

## **Part 10**

### **Directors and Company Secretaries**

#### **Division 1**

#### **Appointment, Removal and Resignation of Directors**

##### **Subdivision 1**

##### **Requirement to have Directors**

- 453. Public company and company limited by guarantee required to have at least 2 directors**
- (1) This section applies to—
    - (a) a public company; and
    - (b) a company limited by guarantee.
  - (2) The company must have at least 2 directors.
  - (3) With effect from the date of incorporation of the company, the first directors of the company are the persons named as the directors in the incorporation form delivered to the Registrar under section 67(1).
  - (4) A person who is deemed to be a director of the company under section 153(2) of the pre-amended predecessor Ordinance immediately before the commencement date of this section continues to be deemed to be a director of the company as if section 19(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004) had not been enacted, until a notice of appointment of a director is delivered to the Registrar in accordance with section 645(1).

- (5) If a power specified in subsection (6) is exercisable by a director under the company's articles where the number of directors is reduced below the number fixed as the necessary quorum of directors, the power is exercisable also where the number of directors is reduced below the number required by subsection (2).
- (6) The power specified for the purposes of subsection (5) is a power to act for the purpose of—
- (a) increasing the number of directors; or
  - (b) calling a general meeting of the company, but not for any other purpose.
- (7) In subsection (4)—

*pre-amended predecessor Ordinance* (修訂前的《前身條例》) means the predecessor Ordinance that was in force immediately before it was amended by section 19(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004).

**454. Private company required to have at least one director**

- (1) A private company must have at least one director.
- (2) With effect from the date of incorporation of a private company, the first directors of the company are the persons named as the directors in the incorporation form delivered to the Registrar under section 67(1).
- (3) A person who is deemed to be a director of a private company under section 153A(2) of the pre-amended predecessor Ordinance immediately before the commencement date of this section continues to be deemed to be a director of the company as if section 20(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004) had not been enacted, until a notice of appointment of a director is delivered to the Registrar in accordance with section 645(1).

(4) In subsection (3)—

*pre-amended predecessor Ordinance* (修訂前的《前身條例》) means the predecessor Ordinance that was in force immediately before it was amended by section 20(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004).

#### **455. Nomination of reserve director of private company**

- (1) If a private company has only one member and that member is the sole director of the company, the company may by a resolution passed at a general meeting, despite anything in its articles, nominate a person (other than a body corporate) who has attained the age of 18 years as a reserve director of the company to act in the place of the sole director in the event of the sole director's death.
- (2) The nomination of a person as a reserve director of a private company ceases to have effect if—
  - (a) before the death of the director in respect of whom the person was nominated—
    - (i) the person resigns as reserve director in accordance with section 464; or
    - (ii) the company at a general meeting revokes the nomination; or
  - (b) the director in respect of whom the person was nominated ceases to be the sole member and sole director of the company for any reason other than the death of that director.
- (3) If the nomination of a person as a reserve director of a private company ceases to have effect under subsection (2), the company must deliver a notice to the Registrar in accordance with section 645(4).
- (4) Subject to compliance with the conditions specified in subsection (5), in the event of the death of the director in

respect of whom the reserve director is nominated, the reserve director is to be regarded as a director of the company for all purposes until—

- (a) a person is appointed as a director of the company in accordance with its articles; or
- (b) the reserve director resigns from the office of director in accordance with section 464,

whichever is the earlier.

- (5) The conditions specified for the purposes of subsection (4) are—

- (a) that the nomination of the reserve director has not ceased to have effect under subsection (2); and
- (b) that the reserve director is not prohibited by law nor disqualified from acting as a director of the company.

#### **456. Restriction on body corporate being director**

- (1) This section applies to—
  - (a) a public company;
  - (b) a private company that is a member of a group of companies of which a listed company is a member; and
  - (c) a company limited by guarantee.
- (2) A body corporate must not be appointed a director of the company.
- (3) An appointment made in contravention of subsection (2) is void.
- (4) Nothing in this section affects any liability of a body corporate under any provision of this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) if it—

- (a) purports to act as a director; or
  - (b) acts as a shadow director,
- although it could not, by virtue of this section, be appointed as a director.

**457. Requirement to have at least one director who is natural person**

- (1) This section applies to a private company other than a private company that is a member of a group of companies of which a listed company is a member.
- (2) The company must have at least one director who is a natural person.

