

**第 5 部****關於股本的事宜**

(格式變更——2013 年第 1 號編輯修訂紀錄)

**第 1 分部 —— 導言****203. 釋義**

(1) 在本部中 ——

**可分派利潤** (distributable profits) 就某公司作出的一項付款而言，指該公司可合法地從中撥作分派，且價值是相等於該項付款的利潤；

**待確定回購合約** (contingent buy-back contract) 指由某公司訂立的、關乎其任何股份的合約，而 ——

- (a) 該合約並非回購該等股份的合約；但
- (b) 該公司根據該合約，可在任何條件規限下變為有權或有責任回購該等股份；

**指明中文報章** (specified Chinese language newspaper) 指根據第 (2) 款指明的中文報章；

**指明英文報章** (specified English language newspaper) 指根據第 (2) 款指明的英文報章；

**監察機關** (Commission) ——

- (a) 除 (b) 及 (c) 段另有規定外，指《證券及期貨條例》(第 571 章) 第 3(1) 條提述的證券及期貨事務監察委員會；
- (b) 如有根據該條例第 25 條作出的有關轉移令，在該轉移令的有效期內，按照該轉移令的規定而指有關的認可交易所，或同時指證券及期貨事務監察委員會及有關的認可交易所；或

**Part 5****Transactions in relation to Share Capital**

(Format changes—E.R. 1 of 2013)

**Division 1—Preliminary****203. Interpretation**

(1) In this Part—

**Commission** (監察機關) means—

- (a) subject to paragraphs (b) and (c), the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap. 571);
- (b) if any relevant transfer order made under section 25 of that Ordinance is in force, the recognized exchange company concerned or both the Securities and Futures Commission and the recognized exchange company concerned, in accordance with the provisions of that order; or
- (c) if any relevant transfer order made under section 68 of that Ordinance is in force, the recognized exchange controller concerned or both the Securities and Futures Commission and the recognized exchange controller concerned, in accordance with the provisions of that order;

**contingent buy-back contract** (待確定回購合約) means a contract entered into by a company relating to any of its shares—

- (a) that is not a contract to buy back those shares; but

- (c) 如有根據該條例第 68 條作出的有關轉移令，在該轉移令的有效期內，按照該轉移令的規定而指有關的認可控制人，或同時指證券及期貨事務監察委員會及有關的認可控制人；

**認可控制人** (recognized exchange controller) 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。

- (2) 政務司司長可為施行本部而指明中文報章及英文報章，並須在憲報刊登指明報章的名單。  
(編輯修訂——2013 年第 1 號編輯修訂紀錄)

## 第 2 分部 —— 償付能力測試

### 204. 本分部的適用範圍

本分部對以下事宜具有效力 ——

- (a) 第 3 分部第 2 次分部所指的藉著通過以償付能力陳述作支持的特別決議而進行的股本減少；
- (b) 第 4 分部所指的就贖回或回購股份而從資本中撥款作付款；
- (c) 第 5 分部第 4 次分部所指的由公司給予資助。

- (b) under which the company may (subject to any conditions) become entitled or obliged to buy back those shares;

**distributable profits** (可分派利潤), in relation to the making of a payment by a company, means those profits out of which the company could lawfully make a distribution equal in value to the payment;

**recognized exchange controller** (認可控制人) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

**specified Chinese language newspaper** (指明中文報章) means a Chinese language newspaper that is specified under subsection (2);

**specified English language newspaper** (指明英文報章) means an English language newspaper that is specified under subsection (2).

- (2) The Chief Secretary for Administration may specify Chinese language newspapers and English language newspapers for the purposes of this Part and must publish a list of the specified newspapers in the Gazette.

## Division 2—Solvency Test

### 204. Application of Division

This Division has effect for the following transactions—

- (a) a reduction of share capital by special resolution supported by a solvency statement under Subdivision 2 of Division 3;
- (b) a payment out of capital in respect of a share redemption or buy-back under Division 4;

**205. 償付能力測試**

如 ——

- (a) 在緊接某事宜的進行後，將會沒有認定某公司無能力償付其債項的理由；及
- (b) 有以下其中一種情況 ——
  - (i) 該公司的清盤擬在該事宜的日期後的 12 個月內展開，而在展開清盤後的 12 個月內，該公司將會有能力悉數償付其債項；或
  - (ii) 屬任何其他情況，而該公司將會有能力償付其在緊接該事宜後的 12 個月內到期的債項，

則該公司即屬就該事宜而言通過償付能力測試。

**206. 償付能力陳述**

- (1) 就某事宜而言，償付能力陳述是內容如下的陳述：作出該陳述的每名董事已得出意見，認為有關公司就該事宜而言通過償付能力測試。
- (2) 在為作出償付能力陳述的目的而得出意見時，董事須 ——
  - (a) 查究有關公司的事務狀況及前景；及
  - (b) 考慮該公司的所有債務（包括或有負債及潛在負債）。
- (3) 償付能力陳述須 ——
  - (a) 符合指明格式；

- (c) the giving of financial assistance by a company under Subdivision 4 of Division 5.

**205. Solvency test**

A company satisfies the solvency test in relation to a transaction if—

- (a) immediately after the transaction there will be no ground on which the company could be found to be unable to pay its debts; and
- (b) either—
  - (i) if it is intended to commence the winding up of the company within 12 months after the date of the transaction, the company will be able to pay its debts in full within 12 months after the commencement of the winding up; or
  - (ii) in any other case, the company will be able to pay its debts as they become due during the period of 12 months immediately following the date of the transaction.

**206. Solvency statement**

- (1) A solvency statement in relation to a transaction is a statement that each of the directors making it has formed the opinion that the company satisfies the solvency test in relation to the transaction.
- (2) In forming an opinion for the purpose of making a solvency statement, a director must—
  - (a) inquire into the company's state of affairs and prospects; and
  - (b) take into account all the liabilities of the company (including contingent and prospective liabilities).

- (b) 述明 ——
  - (i) 作出該陳述的日期；及
  - (ii) 每名作出該陳述的董事的姓名或名稱；及
- (c) 由每名作出該陳述的董事簽署。
- (4) 第 (3)(a) 款不適用於公司為根據第 5 分部第 4 次分部提供資助的目的而作出的償付能力陳述。

**207. 關於償付能力陳述的罪行**

董事在無合理理由支持在償付能力陳述中表達的意見的情況下，仍作出該陳述，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 6 級罰款及監禁 6 個月。

**208. 訂立規例修改償付能力測試的權力**

- (1) 行政長官會同行政會議可訂立規例 ——
  - (a) 修改償付能力測試，或修改該測試對任何事宜或事宜類別的適用情況；或
  - (b) 修改董事為作出償付能力陳述的目的而得出意見時須考慮的事宜。
- (2) 根據本條訂立的規例須經立法會批准。

**第 3 分部 —— 股本減少**

- (3) A solvency statement—
  - (a) must be in the specified form;
  - (b) must state—
    - (i) the date on which it is made; and
    - (ii) the name of each director making it; and
  - (c) must be signed by each director making it.
- (4) Subsection (3)(a) does not apply to a solvency statement made for the purposes of the giving of financial assistance by a company under Subdivision 4 of Division 5.

**207. Offences regarding solvency statement**

A director who makes a solvency statement without having reasonable grounds for the opinion expressed in it 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 6 and to imprisonment for 6 months.

**208. Power to modify solvency test by regulation**

- (1) The Chief Executive in Council may make regulations—
  - (a) modifying the solvency test or its application to any transaction or class of transactions; or
  - (b) modifying the matters that a director is required to take into account in forming an opinion for the purpose of making a solvency statement.
- (2) Regulations made under this section are subject to the approval of the Legislative Council.

**Division 3—Reduction of Share Capital**

**第 1 次分部 —— 一般條文****209. 本分部的適用範圍**

本分部適用於 ——

- (a) 股份有限公司；及
- (b) 於 2004 年 2 月 13 日之前根據《舊有公司條例》組成或成為有股本的擔保有限公司的公司。

**210. 獲准的股本減少**

- (1) 公司可按照第 211 條指明的程序，根據本分部以任何方式減少其股本。

例子 ——

- 1. 公司可終絕或減少其任何股份在未繳股本方面的法律責任。
- 2. 公司可 ——
  - (a) 取消任何已虧損或不能以可用的資產代表的已繳股本，不論有否終絕或減少其任何股份的法律責任；或
  - (b) 將超過其所需的任何已繳股本付還，不論有否終絕或減少其任何股份的法律責任。
- (2) 然而，如某公司減少股本，會導致該公司不再有任何成員持有可贖回股份以外的股份，則該公司不得減少其股本。
- (3) 凡公司的章程細則中，有關於任何禁止或限制減少其股本的規定，本分部受該規定所規限。

**211. 公司減少其股本的程序****Subdivision 1—General Provisions****209. Application of Division**

This Division applies to—

- (a) a company limited by shares; and
- (b) a company limited by guarantee having a share capital that was formed as, or became, such a company under a former Companies Ordinance before 13 February 2004.

**210. Permitted reductions of share capital**

- (1) A company may, in accordance with the procedure specified in section 211, reduce its share capital under this Division in any way.

Examples—

- 1. A company may extinguish or reduce the liability on any of its shares in respect of share capital not paid up.
- 2. A company may, either with or without extinguishing or reducing liability on any of its shares—
  - (a) cancel any paid-up share capital that is lost or unrepresented by available assets; or
  - (b) repay any paid-up share capital in excess of the company's wants.
- (2) However, a company must not reduce its share capital if, as a result of the reduction, there would no longer be any member of the company holding shares other than redeemable shares.
- (3) This Division is subject to any provision of a company's articles that prohibits or restricts the reduction of the company's share capital.

**211. Procedure for a company to reduce its share capital**

公司根據本分部減少其股本的程序是 ——

- (a) 根據第 2 次分部藉通過以償付能力陳述支持的特別決議；或
- (b) 根據第 3 次分部藉獲原訟法庭確認的特別決議。

## 212. 如有違反本分部而減少股本屬罪行

- (1) 如公司在違反本分部的情况下減少其股本，該公司及其每名責任人，即屬犯罪 ——
  - (a) 一經循公訴程序定罪，可各處罰款 \$1,250,000 及監禁 5 年；或
  - (b) 一經循簡易程序定罪，可各處罰款 \$150,000 及監禁 12 個月。
- (2) 即使某公司的一名或多於一名董事在為減少該公司的股本而作出償付能力陳述一事上，犯第 207 條所訂的罪行，該公司不會僅因此而就該項股本減少干犯本條所訂的罪行。
- (3) 如按照第 4 分部進行股份贖回或股份回購，因而導致股本減少，或因本條例的其他規定而導致股本減少，則不屬犯本條所訂的罪行。

## 213. 股本減少後成員的法律責任

- (1) 如某公司的股本根據本分部減少，其前度成員或現在的成員，無須就股份的催繳或分擔的款額超過以下兩個項目之間的差額（如有的話）之數而承擔法律責任 ——
  - (a) 有關股份的發行價格；與

The procedure for a company to reduce its share capital under this Division is—

- (a) by special resolution supported by a solvency statement under Subdivision 2; or
- (b) by special resolution confirmed by the Court under Subdivision 3.

## 212. Offence if share capital is reduced in contravention of Division

- (1) If a company reduces its share capital in contravention of this Division, the company, and every responsible person of the company, commit an offence and each is liable—
  - (a) on conviction on indictment to a fine of \$1,250,000 and to imprisonment for 5 years; or
  - (b) on summary conviction to a fine of \$150,000 and to imprisonment for 12 months.
- (2) An offence is not committed under this section in relation to a reduction of share capital by a company only because one or more directors of the company commit an offence under section 207 in making a solvency statement for the purposes of the reduction of share capital.
- (3) An offence is not committed under this section if the reduction of share capital occurs as a result of a share redemption or buy-back in accordance with Division 4 or as otherwise provided in this Ordinance.

## 213. Liability of members following reduction of share capital

- (1) If a company's share capital is reduced under this Division, a past or present member of the company is not liable in respect of a share to a call or contribution exceeding in amount the difference (if any) between—
  - (a) the issue price of the share; and



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- (b) 該股份的已繳付股款 ( 如有的話 ) 及股份所減少的款額的總和。
- (2) 第 (1) 款受第 232 條規限。
- (3) 本條並不影響分擔人彼此之間的權利。

#### 214. 因股本減少而產生的儲備

- (1) 如公司按照本分部減少股本，則就第 6 部而言，因股本減少而產生的儲備，須視為已實現利潤。
- (2) 第 (1) 款須受在以下項目中的任何相反條文規限 ——
- (a) 原訟法庭的命令，或向原訟法庭作出的承諾；
- (b) 議決減少股本的決議，或攸關股本減少的任何其他決議；或
- (c) 公司的章程細則。

### 第 2 次分部 —— 藉著以償付能力陳述支持的特別決議減少股本

#### 215. 議決減少股本的特別決議

- (1) 公司可按照本次分部，藉特別決議減少其股本。
- (2) 在處長登記關於股本減少的第 224 或 225 條所指的申報表時，有關特別決議及股本減少即告生效。

#### 216. 關於股本減少的償付能力陳述

- (1) 公司所有董事須就股本減少一事，作出符合第 2 分部的償付能力陳述。
- (2) 議決減少股本的特別決議，須在作出償付能力陳述的日期後的 15 日內通過。

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- (b) the aggregate of the amount paid up on the share (if any) and the amount reduced on the share.
- (2) Subsection (1) is subject to section 232.
- (3) Nothing in this section affects the rights of the contributories among themselves.

#### 214. Reserves arising from reductions of share capital

- (1) If a company reduces its share capital in accordance with this Division, a reserve arising from the reduction is to be regarded for the purposes of Part 6 as realized profit.
- (2) Subsection (1) is subject to anything to the contrary in—
- (a) an order of, or undertaking given to, the Court;
- (b) the resolution for, or any other resolution relevant to, the reduction of share capital; or
- (c) the company's articles.

### Subdivision 2—Reduction of Share Capital by Special Resolution Supported by Solvency Statement

#### 215. Special resolution for reduction of share capital

- (1) A company may reduce its share capital by special resolution in accordance with this Subdivision.
- (2) The special resolution and the reduction of share capital take effect when the return under section 224 or 225 in relation to the reduction is registered by the Registrar.

#### 216. Solvency statement for reduction of share capital

- (1) All directors of the company must make a solvency statement that complies with Division 2 in relation to the reduction of share capital.

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- (3) 如有關特別決議是以書面決議形式提出的，則償付能力陳述的文本須在該項決議送交公司成員之時或之前，送交該公司每名成員。
- (4) 如有關特別決議是建議在會議上通過的，則須在該會議上，備有償付能力陳述的文本，供與會的成員查閱。
- (5) 如第 (3) 或 (4) 款 (視何者適用而定) 不獲遵守，則有關特別決議不具有效力。

## 217. 特別決議：行使表決權

- (1) 如議決減少股本的特別決議是以書面決議形式提出的，則就第 12 部第 1 分部第 2 次分部 (書面決議) 而言，持有該項決議所關乎的股份的公司成員，就該等股份而言不屬合資格成員。
- (2) 如有關特別決議是建議在會議上通過的，則該項決議在下述情況下，不具有效力——
  - (a) 任何持有該項決議所關乎的股份的公司成員，行使該等股份所帶有的表決權；而
  - (b) 假使該成員沒有如此行事，該項決議便不會通過。
- (3) 就第 (2) 款而言——
  - (a) 持有有關決議所關乎的股份的成員，不僅因為在就該項決議應否通過的問題上以投票方式表決，才被視為行使該等股份所帶有的表決權，該成員就該項決議以投票以外的方式表決，亦須視為行使該表決權；
  - (b) 有關公司的任何成員均可要求就該問題以投票方式表決；及

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- (2) The special resolution for reduction of share capital must be passed within 15 days after the date of the solvency statement.
- (3) If the special resolution is proposed as a written resolution, a copy of the solvency statement must be sent to every member of the company at or before the time when the proposed resolution is sent to them.
- (4) If the special resolution is proposed at a meeting, a copy of the solvency statement must be made available for inspection by members at the meeting.
- (5) The special resolution is not effective if subsection (3) or (4) (as applicable) is not complied with.

## 217. Special resolution: exercise of voting rights

- (1) If the special resolution for reduction of share capital is proposed as a written resolution, a member of the company holding shares to which the resolution relates is not an eligible member for the purposes of Subdivision 2 of Division 1 of Part 12 (written resolution) in respect of those shares.
- (2) If the special resolution is proposed at a meeting, the resolution is not effective if—
  - (a) any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares; and
  - (b) the resolution would not have been passed if the member had not done so.
- (3) For the purposes of subsection (2)—
  - (a) a member holding shares to which the resolution relates is to be regarded as exercising the voting rights carried by those shares not only if the member votes in respect of them on a poll on the question whether the resolution



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- (c) 由成員的投票代表表決或提出要求以投票方式表決，等同由該成員親自表決或親自提出要求。
- (4) 如第 (3)(b) 款提述的以投票方式表決的要求遭拒絕，則有關特別決議不具有效力。
- (5) 如股本減少同樣適用於公司所有已發行的股份，則本條不適用。

## 218. 關於股本減少的公告

- (1) 如議決減少股本的特別決議獲通過，公司須於第 (2) 款指明的日期當日或之前，在憲報刊登公告 ——
  - (a) 述明公司已批准減少股本；
  - (b) 指明將要減少的股本的款額，以及該項特別決議的日期；
  - (c) 述明可在何處查閱該項特別決議及有關償付能力陳述；及
  - (d) 述明沒有同意或沒有表決贊成該項特別決議的公司成員或公司債權人，可在該項決議的日期後的 5 個星期內，根據第 220 條向原訟法庭提出申請，要求撤銷該項決議。
- (2) 上述日期是 ——
  - (a) 在有關特別決議通過的星期的下一個星期中的最後一個工作日；或

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- should be passed but also if the member votes on the resolution otherwise than on a poll;
- (b) any member of the company may demand a poll on that question; and
- (c) a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.
- (4) The special resolution is not effective if a demand for a poll referred to in subsection (3)(b) is refused.
- (5) This section does not apply in the case of a reduction of share capital that applies equally to all issued shares in the company.

