

Bills Committee on Companies Bill
Committee Stage Amendments to the Companies Bill
Part 6 – Distribution of Profits and Assets

The table below sets out the proposed Committee Stage Amendments (CSAs) in relation to Part 6 (“Distribution of Profits and Assets”) (clauses 286 to 302) 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:

CB: Companies Bill

CO: Companies Ordinance (Cap 32)

CSA: Committee Stage Amendment

LegCo: Legislative Council

LSHK: Law Society of Hong Kong

Registrar: Registrar of Companies

UKCA 2006: Companies Act 2006 of the United Kingdom

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
General amendments across CB			
1	Add “for registration” as appropriate	In CB, documents delivered to the Registrar for registration are subject to the requirement of the provisions of clauses 29 to 36. These documents will also form part of the Companies Register (clause 26). When a provision requires a person to deliver a document, “for	<ul style="list-style-type: none"> Insofar as Part 6 is concerned, we propose to amend clauses 301(6) and 302(7) pursuant to this item. The same amendments were also proposed by LSHK (vide LegCo Paper No. CB(1)1805/10-11(02)) and agreed by the Administration (see pages 24 and 25 of LegCo Paper No. CB(1)339/11-12(01) “<i>Administration’s Response to Deputations’ Views</i>”).

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		registration” will be added if it is intended that the document is one that these provisions apply.	
Other amendments specific to Part 6			
2	Clause 286 Interpretation	Remove the word “該” in paragraph (b) of the definition of “distribution”.	<ul style="list-style-type: none"> • This CSA is proposed in response to the LegCo Legal Adviser’s observation. • The words “the company” are rendered as “該公司” in paragraph (b) but as “公司” in paragraphs (c), (d) and (e).
3	Clause 288 Certain amount to be regarded as realized profit or loss	(I) In clause 288(4)(b)(iii), add the word “該” before the words “公司的固定資產”.	<ul style="list-style-type: none"> • This CSA is proposed in response to the LegCo Legal Adviser’s observation. • The words “the company’s fixed assets” should be rendered as be “該公司的固定資產” instead of “公司的固定資產”.
		(II) In clause 288(8), add the word “該” before the words “公司的活動的目的”.	<ul style="list-style-type: none"> • This CSA is proposed in response to the LegCo Legal Adviser’s observation. • The words “for the purpose of the company’s activities” should be rendered as “該公司的活動的目的” instead of “公司的活動的目的”.
4	Clause 291 Application of Part	In clause 291(2), “假使本條” should be changed to “假使本 <u>部</u> ”.	<ul style="list-style-type: none"> • This CSA is proposed in response to the LegCo Legal Adviser’s observation. • The words “had this Part” should be rendered as “假使本<u>部</u>” instead of “假使本條”.
5	Clause 292 Saving for other restraints on	Add the word “可” before the words “作出分派的情況加以限制”.	<ul style="list-style-type: none"> • This CSA is proposed in response to the LegCo Legal Adviser’s observation. • The words “restricting the sums out of which, or the cases in which, a distribution

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	distribution		may be made” should be rendered as “對可撥作分派的款項或對可作出分派的情況加以限制” instead of “對可撥作分派的款項或對作出分派的情況加以限制”.
6	Clause 294 Listed company may only make certain distributions	In clause 294(1)(a), amend the word “小” to “少”.	<ul style="list-style-type: none"> • This CSA is proposed in response to the LegCo Legal Adviser’s observation. • The words “not less than” should be rendered as “不少於” instead of “不小於”.
7	Clause 295 Restriction on application of unrealized profits	Add the word “其” before the words “已發行股份”.	<ul style="list-style-type: none"> • The CSA is proposed in response to the LegCo Legal Adviser’s suggestion. • The words “its issued shares” should be rendered as “其已發行股份” instead of “已發行股份”.
8	Clauses 296 to 302 Amend “禁制” to “禁止” as appropriate	Amend “禁制” in clauses 296(1)(a) and (b), 297(1)(a)(ii) and (1)(b), 298, 299(2), 300(8), 301(1) and (3), and 302(8) to “禁止”.	<ul style="list-style-type: none"> • These CSAs are proposed in response to the LegCo Legal Adviser’s observation to rectify the inconsistency of the Chinese rendition of “prohibition” / “prohibitions” in Part 6. • The Legal Adviser noted that “Prohibitions” in the title of Division 2 of Part 6 and “Prohibition” in the clause heading of clause 293 are both rendered as “禁止”, while in clauses 296(1)(a) and (b), 297(1)(a)(ii) and (1)(b), 298, 299(2), 300(8), 301(1) and (3), and 302(8) as “禁制”.
9	Clause 299 Successive distributions	(I) In clause 299(3) and (4), remove the word “的” from the words “可分派的利潤”.	<ul style="list-style-type: none"> • This CSA is proposed in response to the LegCo Legal Adviser’s observation. • The words “distributable profits” are rendered as “可分派的利潤” in clause

