

第 6 部**利潤及資產的分派**

(格式變更——2013 年第 1 號編輯修訂紀錄)

第 1 分部 —— 導言**290. 釋義**

(1) 在本部中 ——

已催繳股本 (called up share capital) 就公司而言，指該公司的股本中相等於已催繳股款的總額 (不論該等已催繳股款是否已獲繳付) 的部分，連同 ——

- (a) 未催繳而已繳付的股本；及
- (b) 根據章程細則、有關股份的配發條款或任何其他關於繳付該等股份的股款的安排而須在一個指明的未來日期繳付的任何股本，

而**未催繳股本** (uncalled share capital) 須據此理解；**不可分派的儲備** (undistributable reserves) 就公司而言 ——

- (a) 除第 (2) 款另有規定外，指該公司以往尚未透過資本化運用的累積未實現利潤，超出該公司以往尚未因股本減少或股本重組而沖銷的累積未實現虧損的款額；或
- (b) 指任何條例 (本部除外) 或該公司的章程細則禁止該公司分派的任何其他儲備；

分派 (distribution) 指每一種將公司的資產分派 (不論是否採用現金形式) 予其成員的行動，但不包括 ——

- (a) 以發行全部或部分繳付股款的紅股的形式，發行股份；

Part 6**Distribution of Profits and Assets**

(Format changes—E.R. 1 of 2013)

Division 1—Preliminary**290. Interpretation**

(1) In this Part—

called up share capital (已催繳股本), in relation to a company, means so much of its share capital as equals the aggregate amount of the calls made on its shares (whether or not those calls have been paid), together with—

- (a) any share capital paid up without being called; and
- (b) any share capital to be paid on a specified future date under the articles, the terms of allotment of the relevant shares, or any other arrangements for payment of those shares,

and **uncalled share capital** (未催繳股本) is to be read accordingly;**capitalization** (資本化), in relation to a company's profits, means any of the following operations (whenever carried out)—

- (a) applying the profits in wholly or partly paying up unissued shares in the company to be allotted to members of the company as fully or partly paid bonus shares;
- (b) transferring the profits to share capital;

distribution (分派) means every description of distribution of a company's assets to its members, whether in cash or otherwise, except distribution by way of—

- (b) 按照第 5 部第 4 分部從資本 (包括發行新股份所得收益) 或未實現利潤中, 撥款贖回或回購公司的任何股份;
- (c) 藉終絕或減低任何成員就公司的未繳股本所關乎的股份承擔的法律責任, 或藉退還已繳股本, 從而減少股本;
- (d) 於公司清盤時, 將資產分派予成員; 或
- (e) 公司根據第 283、284 或 285 條向成員提供資助;

財務項目 (financial items) 指以下所有項目 ——

- (a) 利潤、虧損、資產及負債;
- (b) 準備金;
- (c) 股本及儲備 (包括不可分派的儲備);

淨資產 (net assets) 就公司而言, 指將該公司的資產總額減去其負債總額後得出的款額;

資本化 (capitalization) 就公司的利潤而言, 指以下任何一項行動 (不論在何時進行) ——

- (a) 將該利潤用作繳付該公司的未發行股份的全部或部分股款, 而該股份是會以全部或部分繳付股款的紅股的形式, 配發予該公司的成員的;
- (b) 將該利潤撥入股本;

資助 (financial assistance) 具有第 274(1) 條給予該詞的涵義。

- (2) 在第 (1) 款 **不可分派的儲備** 的定義的 (a) 段中, 提述資本化, 不包括於 1991 年 9 月 1 日當日或之後將公司的利潤撥入其資本贖回儲備。
- (3) 在本部中 ——
 - (a) 提述任何特定種類的利潤, 即提述在任何時間產生的該種利潤; 及
 - (b) 提述任何特定種類的虧損, 即提述在任何時間產生的該種虧損。

- (a) an issue of shares as fully or partly paid bonus shares;
- (b) a redemption or buy-back of any shares in the company out of capital (including the proceeds of any fresh issue of shares), or out of unrealized profits, in accordance with Division 4 of Part 5;
- (c) a reduction of share capital by extinguishing or reducing any member's liability on any of the company's shares in respect of share capital not paid up, or by repaying paid up share capital;
- (d) a distribution of assets to the members on the company's winding up; or
- (e) financial assistance given by the company to a member under section 283, 284 or 285;

financial assistance (資助) has the meaning given by section 274(1);

financial items (財務項目) means all of the following—

- (a) profits, losses, assets and liabilities;
- (b) provisions;
- (c) share capital and reserves (including undistributable reserves);

net assets (淨資產), in relation to a company, means the aggregate of the company's assets less the aggregate of its liabilities;

undistributable reserves (不可分派的儲備), in relation to a company, means—

- (a) subject to subsection (2), the amount by which the company's accumulated, unrealized profits, so far as not previously utilized by capitalization, exceeds its accumulated, unrealized losses, so far as not previously written off in a reduction or reorganization of capital; or

