
Securities and Futures and Companies Legislation (Uncertificated Securities Market Amendment) Ordinance 2015

Contents

Section	Page
Part 1	
Preliminary	
1.	Short title and commencement A565
2.	Enactments amended A567
Part 2	
Amendments to Securities and Futures Ordinance	
3.	Section 38 amended (duties of recognized clearing house) A569
4.	Section 40 amended (rules by recognized clearing houses) A571
5.	Section 42 amended (production of records, etc. by recognized clearing house) A573
6.	Section 43 amended (withdrawal of recognition of clearing house and direction to cease to provide facilities)..... A575
7.	Section 63 amended (duties of recognized exchange controller) A577
8.	Section 71 amended (production of records, etc. by recognized exchange controller) A579
9.	Section 76 amended (fees to be approved by Commission) A581
10.	Section 91 amended (supply of information)..... A583

Section	Page
11. Section 92 amended (additional powers of Commission— restriction notices).....	A583
12. Part IIIAA added.....	A585

Part IIIAA

Uncertificated Securities Market

Division 1—Preliminary

101AA. Interpretation of Part IIIAA.....	A585
101AAB. What are prescribed securities	A585
101AAC. What is an uncertificated securities market system.....	A587

Division 2—General Principles

101AAD. Evidence and transfer of title to prescribed securities without instrument	A587
101AAE. Conflict or inconsistency between section 101AAD and certain provisions and terms of corporations	A589
101AAF. Conflict or inconsistency between section 101AAD or 101AAE and laws of places outside Hong Kong.....	A591

Division 3—Uncertificated Securities Market Regime

Subdivision 1—Powers of Commission

101AAG. Commission to approve recognized clearing house to operate and maintain uncertificated securities market system	A593
---	------

Section	Page
101AAH. Power of Commission to impose conditions, or to amend or revoke conditions.....	A595
101AAI. Power of Commission to withdraw approval granted under section 101AAG.....	A597
101AAJ. Notification of Commission's intention to withdraw approval under section 101AAI.....	A601
101AAK. Power of Commission to direct recognized clearing house to cease operating uncertificated securities market system etc.....	A603
101AAL. Notification of Commission's intention to give direction under section 101AAK.....	A609
101AAM. Certain facts or particulars to be published in Gazette.....	A611
101AAN. Appeals.....	A611
Subdivision 2—Uncertificated Securities Market Rules	
101AAO. Uncertificated Securities Market Rules	A613
13. Section 209 amended (general provisions relating to sections 204, 205, 206 and 208).....	A619
14. Section 212 amended (winding-up orders and bankruptcy orders).....	A621
15. Section 213 amended (injunctions and other orders).....	A621
16. Section 336 amended (register of interests in shares and short positions).....	A621
17. Schedule 1 amended (interpretation and general provisions)....	A623

Section	Page
18.	Schedule 2 amended (Securities and Futures Commission)..... A629
19.	Schedule 3A added A631
	Schedule 3A Classes or Descriptions of Securities..... A631

Part 3

Amendments to Companies Ordinance

20.	Section 2 amended (interpretation)..... A633
21.	Section 134 amended (nature and transferability of shares) A635
22.	Section 137 amended (share certificate to be proof of title in the absence of contrary evidence)..... A637
23.	Section 143 amended (registration of allotment)..... A637
24.	Sections 143A and 143B added..... A639
	143A. Registration of allotment—participating company A641
	143B. Power of Court in relation to non-compliance with section 143A(1)..... A643
25.	Section 144 amended (issue of share certificate on allotment)..... A645
26.	Section 150 amended (requirement for instrument of transfer)..... A647
27.	Section 151 amended (registration of transfer or refusal of registration)..... A647
28.	Section 152 amended (order of Court for registration) A649
29.	Section 153 amended (transfer by personal representative) A649

Securities and Futures and Companies Legislation (Uncertificated Securities
Market Amendment) Ordinance 2015

Ord. No. 5 of 2015
A559

Section	Page
30.	Section 155 amended (issue of share certificate on transfer) A649
31.	Section 158 amended (registration or refusal of registration)..... A651
32.	Section 158A added A653
	158A. Registration or refusal of registration— participating company A653
33.	Section 159 amended (order of Court for registration) A657
34.	Sections 626A and 626B added..... A659
	626A. Each company must have register of members A659
	626B. Register of members of participating company A659
35.	Section 627 amended (register of members) A661
36.	Section 627A added A665
	627A. Exceptions to section 627—when a participating company changes to a non-participating company A665
37.	Section 628 amended (place where register must be kept) A667
38.	Section 629 amended (statement that company has only one member) A669
39.	Section 630 amended (index of members) A671
40.	Section 631 amended (right to inspect and request copy)..... A671
41.	Section 632 amended (power to close register of members) A673
42.	Section 633 amended (power of Court to rectify register)..... A675

Section	Page
43.	Section 635 amended (register to be proof in the absence of contrary evidence)..... A677
44.	Section 637 amended (keeping of branch register) A677
45.	Section 637A added A679
	637A. Keeping of branch register—participating company A679
46.	Section 654 amended (meaning of <i>company records</i>) A681
47.	Section 655 amended (form of company records) A681
48.	Section 696 amended (obligations of offeror with right to buy out minority shareholders)..... A683
49.	Section 908 repealed (paperless holding and transfer of shares and debentures)..... A683
50.	Schedule 8 repealed (amendments relating to paperless holding and transfer of shares and debentures)..... A683

Part 4

Related Amendments

Division 1—Amendments to Companies (Winding-up) Rules

(Cap. 32 sub. leg. H)

51.	Appendix amended (forms)..... A685
-----	------------------------------------

Division 2—Amendments to Stamp Duty Ordinance (Cap. 117)

52.	Section 2 amended (interpretation) A687
53.	Section 4 amended (charging of, liability for, and recovery of stamp duty) A687

Section	Page
54.	Sections 5AA and 5AAB added..... A689
5AA.	Additional provision on methods of stamping— sale or purchase of Hong Kong stock..... A689
5AAB.	Approval of arrangement for purposes of section 5AA..... A691
55.	Section 19 amended (contract notes, etc. in respect of sale and purchase of Hong Kong stock)..... A697
56.	Section 58A amended (representations may be made to Collector before certain penalties are imposed) A697
57.	Section 58B amended (remission of certain penalties)..... A697
58.	First Schedule amended A697
Division 3—Amendments to Mental Health Ordinance (Cap. 136)	
59.	Section 17 amended (committee to execute instruments)..... A699
Division 4—Amendments to Crimes Ordinance (Cap. 200)	
60.	Section 84 amended (making false entry in contract for sale of shares) A701
Division 5—Amendment to Electronic Transactions Ordinance (Cap. 553)	
61.	Schedule 1 amended (matters excluded from application of sections 5, 5A, 6, 7, 8 and 17 of this Ordinance under section 3 of this Ordinance)..... A703
Division 6—Amendment to Companies Ordinance (Cap. 622)	
62.	Section 632 amended (power to close register of members) A703

Securities and Futures and Companies Legislation (Uncertificated Securities
Market Amendment) Ordinance 2015

Part 1
Section 1

Ord. No. 5 of 2015
A565

HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 5 OF 2015



C. Y. LEUNG
Chief Executive
26 March 2015

An Ordinance to amend the Securities and Futures Ordinance, the Companies Ordinance and other enactments to facilitate the establishment and implementation of an uncertificated securities market regime in Hong Kong; and to provide for related matters and make minor amendments.

[27 March 2015]

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Securities and Futures and Companies Legislation (Uncertificated Securities Market Amendment) Ordinance 2015.
- (2) Subject to subsection (3), this Ordinance comes into operation on the day on which it is published in the Gazette.

Securities and Futures and Companies Legislation (Uncertificated Securities
Market Amendment) Ordinance 2015

Part 1
Section 2

Ord. No. 5 of 2015
A567

- (3) Section 2(2) and (3), Part 2 (except section 17(7)) and Parts 3 and 4 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. Enactments amended

- (1) The Securities and Futures Ordinance (Cap. 571) is amended as set out in Part 2.
 - (2) The Companies Ordinance (Cap. 622) is amended as set out in Part 3.
 - (3) The enactments specified in Part 4 are amended as set out in that Part.
-

Part 2

Amendments to Securities and Futures Ordinance

3. Section 38 amended (duties of recognized clearing house)

(1) Section 38, Chinese text—

Repeal subsection (1)

Substitute

“(1) 認可結算所——

- (a) 有責任在合理地切實可行的範圍內，確保透過其設施結算或交收的證券或期貨合約的交易，是在有秩序、公平和快捷的結算及交收安排下進行的；及
- (b) 有責任確保與其業務及營運有關聯的風險，得以審慎管理。”

(2) After section 38(1)—

Add

“(1A) If a recognized clearing house is also the system operator of an uncertificated securities market system, the clearing house must also ensure, so far as reasonably practicable, that—

- (a) the system is properly operated and maintained; and
- (b) the activities, instructions and other things that are required or permitted to be carried out, executed or processed by or through the system are carried out, executed or processed by or through the system in an orderly, fair and expeditious manner.”

