

Bills Committee on Companies Bill
Committee Stage Amendments to the Companies Bill

CB(1)1747/11-12(04)

Part 13 – Arrangements, Amalgamation, and Compulsory Share Acquisition in Takeover and Share Buy-Back
(Excluding the issue of headcount test)

The table below sets out the proposed Committee Stage Amendments (CSAs) in relation to Part 13 (“Arrangements, Amalgamation, and Compulsory Share Acquisition in Takeover and Share Buy-Back”) (clauses 657 to 710) of the Companies Bill (CB) (except for the issue of headcount test, which will be dealt with separately). In preparing the CSAs, the Administration has taken account of, *inter alia*, the views of Members, deputations 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

LegCo: Legislative Council

Registrar: Registrar of Companies

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
General amendments across CB			
1	Change “14 days” to “15 days”	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. • Having reviewed the relevant provisions in CB, the Administration agreed to

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
			<p>extend the 14-day period to 15 days across the board. Please see paragraphs 31 to 32 of LegCo Paper No. 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>”.</p> <ul style="list-style-type: none"> • Insofar as Part 13 is concerned, we propose to amend clause 673 pursuant to this item.
Other amendments specific to Part 13			
2	Clause 657 Interpretation	(I) Add a definition for “child (子女)” as “includes a step-child, an illegitimate child and a child adopted in any manner recognized by the law of Hong Kong”.	<ul style="list-style-type: none"> • This CSA is proposed for clarity in response to LegCo Legal Adviser’s comment. In Part 11, an entity connected with a director includes, among others, an illegitimate child of the director. This CSA is proposed to extend the coverage of “child (子女)” in Part 13 to illegitimate child.
		(II) Add a definition for “cohabitation relationship” as “means a relationship between 2 persons (whether of the same sex or of the opposite sex) who live together as a couple in an intimate relationship”.	<ul style="list-style-type: none"> • Under the current Part 11, an entity connected with a director of a company covers a person other than the director’s family with whom the director lived “as a couple in an enduring family relationship” (clause 477(1)(b)). In response to Members’ suggestion, we propose to introduce a CSAs with reference to the formulation in the Domestic and Cohabitation Relationships Violence Ordinance (Cap 189). Please see paragraphs 2 and 3 of LegCo Paper No. CB(1)1490/11-12(01) <i>Follow-up actions for the meetings held on 2 and 9 December 2011 in relation to Part 11 of the Companies Bill</i>. • This CSA is proposed to align the relevant formulation in Part 13 with that in Part 11.
3	Clause 658 Associate	(I) Replace “any other person (whether of a different sex or the same sex) with whom the offeror or member lives as a couple in an enduring	<ul style="list-style-type: none"> • See item 2(II) above.

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
		family relationship” in subclause (1)(a)(ii) with “a person who is in a cohabitation relationship with the offeror or member”.	
		(II) Delete the reference to step-child and adopted child in subclause (1)(a).	<ul style="list-style-type: none"> Step-child and adopted child have been included in the definition of “child (子女)” proposed under item 2(I) above.
		(III) Add subclauses (2A) and (2B) to provide that a reference to voting power the exercise of which is controlled by an offeror or a member includes voting power the exercise of which is controlled by a body corporate controlled by the offeror or member.	<ul style="list-style-type: none"> This CSA is proposed for clarity in response to LegCo Legal Adviser’s comment. The additional provisions clarify that the 30% voting power provision includes voting power the exercise of which is controlled through a body corporate. There are similar provisions in clause 479(2) and (3).
4	Clause 662 Explanatory statements to be issued or made available to creditors or members	Delete “or fails to take all reasonable steps to prevent” in subclauses (5)(c) and (d).	<ul style="list-style-type: none"> This CSA is proposed in response to LegCo Legal Adviser’s comment. The CSA aligns the provisions with the new formulation of “responsible person” under Part 1. Please refer to paragraphs 2 to 9 of LegCo Paper No. CB(1)2636/10-11(01) “Administration’s response to issues raised by members at the meeting on 13 May 2011 in relation to the formulation of “responsible person” under Part 1”.
5	Clause 666 Company’s articles to be accompanied by	Replace “commits” in subclause (2) with “commit”.	<ul style="list-style-type: none"> This CSA corrects a typo.

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
	order of Court		
6	Clause 668 Solvency statement	<p>(I) Add subclause (1)(b)(ii) as follows – “(ii) there exists such a floating charge or other security, and each person entitled to the charge or security has consented in writing to the amalgamation proposal.”</p> <p>(II) Replace “time when the resolution is circulated to the members” in subclause (2)(b) with “circulation date of the resolution”, and add a subclause on the circulation date.</p>	<ul style="list-style-type: none"> Members proposed that a company with floating charge should be allowed to use the amalgamation procedures under clauses 669 and 670. To implement the proposal, CSAs are proposed to clauses 668, 669 and 670 to require the consent of all the holders of the floating charges as a condition for allowing the amalgamation, so as to ensure that the holders of the floating charges can act to protect their own interests. Similarly, a company with other security would also be allowed to use the amalgamation procedures provided that all holders of the other security has consented to the amalgamation proposal. Please see paragraphs 3 and 4 of LegCo Paper No. CB(1)1184/11-12(03) <i>Follow-up actions for the meetings held on 3 and 10 February 2012 in relation to Part 13 of the Companies Bill.</i> This CSA clarifies the intention of subclause (2)(b) by making reference to the meaning of “circulation date (傳閱日期)” given by section 537(1).
7	Clause 669 Vertical amalgamation	<p>Add subclause (2)(d)(ii) as follows – “(ii) there exists such a floating charge or other security, and each person entitled to the charge or security has consented in writing to the amalgamation proposal.”</p>	<ul style="list-style-type: none"> See item 6(I) above.
8	Clause 670 Horizontal	<p>Add subclause (2)(d)(ii) as follows – “(ii) there exists such a floating charge or</p>	<ul style="list-style-type: none"> See item 6(I) above.

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
	amalgamation	other security, and each person entitled to the charge or security has consented in writing to the amalgamation proposal.”	
9	Clause 671 Directors of amalgamating company must notify secured creditors of proposed amalgamation	(I) Replace “at the same time as the resolution is circulated to the members” in subclause (1)(b) with “on or before the circulation date of the resolution”, and add a subclause on the circulation date. (II) Add “generally” after “circulating” in subclause (2)(b).	<ul style="list-style-type: none"> This CSA clarifies the intention of subclause (1)(b) by making reference to the meaning of “circulation date (傳閱日期)” given by section 537(1). This is similar to item 6(II) above. This is a drafting change proposed in response to LegCo Legal Adviser’s comment to align the wordings of the clause with those of other clauses (e.g. clauses 308(2), 568(3) and 623(2)).
10	Clause 673 Registration of amalgamation	Amend subclause (1)(e) as “...in relation to the value of that company’s <u>assets</u> , no creditor will be prejudiced by that fact.”	<ul style="list-style-type: none"> This is a drafting change proposed in response to LegCo Legal Adviser’s comment to align the wordings within the subclause.
11	Clause 678 Takeover offer	Amend the Chinese version of subclause (3)(a) as “...已無條件訂立合約承諾無條件收購或承諾在某些條件獲得符合的前提下訂立合約承諾收購...”	<ul style="list-style-type: none"> This is a technical amendment to clarify our intention. “無條件”or“在某些條件獲得符合的前提下” is meant to qualify “收購”/“回購” rather than “訂立合約”. We also take the opportunity to align the wordings of the relevant provisions.
12	Clause 680 Shares to which takeover offer	(I) Amend the Chinese version of subclauses (1) and (4) as “...收購或無條件訂立合約承諾無條件收購...”	<ul style="list-style-type: none"> See item 11 above.

