

**第 14 部****保障公司或成員權益的補救***(格式變更——2013 年第 1 號編輯修訂紀錄)***第 1 分部 —— 導言****722. 釋義**

(1) 在本部中 ——

**公司** (company) 包括非香港公司。

(2) 如某公司沒有章程細則，在本部中，提述公司的章程細則，須理解為組織該公司或對該公司的組織作出規定的文書。

**第 2 分部 —— 對不公平地損害成員權益的補救****723. 釋義**

(1) 凡 ——

- (a) 某人在緊接去世前，是某公司成員，則在本分部中，提述公司成員，包括該人的遺產代理人；及
- (b) 某人在緊接去世前，是某公司成員，則在本分部中，提述公司成員，包括憑藉該人的遺囑或因該人在無遺囑的情況下去世而成為該公司的股份的受託人，或憑藉該遺囑或因該人在無遺囑的情況下去世而享有該公司股份的實益權益的人。

(2) 凡某人在緊接去世前，是某公司的前度成員，則在本分部中，提述公司的前度成員，包括該人的遺產代理人。

**Part 14****Remedies for Protection of Companies' or Members' Interests***(Format changes—E.R. 1 of 2013)***Division 1—Preliminary****722. Interpretation**

(1) In this Part—

**company** (公司) includes a non-Hong Kong company.

(2) In this Part, a reference to a company's articles, in the case of a company not having articles, is to be read as the instrument constituting or defining the constitution of the company.

**Division 2—Remedies for Unfair Prejudice to Members' Interests****723. Interpretation**

(1) In this Division, a reference to a member of a company includes—

- (a) the personal representative of a person who, immediately before the person's death, was a member of the company; and
- (b) a trustee of, or a person beneficially interested in, the shares of the company by virtue of the will or intestacy of another person who, immediately before that other person's death, was a member of the company.

(2) In this Division, a reference to a past member of a company includes the personal representative of a person who,

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- (3) 就本分部而言，除非某人符合以下說明，否則該人不是某公司的前度成員 ——
- (a) 該人曾經是該公司成員，但已不再是該公司成員；及
- (b) 該人在 2005 年 7 月 15 日或之後，不再是該公司成員。

#### 724. 原訟法庭何時可命令作出補救

- (1) 原訟法庭如應某公司的成員提出的呈請，認為 ——
- (a) 該公司的事務，正以或曾以不公平地損害眾成員或某名或某些成員 (包括該成員) 的權益的方式處理；或
- (b) 該公司某項實際作出或沒有作出的作為 (包括任何代表該公司而作出或沒有作出的作為)，或該公司某項擬作出或不作出的作為 (包括任何代表該公司而作出或不作出的作為)，具有或會具有 (a) 段所述的損害性，
- 則可行使第 725(1)(a) 及 (2) 條所指的權力。
- (2) 原訟法庭如應財政司司長根據第 879(3) 條提出的呈請，認為 ——
- (a) 某公司的事務，正以或曾以不公平地損害眾成員或某名或某些成員的權益的方式處理；或
- (b) 某公司某項實際作出或沒有作出的作為 (包括任何代表該公司而作出或沒有作出的作為)，或該公司某項擬作出或不作出的作為 (包括任何代表該公司而作出或不作出的作為)，具有或會具有 (a) 段所述的損害性，

則可行使第 725(1)(b) 及 (2) 條所指的權力。

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immediately before the person's death, was a past member of the company.

- (3) For the purposes of this Division, a person is not a past member of a company unless—
- (a) the person was, but is no longer, a member of the company; and
- (b) the person ceased to be such a member on or after 15 July 2005.

#### 724. When Court may order remedies

- (1) The Court may exercise the power under section 725(1)(a) and (2) if, on a petition by a member of a company, it considers that—
- (a) the company's affairs are being or have been conducted in a manner unfairly prejudicial to the interests of the members generally or of one or more members (including the member); or
- (b) an actual or proposed act or omission of the company (including one done or made on behalf of the company) is or would be so prejudicial.
- (2) The Court may exercise the power under section 725(1)(b) and (2) if, on a petition by the Financial Secretary under section 879(3), it considers that—
- (a) a company's affairs are being or have been conducted in a manner unfairly prejudicial to the interests of the members generally or of one or more members; or
- (b) an actual or proposed act or omission of a company (including one done or made on behalf of the company) is or would be so prejudicial.
- (3) The Court may exercise the power under section 725(4) if, on a petition by a past member of a company, it considers

- (3) 原訟法庭如應某公司的前度成員提出的呈請，認為在該前度成員是該公司的成員時 ——
- (a) 該公司的事務，曾以不公平地損害當其時眾成員或當其時某名或某些成員（包括該前度成員）的權益的方式處理；或
  - (b) 該公司某項實際作出或沒有作出的作為（包括任何代表該公司而作出的作為，亦包括任何沒有代表該公司而作出的作為），具有 (a) 段所述的損害性，
- 則可行使第 725(4) 條所指的權力。

**725. 原訟法庭可命令作出的補救**

- (1) 原訟法庭可 ——
  - (a) 為施行第 724(1) 條，作出它認為合適的命令，以就第 724(1)(a) 或 (b) 條所述的事情提供濟助；及
  - (b) 為施行第 724(2) 條，作出它認為合適的命令，以就第 724(2)(a) 或 (b) 條所述的事情提供濟助。
- (2) 在不局限第 (1) 款的原則下，原訟法庭 ——
  - (a) 可作出以下任何或所有命令 ——
    - (i) 具有以下效力的命令 ——
      - (A) 禁制繼續以第 724(1)(a) 或 (2)(a) 條所述的方式，處理有關公司的事務；
      - (B) 禁制作出第 724(1)(b) 或 (2)(b) 條所述的作為；或
      - (C) 規定作出第 724(1)(b) 或 (2)(b) 條所述的、有關公司沒有作出或擬不作出的作為；
    - (ii) 規定以有關公司的名義，並按原訟法庭所命令的任何條款，針對原訟法庭所命令的任何人，提起原訟法庭認為合適的法律程序的命令；
    - (iii) 就以下所有項目或其中一個項目委任接管人或經理人的命令 ——

that at the time when the past member was a member of the company—

- (a) the company's affairs were conducted in a manner unfairly prejudicial to the interests of the members at that time generally or of one or more members at that time (including the past member); or
- (b) an actual act or omission of the company (including one done or made on behalf of the company) was so prejudicial.

