

Bills Committee on Companies Bill

Consequential amendments to be introduced pursuant to the enactment of the Companies Bill

PURPOSE

This paper sets out the details of the consequential amendments to be introduced pursuant to the enactment of the Companies Bill (CB).

BACKGROUND

2. CB rewrites the provisions of the current Companies Ordinance (Cap. 32) (CO) that relate to the operation of live companies in Hong Kong. Upon commencement of CB, such provisions in Cap. 32 will be repealed. CB will become the new CO, while Cap. 32 will be retitled as “Companies (Winding Up and Miscellaneous Provisions) Ordinance” (C(WUMP)O), housing the remaining provisions the predominance of which deal with company winding-up and insolvency as well as prospectuses. The existing Part 21 of CB (“Consequential Amendments, and Transitional and Saving Provisions”) contains a small number of consequential amendments (listed in the current Schedule 9 to CB) that are necessary because of the transitional and saving provisions in the Bill.

3. For the remaining bulk of consequential amendments that have to be introduced pursuant to the enactment of CB, the Administration’s original intention¹ was to handle them through a separate Bill. At the meeting of the Bills Committee on 14 March 2011, Members considered that all consequential amendments pursuant to the enactment of the CB should be introduced into the Legislative Council (LegCo) in the form of Committee Stage Amendments (CSAs) to CB instead of a separate Bill so that they could be scrutinised by the same Bills Committee.

PROPOSAL

4. At the Bills Committee meeting on 3 February 2012, Members noted the Administration’s plan to introduce the consequential amendments through:

- (a) a CSA which replaces the current Schedule 9 with a revised Schedule 9 (hereunder referred to as “Schedule 9”) that contains

¹ As set out in paragraph 11 of the LegCo Brief on Companies Bill.

187 sections involving around 340 consequential amendments to CO and its subsidiary legislation²; and

- (b) a CSA which adds a new Schedule 9A (hereunder referred to as “Schedule 9A”) that contains 472 sections involving around 880 consequential amendments to other ordinances and pieces of subsidiary legislation in the Laws of Hong Kong³.

5. The two Schedules, together with a marked-up version of the amendments illustrating the proposed changes to the ordinances were circulated to Members for consideration on 9 February 2012⁴.

Nature of the consequential amendments

6. The consequential amendments set out in Schedule 9 and Schedule 9A are technical in nature and consequential to the enactment of CB. They can be broadly grouped into five categories, as follows:

Category I: Changes in reference to “Companies Ordinance (Cap. 32)” or its provision(s)

- (a) change of reference to “Companies Ordinance (Cap. 32)” to (i) “Companies Ordinance (_____ of 2011)”;⁵ and/or (ii) “Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)”;⁵ and/or (iii) a former CO or CO as in force from time to time or at some specific point in time, as appropriate⁵ (*Note:*

² LegCo Paper No. CB(1)1033/11-12(02) “*Consequential amendments*”.

³ *Ibid.*

⁴ For Schedule 9, LegCo Paper No. CB(1)1033/11-12(03) “*Marked-up version of consequential amendments to the Companies Ordinance and its subsidiary legislation*”; and for Schedule 9A, LegCo Paper No. CB(1)1033/11-12(04) “*Marked-up version of consequential amendments to other ordinances and subsidiary legislation*”.

⁵ For Schedule 9, the reference to the “Companies Ordinance (Cap. 32)” may be changed to one or more than one of the following:

- (i) “Companies Ordinance (_____ of 2011)”

This applies where the reference to CO relates to a subject matter that will be moved to CB. For example, section 102(2) of Schedule 9 (i.e. section 307(a) to (c) of Cap. 32).

- (ii) “this Ordinance” and/ or “Companies Ordinance (_____ of 2011)”

This applies where the reference to CO relates to a subject matter which used to be covered by the current CO only, but will scatter in CB and C(WUMP)O due to the CO Rewrite. For example, section 98 of Schedule 9 (i.e. section 296(1) of Cap. 32).

- (iii) “the pre-amended Ordinance”

This applies where the reference to CO relates to a subject matter which includes something done under the current CO prior to commencement of CB. For example, section 84(4) and (8) of Schedule 9 (i.e. section 177(7) of Cap. 32).

- Item (1)(a) to (c) of Annex); and
- (b) change of reference to a specific provision in the current CO to the re-enacted provision in CB⁶ (*Note*: Item (2) of Annex).

Category II: Amendments due to changes in concepts, terminologies and definitions in CB

- (a) amendments due to introduction of new concepts (e.g. “financial

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- (iv) “the pre-amended Ordinance having a continuing effect under Schedule 10 to the Companies Ordinance (_____ of 2011) or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1)”

This applies where the reference to CO relates to a subject matter which includes something done under the current CO which has a continuing effect after the commencement of CB. For example, section 6 of Schedule 9 (i.e. section 38(6)(b) of Cap. 32).

In Schedule 9A, the reference to the current CO may be changed to the following:

- (i) “Companies Ordinance (_____ of 2011)”

This applies where the reference to CO relates to a subject matter that will be moved to CB. For example, section 11 of Schedule 9A (i.e. section 11 of Part 2 of the Schedule to the Defamation Ordinance (Cap. 21)).

- (ii) “Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)”

This applies where the reference to CO relates to a subject matter that will remain in C(WUMP)O. The reference is changed only because the name of the current CO will be changed to “Companies (Winding Up and Miscellaneous Provisions) Ordinance”. For example, section 301(1) of Schedule 9A (i.e. section 48(2) of the Securities and Futures Ordinance (Cap. 571)).

- (iii) “Companies Ordinance (_____ of 2011) and Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)”

This applies where the reference to CO relates to a subject matter which used to be covered by the current CO only, but will scatter in the CB and C(WUMP)O due to the CO Rewrite. For example, section 18 of Schedule 9A (i.e. section 57 of the Co-operative Societies Ordinance (Cap. 33)).

- (iv) “Companies Ordinance (_____ of 2011) or a former Companies Ordinance as defined by section 2(1) of the Companies Ordinance (_____ of 2011)”

This applies where the reference to CO relates to a subject matter that will be moved to CB, and the subject matter includes something done under a former CO (including the current CO). For example, section 297 of Schedule 9A (i.e. Item 8(4) of Table 5 in section 2 of the Schedule to the Chief Executive Election Ordinance (Cap. 569)).

- (v) “Companies Ordinance (Cap. 32) as in force from time to time before the commencement date of section 1 (*Note: will be changed to “section 2”*) of Schedule 9 to the Companies Ordinance (_____ of 2011)”

This applies where the reference is only made to an action already done under a provision in the current CO. For example, section 83 of Schedule 9A (i.e. section 6 of the Ferry Services Ordinance (Cap. 104)).

⁶ For example, section 166 of Schedule 9 (i.e. rule 117 of the Companies (Winding-Up) Rules (Cap. 32H)) and section 30 of Schedule 9A (i.e. section 24(7) of the Insurance Companies Ordinance (Cap. 41)).

statements”⁷, “financial year”⁸, etc.) or new procedures (e.g. new procedures to apply to the Administrative Appeals Board⁹, etc.) in CB (*Note*: Item (3) of Annex);

(b) amendments due to abolition of concepts (e.g. memorandum of association¹⁰, par value¹¹, etc.) in CB (*Note*: Item (4) of Annex);

(c) amendments due to terminological changes (e.g. changing “secretary” to “company secretary”¹², “repurchase(s)” to

⁷ For example, section 145(1) to (4) of Schedule 9 (i.e. section 8(a) and (c) of Part 1 and section 8(a) and (c) of Part 2 of the Twenty-first Schedule to Cap. 32) and section 284(1) to (3) of Schedule 9A (i.e. section 43 of the Mass Transit Railway Ordinance (Cap. 556)). To align with the terminology used in the Hong Kong Financial Reporting Standards, the requirements under CO to prepare annual “accounts” for companies and “group accounts” for holding companies will be changed to the requirement to prepare “financial statements” as defined in clause 356 of CB. The terms “balance sheet” and “profit and loss account” used in CO will respectively be replaced by “statement of financial position” and “statement of comprehensive income” in CB.

⁸ CO provides that “financial year” means the period in respect of which any profit and loss account of any body corporate laid before it in general meeting is made up. In CB, the definition of “financial year” in clause 2(1) refers to clause 363 which provides for the determination of a company’s financial year:

- (i) in case of a company, by reference to its accounting reference period;
- (ii) in case of an undertaking not being a company, by reference to the period that a profit and loss account is required to be made up, by its constitution or law of incorporation.

For example, section 23(2) of Schedule 9A (i.e. definition of “financial year” in section 2(1) of the Insurance Companies Ordinance (Cap. 41)).

⁹ Clauses 104(3) and 772 of CB provide for a new procedure for a company and registered non-Hong Kong company to apply to the Administrative Appeals Board to appeal against the Registrar of Companies’ (the Registrar’s) direction to change misleading or offensive names. The Schedule to the Administration Appeals Board Ordinance (Cap. 442) therefore needs to be amended to reflect this. See section 238 of Schedule 9A.

¹⁰ Clause 93 of CB provides that a condition of an existing company’s memorandum of association is to be regarded as a provision of its articles. Therefore, references to a company’s memorandum of association in ordinances would be amended to its “articles of association” or “articles” as appropriate. For example, section 84(1) of Schedule 9 (i.e. section 177(1)(e) of Cap. 32) and section 60(3) of Schedule 9A (i.e. section 28D(2)(b)(iv) of the Professional Accountants Ordinance (Cap. 50)).

However, if the companies concerned are or could be overseas companies, the reference to memorandum of association, if applicable, may still be retained. For example, section 459(2) of Schedule 9A (i.e. section 18 of the Dao Heng Bank Limited (Merger) Ordinance (Cap. 1172)).

¹¹ Clause 130 of CB provides that shares in a company will have no nominal value. The relevant concepts and references, e.g. “nominal value”, “authorized share capital”, “share premium”, etc. will become obsolete and will be abolished. For example, section 9 of Schedule 9 (i.e. section 42(3) of Cap. 32) and section 346(19) of Schedule 9A (i.e. section 6(1)(a)(i) in Schedule 1 to the Securities and Futures Ordinance (Cap. 571)).

However, if the companies concerned are or could be overseas companies, these concepts may still be applicable. For example, section 137(1) of Schedule 9 (i.e. paragraph 2 of Part I of the Third Schedule to Cap. 32) and section 138 of Schedule 9A (i.e. section 24(2)(a)(iii) of the Banking (Disclosure) Rules (Cap. 155M)).

¹² For example, section 80 of Schedule 9 (i.e. section 168N(1) of Cap. 32).

“buy-back(s)”¹³, “控股公司” to “控權公司”¹⁴, etc.) in CB (*Note*: Item (5) of Annex); and

- (d) amendments to add or modify definitions or expressions (e.g. changing “register of companies” to “Companies Register”¹⁵, “former Companies Ordinance” (前有《公司條例》) to “former Companies Ordinance” (《舊有公司條例》)¹⁶, etc.) to align with CB (*Note*: Item (6) of Annex).

Category III: Amendments arising from the repeal of existing provisions in CO in whole or in part

- (a) repeal of provisions in CO that relate to the operation of live companies¹⁷ (*Note*: Item (7) of Annex); and
- (b) repeal of provisions in other ordinances due to the repeal of CO provisions in whole or in part that will not be re-enacted in CB (e.g. the provisions in CO concerning “share premium”, “capital redemption reserve” and “shares issued at a discount”¹⁸, etc.) (*Note*: Item (8) of Annex).

¹³ For example, section 144 of Schedule 9 (i.e. paragraph 6 of Part 1 of the Seventeenth Schedule to Cap. 32) and section 361(1) and (2) of Schedule 9A (i.e. section 5 of the Securities and Futures (Fees) Rules (Cap. 571AF)).

¹⁴ For example, section 133(2) (i.e. definition of “母銀行” in section 2(1) of the Banking (Capital) Rules (Cap. 155L)) and section 47 of Schedule 9A (i.e. section 56A of the Insurance Companies Ordinance (Cap. 41)).

¹⁵ “Companies Register” is a new defined term under clause 2(1) of CB. In section 3(16) of Schedule 9, the definition of “Companies Register” making reference to the meaning given by clause 2(1) of CB is added to Cap. 32, while the references to “register of companies” in Cap. 32 are changed to “Companies Register” (for example, section 131(2) of Schedule 9 (i.e. section 360C of Cap. 32)). In Schedule 9A, likewise, the references to “register of companies” in other ordinances are changed to “Companies Register” (for example, section 318(3) of Schedule 9A (i.e. section 193(1) of the Securities and Futures Ordinance (Cap. 571)).

¹⁶ “Former Companies Ordinance (《舊有公司條例》)” is a new defined term under clause 2(1) of CB. In section 3(16) of Schedule 9, definition of “former Companies Ordinance (《舊有公司條例》)” along the lines of the same definition under CB is added to Cap. 32, while references to “前有《公司條例》” in Cap. 32 are changed to “《舊有公司條例》” (for example, section 102(1) of Schedule 9 (i.e. heading of section 307 of Cap. 32)) to align with the Chinese rendition in CB.

¹⁷ These mainly include provisions which will be re-enacted in the CB, but also provisions which will not be re-enacted. Provisions being repealed which will be re-enacted in CB are e.g. section 5 of Schedule 9 (i.e. section 18A of Cap. 32 relating to delivery of director’s written consent which will be re-enacted as clause 69 of CB). Provisions being repealed which will not be re-enacted in the CB are e.g. section 66 of Schedule 9 (i.e. section 155B of Cap. 32).

¹⁸ For example, section 5(11) of Schedule 9A repeals paragraphs (c) to (e) of rule 5(1) of Order 102 of The Rules of the High Court (Cap. 4A). The said paragraphs (c) to (e) refer to applications made under CO for reduction of share premium account, issue of shares at a discount and reduction of capital redemption reserve fund.

Category IV: Amendments due to effect of the provision being spent or redundant

Repeal of or amendments to provisions in CO or other ordinances because the effect of the provisions is spent or redundant¹⁹ (*Note*: Item (9) of Annex).

Category V: Drafting changes

These are changes in drafting to accord with other consequential amendments made to rationalise the presentation of the amended provisions with other existing provisions. These drafting changes are mainly using defined terms or consolidating references to simplify the provisions (e.g. adding definitions of “specified provision”²⁰ and “relevant Ordinance”²¹, etc.) and changing punctuations or connection, etc. (*Note*: Item (10) of Annex).

7. Apart from the above categories, please also see other miscellaneous consequential amendments in Schedule 9 at pages 9 and 10 of Annex.

¹⁹ For example, section 3(9) of Schedule 9 deletes the expression “or by such other process as the Registrar in his discretion may accept” in the definition of the term “printed” in section 2(1) of Cap. 32. This is because all provisions in the current CO containing the expression “printed” will be repealed except section 203 of Cap. 32, rules 10, 133 and 165 and Form 23 of the Companies (Winding-Up) Rules (Cap. 32H) and section 9A of the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap. 32L), and the Registrar does not have any role in specifying the process of printing for the aforesaid provisions to be retained.

Another example is section 468(2) of Schedule 9A which deletes the definition of “Registrar of Companies” from the Citibank (Hong Kong) Limited (Merger) Ordinance (Cap. 1177). This is necessary as there is no reference to “Registrar of Companies” in any of the provisions in that ordinance.

²⁰ For example, in section 75(6) of Schedule 9, a new subsection (4A) is added to section 168F of Cap. 32 to define “specified provision” as “a provision of the pre-amended Ordinance, this Ordinance, or the Companies Ordinance (of 2011), requiring (a) any return, accounts or other document to be filed with, or delivered or sent to, the Registrar; or (b) notice of any matter to be given to the Registrar.”.

²¹ For example, in section 99 of Schedule 9A, the definition of “relevant Ordinance” is added to section 2(1) of the Stamp Duty Ordinance (Cap. 117) to mean “the Companies Ordinance (Cap. 32) as in force from time to time before the commencement date of section 1 of Schedule 9 to the Companies Ordinance (of 2011)”. In section 194(3) of Schedule 9A, the definition of “relevant Ordinance” is added to section 68 of the Trade Unions Ordinance (Cap. 332) to mean “(a) the Companies Ordinance (Cap. 32) as in force from time to time before the commencement date of section 1 of Schedule 9 to the Companies Ordinance (of 2011); (b) the Co-operative Societies Ordinance (Cap. 33); or (c) the Companies Ordinance (of 2011).”.

Specific issues

8. The LegCo Legal Adviser has enquired whether some amendments should be regarded as consequential to the enactment of CB. Such amendments and our responses are set out below:

(a) Section 75(5) of Schedule 9: Section 168F(4) of Cap. 32

Section 75(5) of Schedule 9 changes the term “him” in section 168F(4) of Cap. 32 to “the person”.

The Law Drafting Division of the Department of Justice advises that as per general drafting practice, opportunity is taken to make gender-neutral changes in the consequential changes to other parts of section 168F (see section 75(2) to (4) of Schedule 9). To maintain consistency, the word “him” in section 168F(4) also has to be changed.

(b) Section 91(2) of Schedule 9: Section 219 of Cap. 32 (Note: Item (d) at page 10 of Annex)

Section 219 (1) of the current CO provides for two matters. First, the court may, after the making of a winding up order against a company, make an order for inspection of its books and papers by its creditors and contributories as the court thinks just. Secondly, if the court makes such an order, the books and papers of the company may be inspected by its creditors and contributories according to the court order but not further or otherwise.

Where the books and papers of the company are kept in a non-legible form, the company may, currently, rely on section 348C(3) of CO to satisfy its duty to allow inspection by allowing an inspection of a reproduction of such of its books and papers in a legible form. However, after the commencement of CB, section 348C will no longer be retained in C(WUMP)O.

Without such a provision as section 348C(3) in C(WUMP)O, a specific order has to be sought every time where an inspection order is made by the court under section 219(1) of C(WUMP)O if the books and papers of the company to be inspected involve some non-legible parts. This is unnecessary under the current CO and is unintended.

In order to avoid this unintended consequence as a result of the enactment of CB, a provision similar to section 348C(3) has to be added. Hence, paragraph (b) is added under the new section 219(1A).

The new section 219(1A)(a) is simply a transfer of the second matter currently under section 219(1) from its original position to make the presentation of the whole section clearer.

(c) Section 158(1) of Schedule 9: Rule 9(1) of Cap. 32H

Rule 9(1) of Cap. 32H requires that every proceeding in a winding-up matter must be dated and intituled in a specified format, under which a proceeding has to be numbered as “No. OF 19 .”. Section 158(1) of Schedule 9 changes the reference of year “19 ” to year “20 ”.

With section 158(2) of Schedule 9, proceedings referred to in rule 9(1) will be in the matter of the “Companies (Winding Up and Miscellaneous Provisions) Ordinance”. Since proceedings under C(WUMP)O would be bound to take place after year 2000, there is need to amend “19 .” to “20 .”.

(d) Section 168 of Schedule 9: Rule 155 of Cap. 32H (Note: Item (g) at page 10 of Annex)

Section 168 of Schedule 9 changes, *inter alia*, the reference to “Receiving Order in bankruptcy” to “bankruptcy order”.

Upon the commencement of the Bankruptcy (Amendment) Ordinance 1996 (76 of 1996), the making of a “Receiving Order” in pursuance of a bankruptcy petition was amended to the making of a “bankruptcy order” (see section 9 of the Bankruptcy Ordinance (Cap. 6)). Opportunity is taken to update rule 155 to reflect the previous amendment to Cap. 6 as explained above, when making a consequential amendment in that rule to change the reference to CO to C(WUMP)O and CB.

(e) Section 179 of Schedule 9: Title of Cap. 32L

Section 179 of Schedule 9 changes the title of Cap. 32L “Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice” by deleting the word “Ordinance”.

Upon the commencement of CB, the current CO will be retitled as “Companies (Winding Up and Miscellaneous Provisions) Ordinance”. We consider that the title of Cap. 32L will be excessively clumsy if the words “Companies Ordinance” in the title are to be changed to “Companies (Winding Up and Miscellaneous Provisions) Ordinance”. As such, we propose to change the reference to “Companies Ordinance” to simply “Companies”, to also bring the title of Cap. 32L in line with the titles of other subsidiary legislation under CO.

WAY FORWARD

9. Members are invited to note and provide their comments on the consequential amendments as set out in Schedule 9 and Schedule 9A.

10. As there are new enactments passed and CSAs to CB proposed since the two Schedules were prepared that would necessitate changes to the two Schedules, we will inform the Bills Committee of such further changes.

Financial Services and the Treasury Bureau
Companies Registry
17 May 2012

General categorisation of consequential amendments to be introduced pursuant to the enactment of the Companies Bill¹

Category	The revised Schedule 9 (section number)	The new Schedule 9A (section number)
<u>Category I: Changes in reference to the Companies Ordinance (CO) (Cap. 32) or its provision(s)</u>		
(1)	Change of reference to Companies Ordinances (Cap. 32) (CO) to:	
	(a) Companies Ordinance (of 2011) (i.e. CB)	6, 75(1), 75(2), 75(3), 75(4), 83(1), 84(4), 87, 90, 92(5), 94, 96, 98(1), 98(2), 102(2), 103, 105(2), 109(1), 110, 113, 131(1), 138(6), 156, 159, 165, 168, 171(1), 180, 181, 182, 183(1), 184, 185(1), 185(2)
	(b) Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (C(WUMP)O)	1, 5(1), 5(19), 8, 11, 17(1), 18, 19, 23(5), 23(6), 27, 29(1), 31(2), 36, 59(1), 59(2), 60(1), 60(4), 62, 63, 65(1), 65(3), 70, 71, 74, 75(2), 76(1), 76(2), 78(3), 78(4), 80(3), 81(1), 83, 84, 85(2), 86, 88, 89, 91, 93, 104(1), 105, 106, 107, 109(1), 110(1), 110(3), 110(6), 111(1), 111(2), 112(1), 114(1), 115, 123(2), 128(1), 133(1), 134(1), 143(1), 144(1), 146(1), 147, 148(1), 150(1), 150(2), 151(1), 152(1), 152(5), 152(8), 152(11), 152(13), 152(15), 154, 155, 156, 158, 162, 163, 166, 167, 169, 170, 174(3), 174(7), 176, 177, 179(5), 179(8), 182(1), 184, 185, 186(1), 187(1), 188(1), 192, 193(2), 193(3), 194(1), 194(2), 198, 199, 200, 201, 202, 203, 205, 206, 212(1), 214, 218(1), 221, 226, 227, 228, 229, 230, 231, 232(1), 232(2), 232(5), 236, 237, 242, 246(1), 248, 249(1), 250, 251, 253(1), 254(1), 263(2), 267(1), 267(2), 268, 271(1), 272, 274, 277, 278, 281, 290(1), 290(2), 295, 297, 309(1), 309(2), 310(5), 313, 317, 322(1), 322(2), 339, 340, 346(2), 352, 356(1), 357, 380(1), 382(2), 385(2), 385(3), 385(4), 389(5), 389(9), 390, 391, 392, 395, 396(1), 401(1), 402(3), 403(3), 417, 418
		4, 5(1), 5(3), 5(5), 5(6), 5(19), 12, 13, 15, 18, 20, 23(5), 27, 32, 33, 36, 37, 39, 40(1), 40(2), 41, 42, 43, 44, 45, 50, 60(6), 69, 75(2), 75(3), 75(5), 76(1), 78(3), 78(4), 81(1), 84, 92, 102, 103, 110(5), 110(9), 111(2), 114(1), 126, 127, 150(5), 156, 160, 161, 163, 193(2), 196, 197, 199, 206, 207(1), 207(2), 207(3), 207(4),

¹ A consequential amendment may straddle different categories. Typical examples of each category can be found in the highlighted provisions. Excerpt of the marked-up copy of the relevant parts of these highlighted provisions can be found at **Enclosure**.

Category		The revised Schedule 9 (section number)	The new Schedule 9A (section number)
		171(23), 171(24), 171(25), 172(1), 172(2), 172(3), 173, 174(1), 174(2), 176(1), 177	207(5), 207(6), 207(7), 207(8), 208, 209, 214, 216, 217(1), 217(2), 218(1), 218(2), 218(3), 218(4), 219, 234, 236, 237, 243, 244, 245, 246(1), 246(2), 247, 250, 256, 269, 270, 271(1), 271(2), 271(3), 271(4), 281, 289, 293, 298, 299(2), 300, 301(1), 301(2), 302(1), 302(2), 303, 304, 306(2), 309(1), 309(2), 310(1), 310(2), 310(3), 310(4), 311, 316, 321, 322(1), 322(2), 331(1), 331(4), 334(1), 334(4), 338, 341, 346(7), 346(9), 346(11), 347(1), 348(2), 349(1), 349(2), 350(6), 350(7), 350(9), 353, 354, 359, 364(1), 364(2), 367(2), 367(3), 369, 370, 375(1), 375(2), 376(1), 377, 378, 379, 380(3), 380(4), 381, 383, 385(6), 385(9), 385(10), 387(1), 387(3), 403(3), 403(4), 404(1)
	(c) A former CO or CO as in force from time to time or at some specific point of time ²	6, 75(1), 75(2), 75(3), 75(4), 83(2), 84(3), 84(4), 89(1), 89(2), 102(3), 103, 105(2), 105(3), 107, 108, 109(1), 111(2), 113, 130(2), 130(3), 142(1), 142(2), 156, 159, 170, 171(1), 180, 181, 182, 183(1), 184, 185(1), 185(2)	7, 8, 9(1), 17(2), 51(6), 53(6), 54(6), 55(6), 59(2), 60(1), 65(2), 75(1), 75(4), 78(1), 79(1), 79(2), 80(5), 81(1), 81(2), 83, 85(2), 86, 100(1), 100(2), 101, 104(1), 105, 106, 109(2), 110(1), 110(4), 110(8), 111(1), 111(2), 129, 142, 146(1), 147, 148(2), 150(1), 150(2), 152(2), 152(6), 152(9), 152(12), 152(14), 152(16), 157, 159(1), 162, 167, 169, 170, 176, 179(5), 179(6), 179(8), 182(2), 182(3), 184, 185, 186(1), 187(1), 194(1), 194(2), 202, 203, 210, 211(1), 212(1), 212(2), 223, 224, 230, 231, 239, 240(1), 249(2), 251, 261, 265, 274, 277, 278, 279, 280(1), 282, 285, 286(2), 287(1), 287(3), 288, 294(1), 296(1), 297, 307, 310(5), 339, 346(4), 346(13), 350(1), 350(2), 350(3), 350(4), 350(8), 351, 356(1), 357, 358, 366, 380(2), 385(2), 385(3), 385(5), 386, 387(2), 389(1), 389(3), 389(4), 389(5), 389(6), 389(8), 389(9), 397, 400, 402(1), 402(2), 402(3), 403(1), 403(2), 403(3), 403(4), 403(5), 404(2), 404(3), 404(4), 417, 418, 419, 427, 430(2), 431, 432(1), 433(1), 434, 435, 439, 442, 443, 446, 448(1), 448(2), 450, 454, 456(1), 456(2), 458(1), 458(2), 460(1), 460(2), 463(1), 463(2), 465(1), 465(2), 468(1), 471(1)
(2)	Change of reference to a specific provision in the current CO to the re-enacted provision in CB	3(8), 3(10), 3(11), 3(14), 3(16), 75(4), 78(2), 81, 82, 84(3), 85, 92(2), 92(4), 92(6), 107, 108, 130(2), 130(3), 142(1), 142(2), 151(2), 151(3), 151(5), 151(6), 151(7), 151(8), 151(9), 164(5),	3, 5(3), 5(4), 5(6), 5(7), 5(9), 5(10), 5(12), 5(13), 5(14), 5(15), 5(16), 5(17), 5(18), 5(21), 5(22), 5(24), 5(25), 5(26), 7, 9(1), 9(2), 10, 14(1), 14(3), 16, 23(1), 23(3), 23(4), 24, 25, 26(1), 30, 31(1), 35, 46, 48, 51(1), 51(2), 51(4), 51(5), 51(6), 51(7), 52(1), 52(2),

² Including change of reference to a former CO under the current CO to a former CO under CB.

