

**Bills Committee on Companies Bill**  
**Committee Stage Amendments to the Companies Bill**  
**Part 5 – Transactions in relation to Share Capital**

The table below sets out the proposed Committee Stage Amendments (CSAs) in relation to Part 5 (“Transactions in relation to Share Capital”) (clauses 198 to 285) of the Companies Bill. In preparing the CSAs, the Administration has taken account of, *inter alia*, the views of Members, deputations and the Legislative Council Legal Adviser. Marked-up copy of the proposed CSAs in numerical order is at **Annex** for reference. The marked-up Chinese provisions in the Annex only contain CSAs solely applicable to the Chinese text. CSAs to Schedule 10 (“Transitional and Saving Provisions”) will be reported to the Bills Committee later in one go.

A list of abbreviations used in this table is as follows:

ACCA HK: Association of Chartered Certified Accountants, Hong Kong

Bills Committee: Bills Committee on Companies Bill

CB: Companies Bill

CO: Companies Ordinance (Cap 32)

CSA: Committee Stage Amendment

FS: Financial Secretary

HKAB: Hong Kong Association of Banks

LegCo: Legislative Council

LSHK: Law Society of Hong Kong

NZCA: Companies Act of New Zealand

Registrar: Registrar of Companies

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
<b>General amendments across CB</b>			
1	Change “14 days” to “15 days” for delivery of documents to the	Where a document has to be delivered to the Registrar within “14 days”, the time limit should be changed to “15 days”.	<ul style="list-style-type: none"> <li>Some Bills Committee Members were concerned that the 14-day period may be insufficient for companies to deliver certain documents to the Registrar for registration or notification, as the delivery period for some of the documents was 15 days in CO.</li> </ul>

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
	Registrar		<ul style="list-style-type: none"> <li>• Upon review, the Administration agreed to extend the 14-day period to 15 days for the relevant provisions in CB. Please see paragraphs 31 to 32 of LegCo Paper No. CB(1)357/11-12(01) “<i>Administration’s response to issues raised by members at the meetings on 4 and 11 November 2011 in relation to Part 4 and Part 5</i>”.</li> <li>• Insofar as Part 5 is concerned, we propose to amend clauses 218(1), 220(1)(c)(i) and (ii), 225(1)(b), 261(1), 266(1) and 285(1) pursuant to this item.</li> </ul>
2	Delete the relevant provisions to effect abolition of capital duty	FS announced in his 2012-13 Budget Speech on 1 February 2012 to abolish capital duty levied on local companies. CSAs have to be introduced to effect the proposal under CB.	<ul style="list-style-type: none"> <li>• Insofar as Part 5 is concerned, we propose to delete clause 265 pursuant to this item.</li> <li>• Clause 265 exempts a company from paying capital duty if “replacement” shares are issued in the 1-month period before redemption or buy-back of the existing shares.</li> <li>• For reference, clauses 62(1)(c) and 126(1)(b) of Part 3, clauses 137(3), 144(2), 166(3) of Part 4, clause 897(3) and (4) of Part 20 and sections 17(2), 27 and 28(2) of Schedule 10 will also be removed to effect abolition of capital duty under CB.</li> </ul>
3	Amend the Notes in CB as appropriate	CB currently contains 37 Notes. Upon review, we consider that some Notes have to be deleted or amended while some new Notes should be added.	<ul style="list-style-type: none"> <li>• Detailed proposals are set out in the LegCo Paper No. CB(1)1295/11-12(02) “<i>Notes and Examples in the Companies Bill</i>” discussed on 10 April 2012. Members endorsed most of the proposals relating to Part 5 but considered that the Administration should review the appropriateness of turning the “Note” in clause 205 into an “Example” as the example might be seen as exhaustive. Upon review, we consider that it would not mislead readers into thinking that it is exhaustive as general readers would appreciate that an example, giving the word “example” its ordinary meaning, is only an illustration and is not exhaustive (see <i>Hsu Li Yun v The Incorporated Owners of Yuen Fat Building</i> [2000]1 HKLRD 900).</li> <li>• Save for the above, insofar as Part 5 is concerned, Members endorsed the following proposals: <ul style="list-style-type: none"> <li>(a) <u>Note to be deleted</u> Clauses 198, 207, 218, 225, 237, 253, 261, 266, 272, 279, 280, 281 and 285.</li> <li>(b) <u>Note to be retained with modifications</u></li> </ul> </li> </ul>