## 218. Public notice of reduction of share capital

- (1) If a special resolution for reduction of share capital is passed, the company must, on or before the date specified in subsection (2), publish a notice in the Gazette—
  - (a) stating that the company has approved a reduction of share capital;
  - (b) specifying the amount of share capital to be reduced and the date of the special resolution;
  - (c) stating where the special resolution and solvency statement are available for inspection; and
  - (d) stating that a member of the company who did not consent to or vote in favour of the special resolution or a creditor of the company may, within 5 weeks after the date of the special resolution, apply to the Court under section 220 for cancellation of the special resolution.
- (2) The date is—

- (b) (如 (a) 段所述的日期與有關特別決議通過的日期 (不包括兩者在內) 相距少於 4 個辦公日) 在再下一個星期中的最後一個工作日。

**例子——**

1. 有關特別決議於某年的 2 月 2 日 (星期四) 通過。除星期六及星期日外，該年 2 月內所有其他日子均屬辦公日。在該項特別決議通過的星期的下一個星期中的最後一個工作日是該年的 2 月 10 日 (星期五)。2 月 2 日與 2 月 10 日之間共有 5 個辦公日。因此，有關公告須於該年的 2 月 10 日 (星期五) 或之前，在憲報刊登。
  2. 有關特別決議於某年的 3 月 30 日 (星期五) 通過。該年的 4 月 4 日 (星期三) 及 4 月 6 日 (星期五) 均為公眾假期。該年的 4 月 2 日 (星期一)、4 月 3 日 (星期二)、4 月 5 日 (星期四) 及 4 月 13 日 (星期五) 均屬辦公日。在該項特別決議通過的星期的下一個星期中的最後一個工作日是 4 月 5 日 (星期四)。3 月 30 日與 4 月 5 日之間只有 2 個辦公日。因此，有關公告須於在再下一個星期中的最後一個工作日 (即該年的 4 月 13 日 (星期五)) 或之前，在憲報刊登。
- (3) 公司亦須在通過議決減少股本的特別決議的星期後的一個星期終結前——
- (a) 在最少一份指明中文報章及最少一份指明英文報章上，刊登與第 (1) 款所指的公告的內容具相同意思的公告；或
  - (b) 向其每名債權人發出具有該意思的書面通知。
- (4) 如公司違反第 (1) 或 (3) 款，該公司及其每名責任人均屬犯罪，可各處第 3 級罰款。
- (5) 公司須在以下日期或之前，將償付能力陳述的文本交付處長登記——
- (a) 公司根據第 (1) 款刊登有關公告的日期；或
  - (b) (如早於 (a) 段所指的日期) 公司根據第 (3) 款首次刊登有關公告的日期，或首次向債權人發出通知的日期。

- (a) a date that falls on the last working day of the week after the week in which the special resolution is passed; or
- (b) if the period between the date in paragraph (a) and the date on which the special resolution is passed is less than 4 business days (both dates exclusive), a date that falls on the last working day of the week next following.

**Examples—**

1. The special resolution is passed on 2 February of a year (Thursday). Apart from Saturdays and Sundays, all other dates in February of that year are business days. The date that falls on the last working day of the week after the week in which the special resolution is passed is 10 February (Friday) of that year. There are 5 business days between 2 February and 10 February. Therefore, the relevant notice must be published in the Gazette on or before 10 February (Friday) of that year.
  2. The special resolution is passed on 30 March of a year (Friday). Both 4 April (Wednesday) and 6 April (Friday) of that year are general holidays. 2 April (Monday), 3 April (Tuesday), 5 April (Thursday) and 13 April (Friday) of that year are business days. The date that falls on the last working day of the week after the week in which the special resolution is passed is 5 April (Thursday). There are only 2 business days between 30 March and 5 April. Therefore, the relevant notice must be published in the Gazette on or before the last working day of the week next following, which is 13 April (Friday) of that year.
- (3) Before the end of the week after the week in which the special resolution for reduction of share capital is passed, the company must also—
- (a) publish a notice to the same effect as the notice under subsection (1) in at least one specified Chinese language

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- (6) 如公司違反第 (5) 款，該公司及其每名責任人均屬犯罪，可各處第 5 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 \$1,000。
- (7) 就第 (2) 款而言 ——
- 工作日** (working day) 指不是以下任何日子的日子 ——
- (a) 公眾假期；或
  - (b) 星期六；
- 辦公日** (business day) 指不是以下任何日子的日子 ——
- (a) 公眾假期；
  - (b) 星期六；或
  - (c) 《釋義及通則條例》(第 1 章) 第 71(2) 條所界定的黑色暴雨警告日或烈風警告日。

## 219. 特別決議及償付能力陳述的查閱

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- newspaper and at least one specified English language newspaper; or
- (b) give written notice to that effect to each of its creditors.
- (4) If the company contravenes subsection (1) or (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.
- (5) The company must deliver to the Registrar for registration a copy of the solvency statement no later than the day on which the company—
- (a) publishes the notice under subsection (1); or
  - (b) if earlier, first publishes the notice or gives notice to creditors under subsection (3).
- (6) If the company contravenes subsection (5), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (7) For the purposes of subsection (2)—
- business day** (辦公日) means a day that is not—
- (a) a general holiday;
  - (b) a Saturday; or
  - (c) a black rainstorm warning day or gale warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);
- working day** (工作日) means a day that is not—
- (a) a general holiday; or
  - (b) a Saturday.

## 219. Inspection of special resolution and solvency statement

- (1) 公司須確保議決減少股本的特別決議及就該項決議作出的償付能力陳述，備存於公司的註冊辦事處，或備存於根據第 657 條訂立的規例訂明的地點，備存期間 ——
  - (a) 於 ——
    - (i) 公司根據第 218(1) 條刊登有關公告的日期開始；或
    - (ii) (如早於第(i)節所指的日期) 公司根據第 218(3) 條首次刊登有關公告的日期，或首次向債權人發出通知的日期開始；並
  - (b) 於該項特別決議通過的日期後的 5 個星期結束。
- (2) 公司須准許其成員或債權人，在第 (1) 款所述期間，於辦公時間內，免費查閱有關特別決議及償付能力陳述。
- (3) 如公司違反第 (1) 或 (2) 款，該公司及其每名責任人均屬犯罪，可各處第 5 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 \$1,000。
- (4) 如公司違反第 (2) 款，原訟法庭可藉命令規定該公司准許有關的人作即時查閱。

**220. 成員或債權人向原訟法庭提出申請**

- (1) 除第 (2) 款另有規定外，在議決減少股本的特別決議的日期後的 5 個星期內，公司成員或債權人可向原訟法庭提出申請，要求撤銷該項決議。
- (2) 同意或表決贊成有關決議的成員，無權提出上述申請。
- (3) 有權提出申請的人，可藉書面方式，委任他們當中的任何一人或多於一人，代表所有作出該項委任的人提出申請。
- (4) 如有人根據本條提出申請 ——

- (1) The company must ensure that the special resolution for reduction of share capital and the solvency statement made in relation to it are kept at its registered office or at a place prescribed by regulations made under section 657 for the period—
  - (a) beginning on the day on which the company—
    - (i) publishes the notice under section 218(1); or
    - (ii) if earlier, first publishes the notice or gives notice to creditors under section 218(3); and
  - (b) ending 5 weeks after the date of the special resolution.
- (2) The company must permit a member or creditor of the company to inspect the special resolution and solvency statement without charge during business hours in that period.
- (3) If the company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (4) If the company contravenes subsection (2), the Court may by order require the company to permit an immediate inspection.

**220. Application to Court by members or creditors**

- (1) Subject to subsection (2), a member or creditor of the company may apply to the Court, within 5 weeks after the date of the special resolution for reduction of share capital, for cancellation of the resolution.
- (2) A member who consented to or voted in favour of the special resolution is not entitled to apply.
- (3) An application may be made on behalf of the persons entitled to apply by any one or more of them appointed in writing by all of them.

- (a) 申請人須盡快將申請書送達有關公司；及
  - (b) 該公司須在申請書送達該公司的日期之後的 7 日內，向處長發出關於該項申請的通知，該通知須符合指明格式。
- (5) 如公司違反第 (4)(b) 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。

**221. 原訟法庭押後法律程序的權力**

- (1) 原訟法庭如接獲根據第 220 條提出的申請，可將法律程序押後，好讓令原訟法庭滿意的安排得以作出，以保障持異議的成員或持異議的債權人的權益。
- (2) 原訟法庭可作出它認為合宜的指示及命令，以利便作出或執行任何上述安排。

**222. 原訟法庭確認或撤銷特別決議的權力**

- (1) 原訟法庭如接獲根據第 220 條提出的申請，須作出確認或撤銷有關的議決減少股本的特別決議的命令，並可按其認為合適的條款及條件，作出該命令。
- (2) 原訟法庭如確認有關特別決議，可藉命令更改或延展 ——
  - (a) 該項決議指明的任何日期或期間；或
  - (b) 本分部任何適用於該項決議或股本減少的條文指明的任何日期或期間。
- (3) 如原訟法庭認為合適，有關命令可 ——

- (4) If an application is made under this section—
  - (a) the applicant must, as soon as possible, serve the application on the company; and
  - (b) the company must give the Registrar notice in the specified form of the application within 7 days after the day on which the application is served on the company.
- (5) If the company contravenes subsection (4)(b), 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.

**221. Power of Court to adjourn proceedings**

- (1) The Court may adjourn proceedings on an application under section 220 so that an arrangement may be made to its satisfaction for the protection of the interests of dissentient members or dissentient creditors.
- (2) The Court may give any directions and make any orders it thinks expedient for facilitating or carrying into effect any such arrangement.

**222. Power of Court to confirm or cancel special resolution**

- (1) On an application under section 220, the Court must make an order confirming or cancelling the special resolution for reduction of share capital, and may do so on any terms and conditions it thinks fit.
- (2) If the Court confirms the special resolution, it may by order alter or extend any date or period of time specified—
  - (a) in the special resolution; or
  - (b) in any provision of this Division applying to the special resolution or the reduction of share capital.



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- (a) 就公司回購其任何成員的股份及就公司股本據此減少一事，作出規定；
  - (b) 就保障公司的成員或債權人的權益，作出規定；
  - (c) 對公司的章程細則作出因上述規定而需作出的更改；
  - (d) 規定公司不得對其章程細則作出任何更改或任何指明的更改。
- (4) 如原訟法庭的命令規定，公司不得對其章程細則作出任何更改或任何指明的更改，則公司無權在未獲原訟法庭的許可下作出該更改。
- (5) 原訟法庭根據本條具有的權力，不局限其根據第 221 條具有的權力。

### 223. 公司將原訟法庭命令的文本交付處長

- (1) 公司須在原訟法庭作出第 222 條所指的命令後的 15 日內，或在原訟法庭命令的任何較長限期內，將該命令的正式文本交付處長登記。
- (2) 如公司違反第 (1) 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。

### 224. 登記申報表：無人向原訟法庭提出申請的情況

- (1) 如 ——

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- (3) If the Court thinks fit, the order may—
  - (a) provide for the company to buy back the shares of any of its members and for the reduction accordingly of the company's share capital;
  - (b) provide for the protection of the interests of members or creditors of the company;
  - (c) make any alteration to the company's articles that may be required as a consequence;
  - (d) require the company not to make any, or any specified, alteration to its articles.
- (4) If the order of the Court requires the company not to make any, or any specified, alteration to its articles, the company does not have power to make any such alteration without leave of the Court.
- (5) The powers of the Court under this section do not limit its powers under section 221.

### 223. Company to deliver copy of order of Court to Registrar

- (1) Within 15 days after the making of an order by the Court under section 222, or within any longer period ordered by the Court, the company must deliver an office copy of the order to the Registrar for registration.
- (2) If the company contravenes subsection (1), 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.

### 224. Registration of return if no application to Court

- (1) If—

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- (a) 無人根據第 220 條就議決減少股本的特別決議提出申請；及
- (b) 公司在該項決議的日期後的 5 個星期後並在該項決議的日期後的 7 個星期之前的期間內，將符合第 (2) 款的申報表交付處長，  
則處長須登記該申報表。

**附註 ——**

根據第 215(2) 條，有關特別決議及股本減少，在處長登記有關申報表時生效。

(2) 有關申報表須 ——

- (a) 符合指明格式；
- (b) 載有股本減少的詳情；及
- (c) 載有一項以緊接股本減少之後當時的狀況為準的股本說明，該說明須符合第 201 條。(由 2018 年第 35 號第 21 條修訂)

**225. 登記申報表：有人向原訟法庭提出申請的情況**

(1) 如 ——

- (a) 有人根據第 220 條就議決減少股本的特別決議提出申請；
- (b) 有以下其中一種情況 ——
  - (i) 原訟法庭根據第 222 條作出確認該項決議的命令；或
  - (ii) 關於該項申請的法律程序，在沒有原訟法庭裁定下結束（例如該項申請被撤回）；及
- (c) 公司 ——
  - (i) 在作出該項命令後的 15 日內，或在原訟法庭命令的任何較長限期內；或

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- (a) no application is made under section 220 in respect of the special resolution for reduction of share capital; and
- (b) the company delivers a return that complies with subsection (2) to the Registrar no earlier than 5 weeks and no later than 7 weeks after the date of the special resolution,  
the Registrar must register the return.

**Note—**

Under section 215(2), the special resolution and the reduction of share capital take effect when the return is registered by the Registrar.

(2) The return—

- (a) must be in the specified form;
- (b) must contain particulars of the reduction of share capital; and
- (c) must include a statement of capital, as at the time immediately after the reduction of share capital, that complies with section 201.

**225. Registration of return if application to Court**

(1) If—

- (a) an application is made under section 220 in respect of the special resolution for reduction of share capital;
- (b) either—
  - (i) the Court makes an order under section 222 confirming the special resolution; or
  - (ii) the proceedings on the application are ended without determination by the Court (for example, by the withdrawal of the application); and
- (c) the company delivers to the Registrar a return that complies with subsection (2)—

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- (ii) 在法律程序於沒有原訟法庭裁定下結束後的 15 日內，或如有多於一項該等法律程序，在該等法律程序中的最後一項如此結束後的 15 日內，將符合第 (2) 款的申報表交付處長，

則處長須登記該申報表。

**附註 ——**

根據第 215(2) 條，有關特別決議及股本減少，在處長登記有關申報表時生效。

- (2) 有關申報表須 ——
- (a) 符合指明格式；
  - (b) 載有股本減少的詳情；及
  - (c) 載有一項以緊接股本減少之後當時的狀況為準的股本說明，該說明須符合第 201 條。(由 2018 年第 35 號第 22 條修訂)

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#### 226. 特別決議及向原訟法庭提出要求確認股本減少的申請

- (1) 公司可根據本次分部，通過一項議決減少股本的特別決議，並可藉呈請書向原訟法庭提出申請，要求發出一項確認股本減少的命令。
- (2) 除非原訟法庭另有指示，否則如建議的股本減少涉及以下其中一項事宜，則第 227 條 (債權人有權反對股本減少) 適用 ——
  - (a) 減輕在未繳股本方面的法律責任；或
  - (b) 付款予持有任何已繳股本的股東。

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- (i) within 15 days after the making of the order, or within any longer period ordered by the Court; or
- (ii) within 15 days after the proceedings are ended without determination by the Court or, if there are more than one such proceedings, the last of them are so ended,

the Registrar must register the return.

**Note—**

Under section 215(2), the special resolution and the reduction of share capital take effect when the return is registered by the Registrar.

- (2) The return—
- (a) must be in the specified form;
  - (b) must contain particulars of the reduction of share capital; and
  - (c) must include a statement of capital, as at the time immediately after the reduction of share capital, that complies with section 201.

### Subdivision 3—Reduction of Share Capital Confirmed by Court

#### 226. Special resolution and application to Court for confirmation of reduction of share capital

- (1) A company may pass a special resolution for reduction of share capital under this Subdivision and apply by petition to the Court for an order confirming the reduction.
- (2) Unless the Court directs otherwise, section 227 (creditors entitled to object to reduction of share capital) applies if the proposed reduction of share capital involves either—
  - (a) the diminution of liability in respect of unpaid share capital; or

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- (3) 原訟法庭在顧及有關個案的任何特殊情況後，如認為恰當，可指示第 227 條不適用於某類別或某些類別的債權人。
- (4) 原訟法庭可指示第 227 條在任何其他情況下適用。

## 227. 債權人有權反對股本減少

- (1) 如本條適用 ( 見第 226(2) 及 (4) 條 )，在以下情況下公司債權人有權反對股本減少：該債權人在原訟法庭指定的日期有權追討任何債項或提出任何申索，而該債項或申索是假使該公司在該日期展開清盤，是會獲原訟法庭接納為針對該公司的證據者。
- (2) 原訟法庭須議定一份有權反對的債權人的名單。(由 2018 年第 35 號第 23 條修訂)
- (3) 為施行第 (2) 款，原訟法庭 ——
  - (a) 須盡可能在沒有規定任何債權人提出申請的情況下，確定該等債權人的姓名或名稱、其債項或申索的性質及款額；及
  - (b) 可刊登公告，為並非名列該名單的債權人要求將其姓名或名稱列入該名單，或將該債權人排除於就股本減少提出反對的權利之外，訂定一個如此行事的限期或最後日期。
- (4) 如任何名列有關名單的債權人的債項或申索未獲清償或尚未終結，而該債權人並不同意股本減少，則原訟法庭如認為合適，可在公司保證償付該人的債項或申索的前提下，免除該債權人的同意。
- (5) 為施行第 (4) 款，有關債項或申索須藉撥付 ( 按原訟法庭指示 ) 下述款額而獲保證 ——

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(b) the payment to a shareholder of any paid-up share capital.

- (3) The Court may direct that section 227 is not to apply to any class or classes of creditors if the Court thinks it proper to do so, having regard to any special circumstances of the case.
- (4) The Court may direct that section 227 is to apply in any other case.

