

《公司條例草案》委員會
《公司條例草案》第 4 部 — 股本
委員會審議階段修正案

下表載述政府當局就《公司條例草案》第 4 部(“股本”)(第 129 至 197 條)擬議提出的委員會審議階段修正案(修正案)。政府當局在擬訂這些修正案時，考慮了議員、各團體／代表及立法會法律顧問的意見。該些修正案的標示文本按數序排列載於**附件**，以供參閱。在附件內的中文標示文本只載有僅適用於中文版的修正案。有關附表 10(“過渡性條文及保留條文”)的修正案，我們稍後會一次過向法案委員會匯報。

本列表所採用的縮寫如下：

《公司條例》：《公司條例》(第 32 章)

《公司(清盤及雜項條文)條例》：草案生效後的《公司(清盤及雜項條文)條例》(第 32 章)

修正案：委員會審議階段修正案

法案委員會：《公司條例草案》委員會

草案：《公司條例草案》

處長：公司註冊處處長

證監會：證券及期貨事務監察委員會

項目	有關事宜／ 條文	擬議的 委員會審議階段修正案	備註
對草案各部所作的一般修訂			
1	視乎情況加入“登記”一詞	在草案下，交付處長作登記的文件須符合第 29 至 36 條的規定，而該些文件會成為公司登記冊的一部份(第 26 條)。若有關條文要求交付文件，而上述條文適用於該條，則須加入“for	<ul style="list-style-type: none"> 就第 4 部而言，我們建議據此修訂第 178(1)、179(1)、186(1)及 196(1)條和第 166(4)條的附註。

項目	有關事宜／ 條文	擬議的 委員會審議階段修正案	備註
		registration”(登記)一詞。	
2	把向處長交付文件的“14日”修訂為“15日”	如任何文件須在“14日”內交付處長，時限應修訂為“15日”。	<ul style="list-style-type: none"> ● 有法案委員會委員關注，公司向處長交付某些文件作登記或通知之用，14日的期限可能並不足夠，因為就一些文件而言，《公司條例》所訂的交付期限為15日。 ● 經審視後，政府當局同意把草案相關條文的14日期限劃一修訂為15日。請參閱立法會CB(1)357/11-12(01)號文件“政府當局對委員在二零一一年十一月四日及十一日會議上提出有關第4及5部的事宜所作的回應”第31及32段。 ● 就第4部而言，我們建議據此修訂第178(1)及186(1)條。
3	刪除有關條文，以實施取消股本註冊費的安排	財政司司長在二零一二年二月一日發表的《二〇一二至一三年度政府財政預算案》演辭中建議，取消向本地公司徵收股本註冊費。我們須提出修正案，以便在草案中實施這項建議。	<ul style="list-style-type: none"> ● 就第4部而言，我們據此提出以下修正案： <ul style="list-style-type: none"> (a) <u>刪除第137(3)條</u> 第137(3)條述明，公司的已發行股本如因某項配發而增加，則公司向處長登記配發申報書時，須繳付根據第897條訂立的規例所訂明的“股本註冊費”。 (b) <u>刪除第144(2)條</u> 第144(2)條訂明，“股本註冊費”應列為發行股份的開支，而公司可根據第144(1)條將其股本用於沖銷這筆費用。

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			<p>(c) <u>刪除第 166(3)條</u> 第 166(3)條述明，公司的已發行股本如因更改股本而增加，則公司向處長登記更改股本的通知時，須繳付根據第 897 條訂立的規例所訂明的“股本註冊費”。</p> <ul style="list-style-type: none"> 為供參考，我們亦會刪除第 3 部第 62(1)(c)及 126(1)(b)條、第 5 部第 265 條、第 20 部第 897(3)及 (4)條，以及附表 10 第 17(2)、27 及 28(2)條，以便在草案中取消徵收股本註冊費。
4	視乎情況修訂草案中的附註	草案現時載有 37 項附註。經檢討後，我們認為須刪除或修訂部分附註，及加入新的附註。	<ul style="list-style-type: none"> 詳細建議載於立法會 CB(1)1295/11-12(02)號文件“《公司條例草案》中的附註和例子”。法案委員會在二零一二年四月十日的會議上討論了該份文件。委員會通過了有關第 4 部的部份建議，但認為就某些附註而言，當局應謹慎行事，避免產生並非預期中的法律效力。我們同意有關意見。考慮了議員的意見，我們決定刪除第 155 條的附註，以及如下述修訂第 175 及 183 條的例子，使其更清晰及簡潔： <p><u>第 175 條</u> Note Example— For example, aA company could make an agreement with the holders of shares in a class that imposes greater restrictions on the variation of class rights than those in the company’s articles or in this section.</p> <p><u>第 183 條</u> Note Example— For example, aA company could make an agreement with the</p>