**458. Direction requiring company to appoint director**

- (1) If it appears to the Registrar that a company is in contravention of section 453(2), 454(1) or 457(2), the Registrar may direct the company to appoint a director or directors in compliance with that section.
- (2) The direction must specify—
  - (a) the statutory requirement of which the company appears to be in contravention;
  - (b) subject to subsection (3), the period within which the company must comply with the direction; and
  - (c) that a failure to comply with the direction is an offence under subsection (6).
- (3) The period must not be less than one month or more than 3 months after the date on which the direction is given.
- (4) The Registrar may, before the end of the period specified in the direction, by notice in writing extend the period.

- (5) The company must comply with the direction by making the necessary appointment or appointments before the end of the period specified in the direction, or, if the period is extended by the Registrar under subsection (4), the extended period.
- (6) If a company fails to comply with a direction under this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.

## **Subdivision 2**

### **Appointment of Directors**

#### **459. Minimum age for appointment as director**

- (1) A person must not be appointed a director of a company unless at the time of appointment the person has attained the age of 18 years.
- (2) An appointment made in contravention of subsection (1) is void.
- (3) Nothing in this section affects any liability of a person under any provision of this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) if the person—
  - (a) purports to act as a director; or
  - (b) acts as a shadow director,although the person could not, by virtue of this section, be appointed as a director.

#### **460. Appointment of directors to be voted on individually**

- (1) This section applies to—

- (a) a public company; and
  - (b) a company limited by guarantee.
- (2) At a general meeting of the company, a motion for the appointment of 2 or more persons as directors of the company by a single resolution must not be made, unless a resolution that it may be so made has first been passed at the meeting without any vote against it.
- (3) A resolution moved in contravention of subsection (2) is void, whether or not its being so moved was objected to at the time.
- (4) Despite the fact that the resolution is void, no provision (whether contained in a company's articles or in any contract with the company or otherwise) for the automatic reappointment of retiring directors in default of another appointment applies.
- (5) For the purposes of this section, a motion for approving a person's appointment, or for nominating a person for appointment, is to be regarded as a motion for the appointment of the person.

**461. Validity of acts of director**

- (1) The acts of a person acting as a director are valid despite the fact that it is afterwards discovered—
- (a) that there was a defect in the appointment of the person as a director;
  - (b) that the person was not qualified to hold office as a director or was disqualified from holding office as a director;
  - (c) that the person had ceased to hold office as a director; or
  - (d) that the person was not entitled to vote on the matter in question.

- (2) Subsection (1) applies even if—
  - (a) the appointment of the person as a director is void under section 456(3) or 459(2); or
  - (b) the resolution for the appointment of the person as a director is void under section 460(3).

### **Subdivision 3**

#### **Removal and Resignation of Directors**

##### **462. Resolution to remove director**

- (1) A company may by an ordinary resolution passed at a general meeting remove a director before the end of the director's term of office, despite anything in its articles or in any agreement between it and the director.
- (2) Subsection (1) does not, if the company is a private company, authorize the removal of a director who has held office for life since 31 August 1984.
- (3) Subsections (4), (5), (6), (7) and (8) apply in relation to a removal of a director by resolution, irrespective of whether the removal by resolution is under subsection (1) or otherwise.
- (4) Special notice is required of a resolution—
  - (a) to remove a director; or
  - (b) to appoint somebody in place of a director so removed at the meeting at which the director is removed.

**Note—**

See also section 578 which sets out the requirements regarding special notice.

- (5) A vacancy created by the removal of a director, if not filled at the meeting at which the director is removed, may be filled as a casual vacancy.
- (6) A person appointed director in place of a removed director is to be regarded, for the purpose of determining the time at which that person or any other director is to retire, as if that person had become director on the day on which the person removed was last appointed a director.
- (7) In relation to a resolution to remove a director before the end of the director's term of office, no share may, on a poll, carry a greater number of votes than it would carry in relation to the generality of matters to be voted on at a general meeting of the company.
- (8) If a share carries special voting rights (that is to say, rights different from those carried by other shares) in relation to some matters but not others, the reference in subsection (7) to the generality of matters to be voted on at a general meeting of the company is to be construed as a reference to the matters in relation to which the share carries no special voting rights.
- (9) This section is not to be regarded as depriving a person of compensation or damages payable to the person in respect of the termination of—
  - (a) the person's appointment as director; or
  - (b) any appointment terminating with that as director.

