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**HONG KONG SPECIAL ADMINISTRATIVE REGION**

ORDINANCE NO. 28 OF 2003

L.S.TUNG Chee-hwa  
Chief Executive  
10 July 2003

An Ordinance to amend the Companies Ordinance.

[ ]

Enacted by the Legislative Council.

**1. Short title and commencement**

(1) This Ordinance may be cited as the Companies (Amendment) Ordinance 2003.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

**2. Interpretation**

(1) Section 2(1) of the Companies Ordinance (Cap. 32) is amended—

(a) in the definition of “annual return”, by repealing “, in the case of a company having a share capital, under section 107, and, in the case of a company not having a share capital, under section 108” and substituting “under section 107”;

(b) by adding—

““certificate of solvency” (有償債能力證明書) means a certificate issued under section 233;

“image record” (影像紀錄) means a record produced using the imaging method and, where the context permits, includes a record in a legible form;

“imaging method” (影像處理方法) means a method by which documents in a legible form or in the form of microfilm are scanned by a scanner and the information recorded therein is converted into electronic images, which are then stored on electronic storage media capable of being retrieved and reproduced in a legible form;

“manager” (經理), in relation to a company, means a person who, under the immediate authority of the board of directors, exercises managerial functions but does not include—

(a) a receiver or manager of the property of the company; or

(b) a special manager of the estate or business of the company appointed under section 216;

“record” (紀錄) includes not only a written record but any record conveying information or instructions by any other means whatsoever;

“reserve director” (備任董事) means a person nominated as a reserve director of a private company under section 153A(6);

“shadow director” (影子董事), in relation to a company, means a person in accordance with whose directions or instructions the directors or a majority of the directors of the company are accustomed to act;”.

(2) Section 2(2) is repealed and the following substituted—

“(2) A person shall not be considered to be a shadow director of a company by reason only that the directors or a majority of the directors of the company act on advice given by him in a professional capacity.”.

(3) Section 2 is amended by adding—

“(10) Any provision of this Ordinance that refers (in whatever words) to—

(a) the subscribers of the memorandum of association of a company;

(b) the members or shareholders of a company;

(c) a majority of members or shareholders of a company; or

(d) a specified number or percentage of members or shareholders of a company,

shall, unless the context otherwise requires, apply with necessary modifications in relation to a company the memorandum of association of which has only one subscriber or that has only one person as a member or shareholder, as the case may be.

(11) Any provision of this Ordinance that refers (in whatever words) to—

- (a) the directors of a company;
- (b) the board of directors of a company;
- (c) a majority of the directors of a company; or
- (d) a specified number or percentage of the directors of a company,

shall, unless the context otherwise requires, apply with necessary modifications in relation to a private company that has only one director.”.

### **3. Registrar to specify forms**

Section 2A(3) is repealed.

### **4. Mode of forming incorporated company**

(1) Section 4(1) is amended by repealing “2 or more persons, associated for any lawful purpose may, by subscribing their names” and substituting “one or more persons may, for any lawful purpose, by subscribing his or their name or names”.

(2) Section 4 is amended by adding—

“(4) With effect from the commencement of section 4(2) of the Companies (Amendment) Ordinance 2003 (28 of 2003), a company cannot be formed as, or become, a company limited by guarantee with a share capital.”.

### **5. Mode in which and extent to which objects may be altered**

(1) Section 8(1) is amended by repealing the proviso and substituting—  
“Provided that, where a private company passes such a resolution, an application may be made to the court in accordance with subsections (2) to (5) for the alteration to be cancelled, and if such an application is made, the alteration shall not have effect except in so far as it is confirmed by the court.”.

(2) Section 8(7) is amended—

- (a) by repealing “a company” and substituting “a private company”;
- (b) in paragraph (b)(ii), by repealing “annulling” and substituting “cancelling”.

(3) Section 8 is amended by adding—

“(7A) Where a company (not being a private company) passes a resolution altering its objects, it shall, within 15 days after the date on which the resolution was passed, deliver to the Registrar a printed copy of its memorandum as altered and certified as correct by an officer of the company.”.

(4) Section 8(8) is amended by adding “or (7A)” after “(7)”.

(5) Section 8 is amended by adding—

“(10) In relation to a resolution for altering the conditions of a company’s memorandum with respect to the objects of the company that is passed by a company (whether a private company or not) after the commencement of the Companies (Amendment) Ordinance 1984 (6 of 1984) and before the commencement of section 5 of the Companies (Amendment) Ordinance 2003 (28 of 2003), the provisions of this section in force immediately before the commencement of section 5 of the Companies (Amendment) Ordinance 2003 (28 of 2003) shall continue to have effect as if section 5 of that Ordinance had not been enacted.”.

## **6. Conclusiveness of certificate of incorporation**

Section 18(2) is repealed and the following substituted—

“(2) A statement in the specified form, certifying the company’s compliance with all or any of the requirements referred to in subsection (1) and signed by a subscriber to the memorandum or a person named in the articles as a director or secretary of the company, shall be produced to the Registrar, and the Registrar may accept such a statement as sufficient evidence of compliance.”.

## **7. Change of name**

(1) Section 22 is amended by adding—

“(1A) Where a company passes a special resolution changing its name, it shall, within 15 days after the passing of the resolution, give notice in the specified form of the change of its name to the Registrar.

(1B) If a company fails to comply with subsection (1A), the company and every officer of the company who is in default is liable to a fine and, for continued default, to a daily default fine.”.

(2) Section 22(7) is repealed and the following substituted—

“(7) Where a company gives notice of a change of its name to the Registrar under subsection (1A), the Registrar shall, subject to section 20—

(a) enter the new name on the register in place of the former name; and

(b) issue a certificate of change of name, and the change of name shall have effect from the date on which the certificate is issued.”.

## **8. Specification of names by Chief Executive**

Section 22B(3) is amended by repealing “a copy of the special resolution under section 22(1) changing the company’s name” and substituting “the notice of change of name required by section 22(1A)”.

## **9. Effect of memorandum and articles**

Section 23(1) is repealed and the following substituted—

“(1) Subject to the provisions of this Ordinance, the memorandum and articles shall, when registered, have effect as a contract under seal—

(a) between the company and each member; and

(b) between a member and each other member,

and shall be deemed to contain covenants on the part of the company and of each member to observe all the provisions of the memorandum and articles.

(1A) Without limiting the generality of subsection (1), the memorandum and articles shall, when registered, be enforceable by the company against each member and by a member against the company and against each other member.”.

## **10. Power to alter conditions in memorandum which could have been contained in articles**

(1) Section 25A(1) is amended by repealing the proviso and substituting—

“Provided that, where a private company passes such a resolution, an application may be made to the court for the alteration to be cancelled, and if such an application is made, the alteration shall not have effect except in so far as it is confirmed by the court.”.