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			<p>members of a class that imposes greater restrictions on the variation of class rights than those in the company's articles or in this section.</p> <ul style="list-style-type: none"> 除以上所述，就第 4 部而言，委員會通過了保留第 130、133 及 165 條的附註，並作出如立法會 CB(1)1295/11-12(02)號文件所述的修訂。
對第 4 部所作的其他修訂			
5	第 135 條 董事行使權力配發股份或授予權利	修訂第 135(4)條，訂明任何董事“knowingly contravenes, or authorizes or permits a contravention of”(明知而違反、准許或授權他人違反)第 135 條，即屬犯罪。	<ul style="list-style-type: none"> 這項修正案是因應委員在二零一一年十一月四日法案委員會會議上所作建議而提出的。 委員建議，應在第 135(4)條中述明須有“knowingly”(明知)的意圖，使之與英國《2006 年公司法》第 549(4)條所訂類似罪行的條文看齊。該條文訂明，“A director who knowingly contravenes, or permits or authorizes a contravention of, this section commits an offence”(譯文：任何董事明知而違反、准許或授權他人違反本條，即屬犯罪)。 請參閱立法會 CB(1)357/11-12(01)號文件“政府當局對委員在二零一一年十一月四日及十一日會議上提出有關第 4 及 5 部的事宜所作的回應”第 3 至 6 段。
6	第 137 條 配發申報書	修訂第 137 條，使條文只適用於“limited company”(有限公司)(按第 6 條的定義)。	<ul style="list-style-type: none"> 根據《公司條例》第 45(1)條，“任何股份有限公司或有股本的擔保有限公司”須將分配申報書交付處長註冊。 根據草案第 137(1)條，“公司”須將配發申報書交付處

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			長登記。“公司”包括“無限公司”，而此非條文的原意，因此應修訂條文，以重訂《公司條例》的規定。
7	第 141 條 原 訟 法 庭 認 可 發 行 或 配 發	把中文本內的條文標題由“原訟法庭認可發行或配發”修訂為“原訟法庭認可 <u>使</u> 發行或配發 <u>有效</u> ”，與第 141(2)條一致。	<ul style="list-style-type: none"> 這項修正案是因應立法會法律顧問的建議而提出的。 在《公司條例》第 57C 條的標題中，“validation”譯為“使...變成有效”，但同一個字在草案第 141 條的標題中卻譯為“認可”，即使第 141(2)條把“validating”譯為“使...有效”。這個字的譯法應予劃一。
8	第 143 條 獲 准 的 佣 金	刪除第 143(2)(c)條。	<ul style="list-style-type: none"> 第 143(2)(c)條旨在重訂《公司條例》第 46(1)(c)(i)及(d)條。 《公司條例》第 46(1)(c)(i)及(d)條規定，如任何人認購(或同意認購)公司的股份，而公司向該人支付佣金作為代價，便須在招股章程內披露某些相關資料。 我們諮詢了證監會，認為依據《公司條例》第 38(1)及 342(1)條，附表 3 第 I 部第 14 及 15 段現時訂有足夠的保障，確保公司在招股章程內披露有關支付佣金的詳情。 因此，第 143(2)(c)條(重訂《公司條例》第 46(1)(c)(i)及(d)條)並無必要，應予以刪除。
9	第 150 條 在 轉 讓 後 發 出 股 份 證 明	把第 150(5)條中“營業日 (business day)”的定義修訂為“指認可證券市場營業進行證券交易業務的日子”。	<ul style="list-style-type: none"> 這項修正案是因應立法會法律顧問的建議而提出的，以使文意更為清晰。

