

Bills Committee on Companies Bill
Committee Stage Amendments to the Companies Bill
Part 11 – Fair Dealing by Directors

The table below sets out the proposed Committee Stage Amendments (CSAs) in relation to Part 11 (“Fair Dealing by Directors”) (clauses 475 to 536) of the Companies Bill (CB). 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” for delivering 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 the CO. • Having reviewed the relevant provisions in the CB, the Administration agreed to extend the 14-day period to 15 days across the board. Please see paragraphs 31 to

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			<p>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”.</p> <ul style="list-style-type: none"> Insofar as Part 11 is concerned, we propose to amend clause 533(5) pursuant to this item.
Other amendments specific to Part 11			
2	Clause 475 Interpretation	<p>(I) Extend the definition of “child (子女)” to cover an adopted child, and incorporate the definition of “adopted (領養)”.</p> <p>(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”.</p>	<ul style="list-style-type: none"> This is a drafting change proposed to streamline the provisions. Reference to adopted child in other provisions can be deleted. Under clause 477(1)(b), 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”. In response to Members’ suggestion, we propose to amend the formulation 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>.
3	Clause 477 Connected entity	<p>(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 family relationship” in subclause (1)(b) with “a person who is in a cohabitation relationship with the</p>	<ul style="list-style-type: none"> See item 2(II) above.

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
		director or former director”.	
		(II) Delete the reference to (minor) adopted child in subclause (1)(c), (1)(f), (2)(a) and (2)(b).	<ul style="list-style-type: none"> • See item 2(I) above.
4	Clause 478 Family member of director or former director	Delete the reference to adopted child.	<ul style="list-style-type: none"> • See item 2(I) above.
5	Clause 479 Director of former director associated with, or controlling body corporate	(I) Delete “, or controlling,” in the heading of the clause.	<ul style="list-style-type: none"> • A body corporate controlled by a director will be dealt with in a new clause 482A. Clause 479 will deal with a body corporate associated with a director.
		(II) Combine subclauses (2) and (3).	<ul style="list-style-type: none"> • This is a drafting change to streamline the provisions.
		(III) Delete the reference to minor adopted child in subclause (4)(b).	<ul style="list-style-type: none"> • See item 2(I) above.
		(IV) Replace “大部分” in the Chinese version of subclause (1)(b) with “過半數”.	<ul style="list-style-type: none"> • This is a drafting change proposed to align the wordings of the provision with those of clauses 2 and 456.
6	Clause 481 Application to transaction or arrangement despite its	Replace “宏旨” in the Chinese version with “重要”.	<ul style="list-style-type: none"> • This is a drafting change proposed in response to LegCo Legal Adviser’s comment.

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
	governing law		
7	Clause 482 Interpretation	Amend the Chinese version of subclause (2) as follows – “(2) 就本分部而言，某法人團體並不僅因其任何附屬公司的一眾董事或大部分董事慣於按照其指示或指令行事，而被視為該附屬公司的幕後董事縱使某法人團體的附屬公司的一眾董事或過半數董事，慣於按照該團體的指示或指令行事，該團體不會僅因此而視為其附屬公司的幕後董事。”	<ul style="list-style-type: none"> This is a drafting change proposed to align the wordings of the provision with clause 456(6).
8	Clause 482A Body corporate controlled by director	Add a new clause.	<ul style="list-style-type: none"> In response to Members’ suggestion, we propose to extend the prohibition from making a loan etc. to a director of the company under clause 491 to cover a body corporate controlled by the director. Please see paragraph 8 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 new clause defines a body corporate controlled by a director. The reference to a body corporate controlled by a director will be added to relevant clauses for implementation of the proposal.
9	Clause 485 Person for whom transaction or arrangement entered into	Add the reference to a body corporate controlled by a director.	<ul style="list-style-type: none"> See item 8 above.
10	Clause 486	(I) Add “that enters into a transaction or	<ul style="list-style-type: none"> This is a technical change proposed to clarify our intention. Apart from the

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	approval of members	arrangement, or the members of a holding company of the company,” after “a company” in subclause (1), and fine-tune the drafting of subclause (1)(a).	company entering into the transaction or arrangement, the provision is also intended to cover the resolution of its holding company (in case the transaction or arrangement is entered into by the subject company for a director of the holding company).
		(II) Replace “failure” in subclause (3) with “omission”.	<ul style="list-style-type: none"> This is a drafting change proposed to standardize the use of words in the CB.
		(III) Add the reference to a body corporate controlled by a director to subclauses (5)(a) and (d) and (7).	<ul style="list-style-type: none"> See item 8 above. Note that the reference to quasi-loan in subclause (5)(a)(i) has been deleted as it is not applicable in the case of a body corporate controlled by a director.
		(IV) Amend subclauses (4) and (5) of the Chinese version as follows – “(如屬須為違反第...條的目的而通過的決議)...”	<ul style="list-style-type: none"> This is a drafting change proposed for clarity.
		(V) Amend subclauses (4)(c)(i) of the Chinese version as follows – “...批准關乎有關安排所關乎的交易...”	<ul style="list-style-type: none"> This is a drafting change proposed for clarity.
11	Clause 487 Value of transaction or arrangement	Add the reference to a body corporate controlled by a director to subclauses (1)(b) and (3)(a).	<ul style="list-style-type: none"> See item 8 above.

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
12	Clause 488 Relevant transaction or arrangement	Move the clause to clause 496.	<ul style="list-style-type: none"> This is a drafting change. This provision will apply only to clause 496. It is therefore more user-friendly to move it to clause 496.
13	Clause 489 Total exposure amount	(I) Replace “a private company or a company limited by guarantee” in subclause (1)(a) with “a company that is not a specified company”.	<ul style="list-style-type: none"> This is a technical amendment to clarify our intention. A private company or a company limited by guarantee will be a specified company if it is a subsidiary of a public company and will be covered by subclause (1)(b). Subclause (1)(a) only covers a company which is not a specified company.
		(II) Add the reference to a body corporate controlled by a director of the company or of a holding company of the company to subclauses (2)(b), (2)(c), (3)(b), (3)(c), (4)(a), (4)(b), (5)(a), (5)(b), (6)(a) and (6)(c).	<ul style="list-style-type: none"> See item 8 above. Consequentially, the provisions on the calculation of total exposure amount should also cover a body corporate controlled by a director.
		(III) Extend the coverage of subclauses (3)(b), (3)(c), (5)(a), (5)(b), (6)(c) and (6)(d) to cover an entity connected with a director of a holding company of the company.	<ul style="list-style-type: none"> In response to Members’ suggestion, we propose to extend the prohibition from making a loan, quasi-loan etc. to a director of the holding company of the specified company to cover the connected entities of such a director. Please see paragraph 8 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 II of the Companies Bill</i>. Consequentially, the provisions on the calculation of total exposure amount should also cover an entity connected with such a director.
		(IV) Replace “493” in subclause (6)(a) with “493(1)” and add the reference to clause 493(2) in subclause (6)(c).	<ul style="list-style-type: none"> These are drafting changes following the CSAs proposed to clause 493.