(2) Section 25A(3) is repealed and the following substituted—

“(3) Where a private company passes a resolution under this section altering any condition contained in its memorandum, subsections (2)(a), (3), (4), (7) and (8) of section 8 shall apply in relation to the alteration and to any application made under this section in the same manner as they apply in relation to alterations and to applications made under section 8.

(3A) Where a company (not being a private company) passes a resolution under this section altering any condition contained in its memorandum, subsections (7A) and (8) of section 8 shall apply in relation to the alteration made under this section in the same manner as they apply in relation to alterations made under section 8.”.

(3) Section 25A is amended by adding—

“(5) In relation to a resolution for altering any condition contained in a company’s memorandum that is passed by a company (whether a private company or not) under this section before the commencement of section 10 of the Companies (Amendment) Ordinance 2003 (28 of 2003), the provisions of this section in force immediately before that commencement shall continue to have effect as if section 10 of that Ordinance had not been enacted.”.

## **11. Subheading repealed**

The subheading immediately before section 31 is repealed.

## **12. Liability for debts where business carried on without minimum number of members**

Section 31 is repealed.

## **13. Return as to allotments**

(1) Section 45(1) is amended—

(a) by repealing “8 weeks” and substituting “1 month”;

(b) in paragraph (a), by repealing “names, addresses and the occupations or descriptions” and substituting “names and addresses”;

(c) in paragraph (b), by repealing “contract in writing constituting the title of the allottee to the allotment together with any contract for sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped” and substituting “copy of a contract in writing constituting the title of the allottee to the allotment together with a copy of any contract for sale, or for services or other consideration in respect of which that allotment was made, such copies being duly certified by an officer of the company to be true copies”.

(2) Section 45(2) is repealed and the following substituted—

“(2) Where such a contract as mentioned in subsection (1)(b) is not reduced to writing, the company shall within 1 month after the allotment deliver to the Registrar for registration a return in the specified form containing the particulars of the contract specified in that subsection.”.

(3) Section 45(3) is amended, in the proviso, by repealing “8 weeks” and substituting “1 month”.

#### **14. Definitions**

Section 47B(2) is amended by repealing “157H(1)” and substituting “157HA(15)”.

#### **15. Relaxation of section 47A for unlisted companies**

(1) Section 47E(6) is amended by repealing “statutory declaration in the specified form” and substituting “statement”.

(2) Section 47E(7) is amended by repealing “declaration” and substituting “statement”.

#### **16. Directors’ statement under section 47E**

(1) Section 47F(1) is amended—

(a) by repealing “A statutory declaration made by a majority of a company’s directors under section 47E(6)” and substituting “The statement referred to in section 47E(6) shall be in the specified form, shall be signed by the directors and”;

(b) in paragraph (b), by repealing “names, addresses and occupations” and substituting “names and addresses”;

(c) in paragraph (d), by repealing “declaration” and substituting “statement”.

(2) Section 47F(3) is repealed and the following substituted—

“(3) A statement made by a majority of a company’s directors under section 47E(6) shall be delivered to the Registrar within 15 days after it is made.”.

(3) Section 47F(5) is amended by repealing “statutory declaration under section 47E” and substituting “statement under section 47E(6)”.

**17. Special resolution under section 47E**

(1) Section 47G(1) is amended by repealing “the directors of that company make the statutory declaration required by that section” and substituting “a majority of the directors of that company make the statement required by section 47E(6)”.

(2) Section 47G(11)(a) is amended by repealing “declaration made in compliance with section 47E(6) by the directors of the company” and substituting “statement required by section 47E(6)”.

**18. Time for giving financial assistance under section 47E**

Section 48(4)(a) and (b) is repealed and the following substituted—

“(a) the date on which the majority of the directors of the company proposing to give the assistance made their statement under section 47E(6); or

(b) where that company is a subsidiary and both a majority of its directors and a majority of the directors of any of its holding companies made such a statement, the date on which the earliest of the statements was made.”.

**19. Requirements for listed company to purchase own shares**

Section 49BA(10)(b) is repealed and the following substituted—

“(b) a shadow director.”.

**20. Availability of profits for purposes of section 49I**

Section 49J(6) is amended by repealing “statutory declaration” and substituting “statement”.

**21. Conditions for payment out of capital**

(1) Section 49K(3) is amended by repealing “statutory declaration” and substituting “statement”.

(2) Section 49K(5) is amended—

(a) by repealing “statutory declaration shall be in the specified form and” and substituting “statement shall be in the specified form, shall be signed by the directors and shall”;

- (b) in paragraphs (b) and (c), by repealing “the declaration” and substituting “the statement”.
- (3) Section 49K(6) is amended—
  - (a) by repealing “makes a declaration” and substituting “signs a statement”;
  - (b) by repealing “the declaration” and substituting “the statement”.

## **22. Procedure for special resolution under section 49K**

(1) Section 49L(1) is amended by repealing “statutory declaration” and substituting “statement”.

(2) Section 49L(4) is amended by repealing “statutory declaration” and substituting “directors’ statement”.

## **23. Publicity for proposed payment out of capital**

(1) Section 49M(1) is amended—

(a) in paragraph (b), by repealing “49L” and substituting “49K”;

(b) in paragraph (c), by repealing “statutory declaration of the directors and the” and substituting “directors’ statement and”.

(2) Section 49M(4) is amended by repealing “statutory declaration of the directors” and substituting “directors’ statement”.

(3) Section 49M(5) is amended by repealing “statutory declaration” and substituting “directors’ statement”.

(4) Section 49M(7) is amended by repealing “declaration or report, the court may by order compel an immediate inspection of that declaration” and substituting “directors’ statement or auditors’ report, the court may by order compel an immediate inspection of that statement”.

## **24. Power for Chief Executive in Council to modify certain sections**

(1) Section 49Q(1)(d) is amended by repealing “statutory declaration” and substituting “statement”.

(2) Section 49Q(1)(e) is amended by repealing “that declaration” and substituting “the directors’ statement”.

**25. Notice to Registrar of consolidation of share capital, conversion of shares into stock, &c.**

Section 54(1) is amended by repealing “Registrar of Companies specifying, as the case may be, the shares consolidated, divided, converted, subdivided, redeemed or cancelled, or the stock re-converted” and substituting “Registrar in the specified form, specifying the shares consolidated, divided, converted, subdivided, redeemed or cancelled, or the stock re-converted, as the case may be”.

**26. Notice of increase of capital**

(1) Section 55(1) is amended by adding “, subject to subsection (1A),” after “it shall”.

(2) Section 55 is amended by adding—

“(1A) Where the increase in the share capital of the company takes effect on a date after the date on which the resolution authorizing the increase is passed, the notice referred to in subsection (1) shall be given to the Registrar within 15 days after the increase takes effect.”.