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	書		
10	第 153 條 登記或拒絕 登記	把第 153(1)條中“獲傳轉股份的權利” 修訂為“獲傳轉 <u>獲得</u> 股份的權利”。	<ul style="list-style-type: none"> ● 這項修正案是因應立法會法律顧問的意見而提出的。 ● 法律顧問注意到，在草案的中文本中，“right to shares”有以下不同的譯法： <ul style="list-style-type: none"> * 獲得股份的權利(第 145 條) * 股份的權利(第 153(1)條) * 股份權利(第 155(2)條) ● 經審視後，我們認為在第 145、153(1)及 155(2)條中應劃一採用“獲得股份的權利”這個譯法，因為該等條文是關於把某人登記為公司成員或優先認購股份的權利。
11	第 155 條 關於藉法律 傳轉的優先 認購權	把第 155(2)條中的“股份權利”修訂為 “ <u>獲得</u> 股份的權利”。	<ul style="list-style-type: none"> ● 這項修正案是因應立法會法律顧問的意見而提出的。 ● 請參閱上文第 10 項有關第 153 條的備註。
12	第 156 條 遺囑認證書 批給等的證 據	把第 156 條中的“股份權利”修訂為“ <u>獲 得</u> 股份的權利”。	<ul style="list-style-type: none"> ● 請參閱上文第 10 項有關第 153 條的備註。

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13	第 157 條 釋義	把第 159(7)條“website(網站)”的定義移至第 157 條，及對該定義予以修訂。	<ul style="list-style-type: none"> ● “Website(網站)”的定義適用於第 159、160 及 161 條，故應移至第 157 條，使之適用於第 5 分部，而非限於第 159 條。 ● 由於該定義將適用於第 5 分部，故需予以修訂，使其不適用於認可交易所，因為認可交易所本身或不受《上市規則》規管。
14	第 159 條 公布規定	<p>(I) 把第 159(4)(a)、(b) 及 (5) 條中“recognized stock market”(認可證券市場)修訂為“recognized exchange company”(認可交易所)，因該條所指的是法人。</p> <p>(II) 修訂第 159(5)條，訂明認可交易所可選擇在其網站或在該市場營運所在的處所的顯眼地方公布其根據第 159(4)(a)條收到的公告。</p>	<ul style="list-style-type: none"> ● 兩個字詞在草案第 2(1)條中均有界定。“認可證券市場”的定義與《證券及期貨條例》(第 571 章)中的定義相同，即由認可交易所營辦的證券市場。 ● 交易所與證券市場有別。交易所營辦證券市場和期貨市場，而證券市場只可透過交易所行事。因此，當所指的是法人時，採用“認可交易所”一詞較為合適。 ● 這項修正案是因應香港律師會的建議而提出的，該建議獲委員贊同。請參閱立法會 CB(1)357/11-12(01)號文件“二零一一年十一月四日及十一日會議有關第 4 部及第 5 部的跟進行動”第 7 及 8 段。 ● 第 159(5)條規定，認可證券市場須在該市場營運所在的處所的顯眼地方，展示上市公司根據第 159(4)(a)條發出新股份證明書以替代已遺失的股份證明書的公告。 ● 香港律師會認為(見立法會 CB(1)1805/10-11(02)號文件)，這項規定已不合時宜，並建議應修訂為規定在

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			<p>香港交易及結算所有限公司網站的專用網頁刊登公告。</p> <ul style="list-style-type: none"> 根據這項修正案，公司須按第 159(5)(a)或(b)條的規定，在認可交易所的網站或該市場營運所在的處所的顯眼地方公布有關公告一或三個月。
		(III) 修訂第 159(5)(a)及(b)條，清楚訂明只根據第 159(2)(a)條須予公布的公告須公布一個月，而同時須根據第 159(2)(b)條刊登的公告則須刊登三個月。	<ul style="list-style-type: none"> 作出修訂旨在訂明，第 159(5)(a)條適用於只根據第 159(2)(a)條須予公布的公告，而第 159(5)(b)條則適用於根據第 159(2)(b)條須予刊登的公告。 第 159(5)(a)條現時採用的字眼，即“for a notice published under subsection (2)(a)”(根據第(2)(a)款公布的公告)，有不清晰之處，因為若第 159(2)(b)(i)及(ii)條所列的其中一種情況出現，則根據第 159(2)(a)條須在有關公司的網站公布公告的同時，也須根據第 159(2)(b)條於憲報刊登。
		(IV) 加入新條文第 159(5)(A)條，以處理網站發生不能避免的故障的情況。	<ul style="list-style-type: none"> 這與第 160(4)條類似，該條處理網站發生不能避免的故障的情況。
		(V) 把第 159(7)條中“website(網站)”的定義移往第 157 條“Interpretation”(釋義)。	<ul style="list-style-type: none"> 請參閱上文第 13 項有關第 157 條的備註。
15	第 160 條	刪除第 160(5)條，該條文訂明“網站	<ul style="list-style-type: none"> 這項修正案是因應“網站”一詞會在第 157 條中界定