(3) Section 38(2), after “subsection (1)”—

Add

“or (1A)”.

- (4) Section 38(3), Chinese text—

Repeal

“運作”

Substitute

“營辦”.

- (5) Section 38(4), after “clearing participants”—

Add

“and (if it is also a system operator) its system participants”.

- (6) After section 38(5)—

Add

“(6) In subsection (1A)—

instruction (指示) means any instruction, election, acceptance or other message of any kind.”.

4. Section 40 amended (rules by recognized clearing houses)

- (1) Section 40(1)(a), Chinese text—

Repeal

“運作” (wherever appearing)

Substitute

“營辦”.

- (2) After section 40(1)(a)—

Add

“(ab) for the proper regulation and efficient operation of the uncertificated securities market system that it operates;”.

(3) Section 40(1)(b)—

Repeal the semicolon

Substitute

“and (if it is also a system operator) its system participants;
or”.

5. Section 42 amended (production of records, etc. by recognized clearing house)

Section 42—

Repeal subsection (1)

Substitute

“(1) The Commission may, by notice in writing served on a recognized clearing house, require the clearing house to provide to the Commission, within the period specified in the notice, any specified materials that the Commission reasonably requires for performing its functions.

(1A) The specified materials are—

- (a) books and records kept by the recognized clearing house in connection with or for its business;
- (b) books and records kept by the clearing house in respect of any clearing and settlement arrangements for—
 - (i) any transactions in securities or futures contracts; or
 - (ii) any transactions in OTC derivative products;
- (c) other information that relates to—
 - (i) the business of the clearing house; or
 - (ii) any clearing and settlement arrangements described in paragraph (b); and

- (d) if the clearing house is also the system operator of an uncertificated securities market system—
- (i) books and records kept by the clearing house in respect of the operation and maintenance of the system, or in respect of any transactions or other things effected or processed by or through the system; and
 - (ii) other information that relates to the operation and maintenance of the system, or to any transactions or things described in subparagraph (i).”.

6. Section 43 amended (withdrawal of recognition of clearing house and direction to cease to provide facilities)

- (1) Section 43(1)(b), Chinese text—

Repeal

“運作”

Substitute

“營辦”.

- (2) Section 43(2)(a), Chinese text—

Repeal

“運作”

Substitute

“營運”.

- (3) Section 43(3)(c), Chinese text—

Repeal

“已停止以結算所的形式營辦”

Substitute

“停止作為結算所的營運”.

(4) Section 43(7), Chinese text—

Repeal

“運作”

Substitute

“營辦”.

7. Section 63 amended (duties of recognized exchange controller)

(1) After section 63(1)—

Add

“(1A) If a recognized clearing house is also the system operator of an uncertificated securities market system, a recognized exchange controller which is a controller of the clearing house must also ensure, so far as reasonably practicable, that—

(a) the system is properly operated and maintained; and

(b) the activities, instructions and other things that are required or permitted to be carried out, executed or processed by or through the system are carried out, executed or processed by or through the system in an orderly, fair and expeditious manner.”.

(2) Section 63(2), after “(c)—

Add

“or (1A)”.

(3) After section 63(2)—

Add

“(3) In subsection (1A)—

instruction (指示) means any instruction, election, acceptance or other message of any kind.”.

8. Section 71 amended (production of records, etc. by recognized exchange controller)

Section 71—

Repeal subsection (1)

Substitute

- “(1) The Commission may, by notice in writing served on a recognized exchange controller, require the exchange controller to provide to the Commission, within the period specified in the notice, any specified materials that the Commission reasonably requires for performing its functions.
- (1A) The specified materials are—
- (a) books and records kept by the recognized exchange controller in connection with or for its business;
 - (b) books and records kept by the exchange controller in respect of—
 - (i) any trading in securities or futures contracts traded on the stock market or futures market operated by a recognized exchange company of which it is a controller;
 - (ii) any trading in securities or futures contracts traded through the facilities of that company; or
 - (iii) any trading in OTC derivative products traded through the facilities of that company;
 - (c) books and records kept by the exchange controller in respect of any clearing and settlement arrangements for—

- (i) any transactions in securities or futures contracts cleared or settled through the facilities of a recognized clearing house of which it is a controller; or
- (ii) any transactions in OTC derivative products cleared or settled through the facilities of that clearing house;
- (d) other information that relates to—
 - (i) the business of the exchange controller;
 - (ii) any trading described in paragraph (b); or
 - (iii) any clearing and settlement arrangements described in paragraph (c); and
- (e) if a recognized clearing house of which the exchange controller is a controller is also the system operator of an uncertificated securities market system—
 - (i) books and records kept by the exchange controller in respect of the operation and maintenance of the system, or in respect of any transactions or other things effected or processed by or through the system; and
 - (ii) other information that relates to the operation and maintenance of the system, or to any transactions or things described in subparagraph (i).”.

9. Section 76 amended (fees to be approved by Commission)

(1) After section 76(1)—

Add

“(1A) A fee imposed by a recognized clearing house in its capacity as a system operator does not have effect unless the fee—

- (a) is specified in the rules of the clearing house; and
- (b) is approved in writing by the Commission.”.

- (2) Section 76(2), after “subsection (1)”—

Add

“or (1A)”.

10. Section 91 amended (supply of information)

- (1) Section 91(1)(b), after “clearing participants”—

Add

“and (if it is also a system operator) the affairs of any of its system participants”.

- (2) Section 91(1)(ii)—

Repeal

everything after “clearing house”

Substitute

“(whether or not as a system operator), recognized exchange controller or recognized investor compensation company to which the information is supplied, under this Ordinance or their respective rules.”.

- (3) Section 91(2)(b), after “clearing participants”—

Add

“and (if it is also a system operator) the affairs of any of its system participants”.

11. Section 92 amended (additional powers of Commission—restriction notices)

- (1) Section 92(13)(c)—

Repeal

“or”.

- (2) Section 92(13)(d)—
Repeal the comma
Substitute
“; or”.
- (3) After section 92(13)(d)—
Add
“(e) a system participant.”.

12. Part IIIAA added

After Part III—
Add

“Part IIIAA

Uncertificated Securities Market

Division 1—Preliminary

101AA. Interpretation of Part IIIAA

In this Part—

cessation notice (停止營辦通知) means a notice served under section 101AAK(5);

prescribed securities (訂明證券)—see section 101AAB;

withdrawal notice (撤回批准通知) means a notice served under section 101AAI(5).

101AAB. What are prescribed securities

- (1) Prescribed securities are securities—
- (a) that fall within a class or description of securities specified in Schedule 3A; and

- (b) that are listed or to be listed on a recognized stock market.
- (2) The Commission may, after consultation with the Financial Secretary, by notice published in the Gazette, amend Schedule 3A.

101AAC. What is an uncertificated securities market system

An uncertificated securities market system is a computer-based system, together with procedures and other facilities, that—

- (a) enables title to prescribed securities to be evidenced and transferred without an instrument; and
- (b) facilitates supplementary and incidental matters.

Division 2—General Principles

101AAD. Evidence and transfer of title to prescribed securities without instrument

- (1) Subject to subsection (2), title to prescribed securities may be evidenced and transferred without an instrument.
- (2) Title to prescribed securities may only be so evidenced and transferred—
 - (a) by or through an uncertificated securities market system operated and maintained by its system operator; and
 - (b) under the Uncertificated Securities Market Rules.

Note—

See also sections 101AAE and 101AAF.

101AAE. Conflict or inconsistency between section 101AAD and certain provisions and terms of corporations

- (1) For any prescribed securities that are shares in a corporation, if there is a conflict or inconsistency between the specified enactments and the provisions and terms, the specified enactments prevail to the extent of the conflict or inconsistency.
- (2) For any other prescribed securities, if there is a conflict or inconsistency between the specified enactments and the terms of issue of the securities, the specified enactments prevail to the extent of the conflict or inconsistency.
- (3) In this section—

provisions and terms (條文及條款), in relation to shares in a corporation, means the following provisions and terms—

- (a) the provisions of the constitution of the corporation; and
- (b) the terms of issue of the shares;

specified enactments (指明成文法則) means the following enactments—

- (a) section 101AAD; and
- (b) the Uncertificated Securities Market Rules;

terms of issue (發行條款), in relation to any prescribed securities, includes the terms of issue of the securities imposed by the issuer in relation to—

- (a) the holding of the securities; or
- (b) the transfer of title to the securities.