## 227. Creditors entitled to object to reduction of share capital

- (1) If this section applies (see section 226(2) and (4)), a creditor of the company is entitled to object to the reduction of share capital if the creditor is entitled, at the date fixed by the Court, to any debt or claim that would be admissible in proof against the company if the company were to commence being wound up on that date.
- (2) The Court must settle a list of creditors entitled to object.
- (3) For the purposes of subsection (2), the Court—
  - (a) must ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims; and
  - (b) may publish a notice fixing a period within which, or a date by which, creditors not on the list are to claim to be entered on the list or are to be excluded from the right of objecting.
- (4) If a creditor on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of the creditor on the company securing payment of the debt or claim.

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- (a) (如公司承認該債項或申索的全數款額，或雖不承認卻願為之提供款項) 該債項或申索的全數款額；或
- (b) (如公司既不承認該債項或申索的全數款額，又不願為之提供款項，或如該筆款額是待確定的或是未經確定的) 原訟法庭在猶如該公司正由原訟法庭清盤的情況下作出查訊及判定後釐定的款額。

## 228. 與債權人名單有關的罪行

- (1) 公司的高級人員不得 ——
  - (a) 蓄意或罔顧實情地 ——
    - (i) 隱匿有權反對股本減少的債權人的姓名或名稱；或
    - (ii) 就債項的性質或款額或對債權人的申索，作出失實陳述；或
  - (b) 明知而參與任何上述隱匿或失實陳述的作出。
- (2) 任何人違反第 (1) 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 6 級罰款及監禁 6 個月。

## 229. 確認股本減少的原訟法庭命令

- (1) 原訟法庭如接獲根據第 226 條藉呈請書提出的申請，可按其認為合適的條款及條件，作出一項確認股本減少的

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- (5) For the purposes of subsection (4), the debt or claim must be secured by appropriating (as the Court directs) the following amount—
  - (a) if the company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it, the full amount of the debt or claim; or
  - (b) if the company does not admit, and is not willing to provide for, the full amount of the debt or claim, or if the amount is contingent or not ascertained, an amount fixed by the Court after an inquiry and adjudication as if the company were being wound up by the Court.

## 228. Offence in connection with creditors list

- (1) An officer of a company—
  - (a) must not intentionally or recklessly—
    - (i) conceal the name of a creditor entitled to object to the reduction of share capital; or
    - (ii) misrepresent the nature or amount of the debt or claim of a creditor; or
  - (b) must not be knowingly concerned in any such concealment or misrepresentation.
- (2) A person who contravenes subsection (1) 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 6 and to imprisonment for 6 months.

## 229. Order of Court confirming reduction of share capital

- (1) On an application by petition under section 226, the Court may make an order confirming the reduction of share capital



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命令。

- (2) 除非原訟法庭就根據第 227 條有權反對股本減少的每名公司債權人而言，信納 ——
- (a) 已取得該債權人的同意；或
  - (b) 該債權人的債項或申索已獲清償、已告終結或已獲給予保證，
- 否則原訟法庭不得確認該項股本減少。

### 230. 將命令、紀錄及申報表登記

- (1) 如 ——
- (a) 原訟法庭根據第 229 條，作出一項確認股本減少的命令；及
  - (b) 有關公司在原訟法庭作出該命令後的 15 日內，或在原訟法庭命令的任何較長限期內，將下述文件交付處長 ——
    - (i) 該命令的正式文本一份；
    - (ii) 符合第 (2) 款並經原訟法庭批准的紀錄一份；及
    - (iii) 符合第 (3) 款的申報表一份，
 則處長須將該命令、紀錄及申報表登記。
- (2) 有關紀錄須就經有關命令更改的公司股本而述明 ——
- (a) 股本額；
  - (b) 公司所發行的股份的總數；
  - (c) 每股股份的股款款額；及
  - (d) 每股股份已繳付的股款款額及 ( 如有的話 ) 尚未繳付的股款款額。
- (3) 有關申報表須 ——
- (a) 符合指明格式；

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on any terms and conditions it thinks fit.

- (2) The Court must not confirm the reduction of share capital unless it is satisfied, with respect to every creditor of the company who is entitled to object to the reduction of share capital under section 227, that—
- (a) the creditor's consent has been obtained; or
  - (b) the creditor's debt or claim has been discharged, has determined or has been secured.

### 230. Registration of order, minute and return

- (1) If—
- (a) the Court makes an order under section 229 confirming the reduction of share capital; and
  - (b) within 15 days after the making of the order, or within any longer period ordered by the Court, the company delivers to the Registrar—
    - (i) an office copy of the order;
    - (ii) a minute that complies with subsection (2) and that is approved by the Court; and
    - (iii) a return that complies with subsection (3),
 the Registrar must register the order, minute and return.
- (2) The minute must state, with respect to the company's share capital as altered by the order—
- (a) the amount of the share capital;
  - (b) the total number of issued shares in the company;
  - (c) the amount of each share; and
  - (d) the amount paid up and the amount (if any) remaining unpaid on each share.
- (3) The return—

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- (b) 藉提述有關命令、紀錄或其他文件，載有股本減少的詳情；及
- (c) 載有一項以緊接股本減少之後當時的狀況為準的股本說明，該說明須符合第 201 條。(由 2018 年第 35 號第 24 條修訂)
- (4) 獲有關命令確認的有關特別決議，在處長登記該項命令、紀錄及申報表時，即告生效。
- (5) 有關登記的公告，須以原訟法庭指示的方式發表。

### 231. 登記證明書

- (1) 處長須核證根據第 230 條就有關命令、紀錄及申報表作出的登記。
- (2) 上述證明書須由處長簽署。
- (3) 上述證明書是以下事宜的確證——
  - (a) 本條例中關於股本減少的規定已獲遵守；及
  - (b) 公司股本為該份紀錄所述者。

### 232. 對不在債權人名單的債權人的法律責任

- (1) 如——
  - (a) 一名有權反對經原訟法庭根據第 229 條確認的股本減少的債權人——
    - (i) 因為不知悉關於該項股本減少的法律程序，而未有名列債權人名單；或

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- (a) must be in the specified form;
- (b) must contain particulars of the reduction of share capital (by reference to the order or minute, or otherwise); and
- (c) must include a statement of capital, as at the time immediately after the reduction of share capital, that complies with section 201.
- (4) The special resolution, as confirmed by the order, takes effect on registration of the order, minute and return by the Registrar.
- (5) Notice of the registration must be published in the manner directed by the Court.

### 231. Certification of registration

- (1) The Registrar must certify the registration of an order, minute and return under section 230.
- (2) The certificate must be signed by the Registrar.
- (3) The certificate is conclusive evidence—
  - (a) that the requirements of this Ordinance for the reduction of share capital have been complied with; and
  - (b) that the company's share capital is as stated in the minute.

### 232. Liability to creditors omitted from list of creditors

- (1) This section applies to a reduction of share capital confirmed by the Court under section 229 if—
  - (a) a creditor entitled to object to the reduction of share capital was not entered on the list of creditors because the creditor was not aware—
    - (i) of the proceedings for reduction of share capital; or

- (ii) 因為不知悉該法律程序的性質或對該債權人的債項或申索的影響，而未有名列債權人名單；及
- (b) 公司在股本減少後，無能力償付該項債項或申索，則本條適用於該項股本減少。
- (2) 如有關命令確認識決減少股本的特別決議，任何在登記該項命令當日屬公司成員的人，均有法律責任分擔提供款項償付有關債項或申索，分擔額不超過假使公司已在該日期之前一日展開清盤該人便會有法律責任分擔支付的款額。
- (3) 如公司清盤，原訟法庭如接獲上述債權人的申請及第(1)(a)款提述的債權人不知悉事宜的證明，並認為合適，可——
- (a) 議定一份根據本條有法律責任分擔提供款項的人的名單；並(由 2018 年第 35 號第 25 條修訂)
- (b) 針對他們作出及強制執行催繳，以及作出及強制執行命令，猶如他們是一宗清盤案中的普通分擔人一樣。
- (4) 本條並不影響分擔人彼此之間的權利。

## 第 4 分部 —— 股份贖回及股份回購

### 第 1 次分部 —— 導言

#### 233. 本分部的適用範圍

本分部適用於——

- (a) 股份有限公司；及
- (b) 於 2004 年 2 月 13 日之前根據《舊有公司條例》組成或成為有股本的擔保有限公司的公司。

- (ii) of their nature or effect with respect to the creditor's debt or claim; and

- (b) after the reduction of share capital the company is unable to pay the debt or claim.

- (2) A person who was a member of the company on the date of registration of the order confirming the special resolution for the reduction is liable to contribute for the payment of the debt or claim an amount not exceeding the amount that the person would have been liable to contribute if the company had commenced to be wound up on the day before that date.
- (3) If the company is wound up, the Court, on application by the creditor and proof of the creditor's lack of awareness referred to in subsection (1)(a), may, if it thinks fit—
- (a) settle a list of persons liable to contribute under this section; and
- (b) make and enforce calls and orders on them as if they were ordinary contributories in a winding up.
- (4) Nothing in this section affects the rights of the contributories among themselves.

## Division 4—Share Redemptions and Buy-backs

### Subdivision 1—Preliminary

#### 233. Application of Division

This Division applies to—

- (a) a company limited by shares; and
- (b) a company limited by guarantee having a share capital that was formed as, or became, such a company under a former Companies Ordinance before 13 February 2004.

**第 2 次分部 —— 可贖回股份****234. 發行可贖回股份**

- (1) 除第 (2) 及 (3) 款另有規定外，公司可發行可贖回股份。
- (2) 公司的章程細則可禁止或限制可贖回股份的發行。
- (3) 公司如無不屬可贖回股份的已發行股份，則不得發行可贖回股份。

**235. 股份贖回的條款、條件及方式**

- (1) 公司董事如 ——
  - (a) 獲公司的章程細則授權；或
  - (b) 獲公司決議授權，可決定股份贖回的條款、條件及方式。
- (2) 即使根據第 (1)(b) 款提出的決議修改公司的章程細則，該項決議仍可作為普通決議通過。
- (3) 如有關董事獲授權根據第 (1) 款決定股份贖回的條款、條件及方式 ——
  - (a) 他們須在該等股份配發前如此行事；及
  - (b) 公司在股本說明中述明附於該等股份的權利的責任，延伸至股份贖回的條款、條件及方式。
- (4) 如有關董事並非根據第 (1) 款獲授權，股份贖回的條款、條件及方式，須在公司的章程細則內述明。

**Subdivision 2—Redeemable Shares****234. Issue of redeemable shares**

- (1) Subject to subsections (2) and (3), a company may issue redeemable shares.
- (2) A company's articles may prohibit or restrict the issue of redeemable shares.
- (3) A company must not issue redeemable shares at a time when there are no issued shares in the company other than redeemable shares.

**235. Terms, conditions and manner of redemption**

- (1) The directors of a company may determine the terms, conditions and manner of redemption of shares if they are authorized to do so—
  - (a) by the company's articles; or
  - (b) by resolution of the company.
- (2) A resolution under subsection (1)(b) may be an ordinary resolution even if it amends the company's articles.
- (3) If the directors are authorized under subsection (1) to determine the terms, conditions and manner of redemption of shares—
  - (a) they must do so before the shares are allotted; and
  - (b) any obligation of the company to state in a statement of capital the rights attached to the shares extends to the terms, conditions and manner of redemption.
- (4) If the directors are not authorized under subsection (1), the terms, conditions and manner of redemption of shares must be stated in the company's articles.

**第 3 次分部 —— 股份回購****236. 公司回購本身股份的一般權力**

- (1) 除第 (2) 及 (3) 款另有規定外及在第 6 次分部的規限下，公司 ——
  - (a) 如屬上市公司，可按照第 4 次分部回購本身的股份；
  - (b) 如屬非上市公司，可按照第 5 次分部回購本身的股份。
- (2) 公司的章程細則可禁止或限制該公司回購本身的股份。
- (3) 如公司回購本身的股份，會導致該公司不再有任何成員持有可贖回股份以外的股份，則該公司不得回購本身的股份。
- (4) 違反第 (3) 款的股份回購屬無效。

**237. 股份回購合約的保留及查閱**

- (1) 本條適用於 ——
  - (a) 根據第 240 條獲授權訂立回購本身股份的合約的上市公司；及
  - (b) 根據 ——
    - (i) 第 244 條獲授權訂立回購本身股份的合約的非上市公司；
    - (ii) 第 247 條獲授權同意更改回購本身股份的合約的非上市公司；
    - (iii) 第 251 條獲授權同意放棄回購本身股份的合約下的權利的非上市公司；或
    - (iv) 第 254 條獲授權同意更改放棄回購本身股份的合約下的權利的協議的非上市公司。
- (2) 公司須在其註冊辦事處或在根據第 657 條訂立的規例訂明的地方，備存 ——

**Subdivision 3—Share Buy-backs****236. General power of company to buy back its own shares**

- (1) Subject to subsections (2) and (3) and Subdivision 6, a company may buy back its own shares in accordance with—
  - (a) for a listed company, Subdivision 4;
  - (b) for an unlisted company, Subdivision 5.
- (2) A company's articles may prohibit or restrict a buy-back by the company of its own shares.
- (3) A company must not buy back its own shares if, as a result of the buy-back, there would no longer be any member of the company holding shares other than redeemable shares.
- (4) A buy-back that contravenes subsection (3) is void.

**237. Retention and inspection of share buy-back contracts**

- (1) This section applies to—
  - (a) a listed company that enters into a contract for the buy-back of its own shares that is authorized under section 240; and
  - (b) an unlisted company that—
    - (i) under an authorization under section 244, enters into a contract for the buy-back of its own shares;
    - (ii) under an authorization under section 247, agrees to a variation of a contract for the buy-back of its own shares;
    - (iii) under an authorization under section 251, agrees to release its rights under a contract for the buy-back of its own shares; or



- (a) (如有關合約或協議採用書面形式) 該合約或協議的文本一份; 及
- (b) (如該合約或協議並非採用書面形式) 該合約或協議的條款的備忘錄一份。
- (3) 上述文本或備忘錄須由該合約或協議協定時開始備存, 直至根據該合約完成回購所有股份的日子或由該合約以其他方式終止的日期起計的 10 年期間結束為止。
- (4) 在不抵觸第 (5) 款的條文下, 公司須在辦公時間內, 提供上述文本或備忘錄供下述人士免費查閱 ——
  - (a) 其成員; 及
  - (b) (如屬上市公司) 任何其他人。
- (5) 公司可藉決議, 對提供上述文本或備忘錄供查閱施加合理限制, 但前提是每日容許供查閱的時間, 不得少於 2 小時。
- (6) 如公司違反第 (2) 或 (3) 款, 或如根據第 (4) 款所規定的查閱遭拒絕, 該公司及其每名責任人均屬犯罪, 可各處第 5 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 \$1,000。
- (7) 如第 (4) 款所規定的查閱遭拒絕, 原訟法庭可藉命令規定公司准許有關的人作即時查閱。
- (8) 在本條中 ——  
**合約 (contract)** 包括待確定回購合約。

- (iv) under an authorization under section 254, agrees to a variation of an agreement to release its rights under a contract for the buy-back of its own shares.
- (2) The company must keep at its registered office or at a place prescribed by regulations made under section 657—
  - (a) a copy of the contract or agreement if it is in writing; and
  - (b) if not, a memorandum of its terms.
- (3) The copy or memorandum must be kept from the conclusion of the contract or agreement until the end of the period of 10 years beginning on the day on which the buy-back of all the shares under the contract is completed or the day on which the contract otherwise terminates.
- (4) Subject to subsection (5), the company must make the copy or memorandum available during business hours for inspection without charge by—
  - (a) a member of the company; and
  - (b) any other person, in the case of a listed company.
- (5) The company may, by resolution, impose reasonable restrictions on the making available of the copy or memorandum for inspection, as long as not less than 2 hours per day are allowed for inspection.
- (6) If a company contravenes subsection (2) or (3), or if an inspection required under subsection (4) is refused, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (7) In the case of a refusal of an inspection required under subsection (4), the Court may by order require the company to permit an immediate inspection.

**第 4 次分部 —— 股份回購：上市公司****238. 根據公開要約進行的股份回購**

- (1) 上市公司可根據一項公開要約回購本身的股份，但該要約須事先獲該公司的決議授權。
- (2) 上述公司須在建議的決議的通知內，包括 ——
  - (a) 載有建議的公開要約的文件的文本；及
  - (b) 由該公司董事簽署的陳述，該陳述須載有會使一個合乎常理的人能夠對該要約的利弊得出言之成理而有理可據的意見的資料。
- (3) 如根據建議的公開要約，公司某成員有可能根據第 13 部第 5 分部（在作出回購股份的公開要約後強制購入股份）被強制將其股份處置，則 ——
  - (a) 該公司須委任一名獨立投資顧問，就該要約的利弊向可能受強制處置影響的成員提供意見；及
  - (b) 授權作出該要約的決議，須屬不售股成員沒有參與表決的特別決議。
- (4) 符合以下條件的人，方有資格獲委任為第 (3)(a) 款所指的投資顧問 ——
  - (a) 該人是一個根據《證券及期貨條例》（第 571 章）第 V 部獲發牌經營就證券提供意見或就機構融資提供意見的業務的法團，或是根據該條例第 V 部獲註冊經營該等業務的認可財務機構；而
  - (b) 該人既非 ——
    - (i) 作出有關的公開要約的公司的成員、高級人員、幕後董事或僱員或其有聯繫公司的成員、高級人員、幕後董事或僱員；亦非

(8) In this section—

*contract* (合約) includes a contingent buy-back contract.