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	發出新股份證明書	(website)”“...has the meaning given by section 159(7)”(...具有第 159(7)條給予該詞的涵義)。	而提出的。請參閱上文第 13 項有關第 157 條的備註。
16	第 161 條 發出新股份證明書的公告	<p>(I) 修訂第 161 條，以反映以下向意：</p> <p>(a) 在所有第 161 條訂明的情況下，有關公司須在一段為期最少七日的期間內，在公司的網站公布有關公告。若(且惟若)有關公司須在新股份證明書發出前，根據第 159(2)(b)條於憲報刊登公告，則該公司也須根據現時載於第 161(1)(a)條的規定，於憲報刊登第 161 條所指的廣告。該七日的期間可在該 14 日的期間內開始計算。此外，應加入類似第 160(4)條的條文(處理網站發生不能避免的故障的情況)；以及</p> <p>(b) 將公告交付認可交易所的規定仍適用於所有情況(第 161(1)(b)條)</p> <p>(II) 把第 161(1)(b)條中，以“recognized exchange</p>	<ul style="list-style-type: none"> ● 這項修正案是因應香港律師會的建議而提出的。 ● 根據第 159(2)條，上市公司如擬補發證明書，而股份的價值低於 200,000 元，則無須於憲報刊登公告。 ● 香港律師會建議(見立法會 CB(1)1805/10-11(02)號文件)，這項豁免於憲報刊登公告的安排，也應適用於根據第 161(1)(a)條刊登關於發出新股份證明書的公告的規定。 ● 請參閱立法會 CB(1)339/11-12(01)號文件“政府當局對各團體／代表所提意見的回應”第 13 頁。 <p>● 請參閱上文第 14(I)項有關第 159(4)(a)、(b)及(5)條的</p>

項目	有關事宜／ 條文	擬議的 委員會審議階段修正案	備註
		company”(認可交易所)修訂為“recognized stock market”(認可證券市場)，因該條指的是法人。	備註。
17	第 165 條 獲准許的股本更改	修訂第 165 條，使條文只適用於“limited company”(有限公司)(按第 6 條的定義)。	<ul style="list-style-type: none"> • 《公司條例》第 53(1)條訂明，“任何股份有限公司或有股本的擔保有限公司”可根據第 53 條更改股本。 • 根據草案第 165(1)條，“公司”可根據第 165 條更改其股本。“公司”包括“無限公司”，表示無限公司也受第 165 條管限。此非條文的原意，因此應修訂條文，以重訂《公司條例》的規定。 • 草案第 166 條(“更改股本的通知”)中對“公司”的提述無須予以修訂，因為第 166(1)條把第 166 條的適用範圍局限於根據第 165 條作出的更改。
18	第 167 條 股本的幣值重訂	<p>(I) 修訂第 167 條，使條文只適用於“limited company”(有限公司)(按第 6 條的定義)。</p> <p>(II) 把第 167(5)條中的“For this purpose”(就此而言)修訂為“For the purposes of this section”(就本條而言)。</p>	<ul style="list-style-type: none"> • 第 167 條是新條文，並非源自《公司條例》，而是根據英國《2006 年公司法》第 622(1)條制訂的。條文只應管限“有限公司”而非“無限公司”，因此應修訂條文以反映此意。 • 這項修正案是因應立法會法律顧問的建議而提出的。 • 立法會法律顧問指出，在草案中，表達同一意思的用語並不相同，例如 (a) 第 167(5)條的“For this purpose”(就此條而言)；(b) 第 222(5)條的“For that purpose”(為上述目的)；以及 (c) 第 192(4)條的“For the purposes of this section”(就本條而言)。法律顧問認