**725. Remedies that Court may order**

- (1) The Court may—
  - (a) for the purposes of section 724(1), make any order that it thinks fit for giving relief in respect of the matter mentioned in section 724(1)(a) or (b); and
  - (b) for the purposes of section 724(2), make any order that it thinks fit for giving relief in respect of the matter mentioned in section 724(2)(a) or (b).
- (2) Without limiting subsection (1), the Court—
  - (a) may make any or all of the following orders—
    - (i) an order—
      - (A) restraining the continuance of the conduct of the company's affairs in the manner mentioned in section 724(1)(a) or (2)(a);
      - (B) restraining the doing of the act mentioned in section 724(1)(b) or (2)(b); or
      - (C) requiring the doing of an act that, as mentioned in section 724(1)(b) or (2)(b), the company has omitted, or has proposed to omit, to do;

- (A) 有關公司的財產或其任何部分；
- (B) 有關公司的業務或其任何部分；
- (iv) 原訟法庭認為合適的任何其他命令，不論是為以下任何目的而作出 ——
  - (A) 規管有關公司的事務在日後的處理方式；
  - (B) 有關公司的任何成員購買該公司另一成員的股份；
  - (C) 有關公司購買其任何成員的股份，並相應地減少其資本；或
  - (D) 任何其他目的；及
- (b) 在有關公司任何成員權益曾受到該公司的事務的處理方式或有關作為或不作為不公平地損害的情況下，可命令該公司或任何其他人向該成員支付原訟法庭認為合適的損害賠償，以及原訟法庭認為合適的該等損害賠償的利息。
- (3) 原訟法庭在根據第 (2)(a)(iii) 款作出命令時，可指明接管人或經理人的權力及責任，以及釐定其酬金。
- (4) 為施行第 724(3) 條，凡有關公司在關鍵時間的成員的權益曾受到該公司的事務的處理方式或有關作為或不作為不公平地損害，原訟法庭可命令該公司或任何其他人向該成員支付原訟法庭認為合適的損害賠償，以及原訟法庭認為合適的該等損害賠償的利息。
- (5) 為免生疑問，任何公司的成員（前度成員或現在的成員）均無權藉著尋求第 (2)(b) 或 (4) 款所指的損害賠償，追討任何純粹反映該公司所蒙受並且在普通法之下只有該公司才有權追討的損失。
- (6) 在本條中 ——

**關鍵時間** (material time) 指當有關的前度成員是有關公司成員的時間。

- (ii) an order that proceedings that the Court thinks fit be brought in the company's name against any person, and on any terms, that the Court so orders;
- (iii) an order appointing a receiver or manager of either or both of the following—
  - (A) the company's property, or any part of the property;
  - (B) the company's business, or any part of the business;
- (iv) any other order that the Court thinks fit, whether—
  - (A) for regulating the conduct of the company's affairs in future;
  - (B) for the purchase of the shares of any member of the company by another member of the company;
  - (C) for the purchase of the shares of any member of the company by the company and the reduction accordingly of the company's capital; or
  - (D) for any other purpose; and
- (b) may order the company or any other person to pay any damages, and any interest on those damages, that the Court thinks fit to a member of the company whose interests have been unfairly prejudiced by the conduct of the company's affairs or by the act or omission.
- (3) The Court may, on making an order under subsection (2)(a)(iii), specify the powers and duties of, and fix the remuneration of, the receiver or manager.
- (4) For the purposes of section 724(3), the Court may order the company or any other person to pay any damages, and any interest on those damages, that the Court thinks fit to a

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#### 726. 藉原訟法庭命令修改章程細則

- (1) 如公司的章程細則，被第 725 條所指的命令修改，則本條適用。
- (2) 上述修改所具效力，猶如該項修改是藉有關公司的決議作出的一樣，而本條例適用於有關章程細則，猶如該項修改是藉該公司的決議作出的一樣。
- (3) 儘管本條例有任何規定，有關公司無權未經原訟法庭許可，而以抵觸上述命令的方式，修改章程細則。
- (4) 有關公司須於上述命令作出後的 15 日內，將該命令的正式文本交付處長登記。
- (5) 如公司違反第 (4) 款，該公司及其每名責任人均屬犯罪，可各處第 3 級罰款，如有關罪行是持續的罪行，則可就該罪行持續期間的每一日，另各處罰款 \$300。

#### 727. 終審法院首席法官可訂立規則

member of the company at the material time whose interests were unfairly prejudiced by the conduct of the company's affairs or by the act or omission.

- (5) To avoid doubt, a member, past or present, of a company is not entitled to recover, by way of damages under subsection (2)(b) or (4), any loss that solely reflects the loss suffered by the company that only the company is entitled to recover under the common law.

- (6) In this section—

**material time** (關鍵時間) means the time when the past member was a member of the company.

#### 726. Alteration of articles by order of Court

- (1) This section applies if a company's articles are altered by an order under section 725.
- (2) The alteration has the same effect, and this Ordinance applies to the articles, as if the alteration were made by a resolution of the company.
- (3) Despite anything in this Ordinance, the company has no power, without the leave of the Court, to alter the articles in a way that is inconsistent with the order.
- (4) Within 15 days after the order is made, the company must deliver an office copy of the order to the Registrar for registration.
- (5) If a company contravenes subsection (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

#### 727. Chief Justice may make rules



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- (1) 在立法會批准下，終審法院首席法官可訂立規則 ——
  - (a) 規管根據本分部提起的法律程序；及
  - (b) 訂明須就該法律程序支付的費用。
- (2) 上述規則如賦權某人向另一人提出問題，則該等規則亦可規定，該另一人對該問題的答覆，可用作為針對該另一人的證據。
- (3) 上述規則可賦權原訟法庭 ——
  - (a) 釐定須就上述法律程序支付但該等規則沒有訂明的費用；及
  - (b) 更改如此釐定的費用。
- (4) 上述規則可規定，須就上述法律程序向某人支付的費用，可作為拖欠該人的債項而追討。
- (5) 上述規則可藉參照費用及百分率計算表而訂明費用；而原訟法庭可根據該等規則，藉參照費用及百分率計算表而釐定或更改費用。
- (6) 按上述條文訂明、釐定或更改費用時，無需參照就上述法律程序或相當可能就上述法律程序而招致的行政費用或其他費用的款額。
- (7) 按上述條文訂明、釐定或更改的費用，不會僅因其款額而無效。

