

**Bills Committee on Companies Bill**  
**Committee Stage Amendments to the Companies Bill**  
**Part 3 – Company Formation and Related Matters, and Re-registration of Company**

The table below sets out the proposed Committee Stage Amendments (CSAs) in relation to Part 3 (“Company Formation and Related Matters, and Re-registration of Company”) (clauses 61 to 128 and Schedule 2) of the Companies Bill (CB). 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:

Bills Committee: Bills Committee on Companies Bill

CB: Companies Bill

CO: Companies Ordinance (Cap 32)

CSA: Committee Stage Amendment

LegCo: Legislative Council

Registrar: Registrar of Companies

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
<b>General amendments across CB</b>			
1	Delete the relevant provisions to effect abolition of capital duty	The Financial Secretary 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	<ul style="list-style-type: none"> <li>• Insofar as Part 3 is concerned, we propose the following CSAs pursuant to this item:               <ul style="list-style-type: none"> <li>(a) <u>Remove clause 62(1)(c)</u>                    Clause 62(1)(c) states that a fee as prescribed by regulations made under clause 897 is payable when a company is formed.</li> </ul> </li> </ul>

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
		the CB.	<p>(b) <u>Remove clause 126(1)(b)</u>            Clause 126(1)(b) states that an application under section 125(1) must be accompanied by a fee as prescribed by regulations made under clause 897.</p> <ul style="list-style-type: none"> <li>• Clause 897(3) and (4) empowers the Financial Secretary to prescribe fees by reference to the amount of share capital of a company.</li> <li>• For reference, clauses 137(3), 144(2) and 166(3) of Part 4, clause 265 of Part 5, 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 the CB.</li> </ul>
2	Change “14 days” to “15 days” for delivery of documents to the Registrar	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 the CO.</li> <li>• Having reviewed the relevant provisions in the CB, the Administration agreed to extend the 14-day period to 15 days across the board. 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 3 is concerned, we propose to amend clauses 69(1), 83(5), 84(6)(a), (b)(ii) and (c), 85(5)(a), (b)(ii) and (c), 89(2), 90(2), 91(1), 102(2) and 109(1) pursuant to this item.</li> </ul>
<b>Other amendments specific to Part 3</b>			
3	Clause 68 Effect of incorporation	Add “or, if a change of name has effect under section 102, 105, 758 or 760, with the new name” at the end of subclause	<ul style="list-style-type: none"> <li>• This is a technical amendment proposed to cater for situations where a company’s name is changed after incorporation and is no longer the name stated in the certificate of incorporation.</li> </ul>

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
		(1).	
4	Clause 78 Members' liabilities	Add "formed and registered under this Ordinance" after "unlimited company" in subclause (2).	<ul style="list-style-type: none"> <li>This is a technical amendment proposed to clarify our intention. An existing unlimited company is not required to amend its articles to include a statement to the effect that the liability of its members is unlimited.</li> </ul>
5	Clause 79 Liabilities or contributions of members of limited company	Add subclause (3).	<ul style="list-style-type: none"> <li>This is a technical amendment. Section 4(3) of the CO provides that a company whose memorandum contains a condition in accordance with the 4th paragraph in Table B (which states that "The liability of the members is limited") is deemed to come within the definition of section 4(2)(a) of the CO and is a company limited by shares. This CSA is necessary, otherwise such a company will not comply with clause 79(1) of the CB and will not come within the definition of "company limited by shares" in clause 7 of the CB.</li> </ul>
6	Clause 80 Capital and initial shareholdings	Move subclauses (1)(b) and (2)(a) to (d) to Schedule 2 and add "(except subsections (1)(d)(iv), (v), (vi) and (vii))" after "section 8".	<ul style="list-style-type: none"> <li>Under the CO, the only obligation in relation to a company having different class of shares is set out in section 64A, which is an obligation for any company, the share capital of which is divided into different classes of shares, to deliver to the Registrar for filing a copy of any document or resolution attaching rights to any class of shares in the company which is not otherwise required to be filed by the CO. There is no obligation to put information about class rights in the memorandum and articles of association and it is up to a company to decide whether to do so.</li> <li>Under the original clause 80, it would be mandatory for information about class rights to be stated in the articles of association, and any future variation would require an amendment to the articles. On reflection, we consider that it should not be mandatory for the information to be stated in the articles. For the sake of transparency, it suffices to require a company to put the relevant information in the Incorporation Form and update it with the Statement of Capital required to be filed under the various CB provisions.</li> </ul>

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
			<ul style="list-style-type: none"> <li>This CSA is proposed to remove the requirement of including information about class rights in the articles. With the amendment, it would be up to a company to decide whether to include such information in the articles. This is in line with the position under the CO.</li> </ul>
7	Clause 82 Company may alter articles	<p>(I) Add “Except as provided in Division 8,” at the beginning of subclause (2).</p> <p>(II) Amend the Chinese version of subclause (3) as follows –   “...如對有股本的公司不得對其的章程細則的修改，會作出與附於該公司某類別股份的的任何權利不相符，則該公司不得作出的該修改”。</p>	<ul style="list-style-type: none"> <li>This is a technical amendment. Subclause (2) provides that a company must not alter any provision in its articles on members’ liabilities. This should be subject to Division 8 of Part 3, which provides for such a change to be made to the articles where an unlimited company re-registers as a company limited by shares.</li> <li>This is a drafting change proposed for clarity in response to LegCo Legal Adviser’s comment.</li> </ul>
8	Clause 86 Application to Court to cancel alteration	<p>Amend the Chinese version of subclause (2) as follows –   “第 84(5)條所指的申請，可由所有第(1)(a)或(b)款所述的全部有關人士為此提出該條所指的申請而以書面委任的他們當中的任何一人或多於一人代為表他們提出”</p>	<ul style="list-style-type: none"> <li>This is a drafting change proposed in response to LegCo Legal Adviser’s comment. CSAs to this clause and to clause 177(3) (to be proposed) will align the wordings of the provisions.</li> </ul>
9	Clause 92 Notifying	Delete the clause.	<ul style="list-style-type: none"> <li>This CSA is proposed in response to LegCo Legal Adviser’s comment. We are not aware of any situation where clause 92 of the CB would apply and consider</li> </ul>