(3) Section 55(2) is amended by repealing “, and there shall be forwarded to the Registrar together with the notice a printed copy of the resolution authorizing the increase”.

**27. Special resolution for reduction of share capital**

(1) Section 58(1C) is amended by repealing “and subsection (1D)”.

(2) Section 58 is amended by adding—

“(3) Confirmation by the court of a reduction of the share capital of a company is not required under subsection (1) if the sole purpose of the reduction is to re-designate the nominal value of the shares of the company to a lower amount and the following conditions are satisfied—

(a) the company has only one class of shares;

(b) all issued shares are fully paid-up and the amount of the net assets of the company is not less than its paid-up share capital;

(c) the reduction applies to and affects all shares equally;

(d) the amount arising from the reduction is not less than an amount representing the difference between the amount of the company’s fully paid-up share capital immediately before the reduction and the amount of its fully paid-up share capital immediately after the reduction; and

(e) the amount arising from the reduction is credited to the share premium account of the company.

(4) In this section, “net assets” (淨資產), in relation to a company, has the same meaning as in section 157HA(15).”.

**28. Application to court for confirming order, objections by creditors and settlement of list of objecting creditors**

Section 59 is amended by adding—

“(4) This section does not apply to a reduction of the share capital of a company for which, by virtue of section 58(3), confirmation by the court is not required.”.

**29. Registration of order and minute of reduction**

(1) Section 61(1) is amended by repealing “The Registrar, on production to him of an order of the court confirming the reduction of the share capital of a company” and substituting “In the case of a reduction of the share capital of a company that is subject to confirmation by the court under section 58, the Registrar, on production to him of an order of the court confirming the reduction of the share capital of the company”.

(2) Section 61(4) is repealed and the following substituted—

“(4) The Registrar shall issue a certificate, with his signature or printed signature, certifying the registration of the order and minute, and the certificate shall be conclusive evidence that all the requirements of this Ordinance with respect to the reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.”.

**30. Section added**

The following is added—

**“61A. Registration of special resolution, minute and statement where court confirmation is not required**

(1) Where a company has passed a resolution for reducing share capital under section 58 and, by virtue of section 58(3), confirmation of the reduction by the court is not required, the Registrar, on production to him of a copy of the resolution certified as correct by an officer of the company and the delivery to him of—

- (a) a copy of a minute, certified as correct by an officer of the company, showing with respect to the share capital of the company, as altered by the resolution, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount, if any, at the date of the registration deemed to be paid up on each share; and
- (b) a statement in the specified form signed by an officer of the company, certifying that the conditions set out in section 58(3)(a), (b), (c), (d) and (e) have been satisfied,

shall register the resolution, minute and statement.

(2) On the registration of the resolution, minute and statement, and not before, the resolution for reducing share capital shall take effect.

(3) Notice of the registration shall be published in such manner as the Registrar may direct.

(4) The Registrar shall issue a certificate, with his signature or printed signature, certifying the registration of the resolution, minute and statement, and the certificate shall be conclusive evidence that all the requirements of this Ordinance with respect to the reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

(5) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum, and shall be valid and alterable as if it had been originally contained in the memorandum.

(6) The substitution of any such minute for part of the memorandum of the company shall be deemed to be an alteration of the memorandum within the meaning of section 27.”.

### **31. Variation of rights attached to special classes of shares**

Section 63A(6) is amended by adding “, 114AA” after “114A”.

### **32. Duties of company with respect to issue of certificates**

(1) Section 70(1) is repealed and the following substituted—

“(1) Every company shall, within 2 months after the allotment of any of its shares, debentures or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock so allotted, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

(1A) Every company (other than a private company) shall, within 10 business days after the date on which a transfer of any of its shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock so transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

(1B) Every private company shall, within 2 months after the date on which a transfer of any of its shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock so transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.”.

(2) Section 70(3) is amended by adding “, (1A) or (1B)” after “subsection (1)”.

(3) Section 70 is amended by adding—

“(4) In this section—

“business day” (營業日) means any day on which a recognized stock market is open for the business of dealing in securities;

“transfer” (轉讓書) means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.”.

### **33. Interpretation**

Section 79A(1) is amended, in the definition of “net assets”, by repealing “157H(1)” and substituting “157HA(15)”.

### **34. Register of charges to be kept by Registrar**

Section 83(2) is repealed and the following substituted—

“(2) The Registrar shall issue a certificate, with his signature or printed signature, certifying the registration of any charge registered in pursuance of this Part, and the certificate shall be conclusive evidence that all the requirements of this Part with respect to registration have been complied with.”.

### **35. Section substituted**

Section 85 is repealed and the following substituted—

**“85. Entries of satisfaction and release of property from charge**

(1) The Registrar may, on application under this section, where he is satisfied that the debt for which a registered charge was given has been paid or satisfied in whole or in part, enter on the register a memorandum of satisfaction in whole or in part.

(2) The Registrar may, on application under this section, where he is satisfied that the whole or any part of the property or undertaking subject to a registered charge has been released from the charge or has ceased to form part of the company’s property or undertaking, enter on the register a memorandum of that fact.

(3) An application under this section shall be made in the specified form and be accompanied by such evidence as the Registrar may require.

(4) The specified form referred to in subsection (3) shall contain—

(a) such particulars with respect to the debt, charge, property or undertaking in question as may be specified by the Registrar; and

(b) a statement certifying the fact of payment, satisfaction, release or cessation, as the case may be.

(5) The specified form referred to in subsection (3) shall be signed by—

(a) where it is submitted to the Registrar on behalf of a company—

(i) a director or officer of the company;

(ii) a solicitor of the High Court acting on behalf of the company; or

(iii) in the case of an oversea company, a person authorized to accept service of process and notices on its behalf who is registered under section 333(1)(c); or

(b) in any other case, by the mortgagee or person entitled to the charge.

(6) Where the Registrar enters a memorandum of satisfaction in whole under subsection (1), he shall, if required and upon payment of the prescribed fee, endorse the words “satisfaction entered” or the expression in Chinese “已清償” upon the instrument creating the charge.”.

**36. Extension of time for registration, and rectification of register of charges**

Section 86(1) is amended by repealing “memorandum of satisfaction” and substituting “memorandum under section 85”.

**37. Section substituted**

Section 87 is repealed and the following substituted—

**“87. Notice to Registrar of appointment of receiver or manager, or of mortgagee taking possession, etc.**

(1) If any person appoints a receiver or manager of the property of a company under the powers contained in any instrument, or obtains an order for the appointment of such a receiver or manager, he shall, within 7 days after the date of the appointment, give notice of that fact to the Registrar, which notice shall include with respect to the person so appointed the following particulars—

- (a) his name;
- (b) his address; and
- (c) the number of his identity card (if any) or, in the absence of such number, the number and issuing country of any passport held by him.

