

《公司條例草案》委員會
《公司條例草案》第 5 部 — 關於股本的事宜
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 5 部(“關於股本的事宜”)(第 198 至 285 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)

法案委員會：《公司條例草案》委員會

修正案：委員會審議階段修正案

草案：《公司條例草案》

特許公認會計師公會：特許公認會計師公會香港分會

處長：公司註冊處處長

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	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

項目	有關事宜／ 條文	擬議的 委員會審議階段修正案	備註
			<p>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。</p> <ul style="list-style-type: none"> 就第 5 部而言，我們建議據此修訂第 218(1)、220(1)(c)(i) 及 (ii)、225(1)(b)、261(1)、266(1) 和 285(1) 條。
2	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 5 部而言，我們建議據此刪除第 265 條。 第 265 條豁免公司如在贖回或回購現有股份前的一個月內發行“替補”股份，便無須繳付股本註冊費。 為供參考，我們亦會刪除第 3 部第 62(1)(c) 及 126(1)(b) 條、第 4 部第 137(3)、144(2) 及 166(3) 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。
3	視乎情況修訂草案中的附註	草案現時載有 37 項附註。經審視後，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”。法案委員會於二零一二年四月十日的會議上討論了該份文件。委員會通過了大部份關於第 5 部的建議，但認為當局應考慮將第 205 條的“附註”修訂為“例子”是否合適，因為“例子”或會被視為已盡列所有情況。經考慮後，我們認為有關建議應不會誤導讀者，令他們以為已涵蓋一切，因為對於一般讀者，若以“例子”的一般涵義而言，該詞會被視為僅作示範而並非已臚列所有情況(見 <i>Hsu Li Yun v The Incorporated Owners of Yuen Fat Building</i> [2000]1 HKLRD 900)。 除以上所述外，就第 5 部而言，法案委員會通過了以下的

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			建議： (a) <u>刪除附註</u> 第 198、207、218、225、237、253、261、266、272、 279、280、281 及 285 條。 (b) <u>保留附註，並加以修改</u> 第 219 及 220 條。
對第 5 部所作的其他修訂			
4	第 205 條例子 1 及 2 獲准的股本減少	把第 205(1)條例子 1 所載“未繳款股本”一詞及例子 2“已繳款股本”一詞中的“款”字刪除。	<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，以劃一用語。 法律顧問注意到，在第 286(1)條有關“分派”的定義(c)段中，“share capital not paid up”譯為“未繳股本”，但同一字眼在第 205(1)條例子 1 中卻譯為“未繳款股本”。 據此，我們亦就例子 2“已繳款股本”作出同樣的修訂。
5	第 207 條 如有違反本分部而減少股本屬罪行	把第 207(2)條修訂為“即使有償付...，該公司並不會僅因此而就該項股本減少犯本條所訂的罪行”。	<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。 法律顧問同時亦提出。在“減少”及“犯本條”中間加入“而干”。經審視後，我們認為現時的行文與草案整體的草擬方式較為一致。
6	第 213 條	修訂第 213(1)條，訂明公司一般須在通過特別決議的星期(第	<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十一日法案委員會會議上的意見而提出的。委員認為，現時所訂的時

項目	有關事宜／ 條文	擬議的 委員會審議階段修正案	備註
	關於股本減少的公告	一個星期)後的一個星期(第二個星期)終結前，在憲報刊登有關公告(即與現行條文所訂者相同)，但同時訂明，公司如因慣常憲報周期有變(因為期間有假期，或有黑色暴雨警告日或烈風警告日)而未能在第一或第二個星期遵辦規定，則可在第三個星期於憲報刊登公告。	<p>限未必能顧及在通過決議後至有關公告刊憲前碰上有假期，或有黑色暴雨警告日或烈風警告日的情況。</p> <ul style="list-style-type: none"> 政府當局同意提出修正案，以修訂有關條文，訂明公司須在通過特別決議的星期(第一個星期)後的一個星期(第二個星期)終結前，在憲報刊登有關公告(即與現行條文所訂者相同)，但公司如因憲報周期有變而未能在第二個星期遵辦規定，則可在第二個星期後的一個星期(第三個星期)終結前於憲報刊登公告。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27至30段。 鑑於兩期憲報出版日之間必須相隔四個完整工作天(不包括出版日)，根據第213(1A)(b)條的新表述方式，如因碰上該些指明日子而令公司無法在第二個星期遵辦規定，公司可在第三個星期於憲報刊登有關公告。 新條文第213(1A)條加入了例子，以作示範。
7	第221條 特別決議及向原訟法庭提出要求議決確認股本減少的申請	<p>(I) 把中文本中的標題修訂如下： “特別決議及向原訟法庭提出要求議決確認股本減少的申請”。</p> <p>(II) 刪除第221(2)(a)條所載的“未繳款股本”及第</p>	<ul style="list-style-type: none"> 這項修正案是為消除中文標題與英文標題之間的不一致而提出的。 請參閱上文第4項有關第205條的備註。

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		221(2)(b)條所載的“已繳款股本”中的“款”字。	
8	第 222 條 債權人有權反對股本減少	把第 222(3)及(5)條中的“ For that purpose ”(為上述目的)分別修訂為“ For the purposes of subsection (2) ”(就第(2)款而言)及“ For the purposes of subsection (4) ”(就第(4)款而言)。	<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。 立法會法律顧問注意到，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)。法律顧問認為應力求劃一草擬方式。
9	第 226 條 登記證明書	刪除“ or bear the Registrar’s printed signature ”(或印有其簽署)的字眼。	<ul style="list-style-type: none"> 這項修訂使條文與草案第 66(2)條有關公司註冊證明書和第 343(3)條有關押記登記證明書的情況一致。條文述明該證明書由處長簽署，已經足夠。
10	第 227 條 對不在債權人名單的債權人的法律責任	把草案第 227(3)(b)條中“ contributors ”一字修訂為“ contributories ”。	<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。 法律顧問指出，由於“contributory”一字在草案第 2 條中定義為“負有法律責任在該公司清盤時作出付款作為該公司資產的人”，故在第 227(3)(b)條應使用“contributories”一字。 草案第 227(3)條中“contributors”前的“ordinary”一字應予保留，因為《公司條例》(第 62(1)(b)條)亦使用了“ordinary contributories”(普通分擔人)一詞。
11	第 231 條	(I) 刪除第 231(3)條的附註。	<ul style="list-style-type: none"> 這兩項修正案是因應立法會法律顧問的建議而提出的。