**463. Director's right to protest against removal**

- (1) On receipt of notice of a resolution under section 462(4) to remove a director, the company must forthwith send a copy of the notice to the director concerned.
- (2) The director (whether or not a member of the company) is entitled to be heard on the resolution at the meeting at which the resolution is voted on.

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- (3) If notice is given of a resolution under section 462(4) to remove a director, the director—
- (a) may make with respect to the resolution representations in writing to the company (not exceeding a reasonable length); and
  - (b) may request the company to comply with the requirement specified in subsection (4) in relation to the representations.
- (4) The requirement specified for the purposes of subsection (3)(b) is—
- (a) if the company receives the representations on a date that is more than 2 days before the last day on which notice may be given under section 571(1) to call the meeting, the requirement—
    - (i) to state, in every notice of the meeting given to the members, that the representations have been made; and
    - (ii) to send a copy of the representations to every member to whom a notice of the meeting is or has been given; or
  - (b) if the company has not sent a copy of the representations to every member to whom a notice of the meeting is or has been given, the requirement to ensure that the representations are read out at the meeting.
- (5) Unless exempted by an order under subsection (6), the company must comply with a request made under subsection (3)(b).
- (6) On application by the company or by anyone who claims to be aggrieved, the Court may order that the company is exempted from complying with the request, if it is satisfied that the person who has made representations and made a requirement under subsection (3)—

- (a) has abused the right to do so; or
  - (b) has used such a right to secure needless publicity for defamatory matter.
- (7) If the company contravenes subsection (5), the resolution passed under section 462(1) is void even though section 562(1) is complied with.

#### **464. Resignation of director**

- (1) A director of a company may, unless it is otherwise provided in the articles of the company or by any agreement with the company, resign as director at any time.
- (2) If a director of a company resigns, the company must deliver a notice of the resignation to the Registrar in the manner required by section 645(4).
- (3) Despite subsection (2), if the director resigning has reasonable grounds for believing that the company will not deliver the notice, the director resigning must deliver to the Registrar for registration a notice of the resignation in the specified form.
- (4) The notice required to be delivered under subsection (3) must state—
  - (a) whether the director resigning is required by the articles of the company or by any agreement with the company to give notice of resignation to the company; and
  - (b) if notice is so required, whether the notice has been given in accordance with the requirement.
- (5) If notice of the resignation of a director of a company is required to be given by the articles of the company or by any agreement with the company, the resignation does not have effect unless the director gives notice in writing of the resignation—
  - (a) in accordance with the requirement;

- (b) by leaving it at the registered office of the company; or
  - (c) by sending it to the company in hard copy form or in electronic form.
- (6) In this section—
- director* (董事) includes a reserve director and a person regarded as a director under section 455(4).

## Division 2

### Directors' Duty of Care, Skill and Diligence

#### 465. Duty to exercise reasonable care, skill and diligence

- (1) A director of a company must exercise reasonable care, skill and diligence.
- (2) Reasonable care, skill and diligence mean the care, skill and diligence that would be exercised by a reasonably diligent person with—
  - (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company; and
  - (b) the general knowledge, skill and experience that the director has.
- (3) The duty specified in subsection (1) is owed by a director of a company to the company.
- (4) The duty specified in subsection (1) has effect in place of the common law rules and equitable principles as regards the duty to exercise reasonable care, skill and diligence, owed by a director of a company to the company.

- (5) This section applies to a shadow director as it applies to a director.
- (6) For the purposes of subsection (5), a body corporate is not to be regarded as a shadow director of any of its subsidiaries by reason only that the directors, or a majority of the directors, of the subsidiary are accustomed to act in accordance with its direction or instructions.

**466. Civil consequences of breach of duty to exercise reasonable care, skill and diligence**

Without affecting other provisions of this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the consequences of breach (or threatened breach) of the duty specified in section 465(1) are the same as would apply if the common law rules or equitable principles that section 465(1) replaces applied.