項目	有關事宜／ 條文	擬議的 委員會審議階段修正案	備註
			為應力求劃一草擬方式。
19	第 173 條 股份的類別	把第 173(2)條中“...有關股份所附帶的權利並不僅因該事宜...”修訂為“...有關股份所附帶的權利不會僅因該事宜...”。	<ul style="list-style-type: none"> 這項修訂是因應立法會法律顧問就第 207(2)條類似的中文譯法而作出的建議。
20	第 174 條 不同類別的 股份的說明	修訂第 174 條，以刪除第 174(2)(b)條所訂招股章程及董事報告必須載有“無表決權”中文字樣或“non voting”英文字樣的規定。	<ul style="list-style-type: none"> 第 174(2)條源自《公司條例》第 57A(1)條。 《公司條例》第 57A(1)條規定，如公司的某類股份不附帶表決權(即持有人無權在大會上表決)，公司須確保其發出的任何股票、招股章程或董事報告書如此說明。 <p><u>招股章程須作的披露</u></p> <ul style="list-style-type: none"> 我們諮詢了證監會，認為《公司條例》附表 3(第 I 部第 20 段)訂有足夠的保障，確保公司在招股章程內披露不附帶表決權股份的詳情。第 57A(1)條有關招股章程的披露規定，基本上與附表 3 的類似規定重疊。因此，第 174(2)(b)條(重訂《公司條例》第 57A(1)條的類似規定)中對“招股章程”的提述並無必要。 <p><u>董事報告須作的披露</u></p> <ul style="list-style-type: none"> 在董事報告須作的披露方面，草案第 196(3)(a)條規定，通知／申報表須連同股本說明一併登記。根據這項規定，某類別股份所附帶的表決權的詳情須在股本說明內披露。因此，規定在董事報告內披露同類資料

項目	有關事宜／ 條文	擬議的 委員會審議階段修正案	備註
			<p>並無必要。</p> <ul style="list-style-type: none"> 此外，某類別股份所附帶的表決權，並不屬於須在董事報告內特別披露的管理資料。
21	第 178 條 將原訟法庭命令交付處長	修訂第 178(1)條，規定將原訟法庭命令的“office copy”(正式文本)交付處長。	<ul style="list-style-type: none"> 在草案的其他條文(例如第 218、225(1)(b)、261、675(6)及 715(4)條)中，規定向處長交付的原訟法庭命令文本通常為“正式文本”。因此，我們建議把“copy”(文本)一詞修訂為“office copy”(正式文本)。
22	第 186 條 將原訟法庭命令交付處長	修訂第 186(1)條，規定將原訟法庭命令的“office copy”(正式文本)交付處長。	<ul style="list-style-type: none"> 請參閱上文第 21 項關於第 178 條的備註。
23	第 194 條 規例	把第 194(1)條“...對本次分部所提供的寬免...”修訂為“...對本次分部所給予的寬免...”。	<ul style="list-style-type: none"> 這項修訂由律政司法律草擬科提出，以改善行文。

財經事務及庫務局

公司註冊處

二零一二年四月十三日

Companies Bill
《公司條例草案》**130. No nominal value**

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

Note—

Division 2 of Part 4 of Schedule 10 contains transitional provisions relating to the ~~introduction of shares having no abolition of~~¹ nominal value.

¹ Item 4/第 4 項

133. Repeal of power to issue stock

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

Note—

Sections 169 and 170 contain provisions [for relating to](#)² the reconversion of stock into shares.

² Item 4 / 第 4 項

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

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

³ Item 5 / 第 5 項

Companies Bill
《公司條例草案》

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

⁴ Item 5 / 第 5 項

137. Return of allotment

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

⁵ Item 6 / 第 6 項

- (iii) in any other case of an allotment wholly or partly for non-cash consideration, must contain particulars of the contract for sale, or for services or other consideration in respect of which the shares were allotted; and
- (e) for any shares allotted credited as fully paid up (whether on or without a capitalization)—
 - (i) must state the amount regarded as paid on each share; and
 - (ii) must contain particulars of the resolution authorizing the capitalization or allotment.
- ~~(3) If a company's issued share capital is increased as a result of an allotment, a fee prescribed by regulations made under section 897 is payable for registration of the return.⁶~~
- (4) If a limited⁷ company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (5) If a limited⁸ company fails to deliver a return that complies with subsection (2) within one month after an allotment of shares, the Court may, on application by the company or a responsible person of the company, extend the period for delivery of the return by a period determined by the Court.
- (6) The Court may extend a period under subsection (5) only if it is satisfied—