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
	relates	(II) Amend the Chinese version of subclause (3) as “...已無條件訂立合約承諾無條件收購或承諾在某些條件獲得符合的前提下訂立合約承諾收購...”	<ul style="list-style-type: none"> • See item 11 above.
13	Clause 682 Offeror may give notice to buy out minority shareholders	Amend the Chinese version of subclauses (1) to (5) as “...收購或無條件訂立合約承諾無條件收購...”	<ul style="list-style-type: none"> • See item 11 above.
14	Clause 683 Notice to minority shareholders	Delete subclause (5).	<ul style="list-style-type: none"> • This CSA is proposed in response to Members’ suggestion. The deletion means that the position under the CO will be maintained. Please see paragraph 5 of LegCo Paper No. CB(1)1184/11-12(03) <i>Follow-up actions for the meetings held on 3 and 10 February 2012 in relation to Part 13 of the Companies Bill.</i>
15	Clause 684 Offeror’s right to buy out minority shareholders	Delete subclause (4)(d).	<ul style="list-style-type: none"> • See item 14 above.
16	Clause 688 Provisions supplementary to section 687	Delete the reference to provisional liquidator in subclauses (2) and (3).	<ul style="list-style-type: none"> • This is a technical amendment. Under the CO, the provisional liquidator does not generally have all the powers and functions of the liquidator. We intend to leave it to the court to decide on the scope of the provisional liquidator’s powers.

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
17	Clause 689 Offeror may be required to buy out minority shareholders	(I) Amend the Chinese version of subclauses (1), (2) and (5)(b) as “...收購或無條件訂立合約承諾無條件收購...”	<ul style="list-style-type: none"> • See item 11 above.
		(II) Add “已” before “憑藉” in the Chinese version of subclause (5)(b).	<ul style="list-style-type: none"> • This is a drafting change to align the wordings with those of clause 707(6)(b).
		(III) Amend the Chinese version of subclause (5)(c) as “...收購或已無條件訂立合約承諾無條件收購或承諾在某些條件獲得符合的前提下訂立合約承諾收購...”	<ul style="list-style-type: none"> • See item 11 above.
18	Clause 691 Notice to minority shareholders	Delete subclause (6).	<ul style="list-style-type: none"> • See item 14 above.
19	Clause 692 Minority shareholders’ right to be bought out by offeror	Delete subclause (4)(d).	<ul style="list-style-type: none"> • See item 14 above.
20	Clause 693 Shareholder to be	Amend the Chinese version of subclause (2) as “...收購或[已]無條件訂立合約承	<ul style="list-style-type: none"> • See item 11 above.

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
	regarded as not having exercised right to be bought out in certain circumstances	諾無條件收購...”	
21	Clause 694 Interpretation	Amend the Chinese version of subclause (2)(b) as “...已無條件訂立合約承諾無條件收購或承諾在某些條件獲得符合的前提下訂立合約承諾收購...”	<ul style="list-style-type: none"> • See item 11 above.
22	Clause 696 General offer	Amend the Chinese version of subclause (3)(a) as “...已無條件訂立合約承諾無條件收購或承諾在某些條件獲得符合的前提下訂立合約承諾收購...”	<ul style="list-style-type: none"> • See item 11 above.
23	Clause 697 Non-communication etc. does not prevent offer from being general offer	Amend the Chinese version of subclause (3) as “即使某人因為香港以外某地方的法律，而不可能接受回購股份的要約，或因為香港以外某地方的法律，而使接受回購股份的要約對某人而言是不可能的，或是較為困難的，...”	<ul style="list-style-type: none"> • This is a drafting change proposed for clarity in response to LegCo Legal Adviser’s comment.
24	Clause 698 Shares to which general offer	(I) Amend the Chinese version of subclauses (1) and (4) as “...回購或無條件訂立合約承諾無條件回購...”	<ul style="list-style-type: none"> • See item 11 above.

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
	relates	(II) Amend the Chinese version of subclause (3) as “...已無條件訂立合約承諾無條件回購或承諾在某些條件獲得符合的前提下訂立合約承諾回購...”	<ul style="list-style-type: none"> • See item 11 above.
		(III) Delete “無條件” in the Chinese version of subclause (4)(a).	<ul style="list-style-type: none"> • This is a drafting change to align the Chinese version with the English version. “Unconditionally” and “無條件” have been clearly stated in the subclause (4) and there is no need to repeat it in subclause (4)(a).
25	Clause 701 Repurchasing company may give notice to buy out minority shareholders	Amend the Chinese version of subclauses (2) to (6) as “...回購或無條件訂立合約承諾無條件回購...”	<ul style="list-style-type: none"> • See item 11 above.
26	Clause 702 Notice to minority shareholders	(I) Replace “an offeror” in subclause (3) with “the repurchasing company”.	<ul style="list-style-type: none"> • This CSA corrects a clerical error.
		(II) Delete subclause (5).	<ul style="list-style-type: none"> • See item 14 above.
27	Clause 703 Repurchasing company’s right to buy out minority	Delete subclause (4)(b).	<ul style="list-style-type: none"> • See item 14 above.

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
	shareholders		
28	Clause 707 Repurchasing company may be required to buy our minority	<p>(I) Amend the Chinese version of subclauses (2), (3) and (6)(b) as “... 回購或無條件訂立合約承諾無條件回購...”</p> <p>(II) Add “已” before “憑藉” and deleted “已” after “而” in the Chinese version of subclause (6)(b).</p> <p>(III) Amend the Chinese version of subclause (6)(c) as “...回購或已無條件訂立合約承諾無條件或承諾在某些條件獲得符合的前提下訂立合約承諾回購...”</p>	<ul style="list-style-type: none"> • See item 11 above. • This is a drafting change to align the wordings with those of clause 689(5)(b). • See item 11 above.
29	Clause 709 Notice to minority shareholders	Delete subclause (6).	<ul style="list-style-type: none"> • See item 14 above.
30	Clause 710 Minority shareholders’ right to be bought out by repurchasing	<p>(I) Delete subclause (4)(b).</p> <p>(II) Delete the note at the end of the clause.</p>	<ul style="list-style-type: none"> • See item 14 above. • As explained in Annex D to LegCo Paper No. CB(1)1295/11-12(02) “Notes” and “Examples” in the Companies Bill, Division 4 of Part 5 contains the core provisions on buy-back. The note gives an impression that Division 4 of Part 5 is supplementary to clause 710. In any event, there is no need to specifically

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
	company		mention Division 4 of Part 5 under clause 710.

**Financial Services and the Treasury Bureau
Companies Registry
2 May 2012**

657. Interpretation

In this Part—

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

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

offer period (要約期), in relation to an offer, means the period within which the offer can be accepted.