### 第 3 分部 —— 對於其他人就公司從事的行為作出的補救等

#### 728. 第 729 條的適用範圍

- (1) 如就某公司而言有以下情況，則第 729 條適用 ——

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- (1) Subject to the approval of the Legislative Council, the Chief Justice may make rules—
  - (a) for regulating proceedings under this Division; and
  - (b) for prescribing fees payable in respect of such proceedings.
- (2) If the rules empower a person to put a question to another person, they may also provide that that other person's reply to the question may be used in evidence against that other person.
- (3) The rules may empower the Court—
  - (a) to fix any fee payable in respect of such proceedings that is not prescribed by the rules; and
  - (b) to vary the fee so fixed.
- (4) The rules may provide that a fee payable to a person in respect of such proceedings is recoverable as a debt due to the person.
- (5) A fee may be prescribed by the rules, or fixed or varied by the Court under the rules, by reference to a scale of fees and percentages.
- (6) A fee may be so prescribed, fixed or varied without reference to the amount of administrative or other costs incurred or likely to be incurred in relation to such proceedings.
- (7) A fee so prescribed, fixed or varied is not invalid by reason only of the amount of the fee.

### Division 3—Remedies for Others' Conduct in relation to Companies etc.

#### 728. Application of section 729

- (1) Section 729 applies if, in relation to a company—

- (a) 某人曾從事、正從事或正擬從事某行為，而該行為已構成、正構成或會構成 ——
- (i) 違反本條例的行為；
  - (ii) 關乎違反本條例的錯失；或
  - (iii) 第 (4) 款指明的違反行為；或
- (b) 某人曾拒絕或沒有作出、正拒絕或沒有作出、或正擬拒絕或不作出本條例規定該人作出的作為或事情。
- (2) 如就某公司而言有以下情況，則第 729 條亦適用 ——
- (a) 某人在本條的生效日期<sup>#</sup>前曾從事、正從事或正擬從事 ——
- (i) 構成或會構成違反《前身條例》且亦會構成違反本條例的行為；
  - (ii) 構成或會構成關乎違反《前身條例》的錯失且亦會構成關乎違反本條例的相同錯失的行為；或
  - (iii) 構成或會構成第 (4) 款指明的違反行為的行為；及
- (b) 該人曾從事、正從事或正擬從事上述行為一事，仍在繼續。
- (3) 如就某公司而言有以下情況，則第 729 條亦適用 ——
- (a) 某人在本條的生效日期<sup>#</sup>前曾拒絕或沒有作出、正拒絕或沒有作出、或正擬拒絕或不作出《前身條例》規定該人作出的作為或事情；
  - (b) 本條例亦規定該人作出該作為或事情；及
  - (c) 該人曾拒絕或沒有作出、正拒絕或沒有作出、或正擬拒絕或不作出上述行為一事，仍在繼續。
- (4) 為施行第 (1)(a)(iii) 或 (2)(a)(iii) 款而指明的違反行為如下 ——
- (a) 違反有關的人以有關公司董事以外的身分對該公司所負的受信責任；

- (a) a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute—
- (i) a contravention of this Ordinance;
  - (ii) a default relating to a contravention of this Ordinance; or
  - (iii) a breach specified in subsection (4); or
- (b) a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required by this Ordinance to do.
- (2) Section 729 also applies if, in relation to a company—
- (a) a person had engaged, was engaging or was proposing to engage, before the commencement date<sup>#</sup> of this section, in—
- (i) conduct that constituted or would constitute a contravention of the predecessor Ordinance and that would also constitute a contravention of this Ordinance;
  - (ii) conduct that constituted or would constitute a default relating to a contravention of the predecessor Ordinance and that would also constitute the same default relating to a contravention of this Ordinance; or
  - (iii) conduct that constituted or would constitute a breach specified in subsection (4); and
- (b) the engagement or proposal still subsists.
- (3) Section 729 also applies if, in relation to a company—
- (a) a person had refused or failed, was refusing or failing, or was proposing to refuse or fail, before the commencement date<sup>#</sup> of this section, to do an act or

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- (b) 違反有關的人以有關公司董事的身分對該公司所負的受信責任或其他責任；或
- (c) 違反有關公司的章程細則。
- (5) 在本條中，提述關乎違反本條例或《前身條例》的錯失，即提述 ——
  - (a) 企圖違反有關條例；
  - (b) 協助、教唆、慫使或促致另一人違反有關條例；
  - (c) 以或企圖以不論威脅、承諾或其他方式，誘使另一人違反有關條例；
  - (d) 以直接或間接的方式，在知情的情況下，牽涉入或參與另一人違反有關條例；或
  - (e) 與其他人串謀違反有關條例。

編輯附註：

# 生效日期：2014 年 3 月 3 日。

## 729. 原訟法庭可命令作出補救

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- thing that the person was required by the predecessor Ordinance to do;
- (b) the person is also required by this Ordinance to do the act or thing; and
- (c) the refusal, failure or proposal still subsists.
- (4) The breach specified for the purposes of subsection (1)(a)(iii) or (2)(a)(iii) is—
  - (a) a breach of the person's fiduciary duties owed to the company in any capacity other than as a director of the company;
  - (b) a breach of the person's fiduciary or other duties as a director of the company owed to the company; or
  - (c) a breach of the company's articles.
- (5) In this section, a reference to a default relating to a contravention of this Ordinance or the predecessor Ordinance is a reference to—
  - (a) an attempt to contravene the Ordinance;
  - (b) aiding, abetting, counselling or procuring another person to contravene the Ordinance;
  - (c) inducing or attempting to induce, whether by threats, promises or otherwise, another person to contravene the Ordinance;
  - (d) being in any way, directly or indirectly, knowingly concerned in, or a party to, a contravention of the Ordinance by another person; or
  - (e) conspiring with others to contravene the Ordinance.