⁶ Item 3 / 第 3 項

⁷ Item 6 / 第 6 項

⁸ Item 6 / 第 6 項

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

141. 原訟法庭使認可發行或配發有效⁹

- (1) 如公司本意是發行股份或配發股份，而 —
 - (a) 該項發行或配發因任何理由而屬無效，或可能因任何理由而屬無效；或
 - (b) 該項發行或配發的條款 —
 - (i) 抵觸本條例或任何其他條例，或不獲本條例或任何其他條例批准；或
 - (ii) 抵觸公司的章程細則，或不獲公司的章程細則批准，

則本條適用。
- (2) 有關公司、該公司的債權人或任何有關股份的持有人或承按人，均可向原訟法庭申請一項命令，使有關發行或配發有效，或確認有關發行或配發的條款。
- (3) 原訟法庭如信納作出第(2)款所指的命令是公正公平的，可作出該命令。
- (4) 在上述命令的正式文本交付處長時，該命令自本意進行的發行或配發之時起具有效力。

⁹ Item 7 / 第 7 項

143. Permitted commissions

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

¹⁰ Item 8 / 第 8 項

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

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

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

- (1) A company may apply its share capital in writing off—
- (a) the preliminary expenses of the company;
 - (b) any commission paid under section 143 or under section 46 of the predecessor Ordinance; or
 - (c) any other expenses of any issue of shares in the company.

~~(2) For the purposes of subsection (1)(c), the expenses of any issue of shares in a company include the portion attributable to the shares issued of any fee paid by or in respect of the company under section 62(1)(c) or 137(3).¹¹~~

¹¹ Item 3 / 第 3 項

150. 在轉讓後發出股份證明書

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

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

¹² Item 9 / 第 9 項

153. 登記或拒絕登記

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

¹³ Item 10 / 第 10 項

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

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

Note—

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

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

¹⁴ Item 4 / 第 4 項

155. 關於藉法律傳轉的優先認購權

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

附註一

例如在股東去世或破產時出現的股份權利的傳轉。

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

¹⁵ Item 11 / 第 11 項

156. 遺囑認證書批給等的證據

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

¹⁶ Item 12／第 12 項

157. Interpretation

In this Division—

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

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

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

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

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

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

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

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

159. Publication requirements

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

¹⁸ Item 14(I)／第 14(I) 項

¹⁹ Item 14(I)／第 14(I) 項

²⁰ Item 14(I)／第 14(I) 項

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

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

~~(b) — (a) — one month, for a notice published under subsection (2)(a); or~~²³

~~(b) — 3 months, for a notice that is required to be~~²⁴ published under subsection (2)(b).

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

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

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

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

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

²¹ Item 14(II)／第 14(II) 項

²² Item 14(III)／第 14(III) 項

²³ Item 14(III)／第 14(III) 項

²⁴ Item 14(III)／第 14(III) 項

²⁵ Item 14(IV)／第 14(IV) 項

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

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

(7) In this section—

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

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

²⁶ Item 14(V) / 第 14(V) 項

160. Issue of new certificate

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

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

~~(5) In this section—~~

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

161. Public notice of issue of new certificate

(1) A listed company that issues a new certificate must, ~~within 14 days after the date of issue~~—

(a) publish ~~in the Gazette~~ a notice in the specified form in accordance with this section²⁸ of the issue of the new certificate and cancellation of the original certificate; and

(b) deliver a copy of the notice to the recognized exchange company that operates the stock market on which the shares concerned are listed²⁹ within 14 days after the date of issue³⁰ ~~stock market concerned~~.

(1A) The notice must be published on the listed company's website throughout a period of at least 7 days beginning on a date falling within 14 days after the date of issue.³¹

(1B) If the listed company was required by section 159(2)(b) to publish a notice in the Gazette of its intention to issue the new certificate, the notice under this section must also be published in the Gazette within 14 days after the date of issue.³²

(1C) For the purposes of subsection (1A), a failure to make a notice available on a listed company's website throughout a period mentioned in that subsection is to be disregarded if—