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14	Clause 491 Company must not make loan etc. to director	Add the reference to a body corporate controlled by a director to the heading, subclauses (1)(a), (1)(b), (2)(a) and (2)(b).	<ul style="list-style-type: none"> • See item 8 above.
15	Clause 493 Specified company must not make loan or quasi-loan etc. to connected entity	<p>(I) Add subclause (2) to extend the prohibition from making a loan, quasi-loan etc. to a director of the holding company of the specified company to cover the connected entities of such a director.</p> <p>(II) Add subclause (3) to provide for the exceptions to the requirement for prescribed approval.</p>	<ul style="list-style-type: none"> • In response to Members' suggestion, we propose to extend the prohibition from making a loan, quasi-loan etc. to a director of the holding company of the specified company to cover the connected entities of such a director. Please see paragraph 8 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 provision with related provisions (clauses 491(3), 492(3), 494(3) and 495(3)).
16	Clause 494 Specified company must not enter into credit transaction etc. as creditor for director or connected entity	Add the reference to an entity connected with a director of a holding company of the company to subclause (2).	<ul style="list-style-type: none"> • See item 15(I) above.
17	Clause 495 Company must	(I) Add the reference to a body corporate controlled by a director of	<ul style="list-style-type: none"> • See item 8 above.

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	not take part in arrangement purporting to circumvent sections 491 to 494	the company or of a holding company of the company to subclauses (1)(a), (1)(b), (2)(a), (2)(b), (4)(a) and (4)(b).	
		(II) Add the reference to an entity connected with a director of a holding company of the company to subclauses (2)(a), (2)(b) and (4)(b).	<ul style="list-style-type: none"> • See item 15(I) above.
		(III) Replace “493” in subclause (4)(a) with “493(1)” and add the reference to clause 493(2) in subclause (4)(b).	<ul style="list-style-type: none"> • This is consequential to the amendment proposed to clause 493. See item 15(I) above.
18	Clause 496 Exception for loan, quasi-loan and credit transaction of value not exceeding 5% of total assets or called-up share capital	(I) Change the reference to total assets to net assets.	<ul style="list-style-type: none"> • Members were concerned that the financial limits would be unduly high if they were calculated on the basis of the company’s total assets, in particular for highly-g geared companies. These CSAs are proposed to address Members’ concern. Please see paragraphs 12 and 13 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>
		(II) Add subclauses (3) and (4).	<ul style="list-style-type: none"> • This is a drafting change. The subclauses are moved from clause 488 to clause 496.
19	Clause 497 Exception for expenditure on company business	Extend the coverage of the clause to a body corporate controlled by a director of the company or of a holding company of the company, and an entity connected with a director of a holding company of	<ul style="list-style-type: none"> • Following the extension of the coverage of the prohibition (see items 8 and 15(I) above), the coverage of the relevant exceptions has to be extended.

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		the company; and fine-tune the drafting.	
20	Clause 500 Exception for home loan	(I) Exclude a director of a holding company of the company and an entity connected with a director of a holding company of the company from the exception if they are not an employee to the company.	<ul style="list-style-type: none"> • These CSAs are proposed to address Members' concern. Please see paragraphs 18 and 19 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 II of the Companies Bill.</i>
		(II) Change the reference to total assets to net assets.	<ul style="list-style-type: none"> • See item 18(I) above.
21	Clause 501 Exception for leasing goods and land etc.	(I) Extend the coverage of the clause to a body corporate controlled by a director of the company or of a holding company of the company, and an entity connected with a director of a holding company of the company.	<ul style="list-style-type: none"> • See item 19 above.
		(II) Change the reference to total assets to net assets.	<ul style="list-style-type: none"> • See item 18(I) above.
22	Clause 503 Exception for intra-group transaction	Add the reference to clauses 491 and 492.	<ul style="list-style-type: none"> • This CSA is proposed to clarify our intention. Our intention is to restate section 157HA(1) of the CO, which does not limit the exception for intra-group transaction to provisions that prohibit loans and similar transactions involving connected entities. The exception for intra-group transaction should also be applicable to the prohibition under clauses 491 and 492.
23	Clause 504	(I) Replace "who is not a party to the	<ul style="list-style-type: none"> • This is a technical amendment proposed in response to the view of the depositions.

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	Civil consequences of contravention	transaction or arrangement” in subclause (1)(c) with “other than the director, controlled body corporate, or connected entity for whom the transaction or arrangement was entered into”.	The original wordings are not wide enough to cover all innocent parties as it only applies to persons “not a party to a transaction” and a lending bank will not come within the wordings.
		(II) Add the reference to a body corporate controlled by a director of the company or of a holding company of the company, and an entity connected with a director of a holding company of the company to subclauses (3) and (4).	<ul style="list-style-type: none"> • These CSAs are consequential to the extension of the coverage of the prohibition (see items 8 and 15(I) above).
		(III) Add the reference to clause 491 to subclause (4)(b).	<ul style="list-style-type: none"> • Following the extension of the prohibition under clause 491 (see item 14 above), the defence in subclause (4)(b) should also include a reference to clause 491.
24	Clause 505 Affirmation of contravening transaction or arrangement	Replace “This section does” in subclause (5) with “Subsections (2), (3) and (4) do”.	<ul style="list-style-type: none"> • This is a technical amendment proposed to clarify our intention. Please see paragraph 21 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>.
25	Clause 506 Provisions supplementary to section 505	(I) Replace “failure” in subclause (2) with “omission”.	<ul style="list-style-type: none"> • See item 10(II).
		(II) Add the reference to a body corporate controlled by a director in	<ul style="list-style-type: none"> • These CSAs are consequential to the extension of the coverage of the prohibition (see item 8 above). Note that the reference to quasi-loan in subclause (4)(a)(i) has been deleted as it is not applicable in the case of a body corporate controlled by a

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		subclause (4)(a), (4)(d) and (6)(a).	director.
26	Clause 507 Interpretation	Amend the Chinese version of subclause (5) as follows – “(5) 就本分部而言，某法人團體並不僅因其任何附屬公司的一眾董事或大部分董事慣於按照其指示或指令行事，而被視為該附屬公司的幕後董事縱使某法人團體的附屬公司的一眾董事或過半數董事，慣於按照該團體的指示或指令行事，該團體不會僅因此而視為其附屬公司的幕後董事。”	<ul style="list-style-type: none"> • See item 7 above.
27	Clause 509 Prescribed approval of members or affected members	(I) Replace “failure” in subclause (3) with “omission”. (II) Amend subclauses (4) and (5) of the Chinese version as follows – “(如屬須為違反第...條的目的而通過的決議)...”	<ul style="list-style-type: none"> • See item 10(II). • See item 10(IV) above.
28	Clause 513 Person must not make payment for loss of office to director or former director in connection with	Add “或財產” after “業務” in subclause (3)(a) of the Chinese version.	<ul style="list-style-type: none"> • This is a drafting change to align the Chinese version with the English version.