### **Division 3**

#### **Directors' Liabilities**

**467. Interpretation and application**

- (1) In this Division—

*permitted indemnity provision* (獲准許的彌償條文), in relation to a company, means a provision that—

- (a) provides for indemnity against liability incurred by a director of the company to a third party; and
- (b) meets the requirements specified in section 469(2);

*third party* (第三者), in relation to a company, means a person other than the company or an associated company.

- (2) Sections 468, 469 and 470 apply to any provision made on or after the commencement date of those sections.

- (3) Sections 471 and 472 apply to a permitted indemnity provision made on or after the commencement date of those sections.
- (4) Section 473 applies to conduct by a director on or after the commencement date of that section.

**468. Avoidance of provisions protecting director from liability**

- (1) This section applies to a provision contained in a company's articles, or in a contract entered into by a company, or otherwise.
- (2) If a provision purports to exempt a director of the company from any liability that would otherwise attach to the director in connection with any negligence, default, breach of duty or breach of trust in relation to the company, the provision is void.
- (3) If, by a provision, the company directly or indirectly provides an indemnity for a director of the company, or a director of an associated company of the company, against any liability attaching to the director 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), the provision is void.
- (4) Subsection (3) does not prevent a company from taking out and keeping in force insurance 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).

**469. Permitted indemnity provision**

- (1) Section 468(3) does not apply to a provision for indemnity against liability incurred by the director to a third party if the requirements specified in subsection (2) are met in relation to the provision.
- (2) The provision must not provide any indemnity against—
  - (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 358 of the predecessor Ordinance or section 903 or 904 in which the Court refuses to grant the director relief.
- (3) A reference in subsection (2)(b) to a conviction, judgment or refusal of relief is to the final decision in the proceedings.
- (4) For the purposes of subsection (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 subsection (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.

**470. Permitted indemnity provision to be disclosed in directors' report**

- (1) If, when a directors' report prepared by the directors of a company is approved in accordance with section 391, a permitted indemnity provision (whether made by the company or otherwise) is in force for the benefit of one or more directors of the company, the report must state that the provision is in force.
- (2) If, at any time during the financial year to which a directors' report prepared by the directors of a company relates, a permitted indemnity provision (whether made by the company or otherwise) was in force for the benefit of one or more persons who were then directors of the company, the report must state that the provision was in force.

- (3) If, when a directors' report prepared by the directors of a company is approved in accordance with section 391, a permitted indemnity provision made by the company is in force for the benefit of one or more directors of an associated company of the company, the report must state that the provision is in force.
- (4) If, at any time during the financial year to which a directors' report prepared by the directors of a company relates, a permitted indemnity provision made by the company was in force for the benefit of one or more persons who were then directors of an associated company of the company, the report must state that the provision was in force.
- (5) In this section—  
*directors' report* (董事報告) means—
  - (a) the report required to be prepared under section 388(1); or
  - (b) the consolidated report required to be prepared under section 388(2).

**471. Place where copy of permitted indemnity provision must be kept**

- (1) This section has effect if a permitted indemnity provision is made for a director of a company, and applies—
  - (a) to that company (whether the provision is made by that company or an associated company of that company); and
  - (b) if the provision is made by an associated company, to that associated company.
- (2) A company to which this section applies must keep the following at its registered office or at a place prescribed by regulations made under section 657—
  - (a) a copy of the permitted indemnity provision;

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- (b) if the provision is not in writing, a written memorandum setting out the terms of the provision.
  - (3) The company—
    - (a) must retain the copy or memorandum for at least one year after the date of termination or expiry of the provision; and
    - (b) must keep the copy or memorandum available for inspection during that time.
  - (4) If the copy or memorandum is kept at a place other than the company's registered office, the company must notify the Registrar of the place, or any change in the place, at which the copy or memorandum is kept. The notice must be in the specified form and delivered to the Registrar for registration within 15 days after the copy or memorandum is first kept at that place or within 15 days after the change (as the case may be).
  - (5) If a company contravenes subsection (2) or (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.
  - (6) If a company contravenes subsection (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
  - (7) In this section, a reference to a permitted indemnity provision includes a variation of the provision.

**472. Right of member to inspect and request copy**

- (1) A member of a company is entitled, on request made in the prescribed manner and without charge, to inspect, in accordance with regulations made under section 657, a copy of a permitted indemnity provision or a written memorandum kept by the company under section 471.