**Subdivision 4—Share Buy-backs: Listed Companies****238. Share buy-back under general offer**

- (1) A listed company may buy back its own shares under a general offer that is authorized in advance by resolution of the company.
- (2) The company must include with the notice of the proposed resolution—
  - (a) a copy of the document containing the proposed general offer; and
  - (b) a statement, signed by the directors of the company, containing information that would enable a reasonable person to form a valid and justifiable opinion as to the merits of the offer.
- (3) If, under the proposed general offer, a member of the company may be compelled to dispose of the member's shares under Division 5 of Part 13 (compulsory acquisition after general offer for share buy-back)—
  - (a) the company must appoint an independent investment adviser to advise members who may be affected by the compulsory disposal on the merits of the offer; and
  - (b) the resolution authorizing the offer must be a special resolution on which no non-tendering member votes.
- (4) A person is eligible for appointment as an investment adviser under subsection (3)(a) only if—
  - (a) the person is a corporation licensed to carry on, or an authorized financial institution registered for carrying on, a business in advising on securities or advising on

(ii) 作出該要約的公司的有聯繫公司。

(5) 就第 (3)(b) 款提述的特別決議而言 ——

- (a) 不售股成員不僅因為以投票方式參與表決該項決議應否通過才視為有參與表決，該成員以投票以外的方式就該項決議作出表決亦視為有參與表決；
- (b) 有關公司的任何成員均可要求就該問題以投票方式表決；及
- (c) 由成員的投票代表表決或提出要求以投票方式表決，等同由該成員親自表決或親自提出要求。

(6) 在本條中 ——

**不售股成員** (non-tendering member) 具有第 705 條給予該詞的涵義；

**公開要約** (general offer) 具有第 707 條給予該詞的涵義。

### 239. 在認可證券市場或核准證券交易所進行的股份回購

- (1) 上市公司可在事先獲該公司的決議授權下，在認可證券市場或核准證券交易所回購本身的股份。
- (2) 上述公司須在建議的決議的通知內，包括建議的回購的條款的備忘錄。

corporate finance under Part V of the Securities and Futures Ordinance (Cap. 571); and

(b) the person is neither—

- (i) a member, officer, shadow director or employee of the company making the general offer or of an associated company of that company; nor
- (ii) an associated company of the company making the general offer.

(5) For the purposes of a special resolution referred to in subsection (3)(b)—

- (a) a non-tendering member is to be regarded as voting not only if the non-tendering member votes on a poll on the question whether the resolution should be passed but also if the non-tendering member votes on the resolution otherwise than on a poll;
- (b) any member of the company may demand a poll on that question; and
- (c) a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.

(6) In this section—

**general offer** (公開要約) has the meaning given by section 707;

**non-tendering member** (不售股成員) has the meaning given by section 705.

### 239. Share buy-back on recognized stock market or approved stock exchange

- (1) A listed company may buy back its own shares on a recognized stock market or on an approved stock exchange if the buy-back is authorized in advance by resolution of the company.

- (3) 授權本條所指的回購的決議，於在有關公司下一次周年成員大會的日期屆滿的期間內有效，而該期間可由該公司在該大會上延長至再下一次周年成員大會的日期為止。

- (4) 在本條中 ——

**核准證券交易所** (approved stock exchange) 指 ——

- (a) 監察機關；及
- (b) ( 如有關股份是在某認可證券市場上市的 ) 營辦該市場的認可交易所，  
為本條的施行而藉於憲報刊登的公告核准的證券交易所。

#### 240. 並非根據第 238 或 239 條進行的股份回購

- (1) 上市公司可並非根據第 238 或 239 條而回購本身的股份，但前提是回購股份合約須事先獲特別決議授權。
- (2) 上述合約可採用待確定回購合約的形式。
- (3) 上述公司須在建議的特別決議的通知內，包括 ——
  - (a) 建議合約的文本或 ( 如該合約並非採用書面形式 ) 該合約的條款的備忘錄；及
  - (b) 符合以下規定的由該公司董事簽署的陳述：該等董事在簽署該陳述前，已對持有該合約所關乎的股份的公司成員，進行妥善而盡職的查訊，而該陳述須載有會使一個合乎常理的人能夠對該合約的利弊得出言之成理而有理可據的意見的資料。
- (4) 如有以下情況，則本條所指的特別決議不具有效力 ——

- (2) The company must include a memorandum of the terms of the proposed buy-back with the notice of the proposed resolution.
- (3) A resolution authorizing a buy-back under this section is valid for the period expiring on the date of the next annual general meeting of the company, and that period may be extended by the company at that annual general meeting until the date of the following annual general meeting.

- (4) In this section—

**approved stock exchange** (核准證券交易所) means a stock exchange approved for the purposes of this section by notice published in the Gazette by—

- (a) the Commission; and
- (b) the recognized exchange company that operates the recognized stock market on which the shares concerned are listed.

#### 240. Share buy-back otherwise than under section 238 or 239

- (1) A listed company may buy back its own shares otherwise than under section 238 or 239 if the contract for buy-back of the shares is authorized in advance by special resolution.
- (2) A contract may take the form of a contingent buy-back contract.
- (3) The company must include with the notice of the proposed special resolution—
  - (a) a copy of the proposed contract or, if it is not in writing, a memorandum of its terms; and
  - (b) a statement, signed by the directors of the company, after having made due and diligent inquiry of the members of the company holding the shares to which the proposed contract relates, containing information

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- (a) 任何持有該項決議所關乎的股份的公司成員，行使該等股份所附有的表決權；而
- (b) 假使該成員沒有如此行事，該項決議便不會通過。
- (5) 就第 (4) 款而言 ——
  - (a) 持有有關決議所關乎的股份的成員，不僅因為在就該項決議應否通過的問題上以投票方式表決，才被視為行使該等股份所附有的表決權，該成員就該項決議以投票以外的方式表決，亦須視為行使該表決權；
  - (b) 有關公司的任何成員均可要求就該問題以投票方式表決；及
  - (c) 由成員的投票代表表決或提出要求以投票方式表決，等同由該成員親自表決或親自提出要求。
- (6) 如第 (5)(b) 款提述的以投票方式表決的要求遭拒絕，則本條所指的特別決議不具有效力。

## 241. 豁免

- (1) 監察機關可在其認為合適的條件規限下，豁免任何上市公司，使其無須受第 238、239 或 240 條的任何條文規限。
- (2) 監察機關可 ——
  - (a) 以規限豁免的條件不獲遵從為理由，或以其認為合適的任何其他理由，暫時中止或撤回根據第 (1) 款批予的豁免；或

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- that would enable a reasonable person to form a valid and justifiable opinion as to the merits of the contract.
- (4) A special resolution under this section is not effective if—
  - (a) any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares; and
  - (b) the resolution would not have been passed if the member had not done so.
- (5) For the purposes of subsection (4)—
  - (a) a member holding shares to which the resolution relates is to be regarded as exercising the voting rights carried by those shares not only if the member votes in respect of them on a poll on the question whether the resolution should be passed but also if the member votes on the resolution otherwise than on a poll;
  - (b) any member of the company may demand a poll on that question; and
  - (c) a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.
- (6) A special resolution under this section is not effective if a demand for a poll referred to in subsection (5)(b) is refused.

## 241. Exemptions

- (1) The Commission may exempt any listed company from any of the provisions of section 238, 239 or 240, subject to any conditions it thinks fit.
- (2) The Commission may—
  - (a) suspend or withdraw an exemption granted under subsection (1) on the ground that the conditions subject to which the exemption was granted have not been



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(b) 更改根據第 (1) 款施加的任何條件。

#### 242. 不得轉讓回購本身股份的權利

上市公司的下述權利均不能轉讓 ——

- (a) 在根據第 238 條獲授權的公開要約下所具有的權利；
- (b) 按根據第 239 條獲授權的在認可證券市場或核准證券交易所進行的回購而具有的權利；
- (c) 在根據第 240 條獲授權的合約下所具有的權利。

#### 243. 放棄回購本身股份的權利

- (1) 凡上市公司訂立協議，放棄它在根據第 240 條獲授權的合約下的權利，或放棄它在根據第 238 條獲授權的公開要約下的權利，則除非該項協議的條款事先獲特別決議授權，否則該協議屬無效。
- (2) 第 240(3)、(4)、(5) 及 (6) 條適用於對建議的放棄權利協議的授權，一如其適用於第 240 條所指的對建議的合約的授權。

### 第 5 次分部 —— 股份回購：非上市公司

#### 244. 根據合約進行的股份回購

- (1) 非上市公司可根據一項合約回購本身的股份，但該合約須事先獲特別決議授權。
- (2) 上述合約可採用待確定回購合約的形式。
- (3) 對合約的授權，可藉特別決議更改、撤銷或不時重訂。

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complied with or on any other ground the Commission thinks fit; or

(b) vary any condition imposed under subsection (1).

#### 242. No assignment of right to buy back own shares

The following rights of a listed company are not capable of being assigned—

- (a) rights under a general offer authorized under section 238;
- (b) rights under a buy-back on a recognized stock market or on an approved stock exchange authorized under section 239;
- (c) rights under a contract authorized under section 240.

#### 243. Release of right to buy back own shares

- (1) An agreement by a listed company to release its rights under a contract authorized under section 240 or under a general offer authorized under section 238 is void unless the terms of the release agreement are authorized in advance by special resolution.
- (2) Section 240(3), (4), (5) and (6) applies to the authorization for a proposed release agreement as it applies to the authorization for a proposed contract under section 240.

### Subdivision 5—Share Buy-backs: Unlisted Companies

#### 244. Share buy-back under contract

- (1) An unlisted company may buy back its own shares under a contract that is authorized in advance by special resolution.
- (2) A contract may take the form of a contingent buy-back contract.

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- (4) 任何關於授予、更改、撤銷或重訂對合約的授權的特別決議，均受第 245 及 246 條規限。

#### 245. 合約的授權的決議：披露合約的細節

- (1) 本條就關於授予、更改、撤銷或重訂第 244 條所指的合約的授權的特別決議而適用。
- (2) 採用書面形式的建議合約的文本，或列明並非採用書面形式的建議合約的條款的備忘錄，須以下述方式提供予有關成員——
  - (a) (如屬書面決議) 在建議決議送交公司的所有成員之時或之前，將上述文本或備忘錄送交該公司的每名成員；或
  - (b) (如屬建議在會議上通過的決議) 在——
    - (i) 公司的註冊辦事處或在根據第 657 條訂立的規例訂明的地方，將上述文本或備忘錄提供予公司成員查閱，為期不少於在該會議的日期結束的 15 日期間；及
    - (ii) 該會議上，將上述文本或備忘錄提供予公司成員查閱。
- (3) 第 (2) 款提述的備忘錄，須載有持有建議合約所關乎的股份的成員的姓名或名稱。
- (4) 根據第 (2) 款提供的建議合約的文本，須附有一份備忘錄，指明任何沒有在該合約內出現的上述姓名或名稱。
- (5) 如本條的規定不獲遵守，則有關特別決議不具有效力。

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- (3) The authorization for a contract may be varied, revoked or from time to time renewed by special resolution.
- (4) A special resolution conferring, varying, revoking or renewing the authorization for a contract is subject to sections 245 and 246.

#### 245. Resolution authorizing contract: disclosure of contract details

- (1) This section applies in relation to a special resolution to confer, vary, revoke or renew the authorization for a contract under section 244.
- (2) A copy of the proposed contract (if it is in writing) or a memorandum setting out its terms (if it is not) must be made available to members—
  - (a) in the case of a written resolution, by being sent to every member of the company at or before the time when the proposed resolution is sent to them; or
  - (b) in the case of a resolution proposed at a meeting, by being made available for inspection by members of the company—
    - (i) at the company's registered office or at a place prescribed by regulations made under section 657, for a period of not less than 15 days ending on the date of the meeting; and
    - (ii) at the meeting.
- (3) A memorandum referred to in subsection (2) must include the names of members holding shares to which the proposed contract relates.
- (4) A copy of a proposed contract made available under subsection (2) must have annexed to it a memorandum specifying any of those names that do not appear in the proposed contract.

**246. 合約的授權的決議：行使表決權**

- (1) 本條適用於關於授予、更改、撤銷或重訂第 244 條所指的合約的授權的特別決議。
- (2) 如有關特別決議是以書面決議形式提出的，則就第 12 部第 1 分部第 2 次分部（書面決議）而言，持有該項決議所關乎的股份的成員，就該等股份而言不屬合資格成員。
- (3) 如有關特別決議是建議在會議上通過的，則該項決議在下述情況下，不具有效力——
  - (a) 任何持有該項決議所關乎的股份的公司成員，行使該等股份所帶有的表決權；而
  - (b) 假使該成員沒有如此行事，該項決議便不會通過。
- (4) 就第 (3) 款而言——
  - (a) 持有有關決議所關乎的股份的成員，不僅因為在就該項決議應否通過的問題上以投票方式表決，才被視為行使該等股份所帶有的表決權，該成員就該項決議以投票以外的方式表決，亦須視為行使該表決權；
  - (b) 有關公司的任何成員均可要求就該問題以投票方式表決；及
  - (c) 由成員的投票代表表決或提出要求以投票方式表決，等同由該成員親自表決或親自提出要求。
- (5) 如第 (4)(b) 款提述的以投票方式表決的要求遭拒絕，則有關特別決議不具有效力。

- (5) The special resolution is not effective if the requirements of this section are not complied with.

**246. Resolution authorizing contract: exercise of voting rights**

- (1) This section applies to a special resolution to confer, vary, revoke or renew the authorization for a contract under section 244.
- (2) If the special resolution is proposed as a written resolution, a member holding shares to which the resolution relates is not an eligible member for the purposes of Subdivision 2 of Division 1 of Part 12 (written resolution) in respect of those shares.
- (3) If the special resolution is proposed at a meeting, the resolution is not effective if—
  - (a) any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares; and
  - (b) the resolution would not have been passed if the member had not done so.
- (4) For the purposes of subsection (3)—
  - (a) a member holding shares to which the resolution relates is to be regarded as exercising the voting rights carried by those shares not only if the member votes in respect of them on a poll on the question whether the resolution should be passed but also if the member votes on the resolution otherwise than on a poll;
  - (b) any member of the company may demand a poll on that question; and
  - (c) a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.

**247. 更改獲授權合約**

- (1) 非上市公司可同意更改根據第 244 條授權的合約，但該更改協議須事先獲特別決議授權。
- (2) 對更改協議的授權，可藉特別決議更改、撤銷或不時重訂。
- (3) 任何關於授予、更改、撤銷或重訂對更改協議的授權的特別決議，均受第 248 及 249 條規限。

**248. 授權更改協議的決議：披露更改的細節**

- (1) 本條就關於授予、更改、撤銷或重訂第 247 條所指的更改協議的授權的特別決議而適用。
- (2) 採用書面形式的建議更改協議的文本，或列明並非採用書面形式的建議更改協議的細節的備忘錄，須以下述方式提供予有關成員——
  - (a) (如屬書面決議) 在建議決議送交公司的所有成員之時或之前，將上述文本或備忘錄送交該公司的每名成員；或
  - (b) (如屬建議在會議上通過的決議) 在——
    - (i) 公司的註冊辦事處或在根據第 657 條訂立的規例訂明的地方，將上述文本或備忘錄提供予公司成員查閱，為期不少於在該會議的日期結束的 15 日期間；及
    - (ii) 該會議上，將上述文本或備忘錄提供予公司成員查閱。
- (3) 原有合約或備忘錄的文本，連同先前作出的任何更改，亦須按照第 (2) 款提供予成員。

- (5) The special resolution is not effective if a demand for a poll referred to in subsection (4)(b) is refused.

**247. Variation of authorized contract**

- (1) An unlisted company may agree to a variation of a contract authorized under section 244 if the variation agreement is authorized in advance by special resolution.
- (2) The authorization for a variation agreement may be varied, revoked or from time to time renewed by special resolution.
- (3) A special resolution conferring, varying, revoking or renewing the authorization for a variation agreement is subject to sections 248 and 249.

**248. Resolution authorizing variation: disclosure of details of variation**

- (1) This section applies in relation to a special resolution to confer, vary, revoke or renew the authorization for a variation agreement under section 247.
- (2) A copy of the proposed variation agreement (if it is in writing) or a memorandum giving details of the proposed variation agreement (if it is not) must be made available to members—
  - (a) in the case of a written resolution, by being sent to every member of the company at or before the time when the proposed resolution is sent to them; or
  - (b) in the case of a resolution proposed at a meeting, by being made available for inspection by members of the company—
    - (i) at the company's registered office or at a place prescribed by regulations made under section 657, for a period of not less than 15 days ending on the date of the meeting; and

- (4) 第 (2) 款提述的備忘錄，須載有持有建議更改協議所關乎的股份的成員的姓名或名稱。
- (5) 根據第 (2) 款提供的建議更改協議的文本，須附有一份備忘錄，指明任何沒有在該協議內出現的上述姓名或名稱。
- (6) 如本條的規定不獲遵守，則有關特別決議不具有效力。

**249. 授權更改協議的決議：行使表決權**

- (1) 本條適用於關於授予、更改、撤銷或重訂第 247 條所指的更改協議的授權的特別決議。
- (2) 如有關特別決議是以書面決議形式提出的，則就第 12 部第 1 分部第 2 次分部（書面決議）而言，持有該項決議所關乎的股份的成員，就該等股份而言不屬合資格成員。
- (3) 如有關特別決議是建議在會議上通過的，則該項決議在下述情況下，不具有效力——
  - (a) 任何持有該項決議所關乎的股份的公司成員，行使該等股份所帶有的表決權；而
  - (b) 假使該成員沒有如此行事，該項決議便不會通過。
- (4) 就第 (3) 款而言——
  - (a) 持有有關決議所關乎的股份的成員，不僅因為在就該項決議應否通過的問題上以投票方式表決，才被視為行使該等股份所帶有的表決權，該成員就該項決議以投票以外的方式表決，亦須視為行使該表決權；

- (ii) at the meeting.
- (3) There must also be made available to members in accordance with subsection (2) a copy of the original contract or memorandum, together with any variations previously made.
- (4) A memorandum referred to in subsection (2) must include the names of members holding shares to which the proposed variation agreement relates.
- (5) A copy of a proposed variation agreement made available under subsection (2) must have annexed to it a memorandum specifying any of those names that do not appear in the proposed variation agreement.
- (6) The special resolution is not effective if the requirements of this section are not complied with.