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	transfer of company's undertaking or property		
29	Clause 515 Exception for payments in discharge of legal obligation etc.	Replace “企業” with “業務” in subclause (3)(b) of the Chinese version.	<ul style="list-style-type: none"> • This is a drafting change to align the wordings with those of clause 513.
30	Clause 516 Exception for small payment	Raise the financial limits to \$100,000.	<ul style="list-style-type: none"> • This CSA is proposed to address Members' concern. Please see paragraph 24 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>
31	Clause 521 Interpretation	<p>Amend the Chinese version of subclause (2) as follows –</p> <p>“(2) 就本分部而言，某法人團體並不僅因其任何附屬公司的一眾董事或大部分董事慣於按照其指示或指令行事，而被視為該附屬公司的幕後董事縱使某法人團體的附屬公司的一眾董事或過半數董事，慣於按照該團體的指示或指令行事，該團體不會僅因此而視為其附屬公司的幕後董事。”</p>	<ul style="list-style-type: none"> • See item 7 above.
32	Clause 522	Replace “親自承諾” in subclause (1) of	<ul style="list-style-type: none"> • This is a drafting change proposed to clarify our intention. “親自” is intended to

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	Prescribed approval of members	the Chinese version with “承諾親自”.	qualify the performance of services but not the undertaking.
33	Clause 523 Prescribed approval of members	Replace “failure” in subclause (3) with “omission”.	<ul style="list-style-type: none"> • See item 10(II).
34	Clause 529 Declaration to directors: procedures	(I) Delete “effective” in subclauses (4)(a) and (4)(b).	<ul style="list-style-type: none"> • This is a technical amendment proposed in response to Members’ suggestion. The effectiveness of the general notice will be governed by subclause (6). Please see paragraph 27 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>.
		(II) Add subclause (6)(c).	<ul style="list-style-type: none"> • This is a technical amendment proposed in response to Members’ suggestion.
35	Clause 533 Disclosure of management contract	Delete the reference to subclause (2) in subclause (6).	<ul style="list-style-type: none"> • This is a technical amendment. The offence for contravening clause 533(2) will be moved to clause 380, in line with other offences in relation to the directors’ report.
36	Clause 535 Contract with sole member who is also director	(I) Provide for a time limit of 15 days in subclause (2).	<ul style="list-style-type: none"> • This CSA is proposed in response to Members’ suggestion. Please see paragraph 31 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>. Members suggested that the time limit should be 15 days.
		(II) Amend the Chinese version of	<ul style="list-style-type: none"> • See item 7 above.

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
		<p>subclause (7) as follows –</p> <p>“(7) 就本分部而言，某法人團體並不僅因其任何附屬公司的一眾董事或大部分董事慣於按照其指示或指令行事，而被視為該附屬公司的幕後董事縱使某法人團體的附屬公司的一眾董事或過半數董事，慣於按照該團體的指示或指令行事，該團體不會僅因此而視為其附屬公司的幕後董事。”</p>	

Financial Services and the Treasury Bureau
Companies Registry
10 May 2012

475. Interpretation

(1) In this Division—

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

child (子女) includes a step-child, ~~and~~ an illegitimate child and a child adopted in any manner recognized by the law of Hong Kong¹;

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

director (董事) includes a shadow director.

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

¹ Item 2(I) / 第 2(I)項

² Item 2(II) / 第 2(II)項

477. Connected entity

- (1) In this Part, a reference to an entity connected with a director or former director of a company is a reference to—
- (a) a member of the director's or former director's family;
 - (b) ~~any other person (whether of a different sex or the same sex) with whom the director or former director lives as a couple in an enduring family relationship~~ a person who is in a cohabitation relationship with the director or former director³;
 - (c) a minor child ~~or minor adopted child~~⁴ of a person falling within paragraph (b) who—
 - (i) is not a child ~~or adopted child~~⁴ of the director or former director; and
 - (ii) lives with the director or former director;
 - (d) a body corporate with which the director or former director is associated;
 - (e) a person acting in the capacity as trustee of a specified trust, other than a trust for the purpose of an employee share scheme or a pension scheme; or
 - (f) a person acting in the capacity as partner of—
 - (i) the director or former director;
 - (ii) the spouse of the director or former director;
 - (iii) a minor child ~~or minor adopted child~~⁴ of the director or former director; or
 - (iv) another person who, by virtue of paragraph (e), is an entity connected with the director or former director.
- (2) For the purposes of subsection (1)(e), a trust is a specified trust—
- (a) if the beneficiaries of the trust include—
 - (i) the director or former director;
 - (ii) the spouse of the director or former director; or
 - (iii) a minor child ~~or minor adopted child~~⁴ of the director or former director; or
 - (b) if—
 - (i) the terms of the trust give a power to the trustees that may be exercised for the benefit of—
 - (A) the director or former director;
 - (B) the spouse of the director or former director; or
 - (C) a minor child ~~or minor adopted child~~⁴ of the director or former director; and
 - (ii) the director or former director knows that the director or former director, or the spouse, child ~~or adopted child~~⁴, is an object of the power.
- (3) In this section—
- employee share scheme** (僱員參股計劃) means a scheme for encouraging or facilitating the holding of shares in a company by or for the benefit of—
- (a) persons employed or formerly employed in good faith by that company or another company in the same group of companies; or
 - (b) the spouses, widows, widowers or minor children of persons referred to in paragraph (a);
- partner** (合夥人), in relation to another person, means a person who is a partner of that other person in a partnership within the meaning of the Partnership Ordinance (Cap. 38).