- (2) A member of the company is entitled, on request and on payment of a prescribed fee, to be provided with a copy of the provision or memorandum in accordance with regulations made under section 657.
- (3) In this section—  
*prescribed* (訂明) means prescribed by regulations made under section 657.
- (4) In this section, a reference to a permitted indemnity provision includes a variation of the provision.

**473. Ratification of conduct by director involving negligence, etc.**

- (1) This section applies to the ratification by a company of conduct by a director involving negligence, default, breach of duty or breach of trust in relation to the company.
- (2) A decision of the company to ratify the conduct may only be made by resolution of the members of the company.
- (3) If such a resolution is proposed at a meeting, every vote in favour of the resolution by a member who—
- (a) is a director in respect of whose conduct the ratification is sought;
  - (b) is an entity connected with that director; or
  - (c) holds any shares in the company in trust for that director or entity,
- is to be disregarded.
- (4) Subsection (3) does not prevent a member specified in that subsection from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.
- (5) For the purposes of this section—
- (a) *conduct* (行為) includes acts and omissions;

- (b) *director* (董事) includes a former director;
  - (c) a shadow director is to be regarded as a director; and
  - (d) a reference to an entity connected with a director has the meaning given by section 486.
- (6) Nothing in this section affects—
- (a) the validity of a decision taken by unanimous consent of the members of the company; or
  - (b) any power of the directors to agree not to sue, or to settle or release a claim made by them on behalf of the company.
- (7) This section does not affect—
- (a) any other Ordinance or rule of law imposing additional requirements for valid ratification; or
  - (b) any rule of law as to acts that are incapable of being ratified by the company.

## Division 4

### Appointment and Resignation of Company Secretaries

#### 474. Company required to have company secretary

- (1) A company must have a company secretary.
- (2) With effect from the date of incorporation of a company, the first company secretary of the company is the person named as the company secretary in the incorporation form delivered to the Registrar under section 67(1).
- (3) If the name of a firm is specified in the incorporation form under section 5(1)(c) of Schedule 2, all partners of the firm as at the date of the incorporation form are the first joint company secretaries of the company.
- (4) A company secretary of a company must—

- (a) if a natural person, ordinarily reside in Hong Kong; and
  - (b) if a body corporate, have its registered office or a place of business in Hong Kong.
- (5) Anything required or authorized to be done by or to the company secretary may be done—
- (a) if the office is vacant or there is for any other reason no company secretary capable of acting, by or to any assistant or deputy company secretary; or
  - (b) if there is no assistant or deputy company secretary capable of acting, by or to any officer of the company authorized generally or specially in that behalf by the directors.

**475. Circumstances under which director may not be company secretary**

- (1) Subject to subsections (2) and (3), a director of a company may be a company secretary of the company.
- (2) The director of a private company having only one director must not also be a company secretary of the company.
- (3) No private company having only one director may have as company secretary of the company a body corporate the sole director of which is the sole director of the private company.

**476. Direction requiring company to appoint company secretary**

- (1) If it appears to the Registrar that a company is in contravention of section 474(1) or (4) or 475(2) or (3), the Registrar may direct the company to appoint a company secretary in compliance with that section.

- (2) The direction must specify—
  - (a) the statutory requirement of which the company appears to be in contravention;
  - (b) subject to subsection (3), the period within which the company must comply with the direction; and
  - (c) that a failure to comply with the direction is an offence under subsection (6).
- (3) The period must not be less than one month or more than 3 months after the date on which the direction is given.
- (4) The Registrar may, before the end of the period specified in the direction, by notice in writing extend the period.
- (5) The company must comply with the direction by making the necessary appointment before the end of the period specified in the direction, or, if the period is extended by the Registrar under subsection (4), the extended period.
- (6) If a company fails to comply with a direction under this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.

#### **477. Resignation of company secretary**

- (1) A company secretary of a company may, unless it is otherwise provided in the articles of the company or by any agreement with the company, resign as company secretary at any time.
- (2) If a company secretary of a company resigns, the company must deliver a notice of the resignation to the Registrar in the manner required by section 652(2).