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
			Clauses 219 and 220.
<b>Other amendments specific to Part 5</b>			
4	Clause 205 Examples 1 and 2  Permitted reductions of share capital	Remove the word “款” in Example 1 under clause 205(1) from the words “未繳款股本” and in Example 2 from “已繳款股本”.	<ul style="list-style-type: none"> <li>• These CSAs are proposed in response to LegCo Legal Adviser’s observations to achieve consistency.</li> <li>• The Legal Adviser noted that the words “share capital not paid up” are rendered as “未繳股本” in paragraph (c) of the definition of “distribution” in clause 286(1) whereas the same words are rendered as “未繳款股本” in Example 1 under clause 205(1).</li> <li>• Likewise, the same change should be made to “已繳款股本” in Example 2.</li> </ul>
5	Clause 207  Offence if share capital is reduced in contravention of Division	Amend clause 207(2) as “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"> <li>• This CSA is proposed in response to Legal Adviser’s suggestion to improve clarity.</li> <li>• The Legal Adviser also suggested that “而干” should be added between “減少” and “犯本條”. Upon review, having regard to the overall drafting of CB, we consider it more consistent to maintain the current drafting.</li> </ul>
6	Clause 213  Public notice of reduction of share capital	Amend clause 213(1) such that generally the notice will have to be published in the Gazette before the end of the week (Week 2) after the week in which the special resolution is passed (Week 1), i.e. same as the current provisions, while at the same time allow the notice to be published in the Gazette in Week 3 where there are intervening holidays, or black rainstorm warning or gale warning days.	<ul style="list-style-type: none"> <li>• This CSA is proposed in response to Members’ observation at the Bills Committee meeting on 11 November 2011 that the current timeframe may not be able to accommodate situations in which there is intervening holidays, or black rainstorm warning or gale warning days after the resolution is passed and the notice to be published in the Gazette.</li> <li>• The Administration agreed to introduce a CSA to change the provisions such that the notice is to be published in the Gazette either before the end of the week (Week 2) after the week (Week 1) in which the special resolution is passed (i.e. the same as the current provisions), or before the end of the week following Week 2 (Week 3) provided that it is not possible to do so in Week 2 because of intervening holidays in</li> </ul>

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
			<p>the Gazette cycle. Please see paragraphs 27 to 30 of the LegCo Paper No. CB(1)357/11-12(01) “Administration’s response to issues raised by members at the meetings on 4 and 11 November 2011 in relation to Part 4 and Part 5”.</p> <ul style="list-style-type: none"> <li>As there must be four clear working days between the publication of two issues of Gazette (excluding the publication days), the new formulation of clause 213(1A)(b) would allow the notice to be published in the Gazette in Week 3 if it is impossible to do so in Week 2 due to the specified events.</li> <li>Examples are added after the new clause 213(1A) for illustration purpose.</li> </ul>
7	Clause 221 Special resolution and application to Court for confirmation of reduction of share capital	(I) Amend the heading in the Chinese text as follows - “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”。 (II) Remove the word “款” from “未繳款股本” in clause 221(2)(a) and from “已繳款股本” in clause 221(2)(b).	<ul style="list-style-type: none"> <li>This CSA is proposed to eliminate the discrepancy between the Chinese and English heading.</li> <li>Please see the remarks under Item 4 in respect of clause 205.</li> </ul>
8	Clause 222 Creditors entitled to object to reduction of share capital	Amend “For that purpose” in clause 222(3) and (5) to “For the purposes of subsection (2)” and “For the purposes of subsection (4)” respectively.	<ul style="list-style-type: none"> <li>This CSA is proposed in response to the LegCo Legal Adviser’s suggestion.</li> <li>The LegCo Legal Adviser noted that there are different uses in CB of (a) “For this purpose” in clause 167(5); (b) “For that purpose” in clause 222(5); and (c) “For the purposes of this section” in clause 192(4). The Legal Adviser considered that the drafting should be consistent as far as practicable.</li> </ul>
9	Clause 226	Delete the words “or bear the Registrar’s	<ul style="list-style-type: none"> <li>This accords with the position in clause 66(2) in respect of certificate of incorporation and clause 343(3) in respect of certificate of registration of charge. It</li> </ul>