Editorial Note:

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## 729. Court may order remedies

Verified Copy

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- (1) 如有關公司的成員或債權人提出申請，而該成員或債權人的權益，曾受、正受或會受有關的人的行為或有關的人拒絕或沒有作出有關作為或事情所影響，則原訟法庭可應有關申請，作出以下任何或所有命令——
  - (a) 按原訟法庭認為合適的條款，授予強制令——
    - (i) 就第 728(1)(a) 或 (2) 條而言，禁制該人從事該行為，或規定該人作出任何作為或事情；或
    - (ii) 就第 728(1)(b) 或 (3) 條而言，規定該人作出任何作為或事情；
  - (b) 命令該人向任何其他人支付損害賠償；
  - (c) 宣布任何合約在該命令指明的範圍內屬無效或可致無效。
- (2) 原訟法庭可應財政司司長根據第 879(4) 或 (5) 條提出的申請，作出以下任何或所有命令——
  - (a) 按原訟法庭認為合適的條款，授予強制令——
    - (i) 就第 728(1)(a) 或 (2) 條而言，禁制有關的人從事有關行為，或規定該人作出任何作為或事情；或
    - (ii) 就第 728(1)(b) 或 (3) 條而言，規定有關的人作出任何作為或事情；
  - (b) 命令該人向任何其他人支付損害賠償；
  - (c) 宣布任何合約在該命令指明的範圍內屬無效或可致無效。
- (3) 原訟法庭可根據第 (1)(a)(i) 或 (2)(a)(i) 款授予強制令，禁制某人從事某行為，而不論——
  - (a) 原訟法庭是否覺得該人意圖再次從事或繼續從事該行為；
  - (b) 該人以前曾否從事該行為；及

- (1) The Court may, on application by a member or creditor of the company whose interests have been, are or would be affected by the conduct or by the refusal or failure, do any or all of the following—
  - (a) grant an injunction, on the terms that the Court thinks fit—
    - (i) in the case of section 728(1)(a) or (2), restraining the person from engaging in the conduct or requiring the person to do any act or thing; or
    - (ii) in the case of section 728(1)(b) or (3), requiring the person to do any act or thing;
  - (b) order the person to pay damages to any other person;
  - (c) declare any contract to be void or voidable to the extent specified in the order.
- (2) The Court may, on application by the Financial Secretary under section 879(4) or (5), do any or all of the following—
  - (a) grant an injunction, on the terms that the Court thinks fit—
    - (i) in the case of section 728(1)(a) or (2), restraining the person from engaging in the conduct or requiring the person to do any act or thing; or
    - (ii) in the case of section 728(1)(b) or (3), requiring the person to do any act or thing;
  - (b) order the person to pay damages to any other person;
  - (c) declare any contract to be void or voidable to the extent specified in the order.
- (3) The Court may grant an injunction under subsection (1)(a)(i) or (2)(a)(i) restraining a person from engaging in a conduct—

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- (c) 該人如從事該行為，會否有對任何其他人造成重大損害的迫切危險。
- (4) 原訟法庭可根據第 (1)(a) 或 (2)(a) 款授予強制令，規定某人作出某作為或事情，而不論——
  - (a) 原訟法庭是否覺得該人意圖再次拒絕作出或意圖再次不作出該作為或事情，或意圖繼續拒絕作出或意圖繼續不作出該作為或事情；
  - (b) 該人以前曾否拒絕作出或沒有作出該作為或事情；及
  - (c) 該人如拒絕作出或沒有作出該作為或事情，會否有對任何其他人造成重大損害的迫切危險。
- (5) 為免生疑問，任何人均無權藉著尋求第 (1)(b) 或 (2)(b) 款所指的損害賠償，追討任何純粹反映有關公司所蒙受並且在普通法之下只有該公司才有權追討的損失。

### 730. 補充第 729 條的條文

- (1) 原訟法庭可在第 729(1) 或 (2) 條所指的申請仍有待裁定時，按它認為合適的條款及條件，授予臨時強制令或臨時損害賠償，或同時授予兩者。
- (2) 原訟法庭可解除或更改根據第 (1) 款或第 729(1) 或 (2) 條授予的強制令。

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- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in the conduct;
- (b) whether or not the person has previously engaged in the conduct; and
- (c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in the conduct.
- (4) The Court may grant an injunction under subsection (1)(a) or (2)(a) requiring a person to do an act or thing—
  - (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do the act or thing;
  - (b) whether or not the person has previously refused or failed to do the act or thing; and
  - (c) whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do the act or thing.
- (5) To avoid doubt, a person is not entitled to recover, by way of damages under subsection (1)(b) or (2)(b), any loss that solely reflects the loss suffered by the company that only the company is entitled to recover under the common law.

### 730. Provisions supplementary to section 729

- (1) The Court may grant an interim injunction or interim damages, or both, on the terms and conditions that it thinks fit pending the determination of an application under section 729(1) or (2).
- (2) The Court may discharge or vary an injunction granted under subsection (1) or section 729(1) or (2).

## 第 4 分部 —— 就對公司所作的不當行為提出衍生訴訟以尋求補救等

### 731. 釋義

在本分部中 ——

**不當行為** (misconduct) 指欺詐、疏忽或違反責任，亦指在遵從任何條例或法律規則方面的錯失；

**法律程序** (proceedings) 指任何在法院司法管轄權範圍內的法律程序，但刑事法律程序除外。

### 732. 公司的成員或有聯繫公司的成員可提起或介入法律程序

- (1) 如有人對某公司作出不當行為，該公司的任何成員或該公司的有聯繫公司的任何成員若獲得原訟法庭根據第 733 條批予的許可，即可代表該公司，就該行為在法院提起法律程序。
- (2) 如因對某公司作出的不當行為，以致該公司沒有就任何事宜提起法律程序，該公司的任何成員或該公司的有聯繫公司的任何成員若獲得原訟法庭根據第 733 條批予的許可，即可代表該公司，就該事宜在法院提起法律程序。
- (3) 如因對某公司作出的不當行為，以致該公司沒有努力繼續進行或沒有努力中止任何法律程序，或沒有努力在任何法律程序中抗辯，該公司的任何成員或該公司的有聯繫公司的任何成員若獲得原訟法庭根據第 733 條批予的許可，即可介入在法院進行的該法律程序，以代表該公司繼續進行或中止該法律程序，或在該法律程序中抗辯。
- (4) 就根據第 (1) 或 (2) 款提起法律程序而言，其訴訟因由歸屬有關公司。任何該法律程序，均須以該公司的名義提起，而有關濟助 (如有的話)，亦須是代表該公司尋求的。
- (5) 就根據第 (3) 款介入的法律程序而言，繼續進行或中止該法律程序或在該法律程序中抗辯的權利，歸屬有關公司，而有關濟助 (如有的話)，亦須是代表該公司尋求的。