項目	有關事宜／ 條文	擬議的 委員會審議階段修正案	備註
	公司回購本身股份的一般權力	(II) 新增第 231(4)條，重述該附註的內容，即任何違反第 231(3)條的股份回購，均屬無效。	<ul style="list-style-type: none"> 法律顧問認為，把第 262(5)條的條文(即任何違反第 231(3)條的股份回購，均屬無效)置於第 231 條之下較為合理。因此，第 231(3)條下載述同一規定的附註可予刪除。
12	第 233 條 根據公開要約進行的股份回購	修訂草案英文本第 233(4)(b)條，在形容該人時以“neither...nor”(既非...亦非)取代“either...or”(非...或非)。	<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，草案中文本第 233(4)(b)及 282(4)(a)條中的“既非...亦非”字眼，含有“非(i)也非(ii)”的意思，但英文本的意思則為“非(i)或非(ii)”。 第 233(4)(b)條的前身條文為《公司條例》第 49BA(8)(a)及(b)條，而該條使用了“neither...nor”(既非...亦非)的字眼。因此，草案英文本應予以修訂，使之與中文本的意思一致。
13	第 256 條 關於從資本中撥款作付款的公告	修訂第 256(1)條，方式與第 213(1)條相同。	<ul style="list-style-type: none"> 請參閱上文第 6 項有關第 213 條的備註。
14	第 262 條 對購入本身股份的一般禁止	(I) 把第 262(4)條“...並不僅因本分部不獲遵守...”修訂為“...並不會僅因本分部不獲遵守...”。	<ul style="list-style-type: none"> 這項修正案是因應立法會法律顧問對第 207(2)條類似條文的中文譯法的建議而提出的。

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		(II) 刪除第 262(5)條及相應修訂第 262(4)條的對該款的提述。	<ul style="list-style-type: none"> 請參閱上文第 11 項有關第 231 條的備註。
15	第 271 條 禁止為購入股份或為減少或解除因購入招致的債務而提供資助	修訂第 271(1)條，採用《公司條例》第 47A 條的字眼，以闡明“the company”(該公司)指一間公司本身，或該公司作為其控權公司的附屬公司。	<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。 立法會法律顧問認為，第 271(1)條中“the company”(該公司)所指並不清晰，可能會被誤以為條文中首述的公司及其控權公司。如此，該公司的控權公司也不得為購入其附屬公司的股份而提供資助。 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 34 及 35 段。
16	第 272 條 沒有遵守本分部的後果	把標題修訂為“Failure to comply with Division does not affect validity of financial assistance, etc.”(沒有遵守本分部不影響資助等的有效性)。	<ul style="list-style-type: none"> 這項修正案是載於立法會文件 CB(1)1295/ 11-12(02)“《公司條例草案》中的附註和例子”中建議刪除第 272 條的附註而附帶作出的改動。 這項修正案是為了更能反映該條的內容而提出的。
17	第 276 條 僱員參股計劃的例外情況	修訂第 276(2)條中“children”(子女)的定義，以包括領養子女。	<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。 第 477(3)條載述“僱員參股計劃”的定義。該條所述定義與第 276(2)條中就同一字詞所下的定義相同。第 477(3)條把該詞界定為： “旨在鼓勵或利便由以下的人持有或為以下的人的利益

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			<p>而持有公司股份的計劃—</p> <p>(a) 正真誠地受僱於或曾真誠地受僱於該公司或與其同屬一個公司集團成員的另一公司的人；或</p> <p>(b) (a)段提述的人的配偶、遺孀、未亡夫或未成年子女；”</p> <ul style="list-style-type: none"> • 回應法律顧問的意見，政府當局決定在第 477(3)條的定義中，把領養子女列為受益人之一。 • 為求一致，在第 276(2)條的有關定義中，領養子女也應列為受益人之一。
18	第 277 條 貸款給僱員的 例外情況	修訂“child”(子女)的定義，使領養子女也包括在內。	<ul style="list-style-type: none"> • 這項修訂旨在與上文第 17 項有關第 276 條的修訂一致。請參閱該項的備註。
19	第 279 條 資助不得超過 股東資金的 5%	(I) 在第 279(1)(c)條中，把“aggregate amount received by the company in respect of the issue of shares and the reserves of the company”(該公司就發行股份所得之數加上該公司的儲備的總數)修訂為“paid up share capital and reserves”(該公司的已繳股本及儲備)。	<ul style="list-style-type: none"> • 這項修正案是因應香港銀行公會的建議而提出的。 • 香港銀行公會認為(見立法會 CB(1)1805/10-11(14)號文件)，第 279(1)(c)條所使用的字眼，即“...該公司就發行股份所得之數加上該公司的儲備的總數...”，可進一步簡化，以已繳股本及儲備來表達即可。不然，或會有人質疑，以非現金為代價發行的股份或其他注資方式是否包括在內。 • 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 20 及 21 頁。

項目	有關事宜／ 條文	擬議的 委員會審議階段修正案	備註
		(II) 刪除第 279(1)(d)條。	<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。 第 279(1)(d)條規定，公司就提供資助收到公平價值。香港律師會建議，第 279(1)(d)條應予刪除，原因是第 279 條旨在訂定提供低額資助的例外情況。此外，第 279(1)(a) 條已載有充足的保障措施，訂明董事須議決提供資助符合公司的最佳利益，以及資助的條款公平合理。 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 21 頁。
		(III) 在第 279(3)條的中文本中： <ul style="list-style-type: none"> (i) 所有對“保證”一詞的提述應修訂為“擔保”；以及 (ii) 所有對“抵押”一詞的提述應修訂為“保證”。 	<ul style="list-style-type: none"> 在第 279(3)條的中文本中，“保證”一詞具有“guarantee”的意思。這與草案其他條文的用語不符，例如第 270(1) 條以“擔保”一詞表達“guarantee”的意思。 此外，“保證”一詞應用以表達“security”的意思。
		(IV) 刪除第 279(4) 條中“if quantifiable”(如可量化)的字眼。	<ul style="list-style-type: none"> 第 279 條所述資助的款額應可量化，否則公司亦不能計算資助是否超過 5%的限額。
20	第 282 條 向原訟法庭申	(I) 修訂第 282(1)(a)及(b)條，把門檻由(佔總表決權或成員人數的)10%修訂為 5%。	<ul style="list-style-type: none"> 這項修正案是因應特許公認會計師公會的建議而提出的。 特許公認會計師公會認為(見立法會 CB(1)1805/10-11(10)號文件)，成員向法院申請限制提供資助的門檻

項目	有關事宜／ 條文	擬議的 委員會審議階段修正案	備註
	請限制令		(佔總表決權 10%的成員)太高。 • 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 23 頁。
(II) 把第 282(4)(a)條英文本由“either...or”(非 ... 或非)的情況修訂為“neither...nor”(既非 ... 亦非)的情況。		• 請參閱上文第 12 項有關第 233 條的備註。	
(III) 把第 282(4)(b)(i)條“...; or”(“或”的情況)修訂為“...; and”(“及”的情況)。		• 條文參考了新西蘭《公司法》第 78(7)條。該條訂明“the terms and conditions under which the assistance is to be given are not fair and reasonable to the company <u>and</u> to those shareholders not receiving the assistance”。這是一個“and”(及)的情況。	