Category	The revised Schedule 9 (section number)	The new Schedule 9A (section number)
	166, 167(1), 177	52(3), 52(6), 53(1), 53(2), 53(4), 53(5), 53(6), 53(7), 54(1), 54(2), 54(4), 54(5), 54(6), 54(7), 55(1), 55(2), 55(4), 55(5), 55(6), 55(7), 66, 67, 68, 72(1), 72(2), 75(5), 83, 85(1), 85(3), 87, 88, 90, 95(1), 95(2), 96, 100(1), 100(2), 101, 112(2), 116(1), 116(2), 117(1), 117(2), 117(4), 119, 120, 128(2), 128(3), 130(2), 134(2), 145, , 148(3), 150(4), 152(3), 153, 159(2), 159(3), 165, 168(1), 168(3), 171(1), 171(4), 178(1), 178(2), 179(1), 179(2), 179(3), 179(4), 179(6), 179(7), 183(2), 183(3), 183(4), 188(2), 188(3), 190(2), 195, 211(2), 211(3), 212(2), 213, 220, 223, 224, 232(3), 232(4), 240(2), 240(3), 241(2), 253(2), 254(3), 257, 258, 261, 266(1), 266(2), 287(2), 292(1), 292(2), 296(2), 296(3), 299(2), 300, 305, 306(2), 308, 312(2), 314, 315, 318(3), 335, 346(8), 346(10), 346(12), 351, 367(1), 367(4), 371(1), 374, 376(2), 382(1), 385(1), 385(7), 385(8), 386, 387(2), 388(2), 389(2), 389(3), 389(4), 389(7), 389(8), 394, 399(1), 399(2), 404(1), 406, 407(1), 407(2), 408(1), 408(2), 409(1), 409(2), 410(1), 410(2), 411(1), 411(2), 412(1), 412(2), 413, 414(1), 414(2), 415(1), 415(2), 416(1), 416(2), 420(1), 420(2), 421(1), 421(2), 422(1), 422(2), 423(1), 423(2), 424(1), 424(2), 425(1), 425(2), 426(1), 426(2), 429, 430(1), 433(3), 437(1), 437(2), 438(1), 438(2), 441(1), 441(2), 445(1), 445(2), 447(1), 447(2), 448(3), 453, 458(3), 463(3), 465(3), 468(3), 471(2)

Category II: Amendments due to changes in concepts, terminologies and definitions in CB

(3)	Amendments due to introduction of new concepts or new procedures in CB	
(a)	Financial statements 137(2), 137(3), 137(4), 137(5), 137(6), 137(7), 137(8), 137(9), 138(3), 138(4), 138(5), 145(1), 145(2), 145(3), 145(4), 183(2)	261, 284(1), 284(2), 284(3), 389(2), 389(7)
(b)	Financial year	23(2)
(c)	New procedure to apply to the Administrative Appeals Board to appeal against the	238

Category		The revised Schedule 9 (section number)	The new Schedule 9A (section number)
	Registrar of Companies' (the Registrar's) direction to change offensive or misleading names of the company		
	(d) Deemed appointment of auditors ³	N/A	26(2), 26(3)
(4)	Amendments due to abolition of concepts or powers		
	(a) Memorandum of association	84(1), 84(5), 84(6), 84(7), 93, 130(2), 130(3), 131(4), 133, 171(3)	14(2), 60(3), 60(5), 64, 86(2), 98, 114(2), 146(2), 156, 164, 167, 168(2), 169, 175(1), 214, 237, 250, 252, 255, 262, 291, 292(4), 292(5), 292(6), 346(3), 428, 436, 440, 444, 449, 451, 455, 457, 459(1), 459(2), 461, 464(1), 464(2), 466, 469, 472
	(b) Nominal value of shares		
	(i) Share premium	N/A	5(11), 5(23), 52(11), 110(2), 110(7), 130(1), 131, 135, 138, 140
	(ii) Nominal value of shares or share capital	9, 137(1), 138(2), 171(2), 171(12), 171(13), 171(14)	52(10), 57(2), 58(2), 77, 80(1), 80(2), 94(1), 94(2), 97, 108(1), 121, 132, 149, 151(2), 152(4), 152(10), 175(2), 286(1), 323, 324, 346(19), 347(2), 348(1), 348(3), 348(6), 348(7)
	(iii) Other terms relating to the par regime e.g. share issued at discount, capital redemption reserve, etc.	N/A	5(11), 5(23), 5(27)

³ Clause 394(1) of CB newly provides for the situations where a person is deemed to be reappointed as auditor where the company does not hold an Annual General Meeting and no person has been appointed as auditor for the next financial year.

Category		The revised Schedule 9 (section number)	The new Schedule 9A (section number)
	(c) Powers of the Financial Secretary to exempt a company from disclosing certain information of its subsidiaries or associated companies in its accounts (sections 128(3) and 129(3) of CO) ⁴	N/A	350(10)
(5)	Amendments due to terminological changes		
	(a) Secretary → company secretary	8, 80, 84(2), 86, 99, 115(1), 115(2), 160, 162(3), 167(2), 171(5), 171(6), 171(9), 171(21)	N/A
	(b) Repurchase(s) → buy-back(s)	144	80(4), 215, 342, 343, 360(1), 360(2), 360(3), 360(4), 360(5), 361(1), 361(2), 362(1), 362(2), 363
	(c) “控股公司”/“母公司” → “控權公司”	N/A (<i>note</i> : In response to LegCo Legal Adviser’s suggestion, we will amend Schedule 9 to change the references in the Chinese text of Cap. 32 as far as appropriate to align with the term in CB.)	23(3), 47, 51(3), 52(4), 52(5), 52(7), 52(8), 52(9), 53(3), 54(3), 55(3), 56, 57, 58(1), 108(2), 110(6), 113, 117(3), 118, 122, 123(1), 123(3), 124, 125, 130(3), 133(2), 133(3), 133(4), 133(5), 134(3), 136, 137, 139(2), 141, 143(1), 143(2), 150(3), 152(7), 171(4), 172, 173(1), 173(2), 174(1), 174(2), 174(4), 174(5), 174(6), 174(8), 191, 204, 232(3), 232(6), 233, 241(1), 241(2), 260, 264, 325, 326, 327, 328, 330, 333, 346(5), 346(14), 346(15), 346(18), 347(3), 347(4), 347(5), 347(6), 355, 365, 367(1), 368, 371(2), 372, 373, 405(2), 452, 462, 467, 470 ⁵

⁴ Sections 128(3) and 129(3) of CO will be repealed and not restated in CB.

⁵ While it is not a general practice to change the Chinese rendition in other ordinances (see footnote 6), in this exercise, we have done so for the change to “控權公司” because the Chinese terms of “控股公司” and “母公司” are distinctive and unlikely to carry a meaning other than “holding company” (控權公司).

Category	The revised Schedule 9 (section number)	The new Schedule 9A (section number)
(d) “分配” → “配發”		N/A ⁶
(e) “分發” → “分派”		N/A ⁶
(f) “登記” → “註冊”		N/A ⁶
(g) “影子董事” → “幕後董事”	76, 77, 79, 88, 95, 124, 175, 176(2), 176(3), 176(4), 176(5), 176(6), 178	N/A ⁷
(h) Companies to which Part XI of CO applies → non-Hong Kong company as defined by section 2(1) of Companies Ordinance (of 2011)	134(1), 134(2)	9(2), 10, 23(1), 35, 51(4), 53(4), 54(4), 55(4), 179(6), 179(8), 182(3), 184, 185, 190(1), 190(3), 235, 251, 254(2), 259, 263(1), 346(6)
(i) Non-Hong Kong company that is registered under Part XI of CO → registered non-Hong Kong company	74, 109(2)	6, 83, 144(2), 212(2), 222, 225(1), 225(2), 273, 274, 275, 276, 277, 278, 312(1), 344(3), 344(5), 346(1), 350(5), 356(2), 388(2), 429
(j) Person residing in Hong Kong authorized to accept on behalf of a non-Hong Kong company registered under Part XI of CO service of process and any notices → authorized representative	N/A	46, 51(5), 53(5), 54(5), 55(5), 128(3), 183(3), 229, 248, 344(4), 344(6), 430(1)

⁶ The changes in (d), (e) and (f) are only applicable to Schedule 9, because as a matter of general practice, when we adopt a new Chinese expression in a Bill, we do not seek to amend, by way of consequential amendments, the existing Chinese expression whenever it appears in all other ordinances or subsidiary legislation.

⁷ According to our search, the term “shadow director” is rendered as “幕後董事” in other ordinances, although in Cap. 32 as “影子董事”.

Category		The revised Schedule 9 (section number)	The new Schedule 9A (section number)
(6)	Amendments to add or modify definitions or expressions to align with CB	3(1), 3(2), 3(3), 3(4), 3(5), 3(6), 3(7), 3(12), 3(13), 3(16), 3(18), 92(1), 92(3), 92(6), 102(1), 102(4), 111(1), 131(2), 131(3), 146(1), 146(2)	23(2), 61, 318(3), 319, 320, 344(6), 388(1), 389(2), 389(7), 393, 396(2), 398
<u>Category III: Amendments arising from the repeal of existing provisions in CO in whole or in part</u>			
(7)	Schedule 9 repeals CO provisions that relate to operation of live companies	3(5), 3(17), 3(19), 4, 5, 10 to 41, 42(1), 43 to 73 (including 66), 74(2), 78(1), 97, 100, 106, 112, 117 to 122, 123(3), 125, 126, 127, 128, 129(2), 132, 135, 136, 139, 140(1), 141, 143, 147, 148, 152, 153, 154(1), 154(2), 155(1), 155(2), 157, 161, 162(1), 162(2), 163, 169, 186, 187	N/A
(8)	Schedule 9A repeals provisions in other ordinances due to repeals of CO provisions in whole or in part that will not be re-enacted in CB	N/A	2, 5(11), 5(20), 5(27), 34, 38, 49, 82, 139(3), 292(3), 292(7), 329, 331(2), 331(3), 332, 334(2), 334(3), 384, 433(2)
<u>Category IV: Amendments due to effect of the provision being spent or redundant</u>			
(9)	Provisions repealed or amended because of effect being spent or redundant	3(9)	5(2), 5(8), 14(4), 283, 284(4), 405(1), 468(2)
<u>Category V: Drafting changes</u>			
(10)	Drafting changes		
	(a)	Using defined terms or consolidating references to simplify the provisions	
	(i)	“Specified provisions”, “relevant	75(6), 84(8), 98(3), 130(4), 155(3)

Category		The revised Schedule 9 (section number)	The new Schedule 9A (section number)
	Ordinance”, etc.		
	(ii) “Authorized representative” and “Companies Register”	N/A	344(6)
	(iii) “Constitution” replacing “articles” and “memorandum”	N/A	336, 337, 346(16)
(b)	Renumbering subsections, changing punctuations or connection	7(2), 7(5), 91(1), 114(2), 114(5), 123(1), 123(2), 130(1), 158(1)	73(1), 139(1), 171(2), 193(1), 299(1), 306(1), 318(1), 344(1), 432(2)
(c)	Changing the long title of CO ⁸ , Part heading and section heading	1, 75(1), 101, 105(1), 129(1), 179	N/A
(d)	Others ⁹		

⁸ CB will become the new CO, while the current CO will be retitled as “Companies (Winding Up and Miscellaneous Provisions) Ordinance”. The long title of the current CO therefore needs to be amended (section 1 of Schedule 9).

⁹ Such other drafting changes include:

- (i) replacing provisions making references to CO by provisions without such references (sections 104(2), 139(4), 139(5), 344(2), 391 and 392 of Schedule 9A);
- (ii) for the Business Registration Ordinance (Cap. 310), replacing the expression “incorporation application” with “incorporation submission” and associated changes as the word “apply” used in section 14A of CO in relation to formation of an incorporated company is no longer used in the CB provisions for company incorporation (sections 179(2), 179(9), 180, 181(1), 181(2), 181(3), 181(4), 182(4), 182(5), 183(1), 186(2), 187(2), 189 and 190(4) of Schedule 9A);
- (iii) replacing the reference to the date of “registration under Part XI” of CO by the date “the certificate of registration issued under section 765” of CB (section 190(2) of Schedule 9A);
- (iv) replacing “that capital” by “share capital” (section 348(4) and 348(5) of Schedule 9A);
- (v) adding transitional provisions (section 345 of Schedule 9A);
- (vi) changes for rationalizing the presentation of the provisions concerned (sections 75(5), 150(2), 151(1), 151(4) and 164(1) of Schedule 9 and section 60(2) of Schedule 9A);
- (vii) adding the words “for registration” in relation to documents required to be delivered to the Registrar to align with the wording used in CB (sections 21, 22, 28 and 29(2) of Schedule 9A); and

Other miscellaneous consequential amendments in Schedule 9	The revised Schedule 9 (Section number)
<p>(a) Sections 38D and 342C of CO which deal with registration of prospectuses issued on behalf of a local company and a company incorporated outside Hong Kong (whether or not a place of business in Hong Kong is established) respectively are retained in C(WUMP)O with their own registration regime¹⁰. Accordingly, Division 4 (“<i>Registration of Document</i>”) of Part 2 (“<i>Registrar of Companies and Companies Register</i>”) of CB will not apply to the registration of prospectuses under sections 38D and 342C of C(WUMP)O. The relevant requirements in section 304(1) of CO regarding fees and section 346 of CO relating to registration are now moved to subsections (7)(a)(v), (7A) and (7B) of sections 38D and 342C of (CWUMP)O.</p> <p>The Legal Adviser enquired whether the proposed new section 38D(7A)(b) (see section 7(6) of Schedule 9) and section 342C(7A)(b) (see section 114(6) of Schedule 9) of Cap. 32, which empower the Registrar of Companies (the Registrar) to specify any other requirements by any means that the Registrar thinks fit, would be an unrestricted authorisation.</p> <p>The proposed new section 38D(7A)(a) and section 342C(7A)(a) empower the Registrar to, for the purpose of registration of prospectuses, by notice in the Gazette, specify requirements for the font size of prospectuses. The proposed new section 38D(7A)(b) and section 342C(7A)(b) empower the Registrar to specify any other requirements, by any means that the Registrar thinks fit, for the purpose of (a) ensuring that documents of the same kind are of a standard form (see the new sections 38D(7A)(b)(i) and 342C(7A)(b)(i)); and (b) making copies or image records of documents and to make and keep records of the information contained therein (see the new sections 38D(7A)(b)(ii) and 342C(7A)(b)(ii)).</p> <p>We consider that the proposed power is not an unrestricted authorisation, as the requirements to be specified by the Registrar in the exercise of that power must be for the two purposes set out in paragraph 9 above. In any event, in determining the means, the Registrar must still exercise the power in accordance with general legal principles, acting reasonably and taking into consideration all the relevant factors.</p>	<p>7(1), 7(3), 7(4), 7(6), 114(1), 114(3), 114(4), 114(6)</p>
<p>(b) Section 42(2) and (3) of Schedule 9 was intended to align section 102(2) of Cap. 32 with clause 626(2) in Part 12 of CB. Clause 626(2) is derived from section 102(2) of CO (Cap. 32) with the specified period changed from 30 years to 20</p>	<p>42(2), 42(3)</p>

(viii) repealing definitions being replaced by new ones (sections 139(3), 171(3) and 318(2) of Schedule 9A).

¹⁰ Sections 38D and 342C of CO prohibit the issue of prospectuses on behalf of a company and a company incorporated outside Hong Kong (whether or not a place of business in Hong Kong is established) respectively unless the company complies with the requirements of CO and unless its registration has been authorized by the Securities and Futures Commission (SFC) and a copy of the prospectus has been registered by the Registrar. The two sections were amended in 1992 to its current form so that SFC would undertake the full responsibility for vetting the prospectuses and the Registrar would undertake the responsibility for purely registering the prospectuses approved by SFC.

Other miscellaneous consequential amendments in Schedule 9	The revised Schedule 9 (Section number)
<p>years. However, in response to Members' concerns at the Bills Committee that clause 626(2) might prejudice the rights of shareholders, we agree to propose CSA to remove clause 626(2) in its entirety (see paragraphs 38 to 40 of the LegCo Paper No. CB(1)1277/11-12(01) "<i>Administration's response to issues raised by members at the meetings on 16 December 2011 and 6 January 2012 in relation to Part 12</i>"). Given the above development, we will amend section 42 of Schedule 9 to repeal section 102 of Cap. 32.</p>	
<p>(c) The original reference in section 343(3) of CO is to "a company incorporated under this Ordinance". The purpose of section 343(3) of CO is simply to provide that "shares" and "debentures" have the same meaning for a company incorporated outside Hong Kong as for a local company. On this basis, consequential amendment is proposed to change the reference to "a company as defined in section 2(1)".</p>	116
<p>(d) As section 348C of CO will not be retained in C(WUMP)O, it is necessary to add a new subsection to section 219 of C(WUMP)O similar to section 348C(3) of CO to provide for the inspection of the books and papers of the company by creditors and contributories as ordered by the court is to be treated as a duty to allow inspection of a reproduction of the same or of the relevant part of it in a legible form.</p>	91(2)
<p>(e) Section 308 of CO is retained in C(WUMP)O with modification in order to apply C(WUMP)O to companies registered but not formed under a former CO or CB and its officers, members, contributories and creditors, in the same manner in all respects as if the company had been formed under CB. The new section 308A (exceptions to section 308) of C(WUMP)O will re-enact section 322(3)(f) and (g) of CO¹¹.</p>	103, 104
<p>(f) Section 342F(1) of CO is an offence provision in respect of the issue of prospectus relating to shares in or debentures of a company incorporated outside Hong Kong (whether the company has or has not established a place of business in Hong Kong). The relevant entry in the Twelfth Schedule to CO is amended to reflect the type of company that the provision covers.</p>	140(2)
<p>(g) Pursuant to the operation of the Bankruptcy (Amendment) Ordinance 1996, the making of a "Receiving Order in bankruptcy" pursuant to a bankruptcy petition has been amended to the making of a bankruptcy order (section 9 of the Bankruptcy Ordinance (Cap. 6)). Amendment is therefore made to rule 155 of Cap. 32H to reflect that previous amendment to Cap. 6.</p>	168

¹¹ We will amend the wording of the new section 308A of (CWUMP)O to ensure that it re-enacts section 322(3)(f) and (g) of Cap. 32 as intended.

Excerpt of the marked-up copy of the relevant parts of the provisions highlighted in Annex

Category I: Change of reference to the Companies Ordinance (Cap. 32) (CO) or its provisions

Item (1): Change of reference to CO to (a) the Companies Ordinance (_____ of 2011) (i.e. the Companies Bill); and/or (b) the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); and/or (c) a former CO or CO as in force from time to time or at some specific point of time

Item 1(a)

Section 102(2) of Schedule 9

Section:	307	Application of Ordinance to companies formed under former Companies Ordinance
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In the application of this Ordinance to existing companies, it shall apply in the same manner-

- (a) in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under ~~this Ordinance~~ the Companies Ordinance (_____ of 2011) as a company limited by shares;
- (b) in the case of a company limited by guarantee, as if the company had been formed and registered under the Companies Ordinance (_____ of 2011) ~~this Ordinance~~ as a company limited by guarantee; and
- (c) in the case of a company other than a limited company, as if the company had been formed and registered under ~~this Ordinance~~ the Companies Ordinance (_____ of 2011) as an unlimited company;

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Companies Ordinance 1865 (1 of 1865), or the Companies Ordinance 1911 (58 of 1911), as the case may be a former Companies Ordinance.

Section 11 of Schedule 9A

Chapter:	21	Title:	DEFAMATION ORDINANCE
Schedule:		Heading:	SCHEDULE

PART II

STATEMENTS PRIVILEGED SUBJECT TO EXPLANATION OR CONTRADICTION

11. A fair and accurate report of the proceedings at a general meeting of any company or association constituted, registered or certified by or under any Ordinance or Act of Parliament or incorporated by Royal Charter, not being a private company within the meaning of the ~~Companies Ordinance, Chapter 32~~ Companies Ordinance (_____ of 2011).

Category I: Change of reference to the Companies Ordinance (Cap. 32) (CO) or its provisions

Item (1): Change of reference to CO to (a) the Companies Ordinance (____ of 2011) (i.e. the Companies Bill); and/or (b) the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); and/or (c) a former CO or CO as in force from time to time or at some specific point of time

Item 1(b)

Section 301(1) of Schedule 9A

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE
Section:	48	Heading:	Net sum payable on completion of default proceedings

(2) Where a bankruptcy or winding-up order has been made, or a resolution for voluntary winding up has been passed, any net sum shall, notwithstanding any provision of section 34 or 35 of the Bankruptcy Ordinance (Cap 6) or section 264 ~~of the Companies Ordinance of the Companies (Winding Up and Miscellaneous Provisions) Ordinance~~ (Cap 32), be-

(a) provable in the bankruptcy or winding up or (as the case may be) payable to the relevant office-holder; and

(b) taken into account, where appropriate, under section 35 of the Bankruptcy Ordinance (Cap 6) or that section as applied in the case of a winding-up order under the ~~Companies Ordinance~~ Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32).

Category I: Change of reference to the Companies Ordinance (Cap. 32) (CO) or its provisions

Item (1): Change of reference to CO to (a) the Companies Ordinance (_____ of 2011) (i.e. the Companies Bill); and/or (b) the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); and/or (c) a former CO or CO as in force from time to time or at some specific point of time

Item 1(a) and (b)

Section 98(1) of Schedule 9

Section:	296	General rules and fees
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Rules and Fees

(1) The Chief Justice may, with the approval of the Legislative Council, make general rules for carrying into effect the objects of ~~this Ordinance~~ **this Ordinance and the Companies Ordinance (_____ of 2011)** so far as relates to the winding up of companies.

(2) All rules and orders made under this section shall be judicially noticed, and shall have effect as if enacted by this Ordinance.

(2A) An answer given by a person to a question put to him in exercise of powers conferred by rules made under this section may be used in evidence against him. (Added 72 of 1994 s. 10)

(3) There shall be paid in respect of ~~proceedings under this Ordinance~~ **the relevant proceedings**, where no fee is otherwise fixed, such fees as the Chief Justice may, with the approval of the Legislative Council by order, direct, and he may direct by whom and in what manner the same are to be collected and accounted for.

(3A) ~~In subsection (3)—~~

“relevant proceedings” (有關法律程序) means—

(a) proceedings under this Ordinance (other than winding up proceedings); or

(b) proceedings in the winding up of companies, including those where proceedings under this Ordinance or the Companies Ordinance (_____ of 2011) are taken with respect to a company which is being wound up.

Section 18 of Schedule 9A

Chapter:	33	Title:	CO-OPERATIVE SOCIETIES ORDINANCE
Section:	57	Heading:	Certain legislation not to apply to registered societies

The provisions of the ~~Companies Ordinance (Cap 32)~~ **Companies Ordinance (_____ of 2011) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)**, and of any law relating to trade unions, shall not apply to societies registered under this Ordinance.

Section 218(1) of Schedule 9A

Chapter:	405A	Title:	DRUG TRAFFICKING (RECOVERY OF PROCEEDS) (DESIGNATED COUNTRIES AND TERRITORIES) ORDER
Schedule:	2	Heading:	DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE AS MODIFIED

17. Winding up of company holding realisable property

(3) Nothing in the Companies Ordinance (_____ of 2011) **or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (~~Cap 32~~)** shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on the Court of First Instance by sections 10 to 13.

(5) In this section-

“company” (公司) means any company which may be wound up under the **Companies (Winding Up and Miscellaneous Provisions) Ordinance** ~~Companies Ordinance~~ (Cap 32); and

“the relevant time” (有關時間) means-

(a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;

- (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the Court of First Instance, such a resolution had been passed by the company, the time of the passing of the resolution; and
- (c) in any other case where such an order has been made, the time of the making of the order.

Category I: Change of reference to the Companies Ordinance (Cap. 32) (CO) or its provisions

Item 1(1): Change of reference to CO to (a) the Companies Ordinance (_____ of 2011) (i.e. the Companies Bill); and/or (b) the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); and/or (c) a former CO or CO as in force from time to time or at some specific point of time

Item 1(c)

Section 84(4) of Schedule 9

Section:	177	Circumstances in which company may be wound up by court
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Cases in which Company may be wound up by Court

- (1) A company may be wound up by the court if-
 - (a) the company has by special resolution resolved that the company be wound up by the court;
 - (b) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
 - (c) the company has no members; (Replaced 28 of 2003 s. 76)
 - (d) the company is unable to pay its debts;
 - (e) the event, if any, occurs on the occurrence of which the ~~memorandum or~~ articles provide that the company is to be dissolved;
 - (f) the court is of opinion that it is just and equitable that the company should be wound up.
- (2) On the application of the Registrar for the winding up of a company, the company may be wound up by the court if it appears to the court-
 - (a) that the company is being carried on for an unlawful purpose or any purpose lawful in itself but one which cannot be carried out by a company; or
 - (b) that throughout a period of not less than 6 months ending on the date of the winding-up petition the company has not had-
 - (i) in the case of a private company, at least one director; or
 - (ii) in the case of a company not being a private company, at least 2 directors; or (Replaced 28 of 2003 s. 76)
 - (c) that throughout the period referred to in paragraph (b) the company has not had a ~~secretary~~ company secretary; or
 - (d) that the ~~company has failed to pay the annual registration fee payable under the Eighth Schedule~~ company—
 - (i) had failed to pay the annual registration fee payable under the Eighth Schedule of the pre-amended Ordinance; or
 - (ii) has failed to pay the annual registration fee payable under a regulation made under section 25 of the Companies Ordinance (_____ of 2011)”; or
 - (e) without prejudice to paragraphs (a) to (d), that the company has been persistently in breach of its ~~obligations under this Ordinance~~ specified obligations.
- (3) A company registered before the commencement* of the Companies (Amendment) Ordinance 1984 (6 of 1984) may by special resolution alter the ~~conditions contained in its memorandum by adding a condition to the effect that the company shall be dissolved on the occurrence of a specified event, with or without a provision providing for or prohibiting the alteration of that condition~~ provisions contained in its articles by adding a provision to the effect that the company is to be dissolved on the occurrence of a specified event, with or without another provision providing for or prohibiting the alteration of the added provision:

Provided that, where a private company passes such a resolution, an application may be made to the court for the alteration to be cancelled, and if such an application is made, the alteration shall not have effect except in so far as it is confirmed by the court. (Amended 28 of 2003 s. 76)

- (4) Where a private company passes a resolution under this section altering the ~~conditions contained in its memorandum, subsections (2)(a), (3), (4), (7) and (8) of section 8 shall apply in relation to the alteration and to any application made under this section in the same manner as they apply in relation to alterations and to applications made under section 8.~~ provisions contained in its articles, sections 85(5)(a), (5)(b) and (8) and 86(1)(a), (5) and (6) of the Companies Ordinance (_____ of 2011) apply in relation to the alteration and to any application made under this section in the same manner as they apply in relation to alterations made under that section 85 and to applications made under that section 86. (Replaced 28 of 2003 s. 76)

(5) Where a company (not being a private company) passes a resolution under this section altering the ~~conditions contained in its memorandum, subsections (7A) and (8) of section 8 shall apply in relation to the alteration made under this section in the same manner as they apply in relation to alterations made under section 8.~~ provisions contained in its articles, section 85(5)(c), (6) and (8) of the Companies Ordinance (of 2011) applies in relation to the alteration made under this section in the same manner as it applies in relation to alterations made under that section 85. (Added 28 of 2003 s. 76)

(6) In relation to a resolution for altering the conditions of a company's memorandum that is passed by a company (whether a private company or not) under this section before the commencement+ of section 76 of the Companies (Amendment) Ordinance 2003 (28 of 2003), the provisions of this section in force immediately before that commencement shall continue to have effect as if section 76 of that Ordinance had not been enacted. (Added 28 of 2003 s. 76)

~~(7) In this section—~~
“specified obligation” (指明義務) means an obligation under the pre-amended Ordinance, this Ordinance or the Companies Ordinance (of 2011).

