

## **LEGISLATIVE COUNCIL BRIEF**

Companies Ordinance  
(Ord. No. 28 of 2012)

### **Companies (Model Articles) Notice**

### **Company Records (Inspection and Provision of Copies) Regulation**

### **Companies (Non-Hong Kong Companies) Regulation**

### **Companies (Fees) Regulation**

## **INTRODUCTION**

The Financial Secretary (“FS”) has made the following pieces of subsidiary legislation on 16 May 2013 for the implementation of the new Companies Ordinance (“CO”) (Ord. No. 28 of 2012) –

- \_\_\_\_\_ (a) the Companies (Model Articles) Notice (Annex A) in exercise of the power under section 78 of the new CO;
- \_\_\_\_\_ (b) the Company Records (Inspection and Provision of Copies) Regulation (Annex B) in exercise of the power under sections 356 and 657 of the new CO;
- \_\_\_\_\_ (c) the Companies (Non-Hong Kong Companies) Regulation (Annex C) in exercise of the power under sections 804 and 805 of the new CO; and
- \_\_\_\_\_ (d) the Companies (Fees) Regulation (Annex D) in exercise of the power under sections 26 and 909 of the new CO;

## **JUSTIFICATIONS**

2. The new CO contains provisions which empower FS and the Chief Justice respectively to make subsidiary legislation on various

administrative, procedural and technical matters. As discussed with the Legislative Council (“LegCo”) Panel on Financial Affairs (“FA Panel”) on 7 January 2013, for the implementation of the new CO (tentatively scheduled for the first quarter of 2014), the subsidiary legislation would be made progressively by batches. This LegCo Brief covers the third batch, comprising four pieces of subsidiary legislation<sup>1</sup>, made by FS on 16 May 2013.

## THE SUBSIDIARY LEGISLATION

### Companies (Model Articles) Notice

3. This Notice prescribes the model articles of association which a company to be incorporated under the new CO may adopt in part or in its entirety at its volition. The model articles will have no impact on existing companies, including those which have adopted the standard articles currently provided in Schedule 1 to the existing CO (Cap.32)<sup>2</sup>.

4. Under the existing CO, Parts I and II of Table A to Schedule 1 provide a set of standard articles for public and private companies limited by shares respectively, while companies limited by guarantee may rely on the form of articles set out in Table C to Schedule 1 of the existing CO. To make the model articles more user-friendly, the Notice prescribes three distinctive sets of model articles as follows –

- (a) *Schedule 1* consists of 105 articles for public companies limited by shares;
- (b) *Schedule 2* consists of 84 articles for private companies limited by shares; and
- (c) *Schedule 3* consists of 57 articles for companies limited by guarantee.

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<sup>1</sup> It was previously envisaged that the third batch would also cover the Companies (Residential Addresses and Identification Numbers) Regulation, which deals with the new arrangement for inspection of protected and withheld information on the Companies Register under the new CO. Following the discussion on the subject at the meeting of the LegCo Panel on Financial Affairs on 8 April 2013, we will accord priority to the tasks necessary for commencing the new CO in the first quarter of 2014 as scheduled, and consider the matters relating to the new inspection arrangement thereafter. Accordingly we will not make the Companies (Residential Addresses and Identification Numbers) Regulation at this stage.

<sup>2</sup> An existing company may, however, amend its articles to follow the model articles at its volition.

5. Compared with the existing standard articles, the model articles have been substantially re-organised to enhance clarity, coherence and ease of reference. Articles concerning similar matters are grouped together under different broad headings. The topics are covered in the following sequence –

- (a) directors and company secretary, and in particular how directors are to make decisions;
- (b) members' rights and the proceedings at general meetings;
- (c) shares and distributions (not applicable to the model articles for companies limited by guarantee); and
- (d) miscellaneous matters, including communications to and by the company.

6. In terms of contents, the major changes introduced in the model articles include, for example –

- (a) in respect of decision-making by directors, new articles have been added to provide the detailed procedures for written resolutions and the appointment and removal of alternate director. The articles on voting at directors' meetings where there is a conflict of interests have been updated to take into account the changes in Part 11 of the new CO and other changes. Articles on directors' meetings have also been revised to cater for dispersed meetings, i.e. where directors meet via telecommunication or video conferences, or with the aid of other communication technology;
- (b) in respect of the proceedings at general meetings, an article is added on the rights of directors and anyone who is not a member of the company to attend and speak at general meetings. The articles relating to the effect, validity and the delivery of relevant notices for proxies have been set out in greater details. The articles on the contents and timeframe for notices of meetings have also been revised to align with those provided for in the new CO; and
- (c) in respect of share capital, the articles relating to forfeiture of partly-paid shares are set out in greater details and an article has been added to deal with surrender of shares in lieu of enforcement of a call for payment. Amendments have also been made to reflect provisions in the new CO,

providing for greater flexibility resulting from migration to no-par regime.

### **Company Records (Inspection and Provision of Copies) Regulation**

7. This Regulation provides for the arrangements and procedures concerning company records kept by a company in the following aspects – (i) the place for keeping of records; (ii) the inspection of records; and (iii) the provision of copies of records. This Regulation applies only to those company records which the new CO has identified and stipulated as being subject to this Regulation. For example, it does not apply to accounting records, which are governed by sections 373 to 378 of the new CO.

8. On the keeping of company records, Members of the Bills Committee on the Companies Bill have proposed during scrutiny of the Bill that companies should be allowed to keep their records and registers in more than one place as many companies in Hong Kong would prefer to keep such records in warehouses. This Regulation gives effect to the aforesaid proposal by allowing the keeping of company records at any place in Hong Kong if, under the relevant provisions in the new CO, that type of company records may be kept at a place prescribed by regulation made under section 356 or 657 thereof. For any company records not kept at the registered office of the company and subject to inspection in accordance with this Regulation, the company is required under the primary legislation to notify the Registrar of Companies (“the Registrar”) of the location where they are kept. Such information will be accessible to members of the public through the Companies Register.

9. In respect of the inspection of company records (where the relevant provisions in the new CO have provided that the inspection is subject to regulation made under section 356 or 657 of the Ordinance), the obligation for companies to make available company records for inspection follows that under the existing CO, i.e. the records must be made available for inspection during business hours, subject to reasonable restrictions that may be imposed by the company by resolution. This Regulation provides that a request for inspection must identify the type of records being sought and the date on which they were made (or the period covered), and has also provided for the right to make copies of the records concerned during inspection. More detailed provisions have also been included on the powers of the Court of First Instance (hereafter “Court”) to compel inspection in the case where a company fails to entertain the inspection or to allow copying in the course of inspection in

accordance with this Regulation. The inspection fee, which usually applies in the case where the requestor is not a member of the company, has been standardised at \$50.

10. For the provision of copies (where the relevant provisions in the new CO have provided that copies of the records may be provided subject to regulation made under section 657 of the Ordinance), the two key elements are the lead time for responding to a request and the fees payable for the copies by the requestor. The lead time is standardised as five business days (i.e. general holidays and days of inclement weather excluded) as compared to the range of seven to 20 calendar days under the existing CO. As regards the fees payable, the calculation basis has been modified and the fees are to be calculated according to the number of entries in the case of a register (at \$5 for every ten entries within the first 2 000 entries requested, to be followed by \$1 for every 100 entries thereafter) or otherwise the number of pages in the case of records other than registers (at \$5 per page), instead of the typical approach of using the number of words as the calculation basis under the existing CO. Similarly, more detailed provisions have also been included on the powers of the Court where a request for provision of copies is not fulfilled. This Regulation also sets out the circumstances under which the company must provide copies in electronic or hard copy form.

11. This Regulation comprises four parts –

- (a) *Part 1* provides for the commencement of this Regulation and interpretation of the term “company records”;
- (b) *Part 2* prescribes the place where company records may be kept or made available for inspection;
- (c) *Part 3* provides for the inspection of company records, which includes (i) the manner of making a request, (ii) the fee payable for an inspection, and (iii) the obligations of companies to make available company records for inspection during business hours and to permit a copy of company records to be made in the course of inspection. It also provides for the powers of the Court to make certain orders relating to the inspection of company records; and
- (d) *Part 4* provides for the obligation of companies to provide copies of company records within five business days upon receipt of the request or payment of the prescribed fees for the copies (whichever is the later). It also prescribes the fee payable for a copy of company records and empowers

the Court to make certain orders relating to the provision of a copy of company records.

## **Companies (Non-Hong Kong Companies) Regulation**

12. Non-Hong Kong companies (i.e. companies incorporated in a place outside Hong Kong that have established a place of business in Hong Kong) are currently subject to Part XI of the existing CO. Under the new CO, Part 16 provides for the requirements applicable to non-Hong Kong companies whereas certain procedural requirements are to be set out by subsidiary legislation for ease of reference and to facilitate future updating as necessary. For the implementation of the relevant provisions in the new CO, this Regulation restates, with minor changes where appropriate, the following existing requirements and procedures –

- (a) the particulars and documents required to accompany (i) application for registration of a non-Hong Kong company; (ii) annual returns; and (iii) returns on change of particulars or termination of authorization of the authorized representative of a registered non-Hong Kong company under sections 333, 333B, 334 and 335 of the existing CO;
- (b) the eligibility and detailed requirements set out in the Companies Registry External Circular No. 1/2001 concerning the registration of certified translations of the domestic name (or one of the domestic names)<sup>3</sup> of a non-Hong Kong company (see also paragraph 27 for details); and
- (c) the requirements applicable to the revised accounts of a registered non-Hong Kong company in sections 20 to 21 of the Companies (Revision of Accounts and Reports) Regulation (Cap.32N).

13. This Regulation comprises seven parts –

- (a) *Part 1* provides for the commencement of this Regulation and interpretation of the terms used;
- (b) *Part 2* sets out the particulars and documents required for an application for registration of a non-Hong Kong

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<sup>3</sup> The term “domestic name” is defined in section 774(1) of the new CO to mean the name or names by which the non-Hong Kong company is registered in its place of incorporation

company;

- (c) *Part 3* provides that an application under section 776(2) and (3) of the new CO or a return under section 778(2) of the new CO may contain a certified translation of a domestic name under specified conditions. The application or return must be accompanied by a certified translation of the relevant part of the certificate of incorporation or certificate of change of name showing the domestic name or new domestic name of the company;
- (d) *Part 4* sets out the documents required to accompany a notice of termination of authorization as an authorized representative of a registered non-Hong Kong company;
- (e) *Part 5* sets out the particulars to be contained in an annual return of a registered non-Hong Kong company;
- (f) *Part 6* provides for the requirements for delivery of revised accounts of a registered non-Hong Kong company to the Registrar and the effect of the revision; and
- (g) *Part 7* sets out the particulars of the changes in relation to a registered non-Hong Kong company to be contained in a return required to be delivered under section 791 of the new CO. It also sets out the documents required to accompany the return if there is any change to the constitutional document of the company.

## **Companies (Fees) Regulation**

14. This Regulation provides for the fees payable to the Registrar in respect of the performance of the Registrar's functions under the new CO or in respect of the provision of services or facilities by the Registrar<sup>4</sup>, as well as miscellaneous fees. The fees are set out in four schedules to this Regulation –

- (a) *Schedule 1* specifies the fees payable to the Registrar in relation to the registration of a company or for the registration of documents delivered to the Registrar;
- (b) *Schedule 2* specifies the fees payable to the Registrar for inspecting or obtaining documents or information on the

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<sup>4</sup> Including services and facilities by the Registrar under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap.32).

Companies Register;

- (c) *Schedule 3* specifies the fees payable for obtaining the Registrar's approval or licence under the Ordinance; and
- (d) *Schedule 4* specifies miscellaneous fees.

15. Under the existing CO, a company limited by shares is required to pay an annual registration fee upon the delivery of its annual return within 42 days of its return date. To encourage compliance with the statutory filing requirement, the annual registration fee is subject to an escalating scale in the case of late filing. The escalating scale for companies limited by shares was introduced in 1988 and was extended to non-Hong Kong companies in 2007. In contrast, companies limited by guarantee are currently not subject to an escalating scale for late filing of annual returns. Considering that only 22.2% of companies limited by guarantee complied with the filing requirement on time in 2012-13, which is much lower than the compliance rate by companies limited by shares, and in light of increasing public expectation of corporate transparency of such companies, we consider it appropriate to subject companies limited by guarantee to an escalating scale for late filing of annual returns so as to encourage compliance with the statutory filing requirements as in the case for companies limited by shares and non-Hong Kong companies. The escalating scale in respect of companies limited by guarantee, which is the same as the one applicable to private companies limited by shares, is shown in Annex E. The rest of the items under this Regulation are in line with the corresponding items or fee levels as stipulated in the existing CO, with elaboration or clarification where appropriate. With the rewrite of the CO and the abolition of capital duty since 1 June 2012, several existing fee items, for example those concerning an increase in nominal share capital or shares issued at a premium, have become obsolete and are accordingly omitted from this Regulation.

## **LEGISLATIVE TIMETABLE**

16. The four pieces of subsidiary legislation will be published in the Gazette on 24 May 2013 and tabled at the LegCo for negative vetting on 29 May 2013. They will come into operation together with the new CO.

## IMPLICATIONS OF THE PROPOSALS

17. The economic and financial implications of the four pieces of subsidiary legislation are as follows –

- (a) *Economic Implications* : the four pieces of subsidiary legislation form part of the new company law regime, which will contribute to the achievement of the economic benefits as envisaged to be brought by the CO rewrite, namely to improve Hong Kong's business environment and strengthen our position as an international financial and business centre.
- (b) *Financial Implications* : the Companies (Fees) Regulation introduces an escalating scale for late filing of annual returns by companies limited by guarantee in place of the existing flat rate of annual registration fee in order to encourage compliance with the statutory filing requirements. Any incidental increase in revenue arising from this measure will depend on the level of compliance upon the introduction of the escalating scale. As to the other three pieces of subsidiary legislation, they do not have financial implications.

18. The four pieces of subsidiary legislation do not have civil service, environmental, family, productivity or sustainability implications. They are in conformity with the Basic Law, including the provisions concerning human rights. They will not affect the binding effect of the new CO.

## PUBLIC CONSULTATION

19. We conducted a public consultation on the draft provisions of subsidiary legislation under the new CO in two phases, with phase one launched on 28 September 2012 and phase two on 2 November 2012 (consultation on the Companies (Fees) Regulation was done separately as explained in paragraph 20 below). The consultation period was six weeks in both phases. A total of 34 submissions were received by end 2012 and the respondents were generally supportive. The Standing Committee on Company Law Reform was consulted in the process. We also briefed the LegCo FA Panel on the subsidiary legislation on 7 January 2013. For the Companies (Model Articles) Notice and the Companies (Non-Hong Kong Companies) Regulation, the respondents

offered mostly general and technical comments on the draft provisions. We have taken into account these comments when finalising the subsidiary legislation. As regards the Company Records (Inspection and Provision of Copies) Regulation, the arrangement for inspection of company records as set out in this Regulation has taken into account respondents' comments on practical aspects of the original proposal set out in the draft Regulation for consultation.

20. For the Companies (Fees) Regulation, we have separately written to relevant stakeholders on our proposals to introduce an escalating scale on late filing of annual returns by companies limited by guarantee in December 2012. Among the two submissions received, the Hong Kong Bar Association welcomed the introduction of the escalating scale while the Hong Kong Institute of Certified Public Accountants did not object to the proposal.

## **PUBLICITY**

21. A press release on the gazettal of the four pieces of subsidiary legislation will be issued on 24 May 2013. A spokesman will also be arranged to handle media enquiries.

## **BACKGROUND**

### **Rewrite of the Companies Ordinance**

22. The rewrite of the existing CO aims to provide a modernised legal regime for the formation and operation of companies in Hong Kong. The Companies Bill was passed on 12 July 2012 and it was subsequently gazetted as the new CO on 10 August 2012. Our target is to bring the new CO into operation in the first quarter of 2014.

### **Companies (Model Articles) Notice**

23. Standard articles of association are contained in Schedule 1 to the existing CO. They apply to companies that do not have their own articles excluding or modifying the statutory standard articles. Specifically, Table A provides the standard articles for companies limited by shares. Part I contains provisions applicable to a company limited by shares not being a private company whereas Part II is applicable to a private company limited by shares (with provisions in Part I incorporated

into Part II by reference).

24. Section 78 of the new CO empowers FS to prescribe model articles for companies. Section 80 thereof provides that on the incorporation of a limited company, the model articles prescribed for the type of company to which the company belongs and that are for the time being in force, so far as are applicable, form part of the company's articles if the company's articles do not exclude or modify the model articles.

### **Company Records (Inspection and Provision of Copies) Regulation**

25. Under the existing CO, different types of company records are subject to different requirements concerning the place for keeping of records as well as the manner for their inspection and provision of copies (including the fees payable). The requirements that apply to each type of company records are prescribed in the respective sections or schedule of the Ordinance. Although the specific requirements vary from one type of records to another, the usual arrangement is as follows –

- (a) *Keeping of records* : the records must be kept at the registered office of the company, or at a place where the records are made up;
- (b) *Inspection* : the records must be made available for inspection during business hours, subject to any reasonable restrictions imposed at general meetings so long as not less than two hours are available for inspection each day; and
- (c) *Provision of copies* : the copy is to be provided within seven to 20 calendar days to the requestor on payment on a fee, usually at \$2 for every 100 words.

26. The obligations concerning the keeping and inspection of company records and the provision of copies are provided for in the respective sections of the new CO. Section 356 or 657 of the Ordinance further provides that FS may make regulation to prescribe the place where such records may be kept as well as the specific requirements concerning the inspection or provision of copies of company records. The regulation may also provide for the offences and the penalty in the case of contravention.

## **Companies (Non-Hong Kong Companies) Regulation**

27. Under Part XI of the existing CO, a non-Hong Kong company is required to register with the Registrar within one month of establishment of a place of business in Hong Kong. The registered non-Hong Kong company must then comply with various requirements as set out in that Part, which include delivery of annual returns and delivery of returns upon change of particulars or termination of authorization of an authorized representative. The application for registration and relevant returns must contain the specified particulars and be accompanied by the required documents. The obligations are re-enacted in various sections under Part 16 of the new CO, while section 805 thereof provides that FS may make regulation to prescribe the particulars and accompanying documents required for the purpose of registration of non-Hong Kong companies or delivery of certain returns.

28. At present, a non-Hong Kong company having only domestic name(s) in Chinese or Roman Script may apply to register a certified translation of a domestic name, in English or Chinese (as the case may be), for entering into the Companies Register in accordance with Companies Registry External Circular No. 1/2001. Sections 777(2)(b) and 779(3)(b) of the new CO provide for the making of such applications in the course of registration of a non-Hong Kong company or upon a change in domestic name(s) of the registered non-Hong Kong company. The applications are subject to the procedures and requirements provided in regulation made under section 805 of the new CO.

29. Section 336A of the existing CO provides that the directors of a non-Hong Kong company may revise the accounts of the company if the accounts are found to be non-compliant with the laws of its place of incorporation<sup>5</sup>, while the detailed requirements applicable to the revised accounts and the delivery of the revised accounts to the Registrar for registration are set out in sections 20 and 21 of Cap.32N. The aforesaid regime is retained under the new CO, where section 790 thereof provides that the directors of a registered non-Hong Kong company may revise the company's accounts and section 804 provides that regulations may be made to provide for the detailed arrangements.

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<sup>5</sup> Where there is no such requirement in the law of the place of incorporation, the accounts may be revised if they are found to be non-compliant with the laws of any other jurisdiction or rules of any stock exchange that require their publication.

## **Companies (Fees) Regulation**

30. At present, the fees and charges for various purposes of the existing CO are mainly stipulated in Schedule 8 to that Ordinance. These include the fees payable to the Registrar for the performance of various functions, the provision of services and facilities by the Registrar as well as miscellaneous fees. Under the new CO, the fees are to be set out in regulation made by FS under sections 26 and 909 of the Ordinance.

## **ENQUIRIES**

31. Any enquiry on this LegCo Brief should be addressed to Mr Arsene Yiu, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) at 2528 6384.

**Financial Services and the Treasury Bureau**  
**22 May 2013**

## Companies (Model Articles) Notice

### Contents

Section	Page
1. Commencement .....	1
2. Model articles for public companies limited by shares.....	1
3. Model articles for private companies limited by shares .....	1
4. Model articles for companies limited by guarantee .....	1
5. Saving .....	2
Schedule 1 Model Articles for Public Companies Limited by Shares.....	3
Schedule 2 Model Articles for Private Companies Limited by Shares.....	70
Schedule 3 Model Articles for Companies Limited by Guarantee .....	123

## Companies (Model Articles) Notice

(Made by the Financial Secretary under section 78 of the Companies Ordinance (28 of 2012))

### 1. Commencement

This Notice comes into operation on the day on which section 78 of the Companies Ordinance (28 of 2012) comes into operation.

### 2. Model articles for public companies limited by shares

Schedule 1 prescribes the model articles for public companies limited by shares.

#### Note—

For information that must be stated in the articles of a public company limited by shares, please see sections 81, 83(1), 84(1) and 85(1) of the Companies Ordinance (28 of 2012).

### 3. Model articles for private companies limited by shares

Schedule 2 prescribes the model articles for private companies limited by shares.

#### Note—

For information that must be stated in the articles of a private company limited by shares, please see sections 81, 83(1), 84(1) and 85(1) of the Companies Ordinance (28 of 2012).

### 4. Model articles for companies limited by guarantee

Schedule 3 prescribes the model articles for companies limited by guarantee.

#### Note—

For information that must be stated in the articles of a company limited by guarantee, please see sections 81, 83(1) and 84(2) of the Companies Ordinance (28 of 2012).

**5. Saving**

This Notice does not affect—

- (a) Table A in the First Schedule to the Companies Ordinance 1865 (1 of 1865), as in force from time to time, so far as it applies to an existing company;
- (b) Table A in the First Schedule to the Companies Ordinance 1911 (58 of 1911), as in force from time to time, so far as it applies to an existing company;
- (c) Table A in the First Schedule to the predecessor Ordinance, so far as it applies to an existing company; and
- (d) the articles of an existing company limited by guarantee, whether or not the existing company has a share capital.

**Schedule 1**

[s. 2]

**Model Articles for Public Companies Limited by Shares****Contents**

## Article

**Part 1****Interpretation**

1. Interpretation

**Part 2****Directors and Company Secretary****Division 1—Directors' Powers and Responsibilities**

2. Directors' general authority
3. Members' reserve power
4. Directors may delegate
5. Committees

**Division 2—Decision-taking by Directors**

6. Directors to take decision collectively
7. Calling directors' meetings
8. Participation in directors' meetings
9. Quorum for directors' meetings
10. Meetings if total number of directors less than quorum

## Article

11. Chairing of directors' meetings
  12. Voting at directors' meetings: general rules
  13. Chairperson's casting vote at directors' meetings
  14. Alternates voting at directors' meetings
  15. Conflicts of interest
  16. Supplementary provisions as to conflicts of interest
  17. Proposing directors' written resolutions
  18. Adoption of directors' written resolutions
  19. Effect of directors' written resolutions
  20. Validity of acts of meeting of directors
  21. Record of decisions to be kept
  22. Directors' discretion to make further rules
- Division 3—Appointment and Retirement of Directors**
23. Appointment and retirement of directors
  24. Retirement of directors by rotation
  25. Retiring director eligible for reappointment
  26. Composite resolution
  27. Termination of director's appointment
  28. Directors' remuneration
  29. Directors' expenses

## Article

- Division 4—Alternate Directors**
30. Appointment and removal of alternates
  31. Rights and responsibilities of alternate directors
  32. Termination of alternate directorship
- Division 5—Managing Directors**
33. Appointment of managing directors and termination of appointment
  34. Powers of managing directors
- Division 6—Directors' Indemnity and Insurance**
35. Indemnity
  36. Insurance
- Division 7—Company Secretary**
37. Appointment and removal of company secretary
- Part 3**
- Decision-taking by Members**
- Division 1—Organization of General Meetings**
38. General meetings
  39. Notice of general meetings
  40. Persons entitled to receive notice of general meetings
  41. Accidental omission to give notice of general meetings
  42. Attendance and speaking at general meetings

## Article

43. Quorum for general meetings
44. Chairing general meetings
45. Attendance and speaking by non-members
46. Adjournment
- Division 2—Voting at General Meetings**
47. General rules on voting
48. Errors and disputes
49. Demanding a poll
50. Number of votes a member has
51. Votes of joint holders of shares
52. Votes of mentally incapacitated members
53. Content of proxy notices
54. Execution of appointment of proxy on behalf of member appointing the proxy
55. Delivery of proxy notice and notice revoking appointment of proxy
56. Effect of member's voting in person on proxy's authority
57. Effect of proxy votes in case of death, mental incapacity, etc. of member appointing the proxy
58. Amendments to proposed resolutions

**Division 3—Restrictions on Members' Rights**

## Article

59. No voting of shares on which money owed to company
- Division 4—Application of Rules to Class Meetings**

60. Class meetings

**Part 4****Shares and Distributions****Division 1—Issue of Shares**

61. Powers to issue different classes of shares
62. Payment of commissions on subscription for shares

**Division 2—Interests in Shares**

63. Company only bound by absolute interests

**Division 3—Share Certificates**

64. Certificates to be issued except in certain cases
65. Contents and execution of share certificates
66. Consolidated share certificates
67. Replacement share certificates

**Division 4—Partly Paid Shares**

68. Company's lien over partly paid shares
69. Enforcement of company's lien
70. Call notices
71. When call deemed to be made

## Article

- 72. Liability to pay calls
- 73. When call notice need not be issued
- 74. Failure to comply with call notice: automatic consequences
- 75. Notice of intended forfeiture
- 76. Directors' power to forfeit shares
- 77. Effect of forfeiture
- 78. Procedure following forfeiture
- 79. Surrender of shares

**Division 5—Transfer and Transmission of Shares**

- 80. Transfer of shares
- 81. Power of directors to refuse transfer of shares
- 82. Power of directors to suspend registration of transfer of shares
- 83. Transmission of shares
- 84. Transmittees' rights
- 85. Exercise of transmittees' rights
- 86. Transmittes bound by prior notices

**Division 6—Alteration and Reduction of Share Capital, Share Buy-backs and Allotment of Shares**

- 87. Alteration of share capital
- 88. Reduction of share capital

## Article

- 89. Share buy-backs
- 90. Allotment of shares

**Division 7—Distributions**

- 91. Procedure for declaring dividends
- 92. Calculation of dividends
- 93. Payment of dividends and other distributions
- 94. Deductions from distributions in respect of sums owed to company
- 95. No interest on distributions
- 96. Unclaimed distributions
- 97. Non-cash distributions
- 98. Waiver of distributions

**Division 8—Capitalization of Profits**

- 99. Capitalization of profits

**Part 5****Miscellaneous Provisions****Division 1—Communications to and by Company**

- 100. Means of communication to be used
- 101. Failure to notify contact details

**Division 2—Administrative Arrangements**

- 102. Company seals

Article

103. No right to inspect accounts and other records  
104. Auditor's insurance  
105. Winding up

Part 1

Interpretation

1. Interpretation

(1) In these articles—

*alternate* (候補者) and *alternate director* (候補董事) mean a person appointed by a director as an alternate under article 30(1);

*appointor* (委任者)—see article 30(1);

*articles* (本《章程細則》) means the articles of association of the company;

*associated company* (有聯繫公司) means—

- (a) a subsidiary of the company;
- (b) a holding company of the company; or
- (c) a subsidiary of such a holding company;

*call* (催繳、催繳股款)—see article 70(1);

*call notice* (催繳通知書)—see article 70(1);

*distribution recipient* (分派對象) means, in relation to a share in respect of which a dividend or other sum is payable—

- (a) the holder of the share;

(b) if the share has 2 or more joint holders, whichever of them is named first in the register of members; or

(c) if the holder is no longer entitled to the share by reason of death or bankruptcy or otherwise by operation of law, the transmittee;

*fully paid* (已繳足款), in relation to a share, means the price at which the share was issued has been fully paid to the company;

*holder* (持有人), in relation to a share, means the person whose name is entered in the register of members as the holder of the share;

*mental incapacity* (精神上無行為能力) has the meaning given by section 2(1) of the Mental Health Ordinance (Cap. 136);

*mentally incapacitated person* (精神上無行為能力者) means a person who is found under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs;

*Ordinance* (《條例》) means the Companies Ordinance (28 of 2012);

*paid* (已繳) means paid or credited as paid;

*partly paid* (部分已繳), in relation to a share, means part of the price at which the share was issued remains unpaid;

*proxy notice* (代表通知書)—see article 53(1);

*register of members* (成員登記冊) means the register of members of the company;

*transmittee* (承傳人) means a person entitled to a share by reason of the death or bankruptcy of a member or otherwise by operation of law.