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

²⁸ Item 16(I)／第 16(I) 項

²⁹ Item 16(II)／第 16(II) 項

³⁰ Item 16(I)／第 16(I) 項

³¹ Item 16(I)／第 16(I) 項

³² Item 16(I)／第 16(I) 項

(b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.³³

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

³³ Item 16(I)(a) / 第 16(I)(a) 項

165. Permitted alteration of share capital

- (1) A [limited](#)³⁴ company may alter its share capital in any one or more of the ways set out in subsection (2).
- (2) The company may—
 - (a) increase its share capital by allotting and issuing new shares in accordance with this Part;
 - (b) increase its share capital without allotting and issuing new shares, if the funds or other assets for the increase are provided by the members of the company;
 - (c) capitalize its profits, with or without allotting and issuing new shares;
 - (d) allot and issue bonus shares with or without increasing its share capital;
 - (e) convert all or any of its shares into a larger or smaller number of shares;
 - (f) cancel shares—
 - (i) that, at the date the resolution for cancellation is passed, have not been taken or agreed to be taken by any person; or
 - (ii) that have been forfeited.
- (3) A [limited](#)³⁵ company may alter its share capital as referred to in subsection (2)(e) or (f) only by resolution of the company.

Note—

[Sections 135 and 136 contain provisions requiring a](#) resolution of the company ~~may also be required~~ for an allotment of shares. [Those sections](#)

³⁴ Item 17／第 17 項

³⁵ Item 17／第 17 項

may be relevant to an alteration of share capital referred to in subsection (2)(a), (c) or (d)—~~see sections 135 and 136.~~³⁶

- (4) A resolution referred to in subsection (3) may authorize the company to exercise the power—
 - (a) on more than one occasion;
 - (b) at a specified time or in specified circumstances.
- (5) Any amount remaining unpaid on shares being converted under subsection (2)(e) is to be divided equally among the replacement shares.
- (6) If shares are cancelled under subsection (2)(f), the company must reduce its share capital by the amount of the shares cancelled.
- (7) For the purposes of Part 5, a cancellation of shares under this section is not a reduction of share capital.
- (8) A limited³⁷ company's articles may exclude or restrict the exercise of a power conferred by this section.

³⁶ Item 4／第 4 項

³⁷ Item 17／第 17 項

166. Notice of alteration of share capital

- (1) Within one month after altering its share capital under section 165, a company must deliver a notice to the Registrar for registration in relation to the alteration of share capital.
- (2) The notice—
 - (a) must be in the specified form;
 - (b) if the company's issued share capital is increased by the alteration, must state the amount of the increase; and
 - (c) must include a statement of capital as at the date of the alteration that complies with section 196.
- ~~(3) If the company's issued share capital is increased by the alteration, a fee prescribed by regulations made under section 897 is payable for registration of the notice.³⁸~~
- (4) A company is not required to deliver a notice under this section in relation to an alteration of share capital involving an allotment of shares.

Note—

For an allotment of shares, section 137 requires a company to deliver a return of the allotment to the Registrar [for registration](#)³⁹.

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

³⁸ Item 3 / 第 3 項

³⁹ Item 1 / 第 1 項

167. Redenomination of share capital

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

⁴⁰ Item 18(I)／第 18(I) 項

⁴¹ Item 18(I)／第 18(I) 項

⁴² Item 18(II)／第 18(II) 項

⁴³ Item 18(I)／第 18(I) 項

173. 股份的類別

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

⁴⁴ Item 19 / 第 19 項

174. Description of shares of different classes

- (1) A share certificate issued by a company that has different classes of shares must contain in a prominent position a statement—
 - (a) stating that the company’s share capital is divided into different classes of shares; and
 - (b) specifying the voting rights attached to shares in each class.
- (2) If a company has a class of shares the holders of which are not entitled to vote at general meetings of the company—
 - (a) the descriptive title of shares in the class must include the words “non voting” or the Chinese characters “無表決權”; and
 - (b) the company must ensure that those words appear legibly on any share certificate, ~~prospectus or directors’ report~~⁴⁵ issued by the company.
- (3) Subsection (2) does not apply to shares that are described as preference shares or preferred shares.
- (4) If a company contravenes this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

⁴⁵ Item 20 / 第 20 項

175. Varying class rights

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

NoteExample—

~~For example, a~~A company could make an agreement with the holders of shares in a class that imposes ~~greater~~ restrictions on the variation of class rights ~~than those in the company's articles or in this section~~⁴⁶.