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- (4) 就本部而言，如根據第 302 條藉參照某財務報表述明的財務項目釐定分派的款額，並依據該項釐定作出有關分派，則該財務報表即屬參照財務報表。

291. 已實現利潤及虧損

- (1) 在本部中，提述公司的已實現利潤或已實現虧損，即提述該公司的利潤或虧損中，按照在董事擬備財務報表時普遍接受的關於為會計目的而釐定已實現利潤或已實現虧損的原則，屬為該報表的目的視為已實現利潤或已實現虧損者。
- (2) 如根據某特定條文（不論是否在任何條例中出現），某種類的利潤或虧損視為已實現者，第 (1) 款不影響該條文。
- (3) 公司的董事如在作出一切合理查究後，仍未能斷定在 1991 年 9 月 1 日前產生的某項利潤或虧損，是否屬已實現利潤或已實現虧損，則可為本部的目的，將該項利潤視為已實現利潤，及將該項虧損視為未實現虧損。

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- (b) any other reserve that the company is prohibited from distributing by an Ordinance (other than this Part) or by its articles.
- (2) In paragraph (a) of the definition of ***undistributable reserves*** in subsection (1), a reference to capitalization excludes a transfer of profits of the company to its capital redemption reserve on or after 1 September 1991.
- (3) In this Part—
- (a) a reference to profits of any particular description is a reference to profits of that description made at any time; and
- (b) a reference to losses of any particular description is a reference to losses of that description made at any time.
- (4) For the purposes of this Part, any financial statements are referential financial statements if the distribution in question is made pursuant to determinations made by reference to financial items as stated in the financial statements under section 302.

291. Realized profits and losses

- (1) In this Part, a reference to realized profits or realized losses of a company is a reference to those profits or losses of the company that are regarded as realized profits or realized losses for the purpose of any financial statements prepared by the directors in accordance with principles generally accepted, at the time when the financial statements are prepared, with respect to the determination for accounting purposes of realized profits or realized losses.
- (2) Subsection (1) does not affect any specific provision (whether in an Ordinance or otherwise) under which profits or losses of any description are regarded as realized.

292. 某些款額須視為已實現利潤或虧損

- (1) 就本部而言，不屬第 (2) 款指明的款額的準備金，須視為已實現虧損。
- (2) 上述款額，即藉為下述事宜提供準備而予以沖銷或保留的款額 ——
 - (a) 在重估公司所有固定資產的價值時出現的固定資產減值；或
 - (b) 在重估公司除商譽以外的所有固定資產的價值時出現的固定資產減值。
- (3) 為施行第 (2) 款，如有以下情況，則董事在某特定時刻就某固定資產的價值作出的考慮，須視為重估該資產的價值 ——
 - (a) 有關公司是上市公司，而第 (4)(a) 及 (b) 款指明的條件獲符合；或
 - (b) 有關公司不是上市公司，而 ——
 - (i) 有關參照財務報表是第 304 條指明的財務報表，且第 (4)(a) 及 (b) 款指明的條件獲符合；或
 - (ii) 有關參照財務報表是第 305 或 306 條指明的財務報表，且第 (4)(a) 款指明的條件獲符合。
- (4) 上述條件為 ——
 - (a) 董事信納在有關時刻，公司的固定資產的總值，不少於有關財務報表當其時述明的該等資產的總額；及
 - (b) 有關參照財務報表的附註述明 ——

- (3) If, after making all reasonable enquiries, a company's directors are unable to determine whether or not a particular profit or loss made before 1 September 1991 is realized, they may treat the profit as realized, and the loss as unrealized, for the purposes of this Part.

292. Certain amount to be regarded as realized profit or loss

- (1) For the purposes of this Part, a provision other than an amount specified in subsection (2) is to be regarded as a realized loss.
- (2) The amount is one written off or retained by way of providing for a diminution in value of a fixed asset appearing on a revaluation of—
 - (a) all of the company's fixed assets; or
 - (b) all of the company's fixed assets other than goodwill.
- (3) For the purposes of subsection (2), any consideration by the directors of the value at a particular time of a fixed asset is to be regarded as a revaluation of the asset if—
 - (a) in the case of a listed company, the conditions specified in subsection (4)(a) and (b) are satisfied; or
 - (b) in the case of any other company—
 - (i) where the referential financial statements are the financial statements specified in section 304, the conditions specified in subsection (4)(a) and (b) are satisfied; or
 - (ii) where the referential financial statements are the financial statements specified in section 305 or 306, the condition specified in subsection (4)(a) is satisfied.
- (4) The conditions are—