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
	Registrar of alteration by Ordinance		that the clause can be deleted.
10	Clause 94 Articles of company limited by guarantee	Add subclause (1)(b).	<ul style="list-style-type: none"> <li>This is a technical change to clarify our intention. The clause is applicable to companies limited by guarantee registered under the CB.</li> </ul>
11	Clause 95 Company must not be registered by certain names	(I) Add a reference to clause 759 in subclause (2)(c)(i).	<ul style="list-style-type: none"> <li>Under clause 759, the Registrar may by notice in writing direct a company to change a name under which the company is restored to the register if the name is, as at the time of the restoration, the same as or in the Registrar’s opinion too like a name that appeared or should have appeared in the index of company names. It is appropriate to make specific reference to clause 759 in this clause which restricts the use of names which the Registrar has previously directed to be changed.</li> </ul>
		(II) Replace “the commencement date of the Companies (Amendment) Ordinance 2010 (12 of 2010)” in subclause (2)(c)(ii) with “10 December 2010”.	<ul style="list-style-type: none"> <li>This is a drafting change proposed for clarity.</li> </ul>
12	Clause 100 Effect of licence	Replace “publication of a company name” in subclause (1)(b) with “use of the word “Limited” as part of its English name or use of the characters “有限公司” as part of its Chinese name”.	<ul style="list-style-type: none"> <li>This CSA is proposed to clarify our intention. It is not our intention to exempt the company to which a licence under clause 98 of the CB is granted from the requirements to comply with all of the regulations to be made under clause 650 of the CB. The company will only be exempted from those regulations requiring “Limited” or “有限公司” as appropriate as part of the name.</li> </ul>
13	Clause 103	Amend subclause (2)(b) as follows –	<ul style="list-style-type: none"> <li>This is a drafting change proposed for clarity. The office copy of the court order</li> </ul>

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
	Registrar may direct company to change same or similar name etc.	<del>“the Registrar receives from a person in whose favour the order is made an office copy of the order, and a notice in the specified form, are delivered to the Registrar for registration by a person in whose favour the order is made.”</del>	and the notice in specified form will be registered by the Registrar.
14	Clause 105 Registrar may change company name in case of failure to comply with direction	Replace “the commencement date of the Companies (Amendment) Ordinance 2010 (12 of 2010)” in subclause (1)(a) with “10 December 2010”.	<ul style="list-style-type: none"> <li>• This is a drafting change proposed for clarity.</li> </ul>
15	Clause 108 Members of holding company	Delete the comma in subclause (5).	<ul style="list-style-type: none"> <li>• This CSA corrects a typo.</li> </ul>
16	Clause 112 Transactions or act binds company despite limitation in articles etc.	In the Chinese version of subclause (2)(c), replace “並不” with “不會”.	<ul style="list-style-type: none"> <li>• This is a drafting change proposed for clarity in response to LegCo Legal Adviser’s comment on a similar clause (clause 207(2)).</li> </ul>
17	Clause 113 Transaction or act involving	Delete the reference to Part 11 in subclause (9).	<ul style="list-style-type: none"> <li>• This is a drafting change proposed to align the wordings of the subclause with those of clause 464(5)(d).</li> </ul>

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
	directors or their associates is voidable		
18	Clause 114 Section 112 not to apply to certain cases	Add subclause (4)(b).	<ul style="list-style-type: none"> <li>This CSA is proposed in response to Members' suggestion that the scope of clause 114 should be limited to a company to which a licence under clause 98 relates and is exempt from tax under section 88 of the Inland Revenue Ordinance. Please see paragraphs 2 and 3 of LegCo Paper No. CB(1)744/11-12(03) <i>Follow-up actions for the meetings held on 4, 11 and 18 November 2011</i> Relating to Parts 3, 4 and 7.</li> </ul>
19	Clause 120 Official seal for use abroad	Replace "An executing agent" in subclause (5) with "The person".	<ul style="list-style-type: none"> <li>This is a technical change. There are circumstances where the seal may be affixed by a person other than an executing agent.</li> </ul>
20	Clause 122 Execution of documents by company	Add subclause (1A).	<ul style="list-style-type: none"> <li>This CSA makes it clear that where a company chooses to have a common seal and executes documents under seal, the seal should be affixed in accordance with the provisions of the company's articles. This is to accord with the provisions in the Model Articles that will deal with the affixing of the common seal and to make it clear that the affixing of the seal in a manner contrary to the procedure set out in the articles is not proper execution.</li> </ul>
21	Clause 128 Winding up of company re-registered as company limited by shares	Delete the reference to section 170(1)(e) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance.	<ul style="list-style-type: none"> <li>Section 170(1)(e) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance relates to companies limited by guarantee. There will be no re-registration of unlimited companies as companies limited by guarantee under CB, hence the reference to section 170(1)(e) is unnecessary.</li> </ul>
22	Section 3 of	Delete "must be a place in Hong Kong	<ul style="list-style-type: none"> <li>This CSA is proposed to clarify our intention. The correspondence addresses</li> </ul>

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
	Schedule 2  Particular of directors	and” in subsection (2).	need not be a place in Hong Kong. Similar CSAs will be proposed in clauses 47(9) and 634(5).
23	Section 4 of Schedule 2  Statement relating to director	Replace “he or she” in subsection (b)(i) with “the person”.	<ul style="list-style-type: none"> <li>• This is a technical change. “The person” will cover legal persons while “he or she” will not.</li> </ul>
24	Section 8 of Schedule 2  Statement of capital and initial shareholdings	Add subsections (1)(d)(iv) to (vii).	<ul style="list-style-type: none"> <li>• See item 6 above.</li> </ul>

**Financial Services and the Treasury Bureau**  
**Companies Registry**  
**10 May 2012**



**62. Formation of company**

- (1) Any one or more persons may form a company by—
- (a) signing the articles of the company intended to be formed; and
  - (b) delivering to the Registrar for registration—
    - (i) an incorporation form in the specified form; and
    - (ii) a copy of the articles; ~~and~~
    - ~~(c) paying the Registrar a fee prescribed by regulations made under section 897.<sup>1</sup>~~
- (2) A company may only be formed for a lawful purpose.