**249. Resolution authorizing variation: exercise of voting rights**

- (1) This section applies to a special resolution to confer, vary, revoke or renew the authorization for a variation agreement under section 247.
- (2) If the special resolution is proposed as a written resolution, a member holding shares to which the resolution relates is not an eligible member for the purposes of Subdivision 2 of Division 1 of Part 12 (written resolution) in respect of those shares.
- (3) If the special resolution is proposed at a meeting, the resolution is not effective if—
  - (a) any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares; and
  - (b) the resolution would not have been passed if the member had not done so.
- (4) For the purposes of subsection (3)—



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- (b) 有關公司的任何成員均可要求就該問題以投票方式表決；及
- (c) 由成員的投票代表表決或提出要求以投票方式表決，等同由該成員親自表決或親自提出要求。
- (5) 如第 (4)(b) 款提述的以投票方式表決的要求遭拒絕，則有關特別決議不具有效力。

## 250. 不得轉讓回購本身股份的權利

非上市公司在根據第 244 條獲授權的合約（根據第 247 條不時更改者）下所具有的權利，均不能轉讓。

## 251. 放棄回購本身股份的權利

- (1) 凡非上市公司訂立協議，放棄它在根據第 244 條獲授權的合約（根據第 247 條不時更改者）下的權利，則除非該項協議的條款事先獲特別決議授權，否則該協議屬無效。
- (2) 對放棄權利協議的授權，可藉特別決議更改、撤銷或不時重訂。
- (3) 任何關於授予、更改、撤銷或重訂對放棄權利協議的授權的特別決議，均受第 252 及 253 條規限。

## 252. 授權放棄權利的決議：披露放棄的細節

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- (a) a member holding shares to which the resolution relates is to be regarded as exercising the voting rights carried by those shares not only if the member votes in respect of them on a poll on the question whether the resolution should be passed but also if the member votes on the resolution otherwise than on a poll;
- (b) any member of the company may demand a poll on that question; and
- (c) a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.
- (5) The special resolution is not effective if a demand for a poll referred to in subsection (4)(b) is refused.

## 250. No assignment of right to buy back own shares

The rights of an unlisted company under a contract authorized under section 244 (as varied from time to time under section 247) are not capable of being assigned.

## 251. Release of right to buy back own shares

- (1) An agreement by an unlisted company to release its rights under a contract authorized under section 244 (as varied from time to time under section 247) is void unless the terms of the release agreement are authorized in advance by special resolution.
- (2) The authorization for a release agreement may be varied, revoked or from time to time renewed by special resolution.
- (3) A special resolution conferring, varying, revoking or renewing the authorization for a release agreement is subject to sections 252 and 253.

## 252. Resolution authorizing release: disclosure of details of release

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第 253 條

- (1) 本條就關於授予、更改、撤銷或重訂第 251 條所指的放棄權利協議的授權的特別決議而適用。
- (2) 採用書面形式的建議放棄權利協議的文本，或列明並非採用書面形式的建議放棄權利協議的細節的備忘錄，須以下述方式提供予有關成員——
  - (a) (如屬書面決議) 在建議決議送交公司的所有成員之時或之前，將上述文本或備忘錄送交該公司的每名成員；或
  - (b) (如屬建議在會議上通過的決議) 在——
    - (i) 公司的註冊辦事處或在根據第 657 條訂立的規例訂明的地方，將上述文本或備忘錄提供予公司成員查閱，為期不少於在該會議的日期結束的 15 日期間；及
    - (ii) 該會議上，將上述文本或備忘錄提供予公司成員查閱。
- (3) 原有合約或備忘錄的文本，連同先前作出的任何更改，亦須按照第 (2) 款提供予成員。
- (4) 第 (2) 款提述的備忘錄，須載有持有建議放棄權利協議所關乎的股份的成員的姓名或名稱。
- (5) 根據第 (2) 款提供的建議放棄權利協議的文本，須附有一份備忘錄，指明任何沒有在該協議內出現的上述姓名或名稱。
- (6) 如本條的規定不獲遵守，則有關特別決議不具有效力。

### 253. 授權放棄權利的決議：行使表決權

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Section 253

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- (1) This section applies in relation to a special resolution to confer, vary, revoke or renew the authorization for a release agreement under section 251.
- (2) A copy of the proposed release agreement (if it is in writing) or a memorandum giving details of the proposed release agreement (if it is not) must be made available to members—
  - (a) in the case of a written resolution, by being sent to every member of the company at or before the time when the proposed resolution is sent to them; or
  - (b) in the case of a resolution proposed at a meeting, by being made available for inspection by members of the company—
    - (i) at the company's registered office or at a place prescribed by regulations made under section 657, for a period of not less than 15 days ending on the date of the meeting; and
    - (ii) at the meeting.
- (3) There must also be made available to members in accordance with subsection (2) a copy of the original contract or memorandum, together with any variations previously made.
- (4) A memorandum referred to in subsection (2) must include the names of members holding shares to which the proposed release agreement relates.
- (5) A copy of a proposed release agreement made available under subsection (2) must have annexed to it a memorandum specifying any of those names that do not appear in the proposed release agreement.
- (6) The special resolution is not effective if the requirements of this section are not complied with.

### 253. Resolution authorizing release: exercise of voting rights

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第 5 部 —— 第 4 分部  
第 254 條

- (1) 本條適用於關於授予、更改、撤銷或重訂第 251 條所指的放棄權利協議的授權的特別決議。
- (2) 如有關特別決議是以書面決議形式提出的，則就第 12 部第 1 分部第 2 次分部（書面決議）而言，持有該項決議所關乎的股份的成員，就該等股份而言不屬合資格成員。
- (3) 如有關特別決議是建議在會議上通過的，則該項決議在下述情況下，不具有效力——
  - (a) 任何持有該項決議所關乎的股份的公司成員，行使該等股份所帶有的表決權；而
  - (b) 假使該成員沒有如此行事，該項決議便不會通過。
- (4) 就第 (3) 款而言——
  - (a) 持有有關決議所關乎的股份的成員，不僅因為在就該項決議應否通過的問題上以投票方式表決，才被視為行使該等股份所帶有的表決權，該成員就該項決議以投票以外的方式表決，亦須視為行使該表決權；
  - (b) 有關公司的任何成員均可要求就該問題以投票方式表決；及
  - (c) 由成員的投票代表表決或提出要求以投票方式表決，等同由該成員親自表決或親自提出要求。
- (5) 如第 (4)(b) 款提述的以投票方式表決的要求遭拒絕，則有關特別決議不具有效力。

## 254. 更改放棄回購本身股份的權利

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Section 254

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- (1) This section applies to a special resolution to confer, vary, revoke or renew the authorization for a release agreement under section 251.
- (2) If the special resolution is proposed as a written resolution, a member holding shares to which the resolution relates is not an eligible member for the purposes of Subdivision 2 of Division 1 of Part 12 (written resolution) in respect of those shares.
- (3) If the special resolution is proposed at a meeting, the resolution is not effective if—
  - (a) any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares; and
  - (b) the resolution would not have been passed if the member had not done so.
- (4) For the purposes of subsection (3)—
  - (a) a member holding shares to which the resolution relates is to be regarded as exercising the voting rights carried by those shares not only if the member votes in respect of them on a poll on the question whether the resolution should be passed but also if the member votes on the resolution otherwise than on a poll;
  - (b) any member of the company may demand a poll on that question; and
  - (c) a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.
- (5) The special resolution is not effective if a demand for a poll referred to in subsection (4)(b) is refused.

## 254. Variation of release of right to buy back own shares

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第 5 部 —— 第 4 分部  
第 255 條

- (1) 非上市公司可同意更改根據第 251 條授權的放棄權利協議，但該更改協議須事先獲特別決議授權。
- (2) 對更改協議的授權，可藉特別決議更改、撤銷或不時重訂。
- (3) 任何關於授予、更改、撤銷或重訂對更改協議的授權的特別決議，均受第 255 及 256 條規限。

#### 255. 授權更改放棄權利的決議：披露更改的細節

- (1) 本條就關於授予、更改、撤銷或重訂第 254 條所指的更改協議的授權的特別決議而適用。
- (2) 採用書面形式的建議更改協議的文本，或列明並非採用書面形式的建議更改協議的細節的備忘錄，須以下述方式提供予有關成員——
  - (a) (如屬書面決議) 在建議決議送交公司的所有成員之時或之前，將上述文本或備忘錄送交該公司的每名成員；或
  - (b) (如屬建議在會議上通過的決議) 在——
    - (i) 公司的註冊辦事處或在根據第 657 條訂立的規例訂明的地方，將上述文本或備忘錄提供予公司成員查閱，為期不少於在該會議的日期結束的 15 日期間；及
    - (ii) 該會議上，將上述文本或備忘錄提供予公司成員查閱。
- (3) 原有放棄協議或備忘錄的文本，連同先前作出的任何更改，亦須按照第 (2) 款提供予成員。
- (4) 第 (2) 款提述的備忘錄，須載有持有建議更改協議所關乎的股份的成員的姓名或名稱。
- (5) 根據第 (2) 款提供的建議更改協議的文本，須附有一份備忘錄，指明任何沒有在該協議內出現的上述姓名或名稱。

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- (1) An unlisted company may agree to a variation of a release agreement authorized under section 251 if the variation agreement is authorized in advance by special resolution.
- (2) The authorization for a variation agreement may be varied, revoked or from time to time renewed by special resolution.
- (3) A special resolution conferring, varying, revoking or renewing the authorization for a variation agreement is subject to sections 255 and 256.

#### 255. Resolution authorizing variation of release: disclosure of details of variation

- (1) This section applies in relation to a special resolution to confer, vary, revoke or renew the authorization for a variation agreement under section 254.
- (2) A copy of the proposed variation agreement (if it is in writing) or a memorandum giving details of the proposed variation agreement (if it is not) must be made available to members—
  - (a) in the case of a written resolution, by being sent to every member of the company at or before the time when the proposed resolution is sent to them; or
  - (b) in the case of a resolution proposed at a meeting, by being made available for inspection by members of the company—
    - (i) at the company's registered office or at a place prescribed by regulations made under section 657, for a period of not less than 15 days ending on the date of the meeting; and
    - (ii) at the meeting.
- (3) There must also be made available to members in accordance with subsection (2) a copy of the original release agreement

- (6) 如本條的規定不獲遵守，則有關特別決議不具有效力。

#### 256. 授權更改放棄權利的決議：行使表決權

- (1) 本條適用於關於授予、更改、撤銷或重訂第 254 條所指的更改協議的授權的特別決議。
- (2) 如有關特別決議是以書面決議形式提出的，則就第 12 部第 1 分部的第 2 次分部（書面決議）而言，持有該項決議所關乎的股份的成員，就該等股份而言不屬合資格成員。
- (3) 如有關特別決議是建議在會議上通過的，則該項決議在下述情況下，不具有效力——
  - (a) 任何持有該項決議所關乎的股份的公司成員，行使該等股份所帶有的表決權；而
  - (b) 假使該成員沒有如此行事，該項決議便不會通過。
- (4) 就第 (3) 款而言——
  - (a) 持有有關決議所關乎的股份的成員，不僅因為在就該項決議應否通過的問題上以投票方式表決，才被視為行使該等股份所帶有的表決權，該成員就該項決議以投票以外的方式表決，亦須視為行使該表決權；
  - (b) 有關公司的任何成員均可要求就該問題以投票方式表決；及

or memorandum, together with any variations previously made.

- (4) A memorandum referred to in subsection (2) must include the names of members holding shares to which the proposed variation agreement relates.
- (5) A copy of a proposed variation agreement made available under subsection (2) must have annexed to it a memorandum specifying any of those names that do not appear in the proposed variation agreement.
- (6) The special resolution is not effective if the requirements of this section are not complied with.

#### 256. Resolution authorizing variation of release: exercise of voting rights

- (1) This section applies to a special resolution to confer, vary, revoke or renew the authorization for a variation agreement under section 254.
- (2) If the special resolution is proposed as a written resolution, a member holding shares to which the resolution relates is not an eligible member for the purposes of Subdivision 2 of Division 1 of Part 12 (written resolution) in respect of those shares.
- (3) If the special resolution is proposed at a meeting, the resolution is not effective if—
  - (a) any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares; and
  - (b) the resolution would not have been passed if the member had not done so.
- (4) For the purposes of subsection (3)—



- (c) 由成員的投票代表表決或提出要求以投票方式表決，等同由該成員親自表決或親自提出要求。
- (5) 如第 (4)(b) 款提述的以投票方式表決的要求遭拒絕，則有關特別決議不具有效力。

### 第 6 次分部 —— 為贖回及回購股份作出的付款

#### 257. 為贖回或回購作出的付款

- (1) 某公司如贖回或回購本身的股份，須在贖回或回購時為該等股份付款。
- (2) 除第 (3) 及 (4) 款另有規定外，某公司可就贖回或回購本身的股份 ——
  - (a) 從該公司的可分派利潤中撥款作付款；
  - (b) 從為贖回或回購股份的目的而發行新股份所得收益中撥款作付款；或
  - (c) 按照本次分部從資本中撥款作付款。
- (3) 上市公司不得就根據第 239 條在認可證券市場或在核准證券交易所回購本身的股份，從資本中撥款作付款。
- (4) 除第 (3) 款另有規定外，第 (5) 款提述的付款只可由公司 ——
  - (a) 從該公司的可分派利潤中撥款作出；或

- (a) a member holding shares to which the resolution relates is to be regarded as exercising the voting rights carried by those shares not only if the member votes in respect of them on a poll on the question whether the resolution should be passed but also if the member votes on the resolution otherwise than on a poll;
  - (b) any member of the company may demand a poll on that question; and
  - (c) a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.
- (5) The special resolution is not effective if a demand for a poll referred to in subsection (4)(b) is refused.

### Subdivision 6—Payment for Share Redemptions and Buy-backs

#### 257. Payment for redemption or buy-back

- (1) If a company redeems or buys back its own shares, the shares must be paid for on redemption or buy-back.
- (2) Subject to subsections (3) and (4), a company may make a payment in respect of a redemption or buy-back of its own shares—
  - (a) out of the company's distributable profits;
  - (b) out of the proceeds of a fresh issue of shares made for the purpose of the redemption or buy-back; or
  - (c) out of capital in accordance with this Subdivision.
- (3) A listed company must not make a payment out of capital in respect of a buy-back of its own shares on a recognized stock market or on an approved stock exchange under section 239.
- (4) Subject to subsection (3), a payment referred to in subsection (5) may be made by a company only—

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- (b) 按照本次分部從資本中撥款作出。
- (5) 第 (4) 款適用於公司作出付款作為交換以下任何一項的代價——
- (a) 該公司購入關於根據第 4 或 5 次分部回購本身股份的任何權利；
- (b) 根據第 5 次分部授權的合約更改；或
- (c) 解除該公司根據第 4 或 5 次分部回購本身的股份的任何責任，或更改該項解除。

#### 258. 關於從資本中撥款作付款的特別決議

- (1) 除第 257(3) 條另有規定外，某公司可就贖回或回購本身的股份，按照本次分部藉特別決議從資本中撥款作付款。
- (2) 在不抵觸第 263 條的條文下，就贖回或回購股份而從資本中撥款作付款，須在有關特別決議的日期後的 5 個星期之後並在該項決議的日期後的 7 個星期之前的期間內作出。

#### 259. 關於從資本中撥款作付款的償付能力陳述

- (1) 公司所有董事須就從資本中撥款作付款一事，作出符合第 2 分部的償付能力陳述。
- (2) 議決從資本中撥款作付款的特別決議，須在作出償付能力陳述的日期後的 15 日內通過。
- (3) 如有關特別決議是以書面決議形式提出的，則償付能力陳述的文本須在該項決議送交公司成員之時或之前，送交公司每名成員。

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- (a) out of the company's distributable profits; or
- (b) out of capital in accordance with this Subdivision.
- (5) Subsection (4) applies to a payment by a company in consideration of any of the following—
- (a) the company acquiring any right with respect to the buy-back of its own shares under Subdivision 4 or 5;
- (b) the variation of a contract authorized under Subdivision 5; or
- (c) the release, or variation of the release, of any of the company's obligations with respect to the buy-back of any of its own shares under Subdivision 4 or 5.

#### 258. Special resolution for payment out of capital

- (1) Subject to section 257(3), a company may make a payment out of capital in respect of the redemption or buy-back of its own shares by special resolution in accordance with this Subdivision.
- (2) Subject to section 263, the payment out of capital and the redemption or buy-back must be made no earlier than 5 weeks and no later than 7 weeks after the date of the special resolution.

#### 259. Solvency statement for payment out of capital

- (1) All directors of the company must make a solvency statement that complies with Division 2 in relation to the payment out of capital.
- (2) The special resolution for payment out of capital must be passed within 15 days after the date of the solvency statement.
- (3) If the special resolution is proposed as a written resolution, a copy of the solvency statement must be sent to every member

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- (4) 如有關特別決議是建議在會議上通過的，則須在該會議上，備有償付能力陳述的文本，供與會的成員查閱。
- (5) 如第 (3) 或 (4) 款（視何者適用而定）不獲遵守，則有關特別決議不具有效力。

## 260. 特別決議：行使表決權

- (1) 如關於從資本中撥款作付款的特別決議是以書面決議形式提出的，則就第 12 部第 1 分部第 2 次分部（書面決議）而言，持有該項決議所關乎的股份的公司成員，就該等股份而言不屬合資格成員。
- (2) 如關於從資本中撥款作付款的特別決議是建議在會議上通過的，則該項決議在下述情況下，不具有效力——
  - (a) 任何持有該項決議所關乎的股份的公司成員，行使該等股份所帶有的表決權；而
  - (b) 假使該成員沒有如此行事，該項決議便不會通過。
- (3) 就第 (2) 款而言——
  - (a) 持有有關決議所關乎的股份的成員，不僅因為在就該項決議應否通過的問題上以投票方式表決，才被視為行使該等股份所帶有的表決權，該成員就該項決議以投票以外的方式表決，亦須視為行使該表決權；
  - (b) 有關公司的任何成員均可要求就該問題以投票方式表決；及
  - (c) 由成員的投票代表表決或提出要求以投票方式表決，等同由該成員親自表決或親自提出要求。
- (4) 如第 (3)(b) 款提述的以投票方式表決的要求遭拒絕，則有關特別決議不具有效力。

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of the company at or before the time when the proposed resolution is sent to them.

- (4) If the special resolution is proposed at a meeting, a copy of the solvency statement must be made available for inspection by members at the meeting.
- (5) The special resolution is not effective if subsection (3) or (4) (as applicable) is not complied with.