- (i) 董事已對該公司的固定資產的價值作出考慮，但並無實際上重估該等資產的價值；
 - (ii) 董事信納在作出上述考慮時，該等資產的總值，不少於有關財務報表當其時述明的該等資產的總額；及
 - (iii) 據此，憑藉本款，有關款額在該公司的固定資產的價值須視為已在該時刻被重估的基礎上，在有關參照財務報表內述明。
- (5) 就本部而言，如 ——
- (a) 在重估固定資產的價值時，顯示有未實現利潤產生；及
 - (b) 在作出價值重估時或之後，有一筆款項就該固定資產在某段期間的折舊而沖銷或保留，
- 則該筆款項超出關乎該資產在該段期間的折舊的預計款項的款額，須視為在該段期間產生的已實現利潤。
- (6) 在為第 (5) 款的目的斷定公司就某資產是否有利潤或虧損時，如 ——
- (a) 並無該資產的原來成本的紀錄；或
 - (b) 無法在不承受不合理支出不合理延誤的情況下，取得該資產的原來成本的紀錄，
- 則在該公司取得該資產時或之後所備有的關於該資產的價值的最早紀錄中記載的該資產的價值，須視為該資產的成本。
- (7) 在第 (5) 款中 ——
- 預計款項** (projected sum) 就固定資產的折舊而言，指假使沒有重估該資產的價值則本應會就折舊而沖銷或保留的款項。
- (8) 就本條而言，公司的資產如擬在該公司的活動中持續使用，或因其他原因而為該公司的活動的目的持續持有，須視為固定資產。

- (a) that the directors are satisfied that the aggregate value at that time of the company's fixed assets is not less than the aggregate amount at which they are for the time being stated in the financial statements; and
 - (b) that it is stated in a note to the referential financial statements that—
 - (i) the directors have considered the value of the company's fixed assets without actually revaluing them;
 - (ii) the directors are satisfied that the aggregate value at the time of consideration of those assets is or was not less than the aggregate amount at which they are or were for the time being stated in the financial statements; and
 - (iii) accordingly, by virtue of this subsection, amounts are stated in the referential financial statements on the basis that a revaluation of the company's fixed assets is to be regarded as having taken place at that time.
- (5) For the purposes of this Part, if—
- (a) on the revaluation of a fixed asset, an unrealized profit is shown to have been made; and
 - (b) on or after the revaluation, a sum is written off or retained for depreciation of the fixed asset over a period, the amount by which the sum exceeds the projected sum in relation to the depreciation of that asset over the period is to be regarded as a realized profit made over the period.
- (6) In determining whether a company has made a profit or loss on an asset for the purposes of subsection (5), the value given to the asset in the earliest available record of its value made

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293. 關乎經營長期業務的保險公司的某些款額須視為已實現利潤或虧損

- (1) 本條適用於屬保險人並且經營長期業務的公司。
- (2) 就本部而言 ——
 - (a) 從公司就長期業務而維持的基金的盈餘中，恰當地撥入該公司的全面收益表的款額，須視為已實現利潤；及
 - (b) 該基金的赤字須視為已實現虧損。
- (3) 在不抵觸第 (2) 款的條文下，為施行本部，公司的長期業務所產生的利潤或虧損須不予理會。
- (4) 在本條中 ——
 - (a) 提述公司維持的基金的盈餘，即提述經精算調查後得出的、代表該基金的資產超出可歸因於其長期業務的負債的款額；及

on or after its acquisition by the company is to be regarded as the cost of the asset if—

- (a) there is no record of the original cost of the asset; or
- (b) a record of the original cost of the asset cannot be obtained without unreasonable expense or delay.

(7) In subsection (5)—

projected sum (預計款項), in relation to a depreciation of a fixed asset, means a sum that would have been written off or retained for depreciation if the revaluation of the asset had not been made.

- (8) For the purposes of this section, an asset of a company is to be regarded as a fixed asset if it is intended for use in the company's activities, or otherwise to be held for the purpose of the company's activities, on a continuing basis.

293. Certain amount relating to insurance company with long term business to be regarded as realized profit or loss

- (1) This section applies to a company that is an insurer and carries on long term business.
- (2) For the purposes of this Part—
 - (a) an amount properly transferred to the statement of comprehensive income of the company from a surplus in the fund maintained by it in respect of the long term business is to be regarded as a realized profit; and
 - (b) a deficit in that fund is to be regarded as a realized loss.
- (3) Subject to subsection (2), any profit or loss arising in the company's long term business is to be disregarded for the purposes of this Part.
- (4) In this section—

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(b) 提述該基金的赤字，即提述經精算調查後得出的該負債超出該資產的款額。

(5) 在本條中 ——

長期業務 (long term business) 具有《保險業條例》(第 41 章) 第 2(1) 條給予該詞的涵義；(由 2015 年第 12 號第 166 條修訂)

保險人 (insurer) 具有《保險業條例》(第 41 章) 第 2(1) 及 (2) 條給予該詞的涵義；(由 2015 年第 12 號第 166 條修訂)