- (3) The consent required for the purposes of this section is—
 - (a) written consent of holders representing at least 75% of the total voting rights of holders of shares in the class; or
 - (b) a special resolution passed at a separate general meeting of holders of shares in the class sanctioning the variation.
- (4) A variation takes effect—
 - (a) if no application is made under section 177 for it to be disallowed, at the end of the period in which applications may be made under that section; or
 - (b) if an application is made within that period, at the time the application is withdrawn or finally determined (unless the variation is disallowed).

⁴⁶ Item 4 / 第 4 項

- (5) Any amendment of a provision in a company's articles for the variation of the rights attached to shares in a class, or the insertion of any such provision into the articles, is itself to be regarded as a variation of those rights.
- (6) Nothing in this section affects the Court's powers under sections 664, 665 and 714.

178. Delivery of order of Court to Registrar

- (1) If the Court makes an order under section 177 in relation to a company, the company must deliver an office⁴⁷ copy of the order to the Registrar for registration⁴⁸ within 1514⁴⁹ days after it is made.
- (2) If a company contravenes this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

⁴⁷ Item 21 / 第 21 項

⁴⁸ Item 1 / 第 1 項

⁴⁹ Item 2 / 第 2 項

179. Notifying Registrar of variation

- (1) If the rights attached to shares in any class of shares in a company are varied, the company must deliver to the Registrar [for registration](#)⁵⁰, within one month after the date on which the variation takes effect—
 - (a) a copy of the resolution or other document that authorized the variation; and
 - (b) a notice in the specified form including a statement of capital, as at the date on which the variation takes effect, that complies with section 196.
- (2) Subsection (1)(a) does not apply if the company is required to deliver a copy of the resolution or other document to the Registrar under another provision of this Ordinance.
- (3) If a company contravenes this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

⁵⁰ Item 1 / 第 1 項

183. Varying class rights

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

NoteExample—

~~For example, a~~ company could make an agreement with the members of a class that imposes greater restrictions on the variation of class rights ~~than those in the company's articles or in this section~~⁵¹.

- (3) The consent required for the purposes of this section is—
 - (a) written consent of at least 75% of the members in the class; or
 - (b) a special resolution passed at a separate general meeting of the members in the class sanctioning the variation.
- (4) A variation takes effect—
 - (a) if no application is made under section 185 for it to be disallowed, at the end of the period in which applications may be made under that section; or
 - (b) if an application is made within that period, at the time the application is withdrawn or finally determined (unless the variation is disallowed).
- (5) Any amendment of a provision in a company's articles for the variation of the rights of a class of members, or the insertion

⁵¹ Item 4 / 第 4 項

of any such provision into the articles, is itself to be regarded as a variation of those rights.

- (6) Nothing in this section affects the Court's powers under sections 664, 665 and 714.

186. Delivery of order of Court to Registrar

- (1) If the Court makes an order under section 185 in relation to a company, the company must deliver an office⁵² copy of the order to the Registrar for registration⁵³ within ~~14~~15⁵⁴ days after it is made.
- (2) If a company contravenes this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

⁵² Item 22 / 第 22 項

⁵³ Item 1 / 第 1 項

⁵⁴ Item 2 / 第 2 項

194. 規例

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

⁵⁵ Item 23／第 23 項

196. Statement of capital

- (1) This section applies if a provision of this Part or Part 5 requires a statement of capital to be included in a return or notice delivered to the Registrar [for registration](#)⁵⁶.
- (2) A statement of capital must state—
- (a) the total number of issued shares in the company;
 - (b) the amount paid up or regarded as paid up and the amount (if any) remaining unpaid or regarded as remaining unpaid on the total number of issued shares in the company;
 - (c) the total amount of the company's issued share capital; and
 - (d) for each class of shares—
 - (i) the particulars specified in subsection (3);
 - (ii) the total number of issued shares in the class;
 - (iii) the amount paid up or regarded as paid up and the amount (if any) remaining unpaid or regarded as remaining unpaid on the total number of issued shares in the class; and
 - (iv) the total amount of issued share capital of the class.
- (3) The particulars are—
- (a) particulars of any voting rights attached to shares in the class, including rights that arise only in certain circumstances;
 - (b) particulars of any rights attached to shares in the class, as respects dividends, to participate in a distribution;

⁵⁶ Item 1 / 第 1 項

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