Note—

See also section 101AAF.

101AAF. Conflict or inconsistency between section 101AAD or 101AAE and laws of places outside Hong Kong

- (1) This section applies to—
 - (a) any prescribed securities that are shares in or debentures of a body corporate incorporated in a place outside Hong Kong; and
 - (b) any prescribed securities, other than those mentioned in paragraph (a), that are constituted under the law of a place outside Hong Kong.
- (2) The specified enactments apply to any prescribed securities mentioned in subsection (1)(a) to the extent to which the application is neither prohibited under nor in conflict or inconsistent with—
 - (a) the law of the place of incorporation; or
 - (b) the law under which the securities are constituted (if the securities are constituted under the law of a place other than Hong Kong and the place of incorporation).
- (3) The specified enactments apply to any prescribed securities mentioned in subsection (1)(b), other than those mentioned in subsection (1)(a), to the extent to which the application is neither prohibited under nor in conflict or inconsistent with the law under which the securities are constituted.
- (4) In this section—

place of incorporation (成立地), in relation to prescribed securities that are shares in or debentures of a body corporate, means the place in which the body corporate is incorporated;

specified enactments (指明成文法則) means the following enactments—

 - (a) section 101AAD;

- (b) section 101AAE; and
- (c) the Uncertificated Securities Market Rules.

Division 3—Uncertificated Securities Market Regime

Subdivision 1—Powers of Commission

101AAG. Commission to approve recognized clearing house to operate and maintain uncertificated securities market system

- (1) The Commission may, after consultation with the Financial Secretary, approve a recognized clearing house to operate and maintain an uncertificated securities market system.
- (2) The Commission must not grant the approval unless the Commission is satisfied that—
 - (a) it is appropriate to do so in the interests of the investing public or in the public interest; or
 - (b) it is appropriate to do so for the proper regulation of markets in securities.
- (3) The approval—
 - (a) is to be granted by notice in writing served on the clearing house; and
 - (b) may be granted subject to conditions imposed by the Commission and specified in the notice.
- (4) The approval takes effect on the date specified in the notice.
- (5) If—
 - (a) a recognized clearing house seeks an approval under subsection (1); and
 - (b) the Commission intends not to grant the approval,

the Commission must give the clearing house a reasonable opportunity of being heard before making a decision not to grant the approval.

- (6) If—
- (a) a recognized clearing house seeks an approval under subsection (1); and
 - (b) the Commission decides not to grant the approval, the Commission must, by notice in writing served on the clearing house, inform the clearing house of the decision and the reasons for the decision.

101AAH. Power of Commission to impose conditions, or to amend or revoke conditions

- (1) The Commission may, after consultation with the Financial Secretary, do one or more of the following with regard to an approval that has been granted under section 101AAG(1)—
 - (a) impose a condition;
 - (b) amend or revoke a condition.
- (2) The Commission must not impose, amend or revoke a condition under subsection (1) unless the Commission is satisfied that—
 - (a) it is appropriate to do so in the interests of the investing public or in the public interest; or
 - (b) it is appropriate to do so for the proper regulation of markets in securities.
- (3) If the Commission decides to impose, amend or revoke a condition under subsection (1), the Commission must, by notice in writing served on the recognized clearing house, inform the clearing house of the decision.

- (4) If the Commission imposes, amends or revokes a condition under subsection (1), the imposition, amendment or revocation takes effect—
 - (a) at the time the notice is served on the recognized clearing house; or
 - (b) at the time specified in the notice,
whichever is the later.

101AAI. Power of Commission to withdraw approval granted under section 101AAG

- (1) The Commission may, after consultation with the Financial Secretary, withdraw an approval granted under section 101AAG(1) to a recognized clearing house.
- (2) In addition, the Commission may, after consultation with the Financial Secretary, permit the clearing house to continue to carry on any activities affected by the withdrawal.
- (3) The Commission must not withdraw an approval granted under section 101AAG(1) to a recognized clearing house unless—
 - (a) the clearing house fails to comply with a requirement of this Ordinance;
 - (b) the clearing house fails to comply with a condition imposed under section 37(1) or (2);
 - (c) the clearing house fails to comply with—
 - (i) a condition imposed under section 101AAG(3)(b) or 101AAH(1)(a); or
 - (ii) a condition amended under section 101AAH(1)(b);
 - (d) the clearing house is being wound up;

-
- (e) the clearing house has requested the Commission to withdraw the approval;
 - (f) the clearing house has requested the Commission to serve on the clearing house a notice under section 43(1);
 - (g) the clearing house has requested the Commission to give a direction under section 101AAK(1);
 - (h) the clearing house—
 - (i) ceases to operate or maintain the uncertificated securities market system that the clearing house is approved under section 101AAG(1) to operate and maintain;
 - (ii) ceases to provide or operate any other facilities that are provided or operated by the clearing house in connection with the operation of the system; or
 - (iii) ceases to provide any services that are provided by the clearing house in connection with the operation of the system; or
 - (i) the clearing house ceases to operate as a clearing house.
- (4) The Commission must not grant a permission under subsection (2) except—
- (a) for giving effect to the withdrawal; or
 - (b) for protecting the interests of the investing public or the public interest.
- (5) If the Commission decides to withdraw an approval under subsection (1), the Commission must, by notice in writing served on the clearing house, inform the clearing house of—
- (a) the decision; and
 - (b) the reasons for the decision.

- (6) Subject to subsection (7), the withdrawal takes effect on the date specified in the withdrawal notice for the purpose.
- (7) The withdrawal must not take effect—
 - (a) if an appeal against the Commission's decision to withdraw the approval is made under section 101AAN, until the appeal is withdrawn, abandoned or determined; and
 - (b) in any other case, until the period within which the appeal may be made under section 101AAN expires.
- (8) If the Commission decides to grant a permission under subsection (2), the Commission must, by the withdrawal notice served on the clearing house, inform the clearing house of—
 - (a) the decision; and
 - (b) the reasons for the decision.
- (9) The permission takes effect on the date specified in the withdrawal notice for the purpose.

101AAJ. Notification of Commission's intention to withdraw approval under section 101AAI

- (1) If the Commission intends to withdraw an approval under section 101AAI(1), the Commission must, by notice in writing served on the clearing house to whom the approval is granted, inform the clearing house of—
 - (a) the Commission's intention; and
 - (b) the reasons the Commission will rely on for withdrawing the approval.
- (2) Subsection (1) does not apply if—
 - (a) the clearing house has requested the Commission to withdraw the approval; or

- (b) the clearing house has requested the Commission to serve on the clearing house a notice under section 43(1).
- (3) If subsection (1) applies, and the Commission also intends to grant a permission under section 101AAI(2), the Commission must, by the intention notice served on the clearing house, further inform the clearing house of—
 - (a) the Commission's intention to grant the permission; and
 - (b) the reasons the Commission will rely on for granting the permission.
- (4) The intention notice must be served on the clearing house not less than 14 days before the Commission serves the withdrawal notice.
- (5) The Commission must give the clearing house on whom the intention notice is served a reasonable opportunity of being heard before exercising any of the powers under section 101AAI(1) and (2).
- (6) In this section—

intention notice (意向通知) means a notice served under subsection (1).

101AAK. Power of Commission to direct recognized clearing house to cease operating uncertificated securities market system etc.