- (2) Other words or expressions used in these articles have the same meaning as in the Ordinance as in force on the date these articles become binding on the company.
- (3) For the purposes of these articles, a document is authenticated if it is authenticated in any way in which section 828(5) or 829(3) of the Ordinance provides for documents or information to be authenticated for the purposes of the Ordinance.

## **Part 2**

### **Directors and Company Secretary**

#### **Division 1—Directors' Powers and Responsibilities**

##### **2. Directors' general authority**

- (1) Subject to the Ordinance and these articles, the business and affairs of the company are managed by the directors, who may exercise all the powers of the company.
- (2) An alteration of these articles does not invalidate any prior act of the directors that would have been valid if the alteration had not been made.
- (3) The powers given by this article are not limited by any other power given to the directors by these articles.
- (4) A directors' meeting at which a quorum is present may exercise all powers exercisable by the directors.

##### **3. Members' reserve power**

- (1) The members may, by special resolution, direct the directors to take, or refrain from taking, specified action.
- (2) The special resolution does not invalidate anything that the directors have done before the passing of the resolution.

##### **4. Directors may delegate**

- (1) Subject to these articles, the directors may, if they think fit, delegate any of the powers that are conferred on them under these articles—
  - (a) to any person or committee;
  - (b) by any means (including by power of attorney);
  - (c) to any extent and without territorial limit;
  - (d) in relation to any matter; and
  - (e) on any terms and conditions.
- (2) If the directors so specify, the delegation may authorize further delegation of the directors' powers by any person to whom they are delegated.
- (3) The directors may—
  - (a) revoke the delegation wholly or in part; or
  - (b) revoke or alter its terms and conditions.

##### **5. Committees**

- (1) The directors may make rules providing for the conduct of business of the committees to which they have delegated any of their powers.
- (2) The committees must comply with the rules.

#### **Division 2—Decision-taking by Directors**

##### **6. Directors to take decision collectively**

A decision of the directors may only be taken—

- (a) at a directors' meeting; or
- (b) in the form of a directors' written resolution.

**7. Calling directors' meetings**

- (1) Any director may call a directors' meeting.
- (2) The company secretary must call a directors' meeting if a director requests it.
- (3) A directors' meeting is called by giving notice of the meeting to the directors.
- (4) Notice of a directors' meeting must indicate—
  - (a) its proposed date and time; and
  - (b) where it is to take place.
- (5) Notice of a directors' meeting must be given to each director, but need not be in writing.
- (6) If a notice of a directors' meeting has not been given to a director (*the failure*) but the director waives his or her entitlement to the notice by giving notice to that effect to the company not more than 7 days after the meeting, the failure does not affect the validity of the meeting, or of any business conducted at it.

**8. Participation in directors' meetings**

- (1) Subject to these articles, directors participate in a directors' meeting, or part of a directors' meeting, when—
  - (a) the meeting has been called and takes place in accordance with these articles; and
  - (b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- (2) In determining whether directors are participating in a directors' meeting, it is irrelevant where a director is and how they communicate with each other.

- (3) If all the directors participating in a directors' meeting are not in the same place, they may regard the meeting as taking place wherever any one of them is.

**9. Quorum for directors' meetings**

- (1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- (2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it must be at least 2, and unless otherwise fixed it is 2.

**10. Meetings if total number of directors less than quorum**

- (1) This article applies if the total number of directors for the time being is less than the quorum required for directors' meetings.
- (2) If there is only 1 director, that director may appoint sufficient directors to make up a quorum or call a general meeting to do so.
- (3) If there is more than one director—
  - (a) a directors' meeting may take place, if it is called in accordance with these articles and at least 2 directors participate in it, with a view to appointing sufficient directors to make up a quorum or calling a general meeting to do so; and
  - (b) if a directors' meeting is called but only 1 director attends at the appointed date and time to participate in it, that director may appoint sufficient directors to make up a quorum or call a general meeting to do so.

**11. Chairing of directors' meetings**

- (1) The directors may appoint a director to chair their meetings.

- (2) The person appointed for the time being is known as the chairperson.
- (3) The directors may appoint other directors as deputy or assistant chairpersons to chair directors' meetings in the chairperson's absence.
- (4) The directors may terminate the appointment of the chairperson, or deputy or assistant chairperson at any time.
- (5) If neither the chairperson nor the deputy or assistant chairperson is participating in a directors' meeting within 10 minutes of the time at which it was to start or is willing to chair the meeting, the participating directors may appoint one of themselves to chair it.

#### 12. Voting at directors' meetings: general rules

- (1) Subject to these articles, a decision is taken at a directors' meeting by a majority of the votes of the participating directors.
- (2) Subject to these articles, each director participating in a directors' meeting has 1 vote.

#### 13. Chairperson's casting vote at directors' meetings

- (1) If the numbers of votes for and against a proposal are equal, the chairperson or other director chairing the directors' meeting has a casting vote.
- (2) Paragraph (1) does not apply if, in accordance with these articles, the chairperson or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

#### 14. Alternates voting at directors' meetings

A director who is also an alternate director has an additional vote on behalf of each appointor who—

- (a) is not participating in a directors' meeting; and
- (b) would have been entitled to vote if he or she were participating in it.

#### 15. Conflicts of interest

- (1) This article applies if—
  - (a) a director or an entity connected with the director is in any way (directly or indirectly) interested in a transaction, arrangement or contract with the company that is significant in relation to the company's business; and
  - (b) the director's or the entity's interest is material.
- (2) The director must declare the nature and extent of the director's or the entity's interest to the other directors in accordance with section 536 of the Ordinance.
- (3) The director and the director's alternate must neither—
  - (a) vote in respect of the transaction, arrangement or contract in which the director or the entity is so interested; nor
  - (b) be counted for quorum purposes in respect of the transaction, arrangement or contract.
- (4) Paragraph (3) does not preclude the alternate from—
  - (a) voting in respect of the transaction, arrangement or contract on behalf of another appointor who does not have such an interest; and
  - (b) being counted for quorum purposes in respect of the transaction, arrangement or contract.
- (5) If the director or the director's alternate contravenes paragraph (3)(a), the vote must not be counted.
- (6) Paragraph (3) does not apply to—

- (a) an arrangement for giving a director any security or indemnity in respect of money lent by the director to or obligations undertaken by the director for the benefit of the company;
  - (b) an arrangement for the company to give any security to a third party in respect of a debt or obligation of the company for which the director has assumed responsibility wholly or in part under a guarantee or indemnity or by the deposit of a security;
  - (c) an arrangement under which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries, which do not provide special benefits for directors or former directors; or
  - (d) an arrangement to subscribe for or underwrite shares.
- (7) A reference in this article to an entity connected with a director has the meaning given by section 486 of the Ordinance.
- (8) A reference in this article (except in paragraphs (6)(d) and (9)) to a transaction, arrangement or contract includes a proposed transaction, arrangement or contract.
- (9) In this article—
- arrangement to subscribe for or underwrite shares*** (認購或包銷股份安排) means—
- (a) a subscription or proposed subscription for shares or other securities of the company;
  - (b) an agreement or proposed agreement to subscribe for shares or other securities of the company; or
  - (c) an agreement or proposed agreement to underwrite any of those shares or securities.

## 16. Supplementary provisions as to conflicts of interest

- (1) A director may hold any other office or position of profit under the company (other than the office of auditor) in conjunction with the office of director for a period and on terms (as to remuneration or otherwise) that the directors determine.
- (2) A director or intending director is not disqualified by the office of director from contracting with the company—
  - (a) with regard to the tenure of the other office or position of profit mentioned in paragraph (1); or
  - (b) as vendor, purchaser or otherwise.
- (3) The contract mentioned in paragraph (2) or any transaction, arrangement or contract entered into by or on behalf of the company in which any director is in any way interested is not liable to be avoided.
- (4) A director who has entered into a contract mentioned in paragraph (2) or is interested in a transaction, arrangement or contract mentioned in paragraph (3) is not liable to account to the company for any profit realized by the transaction, arrangement or contract by reason of—
  - (a) the director holding the office; or
  - (b) the fiduciary relation established by the office.
- (5) Paragraph (1), (2), (3) or (4) only applies if the director has declared the nature and extent of the director's interest under the paragraph to the other directors in accordance with section 536 of the Ordinance.
- (6) A director of the company may be a director or other officer of, or be otherwise interested in—
  - (a) any company promoted by the company; or

(b) any company in which the company may be interested as shareholder or otherwise.

(7) Subject to the Ordinance, the director is not accountable to the company for any remuneration or other benefits received by the director as a director or officer of, or from the director's interest in, the other company unless the company otherwise directs.

#### 17. Proposing directors' written resolutions

- (1) Any director may propose a directors' written resolution.
- (2) The company secretary must propose a directors' written resolution if a director requests it.
- (3) A directors' written resolution is proposed by giving notice in writing of the proposed resolution to each director.
- (4) Notice of a proposed directors' written resolution must indicate--
  - (a) the proposed resolution; and
  - (b) the time by which it is proposed that the directors should adopt it.
- (5) Any decision which a person giving notice of a proposed directors' written resolution takes regarding the process of adopting the resolution must be taken reasonably in good faith.

#### 18. Adoption of directors' written resolutions

- (1) A proposed directors' written resolution is adopted when all the directors who would have been entitled to vote on the resolution at a directors' meeting have signed one or more copies of it.
- (2) Paragraph (1) only applies if those directors would have formed a quorum at the directors' meeting.

(3) It is immaterial whether any director signs the resolution before or after the time by which the notice proposed that it should be adopted.

#### 19. Effect of directors' written resolutions

If a proposed directors' written resolution has been adopted, it is as valid and effectual as if it had been passed at a directors' meeting duly convened and held.

#### 20. Validity of acts of meeting of directors

The acts of any meeting of directors or of a committee of directors or the acts of any person acting as a director are as valid as if the directors or the person had been duly appointed as a director and was qualified to be a director, even if it is afterwards discovered that—

- (a) there was a defect in the appointment of any of the directors or of the person acting as a director;
- (b) any one or more of them were not qualified to be a director or were disqualified from being a director;
- (c) any one or more of them had ceased to hold office as a director; or
- (d) any one or more of them were not entitled to vote on the matter in question.

#### 21. Record of decisions to be kept

The directors must ensure that the company keeps a written record of every decision taken by the directors under article 6 for at least 10 years from the date of the decision.

#### 22. Directors' discretion to make further rules

Subject to these articles, the directors may make any rule that they think fit about—

- (a) how they take decisions; and
- (b) how the rules are to be recorded or communicated to directors.

### **Division 3—Appointment and Retirement of Directors**

#### **23. Appointment and retirement of directors**

- (1) A person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—
  - (a) by ordinary resolution; or
  - (b) by a decision of the directors.
- (2) A director appointed under paragraph (1)(a) is subject to article 24.
- (3) An appointment under paragraph (1)(b) may only be made to—
  - (a) fill a casual vacancy; or
  - (b) appoint a director as an addition to the existing directors if the total number of directors does not exceed the number fixed in accordance with these articles.
- (4) A director appointed under paragraph (1)(b) must retire from office at the next annual general meeting following the appointment.

#### **24. Retirement of directors by rotation**

- (1) At the first annual general meeting, all the directors must retire from office.
- (2) At every subsequent annual general meeting, one-third of the directors for the time being must retire from office.
- (3) Paragraphs (1) and (2) are subject to article 33(2).

- (4) For the purposes of paragraph (2), if the number of directors is not 3 or a multiple of 3, then the number nearest one-third must retire from office.
- (5) The directors to retire in every year must be those who have been longest in office since their last appointment or reappointment.
- (6) For persons who became directors on the same day, those to retire must be determined by lot, unless they otherwise agree among themselves.
- (7) At the annual general meeting at which a director retires, the company may appoint a person to fill the vacated office.
- (8) A retiring director is regarded as having been reappointed to the office if—
  - (a) the company does not appoint a person to the vacated office; and
  - (b) the retiring director has not given notice to the company of the intention to decline reappointment to the office.
- (9) However, a retiring director is not regarded as having been reappointed to the office if—
  - (a) at the meeting at which the director retires, it is expressly resolved not to fill the vacated office; or
  - (b) a resolution for the reappointment of the director has been put to the meeting and lost.
- (10) A person is not eligible for appointment to the office of director at any general meeting unless—
  - (a) the person is a director retiring at the meeting;
  - (b) the person is recommended by the directors for appointment to the office; or
  - (c) a member qualified to attend and vote at the meeting has sent the company a notice of the member's intention to

propose the person for appointment to the office, and the person has also sent the company a notice of the person's willingness to be appointed.

- (11) The notice of the member's intention to propose the person for appointment to the office must be authenticated by that member and the notice of the person's willingness to be appointed must be authenticated by that person, and they must be sent to the company in hard copy form or in electronic form and received by the company, at least 7 days before the date of the general meeting.
- (12) The company may—
- (a) by ordinary resolution increase or reduce the number of directors; and
  - (b) determine in what rotation the increased or reduced number is to retire from office.

## 25. Retiring director eligible for reappointment

A retiring director is eligible for reappointment to the office.

## 26. Composite resolution

- (1) This article applies if proposals are under consideration concerning the appointment of 2 or more directors to offices or employments with the company or any other body corporate.
- (2) The proposals may be divided and considered in relation to each director separately.
- (3) Each of the directors concerned is entitled to vote (if the director is not for another reason precluded from voting) and be counted in the quorum in respect of each resolution except that concerning the director's own appointment.

## 27. Termination of director's appointment

A person ceases to be a director if the person—

- (a) ceases to be a director under the Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) or is prohibited from being a director by law;
- (b) becomes bankrupt or makes any arrangement or composition with the person's creditors generally;
- (c) becomes a mentally incapacitated person;
- (d) resigns the office of director by notice in writing of the resignation in accordance with section 464(5) of the Ordinance;
- (e) for more than 6 months has been absent without the directors' permission from directors' meetings held during that period; or
- (f) is removed from the office of director by an ordinary resolution of the company.

## 28. Directors' remuneration

- (1) Directors' remuneration must be determined by the company at a general meeting.
- (2) A director's remuneration may—
  - (a) take any form; and
  - (b) include any arrangements in connection with the payment of a retirement benefit to or in respect of that director.
- (3) Directors' remuneration accrues from day to day.

## 29. Directors' expenses

The company may pay any travelling, accommodation and other expenses properly incurred by directors in connection with—

- (a) their attendance at—
  - (i) meetings of directors or committees of directors;
  - (ii) general meetings; or
  - (iii) separate meetings of the holders of any class of shares or of debentures of the company; or
- (b) the exercise of their powers and the discharge of their responsibilities in relation to the company.

#### Division 4—Alternate Directors

##### 30. Appointment and removal of alternates

- (1) A director (*appointor*) may appoint as an alternate any other director, or any other person approved by resolution of the directors.
- (2) An alternate may exercise the powers and carry out the responsibilities of the alternate's appointor, in relation to the taking of decisions by the directors in the absence of the alternate's appointor.
- (3) An appointment or removal of an alternate by the alternate's appointor must be effected—
  - (a) by notice to the company; or
  - (b) in any other manner approved by the directors.
- (4) The notice must be authenticated by the appointor.
- (5) The notice must—
  - (a) identify the proposed alternate; and
  - (b) if it is a notice of appointment, contain a statement authenticated by the proposed alternate indicating the proposed alternate's willingness to act as the alternate of the appointor.

- (6) If an alternate is removed by resolution of the directors, the company must as soon as practicable give notice of the removal to the alternate's appointor.

##### 31. Rights and responsibilities of alternate directors

- (1) An alternate director has the same rights as the alternate's appointor in relation to any decision taken by the directors under article 6.
- (2) Unless these articles specify otherwise, alternate directors—
  - (a) are deemed for all purposes to be directors;
  - (b) are liable for their own acts and omissions;
  - (c) are subject to the same restrictions as their appointors; and
  - (d) are deemed to be agents of or for their appointors.
- (3) Subject to article 15(3), a person who is an alternate director but not a director—
  - (a) may be counted as participating for determining whether a quorum is participating (but only if that person's appointor is not participating); and
  - (b) may sign a written resolution (but only if it is not signed or to be signed by that person's appointor).
- (4) No alternate director may be counted as more than one director for the purposes mentioned in paragraph (3).
- (5) An alternate director is not entitled to receive any remuneration from the company for serving as an alternate director.
- (6) But the alternate's appointor may, by notice in writing made to the company, direct that any part of the appointor's remuneration be paid to the alternate.

**32. Termination of alternate directorship**

- (1) An alternate director's appointment as an alternate terminates—
  - (a) if the alternate's appointor revokes the appointment by notice to the company in writing specifying when it is to terminate;
  - (b) on the occurrence in relation to the alternate of any event which, if it occurred in relation to the alternate's appointor, would result in the termination of the appointor's appointment as a director;
  - (c) on the death of the alternate's appointor; or
  - (d) when the alternate's appointor's appointment as a director terminates.
- (2) Paragraph (1)(d) does not apply if the appointor is reappointed after having retired by rotation at a general meeting or is regarded as having been reappointed as a director at the same general meeting, and in such a case, the alternate director's appointment as an alternate continues after the reappointment.
- (3) If the alternate was not a director when appointed as an alternate, the alternate's appointment as an alternate terminates if—
  - (a) the approval under article 30(1) is withdrawn or revoked; or
  - (b) the company by an ordinary resolution passed at a general meeting terminates the appointment.

**Division 5—Managing Directors****33. Appointment of managing directors and termination of appointment**

- (1) The directors may—

- (a) from time to time appoint one or more of themselves to the office of managing director for a period and on terms they think fit; and
  - (b) subject to the terms of an agreement entered into in any particular case, revoke the appointment.
- (2) A director appointed to the office of managing director is not, while holding the office, subject to retirement by rotation under article 24. While holding the office, the director must also not be taken into account in determining the rotation of retirement of directors under that article.
- (3) The appointment as a managing director is automatically terminated if the managing director ceases to be a director for any reason.
- (4) The directors may determine a managing director's remuneration, whether by way of salary, commission or participation in profits, or a combination of them.

**34. Powers of managing directors**

- (1) The directors may entrust to and confer on a managing director any of the powers exercisable by them on terms and conditions and with restrictions they think fit, either collaterally with or to the exclusion of their own powers.
- (2) The directors may from time to time revoke, withdraw, alter or vary all or any of those powers.

**Division 6—Directors' Indemnity and Insurance****35. Indemnity**

- (1) A director or former director of the company may be indemnified out of the company's assets against any liability incurred by the director to a person other than the company or an associated company of the company in connection with any

negligence, default, breach of duty or breach of trust in relation to the company or associated company (as the case may be).

(2) Paragraph (1) only applies if the indemnity does not cover—

(a) any liability of the director to pay—

- (i) a fine imposed in criminal proceedings; or
- (ii) a sum payable by way of a penalty in respect of non-compliance with any requirement of a regulatory nature; or

(b) any liability incurred by the director—

- (i) in defending criminal proceedings in which the director is convicted;
- (ii) in defending civil proceedings brought by the company, or an associated company of the company, in which judgment is given against the director;
- (iii) in defending civil proceedings brought on behalf of the company by a member of the company or of an associated company of the company, in which judgment is given against the director;
- (iv) in defending civil proceedings brought on behalf of an associated company of the company by a member of the associated company or by a member of an associated company of the associated company, in which judgment is given against the director; or
- (v) in connection with an application for relief under section 903 or 904 of the Ordinance in which the Court refuses to grant the director relief.

- (3) A reference in paragraph (2)(b) to a conviction, judgment or refusal of relief is a reference to the final decision in the proceedings.
- (4) For the purposes of paragraph (3), a conviction, judgment or refusal of relief—
  - (a) if not appealed against, becomes final at the end of the period for bringing an appeal; or
  - (b) if appealed against, becomes final when the appeal, or any further appeal, is disposed of.
- (5) For the purposes of paragraph (4)(b), an appeal is disposed of if—
  - (a) it is determined, and the period for bringing any further appeal has ended; or
  - (b) it is abandoned or otherwise ceases to have effect.

### 36. Insurance

The directors may decide to purchase and maintain insurance, at the expense of the company, for a director of the company, or a director of an associated company of the company, against—

- (a) any liability to any person attaching to the director in connection with any negligence, default, breach of duty or breach of trust (except for fraud) in relation to the company or associated company (as the case may be); or
- (b) any liability incurred by the director in defending any proceedings (whether civil or criminal) taken against the director for any negligence, default, breach of duty or breach of trust (including fraud) in relation to the company or associated company (as the case may be).

### Division 7—Company Secretary

**37. Appointment and removal of company secretary**

- (1) The directors may appoint a company secretary for a term, at a remuneration and on conditions they think fit.
- (2) The directors may remove a company secretary appointed by them.

**Part 3****Decision-taking by Members****Division 1—Organization of General Meetings****38. General meetings**

- (1) Subject to sections 611, 612 and 613 of the Ordinance, the company must, in respect of each financial year of the company, hold a general meeting as its annual general meeting in accordance with section 610 of the Ordinance.
- (2) The directors may, if they think fit, call a general meeting.
- (3) If the directors are required to call a general meeting under section 566 of the Ordinance, they must call it in accordance with section 567 of the Ordinance.
- (4) If the directors do not call a general meeting in accordance with section 567 of the Ordinance, the members who requested the meeting, or any of them representing more than one half of the total voting rights of all of them, may themselves call a general meeting in accordance with section 568 of the Ordinance.

**39. Notice of general meetings**

- (1) An annual general meeting must be called by notice of at least 21 days in writing.

- (2) A general meeting other than an annual general meeting must be called by notice of at least 14 days in writing.
- (3) The notice is exclusive of—
  - (a) the day on which it is served or deemed to be served; and
  - (b) the day for which it is given.
- (4) The notice must—
  - (a) specify the date and time of the meeting;
  - (b) specify the place of the meeting (and if the meeting is to be held in 2 or more places, the principal place of the meeting and the other place or places of the meeting);
  - (c) state the general nature of the business to be dealt with at the meeting;
  - (d) for a notice calling an annual general meeting, state that the meeting is an annual general meeting;
  - (e) if a resolution (whether or not a special resolution) is intended to be moved at the meeting—
    - (i) include notice of the resolution; and
    - (ii) include or be accompanied by a statement containing any information or explanation that is reasonably necessary to indicate the purpose of the resolution;
  - (f) if a special resolution is intended to be moved at the meeting, specify the intention and include the text of the special resolution; and
  - (g) contain a statement specifying a member's right to appoint a proxy under section 596(1) and (3) of the Ordinance.
- (5) Paragraph (4)(e) does not apply in relation to a resolution of which—

- (a) notice has been included in the notice of the meeting under section 567(3) or 568(2) of the Ordinance; or
  - (b) notice has been given under section 615 of the Ordinance.
- (6) Despite the fact that a general meeting is called by shorter notice than that specified in this article, it is regarded as having been duly called if it is so agreed—
- (a) for an annual general meeting, by all the members entitled to attend and vote at the meeting; and
  - (b) in any other case, by a majority in number of the members entitled to attend and vote at the meeting, being a majority together representing at least 95% of the total voting rights at the meeting of all the members.

#### 40. **Persons entitled to receive notice of general meetings**

- (1) Notice of a general meeting must be given to—
  - (a) every member; and
  - (b) every director.
- (2) In paragraph (1), the reference to a member includes a transmittee, if the company has been notified of the transmittee's entitlement to a share.
- (3) If notice of a general meeting or any other document relating to the meeting is required to be given to a member, the company must give a copy of it to its auditor (if more than one auditor, to everyone of them) at the same time as the notice or the other document is given to the member.

#### 41. **Accidental omission to give notice of general meetings**

Any accidental omission to give notice of a general meeting to, or any non-receipt of notice of a general meeting by, any person

entitled to receive notice does not invalidate the proceedings at the meeting.

#### 42. **Attendance and speaking at general meetings**

- (1) A person is able to exercise the right to speak at a general meeting when the person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions that the person has on the business of the meeting.
- (2) A person is able to exercise the right to vote at a general meeting when—
  - (a) the person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
  - (b) the person's vote can be taken into account in determining whether or not those resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- (3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
- (4) In determining attendance at a general meeting, it is immaterial whether any 2 or more members attending it are in the same place as each other.
- (5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have rights to speak and vote at the meeting, they are able to exercise them.

#### 43. **Quorum for general meetings**

- (1) Two members present in person or by proxy constitute a quorum at a general meeting.

- (2) No business other than the appointment of the chairperson of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

#### 44. Chairing general meetings

- (1) If the chairperson (if any) of the board of directors is present at a general meeting and is willing to preside as chairperson at the meeting, the meeting is to be presided over by him or her.
- (2) The directors present at a general meeting must elect one of themselves to be the chairperson if—
  - (a) there is no chairperson of the board of directors;
  - (b) the chairperson is not present within 15 minutes after the time appointed for holding the meeting;
  - (c) the chairperson is unwilling to act; or
  - (d) the chairperson has given notice to the company of the intention not to attend the meeting.
- (3) The members present at a general meeting must elect one of themselves to be the chairperson if—
  - (a) no director is willing to act as chairperson; or
  - (b) no director is present within 15 minutes after the time appointed for holding the meeting.
- (4) A proxy may be elected to be the chairperson of a general meeting by a resolution of the company passed at the meeting.

#### 45. Attendance and speaking by non-members

- (1) Directors may attend and speak at general meetings, whether or not they are members of the company.
- (2) The chairperson of a general meeting may permit other persons to attend and speak at a general meeting even though they are not—

- (a) members of the company; or
- (b) otherwise entitled to exercise the rights of members in relation to general meetings.

#### 46. Adjournment

- (1) If a quorum is not present within half an hour from the time appointed for holding a general meeting, the meeting must—
  - (a) if called on the request of members, be dissolved; or
  - (b) in any other case, be adjourned to the same day in the next week, at the same time and place, or to another day and at another time and place that the directors determine.
- (2) If at the adjourned meeting, a quorum is not present within half an hour from the time appointed for holding the meeting, the member or members present in person or by proxy constitute a quorum.
- (3) The chairperson may adjourn a general meeting at which a quorum is present if—
  - (a) the meeting consents to an adjournment; or
  - (b) it appears to the chairperson that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.
- (4) The chairperson must adjourn a general meeting if directed to do so by the meeting.
- (5) When adjourning a general meeting, the chairperson must specify the date, time and place to which it is adjourned.
- (6) Only the business left unfinished at the general meeting may be transacted at the adjourned meeting.

- (7) If a general meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for an original meeting.
- (8) If a general meeting is adjourned for less than 30 days, it is not necessary to give any notice of the adjourned meeting.