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		<p>(II) In clause 299(3)(b)(ii), replace the words “債務” by the words “負債”.</p> <p>(III) Add definitions of “liabilities”, “net liabilities” and “net assets” to clarify that when determining whether the net assets have been reduced or net liabilities have been increased under clause 299(3)(b)(ii) by the giving of financial assistance,</p> <p>(a) the amount of the assets and liabilities as stated in the company’s accounting records <u>immediately before</u> the giving of the financial assistance should be taken; and</p> <p>(b) when considering the amount of a company’s “liabilities”, the word “liabilities” should have the meaning as defined in clause 270(1).</p>	<p>299(3) and (4) but as “可分派利潤” in Part 5 of CB.</p> <ul style="list-style-type: none"> • This CSA is proposed in response to the LegCo Legal Adviser’s observation. • The word “liabilities” is rendered as “債務” in clause 299(3)(b)(ii) and clause 369(3)(b), which is different from the rendition of the word in the definition of “financial items” in clause 286(1) and clause 289(4) as “負債”. <ul style="list-style-type: none"> • This CSA is made in response to the LegCo Legal Adviser’s observation. • The Legal Adviser noted that there is a definition of “net assets” in clause 286(1) for the purposes of Part 6 of the Bill, but “net liabilities” is not defined in Part 6 while currently defined in section 79J(3) of CO. • In this relation, the CSAs are introduced to provide definitions for “net assets” and “net liabilities” based on the corresponding provisions in CO (section 79J(3)) and UKCA 2006 (section 840(4)).
10	Clause 301	Remove “If the financial statements are not...in either of those languages” in	<ul style="list-style-type: none"> • Pursuant to Item 1 above, the words “for registration” are proposed to be added to clauses 301(6) and 302(7). With the addition of the words “for registration” in

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	Interim financial statements specified for purposes of section 298	clause 301(6).	the provisions, the requirement for the submission of a certified translation of the financial statement will become redundant. Under clause 29(1)(b), a document is an unsatisfactory document if it is not accompanied by the required certified translation. The Registrar has power under Part 2 to reject the document.
11	Clause 302 Initial financial statements specified for purposes of section 298	Remove “If the financial statements, report or written statement are not...in either of those languages” in clause 302(7).	

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

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286. 釋義

(1) 在本部中 —

已催繳股本 (called up share capital) 就公司而言，指該公司的股本中相等於已催繳股款的總額(不論該等已催繳股款是否已獲繳付)的部分，連同 —

- (a) 未催繳而已繳付的股本；及
- (b) 根據章程細則、有關股份的配發條款或任何其他關於繳付該等股份的股款的安排而須在一個指明的未來日期繳付的任何股本，

而**未催繳股本** (uncalled share capital) 須據此理解；

不可分派的儲備 (undistributable reserves) 就公司而言 —

- (a) 除第(2)款另有規定外，指該公司以往尚未透過資本化運用的累積未實現利潤，超出該公司以往尚未因股本減少或股本重組而沖銷的累積未實現虧損的款額；或
- (b) 指任何條例(本部除外)或該公司的章程細則禁止該公司分派的任何其他儲備；

分派 (distribution) 指每一種將公司的資產分派(不論是否採用現金形式)予其成員的行動，但不包括 —

- (a) 以發行全部或部分繳付股款的紅股的形式，發行股份；
- (b) 按照第 5 部第 4 分部從資本(包括發行新股份所得收益)或未實現利潤中，撥款贖回或回購該¹公司的任何股份；

¹ Item 2 / 第 2 項

- (c) 藉終絕或減低任何成員就公司的未繳股本所關乎的股份承擔的法律責任，或藉退還已繳股本，從而減少股本；
- (d) 於公司清盤時，將資產分派予成員；或
- (e) 公司根據第 279、280 或 281 條向成員提供資助；

