

本條例旨在改革香港的公司法及使之現代化、將關乎公司的部分成文法重新立法、訂定關乎公司的其他條文，以及就附帶及相關事宜訂定條文。

An Ordinance to reform and modernize Hong Kong company law, to restate part of the enactments relating to companies, to make other provision relating to companies, and to provide for incidental and connected matters.

[2014 年 3 月 3 日]

[3 March 2014]

(略去制定語式條文——2013 年第 1 號編輯修訂紀錄)

(Enacting provision omitted—E.R. 1 of 2013)

**第 1 部****Part 1****導言****Preliminary**

(格式變更——2013 年第 1 號編輯修訂紀錄)

(Format changes—E.R. 1 of 2013)

**第 1 分部 —— 簡稱及生效日期****Division 1—Short Title and Commencement****1. 簡稱及生效日期****1. Short title and commencement**

- (1) 本條例可引稱為《公司條例》。
- (2) 本條例自財經事務及庫務局局長以憲報公告指定的日期起實施。

- (1) This Ordinance may be cited as the Companies Ordinance.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

**第 2 分部 —— 本條例的釋義：一般條文****Division 2—Interpretation of this Ordinance: General****2. 釋義****2. Interpretation**

- (1) 在本條例中 ——

**上市公司** (listed company) 指有股份在認可證券市場上市的公司；

- (1) In this Ordinance—

**accounting transaction** (會計交易), in relation to a company, means a transaction that is required by section 373 to be entered in the company's accounting records, excluding a

**《上市規則》** (listing rules) 指認可交易所根據《證券及期貨條例》(第 571 章) 第 23 條訂立的、管限證券在該交易所營辦的證券市場上市事宜的規章；

**公司** (company) 指 ——

- (a) 根據本條例組成及註冊的公司；或
- (b) 原有公司；

**《公司名稱索引》** (Index of Company Names) 指根據第 30 條備存的名稱索引；

**公司秘書** (company secretary) 包括擔任公司秘書職位的人 (不論該人是以何職稱擔任該職位)；

**公司登記冊** (Companies Register) 指根據第 27 條備存的紀錄；

**公司集團** (group of companies) 指 2 間或多於 2 間的法人團體，而其中一間是餘者的控權公司；

**分擔人** (contributory) 就公司而言，指負有法律責任在該公司清盤時作出付款作為該公司資產的人；

**文件** (document) 包括 ——

- (a) 傳票、通知、命令及任何其他法律程序文件；及
- (b) 登記冊；

**可贖回股份** (redeemable shares) 指須按或可按公司或股東的選擇而贖回的股份；

**生效日期** (commencement date) 就本條例任何條文而言，指該條文開始實施的日期；

**成員** (member) 就公司而言，指 ——

- (a) 該公司的創辦成員；或
- (b) 同意成為該公司成員的人，而該人的姓名或名稱是以成員身分記入該公司的成員登記冊的；

**有聯繫公司** (associated company) 就法人團體而言，指 ——

- (a) 該法人團體的附屬公司；

transaction arising from the payment of any fee that the company is required by an Ordinance to pay;

**articles** (章程細則), in relation to a company, means the articles of association of the company;

**Note—**

Please also see section 98. A condition of an existing company's memorandum of association is to be regarded as a provision of the company's articles.

**associated company** (有聯繫公司), in relation to a body corporate, means—

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

**body corporate** (法人團體) —

- (a) includes—
  - (i) a company; and
  - (ii) a company incorporated outside Hong Kong; but
- (b) excludes a corporation sole;

**certified public accountant (practising)** (執業會計師) has the meaning given by section 2(1) of the Professional Accountants Ordinance (Cap. 50);

**commencement date** (生效日期), in relation to any provision of this Ordinance, means the date on which that provision comes into operation;

**Companies Register** (公司登記冊) means the records kept under section 27;

**company** (公司) means—

- (a) a company formed and registered under this Ordinance; or

- (b) 該法人團體的控權公司；或
- (c) 上述控權公司的附屬公司；

**局長** (Secretary) 指財經事務及庫務局局長；

**身分證** (identity card) 指根據《人事登記條例》(第 177 章) 發出的身分證；

**法人團體** (body corporate) ——

- (a) 包括 ——
  - (i) 公司；及
  - (ii) 在香港以外地方成立為法團的公司；但
- (b) 不包括單一法團；

**法院** (court) 指香港特別行政區具司法管轄權的法院，並包括裁判官；

**股份** (share) ——

- (a) 指公司股本中的股份；及
- (b) (如公司的任何股份被轉換為股額) 包括股額；

**股份權證** (share warrant) 指符合以下說明的權證 ——

- (a) 述明其持有人擁有該權證指明的股份；及
- (b) 使該等股份可藉交付該權證而轉讓；

**非上市公司** (unlisted company) 指沒有任何股份在認可證券市場上市的公司；

**非香港公司** (non-Hong Kong company) 指在香港以外地方成立為法團並符合以下說明的公司 ——

- (a) 在第 16 部的生效日期當日或之後，在香港設立營業地點；或
- (b) 在該生效日期前，已在香港設立營業地點，並在該生效日期繼續在香港設有營業地點；

**《前身條例》** (predecessor Ordinance) 指在附表 9 第 2 條的生效日期\*前不時有效的《公司條例》(第 32 章)；

- (b) an existing company;

**company secretary** (公司秘書) includes any person occupying the position of company secretary (by whatever name called);

**contributory** (分擔人), in relation to a company, means a person liable to contribute to the assets of the company in the event of its being wound up;

**Court** means the Court of First Instance;

**court** (法院) means a court of competent jurisdiction of the Hong Kong Special Administrative Region and includes a magistrate;

**debenture** (債權證), in relation to a company, includes debenture stock, bonds and any other debt securities of the company, whether or not constituting a charge on the assets of the company;