### **Division 2—Voting at General Meetings**

#### **47. General rules on voting**

- (1) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with these articles.
- (2) If there is an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded, is entitled to a second or casting vote.
- (3) On a vote on a resolution on a show of hands at a general meeting, a declaration by the chairperson that the resolution—
  - (a) has or has not been passed; or
  - (b) has passed by a particular majority,
 is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (4) An entry in respect of the declaration in the minutes of the meeting is also conclusive evidence of that fact without the proof.

#### **48. Errors and disputes**

- (1) Any objection to the qualification of any person voting at a general meeting may only be raised at the meeting or

adjourned meeting at which the vote objected to is tendered, and a vote not disallowed at the meeting is valid.

- (2) Any objection must be referred to the chairperson of the meeting whose decision is final.

#### **49. Demanding a poll**

- (1) A poll on a resolution may be demanded—
  - (a) in advance of the general meeting where it is to be put to the vote; or
  - (b) at a general meeting, either before or on the declaration of the result of a show of hands on that resolution.
- (2) A poll on a resolution may be demanded by—
  - (a) the chairperson of the meeting;
  - (b) at least 2 members present in person or by proxy; or
  - (c) any member or members present in person or by proxy and representing at least 5% of the total voting rights of all the members having the right to vote at the meeting.
- (3) The instrument appointing a proxy is regarded as conferring authority to demand or join in demanding a poll on a resolution.
- (4) A demand for a poll on a resolution may be withdrawn.

#### **50. Number of votes a member has**

- (1) On a vote on a resolution on a show of hands at a general meeting—
  - (a) every member present in person has 1 vote; and
  - (b) every proxy present who has been duly appointed by a member entitled to vote on the resolution has 1 vote.

- (2) If a member appoints more than one proxy, the proxies so appointed are not entitled to vote on the resolution on a show of hands.
- (3) On a vote on a resolution on a poll taken at a general meeting—
  - (a) every member present in person has 1 vote for each share held by him or her; and
  - (b) every proxy present who has been duly appointed by a member has 1 vote for each share in respect of which the proxy is appointed.
- (4) This article has effect subject to any rights or restrictions attached to any shares or class of shares.

#### 51. Votes of joint holders of shares

- (1) For joint holders of shares, only the vote of the most senior holder who votes (and any proxies duly authorized by the holder) may be counted.
- (2) For the purposes of this article, the seniority of a holder of a share is determined by the order in which the names of the joint holders appear in the register of members.

#### 52. Votes of mentally incapacitated members

- (1) A member who is a mentally incapacitated person may vote, whether on a show of hands or on a poll, by the member's committee, receiver, guardian or other person in the nature of a committee, receiver or guardian appointed by the Court.
- (2) The committee, receiver, guardian or other person may vote by proxy on a show of hands or on a poll.

#### 53. Content of proxy notices

- (1) A proxy may only validly be appointed by a notice in writing (*proxy notice*) that—
  - (a) states the name and address of the member appointing the proxy;
  - (b) identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed;
  - (c) is authenticated, or is signed on behalf of the member appointing the proxy; and
  - (d) is delivered to the company in accordance with these articles and any instructions contained in the notice of the general meeting in relation to which the proxy is appointed.
- (2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- (3) If the company requires or allows a proxy notice to be delivered to it in electronic form, it may require the delivery to be properly protected by a security arrangement it specifies.
- (4) A proxy notice may specify how the proxy appointed under it is to vote (or that the proxy is to abstain from voting) on one or more resolutions dealing with any business to be transacted at a general meeting.
- (5) Unless a proxy notice indicates otherwise, it must be regarded as—
  - (a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the general meeting; and
  - (b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

**54. Execution of appointment of proxy on behalf of member appointing the proxy**

If a proxy notice is not authenticated, it must be accompanied by written evidence of the authority of the person who executed the appointment to execute it on behalf of the member appointing the proxy.

**55. Delivery of proxy notice and notice revoking appointment of proxy**

- (1) A proxy notice does not take effect unless it is received by the company—
  - (a) for a general meeting or adjourned general meeting, at least 48 hours before the time appointed for holding the meeting or adjourned meeting; and
  - (b) for a poll taken more than 48 hours after it was demanded, at least 24 hours before the time appointed for taking the poll.
- (2) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- (3) A notice revoking the appointment only takes effect if it is received by the company—
  - (a) for a general meeting or adjourned general meeting, at least 48 hours before the time appointed for holding the meeting or adjourned meeting; and
  - (b) for a poll taken more than 48 hours after it was demanded, at least 24 hours before the time appointed for taking the poll.

**56. Effect of member's voting in person on proxy's authority**

- (1) A proxy's authority in relation to a resolution is to be regarded as revoked if the member who has appointed the proxy—
  - (a) attends in person the general meeting at which the resolution is to be decided; and
  - (b) exercises, in relation to the resolution, the voting right attached to the shares in respect of which the proxy is appointed.
- (2) A member who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of the meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of the member.

**57. Effect of proxy votes in case of death, mental incapacity, etc. of member appointing the proxy**

- (1) A vote given in accordance with the terms of a proxy notice is valid despite—
  - (a) the previous death or mental incapacity of the member appointing the proxy;
  - (b) the revocation of the appointment of the proxy or of the authority under which the appointment of the proxy is executed; or
  - (c) the transfer of the share in respect of which the proxy is appointed.
- (2) Paragraph (1) does not apply if notice in writing of the death, mental incapacity, revocation or transfer is received by the company—
  - (a) for a general meeting or adjourned general meeting, at least 48 hours before the time appointed for holding the meeting or adjourned meeting; and

- (b) for a poll taken more than 48 hours after it was demanded, at least 24 hours before the time appointed for taking the poll.

#### **58. Amendments to proposed resolutions**

- (1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—
  - (a) notice of the proposed amendment is given to the company secretary in writing; and
  - (b) the proposed amendment does not, in the reasonable opinion of the chairperson of the meeting, materially alter the scope of the resolution.
- (2) The notice must be given by a person entitled to vote at the general meeting at which it is to be proposed at least 48 hours before the meeting is to take place (or a later time the chairperson of the meeting determines).
- (3) A special resolution to be proposed at a general meeting may be amended by ordinary resolution if—
  - (a) the chairperson of the meeting proposes the amendment at the meeting at which the special resolution is to be proposed; and
  - (b) the amendment merely corrects a grammatical or other non-substantive error in the special resolution.
- (4) If the chairperson of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the vote on that resolution remains valid unless the Court orders otherwise.

#### **Division 3—Restrictions on Members' Rights**

#### **59. No voting of shares on which money owed to company**

A member is not entitled to vote at any general meeting unless all calls or other sums presently payable by the member in respect of shares in the company have been paid.

#### **Division 4—Application of Rules to Class Meetings**

#### **60. Class meetings**

The provisions of these articles relating to general meetings apply, with any necessary modifications, to meetings of the holders of any class of shares.

### **Part 4**

## **Shares and Distributions**

### **Division 1—Issue of Shares**

#### **61. Powers to issue different classes of shares**

- (1) Without affecting any special rights previously conferred on the holders of any existing shares or class of shares, the company may issue shares with—
  - (a) preferred, deferred or other special rights; or
  - (b) any restrictions, whether in regard to dividend, voting, return of capital or otherwise, that the company may from time to time by ordinary resolution determine.
- (2) Subject to Division 4 of Part 5 of the Ordinance, the company may issue shares on the terms that they are to be redeemed, or liable to be redeemed, at the option of the company or the holders of the shares.
- (3) The directors may determine the terms, conditions and manner of redemption of the shares.

**62. Payment of commissions on subscription for shares**

- (1) If the conditions in paragraph (2) are satisfied, the company may pay a commission to a person under section 148 of the Ordinance.
- (2) The conditions are that—
  - (a) the commission paid or agreed to be paid does not exceed 10% of the price at which the shares in respect of which the commission is paid are issued;
  - (b) if those shares are offered to the public for subscription, the company, before making the payment, discloses the amount or rate of the commission in the prospectus for the public offer, as required under paragraph 7(a)(ii) in Part I of the Third Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); and
  - (c) if those shares are not offered to the public for subscription, the company, before making the payment, discloses the amount or rate of the commission in any circular or notice issued by the company inviting subscriptions for those shares, as required under section 148(2)(c)(ii) of the Ordinance.
- (3) The commission may be paid—
  - (a) in cash;
  - (b) in fully paid or partly paid shares; or
  - (c) partly in one way and partly in the other.
- (4) The company may also on any issue of shares pay a brokerage that is lawful.

**Division 2—Interests in Shares****63. Company only bound by absolute interests**

- (1) Except as required by law, no person is to be recognized by the company as holding any share on any trust.
- (2) Except as otherwise required by law or these articles, the company is not in any way to be bound by or recognize any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.
- (3) Paragraph (2) applies even though the company has notice of the interest.

**Division 3—Share Certificates****64. Certificates to be issued except in certain cases**

- (1) The company must issue each member, free of charge, with one or more certificates in respect of the shares that the member holds, within—
  - (a) 2 months after allotment or lodgment of a proper instrument of transfer; or
  - (b) any other period that the conditions of issue provide.
- (2) No certificate may be issued in respect of shares of more than one class.
- (3) If more than one person holds a share, only 1 certificate may be issued in respect of it.

**65. Contents and execution of share certificates**

- (1) A certificate must specify—
  - (a) in respect of how many shares and of what class the certificate is issued;
  - (b) the amount paid up on them; and
  - (c) any distinguishing numbers assigned to them.
- (2) A certificate must—

- (a) have affixed to it the company's common seal or the company's official seal under section 126 of the Ordinance; or
- (b) be otherwise executed in accordance with the Ordinance.

#### 66. Consolidated share certificates

- (1) A member may request the company, in writing, to replace—
  - (a) the member's separate certificates with a consolidated certificate; or
  - (b) the member's consolidated certificate with 2 or more separate certificates representing the proportion of the shares that the member specifies.
- (2) A consolidated certificate must not be issued unless any certificates that it is to replace have first been returned to the company for cancellation.
- (3) Separate certificates must not be issued unless the consolidated certificate that they are to replace has first been returned to the company for cancellation.

#### 67. Replacement share certificates

- (1) If a certificate issued in respect of a member's shares is defaced, damaged, lost or destroyed, the member is entitled to be issued with a replacement certificate in respect of the same shares.
- (2) A member exercising the right to be issued with a replacement certificate—
  - (a) may at the same time exercise the right to be issued with a single certificate, separate certificates or a consolidated certificate;
  - (b) must return the certificate that is to be replaced to the company if it is defaced or damaged; and

- (c) must comply with the conditions as to evidence, indemnity and the payment of a reasonable fee that the directors decide.

### Division 4—Partly Paid Shares

#### 68. Company's lien over partly paid shares

- (1) The company has a first and paramount lien on any share that is partly paid for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share.
- (2) The company also has a first and paramount lien on any share that is partly paid standing registered in the name of a single person for all moneys presently payable by the person or the person's estate to the company.
- (3) The company's lien on a share extends to any dividend payable in respect of that share.
- (4) The directors may at any time declare a share to be wholly or in part exempt from this article.

#### 69. Enforcement of company's lien

- (1) Subject to this article, the company may sell a share in a manner the directors think fit if—
  - (a) a notice enforcing a lien (*lien enforcement notice*) has been issued in respect of that share; and
  - (b) the person to whom the notice was issued has failed to comply with it.
- (2) A lien enforcement notice—
  - (a) may only be issued in respect of a share on which the company has a lien, in respect of which a sum is presently payable;
  - (b) must specify the share concerned;

- (c) must require payment of the sum within 14 days of the notice;
  - (d) must be issued to the holder of the share or to the person entitled to it by reason of the holder's death, bankruptcy or otherwise; and
  - (e) must state the company's intention to sell the share if the notice is not complied with.
- (3) To give effect to the sale of shares under this article, the directors may authorize any person to transfer the shares to the purchaser, and the purchaser is to be registered as the holder of those shares.
- (4) The purchaser is not bound to see to the application of the purchase money, and the purchaser's title to the shares is not affected by any irregularity in or invalidity of the process leading to the sale.
- (5) The net proceeds of the sale (after payment of the costs of sale and any other costs of enforcing the lien) must be applied—
- (a) first, in payment of so much of the sum for which the lien exists as was payable at the date of the lien enforcement notice;
  - (b) second, to the person entitled to the shares at the date of the sale.
- (6) Paragraph (5)(b) applies—
- (a) only after the certificate for the shares sold has been surrendered to the company for cancellation or a suitable indemnity has been given for any lost certificates; and
  - (b) subject to a lien equivalent to the company's lien on the shares before the sale for any money payable in respect of the shares after the date of the lien enforcement notice.

- (7) A statutory declaration by a director or the company secretary that the declarant is a director or the company secretary and that a share has been sold to satisfy the company's lien on a specified date—
- (a) is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share; and
  - (b) subject to compliance with any other formalities of transfer required by these articles or by law, constitutes a good title to the share.

#### 70. Call notices

- (1) Subject to these articles and the terms on which shares are allotted, the directors may send a notice (*call notice*) to a member requiring the member to pay the company a specified sum of money (*call*) that is payable in respect of shares held by the member at the date when the directors decide to send the call notice.
- (2) A call notice—
- (a) must not require a member to pay a call that exceeds the total sum unpaid on that member's shares;
  - (b) must specify when and how any call to which it relates is to be paid; and
  - (c) may permit or require the call to be paid by instalments.
- (3) A member must comply with the requirements of a call notice, but is not obliged to pay any call before 14 days have passed since the notice was sent.
- (4) Before the company has received any call due under a call notice, the directors may, by a further notice in writing to the member in respect of whose shares the call is made—
- (a) revoke the call notice wholly or in part; or

- (b) specify a later time for payment than is specified in the call notice.

**71. When call deemed to be made**

A call is deemed to have been made at the time when the resolution of the directors authorizing the call was passed.

**72. Liability to pay calls**

- (1) Liability to pay a call is not extinguished or transferred by transferring the shares in respect of which it is required to be paid.
- (2) Joint holders of a share are jointly and severally liable to pay all calls in respect of that share.
- (3) Subject to the terms on which shares are allotted, the directors may, when issuing shares, provide that call notices sent to the holders of those shares may require them—
  - (a) to pay calls that are not the same; or
  - (b) to pay calls at different times.

**73. When call notice need not be issued**

- (1) A call notice need not be issued in respect of sums that are specified, in the terms on which a share is issued, as being payable to the company in respect of that share—
  - (a) on allotment;
  - (b) on the occurrence of a particular event; or
  - (c) on a date fixed by or in accordance with the terms of issue.
- (2) But if the due date for payment of such a sum has passed and it has not been paid, the holder of the share concerned is—

- (a) treated in all respects as having failed to comply with a call notice in respect of that sum; and
- (b) liable to the same consequences as regards the payment of interest and forfeiture.

**74. Failure to comply with call notice: automatic consequences**

- (1) If a member is liable to pay a call or instalment of a call and fails to do so by the date specified for its payment, the member must pay the company interest on the call or instalment from that date until the call or instalment is paid.
- (2) The interest rate is to be determined by the directors, but must not exceed 10% per annum.
- (3) The directors may waive the payment of the interest wholly or in part.

**75. Notice of intended forfeiture**

- (1) If a member is liable to pay a call or instalment of a call and fails to do so by the date specified for its payment, the directors may, for so long as any part of the call or instalment remains unpaid, serve a notice on the member requiring payment of the part of the call or instalment that is unpaid, together with any interest that may have accrued.
- (2) The notice must—
  - (a) specify a further date (not before the end of 14 days after the date of service of the notice) on or before which the payment required by the notice is to be made;
  - (b) state how that payment is to be made; and
  - (c) state that if the notice is not complied with, the shares in respect of which the call was made will be liable to be forfeited.

**76. Directors' power to forfeit shares**

If the requirements of the notice of intended forfeiture under article 75 are not complied with, the shares in respect of which the call was made may, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

**77. Effect of forfeiture**

- (1) Subject to these articles, the forfeiture of a share extinguishes—
  - (a) all interests in the share, and all claims and demands against the company in respect of it; and
  - (b) all other rights and liabilities incidental to the share between the person whose share it was prior to the forfeiture and the company.
- (2) If a person's shares have been forfeited—
  - (a) the company must send that person a notice that forfeiture has occurred and record it in the register of members;
  - (b) that person ceases to be a member in respect of those shares;
  - (c) that person must surrender the certificate for the shares forfeited to the company for cancellation;
  - (d) that person remains liable to the company for all sums payable by that person under these articles at the date of forfeiture in respect of those shares, including any interest (whether accrued before or after the date of forfeiture); and
  - (e) the directors may waive the payment of those sums wholly or in part or enforce the payment without any allowance for the value of the shares at the time of

forfeiture or for any consideration received on their disposal.

**78. Procedure following forfeiture**

- (1) If a forfeited share is to be disposed of by being transferred, the company may receive the consideration for the transfer and the directors may authorize any person to execute the instrument of transfer.
- (2) A statutory declaration by a director or the company secretary that the declarant is a director or the company secretary and that a share has been forfeited on a specified date—
  - (a) is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share; and
  - (b) subject to compliance with any other formalities of transfer required by these articles or by law, constitutes a good title to the share.
- (3) A person to whom a forfeited share is transferred is not bound to see to the application of the consideration (if any).
- (4) The person's title to the share is not affected by any irregularity in or invalidity of the process leading to the forfeiture or transfer of the share.
- (5) If the company sells a forfeited share, the person who held it prior to its forfeiture is entitled to receive from the company the proceeds of the sale, net of any commission, and excluding any amount that—
  - (a) was, or would have become, payable; and
  - (b) had not, when the share was forfeited, been paid by that person in respect of the share.
- (6) Despite paragraph (5), no interest is payable to such a person in respect of the proceeds and the company is not required to account for any money earned on them.

**79. Surrender of shares**

- (1) A member may surrender any share—
  - (a) in respect of which the directors may serve a notice of intended forfeiture under article 75;
  - (b) that the directors may forfeit; or
  - (c) that has been forfeited.
- (2) The directors may accept the surrender of such a share.
- (3) The effect of surrender on a share is the same as the effect of forfeiture on that share.
- (4) A share that has been surrendered may be dealt with in the same way as a share that has been forfeited.

**Division 5—Transfer and Transmission of Shares****80. Transfer of shares**

- (1) Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of both the transferor and the transferee.
- (2) No fee may be charged by the company for registering any instrument of transfer or other document relating to or affecting the title to any share.
- (3) The company may retain any instrument of transfer that is registered.
- (4) The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.

**81. Power of directors to refuse transfer of shares**

- (1) The directors may refuse to register the transfer of a share if—

- (a) the share is not fully paid;
  - (b) the instrument of transfer is not lodged at the company's registered office or another place that the directors have appointed;
  - (c) the instrument of transfer is not accompanied by the certificate for the share to which it relates, or other evidence the directors reasonably require to show the transferor's right to make the transfer, or evidence of the right of someone other than the transferor to make the transfer on the transferor's behalf; or
  - (d) the transfer is in respect of more than one class of shares.
- (2) If the directors refuse to register the transfer of a share—
  - (a) the transferor or transferee may request a statement of the reasons for the refusal; and
  - (b) the instrument of transfer must be returned to the transferor or transferee who lodged it unless the directors suspect that the proposed transfer may be fraudulent.
- (3) The instrument of transfer must be returned in accordance with paragraph (2)(b) together with a notice of refusal within 2 months after the date on which the instrument of transfer was lodged with the company.
- (4) If a request is made under paragraph (2)(a), the directors must, within 28 days after receiving the request—
  - (a) send the transferor or transferee who made the request a statement of the reasons for the refusal; or
  - (b) register the transfer.

**82. Power of directors to suspend registration of transfer of shares**

The directors may suspend the registration of a transfer of a share—

- (a) for any period or periods not exceeding 30 days in each year; or
- (b) if the period of 30 days for closing the register of members is extended in respect of that year under section 632(3) of the Ordinance, for not more than that extended period.

**83. Transmission of shares**

- (1) If a member dies, the company may only recognize the following person or persons as having any title to a share of the deceased member—
  - (a) if the deceased member was a joint holder of the share, the surviving holder or holders of the share; and
  - (b) if the deceased member was a sole holder of the share, the legal personal representative of the deceased member.
- (2) Nothing in these articles releases the estate of a deceased member from any liability in respect of a share that had been jointly held by the deceased member with other persons.

**84. Transmittees' rights**

- (1) If a transmittee produces evidence of entitlement to the share as the directors properly require, the transmittee may, subject to these articles, choose to become the holder of the share or to have the share transferred to another person.
- (2) The directors have the same right to refuse or suspend the registration as they would have had if the holder had transferred the share before the transmission.
- (3) A transmittee is entitled to the same dividends and other advantages to which the transmittee would be entitled if the transmittee were the holder of the share, except that the transmittee is not, before being registered as a member in

respect of the share, entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

- (4) The directors may at any time give notice requiring a transmittee to choose to become the holder of the share or to have the share transferred to another person.
- (5) If the notice is not complied with within 90 days of the notice being given, the directors may withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

**85. Exercise of transmittees' rights**

- (1) If a transmittee chooses to become the holder of a share, the transmittee must notify the company in writing of the choice.
- (2) Within 2 months after receiving the notice, the directors must—
  - (a) register the transmittee as the holder of the share; or
  - (b) send the transmittee a notice of refusal of registration.
- (3) If the directors refuse registration, the transmittee may request a statement of the reasons for the refusal.
- (4) If a request is made under paragraph (3), the directors must, within 28 days after receiving the request—
  - (a) send the transmittee a statement of the reasons for the refusal; or
  - (b) register the transmittee as the holder of the share.
- (5) If the transmittee chooses to have the share transferred to another person, the transmittee must execute an instrument of transfer in respect of it.

- (6) All the limitations, restrictions and other provisions of these articles relating to the right to transfer and the registration of transfer of shares apply to the notice under paragraph (1) or the transfer under paragraph (5), as if the transmission had not occurred and the transfer were a transfer made by the holder of the share before the transmission.

**86. Transmitters bound by prior notices**

If a notice is given to a member in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was given to the member before the transmittee's name has been entered in the register of members.

**Division 6—Alteration and Reduction of Share Capital, Share Buy-backs and Allotment of Shares**

**87. Alteration of share capital**

The company may by ordinary resolution alter its share capital in any one or more of the ways set out in section 170 of the Ordinance.

**88. Reduction of share capital**

The company may by special resolution reduce its share capital in accordance with Division 3 of Part 5 of the Ordinance.

**89. Share buy-backs**

The company may buy back its own shares (including any redeemable shares) in accordance with Division 4 of Part 5 of the Ordinance.

**90. Allotment of shares**

The directors must not exercise any power conferred on them to allot shares in the company without the prior approval of the

company by resolution if the approval is required by section 140 of the Ordinance.

**Division 7—Distributions**

**91. Procedure for declaring dividends**

- (1) The company may at a general meeting declare dividends, but a dividend must not exceed the amount recommended by the directors.
- (2) The directors may from time to time pay the members interim dividends that appear to the directors to be justified by the profits of the company.
- (3) A dividend may only be paid out of the profits in accordance with Part 6 of the Ordinance.
- (4) Unless the members' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each member's holding of shares on the date of the resolution or decision to declare or pay it.
- (5) Before recommending any dividend, the directors may set aside out of the profits of the company any sums they think fit as reserves.
- (6) The directors may—
  - (a) apply the reserves for any purpose to which the profits of the company may be properly applied; and
  - (b) pending such an application, employ the reserves in the business of the company or invest them in any investments (other than shares of the company) that they think fit.
- (7) The directors may also without placing the sums to reserve carry forward any profits that they think prudent not to divide.

**92. Calculation of dividends**

- (1) All dividends must be—
  - (a) declared and paid according to the amounts paid on the shares in respect of which the dividend is paid; and
  - (b) apportioned and paid proportionately to the amounts paid on the shares during any portion or portions of the period in respect of which the dividend is paid.
- (2) Paragraph (1) is subject to any rights of persons who are entitled to shares with special rights regarding dividend.
- (3) If a share is issued on terms providing that it ranks for dividend as from a particular date, the share ranks for dividend accordingly.
- (4) For the purposes of this article, no amount paid on a share in advance of calls is treated as paid on the share.

**93. Payment of dividends and other distributions**

- (1) If a dividend or other sum that is a distribution is payable in respect of a share, it must be paid by one or more of the following means—
  - (a) transfer to a bank account specified by the distribution recipient either in writing or as the directors decide;
  - (b) sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors decide;
  - (c) sending a cheque made payable to the specified person by post to the specified person at the address the distribution recipient has specified either in writing or as the directors decide;

- (d) any other means of payment as the directors agree with the distribution recipient either in writing or as the directors decide.

- (2) In this article—

*specified person* (指明人士) means a person specified by the distribution recipient either in writing or as the directors decide.

**94. Deductions from distributions in respect of sums owed to company**

- (1) This article applies if—
  - (a) a share is subject to the company's lien under article 68; and
  - (b) the directors are entitled to issue a lien enforcement notice under article 69 in respect of it.
- (2) Instead of issuing the lien enforcement notice, the directors may deduct from any dividend or other sum payable in respect of the share any sum of money that is payable to the company in respect of that share to the extent that they are entitled to require payment under the lien enforcement notice.
- (3) The money so deducted must be used to pay any of the sums payable in respect of the share.
- (4) The company must notify the distribution recipient in writing of—
  - (a) the fact and amount of the deduction;
  - (b) any non-payment of a dividend or other sum payable in respect of a share resulting from the deduction; and
  - (c) how the money deducted has been applied.

**95. No interest on distributions**

The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by—

- (a) the terms on which the share was issued; or
- (b) the provisions of another agreement between the holder of the share and the company.

#### **96. Unclaimed distributions**

- (1) If dividends or other sums are payable in respect of shares and they are not claimed after having been declared or become payable, they may be invested or made use of by the directors for the benefit of the company until claimed.
- (2) The payment of the dividends or other sums into a separate account does not make the company a trustee in respect of it.
- (3) A distribution recipient is no longer entitled to a dividend or other sum and it ceases to remain owing by the company, if—
  - (a) 12 years have passed from the date on which the dividend or other sum became due for payment; and
  - (b) the distribution recipient has not claimed it.

#### **97. Non-cash distributions**

- (1) Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).
- (2) For paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, if any difficulty arises regarding the distribution—
  - (a) fixing the value of any assets;

- (b) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and
- (c) vesting any assets in trustees.

#### **98. Waiver of distributions**

- (1) Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by executing to the company a deed to that effect.
- (2) But if the share has more than one holder or more than one person is entitled to the share (whether by reason of the death or bankruptcy of one or more joint holders, or otherwise), the deed is not effective unless it is expressed to be executed by all the holders or other persons entitled to the share.

### **Division 8—Capitalization of Profits**

#### **99. Capitalization of profits**

- (1) The company may by ordinary resolution on the recommendation of the directors capitalize profits.
- (2) If the capitalization is to be accompanied by the issue of shares or debentures, the directors may apply the sum capitalized in the proportions in which the members would be entitled if the sum was distributed by way of dividend.
- (3) To the extent necessary to adjust the rights of the members among themselves if shares or debentures become issuable in fractions, the directors may make any arrangements they think fit, including the issuing of fractional certificates or the making of cash payments or adopting a rounding policy.

## **Part 5**

### **Miscellaneous Provisions**

**Division 1—Communications to and by Company****100. Means of communication to be used**

- (1) Subject to these articles, anything sent or supplied by or to the company under these articles may be sent or supplied in any way in which Part 18 of the Ordinance provides for documents or information to be sent or supplied by or to the company for the purposes of the Ordinance.
- (2) Subject to these articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such a notice or document for the time being.
- (3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

**101. Failure to notify contact details**

- (1) A member ceases to be entitled to receive notices from the company if—
  - (a) the company sends 2 consecutive documents to the member over a period of at least 12 months; and
  - (b) each of those documents is returned undelivered, or the company receives notification that it has not been delivered.
- (2) A member who has ceased to be entitled to receive notices from the company becomes entitled to receive those notices again by sending the company—
  - (a) an address to be recorded in the register of members; or

- (b) if the member has agreed that the company should use a means of communication other than sending things to such an address, the information that the company needs to use that means of communication effectively.