¹ Item 2(I) / 第 2(I)項

² Item 2(II) / 第 2(II)項

658. Associate

- (1) In this Part, a reference to an associate of an offeror or member, is—
- (a) if the offeror or member is a natural person, a reference to—
 - (i) the offeror's or member's spouse;
 - (ii) ~~a person who is in a cohabitation relationship with the offeror or member; any other person (whether of a different sex or the same sex) with whom the offeror or member lives as a couple in an enduring family relationship;~~³
 - (iii) a child, ~~step-child or adopted child~~⁴ of the offeror or member;
 - (iv) a child, ~~step-child or adopted child~~⁴ of a person falling within subparagraph (ii) who—
 - (A) is not a child, ~~step-child or adopted child~~⁴ of the offeror or member;
 - (B) lives with the offeror or member; and
 - (C) has not attained the age of 18;
 - (v) a parent of the offeror or member;
 - (vi) a body corporate in which the offeror or member is substantially interested; or
 - (vii) a person who is a party, or a nominee of a party, to an acquisition agreement with the offeror or member; or
 - (b) if the offeror or member is a body corporate, a reference to—
 - (i) a body corporate in the same group of companies as the offeror or member;
 - (ii) a body corporate in which the offeror or member is substantially interested; or
 - (iii) a person who is a party, or a nominee of a party, to an acquisition agreement with the offeror or member.
- (2) For the purposes of subsection (1), an offeror or member is substantially interested in a body corporate if—
- (a) the body corporate, or its directors or a majority of its directors, are accustomed to act in accordance with the directions or instructions of the offeror or member; or
 - (b) the offeror or member is entitled to exercise, or control the exercise of, more than 30% of the voting power at any general meeting of the body corporate.
- ~~(2A) In subsection (2), a reference to voting power the exercise of which is controlled by an offeror or a member includes voting power the exercise of which is controlled by a body corporate controlled by the offeror or member.~~
- ~~(2B) For the purposes of subsection (2A), an offeror or a member controls a body corporate if the offeror or member is entitled to exercise, or control the exercise of, more than 50% of the voting power at any general meeting of that body corporate.~~⁵
- (3) For the purposes of subsection (1), an agreement is an acquisition agreement if—
- (a) it is an agreement for the acquisition of—
 - (i) any of the shares to which the takeover offer or general offer relates; or
 - (ii) an interest in those shares; and
 - (b) it includes provisions imposing obligations or restrictions on any of the parties to it with respect to the use, retention or disposal of the party's interests in the shares acquired pursuant to the agreement.

³ Item 3(I) / 第2(I)項

⁴ Item 3(II) / 第3(II)項

⁵ Item 3(III) / 第3(III)項

662. Explanatory statements to be issued or made available to creditors or members

- (1) If a meeting is summoned under section 661—
 - (a) every notice summoning the meeting that is sent to a creditor or member must be accompanied by an explanatory statement complying with subsections (3) and (4); and
 - (b) every notice summoning the meeting that is given by advertisement—
 - (i) must include an explanatory statement complying with subsections (3) and (4); or
 - (ii) must state where and how a creditor or member entitled to attend the meeting may obtain a copy of the explanatory statement.
- (2) If a notice given by advertisement states that a creditor or member entitled to attend the meeting may obtain a copy of an explanatory statement, the company must provide a copy of the statement, free of charge, to a creditor or member applying in the manner specified in the notice.
- (3) An explanatory statement—
 - (a) must explain the effect of the arrangement or compromise; and
 - (b) must state—
 - (i) any material interests of the company's directors, whether as directors or as members or as creditors of the company or otherwise, under the arrangement or compromise; and
 - (ii) the effect of the arrangement or compromise on those interests, in so far as the effect is different from the effect on the like interests of other persons.
- (4) If the arrangement or compromise affects the rights of the company's debenture holders, an explanatory statement must give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the directors.
- (5) If subsection (1) or (2) is contravened, all of the following commit an offence—
 - (a) the company;
 - (b) every responsible person of the company;
 - (c) a liquidator or provisional liquidator of the company who authorizes or permits, or participates in, ~~or fails to take all reasonable steps to prevent,~~⁶ the contravention;
 - (d) a trustee of a deed for securing the issue of the company's debentures who authorizes or permits, or participates in, ~~or fails to take all reasonable steps to prevent,~~⁶ the contravention.
- (6) A person who commits an offence under subsection (5) is liable to a fine at level 5.
- (7) If a person is charged with an offence under subsection (5) for a contravention of subsection (1), it is a defence to establish that the contravention was due to the refusal of another person, who was a director of the company or a trustee for debenture holders of the company, to supply the necessary particulars of that other person's interests.

⁶ Item 4 / 第 4 項

666. Company's articles to be accompanied by order of Court

- (1) Every copy of the company's articles issued by the company after an order is made for the purposes of section 664 or 665 must be accompanied by a copy of the order, unless the effect of the order, and the effect of the arrangement or compromise to which the order relates, has been incorporated into the articles by alteration to those articles.
- (2) If subsection (1) is contravened, the company, and every responsible person of the company, commits⁷ an offence, and each is liable to a fine at level 3.

668. Solvency statement

- (1) In this Division, a reference to a solvency statement made by the directors of an amalgamating company is a reference to a statement made before the time specified in subsection (2) that—
- (a) in the directors' opinion—
- (i) as at the date of the statement, there is no ground on which the amalgamating company could be found to be unable to pay its debts; and
- (ii) the amalgamated company will be able to pay its debts as they fall due during the period of 12 months immediately after the date on which the amalgamation is to become effective; and
- (b) as at the date of the statement,—
- ~~(i) none of the following exists—~~
- ~~(A) any floating charge created by the amalgamating company;~~
- ~~(B) any other security created by the amalgamating company over a class of assets, to any of which the security interest has not attached; or~~
- ~~(ii) there exists such a floating charge or other security, and each person entitled to the charge or security has consented in writing to the amalgamation proposal.⁸~~
- (2) The time specified for the purposes of subsection (1) is—
- (a) if the amalgamation is to be approved by a resolution passed on a poll at a general meeting, the date of the meeting; or
- (b) if the amalgamation is to be approved by a written resolution, the circulation date of the resolution.⁹ ~~time when the resolution is circulated to the members.~~
- (3) In forming an opinion for the purposes of subsection (1)(a)(ii), the directors must take into account all the liabilities of the amalgamated company (including contingent and prospective liabilities).
- ~~(4) In subsection (2)—~~
- circulation date (傳閱日期) has the meaning given by section 537(1).⁹

⁸ Item 6(I) / 第 6(I)項

⁹ Item 6(II) / 第 6(II)項

669. Vertical amalgamation

- (1) A company (*amalgamating holding company*), and one or more of its wholly owned subsidiaries, may amalgamate, and continue, as one company if—
 - (a) the members of the amalgamating holding company approve the amalgamation on the terms specified in subsection (2); and
 - (b) the members of each of the amalgamating subsidiaries approve the amalgamation on the terms specified in subsection (2).
- (2) The terms are—
 - (a) that the shares of each of the amalgamating subsidiaries will be cancelled without payment or other consideration;
 - (b) that the articles of the amalgamated company will be the same as the articles of the amalgamating holding company;
 - (c) that the directors of each amalgamating company—
 - (i) are satisfied that, as at the date of the solvency statement made by them, there is no ground on which the amalgamating company could be found to be unable to pay its debts; and
 - (ii) after taking into account all the liabilities of the amalgamated company (including contingent and prospective liabilities), are satisfied that the amalgamated company will be able to pay its debts as they fall due during the period of 12 months immediately after the date on which the amalgamation is to become effective;
 - (d) that the directors of each amalgamating company have confirmed that as at the date of the solvency statement made by them, ~~—~~
 - ~~(i) none of the following exists—~~
 - ~~(A) any floating charge created by the amalgamating company;~~
 - ~~(B) any other security created by the amalgamating company over a class of assets, to any of which the security interest has not attached; or~~
 - ~~(ii) there exists such a floating charge or other security, and each person entitled to the charge or security has consented in writing to the amalgamation proposal;~~¹⁰
 - (e) that the person or persons named in the resolution will be the director or directors of the amalgamated company.
- (3) An approval for the purposes of subsection (1)(a) must be obtained by a special resolution of the company passed on a poll at a general meeting but not by a written resolution.
- (4) An approval for the purposes of subsection (1)(b) must be obtained by a special resolution of the company passed on a poll at a general meeting or by a written resolution.
- (5) This section does not apply unless each amalgamating company is a company limited by shares.