財務項目 (financial items) 指以下所有項目 —

- (a) 利潤、虧損、資產及負債；
- (b) 準備金；
- (c) 股本及儲備(包括不可分派的儲備)；

淨資產 (net assets) 就公司而言，指將該公司的資產總額減去其負債總額後得出的款額；

資本化 (capitalization) 就公司的利潤而言，指以下任何一項行動(不論在何時進行) —

- (a) 將該利潤用作繳付該公司的未發行股份的全部或部分股款，而該股份是會以全部或部分繳付股款的紅股的形式，配發予該公司的成員的；
- (b) 將該利潤撥入股本；

資助 (financial assistance) 具有第 270(1) 條給予該詞的涵義。

- (2) 在第(1)款 **不可分派的儲備** 的定義的(a)段中，提述資本化，不包括於 1991 年 9 月 1 日當日或之後將公司的利潤撥入其資本贖回儲備。
- (3) 在本部中 —
 - (a) 提述任何特定種類的利潤，即提述在任何時間產生的該種利潤；及
 - (b) 提述任何特定種類的虧損，即提述在任何時間產生的該種虧損。

- (4) 就本部而言，如根據第 298 條藉參照某財務報表述明的財務項目釐定分派的款額，並依據該項釐定作出有關分派，則該財務報表即屬參照財務報表。

288. 某些款額須視為已實現利潤或虧損

- (1) 就本部而言，不屬第(2)款指明的款額的準備金，須視為已實現虧損。
- (2) 上述款額，即藉為下述事宜提供準備而予以沖銷或保留的款額 —
 - (a) 在重估公司所有固定資產的價值時出現的固定資產減值；或
 - (b) 在重估公司除商譽以外的所有固定資產的價值時出現的固定資產減值。
- (3) 為施行第(2)款，如有以下情況，則董事在某特定時刻就某固定資產的價值作出的考慮，須視為重估該資產的價值 —
 - (a) 有關公司是上市公司，而第(4)(a)及(b)款指明的條件獲符合；或
 - (b) 有關公司不是上市公司，而 —
 - (i) 有關參照財務報表是第 300 條指明的財務報表，且第(4)(a)及(b)款指明的條件獲符合；或
 - (ii) 有關參照財務報表是第 301 或 302 條指明的財務報表，且第(4)(a)款指明的條件獲符合。
- (4) 上述條件為 —
 - (a) 董事信納在有關時刻，公司的固定資產的總值，不少於有關財務報表當其時述明的該等資產的總額；及
 - (b) 有關參照財務報表的附註述明 —
 - (i) 董事已對該公司的固定資產的價值作出考慮，但並無實際上重估該等資產的價值；

- (ii) 董事信納在作出上述考慮時，該等資產的總值，不少於有關財務報表當其時述明的該等資產的總額；及
 - (iii) 據此，憑藉本款，有關款額在該²公司的固定資產的價值須視為已在該時刻被重估的基礎上，在有關參照財務報表內述明。
- (5) 就本部而言，如 —
- (a) 在重估固定資產的價值時，顯示有未實現利潤產生；及
 - (b) 在作出價值重估時或之後，有一筆款項就該固定資產在某段期間的折舊而沖銷或保留，
- 則該筆款項超出關乎該資產在該段期間的折舊的預計款項的款額，須視為在該段期間產生的已實現利潤。
- (6) 在為第(5)款的目的斷定公司就某資產是否有利潤或虧損時，如 —
- (a) 並無該資產的原來成本的紀錄；或
 - (b) 無法在不承受不合理支出不合理延誤的情況下，取得該資產的原來成本的紀錄，
- 則在該公司取得該資產時或之後所備有的關於該資產的價值的最早紀錄中記載的該資產的價值，須視為該資產的成本。
- (7) 在第(5)款中 —
- 預計款項**(projected sum)就固定資產的折舊而言，指假使沒有重估該資產的價值則本應會就折舊而沖銷或保留的款項。

² Item 3(I) / 第 3(I) 項

- (8) 就本條而言，公司的資產如擬在該公司的活動中持續使用，或因其他原因而為該³公司的活動的目的持續持有，須視為固定資產。

³ Item 3(II)／第 3(II)項

291. 本部的適用範圍

- (1) 本部就在本部的生效日期當日或之後作出的分派而適用，但第(2)款指明的分派則不包括在內。
- (2) 上述不包括在內的分派即符合以下說明的分派：假使本條部⁴就該項分派而適用的話，則會根據第 298 條釐定分派的款額，而該項釐定，是藉參照關乎在本部的生效日期前開始的財政年度或期間的財務報表所述明的財務項目而作出的。