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<sup>1</sup> Item 1 / 第 1 項

**68. Effect of incorporation**

- (1) On and after the date of incorporation stated in the certificate of incorporation, the founder members, and any other persons who may from time to time become the company's members, are a body corporate with the name stated in the certificate or, if a change of name has effect under section 102, 105, 758 or 760, with the new name<sup>2</sup>.
- (2) On and after the date of incorporation, the body corporate is capable of exercising all the functions of an incorporated company, and has perpetual succession.
- (3) On and after the date of incorporation, the founder members, and any other persons who may from time to time become the company's members, are liable to contribute to the assets of the company in the event of the company being wound up as is mentioned in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

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<sup>2</sup> Item 3 / 第 3 項

**69. Delivery of director's written consent**

- (1) Each consent given for the purposes of section 4(b)(ii) of Schedule 2 in relation to a company intended to be formed must be delivered in the specified form to the Registrar for registration not later than 15<sup>3</sup> days after the date of incorporation of the company.
- (2) If subsection (1) is contravened, the company, every responsible person of the company, and the founder member who signs the incorporation form for the purposes of section 64, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (3) In any proceedings against a founder member for an offence under this section, it is a defence to establish that the founder member took all reasonable steps to secure compliance with subsection (1).

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<sup>3</sup> Item 2 / 第 2 項

**78. Members' liabilities**

- (1) The articles of a limited company must state that the liability of its members is limited.
- (2) The articles of an unlimited company formed and registered under this Ordinance<sup>4</sup> must state that the liability of its members is unlimited.

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<sup>4</sup> Item 4 / 第 4 項

**79. Liabilities or contributions of members of limited company**

- (1) The articles of a company limited by shares must state that the liability of its members is limited to any amount unpaid on the shares held by the members.
- (2) The articles of a company limited by guarantee must state that each person who is a member of the company undertakes that if the company is wound up while the person is a member of the company, or within one year after the person ceases to be such a member, the person will contribute an amount required of the person, not exceeding a specified amount, to the company's assets—
  - (a) for the payment of the company's debts and liabilities contracted before the person ceases to be such a member;
  - (b) for the payment of the costs, charges and expenses of winding up the company; and
  - (c) for the adjustment, among the contributories, of their rights.
- (3) Subsection (1) does not apply to the articles of an existing company that is deemed to be a company limited by shares under section 4(3) of the predecessor Ordinance.<sup>5</sup>

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<sup>5</sup> Item 5 / 第 5 項

**80. Capital and initial shareholdings**

(1) The articles of a company with a share capital—

- ~~(a) must state the information required under section 8 (except subsections (1)(d)(iv), (v), (vi) and (vii)) of Schedule 2 to be contained in the company's incorporation form; and~~
- ~~(b) if the share capital of the company is divided into different classes of shares, must also state for each class the particulars specified in subsection (2).~~
- ~~(2) The particulars are—~~
  - ~~(a) particulars of any voting rights attached to shares in the class, including rights that arise only in certain circumstances;~~
  - ~~(b) particulars of any rights attached to shares in the class, as respects dividends, to participate in a distribution;~~
  - ~~(c) particulars of any rights attached to shares in the class, as respects capital, to participate in a distribution (including on a winding up); and~~
  - ~~(d) whether or not shares in the class are redeemable shares.<sup>6</sup>~~

(3) The articles of a company with a share capital may state the maximum number of shares that the company may issue.

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<sup>6</sup> Item 6 / 第 6 項

**82. Company may alter articles**

- (1) Subject to this Ordinance, a company may alter its articles.
- (2) Except as provided in Division 8, a<sup>7</sup>A company must not alter in its articles any statement mentioned in section 78 or 79(1).
- (3) Subject to section 175, a company with a share capital must not make any alteration to its articles that is inconsistent with any rights attached to shares in a class of shares in the company.
- (4) Subject to section 183, a company without a share capital must not make any alteration to its articles that is inconsistent with any rights of a class of members of the company.
- (5) A company limited by guarantee must not alter in its articles the information required under section 79(2) other than to increase the specified amount.

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<sup>7</sup> Item 7(I) / 第 7(I)項

82. **公司可修改章程細則** (Note: CSAs to this provision in the Chinese text do not include the CSA(s) in the English text. / 這條條文中文本的修正案並不包括英文本中的修正案。)

- (1) 在符合本條例的規定下，公司可修改其章程細則。
- (2) 公司不得在其章程細則中修改第 78 或 79(1)條所述的任何陳述。
- (3) 除第 175 條另有規定外，如對有股本的公司不得對其的章程細則的修改，會作出與附於該公司某類別股份的股份的任何權利不相符，則該公司不得作出的該修改。<sup>8</sup>
- (4) 除第 183 條另有規定外，無股本的公司不得對其章程細則作出與該公司某類別成員的任何權利不相符的修改。
- (5) 擔保有限公司不得在其章程細則中修改第 79(2)條所規定的資料，但該公司可增加有關指明款額。

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<sup>8</sup> Item 7(II) / 第 7(II)項



**83. Alteration by special resolution or ordinary resolution**

- (1) Subject to this Ordinance, this section applies to the alteration of a company's articles.
- (2) Subject to subsection (3) and any other provisions of this Ordinance, a company may only alter its articles by special resolution.
- (3) An alteration in articles to the maximum number of shares that the company may issue may be made by ordinary resolution.
- (4) Subject to this Ordinance, an alteration made in accordance with this section is as valid as if the alteration were originally contained in the articles.
- (5) Within 154<sup>9</sup> days after the date on which an alteration takes effect, the company must deliver to the Registrar for registration—
  - (a) a notice of the alteration in the specified form; and
  - (b) a copy, certified by an officer of the company as correct, of the articles as altered.
- (6) If a company contravenes subsection (5), 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>9</sup> Item 2 / 第 2 項

