒絕登記並拒絕登記轉讓，
第(1)款不適用於該轉讓。
- (4) 如公司違反本條，該公司及其每名責任人均屬犯罪，可各處第 4 級罰款，如有關罪行是持續的罪行，則可就該罪行持續期間的每一日，另各處罰款\$700。
- (5) 在本條中—

| **營業日** (business day)指認可證券市場**營業**¹²進行證券交易業務的日子。

¹² Item 9／第 9 項

153. 登記或拒絕登記

- (1) 如某人藉法律的施行而獲傳轉股份的權利獲得股份的權利¹³，而該人以書面通知公司，表明該人欲就有關股份登記為該公司的成員，則本條適用。
- (2) 在接獲上述通知後的 2 個月內，有關公司須—
 - (a) 將有關的人就有關股份登記為該公司的成員；或
 - (b) 將拒絕登記的通知，送交該人。
- (3) 如公司拒絕辦理登記，有關的人可要求得到一份說明拒絕理由的陳述書。
- (4) 如有人根據第(3)款提出要求，有關公司須在接獲要求後的 28 日內—
 - (a) 將一份說明有關理由的陳述書，送交該人；或
 - (b) 將該人就有關股份登記為該公司的成員。
- (5) 如公司違反第(2)或(4)款，該公司及其每名責任人均屬犯罪，可各處第 4 級罰款，如有關罪行是持續的罪行，則可就該罪行持續期間的每一日，另各處罰款\$700。

¹³ Item 10／第 10 項

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.

Note—

~~For example, transmission of the right to shares on the death or bankruptcy of a shareholder.¹⁴~~

- (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.

¹⁴ Item 4／第 4 項

155. 關於藉法律傳轉的優先認購權

- (1) 如公司的章程細則向其成員或某類別成員給予權利，使其可在有任何構成股份的權利藉法律的施行而傳轉的事件發生的情況下，優先認購公司股份或購買公司股份，則本條適用。

附註一

例如在股東去世或破產時出現的股份權利的傳轉。

- (2) 如本條適用，把屬股份權利獲得股份的權利¹⁵的傳轉對象的人登記為公司成員一事，受載於章程細則的優先認購股份或購買股份的權利所規限，而該項權利可針對該人強制執行。

¹⁵ Item 11／第 11 項

156. 遺囑認證書批給等的證據

就股份的轉讓或股份權利獲得股份的權利¹⁶的傳轉而言，如有文件向公司出示，而在法律上，該文件是某死者的遺囑認證書或某死者的遺產管理書的批給的充分證明，則該公司須接受該文件為該項批給的充分證據。

¹⁶ Item 12／第 12 項

157. Interpretation

In this Division—

eligible person (合資格人士), in relation to shares in a listed company, means—

- (a) a registered holder of the shares; or
- (b) a person who claims to be entitled to have the person's name entered in the register of members of the company in respect of the shares;

genuine purchaser (真正購買者), in relation to shares, means—

- (a) a person (other than a person to whom a new certificate for the shares is issued under this Division) who purchases the shares in good faith for value and without notice of any defect in the title of the seller; or
- (b) a person who becomes entitled to the shares at any time after the purchase of them by a person referred to in paragraph (a);

new certificate (新股份證明書) means a share certificate that replaces a share certificate that has been lost;

original certificate (原有股份證明書) means a share certificate that has been lost;

registered holder (登記持有人), in relation to shares in a listed company, means a person whose name is entered in the register of members of the company in respect of the shares;¹⁷

website (網站), in relation to a company (other than a recognized exchange company), means the website on which the company is required, by the listing rules applicable to the recognized stock market concerned, to publish announcements, notices or other documents.¹⁷