Section 6 of Schedule 9

Section:	38	Specific requirements as to particulars in prospectus
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(1) Subject to the provisions of section 38A, every prospectus issued by or on behalf of a company must either be in the English language and contain a Chinese translation or be in the Chinese language and contain an English translation, and must state the matters specified in Part I of the Third Schedule and set out the reports specified in Part II of that Schedule, and the said Parts I and II shall have effect subject to the provisions contained in Part III of the said Schedule. (Replaced 78 of 1972 s. 5. Amended 83 of 1995 s. 5)

(1A) Every prospectus to which subsection (1) applies must contain a statement specified in Part 1 of the Eighteenth Schedule. (Added 78 of 1972 s. 5. Amended 83 of 1995 s. 5; 23 of 2004 s. 56; 30 of 2004 s. 2)

(1B) If any prospectus is issued which does not comply with or contravenes the requirements of subsections (1) and (1A), the company and every person who is knowingly a party to the issue thereof shall be liable to a fine. (Added 78 of 1972 s. 5. Amended 7 of 1990 s. 2)

(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(3) Subject to the provisions of section 38A, it shall not be lawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section: (Amended 78 of 1972 s. 5)

Provided that this subsection shall not apply if it is shown that the form of application was issued- (Amended 30 of 2004 s. 2)

- (a) in connexion with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures;
- (b) in relation to shares or debentures which were not offered to the public; or
- (c) in connexion with an offer specified in Part 1 of the Seventeenth Schedule as read with the other Parts of that Schedule. (Added 30 of 2004 s. 2)

If any person acts in contravention of the provisions of this subsection, he shall be liable to a fine. (Amended 6 of 1984 s. 259; 7 of 1990 s. 2; 30 of 2004 s. 2)

(3A) This section shall not prevent the publication of the English version only of a prospectus in an English language newspaper or the Chinese version only in a Chinese language newspaper, nor the publication in such newspaper together with the prospectus of a form of application relating thereto. (Added 6 of 1984 s. 22)

(4) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if-

- (a) as regards any matter not disclosed, he proves that he was not cognisant thereof; or
- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
- (c) the non-compliance or contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial or was otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 19 of Part I of the Third Schedule, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed. (Amended 78 of 1972 s. 5)

(5) This section shall not apply-

- (a) to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; or
- (b) to the issue of a prospectus or form of application relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being listed on a recognized stock market; (Amended 6 of 1984 s. 259; 10 of 1987 s. 11; 5 of 2002 s. 407)

but, subject as aforesaid, this section shall apply to a prospectus or a form of application whether issued on the formation of a company or subsequently. (Replaced 78 of 1972 s. 5)

(6) Nothing in this section shall limit or diminish any liability which any person may incur ~~under the general law or this Ordinance apart from this section; under—~~

- (a) the general law;
- (b) the provisions of the pre-amended Ordinance having a continuing effect under Schedule 10 to the Companies Ordinance (_____ of 2011) or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1);
- (c) this Ordinance apart from this section; or
- (d) the Companies Ordinance (_____ of 2011).

(7) It is hereby declared that the provisions of the Third Schedule applied by this section are also applied to a guarantor corporation in relation to an offer or invitation to the public to subscribe for or purchase debentures of a company. (Replaced 30 of 2004 s. 2)

(8) In subsection (7), "guarantor corporation" (提供擔保的法團), in relation to an offer or invitation to the public to subscribe for or purchase debentures of a company, means a corporation that guarantees or agrees to guarantee-

- (a) the repayment of any money received or to be received by the company in response to the offer or invitation;
- (b) any other obligations of the company under or in respect of the debentures; or
- (c) in favour of the company any amount-
 - (i) to which the company is entitled; and
 - (ii) receipt of which, as stated in the prospectus concerned, is intended to enable the company to wholly or partly discharge any of its obligations under or in respect of the debentures. (Added 30 of 2004 s. 2)

Section 83 of Schedule 9A

Chapter:	104	Title:	FERRY SERVICES ORDINANCE
Section:	6	Heading:	Grant of franchises

(1) Subject to this Ordinance, the Chief Executive in Council may grant ~~to any company within the meaning of the Companies Ordinance (Cap 32), or any company to which Part IX or Part XI of the Companies Ordinance (Cap 32) applies, a franchise that confers the right to operate a ferry service between such points as are specified by him to—~~

- (a) any company within the meaning of the Companies Ordinance (_____ of 2011);
- (b) a registered non-Hong Kong company as defined by section 2(1) of that Ordinance;
- (c) a company registered under Part 17 of that Ordinance; or
- (d) a company registered under Part IX of the Companies Ordinance (Cap. 32) as in force from time to time before the commencement date of section 1 of Schedule 9 to the Companies Ordinance (_____ of 2011).

a franchise that confers the right to operate a ferry service between such points as are specified by the Chief Executive in Council.

Section 297 of Schedule 9A

Chapter:	569	Title:	CHIEF EXECUTIVE ELECTION ORDINANCE
Schedule:		Heading:	SCHEDULE

PART 2

MEMBERSHIP OF ELECTION COMMITTEE

2. How Election Committee is to be constituted

TABLE 5

COMPOSITION OF SUBSECTORS REFERRED TO IN SECTION 2(5)(c)

(Subsectors without an equivalent functional constituency)

Item	Subsector	Constituents
8.	Social welfare	(4) Non-profit making companies registered under the Companies Ordinance (Cap 32) (<u>_____ of 2011</u>), or a former Companies Ordinance as defined by section 2(1) of the Companies Ordinance (<u>_____ of 2011</u>), that have been operating with paid employees to provide service on a regular basis in accordance with the following aims for a period of 12 months immediately before making the application for registration as a voter—

Section 310(5) of Schedule 9A

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE
Section:	103	Heading:	Offence to issue advertisements, invitations or documents relating to investments in certain cases

(2) Subsection (1) does not apply to the issue, or the possession for the purposes of issue, of any advertisement, invitation or document-

(ga) to the extent that the advertisement, invitation or document relates to an offer falling within paragraph (b)(ii) of the definition of “prospectus” in section 2(1) of the ~~Companies Ordinance~~ Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32);

(3) Subsection (1) does not apply to the issue, or the possession for the purposes of issue-

(a) of-

(i) a prospectus which complies with or is exempt from compliance with Part II of the ~~Companies Ordinance~~ Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32);

(ii) in the case of a corporation incorporated outside Hong Kong, a prospectus which complies with or is exempt from compliance with Part XII of that Ordinance;

(iii) a publication falling within section 38B(2) of ~~the Companies Ordinance (Cap 32)~~ that Ordinance;

(b) of a document relating to the securities of a body corporate incorporated in Hong Kong that is not a registered company, being a document which-

(i) would, if the body corporate were a registered company, be a prospectus to which section 38 of the ~~Companies Ordinance~~ Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) applies, or would apply if not excluded by section 38(5)(b) or 38A of that Ordinance; and

(ii) contains all the matters which, by virtue of Part XII of that Ordinance, it would be required to contain if the body corporate were a corporation incorporated outside Hong Kong and the document were a prospectus issued by that corporation;

(c) of a form of application for the shares or debentures of a corporation, where it is issued, or the possession is for the purposes of issue, together with-

(i) a prospectus with respect to those shares or debentures which complies with or is exempt from compliance with Part II of the ~~Companies Ordinance~~ Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) or, in the case of a corporation incorporated outside Hong Kong, complies with or is exempt from compliance with Part XII of that Ordinance; or

(ii) in the case of a body corporate incorporated in Hong Kong that is not a registered company, a document containing all the matters which, by virtue of Part XII of that Ordinance, it would be required to contain if the body corporate were a corporation incorporated outside Hong Kong and the document were a prospectus issued by that

corporation with respect to those shares or debentures;

(12) In this section-

“registered company” (註冊公司) means a company registered under the Companies Ordinance (Cap 32) (of 2011) or the relevant Ordinance;

Section 346(17) of Schedule 9A

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE
Schedule:	1	Heading:	INTERPRETATION AND GENERAL PROVISIONS

PART 1

INTERPRETATION

1. Interpretation of this Ordinance

In this Ordinance, unless otherwise defined or excluded or the context otherwise requires-

relevant Ordinance (《有關條例》) means the Companies Ordinance (Cap. 32) as in force from time to time before the commencement date of section 1 of Schedule 9 to the Companies Ordinance (of 2011);

Category I: Change of reference to the Companies Ordinance (Cap. 32) (CO) or its provisions

Item (2): Change of reference to a specific provision in the current CO to the re-enacted provision in CB

Section 166 of Schedule 9

Chapter:	32H	COMPANIES (WINDING-UP) RULES
Rule:	117	Costs of calling meeting

The costs of summoning a meeting of creditors or contributories at the instance of any person other than the Official Receiver or liquidator shall be paid by the person at whose instance it is summoned who shall before the meeting is summoned deposit with the Official Receiver or liquidator (as the case may be) such sum as may be required by the Official Receiver or liquidator as security for the payment of such costs. The costs of summoning such meeting of creditors or contributories, which shall be deemed to include all disbursements for stationery, printing and postage within Hong Kong shall be \$1560. Any charge for hiring a room outside the Official Receiver's Office by reason of the large number of creditors or contributories shall be additional to the said sum. (L.N. 170 of 1997)

The said costs, including the costs of summoning a meeting under [section 166 and of complying with the requirements of section 166A](#) ~~section 661 of the Companies Ordinance (_____ of 2011) and of complying with the requirements of section 662 of the Companies Ordinance (_____ of 2011)~~ in respect of such meeting, shall be repaid out of the assets of the company if the court shall by order or if the creditors or contributories (as the case may be) shall by resolution so direct. This rule shall not apply to meetings under sections 241 and 245 of the Ordinance. (L.N. 201 of 1984)

Section 30 of Schedule 9A

Chapter:	41	Title:	INSURANCE COMPANIES ORDINANCE
Section:	24	Heading:	Sanction of Court of First Instance for transfer of long term business

(7) No such transfer as is mentioned in subsection (1) shall be carried out unless the scheme relating to the transfer has been sanctioned by the Court of First Instance in accordance with this section; and no order shall be made under ~~section 166 or 167 of the Companies Ordinance (Cap 32)~~ [section 664 or 665 of the Companies Ordinance \(_____ of 2011\)](#) in respect of so much of any compromise or arrangement as involves any such transfer.

Category II: Amendments due to changes in concepts, terminologies and definitions in CB

Item (3): Amendments due to introduction of new concepts or new procedures in CB

(a) Financial statements

Section 145(1) to (4) of Schedule 9

Schedule:	21	PROVISIONS IN ACCORDANCE WITH WHICH A PROSPECTUS MAY CONSIST OF MORE THAN ONE DOCUMENT
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Expanded Cross Reference:

37, 38, 38A, 38B, 38BA, 38C, 38D, 39, 39A, 39B, 39C, 40, 40A, 40B, 41, 41A, 42, 43, 44, 44A, 44B

TWENTY-FIRST SCHEDULE

[sections 38A, 38AA, 39B,
342A, 342AA, 342CB &
360 & 12th & 18th Schs.]
(Amended 8 of 2011 s. 25)

PART 1

PROSPECTUS TO WHICH THE PROVISIONS OF
PART II OF THIS ORDINANCE APPLY

8. Cessation of offer to which programme prospectus, etc. relates

The shares or debentures the subject of a programme prospectus and its addenda, if any, and the issue prospectus concerned and its addenda, if any, shall cease to be offered or sold to the public on and after the date of—

- (a) the publication of the next annual report and ~~accounts~~ financial statements of the company to which the programme prospectus relates after the publication of the programme prospectus;
- (b) the first anniversary of the date of publication of the programme prospectus; or
- (c) if there is a guarantor corporation, within the meaning of section 38(8) of this Ordinance, in relation to the offer concerned, the publication of the next annual report and ~~accounts~~ financial statements of the guarantor corporation after the publication of the programme prospectus,

whichever is the earlier.

PART 2

PROSPECTUS TO WHICH THE PROVISIONS OF
PART XII OF THIS ORDINANCE APPLY

8. Cessation of offer to which programme prospectus, etc. relates

The shares or debentures the subject of a programme prospectus and its addenda, if any, and the issue prospectus concerned and its addenda, if any, shall cease to be offered or sold to the public on and after the date of—

- (a) the publication of the next annual report and ~~accounts~~ financial statements of the company to which the programme prospectus relates after the publication of the programme prospectus;
- (b) the first anniversary of the date of publication of the programme prospectus; or
- (c) if there is a guarantor corporation, within the meaning of section 342(8) of this Ordinance, in relation to the offer concerned, the publication of the next annual report and ~~accounts~~ financial statements of the guarantor corporation after the publication of the programme prospectus,

whichever is the earlier.

Section 261 of Schedule 9A

Chapter:	485A	Title:	MANDATORY PROVIDENT FUND SCHEMES (GENERAL) REGULATION
Section:	109	Heading:	Approved trustee to lodge trustee's return with Authority

(7) If the trustee is or includes a company, the trustee must attach to the return the following documents-

- (a) if the trustee is not a non-Hong Kong company, ~~a copy of the balance sheet and profit and loss account of the company relating to the immediately preceding financial year of the company, together with a copy of the auditor's report on those documents and a copy of the directors' report for that year, all of which must be prepared in accordance with Part IV of the Companies Ordinance (Cap 32);~~ a copy of the financial statements, or the balance sheet and profit and loss account, of the company relating to the immediately preceding financial year of the company, together with a copy of the auditor's report on the documents and a copy of the directors' report for that year, all of which must be prepared in accordance with Part 9 of the Companies Ordinance (_____ of 2011) or Part IV of the Companies Ordinance (Cap. 32) as in force from time to time before the commencement date of section 1 of Schedule 9 to the Companies Ordinance (_____ of 2011), as the case may be;

Section 284(1) to (3) of Schedule 9A

Chapter:	556	Title:	MASS TRANSIT RAILWAY ORDINANCE
Section:	43	Heading:	<u>Accounts</u> Financial statements

(1) For the purpose of any ~~accounts prepared by the Corporation for the purposes of the Companies Ordinance (Cap 32)~~ financial statements prepared by the Corporation for the purposes of the Companies Ordinance (_____ of 2011)-

- (a) the Corporation shall be treated, on and from the appointed day, as if it were the continuation of MTRC;
- (b) the value of any asset and the amount of any liability of MTRC vested in the Corporation by virtue of this Part is taken to be the value assigned to that asset or the amount assigned to that liability in the audited accounts of MTRC for the last complete financial year of MTRC; and
- (c) the amount to be included in respect of any item is determined as if anything done by MTRC (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) had been done by the Corporation.

(4) For the purposes of the ~~accounts of the Corporation prepared for the purposes of the Companies Ordinance (Cap 32)~~ financial statements of the Corporation prepared for the purposes of the Companies Ordinance (_____ of 2011), the vesting in the Corporation effected by virtue of this Part is taken-

- (a) to have been effected immediately after the end of the last complete financial year of MTRC; and
- (b) to have been a vesting of all the property, rights and liabilities to which MTRC was entitled or subject immediately before the end of the last complete financial year of MTRC.

Category II: Amendments due to changes in concepts, terminologies and definitions in CB

Item (3): Amendments due to introduction of new concepts or new procedures in CB

(b) Financial year

Section 23(2) of Schedule 9A

Chapter:	41	Title:	INSURANCE COMPANIES ORDINANCE
Section:	2	Heading:	Interpretation

(1) In this Ordinance, unless the context otherwise requires-

“financial year” (財政年度), in relation to a body corporate, ~~has the meaning assigned to it by section 2(1) of the Companies Ordinance (Cap 32)~~ means the period in respect of which either of the following profit and loss accounts of the body corporate is made up, whether that period is a year or not —

(a) ~~if the body corporate is not required to hold a general meeting to lay the profit and loss account, the profit and loss account provided to every member, as required by the law under which the body corporate is incorporated or (in the absence of such requirement by such law) by its constitution;~~

(b) ~~in any other case, the profit and loss account laid before the body corporate in a general meeting, as required by the law under which the body corporate is incorporated or (in the absence of such requirement by such law) by its constitution;~~

Category II: Amendments due to changes in concepts, terminologies and definitions in CB

Item (3): Amendments due to introduction of new concepts or new procedures in CB

(c) ***New procedure to apply to the Administrative Appeal Board to appeal against the Registrar of Companies' direction to change offensive or misleading names of the company***

Section 238 of Schedule 9A

Chapter:	442	Title:	ADMINISTRATIVE APPEALS BOARD ORDINANCE
Schedule:		Heading:	SCHEDULE

Item	Ordinance	Decision
70.	Residential Care Homes (Persons with Disabilities) Ordinance (Cap 613)	A decision of the Director of Social Welfare under section 7, 8, 9(1), 11 or 12.
71.	Companies Ordinance (_____ of 2011)	(a) A direction of the Registrar of Companies under section 104(1) to change a company name. (b) A decision of the Registrar of Companies to serve a notice under section 768(1)(b).

Category II: Amendments due to changes in concepts, terminologies and definitions in CB

Item (3): Amendments due to introduction of new concepts or new procedures in CB

(d) Deemed appointment of auditors

Section 26(2) of Schedule 9A

Chapter:	41	Title:	INSURANCE COMPANIES ORDINANCE
Section:	15A	Heading:	Notification in respect of auditors appointed under section 15

- (1) An insurer shall immediately give written notice to the Insurance Authority if-
- (a) the insurer decides to remove or replace an auditor appointed under section 15;
 - (b) a person appointed under section 15 to be the auditor of the insurer ceases to be such auditor otherwise than in consequence of a decision referred to in paragraph (a); or
 - (c) in relation to an insurer incorporated in Hong Kong-
 - (i) the insurer either-
 - (A) proposes to give special notice to its shareholders of a resolution removing an auditor appointed under ~~section 131 of the Companies Ordinance (Cap 32) section 386, 387, 388 or 389 of the Companies Ordinance (~~ of 2011) or deemed to be reappointed under section 394 of that Ordinance before the expiration of his term of office; or
 - (B) gives notice to its shareholders of a resolution replacing an auditor so appointed appointed or deemed to be reappointed at the expiration of his term of office; and
 - (ii) the auditor ~~so appointed so appointed or deemed to be reappointed~~ has also been appointed under section 15 to be the auditor of the insurer.

Category II: Amendments due to changes in concepts, terminologies and definitions in CB

Item (4): Amendments due to abolition of concepts or powers

(a) **Memorandum of association**

Section 84(1) of Schedule 9

Section:	177	Circumstances in which company may be wound up by court
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Cases in which Company may be wound up by Court

- (1) A company may be wound up by the court if-
 - (a) the company has by special resolution resolved that the company be wound up by the court;
 - (b) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
 - (c) the company has no members; (Replaced 28 of 2003 s. 76)
 - (d) the company is unable to pay its debts;
 - (e) the event, if any, occurs on the occurrence of which the ~~memorandum or~~ articles provide that the company is to be dissolved;
 - (f) the court is of opinion that it is just and equitable that the company should be wound up.
- (2) On the application of the Registrar for the winding up of a company, the company may be wound up by the court if it appears to the court-
 - (a) that the company is being carried on for an unlawful purpose or any purpose lawful in itself but one which cannot be carried out by a company; or
 - (b) that throughout a period of not less than 6 months ending on the date of the winding-up petition the company has not had-
 - (i) in the case of a private company, at least one director; or
 - (ii) in the case of a company not being a private company, at least 2 directors; or (Replaced 28 of 2003 s. 76)
 - (c) that throughout the period referred to in paragraph (b) the company has not had a ~~secretary~~ company secretary; or
 - (d) ~~that the company has failed to pay the annual registration fee payable under the Eighth Schedule company—~~
 - (i) had failed to pay the annual registration fee payable under the Eighth Schedule of the pre-amended Ordinance; or
 - (ii) has failed to pay the annual registration fee payable under a regulation made under section 25 of the Companies Ordinance (_____ of 2011)”; or
 - (e) without prejudice to paragraphs (a) to (d), that the company has been persistently in breach of its ~~obligations under this Ordinance~~ specified obligations.

Section 60(3) of Schedule 9A

Chapter:	50	Title:	PROFESSIONAL ACCOUNTANTS ORDINANCE
Section:	28D	Heading:	Qualification for registration of company as corporate practice

(1) Subject to subsection (11)(b), ~~a company limited by shares and formed and registered under the Companies Ordinance (Cap 32), and only such a company, shall be qualified for registration as a corporate practice and where such a company is so registered it shall be qualified to remain registered as a corporate practice if and only for so long as the requirements specified in subsection (2) are complied with in relation to it; only a company limited by shares, and formed and registered under either of the following Ordinances, is qualified for registration as a corporate practice—~~

- (a) the Companies Ordinance (_____ of 2011); or
- (b) the Companies Ordinance (Cap. 32) as in force from time to time before the commencement date of section 1 of Schedule 9 to the Companies Ordinance (_____ of 2011).

(1A) If a company mentioned in subsection (1) is so registered, it is qualified to remain registered as a corporate practice if and only for as long as the requirements specified in subsection (2) are complied with in relation to it.

(2) (a) The requirements referred to in subsection (1) are that the company concerned is and continues to be a qualified company and that the requirements of paragraph (b) or, where appropriate, paragraph (c) are complied with in relation to it.

(b) Where a qualified company has for the time being 3 or more members-

(iv) the company's ~~memorandum and~~ articles of association shall comply with the requirements of rules (if any) made under section 51.

Section 146(2) of Schedule 9A

Chapter:	159X	Title:	SOLICITORS (GROUP PRACTICE) RULES
Section:	7	Heading:	Group practice management company

(1) The members of every group practice shall, for so long as any member conducts his or its business as a member of the group practice, maintain an incorporated company with limited liability registered under the [Companies Ordinance \(_____ of 2011\)](#), or under the [Companies Ordinance \(Cap. 32\) as in force from time to time before the commencement date of section 1 of Schedule 9 to the Companies Ordinance \(_____ of 2011\)](#) ~~Companies Ordinance (Cap. 32)~~ (“management company”).

(2) The objects of a group practice's management company as stated in the company's ~~articles of association memorandum~~ shall be limited to matters relating to the management of the affairs of the group practice or the members of the group practice as such.

Section 214 of Schedule 9A

Chapter:	393	Title:	TATE'S CAIRN TUNNEL ORDINANCE
Section:	8	Heading:	Directors and paid up share capital of the Company

(2) The Governor shall have power, notwithstanding any provision of the Companies Ordinance (~~Cap 32) or any other law, the memorandum or articles (_____ of 2011), Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) or any other law,~~ [the memorandum of association \(if any\) or articles of association](#) of the Company or other instrument, to appoint 2 directors to the board of the Company.

Section 459(2) of Schedule 9A

Chapter:	1172	Title:	DAO HENG BANK LIMITED (MERGER) ORDINANCE
Section:	18	Heading:	Saving for companies

Nothing in this Ordinance shall prejudice the powers of ~~Dao Heng Bank to alter its Dao Heng Bank to alter its memorandum and~~ articles of association or to dispose of, or deal with, its property, security interests or liabilities or to carry on or discontinue any part of its business; and nothing in this Ordinance shall prejudice the powers of any member of the [DBS Group to alter its articles of association, and its memorandum of association \(if applicable\)](#) ~~DBS Group to alter its memorandum and articles of association~~ or to dispose of, or deal with, its property, security interests or liabilities before the appointed day.

Category II: Amendments due to changes in concepts, terminologies and definitions in CB

Item (4): Amendments due to abolition of concepts or powers

(b) Nominal value of shares

(i) Share premium

Section 5(23) of Schedule 9A

Chapter: 4A Title: THE RULES OF THE HIGH COURT
Order: 102 Heading: ~~THE COMPANIES ORDINANCE~~ THE COMPANIES
ORDINANCE AND THE COMPANIES (WINDING UP AND
MISCELLANEOUS PROVISIONS) ORDINANCE

7. Case management summons (O. 102, r. 7)

(1) After presentation of a petition by which any such application as is mentioned in rule 5 is made, the petitioner, except where his application is one of those mentioned in paragraph (2), must take out a case management summons under this rule.

(2) The applications referred to in paragraph (1) are-

(a) ~~an application under section 50 of the Ordinance to sanction the issue by a company of shares at a discount;~~

(b) ~~an application under section 166 of the Ordinance to sanction a compromise or arrangement unless there is included in the petition for such sanction an application for an order under section 167 of the Ordinance section 664 of the Companies Ordinance (_____ of 2011) to sanction an arrangement or compromise (except where the petition for such sanction includes an application for an order under section 665 of the Companies Ordinance (_____ of 2011)), and~~

(c) ~~an application under section 291(7) of the Ordinance for an order restoring the name of a company to the register section 753 of the Companies Ordinance (_____ of 2011) for the restoration of a company to the Companies Register.~~

(3) On the hearing of the summons the Court may by order give such directions as to the proceedings to be taken before the hearing of the petition as it thinks fit including, in particular, directions for the publication of notices and the making of any inquiry.

(4) Where the application made by the petition is to confirm a reduction of the share capital, ~~the share premium account or the capital redemption reserve fund,~~ of a company, then, without prejudice to the generality of paragraph (3), the Court may give directions-

(a) for an inquiry to be made as to the debts of, and claims against, the company or as to any class or classes of such debts or claims;

(b) as to the proceedings to be taken for settling the list of creditors entitled to object to the reduction and fixing the date by reference to which the list is to be made;

and the power of the Court under ~~section 59(3) of the Ordinance to direct that section 59(2) thereof section 221(3) of the Companies Ordinance (_____ of 2011) to direct that section 222 of that Ordinance~~ shall not apply as regards any class or classes of creditors may be exercised on any hearing of the summons.

(5) Rules 8 to 13 shall have effect subject to any directions given by the Court under this rule.