精算調查 (actuarial investigation) 指 ——

(a) 根據《保險業條例》(第 41 章) 第 18 條進行的調查；或 (由 2015 年第 12 號第 166 條修訂)

(b) 依據一項根據該條例第 32 條施加的規定進行的調查。

294. 以實物形式分派：某些款額須視為已實現利潤

如公司作出屬或包含非現金資產的分派，而有關參照財務報表述明的該資產款額當中某部分是代表未實現利潤的，則為斷定該項按照本部作出的分派（不論是在作出該項分派之前或之後斷定）的合法性的目的，該部分款額須視為已實現利潤。

295. 本部的適用範圍

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(a) a reference to a surplus in a fund maintained by a company is a reference to an excess of the assets representing the fund over the company's liabilities attributable to its long term business, as shown by an actuarial investigation; and

(b) a reference to a deficit in such a fund is a reference to an excess of those liabilities over those assets, as shown by an actuarial investigation.

(5) In this section—

actuarial investigation (精算調查) means an investigation—

(a) made under section 18 of the Insurance Ordinance (Cap. 41); or (*Amended 12 of 2015 s. 166*)

(b) made pursuant to a requirement imposed under section 32 of that Ordinance;

insurer (保險人) has the meaning given by section 2(1) and (2) of the Insurance Ordinance (Cap. 41); (*Amended 12 of 2015 s. 166*)

long term business (長期業務) has the meaning given by section 2(1) of the Insurance Ordinance (Cap. 41). (*Amended 12 of 2015 s. 166*)

294. Distribution in kind: certain amount to be regarded as realized profit

If a company makes a distribution consisting of or including a non-cash asset, and any part of the amount at which the asset is stated in the referential financial statements represents an unrealized profit, that part of that amount is to be regarded as a realized profit for the purpose of determining, before or after the distribution, the lawfulness of the distribution in accordance with this Part.

295. Application of Part

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- (1) 本部就本部的生效日期[#]當日或之後作出的分派而適用，但第(2)款指明的分派則不包括在內。
- (2) 上述不包括在內的分派即符合以下說明的分派：假使本部就該項分派而適用的話，則會根據第 302 條釐定分派的款額，而該項釐定，是藉參照關乎在本部的生效日期[#]前開始的財政年度或期間的財務報表所述明的財務項目而作出的。

編輯附註：

[#] 生效日期：2014 年 3 月 3 日。

296. 保留其他對分派的限制

如任何條例、法律規則或公司章程細則的條文，對可撥作分派的款項或對可作出分派的情況加以限制，本部並不影響該條例、法律規則或條文。

第 2 分部 —— 禁止和限制

297. 禁止某些分派

- (1) 公司只可從可供分派的利潤中撥款作出分派。
- (2) 就本條而言，公司可供分派的利潤，是將公司以往尚未透過分派或資本化運用的累積已實現利潤，減去以往尚未因股本減少或股本重組而沖銷的累積已實現虧損的款額。

298. 上市公司只可作出某些分派

- (1) 上市公司只可在下述條件均獲符合的情況下作出分派——

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- (1) This Part applies in relation to a distribution made on or after the commencement date[#] of this Part, except a distribution specified in subsection (2).
- (2) The excepted distribution is a distribution the amount of which would, had this Part applied in relation to the distribution, be determined under section 302 by reference to the financial items as stated in any financial statements for a financial year or period beginning before the commencement date[#] of this Part.

Editorial Note:

[#] Commencement date: 3 March 2014.

296. Saving for other restraints on distribution

This Part does not affect any Ordinance or rule of law, or any provision of a company's articles, restricting the sums out of which, or the cases in which, a distribution may be made.

Division 2—Prohibitions and Restrictions

297. Prohibition on certain distributions

- (1) A company may only make a distribution out of profits available for distribution.
- (2) For the purposes of this section, a company's profits available for distribution are its accumulated, realized profits, so far as not previously utilized by distribution or capitalization, less its accumulated, realized losses, so far as not previously written off in a reduction or reorganization of capital.

298. Listed company may only make certain distributions

- (1) A listed company may only make a distribution—

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- (a) 其淨資產款額不少於其已催繳股本及不可分派的儲備的總額；及
 - (b) 作出該項分派，不會使該等資產的款額減至少於該總額，而該項分派亦以此為限。
- (2) 上市公司不得為根據本條釐定其淨資產款額的目的，而將未催繳股本作為資產計入。

299. 運用未實現利潤的限制

公司不得將未實現利潤運用於支付債權證款項，或運用於支付其已發行股份的任何未付款額。

300. 財政司司長可就投資公司變通或豁免條文

(1) 財政司司長可應投資公司的申請 ——

- (a) 就該公司而對第 297、298 或 299 條所訂的禁止或限制予以變通；或
 - (b) 豁免該公司使其無須受任何上述禁止或限制所規限。
- (2) 財政司司長在根據第 (1) 款作出變通或批予豁免時，可規定該變通或豁免須受其認為合適的條款及條件規限。
- (3) 在本條中 ——