**Division 2—Administrative Arrangements****102. Company seals**

- (1) A common seal may only be used by the authority of the directors.
- (2) A common seal must be a metallic seal having the company's name engraved on it in legible form.
- (3) Subject to paragraph (2), the directors may decide by what means and in what form a common seal or official seal (whether for use outside Hong Kong or for sealing securities) is to be used.
- (4) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least 1 director of the company and 1 authorized person.
- (5) For the purposes of this article, an authorized person is—
  - (a) any director of the company;
  - (b) the company secretary; or
  - (c) any person authorized by the directors for signing documents to which the common seal is applied.
- (6) If the company has an official seal for use outside Hong Kong, it may only be affixed to a document if its use on the document, or documents of a class to which it belongs, has been authorized by a decision of the directors.
- (7) If the company has an official seal for sealing securities, it may only be affixed to securities by the company secretary or

a person authorized to apply it to securities by the company secretary.

### 103. No right to inspect accounts and other records

A person is not entitled to inspect any of the company's accounting or other records or documents merely because of being a member, unless the person is authorized to do so by—

- (a) an enactment;
- (b) an order under section 740 of the Ordinance;
- (c) the directors; or
- (d) an ordinary resolution of the company.

### 104. Auditor's insurance

- (1) The directors may decide to purchase and maintain insurance, at the expense of the company, for an auditor of the company, or an auditor of an associated company of the company, against—
  - (a) any liability to any person attaching to the auditor in connection with any negligence, default, breach of duty or breach of trust (except for fraud) occurring in the course of performance of the duties of auditor in relation to the company or associated company (as the case may be); or
  - (b) any liability incurred by the auditor in defending any proceedings (whether civil or criminal) taken against the auditor for any negligence, default, breach of duty or breach of trust (including fraud) occurring in the course of performance of the duties of auditor in relation to the company or associated company (as the case may be).

- (2) In this article, a reference to performance of the duties of auditor includes the performance of the duties specified in section 415(6)(a) and (b) of the Ordinance.

### 105. Winding up

- (1) If the company is wound up and a surplus remains after the payment of debts proved in the winding up, the liquidator—
  - (a) may, with the required sanction, divide amongst the members in specie or kind the whole or any part of the assets of the company (whether they consist of property of the same kind or not) and may, for this purpose, set a value the liquidator thinks fair on any property to be so divided; and
  - (b) may determine how the division is to be carried out between the members or different classes of members.
- (2) The liquidator may, with the required sanction, vest the whole or part of those assets in trustees on trust for the benefit of the contributories that the liquidator, with the required sanction, thinks fit, but a member must not be compelled to accept any shares or other securities on which there is any liability.
- (3) In this article—  
*required sanction* (規定認許) means the sanction of a special resolution of the company and any other sanction required by the Ordinance.

**Schedule 2**

[s. 3]

**Model Articles for Private Companies Limited by Shares****Contents**

## Article

**Part 1****Interpretation**

1. Interpretation

**Part 2****Private Company**

2. Company is private company

**Part 3****Directors and Company Secretary****Division 1—Directors' Powers and Responsibilities**

3. Directors' general authority  
 4. Members' reserve power  
 5. Directors may delegate  
 6. Committees

**Division 2—Decision-taking by Directors**

7. Directors to take decision collectively

## Article

8. Unanimous decisions  
 9. Calling directors' meetings  
 10. Participation in directors' meetings  
 11. Quorum for directors' meetings  
 12. Meetings if total number of directors less than quorum  
 13. Chairing of directors' meetings  
 14. Chairperson's casting vote at directors' meetings  
 15. Alternates voting at directors' meetings  
 16. Conflicts of interest  
 17. Supplementary provisions as to conflicts of interest  
 18. Validity of acts of meeting of directors  
 19. Record of decisions to be kept  
 20. Written record of decision of sole director  
 21. Directors' discretion to make further rules  
**Division 3—Appointment and Retirement of Directors**  
 22. Appointment and retirement of directors  
 23. Retiring director eligible for reappointment  
 24. Composite resolution  
 25. Termination of director's appointment  
 26. Directors' remuneration

## Article

27. Directors' expenses

**Division 4—Alternate Directors**

28. Appointment and removal of alternates

29. Rights and responsibilities of alternate directors

30. Termination of alternate directorship

**Division 5—Directors' Indemnity and Insurance**

31. Indemnity

32. Insurance

**Division 6—Company Secretary**

33. Appointment and removal of company secretary

**Part 4**

**Decision-taking by Members**

**Division 1—Organization of General Meetings**

34. General meetings

35. Notice of general meetings

36. Persons entitled to receive notice of general meetings

37. Accidental omission to give notice of general meetings

38. Attendance and speaking at general meetings

39. Quorum for general meetings

40. Chairing general meetings

## Article

41. Attendance and speaking by non-members

42. Adjournment

**Division 2—Voting at General Meetings**

43. General rules on voting

44. Errors and disputes

45. Demanding a poll

46. Number of votes a member has

47. Votes of joint holders of shares

48. Votes of mentally incapacitated members

49. Content of proxy notices

50. Execution of appointment of proxy on behalf of member appointing the proxy

51. Delivery of proxy notice and notice revoking appointment of proxy

52. Effect of member's voting in person on proxy's authority

53. Effect of proxy votes in case of death, mental incapacity, etc. of member appointing the proxy

54. Amendments to proposed resolutions

**Division 3—Application of Rules to Class Meetings**

55. Class meetings

**Part 5**

Article

**Shares and Distributions**

**Division 1—Issue of Shares**

56. All shares to be fully paid up

57. Powers to issue different classes of shares

**Division 2—Interests in Shares**

58. Company only bound by absolute interests

**Division 3—Share Certificates**

59. Certificates to be issued except in certain cases

60. Contents and execution of share certificates

61. Consolidated share certificates

62. Replacement share certificates

**Division 4—Transfer and Transmission of Shares**

63. Transfer of shares

64. Power of directors to refuse transfer of shares

65. Transmission of shares

66. Transmittees' rights

67. Exercise of transmittees' rights

68. Transmittees bound by prior notices

**Division 5—Alteration and Reduction of Share Capital, Share Buy-backs and Allotment of Shares**

69. Alteration of share capital

Article

70. Reduction of share capital

71. Share buy-backs

72. Allotment of shares

**Division 6—Distributions**

73. Procedure for declaring dividends

74. Payment of dividends and other distributions

75. No interest on distributions

76. Unclaimed distributions

77. Non-cash distributions

78. Waiver of distributions

**Division 7—Capitalization of Profits**

79. Capitalization of profits

**Part 6**

**Miscellaneous Provisions**

**Division 1—Communications to and by Company**

80. Means of communication to be used

**Division 2—Administrative Arrangements**

81. Company seals

82. No right to inspect accounts and other records

83. Auditor's insurance

## Article

## 84. Winding up

**Part 1****Interpretation****1. Interpretation**

(1) In these articles—

**alternate** (候補者) and **alternate director** (候補董事) mean a person appointed by a director as an alternate under article 28(1);

**appointor** (委任者)—see article 28(1);

**articles** (本《章程細則》) means the articles of association of the company;

**associated company** (有聯繫公司) means—

- (a) a subsidiary of the company;
- (b) a holding company of the company; or
- (c) a subsidiary of such a holding company;

**distribution recipient** (分派對象) means, in relation to a share in respect of which a dividend or other sum is payable—

- (a) the holder of the share;
- (b) if the share has 2 or more joint holders, whichever of them is named first in the register of members; or
- (c) if the holder is no longer entitled to the share by reason of death or bankruptcy or otherwise by operation of law, the transmittee;

**fully paid** (已繳足款), in relation to a share, means the price at which the share was issued has been fully paid to the company;

**holder** (持有人), in relation to a share, means the person whose name is entered in the register of members as the holder of the share;

**mental incapacity** (精神上無行為能力) has the meaning given by section 2(1) of the Mental Health Ordinance (Cap. 136);

**mentally incapacitated person** (精神上無行為能力者) means a person who is found under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs;

**Ordinance** (《條例》) means the Companies Ordinance (28 of 2012);

**paid** (已繳) means paid or credited as paid;

**proxy notice** (代表通知書)—see article 49(1);

**register of members** (成員登記冊) means the register of members of the company;

**transmittee** (承傳人) means a person entitled to a share by reason of the death or bankruptcy of a member or otherwise by operation of law.

(2) Other words or expressions used in these articles have the same meaning as in the Ordinance as in force on the date these articles become binding on the company.

(3) For the purposes of these articles, a document is authenticated if it is authenticated in any way in which section 828(5) or 829(3) of the Ordinance provides for documents or information to be authenticated for the purposes of the Ordinance.

**Part 2**

## Private Company

### 2. Company is private company

- (1) The company is a private company and accordingly—
  - (a) a member's right to transfer shares is restricted in the manner specified in this article;
  - (b) the number of members is limited to 50; and
  - (c) any invitation to the public to subscribe for any shares or debentures of the company is prohibited.
- (2) The directors may in their discretion refuse to register the transfer of a share.
- (3) In paragraph (1)(b)—  
*member* (成員) excludes—
  - (a) a member who is an employee of the company; and
  - (b) a person who was a member while being an employee of the company and who continues to be a member after ceasing to be such an employee.
- (4) For the purposes of this article, 2 or more persons who hold shares in the company jointly are to be regarded as 1 member.

## Part 3

### Directors and Company Secretary

#### Division 1—Directors' Powers and Responsibilities

### 3. Directors' general authority

- (1) Subject to the Ordinance and these articles, the business and affairs of the company are managed by the directors, who may exercise all the powers of the company.

- (2) An alteration of these articles does not invalidate any prior act of the directors that would have been valid if the alteration had not been made.
- (3) The powers given by this article are not limited by any other power given to the directors by these articles.
- (4) A directors' meeting at which a quorum is present may exercise all powers exercisable by the directors.

### 4. Members' reserve power

- (1) The members may, by special resolution, direct the directors to take, or refrain from taking, specified action.
- (2) The special resolution does not invalidate anything that the directors have done before the passing of the resolution.

### 5. Directors may delegate

- (1) Subject to these articles, the directors may, if they think fit, delegate any of the powers that are conferred on them under these articles—
  - (a) to any person or committee;
  - (b) by any means (including by power of attorney);
  - (c) to any extent and without territorial limit;
  - (d) in relation to any matter; and
  - (e) on any terms and conditions.
- (2) If the directors so specify, the delegation may authorize further delegation of the directors' powers by any person to whom they are delegated.
- (3) The directors may—
  - (a) revoke the delegation wholly or in part; or
  - (b) revoke or alter its terms and conditions.

**6. Committees**

- (1) The directors may make rules providing for the conduct of business of the committees to which they have delegated any of their powers.
- (2) The committees must comply with the rules.

**Division 2—Decision-taking by Directors****7. Directors to take decision collectively**

- (1) A decision of the directors may only be taken—
  - (a) by a majority of the directors at a meeting; or
  - (b) in accordance with article 8.
- (2) Paragraph (1) does not apply if—
  - (a) the company only has 1 director; and
  - (b) no provision of these articles requires it to have more than one director.
- (3) If paragraph (1) does not apply, the director may take decisions without regard to any of the provisions of these articles relating to directors' decision-taking.

**8. Unanimous decisions**

- (1) A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other (either directly or indirectly) by any means that they share a common view on a matter.
- (2) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.

- (3) A reference in this article to eligible directors is a reference to directors who would have been entitled to vote on the matter if it had been proposed as a resolution at a directors' meeting.
- (4) A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at a directors' meeting.

**9. Calling directors' meetings**

- (1) Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorizing the company secretary to give such notice.
- (2) Notice of a directors' meeting must indicate—
  - (a) its proposed date and time; and
  - (b) where it is to take place.
- (3) Notice of a directors' meeting must be given to each director, but need not be in writing.

**10. Participation in directors' meetings**

- (1) Subject to these articles, directors participate in a directors' meeting, or part of a directors' meeting, when—
  - (a) the meeting has been called and takes place in accordance with these articles; and
  - (b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- (2) In determining whether directors are participating in a directors' meeting, it is irrelevant where a director is and how they communicate with each other.
- (3) If all the directors participating in a directors' meeting are not in the same place, they may regard the meeting as taking place wherever any one of them is.

**11. Quorum for directors' meetings**

- (1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- (2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors and unless otherwise fixed it is 2.

**12. Meetings if total number of directors less than quorum**

If the total number of directors for the time being is less than the quorum required for directors' meetings, the directors must not take any decision other than a decision—

- (a) to appoint further directors; or
- (b) to call a general meeting so as to enable the members to appoint further directors.

**13. Chairing of directors' meetings**

- (1) The directors may appoint a director to chair their meetings.
- (2) The person appointed for the time being is known as the chairperson.
- (3) The directors may terminate the appointment of the chairperson at any time.
- (4) If the chairperson is not participating in a directors' meeting within 10 minutes of the time at which it was to start or is unwilling to chair the meeting, the participating directors may appoint one of themselves to chair it.

**14. Chairperson's casting vote at directors' meetings**

- (1) If the numbers of votes for and against a proposal are equal, the chairperson or other director chairing the directors' meeting has a casting vote.

- (2) Paragraph (1) does not apply if, in accordance with these articles, the chairperson or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

**15. Alternates voting at directors' meetings**

A director who is also an alternate director has an additional vote on behalf of each appointor who—

- (a) is not participating in a directors' meeting; and
- (b) would have been entitled to vote if he or she were participating in it.

**16. Conflicts of interest**

- (1) This article applies if—
  - (a) a director is in any way (directly or indirectly) interested in a transaction, arrangement or contract with the company that is significant in relation to the company's business; and
  - (b) the director's interest is material.
- (2) The director must declare the nature and extent of the director's interest to the other directors in accordance with section 536 of the Ordinance.
- (3) The director and the director's alternate must neither—
  - (a) vote in respect of the transaction, arrangement or contract in which the director is so interested; nor
  - (b) be counted for quorum purposes in respect of the transaction, arrangement or contract.
- (4) Paragraph (3) does not preclude the alternate from—

- (a) voting in respect of the transaction, arrangement or contract on behalf of another appointor who does not have such an interest; and
- (b) being counted for quorum purposes in respect of the transaction, arrangement or contract.
- (5) If the director or the director's alternate contravenes paragraph (3)(a), the vote must not be counted.
- (6) Paragraph (3) does not apply to—
  - (a) an arrangement for giving a director any security or indemnity in respect of money lent by the director to or obligations undertaken by the director for the benefit of the company;
  - (b) an arrangement for the company to give any security to a third party in respect of a debt or obligation of the company for which the director has assumed responsibility wholly or in part under a guarantee or indemnity or by the deposit of a security;
  - (c) an arrangement under which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries, which do not provide special benefits for directors or former directors; or
  - (d) an arrangement to subscribe for or underwrite shares.
- (7) A reference in this article (except in paragraphs (6)(d) and (8)) to a transaction, arrangement or contract includes a proposed transaction, arrangement or contract.
- (8) In this article—
 

***arrangement to subscribe for or underwrite shares*** (認購或包銷股份安排) means—

  - (a) a subscription or proposed subscription for shares or other securities of the company;

- (b) an agreement or proposed agreement to subscribe for shares or other securities of the company; or
- (c) an agreement or proposed agreement to underwrite any of those shares or securities.

#### 17. Supplementary provisions as to conflicts of interest

- (1) A director may hold any other office or position of profit under the company (other than the office of auditor and if the company has only 1 director, the office of company secretary) in conjunction with the office of director for a period and on terms (as to remuneration or otherwise) that the directors determine.
- (2) A director or intending director is not disqualified by the office of director from contracting with the company—
  - (a) with regard to the tenure of the other office or position of profit mentioned in paragraph (1); or
  - (b) as vendor, purchaser or otherwise.
- (3) The contract mentioned in paragraph (2) or any transaction, arrangement or contract entered into by or on behalf of the company in which any director is in any way interested is not liable to be avoided.
- (4) A director who has entered into a contract mentioned in paragraph (2) or is interested in a transaction, arrangement or contract mentioned in paragraph (3) is not liable to account to the company for any profit realized by the transaction, arrangement or contract by reason of—
  - (a) the director holding the office; or
  - (b) the fiduciary relation established by the office.
- (5) Paragraph (1), (2), (3) or (4) only applies if the director has declared the nature and extent of the director's interest under

the paragraph to the other directors in accordance with section 536 of the Ordinance.

- (6) A director of the company may be a director or other officer of, or be otherwise interested in—
- (a) any company promoted by the company; or
  - (b) any company in which the company may be interested as shareholder or otherwise.
- (7) Subject to the Ordinance, the director is not accountable to the company for any remuneration or other benefits received by the director as a director or officer of, or from the director's interest in, the other company unless the company otherwise directs.

#### 18. **Validity of acts of meeting of directors**

The acts of any meeting of directors or of a committee of directors or the acts of any person acting as a director are as valid as if the directors or the person had been duly appointed as a director and was qualified to be a director, even if it is afterwards discovered that—

- (a) there was a defect in the appointment of any of the directors or of the person acting as a director;
- (b) any one or more of them were not qualified to be a director or were disqualified from being a director;
- (c) any one or more of them had ceased to hold office as a director; or
- (d) any one or more of them were not entitled to vote on the matter in question.

#### 19. **Record of decisions to be kept**

The directors must ensure that the company keeps a written record of every decision taken by the directors under article 7(1) for at least 10 years from the date of the decision.

#### 20. **Written record of decision of sole director**

- (1) This article applies if the company has only 1 director and the director takes any decision that—
- (a) may be taken in a directors' meeting; and
  - (b) has effect as if agreed in a directors' meeting.
- (2) The director must provide the company with a written record of the decision within 7 days after the decision is made.
- (3) The director is not required to comply with paragraph (2) if the decision is taken by way of a resolution in writing.
- (4) If the decision is taken by way of a resolution in writing, the company must keep the resolution for at least 10 years from the date of the decision.
- (5) The company must also keep a written record provided to it in accordance with paragraph (2) for at least 10 years from the date of the decision.

#### 21. **Directors' discretion to make further rules**

Subject to these articles, the directors may make any rule that they think fit about—

- (a) how they take decisions; and
- (b) how the rules are to be recorded or communicated to directors.

### **Division 3—Appointment and Retirement of Directors**

#### 22. **Appointment and retirement of directors**

- (1) A person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—
  - (a) by ordinary resolution; or
  - (b) by a decision of the directors.
- (2) Unless otherwise specified in the appointment, a director appointed under paragraph (1)(a) holds office for an unlimited period of time.
- (3) An appointment under paragraph (1)(b) may only be made to—
  - (a) fill a casual vacancy; or
  - (b) appoint a director as an addition to the existing directors if the total number of directors does not exceed the number fixed in accordance with these articles.
- (4) A director appointed under paragraph (1)(b) must—
  - (a) retire from office at the next annual general meeting following the appointment; or
  - (b) if the company has dispensed with the holding of annual general meetings or is not required to hold annual general meetings, retire from office before the end of 9 months after the end of the company's accounting reference period by reference to which the financial year in which the director was appointed is to be determined.

### 23. Retiring director eligible for reappointment

A retiring director is eligible for reappointment to the office.

### 24. Composite resolution

- (1) This article applies if proposals are under consideration concerning the appointment of 2 or more directors to offices or employments with the company or any other body corporate.

- (2) The proposals may be divided and considered in relation to each director separately.
- (3) Each of the directors concerned is entitled to vote (if the director is not for another reason precluded from voting) and be counted in the quorum in respect of each resolution except that concerning the director's own appointment.

### 25. Termination of director's appointment

A person ceases to be a director if the person—

- (a) ceases to be a director under the Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) or is prohibited from being a director by law;
- (b) becomes bankrupt or makes any arrangement or composition with the person's creditors generally;
- (c) becomes a mentally incapacitated person;
- (d) resigns the office of director by notice in writing of the resignation in accordance with section 464(5) of the Ordinance;
- (e) for more than 6 months has been absent without the directors' permission from directors' meetings held during that period; or
- (f) is removed from the office of director by an ordinary resolution of the company.

### 26. Directors' remuneration

- (1) Directors' remuneration must be determined by the company at a general meeting.
- (2) A director's remuneration may—
  - (a) take any form; and

- (b) include any arrangements in connection with the payment of a retirement benefit to or in respect of that director.

- (3) Directors' remuneration accrues from day to day.

## 27. Directors' expenses

The company may pay any travelling, accommodation and other expenses properly incurred by directors in connection with—

- (a) their attendance at—
  - (i) meetings of directors or committees of directors;
  - (ii) general meetings; or
  - (iii) separate meetings of the holders of any class of shares or of debentures of the company; or
- (b) the exercise of their powers and the discharge of their responsibilities in relation to the company.

## Division 4—Alternate Directors

## 28. Appointment and removal of alternates

- (1) A director (*appointor*) may appoint as an alternate any other director, or any other person approved by resolution of the directors.
- (2) An alternate may exercise the powers and carry out the responsibilities of the alternate's appointor, in relation to the taking of decisions by the directors in the absence of the alternate's appointor.
- (3) An appointment or removal of an alternate by the alternate's appointor must be effected—
  - (a) by notice to the company; or
  - (b) in any other manner approved by the directors.

- (4) The notice must be authenticated by the appointor.
- (5) The notice must—
  - (a) identify the proposed alternate; and
  - (b) if it is a notice of appointment, contain a statement authenticated by the proposed alternate indicating the proposed alternate's willingness to act as the alternate of the appointor.
- (6) If an alternate is removed by resolution of the directors, the company must as soon as practicable give notice of the removal to the alternate's appointor.

## 29. Rights and responsibilities of alternate directors

- (1) An alternate director has the same rights as the alternate's appointor in relation to any decision taken by the directors under article 7(1).
- (2) Unless these articles specify otherwise, alternate directors—
  - (a) are deemed for all purposes to be directors;
  - (b) are liable for their own acts and omissions;
  - (c) are subject to the same restrictions as their appointors; and
  - (d) are deemed to be agents of or for their appointors.
- (3) Subject to article 16(3), a person who is an alternate director but not a director—
  - (a) may be counted as participating for determining whether a quorum is participating (but only if that person's appointor is not participating); and
  - (b) may sign a written resolution (but only if it is not signed or to be signed by that person's appointor).
- (4) No alternate director may be counted as more than one director for the purposes mentioned in paragraph (3).

- (5) An alternate director is not entitled to receive any remuneration from the company for serving as an alternate director.
- (6) But the alternate's appointor may, by notice in writing made to the company, direct that any part of the appointor's remuneration be paid to the alternate.

### 30. Termination of alternate directorship

- (1) An alternate director's appointment as an alternate terminates—
  - (a) if the alternate's appointor revokes the appointment by notice to the company in writing specifying when it is to terminate;
  - (b) on the occurrence in relation to the alternate of any event which, if it occurred in relation to the alternate's appointor, would result in the termination of the appointor's appointment as a director;
  - (c) on the death of the alternate's appointor; or
  - (d) when the alternate's appointor's appointment as a director terminates.
- (2) If the alternate was not a director when appointed as an alternate, the alternate's appointment as an alternate terminates if—
  - (a) the approval under article 28(1) is withdrawn or revoked; or
  - (b) the company by an ordinary resolution passed at a general meeting terminates the appointment.

## Division 5—Directors' Indemnity and Insurance

### 31. Indemnity

- (1) A director or former director of the company may be indemnified out of the company's assets against any liability incurred by the director to a person other than the company or an associated company of the company in connection with any negligence, default, breach of duty or breach of trust in relation to the company or associated company (as the case may be).
- (2) Paragraph (1) only applies if the indemnity does not cover—
  - (a) any liability of the director to pay—
    - (i) a fine imposed in criminal proceedings; or
    - (ii) a sum payable by way of a penalty in respect of non-compliance with any requirement of a regulatory nature; or
  - (b) any liability incurred by the director—
    - (i) in defending criminal proceedings in which the director is convicted;
    - (ii) in defending civil proceedings brought by the company, or an associated company of the company, in which judgment is given against the director;
    - (iii) in defending civil proceedings brought on behalf of the company by a member of the company or of an associated company of the company, in which judgment is given against the director;
    - (iv) in defending civil proceedings brought on behalf of an associated company of the company by a member of the associated company or by a member of an associated company of the associated company, in which judgment is given against the director; or

- (v) in connection with an application for relief under section 903 or 904 of the Ordinance in which the Court refuses to grant the director relief.
- (3) A reference in paragraph (2)(b) to a conviction, judgment or refusal of relief is a reference to the final decision in the proceedings.
- (4) For the purposes of paragraph (3), a conviction, judgment or refusal of relief—
  - (a) if not appealed against, becomes final at the end of the period for bringing an appeal; or
  - (b) if appealed against, becomes final when the appeal, or any further appeal, is disposed of.
- (5) For the purposes of paragraph (4)(b), an appeal is disposed of if—
  - (a) it is determined, and the period for bringing any further appeal has ended; or
  - (b) it is abandoned or otherwise ceases to have effect.

### 32. Insurance

The directors may decide to purchase and maintain insurance, at the expense of the company, for a director of the company, or a director of an associated company of the company, against—

- (a) any liability to any person attaching to the director in connection with any negligence, default, breach of duty or breach of trust (except for fraud) in relation to the company or associated company (as the case may be); or
- (b) any liability incurred by the director in defending any proceedings (whether civil or criminal) taken against the director for any negligence, default, breach of duty or breach of trust (including fraud) in relation to the company or associated company (as the case may be).

## Division 6—Company Secretary

### 33. Appointment and removal of company secretary

- (1) The directors may appoint a company secretary for a term, at a remuneration and on conditions they think fit.
- (2) The directors may remove a company secretary appointed by them.

## Part 4

## Decision-taking by Members

### Division 1—Organization of General Meetings

#### 34. General meetings

- (1) Subject to sections 611, 612 and 613 of the Ordinance, the company must, in respect of each financial year of the company, hold a general meeting as its annual general meeting in accordance with section 610 of the Ordinance.
- (2) The directors may, if they think fit, call a general meeting.
- (3) If the directors are required to call a general meeting under section 566 of the Ordinance, they must call it in accordance with section 567 of the Ordinance.
- (4) If the directors do not call a general meeting in accordance with section 567 of the Ordinance, the members who requested the meeting, or any of them representing more than one half of the total voting rights of all of them, may themselves call a general meeting in accordance with section 568 of the Ordinance.

#### 35. Notice of general meetings

- (1) An annual general meeting must be called by notice of at least 21 days in writing.
- (2) A general meeting other than an annual general meeting must be called by notice of at least 14 days in writing.
- (3) The notice is exclusive of—
  - (a) the day on which it is served or deemed to be served; and
  - (b) the day for which it is given.
- (4) The notice must—
  - (a) specify the date and time of the meeting;
  - (b) specify the place of the meeting (and if the meeting is to be held in 2 or more places, the principal place of the meeting and the other place or places of the meeting);
  - (c) state the general nature of the business to be dealt with at the meeting;
  - (d) for a notice calling an annual general meeting, state that the meeting is an annual general meeting;
  - (e) if a resolution (whether or not a special resolution) is intended to be moved at the meeting—
    - (i) include notice of the resolution; and
    - (ii) include or be accompanied by a statement containing any information or explanation that is reasonably necessary to indicate the purpose of the resolution;
  - (f) if a special resolution is intended to be moved at the meeting, specify the intention and include the text of the special resolution; and
  - (g) contain a statement specifying a member's right to appoint a proxy under section 596(1) and (3) of the Ordinance.