Section 110(7) of Schedule 9A

Chapter: 155 Title: BANKING ORDINANCE
Section: 2 Heading: **Interpretation**

(1) In this Ordinance, unless the context otherwise requires-

“share premium account” (股份溢價帳)-

(a) ~~in relation to a company incorporated in Hong Kong, means a share premium account~~

referred to in section 48B(1) of the Companies Ordinance (Cap 32) maintained in respect of the company;

~~(b) in relation to a company incorporated outside Hong Kong, means an account having the same characteristics as a share premium account referred to in section 48B(1) of the Companies Ordinance (Cap 32) irrespective of its name;~~ means the account to which the aggregate amount or value of the premiums on shares issued (whether for cash or otherwise) is transferred;

Section 138 of Schedule 9A

Chapter:	155M	Title:	BANKING (DISCLOSURE) RULES
Section:	24	Heading:	Capital structure and adequacy

(2) Without prejudice to the generality of subsection (1), the disclosure referred to in that subsection required of an authorized institution shall include—

(a) in the case of the institution's core capital—

- (i) the institution's paid-up ordinary share capital;
- (ii) the institution's paid-up irredeemable non-cumulative preference shares;
- (iii) the amount standing to the credit of the institution's share premium account (if any);
- (iv) the institution's published reserves;
- (v) the amount of the institution's profit and loss account;
- (vi) minority interests in the equity of the institution's subsidiaries which are included in the institution's core capital; and
- (vii) the total deductions from the institution's core capital;

Category II: Amendments due to changes in concepts, terminologies and definitions in CB

Item (4): Amendments due to abolition of concepts or powers

(b) Nominal value of shares

(ii) Nominal value of shares or share capital

Section 9 of Schedule 9

Section:	42	Prohibition of allotment unless minimum subscription received
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Allotment

(1) Subject to section 38A, no allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors must be raised by the issue of share capital in order to provide for the matters specified in paragraph 7 in Part I of the Third Schedule has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company. For the purposes of this subsection, a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid. (Amended 78 of 1972 s. 11; 86 of 1992 s. 8)

(2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Ordinance referred to as the minimum subscription.

(3) The amount payable on application on each share shall not be less than 5 per cent of the ~~nominal amount~~ issue price of the share.

(4) Subject to section 38A, if the conditions aforesaid have not been complied with on the expiration of 30 days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within 38 days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of 8 per cent per annum from the expiration of the 38th day: (Amended 86 of 1992 s. 8)

Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part. (Replaced 78 of 1972 s. 11)

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) This section, except subsection (3), shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

Section 137(1) of Schedule 9

Schedule:	3	MATTERS TO BE SPECIFIED IN PROSPECTUS AND REPORTS TO BE SET OUT THEREIN
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THIRD SCHEDULE

[sections 2B, 38, 38A, 38AA, 38D, 42, 342, 342A, 342AA, 342C & 360 & 2nd, 4th, 20th & 21st Schs.]

(Amended 12 of 2005 s. 15; 8 of 2011 s. 20)

PART I

MATTERS TO BE SPECIFIED

1. The general nature of the business of the company, and if the company carries on 2 or more activities which are material having regard to profits or losses, assets employed or any other factor, information as to the relative importance of each such activity.

2. The authorized share capital ~~and the description and nominal value of the shares into which it or~~

maximum number of shares issuable under the articles and the description and nominal value (if any) of the shares into which the authorized share capital is divided, the amount of share capital issued or agreed to be issued, and the amount paid up on the shares which have been issued.

3. Sufficient particulars and information to enable a reasonable person to form as a result thereof a valid and justifiable opinion of the shares or debentures and the financial condition and profitability of the company at the time of the issue of the prospectus, taking into account the nature of the shares or debentures being offered and the nature of the company, and the nature of the persons likely to consider acquiring them. (Amended 30 of 2004 s. 2)

Section 52(10) of Schedule 9A

Chapter:	41	Title:	INSURANCE COMPANIES ORDINANCE
Schedule:	3	Heading:	ACCOUNTS AND STATEMENTS

[sections 17, 18, 22 & 50]

PART 4: GENERAL PROVISIONS RELATING TO BALANCE SHEET

14. The authorized share capital authorized share capital (or maximum number of shares issuable under the articles), issued share capital, assets and liabilities shall be summarized in the balance sheet, with such particulars as are necessary to disclose the general nature of the assets and liabilities, and there shall be specified-

- (a) any part of the issued share capital that consists of redeemable preference shares, the earliest and latest dates on which the insurer has power to redeem those shares, whether those shares must be redeemed in any event or are liable to be redeemed at the option of the insurer and whether any (and, if so, what) premium is payable on redemption;
- (b) so far as the information is not given in the profit and loss account under Part 5 of this Schedule, any share capital on which interest has been paid during the financial year, and the rate of interest;
- (c) the amount of the share premium accounts (if any); and
- (d) particulars of any redeemed debentures which the company has power to reissue.

Section 94(1) of Schedule 9A

Chapter:	112	Title:	INLAND REVENUE ORDINANCE
Section:	16	Heading:	Ascertainment of chargeable profits

(2E) For the purposes of subsection (2B)-

- (c) "excepted person" (除外人士) means-
 - (ii) in the case of a person (other than the lender) who is connected with the borrower-
 - (C) a body corporate, where the Government owns beneficially more than half ~~in nominal value~~ of the issued share capital of that body corporate for the time being;

(2F) For the purposes of subsection (2C)-

- (c) "excepted person" (除外人士) means-
 - (ii) in the case of a person who is connected with the borrower-
 - (C) a body corporate, where the Government owns beneficially more than half ~~in nominal value~~ of the issued share capital of that body corporate for the time being;

Section 152(4) of Schedule 9A

Chapter:	163A	Title:	MONEY LENDERS REGULATIONS
Schedule:	2	Heading:	LICENSING AND EXEMPTION FORMS

FORM 3

[sections 8(1) & (2)
& 34]

MONEY LENDERS ORDINANCE

(Chapter 163)
APPLICATION BY A COMPANY FOR A LICENCE

7. (a) Give the following details of the 6 principal shareholders of the company or of all the shareholders if less than 6-

	1	2	3	4	5	6
Name of shareholder in English						
Name in Chinese characters (if applicable) and code						
Aliases						
Residential address (Post Office Box numbers are not acceptable)						
Particulars of shareholdings (including the number and nominal value <u>(if any)</u> of the shares held by the shareholders and the total number of shares issued by the company)						

Section 286(1) of Schedule 9A

Chapter:	556	Title:	MASS TRANSIT RAILWAY ORDINANCE
Section:	59	Heading:	Securities of Corporation as authorized investment

- (2) For the purposes of paragraph 2 of the Second Schedule to the Trustee Ordinance (Cap 29)-
- (a) any debt security which was issued by, or the payment of principal and interest on which was guaranteed by, MTRC before the appointed day and which becomes vested in the Corporation by virtue of Part IX; or
- (b) during any period for which the Government ~~beneficially owns more than half in nominal value of the issued share capital~~ controls more than half of the voting power of the Corporation, any debt security which is issued by, or the payment of principal and interest on which is guaranteed by, the Corporation,
- is deemed to be a debt security which satisfies the requirements of that paragraph.

Section 346(19) of Schedule 9A

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE
Schedule:	1	Heading:	INTERPRETATION AND GENERAL PROVISIONS

PART 1

INTERPRETATION

6. References to substantial shareholder

- (1) For the purposes of this Ordinance, a person shall, in relation to a corporation, be regarded as a substantial shareholder of the corporation if he, either alone or with any of his associates-
- (a) has an interest in shares in the corporation-
- (i) the ~~nominal value of which shares is equal to more than the nominal value of 10% of the issued share capital~~ aggregate number of which shares is equal to more than 10% of the total number of issued share of the corporation; or
- (ii) which entitles the person, either alone or with any of his associates and either directly or indirectly, to exercise or control the exercise of more than 10% of the voting power at general meetings of the corporation; or

Category II: Amendments due to changes in concepts, terminologies and definitions in CB

Item (4): Amendments due to abolition of concepts or powers

(b) Nominal value of shares

(iii) Other terms relating to the par regime

Section 5(11) of Schedule 9A

Chapter: 4A	Title:	THE RULES OF THE HIGH COURT
Order: 102	Heading:	THE COMPANIES ORDINANCE <u>THE COMPANIES ORDINANCE AND THE COMPANIES (WINDING UP AND MISCELLANEOUS PROVISIONS) ORDINANCE</u>

5. Applications to be made by petition (O. 102, r. 5)

- (1) The following applications ~~under the Ordinance~~ must be made by petition, namely applications-
- (a) under ~~section 8~~section 84(5) of the Companies Ordinance (_____ of 2011) to cancel the alteration of a private company's objects, (28 of 2003 s. 120)
 - (b) under ~~section 25A to cancel the alteration of a condition contained in a private company's memorandum~~ section 85(4) of the Companies Ordinance (_____ of 2011) to cancel the alteration of a provision contained in the articles of association of a relevant company as defined by section 85(10) of that Ordinance, (28 of 2003 s. 120)
 - ~~(c) under section 48B to confirm a reduction of the share premium account of a company,~~
 - ~~(d) under section 50 to sanction the issue by a company of shares at a discount,~~
 - ~~(e) under section 49 to confirm a reduction of the capital redemption reserve fund of a company,~~
 - (f) under ~~section 59~~section 221 of the Companies Ordinance (_____ of 2011) to confirm a reduction of the share capital of a company,
 - (g) under ~~section 64 to cancel any variation or abrogation of the rights attached to section 177 of the Companies Ordinance (_____ of 2011) to disallow any variation or abrogation of the rights attached to shares in~~ any class of shares in a company,
 - ~~(ga) under section 185 of the Companies Ordinance (_____ of 2011) to disallow any variation or abrogation of the rights of any class of members of a company that does not have a share capital,~~
 - (h) under ~~section 166~~section 664 of the Companies Ordinance (_____ of 2011) to sanction a compromise or arrangement between a company and its creditors or any class of them or between a company and its members or any class of them,
 - (i) under ~~section 291(7) for an order restoring the name of a company to the register~~ section 753 of the Companies Ordinance (_____ of 2011) for the restoration of a company to the Companies Register, where the application is made in conjunction with an application for the winding up of the company,
 - (j) under ~~section 323~~section 805 of the Companies Ordinance (_____ of 2011) to cancel the alteration of the form of a company's constitution, and
 - (k) under ~~section 358(2)~~section 892 of the Companies Ordinance (_____ of 2011) for relief from liability of an officer of a company or a person employed by a company as auditor.

Section 5(23) of Schedule 9A

Chapter: 4A	Title:	THE RULES OF THE HIGH COURT
Order: 102	Heading:	THE COMPANIES ORDINANCE <u>THE COMPANIES ORDINANCE AND THE COMPANIES (WINDING UP AND MISCELLANEOUS PROVISIONS) ORDINANCE</u>

7. Case management summons (O. 102, r. 7)

(1) After presentation of a petition by which any such application as is mentioned in rule 5 is made, the petitioner, except where his application is one of those mentioned in paragraph (2), must take out a case management summons under this rule.

- (2) The applications referred to in paragraph (1) are-
- (a) ~~an application under section 50 of the Ordinance to sanction the issue by a company of shares at a discount;~~
 - (b) ~~an application under section 166 of the Ordinance to sanction a compromise or arrangement unless there is included in the petition for such sanction an application for an order under section 167 of the Ordinance~~ section 664 of the Companies Ordinance (_____ of 2011) ~~to sanction an arrangement or compromise (except where the petition for such sanction includes an application for an order under section 665 of the Companies Ordinance (_____ of 2011)), and~~
 - (c) ~~an application under section 291(7) of the Ordinance for an order restoring the name of a company to the register~~ section 753 of the Companies Ordinance (_____ of 2011) ~~for the restoration of a company to the Companies Register.~~

(3) On the hearing of the summons the Court may by order give such directions as to the proceedings to be taken before the hearing of the petition as it thinks fit including, in particular, directions for the publication of notices and the making of any inquiry.

(4) Where the application made by the petition is to confirm a reduction of the share capital, ~~the share premium account or the capital redemption reserve fund,~~ of a company, then, without prejudice to the generality of paragraph (3), the Court may give directions-

- (a) for an inquiry to be made as to the debts of, and claims against, the company or as to any class or classes of such debts or claims;
- (b) as to the proceedings to be taken for settling the list of creditors entitled to object to the reduction and fixing the date by reference to which the list is to be made;

and the power of the Court under ~~section 59(3) of the Ordinance to direct that section 59(2) thereof~~ section 221(3) of the Companies Ordinance (_____ of 2011) ~~to direct that section 222 of that Ordinance~~ shall not apply as regards any class or classes of creditors may be exercised on any hearing of the summons.

(5) Rules 8 to 13 shall have effect subject to any directions given by the Court under this rule.

Category II: Amendments due to changes in concepts, terminologies and definitions in CB

Item (4): Amendments due to abolition of concepts or powers

- (c) ***Powers of the Financial Secretary to exempt a company from disclosing certain information of its subsidiaries or associated companies in its accounts (sections 128(3) and 129(3) of CO)***

Section 350(10) of Schedule 9A

Chapter: 571 Title: SECURITIES AND FUTURES ORDINANCE
Schedule: 10 Heading: SAVINGS, TRANSITIONAL, CONSEQUENTIAL AND RELATED PROVISIONS, ETC.

Part 5

Savings and Transitional Provisions Relating to Consequential Amendments to Securities and Futures Ordinance (Cap. 571) made by Companies Ordinance (_____ of 2011)

1. During the period during which section 128(3) and section 129(3) of the relevant Ordinance have a continuing effect under Schedule 10 of the Companies Ordinance (_____ of 2011) in relation to accounts of a corporation, section 332(5), despite its repeal, continues to apply to a report prepared under section 332, in relation to any information of that corporation.

2. During the period during which section 128(3) and section 129(3) of the relevant Ordinance have a continuing effect under Schedule 10 of the Companies Ordinance (_____ of 2011) in relation to accounts of a corporation, section 336(11), despite its repeal, continues to apply to a register of interests in shares and short positions or an index of the names recorded in the register, in relation to any information of that corporation. Section 336(10)(b) is subject to section 336(11) during the period during which section 336(11) so continues to apply.

3. During the period during which section 128(3) and section 129(3) of the relevant Ordinance have a continuing effect under Schedule 10 of the Companies Ordinance (_____ of 2011) in relation to accounts of a corporation, section 352(12), despite its repeal, continues to apply to a register of directors' and chief executives' interests and short positions or an index of the names recorded in the register, in relation to any information of that corporation. Section 352(11)(b) is subject to section 352(12) during the period during which section 352(12) so continues to apply.

Category II: Amendments due to changes in concepts, terminologies and definitions in CB

Item (5): Amendments due to terminological changes

(a) Secretary → company secretary

Section 80 of Schedule 9

Section:	168N	Offences by body corporate
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(1) Where a body corporate is guilty of an offence of acting in contravention of a disqualification order, and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager, ~~secretary~~ company secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Category II: Amendments due to changes in concepts, terminologies and definitions in CB

Item (5): Amendments due to terminological changes

(b) Repurchase(s) → buy-back(s)

Section 144 of Schedule 9

Schedule:	17	OFFERS SPECIFIED FOR THE PURPOSES OF PARAGRAPH (b)(ii) OF THE DEFINITION OF "PROSPECTUS" IN SECTION 2(1) OF THIS ORDINANCE
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SEVENTEENTH SCHEDULE

[sections 2, 38, 38AA, 43, 48A, 342, 342AA & 360 & 18th Sch.]
(Amended 8 of 2011 s. 21)

PART 1

LIST OF OFFERS, ETC. NOT FALLING
WITHIN DEFINITION

6. An offer in connection with a takeover or merger or a share ~~repurchase which is in compliance with the Codes on Takeovers and Mergers and Share Repurchases issued by the Commission as in force from time to time.~~ buy-back which is in compliance with the Codes on Takeovers and Mergers and Share Buy-backs issued by the Commission as in force from time to time.

Section 361(1) and (2) of Schedule 9A

Chapter:	571AF	Title:	SECURITIES AND FUTURES (FEES) RULES
Section:	5	Heading:	Fees relating to offer documents, off-market share repurchase—buy-back circulars and whitewash documents

(1) Where a first draft of an offer document, off-market share ~~repurchase—buy-back~~ circular or whitewash document is submitted to the Executive for comment, a fee which is prescribed, opposite the applicable value set out in column 1 of Schedule 2, in column 2 of that Schedule shall be payable to the Commission.

(2) For the purposes of subsection (1), the applicable value shall be equivalent-

(a) in the case of an offer document-

- (i) subject to subparagraph (ii), to the value of the offer contained in the offer document; or
- (ii) where the offer document contains alternative offers to the same offeree company, or contains 2 or more offers of different values to different offeree companies, to the value of the offer contained in the offer document which has the lower or lowest value;

(b) in the case of an off-market share ~~repurchase—buy-back~~ circular, to the value of the off-market share ~~repurchase—buy-back~~ contained in the off-market share ~~repurchase—buy-back~~ circular; or

(c) in the case of a whitewash document, to the value of the whitewashed offer.

(3) Where any offer contained in a draft offer document previously submitted to the Executive for comment is replaced by a revised offer, and a revised offer document is submitted to the Executive in connection with the revised offer, there shall be payable to the Commission a fee the amount of which shall be the difference between-

(a) the fee previously paid under subsection (1) on the submission of the draft offer document; and

(b) the fee which would have been payable under subsection (1) had the revised offer been contained in such draft offer document.

(4) For the purposes of this section-

(a) the value of any offer contained in an offer document or the value of an off-market share

~~repurchase buy-back~~ contained in an off-market share ~~repurchase buy-back~~ circular shall be-

(i) where the relevant shares are under the offer or the off-market ~~share repurchase buy-back~~ (as the case may be) to be acquired for cash, the total amount of such cash;

(ii) where the relevant shares are under the offer or the off-market share ~~repurchase buy-back~~ (as the case may be) to be acquired in exchange for securities, the total value of such securities on the date of announcement of a firm intention to make the offer or the off-market share ~~repurchase buy-back~~ (as the case may be) in accordance with the Codes; or

(iii) where the relevant shares are under the offer or the off-market share ~~repurchase buy-back~~ (as the case may be) to be acquired partly for cash and partly in exchange for securities, the aggregate of the total amount of such cash and the total value of such securities on the date of announcement of a firm intention to make the offer or the off-market share ~~repurchase buy-back~~ (as the case may be) in accordance with the Codes; and

(5) The payment of a fee payable under this section shall be accompanied by a statement showing the value of the offer, off-market share ~~repurchase buy-back~~ or whitewashed offer concerned and the manner in which the fee is determined having regard to subsection (4).

(6) Where a first draft of an offer document, a first draft of an off-market share ~~repurchase buy-back~~ circular and a first draft of a whitewash document, or any combination of them, are combined in a draft when submitted to the Executive for comment-

(a) the fee payable under subsection (1) shall be the aggregate of the respective fees payable under that subsection in respect of each such first draft as if each such first draft had not been so combined in the draft, and the provisions of this section shall apply accordingly; and

Category II: Amendments due to changes in concepts, terminologies and definitions in CB

Item (5): Amendments due to terminological changes

(c) “控股公司”/“母公司” → “控權公司”

Section 47 of Schedule 9A

Chapter:	41	Title:	INSURANCE COMPANIES ORDINANCE
Section:	56A	Heading:	Restriction on use of the word “insurance” or “assurance”

(3) 為免生疑問，在第(1)(a)款所提述的“描述”(description) 包括使用第(1)(a)款適用的任何用字或用詞的任何陳述(不論是否以書面形式)，而該陳述可解釋為該人(不論怎樣描述)是保險人、保險代理人或保險經紀的—

- (a) 附屬公司；
- (b) [控股公司控權公司](#)；或
- (c) [控股公司控權公司](#)的附屬公司。

Section 133(2) of Schedule 9A

Chapter:	155L	Title:	BANKING (CAPITAL) RULES
Section:	2	Heading:	Interpretation

(1) 在本規則中，除文意另有所指外—

“母銀行”(parent bank) 就認可機構而言，指該機構的任何[控股公司控權公司](#)，而該[控股公司控權公司](#)在它成立為法團所在的海外國家，是獲認可為銀行的；

Section 233 of Schedule 9A

Chapter:	426	Title:	OCCUPATIONAL RETIREMENT SCHEMES ORDINANCE
Section:	67	Heading:	Special provisions for schemes covering groups of companies

(1B) 來自公司集團的有關僱主須共同或各別以授權書為該計劃的目的提名它們其中之一或公司集團內的同一集團的公司的[母公司控權公司](#)為僱主代表。

(1C) 就本條而言—

- (b) “同一集團的公司”(group of companies) 指[母公司控權公司](#)及其附屬公司；

Category II: Amendments due to changes in concepts, terminologies and definitions in CB

Item (5): Amendments due to terminological changes

(h) **Companies to which Part XI of CO applies → non-Hong Kong company as defined by section 2(1) of Companies Ordinance (_____ of 2011)**

Section 9(2) of Schedule 9A

Chapter:	8	Title:	EVIDENCE ORDINANCE
Section:	20	Heading:	Copy of entry in banker's record

(5) In relation to any criminal proceedings-

(a) this section shall apply to any document or record used in the ordinary business of a body designated by the Financial Secretary under section 19B(1) for the purposes of such criminal proceedings as it applies to a banker's record, and a reference in this section to a bank shall, in its application to such document or record, be construed as a reference to the body so designated; but (b) this section shall not apply to any document or record used-

(i) by a deposit-taking company or restricted licence bank which is a company registered under Part I or IX of the Companies Ordinance (Cap 32) as in force from time to time before the commencement date of section 1 of Schedule 9 to the Companies Ordinance (_____ of 2011) or under Part 3 or 17 of the Companies Ordinance (_____ of 2011);

(ii) by a deposit-taking company or restricted licence bank which is a company to which Part XI of that Ordinance applies non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (_____ of 2011) if such document or record is used in its ordinary business in Hong Kong,

and for the purposes of this paragraph "deposit-taking company or restricted licence bank" (接受存款公司或有限牌照銀行) means a company which is required by the Banking Ordinance (Cap 155) to be authorized thereunder as a deposit-taking company or restricted licence bank.

Section 179(8) of Schedule 9A

Chapter:	310	Title:	BUSINESS REGISTRATION ORDINANCE
Section:	2	Heading:	Interpretation and application*

(1A) ~~For the purposes of this Ordinance a company which is—~~

~~(a) incorporated in Hong Kong under the Companies Ordinance (Cap 32) or to which Part XI of the Companies Ordinance (Cap 32) applies; and~~

~~(b) not otherwise liable to be registered under this Ordinance;~~

~~For the purposes of this Ordinance—~~

~~(a) a company—~~

~~(i) that is incorporated in Hong Kong under the Companies Ordinance (_____ of 2011) or was incorporated under a former Companies Ordinance as defined by section 2(1) of the Companies Ordinance (_____ of 2011); and~~

~~(ii) that is not otherwise liable to be registered under this Ordinance; or~~

~~(b) a non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (_____ of 2011) that is not otherwise liable to be registered under this Ordinance.~~

shall, notwithstanding any deemed cessation of business under section 6(4F) or any notification of cessation of business which may be furnished under section 8(2), be deemed to be a person carrying on business and shall be liable to be registered under this Ordinance.

Section 182(3) of Schedule 9A

Chapter:	310	Title:	BUSINESS REGISTRATION ORDINANCE
Section:	7A	Heading:	Refund of prescribed business registration fees, prescribed branch registration fees or levies

(3) Except in the case of a branch of a business, subsection (2)(b) does not entitle the following companies to any refund—

(a) a company incorporated under the Companies Ordinance (_____ of 2011) ~~(Cap 32)~~;

(ab) incorporated under a former Companies Ordinance as defined by section 2(1) of the Companies Ordinance (_____ of 2011)

~~(b) a non-Hong Kong company to which Part XI of that Ordinance applies;~~

~~(b) a non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (_____ of 2011);~~

~~(c) a company incorporated outside Hong Kong that has established a place of business in Hong Kong, but has ceased to have any such place of business before the repeal of Part XI of the Companies Ordinance (Cap. 32) as in force from time to time before the commencement date of section 1 of Schedule 9 to the Companies Ordinance (_____ of 2011).~~

Category II: Amendments due to changes in concepts, terminologies and definitions in CB

Item (5): Amendments due to terminological changes

- (i) **Non-Hong Kong company that is registered under Part XI of CO → registered non-Hong Kong company**

Section 144(2) of Schedule 9A

Chapter:	159J	Title:	TRAINEE SOLICITORS RULES
Rule:	2	Heading:	Interpretation

"company" (公司) means-

- (a) a company within the meaning of the Companies Ordinance ([of 2011](#))-~~(Cap 32)~~;
- (b) a registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance ([of 2011](#))-company registered under Part XI of that Ordinance; or
- (c) a corporation established by or under any other Ordinance;

Category II: Amendments due to changes in concepts, terminologies and definitions in CB

Item (5): Amendments due to terminological changes

- (j) **Person residing in Hong Kong authorized to accept on behalf of a non-Hong Kong company registered under Part XI of CO service of process and any notices → authorized representative**

Section 46 of Schedule 9A

Chapter:	41	Title:	INSURANCE COMPANIES ORDINANCE
Section:	55	Heading:	Service of notices

Any notice or other document to be given to or served on any person under this Ordinance may be served by post, and without prejudice to section 8 of the Interpretation and General Clauses Ordinance (Cap 1), a letter containing that notice or other document shall be deemed to be properly addressed if it is addressed to that person at his last known residence or business address; and for the purposes of this section “business address” (營業地址) means-

- (a) in relation to an insurer formed or established in Hong Kong, its registered office in Hong Kong;
- (b) in relation to an insurer formed or established outside Hong Kong, the address of ~~any person resident in Hong Kong who is authorized to accept service of process in Hong Kong on behalf of that insurer~~ [its authorized representative as defined by section 762 of the Companies Ordinance \(_____ of 2011\)](#);
- (c) in relation to a member of Lloyd's, the address in Hong Kong of the authorized representative of Lloyd's appointed under section 50B.

Category II: Amendments due to changes in concepts, terminologies and definitions in CB

Item (6): Amendments to add or modify definitions or expressions to align with CB

“Companies Register”

Section 3(16) of Schedule 9

Section:	2	Interpretation
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Interpretation and Specification of Forms

(1) In this Ordinance, unless the context otherwise requires-

Companies Register (公司登記冊) has the meaning given by section 2(1) of the Companies Ordinance (of 2011);

Section 131(2) of Schedule 9

Section:	360C	Power of the Chief Executive in Council to order company engaging in undesirable activities to be struck off
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(1) If the Chief Executive in Council is satisfied that a company formed and registered under ~~this Ordinance~~ the Companies Ordinance (of 2011) or any former Companies Ordinance would, if it were a society in respect of which the Societies Ordinance (Cap 151) applied, be liable to have its registration or exemption from registration cancelled under section 5D or its operation or continued operation prohibited by the Secretary for Security under section 8 of that Ordinance, the Chief Executive in Council may order the Registrar of Companies to strike such company off the ~~register of companies~~ Companies Register.

(2) The Registrar shall thereupon strike the name of the company off the register, and shall publish notice thereof in the Gazette, and on such publication the company shall be dissolved:

Provided that the liability, if any, of every director, officer and member of the company shall continue and may be enforced as if the company had not been dissolved.

(3) A copy of such notice shall be sent to such company, and may either be sent by post or be delivered by hand addressed to the company at its registered office, or if no office has been registered, addressed to the care of some director or officer of the company, or if there is no director or officer of the company whose name and address are known to the Registrar, the notice may be sent or delivered ~~to each of the persons who signed the memorandum of association, addressed to him at the address mentioned in that memorandum~~ each of the founder members, addressed to the founder member at the address mentioned in the memorandum of association or incorporation form, as the case may be, but if none of such addresses is available or if for any other reason the Registrar considers it unlikely that any notice sent in pursuance of this subsection will come to the knowledge of the addressee, it shall be sufficient compliance with this subsection that notice in the Gazette shall have been published in accordance with subsection (2).