**84. Alteration of company's objects**

- (1) This section applies to an alteration of the objects of a company as stated in the company's articles.
- (2) The company may, by special resolution of which notice has been given to all the members of the company (including members who are not entitled to such notice under the company's articles), alter the objects by—
  - (a) abandoning or restricting any of the objects; or
  - (b) adopting any new object that could lawfully have been contained—
    - (i) in the case of a company formed and registered under this Ordinance, in the company's articles when the articles were registered; or
    - (ii) in the case of an existing company, in the company's memorandum of association when the memorandum was registered.
- (3) If a relevant company passes such a resolution, a notice of the resolution must also be given to all holders of the relevant debentures of the company, and the notice must be the same as the notice mentioned in subsection (2).
- (4) For the purposes of subsection (3), if there is no provision regulating the giving of notice to the holders of the relevant debentures, the provisions of the company's articles regulating the giving of notice to members are to apply.
- (5) If a relevant company passes a special resolution altering its objects, an application to cancel the alteration may be made to the Court in accordance with section 86, and if an application is made, the alteration does not have effect except in so far as it is confirmed by the Court.
- (6) After passing a special resolution altering its objects—
  - (a) in the case of a relevant company, if no application is made under subsection (5), the company must, within 154<sup>10</sup> days after the end of the application period, deliver to the Registrar for registration the documents specified in subsection (7);
  - (b) in the case of a relevant company, if an application is made under subsection (5), the company—
    - (i) must immediately give notice of that fact to the Registrar; and
    - (ii) within 154<sup>10</sup> days after the date of any Court order cancelling or confirming the alteration or, if an extension of time is granted under subsection (8), within the extended period, must deliver to the Registrar for registration an office copy of the order and, in the case of an order confirming the alteration, the documents specified in subsection (7); or
  - (c) in the case of a company other than a relevant company, the company must, within 154<sup>10</sup> days after the date of passing the resolution, deliver to the Registrar for registration the documents specified in subsection (7).
- (7) The documents are—
  - (a) a notice of the alteration in the specified form; and
  - (b) a copy, certified by an officer of the company as correct, of the company's articles as altered.
- (8) The Court may at any time by order extend the period for delivery of any documents under subsection (6)(b).
- (9) If a company contravenes subsection (6), 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.
- (10) In this section—

**relevant company** (有關公司) means—

  - (a) a private company; or

<sup>10</sup> Item 2 / 第 2 項

- (b) a company limited by guarantee that, immediately before the commencement date of this Division, was a private company as defined by section 2(1) of the predecessor Ordinance in force at that time;

***relevant debentures*** (有關債權證) means any debentures, secured by a floating charge, that were issued or first issued before 15 February 1963 or that form part of the same series as any debentures so issued.

**85. Alteration of certain articles by existing company**

- (1) Subject to subsection (2), this section applies to an alteration of any provision of the articles of an existing company if the provision—
  - (a) was, immediately before the commencement date of this Division, contained in the company's memorandum of association (whether registered before, on or after 31 August 1984); and
  - (b) could lawfully have been contained in the company's articles instead of in the memorandum of association when the memorandum was registered.
- (2) This section does not apply if any provision of the articles of an existing company—
  - (a) was, immediately before the commencement date of this Part, contained in the company's memorandum of association (whether registered before, on or after 31 August 1984); and
  - (b) provides for or prohibits the alteration of any provision mentioned in subsection (1).
- (3) An existing company may by special resolution alter any provision mentioned in subsection (1).
- (4) If a relevant company passes such a resolution, an application to cancel the alteration may be made to the Court in accordance with section 86, and if an application is made, the alteration does not have effect except in so far as it is confirmed by the Court.
- (5) After passing a resolution under subsection (3)—
  - (a) in the case of a relevant company, if no application is made under subsection (4), the company must, within 154<sup>11</sup> days after the end of the application period, deliver to the Registrar for registration the documents specified in subsection (6);
  - (b) in the case of a relevant company, if an application is made under subsection (4), the company—
    - (i) must immediately give notice of that fact to the Registrar; and
    - (ii) within 154<sup>11</sup> days after the date of any Court order cancelling or confirming the alteration or, if an extension of time is granted under subsection (7), within the extended period, must deliver to the Registrar for registration an office copy of the order and, in the case of an order confirming the alteration, the documents specified in subsection (6); or
  - (c) in the case of a company other than a relevant company, the company must, within 154<sup>11</sup> days after the date of passing the resolution, deliver to the Registrar for registration the documents specified in subsection (6).
- (6) The documents are—
  - (a) a notice of the alteration in the specified form; and
  - (b) a copy, certified by an officer of the company as correct, of the company's articles as altered.
- (7) The Court may at any time by order extend the period for delivery of any documents under subsection (5)(b).
- (8) If a company contravenes subsection (5), 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.
- (9) This section does not authorize any variation or abrogation of the special rights of any class of members.
- (10) In this section—

**relevant company** (有關公司) means—

  - (a) a private company; or
  - (b) a company limited by guarantee that, immediately before the commencement date of this Division, was a private company as defined by section 2(1) of the predecessor Ordinance in force at that time.

<sup>11</sup> Item 2 / 第 2 項

86. 向原訟法庭提出要求取消修改的申請

- (1) 第 84(5)條所指的要求取消對公司宗旨作出修改的申請，可由以下人士提出 —
  - (a) 持有該公司已發行股份數目或任何類別的已發行股本總數中最少 5% 的人，或(如該公司並非股份有限公司)該公司成員中最少 5% 的成員；或
  - (b) 持有第 84(10)條 **有關債權證**的定義所述的該公司債權證中價值最少 5% 的人。
- (2) 第 84(5)條所指的申請，可由**所有**第(1)(a)或(b)款所述的**全部有關人士**為**此提出該條所指的申請**而以書面委任的**他們當中的任何**一人或多於一人代**為表他們**提出。<sup>12</sup>
- (3) 第 85(4)條所指的要求取消對原有公司章程細則條文的修改的申請，可由持有該公司已發行股份數目或任何類別的已發行股本總數中最少 5% 的人提出，或(如該公司並非股份有限公司)由該公司成員中最少 5% 的成員提出。
- (4) 第 85(4)條所指的申請，可由所有第(3)款所述的人為此而以書面委任的一人或多於一人代為提出。
- (5) 第 84(5)或 85(4)條所指的申請，只可在有關特別決議通過的日期後的 28 日內提出。
- (6) 原訟法庭可應第 84(5)或 85(4)條所指的申請 —
  - (a) 按它認為合適的條款及條件，全盤或局部取消有關修改，或全盤或局部確認有關修改；
  - (b) 將法律程序押後，以作出令它滿意的安排，購買持異議的成員的權益；及
  - (c) 作出它認為合宜的任何指示及命令，以執行或利便作出任何該等安排。

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<sup>12</sup> Item 8 / 第 8 項

**89. Alteration affecting status of private company**

- (1) If a private company alters its articles so that the articles no longer comply with section 10(1)(a), the company ceases to be a private company on the date on which the alteration takes effect.
- (2) In addition to the documents required under section 83(5), the company must, within 15<sup>13</sup> days after the date on which the alteration takes effect, deliver to the Registrar for registration—
  - (a) a notice of the change of the company's status in the specified form; and
  - (b) a copy (certified by an officer of the company to be true) of the company's annual financial statements that are—
    - (i) prepared in accordance with section 375; and
    - (ii) prepared for the financial year immediately before the financial year in which the alteration takes effect.
- (3) If a company contravenes subsection (2)(a), 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) If a company contravenes subsection (2)(b), 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.