其他相關事宜

就第 240 條(“合約的授權的決議：披露合約的細節”)而言，立法會法律顧問認為，第 240(4)條中“those names”(上述姓名及名稱)一詞的意思並不清晰，政府當局同意審視有關條文(見立法會 CB(1)357/11-12(01)號文件“政府當局就委員在二零一一年十一月四日及十一日會議上所提關於第 4 部及第 5 部的事項作出的回應”第 33 段)。經審視條文後，政府當局認為，第 240(4)條中“those names”一詞的意思清晰，因為第 240 條只有一處提及“names”，故“those names”的意思必然是第(3)款所指的“names”。因此，政府當局沒有就這方面提出修正案。

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》

198. Interpretation

(1) In this Part—

Commission (監察機關) means—

- (a) subject to paragraphs (b) and (c), the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap. 571);
- (b) if any relevant transfer order made under section 25 of that Ordinance is in force, the recognized exchange company concerned or both the Securities and Futures Commission and the recognized exchange company concerned, in accordance with the provisions of that order; or
- (c) if any relevant transfer order made under section 68 of that Ordinance is in force, the recognized exchange controller concerned or both the Securities and Futures Commission and the recognized exchange controller concerned, in accordance with the provisions of that order;

contingent buy-back contract (待確定回購合約) means a contract entered into by a company relating to any of its shares—

- (a) that is not a contract to buy back those shares; but
- (b) under which the company may (subject to any conditions) become entitled or obliged to buy back those shares;

distributable profits (可分派利潤), in relation to the making of a payment by a company, means those profits out of which the company could lawfully make a distribution equal in value to the payment;

Note—

~~Division 2 of Part 6 contains prohibitions and restrictions on a company in making distributions.~~¹

recognized exchange controller (認可控制人) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

specified Chinese language newspaper (指明中文報章) means a Chinese language newspaper that is specified under subsection (2);

specified English language newspaper (指明英文報章) means an English language newspaper that is specified under subsection (2).

- (2) The Chief Secretary for Administration may specify Chinese language newspapers and English language newspapers for the purposes of this Part and must publish a list of the specified newspapers in the Gazette.

¹ Item 3 / 第 3 項

205. Permitted reductions of share capital

- (1) A company may, in accordance with the procedure specified in section 206, reduce its share capital under this Division in any way.

NoteExamples—

For example—²

1. A company may extinguish or reduce the liability on any of its shares in respect of share capital not paid up.
2. A company may, either with or without extinguishing or reducing liability on any of its shares—
 - (a) cancel any paid-up share capital that is lost or unrepresented by available assets; or
 - (b) repay any paid-up share capital in excess of the company's wants.
- (2) However, a company must not reduce its share capital if, as a result of the reduction, there would no longer be any member of the company holding shares other than redeemable shares.
- (3) This Division is subject to any provision of a company's articles that prohibits or restricts the reduction of the company's share capital.

² Item 3 / 第 3 項

205. 獲准的股本減少

- (1) 公司可按照第 206 條指明的程序，根據本分部以任何方式減少其股本。

附註一

例如 —

1. 公司可終絕或減少其任何股份在未繳款³股本方面的法律責任。
 2. 公司可 —
 - (a) 取消任何已虧損或不能以可用的資產代表的已繳款股本，不論有否終絕或減少其任何股份的法律責任；或
 - (b) 將超過其所需的任何已繳款⁴股本付還，不論有否終絕或減少其任何股份的法律責任。
- (2) 然而，如某公司減少股本，會導致該公司不再有任何成員持有可贖回股份以外的股份，則該公司不得減少其股本。
- (3) 凡公司的章程細則中，有關於任何禁止或限制減少其股本的規定，本分部受該規定所規限。

³ Item 4／第 4 項

⁴ Item 4／第 4 項

207. 如有違反本分部而減少股本屬罪行

- (1) 如公司在違反本分部的情況下減少其股本，該公司及其每名責任人，即屬犯罪 —
 - (a) 一經循公訴程序定罪，可各處罰款\$1,250,000 及監禁 5 年；或
 - (b) 一經循簡易程序定罪，可各處罰款\$150,000 及監禁 12 個月。
- (2) 即使有償付能力陳述為減少公司股本而作出，而該公司的一名或多於一名董事就該陳述犯第 202 條所訂的罪行，該公司並不會⁵僅因此而就該項股本減少犯本條所訂的罪行。
- (3) 如按照第 4 分部進行股份贖回或股份回購，因而導致股本減少，或因本條例的其他規定而導致股本減少，則不屬犯本條所訂的罪行。

附註一

例如股本減少，可以是因原訟法庭根據第 13 部作出的命令導致發生的。

207. Offence if share capital is reduced in contravention of Division

- (1) If a company reduces its share capital in contravention of this Division, the company, and every responsible person of the company, commit an offence and each is liable—
 - (a) on conviction on indictment to a fine of \$1,250,000 and to imprisonment for 5 years; or
 - (b) on summary conviction to a fine of \$150,000 and to imprisonment for 12 months.
- (2) An offence is not committed under this section in relation to a reduction of share capital by a company only because one or more directors of the company commit an offence under section 202 in making a solvency statement for the purposes of the reduction of share capital.
- (3) An offence is not committed under this section if the reduction of share capital occurs as a result of a share redemption or buy-back in accordance with Division 4 or as otherwise provided in this Ordinance.

Note—

~~For example, a reduction of share capital could occur as a result of an order of the Court under Part 13.⁶~~

⁶ Item 3 / 第 3 項

213. Public notice of reduction of share capital

- (1) ~~If a~~ ~~Before the end of the week after the week in which the~~ special resolution for reduction of share capital is passed, the company must, on or before the date specified in subsection (1A),⁷ publish a notice in the Gazette—
- (a) stating that the company has approved a reduction of share capital;
 - (b) specifying the amount of share capital to be reduced and the date of the special resolution;
 - (c) stating where the special resolution and solvency statement are available for inspection; and
 - (d) stating that a member of the company who did not consent to or vote in favour of the special resolution or a creditor of the company may, within 5 weeks after the date of the special resolution, apply to the Court under section 215 for cancellation of the special resolution.

(1A) The date is—

- (a) a date that falls on the last business day of the week after the week in which the special resolution is passed; or
- (b) if the period between the date in paragraph (a) and the date on which the special resolution is passed is less than 4 business days (both dates exclusive), a date that falls on the last business day of the week next following.⁸

Examples:

1. The special resolution is passed on 2 February of a year (Thursday). Apart from Saturdays and Sundays, all other dates in February of that year are business days. The date that falls on the last business day of

⁷ Item 6 / 第 6 項

⁸ Item 6 / 第 6 項

the week after the week in which the special resolution is passed is 10 February (Friday) of that year. There are 5 business days between 2 February and 10 February. The relevant notice must be published in the Gazette on or before 10 February (Friday) of that year⁹.