- (5) Paragraph (4)(e) does not apply in relation to a resolution of which—
  - (a) notice has been included in the notice of the meeting under section 567(3) or 568(2) of the Ordinance; or
  - (b) notice has been given under section 615 of the Ordinance.
- (6) Despite the fact that a general meeting is called by shorter notice than that specified in this article, it is regarded as having been duly called if it is so agreed—
  - (a) for an annual general meeting, by all the members entitled to attend and vote at the meeting; and
  - (b) in any other case, by a majority in number of the members entitled to attend and vote at the meeting, being a majority together representing at least 95% of the total voting rights at the meeting of all the members.

### **36. Persons entitled to receive notice of general meetings**

- (1) Notice of a general meeting must be given to—
  - (a) every member; and
  - (b) every director.
- (2) In paragraph (1), the reference to a member includes a transmittee, if the company has been notified of the transmittee's entitlement to a share.
- (3) If notice of a general meeting or any other document relating to the meeting is required to be given to a member, the company must give a copy of it to its auditor (if more than one auditor, to everyone of them) at the same time as the notice or the other document is given to the member.

### **37. Accidental omission to give notice of general meetings**

Any accidental omission to give notice of a general meeting to, or any non-receipt of notice of a general meeting by, any person entitled to receive notice does not invalidate the proceedings at the meeting.

### 38. Attendance and speaking at general meetings

- (1) A person is able to exercise the right to speak at a general meeting when the person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions that the person has on the business of the meeting.
- (2) A person is able to exercise the right to vote at a general meeting when—
  - (a) the person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
  - (b) the person's vote can be taken into account in determining whether or not those resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- (3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
- (4) In determining attendance at a general meeting, it is immaterial whether any 2 or more members attending it are in the same place as each other.
- (5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have rights to speak and vote at the meeting, they are able to exercise them.

### 39. Quorum for general meetings

- (1) Two members present in person or by proxy constitute a quorum at a general meeting.
- (2) No business other than the appointment of the chairperson of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

### 40. Chairing general meetings

- (1) If the chairperson (if any) of the board of directors is present at a general meeting and is willing to preside as chairperson at the meeting, the meeting is to be presided over by him or her.
- (2) The directors present at a general meeting must elect one of themselves to be the chairperson if—
  - (a) there is no chairperson of the board of directors;
  - (b) the chairperson is not present within 15 minutes after the time appointed for holding the meeting;
  - (c) the chairperson is unwilling to act; or
  - (d) the chairperson has given notice to the company of the intention not to attend the meeting.
- (3) The members present at a general meeting must elect one of themselves to be the chairperson if—
  - (a) no director is willing to act as chairperson; or
  - (b) no director is present within 15 minutes after the time appointed for holding the meeting.
- (4) A proxy may be elected to be the chairperson of a general meeting by a resolution of the company passed at the meeting.

### 41. Attendance and speaking by non-members

- (1) Directors may attend and speak at general meetings, whether or not they are members of the company.

- (2) The chairperson of a general meeting may permit other persons to attend and speak at a general meeting even though they are not—
  - (a) members of the company; or
  - (b) otherwise entitled to exercise the rights of members in relation to general meetings.

#### 42. Adjournment

- (1) If a quorum is not present within half an hour from the time appointed for holding a general meeting, the meeting must—
  - (a) if called on the request of members, be dissolved; or
  - (b) in any other case, be adjourned to the same day in the next week, at the same time and place, or to another day and at another time and place that the directors determine.
- (2) If at the adjourned meeting, a quorum is not present within half an hour from the time appointed for holding the meeting, the member or members present in person or by proxy constitute a quorum.
- (3) The chairperson may adjourn a general meeting at which a quorum is present if—
  - (a) the meeting consents to an adjournment; or
  - (b) it appears to the chairperson that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.
- (4) The chairperson must adjourn a general meeting if directed to do so by the meeting.
- (5) When adjourning a general meeting, the chairperson must specify the date, time and place to which it is adjourned.

- (6) Only the business left unfinished at the general meeting may be transacted at the adjourned meeting.
- (7) If a general meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for an original meeting.
- (8) If a general meeting is adjourned for less than 30 days, it is not necessary to give any notice of the adjourned meeting.

### Division 2—Voting at General Meetings

#### 43. General rules on voting

- (1) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with these articles.
- (2) If there is an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded, is entitled to a second or casting vote.
- (3) On a vote on a resolution on a show of hands at a general meeting, a declaration by the chairperson that the resolution—
  - (a) has or has not been passed; or
  - (b) has passed by a particular majority,
 is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (4) An entry in respect of the declaration in the minutes of the meeting is also conclusive evidence of that fact without the proof.

#### 44. Errors and disputes

- (1) Any objection to the qualification of any person voting at a general meeting may only be raised at the meeting or adjourned meeting at which the vote objected to is tendered, and a vote not disallowed at the meeting is valid.
- (2) Any objection must be referred to the chairperson of the meeting whose decision is final.

#### 45. Demanding a poll

- (1) A poll on a resolution may be demanded—
  - (a) in advance of the general meeting where it is to be put to the vote; or
  - (b) at a general meeting, either before or on the declaration of the result of a show of hands on that resolution.
- (2) A poll on a resolution may be demanded by—
  - (a) the chairperson of the meeting;
  - (b) at least 2 members present in person or by proxy; or
  - (c) any member or members present in person or by proxy and representing at least 5% of the total voting rights of all the members having the right to vote at the meeting.
- (3) The instrument appointing a proxy is regarded as conferring authority to demand or join in demanding a poll on a resolution.
- (4) A demand for a poll on a resolution may be withdrawn.

#### 46. Number of votes a member has

- (1) On a vote on a resolution on a show of hands at a general meeting—
  - (a) every member present in person has 1 vote; and
  - (b) every proxy present who has been duly appointed by a member entitled to vote on the resolution has 1 vote.

- (2) If a member appoints more than one proxy, the proxies so appointed are not entitled to vote on the resolution on a show of hands.
- (3) On a vote on a resolution on a poll taken at a general meeting—
  - (a) every member present in person has 1 vote for each share held by him or her; and
  - (b) every proxy present who has been duly appointed by a member has 1 vote for each share in respect of which the proxy is appointed.
- (4) This article has effect subject to any rights or restrictions attached to any shares or class of shares.

#### 47. Votes of joint holders of shares

- (1) For joint holders of shares, only the vote of the most senior holder who votes (and any proxies duly authorized by the holder) may be counted.
- (2) For the purposes of this article, the seniority of a holder of a share is determined by the order in which the names of the joint holders appear in the register of members.

#### 48. Votes of mentally incapacitated members

- (1) A member who is a mentally incapacitated person may vote, whether on a show of hands or on a poll, by the member's committee, receiver, guardian or other person in the nature of a committee, receiver or guardian appointed by the Court.
- (2) The committee, receiver, guardian or other person may vote by proxy on a show of hands or on a poll.

#### 49. Content of proxy notices

- (1) A proxy may only validly be appointed by a notice in writing (*proxy notice*) that—
  - (a) states the name and address of the member appointing the proxy;
  - (b) identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed;
  - (c) is authenticated, or is signed on behalf of the member appointing the proxy; and
  - (d) is delivered to the company in accordance with these articles and any instructions contained in the notice of the general meeting in relation to which the proxy is appointed.
- (2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- (3) If the company requires or allows a proxy notice to be delivered to it in electronic form, it may require the delivery to be properly protected by a security arrangement it specifies.
- (4) A proxy notice may specify how the proxy appointed under it is to vote (or that the proxy is to abstain from voting) on one or more resolutions dealing with any business to be transacted at a general meeting.
- (5) Unless a proxy notice indicates otherwise, it must be regarded as—
  - (a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the general meeting; and
  - (b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

50. **Execution of appointment of proxy on behalf of member appointing the proxy**

If a proxy notice is not authenticated, it must be accompanied by written evidence of the authority of the person who executed the appointment to execute it on behalf of the member appointing the proxy.
51. **Delivery of proxy notice and notice revoking appointment of proxy**
  - (1) A proxy notice does not take effect unless it is received by the company—
    - (a) for a general meeting or adjourned general meeting, at least 48 hours before the time appointed for holding the meeting or adjourned meeting; and
    - (b) for a poll taken more than 48 hours after it was demanded, at least 24 hours before the time appointed for taking the poll.
  - (2) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
  - (3) A notice revoking the appointment only takes effect if it is received by the company—
    - (a) for a general meeting or adjourned general meeting, at least 48 hours before the time appointed for holding the meeting or adjourned meeting; and
    - (b) for a poll taken more than 48 hours after it was demanded, at least 24 hours before the time appointed for taking the poll.
52. **Effect of member's voting in person on proxy's authority**

- (1) A proxy's authority in relation to a resolution is to be regarded as revoked if the member who has appointed the proxy—
  - (a) attends in person the general meeting at which the resolution is to be decided; and
  - (b) exercises, in relation to the resolution, the voting right attached to the shares in respect of which the proxy is appointed.
- (2) A member who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of the meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of the member.

**53. Effect of proxy votes in case of death, mental incapacity, etc. of member appointing the proxy**

- (1) A vote given in accordance with the terms of a proxy notice is valid despite—
  - (a) the previous death or mental incapacity of the member appointing the proxy;
  - (b) the revocation of the appointment of the proxy or of the authority under which the appointment of the proxy is executed; or
  - (c) the transfer of the share in respect of which the proxy is appointed.
- (2) Paragraph (1) does not apply if notice in writing of the death, mental incapacity, revocation or transfer is received by the company—
  - (a) for a general meeting or adjourned general meeting, at least 48 hours before the time appointed for holding the meeting or adjourned meeting; and

- (b) for a poll taken more than 48 hours after it was demanded, at least 24 hours before the time appointed for taking the poll.

**54. Amendments to proposed resolutions**

- (1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—
  - (a) notice of the proposed amendment is given to the company secretary in writing; and
  - (b) the proposed amendment does not, in the reasonable opinion of the chairperson of the meeting, materially alter the scope of the resolution.
- (2) The notice must be given by a person entitled to vote at the general meeting at which it is to be proposed at least 48 hours before the meeting is to take place (or a later time the chairperson of the meeting determines).
- (3) A special resolution to be proposed at a general meeting may be amended by ordinary resolution if—
  - (a) the chairperson of the meeting proposes the amendment at the meeting at which the special resolution is to be proposed; and
  - (b) the amendment merely corrects a grammatical or other non-substantive error in the special resolution.
- (4) If the chairperson of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the vote on that resolution remains valid unless the Court orders otherwise.

**Division 3—Application of Rules to Class Meetings**

**55. Class meetings**

The provisions of these articles relating to general meetings apply, with any necessary modifications, to meetings of the holders of any class of shares.

## **Part 5**

### **Shares and Distributions**

#### **Division 1—Issue of Shares**

##### **56. All shares to be fully paid up**

No share is to be issued unless the share is fully paid.

##### **57. Powers to issue different classes of shares**

- (1) Without affecting any special rights previously conferred on the holders of any existing shares or class of shares, the company may issue shares with—
  - (a) preferred, deferred or other special rights; or
  - (b) any restrictions, whether in regard to dividend, voting, return of capital or otherwise, that the company may from time to time by ordinary resolution determine.
- (2) Subject to Division 4 of Part 5 of the Ordinance, the company may issue shares on the terms that they are to be redeemed, or liable to be redeemed, at the option of the company or the holders of the shares.
- (3) The directors may determine the terms, conditions and manner of redemption of the shares.

#### **Division 2—Interests in Shares**

##### **58. Company only bound by absolute interests**

- (1) Except as required by law, no person is to be recognized by the company as holding any share on any trust.
- (2) Except as otherwise required by law or these articles, the company is not in any way to be bound by or recognize any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.
- (3) Paragraph (2) applies even though the company has notice of the interest.

#### **Division 3—Share Certificates**

##### **59. Certificates to be issued except in certain cases**

- (1) The company must issue each member, free of charge, with one or more certificates in respect of the shares that the member holds, within—
  - (a) 2 months after allotment or lodgment of a proper instrument of transfer; or
  - (b) any other period that the conditions of issue provide.
- (2) No certificate may be issued in respect of shares of more than one class.
- (3) If more than one person holds a share, only 1 certificate may be issued in respect of it.

##### **60. Contents and execution of share certificates**

- (1) A certificate must specify—
  - (a) in respect of how many shares and of what class the certificate is issued;
  - (b) the fact that the shares are fully paid; and
  - (c) any distinguishing numbers assigned to them.
- (2) A certificate must—

- (a) have affixed to it the company's common seal or the company's official seal under section 126 of the Ordinance; or
- (b) be otherwise executed in accordance with the Ordinance.

#### 61. Consolidated share certificates

- (1) A member may request the company, in writing, to replace—
  - (a) the member's separate certificates with a consolidated certificate; or
  - (b) the member's consolidated certificate with 2 or more separate certificates representing the proportion of the shares that the member specifies.
- (2) A consolidated certificate must not be issued unless any certificates that it is to replace have first been returned to the company for cancellation.
- (3) Separate certificates must not be issued unless the consolidated certificate that they are to replace has first been returned to the company for cancellation.

#### 62. Replacement share certificates

- (1) If a certificate issued in respect of a member's shares is defaced, damaged, lost or destroyed, the member is entitled to be issued with a replacement certificate in respect of the same shares.
- (2) A member exercising the right to be issued with a replacement certificate—
  - (a) may at the same time exercise the right to be issued with a single certificate, separate certificates or a consolidated certificate;
  - (b) must return the certificate that is to be replaced to the company if it is defaced or damaged; and

- (c) must comply with the conditions as to evidence, indemnity and the payment of a reasonable fee that the directors decide.

### Division 4—Transfer and Transmission of Shares

#### 63. Transfer of shares

- (1) Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of both the transferor and the transferee.
- (2) No fee may be charged by the company for registering any instrument of transfer or other document relating to or affecting the title to any share.
- (3) The company may retain any instrument of transfer that is registered.
- (4) The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.

#### 64. Power of directors to refuse transfer of shares

- (1) Without limiting article 2(2), the directors may refuse to register the transfer of a share if—
  - (a) the instrument of transfer is not lodged at the company's registered office or another place that the directors have appointed;
  - (b) the instrument of transfer is not accompanied by the certificate for the share to which it relates, or other evidence the directors reasonably require to show the transferor's right to make the transfer, or evidence of the right of someone other than the transferor to make the transfer on the transferor's behalf; or

- (c) the transfer is in respect of more than one class of shares.
- (2) If the directors refuse to register the transfer of a share under paragraph (1) or article 2(2)—
  - (a) the transferor or transferee may request a statement of the reasons for the refusal; and
  - (b) the instrument of transfer must be returned to the transferor or transferee who lodged it unless the directors suspect that the proposed transfer may be fraudulent.
- (3) The instrument of transfer must be returned in accordance with paragraph (2)(b) together with a notice of refusal within 2 months after the date on which the instrument of transfer was lodged with the company.
- (4) If a request is made under paragraph (2)(a), the directors must, within 28 days after receiving the request—
  - (a) send the transferor or transferee who made the request a statement of the reasons for the refusal; or
  - (b) register the transfer.

#### 65. Transmission of shares

If a member dies, the company may only recognize the following person or persons as having any title to a share of the deceased member—

- (a) if the deceased member was a joint holder of the share, the surviving holder or holders of the share; and
- (b) if the deceased member was a sole holder of the share, the legal personal representative of the deceased member.

#### 66. Transmittees' rights

- (1) If a transmittee produces evidence of entitlement to the share as the directors properly require, the transmittee may, subject

- to these articles, choose to become the holder of the share or to have the share transferred to another person.
- (2) The directors have the same right to refuse or suspend the registration as they would have had if the holder had transferred the share before the transmission.
- (3) A transmittee is entitled to the same dividends and other advantages to which the transmittee would be entitled if the transmittee were the holder of the share, except that the transmittee is not, before being registered as a member in respect of the share, entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.
- (4) The directors may at any time give notice requiring a transmittee to choose to become the holder of the share or to have the share transferred to another person.
- (5) If the notice is not complied with within 90 days of the notice being given, the directors may withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

#### 67. Exercise of transmittees' rights

- (1) If a transmittee chooses to become the holder of a share, the transmittee must notify the company in writing of the choice.
- (2) Within 2 months after receiving the notice, the directors must—
  - (a) register the transmittee as the holder of the share; or
  - (b) send the transmittee a notice of refusal of registration.
- (3) If the directors refuse registration, the transmittee may request a statement of the reasons for the refusal.

- (4) If a request is made under paragraph (3), the directors must, within 28 days after receiving the request—
  - (a) send the transmittee a statement of the reasons for the refusal; or
  - (b) register the transmittee as the holder of the share.
- (5) If the transmittee chooses to have the share transferred to another person, the transmittee must execute an instrument of transfer in respect of it.
- (6) All the limitations, restrictions and other provisions of these articles relating to the right to transfer and the registration of transfer of shares apply to the notice under paragraph (1) or the transfer under paragraph (5), as if the transmission had not occurred and the transfer were a transfer made by the holder of the share before the transmission.

**68. Transmittees bound by prior notices**

If a notice is given to a member in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was given to the member before the transmittee's name has been entered in the register of members.

**Division 5—Alteration and Reduction of Share Capital,  
Share Buy-backs and Allotment of Shares**

**69. Alteration of share capital**

The company may by ordinary resolution alter its share capital in any one or more of the ways set out in section 170(2)(a), (b), (c), (d), (e) and (f)(i) of the Ordinance, and section 170(3), (4), (5), (6), (7) and (8) of the Ordinance applies accordingly.

**70. Reduction of share capital**

The company may by special resolution reduce its share capital in accordance with Division 3 of Part 5 of the Ordinance.

**71. Share buy-backs**

The company may buy back its own shares (including any redeemable shares) in accordance with Division 4 of Part 5 of the Ordinance.

**72. Allotment of shares**

The directors must not exercise any power conferred on them to allot shares in the company without the prior approval of the company by resolution if the approval is required by section 140 of the Ordinance.

**Division 6—Distributions**

**73. Procedure for declaring dividends**

- (1) The company may at a general meeting declare dividends, but a dividend must not exceed the amount recommended by the directors.
- (2) The directors may from time to time pay the members interim dividends that appear to the directors to be justified by the profits of the company.
- (3) A dividend may only be paid out of the profits in accordance with Part 6 of the Ordinance.
- (4) Unless the members' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each member's holding of shares on the date of the resolution or decision to declare or pay it.

- (5) Before recommending any dividend, the directors may set aside out of the profits of the company any sums they think fit as reserves.
- (6) The directors may—
  - (a) apply the reserves for any purpose to which the profits of the company may be properly applied; and
  - (b) pending such an application, employ the reserves in the business of the company or invest them in any investments (other than shares of the company) that they think fit.
- (7) The directors may also without placing the sums to reserve carry forward any profits that they think prudent not to divide.

#### 74. Payment of dividends and other distributions

- (1) If a dividend or other sum that is a distribution is payable in respect of a share, it must be paid by one or more of the following means—
  - (a) transfer to a bank account specified by the distribution recipient either in writing or as the directors decide;
  - (b) sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors decide;
  - (c) sending a cheque made payable to the specified person by post to the specified person at the address the distribution recipient has specified either in writing or as the directors decide;

- (d) any other means of payment as the directors agree with the distribution recipient either in writing or as the directors decide.

#### (2) In this article—

*specified person* (指明人士) means a person specified by the distribution recipient either in writing or as the directors decide.

#### 75. No interest on distributions

The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by—

- (a) the terms on which the share was issued; or
- (b) the provisions of another agreement between the holder of the share and the company.

#### 76. Unclaimed distributions

- (1) If dividends or other sums are payable in respect of shares and they are not claimed after having been declared or become payable, they may be invested or made use of by the directors for the benefit of the company until claimed.
- (2) The payment of the dividends or other sums into a separate account does not make the company a trustee in respect of it.
- (3) A distribution recipient is no longer entitled to a dividend or other sum and it ceases to remain owing by the company, if—
  - (a) 12 years have passed from the date on which the dividend or other sum became due for payment; and
  - (b) the distribution recipient has not claimed it.

#### 77. Non-cash distributions

- (1) Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation

of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).

- (2) For paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, if any difficulty arises regarding the distribution—
  - (a) fixing the value of any assets;
  - (b) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and
  - (c) vesting any assets in trustees.

#### **78. Waiver of distributions**

- (1) Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by executing to the company a deed to that effect.
- (2) But if the share has more than one holder or more than one person is entitled to the share (whether by reason of the death or bankruptcy of one or more joint holders, or otherwise), the deed is not effective unless it is expressed to be executed by all the holders or other persons entitled to the share.

### **Division 7—Capitalization of Profits**

#### **79. Capitalization of profits**

- (1) The company may by ordinary resolution on the recommendation of the directors capitalize profits.
- (2) If the capitalization is to be accompanied by the issue of shares or debentures, the directors may apply the sum capitalized in the proportions in which the members would be entitled if the sum was distributed by way of dividend.

- (3) To the extent necessary to adjust the rights of the members among themselves if shares or debentures become issuable in fractions, the directors may make any arrangements they think fit, including the issuing of fractional certificates or the making of cash payments or adopting a rounding policy.

## **Part 6**

### **Miscellaneous Provisions**

#### **Division 1—Communications to and by Company**

##### **80. Means of communication to be used**

- (1) Subject to these articles, anything sent or supplied by or to the company under these articles may be sent or supplied in any way in which Part 18 of the Ordinance provides for documents or information to be sent or supplied by or to the company for the purposes of the Ordinance.
- (2) Subject to these articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such a notice or document for the time being.
- (3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

#### **Division 2—Administrative Arrangements**

##### **81. Company seals**

- (1) A common seal may only be used by the authority of the directors.
- (2) A common seal must be a metallic seal having the company's name engraved on it in legible form.
- (3) Subject to paragraph (2), the directors may decide by what means and in what form a common seal or official seal (whether for use outside Hong Kong or for sealing securities) is to be used.
- (4) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least 1 director of the company and 1 authorized person.
- (5) For the purposes of this article, an authorized person is—
  - (a) any director of the company;
  - (b) the company secretary; or
  - (c) any person authorized by the directors for signing documents to which the common seal is applied.
- (6) If the company has an official seal for use outside Hong Kong, it may only be affixed to a document if its use on the document, or documents of a class to which it belongs, has been authorized by a decision of the directors.
- (7) If the company has an official seal for sealing securities, it may only be affixed to securities by the company secretary or a person authorized to apply it to securities by the company secretary.

## 82. No right to inspect accounts and other records

A person is not entitled to inspect any of the company's accounting or other records or documents merely because of being a member, unless the person is authorized to do so by—

- (a) an enactment;

- (b) an order under section 740 of the Ordinance;
- (c) the directors; or
- (d) an ordinary resolution of the company.

## 83. Auditor's insurance

- (1) The directors may decide to purchase and maintain insurance, at the expense of the company, for an auditor of the company, or an auditor of an associated company of the company, against—
  - (a) any liability to any person attaching to the auditor in connection with any negligence, default, breach of duty or breach of trust (except for fraud) occurring in the course of performance of the duties of auditor in relation to the company or associated company (as the case may be); or
  - (b) any liability incurred by the auditor in defending any proceedings (whether civil or criminal) taken against the auditor for any negligence, default, breach of duty or breach of trust (including fraud) occurring in the course of performance of the duties of auditor in relation to the company or associated company (as the case may be).
- (2) In this article, a reference to performance of the duties of auditor includes the performance of the duties specified in section 415(6)(a) and (b) of the Ordinance.

## 84. Winding up

- (1) If the company is wound up and a surplus remains after the payment of debts proved in the winding up, the liquidator—
  - (a) may, with the required sanction, divide amongst the members in specie or kind the whole or any part of the assets of the company (whether they consist of property of the same kind or not) and may, for this purpose, set a

value the liquidator thinks fair on any property to be so divided; and

(b) may determine how the division is to be carried out between the members or different classes of members.

(2) The liquidator may, with the required sanction, vest the whole or part of those assets in trustees on trust for the benefit of the contributories that the liquidator, with the required sanction, thinks fit, but a member must not be compelled to accept any shares or other securities on which there is any liability.

(3) In this article—

**required sanction** (規定認許) means the sanction of a special resolution of the company and any other sanction required by the Ordinance.

## Schedule 3

[s. 4]

### Model Articles for Companies Limited by Guarantee

#### Contents

#### Article

##### Part 1

##### Interpretation

1. Interpretation

##### Part 2

##### Directors and Company Secretary

##### Division 1—Directors' Powers and Responsibilities

2. Directors' general authority

3. Members' reserve power

4. Directors may delegate

5. Committees

##### Division 2—Decision-taking by Directors

6. Directors to take decision collectively

7. Unanimous decisions

8. Calling directors' meetings

9. Participation in directors' meetings

10. Quorum for directors' meetings

## Article

11. Meetings if total number of directors less than quorum
  12. Chairing of directors' meetings
  13. Chairperson's casting vote at directors' meetings
  14. Alternates voting at directors' meetings
  15. Conflicts of interest
  16. Supplementary provisions as to conflicts of interest
  17. Validity of acts of meeting of directors
  18. Record of decisions to be kept
  19. Directors' discretion to make further rules
- Division 3—Appointment and Retirement of Directors**
20. Appointment and retirement of directors
  21. Retiring director eligible for reappointment
  22. Composite resolution
  23. Termination of director's appointment
  24. Directors' remuneration
  25. Directors' expenses
- Division 4—Alternate Directors**
26. Appointment and removal of alternates
  27. Rights and responsibilities of alternate directors
  28. Termination of alternate directorship

## Article

- Division 5—Directors' Indemnity and Insurance**
29. Indemnity
  30. Insurance
- Division 6—Company Secretary**
31. Appointment and removal of company secretary
- Part 3**
- Members**
- Division 1—Becoming and Ceasing to be Member**
32. Application for membership
  33. Termination of membership
- Division 2—Organization of General Meetings**
34. General meetings
  35. Notice of general meetings
  36. Persons entitled to receive notice of general meetings
  37. Accidental omission to give notice of general meetings
  38. Attendance and speaking at general meetings
  39. Quorum for general meetings
  40. Chairing general meetings
  41. Attendance and speaking by non-members
  42. Adjournment

## Article

**Division 3—Voting at General Meetings**

- 43. General rules on voting
- 44. Errors and disputes
- 45. Demanding a poll
- 46. Number of votes a member has
- 47. Votes of mentally incapacitated members
- 48. Content of proxy notices
- 49. Execution of appointment of proxy on behalf of member appointing the proxy
- 50. Delivery of proxy notice and notice revoking appointment of proxy
- 51. Effect of member's voting in person on proxy's authority
- 52. Effect of proxy votes in case of death, mental incapacity, etc. of member appointing the proxy
- 53. Amendments to proposed resolutions

**Part 4****Miscellaneous Provisions****Division 1—Communications to and by Company**

- 54. Means of communication to be used

**Division 2—Administrative Arrangements**

- 55. Company seals

## Article

- 56. No right to inspect accounts and other records
- 57. Auditor's insurance

**Part 1****Interpretation****1. Interpretation**

(1) In these articles—

*alternate* (候補者) and *alternate director* (候補董事) mean a person appointed by a director as an alternate under article 26(1);

*appointor* (委任者)—see article 26(1);

*articles* (本《章程細則》) means the articles of association of the company;

*associated company* (有聯繫公司) means—

- (a) a subsidiary of the company;
- (b) a holding company of the company; or
- (c) a subsidiary of such a holding company;

*mental incapacity* (精神上無行為能力) has the meaning given by section 2(1) of the Mental Health Ordinance (Cap. 136);

*mentally incapacitated person* (精神上無行為能力者) means a person who is found under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs;

*Ordinance* (《條例》) means the Companies Ordinance (28 of 2012);

*proxy notice* (代表通知書)—see article 48(1).