⁴ Item 4 / 第 4 項

292. 保留其他對分派的限制

如任何條例、法律規則或公司章程細則的條文，對可撥作分派的款項或對可⁵作出分派的情況加以限制，本部並不影響該條例、法律規則或條文。

⁵ Item 5 / 第 5 項

294. 上市公司只可作出某些分派

- (1) 上市公司只可在下述條件均獲符合的情況下作出分派 —
- (a) 其淨資產款額不少於⁶於其已催繳股本及不可分派的儲備的總額；及
 - (b) 作出該項分派，不會使該等資產的款額減至少於該總額，而該項分派亦以此為限。
- (2) 上市公司不得為根據本條釐定其淨資產款額的目的，而將未催繳股本作為資產計入。

⁶ Item 6 / 第 6 項

295. 運用未實現利潤的限制

公司不得將未實現利潤運用於支付債權證款項，或運用於支付其⁷已發行股份的任何未付款額。

⁷ Item 7 / 第 7 項

296. 財政司司長可就投資公司變通或豁免條文

- (1) 財政司司長可應投資公司的申請 —
- (a) 就該公司而對第 293、294 或 295 條所訂的禁制⁸或限制予以變通；或
 - (b) 豁免該公司使其無須受任何上述禁制⁹或限制所規限。
- (2) 財政司司長在根據第(1)款作出變通或批予豁免時，可規定該變通或豁免須受其認為合適的條款及條件規限。
- (3) 在本條中 —

投資公司 (investment company)指符合以下說明的上市公司：其主要業務，是將其資金投資於證券、土地或其他資產上，而目的是 —

- (a) 分散投資風險；及
- (b) 將管理該等資產所得成果的利益給予其成員。

⁸ Item 8 / 第 8 項

⁹ Item 8 / 第 8 項

297. 不合法分派的後果

- (1) 如有以下情況，則本條適用 —
 - (a) 公司在違反 —
 - (i) 第 293、294 或 295 條；或
 - (ii) 經第 296 條變通的上述條文所訂的禁制¹⁰或限制，
的情況下，向該公司其中一名成員作出分派或部分分派；及
 - (b) 在該項分派作出時，該成員知道或有合理理由相信，該項分派或該部分分派(視屬何情況而定)是在違反上述條文或經變通的禁制¹¹或限制的情況下作出的。
- (2) 如有關分派是以現金形式作出的，則有關成員有法律責任向公司付還該項分派或該部分分派(視屬何情況而定)所派出的款項。
- (3) 如有關分派是以現金以外的形式作出的，則有關成員有法律責任向公司支付一筆款項，其款額須相等於該項分派或該部分分派(視屬何情況而定)所派出的資產在分派時的價值。
- (4) 本條不影響在其他情況下施加於公司成員的、要求該成員向該公司付還不合法地分派予該成員的資產的法律責任。
- (5) 本條不就以下事宜而適用 —
 - (a) 公司就贖回或回購本身的股份而作出的任何付款；或
 - (b) 公司在違反第 271 條的情況下提供的資助。

¹⁰ Item 8 / 第 8 項

¹¹ Item 8 / 第 8 項

298. 藉參照公司的財務報表而提供分派的依據

可在不違反第 293、294 或 295 條或經第 296 條變通的上述條文所訂的禁制¹²或限制的情況下分派的款額，須藉參照第 4 分部指明的財務報表述明的財務項目而釐定。

¹² Item 8 / 第 8 項

299. 相繼分派

- (1) 如有以下情況，本條適用 —
 - (a) 公司建議依據藉參照某財務報表述明的財務項目作出的釐定，作出分派；及
 - (b) 公司 —
 - (i) 曾依據藉參照該財務報表述明的財務項目作出的釐定，作出一次或多於一次分派；或
 - (ii) 在擬備該財務報表後，曾向某人給予第(3)款指明的資助，或曾作出第(4)款指明的付款。
- (2) 為釐定可建議在不違反第 293、294 或 295 條或經第 296 條變通的上述條文所訂的禁制¹³或限制的情況下分派的款額的目的，第 298 條適用，猶如建議分派的款額是以過往的分派、資助及其他付款的款額為加幅而增加一樣。
- (3) 有關資助是 —
 - (a) 公司從其可分派的¹⁴利潤中撥款提供的資助；或
 - (b) 符合以下說明的資助 —
 - (i) 由公司在違反第 5 部第 5 分部的情況下提供的；及
 - (ii) 提供該資助，會減少公司的淨資產或增加公司的淨債務負債¹⁵。
- (4) 有關付款是 —