³ Item 3(I) / 第 3(I)項

⁴ Item 3(II) / 第 3(II)項

478. Family member of director or former director

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

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

⁵ Item 4 / 第 4 項

479. Director or former director associated with ~~5~~⁶ or controlling ~~6~~⁶ body corporate

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

⁶ Item 5(I) / 第 5(I)項

⁷ Item 5(II) / 第 5(II)項

⁸ Item 5(III) / 第 5(III)項

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

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

⁹ Item 5(IV) / 第 5(IV)項

481. 適用於交易或安排，而不論其管限法律為何

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

¹⁰ Item 6 / 第 6 項

482. 釋義

(1) 在本分部中 —

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

服務 (services) 指貨物或土地以外的任何東西；

指明公司 (specified company) 指 —

(a) 公眾公司；或

(b) 屬某公眾公司的附屬公司的私人公司或擔保有限公司；

董事 (director) 包括幕後董事；

擔保 (guarantee) 包括彌償。

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

¹¹ Item 7 / 第 7 項

482A. Body corporate controlled by director

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

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

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

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

¹² Item 8 / 第 8 項

485. Person for whom transaction or arrangement entered into

- (1) In this Division, a reference to a director, a body corporate controlled by a director,¹³ or an entity connected with a director, for whom a transaction is entered into is—
- (a) in the case of a loan or quasi-loan, or a guarantee or security in connection with a loan or quasi-loan, a reference to the director, controlled body corporate¹³ or connected entity to whom the loan or quasi-loan is made; or
 - (b) in the case of a credit transaction, or a guarantee or security in connection with a credit transaction, a reference to the director or connected entity to whom goods, land or services are supplied, sold, leased, hired or otherwise disposed of under the credit transaction.
- (2) For the purposes of this Division, an arrangement is entered into for a director, a body corporate controlled by a director,¹³ or an entity connected with a director if—
- (a) in the case of an arrangement mentioned in section 495(1)(a) or (2)(a), a company takes part in the arrangement under which another person enters into a transaction with the director, controlled body corporate¹³ or connected entity; or
 - (b) in the case of an arrangement mentioned in section 495(1)(b) or (2)(b), a company enters into the arrangement in relation to any rights, obligations or liabilities under a transaction entered into by another person with the director, controlled body corporate¹³ or connected entity.

¹³ Item 9 / 第 9 項

486. Prescribed approval of members

- (1) In this Division, a reference to the prescribed approval of the members of a company that enters into a transaction or arrangement, or the members of a holding company of the company,¹⁴ is a reference to an approval obtained by a resolution of those members—
- (a) that is passed before ~~the company enters into~~ the transaction or arrangement is entered into¹⁴; and
- (b) in respect of which the requirements specified in subsection (2) are met.
- (2) The requirements specified for the purposes of subsection (1)(b) are—
- (a) that, in the case of a written resolution, a memorandum setting out the matters specified in subsection (4) is sent to every member at or before the time at which the proposed resolution is sent to the member; or
- (b) that, in the case of a resolution passed at a general meeting—
- (i) a memorandum setting out the matters specified in subsection (4) is sent to every member together with the notice convening the meeting; and
- (ii) if the company is a specified company, the resolution is passed after disregarding every vote in favour of the resolution by a member specified in subsection (5).
- (3) Subject to any provision of the company's articles, any accidental omission failure¹⁵ to send the memorandum to a member is to be disregarded for the purpose of determining whether the requirement specified in subsection (2)(a) or (b)(i) has been met.
- (4) The matters specified for the purposes of subsection (2)(a) and (b)(i) are—
- (a) in the case of a resolution for the purposes of section 491, 492 or 493—
- (i) the nature of the transaction to be approved by the resolution;
- (ii) the amount of the loan or quasi-loan;
- (iii) the purpose for which the loan or quasi-loan is required; and
- (iv) the extent of the company's liability under any transaction connected with the loan or quasi-loan;
- (b) in the case of a resolution for the purposes of section 494—
- (i) the nature of the transaction to be approved by the resolution;
- (ii) the amount and value of the credit transaction;
- (iii) the purpose for which the goods, land or services supplied, sold, leased, hired or otherwise disposed of under the credit transaction are required; and
- (iv) the extent of the company's liability under any transaction connected with the credit transaction; or
- (c) in the case of a resolution for the purposes of section 495—
- (i) the matters that would have to be disclosed if the company were seeking approval of the transaction to which the arrangement relates;
- (ii) the nature of the arrangement to be approved by the resolution; and
- (iii) the extent of the company's liability under the arrangement.
- (5) The member specified for the purposes of subsection (2)(b)(ii) is—
- (a) in the case of a resolution for the purposes of section 491 or 492—
- (i) one who is the director-controlled body corporate¹⁶ to whom the loan ~~or quasi-loan~~¹⁶ is proposed to be made or was made;

¹⁴ Item 10(I) / 第10(I)項

¹⁵ Item 10(II) / 第10(II)項

¹⁶ Item 10(III) / 第10(III)項

- ~~(ii) one who is the director—~~
~~(A) who controls that body corporate; or~~
~~(B) to whom the loan or quasi-loan is proposed to be made or was made; or¹⁷~~
- ~~or~~
- (iii) one who holds any shares in the company in trust for ~~that that controlled body corporate~~ or¹⁷ director;
- (b) in the case of a resolution for the purposes of section 493—
- (i) one who is the connected entity to whom the loan or quasi-loan is proposed to be made or was made;
- (ii) one who is the director with whom that entity is connected; or
- (iii) one who holds any shares in the company in trust for that connected entity or director;
- (c) in the case of a resolution for the purposes of section 494—
- (i) one who is the director or connected entity for whom the credit transaction is proposed to be entered into or was entered into;
- (ii) one who is the director with whom that entity is connected; or
- (iii) one who holds any shares in the company in trust for the director specified in subparagraph (i) or (ii) or that connected entity; or
- (d) in the case of a resolution for the purposes of section 495—
- (i) one who is the ~~director~~ controlled body corporate,¹⁷ or connected entity, for whom the arrangement is proposed to be entered into or was entered into;
- ~~(ii) one who is the director—~~
~~(A) who controls that body corporate;~~
~~(B) with whom that entity is connected; or~~
~~(C) for whom the arrangement is proposed to be entered into or was entered into; or¹⁷~~
- ~~(ii) one who is the director with whom that entity is connected; or~~
- (iii) one who holds any shares in the company in trust for ~~the director specified in subparagraph (i) or (ii) or that~~ controlled body corporate, connected entity or director¹⁷.
- (6) Subsection (2)(b)(ii) does not prevent a member specified in subsection (5) from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.
- (7) In this section, a reference to a transaction to which an arrangement relates is—
- (a) in the case of an arrangement mentioned in section 495(1)(a) or (2)(a), a reference to the transaction entered into with a director, a body corporate controlled by a director,¹⁷ or an entity connected with a director under the arrangement; or
- (b) in the case of an arrangement mentioned in section 495(1)(b) or (2)(b) in relation to any rights, obligations or liabilities under a transaction, a reference to the transaction.
- (8) For the purposes of subsection (1)(a), it is irrelevant whether the resolution is passed before, on or after the commencement date of this Division.

