

L.N. 77 of 2013

Companies (Model Articles) Notice

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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.
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Schedule 1

[s. 2]

Model Articles for Public Companies Limited by Shares

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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

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- (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.

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- (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.

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- (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.

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- (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

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- (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.

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- (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

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- 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

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- (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.

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- (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—

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- (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.

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- (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;

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- (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.

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- (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

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- (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—

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- (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. 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 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;

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- (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.

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- (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.

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- (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

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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—

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- (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;

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- (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.

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- (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).

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- (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;

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- (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

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- (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.

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- (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.

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- (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.

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- (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

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- (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)—

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- (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.

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- (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—

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- (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).

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- (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.

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- (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.
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Schedule 3

[s. 4]

Model Articles for Companies Limited by Guarantee

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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;

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- (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

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- (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—
 - (a) with regard to the tenure of the other office or position of profit mentioned in paragraph (1); or

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- (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. **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—

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- (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.

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—

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- (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.

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- (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—

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- (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.

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- (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

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- (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.

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- (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

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- (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.

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- (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.

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- (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.

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- (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.

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- (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.

John TSANG
Financial Secretary

16 May 2013

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.