2. The special resolution is passed on 30 March of a year (Friday). Both 4 April (Wednesday) and 6 April (Friday) of that year are general holidays. 2 April (Monday), 3 April (Tuesday), 5 April (Thursday) and 13 April (Friday) of that year are business days. The date that falls on the last business day of the week after the week in which the special resolution is passed is 5 April (Thursday). There are only 2 business days between 30 March and 5 April. Therefore, the relevant notice must be published in the Gazette on or before the last business day of the week next following, which is 13 April (Friday) of that year.¹⁰

- (2) Before the end of the week after the week in which the special resolution for reduction of share capital is passed, the company must also—
- (a) publish a notice to the same effect as the notice under subsection (1) in at least one specified Chinese language newspaper and at least one specified English language newspaper; or
 - (b) give written notice to that effect to each of its creditors.
- (3) If the company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (4) The company must deliver to the Registrar for registration a copy of the solvency statement no later than the day on which the company—
- (a) publishes the notice under subsection (1); or

⁹ Item 6 / 第 6 項

¹⁰ Item 6 / 第 6 項

-
- (b) if earlier, first publishes the notice or gives notice to creditors under subsection (2).
- (5) If the company contravenes subsection (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

(6) For the purposes of subsection (1A), *business day* () means a day that is not—

(a) a general holiday;

(b) a Saturday; or

(c) a black rainstorm warning day or gale warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap.1).¹¹

¹¹ Item 6 / 第 6 項

218. Company to deliver copy of order of Court to Registrar

- (1) Within ~~15~~¹² days after the making of an order by the Court under section 217, or within any longer period ordered by the Court, the company must deliver an office copy of the order to the Registrar for registration.

Note—

~~If the order of the Court makes an alteration to the company's articles, the company is also required to notify the Registrar of the alteration under section 91.~~¹³

- (2) If the 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 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

¹² Item 1 / 第 1 項

¹³ Item 3 / 第 3 項

219. Registration of return if no application to Court

- (1) If—
- (a) no application is made under section 215 in respect of the special resolution for reduction of share capital; and
 - (b) the company delivers a return that complies with subsection (2) to the Registrar no earlier than 5 weeks and no later than 7 weeks after the date of the special resolution,

the Registrar must register the return.

Notes—

- ~~1.—Under section 210(2), t~~The special resolution and the reduction of share capital take effect when the return is registered by the Registrar~~(see section 210(2))~~.
- ~~2.—The company is also required to deliver a copy of the special resolution to the Registrar within 14 days after it is passed (see section 612)~~.
- ~~3.—If the company's articles are altered by the special resolution, the company is also required to notify the Registrar of the alteration within 14 days after it takes effect (see section 83).~~¹⁴

- (2) The return—
- (a) must be in the specified form;
 - (b) must contain particulars of the reduction of share capital; and
 - (c) must include a statement of capital, as at the time immediately after the reduction of share capital, that complies with section 196.

¹⁴ Item 3 / 第 3 項

220. Registration of return if application to Court

- (1) If—
- (a) an application is made under section 215 in respect of the special resolution for reduction of share capital;
 - (b) either—
 - (i) the Court makes an order under section 217 confirming the special resolution; or
 - (ii) the proceedings on the application are ended without determination by the Court (for example, by the withdrawal of the application); and
 - (c) the company delivers to the Registrar a return that complies with subsection (2)—
 - (i) within 154¹⁵ days after the making of the order, or within any longer period ordered by the Court; or
 - (ii) within 154¹⁶ days after the proceedings are ended without determination by the Court or, if there are more than one such proceedings, the last of them are so ended,

the Registrar must register the return.

Notes—

~~1.—Under section 210(2), t~~The special resolution and the reduction of share capital take effect when the return is registered by the Registrar ~~(see section 210(2)).~~

~~2.—The company is also required to deliver a copy of the special resolution to the Registrar within 14 days after it is passed (see section 612) and deliver an office copy of the order of the Court to~~

¹⁵ Item 1 / 第 1 項

¹⁶ Item 1 / 第 1 項

~~the Registrar within 14 days after the making of the order, or within any longer period ordered by the Court (see section 218).~~¹⁷

- (2) The return—
- (a) must be in the specified form;
 - (b) must contain particulars of the reduction of share capital;
and
 - (c) must include a statement of capital, as at the time immediately after the reduction of share capital, that complies with section 196.

221. 特別決議及向原訟法庭提出要求議決¹⁸確認股本減少的申請

- (1) 公司可根據本次分部，通過一項議決減少股本的特別決議，並可藉呈請書向原訟法庭提出申請，要求發出一項確認股本減少的命令。
- (2) 除非原訟法庭另有指示，否則如建議的股本減少涉及以下其中一項事宜，則第 222 條(債權人有權反對股本減少)適用 —
 - (a) 減輕在未繳款¹⁹股本方面的法律責任；或
 - (b) 付款予持有任何已繳款²⁰股本的股東。
- (3) 原訟法庭在顧及有關個案的任何特殊情況後，如認為恰當，可指示第 222 條不適用於某類別或某些類別的債權人。
- (4) 原訟法庭可指示第 222 條在任何其他情況下適用。

¹⁸ Item 7(I) / 第 7(I) 項

¹⁹ Item 7(II) / 第 7(II) 項

²⁰ Item 7(II) / 第 7(II) 項

222. Creditors entitled to object to reduction of share capital

- (1) If this section applies (see section 221(2) and (4)), a creditor of the company is entitled to object to the reduction of share capital if the creditor is entitled, at the date fixed by the Court, to any debt or claim that would be admissible in proof against the company if the company were to commence being wound up on that date.
- (2) The Court must settle a list of creditors entitled to object.
- (3) For [the purposes of subsection \(2\)](#)~~that purpose~~²¹, the Court—
 - (a) must ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims; and
 - (b) may publish a notice fixing a period within which, or a date by which, creditors not on the list are to claim to be entered on the list or are to be excluded from the right of objecting.
- (4) If a creditor on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of the creditor on the company securing payment of the debt or claim.
- (5) For [the purposes of subsection \(4\)](#)~~that purpose~~²², the debt or claim must be secured by appropriating (as the Court directs) the following amount—

²¹ Item 8 / 第 8 項

²² Item 8 / 第 8 項

- (a) if the company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it, the full amount of the debt or claim; or
- (b) if the company does not admit, and is not willing to provide for, the full amount of the debt or claim, or if the amount is contingent or not ascertained, an amount fixed by the Court after an inquiry and adjudication as if the company were being wound up by the Court.