## 260. Special resolution: exercise of voting rights

- (1) If the special resolution for payment out of capital is proposed as a written resolution, a member of the company holding shares to which the resolution relates is not an eligible member for the purposes of Subdivision 2 of Division 1 of Part 12 (written resolution) in respect of those shares.
- (2) If the special resolution for payment out of capital is proposed at a meeting, the resolution is not effective if—
  - (a) any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares; and
  - (b) the resolution would not have been passed if the member had not done so.
- (3) For the purposes of subsection (2)—
  - (a) a member holding shares to which the resolution relates is to be regarded as exercising the voting rights carried by those shares not only if the member votes in respect of them on a poll on the question whether the resolution should be passed but also if the member votes on the resolution otherwise than on a poll;
  - (b) any member of the company may demand a poll on that question; and

- (5) 本條不適用於由上市公司按照第 238 條根據一項公開要約進行的回購股份。

- (c) a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.

- (4) The special resolution is not effective if a demand for a poll referred to in subsection (3)(b) is refused.
- (5) This section does not apply to a buy-back by a listed company under a general offer in accordance with section 238.

## 261. 關於從資本中撥款作付款的公告

- (1) 如議決從資本中撥款作付款的特別決議獲通過，公司須於第 (2) 款指明的日期當日或之前，在憲報刊登公告——
- (a) 述明公司已批准從資本中撥款作付款；
  - (b) 指明該項付款的款額，以及該項特別決議的日期；
  - (c) 述明可在何處查閱該項特別決議及有關償付能力陳述；及
  - (d) 述明沒有同意或沒有表決贊成該項特別決議的公司成員或公司債權人，可在該項決議的日期後的 5 個星期內，根據第 263 條向原訟法庭提出申請，要求撤銷該項決議。
- (2) 上述日期是——
- (a) 在有關特別決議通過的星期的下一個星期中的最後一個工作日；或
  - (b) (如 (a) 段所述的日期與有關特別決議通過的日期 (不包括兩者在內) 相距少於 4 個辦公日) 在再下一個星期中的最後一個工作日。

### 例子——

1. 有關特別決議於某年的 2 月 2 日 (星期四) 通過。除星期六及星期日外，該年 2 月內所有其他日子均屬辦公日。在該項特別決議通過的星期的下一個星期中的最後一個工作日是該年的 2 月

## 261. Public notice of payment out of capital

- (1) If a special resolution for payment out of capital is passed, the company must, on or before the date specified in subsection (2), publish a notice in the Gazette—
- (a) stating that the company has approved a payment out of capital;
  - (b) specifying the amount of the payment out of capital and the date of the special resolution;
  - (c) stating where the special resolution and solvency statement are available for inspection; and
  - (d) stating that a member of the company who did not consent to or vote in favour of the special resolution or a creditor of the company may, within 5 weeks after the date of the special resolution, apply to the Court under section 263 for cancellation of the special resolution.
- (2) The date is—
- (a) a date that falls on the last working day of the week after the week in which the special resolution is passed; or
  - (b) if the period between the date in paragraph (a) and the date on which the special resolution is passed is less

10 日 (星期五) 2 月 2 日與 2 月 10 日之間共有 5 個辦公日。因此，有關公告須於該年的 2 月 10 日 (星期五) 或之前，在憲報刊登。

2. 有關特別決議於某年的 3 月 30 日 (星期五) 通過。該年的 4 月 4 日 (星期三) 及 4 月 6 日 (星期五) 均為公眾假期。該年的 4 月 2 日 (星期一)、4 月 3 日 (星期二)、4 月 5 日 (星期四) 及 4 月 13 日 (星期五) 均屬辦公日。在該項特別決議通過的星期的下一個星期中的最後一個工作日是 4 月 5 日 (星期四)。3 月 30 日與 4 月 5 日之間只有 2 個辦公日。因此，有關公告須於在再下一個星期中的最後一個工作日 (即該年的 4 月 13 日 (星期五)) 或之前，在憲報刊登。
  - (3) 公司亦須在通過議決從資本中撥款作付款的特別決議的星期後的一個星期終結前 ——
    - (a) 在最少一份指明中文報章及最少一份指明英文報章上，刊登與第 (1) 款所指的公告的內容具相同意思的公告；或
    - (b) 向其每名債權人發出具該意思的書面通知。
  - (4) 如公司違反第 (1) 或 (3) 款，該公司及其每名責任人均屬犯罪，可各處第 3 級罰款。
  - (5) 公司須在以下日期或之前，將償付能力陳述的文本交付處長登記 ——
    - (a) 公司根據第 (1) 款刊登有關公告的日期；或
    - (b) (如早於 (a) 段所指的日期) 公司根據第 (3) 款首次刊登有關公告的日期，或首次向債權人發出通知的日期。
  - (6) 如公司違反第 (5) 款，該公司及其每名責任人均屬犯罪，可各處第 5 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 \$1,000。
  - (7) 就第 (2) 款而言 ——
- 工作日** (working day) 指不是以下任何日子的日子 ——
- (a) 公眾假期；或

than 4 business days (both dates exclusive), a date that falls on the last working day of the week next following.

#### Examples—

1. The special resolution is passed on 2 February of a year (Thursday). Apart from Saturdays and Sundays, all other dates in February of that year are business days. The date that falls on the last working day of the week after the week in which the special resolution is passed is 10 February (Friday) of that year. There are 5 business days between 2 February and 10 February. Therefore, the relevant notice must be published in the Gazette on or before 10 February (Friday) of that year.
2. The special resolution is passed on 30 March of a year (Friday). Both 4 April (Wednesday) and 6 April (Friday) of that year are general holidays. 2 April (Monday), 3 April (Tuesday), 5 April (Thursday) and 13 April (Friday) of that year are business days. The date that falls on the last working day of the week after the week in which the special resolution is passed is 5 April (Thursday). There are only 2 business days between 30 March and 5 April. Therefore, the relevant notice must be published in the Gazette on or before the last working day of the week next following, which is 13 April (Friday) of that year.
- (3) Before the end of the week after the week in which the special resolution for payment out of capital is passed, the company must also—
  - (a) publish a notice to the same effect as the notice under subsection (1) in at least one specified Chinese language newspaper and at least one specified English language newspaper; or
  - (b) give written notice to that effect to each of its creditors.
- (4) If the company contravenes subsection (1) or (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.



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- (b) 星期六；
- 辦公日** (business day) 指不是以下任何日子的日子 ——
- (a) 公眾假期；
- (b) 星期六；或
- (c) 《釋義及通則條例》(第 1 章) 第 71(2) 條所界定的黑色暴雨警告日或烈風警告日。

## 262. 特別決議及償付能力陳述的查閱

- (1) 公司須確保議決從資本中撥款作付款的特別決議及就該項決議作出的償付能力陳述，備存於公司的註冊辦事處，或備存於根據第 657 條訂立的規例訂明的地點，備存期間 ——
- (a) 於 ——
- (i) 公司根據第 261(1) 條刊登有關公告的日期開始；或

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- (5) The company must deliver to the Registrar for registration a copy of the solvency statement no later than the day on which the company—
- (a) publishes the notice under subsection (1); or
- (b) if earlier, first publishes the notice or gives notice to creditors under subsection (3).
- (6) If the company contravenes subsection (5), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (7) For the purposes of subsection (2)—
- business day** (辦公日) means a day that is not—
- (a) a general holiday;
- (b) a Saturday; or
- (c) a black rainstorm warning day or gale warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);
- working day** (工作日) means a day that is not—
- (a) a general holiday; or
- (b) a Saturday.

## 262. Inspection of special resolution and solvency statement

- (1) The company must ensure that the special resolution for payment out of capital and the solvency statement made in relation to it are kept at its registered office or at a place prescribed by regulations made under section 657 for the period—
- (a) beginning on the day on which the company—
- (i) publishes the notice under section 261(1); or

(ii) (如早於第(i)節所指的日期)公司根據第261(3)條首次刊登有關公告的日期,或首次向債權人發出通知的日期開始;並

(b) 於該項特別決議的日期後的5個星期結束。

- (2) 公司須准許其成員或債權人,在第(1)款所述期間,於辦公時間內,免費查閱有關特別決議及償付能力陳述。
- (3) 如公司違反第(1)或(2)款,該公司及其每名責任人均屬犯罪,可各處第5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 \$1,000。
- (4) 如公司違反第(2)款,原訟法庭可藉命令規定該公司准許有關的人作即時查閱。

### 263. 成員或債權人向原訟法庭提出申請

- (1) 除第(2)款另有規定外,在議決從資本中撥款作付款的特別決議的日期後的5個星期內,公司成員或債權人可向原訟法庭提出申請,要求撤銷該項決議。
- (2) 同意或表決贊成有關決議的成員,無權提出上述申請。
- (3) 有權提出申請的人,可藉書面方式,委任他們當中的任何一人或多於一人,代表所有作出該項委任的人提出申請。
- (4) 如有人根據本條提出申請——
  - (a) 申請人須盡快將申請書送達有關公司;及
  - (b) 該公司須在申請書送達該公司的日期後的7日內,向處長發出關於該項申請的通知,該通知須符合指明格式。
- (5) 如公司違反第(4)(b)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。

(ii) if earlier, first publishes the notice or gives notice to creditors under section 261(3); and

(b) ending 5 weeks after the date of the special resolution.

- (2) The company must permit a member or creditor of the company to inspect the special resolution and solvency statement without charge during business hours in that period.
- (3) If the company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (4) If the company contravenes subsection (2), the Court may by order require the company to permit an immediate inspection.

### 263. Application to Court by members or creditors

- (1) Subject to subsection (2), a member or creditor of the company may apply to the Court, within 5 weeks after the date of the special resolution for payment out of capital, for cancellation of the resolution.
- (2) A member who consented to or voted in favour of the special resolution is not entitled to apply.
- (3) An application may be made on behalf of the persons entitled to apply by any one or more of them appointed in writing by all of them.
- (4) If an application is made under this section—
  - (a) the applicant must, as soon as possible, serve the application on the company; and
  - (b) the company must give the Registrar notice in the specified form of the application within 7 days after the day on which the application is served on the company.

**264. 原訟法庭押後法律程序的權力**

- (1) 原訟法庭如接獲根據第 263 條提出的申請，可將法律程序押後，好讓令原訟法庭滿意的安排得以作出，以保障持異議的成員或持異議的債權人的權益。
- (2) 原訟法庭可作出它認為合宜的指示及命令，以利便作出或執行任何上述安排。

**265. 原訟法庭確認或撤銷特別決議的權力**

- (1) 原訟法庭如接獲根據第 263 條提出的申請，須作出確認或撤銷有關的議決從資本中撥款作付款的特別決議的命令，並可按其認為合適的條款及條件，作出該命令。
- (2) 原訟法庭如確認有關特別決議，可藉命令更改或延展——
  - (a) 該項決議指明的任何日期或期間；或
  - (b) 本分部任何適用於該項決議、從資本中撥款作有關付款、有關贖回或回購股份的條文指明的任何日期或期間。
- (3) 如原訟法庭認為合適，有關命令可——
  - (a) 就公司回購其任何成員的股份及就公司股本據此減少一事，作出規定；
  - (b) 就保障公司的成員或債權人的權益，作出規定；
  - (c) 對公司的章程細則作出因上述規定而需作出的更改；

- (5) If the company contravenes subsection (4)(b), 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.

**264. Power of Court to adjourn proceedings**

- (1) The Court may adjourn proceedings on an application under section 263 so that an arrangement may be made to its satisfaction for the protection of the interests of dissentient members or dissentient creditors.
- (2) The Court may give any directions and make any orders it thinks expedient for facilitating or carrying into effect any such arrangement.

**265. Power of Court to confirm or cancel special resolution**

- (1) On an application under section 263, the Court must make an order confirming or cancelling the special resolution for payment out of capital, and may do so on any terms and conditions it thinks fit.
- (2) If the Court confirms the special resolution, it may by order alter or extend any date or period of time specified—
  - (a) in the special resolution; or
  - (b) in any provision of this Division applying to the special resolution, the payment out of capital or the redemption or buy-back.
- (3) If the Court thinks fit, the order may—
  - (a) provide for the company to buy back the shares of any of its members and for the reduction accordingly of the company's share capital;

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- (d) 規定公司不得對其章程細則作出任何更改或任何指明的更改。
- (4) 如原訟法庭的命令規定，公司不得對其章程細則作出任何更改或任何指明的更改，則公司無權在未獲原訟法庭的許可下作出該更改。
- (5) 原訟法庭根據本條具有的權力，不局限其根據第 264 條具有的權力。

#### 266. 公司將原訟法庭命令的文本交付處長

- (1) 公司須在原訟法庭作出第 265 條所指的命令後的 15 日內，或在原訟法庭命令的任何較長限期內，將該命令的正式文本交付處長登記。
- (2) 如公司違反第 (1) 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。

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#### 267. 對購入本身股份的一般禁止

- (1) 除本條例有所規定外，公司不得以贖回、回購、認購或其他方式，購入本身的股份。
- (2) 如公司違反第 (1) 款，下述的人即屬犯罪 ——
  - (a) 該公司；

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- (b) provide for the protection of the interests of members or creditors of the company;
- (c) make any alteration to the company's articles that may be required as a consequence;
- (d) require the company not to make any, or any specified, alteration to its articles.
- (4) If the order of the Court requires the company not to make any, or any specified, alteration to its articles, the company does not have power to make any such alteration without leave of the Court.
- (5) The powers of the Court under this section do not limit its powers under section 264.

#### 266. Company to deliver copy of order of Court to Registrar

- (1) Within 15 days after the making of an order by the Court under section 265, or within any longer period ordered by the Court, the company must deliver an office copy of the order to the Registrar for registration.
- (2) If the company contravenes subsection (1), 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.

### Subdivision 7—General Provisions

#### 267. General prohibition on acquisition of own shares

- (1) Except as provided by this Ordinance, a company must not acquire its own shares, whether by redemption, buy-back, subscription or otherwise.
- (2) If a company contravenes subsection (1), an offence is committed by—

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- (b) 該公司的每名責任人；及
- (c) 明知而准許違反該條的該公司每名不售股成員（第 705 條所界定者）。
- (3) 任何人犯第 (2) 款所訂的罪行 ——
  - (a) 一經循公訴程序定罪，可處罰款 \$1,250,000 及監禁 5 年；或
  - (b) 一經循簡易程序定罪，可處罰款 \$150,000 及監禁 12 個月。
- (4) 除第 236(4) 條另有規定外及在第 14 部第 2 分部（對不公平地損害成員權益的補救）的規限下，公司根據本分部進行的股份贖回或股份回購，不會僅因本分部不獲遵守而屬無效。

#### 268. 不得贖回或回購未繳股款或部分已繳股款的股份

公司不可贖回或回購本身的股份，但如股份屬已繳足款股份，則不在此限。

#### 269. 贖回或回購股份的效力

- (1) 根據本分部贖回或回購的股份，須視為在贖回或回購時被註銷。
- (2) 如公司在贖回或回購本身的股份時，是 ——
  - (a) 從資本中撥款贖回或回購的，則公司須減少其股本的款額；
  - (b) 從利潤中撥款贖回或回購的，則公司須減少其利潤的款額；或
  - (c) 從資本及利潤兩者中撥款贖回或回購的，則公司須按比例減少其股本及利潤的款額，

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- (a) the company;
- (b) every responsible person of the company; and
- (c) every non-tendering member of the company (as defined by section 705) who knowingly permits the contravention.
- (3) A person who commits an offence under subsection (2) is liable—
  - (a) on conviction on indictment to a fine of \$1,250,000 and to imprisonment for 5 years; or
  - (b) on summary conviction to a fine of \$150,000 and to imprisonment for 12 months.
- (4) Subject to section 236(4) and Division 2 of Part 14 (remedies for unfair prejudice to members' interests), a redemption or buy-back of shares by a company under this Division is not void only because of a failure to comply with this Division.

#### 268. No redemption or buy-back of unpaid or partly-paid shares

A company must not redeem or buy back its own shares unless they are fully paid.

#### 269. Effect of redemption or buy-back

- (1) Shares redeemed or bought back under this Division are to be regarded as cancelled on redemption or buy-back.
- (2) On redemption or buy-back of its own shares, a company must—
  - (a) reduce the amount of its share capital if the shares were redeemed or bought back out of capital;
  - (b) reduce the amount of its profits if the shares were redeemed or bought back out of profits; or



而減幅相等於該公司繳付的該等股份的價格的總額。

(c) reduce the amount of its share capital and profits proportionately if the shares were redeemed or bought back out of both capital and profits,

by the total amount of the price paid by the company for the shares.

## 270. 贖回或回購股份申報表

- (1) 根據本分部贖回或回購任何股份的公司，須在該等股份交付該公司的日期後的 15 日內，將申報表交付處長登記。
- (2) 上述申報表 ——
  - (a) 須符合指明格式；
  - (b) 須就每一類別贖回或回購的股份，述明 ——
    - (i) 該等股份的數目；及
    - (ii) 該等股份交付該公司的日期；
  - (c) 須載有一項以緊接贖回或回購股份之後當時的狀況為準的股本說明，該說明須符合第 201 條；(由 2018 年第 35 號第 26 條修訂)
  - (d) 如屬由上市公司交付登記，則亦須就每一類別贖回或回購的股份述明 ——
    - (i) 就該等股份繳付的最高及最低價格；及
    - (ii) 該公司為該等股份繳付的總款額；及
  - (e) 在贖回或回購所需資金是從資本中撥出的情況下，亦須述明該項付款的詳情，包括付款日期及款額。
- (3) 在不同日期並根據不同合約交付公司的股份的細節，可載列於單一份申報表內。如有此情況，根據第 (2)(d)(ii) 款規定須述明的款額，是該公司就該申報表所關乎的全部股份繳付的總款額。
- (4) 如公司違反第 (1) 款，該公司及其每名責任人均屬犯罪，可各處第 6 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 \$2,000。

## 270. Return of share redemption or buy-back

- (1) A company that redeems or buys back any shares under this Division must, within 15 days after the date on which the shares are delivered to the company, deliver a return to the Registrar for registration.
- (2) The return—
  - (a) must be in the specified form;
  - (b) must state, for the shares of each class redeemed or bought back—
    - (i) the number of shares; and
    - (ii) the date on which they were delivered to the company;
  - (c) must include a statement of capital, as at the time immediately after the redemption or buy-back, that complies with section 201;
  - (d) in the case of a listed company, must also state, for the shares of each class redeemed or bought back—
    - (i) the maximum and minimum prices paid in respect of the shares; and
    - (ii) the aggregate amount paid by the company for the shares; and
  - (e) in the case of a redemption or buy-back financed by a payment out of capital, must also state particulars of the payment including the date and amount of the payment.