“《舊有公司條例》”

Section 102(1) of Schedule 9

條：	307	本條例對根據 前有《公司條例》 <u>《舊有公司條例》</u> 組成的公司的適用範圍
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本條例對 現有原有 公司的適用方式—

- 如屬擔保有限公司以外的有限公司，須猶如該公司已根據 本條例《公司條例》(2011年第 號) 組成和註冊為股份有限公司一樣；
- 如屬擔保有限公司，須猶如該公司已根據 本條例《公司條例》(2011年第 號) 組成和註冊為擔保有限公司一樣；及
- 如屬有限公司以外的公司，須猶如該公司已根據 本條例《公司條例》(2011年第 號) 組成和註冊為無限公司一樣；

但對註冊日期明示或隱含的提述，須解釋為提述該公司根據 《1865年公司條例》*(1865年第1

號)或《1911年公司條例》+(1911年第58號)(視屬何情況而定)註冊的日期。《舊有公司條例》註冊的日期。

“Authorized representative” and “Companies Register”

Section 344(6) of Schedule 9A

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE
Section:	400	Heading:	Service of notices, etc.

(1) Subject to sections 111, 141 and 374 and any rules made under section 233 or 269, any written notice or direction or other document (however described) to be, or required to be, issued or served (however described) to or on any person, other than the Commission, for the purposes of this Ordinance shall for all purposes be regarded as duly issued or served if-

(b) in the case of a company, it is-

- (i) delivered to any officer of the company by hand;
- (ii) left at, or sent by post to, the ~~registered office of the company within the meaning of the Companies Ordinance (Cap 32)~~ company's registered office in Hong Kong;
- (iii) sent by facsimile transmission to its last known facsimile number; or
- (iv) sent by electronic mail transmission to its last known electronic mail address;

(c) in the case of a ~~non-Hong Kong company~~ registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (_____ of 2011), it is-

- (i) ~~delivered by hand to, or sent by post to, the person resident in Hong Kong who is authorized to accept service of process and notices on its behalf for the purposes of Part XI of the Companies Ordinance (Cap 32) at his address delivered to the Registrar of Companies under that Ordinance; the~~ authorized representative at the representative's address as shown in the Companies Register;
- (ii) sent by facsimile transmission to the last known facsimile number of the person; or
- (iii) sent by electronic mail transmission to the last known electronic mail address of the person;

(e) in the case of a body corporate (other than a company ~~or a non-Hong Kong company~~ a registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (_____ of 2011) or the Commission) or an unincorporated body (other than a partnership), or a tribunal, it is-

- (i) delivered to any officer of the body or the tribunal (as the case may be) by hand;
- (ii) left at, or sent by post to, the last known principal place of business of the body or the tribunal (as the case may be);
- (iii) in the case of the body, sent by facsimile transmission to the last known facsimile number of the body; or
- (iv) in the case of the body, sent by electronic mail transmission to the last known electronic mail address of the body.

(2) In this section—

authorized representative (獲授權代表) means an authorized representative as defined by section 762(1) of the Companies Ordinance (_____ of 2011);

Companies Register (公司登記冊) has the meaning given by section 2(1) of the Companies Ordinance (_____ of 2011).

“Registered office in Hong Kong”

Section 388(1) of Schedule 9A

Chapter:	588	Title:	FINANCIAL REPORTING COUNCIL ORDINANCE
Section:	60	Heading:	Service of notice, etc.

(2) Such a notice or requirement is taken to be given or issued to a person if—

(b) in the case of a company, it is—

- (ii) left at, or sent by post to, the company's registered office in Hong Kong ~~registered office of the company within the meaning of the Companies Ordinance (Cap 32)~~;

(c) in the case of a registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (_____ of 2011), ~~company to which Part XI of the Companies Ordinance (Cap 32) applies~~, it is—

- (i) delivered by hand to, or sent by post to, the person resident in Hong Kong who is authorized to accept service of process and notices on its behalf for the purposes of that Part at his address delivered to the Registrar of Companies under that Ordinance;
- (ii) sent by facsimile transmission to the last known facsimile number of the person; or
- (iii) sent by electronic mail transmission to the last known electronic mail address of the person;

(e) in the case of a body corporate (other than a company, or a registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (_____ of 2011), ~~company to which Part XI of the Companies Ordinance (Cap 32) applies~~) or an unincorporated association (other than a partnership), it is—

- (i) delivered to any officer of the body or association by hand;
- (ii) left at, or sent by post to, the last known principal place of business of the body or association;
- (iii) sent by facsimile transmission to the last known facsimile number of the body or association; or
- (iv) sent by electronic mail transmission to the last known electronic mail address of the body or association.

“Financial statements”

Section 389(2) of Schedule 9A

Chapter:	588	Title:	FINANCIAL REPORTING COUNCIL ORDINANCE
Schedule:	1	Heading:	DEFINITIONS OF “RELEVANT FINANCIAL REPORT” AND “RELEVANT REQUIREMENT”

PART 1

In this Ordinance (except sections 5(2) and 50 of this Ordinance)—

“relevant financial report” (有關財務報告)—

(a) in relation to a listed corporation, means—

(i) a balance sheet of the corporation, together with any accounts annexed to it for the purposes of section 129C(1) of the relevant Ordinance-Companies Ordinance (Cap 32), a copy of which was sent at the relevant time under section 129G of that Ordinance to a person entitled to be sent the copy;

(ia) a copy of the financial statements of the corporation, which was sent under section 421 of the Companies Ordinance (_____ of 2011) to a member;

(ii) the accounts of the corporation, a certified copy of which was delivered at the relevant time to the Registrar of Companies for registration under section 336 of the relevant Ordinance, or under section 777 of the Companies Ordinance (_____ of 2011)-Companies Ordinance (Cap 32);

(iii) a summary financial report of the corporation, a copy of which was sent at the relevant time ~~in compliance with section 141CA of the Companies Ordinance (Cap 32) to a person entitled to be sent the copy~~ to a person entitled to be sent the copy in compliance with section 141CA of the relevant Ordinance, or to a member in accordance with section 432 of the Companies Ordinance (_____ of 2011) or in compliance with section 435 of that Ordinance;

Category III: Amendments arising from the repeal of existing provisions in CO in whole or in part

Item (7): Schedule 9 repeals CO provisions that relate to operation of live companies

Section 5 of Schedule 9

Part:	I	INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO
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Section:	4	Mode of forming incorporated company
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~~Memorandum of Association~~

~~(1) Any one or more persons may, for any lawful purpose, by signing his or their name or names on a memorandum of association (which must be printed in the English or Chinese language) and otherwise complying with the requirements of this Ordinance in respect of registration, form an incorporated company, with or without limited liability. (Amended 6 of 1984 s. 4; 83 of 1995 s. 2; 28 of 2003 s. 4; 30 of 2004 s. 2)~~

~~(2) Such a company may be either-~~

~~(a) a company having, or deemed by virtue of subsection (3) to have, the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Ordinance termed a company limited by shares); or (Amended 6 of 1984 s. 4)~~

~~(b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Ordinance termed a company limited by guarantee); or~~

~~(c) a company not having any limit on the liability of its members (in this Ordinance termed an unlimited company).~~

~~(3) A company whose memorandum contains a condition in accordance with the fourth paragraph of the form set out in Table B in the First Schedule shall be deemed to be, and, in the case of such a company registered at the commencement* of the Companies (Amendment) Ordinance 1984 (6 of 1984), always to have been, a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them. (Added 6 of 1984 s. 4)~~

~~(4) With effect from the commencement** of section 4(2) of the Companies (Amendment) Ordinance 2003 (28 of 2003), a company cannot be formed as, or become, a company limited by guarantee with a share capital. (Added 28 of 2003 s. 4)~~

~~[cf. 1929 c. 23 s. 1 U.K.]~~

~~Note:~~

~~* Commencement date: 31 August 1984.~~

~~** Commencement date: 13 February 2004.~~

Section:	5	Requirements with respect to memorandum
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~~(1) The memorandum of every company limited by shares or by guarantee must state the name of the company and-~~

~~(a) if the name is in English, with "Limited" as the last word of the name;~~

~~(b) if the name is in Chinese, with "有限公司" as the last 4 Chinese characters of the name;~~

~~and~~

~~(c) if the name is both in English and Chinese, with "Limited" as the last word of the name in English and "有限公司" as the last 4 Chinese characters of the name in Chinese respectively. (Replaced 3 of 1997 s. 5)~~

~~(1A) The-~~

~~(a) memorandum of-~~

~~(i) an association referred to in section 21(1) must state the objects of the association; and~~

~~(ii) a company which is authorized to change its name under section 21(2) must state the~~

objects of the company; and

(b) ~~memorandum of any other company may state the objects of the company.~~—(Added 3 of 1997 s. 5)

~~(1B) Subsection (1A) does not affect any requirement relating to the memorandum of a company specified in or under any other enactment.~~—(Added 3 of 1997 s. 5)

~~(2) The memorandum of a company limited by shares or by guarantee must also state that the liability of its members is limited.~~

~~(3) The memorandum of a company limited by guarantee must also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges, and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.~~

~~(4) In the case of a company having a share capital—~~

~~(a) the memorandum must also, unless the company is an unlimited company, state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;~~

~~(b) no founder member may take less than one share;—~~

~~(c) each founder member must write opposite to his name the number of shares he takes.~~
(Amended 30 of 2004 s. 2)

~~(5) The powers of a company formed on or after the commencement* of the Companies (Amendment) Ordinance 1984 (6 of 1984) shall include, unless expressly excluded or modified by the memorandum or articles, the powers set forth in the Seventh Schedule.~~—(Added 6 of 1984 s. 5)
[cf. 1929 c. 23 s. 2 U.K.]

Note:

* **Commencement date: 31 August 1984.**

Section:	5A	Powers of a company
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~~(1) A company has the capacity and the rights, powers and privileges of a natural person.~~

~~(2) Without limiting subsection (1), a company may do anything which it is permitted or required to do by its memorandum or by any enactment or rule of law.~~

~~(Added 3 of 1997 s. 6)~~

Section:	5B	Power limited by memorandum, etc.
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~~(1) A company—~~

~~(a) whose objects are stated in its memorandum shall not carry on any business or do anything that it is not authorized by its memorandum to carry on or do; and~~

~~(b) shall not exercise any power which is expressly excluded or modified by its memorandum or articles, contrary to such exclusion or modification.~~

~~(2) A member of a company may bring proceedings to restrain the doing of an act in contravention of subsection (1); but no such proceedings shall lie in respect of an act to be done in fulfilment of any legal obligation arising under a previous act of the company.~~

~~(3) An act of a company (including a transfer of property to or by the company) is not invalid by reason only that it contravenes subsection (1).~~

~~(Added 3 of 1997 s. 6)~~

Section:	5C	Exclusion of deemed notice
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~~A person shall not be taken to have notice of any matter merely because of its being disclosed in the memorandum or articles kept by the Registrar or a return or resolution lodged with him.~~

~~(Added 3 of 1997 s. 6)~~

Section:	6	Signature of memorandum
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~~(1) The memorandum shall be signed by each founder member of the company.~~—(Amended 30 of 2004 s. 2; 12 of 2010 s. 3)

~~(2) (Repealed 12 of 2010 s. 3)~~

~~(Replaced 6 of 1984 s. 6)
[cf. 1948 c. 38 s. 3 U.K.]~~

Section:	7	Restriction on alteration of memorandum
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~~A company may not alter its memorandum except in the cases, in the mode and to the extent for which express provision is made in this Ordinance.~~

~~(Amended 6 of 1984 s. 7)
[cf. 1929 c. 23 s. 4 U.K.]~~

Section:	8	Mode in which and extent to which objects may be altered
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~~(1) A company may, by special resolution of which notice has been duly given to all the members of the company (including, for the purposes of this section, members who are not entitled to such notice under the articles of the company), alter the conditions of its memorandum with respect to the objects of the company by abandoning or restricting any of those objects or by adopting any new object which could lawfully have been contained in the memorandum at the time of its registration:~~

~~Provided that, where a private company passes such a resolution, an application may be made to the court in accordance with subsections (2) to (5) for the alteration to be cancelled, and if such an application is made, the alteration shall not have effect except in so far as it is confirmed by the court. (Replaced 6 of 1984 s. 8. Amended 28 of 2003 s. 5)~~

~~(2) An application under this section may be made—~~

~~(a) by the holders of not less in the aggregate than 5 per cent in nominal value of the company's issued share capital or any class thereof or, if the company is not limited by shares, not less than 5 per cent of the company's members; or~~

~~(b) by the holders of not less than 5 per cent of the company's debentures entitling the holders to object to alterations of its objects.~~

~~(3) An application under this section shall be made within 28 days after the date on which the resolution altering the company's objects was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.~~

~~(4) On an application under this section the court may make an order confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement.~~

~~(5) The debentures entitling the holders to object to alterations of a company's objects shall be any debentures secured by a floating charge that were issued or first issued before 15 February 1963, or form part of the same series as any debentures so issued, and a special resolution altering a company's objects shall require the same notice to the holders of any such debentures as to members of the company.~~

~~In default of any provisions regulating the giving of notice to any such debenture holders, the provisions of the company's articles regulating the giving of notice to members shall apply.~~

~~(6) (Repealed 6 of 1984 s. 8)~~

~~(7) Where a private company passes a resolution altering its objects— (Amended 28 of 2003 s. 5)~~

~~(a) if no application is made with respect thereto under this section, it shall within 15 days after the end of the period for making such an application deliver to the Registrar a printed copy of its memorandum as altered and certified as correct by an officer of the company; and~~

~~(b) if such an application is made it shall—~~

~~(i) forthwith give notice of that fact to the Registrar; and~~

~~(ii) within 15 days after the date of any order cancelling or confirming the alteration, deliver to the Registrar an office copy of the order and, in the case of an order confirming the alteration, a printed copy of its memorandum as altered and certified as correct by an officer of the company.— (Amended 28 of 2003 s. 5)~~

~~The court may by order at any time extend the time for the delivery of documents to the Registrar under paragraph (b) of this subsection for such period as the court may think proper.~~

~~(7A) Where a company (not being a private company) passes a resolution altering its objects, it shall, within 15 days after the date on which the resolution was passed, deliver to the Registrar a printed copy of its memorandum as altered and certified as correct by an officer of the company. (Added 28 of 2003 s. 5)~~

~~(8) If a company makes default in giving notice or delivering any document to the Registrar as required by subsection (7) or (7A), the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine. (Amended 7 of 1990 s. 2; 28 of 2003 s. 5)~~

~~(9) In relation to a resolution for altering the conditions of a company's memorandum with respect to the objects of the company passed before the commencement* of the Companies (Amendment) Ordinance 1984 (6 of 1984), the provisions of this section in force immediately before such commencement shall continue to have effect as if that Ordinance had not been enacted. (Replaced 6 of 1984 s. 8)~~

~~(10) In relation to a resolution for altering the conditions of a company's memorandum with respect to the objects of the company that is passed by a company (whether a private company or not) after the commencement* of the Companies (Amendment) Ordinance 1984 (6 of 1984) and before the commencement** of section 5 of the Companies (Amendment) Ordinance 2003 (28 of 2003), the provisions of this section in force immediately before the commencement** of section 5 of the Companies (Amendment) Ordinance 2003 (28 of 2003) shall continue to have effect as if section 5 of that Ordinance had not been enacted. (Added 28 of 2003 s. 5)~~

~~(Replaced 4 of 1963 s. 3, Amended 6 of 1984 s. 8)~~

~~[cf. 1929 c. 38 s. 5 U.K.]~~

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Note:

~~* Commencement date: 31 August 1984.~~

~~** Commencement date: 13 February 2004.~~

Section:	9	Articles prescribing regulations for companies
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Articles of Association

~~There may in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered with the memorandum, articles of association prescribing regulations for the company.~~

~~(Amended 15 of 1955 s. 2; 30 of 2004 s. 2; 12 of 2010 s. 4)~~

~~[cf. 1929 c. 23 s. 6 U.K.]~~

Section:	10	Regulations required in case of unlimited company or company limited by guarantee
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~~(1) In the case of an unlimited company the articles shall state the number of members with which the company proposes to be registered and, if the company has a share capital, the amount of share capital with which the company proposes to be registered. (Amended 6 of 1984 s. 9)~~

~~(2) In the case of a company limited by guarantee, the articles shall state the number of members with which the company proposes to be registered. (Amended 6 of 1984 s. 9)~~

~~(3) Where a company not having a share capital has increased the number of its members beyond the registered number, it shall, within 15 days after the increase was resolved on or took place, give to the Registrar notice of the increase, and the Registrar shall record the increase. If default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine. (Amended 7 of 1990 s. 2)~~

~~[cf. 1929 c. 23 s. 7 U.K.]~~

Section:	11	Adoption and application of Table A
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~~(1) Articles of association may adopt all or any of the regulations contained in Table A.~~

~~(2) In the case of a company limited by shares and registered after the commencement of this Ordinance, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations contained in Table A, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.~~

~~[cf. 1929 c. 23 s. 8 U.K.]~~

Section:	12	Printing and signature of articles
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(1) ~~Articles shall— (Amended 30 of 2004 s. 2)~~
 (a) ~~be printed in the English or Chinese language;— (Amended 83 of 1995 s. 2)~~
 (b) ~~be divided into paragraphs numbered consecutively;~~
 (c) ~~be signed by each founder member of the company.— (Amended 30 of 2004 s. 2; 12 of 2010 s. 5)~~
 (2) ~~(Repealed 12 of 2010 s. 5)~~
 (Replaced 6 of 1984 s. 10)
 [cf. 1948 c. 38 s. 9 U.K.]

Section:	13	Alteration of articles by special resolution
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(1) ~~Subject to the provisions of this Ordinance and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles.~~
 (1A) ~~Nothing in this section shall authorize a company to make any alteration or addition in its articles which is inconsistent with any special rights attached to a class of shares in the company. (Added 6 of 1984 s. 11)~~
 (2) ~~Any alteration or addition so made in the articles shall, subject to the provisions of this Ordinance, be as valid as if originally contained therein, and be subject in like manner to alteration by special resolution.~~
 (3) ~~Where the articles of a company are altered, the company shall within 15 days after the alteration deliver to the Registrar a printed copy of its articles as altered and certified as correct by an officer of the company.— (Added 30 of 1999 s. 3)~~
 (4) ~~If a company makes default in delivering any document to the Registrar as required by subsection (3), the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine.— (Added 30 of 1999 s. 3)~~
 [cf. 1929 c. 23 s. 10 U.K.]

Section:	14	Statutory forms of memorandum and articles
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Form of Memorandum and Articles

The form of
 (a) ~~the memorandum of association of a company limited by shares;~~
 (b) ~~the memorandum and articles of association of a company limited by guarantee and not having a share capital;~~
 (c) ~~the memorandum and articles of association of a company limited by guarantee and having a share capital;~~
 (d) ~~the memorandum and articles of association of an unlimited company having a share capital;~~
 shall be respectively in accordance with the forms set out in Tables B, C, D and E in the First Schedule, or as near thereto as circumstances admit.
 [cf. 1929 c. 23 s. 11 U.K.]

Section:	14A	Incorporation form
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Application to Registrar for Formation of Incorporated Company

(Added 30 of 2004 s. 2)

(1) ~~A person who wishes to form an incorporated company shall apply to the Registrar in the specified form (in this Ordinance referred to as the "incorporation form"), which shall contain such particulars as are specified in the form:~~
 (2) ~~Without prejudice to the generality of subsection (1), the incorporation form shall contain—~~
 (a) ~~the name of the company intended to be incorporated;~~
 (b) ~~the intended address of the company's registered office in Hong Kong;~~
 (c) ~~a statement as to whether the company is to be a company limited by shares, a company limited by guarantee or an unlimited company;~~
 (d) ~~if the company is to be a company limited by shares or limited by guarantee, a statement as to whether it is to be a private company;~~

~~(e) if the company is to be a company limited by shares or an unlimited company having a share capital, the amount of share capital with which the company proposes to be registered and the number of shares of fixed amount into which the share capital is to be divided;~~

~~(f) if the company is to be a company limited by guarantee, the number of members with which the company proposes to be registered on its incorporation, and the amount that each person who is to be a member is to undertake to contribute to the assets of the company in the event of its being wound up;—(Amended 12 of 2010 s. 6)~~

~~(g) the name and address of each person who is to be a founder member of the company and, if the company is to be a company limited by shares or an unlimited company having a share capital, the number of shares that each founder member is to take, on the incorporation of the company;~~

~~(h) the following particulars with respect to each person who is to be a director of the company on its incorporation—~~

~~(i) in the case of an individual, his present forename and surname and any former forename or surname, any alias, his usual residential address and the number of his identity card (if any) or, in the absence of such number, the number and issuing country of any passport held by him; and~~

~~(ii) in the case of a body corporate, its corporate name and registered or principal office;~~

~~(i) the following particulars with respect to the person who is to be the secretary of the company on its incorporation (or, where there are to be joint secretaries, with respect to each of them)—~~

~~(i) in the case of an individual, his present forename and surname and any former forename or surname, any alias, his usual residential address and the number of his identity card (if any) or, in the absence of such number, the number and issuing country of any passport held by him; and~~

~~(ii) in the case of a body corporate, its corporate name and registered or principal office;~~

~~—but where all the partners in a firm are joint secretaries, the name and principal office of the firm may be substituted for the particulars mentioned in subparagraphs (i) and (ii);~~

~~(j) the statement of compliance required by section 18(2);—(Amended 12 of 2010 s. 6)~~

~~(k) if the signatory is to be a director of the company on its incorporation, a statement by the signatory—~~

~~(i) that he or she has consented to be a director of the company; and~~

~~(ii) if the signatory is an individual, that he or she has attained the age of 18 years;—(Replaced 12 of 2010 s. 6)~~

~~(l) in relation to each person (other than the signatory) who is to be a director of the company on its incorporation—~~

~~(i) a statement by the person that he or she has consented to be a director of the company and, if the person is an individual, that he or she has attained the age of 18 years; or~~

~~(ii) a statement by the signatory that the person has consented to be a director of the company and, if the person is an individual, that the person has attained the age of 18 years;—(Added 12 of 2010 s. 6)~~

~~(m) a statement that the company's memorandum and articles (if any) have been signed in accordance with sections 6 and 12; and—(Added 12 of 2010 s. 6)~~

~~(n) a statement that the contents of the copies of the company's memorandum and articles (if any) delivered under section 15, with or without the part showing the signature and the date of signing as they appear on the original documents, are the same as those of the memorandum and articles.—(Added 12 of 2010 s. 6)~~

~~(3) The incorporation form shall be signed by any person who is named in the form as a founder member.—(Amended 12 of 2010 s. 6)~~

~~(4) The terms and expressions used in subsection (2)(h) and (i) shall be construed in accordance with section 158(10).~~

~~(5) In subsection (2), "signatory" (簽署人), in relation to an incorporation form, means the person who signs the form for the purposes of subsection (3).—(Added 12 of 2010 s. 6)~~

~~(6) The Financial Secretary may, by order published in the Gazette, amend subsection (2).—(Added 12 of 2010 s. 6)~~

~~(Added 30 of 2004 s. 2)~~

Section:	15	Delivery and registration of incorporation form, memorandum and articles
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Registration

~~(1) A duly completed incorporation form shall be delivered to the Registrar for registration together with copies of the memorandum and articles, if any.—(Amended 12 of 2010 s. 7)~~

~~(2) The Registrar shall retain and register the documents delivered under this section.~~

~~(Replaced 30 of 2004 s. 2)~~

Section:	16	Effect of registration
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~~(1) On the registration of a company's incorporation form and copies of its memorandum and articles, if any, the Registrar shall issue a certificate, with his signature or his printed signature, certifying that the company is incorporated and, in the case of a limited company, that the company is limited. (Amended 83 of 1995 s. 3; 12 of 2010 s. 8)~~

~~(2) From the date of incorporation mentioned in the certificate of incorporation, the founder members, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Ordinance.~~

~~(Amended 30 of 2004 s. 2)~~

~~[cf. 1929 c. 23 s. 13 U.K.]~~

Section:	17	Power of company to hold lands
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~~(1) Every company incorporated under this Ordinance shall have power to acquire, hold and dispose of land. (Replaced 74 of 1974 s. 3)~~

~~(2) For the purposes of this section, "land" (土地) includes any estate or interest in land, buildings, messuages and tenements of what nature or kind soever. (Replaced 25 of 1958 s. 2)~~

~~[cf. 1929 c. 23 s. 14 U.K.]~~

Section:	18	Conclusiveness of certificate of incorporation
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~~(1) A certificate of incorporation issued by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Ordinance in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorized to be registered and duly registered under this Ordinance. (Amended 83 of 1995 s. 4)~~

~~(2) A statement of compliance specified in subsection (3) shall be produced to the Registrar and the Registrar may accept the statement as sufficient evidence of compliance with all the requirements referred to in subsection (1). (Replaced 30 of 2004 s. 2. Amended 12 of 2010 s. 9)~~

~~(3) The statement specified for the purposes of subsection (2) is a statement —~~

~~(a) certifying the company's compliance with all the requirements referred to in subsection (1);~~

~~(b) certifying that the particulars contained in the incorporation form are accurate and consistent with those contained in the memorandum and articles of the company; and~~

~~(c) signed by the founder member who signs the form for the purposes of section 14A(3). (Added 12 of 2010 s. 9)~~

~~[cf. 1929 c. 23 s. 15 U.K.]~~

Section:	18A	Delivery of consent of director
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~~(1) Each consent given for the purposes of section 14A(2)(1)(ii) in relation to a company intended to be incorporated must be delivered to the Registrar in the specified form not later than 14 days after the date of incorporation of the company.~~

~~(2) If subsection (1) is contravened, the company, every officer of the company who is in default, and the founder member who signs the incorporation form for the purposes of section 14A(3), commit an offence, and each is liable to a fine and, for continued contravention, to a daily default fine.~~

~~(3) In any proceedings against a founder member for an offence under this section, it is a defence for the founder member to establish that he or she took all reasonable steps to secure compliance with subsection (1).~~

~~(Added 12 of 2010 s. 10)~~

Section:	19	Unlimited companies may be re-registered as limited
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~~(1) A company which, at or after the commencement* of the Companies (Amendment) Ordinance 1984 (6 of 1984), is registered as unlimited may be re-registered as limited if a special resolution that it should be so re-registered (complying with the requirement of subsection (2)) is passed and an application in that behalf, framed in the specified form and signed by a director or by the~~

~~secretary of the company, is lodged with the Registrar together with the documents mentioned in subsection (3) not earlier than the day on which the copy of the resolution forwarded to him in pursuance of section 117 is received by him; and the Eighth Schedule shall have effect for the purposes of this section as if for references in that Schedule to the registration of a company there were substituted references to its re-registration under this section.—(Amended 3 of 1997 s. 7)~~

~~(2) The said requirement is that the resolution—~~

~~(a) shall state the manner in which the liability of the members of the company is to be limited and, if the company is to have a share capital, what that capital is to be; and~~

~~(b) shall—~~

~~(i) if the company is to be limited by guarantee, provide for the making of such alterations in its memorandum and such alterations in and additions to its articles as are requisite to bring the memorandum and articles, both in substance and in form, into conformity with the requirements of this Ordinance with respect to the substance and form of the memorandum and articles of a company to be formed thereunder whose condition as to mode of limitation of liability and possession of a share capital (or want of it) will be similar to the condition of the company as to those matters which will obtain upon its re-registration;~~

~~(ii) if the company is to be limited by shares, provide for the making of such alterations in its memorandum as are requisite to bring it, both in substance and in form, into conformity with the requirements of this Ordinance with respect to the substance and form of the memorandum of a company to be formed thereunder as a company so limited, and such alterations in and additions to its articles as are requisite in the circumstances.~~