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
	Certification of registration	printed signature”.	is sufficient to state that the Registrar signs the certificate.
10	Clause 227 Liability to creditors omitted from list of creditors	Change the word “contributors” in clause 227(3)(b) to “contributories”.	<ul style="list-style-type: none"> <li>• This CSA is proposed in response to the LegCo Legal Adviser’s suggestion.</li> <li>• The Legal Adviser noted that as “contributory” is defined in clause 2 of CB as “a person liable to contribute to the assets of the company in the event of its being wound up”, the term “contributories” should be used in clause 227(3)(b).</li> <li>• The word “ordinary” before “contributors” in clause 227(3) should be kept as the expression “ordinary contributories” is used in the section 62(1)(b) of CO.</li> </ul>
11	Clause 231 General power of company to buy back its own shares	<p>(I) Remove the Note under clause 231(3).</p> <p>(II) Add a new clause 231(4) to reinstate the content of the Note, i.e. a buy-back that contravenes section 231(3) will be void.</p>	<ul style="list-style-type: none"> <li>• These CSAs are proposed in response to the LegCo Legal Adviser’s suggestion.</li> <li>• The Legal Adviser considers that it is more sensible to place the provision in clause 262(5) (i.e. a buy-back that contravenes section 231(3) is void) under clause 231. Accordingly, the Note under clause 231(3) stating the same could then be removed.</li> </ul>
12	Clause 233 Share buy-back under general offer	Amend clause 233(4)(b) so that the person is “neither...nor” instead of “either...or”.	<ul style="list-style-type: none"> <li>• This CSA is proposed in response to the LegCo Legal Adviser’s observation.</li> <li>• The Legal Adviser noted that for clauses 233(4)(b) and 282(4)(a), the Chinese text “既非 ... 亦非” carries a meaning of “not (i) and not (ii)” whereas the English text carries a meaning of “either not (i) or not (ii)”.</li> <li>• The predecessor provision of clause 233(4)(b) is section 49BA(8)(a) and (b) of CO, which sets out that it is a “neither...nor” provision, and thus the English text should be amended to align with the meaning of the Chinese text.</li> </ul>
13	Clause 256	Amend clause 256(1) in the same way as	<ul style="list-style-type: none"> <li>• Please see the remarks under Item 6 in respect of clause 213.</li> </ul>

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
	Public notice of payment out of capital	clause 213(1).	
14	Clause 262 General prohibition on acquisition of shares	(I) Amend "...並不僅因本分部不獲遵守..." in clause 262(4) to "...並不會僅因本分部不獲遵守...".  (II) Delete clause 262(5), and change reference in clause 262(4) accordingly.	<ul style="list-style-type: none"> <li>• This CSA is proposed in response to the LegCo Legal Adviser's comment on a similar Chinese rendition in clause 207(2).</li> <li>• Please see the remarks under Item 11 in respect of clause 231.</li> </ul>
15	Clause 271 Prohibition on financial assistance for acquisition of shares or for reducing or discharging liability for acquisition	Amend clause 271(1) by adopting the wording of section 47A of CO to clarify that the words "the company" refer to the company in its own capacity or as a subsidiary of its holding company.	<ul style="list-style-type: none"> <li>• This CSA is proposed in response to the LegCo Legal Adviser's observation.</li> <li>• The LegCo Legal Adviser considered that the meaning of the words "the company" in clause 271(1) was unclear, and that the reference to "the company" might be misinterpreted as referring to the holding company as well as the first-mentioned company in the clause, in which case the holding company would also be prohibited from giving financial assistance for the acquisition of the shares in its subsidiary.</li> <li>• Please see paragraphs 34 to 35 of the LegCo Paper No. CB(1)357/11-12(01) "Administration's response to issues raised by members at the meetings on 4 and 11 November 2011 in relation to Part 4 and Part 5".</li> </ul>
16	Clause 272 Consequences of failing to comply with Division	Amend the heading to "Failure to comply with Division does not affect validity of financial assistance, etc.".	<ul style="list-style-type: none"> <li>• This proposed CSA is set out in the LegCo Paper No. CB(1)1295/11-12(02) "Notes" and "Examples" in the Companies Bill" incidental to the proposed deletion of the Note under clause 272.</li> <li>• This CSA is proposed to better reflect the content of this clause.</li> </ul>