¹⁰ Item 7 / 第 7 項

670. Horizontal amalgamation

- (1) Two or more of the wholly owned subsidiaries of a company may amalgamate, and continue, as one company if the members of each amalgamating company approve the amalgamation on the terms specified in subsection (2).
- (2) The terms are—
 - (a) that the shares of all but one of the amalgamating companies will be cancelled without payment or other consideration;
 - (b) that the articles of the amalgamated company will be the same as the articles of the amalgamating company whose shares are not cancelled;
 - (c) that the directors of each amalgamating company—
 - (i) are satisfied that, as at the date of the solvency statement made by them, there is no ground on which the amalgamating company could be found to be unable to pay its debts; and
 - (ii) after taking into account all the liabilities of the amalgamated company (including contingent and prospective liabilities), are satisfied that the amalgamated company will be able to pay its debts as they fall due during the period of 12 months immediately after the date on which the amalgamation is to become effective;
 - (d) that the directors of each amalgamating company have confirmed that as at the date of the solvency statement made by them, ~~—~~
 - (i) none of the following exists—
 - ~~(A)~~ any floating charge created by the amalgamating company;
 - ~~(B)~~ any other security created by the amalgamating company over a class of assets, to any of which the security interest has not attached; or
 - (ii) there exists such a floating charge or other security, and each person entitled to the charge or security has consented in writing to the amalgamation proposal;¹¹
 - (e) that the person or persons named in the resolution will be the director or directors of the amalgamated company.
- (3) An approval for the purposes of subsection (1) must be obtained by a special resolution of the amalgamating company passed on a poll at a general meeting or by a written resolution.
- (4) This section does not apply unless each amalgamating company is a company limited by shares.

¹¹ Item 8 / 第 8 項

671. Directors of amalgamating company must notify secured creditors of proposed amalgamation

- (1) The directors of each amalgamating company under section 669 or 670 must comply with subsection (2)—
 - (a) if the amalgamation is to be approved by a resolution passed on a poll at a general meeting, at least 21 days before the date of the meeting; or
 - (b) if the amalgamation is to be approved by a written resolution, ~~at the on or before the circulation date of the resolutions~~ at the on or before the circulation date of the resolutions ~~same time as the resolution is circulated to the members~~¹².
- (2) Those directors—
 - (a) must give written notice of the proposed amalgamation to every secured creditor of the amalgamating company; and
 - (b) must publish notice of the proposed amalgamation in an English language newspaper, and a Chinese language newspaper, circulating generally¹³ in Hong Kong.
- (3) If the directors of an amalgamating company contravene subsection (1), each of them commits an offence and is liable to a fine at level 3.

~~(4) In subsection (1)(b)—~~

circulation date (傳閱日期) has the meaning given by section 537(1).¹²

¹² Item 9(I) / 第9(I)項

¹³ Item 9(II) / 第9(II)項

673. Registration of amalgamation

- (1) For the purpose of effecting an amalgamation, the following documents must be delivered to the Registrar for registration within 154¹⁴ days after the approval of the amalgamation proposal—
 - (a) the amalgamation proposal that has been approved;
 - (b) every certificate required by section 672(1);
 - (c) a certificate issued by the directors of each amalgamating company stating that the amalgamation has been approved in accordance with—
 - (i) this Division; and
 - (ii) the articles of the amalgamating company;
 - (d) a notice of appointment of the directors of the amalgamated company;
 - (e) a certificate issued by the directors, or the proposed directors, of the amalgamated company stating that where the proportion of the claims of the amalgamated company's creditors in relation to the value of that company's assets is greater than the proportion of the claims of an amalgamating company's creditors in relation to the value of that company's assets¹⁵, no creditor will be prejudiced by that fact.
- (2) A document mentioned in subsection (1)(a), (b), (c), (d) or (e) must be in the specified form.
- (3) As soon as practicable after the documents mentioned in subsection (1) are registered, the Registrar must issue a certificate of amalgamation.
- (4) A certificate of amalgamation may be issued in any form that the Registrar thinks fit.

¹⁴ Item 1 / 第 1 項

¹⁵ Item 10 / 第 10 項

678. 收購要約

- (1) 就本分部而言，如有以下情況，則就收購某公司的股份而作出的要約，即屬收購要約 —
- (a) 該要約的內容，是收購該公司的所有股份或任何類別股份中的所有股份(在該要約的日期由要約人持有的股份除外)；及
 - (b) 該要約 —
 - (i) 不是關乎不同類別股份的，而就該要約關乎的所有股份而言，該要約的條款是相同的；或
 - (ii) 是關乎不同類別股份的，而就該要約關乎的每一類別股份中的所有股份而言，該要約的條款是相同的。
- (2) 在第(1)款中 —
- 股份**(shares)指在有關要約的日期已配發的股份。
- (3) 在第(1)(a)款中，提述由要約人持有的股份 —
- (a) 包括該要約人已無條件訂立合約承諾無條件收購或承諾在某些條件獲得符合的前提下訂立合約承諾¹⁶收購的股份；但
 - (b) 不包括屬符合以下說明的合約的標的之股份 —
 - (i) 該合約是由該要約人與有關公司股份的持有人訂立的，而目的是確保在該要約作出時，該持有人會接受該要約；及
 - (ii) 該合約的訂立是沒有代價且是藉契據訂立的、訂立該合約所收取的代價屬微不足道或訂立該合約所收取的代價包含該要約人作出該要約的承諾。
- (4) 就第(1)(b)款而言，就某要約關乎的所有股份或某類別股份的所有股份而言，即使就較早配發的股份提供的代價的價值，有別於就較後配發的股份提供的代價的價值，只要符合以下條件，該要約的條款仍須視為就所有有關股份而言是相同的 —
- (a) 股份附有獲得某項股息的權利，而同類別的其他股份因為於不同時間配發，而不附有該權利；
 - (b) 該代價的價值的差別，純粹反映上述獲得股息的權利的分別；及
 - (c) 若非因為該代價的價值的差別，關乎所有有關股份的要約條款便會是相同的。
- (5) 就第(1)(b)款而言，就某要約關乎的所有股份或某類別股份的所有股份而言，即使提供的代價的形式有所不同，只要符合以下條件，該要約的條款仍須視為就所有有關股份而言是相同的 —
- (a) 香港以外某地方的法律不准許提供該要約的條款指明形式的代價，或該地方的法律規定除非要約人符合某些要約人不能夠符合或要約人視為過分嚴苛的條件，否則不准許提供該形式的代價；
 - (b) 向某人提供指明形式的代價如此不獲准許，但有另一形式的代價向該人提供；
 - (c) 該人能夠收取該另一形式而大致上是相等價值的代價；及
 - (d) 若非有代價形式的分別，關乎所有有關股份的要約條款便會是相同的。
- (6) 儘管有第(1)款的規定，收購要約關乎的股份當中，可包括將會在該要約的日期後但在該要約指明的日期前配發的股份。

680. 收購要約所關乎的股份

- (1) 就本分部而言，如在收購要約作出後但在要約期終結前，要約人收購或無條件訂立合約承諾無條件¹⁷收購該要約所關乎的任何股份，但要約人並不是憑藉該要約獲接受而收購該等股份的，則該等股份不得視為該要約所關乎的股份。本款在第(2)款的規限下具有效力。
- (2) 就本分部而言，如有以下情況，則有關股份須視為有關收購要約所關乎的股份，而要約人須視為已憑藉該要約獲接受而收購或訂立合約承諾收購該等股份 —
 - (a) 在收購或訂立合約承諾收購該等股份時，收購及承諾收購的代價的價值，不超過該要約的條款指明的代價的價值；或
 - (b) 上述條款其後被修改，以致在公布該修改時，收購或訂立合約承諾收購該等股份的代價的價值，在收購或訂立合約時，不再超過該條款指明的代價的價值。
- (3) 就本分部而言，就要約人的有聯繫者或代表要約人的代名人持有或已無條件訂立合約承諾無條件收購或承諾在某些條件獲得符合的前提下訂立合約承諾¹⁸收購(不論是在收購要約的日期或之後)的股份而言，即使該要約延伸至該等股份，該等股份亦不得視為該要約所關乎的股份。本款在第(4)款的規限下具有效力。
- (4) 就本分部而言，凡在收購要約作出後但在要約期終結前，要約人的有聯繫者或代表要約人的代名人收購或無條件訂立合約承諾無條件¹⁷收購該要約所關乎的任何股份，則如有以下情況，該等股份須視為是該要約所關乎的股份 —
 - (a) 在收購或訂立合約承諾收購該等股份時，收購及承諾收購的代價的價值，不超過該要約的條款指明的代價的價值；或
 - (b) 上述條款其後被修改，以致在公布該修改時，收購或訂立合約承諾收購該等股份的代價的價值，在收購或訂立合約時，不再超過該等條款指明的代價的價值。