~~(3) The documents referred to in subsection (1) are a printed copy of the memorandum as altered in pursuance of the resolution and a printed copy of the articles as so altered.~~

~~(4) The Registrar shall retain the application and other documents lodged with him under subsection (1) and shall issue to the company a certificate of incorporation appropriate to the status to be assumed by the company by virtue of this section; and upon the issue of the certificate—~~

~~(a) the status of the company shall, by virtue of the issue, be changed from unlimited to limited; and~~

~~(b) the alterations in the memorandum specified in the resolution and the alterations in, and additions to, the articles so specified shall, notwithstanding anything in this Ordinance, take effect.~~

~~(5) A certificate of incorporation issued by virtue of this section shall be conclusive evidence that the requirements of this section with respect to re-registration and of matters precedent and incidental thereto have been complied with, and that the company was authorized to be re-registered under this Ordinance in pursuance of this section and was duly so re-registered.~~

~~(6) In the event of the winding up of a company re-registered in pursuance of this section, the following provisions shall have effect—~~

~~(a) notwithstanding section 170(1)(a), a past member of the company who was a member thereof at the time of re-registration shall, if the winding up commences within the period of 3 years beginning with the day on which the company is re-registered, be liable to contribute to the assets of the company in respect of debts and liabilities of its contracted before that time;~~

~~(b) where no persons who were members of the company at that time are existing members of the company, a person who, at that time, was a present or past member thereof shall, subject to section 170(1)(a) and paragraph (a) of this subsection, but notwithstanding section 170(1)(c), be liable to contribute as aforesaid notwithstanding that the existing members have satisfied the contributions required to be made by them in pursuance of this Ordinance;~~

~~(c) notwithstanding section 170(1)(d) and (e), there shall be no limit on the amount which a person who, at that time, was a past or present member of the company is liable to contribute as aforesaid.~~

~~(Replaced 6 of 1984 s. 12)~~

~~[cf. 1967 c. 81 s. 44 U.K.]~~

Note:

*** Commencement date: 31 August 1984.**

Section:	20	Restriction on registration of companies by certain names
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Provisions with respect to Names of Companies

~~(1) A company shall not be registered by a name—~~

~~(a) which is the same as a name appearing in the Registrar's index of company names;—~~

~~(b) which is the same as that of a body corporate incorporated or established under an Ordinance;~~

~~(c) the use of which by the company would, in the opinion of the Chief Executive, constitute a criminal offence; or~~

~~(d) which, in the opinion of the Chief Executive, is offensive or otherwise contrary to the public interest.~~

~~(2) Except with the consent of the Chief Executive no company shall be registered by a name which~~

~~(a) in the opinion of the Chief Executive, would be likely to give the impression that the company is connected in any way with the Central People's Government or the Government of Hong Kong or any department of either Government; or~~

~~(b) includes any word or expression for the time being specified in an order made under section 22B.~~

~~(2A) Except with the consent of the Registrar, a company must not be registered by a name that is the same as a name for which a direction has been given under section 22 or 22A on or after the commencement* of the Companies (Amendment) Ordinance 2010 (12 of 2010).— (Added 12 of 2010 s. 12)~~

~~(3) In determining for the purposes of subsection (1)(a) or (b) or (2A) whether one name is the same as another— (Amended 12 of 2010 s. 12)~~

~~(a) the following shall be disregarded—~~

~~(i) the definite article, where it is the first word of the name;~~

~~(ii) the following words and expressions where they appear at the end of the name, that is to say—~~

~~(A) "company";~~

~~(B) "and company";~~

~~(C) "company limited";~~

~~(D) "and company limited";~~

~~(E) "limited";~~

~~(F) "unlimited";~~

~~(G) "public limited company";~~

~~(H) "公司";— (Added 3 of 1997 s. 8)~~

~~(I) "有限公司";— (Added 3 of 1997 s. 8)~~

~~(J) "無限公司"; and— (Added 3 of 1997 s. 8)~~

~~(K) "公眾有限公司";— (Added 3 of 1997 s. 8)~~

~~(iii) abbreviations of any of the words or expressions referred to in subparagraph (ii) where they appear at the end of the name; and~~

~~(iv) type and case of letters, accents, spaces between letters and punctuation marks; (Amended 3 of 1997 s. 8)~~

~~(b) "and" and "&", "Hong Kong", "Hongkong" and "HK", and "Far East" and "FE" are respectively to be taken as the same;~~

~~(c) two different Chinese characters shall be regarded as the same if the Registrar is satisfied that having regard to the usage of the two Chinese characters in Hong Kong, they can reasonably be used interchangeably.— (Added 3 of 1997 s. 8)~~

~~(Replaced 60 of 1990 s. 3. Amended 23 of 1999 s. 3)~~

~~[cf. 1985 c. 6 s. 26 U.K.]~~

Note:

*— **Commencement date: 10 December 2010 (Parts 1, 3, 4, 6 and 8).**

Section:	20A	(Repealed 60 of 1990 s. 4)
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(Repealed 60 of 1990 s. 4)

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Note:

See 60 of 1990 s. 11.

Section:	21	Power to dispense with certain words in name of charitable and other companies
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(1) Where it is proved to the satisfaction of the Registrar that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity or

any other useful object, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Registrar may by licence direct that the association may be registered as a company with limited liability, without the addition of-

(a) ~~if the name of the association is in English, the word "Limited" to its name;~~

(b) ~~if the name of the association is in Chinese, the expression in Chinese "有限公司" to its name; and~~

(c) ~~if the name of the association is both in English and Chinese, such word and expression to its name in English and Chinese respectively,~~

~~and the association may be registered accordingly and shall, on registration, enjoy all the privileges and (subject to the provisions of this section) be subject to all the obligations of limited companies.—(Replaced 3 of 1997 s. 9)~~

(2) ~~Where it is proved to the satisfaction of the Registrar-~~

(a) ~~that the objects of a company registered under this Ordinance as a limited company are restricted to those specified in subsection (1) and to objects incidental or conducive thereto; and~~

(b) ~~that by its constitution the company is required to apply its profits, if any, or other income in promoting its objects and is prohibited from paying any dividend to its members;~~

~~the Registrar may by licence authorize the company to make by special resolution a change in its name including or consisting of the omission of the word "Limited" or the expression in Chinese "有限公司" or both such word and expression, as the case may be, and subsections (7) and (8) of section 22 shall apply to a change of name under this subsection as they apply to a change of name under that section.—(Amended 3 of 1997 s. 9; 12 of 2010 s. 53)~~

(3) ~~A licence by the Registrar under this section may be granted on such conditions and subject to such regulations as the Registrar thinks fit, and those conditions and regulations shall be binding on the body to which the licence is granted, and (where the grant is under subsection (1)) shall, if the Registrar so directs, be inserted in the memorandum and articles, or in one of those documents.~~

(4) ~~A body to which a licence is granted under this section shall be exempted from the provisions of this Ordinance relating to the use of the word "Limited" or the expression in Chinese "有限公司" or both such word and expression, as the case may be, as any part of its name, the publishing of its name and the sending of lists of members to the Registrar.—(Amended 3 of 1997 s. 9)~~

(5) ~~A licence under this section may at any time be revoked by the Registrar, and upon revocation the Registrar shall, where the name upon the register of the body to which it was granted is-~~

(a) ~~in English, enter the word "Limited" at the end of that name;~~

(b) ~~in Chinese, enter the expression in Chinese "有限公司" at the end of that name; or~~

(c) ~~both in English and Chinese, enter such word and expression at the end of its name in English and Chinese respectively,~~

~~and the body shall cease to enjoy the exemptions and privileges or, as the case may be, the exemptions granted by this section:~~

~~Provided that before a licence is so revoked, the Registrar shall give to the body notice in writing of his intention, and shall afford it an opportunity of being heard in opposition to the revocation.—(Amended 3 of 1997 s. 9)~~

(6) ~~A body in respect of which a licence under this section is in force shall not have power to alter its memorandum or articles unless-~~

(a) ~~(Repealed 46 of 2000 s. 3)~~

(b) ~~the proposed alteration is approved in writing by the Registrar.~~

(7) ~~Where a body in respect of which a licence under this section is in force alters its memorandum or articles, the Registrar may (unless he sees fit to revoke the licence) vary the licence by making it subject to such conditions and regulations as the Registrar thinks fit, in lieu of or in addition to the conditions and regulations, if any, to which the licence was formerly subject.~~

(8) ~~Where a licence granted under this section to a body the name of which contains the words "Chamber of Commerce" or the expression in Chinese "總商會" is revoked, the body shall within a period of 6 weeks from the date of revocation or such longer period as the Registrar may think fit to allow, change its name to a name which does not contain those words, and —(Amended 3 of 1997 s. 9)~~

(a) ~~the notice to be given under the proviso to subsection (5) to that body shall include a statement to the effect of the foregoing provisions of this subsection; and~~

(b) ~~subsections (7) and (8) of section 22 shall apply to a change of name under this subsection as they apply to a change of name under that section.—(Amended 12 of 2010 s. 53)~~

(9) ~~If a body referred to in subsection (8) makes default in complying with the requirements of that subsection, it shall be liable to a fine and, for continued default, to a daily default fine.—(Amended 7 of 1990 s. 2)~~

(10) Without prejudice to section 23 of the Interpretation and General Clauses Ordinance (Cap 1), this section shall apply in relation to any body in respect of which a licence (being a licence granted under this Ordinance in respect of the registration of that body as a company with limited liability without the addition of the word "Limited" to its name) is in force at the commencement of the Companies (Amendment) Ordinance 1978 (51 of 1978) as if such licence had been granted under this section after the commencement of that Ordinance.

~~(Replaced 51 of 1978 s. 2)~~

~~[cf. 1948 c. 38 s. 19 U.K.]~~

Section:	22	Change of name
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~~(1) A company may by special resolution change its name.~~

~~(1A) Where a company passes a special resolution changing its name, it shall, within 15 days after the passing of the resolution, give notice in the specified form of the change of its name to the Registrar.—(Added 28 of 2003 s. 7)~~

~~(1B) If a company fails to comply with subsection (1A), the company and every officer of the company who is in default is liable to a fine and, for continued default, to a daily default fine.—(Added 28 of 2003 s. 7)~~

~~(2) Where a company has been registered by a name which—~~

~~(a) is the same as or, in the opinion of the Registrar, too like a name appearing at the time of the registration in the Registrar's index of company names;~~

~~(b) is the same as or, in the opinion of the Registrar, too like a name which should have appeared in that index at that time; or~~

~~(c) is the same as or, in the opinion of the Registrar, too like the name of a body corporate incorporated or established under any Ordinance at the time of the registration,~~

~~the Registrar may within 12 months of that time, in writing, direct the company to change its name within such period as he may specify.~~

~~(3) Section 20(3) applies in determining under subsection (2) whether a name is the same as or too like another.~~

~~(3A) If a company has been registered by a name by which, at the time of the registration, the company must not be registered under section 20(2), the Registrar may in writing, within 3 months after the time of the registration, direct the company to change the name within the period specified by the Registrar.—(Added 12 of 2010 s. 13)~~

~~(3B) The Registrar may in writing direct a company to change, within the period specified by the Registrar, a name by which the company has been registered if the Registrar receives, from a person in whose favour an order is made by a court restraining the company from using the name or any part of the name—~~

~~(a) an office copy of the order; and~~

~~(b) a notice in the specified form.—(Added 12 of 2010 s. 13)~~

~~(3C) In subsection (3B), "court" (法院) means any court of the Hong Kong Special Administrative Region of competent jurisdiction.—(Added 12 of 2010 s. 13)~~

~~(4) If it appears to the Registrar that misleading information has been given for the purpose of a company's registration by a particular name, or that undertakings or assurances have been given for that purpose and have not been fulfilled, he may within 5 years of the date of its registration by that name direct, in writing, the company to change its name within such period as he may specify.~~

~~(5) Where a direction is given under subsection (2), (3A), (3B) or (4), the Registrar may by a further direction in writing extend the period within which the company is to change its name, at any time before the end of that period.—(Amended 12 of 2010 s. 13)~~

~~(6) A company which fails to comply with a direction under this section and every officer of the company who is in default shall be liable to—~~

~~(a) a fine and, in the case of an individual, imprisonment; and~~

~~(b) for continued default, a daily default fine.~~

~~(7) Where a company gives notice of a change of its name to the Registrar under subsection (1A), the Registrar shall, subject to section 20—~~

~~(a) enter the new name on the register in place of the former name; and~~

~~(b) issue a certificate of change of name;~~

~~and the change of name shall have effect from the date on which the certificate is issued.—(Replaced 28 of 2003 s. 7)~~

~~(8) A change of name by a company under this section does not affect any rights or obligations of the company or render defective any legal proceedings by or against it and any legal proceedings that could have been commenced or continued against it by its former name may be commenced or~~

continued against it by its new name.
(Replaced 60 of 1990 s. 5)
[cf. 1985 c. 6 s. 28 U.K.]

Section:	22A	Power of Registrar to require company to change misleading or offensive name, etc.*
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~~(1) If in the opinion of the Registrar the name by which a company is registered gives so misleading an indication of the nature of its activities as to be likely to cause harm to the public, he may direct it to change its name.~~

~~(1A) If a company has been registered by a name by which, at the time of the registration, the company must not be registered under section 20(1)(e) or (d), the Registrar may direct the company to change the name. (Added 12 of 2010 s. 14)~~

~~(2) A direction given under this section to a company shall, if not duly made the subject of an application under subsection (3) to the court, be complied with within a period of 6 weeks from the date of the direction or such longer period as the Registrar may think fit to allow.~~

~~(3) A company to which a direction is given under this section may, within a period of 3 weeks from the date of the direction, apply to the court to set the direction aside, and the court may set it aside or confirm it; and if it confirms it, it shall specify a period within which it shall be complied with.~~

~~(4) If a company makes default in complying with a direction under this section, it shall be liable to a fine and, for continued default, to a daily default fine. (Amended 7 of 1990 s. 2)~~

~~(5) Subsections (7) and (8) of section 22 shall apply in relation to a change of name under this section as they apply in relation to a change of name under that section. (Amended 12 of 2010 s. 54)
(Added 6 of 1984 s. 13)
[cf. 1967 c. 81 s. 46 U.K.]~~

Note:

* (Amended 12 of 2010 s. 14)

Section:	22AA	Power of Registrar to replace company name in case of failure to comply with direction
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~~(1) This section applies if—
(a) on or after the commencement* of the Companies (Amendment) Ordinance 2010 (12 of 2010), the Registrar directs a company to change a name under section 22(2), (3A), (3B) or (4) or 22A(1) or (1A); and~~

~~(b) the company fails to comply with the direction—
(i) in the case of a direction under section 22(2), (3A), (3B) or (4), within the period specified by the Registrar or, if the period is extended under section 22(5), the extended period; and~~

~~(ii) in the case of a direction under section 22A(1) or (1A), within the period specified in section 22A(2) or, if a period is specified by the court under section 22A(3) for the direction, the period specified by the court.~~

~~(2) Without limiting sections 22(6) and 22A(4), the Registrar may replace the name with—~~

~~(a) if the name is in English, a new name that consists of the words “Company Registration Number” as its prefix, followed by the registration number of the company as stated in the certificate of incorporation;~~

~~(b) if the name is in Chinese, a new name that consists of the Chinese characters “公司註冊編號” as its prefix, followed by the registration number of the company as stated in the certificate of incorporation; or~~

~~(c) if the name is both in English and Chinese, a new name in English that consists of the words “Company Registration Number” as its prefix, followed by the registration number of the company as stated in the certificate of incorporation, and in Chinese that consists of the Chinese characters “公司註冊編號” as its prefix, followed by that registration number.~~

~~(3) On replacing the name with a new name, the Registrar must enter the new name on the register in place of the replaced name.~~

~~(4) The replacement takes effect on the date on which the new name is entered on the register under subsection (3).~~

~~(5) Within 30 days after entering the new name on the register, the Registrar must—~~

~~(a) by notice in writing notify the company of—~~

- (i) ~~the fact that a name of the company has been replaced with a new name; and~~
 - (ii) ~~the date on which the replacement takes effect under subsection (4); and~~
 - (b) ~~by notice in the Gazette notify that fact and that date.~~
 - (6) ~~A replacement of a name of a company under this section does not affect any rights or obligations of the company or render defective any legal proceedings by or against it. Any legal proceedings that could have been commenced or continued against the company by the replaced name may be commenced or continued against it by its new name.~~
- (Added 12 of 2010 s. 15)

Note:

* ~~Commencement date: 10 December 2010 (Parts 1, 3, 4, 6 and 8).~~

Section:	22B	Specification of names by Chief Executive
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- (1) ~~The Chief Executive may by order-~~
 - (a) ~~specify words or expressions for the registration of which as, or as part of, a company's name the approval of the Chief Executive is required under section 20(2)(b); and~~
 - (b) ~~in relation to any such word or expression, specify a Government department or other body as the relevant body for the purposes of subsection (2). (Amended 23 of 1999 s. 3)~~
 - (2) ~~Where a company or the promoter of a proposed company proposes to have as, or as part of, its name any word or expression referred to in subsection (1), a request shall be made in writing by the company or the promoter to any body specified under subsection (1)(b) as the relevant body in relation to such word or expression, to indicate whether it has any objection to the proposed name and the reasons for any such objection.~~
 - (3) ~~Where a company or a promoter makes a request under subsection (2) the company secretary or the promoter shall deliver in writing to the Registrar a statement that such request has been made to the body referred to in subsection (2) together with a copy of any written reply received from that body and, in the case of a change of name, the notice of change of name required by section 22(1A). (Amended 28 of 2003 s. 8)~~
 - (4) ~~Section 305 (inspection, production and evidence of documents kept by Registrar) shall not apply to any document delivered under subsection (3).~~
 - (5) ~~An order under this section may contain such transitional provisions and savings as the Chief Executive may consider appropriate, and may make different provisions for different cases or different classes of cases. (Amended 23 of 1999 s. 3)~~
- (Added 60 of 1990 s. 6)
[ef. 1985 c. 6 s. 29 U.K.]

Section:	22C	Registrar's index of company names
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Remarks:

Adaptation amendments retroactively made - see 23 of 1999 s. 3

- (1) ~~The Registrar shall keep an index of the names of the following-~~
 - (a) ~~every company; and~~
 - (b) ~~every company incorporated outside Hong Kong which has complied with section 333.~~
 - (2) ~~The Chief Executive may by order amend subsection (1) so as to add to it any other body or class of body whether incorporated or unincorporated. (Amended 23 of 1999 s. 3)~~
- (Added 60 of 1990 s. 6)
[ef. 1985 c. 6 s. 714 U.K.]

Section:	23	Effect of memorandum and articles
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General Provisions with respect to Memorandum and Articles

- (1) ~~Subject to the provisions of this Ordinance, the memorandum and articles shall, when registered, have effect as a contract under seal-~~
 - (a) ~~between the company and each member; and~~
 - (b) ~~between a member and each other member,~~
- ~~and shall be deemed to contain covenants on the part of the company and of each member to observe all the provisions of the memorandum and articles. (Replaced 28 of 2003 s. 9)~~

~~(1A) Without limiting the generality of subsection (1), the memorandum and articles shall, when registered, be enforceable by the company against each member and by a member against the company and against each other member. — (Added 28 of 2003 s. 9)~~

~~(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company, and be of the nature of a specialty debt. [cf. 1929 c. 23 s. 20 U.K.]~~

Section:	24	Provision as to memorandum and articles of companies limited by guarantee
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~~(1) In the case of a company limited by guarantee and not having a share capital, and registered on or after 1 January 1912, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.~~

~~(2) For the purpose of the provisions of this Ordinance relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of a company limited by guarantee and registered on or after the date aforesaid, purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby. [cf. 1929 c. 23 s. 21 U.K.]~~

Section:	25	Alterations in memorandum or articles increasing liability to contribute to share capital not to bind existing members without consent
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~~Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company:~~

~~Provided that this section shall not apply in any case where the member agrees in writing, either before or after the alteration is made, to be bound thereby. [cf. 1929 c. 23 s. 22 U.K.]~~

Section:	25A	Power to alter conditions in memorandum which could have been contained in articles
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~~(1) Subject to the provisions of sections 25 and 168A, any condition contained in a company's memorandum which could lawfully have been contained in articles of association instead of in the memorandum may, subject to the provisions of this section, be altered by the company by special resolution:~~

~~Provided that, where a private company passes such a resolution, an application may be made to the court for the alteration to be cancelled, and if such an application is made, the alteration shall not have effect except in so far as it is confirmed by the court. — (Amended 28 of 2003 s. 10)~~

~~(2) This section shall not apply where the memorandum itself provides for or prohibits the alteration of all or any of the said conditions, and shall not authorize any variation or abrogation of the special rights of any class of members.~~

~~(3) Where a private company passes a resolution under this section altering any condition contained in its memorandum, subsections (2)(a), (3), (4), (7) and (8) of section 8 shall apply in relation to the alteration and to any application made under this section in the same manner as they apply in relation to alterations and to applications made under section 8. — (Replaced 28 of 2003 s. 10)~~

~~(3A) Where a company (not being a private company) passes a resolution under this section altering any condition contained in its memorandum, subsections (7A) and (8) of section 8 shall apply in relation to the alteration made under this section in the same manner as they apply in relation to alterations made under section 8. — (Added 28 of 2003 s. 10)~~

~~(4) This section shall apply to a company's memorandum whether registered before or after the commencement* of the Companies (Amendment) Ordinance 1984 (6 of 1984).~~

~~(5) In relation to a resolution for altering any condition contained in a company's memorandum that is passed by a company (whether a private company or not) under this section before the commencement** of section 10 of the Companies (Amendment) Ordinance 2003 (28 of 2003), the provisions of this section in force immediately before that commencement shall continue to have effect as if section 10 of that Ordinance had not been enacted. — (Added 28 of 2003 s. 10)~~

(Added 6 of 1984 s. 14)
[cf. 1948 c. 38 s. 23 U.K.]

Note:

* ~~Commencement date: 31 August 1984.~~

** ~~Commencement date: 13 February 2004.~~

Section:	26	Copies of memorandum and articles to be given to members
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~~(1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles, if any, and a copy of any Ordinance which alters the memorandum, subject to payment, in the case of a copy of the memorandum and of the articles, of \$5 or such less sum as the company may prescribe, and, in the case of a copy of an Ordinance, of such sum not exceeding the published price thereof as the company may require.~~

~~(2) If a company makes default in complying with this section, the company and every officer of the company who is in default shall be liable for each offence to a fine. (Amended 7 of 1990 s. 2)
(Amended 6 of 1984 s. 15)
[cf. 1929 c. 23 s. 23 U.K.]~~

Section:	27	Issued copies of memorandum to embody alterations
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~~(1) Where an alteration is made in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.~~

~~(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, the company and every officer of the company who is in default shall be liable for each offence to a fine. (Amended 22 of 1950 Schedule; 6 of 1984 s. 16; 7 of 1990 s. 2)
[cf. 1929 c. 23 s. 24 U.K.]~~

Section:	28	Definition of member
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Membership of Company

~~(1) The founder members of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members. (Amended 30 of 2004 s. 2)~~

~~(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.
[cf. 1929 c. 23 s. 25 U.K.]~~

Section:	28A	Membership of holding company
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~~(1) Subject to the provisions of this section, a body corporate cannot be a member of a company which is its holding company, and any allotment or transfer of shares in a company to its subsidiary shall be void.~~

~~(2) Nothing in this section shall apply where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.~~

~~(3) This section shall not prevent a subsidiary which was, at the commencement* of the Companies (Amendment) Ordinance 1984 (6 of 1984), a member of its holding company, from continuing to be a member.~~

~~(4) This section shall not prevent a company which at the date it becomes a subsidiary of another company is a member of that other company, from continuing to be a member.~~

~~(5) This section shall not prevent a subsidiary from becoming a member of its holding company, or prevent an allotment to a subsidiary of shares in its holding company, by or by virtue of the exercise by the subsidiary of any rights of conversion attached to any shares in its holding company or under any debentures thereof held by the subsidiary at the commencement* of the Companies (Amendment) Ordinance 1984 (6 of 1984).~~

(6) ~~This section shall not prevent a subsidiary which is a member of its holding company from accepting and holding further shares in its holding company if such further shares are allotted to it as fully paid up in consequence of a capitalization of reserves or profits by such holding company.~~

(7) ~~Subject to subsection (2), a subsidiary which is a member of its holding company shall have no right to vote at meetings of the holding company or any class of members thereof.~~

(8) ~~Subject to subsection (2), this section shall apply in relation to a nominee for a body corporate which is a subsidiary, as if references therein to such a body corporate included references to a nominee for it.~~

(9) ~~Where a holding company makes an offer of shares to its members it may sell, on behalf of a subsidiary, any such shares which the subsidiary could, but for this section, have taken by virtue of shares already held by it in the holding company, and pay the proceeds of the sale to the subsidiary.~~

(10) ~~In relation to a company limited by guarantee or unlimited which is a holding company, the reference in this section to shares, whether or not it has a share capital, shall be construed as including a reference to the interest of its members as such, whatever the form of that interest.~~

~~(Added 6 of 1984 s. 17)~~

~~[cf. 1984 c. 38 s. 27 U.K.]~~

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Note:

* **Commencement date: 31 August 1984.**

Section:	29	Meaning of private company
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Private Companies

(1) ~~For the purposes of this Ordinance, the expression "private company" (私人公司) means a company which by its articles-~~

~~(a) restricts the right to transfer its shares; and~~

~~(b) limits the number of its members to 50, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were while in that employment, and have continued after the determination of that employment to be, members of the company; and~~

~~(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.~~

(2) ~~Where 2 or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member.~~

~~[cf. 1929 c. 23 s. 26 U.K.]~~

Section:	30	Circumstances in which company ceases to be or to enjoy privileges of a private company
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Remarks:

Adaptation amendments retroactively made—see 23 of 1999 s. 3

(1) ~~If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under section 29, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of 14 days after the said date, deliver to the Registrar for registration a prospectus or a statement in lieu of prospectus in the form and containing the particulars set out in Part I of the Second Schedule and, in the cases mentioned in Part II of that Schedule setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule. (Amended 78 of 1972 s. 3)~~

~~(1A) Every statement in lieu of prospectus delivered under subsection (1) shall, where the persons making any report required by Part II of the Second Schedule have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of the Second Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor. (Added 78 of 1972 s. 3)~~

(2) ~~If default is made in complying with subsection (1) or (1A), the company and every officer of the company who is in default shall be liable to a default fine. (Amended 78 of 1972 s. 3; 7 of 1990 s. 2)~~

~~(2A) Where a statement in lieu of prospectus delivered to the Registrar under subsection (1)~~

~~includes any untrue statement, any person who authorized the delivery of the statement, in lieu of prospectus for registration shall be liable to imprisonment and a fine, unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true.—(Added 78 of 1972 s.3. Amended 7 of 1990 s. 2)~~

~~(2B) For the purposes of this section—~~

~~(a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and~~

~~(b) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.—(Added 78 of 1972 s. 3)~~

~~(2C) The Chief Executive in Council may by regulation amend the Second Schedule.—(Added 78 of 1972 s. 3. Amended 23 of 1999 s. 3)~~

~~(3) Where the articles of a company include the provisions aforesaid but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions contained in sections 109(3) and 141D, and thereupon the said provisions shall apply to the company as if it were not a private company.—(Amended 6 of 1984 s. 18)~~

~~Provided that the court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as seem to the court just and expedient, order that the company be relieved from such consequences as aforesaid.~~

~~[cf. 1929 c. 23 s. 27 U.K.]~~

Section:	31	(Repealed 28 of 2003 s. 12)
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~~(Subheading repealed 28 of 2003 s. 11)~~

Section:	32	Form of contracts
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Contracts, etc.