¹⁷ Item 10(III) / 第10(III)項

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

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

¹⁸ Item 10(IV) / 第 10(IV)項

¹⁹ Item 10(V) / 第 10(V)項

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

²⁰ Item 10(IV) / 第 10(IV)項

487. Value of transaction or arrangement etc.

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

²¹ Item 11 / 第 11 項

488. Relevant transaction or arrangement

- ~~(1) A transaction or arrangement is a relevant transaction or arrangement for the purposes of an exception provision—~~
- ~~(a) if it is entered into before, or at the same time as, the transaction in question; and~~
 - ~~(b) if—~~
 - ~~(i) where the transaction in question is entered into for a director of the company or an entity connected with such a director, it is entered into for the director or connected entity by virtue of the exception provision by the company or a subsidiary of the company; or~~
 - ~~(ii) where the transaction in question is entered into for a director of a holding company of the company, it is entered into for the director by virtue of the exception provision by the holding company or a subsidiary of the holding company.~~
- ~~(2) Despite subsection (1), a transaction or arrangement is not a relevant transaction or arrangement for the purposes of an exception provision if—~~
- ~~(a) it was entered into by a body corporate that, at the time it was entered into—~~
 - ~~(i) was a subsidiary of the company entering into the transaction in question; or~~
 - ~~(ii) was a subsidiary of a holding company of that company; and~~
 - ~~(b) at the time the question arises as to whether the transaction in question falls within the exception provision, the body corporate is no longer such a subsidiary.~~
- ~~(3) In this section—~~
- ~~**exception provision** (例外條文) means—~~
- ~~(a) section 496(1); or~~
 - ~~(b) section 497.²²~~

²² Item 12 / 第 12 項

489. Total exposure amount

(1) In sections 500 and 501—

total exposure amount (風險承擔總額) means—

- (a) in relation to ~~a private company or a company limited by guarantee company that is not a specified company~~²³, the aggregate of the amounts specified in subsection (2); or
 - (b) in relation to a specified company, the aggregate of the amounts specified in subsection (3).
- (2) The amounts specified for the purposes of paragraph (a) of the definition of **total exposure amount** in subsection (1) are—
- (a) the amount of the transaction in question;
 - (b) the aggregate of the amounts outstanding at the time that transaction is entered into, in respect of the principal and interest or otherwise, on every loan made by the company to a director of the company or of a holding company of the company, or to a body corporate controlled by such a director²⁴ (excluding the transaction in question, and any loan made with the prescribed approval mentioned in section 491 or by virtue of section 490, 496, 497, 498, 499, 502 or 503);
 - (c) the aggregate of the amounts representing the maximum liability of the company at that time under every guarantee given by the company, and in respect of every security provided by the company, in connection with any loan made by any person to a director of the company or of a holding company of the company, or to a body corporate controlled by such a director²⁴ (excluding the transaction in question, and any guarantee or security given or provided with the prescribed approval mentioned in section 491 or by virtue of section 490, 496, 497, 498, 499, 502 or 503); and
 - (d) the aggregate of the net amounts incurred or to be incurred by the company at that time under every arrangement specified in subsection (4) that is entered into by the company (excluding any arrangement entered into with the prescribed approval mentioned in section 495 or by virtue of section 490).
- (3) The amounts specified for the purposes of paragraph (b) of the definition of **total exposure amount** in subsection (1) are—
- (a) the amount of the transaction in question;
 - (b) the aggregate of the amounts outstanding at the time that transaction is entered into, in respect of the principal and interest or otherwise, on every loan and quasi-loan made by the company to, and every credit transaction entered into by the company as creditor for, a director of the company or of a holding company of the company,²⁵ or a body corporate controlled by such a director,²⁴ or an entity connected with such a director, ~~or a director of a holding company of the company~~²⁵ (excluding the transaction in question, and any loan, quasi-loan or credit transaction made or entered into with the prescribed approval mentioned in section 491, 492, 493 or 494 or by virtue of section 490, 496, 497, 498, 499, 502 or 503);
 - (c) the aggregate of the amounts representing the maximum liability of the company at that time under every guarantee given by the company, and in respect of every security provided by the company, in connection with any loan or quasi-loan made by any person to, or any credit transaction entered into by any person as creditor for, a director of the company or of a holding company of the company,²⁵ or a body corporate controlled by such a director, or²⁴ an entity connected with such a director, ~~or a director of a holding company of the company~~²⁵ (excluding the transaction in question, and any guarantee or security given or provided with the prescribed approval mentioned in section 491, 492, 493 or 494 or by virtue of section 490, 496, 497, 498, 499, 502 or 503); and

²³ Item 13(I) / 第 13(I)項

²⁴ Item 13(II) / 第 13(II)項

²⁵ Item 13(III) / 第 13(III)項

- (d) the aggregate of the net amounts incurred or to be incurred by the company at that time under every arrangement specified in subsection (5) that is entered into by the company (excluding any arrangement entered into with the prescribed approval mentioned in section 495 or by virtue of section 490).
- (4) An arrangement specified for the purposes of subsection (2)(d) is—
- (a) an arrangement under which—
- (i) another person makes a questionable loan to—
~~_____~~ (A) a director of the company or of a holding company of the company; or
(B) a body corporate controlled by such a director²⁶; and
- (ii) that other person, pursuant to the arrangement, has obtained or is to obtain any benefit from the company or an associated company of the company; or
- (b) an arrangement for an assignment to the company, or assumption by the company, of any rights, obligations or liabilities under a questionable loan made by another person to—
~~_____~~ (A) a director of the company or of a holding company of the company; or
(B) a body corporate controlled by such a director²⁶.
- (5) An arrangement specified for the purposes of subsection (3)(d) is—
- (a) an arrangement under which—
- (i) another person makes a questionable loan or quasi-loan to, or enters into a questionable credit transaction as creditor for—
~~_____~~ (A) a director of the company or of a holding company of the company;²⁷
(B) a body corporate controlled by such a director²⁶; or
~~_____~~ (C) an entity connected with such a director, or a director of a holding company of the company²⁷; and
- (ii) that other person, pursuant to the arrangement, has obtained or is to obtain any benefit from the company or an associated company of the company; or
- (b) an arrangement for an assignment to the company, or assumption by the company, of any rights, obligations or liabilities under—
- (i) a questionable loan or quasi-loan made by another person to—
~~_____~~ (A) a director of the company or of a holding company of the company;²⁷
(B) a body corporate controlled by such a director; or²⁶
~~_____~~ (C) an entity connected with such a director, or a director of a holding company of the company²⁷; or
- (ii) a questionable credit transaction entered into by another person as creditor for—
~~_____~~ (A) a director of the company or of a holding company of the company; or²⁷
~~_____~~ (B) an entity connected with such a director, or a director of a holding company of the company²⁷.
- (6) In this section—
- (a) a reference to a questionable loan or quasi-loan made by a person to a director of the company, a body corporate controlled by such a director,²⁶ or an entity connected with such a director, under an arrangement is a reference to a loan or quasi-loan (as the case may be) that, if it had been made by the company on the date of the arrangement, would have been prohibited by section 491(1), 492(1) or 493(1)²⁸ or would have been so prohibited in the absence of sections 500 and 501;