¹⁷ Item 12(I) / 第 12(I)項

¹⁸ Item 12(II) / 第 12(II)項

682. 要約人可發出通知表示全面收購少數股東的股份

- (1) 在收購要約不是關乎不同類別股份的情況下，如要約人已憑藉該要約獲接受，而收購或無條件訂立合約承諾無條件¹⁹收購該要約所關乎的股份中的最少 90%，則該要約人可向該要約所關乎的任何其他股份的持有人發出通知，表明該要約人有意收購該等股份。
- (2) 在收購要約是關乎不同類別股份的情況下，如要約人已憑藉該要約獲接受，而收購或無條件訂立合約承諾無條件¹⁹收購該要約所關乎的任何類別股份中的最少 90%，則該要約人可向該要約所關乎的該類別股份的任何其他股份的持有人發出通知，表明該要約人有意收購該等股份。
- (3) 在收購要約不是關乎不同類別股份的情況下，如要約人已憑藉該要約獲接受，而收購或無條件訂立合約承諾無條件¹⁹收購該要約所關乎的股份中的少於 90%，則該要約人可向原訟法庭提出申請，要求原訟法庭作出命令，授權該要約人向該要約所關乎的任何其他股份的持有人發出通知，表明該要約人有意收購該等股份。
- (4) 在收購要約是關乎不同類別股份的情況下，如要約人已憑藉該要約獲接受，而收購或無條件訂立合約承諾無條件¹⁹收購該要約所關乎的任何類別股份中的少於 90%，則該要約人可向原訟法庭提出申請，要求原訟法庭作出命令，授權該要約人向該要約所關乎的該類別股份的任何其他股份的持有人發出通知，表明該要約人有意收購該等股份。
- (5) 原訟法庭如信納以下事宜，可應根據第(3)或(4)款所指的申請作出命令 —
 - (a) 要約人在作出合理查探後，仍不能追尋到一名或多於一名持有有關收購要約所關乎的股份的人的下落；
 - (b) 假若該人或所有該等人士接受該收購要約，該要約人便會憑藉該要約獲接受，而收購或無條件訂立合約承諾無條件¹⁹收購該要約所關乎的股份或任何類別股份中的最少 90%；及
 - (c) 提供的代價是公平及合理的。
- (6) 原訟法庭除非信納在顧及所有情況(尤其須顧及已找到但沒有接受有關收購要約的股份持有人的數目)下，作出上述命令是公正及公平的，否則不得作出該命令。
- (7) 如原訟法庭作出命令，授權要約人向任何股份的持有人發出通知，則該要約人可向該持有人發出通知。

¹⁹ Item 13 / 第 13 項

683. Notice to minority shareholders

- (1) A notice to a holder of shares under section 682—
 - (a) must be given in the specified form; and
 - (b) must be given to the holder before whichever is the earlier of the following—
 - (i) the end of the period of 3 months beginning on the day after the end of the offer period of the takeover offer;
 - (ii) the end of the period of 6 months beginning on the date of the takeover offer.
- (2) The notice must be given to the holder of shares—
 - (a) by delivering it personally to that holder in Hong Kong;
 - (b) by sending it by registered post to that holder to—
 - (i) an address of that holder in Hong Kong registered in the books of the company; or
 - (ii) if there is no such address, an address in Hong Kong supplied by that holder to the company for the giving of notice to that holder; or
 - (c) in the manner directed by the Registrar on an application made under subsection (3).
- (3) An offeror may apply to the Registrar for directions regarding the manner in which the notice is to be given to a holder of shares if—
 - (a) there is no address of the holder in Hong Kong registered in the books of the company; and
 - (b) the holder has not supplied to the company an address in Hong Kong for the giving of notice to the holder.
- (4) If the takeover offer gives the holder of shares a choice of consideration, the notice—
 - (a) must give particulars of the choices;
 - (b) must state that the holder may, within 2 months after the date of the notice, indicate the holder's choice by a letter sent to the offeror at an address specified in the notice; and
 - (c) must state which consideration specified in the offer will apply if the holder does not indicate a choice.
- ~~(5) Subsection (4) applies whether or not any time limit or other conditions applicable to the choices under the terms of the takeover offer can still be complied with.²⁰~~
- (6) If the takeover offer provides that the holder of shares is to receive shares in or debentures of the offeror, with an option to receive some other consideration to be provided by a third party instead, the offeror may indicate in the notice that the terms of the takeover offer include the option.
- (7) If the offeror does not indicate in the notice that the terms of the takeover offer include the option, the offeror may offer in the notice a corresponding option to receive some other consideration to be provided by the offeror.
- (8) For the purposes of subsection (6), consideration is to be regarded as being provided by a third party if it is made available to the offeror on terms that it is to be used by the offeror as consideration for the takeover offer.

684. Offeror's right to buy out minority shareholders

- (1) This section applies if a notice is given under section 682 to the holder of any shares.
- (2) Unless the Court makes an order under subsection (3), the offeror is entitled and bound to acquire the shares on the terms of the takeover offer.
- (3) The Court may, on application by the holder made within 2 months after the date on which the notice was given, order that—
 - (a) the offeror is not entitled and bound to acquire the shares; or
 - (b) the offeror is entitled and bound to acquire the shares on the terms specified in the order.
- (4) For the purposes of subsection (2)—
 - (a) if the takeover offer falls within section 683(4), the terms of the takeover offer are to be regarded as including the particulars and statements included in the notice for the purposes of that section;
 - (b) if the takeover offer falls within section 683(6), the terms of the takeover offer are to be regarded as not including the option unless the offeror indicates otherwise in the notice; and
 - (c) if, within 2 months after the date of the notice, the holder of the shares, by a letter sent to the offeror at an address specified in the notice, exercises the corresponding option offered under section 683(7), the terms of the takeover offer are to be regarded as including the corresponding option; and
 - ~~(d) if—~~
 - ~~(i) the consideration offered to, or chosen by, the holder of the shares is not cash, and the offeror 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 offeror, that, at the date of the notice, is equivalent to the consideration offered or chosen.~~²¹

688. Provisions supplementary to section 687

- (1) This section applies if—
 - (a) the person entitled to the consideration held on trust under section 687(1) cannot be found;
 - (b) the company has made reasonable enquiries at reasonable intervals to find that person; and
 - (c) 12 years have elapsed since the consideration was received, or the company is wound up.
- (2) The company, or if the company is wound up, the liquidator ~~or provisional liquidator~~²², must sell—
 - (a) any consideration other than cash; and
 - (b) any benefit other than cash that has accrued from the consideration.
- (3) The company, or if the company is wound up, the liquidator ~~or provisional liquidator~~²², must pay into court a sum representing—
 - (a) the consideration so far as it is cash;
 - (b) the proceeds of any sale under subsection (2); and
 - (c) any interest, dividend or other benefit that has accrued from the consideration.
- (4) The trust terminates on the payment being made under subsection (3).
- (5) The expenses of the following may be paid out of the consideration held on trust—
 - (a) the enquiries mentioned in subsection (1)(b);
 - (b) the sale mentioned in subsection (2);
 - (c) the proceedings relating to the payment into court mentioned in subsection (3).