**director** (董事) includes any person occupying the position of director (by whatever name called);

**document** (文件) includes—

- (a) a summons, notice, order and any other legal process; and
- (b) a register;

**electronic record** (電子紀錄) means a record generated in digital form by an information system, which can be—

- (a) transmitted within an information system or from one information system to another; and
- (b) stored in an information system or other medium;

**existing company** (原有公司) means a company formed and registered under a former Companies Ordinance;

**financial year** (財政年度), in relation to a company, means a financial year of the company determined in accordance with Division 3 of Part 9;

**指明格式** (specified form) 指根據第 23 條指明的格式；

**原有公司** (existing company) 指根據《舊有公司條例》組成及註冊的公司；

**書面決議** (written resolution) —— 見第 12 部第 1 分部第 2 次分部；

**特別決議** (special resolution) —— 見第 564 條；

**破產管理署署長** (Official Receiver) 指根據《破產條例》(第 6 章) 委任的破產管理署署長；

**財政年度** (financial year) 就公司而言，指按照第 9 部第 3 分部斷定的該公司的財政年度；

**高級人員** (officer) 就法人團體而言，包括該法人團體的董事、經理或公司秘書；

**執業會計師** (certified public accountant (practising)) 具有《專業會計師條例》(第 50 章) 第 2(1) 條給予該詞的涵義；

**處長** (Registrar) 指根據第 21(1) 條委任的公司註冊處處長；

**章程細則** (articles) 就公司而言，指該公司的組織章程細則；

**附註** ——

請亦參閱第 98 條。載於原有公司的組織章程大綱的條件，須視為該公司的章程細則的條文。

**備任董事** (reserve director) 就私人公司而言，指根據第 455(1) 條提名為該公司的備任董事的人；

**創辦成員** (founder member) ——

(a) 就根據本條例組成及註冊的公司而言，指為第 67(1)(a) 條的目的而在該公司的章程細則上簽署的人；或

(b) 就原有公司而言，指在該公司的組織章程大綱上簽署的人；

**普通決議** (ordinary resolution) —— 見第 563 條；

**former Companies Ordinance** (《舊有公司條例》) means—

- (a) the Companies Ordinance 1865 (1 of 1865);
- (b) the Companies Ordinance 1911 (58 of 1911); or
- (c) the predecessor Ordinance;

**founder member** (創辦成員) —

- (a) in relation to a company formed and registered under this Ordinance, means a person who signs on the company's articles for the purposes of section 67(1)(a); or
- (b) in relation to an existing company, means a person who subscribed to or signed on the company's memorandum of association;

**group of companies** (公司集團) means any 2 or more bodies corporate one of which is the holding company of the other or others;

**identity card** (身分證) means an identity card issued under the Registration of Persons Ordinance (Cap. 177);

**Index of Company Names** (《公司名稱索引》) means the index of names kept under section 30;

**information system** (資訊系統) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

**listed company** (上市公司) means a company that has any of its shares listed on a recognized stock market;

**listing rules** (《上市規則》) means the rules made under section 23 of the Securities and Futures Ordinance (Cap. 571) by a recognized exchange company that govern the listing of securities on a stock market it operates;

**manager** (經理), in relation to a company—

**註冊非香港公司** (registered non-Hong Kong company) 指在公司登記冊內註冊為註冊非香港公司的非香港公司；

**債權證** (debenture) 就公司而言，包括該公司的債權股證、債券及任何其他債務證券（不論該等債權股證、債券及債務證券是否構成對該公司資產的押記）；

**會計交易** (accounting transaction) 就公司而言，指第 373 條規定須記入該公司的會計紀錄的交易，但不包括因支付任何條例規定該公司須支付的費用而產生的交易；

**經理** (manager) 就公司而言 ——

- (a) 指在董事的直接權限下就該公司執行管理職能的人；但
- (b) 不包括 ——
  - (i) 該公司的財產的接管人或經理人；及
  - (ii) 根據《公司（清盤及雜項條文）條例》（第 32 章）第 216 條委任的該公司的產業或業務的特別經理人；

**董事** (director) 包括擔任董事職位的人（不論該人是以何職稱擔任該職位）；

**資訊系統** (information system) 具有《電子交易條例》（第 553 章）第 2(1) 條給予該詞的涵義；

**電子紀錄** (electronic record) 指資訊系統所產生的數碼形式的紀錄，而該紀錄 ——

- (a) 能在資訊系統內傳送，或能由一個資訊系統傳送至另一個資訊系統；並且
- (b) 能儲存在資訊系統或其他媒介內；

**幕後董事** (shadow director) 就法人團體而言，指該法人團體的一眾董事或過半數董事慣於按照其指示或指令（不包括以專業身分提供的意見）行事的人；

- (a) means a person who performs managerial functions in relation to the company under the directors' immediate authority; but
- (b) excludes—
  - (i) a receiver or manager of the company's property; and
  - (ii) a special manager of the company's estate or business appointed under section 216 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

**member** (成員), in relation to a company, means—

- (a) a founder member of the company; or
- (b) a person who agrees to become a member of the company and whose name is entered, as a member, in the company's register of members;

**non-Hong Kong company** (非香港公司) means a company incorporated outside Hong Kong that—

- (a) establishes a place of business in Hong Kong on or after the commencement date of Part 16; or
- (b) has established a place of business in Hong Kong before that commencement date and continues to have a place of business in Hong Kong at that commencement date;

**officer** (高級人員), in relation to a body corporate, includes a director, manager or company secretary of the body corporate;

**Official Receiver** (破產管理署署長) means the Official Receiver appointed under the Bankruptcy Ordinance (Cap. 6);

**ordinary resolution** (普通決議) —see section 563;

**predecessor Ordinance** (《前身條例》) means the Companies Ordinance (Cap. 32) as in force from time to time before the commencement date<sup>#</sup> of section 2 of Schedule 9;