¹³ Item 8／第 8 項

¹⁴ Item 9(I)／第 9(I)項

¹⁵ Item 9(II)／第 9(II)項

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(a) 公司就回購本身的股份而作出的付款(不是從可分派的¹⁶利潤撥款作出的合法付款除外)；或

(b) 公司作出的屬第 252(5)條指明的任何種類的付款(不是從可分派的¹⁷利潤撥款作出的合法付款除外)。

¹⁶ Item 9(I)／第 9(I)項

¹⁷ Item 9(I)／第 9(I)項

299. Successive distributions

- (1) This section applies if—
 - (a) a company proposes to make a distribution pursuant to determinations made by reference to financial items as stated in any financial statements; and
 - (b) the company—
 - (i) has made one or more prior distributions pursuant to determinations made by reference to financial items as stated in the financial statements; or
 - (ii) since the financial statements were prepared, has given financial assistance specified in subsection (3) or has made a payment specified in subsection (4).
- (2) Section 298 applies for the purpose of determining the amount of the proposed distribution that may be made without contravening section 293, 294 or 295, or a prohibition or restriction in that section as modified under section 296, as if the amount of the proposed distribution were increased by the amount of the prior distributions, financial assistance and other payments.
- (3) The financial assistance is—
 - (a) financial assistance that is given by the company out of its distributable profits; or
 - (b) financial assistance—
 - (i) that is given by the company in contravention of Division 5 of Part 5; and
 - (ii) the giving of which reduces the company's net assets or increases its net liabilities.
- (4) The payment is—

- (a) a payment made by the company in respect of the buy-back by the company of shares in itself (except a payment lawfully made otherwise than out of distributable profits); or
- (b) a payment made by the company of any description specified in section 252(5) (except a payment lawfully made otherwise than out of distributable profits).

(5) In this section—

liabilities () has the meaning given by section 270(1);¹⁸

net assets (), in relation to a company that gives any financial assistance, means the amount by which the aggregate of the company's assets exceeds the aggregate of its liabilities (taking the amount of both assets and liabilities to be as stated in the company's accounting records immediately before the financial assistance is given);¹⁹

net liabilities (), in relation to a company that gives any financial assistance, means the amount by which the aggregate of the company's liabilities exceeds the aggregate of its assets (taking the amount of both assets and liabilities to be as stated in the company's accounting records immediately before the financial assistance is given).²⁰

¹⁸ Item 9(III)／第 9(III) 項

¹⁹ Item 9(III)／第 9(III) 項

²⁰ Item 9(III)／第 9(III) 項

300. 為施行第 298 條而指明的對上周年財務報表

- (1) 除第 301 及 302 條另有規定外，為施行第 298 條而指明的財務報表，即符合第(2)、(3)、(4)、(5)及(6)款的董事就對上的財政年度擬備的財務報表。
- (2) 上述財務報表須屬 —
 - (a) 已根據第 420(1)條在成員大會上提交公司省覽者；或
 - (b) 已根據第 421(3)條送交每名成員者。
- (3) 上述財務報表須 —
 - (a) 是按照第 9 部第 4 分部第 3 次分部妥為擬備；或
 - (b) 是按照第 9 部第 4 分部第 3 次分部妥為擬備，但只就為第(8)款指明的目的屬無關重要的事宜除外。
- (4) 公司核數師須已根據第 396 條擬備有關財務報表的報告。
- (5) 如核數師沒有在有關核數師報告內給予無保留意見，指出財務報表是遵照本條例妥為擬備的，則該核數師須已作出書面陳述，述明該核數師認為該報告對之有所保留的事宜，就第(8)款指明的目的而言是否事關重要的。
- (6) 第(5)款所指的書面陳述 —
 - (a) 可在作出報告的時間或其後作出；及
 - (b) 須在成員大會上提交公司省覽，或送交根據第 421(3)條獲送交核數師報告的每名成員。
- (7) 第(5)款所指的書面陳述，就該陳述所關乎的已建議的分派的目的而言，即屬足夠。如該書面陳述關乎任何特定種類的分派，則就該種類分派所包含的某項分派而言，即使在作出該陳述時尚未建議該項分派，該陳述亦屬足夠。