689. 要約人可被要求全面收購少數股東的股份

- (1) 在收購要約不是關乎不同類別股份的情況下，如 —
 - (a) 要約人已憑藉該要約獲接受，而收購或無條件訂立合約承諾無條件²³收購該要約所關乎的股份的一部分(但非全部)；及
 - (b) 在要約期內的任何時間，由該要約人控制的公司股份，佔該公司的股份中的最少 90%，持有該要約所關乎的任何股份而在要約期終結前沒有接受該要約的持有人，可藉致予該要約人的信件，要求該要約人收購該等股份。
- (2) 在收購要約是關乎不同類別股份的情況下，如 —
 - (a) 要約人已憑藉該要約獲接受，而收購或無條件訂立合約承諾無條件²³收購該要約所關乎的任何類別股份的一部分(但非全部)；及
 - (b) 在要約期內的任何時間，由該要約人控制的公司股份，佔該類別股份中的最少 90%，持有該要約所關乎的該類別的任何股份而在要約期終結前沒有接受該要約的持有人，可藉致予該要約人的信件，要求該要約人收購該等股份。
- (3) 本條給予任何股份的持有人要求要約人收購該等股份的權利，只可在以下兩個時間中的較後者之後的 3 個月內行使 —
 - (a) 要約期終結時；
 - (b) 根據第 690 條向該持有人發出通知的日期。
- (4) 如有關收購要約讓股份持有人選擇代價，則該持有人可在要求要約人收購該等股份的信件中，示明該持有人的選擇。
- (5) 在本條中，提述由要約人控制的股份，即提述 —
 - (a) 由該要約人或該要約人的有聯繫者持有的股份，或由代名人代表該要約人持有的股份；
 - (b) 該要約人已²⁴憑藉收購要約獲接受，而收購或無條件訂立合約承諾無條件²³收購的股份；或
 - (c) 該要約人、該要約人的有聯繫者或代表該要約人的代名人已收購或已無條件訂立合約承諾無條件收購或承諾在某些條件獲得符合的前提下訂立合約承諾²⁵收購的其他股份。

²³ Item 17(I) / 第 17(I)項

²⁴ Item 17(II) / 第 17(II)項

²⁵ Item 17(III) / 第 17(III)項

691. Notice to minority shareholders

- (1) A notice to a holder of shares under section 690—
 - (a) must be given in the specified form; and
 - (b) must be given to the holder within one month after the first day on which the holder of the shares is entitled under section 689 to require the offeror to acquire those shares.
- (2) If the notice is given before the end of the offer period of the takeover offer, it must state that the offer is still open for acceptance.
- (3) The notice must be given to the holder of shares—
 - (a) by delivering it personally to that holder in Hong Kong;
 - (b) by sending it by registered post to that holder to—
 - (i) an address of that holder in Hong Kong registered in the books of the company; or
 - (ii) if there is no such address, an address in Hong Kong supplied by that holder to the company for the giving of notice to that holder; or
 - (c) in the manner directed by the Registrar on an application made under subsection (4).
- (4) An offeror may apply to the Registrar for directions regarding the manner in which the notice is to be given to a holder of shares if—
 - (a) there is no address of the holder in Hong Kong registered in the books of the company; and
 - (b) the holder has not supplied to the company an address in Hong Kong for the giving of notice to the holder.
- (5) If the takeover offer gives the holder of shares a choice of consideration, the notice—
 - (a) must give particulars of the choices;
 - (b) must state that the holder may indicate the holder's choice in the letter requiring the offeror to acquire any shares under section 689; and
 - (c) must state which consideration specified in the offer will apply if the holder does not indicate a choice.
- ~~(6) Subsection (5) applies whether or not any time limit or other conditions applicable to the choices under the terms of the takeover offer can still be complied with.²⁶~~
- (7) If subsection (1), (2), (3) or (5) is contravened, the offeror commits an offence and is liable to a fine at level 4.
- (8) If the takeover offer provides that the holder of shares is to receive shares in or debentures of the offeror, with an option to receive some other considerations to be provided by a third party instead, the offeror may indicate in the notice that the terms of the takeover offer include the option.
- (9) If the offeror does not indicate in the notice that the terms of the takeover offer include the option, the offeror may offer in the notice a corresponding option to receive some other consideration to be provided by the offeror.
- (10) For the purposes of subsection (8), consideration is to be regarded as being provided by a third party if it is made available to the offeror on terms that it is to be used by the offeror as consideration for the takeover offer.

692. Minority shareholders' right to be bought out by offeror

- (1) This section applies if the holder of any shares requires the offeror to acquire the shares under section 689.
- (2) Unless the Court makes an order under subsection (3), the offeror is entitled and bound to acquire the shares on the terms of the takeover offer or on other terms as agreed between that holder and the offeror.
- (3) The Court may, on application by the holder or offeror, order that the offeror is entitled and bound to acquire the shares on the terms specified in the order.
- (4) For the purposes of subsection (2)—
 - (a) if the takeover offer falls within section 691(5), the terms of the takeover offer are to be regarded as including the particulars and statements included in the notice for the purposes of that section;
 - (b) if the takeover offer falls within section 691(8), the terms of the takeover offer are to be regarded as not including the option unless the offeror indicates otherwise in the notice under section 690;
and
 - (c) if, when requiring the offeror to acquire the shares, the holder of the shares exercises the corresponding option offered under section 691(9), the terms of the takeover offer are to be regarded as including the corresponding option; ~~and~~
 - ~~(d) if—~~
 - ~~(i) the consideration offered to, or chosen by, the holder of the shares is not cash, and the offeror 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 offeror, that, at the date when that holder requires the offeror to acquire the shares under section 689, is equivalent to the consideration offered or chosen.²⁷

693. 在某些情況下股東須視為沒有行使要求全面收購股份的權利

- (1) 如有以下情況，本條適用 —
 - (a) 股份的持有人行使第 689 條給予的權利，要求要約人收購該等股份；
 - (b) 在行使該權利時，有關公司有符合以下說明的股份 —
 - (i) 要約人已訂立合約承諾會在某些條件獲得符合的前提下收購的；及
 - (ii) 就該等股份而言，該合約沒有成為無條件合約；及
 - (c) 如該等股份不被計算在內，則第 689(1)(b)或(2)(b)條(視屬何情況而定)施加的規定不會獲得符合。
- (2) 就第 692 條而言，除非屬以下情況，否則股份持有人須視為沒有行使要求要約人收購股份的權利 —
 - (a) 在收購要約不是關乎不同類別股份的情況下，於行使該權利的限期終結前的任何時間，該要約人已憑藉該要約獲接受，而收購或無條件訂立合約承諾無條件²⁸收購的股份，佔公司的股份中的最少 90%(不論是否包括該要約人已收購或已無條件訂立合約承諾無條件²⁸收購的該公司的任何其他股份)；或
 - (b) 在收購要約是關乎不同類別股份的情況下，於行使該權利的限期終結前的任何時間，該要約人已憑藉該要約獲接受，而收購或無條件訂立合約承諾無條件²⁸收購的任何類別的股份，佔該類別股份中的最少 90%(不論是否包括要約人已收購或已無條件訂立合約承諾無條件²⁸收購的該類別的其他股份)。

694. 釋義

(1) 在本分部中 —

不售股成員 (non-tendering member)就公開要約而言，指根據第 700(1)條發出通知表明不會提供任何股份讓回購公司根據該要約回購的成員；

代名人 (nominee)就屬某公司集團的成員的公司而言，包括代表屬該集團的成員的另一公司的代名人；

回購公司 (repurchasing company)就公開要約而言，指作出該要約的上市公司。

(2) 在本分部中，提述不售股成員持有的股份，包括 —

(a) 由該成員的有聯繫者持有的股份，或由代名人代表該成員持有的股份；及

(b) 該成員、該成員的有聯繫者或代表該成員的代名人已無條件訂立合約承諾無條件收購或承諾在某些條件獲得符合的前提下訂立合約承諾²⁹收購的股份。

696. 公開要約

- (1) 就本分部而言，如有以下情況，上市公司就回購該公司本身的股份而作出的要約，即屬公開要約 —
- (a) 該要約的內容，是回購除以下股份外該公司的所有股份或該公司任何類別股份中的所有股份的一
 - (i) 在要約的日期由居於某地方的成員持有的股份，而該要約是違反該地方的法律的；及
 - (ii) 在要約的日期由回購公司持有的股份；及
 - (b) 該要約 —
 - (i) 不是關乎不同類別股份的，而就該要約關乎的所有股份而言，該要約的條款是相同的；或
 - (ii) 是關乎不同類別股份的，而就該要約關乎的每一類別股份中的所有股份而言，該要約的條款是相同的。