(2) If any person enters into possession of the property of a company as mortgagee, he shall, within 7 days after the date of his entering into possession, give notice of that fact to the Registrar, which notice shall include with respect to that person the following particulars—

- (a) where that person is an individual, the particulars referred to in subsection (1); or
- (b) where that person is a body corporate, its corporate name and the address of its registered or principal office.

(3) The Registrar shall, on payment of the prescribed fee, enter a notice given under subsection (1) or (2) in the register of charges.

(4) Where—

- (a) any person appointed receiver or manager of the property of a company, and in respect of whom notice is required to be given under subsection (1), ceases to act as receiver or manager; or
- (b) any person who has entered into possession of the property of a company as mortgagee, and in respect of whom notice is required to be given under subsection (2), goes out of possession of the property,

that person shall, within 7 days after ceasing to act as receiver or manager or after going out of possession, as the case may be, give notice of that fact to the Registrar, and the Registrar shall enter a notice given under this subsection in the register of charges.

(5) If any change occurs in the particulars given in a notice under subsection (1) or (2), the person in respect of whom that notice is given shall, within 14 days after the date of the change, give notice of that change to the Registrar, unless that person has previously given notice to the Registrar under subsection (4).

(6) Every notice given to the Registrar under this section shall be in the specified form.

(7) If any person makes default in complying with the requirements of this section, he shall be liable to a fine and, for continued default, to a daily default fine.

(8) In this section, “manager” (經理人) does not include a special manager of the estate or business of a company appointed under section 216.”.

### **38. Registered office of company**

Section 92(2) is amended by adding “in the specified form” after “given”.

### **39. Register of members**

Section 95(1)(a) is amended by repealing “, and the occupations or descriptions,”.

### **40. Section added**

The following is added—

#### **“95A. Statement that company has only one member**

(1) If the number of members of a company falls to one, there shall upon the occurrence of that event be entered in the company’s register of members—

- (a) a statement that the company has only one member; and
- (b) the date on which the company became a company having only one member.

(2) If the membership of a company increases from one to 2 or more members, there shall upon the occurrence of that event be entered in the company’s register of members a statement that the company has ceased to have only one member, together with the date on which that event occurred.

(3) If a company makes default in complying with this section, the company and every officer of the company who is in default is liable to a fine and, for continued default, to a daily default fine.”.

#### **41. Power of company to keep branch register**

Section 103(1) is amended, in the proviso, by repealing paragraph (a) and substituting—

“(a) a company wishing to apply for such a licence shall make an application in writing to the Chief Executive, to be filed with the Registrar, which application shall include sufficient evidence to satisfy the Chief Executive that a substantial part of the business of the company is transacted at or near the place where it desires to keep such register;”.

#### **42. Annual return to be made by company**

Section 107(2)(i) is amended by repealing “as are by this Ordinance required to be contained with respect to directors and the secretary respectively” and substituting “or a reserve director of the company as are by this Ordinance required to be contained with respect to them”.

#### **43. General provisions as to annual returns**

Section 109(5) is amended by repealing “any person in accordance with whose directions or instructions the directors of the company are accustomed to act” and substituting “a shadow director”.

#### **44. General provisions as to meetings and votes**

Section 114A(1) is amended by adding “114AA,” before “155B”.

#### **45. Section added**

The following is added—

##### **“114AA. Quorum where company has only one member**

Notwithstanding any provision to the contrary in the articles of a company, if the company has only one member, one member present in person or by proxy shall be a quorum of a meeting of the company.”.

**46. Circulation of members' resolutions, etc.**

Section 115A(2) is amended—

- (a) in paragraph (a), by repealing “one-twentieth” and substituting “one-fortieth”;
- (b) in paragraph (b), by repealing “100” and substituting “50”.

**47. Section added**

The following is added—

**“116BC. Written record where company has only one member**

(1) Where a company has only one member and that member takes any decision that may be taken by the company in general meeting and that has effect as if agreed by the company in general meeting, he shall (unless that decision is taken by way of a written resolution agreed in accordance with section 116B) provide the company with a written record of that decision within 7 days after the decision is made.

(2) Where the member provides the company with a written record of a decision in accordance with subsection (1), that record shall be sufficient evidence of the decision having been taken by the member.

(3) A company shall cause a record of all written records provided to the company in accordance with this section to be entered into a book kept for that purpose in the same way as minutes of proceedings of a general meeting of the company.

(4) Section 120 shall apply to a record made in accordance with subsection (3) as that section applies to the minutes of proceedings of any general meeting of a company.

(5) If the member fails to comply with subsection (1), he shall be liable to a fine and, for continued default, to a daily default fine.

(6) If a company fails to comply with subsection (3), the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine.

(7) Failure by the member to comply with subsection (1) shall not affect the validity of any decision referred to in that subsection.”.

**48. Registration and copies of certain resolutions and agreements**

Section 117(4)(a) is amended by adding “, other than special resolutions to change the name of a company passed under section 22(1)” after “special resolutions”.

**49. Particulars to be shown in company's accounts in relation to subsidiaries**

(1) Section 128(1) is repealed and the following substituted—

“(1) Subject to the provisions of this section, where, at the end of its financial year, a company has subsidiaries, there shall be shown in the accounts of the company laid before it in general meeting, or in a statement annexed to those accounts, the following particulars with respect to each subsidiary—

- (a) the subsidiary's name;
- (b) the country in which it is incorporated;
- (c) in relation to shares of each class of the subsidiary held by the company, the identity of the class and the proportion of the nominal value of the issued shares of that class represented by the shares held; and
- (d) with reference to the proportion of the nominal value of the issued shares of a class represented by the shares held by the company, the extent (if any) to which it consists of shares held by, or by a nominee for, a subsidiary of the company and the extent (if any) to which it consists of shares held by, or by a nominee for, the company itself.”.

(2) Section 128(2) is amended—

- (a) in paragraph (a), by adding “and” at the end;
- (b) in paragraph (b), by repealing “; and” and substituting a full stop;
- (c) by repealing paragraph (c).

(3) Section 128(5)(a) and (b) is repealed and the following substituted—

- “(a) there shall be added to the particulars, if any, given in compliance with subsection (1) the information that the particulars deal only with subsidiaries carrying on businesses of the kind referred to in subsection (4); and
- (b) the particulars, if any, given in compliance with subsection (1), together with those which, but for the fact that advantage is so taken, would have to be so given, shall be set out in a statement in the specified form, which shall be sent to the Registrar at the same time as the annual return first made by the company after its accounts have been laid before it in general meeting is sent to the Registrar.”.

(4) Section 128(5A)(a) and (b) is repealed and the following substituted—

- “(a) there shall be added to the particulars, if any, given in compliance with subsection (1) the information that the particulars deal only with subsidiaries carrying on businesses of the kind referred to in subsection (4); and

- (b) the particulars, if any, given in compliance with subsection (1), together with those which, but for the fact that advantage is so taken, would have to be so given, shall be set out in a statement in the specified form, which shall be sent to the Registrar within 42 days after its accounts have been laid before it in general meeting.”.
- (5) Section 128(6) is amended by repealing “to annex particulars to a return” and substituting “or (5A)”.