225. Registration of order, minute and return

- (1) If—
- (a) the Court makes an order under section 224 confirming the reduction of share capital; and
 - (b) within 154²³ days after the making of the order, or within any longer period ordered by the Court, the company delivers to the Registrar—
 - (i) an office copy of the order;
 - (ii) a minute that complies with subsection (2) and that is approved by the Court; and
 - (iii) a return that complies with subsection (3),

the Registrar must register the order, minute and return.

Note—

~~If the order of the Court makes an alteration to the company's articles, the company is also required to notify the Registrar of the alteration under section 91.~~²⁴

- (2) The minute must state, with respect to the company's share capital as altered by the order—
- (a) the amount of the share capital;
 - (b) the total number of issued shares in the company;
 - (c) the amount of each share; and
 - (d) the amount paid up and the amount (if any) remaining unpaid on each share.
- (3) The return—
- (a) must be in the specified form;

²³ Item 1 / 第 1 項

²⁴ Item 3 / 第 3 項

- (b) must contain particulars of the reduction of share capital (by reference to the order or minute, or otherwise); and
 - (c) must include a statement of capital, as at the time immediately after the reduction of share capital, that complies with section 196.
- (4) The special resolution, as confirmed by the order, takes effect on registration of the order, minute and return by the Registrar.
- (5) Notice of the registration must be published in the manner directed by the Court.

226. Certification of registration

- (1) The Registrar must certify the registration of an order, minute and return under section 225.
- (2) The certificate must be signed by the Registrar ~~or bear the Registrar's printed signature~~²⁵.
- (3) The certificate is conclusive evidence—
 - (a) that the requirements of this Ordinance for the reduction of share capital have been complied with; and
 - (b) that the company's share capital is as stated in the minute.

227. Liability to creditors omitted from list of creditors

- (1) This section applies to a reduction of share capital confirmed by the Court under section 224 if—
 - (a) a creditor entitled to object to the reduction of share capital was not entered on the list of creditors because the creditor was not aware—
 - (i) of the proceedings for reduction of share capital; or
 - (ii) of their nature or effect with respect to the creditor's debt or claim; and
 - (b) after the reduction of share capital the company is unable to pay the debt or claim.
- (2) A person who was a member of the company on the date of registration of the order confirming the special resolution for the reduction is liable to contribute for the payment of the debt or claim an amount not exceeding the amount that the person would have been liable to contribute if the company had commenced to be wound up on the day before that date.
- (3) If the company is wound up, the Court, on application by the creditor and proof of the creditor's lack of awareness referred to in subsection (1)(a), may, if it thinks fit—
 - (a) settle a list of persons liable to contribute under this section; and
 - (b) make and enforce calls and orders on them as if they were ordinary ~~contributors~~contributories²⁶ in a winding up.
- (4) Nothing in this section affects the rights of the contributories among themselves.

²⁶ Item 10 / 第 10 項

231. General power of company to buy back its own shares

- (1) Subject to subsections (2) and (3) and Subdivision 6, a company may buy back its own shares in accordance with—
 - (a) for a listed company, Subdivision 4;
 - (b) for an unlisted company, Subdivision 5.
- (2) A company's articles may prohibit or restrict a buy-back by the company of its own shares.
- (3) A company must not buy back its own shares if, as a result of the buy-back, there would no longer be any member of the company holding shares other than redeemable shares.
- (4) A buy-back that contravenes subsection (3) is void.²⁷

Note—

~~Section 262(5) provides that a buy-back that contravenes subsection (3) is void.~~²⁸

²⁷ Item 11(II)／第 11(II) 項

²⁸ Item 11(I)／第 11(I) 項

233. Share buy-back under general offer

- (1) A listed company may buy back its own shares under a general offer that is authorized in advance by resolution of the company.
- (2) The company must include with the notice of the proposed resolution—
 - (a) a copy of the document containing the proposed general offer; and
 - (b) a statement, signed by the directors of the company, containing information that would enable a reasonable person to form a valid and justifiable opinion as to the merits of the offer.
- (3) If, under the proposed general offer, a member of the company may be compelled to dispose of the member's shares under Division 5 of Part 13 (compulsory acquisition after general offer for share buy-back)—
 - (a) the company must appoint an independent investment adviser to advise members who may be affected by the compulsory disposal on the merits of the offer; and
 - (b) the resolution authorizing the offer must be a special resolution on which no non-tendering member votes.
- (4) A person is eligible for appointment as an investment adviser under subsection (3)(a) only if—
 - (a) the person is a corporation licensed to carry on, or an authorized financial institution registered for carrying on, a business in advising on securities or advising on corporate finance under Part V of the Securities and Futures Ordinance (Cap. 571); and

- (b) the person is neither²⁹ ~~not~~—
- (i) a member, officer, shadow director or employee of the company making the general offer or of an associated company of that company; ~~nor~~³⁰
 - (ii) an associated company of the company making the general offer.
- (5) For the purposes of a special resolution referred to in subsection (3)(b)—
- (a) a non-tendering member is to be regarded as voting not only if the non-tendering member votes on a poll on the question whether the resolution should be passed but also if the non-tendering member votes on the resolution otherwise than on a poll;
 - (b) any member of the company may demand a poll on that question; and
 - (c) a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.
- (6) In this section—
- general offer** (公開要約) has the meaning given by section 696;
- non-tendering member** (不售股成員) has the meaning given by section 694.

²⁹ Item 12/第 12 項

³⁰ Item 12/第 12 項

237. No assignment of right to buy back own shares

The following rights of a listed company are not capable of being assigned—

- (a) rights under a general offer authorized under section 233;
- (b) rights under a buy-back on a recognized stock market or on an approved stock exchange authorized under section 234;
- (c) rights under a contract authorized under section 235.

Note—

~~A contract authorized under section 235 includes a contingent buy-back contract authorized under that section (see section 235(2)).~~³¹

³¹ Item 3 / 第 3 項

253. Special resolution for payment out of capital

- (1) Subject to section 252(3), a company may make a payment out of capital in respect of the redemption or buy-back of its own shares by special resolution in accordance with this Subdivision.
- (2) Subject to section 258, the payment out of capital and the redemption or buy-back must be made no earlier than 5 weeks and no later than 7 weeks after the date of the special resolution.

Note—

~~The Court has power to alter or extend this period (see section 260).~~³²

256. Public notice of payment out of capital

- (1) ~~If a~~ ~~Before the end of the week after the week in which the~~ special resolution for payment out of capital is passed, the company must, on or before the date specified in subsection (1A),³³ publish a notice in the Gazette—
- (a) stating that the company has approved a payment out of capital;
 - (b) specifying the amount of the payment out of capital and the date of the special resolution;
 - (c) stating where the special resolution and solvency statement are available for inspection; and
 - (d) stating that a member of the company who did not consent to or vote in favour of the special resolution or a creditor of the company may, within 5 weeks after the date of the special resolution, apply to the Court under section 258 for cancellation of the special resolution.