- (1) The Commission may, after consultation with the Financial Secretary, direct a recognized clearing house to do one or more of the following—
 - (a) cease to operate or maintain an uncertificated securities market system that the clearing house is approved under section 101AAG(1) to operate and maintain;

- (b) cease to provide or operate any other facilities that are provided or operated by the clearing house in connection with the operation of the system;
 - (c) cease to provide any services that are provided by the clearing house in connection with the operation of the system.
 - (2) In addition, the Commission may, after consultation with the Financial Secretary, permit the clearing house to continue to carry on any activities affected by the direction.
 - (3) The Commission must not give a direction under subsection (1) to a recognized clearing house unless—
 - (a) the clearing house fails to comply with a requirement of this Ordinance;
 - (b) the clearing house fails to comply with a condition imposed under section 37(1) or (2);
 - (c) the clearing house fails to comply with—
 - (i) a condition imposed under section 101AAG(3)(b) or 101AAH(1)(a); or
 - (ii) a condition amended under section 101AAH(1)(b);
 - (d) the clearing house is being wound up;
 - (e) the clearing house has requested the Commission to give the direction;
 - (f) the clearing house has requested the Commission to serve on the clearing house a notice under section 43(1);
 - (g) the clearing house has requested the Commission to withdraw the approval granted under section 101AAG(1) to the clearing house;
 - (h) the clearing house—

-
- (i) ceases to operate or maintain the uncertificated securities market system that the clearing house is approved under section 101AAG(1) to operate and maintain;
 - (ii) ceases to provide or operate any other facilities that are provided or operated by the clearing house in connection with the operation of the system; or
 - (iii) ceases to provide any services that are provided by the clearing house in connection with the operation of the system; or
 - (i) the clearing house ceases to operate as a clearing house.
 - (4) The Commission must not grant a permission under subsection (2) except—
 - (a) for giving effect to the direction; or
 - (b) for protecting the interests of the investing public or the public interest.
 - (5) If the Commission decides to give a direction under subsection (1), the Commission must, by notice in writing served on the clearing house, inform the clearing house of—
 - (a) the decision; and
 - (b) the reasons for the decision.
 - (6) The direction specified in the cessation notice takes effect on the date specified in the notice for the purpose.
 - (7) If the Commission decides to grant a permission under subsection (2), the Commission must, by the cessation notice served on the clearing house, inform the clearing house of—
 - (a) the decision; and

- (b) the reasons for the decision.
- (8) The permission takes effect on the date specified in the cessation notice for the purpose.

101AAL. Notification of Commission's intention to give direction under section 101AAK

- (1) If the Commission intends to give a direction under section 101AAK(1), the Commission must, by notice in writing served on the clearing house, inform the clearing house of—
 - (a) the Commission's intention; and
 - (b) the reasons the Commission will rely on for giving the direction.
- (2) Subsection (1) does not apply if—
 - (a) the clearing house has requested the Commission to give the direction; or
 - (b) the clearing house has requested the Commission to serve on the clearing house a notice under section 43(1).
- (3) If subsection (1) applies, and the Commission also intends to grant a permission under section 101AAK(2), the Commission must, by the intention notice served on the clearing house, further inform the clearing house of—
 - (a) the Commission's intention to grant the permission; and
 - (b) the reasons the Commission will rely on for granting the permission.
- (4) The intention notice must be served on the clearing house not less than 14 days before the Commission serves the cessation notice.

(5) The Commission must give the clearing house on whom the intention notice is served a reasonable opportunity of being heard before exercising any of the powers under section 101AAK(1) and (2).

(6) In this section—

intention notice (意向通知) means a notice served under subsection (1).

101AAM. Certain facts or particulars to be published in Gazette

(1) If the Commission approves under section 101AAG(1) a recognized clearing house to operate and maintain an uncertificated securities market system, the Commission must publish notice of that fact in the Gazette.

(2) If the Commission withdraws under section 101AAI(1) an approval granted to a recognized clearing house, the Commission must publish notice of that fact in the Gazette.

(3) If the Commission gives a direction under section 101AAK(1) to a recognized clearing house, the Commission must publish notice of the particulars of the direction in the Gazette.

101AAN. Appeals

(1) A person served with a withdrawal notice may appeal to the Chief Executive in Council against the Commission's decision to withdraw the approval granted under section 101AAG(1) to the person.

(2) A person served with a cessation notice may appeal to the Chief Executive in Council against the Commission's decision to give a direction under section 101AAK(1) to the person.

(3) The appeal must be made—

- (a) within 14 days after the date of service of the notice; or
 - (b) if a longer appeal period is specified in the notice, within the period.
- (4) The decision of the Chief Executive in Council on the appeal is final.

Subdivision 2—Uncertificated Securities Market Rules

101AAO. Uncertificated Securities Market Rules

- (1) For the purposes of this Part, the Commission may make rules—
- (a) providing for activities and matters involving or relating to prescribed securities or issuers of prescribed securities (*issuers*), including—
 - (i) the allotment, issue and holding of prescribed securities;
 - (ii) the transfer of prescribed securities, including the circumstances under which the transfer may be effected without an instrument;
 - (iii) the conversion of prescribed securities in certificated form into uncertificated form; and
 - (iv) the conversion of prescribed securities in uncertificated form into certificated form; and
 - (b) providing for matters relating to title to prescribed securities, including the evidencing, recording and passing of such title.
- (2) Without limiting subsection (1), rules made under that subsection (*rules*) may provide for the following—
- (a) the regulation of—

-
- (i) the procedures and operations of an uncertificated securities market system; or
 - (ii) any matters relating to the carrying out, execution or processing of activities, instructions or other things by or through an uncertificated securities market system;
 - (b) the registration of prescribed securities, and the registration of issuers' shares that are not prescribed securities, including—
 - (i) the registration of the allotment, transfer and transmission of such securities or shares;
 - (ii) the registration of holders of such securities or shares; and
 - (iii) the keeping of registers or other records or documents for such securities or shares;
 - (c) the rights, duties and liabilities, including the exemption from liabilities, of persons responsible for keeping the registers or other records or documents mentioned in paragraph (b)(iii);
 - (d) the making and provision of statements, by persons described in paragraph (c), and the issue of certificates or other documents by those persons;
 - (e) the rectification of the registers or other records or documents mentioned in paragraphs (b)(iii) and (d);
 - (f) the inspection, or withholding from inspection, of any or all parts of those registers, records or documents;
 - (g) the making of copies of any or all parts of those registers, records or documents;
 - (h) the authorization of persons—

- (i) to engage or participate in activities involving or relating to prescribed securities; or
 - (ii) to engage or participate in activities involving or relating to any of the matters mentioned in paragraphs (a), (b), (d), (e), (f) and (g),
other than to operate and maintain an uncertificated securities market system;
 - (i) the regulation of the persons mentioned in paragraph (h);
 - (j) the consequences of the insolvency or incapacity of a system operator, or any other person authorized under the rules to engage or participate in activities described in paragraph (h);
 - (k) the rights, duties and liabilities, including exemption from liabilities, of persons mentioned in paragraph (j) and of persons who are system participants;
 - (l) the charging or collecting of fees, by a person (other than the Commission) specified in the rules—
 - (i) in respect of any things done, or services provided, by the person in performing their functions under the rules; or
 - (ii) in respect of any things done, or services provided, by the person in connection with any other matters specified in the rules; and
 - (m) the admissibility in evidence in legal proceedings of documents specified in the rules and proof of the matters contained in those documents.
- (3) Without limiting subsection (1), rules made under that subsection may also—

- (a) provide for a court's functions in relation to any of the activities or matters mentioned in subsection (1) or (2); and
 - (b) provide for activities and matters that are related or incidental to any of the activities, matters or functions mentioned in subsection (1) or (2) or paragraph (a).
- (4) Rules made under subsection (1) may prescribe offences for contravention of the rules punishable (whether on conviction on indictment or on summary conviction), by a fine, imprisonment or both.
- (5) For an offence punishable on conviction on indictment, the maximum fine that may be prescribed is \$1,000,000 and the maximum imprisonment that may be prescribed is 7 years. In addition, in the case of a continuing offence, a further fine not exceeding \$100,000 for each day during which the offence continues may be prescribed.
- (6) For an offence punishable on summary conviction, the maximum fine that may be prescribed is \$500,000 and the maximum imprisonment that may be prescribed is 2 years. In addition, in the case of a continuing offence, a further fine not exceeding \$10,000 for each day during which the offence continues may be prescribed.
- (7) In subsection (2)(a)(ii)—
- instruction* (指示) means any instruction, election, acceptance or other message of any kind.”.

13. **Section 209 amended (general provisions relating to sections 204, 205, 206 and 208)**

Section 209(8)(a)—

Repeal

“or a clearing participant”

Substitute

“, a clearing participant or a system participant”.

14. Section 212 amended (winding-up orders and bankruptcy orders)

Section 212(3)(a)—

Repeal

“or a clearing participant”

Substitute

“, a clearing participant or a system participant”.

15. Section 213 amended (injunctions and other orders)

Section 213(3)(a)—

Repeal

“or a clearing participant”

Substitute

“, a clearing participant or a system participant”.

16. Section 336 amended (register of interests in shares and short positions)

(1) After section 336(14)—

Add

“(14A) For the purposes of subsection (10)(a)(i) and (ii), if any shares in the corporation are participating shares, a reference to the corporation’s register of members in that subsection is a reference to its members register (certificated shares).”.

(2) After section 336(15)—

Add

“(16) In subsection (14A)—

members register (certificated shares) ((有紙股份) 成員登記冊), in relation to a corporation, means the register required under the Uncertificated Securities Market Rules to be kept by the corporation in respect of its members who hold shares in the corporation that are in certificated form;

participating shares (參與股份) means shares that are permitted by the system operator of an uncertificated securities market system to be transferred through the system.”.