## Division 4—Derivative Action for Remedies for Misconduct against Companies etc.

### 731. Interpretation

In this Division—

**misconduct** (不當行為) means fraud, negligence, breach of duty, or default in compliance with any Ordinance or rule of law;

**proceedings** (法律程序) means any proceedings (other than criminal proceedings) within the jurisdiction of any court.

### 732. Member of company or of associated company may bring or intervene in proceedings

- (1) If misconduct is committed against a company, a member of the company or of an associated company of the company may, with the leave of the Court granted under section 733, bring proceedings in respect of the misconduct before the court on behalf of the company.
- (2) If, because of misconduct committed against the company, a company fails to bring proceedings in respect of any matter, a member of the company or of an associated company of the company may, with the leave of the Court granted under section 733, bring proceedings in respect of the matter before the court on behalf of the company.
- (3) If, because of misconduct committed against the company, a company fails to diligently continue, discontinue or defend proceedings, a member of the company or of an associated company of the company may, with the leave of the Court granted under section 733, intervene in the proceedings before the court for the purpose of continuing, discontinuing or defending those proceedings on behalf of the company.

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- (6) 在不抵觸第 736 條的規定下，本分部並不影響公司的成員或公司的有聯繫公司的成員在普通法下代表該公司提起法律程序的權利，亦不影響該成員如此介入該公司屬訴訟一方的法律程序的權利。
- (7) 本條並不阻止公司的成員或公司的有聯繫公司的成員就任何個人權利而以其本人名義就該公司提起法律程序，或介入該公司屬訴訟一方的法律程序。

### 733. 原訟法庭所批予的提起或介入法律程序的許可

- (1) 原訟法庭可應某公司的任何成員或某公司的有聯繫公司的任何成員的申請，為第 732(1)、(2) 或 (3) 條的目的而批予許可，前提是原訟法庭須信納——
  - (a) 從該申請的表面上看，向該成員批予許可看似是符合該公司的利益；
  - (b) 就——
    - (i) 根據第 732(1) 或 (2) 條要求批予提起法律程序的許可的申請而言，有須予認真處理的問題須作審訊，而該公司本身並未提起有關法律程序；或
    - (ii) 根據第 732(3) 條要求批予介入法律程序的許可的申請而言，該公司沒有努力繼續進行或沒有

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- (4) The cause of action in relation to the proceedings under subsection (1) or (2) is vested in the company. Any of those proceedings must be brought in the name of, and the relief (if any) must be sought on behalf of, the company.
- (5) The right to continue, discontinue or defend any proceedings intervened in under subsection (3) is vested in, and the relief (if any) must be sought on behalf of, the company.
- (6) Subject to section 736, this Division does not affect any common law right of a member of a company, or a member of an associated company of a company, to bring proceedings on behalf of the company, or intervene in any proceedings to which the company is a party.
- (7) This section does not prevent a member of a company, or of an associated company of a company, from bringing proceedings in respect of the company, or intervening in any proceedings to which the company is a party, on the member's own behalf in respect of any personal right.

### 733. Leave of Court to bring or intervene in proceedings

- (1) On application by a member of a company or of an associated company of a company, the Court may grant leave for the purposes of section 732(1), (2) or (3) if it is satisfied that—
  - (a) on the face of the application, it appears to be in the company's interests that leave be granted to the member;
  - (b) in the case of—
    - (i) an application for leave to bring proceedings under section 732(1) or (2), there is a serious question to be tried and the company has not itself brought the proceedings; or
    - (ii) an application for leave to intervene in proceedings under section 732(3), the company has not

努力中止有關法律程序，或沒有努力在有關法律程序中抗辯；及

- (c) (除非原訟法庭已根據第(5)款批予許可)該成員已按照第(3)款送達書面通知予該公司，而該通知符合第(4)款的規定。
- (2) 原訟法庭如——
- (a) 就根據第 732(1) 或 (2) 條要求批予提起法律程序的許可的申請而言，信納有關成員已行使任何普通法權利，就同一的訟案或事宜，代表有關公司提起法律程序；或
- (b) 就根據第 732(3) 條要求批予介入法律程序的許可的申請而言，信納有關成員已行使任何普通法權利，介入有關公司屬訴訟一方的有關法律程序，
- 則可拒絕批予許可。
- (3) 上述書面通知，須在有關成員就有關公司提出許可申請前最少 14 日——
- (a) (如屬第 2(1) 條所界定的公司) 以將該通知留在或以郵遞方式將該通知寄往其註冊辦事處的方式，送達該公司；或
- (b) (如屬非香港公司) 以憑藉第 803 條屬妥為將該通知送達該公司的方式，送達該公司。
- (4) 上述書面通知須述明——
- (a) 有關成員意圖為第 732(1)、(2) 或 (3) 條的目的，就有關公司申請許可；及
- (b) 該成員有該意圖的原因。
- (5) 原訟法庭可為第(1)(c)款的目的批予許可，以免除送達上述書面通知的責任。

diligently continued, discontinued or defended the proceedings; and

- (c) except where leave is granted by the Court under subsection (5), the member has served a written notice on the company in accordance with subsection (3), and the notice complies with subsection (4).
- (2) The Court may refuse to grant leave if it is satisfied that—
- (a) in the case of an application for leave to bring proceedings under section 732(1) or (2), the member has, in the exercise of any common law right, brought proceedings on behalf of the company in respect of the same cause or matter; or
- (b) in the case of an application for leave to intervene in proceedings under section 732(3), the member has, in the exercise of any common law right, intervened in the proceedings in question to which the company is a party.
- (3) The written notice must be served on the company, at least 14 days before the member applies for leave in respect of the company—
- (a) in the case of a company as defined by section 2(1), by leaving the notice at, or by sending the notice by post to, its registered office; or
- (b) in the case of a non-Hong Kong company, in a manner that the notice is sufficiently served on the company by virtue of section 803.
- (4) The written notice must state—
- (a) the member's intention to apply for leave for the purposes of section 732(1), (2) or (3) in respect of the company; and
- (b) the reasons for that intention.