**認可交易所** (recognized exchange company) 指根據《證券及期貨條例》(第 571 章) 第 19(2) 條認可為營辦證券市場的交易所公司的公司；

**認可證券市場** (recognized stock market) 具有《證券及期貨條例》(第 571 章) 附表 1 第 1 部第 1 條給予該詞的涵義；

**《舊有公司條例》** (former Companies Ordinance) 指 ——

- (a) 《1865 年公司條例》<sup>+</sup>(1865 年第 1 號)；
  - (b) 《1911 年公司條例》<sup>@</sup>(1911 年第 58 號)；或
  - (c) 《前身條例》。
- (2) 在本條例中 ——
- (a) 提述本條例，包括根據本條例訂立的附屬法例；及
  - (b) 除第 21 部及附表 11 外，提述《前身條例》的條文，包括根據附表 11 或憑藉《釋義及通則條例》(第 1 章) 第 23 條具有持續效力的該條文或其部分。
- (3) 在本條例中 ——
- (a) 提述法人團體財產的經理人，包括該財產的某部分的經理人；
  - (b) 提述法人團體財產的接管人，包括 ——
    - (i) 該財產的某部分的接管人；及
    - (ii) 該財產或該財產的某部分所產生的收入的接管人；及
  - (c) 提述根據某項文書所載的權力而委任經理人或接管人，包括 ——
    - (i) 根據任何條例所賦予的權力作出的委任；及
    - (ii) 根據符合以下說明的權力作出的委任：憑藉任何條例而隱含在某項文書內，並且在猶如是載於該文書的權力的情況下具有效力。
- (4) 就本條例而言 ——

**recognized exchange company** (認可交易所) means a company recognized under section 19(2) of the Securities and Futures Ordinance (Cap. 571) as an exchange company for operating a stock market;

**recognized stock market** (認可證券市場) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

**redeemable shares** (可贖回股份) means shares that are to be redeemed, or are liable to be redeemed, at the option of the company or the shareholder;

**registered non-Hong Kong company** (註冊非香港公司) means a non-Hong Kong company that is registered in the Companies Register as a registered non-Hong Kong company;

**Registrar** (處長) means the Registrar of Companies appointed under section 21(1);

**reserve director** (備任董事), in relation to a private company, means a person nominated as a reserve director of the company under section 455(1);

**Secretary** (局長) means the Secretary for Financial Services and the Treasury;

**shadow director** (幕後董事), in relation to a body corporate, means a person in accordance with whose directions or instructions (excluding advice given in a professional capacity) the directors, or a majority of the directors, of the body corporate are accustomed to act;

**share** (股份) —

- (a) means a share in a company's share capital; and
- (b) if any of the company's shares is converted into stock, includes stock;

**share warrant** (股份權證) means a warrant—

- (a) 文件或資料如 ——
    - (i) 以紙張形式送交或提供；或
    - (ii) 以能供閱讀的相類形式送交或提供，即屬以印本形式送交或提供；
  - (b) 文件或資料如 ——
    - (i) 以電子方式送交或提供；或
    - (ii) 在它屬電子紀錄形式之時，以任何其他方式送交或提供，(由 2018 年第 35 號第 3 條修訂) 即屬以電子形式送交或提供；及
  - (c) 文件或資料如以電子紀錄的形式，向一個資訊系統發送或提供，即屬以電子方式送交或提供。
- (5) 在第 (4) 款中 ——
- (a) 提述送交文件 ——
    - (i) 包括提供、交付、遞交或交出該文件及 (如屬通知) 發出或給予該文件；但
    - (ii) 不包括送達該文件；及
  - (b) 提述提供資料，包括送交、交付、遞交或交出該資料。

- (a) stating that the bearer is entitled to the shares specified in the warrant; and
  - (b) enabling the shares to be transferred by delivery of the warrant;
- special resolution** (特別決議) —see section 564;
- specified form** (指明格式) means the form specified under section 23;
- unlisted company** (非上市公司) means a company that does not have any of its shares listed on a recognized stock market;
- written resolution** (書面決議) —see Subdivision 2 of Division 1 of Part 12.
- (2) In this Ordinance—
- (a) a reference to this Ordinance includes any subsidiary legislation made under this Ordinance; and
  - (b) a reference to a provision of the predecessor Ordinance, except in Part 21 and Schedule 11, includes the provision, or such part of the provision, having a continuing effect under Schedule 11 or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).
- (3) In this Ordinance—
- (a) a reference to a manager of the property of a body corporate includes a manager of part of that property;
  - (b) a reference to a receiver of the property of a body corporate includes—
    - (i) a receiver of part of that property; and
    - (ii) a receiver of the income arising from that property or part of that property; and

- (6) 本條例文本中的附註僅供備知，並無立法效力。  
(編輯修訂——2013 年第 1 號編輯修訂紀錄)

編輯附註：

# 生效日期：2014 年 3 月 3 日。

\* 《1865 年公司條例》乃 “Companies Ordinance 1865” 的譯名。

@ 《1911 年公司條例》乃 “Companies Ordinance 1911” 的譯名。

- (c) a reference to the appointment of a manager or receiver made under powers contained in an instrument includes—
- (i) an appointment made under powers conferred by an Ordinance; and
  - (ii) an appointment made under powers that, by virtue of an Ordinance, are implied in and have effect as if contained in an instrument.
- (4) For the purposes of this Ordinance—
- (a) a document or information is sent or supplied in hard copy form if it is sent or supplied—
    - (i) in paper form; or
    - (ii) in a similar form capable of being read;
  - (b) a document or information is sent or supplied in electronic form if it is sent or supplied—
    - (i) by electronic means; or
    - (ii) by any other means while in the form of an electronic record; and (*Amended 35 of 2018 s. 3*)
  - (c) a document or information is sent or supplied by electronic means if it is sent or supplied in the form of an electronic record to an information system.
- (5) In subsection (4)—
- (a) a reference to sending a document—
    - (i) includes supplying, delivering, forwarding or producing the document and, in the case of a notice, giving the document; but
    - (ii) excludes serving the document; and
  - (b) a reference to supplying information includes sending, delivering, forwarding or producing the information.