17. Schedule 1 amended (interpretation and general provisions)

- (1) Schedule 1, Part 1, section 1, definition of *rules*, after paragraph (b)(i)—

Add

“(ia) its system participants (if the clearing house is also a system operator);”.

- (2) Schedule 1, Part 1, section 1, definition of *rules*, after paragraph (b)(ii)—

Add

“(iia) the operation and maintenance of the uncertificated securities market system that it operates (if the clearing house is also a system operator);”.

- (3) Schedule 1, Chinese text, Part 1, section 1, definition of 規章, paragraph (b)(vi)—

Repeal

“運作”

Substitute

“營運”.

- (4) Schedule 1, English text, Part 1, section 1, definition of *trading right*—

Repeal the full stop

Substitute a semicolon.

- (5) Schedule 1, Part 1, section 1—

Add in alphabetical order

“*system operator* (系統營辦者) means a recognized clearing house approved by the Commission under section 101AAG(1) of this Ordinance to operate and maintain an uncertificated securities market system;

system participant (系統參與者)—see section 1AC of this Part;

Uncertificated Securities Market Rules (《無紙證券市場規則》) means the rules made under section 101AAO(1) of this Ordinance;

uncertificated securities market system (無紙證券市場系統)—see section 101AAC of this Ordinance.”.

- (6) Schedule 1, Part 1, after section 1A—

Add

“1AB. How to determine whether securities are in uncertificated form or in certificated form

For the purposes of this Ordinance—

- (a) any securities are in uncertificated form if the title to them—
- (i) is, under the Uncertificated Securities Market Rules, recorded by or through an uncertificated securities market system operated and maintained by its system operator; and

- (ii) is, under the Rules, permitted to be transferred, without an instrument, through the system; and
- (b) any securities are in certificated form if they are not in uncertificated form.

1AC. Who is a system participant

- (1) A person is a system participant if the person is permitted by the rules of a system operator made under section 40(1)(ab) of this Ordinance to send and receive authenticated instructions by or through an uncertificated securities market system.
- (2) For the purposes of subsection (1), an instruction is authenticated if it complies with the specifications provided for in the Uncertificated Securities Market Rules.
- (3) In this section—
instruction (指示) means any instruction, election, acceptance or other message of any kind.”.
- (7) Schedule 1, Part 1, after section 13—

Add

“14. Commencement of subsidiary legislation

Without limiting section 28(5) of the Interpretation and General Clauses Ordinance (Cap. 1), if any subsidiary legislation made under this Ordinance is to come into operation on a day to be notified in the Gazette—

- (a) the notice may fix different days for a provision of the subsidiary legislation to come into operation for different purposes; and
- (b) different notices may fix different days for the provision to come into operation for different purposes.”.

18. Schedule 2 amended (Securities and Futures Commission)

- (1) Schedule 2, Chinese text, Part 2, section 2(34)—

Repeal

“運作”

Substitute

“營辦”.

- (2) Schedule 2, Part 2, section 2(53), after “76(1)”—

Add

“or (1A)”.

- (3) Schedule 2, Part 2, after section 2(68)—

Add

- “(68A) to approve a recognized clearing house to operate and maintain an uncertificated securities market system, under section 101AAG(1) of this Ordinance;
- (68B) to impose a condition, under section 101AAG(3)(b) or 101AAH(1)(a) of this Ordinance;
- (68C) to give a recognized clearing house a reasonable opportunity of being heard, under section 101AAG(5) of this Ordinance;
- (68D) to amend or revoke a condition, under section 101AAH(1)(b) of this Ordinance;
- (68E) to withdraw an approval granted to a recognized clearing house, under section 101AAI(1) of this Ordinance;
- (68F) to direct a recognized clearing house to cease to operate or maintain an uncertificated securities market system, to cease to provide or operate any other facilities, or to cease to provide any services, under section 101AAK(1) of this Ordinance;”.

19. Schedule 3A added

After Schedule 3—

Add

“Schedule 3A [s. 101AAB]

Classes or Descriptions of Securities

1. Shares.”.
-

Part 3

Amendments to Companies Ordinance

20. Section 2 amended (interpretation)

(1) Section 2(1)—

Add in alphabetical order

“members register (certificated shares) ((有紙股份) 成員登記冊), in relation to a participating company, means the register required under the Uncertificated Securities Market Rules to be kept by the company in respect of its members who hold shares in the company that are in certificated form;

members register (uncertificated shares) ((無紙股份) 成員登記冊), in relation to a participating company, means the register required under the Uncertificated Securities Market Rules to be kept by a system operator in respect of the company’s members who hold shares in the company that are in uncertificated form;

non-participating company (非參與公司) means a company that is not a participating company;

participating company (參與公司) means a company any shares in which are participating shares;

participating shares (參與股份) means shares that are permitted by the system operator of an uncertificated securities market system to be transferred through the system;

register of members (成員登記冊), in relation to a company, means the register of the members of the company mentioned in section 626A;

system operator (系統營辦者) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

Uncertificated Securities Market Rules (《無紙證券市場規則》) means the rules made under section 101AAO(1) of the Securities and Futures Ordinance (Cap. 571);

uncertificated securities market system (無紙證券市場系統) has the meaning given by section 101AAC of the Securities and Futures Ordinance (Cap. 571);”.

(2) After section 2(3)—

Add

“(3A) For the purposes of this Ordinance—

- (a) any share in a company is in uncertificated form if the title to it—
 - (i) is, under the Uncertificated Securities Market Rules, recorded by or through an uncertificated securities market system operated and maintained by its system operator; and
 - (ii) is, under the Rules, permitted to be transferred, without an instrument, through the system; and
- (b) any share in a company is in certificated form if it is not in uncertificated form.”.

21. Section 134 amended (nature and transferability of shares)

(1) Section 134(2)—

Repeal

“A”

Substitute

“Subject to subsection (3), a”.

(2) After section 134(2)—

Add

“(3) Any shares or other interests that are prescribed securities within the meaning of section 101AAB of the Securities and Futures Ordinance (Cap. 571) are transferable in accordance with the company’s articles, subject to—

- (a) Part IIIAA of that Ordinance; and
- (b) the Uncertificated Securities Market Rules.”.

22. Section 137 amended (share certificate to be proof of title in the absence of contrary evidence)

At the end of section 137—

Add

“**Note—**

See also section 635.”.

23. Section 143 amended (registration of allotment)

(1) Section 143, heading, after “**allotment**”—

Add

“**—non-participating company**”.

(2) Section 143(1), after “A”—

Add

“non-participating”.

(3) Section 143(1)—

Repeal

“the register of its members the information referred to in section 627(2) and (3).”

Substitute

“its register of members the following information in respect of the allotment—

- (a) the name and address of each person to whom shares are allotted (*allottee*);
- (b) the date on which each allottee is entered in the register as a member of the company;
- (c) a statement of the shares allotted to each allottee, distinguishing each share by its number so long as the share has a number; and
- (d) a statement of the amount paid or agreed to be considered as paid on the shares allotted to each allottee.”.

(4) Section 143(2), after “If a”—

Add

“non-participating”.

(5) Section 143(2), after “the allotment”—

Add

“by entering in its register of members the information mentioned in subsection (1)”.

24. Sections 143A and 143B added

After section 143—

Add

“143A. Registration of allotment—participating company

- (1) A participating company must, by notice given to the system operator, request the system operator to register under the Uncertificated Securities Market Rules an allotment of shares that are to be in uncertificated form.
- (2) The notice under subsection (1)—
 - (a) must contain the particulars specified in the Uncertificated Securities Market Rules; and
 - (b) must be given within the period and in the manner specified in the Rules.
- (3) A participating company must register an allotment of any other shares as soon as practicable and in any event within 2 months after the date of the allotment, by entering in its members register (certificated shares) the following information in respect of the allotment—
 - (a) the name and address of each person to whom shares are allotted (*allottee*);
 - (b) the date on which each allottee is entered in the register as a member of the company;
 - (c) a statement of the shares allotted to each allottee, distinguishing each share by its number so long as the share has a number; and
 - (d) a statement of the amount paid or agreed to be considered as paid on the shares allotted to each allottee.
- (4) If a participating company fails to comply with subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

- (5) If a participating company fails to register an allotment mentioned in subsection (3) within 2 months after the date of the allotment by entering in its members register (certificated shares) the information mentioned in that subsection, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

Note—

For the registration of an allotment of shares mentioned in subsection (1), see the Uncertificated Securities Market Rules.