159. Publication requirements

- (1) A listed company that intends to issue a new certificate on an application under section 158 must publish a notice in the specified form in accordance with this section.
- (2) The notice must be published—
 - (a) on the company's website; and
 - (b) in the Gazette if—
 - (i) the eligible person making the application is not the registered holder of the shares or does not have the registered holder's consent to make the application; or
 - (ii) the latest value of the shares exceeds \$200,000.
- (3) The notice must be published in the Gazette under subsection (2)(b) within one month after it is first published on the company's website under subsection (2)(a).
- (4) Before publishing a notice under this section, the company must—
 - (a) deliver a copy of the notice to the recognized exchange company that operates the stock market on which the shares concerned are listed¹⁸ ~~stock market concerned~~; and
 - (b) obtain a certificate from an authorized officer of that exchange company¹⁹ ~~stock market~~ that the copy is being exhibited in accordance with subsection (5).
- (5) A recognized exchange company²⁰ ~~stock market~~ must exhibit a copy of a notice received under subsection (4)(a) in a

¹⁸ Item 14(I)/第 14(I)項

¹⁹ Item 14(I)/第 14(I)項

²⁰ Item 14(I)/第 14(I)項

conspicuous place on the premises on which the stock market operates or publish the notice on its official website²¹ for a period of at least—

(a) one month, for a notice that is not required to be published under subsection (2)(b); or²²

(b) (a) one month, for a notice published under subsection (2)(a); or²³

(b) 3 months, for a notice that is required to be²⁴ published under subsection (2)(b).

(5A) For the purposes of subsection (5), a failure to make a copy of a notice available on an exchange company's official website throughout a period mentioned in that subsection is to be disregarded if—

(a) the notice is made available on the website for part of that period; and

(b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the exchange company to prevent or avoid.²⁵

(6) If the application was made by an eligible person who is not the registered holder of the shares and does not have the registered holder's consent to make the application, the listed company—

(a) must serve a copy of the notice under this section on the registered holder by sending it by registered post to the

²¹ Item 14(II)／第 14(II)項

²² Item 14(III)／第 14(III)項

²³ Item 14(III)／第 14(III)項

²⁴ Item 14(III)／第 14(III)項

²⁵ Item 14(IV)／第 14(IV)項

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registered holder's last address appearing in the register of members of the company; and

- (b) must not publish the notice under this section until at least 3 months after the day on which the copy was served.

(7) In this section—

latest value (最新價值) of shares means the value of the shares calculated at the last recorded price paid for shares of the same class in the company at the recognized stock market prior to the making of the application for the new certificate.²⁶

website (網站), in relation to a company, means the website on which the company is required, by the listing rules applicable to the recognized stock market concerned, to publish announcements, notices or other documents.²⁶

²⁶ Item 14(V)／第 14(V)項

160. Issue of new certificate

- (1) A listed company may issue a new certificate on an application under section 158 if—
 - (a) the company has published a notice under section 159 and—
 - (i) if the notice is published under section 159(2)(a), the notice has been made available on the company's website throughout a period of at least one month; or
 - (ii) if the notice is published under section 159(2)(b), the notice has been made available on the company's website throughout a period of at least 3 months and published in the Gazette in accordance with section 159(3);
 - (b) the company has not received notice of any other claim in respect of the shares; and
 - (c) in the case of an application by an eligible person who is not the registered holder of the shares—
 - (i) an instrument of transfer in respect of the shares has been delivered to the company under section 145; or
 - (ii) if the application was made without the registered holder's consent, the company has caused an instrument of transfer to be executed on behalf of the registered holder by a person appointed by the company and executed by the applicant on the applicant's own behalf.
- (2) An instrument of transfer referred to in subsection (1)(c)(ii) is to be regarded as an instrument of transfer duly delivered to the company under section 145.

- (3) A listed company that issues a new certificate must without delay—
 - (a) cancel the original certificate; and
 - (b) record the issue of the new certificate and cancellation of the original certificate in the register of its members.
- (4) For the purposes of subsection (1)(a), a failure to make a notice available on a company's website throughout a period mentioned in that subsection is to be disregarded if—
 - (a) the notice is made available on the website for part of that period; and
 - (b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.