**50. Particulars to be shown in company’s accounts in relation to companies not being subsidiaries whose shares it holds**

(1) Section 129(1) is amended by repealing “stated in, or in a note on, or statement annexed to, the accounts of the company laid before it in general meeting” and substituting “shown in the accounts of the company laid before it in general meeting, or in a statement annexed to those accounts, the following particulars”.

(2) Section 129(2) is amended—

(a) by repealing “or included”;

(b) by repealing “stated in, or in a note on, or statement annexed to, those accounts” and substituting “shown in those accounts, or in a statement annexed to those accounts, the following particulars”.

(3) Section 129(4) is amended by adding “or (2)” after “subsection (1)”.

(4) Section 129(5)(a) and (b) is repealed and the following substituted—

“(a) there shall be added to the particulars, if any, given in compliance with subsection (1) or (2) the information that the particulars deal only with bodies carrying on businesses of the kind referred to in subsection (4); and

(b) the particulars, if any, given in compliance with subsection (1) or (2), together with those which, but for the fact that advantage is so taken, would have to be so given, shall be set out in a statement in the specified form, which shall be sent to the Registrar at the same time as the annual return first made by the company after its accounts have been laid before it in general meeting is sent to the Registrar.”.

(5) Section 129(5A)(a) and (b) is repealed and the following substituted—

“(a) there shall be added to the particulars, if any, given in compliance with subsection (1) or (2) the information that the particulars deal only with bodies carrying on businesses of the kind referred to in subsection (4); and

(b) the particulars, if any, given in compliance with subsection (1) or (2), together with those which, but for the fact that advantage is so taken, would have to be so given, shall be set out in a statement in the specified form, which shall be sent to the Registrar within 42 days after its accounts have been laid before it in general meeting.”.

(6) Section 129(6) is amended by repealing “to annex particulars to a return” and substituting “or (5A)”.

#### **51. Particulars to be shown in subsidiary company’s accounts in relation to its ultimate holding company**

Section 129A(1) is repealed and the following substituted—

“(1) Subject to subsection (2), where, at the end of its financial year, a company is the subsidiary of another body corporate, there shall be shown in the accounts of the company laid before it in general meeting, or in a statement annexed to those accounts, the following particulars—

- (a) the name of the body corporate regarded by the directors as being the company’s ultimate holding company; and
- (b) if known to the directors, the country in which it is incorporated.”.

#### **52. Signing of balance sheet**

Section 129B(1) is amended by adding “or, in the case of a private company having only one director, by the sole director” after “the directors”.

#### **53. Resignation of auditor**

Section 140A(3)(b), (4) and (6)(b) is amended by repealing “subsection (2)(b)” and substituting “subsection (2)(a)(ii)”.

#### **54. Power of inspector to call for director’s accounts**

Section 145B(b) is amended by repealing “161B(1), (2) or (4)” and substituting “161B”.

#### **55. Notice to Registrar**

Section 151 is amended by repealing “notice in writing under his hand of such appointment or of such submission, as the case may be” and substituting “notice of such appointment or submission, as the case may be, in the specified form”.

**56. Sections substituted**

Section 153 is repealed and the following substituted—

**“153. Directors of companies other than private companies**

(1) Every company (not being a private company) shall have at least 2 directors.

(2) If a company (not being a private company) has not at any time sent to the Registrar under section 158 a return containing the names of at least 2 directors of the company and one or more individuals are named as subscribers in the list of subscribers to the memorandum of the company, each of the following shall, until the return is so sent, be deemed to be a director of the company—

- (a) where one individual only is so named in the memorandum, that individual; or
- (b) where 2 or more individuals are so named in the memorandum, the first 2 individuals so named in the order in which the names appear in the memorandum.

(3) Subject to subsection (4), if any company (not being a private company) makes default in complying with subsection (1), the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine.

(4) Where the number of directors of a company (not being a private company) is reduced below 2 by reason of the office of any director being vacated, the company or any officer of the company shall not be liable for any default in respect thereof under this section unless the default continues for a period of 2 months beginning on the day on which the office is vacated.

(5) Any power exercisable by a director under the articles of a company (not being a private company) in a case where the number of directors is reduced below the number fixed as the necessary quorum of directors, being a power to act for the purpose of increasing the number of directors or of summoning a general meeting of the company but not for any other purpose, shall be exercisable also in a case where the number of directors is reduced below the number required by subsection (1).

**153A. Directors of private companies**

(1) Every private company shall have at least one director.

(2) If a private company has not at any time sent to the Registrar under section 158 a return containing the name of at least one director of the company, the following shall, until the return is so sent, be deemed to be a director of the company—

- (a) if the company is not a member of a group of companies of which a listed company is a member, the person whose name appears first in the list of subscribers to the memorandum of the company; or
- (b) if paragraph (a) does not apply to the company and one or more individuals are named as subscribers in the list of subscribers to the memorandum of the company—
  - (i) where one individual only is so named in the memorandum, that individual; or
  - (ii) where 2 or more individuals are so named in the memorandum, the first individual so named.

(3) Subject to subsections (4) and (5), if any private company makes default in complying with subsection (1), the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine.

(4) Subject to subsection (5), where the number of directors of a private company is reduced to zero by reason of the office of any director being vacated, the company or any officer of the company shall not be liable for any default in respect thereof under this section unless the default continues for a period of 2 months beginning on the day on which the office is vacated.

(5) Where the number of directors of a private company having only one director is reduced to zero by reason of the death of that director and the deceased director was, at the date of death, the sole member of the company, the company or any officer of the company shall not be liable for any default in respect thereof under this section unless the default continues for a period of 4 months beginning on the date of the grant of probate of the will, or of letters of administration of the estate, of the deceased director.

(6) Where a private company has only one member and that member is the sole director of the company, the company may in general meeting, notwithstanding anything in its articles, nominate a person (other than a body corporate) who has attained the age of 18 years as a reserve director of the company to act in the place of the sole director in the event of his death. Where the company nominates a reserve director, it shall send to the Registrar particulars of the nomination in accordance with section 158(4), (4A) and (4B).

(7) The nomination of a person as a reserve director of a private company ceases to be valid if—

- (a) before the death of the director in respect of whom he was nominated—
  - (i) he resigns as reserve director in accordance with section 157D; or
  - (ii) the company in general meeting revokes the nomination; or
- (b) the director in respect of whom he was nominated ceases to be the sole member and sole director of the company for any reason other than the death of that director.