(1A) The date is—

- (a) a date that falls on the last business day of the week after the week in which the special resolution is passed; or
- (b) if the period between the date in paragraph (a) and the date on which the special resolution is passed is less than 4 business days (both dates exclusive), a date that falls on the last business day of the week next following.³⁴

Examples:

1. The special resolution is passed on 2 February of a year (Thursday). Apart from Saturdays and Sundays, all other dates in February of that year are business days. The date that falls on the last business day of the week after the week in which the special resolution is passed is 10

³³ Item 13／第 13 項

³⁴ Item 13／第 13 項

February (Friday) of that year. There are 5 business days between 2 February and 10 February. The relevant notice must be published in the Gazette on or before 10 February (Friday) of that year.³⁵

2. The special resolution is passed on 30 March of a year (Friday). Both 4 April (Wednesday) and 6 April (Friday) of that year are general holidays. 2 April (Monday), 3 April (Tuesday), 5 April (Thursday) and 13 April (Friday) of that year are business days. The date that falls on the last business day of the week after the week in which the special resolution is passed is 5 April (Thursday). There are only 2 business days between 30 March and 5 April. Therefore, the relevant notice must be published in the Gazette on or before the last business day of the week next following, which is 13 April (Friday) of that year (Friday).³⁶

- (2) Before the end of the week after the week in which the special resolution for payment out of capital is passed, the company must also—
 - (a) publish a notice to the same effect as the notice under subsection (1) in at least one specified Chinese language newspaper and at least one specified English language newspaper; or
 - (b) give written notice to that effect to each of its creditors.
- (3) If the company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (4) The company must deliver to the Registrar for registration a copy of the solvency statement no later than the day on which the company—
 - (a) publishes the notice under subsection (1); or

³⁵ Item 13 / 第 13 項

³⁶ Item 13 / 第 13 項

- (b) if earlier, first publishes the notice or gives notice to creditors under subsection (2).
- (5) If the company contravenes subsection (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

(6) For the purposes of subsection (1A), *business day* () means a day that is not—

(a) a general holiday;

(b) a Saturday; or

(c) a black rainstorm warning day or gale warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).³⁷

261. Company to deliver copy of order of Court to Registrar

- (1) Within 154³⁸ days after the making of an order by the Court under section 260, or within any longer period ordered by the Court, the company must deliver an office copy of the order to the Registrar for registration.

Note—

~~If the order of the Court makes an alteration to the company's articles, the company is also required to notify the Registrar of the alteration under section 91.~~³⁹

- (2) If the 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 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

³⁸ Item 1 / 第 1 項

³⁹ Item 3 / 第 3 項

262. 對購入本身股份的一般禁止

- (1) 除本條例有所規定外，公司不得以贖回、回購、認購或其他方式，購入本身的股份。
- (2) 如公司違反第(1)款，下述的人即屬犯罪 —
 - (a) 該公司；
 - (b) 該公司的每名責任人；及
 - (c) 明知而准許違反該條的該公司每名不售股成員(第 694 條所界定者)。
- (3) 任何人犯第(2)款所訂的罪行 —
 - (a) 一經循公訴程序定罪，可處罰款\$1,250,000 及監禁 5 年；或
 - (b) 一經循簡易程序定罪，可處罰款\$150,000 及監禁 12 個月。
- (4) 除第(5)款另有規定外及在第 14 部第 2 分部(對不公平地損害成員權益的補救)的規限下，公司根據本分部進行的股份贖回或股份回購，**並不會**⁴⁰僅因本分部不獲遵守而屬無效。
- (5) 任何違反第 231(3)條的股份回購，均屬無效。

⁴⁰ Item 14(I)／第 14(I) 項

262. General prohibition on acquisition of own shares

- (1) Except as provided by this Ordinance, a company must not acquire its own shares, whether by redemption, buy-back, subscription or otherwise.
- (2) If a company contravenes subsection (1), an offence is committed by—
 - (a) the company;
 - (b) every responsible person of the company; and
 - (c) every non-tendering member of the company (as defined by section 694) who knowingly permits the contravention.
- (3) A person who commits an offence under subsection (2) is liable—
 - (a) on conviction on indictment to a fine of \$1,250,000 and to imprisonment for 5 years; or
 - (b) on summary conviction to a fine of \$150,000 and to imprisonment for 12 months.
- (4) Subject to ~~subsection 231(45)~~⁴¹ and Division 2 of Part 14 (remedies for unfair prejudice to members' interests), a redemption or buy-back of shares by a company under this Division is not void only because of a failure to comply with this Division.
- ~~(5) A buy back that contravenes section 231(3) is void.~~⁴²

⁴¹ Item 14(II)／第 14(II) 項

⁴² Item 14(II)／第 14(II) 項

~~265.— Fresh issue of shares before redemption or buy-back~~

- ~~(1) If a company is about to redeem or buy back its own shares, the company may issue shares up to the value of the shares to be redeemed or bought back as if those shares had never been issued.~~
- ~~(2) If the shares to be redeemed or bought back are redeemed or bought back within one month after new shares are issued under subsection (1), no fee is payable by the company under section 137(3) on a return of allotment of the new shares.⁴³~~

266. Return of share redemption or buy-back

- (1) A company that redeems or buys back any shares under this Division must, within 154⁴⁴ days after the date on which the shares are delivered to the company, deliver a return to the Registrar for registration.
- (2) The return—
 - (a) must be in the specified form;
 - (b) must state, for the shares of each class redeemed or bought back—
 - (i) the number of shares; and
 - (ii) the date on which they were delivered to the company;
 - (c) must include a statement of capital, as at the time immediately after the redemption or buy-back, that complies with section 196;
 - (d) in the case of a listed company, must also state, for the shares of each class redeemed or bought back—
 - (i) the maximum and minimum prices paid in respect of the shares; and
 - (ii) the aggregate amount paid by the company for the shares; and
 - (e) in the case of a redemption or buy-back financed by a payment out of capital, must also state particulars of the payment including the date and amount of the payment.

⁴⁴ Item 1 / 第 1 項

Note—

~~If the redemption or buy back results in an alteration of the company's articles, the company is also required to notify the Registrar of the alteration within 14 days after it takes effect (see section 83).~~⁴⁵

- (3) Details of shares delivered to the company on different dates and under different contracts may be included in a single return. If this is done, the amount required to be stated under subsection (2)(d)(ii) is the aggregate amount paid by the company for all the shares to which the return relates.
- (4) If the 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 6 and, in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.