**271. 公司沒有贖回或回購股份的後果**

- (1) 如有以下情況，則本條適用 ——
  - (a) 公司根據本分部發行可贖回股份；或
  - (b) 公司根據本分部同意回購任何本身的股份。
- (2) 有關公司無需就其沒有贖回或沒有回購任何有關股份而承擔損害賠償的法律責任。
- (3) 第 (2) 款不損害股份持有人的任何權利，但股份持有人就公司沒有贖回或沒有回購有關股份控告公司以申索損害賠償的權利除外。
- (4) 如公司證明它不能就贖回或回購有關股份而從可分派利潤中撥款作付款，則法院不得發出命令，強制公司履行贖回或回購該等股份的條款。

**272. 公司沒有贖回或回購股份對清盤的影響**

- (1) 如有以下情況，則本條適用 ——
  - (a) 公司 ——
    - (i) 根據本分部發行可贖回股份；或
    - (ii) 同意根據本分部回購任何本身的股份；

- (3) Details of shares delivered to the company on different dates and under different contracts may be included in a single return. If this is done, the amount required to be stated under subsection (2)(d)(ii) is the aggregate amount paid by the company for all the shares to which the return relates.
- (4) If the company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.

**271. Effect of company's failure to redeem or buy back**

- (1) This section applies if, under this Division, a company—
  - (a) issues redeemable shares; or
  - (b) agrees to buy back any of its own shares.
- (2) The company is not liable in damages for any failure on its part to redeem or buy back any of the shares.
- (3) Subsection (2) is without prejudice to any right of the holder of the shares other than the right to sue the company for damages for the failure.
- (4) A court must not grant an order for specific performance of the terms of the redemption or buy-back if the company shows that it is unable to make a payment in respect of the redemption or buy-back out of distributable profits.

**272. Effect on winding up of company's failure to redeem or buy back**

- (1) This section applies if—
  - (a) a company—
    - (i) issues redeemable shares under this Division; or

- (b) 該公司清盤；及
- (c) 在清盤展開時，仍有任何該等股份未贖回或未回購。
- (2) 有關贖回或回購股份的條款，可針對公司強制執行。
- (3) 在以下情況下，第 (2) 款不適用 ——
  - (a) 有關贖回或回購股份的條款訂定，贖回或回購該等股份的進行日期，是在清盤展開的日期後；或
  - (b) 在 ——
    - (i) 於贖回或回購該等股份的日期開始；並
    - (ii) 於清盤展開之日結束，
 的期間內，公司在任何時間均不能合法地就贖回或回購該等股份從可分派利潤中撥款作付款。
- (4) 股份在根據第 (2) 款贖回或回購時，即視為被註銷。
- (5) 相對於公司根據第 (2) 款有法律責任就任何股份支付的款額，以下項目須優先支付 ——
  - (a) 公司的所有其他債項及債務 ( 成員以成員身分被拖欠的債項及債務除外 ) ；及
  - (b) ( 如其他股份附有權利 ( 不論是關於資本或關於收入方面的權利 ) ，而該等權利較該等股份所附帶的關於資本的權利優先 ) 為履行該等優先權利而須繳付的款額。
- (6) 除第 (5) 款另有規定外，相對於須就履行成員作為成員的權利 ( 不論是關於資本或關於收入方面的權利 ) 而支付予成員的款額，根據第 (2) 款須支付的款額，須優先支付。
- (7) 如根據《公司 ( 清盤及雜項條文 ) 條例》( 第 32 章 ) 第 264A 條，公司債權人在公司償付所有其他債項後，方有權收取任何利息，則就第 (5) 款而言，公司的債項及債務，包括支付該項利息的法律責任。

- (ii) agrees to buy back any of its own shares under this Division;
- (b) the company is wound up; and
- (c) at the commencement of the winding up any of those shares have not been redeemed or bought back.
- (2) The terms of the redemption or buy-back may be enforced against the company.
- (3) Subsection (2) does not apply if—
  - (a) the terms of the redemption or buy-back provided for the redemption or buy-back to take place at a date later than that of the commencement of the winding up; or
  - (b) during the period—
    - (i) beginning on the day on which the redemption or buy-back was to have taken place; and
    - (ii) ending on the commencement of the winding up, the company could not at any time have lawfully made a payment in respect of the redemption or buy-back out of distributable profits.
- (4) Shares are to be regarded as cancelled when they are redeemed or bought back under subsection (2).
- (5) The following must be paid in priority to any amount that the company is liable under subsection (2) to pay in respect of any shares—
  - (a) all other debts and liabilities of the company (other than any due to members in their capacity as such); and
  - (b) if other shares carry rights (whether as to capital or income) that are preferred to the rights as to capital attaching to those shares, any amount due in satisfaction of those preferred rights.

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### 273. 藉訂立規例作出變通的權力

- (1) 行政長官會同行政會議可訂立規例，就下述任何事項對本分部的任何條文作出變通 ——
  - (a) 公司回購本身的股份所需的授權；
  - (b) 公司放棄根據合約（包括待確定回購合約）回購本身的股份的權利所需的授權；及
  - (c) 公司就贖回或回購股份而交付處長的申報表須載有的資料。
- (2) 根據本條訂立的規例須經立法會批准。

## 第 5 分部 —— 對購入本身的股份的資助

### 第 1 次分部 —— 導言

### 274. 釋義

- (6) Subject to subsection (5), any amount payable under subsection (2) must be paid in priority to any amounts due to members in satisfaction of their rights (whether as to capital or income) as members.
- (7) If, under section 264A of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), a creditor of a company is entitled to payment of any interest only after payment of all other debts of the company, the company's debts and liabilities for the purposes of subsection (5) include the liability to pay that interest.

### 273. Power to modify by regulation

- (1) The Chief Executive in Council may make regulations modifying any of the provisions of this Division with respect to—
  - (a) the authorization required for a company to buy back its own shares;
  - (b) the authorization required for the release by a company of its rights under a contract for the buy-back of its own shares, including a contingent buy-back contract; and
  - (c) the information to be included in a return by a company to the Registrar in relation to a share redemption or buy-back.
- (2) Regulations made under this section are subject to the approval of the Legislative Council.

## Division 5—Financial Assistance for Acquisition of Own Shares

### Subdivision 1—Preliminary

### 274. Interpretation

(1) 在本分部中 ——

**負債** (liabilities) 包括對為符合以下說明的債務或損失作出撥備屬合理地需要的被保留的款額 ——

- (a) 相當可能會招致的債務或損失；或
- (b) 確定會招致但款額或產生日期仍未確定的債務或損失；

**淨資產** (net assets) 就根據本分部提供資助的公司而言，指公司資產總額超出公司負債總額之數 (以緊接提供資助前公司的會計紀錄所述明的資產額及負債額計算)；

**資助** (financial assistance) 指 ——

- (a) 藉饋贈而提供的資助；
- (b) 以下述方式而提供的資助 ——
  - (i) 擔保、保證或彌償 (就彌償人本身的疏忽或失責而作出的彌償除外)；或
  - (ii) 責任解除或寬免；
- (c) 以下述方式而提供的資助 ——
  - (i) 貸款協議或任何其他協議，而根據該等協議，當於協議另一方的責任按照協議仍未履行時，提供資助的人的責任須予履行；或
  - (ii) 第 (i) 節提述的貸款協議或其他協議的約務更替，或根據第 (i) 節提述的貸款協議或其他協議而產生的權利轉讓；或
- (d) 任何公司在以下情況下提供的任何其他資助 ——
  - (i) 公司淨資產會因提供該項資助而出現相當程度的減少；或
  - (ii) 該公司沒有淨資產。

(2) 在本分部中 ——

- (a) 提述某人招致債務，包括該人藉訂立協議或安排 (不論是否可強制執行，亦不論是否由該人獨自或連同

(1) In this Division—

**financial assistance** (資助) means—

- (a) financial assistance given by way of gift;
- (b) financial assistance given—
  - (i) by way of guarantee, security or indemnity (other than an indemnity in respect of the indemnifier's own neglect or default); or
  - (ii) by way of release or waiver;
- (c) financial assistance given—
  - (i) by way of a loan or any other agreement under which any of the obligations of the person giving the assistance are to be fulfilled at a time when in accordance with the agreement any obligation of another party to the agreement remains unfulfilled; or
  - (ii) by way of the novation of, or the assignment of rights arising under, a loan or other agreement referred to in subparagraph (i); or
- (d) any other financial assistance given by a company if—
  - (i) the net assets of the company are reduced to a material extent by the giving of the assistance; or
  - (ii) the company has no net assets;

**liabilities** (負債) includes any amount retained as reasonably necessary for the purpose of providing for any liability or loss that is—

- (a) likely to be incurred; or
- (b) certain to be incurred but uncertain as to the amount or as to the date on which it will arise;



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他人訂立)或藉任何其他方法,而改變該人的財務狀況;及

- (b) 提述某公司為減少或解除某人因購入股份而招致的債務而提供資助,包括該公司為使該人的財務狀況完全或部分回復至購入進行前的狀況而提供資助。

## 第 2 次分部 —— 對為購入本身股份而提供資助的一般禁止

### 275. 禁止為購入股份或為減少或解除因購入招致的債務而提供資助

- (1) 除本分部有所規定外,如任何人正進行購入或正建議購入某公司的股份,在該項購入進行之前或同時,該公司或其任何附屬公司不得為該項購入而直接或間接提供資助。
- (2) 如 ——
  - (a) 某人已購入某公司的股份;而

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*net assets* (淨資產) of a company that gives any financial assistance under this Division, means the amount by which the aggregate of the company's assets exceeds the aggregate of its liabilities (taking the amount of both assets and liabilities to be as stated in the company's accounting records immediately before the financial assistance is given).

#### (2) In this Division—

- (a) a reference to a person incurring a liability includes the person changing their financial position by making an agreement or arrangement (whether enforceable or unenforceable, and whether made on the person's own account or with any other person) or by any other means; and
- (b) a reference to a company giving financial assistance for the purpose of reducing or discharging a liability incurred by a person for the purpose of the acquisition of shares includes the company giving financial assistance for the purpose of wholly or partly restoring the person's financial position to what it was before the acquisition took place.

## Subdivision 2—General Prohibition on Financial Assistance for Acquisition of Own Shares

### 275. Prohibition on financial assistance for acquisition of shares or for reducing or discharging liability for acquisition

- (1) If a person is acquiring or proposing to acquire shares in a company, the company or any of its subsidiaries must not give financial assistance directly or indirectly for the purpose of the acquisition before or at the same time as the acquisition takes place, except as provided by this Division.
- (2) If—

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- (b) 任何人為該項購入而招致債務，  
則除本分部有所規定外，該公司或其任何附屬公司不得  
為減少或解除該項債務，而直接或間接提供資助。
- (3) (由 2018 年第 35 號第 27 條廢除)
- (4) 如公司違反第 (1) 或 (2) 款，該公司及其每名責任人均屬  
犯罪，可各處罰款 \$150,000 及監禁 12 個月。

#### 276. 違反本分部不影響資助等的有效性

如公司在違反本分部的情况下提供資助，則該項資助及與其  
有關連的任何合約或交易的有效性，不得僅因該項違反而受  
影響。

### 第 3 次分部 —— 禁止的例外情況

#### 277. 一般例外情況

本分部並不禁止任何以下事宜 ——

- (a) 公司的資產 ——
- (i) 以合法派發股息的形式分派；或
- (ii) 在該公司的清盤過程中分派；
- (b) 紅股的配發；
- (c) 公司股本按照第 3 分部減少；
- (d) 按照第 4 分部進行的公司贖回或回購本身的股份；

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- (a) a person has acquired shares in a company; and
- (b) any person has incurred a liability for the purpose of the  
acquisition,  
the company or any of its subsidiaries must not give financial  
assistance directly or indirectly for the purpose of reducing or  
discharging the liability, except as provided by this Division.
- (3) (*Repealed 35 of 2018 s. 27*)
- (4) If a company contravenes subsection (1) or (2), the company,  
and every responsible person of the company, commit an  
offence, and each is liable to a fine of \$150,000 and to  
imprisonment for 12 months.

#### 276. Failure to comply with Division does not affect validity of financial assistance, etc.

If a company gives financial assistance in contravention of this  
Division, the validity of the financial assistance and of any contract  
or transaction connected with it is not affected only because of the  
contravention.

### Subdivision 3—Exceptions from Prohibition

#### 277. General exceptions

This Division does not prohibit any of the following transactions—

- (a) the distribution of a company's assets—
- (i) by way of dividend lawfully made; or
- (ii) in the course of winding up the company;
- (b) the allotment of bonus shares;
- (c) the reduction of a company's share capital in accordance  
with Division 3;

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- (e) 按照第 13 部第 2 分部 (安排及妥協) 所指的法庭命令而作出的任何事情；
- (f) 按根據《公司 (清盤及雜項條文) 條例》(第 32 章) 第 237 條 (清盤人接受股份等作為出售公司財產的代價的權力) 作出的安排而作出的任何事情；
- (g) 根據一項由公司與其債權人訂立並因《公司 (清盤及雜項條文) 條例》(第 32 章) 第 254 條 (債務償還安排何時對債權人有約束力) 而對該等債權人具約束力的債務償還安排而作出的任何事情。

## 278. 主要目的的例外情況

如符合以下條件，本分部並不禁止公司為購入其股份或其控股公司的股份而提供資助，或為減少或解除為該項購入而招致的債務而提供資助 ——

- (a) 以下兩者其中之一 ——
  - (i) 該公司提供資助的主要目的，並非是為購入其股份或其控股公司的股份，亦非為減少或解除為該項購入而招致的債務；或
  - (ii) 為購入該公司的股份或其控股公司的股份而提供資助，或為減少或解除為該項購入而招致的債務而提供的資助，僅屬該公司某些其他較大目的之附帶部分；及
- (b) 資助是真誠地為了該公司的利益而提供的。

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- (d) the redemption or buy-back of a company's own shares in accordance with Division 4;
- (e) anything done in accordance with a court order under Division 2 of Part 13 (arrangements and compromises);
- (f) anything done under an arrangement made under section 237 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (power of liquidator to accept shares, etc., as consideration for sale of property of company);
- (g) anything done under an arrangement made between a company and its creditors that is binding on the creditors because of section 254 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (arrangement, when binding on creditors).

## 278. Principal purpose exception

This Division does not prohibit a company from giving financial assistance for the purpose of the acquisition of a share in the company or its holding company or for the purpose of reducing or discharging a liability incurred for such an acquisition if—

- (a) either—
  - (i) the company's principal purpose in giving the assistance is not to give it for the purpose of the acquisition of a share in the company or its holding company or for the purpose of reducing or discharging a liability incurred for such an acquisition; or
  - (ii) the giving of the assistance for the purpose of the acquisition of a share in the company or its holding company or for the purpose of reducing or discharging a liability incurred for such an

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## 279. 貸款業務的例外情況

在第 282 條的規限下，本分部並不禁止以借出款項為其通常業務一部分的公司在通常業務運作中借出款項。

## 280. 僱員參股計劃的例外情況

(1) 在第 282 條的規限下，本分部並不禁止 ——

- (a) 公司真誠地為了該公司的利益，而為僱員參股計劃的目的提供資助；或
- (b) 某公司（**出資公司**）為本身或與其同屬一個公司集團成員的另一公司為有關目的而作出的任何事情而提供資助，或在與該等事情有關連的情況下提供資助，上述“有關目的”，是讓出資公司或其控權公司的股份在以下人士之間進行的、涉及以下人士購入該等股份的實益擁有權的交易得以進行，或利便該等交易進行 ——
  - (i) 正真誠地受僱於或曾真誠地受僱於出資公司或與其同屬一個公司集團成員的另一公司的人；或
  - (ii) 第 (i) 節提述的人的配偶、遺孀、未亡夫或未成年子女。

(2) 在本條中 ——

**子女** (children) 包括繼子女、非婚生子女及以香港法律承認的任何方式領養的子女；

**未成年子女** (minor children) 指未滿 18 歲的子女；

acquisition is only an incidental part of some larger purpose of the company; and

- (b) the assistance is given in good faith in the interests of the company.

## 279. Exception for money lending businesses

Subject to section 282, this Division does not prohibit the lending of money by a company in the ordinary course of business if the lending of money is part of the ordinary business of the company.

## 280. Exception for employee share schemes

(1) Subject to section 282, this Division does not prohibit—

- (a) the giving by a company, in good faith in the interests of the company, of financial assistance for the purposes of an employee share scheme; or
- (b) the giving of financial assistance by a company for the purposes of, or in connection with, anything done by the company or another company in the same group of companies for the purposes of enabling or facilitating transactions in shares in the company or its holding company between, and involving the acquisition of beneficial ownership of those shares by—
  - (i) persons employed or formerly employed in good faith by that company or another company in the same group of companies; or
  - (ii) spouses, widows, widowers, or minor children of persons referred to in subparagraph (i).