143B. Power of Court in relation to non-compliance with section 143A(1)

- (1) If a company fails to comply with section 143A(1) in relation to an allotment of shares, a person to whom shares are allotted under the allotment (*allottee*) may serve a notice on the company requesting the company to comply with subsection (2) (*allottee's notice*).
- (2) The company must, within 10 days after the allottee's notice is served on the company, give notice to the system operator in accordance with subsection (3) requesting the system operator to register under the Uncertificated Securities Market Rules the allotment.
- (3) The notice to the system operator—
 - (a) must contain the particulars required under section 143A(2); and
 - (b) must be given in the manner required under that section.
- (4) If the company does not comply with subsection (2), the person who serves the allottee's notice may apply to the Court for an order under subsection (5).

-
- (5) On an application under subsection (4), the Court may—
- (a) make an order directing the company and any officer of the company to give, within the period and in the manner specified in the order, a notice to the system operator—
 - (i) containing the particulars specified in the order; and
 - (ii) requiring the system operator to register under the Uncertificated Securities Market Rules the allotment; or
 - (b) make any other order, in favour of the applicant or any other allottee, that the Court considers appropriate in the particular circumstances.
- (6) The order may provide that all costs of and incidental to the application are to be borne by the company or by an officer of the company responsible for the non-compliance.”.

25. Section 144 amended (issue of share certificate on allotment)

- (1) Section 144—

Repeal subsection (2)

Substitute

- “(2) This section does not apply if—
- (a) the conditions of issue of the shares provide otherwise; or
 - (b) the allotment is an allotment of shares to which section 143A(1) applies.”.

(2) At the end of section 144—

Add

“**Note—**

For matters relating to an allotment of shares to which section 143A(1) applies, see also the Uncertificated Securities Market Rules.”.

26. Section 150 amended (requirement for instrument of transfer)

After section 150(2)—

Add

“(3) Subsection (1) does not apply to a transfer of participating shares effected under the Uncertificated Securities Market Rules.

Note—

For matters relating to the registration of a transfer of participating shares effected under the Uncertificated Securities Market Rules, see the Rules.”.

27. Section 151 amended (registration of transfer or refusal of registration)

(1) Section 151(1)—

Repeal

“the transfer”

Substitute

“the instrument of transfer mentioned in section 150(1)”.

(2) Section 151(2)—

Repeal

“after the transfer”

Substitute

“after the instrument of transfer”.

28. Section 152 amended (order of Court for registration)

- (1) Section 152(1), after “a transfer”—

Add

“under section 151”.

- (2) At the end of section 152—

Add

“**Note—**

For the power of the Court to make an order for the registration of a transfer of participating shares effected under the Uncertificated Securities Market Rules, see the Rules.”.

29. Section 153 amended (transfer by personal representative)

Section 153—

Repeal

“at the time of execution of the instrument of transfer”

Substitute

“immediately before the transfer”.

30. Section 155 amended (issue of share certificate on transfer)

- (1) After section 155(2)—

Add

“(2A) Subsection (1) does not apply to a transfer of participating shares effected under the Uncertificated Securities Market Rules.”.

(2) Section 155(3)—

Repeal

“a transfer”

Substitute

“a transfer of any other shares”.

31. Section 158 amended (registration or refusal of registration)

(1) Section 158, heading, after “**of registration**”—

Add

“—**non-participating company**”.

(2) Section 158(1), after “to shares”—

Add

“in a non-participating company”.

(3) Section 158(2)(a), after “the person”—

Add

“, in its register of members.”.

(4) Section 158(4)(b), after “the person”—

Add

“, in its register of members,”.

32. Section 158A added

After section 158—

Add

“158A. Registration or refusal of registration—participating company

(1) This section applies if—

- (a) the right to shares in a participating company is transmitted to a person by operation of law; and
- (b) the person notifies the company in writing that the person (*transmittee*) wishes to be registered as a member of the company in respect of the shares (*notification*).

(2) In the case specified in subsection (3), the company must—

- (a) within the period specified in the Uncertificated Securities Market Rules, by notice given to the system operator, request the system operator to register the transmittee, in the company’s members register (uncertificated shares), as a member of the company in respect of the shares; or
- (b) within 2 months after receiving the notification, send the transmittee notice of the company’s refusal to give the notice described in paragraph (a).

- (3) The case is where the transmittee has indicated, in the notification and under the Uncertificated Securities Market Rules, that the transmittee wishes to hold the shares in uncertificated form immediately after the transmittee is registered, in the company's register of members, as a member of the company in respect of the shares.
- (4) In any other case, the company must, within 2 months after receiving the notification—
 - (a) register the transmittee, in its members register (certificated shares), as a member of the company in respect of the shares; or
 - (b) send the transmittee notice of refusal of registration.
- (5) If—
 - (a) in the case specified in subsection (3), the company refuses to give the notice described in subsection (2)(a) to the system operator; or
 - (b) in any other case, the company refuses registration,
the transmittee may request a statement of the reasons for the refusal (*statement of reasons*).
- (6) If a transmittee makes a request under subsection (5) because the company refuses to give the notice described in subsection (2)(a), the company must, within 28 days after receiving the request—
 - (a) send the transmittee the statement of reasons; or
 - (b) by notice given to the system operator, request the system operator to register the transmittee, in the company's members register (uncertificated shares), as a member of the company in respect of the shares.

- (7) A notice given to the system operator under subsection (2)(a) or (6)(b)—
 - (a) must contain the particulars specified in the Uncertificated Securities Market Rules; and
 - (b) must be given in the manner specified in the Rules.
- (8) If a transmittee makes a request under subsection (5) because the company refuses registration, the company must, within 28 days after receiving the request—
 - (a) send the transmittee the statement of reasons; or
 - (b) register the transmittee, in its members register (certificated shares), as a member of the company in respect of the shares.
- (9) If a company contravenes subsection (2), (4), (6) or (8), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

Note—

For matters relating to the registration of a transmittee, in the members register (uncertificated shares) of a participating company, as a member of the company, see the Uncertificated Securities Market Rules.”.

33. Section 159 amended (order of Court for registration)

- (1) Section 159(1)—

Repeal

“refuses registration under section 158”

Substitute

“gives a refusal referred to in section 158(3) or 158A(5)”.

(2) Section 159—

Repeal subsection (2)

Substitute

- “(2) On an application under subsection (1), if the Court is satisfied that the application is well-founded, the Court may—
- (a) for a refusal of registration referred to in section 158(3), order the company to register, in its register of members, the person as a member of the company in respect of the shares;
 - (b) for a refusal to give the notice described in section 158A(2)(a) to the system operator, order the company to give notice to the system operator requiring the system operator to register the person, in the company’s members register (uncertificated shares), as a member of the company in respect of the shares; and
 - (c) for a refusal of registration referred to in section 158A(5)(b), order the company to register the person, in its members register (certificated shares), as a member of the company in respect of the shares.”.

34. Sections 626A and 626B added

After section 626—

Add

“626A. Each company must have register of members

For each company, there is to be a register of its members.

626B. Register of members of participating company

The register of members of a participating company is to consist of—

- (a) the members register (certificated shares); and
- (b) the members register (uncertificated shares).

Note—

For the requirements for keeping the members register (certificated shares) and the members register (uncertificated shares) of a participating company, see the Uncertificated Securities Market Rules.”.

35. Section 627 amended (register of members)

- (1) Section 627, heading, after “**members**” —

Add

“**of non-participating company**”.

- (2) Section 627 —

Repeal subsection (1)

Substitute

“(1) A non-participating company must keep the register of its members.

(1A) The register must be kept in the English or Chinese language.”.

- (3) Section 627(2) —

Repeal

“A company must enter in the register of members”

Substitute

“Subject to section 627A, the following particulars must be entered in the register of members of a non-participating company”.

- (4) Section 627(3)—

Repeal

“In the case of a company having a share capital, the company must enter in the register of members, with the names and addresses of the members, a statement of”

Substitute

“If a non-participating company has a share capital, the following statements must be entered in the register of members, with the names and addresses of the members”.

- (5) Section 627(3)(a), English text, before “the shares”—

Add

“a statement of”.

- (6) Section 627(3)(b), English text, before “the amount”—

Add

“a statement of”.

- (7) Section 627(4)—

Repeal

“A company must enter in the register of members the particulars required under subsections (2) and (3)”

Substitute

“The particulars required under subsections (2) and (3) must be entered in the register”.

- (8) Section 627(6), after “A”—

Add

“non-participating”.

- (9) Section 627(7)—

Repeal

“If a company contravenes subsection (1), (4) or (6)”

Substitute

“If subsection (1), (1A), (4) or (6) is contravened”.