²⁶ Item 13(II) / 第 13(II)項

²⁷ Item 13(III) / 第 13(III)項

²⁸ Item 13(IV) / 第 13(IV)項

- (b) a reference to a questionable credit transaction entered into by a person as creditor for a director of the company, or an entity connected with such a director, under an arrangement is a reference to a credit transaction that, if it had been entered into by the company on the date of the arrangement, would have been prohibited by section 494(1) or would have been so prohibited in the absence of sections 500 and 501;
- (c) a reference to a questionable loan or quasi-loan made by a person to a director of a holding company of the company, a body corporate controlled by such a director²⁹, or an entity connected with such a director,³⁰ under an arrangement is a reference to a loan or quasi-loan (as the case may be) that, if it had been made by the company on the date of the arrangement, would have been prohibited by section 491(2), ~~or~~ 492(2) or 493(2)³¹ or would have been so prohibited in the absence of sections 500 and 501; and
- (d) a reference to a questionable credit transaction entered into by a person as creditor for a director of a holding company of the company, or an entity connected with such a director,³⁰ under an arrangement is a reference to a credit transaction that, if it had been entered into by the company on the date of the arrangement, would have been prohibited by section 494(2) or would have been so prohibited in the absence of sections 500 and 501.

²⁹ Item 13(II) / 第 13(II)項

³⁰ Item 13(III) / 第 13(III)項

³¹ Item 13(IV) / 第 13(IV)項

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

- (1) Without the prescribed approval of its members, a company must not—
- (a) make a loan to—
 - (i) a director of the company; or
 - (ii) a body corporate controlled by such a director; or³²
 - (b) give a guarantee or provide security in connection with a loan made by any person to—
 - (i) a director of the company; or
 - (ii) a body corporate controlled by such a director. ~~such a director.~~³²
- (2) Without the prescribed approval of its members and the prescribed approval of the holding company's members, a company must not—
- (a) make a loan to—
 - (i) a director of a holding company of the company; or
 - (ii) a body corporate controlled by such a director; or³²
 - (b) give a guarantee or provide security in connection with a loan made by any person to—
 - (i) a director of a holding company of the company; or
 - (ii) a body corporate controlled by such a director. ~~such a director.~~³²
- (3) Despite subsection (2)—
- (a) a company may enter into the transaction with only the prescribed approval of its members if the holding company is incorporated outside Hong Kong; and
 - (b) a company may enter into the transaction with only the prescribed approval of the holding company's members if it is a wholly owned subsidiary of the holding company, and the holding company is incorporated in Hong Kong.

³² Item 14 / 第 14 項

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

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

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

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

(a) make a loan or quasi-loan to an entity connected with a director of a holding company of the company; or

(b) give a guarantee or provide security in connection with a loan or quasi-loan made by any person to an entity connected with such a director.³³

(3) Despite subsection (2)—

(a) a specified company may enter into the transaction with only the prescribed approval of its members if the holding company is incorporated outside Hong Kong; and

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

³³ Item 15(I) / 第 15(I)項

³⁴ Item 15(II) / 第 15(II)項

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

- (1) Without the prescribed approval of its members, a specified company must not—
- (a) enter into a credit transaction as creditor for—
 - (i) a director of the company; or
 - (ii) an entity connected with such a director; or
 - (b) give a guarantee or provide security in connection with a credit transaction entered into by any person as creditor for such a director or an entity connected with such a director.
- (2) Without the prescribed approval of its members and the prescribed approval of the holding company's members, a specified company must not—
- (a) enter into a credit transaction as creditor for—
 - ~~(i) a director of a holding company of the company; or~~
 - (ii) an entity connected with such a director; or³⁵
 - (b) give a guarantee or provide security in connection with a credit transaction entered into by any person as creditor for such a director or an entity connected with such a director.³⁵
- (3) Despite subsection (2)—
- (a) a specified company may enter into the transaction with only the prescribed approval of its members if the holding company is incorporated outside Hong Kong; and
 - (b) a specified company may enter into the transaction with only the prescribed approval of the holding company's members if it is a wholly owned subsidiary of the holding company, and the holding company is incorporated in Hong Kong.

³⁵ Item 16 / 第 16 項

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

- (1) Without the prescribed approval of its members, a company must not—
- (a) take part in an arrangement under which—
 - (i) another person enters into a questionable transaction with a director of the company, a body corporate controlled by such a director,³⁶ or an entity connected with such a director; and
 - (ii) that other person, pursuant to the arrangement, has obtained or is to obtain any benefit from the company or an associated company of the company; or
 - (b) arrange for an assignment to the company, or assumption by the company, of any rights, obligations or liabilities under a questionable transaction entered into by another person with—
 - (i) a director of the company;³⁷
 - (ii) a body corporate controlled by such a director,³⁶ or
 - (iii) an entity connected with such a director.
- (2) Without the prescribed approval of its members and the prescribed approval of the holding company's members, a company must not—
- (a) take part in an arrangement under which—
 - (i) another person enters into a questionable transaction with a director of a holding company of the company, a body corporate controlled by such a director,³⁶ or an entity connected with such a director,³⁷; and
 - (ii) that other person, pursuant to the arrangement, has obtained or is to obtain any benefit from the company or an associated company of the company; or
 - (b) arrange for an assignment to the company, or assumption by the company, of any rights, obligations or liabilities under a questionable transaction entered into by another person with—
 - (i) a director of a holding company of the company;
 - (ii) a body corporate controlled by such a director; or³⁶
 - (iii) an entity connected with such a director.³⁷
- (3) Despite subsection (2)—
- (a) a company may enter into the arrangement with only the prescribed approval of its members if the holding company is incorporated outside Hong Kong; and
 - (b) a company may enter into the arrangement with only the prescribed approval of the holding company's members if it is a wholly owned subsidiary of the holding company, and the holding company is incorporated in Hong Kong.
- (4) In this section—
- (a) a reference to a questionable transaction entered into by a person with a director of the company, a body corporate controlled by such a director,³⁶ or an entity connected with such a director, under an arrangement is a reference to a transaction that, if it had been entered into by the company on the date of the arrangement, would have been prohibited by section 491(1), 492(1), 493(1)³⁸ or 494(1) or would have been so prohibited in the absence of Subdivision 3; and
 - (b) a reference to a questionable transaction entered into by a person with a director of a holding company of the company, a body corporate controlled by such a director,³⁶ or an entity connected with such a director,³⁷ under an arrangement is a reference to a transaction that, if it had been entered into by the company on the date of the arrangement, would have been