- (2) Other words or expressions used in these articles have the same meaning as in the Ordinance as in force on the date these articles become binding on the company.
- (3) For the purposes of these articles, a document is authenticated if it is authenticated in any way in which section 828(5) or 829(3) of the Ordinance provides for documents or information to be authenticated for the purposes of the Ordinance.

## Part 2

### Directors and Company Secretary

#### Division 1—Directors' Powers and Responsibilities

##### 2. Directors' general authority

- (1) Subject to the Ordinance and these articles, the business and affairs of the company are managed by the directors, who may exercise all the powers of the company.
- (2) An alteration of these articles does not invalidate any prior act of the directors that would have been valid if the alteration had not been made.
- (3) The powers given by this article are not limited by any other power given to the directors by these articles.
- (4) A directors' meeting at which a quorum is present may exercise all powers exercisable by the directors.

##### 3. Members' reserve power

- (1) The members may, by special resolution, direct the directors to take, or refrain from taking, specified action.

- (2) The special resolution does not invalidate anything that the directors have done before the passing of the resolution.

##### 4. Directors may delegate

- (1) Subject to these articles, the directors may, if they think fit, delegate any of the powers that are conferred on them under these articles—
  - (a) to any person or committee;
  - (b) by any means (including by power of attorney);
  - (c) to any extent and without territorial limit;
  - (d) in relation to any matter; and
  - (e) on any terms and conditions.
- (2) If the directors so specify, the delegation may authorize further delegation of the directors' powers by any person to whom they are delegated.
- (3) The directors may—
  - (a) revoke the delegation wholly or in part; or
  - (b) revoke or alter its terms and conditions.

##### 5. Committees

- (1) The directors may make rules providing for the conduct of business of the committees to which they have delegated any of their powers.
- (2) The committees must comply with the rules.

#### Division 2—Decision-taking by Directors

##### 6. Directors to take decision collectively

A decision of the directors may only be taken—

- (a) by a majority of the directors at a meeting; or

(b) in accordance with article 7.

#### 7. **Unanimous decisions**

- (1) A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other (either directly or indirectly) by any means that they share a common view on a matter.
- (2) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.
- (3) A reference in this article to eligible directors is a reference to directors who would have been entitled to vote on the matter if it had been proposed as a resolution at a directors' meeting.
- (4) A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at a directors' meeting.

#### 8. **Calling directors' meetings**

- (1) Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorizing the company secretary to give such notice.
- (2) Notice of a directors' meeting must indicate—
  - (a) its proposed date and time; and
  - (b) where it is to take place.
- (3) Notice of a directors' meeting must be given to each director, but need not be in writing.

#### 9. **Participation in directors' meetings**

- (1) Subject to these articles, directors participate in a directors' meeting, or part of a directors' meeting, when—

- (a) the meeting has been called and takes place in accordance with these articles; and
- (b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- (2) In determining whether directors are participating in a directors' meeting, it is irrelevant where a director is and how they communicate with each other.
- (3) If all the directors participating in a directors' meeting are not in the same place, they may regard the meeting as taking place wherever any one of them is.

#### 10. **Quorum for directors' meetings**

- (1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- (2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it must be at least 2, and unless otherwise fixed it is 2.

#### 11. **Meetings if total number of directors less than quorum**

If the total number of directors for the time being is less than the quorum required for directors' meetings, the directors must not take any decision other than a decision—

- (a) to appoint further directors; or
- (b) to call a general meeting so as to enable the members to appoint further directors.

#### 12. **Chairing of directors' meetings**

- (1) The directors may appoint a director to chair their meetings.

- (2) The person appointed for the time being is known as the chairperson.
- (3) The directors may terminate the appointment of the chairperson at any time.
- (4) If the chairperson is not participating in a directors' meeting within 10 minutes of the time at which it was to start or is unwilling to chair the meeting, the participating directors may appoint one of themselves to chair it.

### 13. Chairperson's casting vote at directors' meetings

- (1) If the numbers of votes for and against a proposal are equal, the chairperson or other director chairing the directors' meeting has a casting vote.
- (2) Paragraph (1) does not apply if, in accordance with these articles, the chairperson or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

### 14. Alternates voting at directors' meetings

A director who is also an alternate director has an additional vote on behalf of each appointor who—

- (a) is not participating in a directors' meeting; and
- (b) would have been entitled to vote if he or she were participating in it.

### 15. Conflicts of interest

- (1) This article applies if—
  - (a) a director is in any way (directly or indirectly) interested in a transaction, arrangement or contract with the company that is significant in relation to the company's business; and

- (b) the director's interest is material.
- (2) The director must declare the nature and extent of the director's interest to the other directors in accordance with section 536 of the Ordinance.
- (3) The director and the director's alternate must neither—
  - (a) vote in respect of the transaction, arrangement or contract in which the director is so interested; nor
  - (b) be counted for quorum purposes in respect of the transaction, arrangement or contract.
- (4) Paragraph (3) does not preclude the alternate from—
  - (a) voting in respect of the transaction, arrangement or contract on behalf of another appointor who does not have such an interest; and
  - (b) being counted for quorum purposes in respect of the transaction, arrangement or contract.
- (5) If the director or the director's alternate contravenes paragraph (3)(a), the vote must not be counted.
- (6) Paragraph (3) does not apply to—
  - (a) an arrangement for giving a director any security or indemnity in respect of money lent by the director to or obligations undertaken by the director for the benefit of the company;
  - (b) an arrangement for the company to give any security to a third party in respect of a debt or obligation of the company for which the director has assumed responsibility wholly or in part under a guarantee or indemnity or by the deposit of a security; or
  - (c) an arrangement under which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries,

which do not provide special benefits for directors or former directors.

- (7) A reference in this article to a transaction, arrangement or contract includes a proposed transaction, arrangement or contract.

#### 16. Supplementary provisions as to conflicts of interest

- (1) A director may hold any other office or position of profit under the company (other than the office of auditor) in conjunction with the office of director for a period and on terms (as to remuneration or otherwise) that the directors determine.
- (2) A director or intending director is not disqualified by the office of director from contracting with the company—
- with regard to the tenure of the other office or position of profit mentioned in paragraph (1); or
  - as vendor, purchaser or otherwise.
- (3) The contract mentioned in paragraph (2) or any transaction, arrangement or contract entered into by or on behalf of the company in which any director is in any way interested is not liable to be avoided.
- (4) A director who has entered into a contract mentioned in paragraph (2) or is interested in a transaction, arrangement or contract mentioned in paragraph (3) is not liable to account to the company for any profit realized by the transaction, arrangement or contract by reason of—
- the director holding the office; or
  - the fiduciary relation established by the office.
- (5) Paragraph (1), (2), (3) or (4) only applies if the director has declared the nature and extent of the director's interest under

the paragraph to the other directors in accordance with section 536 of the Ordinance.

- (6) A director of the company may be a director or other officer of, or be otherwise interested in—
- any company promoted by the company; or
  - any company in which the company may be interested as shareholder or otherwise.
- (7) Subject to the Ordinance, the director is not accountable to the company for any remuneration or other benefits received by the director as a director or officer of, or from the director's interest in, the other company unless the company otherwise directs.

#### 17. Validity of acts of meeting of directors

The acts of any meeting of directors or of a committee of directors or the acts of any person acting as a director are as valid as if the directors or the person had been duly appointed as a director and was qualified to be a director, even if it is afterwards discovered that—

- there was a defect in the appointment of any of the directors or of the person acting as a director;
- any one or more of them were not qualified to be a director or were disqualified from being a director;
- any one or more of them had ceased to hold office as a director; or
- any one or more of them were not entitled to vote on the matter in question.

#### 18. Record of decisions to be kept

The directors must ensure that the company keeps a written record of every decision taken by the directors under article 6 for at least 10 years from the date of the decision.

#### 19. Directors' discretion to make further rules

Subject to these articles, the directors may make any rule that they think fit about—

- (a) how they take decisions; and
- (b) how the rules are to be recorded or communicated to directors.

### Division 3—Appointment and Retirement of Directors

#### 20. Appointment and retirement of directors

- (1) A person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—
  - (a) by ordinary resolution; or
  - (b) by a decision of the directors.
- (2) Unless otherwise specified in the appointment, a director appointed under paragraph (1)(a) holds office for an unlimited period of time.
- (3) An appointment under paragraph (1)(b) may only be made to—
  - (a) fill a casual vacancy; or
  - (b) appoint a director as an addition to the existing directors if the total number of directors does not exceed the number fixed in accordance with these articles.
- (4) A director appointed under paragraph (1)(b) must—
  - (a) retire from office at the next annual general meeting following the appointment; or

- (b) if the company has dispensed with the holding of annual general meetings or is not required to hold annual general meetings, retire from office before the end of 9 months after the end of the company's accounting reference period by reference to which the financial year in which the director was appointed is to be determined.

#### 21. Retiring director eligible for reappointment

A retiring director is eligible for reappointment to the office.

#### 22. Composite resolution

- (1) This article applies if proposals are under consideration concerning the appointment of 2 or more directors to offices or employments with the company or any other body corporate.
- (2) The proposals may be divided and considered in relation to each director separately.
- (3) Each of the directors concerned is entitled to vote (if the director is not for another reason precluded from voting) and be counted in the quorum in respect of each resolution except that concerning the director's own appointment.

#### 23. Termination of director's appointment

A person ceases to be a director if the person—

- (a) ceases to be a director under the Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) or is prohibited from being a director by law;
- (b) becomes bankrupt or makes any arrangement or composition with the person's creditors generally;
- (c) becomes a mentally incapacitated person;

- (d) resigns the office of director by notice in writing of the resignation in accordance with section 464(5) of the Ordinance;
- (e) for more than 6 months has been absent without the directors' permission from directors' meetings held during that period; or
- (f) is removed from the office of director by an ordinary resolution of the company.

#### 24. Directors' remuneration

- (1) Directors' remuneration must be determined by the company at a general meeting.
- (2) A director's remuneration may—
  - (a) take any form; and
  - (b) include any arrangements in connection with the payment of a retirement benefit to or in respect of that director.
- (3) Directors' remuneration accrues from day to day.

#### 25. Directors' expenses

The company may pay any travelling, accommodation and other expenses properly incurred by directors in connection with—

- (a) their attendance at—
  - (i) meetings of directors or committees of directors;
  - (ii) general meetings; or
  - (iii) separate meetings of the holders of debentures of the company; or
- (b) the exercise of their powers and the discharge of their responsibilities in relation to the company.

### Division 4—Alternate Directors

#### 26. Appointment and removal of alternates

- (1) A director (*appointor*) may appoint as an alternate any other director, or any other person approved by resolution of the directors.
- (2) An alternate may exercise the powers and carry out the responsibilities of the alternate's appointor, in relation to the taking of decisions by the directors in the absence of the alternate's appointor.
- (3) An appointment or removal of an alternate by the alternate's appointor must be effected—
  - (a) by notice to the company; or
  - (b) in any other manner approved by the directors.
- (4) The notice must be authenticated by the appointor.
- (5) The notice must—
  - (a) identify the proposed alternate; and
  - (b) if it is a notice of appointment, contain a statement authenticated by the proposed alternate indicating the proposed alternate's willingness to act as the alternate of the appointor.
- (6) If an alternate is removed by resolution of the directors, the company must as soon as practicable give notice of the removal to the alternate's appointor.

#### 27. Rights and responsibilities of alternate directors

- (1) An alternate director has the same rights as the alternate's appointor in relation to any decision taken by the directors under article 6.
- (2) Unless these articles specify otherwise, alternate directors—

- (a) are deemed for all purposes to be directors;
  - (b) are liable for their own acts and omissions;
  - (c) are subject to the same restrictions as their appointors; and
  - (d) are deemed to be agents of or for their appointors.
- (3) Subject to article 15(3), a person who is an alternate director but not a director—
- (a) may be counted as participating for determining whether a quorum is participating (but only if that person's appointor is not participating); and
  - (b) may sign a written resolution (but only if it is not signed or to be signed by that person's appointor).
- (4) No alternate director may be counted as more than one director for the purposes mentioned in paragraph (3).
- (5) An alternate director is not entitled to receive any remuneration from the company for serving as an alternate director.
- (6) But the alternate's appointor may, by notice in writing made to the company, direct that any part of the appointor's remuneration be paid to the alternate.

## 28. Termination of alternate directorship

- (1) An alternate director's appointment as an alternate terminates—
- (a) if the alternate's appointor revokes the appointment by notice to the company in writing specifying when it is to terminate;
  - (b) on the occurrence in relation to the alternate of any event which, if it occurred in relation to the alternate's

- appointor, would result in the termination of the appointor's appointment as a director;
  - (c) on the death of the alternate's appointor; or
  - (d) when the alternate's appointor's appointment as a director terminates.
- (2) If the alternate was not a director when appointed as an alternate, the alternate's appointment as an alternate terminates if—
- (a) the approval under article 26(1) is withdrawn or revoked; or
  - (b) the company by an ordinary resolution passed at a general meeting terminates the appointment.

## Division 5—Directors' Indemnity and Insurance

### 29. Indemnity

- (1) A director or former director of the company may be indemnified out of the company's assets against any liability incurred by the director to a person other than the company or an associated company of the company in connection with any negligence, default, breach of duty or breach of trust in relation to the company or associated company (as the case may be).
- (2) Paragraph (1) only applies if the indemnity does not cover—
- (a) any liability of the director to pay—
    - (i) a fine imposed in criminal proceedings; or
    - (ii) a sum payable by way of a penalty in respect of non-compliance with any requirement of a regulatory nature; or
  - (b) any liability incurred by the director—

- (i) in defending criminal proceedings in which the director is convicted;
  - (ii) in defending civil proceedings brought by the company, or an associated company of the company, in which judgment is given against the director;
  - (iii) in defending civil proceedings brought on behalf of the company by a member of the company or of an associated company of the company, in which judgment is given against the director;
  - (iv) in defending civil proceedings brought on behalf of an associated company of the company by a member of the associated company or by a member of an associated company of the associated company, in which judgment is given against the director; or
  - (v) in connection with an application for relief under section 903 or 904 of the Ordinance in which the Court refuses to grant the director relief.
- (3) A reference in paragraph (2)(b) to a conviction, judgment or refusal of relief is a reference to the final decision in the proceedings.
- (4) For the purposes of paragraph (3), a conviction, judgment or refusal of relief—
- (a) if not appealed against, becomes final at the end of the period for bringing an appeal; or
  - (b) if appealed against, becomes final when the appeal, or any further appeal, is disposed of.
- (5) For the purposes of paragraph (4)(b), an appeal is disposed of if—

- (a) it is determined, and the period for bringing any further appeal has ended; or
- (b) it is abandoned or otherwise ceases to have effect.

### 30. Insurance

The directors may decide to purchase and maintain insurance, at the expense of the company, for a director of the company, or a director of an associated company of the company, against—

- (a) any liability to any person attaching to the director in connection with any negligence, default, breach of duty or breach of trust (except for fraud) in relation to the company or associated company (as the case may be); or
- (b) any liability incurred by the director in defending any proceedings (whether civil or criminal) taken against the director for any negligence, default, breach of duty or breach of trust (including fraud) in relation to the company or associated company (as the case may be).

## Division 6—Company Secretary

### 31. Appointment and removal of company secretary

- (1) The directors may appoint a company secretary for a term, at a remuneration and on conditions they think fit.
- (2) The directors may remove a company secretary appointed by them.

## Part 3

## Members

### Division 1—Becoming and Ceasing to be Member

**32. Application for membership**

A person may become a member of the company only if—

- (a) that person has completed an application for membership in a form approved by the directors; and
- (b) the directors have approved the application.

**33. Termination of membership**

- (1) A member may withdraw from membership of the company by giving 7 days' notice to the company in writing.
- (2) Membership is not transferable.
- (3) A person's membership terminates when that person dies or ceases to exist.

**Division 2—Organization of General Meetings****34. General meetings**

- (1) Subject to sections 611, 612 and 613 of the Ordinance, the company must, in respect of each financial year of the company, hold a general meeting as its annual general meeting in accordance with section 610 of the Ordinance.
- (2) The directors may, if they think fit, call a general meeting.
- (3) If the directors are required to call a general meeting under section 566 of the Ordinance, they must call it in accordance with section 567 of the Ordinance.
- (4) If the directors do not call a general meeting in accordance with section 567 of the Ordinance, the members who requested the meeting, or any of them representing more than one half of the total voting rights of all of them, may themselves call a general meeting in accordance with section 568 of the Ordinance.

**35. Notice of general meetings**

- (1) An annual general meeting must be called by notice of at least 21 days in writing.
- (2) A general meeting other than an annual general meeting must be called by notice of at least 14 days in writing.
- (3) The notice is exclusive of—
  - (a) the day on which it is served or deemed to be served; and
  - (b) the day for which it is given.
- (4) The notice must—
  - (a) specify the date and time of the meeting;
  - (b) specify the place of the meeting (and if the meeting is to be held in 2 or more places, the principal place of the meeting and the other place or places of the meeting);
  - (c) state the general nature of the business to be dealt with at the meeting;
  - (d) for a notice calling an annual general meeting, state that the meeting is an annual general meeting;
  - (e) if a resolution (whether or not a special resolution) is intended to be moved at the meeting—
    - (i) include notice of the resolution; and
    - (ii) include or be accompanied by a statement containing any information or explanation that is reasonably necessary to indicate the purpose of the resolution;
  - (f) if a special resolution is intended to be moved at the meeting, specify the intention and include the text of the special resolution; and

- (g) contain a statement specifying a member's right to appoint a proxy under section 596(1) of the Ordinance.

(5) Paragraph (4)(e) does not apply in relation to a resolution of which—

- (a) notice has been included in the notice of the meeting under section 567(3) or 568(2) of the Ordinance; or
- (b) notice has been given under section 615 of the Ordinance.

(6) Despite the fact that a general meeting is called by shorter notice than that specified in this article, it is regarded as having been duly called if it is so agreed—

- (a) for an annual general meeting, by all the members entitled to attend and vote at the meeting; and
- (b) in any other case, by a majority in number of the members entitled to attend and vote at the meeting, being a majority together representing at least 95% of the total voting rights at the meeting of all the members.

**36. Persons entitled to receive notice of general meetings**

(1) Notice of a general meeting must be given to—

- (a) every member; and
- (b) every director.

(2) If notice of a general meeting or any other document relating to the meeting is required to be given to a member, the company must give a copy of it to its auditor (if more than one auditor, to everyone of them) at the same time as the notice or the other document is given to the member.

**37. Accidental omission to give notice of general meetings**

Any accidental omission to give notice of a general meeting to, or any non-receipt of notice of a general meeting by, any person

entitled to receive notice does not invalidate the proceedings at the meeting.

**38. Attendance and speaking at general meetings**

(1) A person is able to exercise the right to speak at a general meeting when the person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions that the person has on the business of the meeting.

(2) A person is able to exercise the right to vote at a general meeting when—

- (a) the person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
- (b) the person's vote can be taken into account in determining whether or not those resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

(4) In determining attendance at a general meeting, it is immaterial whether any 2 or more members attending it are in the same place as each other.

(5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have rights to speak and vote at the meeting, they are able to exercise them.

**39. Quorum for general meetings**

(1) Two members present in person or by proxy constitute a quorum at a general meeting.

- (2) No business other than the appointment of the chairperson of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

#### 40. Chairing general meetings

- (1) If the chairperson (if any) of the board of directors is present at a general meeting and is willing to preside as chairperson at the meeting, the meeting is to be presided over by him or her.
- (2) The directors present at a general meeting must elect one of themselves to be the chairperson if—
  - (a) there is no chairperson of the board of directors;
  - (b) the chairperson is not present within 15 minutes after the time appointed for holding the meeting;
  - (c) the chairperson is unwilling to act; or
  - (d) the chairperson has given notice to the company of the intention not to attend the meeting.
- (3) The members present at a general meeting must elect one of themselves to be the chairperson if—
  - (a) no director is willing to act as chairperson; or
  - (b) no director is present within 15 minutes after the time appointed for holding the meeting.
- (4) A proxy may be elected to be the chairperson of a general meeting by a resolution of the company passed at the meeting.

#### 41. Attendance and speaking by non-members

- (1) Directors may attend and speak at general meetings, whether or not they are members of the company.
- (2) The chairperson of a general meeting may permit other persons to attend and speak at a general meeting even though they are not—

- (a) members of the company; or
- (b) otherwise entitled to exercise the rights of members in relation to general meetings.

#### 42. Adjournment

- (1) If a quorum is not present within half an hour from the time appointed for holding a general meeting, the meeting must—
  - (a) if called on the request of members, be dissolved; or
  - (b) in any other case, be adjourned to the same day in the next week, at the same time and place, or to another day and at another time and place that the directors determine.
- (2) If at the adjourned meeting, a quorum is not present within half an hour from the time appointed for holding the meeting, the member or members present in person or by proxy constitute a quorum.
- (3) The chairperson may adjourn a general meeting at which a quorum is present if—
  - (a) the meeting consents to an adjournment; or
  - (b) it appears to the chairperson that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.
- (4) The chairperson must adjourn a general meeting if directed to do so by the meeting.
- (5) When adjourning a general meeting, the chairperson must specify the date, time and place to which it is adjourned.
- (6) Only the business left unfinished at the general meeting may be transacted at the adjourned meeting.

- (7) If a general meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for an original meeting.
- (8) If a general meeting is adjourned for less than 30 days, it is not necessary to give any notice of the adjourned meeting.

### **Division 3—Voting at General Meetings**

#### **43. General rules on voting**

- (1) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with these articles.
- (2) If there is an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded, is entitled to a second or casting vote.
- (3) On a vote on a resolution on a show of hands at a general meeting, a declaration by the chairperson that the resolution—
  - (a) has or has not been passed; or
  - (b) has passed by a particular majority,
 is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (4) An entry in respect of the declaration in the minutes of the meeting is also conclusive evidence of that fact without the proof.

#### **44. Errors and disputes**

- (1) Any objection to the qualification of any person voting at a general meeting may only be raised at the meeting or

adjourned meeting at which the vote objected to is tendered, and a vote not disallowed at the meeting is valid.

- (2) Any objection must be referred to the chairperson of the meeting whose decision is final.

#### **45. Demanding a poll**

- (1) A poll on a resolution may be demanded—
  - (a) in advance of the general meeting where it is to be put to the vote; or
  - (b) at a general meeting, either before or on the declaration of the result of a show of hands on that resolution.
- (2) A poll on a resolution may be demanded by—
  - (a) the chairperson of the meeting;
  - (b) at least 2 members present in person or by proxy; or
  - (c) any member or members present in person or by proxy and representing at least 5% of the total voting rights of all the members having the right to vote at the meeting.
- (3) The instrument appointing a proxy is regarded as conferring authority to demand or join in demanding a poll on a resolution.
- (4) A demand for a poll on a resolution may be withdrawn.

#### **46. Number of votes a member has**

On a vote on a resolution, whether on a show of hands at a general meeting or on a poll taken at a general meeting—

- (a) every member present in person has 1 vote; and
- (b) every proxy present who has been duly appointed by a member entitled to vote on the resolution has 1 vote.

#### **47. Votes of mentally incapacitated members**

- (1) A member who is a mentally incapacitated person may vote, whether on a show of hands or on a poll, by the member's committee, receiver, guardian or other person in the nature of a committee, receiver or guardian appointed by the Court.
- (2) The committee, receiver, guardian or other person may vote by proxy on a show of hands or on a poll.

#### 48. Content of proxy notices

- (1) A proxy may only validly be appointed by a notice in writing (*proxy notice*) that—
  - (a) states the name and address of the member appointing the proxy;
  - (b) identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed;
  - (c) is authenticated, or is signed on behalf of the member appointing the proxy; and
  - (d) is delivered to the company in accordance with these articles and any instructions contained in the notice of the general meeting in relation to which the proxy is appointed.
- (2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- (3) If the company requires or allows a proxy notice to be delivered to it in electronic form, it may require the delivery to be properly protected by a security arrangement it specifies.
- (4) A proxy notice may specify how the proxy appointed under it is to vote (or that the proxy is to abstain from voting) on one or more resolutions dealing with any business to be transacted at a general meeting.

- (5) Unless a proxy notice indicates otherwise, it must be regarded as—
  - (a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the general meeting; and
  - (b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

#### 49. Execution of appointment of proxy on behalf of member appointing the proxy

If a proxy notice is not authenticated, it must be accompanied by written evidence of the authority of the person who executed the appointment to execute it on behalf of the member appointing the proxy.

#### 50. Delivery of proxy notice and notice revoking appointment of proxy

- (1) A proxy notice does not take effect unless it is received by the company—
  - (a) for a general meeting or adjourned general meeting, at least 48 hours before the time appointed for holding the meeting or adjourned meeting; and
  - (b) for a poll taken more than 48 hours after it was demanded, at least 24 hours before the time appointed for taking the poll.
- (2) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- (3) A notice revoking the appointment only takes effect if it is received by the company—

- (a) for a general meeting or adjourned general meeting, at least 48 hours before the time appointed for holding the meeting or adjourned meeting; and
- (b) for a poll taken more than 48 hours after it was demanded, at least 24 hours before the time appointed for taking the poll.

**51. Effect of member's voting in person on proxy's authority**

- (1) A proxy's authority in relation to a resolution is to be regarded as revoked if the member who has appointed the proxy—
  - (a) attends in person the general meeting at which the resolution is to be decided; and
  - (b) exercises, in relation to the resolution, the voting right that the member is entitled to exercise.
- (2) A member who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of the meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of the member.

**52. Effect of proxy votes in case of death, mental incapacity, etc. of member appointing the proxy**

- (1) A vote given in accordance with the terms of a proxy notice is valid despite—
  - (a) the previous death or mental incapacity of the member appointing the proxy; or
  - (b) the revocation of the appointment of the proxy or of the authority under which the appointment of the proxy is executed.
- (2) Paragraph (1) does not apply if notice in writing of the death, mental incapacity or revocation is received by the company—

- (a) for a general meeting or adjourned general meeting, at least 48 hours before the time appointed for holding the meeting or adjourned meeting; and
- (b) for a poll taken more than 48 hours after it was demanded, at least 24 hours before the time appointed for taking the poll.

**53. Amendments to proposed resolutions**

- (1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—
  - (a) notice of the proposed amendment is given to the company secretary in writing; and
  - (b) the proposed amendment does not, in the reasonable opinion of the chairperson of the meeting, materially alter the scope of the resolution.
- (2) The notice must be given by a person entitled to vote at the general meeting at which it is to be proposed at least 48 hours before the meeting is to take place (or a later time the chairperson of the meeting determines).
- (3) A special resolution to be proposed at a general meeting may be amended by ordinary resolution if—
  - (a) the chairperson of the meeting proposes the amendment at the meeting at which the special resolution is to be proposed; and
  - (b) the amendment merely corrects a grammatical or other non-substantive error in the special resolution.
- (4) If the chairperson of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the vote on that resolution remains valid unless the Court orders otherwise.

## Part 4

### Miscellaneous Provisions

#### Division 1—Communications to and by Company

##### 54. Means of communication to be used

- (1) Subject to these articles, anything sent or supplied by or to the company under these articles may be sent or supplied in any way in which Part 18 of the Ordinance provides for documents or information to be sent or supplied by or to the company for the purposes of the Ordinance.
- (2) Subject to these articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such a notice or document for the time being.
- (3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

#### Division 2—Administrative Arrangements

##### 55. Company seals

- (1) A common seal may only be used by the authority of the directors.
- (2) A common seal must be a metallic seal having the company's name engraved on it in legible form.
- (3) Subject to paragraph (2), the directors may decide by what means and in what form a common seal is to be used.

- (4) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least 1 director of the company and 1 authorized person.
- (5) For the purposes of this article, an authorized person is—
  - (a) any director of the company;
  - (b) the company secretary; or
  - (c) any person authorized by the directors for signing documents to which the common seal is applied.