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
17	Clause 276  Exception for employee share schemes	Amend the definition of “children” under clause 276(2) to include adopted children.	<ul style="list-style-type: none"> <li>• This CSA is proposed in response to the LegCo Legal Adviser’s observation.</li> <li>• Under clause 477(3), there is a definition of “employee share scheme”. The definition under clause 477(3) is the same as the definition of the same expression under clause 276(2). The expression in clause 477(3) is defined as –  “a scheme for encouraging or facilitating the holding of shares in a company by or for the benefit of— (a) persons employed or formerly employed in good faith by that company or another company in the same group of companies; or (b) spouses, widows, widowers, or minor children of persons referred to in paragraph (a);”</li> <li>• In response to the Legal Adviser’s comment, it is decided that adopted children should be included as one of the beneficiaries in the definition under clause 477(3).</li> <li>• For consistency, adopted children should also be included as one of the beneficiaries in the definition under clause 276(2).</li> </ul>
18	Clause 277  Exception for loans to employees	Amend the definition of “child” to also include an adopted child.	<ul style="list-style-type: none"> <li>• To align with the change in Item 17 in respect of clause 276. Please see the remarks under that Item.</li> </ul>
19	Clause 279  Financial assistance not exceeding 5% of shareholders funds	(I) In clause 279(1)(c), substitute the words “paid up share capital and reserves” for “aggregate amount received by the company in respect of the issue of shares and the reserves of the company”.	<ul style="list-style-type: none"> <li>• This CSA is introduced in response to HKAB’s comment.</li> <li>• HKAB commented (vide LegCo Paper No. CB(1)1805/10-11(14)) that the wording “...aggregate amount received by the company in respect of the issue of shares and the reserves of the company...” used in clause 279(1)(c) could be further simplified and simply expressed as the paid up share capital and reserves. Otherwise, there may be a query as to whether shares issued for a consideration other than cash or</li> </ul>

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
			<p>other forms of capital injection will be included.</p> <ul style="list-style-type: none"> <li>• Please see pages 20 and 21 of the LegCo Paper No. CB(1)339/11-12(01) “Administration’s Response to Deputations’ Views”.</li> </ul>
		(II) Delete clause 279(1)(d).	<ul style="list-style-type: none"> <li>• This CSA is introduced in response to LSHK’s proposal.</li> <li>• Clause 279(1)(d) requires a company to receive fair value in connection with the giving of financial assistance. LSHK proposed that clause 279(1)(d) should be deleted given that clause 279 is meant to provide a <i>de minimis</i> exception to financial assistance. Moreover, adequate safeguards are already embodied in clause 279(1)(a), which requires the directors to resolve that the giving of the financial assistance will be in the best interests of the company and that the terms of the assistance are fair and reasonable.</li> <li>• Please see page 21 of the LegCo Paper No. CB(1)339/11-12(01) “Administration’s Response to Deputations’ Views”.</li> </ul>
		(III) In the Chinese text of clause 279(3):  (i) all references to the words “保證” should be changed to “擔保”; and  (ii) all references to the words “抵押” should be changed to “保證”.	<ul style="list-style-type: none"> <li>• In the Chinese text of clause 279(3), the words “保證” have the meaning of “guarantee”. This is not consistent with other provisions in CB, e.g. clause 270(1), where the words “擔保” are used to mean “guarantee”.</li> <li>• Also, the words “保證” should be used to mean “security”.</li> </ul>
		(IV) Delete the words “if quantifiable” in clause 279(4).	<ul style="list-style-type: none"> <li>• The amount of financial assistance under clause 279 should be quantifiable. If it is not quantifiable, the company will not be able to calculate whether the 5% limit is exceeded.</li> </ul>



Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
20	Clause 282  Application to Court for restraining order	(I) Amend clause 282(1)(a) and (b) to change the threshold from 10% (of total voting right or number of members) to 5%.	<ul style="list-style-type: none"> <li>• This CSA is introduced in response to ACCA HK’s comment.</li> <li>• ACCA HK commented (vide LegCo Paper No. CB(1)1805/10-11(10)) that the threshold (10% voting rights) for members to apply to the Court to restrain the giving of financial assistance is too high.</li> <li>• Please see page 23 of the LegCo Paper No. CB(1)339/11-12(01) “<i>Administration’s Response to Deputations’ Views</i>”.</li> </ul>
		(II) Amend clause 282(4)(a) in the English text so that it is a case of “neither...nor” instead of “either...or”.	<ul style="list-style-type: none"> <li>• Please see the remarks under Item 12 in respect of clause 233.</li> </ul>
		(III) Amend clause 282(4)(b)(i) “...;or” to “...; and”.	<ul style="list-style-type: none"> <li>• The provision is based on section 78(7) of NZCA which provides that “the terms and conditions under which the assistance is to be given are not fair and reasonable to the company and to those shareholders not receiving the assistance”. It is an “and” case.</li> </ul>

**Other relevant matters**

For clause 240 (“Resolution authorizing contract: disclosure of contract details”), the LegCo Legal Adviser was concerned that the meaning of the words “those names” in clause 240(4) were not clear, and the Administration agreed to review the provision (see paragraph 33 of the LegCo Paper No. CB(1)357/11-12(01) “*Administration’s response to issues raised by members at the meetings on 4 and 11 November 2011 in relation to Part 4 and Part 5*”). Having reviewed the matter, the Administration considers that the meaning of “those names” in clause 240(4) is clear as there is only one reference to “names” in clause 240, “those names” must mean the “names” referred to in subclause (3). As such, the Administration does not propose CSA in this regard.

**Financial Services and the Treasury Bureau  
Companies Registry  
13 April 2012**

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.~~<sup>1</sup>

***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.

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<sup>1</sup> Item 3 / 第 3 項

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**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—<sup>2</sup>

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.

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<sup>2</sup> 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<sup>3</sup>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<sup>4</sup>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。

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<sup>3</sup> Item 4／第 4 項

<sup>4</sup> 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<sup>5</sup>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。

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**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.<sup>6</sup>~~

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<sup>6</sup> 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),<sup>7</sup> 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.<sup>8</sup>

**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

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<sup>7</sup> Item 6 / 第 6 項

<sup>8</sup> 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 year<sup>9</sup>.

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.<sup>10</sup>

- (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

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<sup>9</sup> Item 6 / 第 6 項

<sup>10</sup> Item 6 / 第 6 項

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- (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).<sup>11</sup>

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<sup>11</sup> Item 6 / 第 6 項

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

- (1) Within 154<sup>12</sup> 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.~~<sup>13</sup>

- (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.

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<sup>12</sup> Item 1 / 第 1 項

<sup>13</sup> 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).~~<sup>14</sup>

- (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.

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<sup>14</sup> 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 154<sup>15</sup> days after the making of the order, or within any longer period ordered by the Court; or
    - (ii) within 154<sup>16</sup> 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~~

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<sup>15</sup> Item 1 / 第 1 項

<sup>16</sup> 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).~~<sup>17</sup>

- (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<sup>18</sup>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<sup>19</sup>股本方面的法律責任；或
  - (b) 付款予持有任何已繳款<sup>20</sup>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。

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<sup>18</sup> Item 7(I) / 第 7(I) 項

<sup>19</sup> Item 7(II) / 第 7(II) 項

<sup>20</sup> 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~~<sup>21</sup>, 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~~<sup>22</sup>, the debt or claim must be secured by appropriating (as the Court directs) the following amount—

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<sup>21</sup> Item 8 / 第 8 項

<sup>22</sup> 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 154<sup>23</sup> 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.~~<sup>24</sup>

- (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;

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<sup>23</sup> Item 1 / 第 1 項

<sup>24</sup> 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~~<sup>25</sup>.
- (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~~contributories<sup>26</sup> in a winding up.
- (4) Nothing in this section affects the rights of the contributories among themselves.