投資公司 (investment company) 指符合以下說明的上市公司：其主要業務，是將其資金投資於證券、土地或其他資產上，而目的是 ——

- (a) 分散投資風險；及
- (b) 將管理該等資產所得成果的利益給予其成員。

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- (a) if the amount of its net assets is not less than the aggregate of its called up share capital and undistributable reserves; and
 - (b) if, and to the extent that, the distribution does not reduce the amount of those assets to an amount less than that aggregate.
- (2) A listed company must not include any uncalled share capital as an asset for the purpose of determining the amount of its net assets under this section.

299. Restriction on application of unrealized profits

A company must not apply an unrealized profit in paying up debentures or in paying up any amount unpaid on its issued shares.

300. Financial Secretary may modify or exempt provisions in relation to investment company

- (1) On application by an investment company, the Financial Secretary may—
- (a) modify, in relation to the company, any of the prohibitions or restrictions in section 297, 298 or 299; or
 - (b) exempt the company from any of such prohibitions or restrictions.
- (2) The Financial Secretary may make a modification or exemption under subsection (1) subject to any terms and conditions that the Financial Secretary thinks fit.
- (3) In this section—

investment company (投資公司) means a listed company whose principal business consists of investing its funds in securities, land or other assets with the aim of—

- (a) spreading investment risk; and

301. 不合法分派的後果

- (1) 如有以下情況，則本條適用 ——
- (a) 公司在違反 ——
- (i) 第 297、298 或 299 條；或
- (ii) 經第 300 條變通的上述條文所訂的禁止或限制，的情況下，向該公司其中一名成員作出分派或部分分派；及
- (b) 在該項分派作出時，該成員知道或有合理理由相信，該項分派或該部分分派（視屬何情況而定）是在違反上述條文或經變通的禁止或限制的情況下作出的。
- (2) 如有關分派是以現金形式作出的，則有關成員有法律責任向公司付還該項分派或該部分分派（視屬何情況而定）所派出的款項。
- (3) 如有關分派是以現金以外的形式作出的，則有關成員有法律責任向公司支付一筆款項，其款額須相等於該項分派或該部分分派（視屬何情況而定）所派出的資產在分派時的價值。
- (4) 本條不影響在其他情況下施加於公司成員的、要求該成員向該公司付還不合法地分派予該成員的資產的法律責任。
- (5) 本條不就以下事宜而適用 ——
- (a) 公司就贖回或回購本身的股份而作出的任何付款；或
- (b) 公司在違反第 275 條的情況下提供的資助。

- (b) giving its members the benefit of the results of the management of the assets.

301. Consequences of unlawful distribution

- (1) This section applies if—
- (a) a company makes a distribution, or part of a distribution, to one of its members in contravention of—
- (i) section 297, 298 or 299; or
- (ii) a prohibition or restriction in that section as modified under section 300; and
- (b) at the time of the distribution, the member knows or has reasonable grounds for believing that the distribution, or that part of the distribution (as the case may be) is made in contravention of that section or modified prohibition or restriction.
- (2) If the distribution is made in cash, the member is liable to repay the distribution, or that part of the distribution (as the case may be) to the company.
- (3) If the distribution is made otherwise than in cash, the member is liable to pay to the company a sum equal to the value of the distribution or that part of the distribution (as the case may be) at the time of the distribution.
- (4) This section does not affect any obligation otherwise imposed on a member of a company to repay a distribution unlawfully made to the member.
- (5) This section does not apply in relation to—
- (a) any payment made by a company in respect of the redemption or buy-back by the company of shares in itself; or
- (b) any financial assistance given by a company in contravention of section 275.

第 3 分部 —— 第 2 分部的補充條文**302. 藉參照公司的財務報表而提供分派的依據**

可在不違反第 297、298 或 299 條或經第 300 條變通的上述條文所訂的禁止或限制的情況下分派的款額，須藉參照第 4 分部指明的財務報表述明的財務項目而釐定。

303. 相繼分派

(1) 如有以下情況，本條適用 ——

- (a) 公司建議依據藉參照某財務報表述明的財務項目作出的釐定，作出分派；及
- (b) 公司 ——
 - (i) 曾依據藉參照該財務報表述明的財務項目作出的釐定，作出一次或多於一次分派；或
 - (ii) 在擬備該財務報表後，曾向某人給予第 (3) 款指明的資助，或曾作出第 (4) 款指明的付款。

(2) 為釐定可建議在不違反第 297、298 或 299 條或經第 300 條變通的上述條文所訂的禁止或限制的情況下分派的款額的目的，第 302 條適用，猶如建議分派的款額是以過往的分派、資助及其他付款的款額為加幅而增加一樣。

(3) 有關資助是 ——

- (a) 公司從其可分派利潤中撥款提供的資助；或
- (b) 符合以下說明的資助 ——
 - (i) 由公司在違反第 5 部第 5 分部的情況下提供的；及
 - (ii) 提供該資助，會減少公司的淨資產或增加公司的淨負債。

Division 3—Provisions Supplementary to Division 2**302. Justification of distribution by reference to financial statements**

The amount of a distribution that may be made without contravening section 297, 298 or 299, or a prohibition or restriction in that section as modified under section 300, is to be determined by reference to the financial items as stated in the financial statements specified in Division 4.