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<sup>13</sup> Item 2 / 第 2 項

**90. Alteration affecting status of public company**

- (1) If a public company alters its articles so that the articles comply with section 10(1)(a), the company ceases to be a public company on the date on which the alteration takes effect.
- (2) In addition to the documents required under section 83(5), the company must, within 154<sup>14</sup> days after the date on which the alteration takes effect, deliver to the Registrar for registration a notice of the change of the company's status in the specified form.
- (3) If a company contravenes subsection (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.

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<sup>14</sup> Item 2 / 第 2 項

**91. Notifying Registrar of alteration by order of Court**

- (1) If any provision of a company's articles, or the effect of any provision of a company's articles, is altered by an order of the Court, the company must, within 15<sup>15</sup> days after the date on which the alteration takes effect, deliver to the Registrar for registration a notice of the alteration in the specified form.
- (2) A notice of alteration must be accompanied by—
  - (a) an office copy of the order; and
  - (b) a copy of the articles as altered by the order.
- (3) Subsection (2)(a) does not apply if the company is required to deliver an office copy of the order to the Registrar under another provision of this Ordinance.
- (4) If a 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.

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<sup>15</sup> Item 2 / 第 2 項



**92. ~~Notifying Registrar of alteration by Ordinance~~**

- ~~(1) If any provision of a company's articles, or the effect of any provision of a company's articles, is altered by any other Ordinance, the company must, within 14 days after the date on which the alteration takes effect, deliver to the Registrar for registration a notice of the alteration in the specified form.~~
- ~~(2) A notice of alteration must be accompanied by a copy of the articles as altered by that other Ordinance.~~
- ~~(3) If a 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.<sup>16</sup>~~

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<sup>16</sup> Item9 / 第 9 項

**94. Articles of company limited by guarantee**

(1) This section applies to     

(a) -a company limited by guarantee registered under a former Companies Ordinance on or after 1 January 1912 that does not have a share capital; and

(b) a company registered as a company limited by guarantee under this Ordinance.<sup>17</sup>

- (2) A provision in the company's articles, or in any resolution of the company, purporting to give a person a right to participate in the company's divisible profits otherwise than as a member is void.
- (3) For the purposes of a provision of this Ordinance relating to the articles of a company limited by guarantee, a provision in the company's articles, or in any resolution of the company, purporting to divide the company's undertaking into shares or interests, is to be regarded as a provision for a share capital.

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<sup>17</sup> Item 10 / 第 10 項

**95. Company must not be registered by certain names**

- (1) A company must not be registered by—
  - (a) a name that is the same as a name appearing in the Index of Company Names;
  - (b) a name that is the same as a name of a body corporate incorporated or established under an Ordinance;
  - (c) a name the use of which by the company would, in the Registrar's opinion, constitute a criminal offence; or
  - (d) a name that, in the Registrar's opinion, is offensive or otherwise contrary to the public interest.
- (2) Except with the Registrar's prior approval, a company must not be registered by—
  - (a) a name that, in the Registrar's opinion, would be likely to give the impression that the company is connected in any way with—
    - (i) the Central People's Government;
    - (ii) the Government; or
    - (iii) any department or agency of the Central People's Government or the Government;
  - (b) a name that contains any word or expression for the time being specified in an order under section 96; or
  - (c) a name that is the same as a name for which a direction has been given under—
    - (i) section 103, ~~or~~ 104 or 759<sup>18</sup>; or
    - (ii) section 22 or 22A of the predecessor Ordinance on or after 10 December 2010~~the commencement date of the Companies (Amendment) Ordinance 2010 (12 of 2010)~~<sup>19</sup>.

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<sup>18</sup> Item 11(I) / 第 11(I)項

<sup>19</sup> Item 11(II) / 第 11(II)項

**100. Effect of licence**

- (1) The company to which a licence under section 98 relates is exempt from—
  - (a) section 97;
  - (b) regulations made under section 650 in relation to the use of the word “Limited” as part of its English name or use of the characters “有限公司” as part of its Chinese name ~~publication of a company name~~<sup>20</sup>; and
  - (c) section 653 in relation to the delivery of particulars relating to members to the Registrar.
- (2) While a licence under section 98 remains in force, the company must not alter its articles except under a direction given under this section or section 99(2)(b) or with the Registrar’s prior written approval.
- (3) On granting an approval under subsection (2), the Registrar may vary the licence by making it subject to any terms and conditions he or she thinks fit, in addition to or in place of the terms or conditions to which the licence was subject immediately before the variation.
- (4) The terms and conditions imposed under subsection (3)—
  - (a) are binding on the company; and
  - (b) are to be incorporated in the articles of the company if the Registrar so directs.

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<sup>20</sup> Item 12 / 第 12 項

**102. Company may change name by special resolution**

- (1) A company may change a company name by special resolution.
- (2) Within 154<sup>21</sup> days after the date of passing the special resolution, the company must deliver to the Registrar for registration a notice in the specified form of the change of company name.
- (3) After receipt of a notice under subsection (2), the Registrar must, unless the new name is a name by which the company must not be registered under section 95—
  - (a) enter the new name in the Companies Register in place of the former name; and
  - (b) issue to the company a certificate of change of name.
- (4) The change of the name has effect from the date on which the certificate of change of name is issued.
- (5) A change of name under this section does not affect any rights or obligations of the company or render defective any legal proceedings by or against it. Any legal proceedings that could have been commenced or continued by or against it by its former name may be commenced or continued by or against it by its new name.
- (6) If a company contravenes subsection (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.