~~(1) Contracts on behalf of a company may be made as follows —(Amended L.N. 223 of 1976)~~

~~(a) a contract which if made between private persons would be by law required to be in writing and under seal, may be made on behalf of the company in writing under the common seal of the company; —(Amended 6 of 1984 s. 20)~~

~~(b) a contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied;~~

~~(c) a contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied.~~

~~(2) A contract made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto.~~

~~(3) A contract made according to this section may be varied or discharged in the same manner in which it is authorized by this section to be made.~~

~~[cf. 1929 c. 23 s. 29 U.K.]~~

Section:	32A	Pre incorporation contracts
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~~(1) Where a contract purports to have been made in the name or on behalf of a company at a time when the company has not been incorporated—~~

~~(a) subject to subsection (2) and any express agreement to the contrary, the contract shall have effect as a contract entered into by the person purporting to act for the company or as agent for it, and he shall be personally liable on and entitled to enforce the contract accordingly;~~

~~(b) the company may, after incorporation, ratify the contract to the same extent as if it had already been incorporated at that time and as if the contract had been entered into on its behalf by an agent acting without its authority.~~

~~(2) Where a contract is ratified by virtue of this section, the person who purported to act for or on behalf of the company in making the contract shall not thereafter be under any greater liability than~~

he would have been if he had entered into the contract on behalf of the company as an agent acting without its authority and after its incorporation.

(Added 6 of 1984 s. 21)

[cf. 1972 c. 68 s. 9 U.K.]

Section:	33	Bills of exchange and promissory notes
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~~A bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of a company if made, accepted, or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority.~~

~~[cf. 1929 c. 23 s. 30 U.K.]~~

Section:	34	Execution of deeds abroad
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~~(1) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in Hong Kong. (Amended 1 of 1949 s. 6; 6 of 1984 s. 259)~~

~~(2) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the same effect as if it were under its common seal.~~

~~[cf. 1929 c. 23 s. 31 U.K.]~~

Section:	35	Power for company to have official seal for use abroad
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~~(1) A company whose objects require or comprise the transaction of business outside Hong Kong, may, if authorized by its articles, have for use in any territory, district, or place not situate in Hong Kong, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district, or place where it is to be used. (Amended 1 of 1949 s. 7; 6 of 1984 s. 259)~~

~~(2) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.~~

~~(3) A company having an official seal for use in any such territory, district or place may, by writing under its common seal, authorize any person appointed for the purpose in that territory, district or place, to affix the official seal to any deed or other document to which the company is party in that territory, district or place.~~

~~(4) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.~~

~~(5) The person affixing any such official seal shall, by writing under his hand, certify on the deed or other instrument, to which the seal is affixed, the date on which and the place at which it is affixed.~~

~~[cf. 1929 c. 23 s. 32 U.K.]~~

Section:	36	Authentication of documents
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Authentication of Documents

~~A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorized officer of the company, and need not be under its common seal.~~

~~[cf. 1929 c. 23 s. 33 U.K.]~~

Section 66 of Schedule 9

Section:	155B	Notices of resolutions to contain explanation of their effect and particulars of relevant interests of directors
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~~(1) Subject to subsection (2), where a company (not being a company which is a wholly owned subsidiary) gives notice of the intention to move a resolution at a general meeting of the company or a meeting of any class of members of the company the notice shall include or be accompanied by a statement-~~

~~(a) containing such information and explanation, if any, as is reasonably necessary to~~

indicate the purpose of the resolution; and

~~(b) disclosing any material interests of any director in the matter dealt with by the resolution so far as the resolution affects those interests differently from the interests of other members of the company;~~

~~(2) Subsection (1)(a) shall not apply in relation to any resolution of which notice is given by the company under section 115A.~~

~~(3) It shall be the duty of any director of the company to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section; and any person who makes default in complying with this subsection shall be liable to a fine. — (Amended 7 of 1990 s. 2)~~

~~(4) If a company makes default in complying with subsection (1) the company and every officer of the company who is in default shall be liable to a fine. — (Amended 7 of 1990 s. 2)~~

~~(5) Nothing in this section shall affect the validity of a resolution passed at a general meeting of a company.~~

~~(6) For the purposes of this section "wholly owned subsidiary" (全資附屬公司) has the same meaning as it has for the purposes of section 124.~~

Category III: Amendments arising from the repeal of existing provisions in CO in whole or in part

Item (8): Schedule 9A repeals provisions in other ordinances due to repeals of CO provisions in whole or in part that will not be re-enacted in CB

Section 5(11) of Schedule 9A

Chapter:	4A	Title:	THE RULES OF THE HIGH COURT
Order:	102	Heading:	<u>THE COMPANIES ORDINANCE</u> <u>THE COMPANIES ORDINANCE AND THE COMPANIES (WINDING UP AND MISCELLANEOUS PROVISIONS) ORDINANCE</u>

5. Applications to be made by petition (O. 102, r. 5)

- (1) The following applications ~~under the Ordinance~~ must be made by petition, namely applications-
- (a) under ~~section 8~~section 84(5) of the Companies Ordinance (_____ of 2011) to cancel the alteration of a private company's objects, (28 of 2003 s. 120)
 - ~~(b) under section 25A to cancel the alteration of a condition contained in a private company's memorandum~~section 85(4) of the Companies Ordinance (_____ of 2011) to cancel the alteration of a provision contained in the articles of association of a relevant company as defined by section 85(10) of that Ordinance, (28 of 2003 s. 120)
 - ~~(e) under section 48B to confirm a reduction of the share premium account of a company;~~
 - ~~(d) under section 50 to sanction the issue by a company of shares at a discount;~~
 - ~~(e) under section 49 to confirm a reduction of the capital redemption reserve fund of a company;~~
 - (f) under ~~section 59~~section 221 of the Companies Ordinance (_____ of 2011) to confirm a reduction of the share capital of a company,
 - (g) under ~~section 64 to cancel any variation or abrogation of the rights attached to section 177 of the Companies Ordinance (_____ of 2011) to disallow any variation or abrogation of the rights attached to shares in~~ any class of shares in a company,
 - ~~(ga) under section 185 of the Companies Ordinance (_____ of 2011) to disallow any variation or abrogation of the rights of any class of members of a company that does not have a share capital.~~
 - (h) under ~~section 166~~section 664 of the Companies Ordinance (_____ of 2011) to sanction a compromise or arrangement between a company and its creditors or any class of them or between a company and its members or any class of them,
 - (i) under ~~section 291(7) for an order restoring the name of a company to the register~~ section 753 of the Companies Ordinance (_____ of 2011) for the restoration of a company to the Companies Register, where the application is made in conjunction with an application for the winding up of the company,
 - (j) under ~~section 323~~section 805 of the Companies Ordinance (_____ of 2011) to cancel the alteration of the form of a company's constitution, and
 - (k) under ~~section 358(2)~~section 892 of the Companies Ordinance (_____ of 2011) for relief from liability of an officer of a company or a person employed by a company as auditor.

Section 292(3) of Schedule 9A

Chapter:	562	Title:	BROADCASTING ORDINANCE
Schedule:	1	Heading:	<u>DISQUALIFICATION FOR HOLDING DOMESTIC FREE OR PAY TELEVISION PROGRAMME SERVICE LICENCES AND RESTRICTION ON VOTING CONTROL OF VOTING CONTROLLERS</u>

PART 1

INTERPRETATION AND APPLICATION

15. Privilege relating to non-disclosure and confidentiality

(1) A person is not obliged to comply with the requirements of a notice under section 9 if he is for the time being exempted by the Financial Secretary by notice in the Gazette from the operation of section 329 of the Securities and Futures Ordinance (Cap 571).

~~(2) Where a corporation is required to give information under section 9 or 10, the corporation may take advantage of the benefit conferred by section 128(3) or 129(3) of the Companies Ordinance (Cap 32); but where as a consequence of taking such advantage, any information is not given by the corporation, the fact of such omission shall be disclosed by the corporation.~~

Category IV: Amendments due to effect of the provision being spent or redundant

Item (9): Provisions repealed or amended because of effect being spent or redundant

Section 3(9) of Schedule 9

Section:	2	Interpretation
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Interpretation and Specification of Forms

(1) In this Ordinance, unless the context otherwise requires-
"printed" (印刷、印製) means produced by ordinary letterpress or lithography ~~or by such other process as the Registrar in his discretion may accept;~~

Section 283 of Schedule 9A

Chapter:	556	Title:	MASS TRANSIT RAILWAY ORDINANCE
Section:	42	Heading:	Share capital

Matters relating to Corporation as a company

(1) The Corporation shall, on the appointed day, issue shares to the Financial Secretary Incorporated which shall be held by the Financial Secretary Incorporated in trust on behalf of the Government.

(2) Shares issued in pursuance of this section-

- (a) shall each be of a par value of an amount that the Financial Secretary directs and shall carry such rights as he determines;
- (b) shall be issued at par as fully paid and shall be treated as if they had been paid up in cash as to the par value; and
- (c) shall have an aggregate par value of not more than the aggregate par value of the issued shares of MTRC immediately before the appointed day.

~~(3) Section 43(1) of the Companies Ordinance (Cap 32) does not apply in relation to an allotment of shares pursuant to this section.~~

Section 468(2) of Schedule 9A

Chapter:	1177	Title:	CITIBANK (HONG KONG) LIMITED (MERGER) ORDINANCE
Section:	2	Heading:	Interpretation

(1) In this Ordinance, unless the subject or context otherwise requires—

~~"Registrar of Companies" (公司註冊處處長) means the Registrar of Companies appointed under section 303 of the Companies Ordinance (Cap 32);~~

"subsidiary" (附屬公司) has the meaning given by section 14 of the Companies Ordinance (_____ of 2011) for the purposes of that Ordinance ~~assigned to it by section 2(4) of the Companies Ordinance (Cap 32);~~

Category V: Drafting changes

Item 10(a): Using defined terms or consolidating references to simply the provisions

(i) “Specified provisions”, “relevant Ordinance”, etc.

Section 75(6) of Schedule 9

Section:	168F	Disqualification for persistent breaches of <u>Ordinance specified provisions</u>
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(1) The court may make a disqualification order against a person where it appears to it that ~~he has been persistently in default in relation to provisions of this Ordinance requiring any return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the Registrar~~ the person has been persistently in default in relation to the specified provisions.

(2) On an application to the court for an order to be made under this section, the fact that a person has been persistently in default in relation to ~~such provisions may (without prejudice to its proof in any other manner) be conclusively proved by showing that in the 5 years ending with the date of the application he has been adjudged guilty (whether or not on the same occasion) of 3 or more defaults in relation to those provisions~~ the specified provisions may (without prejudice to its proof in any other manner) be conclusively proved by showing that in the 5 years ending with the date of application the person has been adjudged guilty (whether or not on the same occasion) of 3 or more defaults in relation to the specified provisions.

(3) A person is to be treated under subsection (2) as being adjudged guilty of a default in relation to ~~any provision if a~~ specified provision if—

(a) ~~he is convicted of an offence consisting in a contravention of that provision (whether on his own part or on the part of any company); or~~

(b) ~~an order of the court is made against him under section 279, 302 or 306.~~

(a) the person is convicted of an offence consisting in a contravention of a specified provision (whether on the person’s own part or on the part of any company), or

(b) an order of the court is made against the person under—

(i) in the case of a specified provision of the pre-amended Ordinance or this Ordinance, section 279, 302 or 306, or

(ii) in the case of a specified provision of the Companies Ordinance (of 2011), section 886 of that Ordinance.

(4) For the purposes of this section, "court" (法院) includes a magistrate where the application under this section is made in the course of a prosecution in which the person is adjudged guilty of a default referred to in subsection (1) and, as a result, subsection (2) applies to ~~him~~ the person.

(4A) In this section—

“specified provision” (指明條文) means a provision of the pre-amended Ordinance, this Ordinance, or the Companies Ordinance (of 2011), requiring—

(a) any return, accounts or other document to be filed with, or delivered or sent to, the Registrar; or

(b) notice of any matter to be given to the Registrar.

(5) The maximum period of disqualification under this section is 5 years.

Section 98(3) of Schedule 9

Section:	296	General rules and fees
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Rules and Fees

(1) The Chief Justice may, with the approval of the Legislative Council, make general rules for carrying into effect the objects of ~~this Ordinance~~ this Ordinance and the Companies Ordinance (of 2011) so far as relates to the winding up of companies.

(2) All rules and orders made under this section shall be judicially noticed, and shall have effect as if enacted by this Ordinance.

(2A) An answer given by a person to a question put to him in exercise of powers conferred by rules made under this section may be used in evidence against him. (Added 72 of 1994 s. 10)

(3) There shall be paid in respect of ~~proceedings under this Ordinance~~ the relevant proceedings, where no fee is otherwise fixed, such fees as the Chief Justice may, with the approval of the Legislative Council by order, direct, and he may direct by whom and in what manner the same are

to be collected and accounted for.

(3A) In subsection (3)—

“relevant proceedings” (有關法律程序) means—

(a) proceedings under this Ordinance (other than winding up proceedings); or

(b) proceedings in the winding up of companies, including those where proceedings under this Ordinance or the Companies Ordinance (_____ of 2011) are taken with respect to a company which is being wound up.

Section 99 of Schedule 9A

Chapter:	117	Title:	STAMP DUTY ORDINANCE
Section:	2	Heading:	Interpretation

relevant Ordinance (《有關條例》) means the Companies Ordinance (Cap. 32) as in force from time to time before the commencement date of section 1 of Schedule 9 to the Companies Ordinance (_____ of 2011);

Chapter:	117	Title:	STAMP DUTY ORDINANCE
Section:	4	Heading:	Charging of, liability for, and recovery of stamp duty

(7) The return required by section 45(2) of the ~~Companies Ordinance (Cap 32)~~ to be delivered to the Registrar of Companies for registration in respect of any contract mentioned in subsection (1)(b) of that section ~~relevant Ordinance~~, or by section 137(1) of the Companies Ordinance (_____ of 2011), to be delivered to the Registrar of Companies for registration in respect of any contract referred to in section 4(7A)(a) or (b), as the case may be, which is not reduced to writing shall be chargeable with the same stamp duty as would have been payable if the contract had been reduced to writing, and subsections (2), (3), (5) and (6) of this section shall apply to the return as they apply to any such contract in writing.

Section 194(3) of Schedule 9A

Chapter:	332	Title:	TRADE UNIONS ORDINANCE
Section:	68	Heading:	Result of registration

(1) If a trade union is registered under the ~~relevant Ordinance Companies Ordinance (Cap 32) or the Co-operative Societies Ordinance (Cap 33)~~ and the same shall become registered under this Ordinance, all of the property and assets of what description soever vested in the trade union by virtue of registration under the ~~Companies Ordinance (Cap 32) or the Co-operative Societies Ordinance (Cap 33)~~, as the case may be, ~~relevant Ordinance~~ together with all rights and liabilities, whether present, future, certain or contingent, shall forthwith be deemed vested in the trade union by virtue of its registration under this Ordinance, and all causes of action subsisting, or suits or other legal proceedings pending, by or against the trade union by reason of or arising out of its registration under the ~~Companies Ordinance (Cap 32) or the Co-operative Societies Ordinance (Cap 33)~~, as the case may be, ~~relevant Ordinance~~ shall subsist or be continued by or against such trade union by virtue of its registration under this Ordinance.

(3) For the purposes of this section—

relevant Ordinance (《有關條例》) means—

(a) the Companies Ordinance (Cap. 32) as in force from time to time before the commencement date of section 1 of Schedule 9 to the Companies Ordinance (_____ of 2011);

(b) the Co-operative Societies Ordinance (Cap. 33); or

(c) the Companies Ordinance (_____ of 2011).

Category V: Drafting changes

Item 10(a): Using defined terms or consolidating references to simply the provisions

(ii) **“Authorized representative” and “Companies Register”**

Section 344(6) of Schedule 9A

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE
Section:	400	Heading:	Service of notices, etc.

(1) Subject to sections 111, 141 and 374 and any rules made under section 233 or 269, any written notice or direction or other document (however described) to be, or required to be, issued or served (however described) to or on any person, other than the Commission, for the purposes of this Ordinance shall for all purposes be regarded as duly issued or served if-

(b) in the case of a company, it is-

- (i) delivered to any officer of the company by hand;
- (ii) left at, or sent by post to, ~~the registered office of the company within the meaning of the Companies Ordinance (Cap 32)~~ company’s registered office in Hong Kong;
- (iii) sent by facsimile transmission to its last known facsimile number; or
- (iv) sent by electronic mail transmission to its last known electronic mail address;

(c) in the case of a ~~non-Hong Kong company~~ registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (_____ of 2011), it is-

- (i) delivered by hand to, or sent by post to, ~~the person resident in Hong Kong who is authorized to accept service of process and notices on its behalf for the purposes of Part XI of the Companies Ordinance (Cap 32)~~ at his address delivered to the Registrar of Companies under that Ordinance; the authorized representative at the representative’s address as shown in the Companies Register;
- (ii) sent by facsimile transmission to the last known facsimile number of the person; or
- (iii) sent by electronic mail transmission to the last known electronic mail address of the person;

(e) in the case of a body corporate (other than a company ~~or a non-Hong Kong company~~, a registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (_____ of 2011) or the Commission) or an unincorporated body (other than a partnership), or a tribunal, it is-

- (i) delivered to any officer of the body or the tribunal (as the case may be) by hand;
- (ii) left at, or sent by post to, the last known principal place of business of the body or the tribunal (as the case may be);
- (iii) in the case of the body, sent by facsimile transmission to the last known facsimile number of the body; or
- (iv) in the case of the body, sent by electronic mail transmission to the last known electronic mail address of the body.

(2) In this section—

authorized representative (獲授權代表) means an authorized representative as defined by section 762(1) of the Companies Ordinance (_____ of 2011);

Companies Register (公司登記冊) has the meaning given by section 2(1) of the Companies Ordinance (_____ of 2011).

Category V: Drafting changes

Item 10(a): Using defined terms or consolidating references to simply the provisions

(iii) **“Constitution” replacing “articles” and “memorandum”**

Section 336 of Schedule 9A

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE
Section:	366	Heading:	Power of Court of First Instance to impose restrictions on shares, etc. in case of failure to provide information required by listed corporation

(3) An order under subsection (1) or (2) (as the case may be) may be made notwithstanding any power contained in the applicant corporation's ~~memorandum or articles~~ [constitution](#) enabling the listed corporation itself to impose similar restrictions on the shares or equity derivatives in question

Category V: Drafting changes

Item 10(b): Renumbering subsections, changing punctuations or connection

Section 158(1) of Schedule 9

Chapter	32	COMPANIES (WINDING-UP) RULES
Rule:	9	Title of proceedings

PROCEEDINGS

(1) Every proceeding in a winding-up matter shall be dated, and shall, with any necessary additions, be intituled as follows-

IN THE HIGH COURT OF HONG KONG

COMPANIES (WINDING-UP). No.

OF

19 ~~20~~

In the Matter of the ~~Companies Ordinance~~ [Companies \(Winding Up and Miscellaneous Provisions\) Ordinance](#).

and in the matter of the company to which it relates. Numbers and dates may be denoted by figures. (25 of 1998 s. 2)

(2) The first proceeding in every winding-up matter shall have a distinctive number assigned to it in the office of the Registrar, and all proceedings in any matter subsequent to the first proceeding shall bear the same number as the first proceeding.

Category V: Drafting changes

Item 10(c): Changing the long title of CO, Part heading and section heading

Section 129(1) of Schedule 9

Section:	360	Power to amend requirements as to accounts, Schedules, tables, forms and fees Schedules
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~~(1) The Chief Executive in Council may by order amend the requirements of this Ordinance as to the matters to be stated in a company's balance sheet, profit and loss account and group accounts, and in particular those of the Tenth and Eleventh Schedules; and any reference in this Ordinance to the Tenth or Eleventh Schedule shall be construed as a reference to that Schedule with any amendments made by an order for the time being in force under this subsection. (Amended 23 of 1999 s. 3)~~

~~(2) The Chief Executive in Council may by order amend Tables A, B, C, D and E in the First Schedule but no amendment made by the Chief Executive in Council in Table A shall affect any company registered before the amendment comes into operation, or repeal as respects that company any portion of that Table. (Amended 23 of 1999 s. 3)~~

(3) (Repealed 3 of 1997 s. 54)

~~(3A) The Financial Secretary may, by order published in the Gazette, amend the table of fees in the Eighth Schedule and the Fourteenth Schedule. (Added 30 of 1994 s. 9)~~

~~(4) The amount of any fee prescribed under this section shall not be limited by reference to the amount of administrative or other costs incurred or likely to be incurred in relation to providing the service to which such fee relates. (Added 41 of 1989 s. 4)~~

~~(5) The Financial Secretary may, by order published in the Gazette, amend the Sixteenth or Twenty-third Schedule. (Added 30 of 1999 s. 33. Amended 12 of 2005 s. 13)~~

(6) The Commission may, by order published in the Gazette, amend the Third, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-first or Twenty-second Schedule. (Added 30 of 2004 s. 2)

(7) Where the Commission proposes to make an order under subsection (6), it shall publish a draft of the proposed order, in such manner as it considers appropriate, for the purpose of inviting representations on the proposed order by the public. (Added 30 of 2004 s. 2)

(8) Where the Commission makes any order under subsection (6) after a draft is published under subsection (7) in relation to the order, it shall-

(a) publish, in such manner as it considers appropriate, an account setting out in general terms-

- (i) the representations made on the draft; and
- (ii) the response of the Commission to the representations; and

(b) where the order is made with modifications which in the opinion of the Commission result in the order being significantly different from the draft, publish, in such manner as it considers appropriate, details of the difference. (Added 30 of 2004 s. 2)

(9) Subsections (7) and (8) do not apply if the Commission considers, in the circumstances of the case, that-

- (a) it is inappropriate or unnecessary that such subsections should apply; or
- (b) any delay involved in complying with such subsections would not be-
 - (i) in the interest of the investing public; or
 - (ii) in the public interest. (Added 30 of 2004 s. 2)

~~(10) The Financial Secretary may, by order published in the Gazette, amend the Twenty-fourth Schedule. (Added 30 of 2004 s. 2)~~

Section 179 of Schedule 9

Chapter:	32L	COMPANIES ORDINANCE (EXEMPTION OF COMPANIES AND PROSPECTUSES FROM COMPLIANCE WITH PROVISIONS) NOTICE
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Category V: Drafting changes

Item 10(d): Others

- (ii) for the Business Registration Ordinance (Cap. 310), replacing the expression “incorporation application” with “incorporation submission” and associated changes as the word “apply” used in section 14A of CO in relation to formation of an incorporated company is no longer used in the CB provisions for company incorporation

Section 179(2) of Schedule 9A

Chapter:	310	Title:	BUSINESS REGISTRATION ORDINANCE
Section:	2	Heading:	Interpretation and application*

(1) In this Ordinance, unless the context otherwise requires-

~~"incorporation application" (成立法團申請) means an application to form an incorporated company under section 14A of the Companies Ordinance (Cap 32);~~

incorporation submission (成立法團遞呈) means a submission made for the purpose of forming a company under section 62 of the Companies Ordinance (of 2011);

Category V: Drafting changes

Item 10(d): Others

- (iii) replacing the reference to the date of “registration under Part XI” of CO by the date “the certificate of registration issued under section 765” of CB

Section 190(2) of Schedule 9A

Chapter:	310A	Title:	BUSINESS REGISTRATION REGULATIONS
Regulation:	9	Heading:	Forms

FORM 1(b) [regulation 3(1)]

BUSINESS REGISTRATION REGULATIONS
Application by a body corporate for registration

SECTION A.

PART A

2. If body corporate is not incorporated in Hong Kong and is a non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (of 2011) ~~one to which Part XI of the Companies Ordinance (Cap 32) applies:~~
- (a) Name of body corporate :
- (b) Place of incorporation :
- (c) Name and address of person or persons resident in Hong Kong whose particulars have been delivered to the Registrar of Companies
- (d) Date of the certificate of registration issued under section 765 of the Companies Ordinance (of 2011) ~~registration under Part XI of the Companies Ordinance (Cap 32)~~ :

Category V: Drafting changes

Item 10(d): Others

(vi) changes for rationalizing the presentation of the provisions concerned

Section 75(5) of Schedule 9

Section:	168F	Disqualification for persistent breaches of <u>Ordinance specified provisions</u>
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(1) The court may make a disqualification order against a person where it appears to it that ~~he has been persistently in default in relation to provisions of this Ordinance requiring any return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the Registrar~~ the person has been persistently in default in relation to the specified provisions.

(2) On an application to the court for an order to be made under this section, the fact that a person has been persistently in default in relation to ~~such provisions may (without prejudice to its proof in any other manner) be conclusively proved by showing that in the 5 years ending with the date of the application he has been adjudged guilty (whether or not on the same occasion) of 3 or more defaults in relation to those provisions~~ the specified provisions may (without prejudice to its proof in any other manner) be conclusively proved by showing that in the 5 years ending with the date of application the person has been adjudged guilty (whether or not on the same occasion) of 3 or more defaults in relation to the specified provisions.

(3) A person is to be treated under subsection (2) as being adjudged guilty of a default in relation to ~~any provision if a specified provision if—~~

~~(a) he is convicted of an offence consisting in a contravention of that provision (whether on his own part or on the part of any company); or~~

~~(b) an order of the court is made against him under section 279, 302 or 306.~~

(a) the person is convicted of an offence consisting in a contravention of a specified provision (whether on the person's own part or on the part of any company), or

(b) an order of the court is made against the person under—

(i) in the case of a specified provision of the pre-amended Ordinance or this Ordinance, section 279, 302 or 306, or

(ii) in the case of a specified provision of the Companies Ordinance (_____ of 2011), section 886 of that Ordinance.

(4) For the purposes of this section, "court" (法院) includes a magistrate where the application under this section is made in the course of a prosecution in which the person is adjudged guilty of a default referred to in subsection (1) and, as a result, subsection (2) applies to ~~him~~the person.

(4A) In this section—

specified provision (指明條文) means a provision of the pre-amended Ordinance, this Ordinance, or the Companies Ordinance (_____ of 2011), requiring—

(a) any return, accounts or other document to be filed with, or delivered or sent to, the Registrar; or

(b) notice of any matter to be given to the Registrar.

(5) The maximum period of disqualification under this section is 5 years.

Section 150(2) of Schedule 9

Chapter	32C	COMPANIES (FEES AND PERCENTAGES) ORDER
Paragraph:	3	

The fees and percentages to be taken in the Court of First Instance in respect of proceedings under the Companies Ordinance (Cap 32) Ordinance (other than winding-up proceedings) shall be the fees contained in item 1A of Schedule 1, and, where the proceeding is one for which no fee is prescribed in the said Schedule, the fees and percentages prescribed for a similar proceeding in the First Schedule to the High Court Fees Rules (Cap 4 sub. leg. D).