303. Successive distributions

(1) This section applies if—

- (a) a company proposes to make a distribution pursuant to determinations made by reference to financial items as stated in any financial statements; and
- (b) the company—
 - (i) has made one or more prior distributions pursuant to determinations made by reference to financial items as stated in the financial statements; or
 - (ii) since the financial statements were prepared, has given financial assistance specified in subsection (3) or has made a payment specified in subsection (4).

(2) Section 302 applies for the purpose of determining the amount of the proposed distribution that may be made without contravening section 297, 298 or 299, or a prohibition or restriction in that section as modified under section 300, as if the amount of the proposed distribution were increased by the amount of the prior distributions, financial assistance and other payments.

(3) The financial assistance is—

(4) 有關付款是 ——

- (a) 公司就回購本身的股份而作出的付款 (不是從可分派利潤撥款作出的合法付款除外)；或
- (b) 公司作出的屬第 257(5) 條指明的任何種類的付款 (不是從可分派利潤撥款作出的合法付款除外)。

(5) 在本條中 ——

負債 (liabilities) 具有第 274(1) 條給予該詞的涵義；

淨負債 (net liabilities) 就提供資助的公司而言，指公司負債總額超出公司資產總額之數 (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)；

淨資產 (net assets) 就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)。

- (a) financial assistance that is given by the company out of its distributable profits; or
- (b) financial assistance—
 - (i) that is given by the company in contravention of Division 5 of Part 5; and
 - (ii) the giving of which reduces the company's net assets or increases its net liabilities.

(4) The payment is—

- (a) a payment made by the company in respect of the buy-back by the company of shares in itself (except a payment lawfully made otherwise than out of distributable profits); or
- (b) a payment made by the company of any description specified in section 257(5) (except a payment lawfully made otherwise than out of distributable profits).

(5) In this section—

liabilities (負債) has the meaning given by section 274(1);

net assets (淨資產), in relation to a company that gives any financial assistance, 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);

net liabilities (淨負債), in relation to a company that gives any financial assistance, means the amount by which the aggregate of the company's liabilities exceeds the aggregate of its assets (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).

第 4 分部 —— 指明財務報表

Division 4—Specified Financial Statements

304. 為第 302 條的目的而指明的對上周年財務報表

- (1) 除第 305 及 306 條另有規定外，為第 302 條的目的而指明的財務報表，即符合第 (2)、(3)、(4)、(5) 及 (6) 款的董事就對上的財政年度擬備的財務報表。
- (2) 上述財務報表須屬——
 - (a) 已根據第 429(1) 條在成員大會上提交公司省覽者；或
 - (b) 已根據第 430(3) 條送交每名成員者。
- (3) 上述財務報表須——
 - (a) 是按照第 9 部第 4 分部第 3 次分部妥為擬備；或
 - (b) 是按照第 9 部第 4 分部第 3 次分部妥為擬備，但只就為第 (8) 款指明的目的屬無關重要的事宜除外。
- (4) 公司核數師須已根據第 405 條擬備有關財務報表的報告。
- (5) 如核數師沒有在有關核數師報告內給予無保留意見，指出財務報表是遵照本條例妥為擬備的，則該核數師須已作出書面陳述，述明該核數師認為該報告對之有所保留的事宜，就第 (8) 款指明的目的而言是否事關重要的。
- (6) 第 (5) 款所指的書面陳述——
 - (a) 可在作出報告的時間或其後作出；及
 - (b) 須在成員大會上提交公司省覽，或送交根據第 430(3) 條獲送交核數師報告的每名成員。
- (7) 第 (5) 款所指的書面陳述，就該陳述所關乎的已建議的分派的目的而言，即屬足夠。如該書面陳述關乎任何特定種類的分派，則就該種類分派所包含的某項分派而言，即使在作出該陳述時尚未建議該項分派，該陳述亦屬足夠。
- (8) 為第 (3) 及 (5) 款而指明的目的，是藉參照有關財務報表述明的財務項目而斷定有關分派是否違反第 297、298 或