(8) Subject to compliance with the conditions set out in subsection (9), in the event of the death of the director in respect of whom the reserve director is nominated, the reserve director shall be deemed to be a director of the company for all purposes until such time as—

- (a) a person is appointed as a director of the company in accordance with its articles; or
- (b) he resigns from his office of director in accordance with section 157D,

whichever is the earlier.

(9) The conditions referred to in subsection (8) are—

- (a) the nomination of the reserve director has not ceased to be valid under subsection (7); and
- (b) the reserve director is not prohibited by law from acting as a director of the company.”.

## **57. Section added**

The following is added—

### **“153B. Directors vicariously liable for acts of alternates, etc.**

(1) Where the articles of a company authorize a director to appoint an alternate director to act in his place, then, unless the articles contain any provision to the contrary, whether express or implied—

- (a) an alternate director so appointed shall be deemed to be the agent of the director who appoints him; and
- (b) a director who appoints an alternate director shall be vicariously liable for any tort committed by the alternate director while acting in the capacity of alternate director.

(2) Nothing in subsection (1)(b) affects the personal liability of an alternate director for any act or omission.”.

**58. Section added**

The following is added—

**“153C. Written record of decision of sole director of private company**

(1) Where a private company has only one director and that director takes any decision that may be taken in a meeting of the directors and that has effect as if agreed in a meeting of the directors, he shall (unless that decision is taken by way of a resolution in writing) provide the company with a written record of that decision within 7 days after the decision is made.

(2) Where the director provides the company with a written record of a decision in accordance with subsection (1), that record shall be sufficient evidence of the decision having been taken by the director.

(3) A company shall cause a record of all written records provided to the company in accordance with this section to be entered into a book kept for that purpose in the same way as minutes of proceedings of a meeting of the directors.

(4) If the director fails to comply with subsection (1), he shall be liable to a fine and, for continued default, to a daily default fine.

(5) If a company fails to comply with subsection (3), the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine.

(6) Failure by the director to comply with subsection (1) shall not affect the validity of any decision referred to in that subsection.”

**59. Secretary**

(1) Section 154(1) is amended by repealing “, who may be one of the directors”.

(2) Section 154 is amended by adding—

“(1A) Subject to subsections (1B) and (4), a director of a company may be the secretary of the company.

(1B) The director of a private company having only one director shall not also be the secretary of the company.”

(3) Section 154 is amended by adding—

“(4) No private company having only one director shall have as secretary of the company a body corporate the sole director of which is the sole director of the private company.”

**60. Removal of directors**

(1) Section 157B(1) is amended by repealing “special resolution” and substituting “ordinary resolution”.

(2) Section 157B is amended by adding—

“(1A) Special notice is required of a resolution to remove a director or to appoint somebody in place of a director so removed at the meeting at which he is removed.”.

(3) Section 157B(5) is amended by repealing “term of office” and substituting “period of office”.

**61. Resignation of director or secretary**

Section 157D is amended by adding—

“(4) In this section, “director” (董事) includes a reserve director and a person deemed to be a director under section 153A(8).”.

**62. Sections substituted**

Section 157H is repealed and the following substituted—

**“157H. Prohibition of loans, etc., to directors and other persons**

(1) The prohibitions in this section are subject to the exceptions in section 157HA.

(2) A company shall not, directly or indirectly—

(a) make a loan to a director of the company or of its holding company;

(b) enter into a guarantee or provide any security in connection with a loan made by any other person to such a director; or

(c) if any one or more of the directors of the company holds (jointly or severally or directly or indirectly) a controlling interest in another company—

(i) make a loan to that other company; or

(ii) enter into a guarantee or provide any security in connection with a loan made by any person to that other company.

(3) A relevant company shall not—

(a) make a quasi-loan to a director of the company or of its holding company;

(b) enter into a guarantee or provide any security in connection with a quasi-loan made by any other person to such a director; or

- (c) if any one or more of the directors of the company holds (jointly or severally or directly or indirectly) a controlling interest in another company—
    - (i) make a quasi-loan to that other company; or
    - (ii) enter into a guarantee or provide any security in connection with a quasi-loan made by any other person to that other company.
- (4) A relevant company shall not—
  - (a) enter into a credit transaction as creditor for a director of the company or of its holding company;
  - (b) enter into a guarantee or provide any security in connection with a credit transaction entered into by any other person as creditor for such a director; or
  - (c) if any one or more of the directors of the company holds (jointly or severally or directly or indirectly) a controlling interest in another company—
    - (i) enter into a credit transaction as creditor for that other company; or
    - (ii) enter into a guarantee or provide any security in connection with a credit transaction entered into by any other person as creditor for that other company.
- (5) A company shall not arrange for the assignment to it, or the assumption by it, of any rights, obligations or liabilities under a transaction that, if it had been entered into by the company, would have contravened subsection (2), (3) or (4).
- (6) If a company enters into an arrangement in contravention of subsection (5), then for the purposes of this section the company is to be treated as having entered into the transaction in question on the date of that arrangement.
- (7) A company shall not take part in any arrangement whereby—
  - (a) another person enters into a transaction or arrangement that, if it had been entered into by the company, would have contravened subsection (2), (3), (4) or (5); and
  - (b) that other person, in pursuance of the arrangement, has obtained or is to obtain any benefit from the company or its holding company or a subsidiary of the company or its holding company.
- (8) In the application of subsections (2), (3) and (4) to—
  - (a) a company that has any of its shares listed on a recognized stock market; or
  - (b) a company that is a member of a group of companies of which a company referred to in paragraph (a) is a member, references in that subsection to a director shall include references to—

- (i) the spouse or any child or step-child of such director;
- (ii) a person acting in his capacity as the trustee (other than as trustee under an employees' share scheme or a pension scheme) of any trust the beneficiaries of which include the director, his spouse or any of his children or step-children or the terms of which confer a power on the trustees that may be exercised for the benefit of the director, his spouse or any of his children or step-children; and
- (iii) a person acting in his capacity as partner of that director or of his spouse, child or step-child, or of any trustee referred to in paragraph (ii).

(9) References in subsection (8) to the child or step-child of any person shall include a reference to any illegitimate child of that person, but shall not include a reference to any person who has attained the age of 18 years.