- (3) Despite subsection (2), if the company secretary resigning has reasonable grounds for believing that the company will not deliver the notice, the company secretary resigning must deliver to the Registrar for registration a notice of the resignation in the specified form.
- (4) The notice required to be delivered under subsection (3) must state—
  - (a) whether the company secretary resigning is required by the articles of the company or by any agreement with the company to give notice of resignation to the company; and
  - (b) if notice is so required, whether the notice has been given in accordance with the requirement.
- (5) If notice of the resignation of a company secretary of a company is required to be given by the articles of the company or by any agreement with the company, the resignation does not have effect unless the company secretary gives notice in writing of the resignation—
  - (a) in accordance with the requirement;
  - (b) by leaving it at the registered office of the company; or
  - (c) by sending it to the company in hard copy form or in electronic form.

## **Division 5**

### **Miscellaneous Provisions Relating to Directors and Company Secretaries**

#### **478. Director vicariously liable for acts of alternate etc.**

- (1) If the articles of a company authorize a director to appoint an alternate director to act in place of the director, then, unless the articles contain any provision to the contrary, whether express or implied—

- (a) an alternate director so appointed is deemed to be the agent of the director who appoints the alternate director; and
  - (b) a director who appoints an alternate director is vicariously liable for any tort committed by the alternate director while acting in the capacity of alternate director.
- (2) Nothing in subsection (1)(b) affects the personal liability of an alternate director for any act or omission.

**479. Avoidance of acts done by person in dual capacity as director and company secretary**

- (1) A provision requiring or authorizing a thing to be done by or to a director and a company secretary of a company is not satisfied by its being done by or to the same person acting—
- (a) both as director and company secretary; or
  - (b) both as director and in place of the company secretary.
- (2) This section applies to—
- (a) any provision of this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); and
  - (b) any provision in a company's articles.

**480. Provisions as to undischarged bankrupt acting as director**

- (1) A person who is an undischarged bankrupt must not act as director of, or directly or indirectly take part or be concerned in the management of, a company, except with the leave of the Court by which the person was adjudged bankrupt.
- (2) A person who contravenes subsection (1) commits an offence and is liable—

- (a) on conviction on indictment to a fine of \$700,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine of \$150,000 and to imprisonment for 12 months.
- (3) The Court must not give leave for the purposes of this section unless notice of intention to apply for it has been served on the Official Receiver.
- (4) If the Official Receiver is of opinion that it is contrary to the public interest that an application under subsection (3) should be granted, the Official Receiver must attend the hearing of, and oppose the granting of, the application.
- (5) In subsection (1)—
- company* (公司) has the meaning given by section 168C(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

#### **481. Minutes of directors' meetings**

- (1) A company must cause minutes of all proceedings at meetings of its directors to be recorded.
- (2) A company must keep the records under subsection (1) for at least 10 years from the date of the meeting.
- (3) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

#### **482. Minutes as evidence**

- (1) Minutes recorded in accordance with section 481, if purporting to be signed by the chairperson of the meeting or by the chairperson of the next directors' meeting, are evidence of the proceedings at the meeting.

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- (2) If minutes have been recorded in accordance with section 481 of the proceedings at a meeting of directors, then, until the contrary is proved—
- (a) the meeting is to be regarded as having been duly held and convened;
  - (b) all proceedings at the meeting are to be regarded as having duly taken place; and
  - (c) all appointments at the meeting are to be regarded as valid.
- (3) Subsection (2)(c) is subject to sections 456(3) and 459(2).

**483. Written record of decision of sole director of private company**

- (1) If a private company has only one director and the director takes any decision that—
- (a) may be taken in a meeting of directors; and
  - (b) has effect as if agreed in a meeting of directors,
- the director must (unless that decision is taken by way of a resolution in writing) provide the company with a written record of that decision within 7 days after the decision is made.
- (2) If the director provides the company with a written record of a decision in accordance with subsection (1), that record is sufficient evidence of the decision having been taken by the director.
- (3) A company must keep a written record provided to the company in accordance with subsection (1) for at least 10 years from the date of the decision.
- (4) A director who contravenes subsection (1) commits an offence.

- (5) If a company contravenes subsection (3), the company, and every responsible person of the company, commit an offence.
  - (6) A person who commits an offence under subsection (4) is liable to a fine at level 3.
  - (7) A person who commits an offence under subsection (5) 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.
  - (8) A contravention of subsection (1) by a director does not affect the validity of any decision mentioned in that subsection.
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