304. Last annual financial statements specified for purposes of section 302

- (1) Subject to sections 305 and 306, the financial statements specified for the purposes of section 302 are the financial statements prepared by the directors for the previous financial year, in relation to which subsections (2), (3), (4), (5) and (6) are complied with.
- (2) The financial statements must—
 - (a) have been laid before the company in general meeting under section 429(1); or
 - (b) have been sent to every member under section 430(3).
- (3) The financial statements must—
 - (a) have been properly prepared in accordance with Subdivision 3 of Division 4 of Part 9; or
 - (b) have been properly prepared in accordance with Subdivision 3 of Division 4 of Part 9, except only in relation to the matters that are not material for the purpose specified in subsection (8).
- (4) The company's auditor must have prepared a report on the financial statements under section 405.
- (5) If, in the auditor's report, the auditor has not given an unqualified opinion to the effect that the financial statements have been properly prepared in compliance with this Ordinance, the auditor must have given a written statement as to whether, in the auditor's opinion, the matter in respect of which the report is qualified is material for the purpose specified in subsection (8).
- (6) A written statement under subsection (5)—
 - (a) may be made at the time of the report or subsequently; and

299 條或經第 300 條變通的上述條文所訂的禁止或限制的目的。

(b) must be laid before the company in general meeting or sent to every member to whom the auditor's report is sent under section 430(3).

- (7) A written statement under subsection (5) is sufficient for the purpose of a distribution to which it relates and that has been proposed. If such a written statement relates to distributions of any particular description, the statement is also sufficient for the purpose of a distribution included in those distributions, even though the distribution has not been proposed at the time of the statement.
- (8) The purpose specified for subsections (3) and (5) is the purpose of determining, by reference to the financial items as stated in the financial statements, whether the distribution would be made in contravention of section 297, 298 or 299, or a prohibition or restriction in that section as modified under section 300.

305. 為第 302 條的目的而指明的臨時財務報表

- (1) 本條在以下情況下適用：假使可予分派的款額是藉參照第 304 條指明的財務報表述明的財務項目而斷定的，該項分派便會違反第 297、298 或 299 條或經第 300 條變通的上述條文所訂的禁止或限制。
- (2) 為第 302 條的目的而指明的財務報表，是符合以下說明的公司財務報表——
 - (a) 如屬上市公司——
 - (i) 對使人能夠就財務項目的款額作出合理判斷屬必需的；及
 - (ii) 第 (3)、(5) 及 (6) 款就該財務報表而獲符合；或
 - (b) 如屬任何其他公司，對使人能夠就財務項目的款額作出合理判斷屬必需的。
- (3) 在第 (4) 款的規限下，有關財務報表須——

305. Interim financial statements specified for purposes of section 302

- (1) This section applies where the distribution would be made in contravention of section 297, 298 or 299, or a prohibition or restriction in that section as modified under section 300, if the amount of distribution that may be made were determined by reference to the financial items as stated in the financial statements specified in section 304.
- (2) The financial statements specified for the purposes of section 302 are the company's financial statements—
 - (a) in the case of a listed company—
 - (i) that is necessary to enable a reasonable judgement to be made as to the amounts of the financial items; and

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- (a) 是按照第 9 部第 4 分部第 3 次分部妥為擬備的；或
- (b) 是按照第 9 部第 4 分部第 3 次分部妥為擬備的，但只就為藉參照該財務報表述明的財務項目而斷定有關分派是否違反第 297、298 或 299 條或經第 300 條變通的上述條文所訂的禁止或限制的目的屬無關重要的事宜除外。
- (4) 第 (3) 款所指的財務報表須按照第 9 部第 4 分部第 3 次分部妥為擬備的規定，在應用於不是就一個財政年度擬備的財務報表時，須因應該財務報表不是就一個財政年度擬備這一事實而作出必需的變通。
- (5) 屬有關財務報表的組成部分的財務狀況表 ——
 - (a) 須經董事批准；
 - (b) 須由 2 名董事代表該等董事簽署；及
 - (c) 須述明代表該等董事簽署該財務狀況表的董事的姓名。
- (6) 財務報表的文本須已向處長交付登記。

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- (ii) in relation to which subsections (3), (5) and (6) are complied with; or
- (b) in the case of any other company, that is necessary to enable a reasonable judgement to be made as to the amounts of the financial items.
- (3) Subject to subsection (4), the financial statements must—
 - (a) have been properly prepared in accordance with Subdivision 3 of Division 4 of Part 9; or
 - (b) have been properly prepared in accordance with Subdivision 3 of Division 4 of Part 9, except only in relation to the matters that are not material for the purpose of determining, by reference to the financial items as stated in the financial statements, whether the distribution would be made in contravention of section 297, 298 or 299, or a prohibition or restriction in that section as modified under section 300.
- (4) The requirement under subsection (3) for any financial statements to be properly prepared in accordance with Subdivision 3 of Division 4 of Part 9 has effect subject to any modification that is necessary for applying that requirement to the financial statements prepared otherwise than for a financial year.
- (5) A statement of financial position that forms part of the financial statements—
 - (a) must be approved by the directors;
 - (b) must be signed by 2 directors on the directors' behalf; and
 - (c) must state the name of the directors who signed the statement on the directors' behalf.
- (6) A copy of the financial statements must have been delivered to the Registrar for registration.