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<sup>21</sup> Item 2 / 第 2 項

**103. Registrar may direct company to change same or similar name etc.**

- (1) The Registrar may by notice in writing direct a company to change, within the period specified in the notice, a name by which the company is registered under this Ordinance or the predecessor Ordinance if—
  - (a) the name is, as at the time of the registration, the same as or in the Registrar's opinion too like a name that appeared or should have appeared in the index of names kept under section 22C of the predecessor Ordinance or in the Index of Company Names;
  - (b) the name is, as at the time of the registration, the same as or in the Registrar's opinion too like a name of a body corporate incorporated or established under an Ordinance;
  - (c) it appears to the Registrar that misleading information has been given for the company's registration by the name;
  - (d) it appears to the Registrar that any undertaking or assurance given for the registration by the name has not been fulfilled; or
  - (e) the name is a name by which, as at the time of the registration, the company must not be registered because of section 95(2)(a) or (b).
- (2) The Registrar may by notice in writing direct a company to change, within the period specified in the notice, a name by which the company is registered under this Ordinance or any former Companies Ordinance if, after the company is registered by the name—
  - (a) a court makes an order restraining the company from using the name or any part of the name; and
  - (b) ~~the Registrar receives from a person in whose favour the order is made~~ an office copy of the order, and a notice in the specified form, are delivered to the Registrar for registration by a person in whose favour the order is made.<sup>22</sup>
- (3) A direction may only be given—
  - (a) in the case of subsection (1)(a) or (b), within 12 months after the date of registration by the name;
  - (b) in the case of subsection (1)(c) or (d), within 5 years after the date of registration by the name; and
  - (c) in the case of subsection (1)(e), within 3 months after the date of registration by the name.
- (4) The Registrar may, before the end of the period specified in a notice given under subsection (1) or (2), by notice in writing extend the period.
- (5) If a company fails to comply with a direction within the period specified in the notice or, if the period is extended under subsection (4), within the extended period, 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.

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<sup>22</sup> Item 13/ 第 13 項

**105. Registrar may change company name in case of failure to comply with direction**

- (1) This section applies if—
  - (a) the Registrar directs a company to change a name under section 103(1) or (2) or 104(1) or, on or after ~~10 December 2010~~~~the commencement date of the Companies (Amendment) Ordinance 2010 (12 of 2010)~~<sup>23</sup> under section 22 or 22A of the predecessor Ordinance; and
  - (b) the company fails to comply with the direction—
    - (i) in the case of a direction under section 103(1) or (2), within the period specified in the notice or, if the period is extended under section 103(4), within the extended period;
    - (ii) in the case of a direction under section 104(1), within the relevant period specified in section 104(2);
    - (iii) in the case of a direction under section 22(2), (3A), (3B) or (4) of the predecessor Ordinance, within the period specified by the Registrar or, if the period is extended under section 22(5) of that Ordinance, within the extended period; or
    - (iv) in the case of a direction under section 22A(1) or (1A) of the predecessor Ordinance, within the period specified in section 22A(2) of that Ordinance or, if a period is specified by the court under section 22A(3) of that Ordinance for the direction, within the period specified by the court.
- (2) Without limiting section 103(5) or 104(5), or section 22(6) or 22A(4) of the predecessor Ordinance (as the case may be), the Registrar may change the name to—
  - (a) in the case of an English name, a name that consists of the words “Company Registration Number” as its prefix, followed by the registration number of the company as stated in the certificate of incorporation;
  - (b) in the case of a Chinese name, a name that consists of the characters “公司註冊編號” as its prefix, followed by the registration number of the company as stated in the certificate of incorporation; or
  - (c) in the case of a name consisting of both an English name and a Chinese name—
    - (i) an English name that consists of the words “Company Registration Number” as its prefix, followed by the registration number of the company as stated in the certificate of incorporation; and
    - (ii) a Chinese name that consists of the characters “公司註冊編號” as its prefix, followed by the registration number of the company as stated in the certificate of incorporation.
- (3) The Registrar must enter the new name in the Companies Register in place of the former name.
- (4) The change of name has effect from the date on which the new name is entered in the Companies Register.
- (5) Within 30 days after the date of entering the new name in the Companies Register, the Registrar—
  - (a) must by notice in writing notify the company of—
    - (i) the fact that a name of the company has been changed;
    - (ii) the new name; and
    - (iii) the date on which the change takes effect under subsection (4); and
  - (b) must by notice in the Gazette notify that fact, the new name and that date.
- (6) A change of name under this section does not affect any rights or obligations of the company or render defective any legal proceedings by or against it. Any legal proceedings that could have been commenced or continued by or against it by its former name may be commenced or continued by or against it by its new name.

<sup>23</sup> Item 14 / 第 14 項

**108. Members of holding company**

- (1) Subject to this section—
  - (a) a body corporate cannot be a member of a company of which the body corporate is a subsidiary; and
  - (b) any allotment or transfer of shares in a company to a body corporate that is a subsidiary of the company is void.
- (2) Subsection (1) does not apply if—
  - (a) the body corporate is a member of the company as a personal representative; or
  - (b) the body corporate is a member of the company as a trustee, and the holding company or any of its subsidiaries is not beneficially interested under the trust.
- (3) For the purposes of subsection (2)(b), a company or subsidiary is not beneficially interested under a trust if it is interested under the trust only by way of security for the purpose of a transaction entered into by it in the ordinary course of a business (including the lending of money).
- (4) Subsection (1) does not prevent a body corporate that was, on 31 August 1984, already a member of a holding company of the body corporate from continuing to be such a member.
- (5) Subsection (1) does not prevent a company that on the date it becomes a subsidiary of another company is a member of that other company<sup>24</sup> from continuing to be such a member.
- (6) Subsection (1) does not prevent a body corporate from becoming a member of a holding company of the body corporate, or prevent an allotment to a body corporate of shares in a holding company of the body corporate, by virtue of the exercise by the body corporate of any rights of conversion—
  - (a) attached to any shares in the holding company held by the body corporate on 31 August 1984; or
  - (b) under any debentures of the holding company held by the body corporate on 31 August 1984.
- (7) If a body corporate is a member of a holding company of the body corporate, subsection (1) does not prevent the body corporate from accepting or holding further shares in the holding company if those shares are allotted to the body corporate as fully paid up as a consequence of a capitalization of reserves or profits by the holding company.
- (8) If a company makes an offer of shares to its members, the company—
  - (a) may sell, on behalf of any of its subsidiaries, any such shares that the subsidiary could, but for this section, have taken by virtue of shares in the company that are already held by the subsidiary; and
  - (b) may pay to the subsidiary the proceeds of the sale.
- (9) Even though a body corporate is a member of a holding company of the body corporate, it has no right to vote at—
  - (a) meetings of the holding company; or
  - (b) meetings of any class of members of the holding company.
- (10) Subsection (9) does not apply if the body corporate is such a member in the circumstances described in subsection (2).
- (11) In this section, a reference to a body corporate includes a nominee for the body corporate.
- (12) In this section, a reference to shares, in relation to a holding company that is a company limited by guarantee or an unlimited company, includes the interest of the company's members, whatever the form of the interest and whether or not the company has a share capital.