### 3. 責任人

- (1) 如有以下情況，本條適用 ——
- (a) 本條例的條文訂明，如有 ——
    - (i) 違反本條例的情況，或違反某規定、指示、條件或命令的情況；或
    - (ii) 不遵從某規定、指示、條件或命令的情況，公司或非香港公司的責任人即屬犯罪；或
  - (b) 本條例賦權某人訂立將會載有上述條文的附屬法例。
- (2) 就有關條文而言，符合以下條件的人，即屬公司或非香港公司的責任人 ——
- (a) 該人是該公司或該非香港公司的高級人員或幕後董事；及
  - (b) 該人授權、准許或參與違反有關條文、規定、指示、條件或命令，或授權、准許或參與不遵從有關規定、指示、條件或命令。
- (3) 就有關條文而言，符合以下條件的人，亦屬公司或非香港公司的責任人 ——
- (a) 該人是某法人團體的高級人員或幕後董事，而該法人團體是該公司或該非香港公司的高級人員或幕後董事；
  - (b) 該法人團體授權、准許或參與違反有關條文、規定、指示、條件或命令，或授權、准許或參與不遵從有關規定、指示、條件或命令；及

- (6) A note located in the text of this Ordinance is provided for information only and has no legislative effect.

Editorial Note:

# Commencement date: 3 March 2014.

### 3. Responsible person

- (1) This section applies—
- (a) where a provision of this Ordinance provides that a responsible person of a company or non-Hong Kong company commits an offence if there is—
    - (i) a contravention of this Ordinance, or of a requirement, direction, condition or order; or
    - (ii) a failure to comply with a requirement, direction, condition or order; or
  - (b) where this Ordinance empowers a person to make subsidiary legislation that will contain such a provision.
- (2) For the purposes of the provision, a person is a responsible person of a company or non-Hong Kong company if the person—
- (a) is an officer or shadow director of the company or non-Hong Kong company; and
  - (b) authorizes or permits, or participates in, the contravention or failure.
- (3) For the purposes of the provision, a person is also a responsible person of a company or non-Hong Kong company if—
- (a) the person is an officer or shadow director of a body corporate that is an officer or shadow director of the company or non-Hong Kong company;

- (c) 該人授權、准許或參與違反有關條文、規定、指示、條件或命令，或授權、准許或參與不遵從有關規定、指示、條件或命令。

#### 4. 經核證譯本

- (1) 就本條例而言，在香港製備的文件譯本，如符合以下說明，即屬經核證譯本 ——
- (a) 該譯本經有關的翻譯者核證為該文件的正確譯本；及
  - (b) 第 (3) 款指明的人核證該人相信該翻譯者有能力將該文件翻譯為英文或中文（視屬何情況而定）。
- (2) 就本條例而言，在香港以外地方製備的文件譯本，如符合以下說明，即屬經核證譯本 ——
- (a) 如屬第 (4) 款指明的翻譯者，該譯本經該翻譯者核證為該文件的正確譯本；或
  - (b) 如屬任何其他翻譯者 ——
    - (i) 該譯本經該翻譯者核證為該文件的正確譯本；及
    - (ii) 第 (5) 款指明的人核證該人相信該翻譯者有能力將該文件翻譯為英文或中文（視屬何情況而定）。
- (3) 為施行第 (1)(b) 款而指明的人為 ——
- (a) 在香港執業的公證人；
  - (b) 在香港執業的律師；
  - (c) 執業會計師；
  - (d) 在香港的領事館官員；或
  - (e) 在香港執業的專業公司秘書。

- (b) the body corporate authorizes or permits, or participates in, the contravention or failure; and
- (c) the person authorizes or permits, or participates in, the contravention or failure.

#### 4. Certified translation

- (1) For the purposes of this Ordinance, a translation made in Hong Kong of a document is a certified translation if—
- (a) it is certified as a correct translation of the document by the translator; and
  - (b) a person specified in subsection (3) certifies that in that person's belief the translator is competent in translating the document into English or Chinese (as the case may be).
- (2) For the purposes of this Ordinance, a translation made in a place outside Hong Kong of a document is a certified translation if—
- (a) in the case of a translator specified in subsection (4), it is certified as a correct translation of the document by the translator; or
  - (b) in the case of any other translator—
    - (i) it is certified as a correct translation of the document by the translator; and
    - (ii) a person specified in subsection (5) certifies that in that person's belief the translator is competent in translating the document into English or Chinese (as the case may be).
- (3) The person specified for the purposes of subsection (1)(b) is—
- (a) a notary public practising in Hong Kong;

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- (4) 為施行第 (2)(a) 款而指明的翻譯者為有關地方的法院所委任的翻譯者。
- (5) 為施行第 (2)(b)(ii) 款而指明的人為 ——
  - (a) 在有關地方執業的公證人；
  - (b) 在有關地方執業的律師；
  - (c) 在有關地方執業的專業會計師；
  - (d) 獲有關地方的法律妥為授權負責為司法或其他法律目的而核證文件的法院人員；
  - (e) 在有關地方的領事館官員；
  - (f) 在有關地方執業的專業公司秘書；或
  - (g) 處長指明的任何其他自然人。
- (6) 局長可藉於憲報刊登的公告修訂第 (3)、(4) 或 (5) 款。

## 5. 不活動公司

- (1) 如合資格私人公司通過第 (2) 款指明的特別決議，而該決議亦已交付處長登記，則就第 9、10 及 12 部而言，自第 (2)(a) 款所述的該決議宣布的日期起，該公司即屬不活動公司。
- (2) 為施行第 (1) 款而指明的特別決議，指符合以下說明的特別決議 ——

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- (b) a solicitor practising in Hong Kong;
- (c) a certified public accountant (practising);
- (d) a consular officer in Hong Kong; or
- (e) a professional company secretary practising in Hong Kong.
- (4) The translator specified for the purposes of subsection (2)(a) is a translator appointed by a court of law of the place.
- (5) The person specified for the purposes of subsection (2)(b)(ii) is—
  - (a) a notary public practising in the place;
  - (b) a lawyer practising in the place;
  - (c) a professional accountant practising in the place;
  - (d) an officer of a court of law duly authorized by the law of the place to certify documents for any judicial or other legal purpose;
  - (e) a consular officer in the place;
  - (f) a professional company secretary practising in the place; or
  - (g) any other natural person specified by the Registrar.
- (6) The Secretary may, by notice published in the Gazette, amend subsection (3), (4) or (5).