³⁶ Item 17(I) / 第 17(I)項

³⁷ Item 17(II) / 第 17(II)項

³⁸ Item 17(III) / 第 17(III)項

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

³⁹ Item 17(III) / 第 17(III)項

496. Exception for loan, quasi-loan and credit transaction of value not exceeding 5% of nettotal⁴⁰ assets or called-up share capital

- (1) A company is not prohibited by section 491, 492, 493 or 494 from making a loan or quasi-loan, entering into a credit transaction or giving a guarantee or providing security in connection with a loan, quasi-loan or credit transaction, if the aggregate of the value of the transaction in question, and the value of any other relevant transaction or arrangement, does not exceed 5% of—
- (a) the value of the company's nettotal⁴⁰ assets as determined by reference to the relevant financial statements of the company; or
- (b) if no such relevant financial statements have been prepared, the amount of the company's called-up share capital.
- (2) In this section, a reference to the relevant financial statements of a company is—
- (a) a reference to the company's annual financial statements or annual consolidated financial statements prepared under Part 9 that were most recently sent to its members under section 421; or
- (b) if no such annual financial statements or annual consolidated financial statements have been sent since the commencement date of section 421, a reference to the company's accounts prepared under section 122 of the predecessor Ordinance that were most recently sent to its members under section 129G of that Ordinance.

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

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

(b) if—

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

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

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

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

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

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

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

⁴⁰ Item 18(I) / 第 18(I)項

⁴¹ Item 18(II) / 第 18(II)項

497. Exception for expenditure on company business

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

~~(a) to provide a director of the company or of a holding company of the company;⁴²~~

~~(b) a body corporate controlled by such a director;⁴² or~~

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

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

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

~~(ii)(b) for the purpose of enabling the director, controlled body corporate⁴² or connected entity (as the case may be) to properly perform duties as an officer of the company;⁴² ~~or~~~~

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

⁴² Item 19 / 第 19 項

500. Exception for home loan

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

⁴³ Item 20(I) / 第 20(I)項

⁴⁴ Item 20(II) / 第 20(II)項

501. Exception for leasing goods and land etc.

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

⁴⁵ Item 21(I) / 第 21(I)項

⁴⁶ Item 21(II) / 第 21(II)項

503. Exception for intra-group transaction

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

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

⁴⁷ Item 22 / 第 22 項

504. Civil consequences of contravention

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

⁴⁸ Item 23(I) / 第 23(I)項

⁴⁹ Item 23(II) / 第 23(II)項

⁵⁰ Item 23(III) / 第 23(III)項

505. Affirmation of contravening transaction or arrangement

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

⁵¹ Item 24 / 第 24 項

506. Provisions supplementary to section 505

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

⁵² Item 25(I) / 第 25(I)項

⁵³ Item 25(II) / 第 25(II)項

- (iii) one who holds any shares in the company in trust for the director specified in subparagraph ~~(i)(ia)~~ or (ii) or that controlled body corporate⁵⁴;
- (b) in the case of a resolution for the purpose of a contravention of section 493—
- (i) one who is the connected entity to whom the loan or quasi-loan is proposed to be made or was made;
 - (ii) one who is the director with whom that entity is connected;
 - (iii) one who is any other director of the company who authorized the loan or quasi-loan; or
 - (iv) one who holds any shares in the company in trust for the director specified in subparagraph (ii) or (iii) or that connected entity;
- (c) in the case of a resolution for the purpose of a contravention of section 494—
- (i) one who is the director or connected entity for whom the credit transaction is proposed to be entered into or was entered into;
 - (ii) one who is the director with whom that entity is connected;
 - (iii) one who is any other director of the company who authorized the credit transaction; or
 - (iv) one who holds any shares in the company in trust for the director specified in subparagraph (i), (ii) or (iii) or that connected entity; or
- (d) in the case of a resolution for the purpose of a contravention of section 495—
- (i) one who is the ~~director~~controlled body corporate,⁵⁴ or connected entity, for whom the arrangement is proposed to be entered into or was entered into;
 - ~~(ii) one who is the director—~~
 - ~~(A) who controls that body corporate;~~
 - ~~(B) with whom that entity is connected; or~~
 - ~~(C) for whom the arrangement is proposed to be entered into or was entered into;~~⁵⁴
 - ~~(ii) one who is the director with whom that entity is connected;~~
 - (iii) one who is any other director of the company who authorized the arrangement; or
 - (iv) one who holds any shares in the company in trust for the director specified in subparagraph ~~(i)~~, (ii) or (iii) or that controlled body corporate or⁵⁴ connected entity.
- (5) Subsection (1)(b)(ii) does not prevent a member specified in subsection (4) from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.
- (6) In this section, a reference to a transaction to which an arrangement relates is—
- (a) in the case of an arrangement mentioned in section 495(1)(a) or (2)(a), a reference to the transaction entered into with a director, a body corporate controlled by a director,⁵⁴ or an entity connected with a director under the arrangement; or
 - (b) in the case of an arrangement mentioned in section 495(1)(b) or (2)(b) in relation to any rights, obligations or liabilities under a transaction, a reference to the transaction.