271. Prohibition on financial assistance for acquisition of shares or for reducing or discharging liability for acquisition

- (1) If a person is acquiring or proposing to acquire shares in a company ~~or its holding company~~⁴⁶, the company or any of its subsidiaries⁴⁷ must not give financial assistance directly or indirectly for the purpose of the acquisition before or at the same time as the acquisition takes place, except as provided by this Division.
- (2) If—
 - (a) a person has acquired shares in a company ~~or its holding company~~⁴⁸; and
 - (b) any person has incurred a liability for the purpose of the acquisition,the company or any of its subsidiaries⁴⁹ must not give financial assistance directly or indirectly for the purpose of reducing or discharging the liability, except as provided by this Division.
- (3) This section does not apply to the giving of financial assistance by a company for the purpose of the acquisition of a share in its holding company or for the purpose of reducing or discharging a liability incurred for such an acquisition if the holding company is a company incorporated outside Hong Kong.
- (4) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an

⁴⁶ Item 15 / 第 15 項

⁴⁷ Item 15 / 第 15 項

⁴⁸ Item 15 / 第 15 項

⁴⁹ Item 15 / 第 15 項

offence, and each is liable to a fine of \$150,000 and to imprisonment for 12 months.

272. ~~Consequences of failing~~Failure to comply with Division does not affect validity of financial assistance, etc.⁵⁰

If a company gives financial assistance in contravention of this Division, the validity of the financial assistance and of any contract or transaction connected with it is not affected only because of the contravention.

~~Note—~~

~~Offences may be committed by the company and a responsible person of the company for contravention of certain provisions of this Division (see for example section 271(4)).~~⁵¹

⁵⁰ Item 16 / 第 16 項

⁵¹ Item 3 / 第 3 項

276. Exception for employee share schemes

- (1) Subject to section 278, this Division does not prohibit—
- (a) the giving by a company, in good faith in the interests of the company, of financial assistance for the purposes of an employee share scheme; or
 - (b) the giving of financial assistance by a company for the purposes of, or in connection with, anything done by the company or another company in the same group of companies for the purposes of enabling or facilitating transactions in shares in the company or its holding company between, and involving the acquisition of beneficial ownership of those shares by—
 - (i) persons employed or formerly employed in good faith by that company or another company in the same group of companies; or
 - (ii) spouses, widows, widowers, or minor children of persons referred to in subparagraph (i).

- (2) In this section—

children (子女) includes step-children, ~~and~~ illegitimate children and children adopted in any manner recognized by the law of Hong Kong⁵²;

employee share scheme (僱員參股計劃) means a scheme for encouraging or facilitating the holding of shares in a company by or for the benefit of—

- (a) persons employed or formerly employed in good faith by that company or another company in the same group of companies; or

⁵² Item 17 / 第 17 項

(b) spouses, widows, widowers, or minor children of persons referred to in paragraph (a);

minor children (未成年子女) means children who are under 18 years of age.

277. Exception for loans to employees

(1) Subject to section 278, this Division does not prohibit the making by a company of loans to its eligible employees for the purpose of enabling them to acquire fully paid shares in the company or its holding company to be held by them by way of beneficial ownership.

(2) In this section—

child (子女) includes a step-child, ~~and~~ illegitimate child and child adopted in any manner recognized by the law of Hong Kong⁵³;

eligible employees (合資格的僱員), in relation to a company, means persons employed in good faith by the company, other than—

- (a) a director of the company;
- (b) a director's spouse;
- (c) a director's child who is under 18 years of age;
- (d) a trustee of a trust (other than an employee share scheme as defined by section 276(2) or a pension scheme)—
 - (i) the beneficiaries of which include a person referred to in paragraph (a), (b) or (c); or
 - (ii) the terms of which confer a power on the trustees that may be exercised for the benefit of a person referred to in paragraph (a), (b) or (c); or
- (e) a partner of a person referred to in paragraph (a), (b) or (c) or of a trustee referred to in paragraph (d).

⁵³ Item 18 / 第 18 項

279. Financial assistance not exceeding 5% of shareholders funds

- (1) A company may give financial assistance for the purpose of the acquisition of a share in the company or its holding company or for the purpose of reducing or discharging a liability incurred for such an acquisition if—
- (a) the directors resolve, before the assistance is given, that—
 - (i) the company should give the assistance;
 - (ii) giving the assistance is in the best interests of the company; and
 - (iii) the terms and conditions under which the assistance is to be given are fair and reasonable to the company;
 - (b) on the same day that the directors pass the resolution, the directors who vote in favour of it make a solvency statement that complies with Division 2 in relation to the giving of the assistance;
 - (c) the aggregate amount of the assistance and any other financial assistance given under this section that has not been repaid does not exceed 5% of the ~~aggregate amount received by the company in respect of the issue of shares and the paid up share capital and~~⁵⁴ reserves of the company (as ~~that aggregate amount is~~⁵⁵ disclosed in the most recent audited financial statements of the company); and

⁵⁴ Item 19(I)／第 19(I) 項

⁵⁵ Item 19(I)／第 19(I) 項

- ~~(d) the company receives fair value in connection with the giving of the assistance; and~~⁵⁶
- (e) the assistance is given not more than 12 months after the day on which the solvency statement is made under paragraph (b).
- (2) The resolution of the directors under subsection (1)(a) must set out in full the grounds for their conclusions as to the matters referred to in subsection (1)(a)(i), (ii) and (iii).
- (3) A reference in subsection (1)(c) to any other financial assistance given under this section that has not been repaid includes the amount of any financial assistance given in the form of a guarantee or security for which the company remains liable at the time the financial assistance in question is given.
- (4) Within 15 days after giving financial assistance under this section, the company must send to each member of the company a copy of the solvency statement made under subsection (1)(b) and a notice containing the following information—
- (a) the class and number of shares in respect of which the assistance was given;
- (b) the consideration paid or payable for those shares;
- (c) the name of the person receiving the assistance and, if a different person, the name of the beneficial owner of those shares;
- (d) the nature, the terms and, ~~if quantifiable,~~⁵⁷ the amount of the assistance.

⁵⁶ Item 19(II)／第 19(II) 項

⁵⁷ Item 19(IV)／第 19(IV) 項

- (5) If the company contravenes subsection (4), 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.

Note—

~~If the giving of financial assistance by a company would result in a reduction in the company's share capital, the company must also comply with Division 3.~~⁵⁸

279. 資助不得超過股東資金的 5%

- (1) 如符合以下條件，公司可為購入其股份或其控權公司的股份而提供資助，或為減少或解除為該項購入而招致的債務而提供資助 —
 - (a) 董事在提供該項資助前議決 —
 - (i) 該公司應提供該項資助；
 - (ii) 提供該項資助符合該公司的最佳利益；及
 - (iii) 提供該項資助的條款及條件，對該公司而言屬公平及合理；
 - (b) 董事通過該項決議的同一日，表決贊成該項決議的董事就提供該項資助作出符合第 2 分部的償付能力陳述；
 - (c) 該項資助加上任何其他根據本條提供但尚未償還的資助的總數，不超過該公司就發行股份所得之數加上該公司的儲備的總數(以公司最新經審計的財務報表內披露的該總數為準)的 5%；
 - (d) 該公司就提供該項資助而收到公平價值；及
 - (e) 該項資助是在根據(b)段作出償付能力陳述的日期後的 12 個月內提供的。
- (2) 董事根據第(1)(a)款通過的決議，須詳列他們對第(1)(a)(i)、(ii)及(iii)款提述的事宜所下結論的理由。
- (3) 在第(1)(c)款中，提述任何其他根據本條提供但尚未償還的資助，包括以保證擔保⁵⁹或抵押保證⁶⁰的形式提供的資助的款