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<sup>26</sup> 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.<sup>27</sup>

**Note—**

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

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<sup>27</sup> Item 11(II)／第 11(II) 項

<sup>28</sup> 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 neither<sup>29</sup> ~~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~~<sup>30</sup>
  - (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.

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<sup>29</sup> Item 12/第 12 項

<sup>30</sup> 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)).~~<sup>31</sup>

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<sup>31</sup> 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).~~<sup>32</sup>

**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),<sup>33</sup> 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.<sup>34</sup>

**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

<sup>33</sup> Item 13／第 13 項

<sup>34</sup> 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.<sup>35</sup>

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).<sup>36</sup>

- (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

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<sup>35</sup> Item 13 / 第 13 項

<sup>36</sup> 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).<sup>37</sup>

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

- (1) Within 154<sup>38</sup> 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.~~<sup>39</sup>

- (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.

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<sup>38</sup> Item 1 / 第 1 項

<sup>39</sup> 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**<sup>40</sup>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。

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<sup>40</sup> 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)~~<sup>41</sup> 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.~~<sup>42</sup>

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<sup>41</sup> Item 14(II)／第 14(II) 項

<sup>42</sup> 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.<sup>43</sup>~~

**266. Return of share redemption or buy-back**

- (1) A company that redeems or buys back any shares under this Division must, within 154<sup>44</sup> 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.

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<sup>44</sup> 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).~~<sup>45</sup>

- (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~~<sup>46</sup>, the company or any of its subsidiaries<sup>47</sup> 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~~<sup>48</sup>; and
  - (b) any person has incurred a liability for the purpose of the acquisition,the company or any of its subsidiaries<sup>49</sup> 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

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<sup>46</sup> Item 15 / 第 15 項

<sup>47</sup> Item 15 / 第 15 項

<sup>48</sup> Item 15 / 第 15 項

<sup>49</sup> Item 15 / 第 15 項

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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.<sup>50</sup>

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)).~~<sup>51</sup>

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<sup>50</sup> Item 16 / 第 16 項

<sup>51</sup> 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 Kong<sup>52</sup>;

*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

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<sup>52</sup> 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 Kong<sup>53</sup>;

*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).

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<sup>53</sup> 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~~<sup>54</sup> reserves of the company (as ~~that aggregate amount is~~<sup>55</sup> disclosed in the most recent audited financial statements of the company); and

<sup>54</sup> Item 19(I)／第 19(I) 項

<sup>55</sup> Item 19(I)／第 19(I) 項

- ~~(d) the company receives fair value in connection with the giving of the assistance; and~~<sup>56</sup>
- (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,~~<sup>57</sup> the amount of the assistance.

<sup>56</sup> Item 19(II)／第 19(II) 項

<sup>57</sup> Item 19(IV)／第 19(IV) 項

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- (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.~~<sup>58</sup>

**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<sup>59</sup>或抵押保證<sup>60</sup>的形式提供的資助的款

<sup>59</sup> Item 19(III)／第 19(III)項

<sup>60</sup> 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<sup>61</sup>或抵押保證<sup>62</sup>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。

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<sup>61</sup> Item 19(III)／第 19(III)項

<sup>62</sup> 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.~~<sup>63</sup>



**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.~~<sup>64</sup>

## 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~~<sup>65</sup>% of the total voting rights of holders of shares in the company; or
  - (b) in any other case, by members representing at least ~~105~~<sup>66</sup>% 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~~<sup>67</sup>—
    - (i) in the best interests of the company; ~~nor~~<sup>68</sup>
    - (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~~<sup>69</sup>

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<sup>65</sup> Item 20(I)／第 20(I) 項

<sup>66</sup> Item 20(I)／第 20(I) 項

<sup>67</sup> Item 20(II)／第 20(II) 項

<sup>68</sup> 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 154<sup>70</sup> 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.~~<sup>71</sup>

- (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.

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<sup>70</sup> Item 1 / 第 1 項

<sup>71</sup> Item 3 / 第 3 項