(10) In this section—

“company” (公司) means—

- (a) a company within the meaning of section 2; or
- (b) any other body corporate that is incorporated in Hong Kong under an Ordinance and that has any of its shares listed on a recognized stock market,

but does not include an authorized financial institution;

“conditional sale agreement” (有條件售賣協議) means an agreement for the sale of goods or land under which—

- (a) the purchase price or part of it is payable by instalments;
- (b) the property in the goods or land is to remain in the seller until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled; and
- (c) the buyer is (notwithstanding such reservation of property) to be in possession of the goods or land prior to the fulfilment of such conditions;

“credit transaction” (信貸交易) means a transaction between one party (“the creditor”) and another party (“the borrower”) under which the creditor—

- (a) supplies goods to the borrower under a hire-purchase agreement;
- (b) sells goods or land to the borrower under a conditional sale agreement;
- (c) leases or hires goods or leases land to the borrower in return for periodical payments; or

- (d) otherwise disposes of land or supplies goods or services to the borrower on the understanding that payment (whether in a lump sum or instalments or by way of periodical payments or otherwise) is to be deferred;
- “director” (董事) includes a shadow director;
- “guarantee” (擔保) includes indemnity, and cognate expressions are to be construed accordingly;
- “hire-purchase agreement” (租購協議) means an agreement for the bailment of goods under which the bailee may buy the goods, or under which the property in the goods will or may pass to the bailee;
- “land” (土地) includes any estate or interest in land, buildings, messuages and tenements of any nature or kind whatsoever;
- “quasi-loan” (類似貸款) means—
- (a) a transaction under which one party (“the creditor”) agrees to pay, or pays otherwise than in pursuance of an agreement, a sum for another (“the borrower”)—
    - (i) on terms that the borrower (or a person on his behalf) will reimburse the creditor; or
    - (ii) in circumstances giving rise to a liability on the borrower to reimburse the creditor; or
  - (b) a transaction under which one party (“the creditor”) agrees to reimburse, or reimburses otherwise than in pursuance of an agreement, expenditure incurred by another for another (“the borrower”)—
    - (i) on terms that the borrower (or a person on his behalf) will reimburse the creditor; or
    - (ii) in circumstances giving rise to a liability on the borrower to reimburse the creditor;
- “relevant company” (有關公司) means a company within the meaning of this subsection but does not include a private company other than a relevant private company;
- “relevant private company” (有關私人公司) means a private company that is a member of a group of companies of which a company that has any of its shares listed on a recognized stock market is a member;
- “services” (服務) means anything other than goods or land.
- (11) For the purposes of this section—
- (a) a person “makes a quasi-loan to” or “enters into a credit transaction as creditor for” a person if the first-mentioned person is the creditor and the second-mentioned person is the borrower under the quasi-loan or credit transaction, as the case may be;

- (b) the liabilities of a borrower under a quasi-loan include the liabilities of any person who has agreed to reimburse the creditor on behalf of the borrower; and
- (c) a body corporate is not to be treated as a shadow director of any of its subsidiaries by reason only that the directors or a majority of the directors of the subsidiary are accustomed to act in accordance with its directions or instructions.

#### **157HA. Excepted transactions**

(1) Section 157H does not prohibit a company that is a member of a group of companies from—

- (a) making a loan or quasi-loan to, or entering into a credit transaction as creditor for, a company that is a member of the same group of companies; or
- (b) entering into a guarantee or providing any security in connection with—
  - (i) a loan or quasi-loan made by any person to a company that is a member of the same group of companies; or
  - (ii) a credit transaction entered into by any person as creditor for such a company.

(2) Section 157H does not prohibit a private company (not being a relevant private company) from doing anything that has been approved by the company in general meeting.

(3) Subject to this section, a company is not prohibited by section 157H from—

- (a) entering into any transaction to provide any of its directors with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company;
- (b) entering into any transaction—
  - (i) for the purpose of facilitating the purchase of the whole or part of any residential premises, together with any land to be occupied and enjoyed therewith, for use as the only or main residence of a director of the company;
  - (ii) for the purpose of improving any residential premises so used or any land occupied and enjoyed therewith; or
  - (iii) in substitution for any transaction entered into by any person for the benefit of a director of the company and falling within subparagraph (i) or (ii); or

(c) leasing or hiring goods or leasing land to a director of the company on terms not more favourable than the terms it is reasonable to expect the company to have offered, if the goods had been leased or hired or the land had been leased on the open market, to a person who is unconnected with the company.

(4) The exception specified in subsection (3)(a) operates in relation to a transaction described in that subsection only if either of the following conditions is satisfied—

- (a) the transaction in question is entered into with the prior approval of the company given at a general meeting at which the purpose of the expenditure incurred or to be incurred by the director concerned and the amount of the transaction are disclosed; or
- (b) the transaction is entered into on the condition that, if the approval of the company is not so given at or before the next following annual general meeting, any liability falling on any person in connection with the transaction shall be discharged within 6 months from the conclusion of that meeting.

(5) The exception specified in subsection (3)(b) operates in relation to a transaction described in that subsection only if the following conditions are satisfied—

- (a) the company in question ordinarily enters into transactions of that description for its employees on terms no less favourable than those on which the transaction in question is entered into;
- (b) the amount of the transaction does not exceed 80 per cent of the value of the residential premises, or the part thereof, in question and any land to be occupied and enjoyed therewith, as stated in a valuation report that complies with paragraph (c);
- (c) the valuation report is made and signed by a professionally qualified valuation surveyor, who is subject to the discipline of a professional body, not earlier than 3 months prior to the date on which the transaction is entered into; and
- (d) the transaction is secured by a legal mortgage on the land comprising the residential premises, or the part thereof, in question and any land to be occupied and enjoyed therewith.

(6) Subject to this section, a company is not prohibited by section 157H(2) from entering into a transaction described in that section if the ordinary business of that company includes the entering into of transactions of that description.

(7) Subject to this section, a relevant company is not prohibited by section 157H(3) or (4) from entering into a transaction described in that section if the ordinary business of that company includes the entering into of transactions of that description.

(8) The exceptions specified in subsections (6) and (7) operate in relation to a transaction described in that subsection only if the following conditions are satisfied—

- (a) the transaction in question is entered into by the company or relevant company, as the case may be, in the ordinary course of its business; and
- (b) the amount of the transaction is not greater, and the terms of the transaction are not more favourable, in the case of the person with or in respect of whom the transaction is entered into, than that amount or those terms that it is reasonable to expect the company or relevant company, as the case may be, to have offered to or in respect of a person of the same financial standing as that person but who is unconnected with the company or relevant company.

(9) Subsections (6) and (7) do not authorize a company or relevant company, as the case may be, to enter into a transaction described in section 157H(2), (3) or (4) if, at the time the transaction is entered into, the relevant amount exceeds \$750,000.

(10) For the purpose of subsection (9), “relevant amount” (有關款額)—

- (a) in relation to a company that at the time of the transaction in question is subject to the prohibition in section 157H(2) but is not subject to the prohibitions in section 157H(3) and (4), means the aggregate of the following amounts—
  - (i) the amount of the transaction in question;
  - (ii) the amount outstanding at that time in respect of principal on all loans made by the company by virtue of subsection (6) to the director or other company concerned (excluding the transaction in question); and
  - (iii) the amount representing the maximum liability of the company at that time under all guarantees and all security entered into or provided by the company by virtue of subsection (6) in connection with any loans made by any person to the director or other company concerned (excluding the transaction in question); and

- (b) in relation to a company that at the time of the transaction in question is subject to the prohibitions in section 157H(2), (3) and (4), means the aggregate of the following amounts—
- (i) the amount of the transaction in question;
  - (ii) the amount outstanding at that time in respect of principal on all loans and quasi-loans made by the company to, and all credit transactions entered into by the company as creditor for, the director or other company concerned by virtue of subsection (6) or (7) (excluding the transaction in question); and
  - (iii) the amount representing the maximum liability of the company at that time under all guarantees and all security entered into or provided by the company by virtue of subsection (6) or (7) in connection with any loans or quasi-loans made by any person to, or any credit transactions entered into by any person as creditor for, the director or other company concerned (excluding the transaction in question).