306. 為第 302 條的目的而指明的初步財務報表

- (1) 如有關分派是擬於任何財務報表根據第 429(1) 條在成員大會上提交公司省覽前或根據第 430(3) 條送交每名成員前宣布的，則為第 302 條的目的而指明的財務報表，是符合以下說明的公司財務報表 ——
 - (a) 如屬上市公司 ——
 - (i) 對使人能夠就財務項目的款額作出合理判斷屬必需的；及
 - (ii) 第 (2)、(4)、(5)、(6) 及 (7) 款就該財務報表而獲符合；或
 - (b) 如屬任何其他公司，對使人能夠就財務項目的款額作出合理判斷屬必需的。
- (2) 在第 (3) 款的規限下，有關財務報表須 ——
 - (a) 是按照第 9 部第 4 分部第 3 次分部妥為擬備的；或
 - (b) 是按照第 9 部第 4 分部第 3 次分部妥為擬備的，但只就為第 (8) 款指明的目的而言屬無關重要的事宜除外。
- (3) 第 (2) 款所指的財務報表須按照第 9 部第 4 分部第 3 次分部妥為擬備的規定，在應用於不是就一個財政年度擬備的財務報表時，須因應該財務報表不是就一個財政年度擬備這一事實而作出必需的變通。
- (4) 屬有關財務報表的組成部分的財務狀況表 ——
 - (a) 須經董事批准；
 - (b) 須由 2 名董事代表該等董事簽署；及
 - (c) 須述明代表該等董事簽署該財務狀況表的董事的姓名。
- (5) 公司核數師須已擬備有關財務報表的報告，述明該核數師認為該財務報表是否符合第 (2)(a) 款。

306. Initial financial statements specified for purposes of section 302

- (1) If the distribution is proposed to be declared before any financial statements are laid before the company in general meeting under section 429(1) or sent to every member under section 430(3), the financial statements specified for the purposes of section 302 are the company's financial statements—
 - (a) in the case of a listed company—
 - (i) that are necessary to enable a reasonable judgement to be made as to the amounts of the financial items; and
 - (ii) in relation to which subsections (2), (4), (5), (6) and (7) are complied with; or
 - (b) in the case of any other company, that are necessary to enable a reasonable judgement to be made as to the amounts of the financial items.
- (2) Subject to subsection (3), the financial statements must—
 - (a) have been properly prepared in accordance with Subdivision 3 of Division 4 of Part 9; or
 - (b) have been properly prepared in accordance with Subdivision 3 of Division 4 of Part 9, except only in relation to the matters that are not material for the purpose specified in subsection (8).
- (3) The requirement under subsection (2) for any financial statements to be properly prepared in accordance with Subdivision 3 of Division 4 of Part 9 has effect subject to any modification that is necessary for applying that requirement to any financial statements prepared otherwise than for a financial year.

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- (6) 如核數師沒有在有關核數師報告內給予無保留意見，指出財務報表是符合第 (2)(a) 款的，則該核數師須已作出書面陳述，述明該核數師認為該報告對之有所保留的事宜，就第 (8) 款指明的目的而言是否事關重要的。
 - (7) 財務報表的文本、財務報表的核數師報告的文本及第 (6) 款所指的書面陳述的文本須已向處長交付登記。
 - (8) 為第 (2) 及 (6) 款而指明的目的，是藉參照有關財務報表述明的財務項目而斷定有關分派是否違反第 297、298 或 299 條或經第 300 條變通的上述條文所訂的禁止或限制的目的。
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- (4) A statement of financial position that forms part of the financial statements—
 - (a) must be approved by the directors;
 - (b) must be signed by 2 directors on the directors' behalf; and
 - (c) must state the name of the directors who signed the statement on the directors' behalf.
 - (5) The company's auditor must have prepared a report on the financial statements stating whether, in the auditor's opinion, the financial statements satisfy subsection (2)(a).
 - (6) If, in the auditor's report, the auditor has not given an unqualified opinion to the effect that the financial statements satisfy subsection (2)(a), the auditor must have given a written statement as to whether, in the auditor's opinion, the matter in respect of which the report is qualified is material for the purpose specified in subsection (8).
 - (7) A copy of the financial statements, of the auditor's report of the financial statements, and of any written statement under subsection (6), must have been delivered to the Registrar for registration.
 - (8) The purpose specified for subsections (2) and (6) is the purpose of determining, by reference to the financial items as stated in the financial statements, whether the distribution would be made in contravention of section 297, 298 or 299, or a prohibition or restriction in that section as modified under section 300.
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