(2) In this section—

**children** (子女) includes step-children, illegitimate children and children adopted in any manner recognized by the law of Hong Kong;

**僱員參股計劃** (employee share scheme) 指旨在鼓勵或利便由以下的人持有或為以下的人的利益而持有公司股份的計劃——

- (a) 正真誠地受僱於或曾真誠地受僱於該公司或與其同屬一個公司集團成員的另一公司的人；或
- (b) (a)段提述的人的配偶、遺孀、未亡夫或未成年子女。

## 281. 貸款給僱員的例外情況

- (1) 在第 282 條的規限下，本分部並不禁止公司為使其合資格的僱員能購入並以實益擁有權的方式持有該公司或其控權公司的繳足股款的股份，而向該等僱員借出貸款。

- (2) 在本條中——

**子女** (child) 包括繼子女、非婚生子女及以香港法律承認的任何方式領養的子女；

**合資格的僱員** (eligible employees) 就公司而言，指真誠地受僱於該公司而並非以下人士的人——

- (a) 該公司的董事；
- (b) 董事的配偶；
- (c) 董事的未滿 18 歲的子女；
- (d) 符合以下說明的信託 (第 280(2) 條所界定的僱員參股計劃或退休金計劃除外) 的受託人——
  - (i) 該項信託的受益人包括 (a)、(b) 或 (c) 段提述的人；或
  - (ii) 該項信託的條款授予受託人一項可為 (a)、(b) 或 (c) 段提述的人的利益而行使的權力；或

**employee share scheme** (僱員參股計劃) means a scheme for encouraging or facilitating the holding of shares in a company by or for the benefit of—

- (a) persons employed or formerly employed in good faith by that company or another company in the same group of companies; or
- (b) spouses, widows, widowers, or minor children of persons referred to in paragraph (a);

**minor children** (未成年子女) means children who are under 18 years of age.

## 281. Exception for loans to employees

- (1) Subject to section 282, this Division does not prohibit the making by a company of loans to its eligible employees for the purpose of enabling them to acquire fully paid shares in the company or its holding company to be held by them by way of beneficial ownership.

- (2) In this section—

**child** (子女) includes a step-child, an illegitimate child and a child adopted in any manner recognized by the law of Hong Kong;

**eligible employees** (合資格的僱員), in relation to a company, means persons employed in good faith by the company, other than—

- (a) a director of the company;
- (b) a director's spouse;
- (c) a director's child who is under 18 years of age;
- (d) a trustee of a trust (other than an employee share scheme as defined by section 280(2) or a pension scheme)—
  - (i) the beneficiaries of which include a person referred to in paragraph (a), (b) or (c); or



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- (e) (a)、(b) 或 (c) 段提述的人的合夥人或 (d) 段提述的受託人的合夥人。

## 282. 對上市公司的特別限制

只有在符合以下條件的情況下，第 279、280 或 281 條才適用於上市公司 ——

- (a) 該公司擁有沒有因提供有關資助而減少的淨資產；或
- (b) 該等資產因此而減少，而在減少的範圍內，有關資助是從可分派利潤中獲得提供的。

### 第 4 次分部 —— 提供資助的授權

## 283. 資助不得超過股東資金的 5%

- (1) 如符合以下條件，公司可為購入其股份或其控權公司的股份而提供資助，或為減少或解除為該項購入而招致的債務而提供資助 ——
  - (a) 董事在提供該項資助前議決 ——
    - (i) 該公司應提供該項資助；
    - (ii) 提供該項資助符合該公司的最佳利益；及
    - (iii) 提供該項資助的條款及條件，對該公司而言屬公平及合理；
  - (b) 董事通過該項決議的同一日，表決贊成該項決議的董事就提供該項資助作出符合第 2 分部的償付能力陳述；
  - (c) 該項資助加上任何其他根據本條提供但尚未償還的資助的總數，不超過該公司的已繳股本及儲備（以

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- (ii) the terms of which confer a power on the trustees that may be exercised for the benefit of a person referred to in paragraph (a), (b) or (c); or
- (e) a partner of a person referred to in paragraph (a), (b) or (c) or of a trustee referred to in paragraph (d).

## 282. Special restriction for listed companies

Section 279, 280 or 281 applies to a listed company only if—

- (a) the company has net assets that are not reduced by the giving of the financial assistance; or
- (b) to the extent that those assets are reduced, the assistance is provided by a payment out of distributable profits.

### Subdivision 4—Authorization for Giving Financial Assistance

## 283. Financial assistance not exceeding 5% of shareholders funds

- (1) A company may give financial assistance for the purpose of the acquisition of a share in the company or its holding company or for the purpose of reducing or discharging a liability incurred for such an acquisition if—
  - (a) the directors resolve, before the assistance is given, that—
    - (i) the company should give the assistance;
    - (ii) giving the assistance is in the best interests of the company; and
    - (iii) the terms and conditions under which the assistance is to be given are fair and reasonable to the company;
  - (b) on the same day that the directors pass the resolution, the directors who vote in favour of it make a solvency

公司最新經審計的財務報表內披露者為準) 的 5% ;  
及

- (d) 該項資助是在根據 (b) 段作出償付能力陳述的日期後的 12 個月內提供的。
- (2) 董事根據第 (1)(a) 款通過的決議，須詳列他們對第 (1)(a)(i)、(ii) 及 (iii) 款提述的事宜所下結論的理由。
- (3) 在第 (1)(c) 款中，提述任何其他根據本條提供但尚未償還的資助，包括以擔保或保證的形式提供的資助的款額，而在提供該資助時，公司是仍然就該擔保或保證負有法律責任。
- (4) 公司須在根據本條提供資助後的 15 日內，向其每名成員送交根據第 (1)(b) 款作出的償付能力陳述的文本，及載有下列資料的通知——
- (a) 提供該項資助所關乎的股份的類別及數目；
- (b) 已就或須就該等股份支付的代價；
- (c) 獲得該項資助的人的姓名或名稱，如獲得資助的人是不同的人，該等股份的實益擁有人的姓名或名稱；
- (d) 該項資助的性質、條款及款額。
- (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。

statement that complies with Division 2 in relation to the giving of the assistance;

- (c) the aggregate amount of the assistance and any other financial assistance given under this section that has not been repaid does not exceed 5% of the paid up share capital and reserves of the company (as disclosed in the most recent audited financial statements of the company); and
- (d) the assistance is given not more than 12 months after the day on which the solvency statement is made under paragraph (b).
- (2) The resolution of the directors under subsection (1)(a) must set out in full the grounds for their conclusions as to the matters referred to in subsection (1)(a)(i), (ii) and (iii).
- (3) A reference in subsection (1)(c) to any other financial assistance given under this section that has not been repaid includes the amount of any financial assistance given in the form of a guarantee or security for which the company remains liable at the time the financial assistance in question is given.
- (4) Within 15 days after giving financial assistance under this section, the company must send to each member of the company a copy of the solvency statement made under subsection (1)(b) and a notice containing the following information—
- (a) the class and number of shares in respect of which the assistance was given;
- (b) the consideration paid or payable for those shares;
- (c) the name of the person receiving the assistance and, if a different person, the name of the beneficial owner of those shares;

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#### 284. 經公司所有成員批准的資助

- (1) 如符合以下條件，公司可為購入其股份或其控權公司的股份而提供資助，或為減少或解除為該項購入而招致的債務而提供資助——
  - (a) 董事在提供該項資助前議決——
    - (i) 該公司應提供該項資助；
    - (ii) 提供該項資助符合該公司的最佳利益；及
    - (iii) 提供該項資助的條款及條件，對該公司而言屬公平及合理；
  - (b) 董事通過該項決議的同一日，表決贊成該項決議的董事就提供該項資助作出符合第 2 分部的償付能力陳述；
  - (c) 在提供該項資助之前，該公司所有成員藉書面決議批准提供該項資助；及
  - (d) 該項資助是在根據 (b) 段作出償付能力陳述的日期後的 12 個月內提供的。
- (2) 董事根據第 (1)(a) 款通過的決議，須詳列他們對第 (1)(a)(i)、(ii) 及 (iii) 款提述的事宜所下結論的理由。

(d) the nature, the terms and the amount of the assistance.

- (5) If the 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.

#### 284. Financial assistance with approval of all members

- (1) A company may give financial assistance for the purpose of the acquisition of a share in the company or its holding company or for the purpose of reducing or discharging a liability incurred for such an acquisition if—
  - (a) the directors resolve, before the assistance is given, that—
    - (i) the company should give the assistance;
    - (ii) giving the assistance is in the best interests of the company; and
    - (iii) the terms and conditions under which the assistance is to be given are fair and reasonable to the company;
  - (b) on the same day that the directors pass the resolution, the directors who vote in favour of it make a solvency statement that complies with Division 2 in relation to the giving of the assistance;
  - (c) the giving of the assistance is approved by written resolution of all members of the company before the assistance is given; and
  - (d) the assistance is given not more than 12 months after the day on which the solvency statement is made under paragraph (b).

**285. 藉普通決議而提供資助**

- (1) 如符合以下條件，公司可為購入其股份或其控股公司的股份而提供資助，或為減少或解除為該項購入而招致的債務而提供資助 ——
  - (a) 董事在提供該項資助前議決 ——
    - (i) 該公司應提供該項資助；
    - (ii) 提供該項資助符合該公司的最佳利益，並惠及該公司沒有接受該項資助的成員；及
    - (iii) 提供該項資助的條款及條件，對該公司及該公司沒有接受該項資助的成員而言屬公平及合理；
  - (b) 董事通過該項決議的同日，表決贊成該項決議的董事就提供該項資助作出符合第 2 分部的償付能力陳述；
  - (c) 該公司向其每名成員送交根據 (b) 段作出的償付能力陳述的文本，及載有下列資料的通知 ——
    - (i) 該項資助的性質及條款，及將會接受該項資助的人的姓名或名稱；
    - (ii) 如該項資助將會提供予另一人的代名人，該另一人的姓名或名稱；
    - (iii) 董事的決議的全文；
    - (iv) 對一名合乎常理的成員理解該項資助的性質及該項資助對公司和公司成員的影響屬必要的進一步資料及解釋；
  - (d) 在提供該項資助前，已獲公司的決議批准提供該項資助；及
  - (e) 該項資助是在以下期間提供的 ——

- (2) The resolution of the directors under subsection (1)(a) must set out in full the grounds for their conclusions as to the matters referred to in subsection (1)(a)(i), (ii) and (iii).

**285. Financial assistance by ordinary resolution**

- (1) A company may give financial assistance for the purpose of the acquisition of a share in the company or its holding company or for the purpose of reducing or discharging a liability incurred for such an acquisition if—
  - (a) the directors resolve, before the assistance is given, that—
    - (i) the company should give the assistance;
    - (ii) giving the assistance is in the best interests of the company and is of benefit to those members of the company not receiving the assistance; and
    - (iii) the terms and conditions under which the assistance is to be given are fair and reasonable to the company and to those members not receiving the assistance;
  - (b) on the same day that the directors pass the resolution, the directors who vote in favour of it make a solvency statement that complies with Division 2 in relation to the giving of the assistance;
  - (c) the company sends to each member of the company a copy of the solvency statement made under paragraph (b) and a notice containing the following information—
    - (i) the nature and terms of the assistance and the name of the person to whom it will be given;
    - (ii) if it will be given to a nominee for another person, the name of that other person;
    - (iii) the text of the resolution of the directors;

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- (i) 根據 (d) 段通過決議的日期後的 28 日或之後；及
  - (ii) 於根據 (b) 段作出的償付能力陳述的日期後的 12 個月內。
- (2) 上述通知及償付能力陳述的文本，須在建議第 (1)(d) 款所指的決議的日期前最少 14 日根據第 (1)(c) 款送交每名成員，並可隨附於關於將會建議通過該決議的大會的通知。
- (3) 儘管有第 (1)(e)(i) 款的規定，如有人就根據本條提供的資助而根據第 286 條向原訟法庭提出申請，則除非原訟法庭另有命令，否則在該申請獲終局裁定前，不得提供該項資助。
- (4) 董事根據第 (1)(a) 款通過的決議，須詳列他們對第 (1)(a)(i)、(ii) 及 (iii) 款提述的事宜所下結論的理由。

## 286. 向原訟法庭申請限制令

- (1) 在根據第 285(1)(d) 條通過提供資助的決議的日期後的 28 日內 ——

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- (iv) any further information and explanation that would be necessary for a reasonable member to understand the nature of the assistance and the implications of giving it for the company and the members;
  - (d) the giving of the assistance is approved by resolution of the company before the assistance is given; and
  - (e) the assistance is given—
    - (i) not less than 28 days after the day on which the resolution is passed under paragraph (d); and
    - (ii) not more than 12 months after the day on which the solvency statement is made under paragraph (b).
- (2) The notice and copy of the solvency statement must be sent to each member under subsection (1)(c) at least 14 days before the day on which the resolution under subsection (1)(d) is proposed and may accompany notice of the meeting at which the resolution will be proposed.
- (3) Despite subsection (1)(e)(i), if an application is made to the Court under section 286 in relation to the giving of financial assistance under this section, the financial assistance must not be given until the application is finally determined, unless the Court orders otherwise.
- (4) The resolution of the directors under subsection (1)(a) must set out in full the grounds for their conclusions as to the matters referred to in subsection (1)(a)(i), (ii) and (iii).

## 286. Application to Court for restraining order

- (1) Within 28 days after the day on which a resolution for the giving of financial assistance is passed under section 285(1)(d), an application to the Court for an order restraining the giving of financial assistance may be made—



- (a) 如有關公司是股份有限公司，佔該公司的股份持有人的總表決權最少 5% 的成員，可向原訟法庭提出申請，尋求一項限制提供資助的命令；或
- (b) 如有關公司是任何其他公司，佔該公司成員人數最少 5% 的成員，可向原訟法庭提出申請，尋求一項限制提供資助的命令。
- (2) 儘管有第 (1) 款的規定，同意或表決贊成有關決議的成員，無權提出上述申請。
- (3) 有權提出申請的成員，可藉書面方式，委任他們當中的任何一人或多於一人，代表所有作出該項委任的成員提出申請。
- (4) 上述申請只可基於以下理由提出 ——
  - (a) 提供該項資助既非 ——
    - (i) 符合該公司的最佳利益；亦非
    - (ii) 惠及該公司沒有接受該項資助的成員；或
  - (b) 提供該項資助的條款及條件，對 ——
    - (i) 該公司而言；及
    - (ii) 該公司沒有接受該項資助的成員而言，並非公平及合理。
- (5) 如有申請根據本條提出 ——
  - (a) 申請人須盡快將申請書送達有關公司；而
  - (b) 該公司須在申請書送達該公司的日期後的 7 日內，向處長發出關於該項申請的通知，該通知須符合指明格式。
- (6) 如公司違反第 (5)(b) 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。

- (a) if the company is limited by shares, by members representing at least 5% of the total voting rights of holders of shares in the company; or
- (b) in any other case, by members representing at least 5% of the members of the company.
- (2) Despite subsection (1), a member who consented to or voted in favour of the resolution is not entitled to apply.
- (3) An application may be made on behalf of the members entitled to apply by any one or more of them appointed in writing by all of them.
- (4) An application under this section may be made only on the ground that—
  - (a) the giving of the assistance is neither—
    - (i) in the best interests of the company; nor
    - (ii) of benefit to those members of the company not receiving the assistance; or
  - (b) the terms and conditions under which the assistance is to be given are not fair and reasonable to—
    - (i) the company; and
    - (ii) those members not receiving the assistance.
- (5) If an application is made under this section—
  - (a) the applicant must, as soon as possible, serve the application on the company; and
  - (b) the company must give the Registrar notice in the specified form of the application within 7 days after the day on which the application is served on the company.
- (6) If the company contravenes subsection (5)(b), 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

**287. 原訟法庭押後申請的權力**

- (1) 原訟法庭如接獲根據第 286 條提出的申請，可將法律程序押後，好讓令原訟法庭滿意的安排得以作出，以保障持異議的成員的權益。
- (2) 原訟法庭可作出它認為合宜的指示及命令，以利便作出或執行任何上述安排。

**288. 原訟法庭確認或限制提供有關資助的權力**

- (1) 原訟法庭如接獲根據第 286 條提出的申請，須作出確認或限制提供有關資助的命令，並可按其認為合適的條款及條件作出該命令。
- (2) 原訟法庭如確認提供資助，可藉命令更改或延展 ——
  - (a) 董事根據第 285(1)(a) 條通過的決議或公司根據第 285(1)(d) 條通過的決議指明的任何日期或期間；或
  - (b) 本分部中任何適用於提供資助的條文指明的任何日期或期間。
- (3) 如原訟法庭認為合適，有關命令可 ——
  - (a) 就公司回購其任何成員的股份及就公司股本據此減少一事，作出規定；
  - (b) 對公司的章程細則作出因上述規定而需作出的更改；
  - (c) 規定公司不得對章程細則作出任何更改或任何指明的更改。
- (4) 如原訟法庭的命令規定，公司不得對其章程細則作出任何更改或任何指明的更改，則公司無權在未獲原訟法庭的許可下作出該更改。

of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

**287. Power of Court to adjourn application**

- (1) The Court may adjourn proceedings on an application under section 286 so that an arrangement may be made to its satisfaction for the protection of the interests of dissentient members.
- (2) The Court may give any directions and make any orders it thinks expedient for facilitating or carrying into effect any such arrangement.

**288. Power of Court to confirm or restrain giving of financial assistance**

- (1) On an application under section 286, the Court must make an order confirming or restraining the giving of financial assistance, and may do so on any terms and conditions it thinks fit.
- (2) If the Court confirms the giving of financial assistance, it may by order alter or extend any date or period of time specified—
  - (a) in the directors' resolution under section 285(1)(a) or the resolution of the company under section 285(1)(d); or
  - (b) in any provision of this Division applying to the giving of financial assistance.
- (3) If the Court thinks fit, the order may—
  - (a) provide for the company to buy back the shares of any of its members and for the reduction accordingly of the company's share capital;
  - (b) make any alteration to the company's articles that may be required as a consequence;

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- (5) 原訟法庭根據本條具有的權力，不局限其根據第 287 條具有的權力。

**289. 公司將原訟法庭命令的文本交付處長**

- (1) 公司須在原訟法庭作出第 288 條所指的命令後的 15 日內，或在原訟法庭命令的任何較長限期內，將該命令的正式文本交付處長登記。
- (2) 如公司違反第 (1) 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。

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- (c) require the company not to make any, or any specified, alteration to its articles.
- (4) If the order of the Court requires the company not to make any, or any specified, alteration to its articles, the company does not have power to make any such alteration without leave of the Court.
- (5) The powers of the Court under this section do not limit its powers under section 287.

**289. Company to deliver copy of order of Court to Registrar**

- (1) Within 15 days after the making of an order by the Court under section 288, or within any longer period ordered by the Court, the company must deliver an office copy of the order to the Registrar for registration.
- (2) If the company contravenes subsection (1), 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.