## 5. Dormant company

- (1) If a qualified private company passes a special resolution specified in subsection (2), and the resolution is delivered to the Registrar for registration, the company is a dormant company for the purposes of Parts 9, 10 and 12 as from the date mentioned in subsection (2)(a) as declared by the resolution.

- (a) 宣布有關合資格私人公司將會自以下日期起，處於不活動狀態 ——
- (i) 該決議交付處長的日期；或
  - (ii) 該決議指明的較後日期；及
- (b) 授權董事將該決議交付處長登記。
- (3) 如 ——
- (a) 在《前身條例》第 344A 條被第 912 條廢除前，公司根據第 (1) 款通過特別決議，但該決議沒有交付處長；而
  - (b) 在該條被廢除後，該決議交付處長登記，
- 則就第 9、10 及 12 部而言，自該決議交付處長的日期或在該決議內指明的一個較後日期起，該公司亦屬不活動公司。
- (4) 如在緊接《前身條例》第 344A 條被第 912 條廢除前，公司就該條而言當作為不活動公司，則就第 9、10 及 12 部而言，自本條的生效日期<sup>#</sup>起，該公司繼續屬不活動公司。  
(由 2018 年第 35 號第 4 條修訂)
- (5) 如有以下情況，則屬第 9、10 及 12 部所指的不活動公司的公司即不再是不活動公司 ——
- (a) 該公司通過特別決議，宣布該公司擬進行一項會計交易，而該決議已交付處長登記；或
  - (b) 有關乎該公司的會計交易。
- (6) 在本條中 ——
- 合資格私人公司** (qualified private company) 指不屬第 (7) 款指明的公司的私人公司。
- (7) 為第 (6) 款中**合資格私人公司**的定義而指明的公司為 ——
- (a) 《銀行業條例》(第 155 章) 第 2(1) 條所界定的認可機構；

- (2) The special resolution specified for the purposes of subsection (1) is one—
- (a) declaring that the qualified private company will become dormant as from—
    - (i) the date of delivery of that resolution to the Registrar; or
    - (ii) any later date that is specified in that resolution; and
  - (b) authorizing the directors to deliver that resolution to the Registrar for registration.
- (3) If—
- (a) before the repeal of section 344A of the predecessor Ordinance by section 912, a company passed a special resolution under subsection (1) of that section, and the resolution has not been delivered to the Registrar; and
  - (b) the resolution is delivered to the Registrar for registration after the repeal,
- the company is also a dormant company for the purposes of Parts 9, 10 and 12 as from the date of delivery of the resolution to the Registrar or as from a later date as is specified in the resolution.
- (4) If, immediately before the repeal of section 344A of the predecessor Ordinance by section 912, a company was deemed to be a dormant company for the purposes of that section, the company continues to be a dormant company for the purposes of Parts 9, 10 and 12 as from the commencement date<sup>#</sup> of this section. (Amended 35 of 2018 s. 4)
- (5) A company that is a dormant company for the purposes of Parts 9, 10 and 12 ceases to be such dormant company if—
- (a) the company passes a special resolution declaring that the company intends to enter into an accounting

- (b) 《保險業條例》(第 41 章)第 2(1) 及 (2) 條所界定的保險人；(由 2015 年第 12 號第 165 條修訂)
  - (c) 根據《證券及期貨條例》(第 571 章)第 V 部獲發牌經營該條例附表 1 第 1 部第 1 條所界定的受規管活動的業務的法團；
  - (d) (c) 段所述的法團的屬《證券及期貨條例》(第 571 章)第 VI 部所指者的有聯繫實體；
  - (e) 《強制性公積金計劃條例》(第 485 章)第 2(1) 條所界定的核准受託人；
  - (f) 有屬 (a)、(b)、(c)、(d) 或 (e) 段所指者為其附屬公司的公司；或
  - (g) 在緊接有關特別決議通過之前 5 年內的任何時間曾屬 (a)、(b)、(c)、(d)、(e) 或 (f) 段所指者的公司。
- (8) 財政司司長可藉於憲報刊登的公告修訂第 (7) 款。

編輯附註：

# 生效日期：2014 年 3 月 3 日。

- transaction, and the resolution is delivered to the Registrar for registration; or
  - (b) there is an accounting transaction in relation to the company.
- (6) In this section—
- qualified private company** (合資格私人公司) means a private company that is not a company specified in subsection (7).
- (7) A company specified for the purposes of the definition of **qualified private company** in subsection (6) is—
- (a) an authorized institution as defined by section 2(1) of the Banking Ordinance (Cap. 155);
  - (b) an insurer as defined by section 2(1) and (2) of the Insurance Ordinance (Cap. 41); (*Amended 12 of 2015 s. 165*)
  - (c) a corporation licensed under Part V of the Securities and Futures Ordinance (Cap. 571) to carry on a business in any regulated activity as defined by section 1 of Part 1 of Schedule 1 to that Ordinance;
  - (d) an associated entity, within the meaning of Part VI of the Securities and Futures Ordinance (Cap. 571), of a corporation mentioned in paragraph (c);
  - (e) an approved trustee as defined by section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);
  - (f) a company having a subsidiary that falls within paragraph (a), (b), (c), (d) or (e); or
  - (g) a company that fell within paragraph (a), (b), (c), (d), (e) or (f) at any time during the 5 years immediately before the special resolution is passed.