(11) Subsections (3), (6) and (7) do not authorize a company to enter into a transaction if, at the time the transaction is entered into, the relevant amount exceeds 5 per cent of the amount of the company's net assets as shown in the latest balance sheet laid before the company in general meeting.

(12) For the purpose of subsection (11), "relevant amount" (有關款額)—

- (a) in relation to a company that at the time of the transaction in question is subject to the prohibition in section 157H(2) but is not subject to the prohibitions in section 157H(3) and (4), means the aggregate of the following amounts—
- (i) the amount of the transaction in question;
  - (ii) the amount outstanding at that time, in respect of principal and interest or otherwise, on all loans made by the company to any of its directors (excluding the transaction in question and any loans made by virtue of subsection (1) or (2)); and
  - (iii) the amount representing the maximum liability of the company at that time under all guarantees entered into by the company, and in respect of all security provided by the company, in connection with any loans made by any person to any of its directors (excluding the transaction in question and any guarantees or security entered into or provided by virtue of subsection (1) or (2)); and

- (b) in relation to a company that at the time of the transaction in question is subject to the prohibitions in section 157H(2), (3) and (4), means the aggregate of the following amounts—
- (i) the amount of the transaction in question;
  - (ii) the amount outstanding at that time, in respect of principal and interest or otherwise, on all loans and quasi-loans made by the company to, and all credit transactions entered into by the company as creditor for, any of its directors (excluding the transaction in question and any loans, quasi-loans or credit transactions made or entered into by virtue of subsection (1) or (2)); and
  - (iii) the amount representing the maximum liability of the company at that time under all guarantees entered into by the company, and in respect of all security provided by the company, in connection with any loans or quasi-loans made by any person to, or any credit transactions entered into by any person as creditor for, any of its directors (excluding the transaction in question and any guarantees or security entered into or provided by virtue of subsection (1) or (2)).

(13) A reference in this section to the amount of a transaction entered into by a company shall be construed as a reference to—

- (a) where the transaction consists of a loan, quasi-loan or credit transaction, the principal amount of that loan, quasi-loan or credit transaction;
- (b) where the transaction consists of a guarantee, the amount representing the maximum liability of the company under that guarantee; and
- (c) where the transaction consists of the provision of any security, the amount representing the maximum liability of the company in respect of that security.

(14) A reference in this section to the principal amount of a quasi-loan or credit transaction shall be construed as a reference to the total amount payable by the borrower, excluding any amount payable as interest, as a penalty or as compensation or damages for a breach of the transaction.

(15) In this section, “net assets” (淨資產), in relation to a company, means the aggregate of the company’s assets less the aggregate of its liabilities, and for the purposes of this definition, “liabilities” (負債) includes any provision within the meaning of the Tenth Schedule except to the extent that that provision is taken into account in calculating the value of any asset of the company.

(16) All other terms and expressions used in this section have the same meaning as in section 157H subject to the following exceptions—

- (a) for the purposes of subsection (3) of this section, “director” (董事) does not include a shadow director; and
- (b) section 157H(8) shall not apply in relation to the references to a director in subsection (3) of this section insofar as that subsection applies in respect of a director of—
  - (i) a company that has any of its shares listed on a recognized stock market; or
  - (ii) a company that is a member of a group of companies of which a company referred to in paragraph (a) is a member.”.

### **63. Civil consequences of transactions contravening section 157H**

(1) Section 157I(1) is repealed and the following substituted—

“(1) A person who receives from a company a sum paid in pursuance of a transaction or arrangement entered into in contravention of section 157H shall be liable to repay that sum to the company forthwith, except where he is not a director of the company or of its holding company and he shows that, at the time the transaction or arrangement was entered into, he did not know the relevant circumstances.”.

(2) Section 157I(2) is amended by repealing “157H(2)” and substituting “157H”.

(3) Section 157I(3) to (6) is repealed and the following substituted—

“(3) Subsection (2)—

(a) shall not apply to a guarantee entered into or any security provided by the company in connection with a loan or quasi-loan made by any person to, or a credit transaction entered into by any person as creditor for, a person who is not a director of the company or of its holding company if it is shown that, at the time the guarantee was entered into or the security provided, the person to whom the guarantee was given or the security provided, as the case may be, did not know the relevant circumstances; and

(b) shall not affect an interest in any property that has been passed by the company to any person by way of security provided in connection with any transaction or arrangement.

(4) Without prejudice to any liability imposed on directors of companies otherwise than by this subsection, a director of a company that has entered into a transaction or arrangement in contravention of section 157H shall be liable—

- (a) to account to the company for any gain that he has made directly or indirectly by the transaction or arrangement; and
- (b) jointly and severally with any other director liable under this subsection, to indemnify the company for any loss or damage resulting from that transaction or arrangement,

if—

- (i) he knowingly and wilfully authorized or permitted the transaction or arrangement to be entered into;
- (ii) the transaction or arrangement consists of the making of a loan or quasi-loan to, or the entering into of a credit transaction as creditor for, that director or a person connected with him; or
- (iii) the transaction or arrangement consists in the giving of any guarantee or the provision of any security in connection with a loan or quasi-loan made by any person to, or a credit transaction entered into by any person as creditor for, that director or a person connected with him.

(5) Without prejudice to subsections (1) to (4), section 157H shall not of itself invalidate any transaction or arrangement entered into in contravention of that section.

(6) In this section—

“company” (公司) has the same meaning as in section 157H(10);

“director” (董事), except in subsection (3), includes a shadow director;

“the relevant circumstances” (有關情況), in relation to a contravention of section 157H, means all the facts and other circumstances constituting that contravention including, in the case of a transaction or arrangement which but for any fact or circumstance would be authorized by any provision of section 157HA, that fact or circumstance.”.

#### **64. Section substituted**

Section 157J is repealed and the following substituted—

##### **“157J. Criminal penalties for contravention of section 157H**

(1) Where a company enters into a transaction in contravention of section 157H(2), (3) or (4), the following persons shall, subject to subsection (2), be guilty of an offence—

- (a) if the transaction is entered into in contravention of section 157H(2)(a) or (b), (3)(a) or (b) or (4)(a) or (b), the company;