Section 151(1) and (4) of Schedule 9

Chapter	32C	COMPANIES (FEES AND PERCENTAGES) ORDER
Schedule:	1	

Item	Particular	Fee	Document to be stamped
<u>1A.</u>	<u>On an application under section 290 of the Ordinance for a declaration that the dissolution of a company is void.</u>	<u>\$1,045.00</u>	<u>The notice of motion or summons.</u>
1.	On presenting a petition- (a) under section 8 to confirm an alteration in a memorandum; and (a) under section 84 of the Companies Ordinance (____ of 2011) to cancel an alteration of the objects in a company's articles; or (b) under section 59 to confirm a reduction of capital. This fee includes any fee on answering a petition or setting down for hearing. Where a petition is presented under more than one of these sections, only one fee of \$1045.00 shall be charged on the petition. (b) under section 221 of the Companies Ordinance (____ of 2011) to confirm a reduction of share capital. This fee includes any fee on answering a petition or setting down for hearing. Where a petition is presented under more than one of these sections, only one fee of \$1,045.00 is charged on the petition.	\$1045.00	The petition.

Section 164(1) of Schedule 9

Chapter	32H	COMPANIES (WINDING-UP) RULES
Rule:	58	Application by or against delinquent directors, officers and promoters

PROCEEDINGS BY OR AGAINST DIRECTORS,
PROMOTERS, AND OFFICERS

- (1) An application under any of the following provisions ~~of the Ordinance~~-
 - (a) section 276 ~~of the Ordinance~~;
 - (b) section 275(1), (2) or (4) ~~of the Ordinance~~;
 - (c) section 168I ~~of the Ordinance~~, where such application relates to a company in course of being wound up by the court; (L.N. 201 of 1984; 46 of 2000 s. 40)
 - (d) ~~section 358(2)~~ section 892(1) of the Companies Ordinance (____ of 2011),

shall be made by a summons returnable in the first instance in chambers, in which summons shall be stated the nature of the declaration or order for which application is made, and the grounds of the application, and which summons, unless otherwise ordered by the court, shall be served, in the manner in which an originating summons is required by the Rules of the High Court (Cap 4 sub. leg. A) to be served, on every person against whom an order is sought, not less than 8 days before the day named in the summons for hearing the application. Where the application is made by the Official Receiver or liquidator he may make a report to the court stating any facts and information on which he proceeds which are verified by affidavit, or derived from sworn evidence in the proceedings. Where the application is made by any other person it shall be supported by affidavit to be filed by him. (25 of 1998 s. 2)

A copy of every report and affidavit intended to be used in support of the summons shall be served on every person against whom an order is sought not less than 4 days before the hearing of the summons.

Category V: Drafting changes

Item 10(d): Others

(vii) adding the words “for registration” in relation to documents required to be delivered to the Registrar to align with the wording used in CB

Section 21 of Schedule 9A

Chapter:	37	Title:	LIMITED PARTNERSHIPS ORDINANCE
Section:	7	Heading:	Manner and particulars of registration

The registration of a limited partnership shall be effected by sending by registered post or delivering to the Registrar of Companies [for registration](#) a statement signed by the partners containing the following particulars-

- (a) the firm name;
- (b) the general nature of the business;

Other miscellaneous consequential amendments in Schedule 9

Item (a): Section 7(1), (3), (4) and (6) of Schedule 9

Section:	38D	Registration of prospectus
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(1) No prospectus shall be issued by or on behalf of a company unless the prospectus complies with the requirements of this Ordinance and, on or before the date of its publication, its registration has been authorized under this section and a copy thereof has been registered by the Registrar.

(2) Every prospectus shall-

(a) on the face of it, state that a copy has been registered as required by this section and immediately after such statement-

(i) state that neither the Commission nor the Registrar takes any responsibility as to the contents of the prospectus;

(ii) where the prospectus is or is to be authorized for issue by a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance (Cap 571), state that neither the Commission nor the recognized exchange company nor the Registrar takes any responsibility as to the contents of the prospectus; or

(iii) where the prospectus is or is to be authorized for issue by a recognized exchange controller pursuant to a transfer order made under section 68 of that Ordinance, state that neither the Commission nor the recognized exchange controller nor the Registrar takes any responsibility as to the contents of the prospectus; (Replaced 5 of 2002 s. 407)

(b) on the face of it, specify or refer to statements included in the prospectus which specify, any documents required by this section to be endorsed on or attached to the copy so registered; and

(c) conform with such requirements as are prescribed by the Chief Executive in Council ~~or specified by the Registrar under section 346 which are applicable to prospectuses to be registered under this Part and the requirements set out in subsection (7A).~~ (Amended 23 of 1999 s. 3)

(3) An application for authorization for registration of a prospectus under this section shall be made in writing to the Commission and there shall be delivered to the Commission together with the application a copy of the prospectus proposed to be registered which has been signed by every person who is named therein as a director or proposed director of the company or by his agent authorized in writing and having endorsed thereon or attached thereto-

(a) any consent to the issue of the prospectus required by section 38C from any person as an expert; and

(b) in the case of a prospectus issued generally, also-

(i) a copy of any contract required by paragraph 17 of the Third Schedule to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof or, if in the case of a prospectus exempted under section 38A from compliance with the requirements of section 38(1), a contract or a copy thereof or a memorandum of a contract is required by the Commission to be available for inspection in connection with the request made under section 38A(1), a copy or, as the case may be, a memorandum of that contract;

(ii) where the prospectus offers shares in the company for sale to the public, a list of the names, addresses and descriptions of the vendor or vendors of the shares; and

(iii) where the persons making any report required by Part II of the Third Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in paragraph 42 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(4) The references in subsection (3)(b)(i) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a language other than English or Chinese, be taken as references to a copy of a translation of the contract in either language or a copy embodying a translation in English or Chinese of the parts not in either language, as the case may be, being a translation certified in the prescribed manner under subsection (10) to be a correct translation. (Amended 83 of 1995 s. 7; 30 of 2004 s. 2)

(5) The Commission may-

- (a) authorize the registration by the Registrar, of a prospectus to which this section applies and where the Commission so authorizes, the Commission shall issue a certificate-
- (i) certifying that the Commission has done so; and
 - (ii) specifying the documents which are required to be endorsed on or attached to the copy of the prospectus to be registered; or
- (b) refuse to authorize such registration.
- (6) The Commission shall not authorize the registration of a prospectus which relates to an intended company.
- (7) The Registrar-
- (a) shall not register a prospectus under this section unless-
 - (i) it is dated and the copy thereof to be registered has been signed in the manner required by this section;
 - (ii) it is accompanied by a certificate issued under subsection (5);
 - (iii) it has endorsed thereon or attached thereto all the documents specified in the certificate issued under subsection (5); ~~and~~
 - (iv) it conforms with such requirements as are prescribed by the Chief Executive in Council ~~or specified by the Registrar under section 346 which are applicable to prospectuses to be registered under this Part and the requirements set out in subsection (7A); and~~
 - (v) it is accompanied by any fee that is payable, in respect of the registration, under a regulation made under section 25 of the Companies Ordinance (of 2011); and
 - (b) shall register a prospectus if subparagraphs (i), (ii), (iii) ~~and (iv)~~, (iv) and (v) of paragraph (a) are complied with in respect of that prospectus.
- (7A) The following are the requirements set out for the purposes of subsections (2)(c) and (7)(a)(iv)-
- (a) any requirement that the Registrar may specify, by notice in the Gazette, in relation to font size of prospectuses for the purposes of this section;
 - (b) any other requirements that the Registrar may specify, by any means that the Registrar thinks fit, for the purpose of-
 - (i) ensuring that documents of the same kind are of a standard form; and
 - (ii) enabling the Registrar to make copies or image records of documents and to make and keep records of the information contained in them.
- (7B) For the purposes of subsection (7A)(b), the Registrar may specify different requirements for different documents or classes of documents.
- (8) If a prospectus is issued without having endorsed thereon or attached thereto the required documents or without a copy thereof which has the required documents endorsed or attached having been registered under this section by the Registrar, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine and, for continued default, to a daily default fine from the date of the issue of the prospectus until a copy thereof is so registered or until the required documents are endorsed or attached, as the case may be.
- (9) Any person aggrieved by the refusal to authorize the registration of a prospectus under this section may appeal to the court and the court may either dismiss the appeal or order that the registration of the prospectus be authorized by the Commission under this section.
- (10) A translation mentioned in subsection (4) shall be-
- (a) certified by the person making the translation as a correct translation; and
 - (b) deemed to be certified in the prescribed manner if the person making the translation has been certified, by the appropriate person mentioned in subparagraph (i) or (ii), as a person believed by that appropriate person to be competent to translate it into the English or Chinese language, as the case may be, that is to say-
 - (i) if the translation be made outside Hong Kong-
 - (A) a notary public in the place where the translation is made;
 - (B) such other person as may be specified by the Commission; or
 - (C) such other person belonging to a class of persons specified by the Commission, by notice published in the Gazette, for the purposes of this paragraph;
 - (ii) if the translation be made in Hong Kong-
 - (A) a notary public in Hong Kong;
 - (B) a solicitor of the High Court of Hong Kong;
 - (C) such other person as may be specified by the Commission; or
 - (D) such other person belonging to a class of persons specified by the

Commission, by notice published in the Gazette, for the purposes of this paragraph. (Added 30 of 2004 s. 2)

- (11) A notice published under subsection (10)(b)(i)(C) or (ii)(D) is not subsidiary legislation.

Section:	304	Fees
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~~(1) There shall be paid to the Registrar in respect of the several matters mentioned in the table set out in the Eighth Schedule the several fees therein specified.~~

~~(1A) (Repealed 41 of 1989 s. 2)~~

~~(2) All fees paid to the Registrar in pursuance of this Ordinance shall be paid into the general revenue. (Amended 6 of 1984 s. 218)~~

~~(3) (Repealed 86 of 1992 s. 11)~~

~~(4) The Registrar may charge in respect of any service provided by him under this Ordinance otherwise than in pursuance of an obligation imposed by this Ordinance and for which a fee is not specified under this Ordinance such reasonable fee as the Financial Secretary may approve. (Added 60 of 1990 s. 7)~~

Section:	346	Documents delivered to Registrar to conform to certain requirements
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Provisions relating to Documents and Disposal thereof

~~(1) Subject to this Ordinance, every document delivered to the Registrar under this Ordinance shall-~~

~~(a) be in the English or Chinese language or be accompanied by a translation of the document into English or Chinese, being a translation certified in the prescribed manner to be a correct translation;~~

~~(b) be capable of being reproduced in a legible form; and~~

~~(c) comply with such other requirements as the Registrar may specify for the purpose of securing that documents of the same kind are of a standard form and of enabling him to make copies or image records of the document and to make and keep records of the information contained in it. (Replaced 28 of 2003 s. 109)~~

~~(1A) For the purpose of subsection (1)(c), the Registrar may specify different requirements for different documents or classes of documents. (Added 28 of 2003 s. 109)~~

~~(2) If under any provision of this Ordinance there is delivered to the Registrar a document (whether being an original document or a copy) which in the opinion of the Registrar does not comply with such requirements specified by him under this section as are applicable to it, the Registrar may serve on any person by whom under that provision the document was required to be delivered (or, if there are 2 or more such persons, may serve on any of them) a notice stating his opinion to that effect and indicating the requirements so specified with which in his opinion the document does not comply. (Amended 3 of 1997 s. 53; 12 of 2010 s. 28)~~

~~(2A) A notice under subsection (2) must be served on a person-~~

~~(a) by registered post addressed to the person; or~~

~~(b) if the person so consents, in the form of an electronic record. (Added 12 of 2010 s. 28)~~

~~(3) Where the Registrar serves a notice under subsection (2) with respect to a document delivered under any such provision, then, for the purposes of any enactment which enables a penalty to be imposed in respect of any omission to deliver to the Registrar a document required to be delivered under that provision (and, in particular, for the purposes of any such enactment whereby such a penalty may be imposed by reference to each day during which the omission continues)-~~

~~(a) any duty imposed by that provision to deliver such a document to the Registrar shall be treated as not having been discharged by the delivery of that document; but~~

~~(b) no account shall be taken of any days falling within the period mentioned in~~

subsection (4).

~~(4) The period referred to in subsection (3)(b) is the period beginning with the day on which the document was delivered to the Registrar as mentioned in subsection (2) and ending with the fourteenth day after the date of service of the notice under subsection (2) by virtue of which subsection (3) applies.~~

~~(5) In this section any reference to delivering a document shall be construed as including a reference to sending, forwarding, producing or (in the case of a notice) giving it.~~

~~(6) The Registrar may, by notice in the Gazette, specify requirements in relation to print size of prospectuses for the purpose of sections 38D(2)(e) and 342C(2)(e).~~

Other miscellaneous consequential amendments in Schedule 9

Item (a): Section 114(1), (3), (4) and (6) of Schedule 9

Section:	342C	Registration of prospectus
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(1) No prospectus offering for subscription or purchase shares in or debentures of a company incorporated outside Hong Kong (whether the company has or has not established a place of business in Hong Kong) shall be issued, circulated or distributed in Hong Kong unless the prospectus complies with the requirements of this Ordinance and, on or before the date of its publication, circulation or distribution in Hong Kong, its registration has been authorized under this section and a copy thereof has been registered by the Registrar. (Amended 30 of 2004 s. 2)

(2) Every prospectus shall-

- (a) on the face of it, state that a copy has been registered as required by this section and, immediately after such statement, state that neither the Commission nor the Registrar takes any responsibility as to the contents of the prospectus or, where the prospectus is or is to be authorized for issue by a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance (Cap 571), state that neither the Commission nor the recognized exchange company nor the Registrar takes any responsibility as to the contents of the prospectus; (Amended 30 of 2004 s. 2)
- (b) on the face of it, specify or refer to statements included in the prospectus which specify, any documents required by this section to be endorsed on or attached to the copy so registered; and
- (c) conform with such requirements as are prescribed by the Chief Executive in Council or ~~specified by the Registrar under section 346 which are applicable to prospectuses to be registered under this Part and the requirements set out in subsection (7A).~~

(3) An application for authorization for registration of a prospectus under this section shall be made in writing to the Commission and there shall be delivered to the Commission together with the application a copy of the prospectus proposed to be registered which has been certified by 2 members of the governing body of the company or by their agents authorized in writing as having been approved by resolution of the governing body and having endorsed thereon or attached thereto-

- (a) any consent to the issue of the prospectus required by section 342B from any person as an expert; and
- (b) in the case of a prospectus issued generally, also-
 - (i) a copy of any contract required by paragraph 17 of the Third Schedule to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof or, if in the case of a prospectus exempted under section 342A from compliance with the requirements of section 342(1), a contract or a copy thereof or a memorandum of a contract is required by the Commission to be available for inspection in connection with the request made under section 342A(1), a copy or, as the case may be, a memorandum of that contract;
 - (ii) where the prospectus offers shares in the company for sale to the public, a list of the names, addresses and descriptions of the vendor or vendors of the shares; and
 - (iii) where the persons making any report required by Part II of the Third Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in paragraph 42 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(4) The references in subsection (3)(b)(i) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a language other than English or Chinese, be taken as references to a copy of a translation of the contract in either language or a copy embodying a translation in English or Chinese of the parts not in either language, as the case may be, being a translation certified in the prescribed manner under subsection (9) to be a correct translation. (Amended 83 of 1995 s. 20; 30 of 2004 s. 2)

(5) The Commission may-

- (a) authorize the registration by the Registrar, of a prospectus to which this section applies and where the Commission so authorizes, the Commission shall issue a certificate-
 - (i) certifying that the Commission has done so; and

- (ii) specifying the documents which are required to be endorsed on or attached to the copy of the prospectus to be registered; or
- (b) refuse to authorize such registration.
- (6) The Commission shall not authorize the registration of a prospectus which relates to an intended company.
- (7) The Registrar-
 - (a) shall not register a prospectus under this section unless-
 - (i) it is dated and the copy thereof to be registered has been certified in the manner required by this section;
 - (ii) it is accompanied by a certificate issued under subsection (5);
 - (iii) it is endorsed thereon or attached thereto all the documents specified in the certificate granted under subsection (5); ~~and~~
 - (iv) it conforms with such requirements as are prescribed by the Chief Executive in Council ~~or specified by the Registrar under section 346 which are applicable to prospectuses to be registered under this Part and the requirements set out in subsection (7A); and~~
 - (v) ~~it is accompanied by any fee that is payable, in respect of the registration, under a regulation made under section 25 of the Companies Ordinance () of 2011); and~~
 - (b) shall register a prospectus if subparagraphs (i), (ii), (iii) ~~and (iv)~~, (iv) and (v) of paragraph (a) are complied with in respect of that prospectus.
- ~~(7A) The following are the requirements set out for the purposes of subsections (2)(c) and (7)(a)(iv)—~~
 - ~~(a) any requirement that the Registrar may specify, by notice in the Gazette, in relation to font size of prospectuses for the purposes of this section;~~
 - ~~(b) any other requirements that the Registrar may specify, by any means that the Registrar thinks fit, for the purpose of—~~
 - ~~(i) ensuring that documents of the same kind are of a standard form; and~~
 - ~~(ii) enabling the Registrar to make copies or image records of documents and to make and keep records of the information contained in them.~~
- ~~(7B) For the purposes of subsection (7A)(b), the Registrar may specify different requirements for different documents or classes of documents.~~
- (8) Any person aggrieved by the refusal to authorize the registration of a prospectus under this section may appeal to the court and the court may either dismiss the appeal or order that the registration of the prospectus be authorized by the Commission under this section.
- (9) A translation mentioned in subsection (4) shall be-
 - (a) certified by the person making the translation as a correct translation; and
 - (b) deemed to be certified in the prescribed manner if the person making the translation has been certified, by the appropriate person mentioned in subparagraph (i) or (ii), as a person believed by that appropriate person to be competent to translate it into the English or Chinese language, as the case may be, that is to say-
 - (i) if the translation be made outside Hong Kong-
 - (A) a notary public in the place where the translation is made;
 - (B) such other person as may be specified by the Commission; or
 - (C) such other person belonging to a class of persons specified by the Commission, by notice published in the Gazette, for the purposes of this paragraph;
 - (ii) if the translation be made in Hong Kong-
 - (A) a notary public in Hong Kong;
 - (B) a solicitor of the High Court of Hong Kong;
 - (C) such other person as may be specified by the Commission; or
 - (D) such other person belonging to a class of persons specified by the Commission, by notice published in the Gazette, for the purposes of this paragraph. (Added 30 of 2004 s. 2)
- (10) A notice published under subsection (9)(b)(i)(C) or (ii)(D) is not subsidiary legislation.

Other miscellaneous consequential amendments in Schedule 9

Item (b): Section 42(2) and (3) of Schedule 9

Section:	102	Register to be proof
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~~(1) In the absence of evidence to the contrary, the register of members is proof of any matters that are by this Ordinance directed or authorized to be inserted in it. (Replaced 12 of 2010 s. 58)~~

~~(2) Where in any proceedings under this Ordinance it is sought to challenge the accuracy of any entry in the register of members by evidence of any transaction, such evidence shall not be admissible for that purpose unless the transaction occurred not more than 30 years prior to the proceedings.~~

(2) If, in any proceedings to which this section applies, it is sought to challenge the accuracy of any entry in the register of members by evidence of any transaction, the evidence is not admissible for that purpose unless the transaction occurred not more than the specified number of years prior to the proceedings.

(3) This section applies to—

(a) any proceedings under this Ordinance; or

(b) any proceedings under the pre-amended Ordinance—

(i) that were instituted before the commencement date of section 1 of Schedule 9 to the Companies Ordinance (of 2011); and

(ii) that, immediately before that commencement date, were pending and had not been disposed of.

(4) In this section—

“*specified number*” (指明數目)—

(a) in relation to any proceedings specified in subsection (3)(a), means 20;

(b) in relation to any proceedings specified in subsection (3)(b), means 30.

(Note: the proposed amendments to section 102 of Cap. 32 will be removed and section 102 will be repealed.)

Other miscellaneous consequential amendments in Schedule 9

Item (c): Section 116 of Schedule 9

Section:	343	Interpretation of provisions as to prospectuses
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(1) Where any document by which any shares in or debentures of a company incorporated outside Hong Kong are offered for sale to the public would, if the company concerned had been a company within the meaning of this Ordinance, have been deemed by virtue of section 41 to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this Part of this Ordinance, a prospectus issued by the company. (Amended 6 of 1984 s. 259)

(2) An offer of shares or debentures for subscription or sale to any person whose ordinary business is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this Part of this Ordinance. (Amended 30 of 1999 s. 31)

(2A) For the purposes of sections 342E and 342F, "untrue statement" (不真實陳述), in relation to a prospectus, includes a material omission from the prospectus. (Added 30 of 2004 s. 2)

(2B) For the purposes of the provisions of this Part, a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included. (Added 30 of 2004 s. 2)

(3) In this Part the expressions "shares" (股份) and "debentures" (債權證) have the same meanings as when used in relation to a company ~~incorporated under this Ordinance as defined in section 2(1).~~

Other miscellaneous consequential amendments in Schedule 9

Item (d): Section 91(2) of Schedule 9

Section:	219	Inspection of books by creditors and contributories
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(1) The court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributories as the court thinks just, ~~and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.~~

(1A) Where an order for inspection is made under subsection (1), creditors or contributories may, in accordance with the order but not further or otherwise—

(a) inspect any books or papers in the possession of the company; or

(b) if the books or papers are kept by the company by recording the contents of the books or papers otherwise than in a legible form, inspect a reproduction of the recording or the relevant part of it in a legible form.

(2) Nothing in this section shall be taken as excluding or restricting any rights or powers conferred on a public officer by any enactment.

Section:	348C	Form of registers etc.
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Form of Registers etc.

~~(1) Any register, index, minute book or book of account required by this Ordinance to be kept by a company may be kept either by making entries in bound books or by recording the matters in question in any other manner.~~

~~(2) The power conferred on a company by subsection (1) includes power to keep the register or other record by recording the matters in question otherwise than in a legible form so long as the recording is capable of being reproduced in a legible form.~~

~~(3) If any register, index, minute book or book of account required by this Ordinance to be kept by a company is kept by the company by recording the matters in question otherwise than in a legible form, any duty imposed on the company by virtue of this Ordinance to allow inspection of, or to furnish a copy of, the register, index, minute book or book of account or any part of it shall be treated as a duty to allow inspection of, or to furnish, a reproduction of the recording or of the relevant part of it in a legible form.~~

~~(4) Where any such register, index, minute book or book of account is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery, and where default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine.~~

Other miscellaneous consequential amendments in Schedule 9

Item (e): Sections 103 and 104 of Schedule 9

Section:	308	Application of Ordinance to companies registered under former Companies Ordinances <u>Application of Ordinance to companies registered under Companies Ordinances</u>
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~~This Ordinance shall apply to every company registered but not formed under the Companies Ordinance 1865 (1 of 1865), or the Companies Ordinance 1911 (58 of 1911), in the same manner as it is in Part IX of this Ordinance declared to apply to companies registered but not formed under this Ordinance:~~

~~Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Companies Ordinance 1865 (1 of 1865), or the Companies Ordinance 1911 (58 of 1911), as the case may be.~~

(1) Subject to section 308A, this Ordinance applies to a company registered but not formed under the Companies Ordinance (____ of 2011) and its officers, members, contributories and creditors in the same manner in all respects as if the company had been formed under that Ordinance.

(2) This Ordinance applies to a company registered but not formed under a former Companies Ordinance and its officers, members, contributories and creditors in the same manner as it applies to a company registered but not formed under the Companies Ordinance (____ of 2011).

(3) For the purposes of applying this Ordinance to a company registered but not formed under a former Companies Ordinance or the Companies Ordinance (____ of 2011), a reference in this Ordinance to the date of registration is to be read as the date on which the company was registered under the former Companies Ordinance or the Companies Ordinance (____ of 2011), as the case may be.

Other miscellaneous consequential amendments in Schedule 9

Item (e): Sections 103 and 104 of Schedule 9

Section:	308A	Exceptions to section 308
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(1) If a company registered but not formed under the Companies Ordinance (_____ of 2011) is wound up, a person specified in subsection (3) is a contributory—

(a) liable to pay or contribute to the payment of—

(i) the company's debts and liabilities contracted before the registration;

(ii) any sum for the adjustment of the rights of the members among themselves in respect of those debts and liabilities; and

(iii) the costs and expenses of winding up the company, so far as relating to those debts and liabilities; and

(b) liable to contribute to the company's assets all sums due from the person in respect of the liability under paragraph (a).

(2) In the event of the death or bankruptcy of such a contributory, the provisions of this Ordinance with respect to personal representatives, and to the trustees of bankrupt contributories, apply.

(3) The person specified for the purposes of subsection (1) is a person who is liable to pay or contribute to the payment of that company's debts and liabilities contracted before the registration.

Section:	322	Effect of registration under Ordinance
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~~(1) When a company is registered in pursuance of this Part the following provisions of this section shall have effect.~~

~~(2) All provisions contained in any Ordinance or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Ordinance, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.~~

~~(3) All the provisions of this Ordinance shall apply to the company, and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Ordinance, subject as follows—~~

~~(a) Table A shall not apply unless adopted by special resolution;~~

~~(b) the provisions of this Ordinance relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered;~~

~~(c) subject to the provisions of this section the company shall not have power to alter any provision contained in any Ordinance relating to the company;~~

~~(d)-(e) (Repealed 25 of 1998 s. 2)~~

~~(f) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid;~~

~~(g) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid, and, in the event of the death, bankruptcy, or insolvency, of any contributory, the provisions of this Ordinance with respect to the personal representatives and to the trustees of bankrupt or insolvent contributories shall apply.— (Amended 30 of 1999 s. 26)~~

~~(4) The provisions of this Ordinance with respect to—~~

- ~~(a) the registration of an unlimited company as limited;~~
- ~~(b) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up;~~
- ~~(c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up;~~

~~shall apply notwithstanding any provisions contained in any Ordinance or other instrument constituting or regulating the company.~~

~~(5) Nothing in this section shall authorize the company to alter any such provisions contained in any instrument constituting or regulating the company, as would, if the company had originally been formed under this Ordinance, have been required to be contained in the memorandum and are not authorized to be altered by this Ordinance.~~

~~(6) Nothing in this Ordinance shall derogate from any power of altering its constitution or regulations which may, by virtue of any Ordinance or other instrument constituting or regulating the company, be vested in the company.~~

~~(7) In this section, "instrument" (文書) includes deed of settlement, contract of copartnership and cost book regulations.~~

Other miscellaneous consequential amendments in Schedule 9

Item (f): Section 140(2) of Schedule 9

Schedule:	12	PUNISHMENT OF OFFENCES UNDER THIS ORDINANCE
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Expanded Cross Reference:
342, 342A, 342B, 342C

TWELFTH SCHEDULE

[section 351]

Section creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (if applicable)
342F(1)	<u>Authorizing the issue, circulation or distribution in Hong Kong of a prospectus relating to shares in or debentures of a non-Hong Kong company containing an untrue statement – (containing an untrue statement) relating to shares in or debentures of a company incorporated outside Hong Kong (whether the company has or has not established a place of business in Hong Kong)</u>	On indictment	\$550000 and 3 years	-
		Summary	\$150000 and 12 months	-

Other miscellaneous consequential amendments in Schedule 9

Item (g): Section 168 of Schedule 9

Chapter	32H	COMPANIES (WINDING-UP) RULES
Rule:	155	Office of liquidator vacated by his insolvency

If a ~~Receiving Order in bankruptcy is made against the liquidator, he shall thereby vacate his office, and for the purposes of the application of the Ordinance and rules shall be~~ bankruptcy order is made against the liquidator, the liquidator must thereby vacate office, and for the purposes of the application of the Ordinance, the rules and the Companies Ordinance (_____ of 2011) is deemed to have been removed.