- (8) 為第(3)及(5)款而指明的目的，是藉參照有關財務報表述明的財務項目而斷定有關分派是否違反第 293、294 或 295 條或經第 296 條變通的上述條文所訂的禁制止²¹或限制的目的。

²¹ Item 8 / 第 8 項

301. 為施行第 298 條而指明的臨時財務報表

- (1) 本條在以下情況下適用：假使可予分派的款額是藉參照第 300 條指明的財務報表述明的財務項目而斷定的，該項分派便會違反第 293、294 或 295 條或經第 296 條變通的上述條文所訂的禁制²²或限制。
- (2) 為施行第 298 條而指明的財務報表，是符合以下說明的公司財務報表 —
 - (a) 如屬上市公司 —
 - (i) 對使人能夠就財務項目的款額作出合理判斷屬必需的；及
 - (ii) 第(3)、(5)及(6)款就該財務報表而獲符合；或
 - (b) 如屬任何其他公司，對使人能夠就財務項目的款額作出合理判斷屬必需的。
- (3) 在第(4)款的規限下，有關財務報表須 —
 - (a) 是按照第 9 部第 4 分部第 3 次分部妥為擬備的；或
 - (b) 是按照第 9 部第 4 分部第 3 次分部妥為擬備的，但只就為藉參照該財務報表述明的財務項目而斷定有關分派是否違反第 293、294 或 295 條或經第 296 條變通的上述條文所訂的禁制²³或限制的目的屬無關重要的事宜除外。
- (4) 第(3)款所指的財務報表須按照第 9 部第 4 分部第 3 次分部妥為擬備的規定，在應用於不是就一個財政年度擬備的財務報

²² Item 8／第 8 項

²³ Item 8／第 8 項

表時，須因應該財務報表不是就一個財政年度擬備這一事實而作出必需的變通。

- (5) 屬有關財務報表的組成部分的財務狀況表 —
 - (a) 須經董事批准；及
 - (b) 須由 2 名董事代表該等董事簽署。
- (6) 財務報表的文本須已向處長交付。如該財務報表不是採用中文或英文，該文本須隨附該財務報表的經核證中文或英文譯本。

301. Interim financial statements specified for purposes of section 298

- (1) This section applies where the distribution would be made in contravention of section 293, 294 or 295, or a prohibition or restriction in that section as modified under section 296, if the amount of distribution that may be made were determined by reference to the financial items as stated in the financial statements specified in section 300.
- (2) The financial statements specified for the purposes of section 298 are the company's financial statements—
 - (a) in the case of a listed company—
 - (i) that is necessary to enable a reasonable judgement to be made as to the amounts of the financial items; and
 - (ii) in relation to which subsections (3), (5) and (6) are complied with; or
 - (b) in the case of any other company, that is necessary to enable a reasonable judgement to be made as to the amounts of the financial items.
- (3) Subject to subsection (4), the financial statements must—
 - (a) have been properly prepared in accordance with Subdivision 3 of Division 4 of Part 9; or
 - (b) have been properly prepared in accordance with Subdivision 3 of Division 4 of Part 9, except only in relation to the matters that are not material for the purpose of determining, by reference to the financial items as stated in the financial statements, whether the distribution would be made in contravention of section 293, 294 or 295, or a prohibition or restriction in that section as modified under section 296.

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- (4) The requirement under subsection (3) for any financial statements to be properly prepared in accordance with Subdivision 3 of Division 4 of Part 9 has effect subject to any modification that is necessary for applying that requirement to the financial statements prepared otherwise than for a financial year.
- (5) A statement of financial position that forms part of the financial statements—
- (a) must be approved by the directors; and
 - (b) must be signed by 2 directors on the directors' behalf.
- (6) A copy of the financial statements must have been delivered to the Registrar for registration²⁴. ~~If the financial statements are not in English or Chinese, the copy must have been accompanied by a certified translation of the financial statements in either of those languages.~~²⁵