**734. 有關行為獲批准或追認並不禁止提出衍生訴訟**

- (1) 如某公司的成員批准或追認任何行為，該批准或追認——
  - (a) 並不阻止該公司的任何成員或該公司的有聯繫公司的任何成員——
    - (i) 根據第 732(1) 或 (2) 條提起法律程序；
    - (ii) 根據第 732(3) 條介入法律程序；或
    - (iii) 為第 732(1)、(2) 或 (3) 條的目的申請許可；
  - (b) 並不是原訟法庭拒絕為第 732(1)、(2) 或 (3) 條的目的批予許可的理由；及
  - (c) 並不是在有關成員提起或介入的法律程序中法院裁定被告人勝訴的理由。
- (2) 儘管有第 (1) 款的規定，法院可在顧及第 (3) 款指明的事宜後，在決定就以下項目作出何種判決或命令時，考慮有關批准或追認——
  - (a) 根據第 732(1)、(2) 或 (3) 條提起或介入的法律程序；或
  - (b) 為第 732(1)、(2) 或 (3) 條的目的而提出的許可申請。
- (3) 上述事宜是指——
  - (a) 在顧及有關公司的利益下，有關成員在批准或追認有關行為時，是否為正當的目的而行事；
  - (b) 該等成員在批准或追認該行為時，與該行為有關連的程度；及
  - (c) 該等成員在決定是否批准或追認該行為時，掌握了多少關於該行為的資料。

- (5) The Court may grant leave to dispense with the service of a written notice for the purposes of subsection (1)(c).

**734. Approval or ratification of conduct does not bar derivative action**

- (1) If a company's members approve or ratify any conduct, the approval or ratification—
  - (a) does not prevent a member of the company, or of an associated company of the company, from—
    - (i) bringing proceedings under section 732(1) or (2);
    - (ii) intervening in proceedings under section 732(3); or
    - (iii) applying for leave for the purposes of section 732(1), (2) or (3);
  - (b) is not a ground for the Court to refuse to grant leave for the purposes of section 732(1), (2) or (3); and
  - (c) is not a ground for any court to determine the proceedings brought or intervened in by the member in favour of the defendant.
- (2) Despite subsection (1), the court may, after having regard to the matters specified in subsection (3), take the approval or ratification into account in deciding what judgment or order to make in respect of—
  - (a) any proceedings brought or intervened in under section 732(1), (2) or (3); or
  - (b) an application for leave for the purposes of section 732(1), (2) or (3).
- (3) The matters are—
  - (a) whether the members were acting for proper purposes, having regard to the company's interests, when they approved or ratified the conduct;

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**735. 未經原訟法庭許可法律程序不得中止或和解**

如有人根據第 732(1)、(2) 或 (3) 條提起或介入法律程序，則該法律程序只有在經原訟法庭許可下，方可中止或和解。

**736. 原訟法庭可撤銷成員根據普通法提起的衍生法律程序等**

(1) 如有以下情況，本條適用 ——

- (a) 在原訟法庭為第 732(1) 或 (2) 條的目的向某公司的成員或某公司的有聯繫公司的成員批予許可後，該成員行使任何普通法權利，就同一訟案或事宜，代表該公司提起法律程序；或
- (b) 在原訟法庭為第 732(3) 條的目的向某公司的成員或某公司的有聯繫公司的成員批予許可後，該成員行使任何普通法權利，介入該公司屬訴訟一方的有關法律程序。

(2) 原訟法庭可 ——

- (a) 命令修訂在根據普通法提起的法律程序或根據普通法作出的介入行動中的任何狀書或任何令狀上的註明；
- (b) 命令剔除該狀書或該註明，或該狀書或該註明的任何內容；及
- (c) 命令擱置或撤銷根據普通法提起的法律程序或根據普通法作出的介入行動，或據此登錄判決。

- (b) to what extent those members were connected with the conduct, when they approved or ratified the conduct; and
- (c) how well-informed about the conduct those members were, when they decided whether or not to approve or ratify the conduct.

**735. No discontinuance or settlement of proceedings without leave of Court**

If proceedings are brought or intervened in under section 732(1), (2) or (3), the proceedings may only be discontinued or settled with the leave of the Court.

**736. Court may dismiss derivative proceedings brought by member under common law etc.**

(1) This section applies if—

- (a) after the Court grants leave to a member of a company, or of an associated company of a company, for the purposes of section 732(1) or (2), the member, in the exercise of any common law right, brings proceedings on behalf of the company in respect of the same cause or matter; or
- (b) after the Court grants leave to a member of a company, or of an associated company of a company, for the purposes of section 732(3), the member, in the exercise of any common law right, intervenes in the proceedings in question to which the company is a party.