**6. 向公眾人士作出股份或債權證要約等**

- (1) 在本條例中，凡提述向公眾人士作出公司的股份或債權證的要約，即包括向任何部分公眾人士作出該要約，不論該部分公眾人士 ——
  - (a) 是作為該公司的成員或債權證持有人而被選出的；
  - (b) 是作為作出該要約的人的客戶而被選出的；或
  - (c) 是按任何其他方式被選出的。
- (2) 在本條例及公司的章程細則中，凡提述邀請公眾人士認購公司的股份或債權證，即包括邀請任何部分公眾人士，不論該部分公眾人士 ——
  - (a) 是作為該公司的成員或債權證持有人而被選出的；
  - (b) 是作為作出該項邀請的人的客戶而被選出的；或
  - (c) 是按任何其他方式被選出的。
- (3) 第 (1) 及 (2) 款的施行，並不使股份或債權證的非公開要約，或認購股份或債權證的非公開邀請，被視為向公眾人士作出的要約或邀請。
- (4) 在 ——
  - (a) 公司章程細則中的禁止邀請公眾人士認購股份或債權證的條文，尤其不得視為禁止向成員或債權證持有人作出認購股份或債權證的非公開邀請；而
  - (b) 本條例中的關乎私人公司的條文，尤其須據此解釋。
- (5) 在本條中，如某項股份或債權證的要約，或某項認購股份或債權證的邀請，在有關的整體情況下可恰當地視為 ——

- (8) The Financial Secretary may, by notice published in the Gazette, amend subsection (7).

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# Commencement date: 3 March 2014.

**6. Offering shares or debentures to public, etc.**

- (1) In this Ordinance, a reference to offering shares or debentures of a company to the public includes offering them to a section of the public, whether selected—
  - (a) as members or debenture holders of the company;
  - (b) as clients of the person making the offer; or
  - (c) in any other manner.
- (2) In this Ordinance and in a company's articles, a reference to an invitation to the public to subscribe for shares or debentures of a company includes an invitation to a section of the public, whether selected—
  - (a) as members or debenture holders of the company;
  - (b) as clients of the person making the invitation; or
  - (c) in any other manner.
- (3) Neither subsection (1) nor subsection (2) operates to treat a private offer of shares or debentures, or a private invitation to subscribe for shares or debentures, as an offer or invitation made to the public.
- (4) In particular—
  - (a) a provision in a company's articles prohibiting invitations to the public to subscribe for shares or debentures is not to be regarded as prohibiting a private invitation to subscribe for shares or debentures to be made to members or debenture holders; and

- (a) 並非旨在直接或間接導致有關股份或債權證可供收到該項要約或邀請的人以外的人士認購或購買；或
- (b) 屬作出及收到該項要約或邀請的人本身的業務，則該項要約或邀請，即屬非公開要約或非公開邀請。

### 第 3 分部 —— 本條例的釋義：公司類別

#### 第 1 次分部 —— 有限公司及無限公司

##### 7. 有限公司

就本條例而言，如某公司屬股份有限公司或擔保有限公司，該公司即屬有限公司。

##### 8. 股份有限公司

- (1) 就本條例而言，如某公司的章程細則將其成員的法律責任限於該成員所持有的股份的未繳款額，該公司即屬股份有限公司。
- (2) 就第 (1) 款而言，如某原有公司的組織章程大綱中，有某條件述明成員的法律責任是有限的，而該條件憑藉第 98 條被視為該公司的章程細則的條文，則該公司成員的法律責任，即視為按該公司的章程細則而限於該等成員所持有的股份的未繳款額。

- (b) the provisions of this Ordinance relating to private companies are to be construed accordingly.
- (5) In this section, an offer of shares or debentures, or an invitation to subscribe for shares or debentures, is a private offer or invitation if the offer or invitation can properly be regarded, in all the circumstances, as being—
  - (a) not calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or
  - (b) a domestic concern of the persons making and receiving the offer or invitation.

### Division 3—Interpretation of this Ordinance: Types of Companies

#### Subdivision 1—Limited Company and Unlimited Company

##### 7. Limited company

For the purposes of this Ordinance, a company is a limited company if it is a company limited by shares or by guarantee.

##### 8. Company limited by shares

- (1) For the purposes of this Ordinance, a company is a company limited by shares if the liability of its members is limited by the company's articles to any amount unpaid on the shares held by the members.
- (2) For the purposes of subsection (1), the liability of the members of an existing company is to be regarded as being limited by the company's articles to any amount unpaid on the shares held by the members if a condition of the memorandum of association of the company stating that the

liability of the members is limited is regarded as a provision of the articles by virtue of section 98.

## 9. 擔保有限公司

- (1) 就本條例而言，如某公司符合以下說明，該公司即屬擔保有限公司 ——
- (a) 該公司沒有股本；及
  - (b) 該公司的章程細則將其成員的法律責任限於該成員藉該章程細則承諾在該公司清盤時支付作為該公司資產的款額。
- (2) 如有關的公司於 2004 年 2 月 13 日之前，根據《舊有公司條例》組成為或成為擔保有限公司，則第 (1)(a) 款不適用。

## 10. 無限公司

就本條例而言，如某公司的成員的法律責任並無上限，該公司即屬無限公司。

## 第 2 次分部 —— 私人公司及公眾公司

## 11. 私人公司

- (1) 就本條例而言，如某公司符合以下說明，該公司即屬私人公司 ——
- (a) 該公司的章程細則 ——
    - (i) 限制成員轉讓股份的權利；
    - (ii) 將成員最高人數限於 50 人；及
    - (iii) 禁止邀請公眾人士認購該公司的任何股份或債權證；及
  - (b) 該公司不屬擔保有限公司。

## 9. Company limited by guarantee

- (1) For the purposes of this Ordinance, a company is a company limited by guarantee if—
- (a) it does not have a share capital; and
  - (b) the liability of its members is limited by the company's articles to the amount that the members undertake, by those articles, to contribute to the assets of the company in the event of its being wound up.
- (2) Subsection (1)(a) does not apply if the company was formed as, or became, a company limited by guarantee under a former Companies Ordinance before 13 February 2004.