- (2) 在第(1)款中 —

股份 (shares)指在有關要約的日期已配發的股份。

- (3) 在第(1)(a)(ii)款中，提述由回購公司持有的股份 —
- (a) 即提述該公司已**無條件**訂立合約承諾**無條件**收購或**承諾**在某些條件獲得符合的前提下**訂立合約承諾**³⁰收購的股份；但
 - (b) 不包括屬符合以下說明的合約的標的之股份 —
 - (i) 該合約是由該公司與該公司股份的持有人訂立的，而目的是確保在該要約作出時，該持有人會接受該要約；及
 - (ii) 該合約的訂立是沒有代價且是藉契據訂立的、訂立該合約所收取的代價屬微不足道或訂立該合約所收取的代價包含該公司作出該要約的承諾。
- (4) 就第(1)(b)款而言，就某要約關乎的所有股份或某類別股份中的所有股份而言，即使就較早配發的股份提供的代價的價值，有別於就較後配發的股份提供的代價的價值，只要符合以下條件，該要約的條款仍須視為就所有有關股份而言是相同的 —
- (a) 股份附有獲得某些股息的權利，而同類別的其他股份因為於不同時間配發，而不附有該權利；
 - (b) 該代價的價值的差別，純粹反映上述獲得股息的權利的分別；及
 - (c) 若非因為該代價的價值的差別，關乎所有有關股份的要約條款便會是相同的。
- (5) 就第(1)(b)款而言，就某要約關乎的所有股份或某類別股份中的所有股份而言，即使提供的代價的形式有所不同，只要符合以下條件，該要約的條款仍須視為就所有有關股份而言是相同的 —
- (a) 香港以外某地方的法律不准許提供該要約的條款指明形式的代價，或該地方的法律規定除非回購公司符合某些該公司不能夠符合或該公司視為過分嚴苛的條件，否則不准許提供該代價；
 - (b) 向某人提供指明形式的代價如此不獲准許，但有另一形式的代價向該人提供；
 - (c) 該人能夠收取該另一形式而大致上是相等價值的代價；及
 - (d) 若非有代價形式的分別，關乎所有有關股份的要約條款便會是相同的。
- (6) 儘管有第(1)款的規定，公開要約關乎的股份當中，可包括將會在該要約的日期後但在該要約指明的日期前配發的股份。

697. 沒有傳達等不阻止要約成為公開要約

- (1) 即使回購股份的要約沒有傳達至某股份持有人，但如符合以下條件，則為施行本分部，此事不阻止該要約成為公開要約 —
 - (a) 在回購公司的成員登記冊內，沒有登記該持有人的香港地址；
 - (b) 該要約沒有傳達至該持有人，是為免違反香港以外某地方的法律；及
 - (c) 以下其中之一 —
 - (i) 已於憲報刊登該要約；或
 - (ii) 可在香港某地點或在網站上查閱該要約或取得該要約的文本，並已藉於憲報刊登的公告指明該地點的地址或該網站的網址。
- (2) 不得根據第(1)款推斷除非該款(a)、(b)及(c)段指明的條件獲得符合，否則沒有傳達至股份持有人的要約不能為本分部的目的而成為公開要約。
- (3) 即使某人因為香港以外某地方的法律，~~而不可能接受回購股份的要約，或因為香港以外某地方的法律，而使接受回購股份的要約~~對某人而言是~~不可能的，或是較為困難的~~³¹，此事並不阻止該要約為本分部的目的而成為公開要約。
- (4) 不得根據第(3)款推斷除非某些人不可能接受要約或對某些人而言接受要約是較為困難是基於該款所述的原因，否則不可能被某些人接受的要約或對某些人而言是較為難以接受的要約不能為本分部的目的而成為收購要約。

³¹ Item 23 / 第 23 項

698. 公開要約所關乎的股份

- (1) 就本分部而言，如在公開要約作出後但在要約期終結前，回購公司回購或無條件訂立合約承諾無條件³²回購該要約所關乎的任何股份，但它並不是憑藉該要約獲接受而回購該等股份的，則該等股份不得視為該要約所關乎的股份。本款在第(2)款的規限下具有效力。
- (2) 就本分部而言，如有以下情況，則有關股份須視為有關公開要約所關乎的股份，而回購公司須視為憑藉該要約獲接受而回購或訂立合約承諾回購該等股份 —
 - (a) 在回購或訂立合約承諾回購該等股份時，回購或承諾回購的代價的價值，不超過該要約的條款指明的代價的價值；或
 - (b) 上述條款其後被修改，以致在公布該修改時，回購或訂立合約承諾回購該等股份的代價的價值，在回購或訂立合約時，不再超過該條款指明的代價的價值。
- (3) 就本分部而言，就回購公司的有聯繫者或代表回購公司行事的代名人持有或已無條件訂立合約承諾無條件回購或承諾在某些條件獲得符合的前提下訂立合約承諾³³回購(不論是在公開要約的日期或之後)的股份而言，即使該要約延伸至該等股份，該等股份亦不得視為該要約所關乎的股份。本款在第(4)款的規限下具有效力。
- (4) 就本分部而言，凡在公開要約作出後但在要約期終結前，回購公司的有聯繫者或代表回購公司行事的代名人回購或無條件訂立合約承諾無條件³²回購該要約所關乎的任何股份，則如有以下情況，該等股份須視為是該要約所關乎的股份 —
 - (a) 在回購或無條件³⁴訂立合約承諾回購該等股份時，回購或承諾回購的代價的價值，不超過該要約的條款指明的代價的價值；或
 - (b) 上述條款其後被修改，以致在公布該修改時，回購或訂立合約承諾回購該等股份的代價的價值，在回購或訂立合約時不再超過該條款指明的代價的價值。
- (5) 就本分部而言，即使有關公開要約延伸至不售股成員持有的股份，該等股份亦不得視為該要約所關乎的股份。