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<sup>24</sup> Item 15 / 第 15 項



**109. Notifying Registrar of increase in number of members of company limited by guarantee**

- (1) If a company limited by guarantee increases the number of its members beyond the registered number, the company must, within 154<sup>25</sup> days after the increase is resolved by the company or takes place (whichever is the earlier), deliver to the Registrar for registration a notice of the increase in the specified form.
- (2) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (3) In this section—

**registered number** (註冊人數) means—

- (a) the number of members with which the company proposes to register, whether contained in the incorporation form for the purposes of section 1(e) of Schedule 2 or stated in the articles under section 10(2) of the predecessor Ordinance; or
- (b) the increased number of the company's members last notified to the Registrar under subsection (1).

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<sup>25</sup> Item 2 / 第 2 項

**112. 即使章程細則等有限制交易或作為仍對公司具約束力**

- (1) 除第 114 條另有規定外，為惠及真誠地與公司交易的人，如該公司的董事有權使該公司受約束，或有權授權其他人使該公司受約束，該權力須視為不受該公司的任何有關文件下的任何限制所規限。
- (2) 就第(1)款而言 —
  - (a) 如某人屬某項交易或任何其他作為的其中一方，而某公司亦屬該項交易或作為的其中一方，則該人即屬與該公司交易；
  - (b) 除非相反證明成立，否則與公司交易的人須推定為真誠地行事；
  - (c) 與公司交易的人，**並不會**<sup>26</sup>僅因該人知道有關董事作出有關作為屬超越該等董事在該公司的任何有關文件下的權力，而被視為不真誠地行事；及
  - (d) 與公司交易的人，無須查究對該公司董事使該公司受約束的權力的限制，或對授權其他人使該公司受約束的權力的限制。
- (3) 凡有關公司的成員有權利提起法律程序，以禁制有關董事作出超越其權力範圍的作為，本條並不影響該權利。
- (4) 如有關公司的任何以前的作為，產生某項法律義務，則任何人不得就將會為履行該項義務而作出的作為，根據第(3)款提起法律程序。
- (5) 有關董事或任何其他人因該等董事越權行事而招致的任何法律責任，不受本條影響。
- (6) 在本條中 —

**有關文件** (relevant document)就公司而言，指 —

- (a) 該公司的章程細則；
- (b) 該公司的任何決議，或該公司的任何成員類別的任何決議；或
- (c) 該公司成員之間的協議，或該公司的任何成員類別的成員之間的協議。

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<sup>26</sup> Item 16 / 第 16 項

**113. Transaction or act involving directors or their associates is voidable**

- (1) This section applies if—
  - (a) a company enters into a transaction; and
  - (b) the transaction binds the company because the power of the directors to bind the company, or authorize others to do so, is to be regarded under section 112 as free of any limitation under any relevant document of the company.
- (2) The transaction is voidable at the instance of the company if the parties to the transaction include—
  - (a) a director of the company or of a holding company of the company; or
  - (b) an entity connected with such a director.
- (3) The transaction ceases to be voidable if—
  - (a) restitution of any money or other asset that was the subject matter of the transaction is no longer possible;
  - (b) the company is indemnified for any loss or damage resulting from the transaction;
  - (c) a person who is not a party to the transaction has acquired rights in good faith and for value, and without actual notice of the directors' exceeding their powers, and those rights would be affected by the avoidance of the transaction; or
  - (d) the transaction is affirmed by the company.
- (4) Whether or not the transaction is avoided under subsection (2), any party to the transaction falling within subsection (2)(a) or (b) is liable, and any director of the company who has authorized the transaction is liable, to—
  - (a) account to the company for any gain that the party or director has directly or indirectly made from the transaction; and
  - (b) indemnify the company against any loss or damage resulting from the transaction.
- (5) A person who is not a director of the company is not liable under subsection (4) if the person shows that, at the time of the transaction, the person did not know that the directors were exceeding their powers.
- (6) Subject to subsection (7), this section does not affect the rights of any party to the transaction not falling within subsection (2)(a) or (b).
- (7) The Court may, on application by the company or a party covered by subsection (6), affirm, sever or set aside the transaction on any terms it thinks just.
- (8) This section does not exclude the operation of any other Ordinance or rule of law by which the transaction may be called in question or any liability to the company may arise.
- (9) In subsection (2)(b), the reference to an entity connected with a director has the meaning given by ~~Part 11~~ (see section 477)<sup>27</sup>.
- (10) In this section—

**transaction** (交易) includes any act.

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<sup>27</sup> Item 17 / 第 17 項

**114. Section 112 not to apply to certain cases**

- (1) Section 112 does not apply to any act of an exempted company except in favour of a person who—
- (a) does not know at the time of the act that the company is an exempted company; or
  - (b) gives full consideration for the act and does not know—
    - (i) that the act is not permitted by any relevant document of the company; or
    - (ii) that the act is beyond the powers of the directors.
- (2) If an exempted company purports to transfer or grant an interest in property, the fact that—
- (a) the act was not permitted by any relevant document of the company; or
  - (b) the directors exceeded any limitation on their powers under any relevant document of the company,
- does not affect the title of a person who subsequently acquires the property or any interest in it for full consideration without actual notice of any of the circumstances set out in paragraph (a) or (b).
- (3) In any civil proceedings arising out of subsection (1) or (2), the burden of proving that—
- (a) a person knew that the company was an exempted company;
  - (b) a person knew that the act was not permitted by any relevant document of the company; or
  - (c) a person knew that the act was beyond the powers of the directors,
- lies on the person who asserts that fact.
- (4) In this section—

**exempted company** (獲豁免公司) means a company—

(a) ~~the company~~ to which a licence under section 98 relates; and

(b) that is exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112);<sup>28</sup>

**relevant document** (有關文件), in relation to a company, means—

- (a) the company's articles;
- (b) any resolutions of the company or of any class of members of the company; or
- (c) any agreements between the members, or members of any class of members, of the company.

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<sup>28</sup> Item 18 / 第 18 項

**120. Official seal for use abroad**

- (1) A company with a common seal may have an official seal for use outside Hong Kong.
- (2) Such an official seal must be a replica of the company's common seal, but have engraved on it in legible form the name of every place where it is to be used.
- (3) A company with an official seal for use in a place may, by writing under its common seal, authorize any person appointed for the purpose to affix, in that place, the official seal to any deed or any other document to which the company is a party.
- (4) As between a company and any person dealing with an executing agent of the company, the authority of the agent continues—
  - (a) if the authorization mentions a period during which the authority is to continue, until the end of the period; or
  - (b) if the authorization does not mention such a period, until a notice of revocation or termination of the agent's authority has been given to the person.
- (5) ~~An executing agent~~**The person**<sup>29</sup> affixing an official seal must, on the deed or other document to which the seal is affixed, certify in writing the date on which, and the place at which, the seal is so affixed.
- (6) A deed or other document to which an official seal is affixed binds the company as if it had been executed under the company's common seal.
- (7) In this section—  
**executing agent** (簽立代理人), in relation to a company, means a person authorized by the company under subsection (3).