⁵⁴ Item 25(II) / 第 25(II)項

507. 釋義

(1) 在本分部中 —

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

受影響成員 (affected member) 指 —

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

董事 (director) 包括幕後董事。

(2) 在本分部中 —

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

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

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

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

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

⁵⁵ Item 26 / 第 26 項

509. Prescribed approval of members or affected members

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

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

⁵⁶ Item 27(I) / 第 27(I)項

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

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

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

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

⁵⁷ Item 27(II) / 第 27(II)項

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

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

⁵⁸ Item 28 / 第 28 項

515. 例外情況：付款以履行法律義務等

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

退休金 (pension) 包括任何離職津貼、離職酬金或類似的付款；

現存法律義務 (existing legal obligation) —

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

⁵⁹ Item 29 / 第 29 項

516. Exception for small payment

- (1) A company is not prohibited by section 512 from making a payment to a director or former director if the aggregate of the amount or value of the payment, and the amount or value of any other payment for loss of office made by the company or a subsidiary of the company to the director or former director in connection with the same event, does not exceed \$~~100,000~~20,000⁶⁰.
- (2) A company is not prohibited by section 513 or 514 from making a payment to a director or former director in connection with a transfer of any undertaking or property of, or shares in, the company or a subsidiary of the company if the aggregate of the amount or value of the payment, and the amount or value of any other payment for loss of office made by the company or a subsidiary of the company to the director or former director in connection with the transfer, does not exceed \$~~100,000~~20,000⁶⁰.
- (3) A subsidiary of a company is not prohibited by section 513 or 514 from making a payment to a director or former director in connection with a transfer of any undertaking or property of, or shares in, the company or a subsidiary of the company if the aggregate of the amount or value of the payment, and the amount or value of any other payment for loss of office made by the company, or the subsidiary making the payment, to the director or former director in connection with the transfer, does not exceed \$~~100,000~~20,000⁶⁰.

⁶⁰ Item 30 / 第 30 項

521. 釋義

(1) 在本分部中 —

董事 (director) 包括幕後董事。

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

⁶¹ Item 31 / 第 31 項

522. 服務合約

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

⁶² Item 32 / 第 32 項

523. Prescribed approval of members

- (1) In this Division, a reference to the prescribed approval of the members of a company is a reference to an approval obtained by a resolution of those members—
 - (a) that is passed before the company agrees to the provision; and
 - (b) in respect of which the requirements specified in subsection (2) are met.
- (2) The requirements specified for the purposes of subsection (1)(b) are—
 - (a) that, in the case of a written resolution, a memorandum setting out the proposed service contract (incorporating the provision in question) is sent to every member at or before the time at which the proposed resolution is sent to the member; or
 - (b) that, in the case of a resolution passed at a general meeting—
 - (i) a memorandum setting out the proposed service contract (incorporating the provision in question) is sent to every member together with the notice convening the meeting; and
 - (ii) if the company is a public company, the resolution is passed after disregarding every vote in favour of the resolution by a member specified in subsection (4).
- (3) Subject to any provision of the company's articles, any accidental omissionfailure⁶³ to send the memorandum to a member is to be disregarded for the purpose of determining whether the requirement specified in subsection (2)(a) or (b)(i) has been met.
- (4) The member specified for the purposes of subsection (2)(b)(ii) is—
 - (a) one who is the director with whom the service contract is proposed to be entered into; or
 - (b) one who holds any shares in the company in trust for that director.
- (5) Subsection (2)(b)(ii) does not prevent a member specified in subsection (4) from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.
- (6) For the purposes of subsection (1)(a), it is irrelevant whether the resolution is passed before, on or after the commencement date of this Division.

⁶³ Item 33 / 第 33 項

529. Declaration to directors: procedures

- (1) A declaration to directors under section 527 must be—
 - (a) made at a directors' meeting;
 - (b) made by notice in writing and sent by the director to the other directors; or
 - (c) made by general notice by the director to the other directors.
- (2) A notice for the purposes of subsection (1)(b)—
 - (a) must be sent—
 - (i) in hard copy form; or
 - (ii) if the recipient has agreed to receive it in electronic form, in the electronic form so agreed; and
 - (b) must be sent—
 - (i) by hand or by post; or
 - (ii) if the recipient has agreed to receive it by electronic means, by the electronic means so agreed.
- (3) If a declaration to directors under section 527 is made by notice in writing—
 - (a) the making of the declaration is to be regarded as forming part of the proceedings at the next directors' meeting after the notice is given; and
 - (b) section 472 applies as if the declaration had been made at that meeting.
- (4) A general notice by a director for the purposes of subsection (1)(c) is a notice to the effect that—
 - (a) the director—
 - (i) has an interest (as member, officer, employee or otherwise) in a body corporate or firm specified in the notice; and
 - (ii) is to be regarded as interested in any transaction, arrangement or contract that may, after the **effective**⁶⁴-date of the notice, be entered into with the specified body corporate or firm; or
 - (b) the director—
 - (i) is connected with a person specified in the notice (other than a body corporate or firm); and
 - (ii) is to be regarded as interested in any transaction, arrangement or contract that may, after the **effective**⁶⁴-date of the notice, be entered into with the specified person.
- (5) A general notice must state—
 - (a) the nature and extent of the director's interest in the specified body corporate or firm; or
 - (b) the nature of the director's connection with the specified person.
- (6) A general notice is not effective unless—
 - (a) it is given at a directors' meeting;~~or~~
 - (b) the director takes all reasonable steps to secure that it is brought up and read at the next directors' meeting after it is given; or
 - (c) it is given by notice in writing and sent by the director to the other directors⁶⁵.

⁶⁴ Item 34(I) / 第 34(I)項

⁶⁵ Item 34(II) / 第 34(II)項

533. Disclosure of management contract

- (1) This section applies if—
 - (a) a company enters into a contract by which a person undertakes the management and administration of the whole or any substantial part of any business of the company; and
 - (b) the contract is not a contract of service with any director of the company or any person engaged in the full-time employment of the company.
- (2) The directors' report for any year in which the contract is in force must include—
 - (a) a statement of the existence and duration of the contract; and
 - (b) the name of every director and shadow director interested in the contract, and the nature and extent of the interest.
- (3) The company must keep the following available for inspection at its registered office or at a place prescribed by regulations made under section 648—
 - (a) a copy of the contract;
 - (b) if such a contract is not in writing, a written memorandum setting out the terms of the contract.
- (4) The company—
 - (a) must retain the copy or memorandum for at least one year after the date of termination or expiry of the contract; and
 - (b) must keep the copy or memorandum available for inspection during that time.
- (5) If the copy or memorandum is kept available for inspection at a place other than the company's registered office, the company must deliver to the Registrar for registration a notice, in the specified form, of the place, or any change in the place, at which the copy or memorandum is kept. The notice must be delivered to the Registrar within 1514⁶⁶ days after the copy or memorandum is first kept at that place or within 1514⁶⁶ days after the change (as the case may be).
- (6) If subsection ~~(2)~~,⁶⁷(3), (4) or (5) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (7) In this section—

directors' report (董事報告) means—

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

⁶⁶ Item 1 / 第 1 項

⁶⁷ Item 35 / 第 35 項

535. Contract with sole member who is also director

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

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

⁶⁸ Item 36(I) / 第 36(I)項

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

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

董事 (director) 包括幕後董事。

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

⁶⁹ Item 36(II) / 第 36(II)項