## 10. Unlimited company

For the purposes of this Ordinance, a company is an unlimited company if there is no limit on the liability of its members.

## Subdivision 2—Private Company and Public Company

## 11. Private company

- (1) For the purposes of this Ordinance, a company is a private company if—
- (a) its articles—
    - (i) restrict a member's right to transfer shares;
    - (ii) limit the number of members to 50; and
    - (iii) prohibit any invitation to the public to subscribe for any shares or debentures of the company; and
  - (b) it is not a company limited by guarantee.

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(2) 在第 (1)(a)(ii) 款中 ——

**成員** (member) 不包括 ——

- (a) 本身是有關公司僱員的成員；及
  - (b) 曾同時是成員及有關公司僱員，但於不再是該公司僱員後仍繼續是成員的人。
- (3) 就本條而言，如 2 名或多於 2 名人士聯名持有公司股份，他們須視為一名成員。

## 12. 公眾公司

就本條例而言，如某公司符合以下說明，該公司即屬公眾公司 ——

- (a) 該公司不屬私人公司；及
- (b) 該公司不屬擔保有限公司。

## 第 4 分部 —— 本條例的釋義：控權公司及附屬公司

(由 2018 年第 35 號第 5 條修訂)

## 13. 控權公司

(1) 就本條例而言，如某法人團體 (**前者**) ——

- (a) 控制另一法人團體 (**後者**) 的董事局的組成；
- (b) 控制另一法人團體 (**後者**) 超過半數的表決權；或
- (c) 持有另一法人團體 (**後者**) 超過半數的已發行股本，則前者即屬後者的控權公司。

(2) 就本條例而言，如某法人團體 (**前者**) 是另一法人團體 (**後者**) 的控權公司，而後者是另一法人團體 (**第三者**) 的控權公司，則前者亦屬第三者的控權公司。

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(2) In subsection (1)(a)(ii)—

**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.
- (3) For the purposes of this section, 2 or more persons who hold shares in a company jointly are to be regarded as one member.

## 12. Public company

For the purposes of this Ordinance, a company is a public company if—

- (a) it is not a private company; and
- (b) it is not a company limited by guarantee.

## Division 4—Interpretation of this Ordinance: Holding Company and Subsidiary

(Amended 35 of 2018 s. 5)

## 13. Holding company

(1) For the purposes of this Ordinance, a body corporate is a holding company of another body corporate if—

- (a) it controls the composition of that other body corporate's board of directors;
- (b) it controls more than half of the voting rights in that other body corporate; or
- (c) it holds more than half of that other body corporate's issued share capital.

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第 14 條

- (3) 就第 (1)(a) 款而言，如某法人團體 (**前者**) 有權力在無需其他人同意下，委任或罷免另一法人團體 (**後者**) 的全部或過半數董事，則前者即屬控制後者的董事局的組成。
- (4) 就第 (3) 款而言，如有以下情況，某法人團體即屬有權力作出有關委任 ——
- (a) 如該法人團體 (**前者**) 不行使該權力委任有關的人為另一法人團體 (**後者**) 的董事，該人不能獲委任為後者的董事；或
- (b) 某人身為前者的董事或其他高級人員，必然會獲委任為後者的董事。
- (5) 在第 (1)(c) 款中，提述法人團體的已發行股本，並不包括該股本中在分派利潤或資本時無權分享超過某一指明款額的部分。

**14. 補充第 13 條的條文**

- (1) 就本分部而言 ——
- (a) 如任何股份是由某法人團體以受信人身分持有，或如任何權力是可由某法人團體以受信人身分行使，則該股份須視為並非由該法人團體持有，而該權力須視為不可由該法人團體行使；及
- (b) 除第 (2) 及 (3) 款另有規定外，如任何股份是由某法人團體的附屬公司持有，或由某人以該法人團體或附屬公司的代名人的身分持有，或如任何權力是可由某法人團體的附屬公司行使，或可由某人以該法

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- (2) For the purposes of this Ordinance, a body corporate is also a holding company of another body corporate if it is a holding company of a body corporate that is that other body corporate's holding company.
- (3) For the purposes of subsection (1)(a), a body corporate controls the composition of another body corporate's board of directors if it has power to appoint or remove all, or a majority, of that other body corporate's directors without any other person's consent.
- (4) For the purposes of subsection (3), a body corporate has the power to make such an appointment if—
- (a) without the exercise of the power in a person's favour by the body corporate, the person cannot be appointed as a director of that other body corporate; or
- (b) it necessarily follows from a person being a director or other officer of the body corporate that the person is appointed as a director of that other body corporate.
- (5) In subsection (1)(c), a reference to a body corporate's issued share capital excludes any part of it that carries no right to participate beyond a specified amount in a distribution of profits or capital.