##### 56. No right to inspect accounts and other records

A person is not entitled to inspect any of the company's accounting or other records or documents merely because of being a member, unless the person is authorized to do so by—

- (a) an enactment;
- (b) an order under section 740 of the Ordinance;
- (c) the directors; or
- (d) an ordinary resolution of the company.

##### 57. Auditor's insurance

- (1) The directors may decide to purchase and maintain insurance, at the expense of the company, for an auditor of the company, or an auditor of an associated company of the company, against—
  - (a) any liability to any person attaching to the auditor in connection with any negligence, default, breach of duty or breach of trust (except for fraud) occurring in the course of performance of the duties of auditor in relation to the company or associated company (as the case may be); or

- (b) any liability incurred by the auditor in defending any proceedings (whether civil or criminal) taken against the auditor for any negligence, default, breach of duty or breach of trust (including fraud) occurring in the course of performance of the duties of auditor in relation to the company or associated company (as the case may be).
- (2) In this article, a reference to performance of the duties of auditor includes the performance of the duties specified in section 415(6)(a) and (b) of the Ordinance.

Financial Secretary

2013

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### Explanatory Note

This Notice prescribes the model articles of association for—

- (a) public companies limited by shares (section 2 and Schedule 1);
  - (b) private companies limited by shares (section 3 and Schedule 2); and
  - (c) companies limited by guarantee (section 4 and Schedule 3).
2. A company may adopt as its articles of association any or all of the provisions of the model articles prescribed in this Notice for the type of company to which it belongs. On the incorporation of a limited company, the model articles will form the articles of association of the company if the company's registered articles of association do not prescribe any regulations for the company or, if they do so, do not exclude or modify the model articles.
  3. While a company is free to adopt as its articles of association any or all of the provisions of the model articles prescribed in this Notice for the type of company to which it belongs, there are certain information that must be stated in the company's articles of association. Under sections 81 to 85 of the Companies Ordinance (28 of 2012), the articles of association of a company to which those sections apply must state the information specified in those sections.

## **Company Records (Inspection and Provision of Copies) Regulation**

### **Contents**

Section	Page
---------	------

#### **Part 1**

##### **Preliminary**

1.	Commencement .....	1
2.	Interpretation .....	1

#### **Part 2**

##### **Place for Keeping Company Records etc.**

3.	Prescribed place for keeping company records etc.....	3
----	---	---

#### **Part 3**

##### **Inspection of Company Records**

4.	Interpretation of Part 3 .....	4
5.	Prescribed manner for making request for inspection .....	4
6.	Prescribed inspection fee .....	4
7.	Making company records available for inspection .....	5
8.	Making copy of company records during inspection.....	6
9.	Order of Court relating to inspection of company records .....	6

#### **Part 4**

##### **Provision of Copy of Company Records by Company**

Section	Page
10. Interpretation of Part 4.....	8
11. Provision of copy of company records .....	8
12. Prescribed fees for provision of copy of company records.....	9
13. Order of Court relating to provision of copy of company records .....	10

## Company Records (Inspection and Provision of Copies) Regulation

(Made by the Financial Secretary under sections 356 and 657 of the  
Companies Ordinance (28 of 2012))

### Part 1

#### Preliminary

##### 1. Commencement

This Regulation comes into operation on the day on which section 356 of the Companies Ordinance (28 of 2012) comes into operation.

##### 2. Interpretation

In this Regulation—

**company records** (公司紀錄)—

(a) in Parts 2 and 3—

- (i) in relation to a company, means company records as defined by section 654 of the Ordinance; or
- (ii) in relation to a registered non-Hong Kong company, means a copy of an instrument kept by the company under section 351(2) of the Ordinance or a register of charges kept by the company under section 353(1) of the Ordinance; and

(b) in Part 4, means—

- (i) company records as defined by section 654 of the Ordinance; or

- (ii) a trust deed as defined by section 657(6) of the Ordinance.

## Part 2

### Place for Keeping Company Records etc.

#### 3. Prescribed place for keeping company records etc.

- (1) For the purposes of a relevant provision, the place prescribed for keeping company records or making company records available for inspection is a place in Hong Kong.

- (2) In this section—

**relevant provision** (相關條文) means a provision of the Ordinance which provides that the company records mentioned in that provision may be kept or made available for inspection at a place prescribed by regulations made under section 356 or 657 of the Ordinance.

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## Part 3

### Inspection of Company Records

#### 4. Interpretation of Part 3

In this Part—

**company** (公司) includes a registered non-Hong Kong company;

**relevant provision** (相關條文) means a provision of the Ordinance which provides that a person is entitled, on request made in the prescribed manner and on payment of a prescribed fee or without charge, to inspect the company records mentioned in that provision in accordance with regulations made under section 356 or 657 of the Ordinance.

#### 5. Prescribed manner for making request for inspection

For the purposes of a relevant provision, a request for inspection of any company records of a company is to be made, either orally or in writing, to the company by identifying the records by reference to—

- (a) the type of the records; and
- (b) the date on which the records were made or the period covered by the records.

#### 6. Prescribed inspection fee

For the purposes of a relevant provision, the fee prescribed for an inspection of company records is \$50.

**Note—**

Please also see sections 356(5)(b) and 657(5)(b) of the Ordinance which provide that nothing in any provision of the Ordinance or in the regulations made under section 356 or 657 of the Ordinance is to be construed as

preventing a company from charging a lesser fee than that prescribed or none at all.

### 7. Making company records available for inspection

- (1) A company must make its company records available for inspection, by any person entitled to inspect those records under a relevant provision, during business hours (subject to any reasonable restrictions imposed by the company by resolution, as long as at least 2 hours per day are allowed for inspection).
- (2) Subsection (1) does not apply in relation to—
  - (a) (for inspection of a register of debenture holders) any part of the register that is closed under section 311 of the Ordinance;
  - (b) (for inspection of a register of members) any part of the register that is closed under section 632 of the Ordinance; and
  - (c) (for inspection of an index of members' names) any part of the index that is compiled by reference to a part of the register of members that is closed under section 632 of the Ordinance.
- (3) If subsection (1) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.
- (4) In this section—

**index of members' names** (成員的姓名或名稱索引) means an index of the names of the members of a company kept under section 630 of the Ordinance;

**register of debenture holders** (債權證持有人登記冊) means a register of debenture holders as defined by section 307 of the Ordinance;

**register of members** (成員登記冊) means a register of members kept under section 627 of the Ordinance.

### 8. Making copy of company records during inspection

- (1) If a company makes its company records available under section 7 for a person's inspection, the company must permit the person to make a copy of the whole or any part of those records in the course of inspection.
- (2) The company is not required to assist the person to make any copy of company records.
- (3) If subsection (1) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

### 9. Order of Court relating to inspection of company records

- (1) If in relation to a person entitled to inspect any company records of a company under a relevant provision, section 7(1) is contravened, the Court may, on application by the person—
  - (a) make an order to compel the company to permit an immediate inspection by the person of the company records concerned; and
  - (b) make an order as to the time, duration and manner of inspection.
- (2) If in relation to a person inspecting any company records of a company, section 8(1) is contravened, the Court may, on application by the person—
  - (a) make an order to compel the company to permit the person to make a copy of the whole or any part of the company records concerned in the course of inspection; and

- (b) make an order as to the time, duration and manner of inspection, including the circumstances in which and the extent to which the copying of information is permitted in the course of inspection.
  - (3) If the company records of a company are kept at the office of a person other than the company, and because of any default of that other person, section 7(1) or 8(1) is contravened, then the power of the Court under subsection (1) or (2) extends to the making of an order against that other person and that other person's officers and other employees.
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## Part 4

### Provision of Copy of Company Records by Company

#### 10. Interpretation of Part 4

In this Part—

**relevant provision** (相關條文) means a provision of the Ordinance which provides that a person is entitled, on request and on payment of a prescribed fee, to be provided with a copy of the company records mentioned in that provision in accordance with regulations made under section 657 of the Ordinance.

#### 11. Provision of copy of company records

- (1) If by making a request and paying the fee prescribed in section 12, a person is entitled under a relevant provision to be provided with a copy of the whole or any part of any company records of a company, the company must, within 5 business days after the date of receipt of the request or payment (whichever is the later), provide the copy to the person.
- (2) For the purposes of subsection (1)—
  - (a) if the person requests the copy to be in hard copy form, the company must provide the copy in hard copy form; and
  - (b) if the person requests the copy to be in electronic form, the company must provide the copy in any electronic form that the company thinks fit.
- (3) Subsections (1) and (2) do not require a company to provide a copy in electronic form if it keeps the company records concerned in hard copy form only.

- (4) If subsection (1) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

- (5) In this section—

**business day** (辦公日) means a day that is not—

- (a) a general holiday; or
- (b) a black rainstorm warning day or gale warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);

**in electronic form** (電子形式) has the meaning given by section 655(7) of the Ordinance;

**in hard copy form** (印本形式) has the meaning given by section 655(7) of the Ordinance.

## 12. Prescribed fees for provision of copy of company records

- (1) For the purposes of a relevant provision, the fee prescribed for a copy of company records that is a register is the aggregate of the following—
  - (a) the amount calculated by reference to the number of entries in the register that are requested to be copied, and the rate is—
    - (i) for the first 2 000 of the entries, \$5 for each 10 entries (or any part of those 10 entries); and
    - (ii) for the remainder of the entries, \$1 for each 100 entries (or any part of those 100 entries); and
  - (b) any reasonable costs to be incurred by the company in delivering the copy to the person requesting it.
- (2) For the purposes of a relevant provision, the fee prescribed for a copy of company records that is not a register is the aggregate of the following—

- (a) \$5 for each page (or a portion of a page) of the company records requested to be copied; and
- (b) any reasonable costs to be incurred by the company in delivering the copy to the person requesting it.

### Note—

Please also see section 657(5)(b) of the Ordinance which provides that nothing in any provision of the Ordinance or in the regulations made under section 657 of the Ordinance is to be construed as preventing a company from charging a lesser fee than that prescribed or none at all.

## 13. Order of Court relating to provision of copy of company records

- (1) If in relation to a person entitled to be provided with a copy of any company records of a company under a relevant provision, section 11(1) is contravened, the Court may, on application by the person, make an order to compel the company to provide the person with a copy of the company records concerned in any form that the Court thinks fit.
- (2) If the company records of a company are kept at the office of a person other than the company, and because of any default of that other person, section 11(1) is contravened, then the power of the Court under subsection (1) extends to the making of an order against that other person and that other person's officers and other employees.

2013

Financial Secretary

**Explanatory Note**

The main objectives of this Regulation are to—

- (a) prescribe the place for companies or registered non-Hong Kong companies to keep company records or make company records available for inspection under the Companies Ordinance (28 of 2012) (*the Ordinance*);
  - (b) provide for the obligation of companies and registered non-Hong Kong companies to make company records available for inspection;
  - (c) provide for the obligation of companies to provide copies of company records or trust deeds or any other documents securing the issue of debentures; and
  - (d) prescribe the fees payable for an inspection or a copy of company records.
2. Part 1 provides for commencement of the Regulation and contains a definition that is necessary for the interpretation of the Regulation.
  3. Part 2 prescribes the place where a company or registered non-Hong Kong company may keep their company records or make their company records available for inspection under the Ordinance.
  4. Part 3 provides for the inspection of company records. Section 5 prescribes the manner in which a request for inspection of company records under the Ordinance is to be made. Section 6 prescribes the fee payable for making an inspection of company records. Section 7 provides for the obligation of companies and registered non-Hong Kong companies to make their company records available for inspection during business hours. Under section 8, companies and registered non-Hong Kong companies are obliged to permit a copy of company records to be made in the course of inspection. Section 9 empowers the Court of First Instance to make certain orders relating to the inspection of company records.

5. Part 4 provides for the obligation of companies to provide copies of company records or trust deeds or any other documents securing the issue of debentures (section 11). Section 11 also states the period within which, and the form in which, such copies are to be provided. Section 12 prescribes the fees payable for a copy of company records. Section 13 empowers the Court of First Instance to make certain orders relating to the provision of a copy of company records.

## Companies (Non-Hong Kong Companies) Regulation

i

**Companies (Non-Hong Kong Companies) Regulation****Contents**

Section	Page
<b>Part 1</b>	
<b>Preliminary</b>	
1. Commencement .....	1
2. Interpretation .....	1
<b>Part 2</b>	
<b>Particulars and Documents Required for Application for Registration</b>	
3. Particulars to be contained in application for registration .....	2
4. Documents to accompany application for registration .....	4
<b>Part 3</b>	
<b>Certified Translation of Domestic Name</b>	
5. Company may include certified translation of domestic name: application for registration .....	7
6. Company may include certified translation of domestic name: change of domestic name .....	7
7. Contents of application under section 5 and return under section 6 .....	8
<b>Part 4</b>	
<b>Notice of Termination of Authorized Representative</b>	

## Companies (Non-Hong Kong Companies) Regulation

ii

Section	Page
8. Documents to accompany notice of termination .....	10
<b>Part 5</b>	
<b>Particulars Required for Annual Return</b>	
9. Particulars to be contained in annual return .....	11
<b>Part 6</b>	
<b>Revision of Accounts under Section 790 of Ordinance</b>	
10. Interpretation .....	14
11. Company to deliver revised accounts to Registrar .....	15
12. Effect of revision after delivery of revised accounts to Registrar .....	17
<b>Part 7</b>	
<b>Change of Registered Particulars</b>	
13. Particulars to be contained in a return under section 791 of Ordinance .....	18
14. Documents to accompany a return under section 791 of Ordinance .....	18

**Companies (Non-Hong Kong Companies) Regulation**

(Made by the Financial Secretary under sections 804 and 805 of the Companies Ordinance (28 of 2012))

**Part 1****Preliminary****1. Commencement**

This Regulation comes into operation on the day on which sections 804 and 805 of the Companies Ordinance (28 of 2012) come into operation.

**2. Interpretation**

In this Regulation—

**authorized representative** (獲授權代表) has the meaning given by section 774(1) of the Ordinance;

**certified copy** (經核證副本) has the meaning given by section 775 of the Ordinance;

**corporate name** (法團名稱) has the meaning given by section 774(1) of the Ordinance;

**domestic name** (本土名稱) has the meaning given by section 774(1) of the Ordinance;

**place of business** (營業地點) has the meaning given by section 774(1) and (3) of the Ordinance.

**Part 2****Particulars and Documents Required for Application for Registration****3. Particulars to be contained in application for registration**

- (1) For the purposes of section 776(4)(b) of the Ordinance, an application for registration as a registered non-Hong Kong company must contain—
  - (a) if the company's domestic name is in Roman script or in Chinese, the domestic name;
  - (b) the place of incorporation of the company;
  - (c) the date on which the company established its place of business in Hong Kong;
  - (d) the following particulars with respect to each director of the company—
    - (i) the director's date of appointment;
    - (ii) if the director is a natural person—
      - (A) the present forename and surname, former forename or surname (if any), and aliases (if any);
      - (B) the usual residential address; and
      - (C) the number of the identity card or, if the director does not have an identity card, the number and issuing country of any passport held by the director; and
    - (iii) if the director is a body corporate, the name of the body corporate, its registered number in Hong

- Kong (if any) and the address of its registered or principal office;
- (e) the following particulars with respect to the company secretary of the company (or, if there are joint company secretaries, with respect to each of them)—
- (i) the company secretary's date of appointment;
  - (ii) if the company secretary is a natural person—
    - (A) the present forename and surname, former forename or surname (if any), and aliases (if any);
    - (B) the correspondence address; and
    - (C) the number of the identity card or, if the company secretary does not have an identity card, the number and issuing country of any passport held by the company secretary; and
  - (iii) if the company secretary is a body corporate, the name of the body corporate, its registered number in Hong Kong (if any) and the address of its registered or principal office; and
- (f) the address of—
- (i) the principal place of business of the company in Hong Kong;
  - (ii) the principal place of business (if any) of the company in its place of incorporation; and
  - (iii) the registered office (or its equivalent) of the company in its place of incorporation.
- (2) For the purposes of subsection (1)(e), if all the partners in a firm are joint company secretaries of the non-Hong Kong company, the name and principal office of the firm may be

- substituted for the particulars mentioned in subsection (1)(e)(ii) and (iii).
- (3) In this section—
- forename* (名字) includes a Christian or given name;
- residential address* (住址)—
- (a) does not include an address at a hotel unless the person to whom it relates is stated, for the purposes of this section, to have no other permanent address; and
  - (b) does not include a post office box number;
- surname* (姓氏), for a person usually known by a title different from the person's surname, means that title.
- (4) For the purposes of this section, a correspondence address must not be a post office box number.
- (5) In this section, a reference to a former forename or surname is to be construed in accordance with sections 643(6) and 650(5) of the Ordinance.

#### 4. Documents to accompany application for registration

- (1) For the purposes of section 776(4)(d) of the Ordinance, an application for registration as a registered non-Hong Kong company must be accompanied by—
- (a) a certified copy of the charter, statutes or memorandum (including articles, if any) of the company or any other instruments defining the company's constitution or, if the charter, statutes, memorandum or the other instruments are in a language other than English or Chinese, a certified translation of the charter, statutes, memorandum or instrument in English or Chinese;
  - (b) a certified copy of the company's certificate of incorporation and, if the certificate is in a language other

than English or Chinese, a certified translation of the certificate in English or Chinese;

- (c) if the law of the place of incorporation of the company requires the company to publish its accounts or to deliver copies of its accounts to any person in whose office the accounts may be inspected as of right by members of the public, a certified copy of the latest published accounts of the company that comply with that law;
  - (d) if—
    - (i) the law of the place of incorporation of the company does not impose the requirement referred to in paragraph (c); but
    - (ii) the law of any other jurisdiction where the company is registered as a company, or the rules of any stock exchange or similar regulatory bodies in that jurisdiction impose that requirement,
 a certified copy of the latest published accounts of the company that comply with the law or rules that may be chosen by the company; and
  - (e) if none of the following laws or rules imposes the requirement referred to in paragraph (c), a statement in the specified form specifying that fact—
    - (i) the law of the place of incorporation of the company;
    - (ii) the law of any other jurisdiction where the company is registered as a company, or the rules of any stock exchange or similar regulatory bodies in that jurisdiction.
- (2) For the purposes of subsection (1)(b), if it is shown to the satisfaction of the Registrar that it is not the practice under the

law of the place where a non-Hong Kong company claims to be incorporated to issue a certificate of incorporation, the company must deliver to the Registrar other evidence of incorporation that the Registrar considers sufficient.

- (3) For the purposes of subsection (1)(c) and (d), if the accounts required to be provided are in a language other than English or Chinese, the company must deliver to the Registrar a certified translation of the accounts in English or Chinese for registration instead of the certified copy of the accounts in the original language.
- (4) For the purposes of subsection (1)(c) and (d), if—
  - (a) a non-Hong Kong company has been incorporated for less than 18 months prior to the date of delivery of the application under section 776(4) of the Ordinance; and
  - (b) the accounts that the company is required to publish have not been made up,
 the company must deliver to the Registrar for registration a statement in the specified form specifying that fact instead of the certified copy of the latest published accounts of the company.

**Part 3****Certified Translation of Domestic Name****5. Company may include certified translation of domestic name: application for registration**

For the purposes of section 777(2)(b) of the Ordinance, an application for registration as a registered non-Hong Kong company under section 776(2) or (3) of the Ordinance may contain—

- (a) if the company has 1 domestic name and that name is not in Roman script, a certified translation, in English, of that name;
- (b) if the company has more than one domestic name and none of which is in Roman script, a certified translation, in English, of any one of those names;
- (c) if the company has 1 domestic name and that name is not in Chinese, a certified translation, in Chinese, of that name; or
- (d) if the company has more than one domestic name and none of which is in Chinese, a certified translation, in Chinese, of any one of those names.

**6. Company may include certified translation of domestic name: change of domestic name**

- (1) For the purposes of section 779(3)(b) of the Ordinance, a return delivered by a registered non-Hong Kong company under section 778(2) of the Ordinance to the Registrar for registration may contain—

- (a) if the company has 1 new domestic name and that name is not in Roman script, a certified translation, in English, of that name;
  - (b) if the company has more than one new domestic name and none of which is in Roman script, a certified translation, in English, of any one of those names;
  - (c) if the company has 1 new domestic name and that name is not in Chinese, a certified translation, in Chinese, of that name; or
  - (d) if the company has more than one new domestic name and none of which is in Chinese, a certified translation, in Chinese, of any one of those names.
- (2) Subsection (1)(a) and (b) does not apply, if at the time of delivering the return, one or more of the company's corporate names are in Roman script.
  - (3) Subsection (1)(c) and (d) does not apply, if at the time of delivering the return, one or more of the company's corporate names are in Chinese.

**7. Contents of application under section 5 and return under section 6**

- (1) If a certified translation of a domestic name is contained in an application under section 5, the application must contain a certified translation (in the same language as the certified translation of the domestic name) of the relevant part of the company's certificate of incorporation (or its equivalent) that states—
  - (a) the domestic name of the company;
  - (b) the nature of that certificate (or its equivalent); and
  - (c) the date of issue of that certificate (or its equivalent).

- (2) If a certified translation of a new domestic name is contained in a return under section 6(1), the return must contain a certified translation (in the same language as the certified translation of the new domestic name) of the relevant part of the company's certificate of change of name (or its equivalent) that states—

- (a) the new domestic name of the company;
  - (b) the nature of that certificate (or its equivalent); and
  - (c) the date of issue of that certificate (or its equivalent).
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## Part 4

### Notice of Termination of Authorized Representative

#### 8. Documents to accompany notice of termination

For the purposes of section 787(5)(b) of the Ordinance, a notification under section 787(3) of the Ordinance must be accompanied by—

- (a) a copy of the written notice of termination sent under section 787(1) or (2) of the Ordinance; or
  - (b) a certified translation of the written notice of termination in English or Chinese if it is in a language other than English or Chinese.
-

**Part 5****Particulars Required for Annual Return****9. Particulars to be contained in annual return**

- (1) For the purposes of section 788(2)(b) of the Ordinance, an annual return of a registered non-Hong Kong company must contain—
- (a) the date of the annual return, which must be the date of the most recent anniversary of the date of registration of the company under—
    - (i) Part 16 of the Ordinance; or
    - (ii) Part XI of the predecessor Ordinance;
  - (b) the place of incorporation of the company;
  - (c) the corporate name or approved name of the company;
  - (d) the date of registration of the company and its registered number under—
    - (i) Part 16 of the Ordinance; or
    - (ii) Part XI of the predecessor Ordinance;
  - (e) the address of—
    - (i) the principal place of business of the company in Hong Kong;
    - (ii) the principal place of business (if any) of the company in its place of incorporation; and
    - (iii) the registered office (or its equivalent) of the company in its place of incorporation;
  - (f) the particulars specified in section 3(1)(d)(ii) and (iii) with respect to each person who, at the date of the annual return, is a director of the company;

- (g) the particulars specified in section 3(1)(e)(ii) and (iii) with respect to each person who, at the date of the annual return, is the company secretary (or, if there are joint company secretaries, with respect to each of them) of the company;
- (h) the following particulars with respect to each person who, at the date of the annual return, is an authorized representative of the company—
  - (i) the name and address of the representative; and
  - (ii) if the representative is a natural person—
    - (A) the number of the representative's identity card; or
    - (B) if the representative does not have an identity card, the number and issuing country of any passport held by the representative;
- (i) for a company to which section 789 of the Ordinance applies, a statement specifying that the latest published accounts of the company are delivered to the Registrar under that section together with the annual return;
- (j) for a company to which section 789 of the Ordinance does not apply, a statement specifying that fact;
- (k) if the company has been incorporated for less than 18 months prior to the date of delivery of the annual return under section 788(1) of the Ordinance, and the accounts of the company that are required to be published have not been made up, a statement in the specified form specifying that fact;
- (l) if the company has a share capital, the particulars relating to the authorized share capital (if any) and issued share capital (or their equivalents) of the company; and

- (m) the particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges that are required to be registered with the Registrar under—
- (i) Part 8 of the Ordinance; or
  - (ii) Part III of the predecessor Ordinance.
- (2) For the purposes of subsection (1)(g), if all the partners in a firm are joint company secretaries of the registered non-Hong Kong company, the name and principal office of the firm may be substituted for the particulars specified in section 3(1)(e)(ii) and (iii).
- (3) In subsection (1)(c)—
- approved name** (經批准名稱) has the meaning given by section 774(1) of the Ordinance.

## Part 6

### Revision of Accounts under Section 790 of Ordinance

#### 10. Interpretation

##### (1) In this Part—

**original accounts** (原有帳目) means the accounts that are the subject of revision by revised accounts;

**regulatory requirement** (規管性規定) has the meaning given by section 790(2) of the Ordinance;

**revised accounts** (經修改帳目) means—

- (a) for a revision under section 790 of the Ordinance by replacement, the accounts replacing the original accounts for the purpose of the revision; or
- (b) for a revision under that section by supplementary note, the original accounts together with the supplementary note for the purpose of the revision.

##### (2) In this Part—

- (a) a reference to revision of any accounts by replacement is a reference to revision by the preparation of a replacement set of accounts in substitution for the accounts; and
  - (b) a reference to revision of any accounts by supplementary note is a reference to revision by the preparation of a note indicating revisions made to the accounts.
- (3) This Part is not to be construed as affecting any right accrued, or any obligation or liability incurred, in relation to any original accounts.

**11. Company to deliver revised accounts to Registrar**

- (1) If the directors of a registered non-Hong Kong company have revised the accounts of the company under section 790 of the Ordinance, the company must comply with subsection (2) or (3) within 28 days after whichever is the earlier of the following—
  - (a) the date on which the revised accounts of the company are published;
  - (b) the date on which copies of the revised accounts of the company are delivered to any person in whose office the revised accounts may be inspected as of right by members of the public.
- (2) If the original accounts of a registered non-Hong Kong company are revised by replacement, the company must—
  - (a) make in a prominent position in the revised accounts of the company—
    - (i) a statement specifying that the revised accounts replace the original accounts for the financial year specified in the statement; and
    - (ii) a statement specifying—
      - (A) the respects in which the original accounts did not, as appears to the directors of the company, comply with the regulatory requirement; and
      - (B) the material revisions to the original accounts that are made under section 790 of the Ordinance; and
  - (b) deliver to the Registrar for registration—
    - (i) a certified copy of the revised accounts that comply with the regulatory requirement; or

- (ii) if the revised accounts are in a language other than English or Chinese, a certified translation of the revised accounts, in English or Chinese, that comply with the regulatory requirement.
- (3) If the original accounts of a registered non-Hong Kong company are revised by supplementary note, the company must—
  - (a) make in a prominent position in the supplementary note a statement specifying that the note—
    - (i) revises in certain respects the original accounts; and
    - (ii) is to be treated as forming part of the original accounts; and
  - (b) deliver to the Registrar for registration—
    - (i) a certified copy of the supplementary note that complies with the regulatory requirement; or
    - (ii) if the supplementary note is in a language other than English or Chinese, a certified translation of the supplementary note, in English or Chinese, that complies with the regulatory requirement.
- (4) If a registered non-Hong Kong company contravenes subsection (1), the company, every responsible person of the company, and every agent of the company who authorizes or permits the contravention, 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.
- (5) If a person is convicted of an offence under subsection (4), the magistrate may, in addition to any penalty that may be imposed, order that the person must do the act that the person

has failed to do as required by subsection (2)(b) or (3)(b) within a time specified in the order.

- (6) A person who contravenes an order under subsection (5) commits an offence and 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.