²⁴ Item 1 / 第 1 項

²⁵ Item 10 / 第 10 項

302. Initial financial statements specified for purposes of section 298

- (1) If the distribution is proposed to be declared before any financial statements are laid before the company in general meeting under section 420(1) or sent to every member under section 421(3), the financial statements specified for the purposes of section 298 are the company's financial statements—
 - (a) in the case of a listed company—
 - (i) that are necessary to enable a reasonable judgement to be made as to the amounts of the financial items; and
 - (ii) in relation to which subsections (2), (4), (5), (6) and (7) are complied with; or
 - (b) in the case of any other company, that are necessary to enable a reasonable judgement to be made as to the amounts of the financial items.
- (2) Subject to subsection (3), the financial statements must—
 - (a) have been properly prepared in accordance with Subdivision 3 of Division 4 of Part 9; or
 - (b) have been properly prepared in accordance with Subdivision 3 of Division 4 of Part 9, except only in relation to the matters that are not material for the purpose specified in subsection (8).
- (3) The requirement under subsection (2) for any financial statements to be properly prepared in accordance with Subdivision 3 of Division 4 of Part 9 has effect subject to any modification that is necessary for applying that requirement to any financial statements prepared otherwise than for a financial year.

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- (4) A statement of financial position that forms part of the financial statements—
 - (a) must be approved by the directors; and
 - (b) must be signed by 2 directors on the directors' behalf.
 - (5) The company's auditor must have prepared a report on the financial statements stating whether, in the auditor's opinion, the financial statements satisfy subsection (2)(a).
 - (6) If, in the auditor's report, the auditor has not given an unqualified opinion to the effect that the financial statements satisfy subsection (2)(a), the auditor must have given a written statement as to whether, in the auditor's opinion, the matter in respect of which the report is qualified is material for the purpose specified in subsection (8).
 - (7) A copy of the financial statements, of the auditor's report of the financial statements, and of any written statement under subsection (6), must have been delivered to the Registrar for registration²⁶. ~~If the financial statements, report or written statement is not in English or Chinese, the copy must have been accompanied by a certified translation of the financial statements, report or written statement in either of those languages.~~²⁷
 - (8) The purpose specified for subsections (2) and (6) is the purpose of determining, by reference to the financial items as stated in the financial statements, whether the distribution would be made in contravention of section 293, 294 or 295, or a prohibition or restriction in that section as modified under section 296.

²⁶ Item 1 / 第 1 項

²⁷ Item 11 / 第 11 項

302. 為施行第 298 條而指明的初步財務報表

- (1) 如有關分派是擬於任何財務報表根據第 420(1)條在成員大會上提交公司省覽前或根據第 421(3)條送交每名成員前宣布的，則為施行第 298 條而指明的財務報表，是符合以下說明的公司財務報表 —
 - (a) 如屬上市公司 —
 - (i) 對使人能夠就財務項目的款額作出合理判斷屬必需的；及
 - (ii) 第(2)、(4)、(5)、(6)及(7)款就該財務報表而獲符合；或
 - (b) 如屬任何其他公司，對使人能夠就財務項目的款額作出合理判斷屬必需的。
- (2) 在第(3)款的規限下，有關財務報表須 —
 - (a) 是按照第 9 部第 4 分部第 3 次分部妥為擬備的；或
 - (b) 是按照第 9 部第 4 分部第 3 次分部妥為擬備的，但只就為第(8)款指明的目的而言屬無關重要的事宜除外。
- (3) 第(2)款所指的財務報表須按照第 9 部第 4 分部第 3 次分部妥為擬備的規定，在應用於不是就一個財政年度擬備的財務報表時，須因應該財務報表不是就一個財政年度擬備這一事實而作出必需的變通。
- (4) 屬有關財務報表的組成部分的財務狀況表 —
 - (a) 須經董事批准；及
 - (b) 須由 2 名董事代表該等董事簽署。
- (5) 公司核數師須已擬備有關財務報表的報告，述明該核數師認為該財務報表是否符合第(2)(a)款。

- (6) 如核數師沒有在有關核數師報告內給予無保留意見，指出財務報表是符合第(2)(a)款的，則該核數師須已作出書面陳述，述明該核數師認為該報告對之有所保留的事宜，就第(8)款指明的目的而言是否事關重要的。
- (7) 財務報表的文本、財務報表的核數師報告的文本及第(6)款所指的書面陳述的文本須已向處長交付。如該財務報表、報告或書面陳述不是採用中文或英文，該文本須隨附該財務報表、報告或書面陳述的經核證中文或英文譯本。
- (8) 為第(2)及(6)款而指明的目的，是藉參照有關財務報表述明的財務項目而斷定有關分派是否違反第 293、294 或 295 條或經第 296 條變通的上述條文所訂的禁制止²⁸或限制的目的。