**14. Provisions supplementary to section 13**

- (1) For the purposes of this Division—
- (a) if any share is held, or any power is exercisable, by a body corporate in a fiduciary capacity, the share or power is to be regarded as not being held or exercisable by the body corporate; and
- (b) subject to subsections (2) and (3), if any share is held, or any power is exercisable, by a subsidiary of a body corporate, or by a person as nominee for a body corporate or such a subsidiary, the share or power is to



人團體或附屬公司的代名人的身分行使，則該股份須視為由該法人團體持有，而該權力須視為可由該法人團體行使。

- (2) 就本分部而言，某人憑藉另一法人團體的債權證而持有該法人團體的股份，或憑藉用以保證該債權證的發行的信託契據而持有該法人團體的股份，須視為並非由該人持有，而某人憑藉另一法人團體的債權證而可就該法人團體行使的權力，或憑藉用以保證該債權證的發行的信託契據而可就該法人團體行使的權力，須視為不可由該人行使。
- (3) 就本分部而言，凡有由某法人團體或某法人團體的附屬公司持有的股份，或由某人以該法人團體或附屬公司的代名人的身分持有的股份，或有可由某法人團體或某法人團體的附屬公司行使的權力，或可由某人以該法人團體或附屬公司的代名人的身分行使的權力，如——
  - (a) 該法人團體或附屬公司的通常業務，是包括借出款項的；及
  - (b) 該股份僅作為在該業務的通常運作中達成的交易的保證而持有，而該權力僅可作為在該業務的通常運作中達成的交易的保證而行使，
 則該股份須視為並非由該法人團體或附屬公司持有，而該權力須視為不可由該法人團體或附屬公司行使。
- (4) 在第 (1)(b) 款中，提述法人團體或附屬公司，並不包括僅以受信人身分而參涉在內的法人團體或附屬公司。

## 15. 附屬公司

就本條例而言，如某法人團體 (*前者*) 屬另一法人團體 (*後者*) 的控股公司，後者即屬前者的附屬公司。

## 16. (由 2018 年第 35 號第 6 條廢除)

be regarded as being held or exercisable by the body corporate.

- (2) For the purposes of this Division, any share in another body corporate held, or any power in relation to another body corporate exercisable, by a person by virtue of a debenture of that other body corporate, or of a trust deed for securing an issue of such a debenture, is to be regarded as not being held or exercisable by the person.
- (3) For the purposes of this Division, any share held, or any power exercisable, by a body corporate or a subsidiary of a body corporate, or by a person as nominee for a body corporate or such a subsidiary, is to be regarded as not being held or exercisable by the body corporate or subsidiary if—
  - (a) the ordinary business of the body corporate or subsidiary includes the lending of money; and
  - (b) the share or power is held or exercisable by way of security only for the purpose of a transaction entered into in the ordinary course of that business.
- (4) In subsection (1)(b), a reference to a body corporate or subsidiary excludes a body corporate or subsidiary that is concerned only in a fiduciary capacity.

## 15. Subsidiary

For the purposes of this Ordinance, a body corporate is a subsidiary of another body corporate if that other body corporate is a holding company of it.

## 16. (Repealed 35 of 2018 s. 6)

**第 5 分部 —— 本條例的適用範圍****17. 對原有公司的適用**

- (1) 如原有公司 ——
- (a) 屬擔保有限公司，本條例適用於該公司，適用方式猶如該公司是根據本條例組成及註冊為擔保有限公司一樣；
  - (b) 屬擔保有限公司以外的有限公司，本條例適用於該公司，適用方式猶如該公司是根據本條例組成及註冊為股份有限公司一樣；或
  - (c) 屬有限公司以外的公司，本條例適用於該公司，適用方式猶如該公司是根據本條例組成及註冊為無限公司一樣。
- (2) 為將本條例應用於原有公司的目的，在本條例中提述註冊日期之處，須理解為有關公司根據《舊有公司條例》註冊的日期。

**18. 對依據《舊有公司條例》註冊為有限公司的無限公司的適用**

- (1) 本條例適用於依據《1911 年公司條例》\*(1911 年第 58 號) 第 58 條或《前身條例》註冊為有限公司的無限公司，適用方式一如本條例適用於根據本條例註冊為有限公司的無限公司。
- (2) 為將本條例應用於第 (1) 款所述的公司的目的，在本條例中提述註冊日期之處，須理解為有關公司依據《1911 年公司條例》\*(1911 年第 58 號) 第 58 條或《前身條例》註冊的日期。

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編輯附註：**Division 5—Application of this Ordinance****17. Application to existing company**

- (1) This Ordinance applies to an existing company, in the same manner as if—
- (a) in the case of a company limited by guarantee, the company had been formed and registered under this Ordinance as a company limited by guarantee;
  - (b) in the case of a limited company other than a company limited by guarantee, the company had been formed and registered under this Ordinance as a company limited by shares; or
  - (c) in the case of a company other than a limited company, the company had been formed and registered under this Ordinance as an unlimited company.
- (2) For the purpose of applying this Ordinance to an existing company, a reference in this Ordinance to the date of registration is to be read as the date on which the company was registered under a former Companies Ordinance.

**18. Application to unlimited company registered in pursuance of former Companies Ordinance as limited company**

- (1) This Ordinance applies to an unlimited company registered as a limited company in pursuance of the predecessor Ordinance or section 58 of the Companies Ordinance 1911 (58 of 1911), in the same manner as it applies to an unlimited company registered under this Ordinance as a limited company.
- (2) For the purpose of applying this Ordinance to a company mentioned in subsection (1), a reference in this Ordinance to the date of registration is to be read as the date on which the company was registered in pursuance of the predecessor

#《1911 年公司條例》乃“Companies Ordinance 1911”的譯名。

**19. 對根據《舊有公司條例》註冊但並非根據該條例組成的公司的適用**

- (1) 本條例適用於根據《舊有公司條例》註冊但並非根據該條例組成的公司，適用方式一如本條例適用於根據第 17 部註冊的合資格公司。
  - (2) 為將本條例應用於第 (1) 款所述的公司的目的，在本條例中提述註冊日期之處，須理解為有關公司根據《舊有公司條例》註冊的日期。
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Ordinance or section 58 of the Companies Ordinance 1911 (58 of 1911).

**19. Application to company registered, but not formed, under former Companies Ordinance**

- (1) This Ordinance applies to a company registered, but not formed, under a former Companies Ordinance, in the same manner as it applies to an eligible company registered under Part 17.
  - (2) For the purpose of applying this Ordinance to a company mentioned in subsection (1), a reference in this Ordinance to the date of registration is to be read as the date on which the company was registered under the former Companies Ordinance.
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