³² Item 24(I) / 第 24(I)項

³³ Item 24(II) / 第 24(II)項

³⁴ Item 24(III) / 第 24(III)項

701. 回購公司可發出通知表示全面回購少數股東的股份

- (1) 如有回購公司的成員根據第 700 條發出通知，表明該成員不會提供任何股份供該公司根據公開要約回購，則本條適用。
- (2) 在公開要約不是關乎不同類別股份的情況下，如回購公司已憑藉該要約獲接受，而回購或無條件訂立合約承諾無條件³⁵回購該要約所關乎的股份中的最少 90%，則該公司可向該要約所關乎的任何其他股份的持有人發出通知，表明該公司有意回購該等股份。
- (3) 在公開要約是關乎不同類別股份的情況下，如回購公司已憑藉該要約獲接受，而回購或無條件訂立合約承諾無條件³⁵回購該要約所關乎的任何類別股份中的最少 90%，則該公司可藉向該要約所關乎的該類別股份的任何其他股份的持有人發出通知，表明該公司有意回購該等股份。
- (4) 在公開要約不是關乎不同類別股份的情況下，如回購公司已憑藉該要約獲接受，而回購或無條件訂立合約承諾無條件³⁵回購該要約所關乎的股份中的少於 90%，則該公司可向原訟法庭提出申請，要求原訟法庭作出命令，授權該公司向該要約所關乎的任何其他股份的持有人發出通知，表明該公司有意回購該等股份。
- (5) 在公開要約是關乎不同類別股份的情況下，如回購公司已憑藉該要約獲接受，而回購或無條件訂立合約承諾無條件³⁵回購該要約所關乎的任何類別股份中的少於 90%，則該公司可向原訟法庭提出申請，要求原訟法庭作出命令，授權該公司向該要約所關乎的該類別股份的任何其他股份的持有人發出通知，表明該公司有意回購該等股份。
- (6) 原訟法庭如信納以下事宜，可應根據第(4)或(5)款提出的申請作出命令 —
 - (a) 回購公司在作出合理查探後，仍不能追尋到一名或多於一名持有有關公開要約所關乎的股份的人的下落；
 - (b) 假使該人或所有該等人士接受該公開要約，該公司便會憑藉該要約獲接受，而回購或無條件訂立合約承諾無條件³⁵回購該要約所關乎的股份或任何類別股份中的最少 90%；及
 - (c) 提供的代價是公平及合理的。
- (7) 原訟法庭除非信納在顧及所有情況(尤其須顧及已找到但沒有接受有關公開要約的股份持有人的數目)下，作出上述命令是公正及公平的，否則不得作出該命令。
- (8) 如原訟法庭作出命令，授權回購公司向任何股份的持有人發出通知，則該公司可向該持有人發出通知。

702. Notice to minority shareholders

- (1) A notice to a holder of shares under section 701—
 - (a) must be given in the specified form; and
 - (b) must be given to the holder before whichever is the earlier of the following—
 - (i) the end of the period of 3 months beginning on the day after the end of the offer period of the general offer;
 - (ii) the end of the period of 6 months beginning on the date of the general offer.
- (2) The notice must be given to the holder of shares—
 - (a) by delivering it personally to that holder in Hong Kong;
 - (b) by sending it by registered post to that holder to—
 - (i) an address of that holder in Hong Kong registered in the books of the company; or
 - (ii) if there is no such address, an address in Hong Kong supplied by that holder to the company for the giving of notice to that holder; or
 - (c) in the manner directed by the Registrar on an application made under subsection (3).
- (3) ~~The repurchasing company~~An offeror³⁶ may apply to the Registrar for directions regarding the manner in which the notice is to be given to a holder of shares if—
 - (a) there is no address of the holder in Hong Kong registered in the books of the company; and
 - (b) the holder has not supplied to the company an address in Hong Kong for the giving of notice to the holder.
- (4) If the general offer gives the holder of shares a choice of consideration, the notice—
 - (a) must give particulars of the choices;
 - (b) must state that the holder may, within 2 months after the date of the notice, indicate the holder's choice by a letter sent to the repurchasing company at an address specified in the notice; and
 - (c) must state which consideration specified in the offer will apply if the holder does not indicate a choice.
- ~~(5) Subsection (4) applies whether or not any time limit or other conditions applicable to the choices under the terms of the general offer can still be complied with.~~³⁷

³⁶ Item 26(I) / 第 26(I)項

³⁷ Item 26(II) / 第 26(II)項

703. Repurchasing company's right to buy out minority shareholders

- (1) This section applies if a notice is given under section 701 to the holder of any shares.
- (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.
- (3) The Court may, on application by the holder made within 2 months after the date on which the notice was given, order that—
 - (a) the repurchasing company is not entitled and bound to buy back the shares; or
 - (b) 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 702(4), 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 of the notice, is equivalent to the consideration offered or chosen.~~³⁸

707. 回購公司可被要求全面回購少數股東的股份

- (1) 如有回購公司的成員根據第 700 條發出通知，表明該成員不會提供任何股份供該公司根據公開要約回購，則本條適用。
- (2) 在公開要約不是關乎不同類別股份的情況下，如 —
 - (a) 回購公司已憑藉該要約獲接受，而回購或無條件訂立合約承諾無條件³⁹回購該要約所關乎的股份的一部分(但非全部)；及
 - (b) 在要約期內的任何時間，由回購公司控制的該公司的股份(不論是否包括不售股成員持有的該公司的股份)，佔該公司的股份中的最少 90%，
持有該要約所關乎的任何股份而在該期間終結前沒有接受該要約的持有人，可藉致予回購公司的信件，要求該公司回購該等股份。
- (3) 在公開要約是關乎不同類別股份的情況下，如 —
 - (a) 回購公司已憑藉該要約獲接受，而回購或無條件訂立合約承諾無條件³⁹回購該要約所關乎的任何類別股份的一部分(但非全部)；及
 - (b) 在要約期內的任何時間，由回購公司控制的該等股份(不論是否包括不售股成員持有的該類別的股份)，佔該類別股份中的最少 90%，
持有該要約所關乎的該類別的任何股份而在該期間終結前沒有接受該要約的持有人，可藉致予回購公司的信件，要求該公司回購該等股份。
- (4) 本條給予任何股份的持有人要求回購公司回購該等股份的權利，只可在以下兩個時間中的較後者之後的 3 個月內行使 —
 - (a) 要約期終結時；
 - (b) 根據第 708 條向該持有人發出通知的日期。
- (5) 如有關公開要約讓股份持有人選擇代價，則該持有人可在要求回購公司回購該等股份的信件中，示明該持有人的選擇。
- (6) 在本條中，提述由回購公司控制的股份，即提述 —
 - (a) 由回購公司的有聯繫者持有的股份，或由代名人代表該公司持有的股份；
 - (b) 回購公司已⁴⁰憑藉公開要約獲接受，而~~已~~⁴⁰回購或無條件訂立合約承諾無條件³⁹回購的股份；或
 - (c) 回購公司、該公司的有聯繫者或代表該公司的代名人已回購或無條件~~已~~訂立合約承諾無條件或承諾在某些條件獲得符合的前提下訂立合約承諾⁴¹回購的其他股份。

³⁹ Item 28(I) / 第 28(I)項

⁴⁰ Item 28(II) / 第 28(II)項

⁴¹ Item 28(III) / 第 28(III)項

709. Notice to minority shareholders

- (1) A notice to a holder of shares under section 708—
 - (a) must be given in the specified form; and
 - (b) must be given to the holder within one month after the first day on which the holder of the shares is entitled under section 707 to require the repurchasing company to buy back those shares.
- (2) If the notice is given before the end of the offer period of the general offer, it must state that the offer is still open for acceptance.
- (3) The notice must be given to the holder of shares—
 - (a) by delivering it personally to that holder in Hong Kong;
 - (b) by sending it by registered post to that holder to—
 - (i) an address of that holder in Hong Kong registered in the books of the company; or
 - (ii) if there is no such address, an address in Hong Kong supplied by that holder to the company for the giving of notice to that holder; or
 - (c) in the manner directed by the Registrar on an application made under subsection (4).
- (4) A repurchasing company may apply to the Registrar for directions regarding the manner in which the notice is to be given to a holder of shares if—
 - (a) there is no address of the holder in Hong Kong registered in the books of the company; and
 - (b) the holder has not supplied to the company an address in Hong Kong for the giving of notice to the holder.
- (5) If the general offer gives the holder of shares a choice of consideration, the notice—
 - (a) must give particulars of the choices;
 - (b) must state that the holder may indicate the holder's choice in the letter requiring the repurchasing company to buy back any shares under section 707; and
 - (c) must state which consideration specified in the offer will apply if the holder does not indicate a choice.
- ~~(6) Subsection (5) applies whether or not any time limit or other conditions applicable to the choices under the terms of the general offer can still be complied with.⁴²~~
- (7) If subsection (1), (2), (3) or (5) is contravened, the repurchasing company commits an offence and is liable to a fine at level 4.

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.~~⁴³

~~Note —~~

~~Further provisions on share acquisition after a general offer for share buy back are contained in Division 4 of Part 5.~~⁴⁴

⁴³ Item 30(I) / 第 30(I)項

⁴⁴ Item 30(II) / 第 30(II)項