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<sup>29</sup> Item 19 / 第 19 項

**122. Execution of documents by company**

(1) A company may execute a document under its common seal.

(1A) If a company executes a document under its common seal, the seal must be affixed in accordance with the provisions of its articles.<sup>30</sup>

(2) A company may also execute a document—

(a) in the case of a company with only one director, by having it signed by the director on the company's behalf; or

(b) in the case of a company with 2 or more directors, by having it signed on the company's behalf by—

(i) the 2 directors or any 2 of the directors; or

(ii) any of the directors and the company secretary of the company.

(3) For the purposes of subsection (2), if a person is to sign a document on behalf of 2 or more companies, the person must sign the document separately in each capacity.

(4) A document signed in accordance with subsection (2) and expressed (in whatever words) to be executed by the company has effect as if the document had been executed under the company's common seal.

(5) In favour of a person specified in subsection (6), a document is to be regarded as having been executed by a company if the document purports to have been signed in accordance with subsection (2).

(6) The person is a purchaser in good faith for valuable consideration and includes—

(a) a lessee;

(b) a mortgagee; or

(c) any other person who for valuable consideration acquires the property.

(7) This section also applies to a document that is executed, or purports to be executed, by a company in the name of or on behalf of another person whether or not that other person is also a company.

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<sup>30</sup> Item 20 / 第 20 項

**126. Application for re-registration**

- (1) An application under section 125(1)—
  - (a) must be in the specified form; and
  - ~~(b) must be accompanied by a fee prescribed by regulations made under section 897; and~~<sup>31</sup>
  - (c) must be accompanied by a copy of the company's articles as proposed to be altered by the special resolution.
- (2) Such an application may only be delivered to the Registrar on or after the date on which the Registrar receives a copy of the special resolution delivered under section 612.

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<sup>31</sup> Item 1 / 第 1 項

**128. Winding up of company re-registered as company limited by shares**

- (1) This section applies if—
  - (a) a company is re-registered as a company limited by shares under this Division or section 19 of the predecessor Ordinance; and
  - (b) the company is wound up.
- (2) Despite section 170(1)(a) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), a person who is not a member of the company but was a member at the time of the re-registration is liable to contribute to the assets of the company in respect of debts and liabilities of the company contracted before the re-registration if the winding up commences within 3 years beginning on the day of the re-registration.
- (3) Despite section 170(1)(c) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), a person who was a member or a past member of the company at the time of the re-registration is liable to contribute to the assets of the company in respect of debts and liabilities of the company contracted before the re-registration if every person who was a member of the company at that time is no longer a member of the company.
- (4) Subsection (3) applies even though the existing members of the company have satisfied the contribution required to be made by them under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).
- (5) Despite section 170(1)(d) ~~and (e)~~<sup>32</sup> of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), there is no limit on the amount that a person is liable to contribute under subsection (2) or (3).

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<sup>32</sup> Item 21 / 第 21 項



Schedule 2 / 附表 2

**3. Particulars of director**

- (1) The particulars specified for the purposes of section 63(1)(c)(i) are—
- (a) if the person is a natural person—
    - (i) the present forename and surname, former forename or surname (if any), and aliases (if any);
    - (ii) the usual residential address;
    - (iii) the correspondence address; and
    - (iv) the number of the identity card or, if the person does not have an identity card, the number and issuing country of any passport held by the person; or
  - (b) if the person is a body corporate, the corporate name and the address of its registered or principal office.
- (2) For the purposes of subsection (1)(a)(iii), a correspondence address ~~must be a place in Hong Kong and~~<sup>33</sup> must not be a post office box number.

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<sup>33</sup> Item 22 / 第 22 項

**4. Statement relating to director**

The statement specified for the purposes of section 63(1)(c)(ii) is—

- (a) if the person is the signatory to the incorporation form, a statement by the person—
  - (i) that the person has consented to be a director of the company; and
  - (ii) if the person is a natural person, that he or she has attained the age of 18 years; or
- (b) if the person is not the signatory to the incorporation form—
  - (i) a statement by the person that ~~he or she~~ the person<sup>34</sup> has consented to be a director of the company and, if the person is a natural person, that he or she has attained the age of 18 years; or
  - (ii) a statement by the signatory that the person has consented to be a director of the company and, if the person is a natural person, that he or she has attained the age of 18 years.

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<sup>34</sup> Item 23 / 第 23 項

**8. Statement of capital and initial shareholdings**

- (1) The statement specified for the purposes of section 63(2) is a statement that—
- (a) states the total number of shares that the company proposes to issue on the company's formation;
  - (b) states the total amount of share capital to be subscribed by the company's founder members on that formation;
  - (c) states the amount to be paid up or to be regarded as paid up, and the amount to remain unpaid or to be regarded as remaining unpaid, on the total number of shares that the company proposes to issue on that formation;
  - (d) if the share capital is to be divided into different classes of shares on that formation, also states the classes and, for each class—
    - (i) the total number of shares in that class that the company proposes to issue on that formation;
    - (ii) the total amount of share capital in that class to be subscribed by the company's founder members on that formation;~~and~~
    - (iii) the amount to be paid up or to be regarded as paid up, and the amount to remain unpaid or to be regarded as remaining unpaid, on the total number of shares in that class that the company proposes to issue on that formation;~~and~~
    - (iv) the particulars of any voting rights attached to shares in that class, including rights that arise only in certain circumstances;
    - (v) the particulars of any rights attached to shares in that class, as respects dividends, to participate in a distribution;
    - (vi) the particulars of any rights attached to shares in that class, as respects capital, to participate in a distribution (including on a winding up); and
    - (vii) whether or not shares in that class are redeemable shares.<sup>35</sup>
  - (e) in respect of each founder member, states the number of shares that the company proposes to issue to the member and the total amount of share capital to be subscribed by the member on that formation.
- (2) If the shares proposed to be issued to a founder member on the formation belong to 2 or more classes, the information required under subsection (1)(e) must be stated in respect of each class.

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<sup>35</sup> Item 24 / 第 24 項