(2) The Court may—

- (a) order to be amended any pleading or the indorsement of any writ in the proceedings brought under the common law, or in the intervention under the common law;

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- (3) 本條增補而非減損法律賦予原訟法庭的權力。

### 737. 原訟法庭作出命令以及發出指示的一般權力

- (1) 原訟法庭可就以下項目，作出它認為合適的命令，及發出它認為合適的指示——
  - (a) 根據第 732(1)、(2) 或 (3) 條提起或介入的法律程序；
  - (b) 為第 732(1)、(2) 或 (3) 條的目的而提出的許可申請；
  - (c) 拒絕批予上述許可；或
  - (d) 第 736(2) 條所指的命令。
- (2) 在不局限第 (1) 款的原則下，原訟法庭可根據該款的 (a) 或 (b) 段，作出以下任何或所有事情——
  - (a) 在有關法律程序或申請有待裁定時，作出臨時命令；
  - (b) 發出關於有關法律程序或申請如何進行的指示；
  - (c) 作出命令，指示有關公司或該公司的高級人員——
    - (i) 提供或不提供原訟法庭認為就有關法律程序或申請而言屬合適的資料或協助；或
    - (ii) 作出或不作出任何其他作為；
  - (d) 作出命令，委任獨立人士就以下事項進行調查，並向原訟法庭提交報告——
    - (i) 有關公司的財務狀況；
    - (ii) 引致有關法律程序或申請的事實或情況；或

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- (b) order to be struck out such pleading or that indorsement, or anything in such pleading or that indorsement; and
  - (c) order the proceedings brought under the common law, or the intervention under the common law, to be stayed or dismissed or judgment to be entered accordingly.
- (3) This section is in addition to, and does not derogate from, any power of the Court given by the law.

### 737. Court's general powers to order and direct

- (1) The Court may make any order, and give any direction, that it thinks fit in respect of—
  - (a) any proceedings brought or intervened in under section 732(1), (2) or (3);
  - (b) an application for leave for the purposes of section 732(1), (2) or (3);
  - (c) a refusal to grant such leave; or
  - (d) an order under section 736(2).
- (2) Without limiting subsection (1), the Court may do any or all of the following under paragraph (a) or (b) of that subsection—
  - (a) make an interim order pending the determination of the proceedings or application;
  - (b) give directions concerning the conduct of the proceedings or application;
  - (c) make an order directing the company, or an officer of the company—
    - (i) to provide, or not to provide, any information or assistance that the Court thinks fit for the purpose of the proceedings or application; or
    - (ii) to do, or not to do, any other act;

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- (iii) 有關法律程序或申請的各方所招致的訟費，以及提起或介入該法律程序或提出該申請的成員所招致的訟費。
- (3) 原訟法庭如根據第 (2)(d) 款委任獨立人士，可 ——
  - (a) 命令以下任何或所有人士負上支付因調查而引致的任何開支的法律責任 ——
    - (i) 有關公司；
    - (ii) 有關法律程序或申請的各方；
    - (iii) 提起或介入有關法律程序或提出有關申請的成員；
  - (b) 覆核、更改或撤銷根據 (a) 段作出的命令；及
  - (c) 作出原訟法庭認為就該款而言屬合適的任何其他命令。
- (4) 如有命令根據第 (3) 款作出或更改，而根據該命令，有某名或某些人士負上支付任何開支的法律責任，則原訟法庭可決定該名或每名該等人士的法律責任的性質及範圍。

### 738. 原訟法庭可作出關於訟費的命令

- (1) 原訟法庭可就以下訟費，作出它認為合適的命令 ——
  - (a) 就或將會就 ——

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- (d) make an order appointing an independent person to investigate and report to the Court on—
  - (i) the company's financial position;
  - (ii) the facts or circumstances that gave rise to the proceedings or application; or
  - (iii) the costs incurred by the parties to the proceedings or application, and by the member who brought or intervened in the proceedings or who made the application.
- (3) If the Court appoints an independent person under subsection (2)(d), it may—
  - (a) order any or all of the following persons to be liable for any expenses arising out of the investigation—
    - (i) the company;
    - (ii) the parties to the proceedings or application;
    - (iii) the member who brought or intervened in the proceedings or who made the application;
  - (b) review, vary or revoke an order made under paragraph (a); and
  - (c) make any other order that it thinks fit for the purposes of that subsection.
- (4) The Court may, in relation to one or more persons who are liable for any expenses under an order made or varied under subsection (3), determine the nature and extent of the liability of the person or each of the persons.

### 738. Court may order costs

- (1) The Court may make any order that it thinks fit about the costs—
  - (a) incurred or to be incurred in relation to—

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- (i) 根據第 732(1)、(2) 或 (3) 條提起或介入或將會根據第 732(1)、(2) 或 (3) 條提起或介入的法律程序而招致的訟費；或
- (ii) 為第 732(1)、(2) 或 (3) 條的目的而提出許可申請而招致的訟費；及
- (b) 有關成員、有關公司或有關法律程序或申請的任何其他各方所招致或將會招致的訟費。
- (2) 上述命令可規定，有關公司須從其資產撥款，以彌償有關成員因提起或介入有關法律程序或因提出有關申請而招致或將會招致的訟費。
- (3) 原訟法庭須信納有關成員提起或介入有關法律程序或提出有關申請是真誠行事並有合理理由，方可根據本條，就訟費（包括關於彌償的規定）作出有利於該成員的命令。

## 第 5 分部 —— 成員查閱公司的紀錄

### 739. 釋義

在本分部中 ——

**文件** (document) 具有第 838(1) 條給予該詞的涵義；

**紀錄** (record) 具有第 838(1) 條給予該詞的涵義。

### 740. 原訟法庭可命令查閱紀錄或文件

- (1) 原訟法庭可應某公司達到所需數目的成員的申請，作出命令 ——
  - (a) 授權申請人或（如有多於一名申請人）其中一名申請人查閱該公司的任何紀錄或文件；或

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- (i) any proceedings brought or intervened in, or to be brought or intervened in, under section 732(1), (2) or (3); or
- (ii) an application for leave for the purposes of section 732(1), (2) or (3); and
- (b) incurred or to be incurred by the member, the company, or any other parties to the proceedings or application.
- (2) An order may require the company to indemnify, out of its assets, the member against the costs incurred or to be incurred by that member in bringing or intervening in the proceedings or in making the application.
- (3) The Court may only make an order about costs (including the requirement as to indemnification) under this section in favour of the member if it is satisfied that the member was acting in good faith in, and had reasonable grounds for, bringing or intervening in the proceedings or making the application.