**12. Effect of revision after delivery of revised accounts to Registrar**

- (1) If a registered non-Hong Kong company complies with section 11(2) or (3) with respect to any of its revised accounts, Part 16 of the Ordinance has effect with respect to the revised accounts as if the revised accounts were, as from the date of their registration with the Registrar, the accounts of the company in place of the original accounts.
- (2) Without limiting subsection (1), if, as at the date of registration of the revised accounts of a registered non-Hong Kong company for a financial year with the Registrar, section 789(2) of the Ordinance has yet to be complied with, the revised accounts are, as from that date, the accounts of the company for that financial year for the purposes of that section.
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## Part 7

### Change of Registered Particulars

**13. Particulars to be contained in a return under section 791 of Ordinance**

For the purposes of section 791(3)(b) of the Ordinance, a return delivered under section 791(1) of the Ordinance in relation to a registered non-Hong Kong company must—

- (a) identify the matters specified in section 791(2) of the Ordinance in which a change is made;
- (b) contain the new particulars after the change; and
- (c) contain the date on which the change is made.

**14. Documents to accompany a return under section 791 of Ordinance**

- (1) This section applies if, in relation to a registered non-Hong Kong company, a change is made in any of the instruments specified in section 791(2)(a) of the Ordinance.
- (2) For the purposes of section 791(3)(c) of the Ordinance, a return delivered under section 791(1) of the Ordinance must be accompanied by—
- (a) a certified copy of the charter, statutes or memorandum (including articles, if any) of the company or the other instruments defining the company's constitution after the change; or
  - (b) if the charter, statutes or memorandum (including articles, if any) of the company or the other instruments defining the company's constitution are in a language other than English or Chinese, a certified translation of

the charter, statutes, memorandum or instruments in English or Chinese.

Financial Secretary

2013

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### Explanatory Note

Part 16 of the Companies Ordinance (28 of 2012) (*Ordinance*) makes provisions for non-Hong Kong companies, being companies incorporated in a place outside Hong Kong that have established a place of business in Hong Kong. This Regulation is made under sections 804 and 805 of the Ordinance to provide for the various particulars and documents to be provided to the Registrar of Companies (*Registrar*) in respect of a non-Hong Kong company (*company*). The Regulation is divided into 7 Parts.

2. Part 1 deals with the preliminary matters, including the commencement of the Regulation and interpretation of the terms used.
3. Part 2 sets out the particulars and documents required for an application for registration as a registered company.
4. Part 3 provides that an application under section 776(2) and (3) of the Ordinance or a return under section 778(2) of the Ordinance may contain a certified translation of a domestic name under specified conditions. The application or return must be accompanied by a certified translation of the relevant part of a certificate of incorporation or certificate of change of name showing the domestic name or new domestic name of the company.
5. Part 4 sets out the documents required to accompany a notice of termination of authorization as an authorized representative of a registered company.
6. Part 5 sets out the particulars to be contained in an annual return of a registered company.
7. Part 6 provides for the requirements for delivery of revised accounts of a registered company to the Registrar and the effect of the revision. Failure to comply with the requirements is an offence punishable by a fine at level 5.

8. Part 7 sets out the particulars of the changes of a registered company (such as changes made to its constitution or directors) to be contained in a return required to be delivered under section 791 of the Ordinance. It also sets out the documents required to accompany the return if there is any change to the company's constitution.

## Companies (Fees) Regulation

### Contents

Section	Page
1. Commencement .....	1
2. Fees payable in relation to registration of companies or for registration of documents .....	1
3. Fees for inspecting or obtaining documents or information .....	2
4. Fees for Registrar's approval or licence .....	2
5. Miscellaneous fees payable under Ordinance .....	2
Schedule 1 Fees Payable in relation to Registration of Companies or for Registration of Documents .....	3
Schedule 2 Fees for Inspecting or Obtaining Documents or Information .....	10
Schedule 3 Fees Payable for Obtaining Registrar's Approval or Licence .....	31
Schedule 4 Miscellaneous Fees Payable under Ordinance .....	32

## Companies (Fees) Regulation

(Made by the Financial Secretary under sections 26 and 909 of the Companies Ordinance (28 of 2012))

### 1. Commencement

This Regulation comes into operation on the day on which sections 26 and 909 of the Companies Ordinance (28 of 2012) come into operation.

### 2. Fees payable in relation to registration of companies or for registration of documents

- (1) A fee specified in column 3 of Part 1 of Schedule 1 is payable to the Registrar in respect of the matter described, opposite the fee, in column 2 of that Part in relation to the registration of a company having a share capital or for the registration of a document delivered to the Registrar in respect of such a company.
- (2) Subsection (1) does not apply to a company formed as, or became, a company limited by guarantee having a share capital before 13 February 2004.
- (3) A fee specified in column 3 of Part 2 of Schedule 1 is payable to the Registrar in respect of the matter described, opposite the fee, in column 2 of that Part in relation to the registration of a company limited by guarantee or for the registration of a document delivered to the Registrar in respect of such a company.
- (4) A fee specified in column 3 of Part 3 of Schedule 1 is payable to the Registrar in respect of the matter described, opposite the fee, in column 2 of that Part in relation to the registration of a registered non-Hong Kong company or for the registration of

a document delivered to the Registrar in respect of such a company.

**3. Fees for inspecting or obtaining documents or information**

- (1) A fee specified in column 3 of Part 2 of Schedule 2 is payable to the Registrar in respect of the matter described, opposite the fee, in column 2 of that Part.
- (2) A fee specified in column 4 of Part 2 of Schedule 2 is payable to the Registrar in respect of the matter described, opposite the fee, in column 2 of that Part.
- (3) A fee specified in column 5 of Part 2 of Schedule 2 is payable to the Registrar in respect of the matter described, opposite the fee, in column 2 of that Part.

**4. Fees for Registrar's approval or licence**

A fee specified in column 3 of Schedule 3 is payable to the Registrar in respect of the matter described, opposite the fee, in column 2 of that Schedule.

**5. Miscellaneous fees payable under Ordinance**

- (1) A fee specified in column 3 of Part 1 of Schedule 4 is payable to the Registrar in respect of the matter described, opposite the fee, in column 2 of that Part.
- (2) A fee specified in column 3 of Part 2 of Schedule 4 is payable to the Financial Secretary in respect of the matter described, opposite the fee, in column 2 of that Part.

**Schedule 1**

[s. 2]

**Fees Payable in relation to Registration of Companies  
or for Registration of Documents**

**Part 1**

**Fees Payable in relation to Company Having Share  
Capital**

Column 1	Column 2	Column 3
Item	Matter	Fee
1.	For registration of a company under section 67 of the Ordinance	\$1,425
2.	For re-registration of a company under section 130 of the Ordinance	\$1,425
3.	For lodging of an incorporation form and a copy of articles delivered under section 67 of the Ordinance	\$295
4.	For lodging of a specified form and a copy of articles delivered under section 131 of the Ordinance	\$295
5.	For registration of an eligible company under section 807(1)(a) of the Ordinance	\$1,425

## Companies (Fees) Regulation

## Schedule 1—Part 1

4

Column 1	Column 2	Column 3
Item	Matter	Fee
6.	For lodging of a specified form and a copy of every constitutional document delivered under section 807(2) and (3)(a) of the Ordinance	\$295
7.	Annual registration fee of an annual return of a private company delivered under section 662(1) of the Ordinance—	
	(a) if the annual return is delivered within 42 days after the company's return date	\$105
	(b) if the annual return is delivered more than 42 days after but within 3 months after the company's return date	\$870
	(c) if the annual return is delivered more than 3 months after but within 6 months after the company's return date	\$1,740
	(d) if the annual return is delivered more than 6 months after but within 9 months after the company's return date	\$2,610
	(e) if the annual return is delivered more than 9 months after the company's return date	\$3,480
8.	Annual registration fee of an annual return of a public company delivered under section 662(3) of the Ordinance—	
	(a) if the annual return is delivered within 42 days after the company's return date	\$140

## Companies (Fees) Regulation

## Schedule 1—Part 2

5

Column 1	Column 2	Column 3
Item	Matter	Fee
	(b) if the annual return is delivered more than 42 days after but within 3 months after the company's return date	\$1,200
	(c) if the annual return is delivered more than 3 months after but within 6 months after the company's return date	\$2,400
	(d) if the annual return is delivered more than 6 months after but within 9 months after the company's return date	\$3,600
	(e) if the annual return is delivered more than 9 months after the company's return date	\$4,800

**Part 2****Fees Payable in relation to Company Limited by Guarantee**

Column 1	Column 2	Column 3
Item	Matter	Fee
1.	For registration of a company whose number of members as stated in the incorporation form does not exceed 25	\$170

## Companies (Fees) Regulation

Schedule 1—Part 2

6

Column 1	Column 2	Column 3
Item	Matter	Fee
2.	For registration of a company whose number of members as stated in the incorporation form exceeds 25, but does not exceed 100	\$340
3.	(a) For registration of a company whose number of members as stated in the incorporation form exceeds 100; and (b) For every additional 50 members or less after the first 100  But a company is not required to pay on the whole a fee greater than \$1,025 in respect of its number of members.	\$340  \$20
4.	For registration under section 114(1) of the Ordinance of any increase on the number of members beyond the registered number of the company in respect of every 50 members, or less than 50 members, of that increase.  But a company is not required to pay on the whole a fee greater than \$1,025 in respect of its number of members, taking into account the fee paid on the first registration of the company.	\$20
5.	For registration of an eligible company under section 807(1)(b) of the Ordinance— (a) if the number of members stated in the specified form referred to in section 807(2) of the Ordinance does not exceed 25	\$170

## Companies (Fees) Regulation

Schedule 1—Part 2

7

Column 1	Column 2	Column 3
Item	Matter	Fee
	(b) if the number of members stated in the specified form referred to in section 807(2) of the Ordinance exceeds 25 but does not exceed 100	\$340
	(c) (i) if the number of members stated in the specified form referred to in section 807(2) of the Ordinance exceeds 100; and (ii) for every additional 50 members or less after the first 100  But a company is not required to pay on the whole a fee greater than \$1,025 in respect of its number of members.	\$340  \$20
6.	Annual registration fee for an annual return delivered under section 662(3) of the Ordinance— (a) if the annual return is delivered within 42 days after the company's return date (b) if the annual return is delivered more than 42 days after but within 3 months after the company's return date (c) if the annual return is delivered more than 3 months after but within 6 months after the company's return date (d) if the annual return is delivered more than 6 months after but within 9 months after the company's return date	\$105  \$870  \$1,740  \$2,610

Column 1	Column 2	Column 3
Item	Matter	Fee
	(e) if the annual return is delivered more than 9 months after the company's return date	\$3,480

### Part 3

#### Fees Payable in relation to Registered Non-Hong Kong Company

Column 1	Column 2	Column 3
Item	Matter	Fee
1.	For issuing a certificate of registration or a fresh certificate of registration under section 777(4)(a), 779(1)(b), 782(5)(b), 783(3)(b) or 785(5)(c) of the Ordinance	\$1,425
2.	For lodging of an application and accompanying documents delivered under section 776 of the Ordinance	\$295
3.	Annual registration fee of a return delivered under section 788 of the Ordinance—	
	(a) if the return is delivered within 42 days after the anniversary of registration	\$180
	(b) if the return is delivered more than 42 days after but within 3 months after the anniversary of registration	\$1,200

Column 1	Column 2	Column 3
Item	Matter	Fee
	(c) if the return is delivered more than 3 months after but within 6 months after the anniversary of registration	\$2,400
	(d) if the return is delivered more than 6 months after but within 9 months after the anniversary of registration	\$3,600
	(e) if the return is delivered more than 9 months after the anniversary of registration	\$4,800

## Schedule 2

[s. 3 &amp; Sch. 4]

### Fees for Inspecting or Obtaining Documents or Information

#### Part 1

#### Interpretation of Schedule 2

1. In this Schedule—

**charge** (押記) includes mortgage;

**document** (文件) includes a document in electronic form or any other form;

**on-site user** (到場使用者) means a person inspecting or obtaining documents and information specified in items 1, 2, 4, 6 and 7 of Part 2 of this Schedule at the office for the registration of companies;

**principal account** (主要帳戶) means the first account that a registered online user registers with the Registrar under a registration arrangement;

**registered non-Hong Kong company** (註冊非香港公司) means—

- (a) a non-Hong Kong company registered under section 777(1) of the Ordinance; and
- (b) a company that was, at any time before the commencement date of Part 16 of the Ordinance, registered in the register kept under section 333AA of the predecessor Ordinance;

**registered online user** (登記用戶) means a person who has entered into a registration arrangement with the Registrar;

**registration arrangement** (登記安排) means an arrangement under which a person may register one or more accounts with the Registrar through which that person may use online medium, at fees that are the same as or lesser than those payable by an unregistered online user, for inspecting and obtaining documents and information specified in items 1, 2, 3, 5 and 7 of Part 2 of this Schedule;

**reporting documents** (報告文件) has the meaning given by section 357(2) of the Ordinance;

**subsequent account** (其後帳戶) means any account, other than the principal account, that a registered online user registers with the Registrar under a registration arrangement;

**unregistered online user** (無帳戶使用者) means a person, not in the capacity of a registered online user, using an online medium for inspecting or obtaining documents and information specified in items 1, 2, 3, 5 and 7 of Part 2 of this Schedule.

2. In items 3(o), 4(o) and 5(o) of Part 2 of this Schedule—

**company** (公司) includes an unregistered company as defined by section 326 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

**Part 2****Fees for Inspecting or Obtaining Documents or Information**

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Matter	Fee payable by unregistered online user	Fee payable by registered online user	Fee payable by on-site user
1.	Under section 647(3) or 802(3) or both, of the Ordinance for inspecting the index of directors kept by the Registrar—			
	(a) for each inspection of the list of directors and reserve directors (if any) of a company, or of the list of directors of a registered non-Hong Kong company	\$11	\$11	\$11
	(b) for each inspection of the particulars of a director or reserve director of a company, or of the particulars of a director of a	\$11	\$11	\$11

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Matter	Fee payable by unregistered online user	Fee payable by registered online user	Fee payable by on-site user
	registered non-Hong Kong company			
	(c) for each inspection of all the directorships and reserve directorships held by a person in any companies, and all the directorships held by that person in any registered non-Hong Kong companies (whichever is applicable)	\$22	\$22	\$22
2.	Under section 168R(4) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), for each inspection of the register of disqualification orders maintained by the Registrar, per disqualified	\$11	\$11	\$11

## Companies (Fees) Regulation

## Schedule 2—Part 2

14

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Matter	Fee payable by unregistered online user	Fee payable by registered online user	Fee payable by on-site user
	person			
3.	Under section 45(4) of the Ordinance, for obtaining, by way of downloading through online medium, an image record of the following documents kept by the Registrar—			
	(a) the prospectus of a company, or a company incorporated outside Hong Kong, registered under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)	\$23	\$21	Not applicable
	(b) each incorporation form	\$18	\$16	Not applicable
	(c) the articles of a company	\$23	\$21	Not applicable

## Companies (Fees) Regulation

## Schedule 2—Part 2

15

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Matter	Fee payable by unregistered online user	Fee payable by registered online user	Fee payable by on-site user
	(d) the memorandum or memorandum and articles of a company registered under a former Companies Ordinance	\$23	\$21	Not applicable
	(e) the interim accounts under section 79H of the predecessor Ordinance or interim financial statements under section 305 of the Ordinance prepared for a proposed distribution by a listed company	\$23	\$21	Not applicable
	(f) the initial accounts under section 79I of the predecessor Ordinance or initial financial statements under section 306 of the Ordinance prepared for a proposed distribution	\$23	\$21	Not applicable

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Matter	Fee payable by unregistered online user	Fee payable by registered online user	Fee payable by on-site user
	by a listed company			
(g)	the balance sheet (including any documents annexed to it), auditor's report and directors' report forwarded under section 109(3) of the predecessor Ordinance in relation to an annual return of a company other than a private company, or reporting documents accompanying an annual return delivered under section 662 of the Ordinance by a public company or a company limited by guarantee	\$23	\$21	Not applicable
(h)	each annual return of a company (but excluding those	\$18	\$16	Not applicable

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Matter	Fee payable by unregistered online user	Fee payable by registered online user	Fee payable by on-site user
	documents described in paragraph (g))			
(i)	the instrument creating or evidencing a charge and related documents delivered under section 335, 336, 338, 339 or 340 of the Ordinance	\$23	\$21	Not applicable
(j)	the instrument accompanying a notification delivered under section 345(3) of the Ordinance	\$23	\$21	Not applicable
(k)	the charter, statutes, memorandum (including articles, if any), or any other instrument constituting or defining the constitution of a registered non-Hong Kong company	\$23	\$21	Not applicable

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Matter	Fee payable by unregistered online user	Fee payable by registered online user	Fee payable by on-site user
	(l) the lists of the directors, the company secretary and the authorized representative in a specified form delivered under an application to register a non-Hong Kong company	\$18	\$16	Not applicable
	(m) each annual return of a registered non-Hong Kong company	\$18	\$16	Not applicable
	(n) the accounts of a registered non-Hong Kong company	\$23	\$21	Not applicable
	(o) the accounts made up by a liquidator in respect of a company being wound up under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)	\$23	\$21	Not applicable

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Matter	Fee payable by unregistered online user	Fee payable by registered online user	Fee payable by on-site user
	(p) any other document	\$10	\$9	Not applicable
4.	Under section 45(4) of the Ordinance, for obtaining, at the office for the registration of companies, a copy of an image record of the following documents kept by the Registrar—			
	(a) the prospectus of a company, or a company incorporated outside Hong Kong, registered under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)	Not applicable	Not applicable	\$35
	(b) each incorporation form	Not applicable	Not applicable	\$30

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Matter	Fee payable by unregistered online user	Fee payable by registered online user	Fee payable by on-site user
(c)	the articles of a company	Not applicable	Not applicable	\$35
(d)	the memorandum or memorandum and articles of a company registered under a former Companies Ordinance	Not applicable	Not applicable	\$35
(e)	the interim accounts under section 79H of the predecessor Ordinance or interim financial statements under section 305 of the Ordinance prepared for a proposed distribution by a listed company	Not applicable	Not applicable	\$35
(f)	the initial accounts under section 79I of the predecessor Ordinance or initial financial statements under section 306 of the Ordinance	Not applicable	Not applicable	\$35

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Matter	Fee payable by unregistered online user	Fee payable by registered online user	Fee payable by on-site user
	prepared for a proposed distribution by a listed company			
(g)	the balance sheet (including any documents annexed to it), auditor's report and directors' report forwarded under section 109(3) of the predecessor Ordinance in relation to an annual return of a company other than a private company, or reporting documents accompanying an annual return delivered under section 662 of the Ordinance by a public company or a company limited by guarantee	Not applicable	Not applicable	\$35

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Matter	Fee payable by unregistered online user	Fee payable by registered online user	Fee payable by on-site user
	(h) each annual return of a company (but excluding those documents described in paragraph (g))	Not applicable	Not applicable	\$30
	(i) the instrument creating or evidencing a charge and related documents delivered under section 335, 336, 338, 339 or 340 of the Ordinance	Not applicable	Not applicable	\$35
	(j) the instrument accompanying a notification delivered under section 345(3) of the Ordinance	Not applicable	Not applicable	\$35
	(k) the charter, statutes, memorandum (including articles, if any), or any other instrument constituting or defining the	Not applicable	Not applicable	\$35

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Matter	Fee payable by unregistered online user	Fee payable by registered online user	Fee payable by on-site user
	constitution of a registered non-Hong Kong company			
	(l) the lists of the directors, the company secretary and the authorized representative in a specified form delivered under an application to register a non-Hong Kong company	Not applicable	Not applicable	\$30
	(m) each annual return of a registered non-Hong Kong company	Not applicable	Not applicable	\$30
	(n) the accounts of a registered non-Hong Kong company	Not applicable	Not applicable	\$35
	(o) the accounts made up by a liquidator in respect of a company being wound up under the Companies (Winding Up and	Not applicable	Not applicable	\$35

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Matter	Fee payable by unregistered online user	Fee payable by registered online user	Fee payable by on-site user
	Miscellaneous Provisions) Ordinance (Cap. 32)			
	(p) any other document	Not applicable	Not applicable	\$20
5.	Under section 45(3) and (4) of the Ordinance, for online inspection of, and obtaining, an image record of the following documents kept by the Registrar—			
	(a) the prospectus of a company, or a company incorporated outside Hong Kong, registered under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)	\$29	\$26	Not applicable
	(b) each incorporation	\$23	\$21	Not

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Matter	Fee payable by unregistered online user	Fee payable by registered online user	Fee payable by on-site user
	form			applicable
	(c) the articles of a company	\$29	\$26	Not applicable
	(d) the memorandum or memorandum and articles of a company registered under a former Companies Ordinance	\$29	\$26	Not applicable
	(e) the interim accounts under section 79H of the predecessor Ordinance or interim financial statements under section 305 of the Ordinance prepared for a proposed distribution by a listed company	\$29	\$26	Not applicable
	(f) the initial accounts under section 79I of the predecessor Ordinance or initial financial statements under section 306 of	\$29	\$26	Not applicable

## Companies (Fees) Regulation

## Schedule 2—Part 2

26

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Matter	Fee payable by unregistered online user	Fee payable by registered online user	Fee payable by on-site user
	the Ordinance prepared for a proposed distribution by a listed company			
(g)	the balance sheet (including any documents annexed to it), auditor's report and directors' report forwarded under section 109(3) of the predecessor Ordinance in relation to an annual return of a company other than a private company, or reporting documents accompanying an annual return delivered under section 662 of the Ordinance by a public company or a company limited by guarantee	\$29	\$26	Not applicable

## Companies (Fees) Regulation

## Schedule 2—Part 2

27

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Matter	Fee payable by unregistered online user	Fee payable by registered online user	Fee payable by on-site user
(h)	each annual return of a company (but excluding those documents described in paragraph (g))	\$23	\$21	Not applicable
(i)	the instrument creating or evidencing a charge and related documents delivered under section 335, 336, 338, 339 or 340 of the Ordinance	\$29	\$26	Not applicable
(j)	the instrument accompanying a notification delivered under section 345(3) of the Ordinance	\$29	\$26	Not applicable
(k)	the charter, statutes, memorandum (including articles, if any), or any other instrument constituting or defining the	\$29	\$26	Not applicable

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Matter	Fee payable by unregistered online user	Fee payable by registered online user	Fee payable by on-site user
	constitution of a registered non-Hong Kong company			
(l)	the lists of the directors, the company secretary and the authorized representative in a specified form delivered under an application to register a non-Hong Kong company	\$23	\$21	Not applicable
(m)	each annual return of a registered non-Hong Kong company	\$23	\$21	Not applicable
(n)	the accounts of a registered non-Hong Kong company	\$29	\$26	Not applicable
(o)	the accounts made up by a liquidator in respect of a company being wound up under the Companies (Winding Up and	\$29	\$26	Not applicable

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Matter	Fee payable by unregistered online user	Fee payable by registered online user	Fee payable by on-site user
	Miscellaneous Provisions) Ordinance (Cap. 32)			
	(p) any other document	\$13	\$12	Not applicable
6.	If an image record of any document kept by the Registrar under the Ordinance is not available, for each inspection, under section 45(3) of the Ordinance, at the office for the registration of companies of the document or the relevant record kept by the Registrar	Not applicable	Not applicable	\$20
7.	Under section 45(4) of the Ordinance, for obtaining a copy of any record containing the current particulars of a company or a registered non-Hong Kong company, per	\$22	\$22	\$22

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Matter	Fee payable by unregistered online user	Fee payable by registered online user	Fee payable by on-site user
	company			
8.	For registering an account with the Registrar for inspecting and obtaining documents and information specified in items 1, 2, 3, 5 and 7 per year (in addition to the fees payable under those items)—			
	(a) for a principal account	Not applicable	\$500	Not applicable
	(b) for each subsequent account	Not applicable	\$100	Not applicable

**Schedule 3** [s. 4]

**Fees Payable for Obtaining Registrar's Approval or Licence**

Column 1	Column 2	Column 3
Item	Matter	Fee
1.	For an approval under section 100(2) of the Ordinance	\$850
2.	For a licence under section 103 of the Ordinance	\$4,475
3.	For lodging of an application for a licence under section 103 of the Ordinance	\$4,605

**Schedule 4**

[s. 5]

**Miscellaneous Fees Payable under Ordinance****Part 1****Miscellaneous Fees Payable to Registrar**

Column 1	Column 2	Column 3
Item	Matter	Fee
1.	For lodging of a notice of change of name delivered under section 107(2) or 770(2) of the Ordinance	\$240
2.	For issuing a certificate of change of name under section 107(3) or 770(3) of the Ordinance	\$55
3.	For registering—	
	(a) under Part 8 of the Ordinance any specified charge described in section 334 of the Ordinance created by, or a charge existing on property acquired by, a company or a registered non-Hong Kong company	\$340
	(b) a notification under section 345(4) of the Ordinance	\$190
	(c) a notice of appointment of a receiver or manager, or of a mortgagee's entering into possession, under section 348(3) or 349(3) of the Ordinance	\$40

Column 1	Column 2	Column 3
Item	Matter	Fee
4.	For an application for deregistration of a company under section 750 of the Ordinance	\$420
5.	For processing an application requesting the Registrar to represent a dissolved company or its liquidator under section 757 of the Ordinance	\$1,740
6.	For the execution or signing of an instrument or a document by the Registrar under section 757 of the Ordinance	\$1,240
7.	For issuing a copy of or an extract from the relevant document or record referred to in item 6 of Part 2 of Schedule 2, or an extract from any other document, per page	\$5
8.	For certifying under section 45(4) of the Ordinance a copy of or an extract from a document, or a copy of information contained in a record, per copy or extract	\$130
9.	For registration of a prospectus under section 38D or 342C of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)	\$1,415

## Part 2

### Miscellaneous Fees Payable to Financial Secretary

Column 1	Column 2	Column 3
Item	Matter	Fee
1.	For sending a copy of the inspector's report under section 860(1)(b) of the Ordinance—	
	(a) processing fee for provision of a copy of the report; and	\$130
	(b) fee for a copy of the report, per page	\$5

Financial Secretary

2013

## Explanatory Note

This Regulation provides for—

- (a) fees payable to the Registrar of Companies (*Registrar*) in respect of the performance of the Registrar's functions under the Companies Ordinance (28 of 2012) (*the Ordinance*) or any other Ordinance or in respect of the provision of services or facilities by the Registrar; and
  - (b) miscellaneous fees payable to the Financial Secretary under the Ordinance.
2. Schedule 1 specifies fees payable to the Registrar—
    - (a) in relation to the registration of a company having a share capital or for the registration of documents delivered to the Registrar in respect of such a company (Part 1);
    - (b) in relation to the registration of a company limited by guarantee or for the registration of documents delivered to the Registrar in respect of such a company (Part 2); and
    - (c) in relation to the registration of a registered non-Hong Kong company or for the registration of documents delivered to the Registrar in respect of such a company (Part 3).
  3. Schedule 2 specifies fees payable to the Registrar for inspecting or obtaining documents or information on the Companies Register.
  4. Schedule 3 specifies fees payable for obtaining the Registrar's approval or licence under the Ordinance.
  5. Schedule 4 specifies miscellaneous fees payable to—
    - (a) the Registrar (Part 1); and

(b) the Financial Secretary (Part 2).

## **Annex E**

### **Escalating Scale for Annual Registration Fees on Delivery of Annual Returns by Companies Limited by Guarantee under the Companies (Fees) Regulation**

<i>Description</i>	<i>Fee (\$)</i>
Annual registration fees to be paid on delivery of annual returns by companies limited by guarantee –	
(i) if delivered within 42 days after the company's return date	105
(ii) if delivered more than 42 days but within 3 months after the company's return date	870
(iii) if delivered more than 3 months but within 6 months after the company's return date	1,740
(iv) if delivered more than 6 months but within 9 months after the company's return date	2,610
(v) if delivered more than 9 months after the company's return date	3,480