(5) In this section

~~website (網站), in relation to a company, has the meaning given by section 159(7).~~²⁷

²⁷ Item 15／第 15 項

161. Public notice of issue of new certificate

- (1) A listed company that issues a new certificate must, ~~within 14 days after the date of issue~~—
- (a) publish ~~in the Gazette~~ a notice in the specified form ~~in accordance with this section²⁸ of the issue of the new certificate and cancellation of the original certificate~~; and
 - (b) deliver a copy of the notice to the recognized ~~exchange company that operates the stock market on which the shares concerned are listed²⁹ within 14 days after the date of issue³⁰ stock market concerned~~.
- (1A) The notice must be published on the listed company's website throughout a period of at least 7 days beginning on a date falling within 14 days after the date of issue.³¹
- (1B) If the listed company was required by section 159(2)(b) to publish a notice in the Gazette of its intention to issue the new certificate, the notice under this section must also be published in the Gazette within 14 days after the date of issue.³²
- (1C) For the purposes of subsection (1A), a failure to make a notice available on a listed company's website throughout a period mentioned in that subsection is to be disregarded if—
- (a) the notice is made available on the website for part of that period; and

²⁸ Item 16(I)／第 16(I)項

²⁹ Item 16(II)／第 16(II)項

³⁰ Item 16(I)／第 16(I)項

³¹ Item 16(I)／第 16(I)項

³² Item 16(I)／第 16(I)項

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- (b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.³³
- (2) If a listed company contravenes this section, 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.

³³ Item 16(I)(a)／第 16(I)(a)項

165. Permitted alteration of share capital

- (1) A limited³⁴ 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 limited³⁵ 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~~A~~ resolution of the company ~~may also be required~~ for an allotment of shares. Those sections

³⁴ Item 17／第 17 項

³⁵ Item 17／第 17 項

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may be relevant to an alteration of share capital referred to in subsection (2)(a), (c) or (d)—see sections 135 and 136.³⁶

- (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 limited³⁷ company's articles may exclude or restrict the exercise of a power conferred by this section.

³⁶ Item 4／第 4 項

³⁷ Item 17／第 17 項

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.³⁸~~
- (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 for registration³⁹.

- (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.

³⁸ Item 3／第 3 項

³⁹ Item 1／第 1 項

167. Redenomination of share capital

- (1) A limited⁴⁰ company may, by resolution of the company, convert its share capital or any class of shares from one currency to another currency. This is known as a redenomination.
- (2) A resolution under this section may authorize a limited⁴¹ company to redenominate its share capital—
 - (a) on more than one occasion;
 - (b) at a specified time or in specified circumstances.
- (3) A redenomination does not affect any rights or obligations of members under the company's articles, or any restrictions affecting members under the company's articles.
- (4) In particular, it does not affect any entitlement to dividends (including entitlement to dividends in a particular currency), voting rights or liability in respect of amounts remaining unpaid on shares (including liability in a particular currency).
- (5) For the purposes of this section~~this purpose~~⁴², the company's articles include the terms on which any shares in the company are allotted or held.
- (6) A limited⁴³ company's articles may exclude or restrict the exercise of a power conferred by this section.

⁴⁰ Item 18(I)／第 18(I)項

⁴¹ Item 18(I)／第 18(I)項

⁴² Item 18(II)／第 18(II)項

⁴³ Item 18(I)／第 18(I)項

173. 股份的類別

- (1) 就本條例而言，如某些股份所附帶的權利，在所有方面均屬劃一，該等股份即屬同一類別。
- (2) 如被配發的股份在緊接配發後的 12 個月內，並不帶有相同的收取股息的權利，有關股份所附帶的權利並不會⁴⁴僅因該事宜，而被視為有異於其他股份所附帶的權利。