(10) At the end of section 627—

Add

“**Note—**

For the requirement for keeping a register of members of a participating company, see the Uncertificated Securities Market Rules.”.

36. Section 627A added

After section 627—

Add

“627A. Exceptions to section 627—when a participating company changes to a non-participating company

(1) This section applies if—

(a) a company ceases to be a participating company and becomes a non-participating company (*change*); and

(b) because of the change, section 627 applies to the company.

(2) Section 627(2) and (3) does not require any particulars relating to an event that took place, or a fact that existed, before the change to be entered in the register of members of the company, unless those particulars are required under the Uncertificated Securities Market Rules as in force immediately before the change to be kept, or included, in the members register (certificated shares).

- (3) The particulars that are required by the operation of subsection (2) to be entered in the register of members of the company are to be regarded as having been entered in the register in compliance with section 627(4) if they are contained in the register immediately after the change.

Note—

For matters relating to the keeping of the members register (uncertificated shares) of such a company on or after the change, see the Uncertificated Securities Market Rules.”.

37. Section 628 amended (place where register must be kept)

- (1) Section 628, heading, after “**kept**”—

Add

“**—non-participating company**”.

- (2) Section 628(1), after “A”—

Add

“non-participating”.

- (3) Section 628(2), after “A”—

Add

“non-participating”.

- (4) Section 628(3), after “A”—

Add

“non-participating”.

(5) At the end of section 628—

Add

“Note—

As to where any record of the members of a participating company is to be kept, see the Uncertificated Securities Market Rules.”.

38. Section 629 amended (statement that company has only one member)

(1) Section 629(1)—

Repeal

“of a company”

Substitute

“of a non-participating company”.

(2) Section 629(1)—

Repeal

“under”

Substitute

“for the purposes of”.

(3) Section 629(2)—

Repeal

“a company”

Substitute

“a non-participating company”.

(4) Section 629(2)—

Repeal

“under”

Substitute

“for the purposes of”.

- (5) At the end of section 629—

Add

“**Note—**

For the case where the number of members of a participating company falls to one, see the Uncertificated Securities Market Rules.”.

39. Section 630 amended (index of members)

- (1) Section 630, heading, after “**members**”—

Add

“**—non-participating company**”.

- (2) Section 630(1), after “**A**”—

Add

“non-participating”.

- (3) At the end of section 630—

Add

“**Note—**

For the requirement for keeping an index of the names of the members of a participating company, see the Uncertificated Securities Market Rules.”.

40. Section 631 amended (right to inspect and request copy)

- (1) Section 631, heading, after “**copy**”—

Add

“**—non-participating company**”.

- (2) Section 631(1)—

Repeal

“a company”

Substitute

“a non-participating company”.

- (3) At the end of section 631—

Add

“**Note—**

For the right to inspect the register of members of a participating company, and request a copy of any part of it or any other record of the members of such a company, see the Uncertificated Securities Market Rules.”.

41. Section 632 amended (power to close register of members)

- (1) Section 632, heading, after “**members**”—

Add

“**—non-participating company**”.

- (2) Section 632(1), after “A”—

Add

“non-participating”.

- (3) Section 632(2)(b)—

Repeal

“in the case of any other company”

Substitute

“if the company is not a listed company”.

- (4) At the end of section 632—

Add

“**Note—**

For the powers to close the members register (certificated shares) and the members register (uncertificated shares) of a participating company, see the Uncertificated Securities Market Rules.”.

42. Section 633 amended (power of Court to rectify register)

- (1) Section 633(2)—

Repeal paragraph (b)

Substitute

“(b) subject to subsection (2A) and section 167, make the following orders—

- (i) an order to rectify the register; and
- (ii) an order on the company to pay damages for any loss sustained by any party aggrieved.”.

- (2) After section 633(2)—

Add

“(2A) Unless either or both of the conditions in subsection (2B) are satisfied, the Court must not make an order on a participating company under subsection (2)(b)(ii) to pay damages for any loss caused by an act or omission of the system operator responsible for keeping the members register (uncertificated shares) of the company.

(2B) The conditions are—

- (a) the act or omission is done or made by the system operator on the instructions of the company; and
- (b) the act or omission is caused by fraud or negligence of the company.”.

(3) At the end of section 633—

Add

“**Note—**

As to whether the Court has the power to order a participating company or any other person to pay damages for any loss caused by any other act or omission of a system operator, see the Uncertificated Securities Market Rules.”.

43. Section 635 amended (register to be proof in the absence of contrary evidence)

At the end of section 635—

Add

“**Note—**

For the evidential value of the matters contained in the register of members of a participating company, see the Uncertificated Securities Market Rules.”.

44. Section 637 amended (keeping of branch register)

(1) Section 637, heading, after “**register**”—

Add

“**—non-participating company**”.

(2) Section 637(1), after “branch register”—

Add

“of a non-participating company”.

(3) Section 637(2), after “A”—

Add

“non-participating”.

(4) Section 637(3), after “A”—

Add

“non-participating”.

(5) Section 637(4), after “branch register”—

Add

“of a non-participating company”.

(6) Section 637(5)—

Repeal

“a company”

Substitute

“a non-participating company”.

45. Section 637A added

After section 637—

Add

“637A. Keeping of branch register—participating company

- (1) A branch register of a participating company must be kept in the same manner in which the register of members of a non-participating company is by this Ordinance required to be kept.
- (2) A participating company that keeps a branch register may close it in the same manner in which the register of members of a non-participating company may be closed under section 632, except that the advertisement mentioned in that section must be inserted in a newspaper circulating generally in the place in which the branch register is kept.
- (3) A participating company that keeps a branch register—

- (a) must cause a duplicate of it to be kept at the place at which the company's members register (certificated shares) is kept; and
- (b) must, within 15 days after an entry is made in the branch register—
 - (i) transmit a copy of the entry to its registered office; and
 - (ii) update the duplicate of the branch register.
- (4) A duplicate of a branch register of a participating company is to be regarded for all the purposes of this Ordinance as part of the register of members of the company.
- (5) Subject to the provisions of this Ordinance, a participating company may by its articles make any provision that it thinks fit respecting the keeping of branch registers.
- (6) If a company contravenes subsection (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.”.

46. Section 654 amended (meaning of *company records*)

Section 654, definition of *company records*, after “Ordinance”—

Add

“or the Uncertificated Securities Market Rules”.

47. Section 655 amended (form of *company records*)

(1) Section 655(4), after “by this Ordinance”—

Add

“or the Uncertificated Securities Market Rules”.

(2) Section 655(4), after “under this Ordinance”—

Add

“or the Rules”.

48. Section 696 amended (obligations of offeror with right to buy out minority shareholders)

After section 696(4)—

Add

“(5) Subsection (3)(a)(ii) does not require the offeror to send to the company an instrument of transfer of any shares, if—

(a) the transfer is effected under the Uncertificated Securities Market Rules; and

(b) no instrument of transfer is required under those Rules for the registration of the transfer.”.

49. Section 908 repealed (paperless holding and transfer of shares and debentures)

Section 908—

Repeal the section.

50. Schedule 8 repealed (amendments relating to paperless holding and transfer of shares and debentures)

Schedule 8—

Repeal the Schedule.

Part 4

Related Amendments

Division 1—Amendments to Companies (Winding-up) Rules (Cap. 32 sub. leg. H)

51. Appendix amended (forms)

(1) Appendix, Form 73—

Repeal

“19” (wherever appearing)

Substitute

“20”.

(2) Appendix, Form 73—

Repeal

“Upon applying for payment **this notice must be produced entire**, together with the share certificate. If you do not attend personally you must forward the share certificate and fill up and sign the subjoined forms of RECEIPT and AUTHORITY TO DELIVER, when a cheque or money order payable to your order will be delivered in accordance with the AUTHORITY.”

Substitute

“When applying for payment, this notice in its complete form must be produced together with the following evidence (*required evidence*)—

- (a) if the share is in uncertificated form within the meaning of section 2(3A)(a) of the Companies Ordinance (Cap. 622), the evidence of your title to the share as provided for under the Uncertificated Securities Market Rules*; and

(b) if the share is not in uncertificated form, the share certificate.

* Uncertificated Securities Market Rules are the rules made under section 101AAO(1) of the Securities and Futures Ordinance (Cap. 571).

If you do not attend in person, you must fill in and sign the form of RECEIPT and the form of AUTHORITY FOR DELIVERY (*AUTHORITY*) subjoined to this notice and forward them and the required evidence to my office. A cheque or money order will then be delivered in accordance with the AUTHORITY.”.