⁵⁹ Item 19(III)／第 19(III)項

⁶⁰ Item 19(III)／第 19(III)項

額，而在提供該資助時，公司是仍然就該保證擔保⁶¹或抵押保證⁶²負有法律責任。

- (4) 公司須在根據本條提供資助後的 15 日內，向其每名成員送交根據第(1)(b)款作出的償付能力陳述的文本，及載有下列資料的通知 —
- (a) 提供該項資助所關乎的股份的類別及數目；
 - (b) 已就或須就該等股份支付的代價；
 - (c) 獲得該項資助的人的姓名或名稱，如獲得資助的人是不同的人，該等股份的實益擁有人的姓名或名稱；
 - (d) 該項資助的性質、條款及(如可量化)款額。
- (5) 如公司違反第(4)款，該公司及其每名責任人均屬犯罪，可各處第 3 級罰款，如有關罪行是持續的罪行，則可就該罪行持續期間的每一日，另各處罰款\$300。

附註一

如公司提供資助會導致該公司的股本減少，該公司亦須遵守第 3 分部。

⁶¹ Item 19(III)／第 19(III)項

⁶² Item 19(III)／第 19(III)項

280. Financial assistance with approval of all members

- (1) A company may give financial assistance for the purpose of the acquisition of a share in the company or its holding company or for the purpose of reducing or discharging a liability incurred for such an acquisition if—
 - (a) the directors resolve, before the assistance is given, that—
 - (i) the company should give the assistance;
 - (ii) giving the assistance is in the best interests of the company; and
 - (iii) the terms and conditions under which the assistance is to be given are fair and reasonable to the company;
 - (b) on the same day that the directors pass the resolution, the directors who vote in favour of it make a solvency statement that complies with Division 2 in relation to the giving of the assistance;
 - (c) the giving of the assistance is approved by written resolution of all members of the company before the assistance is given; and
 - (d) the assistance is given not more than 12 months after the day on which the solvency statement is made under paragraph (b).
- (2) The resolution of the directors under subsection (1)(a) must set out in full the grounds for their conclusions as to the matters referred to in subsection (1)(a)(i), (ii) and (iii).

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Note—

~~If the giving of financial assistance by a company would result in a reduction in the company's share capital, the company must also comply with Division 3.~~⁶³

281. Financial assistance by ordinary resolution

- (1) A company may give financial assistance for the purpose of the acquisition of a share in the company or its holding company or for the purpose of reducing or discharging a liability incurred for such an acquisition if—
- (a) the directors resolve, before the assistance is given, that—
 - (i) the company should give the assistance;
 - (ii) giving the assistance is in the best interests of the company and is of benefit to those members of the company not receiving the assistance; and
 - (iii) the terms and conditions under which the assistance is to be given are fair and reasonable to the company and to those members not receiving the assistance;
 - (b) on the same day that the directors pass the resolution, the directors who vote in favour of it make a solvency statement that complies with Division 2 in relation to the giving of the assistance;
 - (c) the company sends to each member of the company a copy of the solvency statement made under paragraph (b) and a notice containing the following information—
 - (i) the nature and terms of the assistance and the name of the person to whom it will be given;
 - (ii) if it will be given to a nominee for another person, the name of that other person;
 - (iii) the text of the resolution of the directors;
 - (iv) any further information and explanation that would be necessary for a reasonable member to understand the nature of the assistance and the

implications of giving it for the company and the members;

- (d) the giving of the assistance is approved by resolution of the company before the assistance is given; and
 - (e) the assistance is given—
 - (i) not less than 28 days after the day on which the resolution is passed under paragraph (d); and
 - (ii) not more than 12 months after the day on which the solvency statement is made under paragraph (b).
- (2) The notice and copy of the solvency statement must be sent to each member under subsection (1)(c) at least 14 days before the day on which the resolution under subsection (1)(d) is proposed and may accompany notice of the meeting at which the resolution will be proposed.
- (3) Despite subsection (1)(e)(i), if an application is made to the Court under section 282 in relation to the giving of financial assistance under this section, the financial assistance must not be given until the application is finally determined, unless the Court orders otherwise.
- (4) The resolution of the directors under subsection (1)(a) must set out in full the grounds for their conclusions as to the matters referred to in subsection (1)(a)(i), (ii) and (iii).

Note—

~~If the giving of financial assistance by a company would result in a reduction in the company's share capital, the company must also comply with Division 3.~~⁶⁴

282. Application to Court for restraining order

- (1) Within 28 days after the day on which a resolution for the giving of financial assistance is passed under section 281(1)(d), an application to the Court for an order restraining the giving of financial assistance may be made—
 - (a) if the company is limited by shares, by members representing at least ~~105~~⁶⁵% of the total voting rights of holders of shares in the company; or
 - (b) in any other case, by members representing at least ~~105~~⁶⁶% of the members of the company.
- (2) Despite subsection (1), a member who consented to or voted in favour of the resolution is not entitled to apply.
- (3) An application may be made on behalf of the members entitled to apply by any one or more of them appointed in writing by all of them.
- (4) An application under this section may be made only on the ground that—
 - (a) the giving of the assistance is ~~neither~~⁶⁷—
 - (i) in the best interests of the company; ~~nor~~⁶⁸
 - (ii) of benefit to those members of the company not receiving the assistance; or
 - (b) the terms and conditions under which the assistance is to be given are not fair and reasonable to—
 - (i) the company; ~~or~~⁶⁹

⁶⁵ Item 20(I)/第 20(I) 項

⁶⁶ Item 20(I)/第 20(I) 項

⁶⁷ Item 20(II)/第 20(II) 項

⁶⁸ Item 20(II)/第 20(II) 項

- (ii) those members not receiving the assistance.
- (5) If an application is made under this section—
- (a) the applicant must, as soon as possible, serve the application on the company; and
 - (b) the company must give the Registrar notice in the specified form of the application within 7 days after the day on which the application is served on the company.
- (6) If the company contravenes subsection (5)(b), 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.

285. Company to deliver copy of order of Court to Registrar

- (1) Within 154⁷⁰ days after the making of an order by the Court under section 284, or within any longer period ordered by the Court, the company must deliver an office copy of the order to the Registrar for registration.

Note—

~~If the order of the Court makes an alteration to the company's articles, the company is also required to notify the Registrar of the alteration under section 91.~~⁷¹

- (2) If the 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 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

⁷⁰ Item 1 / 第 1 項

⁷¹ Item 3 / 第 3 項