⁴⁴ Item 19／第 19 項

174. Description of shares of different classes

- (1) A share certificate issued by a company that has different classes of shares must contain in a prominent position a statement—
 - (a) stating that the company's share capital is divided into different classes of shares; and
 - (b) specifying the voting rights attached to shares in each class.
- (2) If a company has a class of shares the holders of which are not entitled to vote at general meetings of the company—
 - (a) the descriptive title of shares in the class must include the words "non voting" or the Chinese characters "無表決權"; and
 - (b) the company must ensure that those words appear legibly on any share certificate,~~prospectus or directors' report~~⁴⁵ issued by the company.
- (3) Subsection (2) does not apply to shares that are described as preference shares or preferred shares.
- (4) If a company contravenes this section, 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.

⁴⁵ Item 20／第 20 項

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 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 section⁴⁶.

- (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).

⁴⁶ Item 4／第 4 項

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- (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.

178. Delivery of order of Court to Registrar

- (1) If the Court makes an order under section 177 in relation to a company, the company must deliver an office⁴⁷ copy of the order to the Registrar for registration⁴⁸ within 15+4⁴⁹ days after it is made.
- (2) If a company contravenes this section, 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.

⁴⁷ Item 21／第 21 項

⁴⁸ Item 1／第 1 項

⁴⁹ Item 2／第 2 項

179. Notifying Registrar of variation

- (1) If the rights attached to shares in any class of shares in a company are varied, the company must deliver to the Registrar for registration⁵⁰, within one month after the date on which the variation takes effect—
 - (a) a copy of the resolution or other document that authorized the variation; and
 - (b) a notice in the specified form including a statement of capital, as at the date on which the variation takes effect, that complies with section 196.
- (2) Subsection (1)(a) does not apply if the company is required to deliver a copy of the resolution or other document to the Registrar under another provision of this Ordinance.
- (3) If a company contravenes this section, 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.

⁵⁰ Item 1／第 1 項

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.

NoteExample

~~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~~⁵¹.

- (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

⁵¹ Item 4／第 4 項

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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.

186. Delivery of order of Court to Registrar

- (1) If the Court makes an order under section 185 in relation to a company, the company must deliver an office⁵² copy of the order to the Registrar for registration⁵³ within 1415⁵⁴ days after it is made.
- (2) If a company contravenes this section, 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.

⁵² Item 22／第 22 項

⁵³ Item 1／第 1 項

⁵⁴ Item 2／第 2 項

194. 規例

- (1) 財政司司長可訂立規例，對本次分部所提供給予⁵⁵的寬免，加以限制或以其他方式變通。
- (2) 根據本條訂立的規例須經立法會批准。

⁵⁵ Item 23／第 23 項

196. Statement of capital

- (1) This section applies if a provision of this Part or Part 5 requires a statement of capital to be included in a return or notice delivered to the Registrar for registration⁵⁶.
- (2) A statement of capital must state—
 - (a) the total number of issued shares in the company;
 - (b) the amount paid up or regarded as paid up and the amount (if any) remaining unpaid or regarded as remaining unpaid on the total number of issued shares in the company;
 - (c) the total amount of the company's issued share capital; and
 - (d) for each class of shares—
 - (i) the particulars specified in subsection (3);
 - (ii) the total number of issued shares in the class;
 - (iii) the amount paid up or regarded as paid up and the amount (if any) remaining unpaid or regarded as remaining unpaid on the total number of issued shares in the class; and
 - (iv) the total amount of issued share capital of the class.
- (3) The particulars are—
 - (a) particulars of any voting rights attached to shares in the class, including rights that arise only in certain circumstances;
 - (b) particulars of any rights attached to shares in the class, as respects dividends, to participate in a distribution;

⁵⁶ Item 1／第 1 項

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- (c) particulars of any rights attached to shares in the class, as respects capital, to participate in a distribution (including on a winding up); and
- (d) whether or not shares in the class are redeemable shares.