## Division 5—Members' Inspection of Company's Records

### 739. Interpretation

In this Division—

**document** (文件) has the meaning given by section 838(1);

**record** (紀錄) has the meaning given by section 838(1).

### 740. Court may order inspection of records or documents

- (1) On application by a required number of a company's members, the Court may make an order—
  - (a) authorizing a person who is the applicant or one of the applicants to inspect any record or document of the company; or



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- (b) 授權並非申請人的人或 (如有多於一名申請人) 並非其中一名申請人的人, 代表該申請人或該等申請人查閱該公司的任何紀錄或文件。
- (2) 原訟法庭如信納 ——
- (a) 有關申請是真誠提出的; 及
- (b) 查閱有關紀錄或文件是為正當目的而進行的, 則可作出上述命令, 授權某人查閱該紀錄或文件。
- (3) 如原訟法庭作出上述命令, 授權某人查閱有關紀錄或文件, 該人可複製該紀錄或文件, 但如原訟法庭另有命令則除外。
- (4) 如原訟法庭作出上述命令, 授權某人查閱有關紀錄或文件, 它可作出它認為合適的任何其他命令, 包括 ——
- (a) 規定有關公司或其高級人員向該人出示任何紀錄或文件的命令;
- (b) 指明該人可查閱的紀錄或文件的命令;
- (c) 規定申請人支付有關公司因該項查閱而合理地招致的開支的命令; 及
- (d) 准許該人或 (如該人並非申請人) 申請人向命令指明的任何其他人士披露因該項查閱而取得的任何資料的命令。
- (5) 遵從根據第 (1) 或 (4) 款作出的命令的人, 不會僅因遵從該命令而負上任何民事法律責任。
- (6) 在本條中, 提述某公司達到所需數目的成員, 即提述 ——
- (a) 於有關申請的日期當日, 代表全體有權在該公司成員大會上表決的成員的表決權最少 2.5% 的數目的成員; 或
- (b) 最少 5 名該公司的成員。

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- (b) authorizing a person who is not the applicant or one of the applicants to inspect any record or document of the company on behalf of the applicant or applicants.
- (2) The Court may make an order authorizing a person to inspect a record or document if it is satisfied that—
- (a) the application is made in good faith; and
- (b) the inspection is for a proper purpose.
- (3) If the Court makes an order authorizing a person to inspect a record or document, the person may, unless the Court otherwise orders, make copies of the record or document.
- (4) If the Court makes an order authorizing a person to inspect a record or document, it may make any other order that it thinks fit, including—
- (a) an order requiring the company, or an officer of the company, to produce any record or document to the person;
- (b) an order specifying the record or document that may be inspected by the person;
- (c) an order requiring the applicant to pay the expenses reasonably incurred by the company in the inspection; and
- (d) an order permitting the person or, if the person is not the applicant, the applicant to disclose any information obtained as a result of the inspection to any other person specified in the order.
- (5) A person who complies with an order made under subsection (1) or (4) does not incur any civil liability by reason only of the compliance.
- (6) In this section, a reference to a required number of a company's members is a reference to—

**741. 保密**

- (1) 原訟法庭如應某公司某名或某些成員的申請而根據第 740(1) 條作出命令，授權某人查閱紀錄或文件，則該人可向屬申請人的人披露因該項查閱而取得的任何資料。
- (2) 獲授權的人或屬資料披露對象的申請人，不得在未經有關公司事先書面同意下，向並非申請人的人披露因有關查閱而取得的任何資料。
- (3) 儘管有第 (2) 款的規定，在以下情況下，獲授權的人或屬資料披露對象的申請人可向另一人披露上述資料——
  - (a) 有關披露是為提起刑事法律程序而須作出的，或是在其他情況下為刑事法律程序的目的而須作出的；
  - (b) 有關披露是按照根據第 740(1) 或 (4) 條作出的命令獲准許的；或
  - (c) 有關披露是按照法律或按照根據法律作出的規定獲准許的。
- (4) 原訟法庭如根據第 740(1) 條作出命令，授權某人為任何目的而查閱紀錄或文件，該人或屬資料披露對象的申請人不得將因該項查閱而取得的任何資料，用於該項查閱申請的目的以外的任何目的，但如原訟法庭另有命令則除外。
- (5) 任何人違反第 (2) 或 (4) 款，即屬犯罪——
  - (a) 一經循公訴程序定罪，可處罰款 \$150,000 及監禁 2 年；或
  - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。

- (a) the number of members that represents at least 2.5% of the voting rights of all the members having a right to vote at the company's general meetings at the date of application; or
- (b) at least 5 members of the company.

**741. Preservation of secrecy**

- (1) If, on application by one or more members of a company, the Court makes an order under section 740(1) authorizing a person to inspect a record or document, the person may disclose any information obtained as a result of the inspection to a person who is an applicant.
- (2) The authorized person, or the applicant to whom the information was disclosed, must not, without the company's prior consent in writing, disclose any information obtained as a result of the inspection to a person who is not an applicant.
- (3) Despite subsection (2), the authorized person, or the applicant to whom the information was disclosed, may disclose such information to another person if the disclosure is—
  - (a) required with a view to the institution of, or otherwise for the purpose of, any criminal proceedings;
  - (b) permitted in accordance with an order made under section 740(1) or (4); or
  - (c) permitted in accordance with law or a requirement made under law.
- (4) If the Court makes an order under section 740(1) authorizing a person to inspect a record or document, the person, or the applicant to whom the information was disclosed, must not, unless the Court otherwise orders, use any information obtained as a result of the inspection for any purpose other than the purpose for which the inspection is applied for.

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**742. 法律專業保密權**

第 740 條或根據該條作出的命令，並不授權任何人查閱任何包含享有法律專業保密權的資料的紀錄或文件。

**743. 保障個人資料**

為免生疑問，第 740 及 741 條或根據第 740 條作出的命令，並不授權在違反《個人資料(私隱)條例》(第 486 章)的情況下收集、保留或使用個人資料。

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(5) A person who contravenes subsection (2) or (4) commits an offence and is liable—

(a) on conviction on indictment to a fine of \$150,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

**742. Legal professional privilege**

Section 740, or an order made under it, does not authorize a person to inspect any record or document containing information that is subject to legal professional privilege.

**743. Protection of personal data**

To avoid doubt, sections 740 and 741, or an order made under section 740, do not authorize the collection, retention or use of personal data in contravention of the Personal Data (Privacy) Ordinance (Cap. 486).

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