Division 2—Amendments to Stamp Duty Ordinance (Cap. 117)

52. Section 2 amended (interpretation)

Section 2(1), definition of *stamp*, after paragraph (d)—

Add

“(e) an imprint on a contract note made in accordance with section 5AA(3);”.

53. Section 4 amended (charging of, liability for, and recovery of stamp duty)

After section 4(3A)—

Add

“(3B) If the amount of the stamp duty imprinted on a contract note stamped under section 5AA(2) has not been paid to the Collector in the manner provided by the arrangement approved under section 5AAB(1), the contract note is deemed for the purposes of subsection (3) to be an instrument that is chargeable with the stamp duty and that is not duly stamped in respect of the duty.”.

54. Sections 5AA and 5AAB added

After section 5—

Add

“5AA. Additional provision on methods of stamping—sale or purchase of Hong Kong stock

- (1) This section applies to a contract note if it is a contract note—
 - (a) to which an arrangement approved under section 5AAB(1) relates; and
 - (b) in respect of which the conditions in section 5AAB(2)(b) are satisfied.
- (2) Without affecting section 5(1) and (2), a contract note may be stamped in accordance with subsection (3) by a person authorized by the Collector for the purposes of this subsection.
- (3) The contract note may be stamped by imprinting on it, in the manner specified by the Collector—
 - (a) the amount of the stamp duty chargeable on the contract note; and
 - (b) a note to the effect that the amount of the chargeable stamp duty has been or will be paid in the manner provided by the arrangement.
- (4) Subject to section 4(3B), a contract note stamped under subsection (2) is to be treated as duly stamped with the amount of the stamp duty imprinted on the note and within the time for stamping the note.
- (5) A person commits an offence if the person, with intent to defraud the Government—
 - (a) imprints on a contract note, the matters described in subsection (3)(a) and (b) without an authorization under subsection (2); or

- (b) imprints on a contract note any matter, as a matter described in subsection (3)(a) or (b), which is false in a material particular.

5AAB. Approval of arrangement for purposes of section 5AA

- (1) For the purposes of section 5AA, the Collector may approve an arrangement for collecting any stamp duty chargeable on a contract note specified in subsection (2) (*specified contract note*).
- (2) The contract note is a contract note—
 - (a) to which the arrangement relates; and
 - (b) in respect of which the following conditions are satisfied—
 - (i) the contract note is not a contract note to which an agreement under section 5A relates;
 - (ii) stamp duty is chargeable under head 2(1) in the First Schedule (*head 2(1)*) on the contract note;
 - (iii) the transfer under the sale or purchase to which the contract note relates is a transfer effected under the Uncertificated Securities Market Rules; and
 - (iv) under the Rules, an instrument of transfer is not required for the registration of the transfer.
- (3) The Collector must not approve an arrangement under subsection (1) unless the arrangement provides for—
 - (a) the duties of a person authorized by the Collector for the purposes of section 5AA(2) (*authorized person*), including the following duties of an authorized person if the person effects a sale or purchase the contract note of which is a contract note to which the arrangement relates—

-
- (i) to make a declaration as to whether any stamp duty is chargeable under head 2(1) on the contract note;
 - (ii) if any stamp duty is chargeable under head 2(1) on the contract note, to make a further declaration as to whether the stamp duty has been paid to the Collector;
 - (b) the payment by an authorized person to the Collector of the stamp duty chargeable on a specified contract note that will be stamped under section 5AA(2); and
 - (c) the imprinting by an authorized person, on the specified contract note, of the matters described in section 5AA(3)(a) and (b).
 - (4) An approval may be granted under subsection (1) subject to any conditions specified by the Collector.
 - (5) For the purposes of collecting any stamp duty chargeable on a specified contract note to which an arrangement approved under subsection (1) relates, the Collector is entitled to have access to a declaration made under the arrangement.
 - (6) If an authorized person—
 - (a) effects a sale or purchase the contract note of which is a specified contract note to which an arrangement approved under subsection (1) relates; and
 - (b) makes, in respect of the sale or purchase, a declaration mentioned in subsection (3)(a)(i) or (ii) that is false in a material particular,the person incurs a penalty at level 2 which is recoverable by the Collector as a civil debt due to the Government.

(7) In this section—

purchase (購買)—

- (a) means a purchase within the meaning of section 19, and includes a purchase in a transaction deemed under that section (other than subsection (12)) to be a sale and purchase for the purposes of this Ordinance; but
- (b) does not include a purchase the contract note of which is a contract note to which an agreement under section 5A relates;

sale (售賣)—

- (a) means a sale within the meaning of section 19, and includes a sale in a transaction deemed under that section (other than subsection (12)) to be a sale and purchase for the purposes of this Ordinance; but
- (b) does not include a sale the contract note of which is a contract note to which an agreement under section 5A relates;

Uncertificated Securities Market Rules (《無紙證券市場規則》) means the rules made under section 101AAO(1) of the Securities and Futures Ordinance (Cap. 571).

(8) In this section—

- (a) a reference to a person who effects a sale includes a person deemed under section 19 to be a person effecting the sale; and
- (b) a reference to a person who effects a purchase includes a person deemed under section 19 to be a person effecting the purchase.”.

55. Section 19 amended (contract notes, etc. in respect of sale and purchase of Hong Kong stock)

After section 19(1F)—

Add

“(1G) For the purposes of subsection (1), if—

- (a) the person who effects the sale or purchase of Hong Kong stock makes, in respect of the sale or purchase, a contract note to which section 5AA applies; and
- (b) the contract note is stamped by the person under section 5AA(2),
the person is to be regarded as having also executed the contract note.”.

56. Section 58A amended (representations may be made to Collector before certain penalties are imposed)

Section 58A(1), before “5A(4)”—

Add

“5AAB(6),”.

57. Section 58B amended (remission of certain penalties)

Section 58B, before “5A(4)”—

Add

“5AAB(6),”.

58. First Schedule amended

First Schedule—

Repeal

“[ss. 2, 4, 5,”

Substitute

“[ss. 2, 4, 5, 5AAB,].”

**Division 3—Amendments to Mental Health Ordinance
(Cap. 136)**

59. Section 17 amended (committee to execute instruments)

(1) Section 17, heading, after “**instruments**”—

Add

“**etc.**”.

(2) Section 17—

Repeal subsection (1)

Substitute

“(1) This section applies if the Court makes any of the following orders—

- (a) an order for a conveyance or instrument of transfer to be executed in respect of a disposition of the estate of a mentally incapacitated person;
- (b) an order for any other thing to be done to give effect to a disposition of any securities in the estate that are, under the Uncertificated Securities Market Rules, permitted to be transferred without an instrument.

(1A) The committee of the estate of the mentally incapacitated person must, in the name and on behalf of the person, act in accordance with an order mentioned in subsection (1).”.

(3) After section 17(2)—

Add

“(3) In subsection (1)—

disposition (處置), in relation to the estate of a mentally incapacitated person, means a sale, mortgage or other disposition of the estate;

Uncertificated Securities Market Rules (《無紙證券市場規則》) means the rules made under section 101AAO(1) of the Securities and Futures Ordinance (Cap. 571).”.

Division 4—Amendments to Crimes Ordinance (Cap. 200)

60. Section 84 amended (making false entry in contract for sale of shares)

(1) Section 84—

Renumber the section as section 84(1).

(2) Section 84(1)—

Repeal

“shares or stock transferable by any deed or written instrument”

Substitute

“any transferable share or stock”.

(3) After section 84(1)—

Add

“(2) In this section—

transferable share or stock (可轉讓股份或股額) means—

(a) any share or stock transferable by deed or other instrument; or

(b) any share or stock transferable, without an instrument, under the Uncertificated Securities Market Rules;

Uncertificated Securities Market Rules (《無紙證券市場規則》) means the rules made under section 101AAO(1) of the Securities and Futures Ordinance (Cap. 571).”.

Division 5—Amendment to Electronic Transactions Ordinance (Cap. 553)

61. Schedule 1 amended (matters excluded from application of sections 5, 5A, 6, 7, 8 and 17 of this Ordinance under section 3 of this Ordinance)

Schedule 1, section 4—

Repeal

“other than a contract note to which an agreement under section 5A of that Ordinance relates.”

Substitute

“, other than—

- (a) a contract note to which an agreement under section 5A of that Ordinance relates; and
- (b) a contract note that is to be stamped under section 5AA(2) of that Ordinance.”.

Division 6—Amendment to Companies Ordinance (Cap. 622)

62. Section 632 amended (power to close register of members)

Section 632—

Repeal subsection (2)

Substitute

“(2) A notice for the purposes of subsection (1) must be given by advertisement in a newspaper circulating generally in Hong Kong.”.