

Cap. 622 Part 1 (Preliminary)

Introduction

Part 1 (Preliminary) sets out the title of the new Ordinance, its commencement date, and the definitions of the terms used in the Companies Ordinance.

The new formulation of “responsible person” in section 3 replaces the concept of “officer who is in default” under the old Companies Ordinance (Cap. 32). The number of types of company that can be formed has been reduced from eight to five, with the abolition of unlimited companies without share capital, companies limited by guarantee without share capital (both private and non-private) becoming a separate category of companies that are treated in a similar manner to public companies, and non-private companies now being expressly referred to as ‘public companies’.

Sections 17 and 18 further apply the new Companies Ordinance to existing companies, and section 19 extends the provisions of the new Ordinance to companies registered but not formed under a former Companies Ordinance.

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CAP 622, PART 1, DIVISION 1

Part 1 contains preliminary provisions.

Reference in old Companies Ordinance/other law	New Companies Ordinance
<p>1 Short title This Ordinance may be cited as the Companies Ordinance.</p>	<p>1. Short title and commencement – CO s 1 (1) This Ordinance may be cited as the Companies Ordinance. (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.</p>

CAP 622, PART 1, DIVISION 2

Division 2 of Part 1 sets out the definitions of terms used in this Ordinance, and explains the effect of a note to a provision.

Reference in old Companies Ordinance/other law	New Companies Ordinance
<p>2 Interpretation (1) In this Ordinance, unless the context otherwise requires— “accounts” (帳目) includes a company’s group accounts, whether prepared in the form of accounts or not; “agent” (代理人) does not include a person’s counsel acting as such; “amend” (修訂) includes delete, add to or vary and the doing of all or any of such things simultaneously; “annual return” (周年申報表) means the return required to be made under section 107; “articles” (章程細則) means the articles of association of a company, as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained in Table A in the First Schedule annexed to the Companies Ordinance 1865 (1 of 1865), or in that table as altered in pursuance of powers given under that Ordinance, or in Table A in the First Schedule to the Companies Ordinance 1911 (58 of 1911), or in that table as altered in pursuance of section 117 of the last mentioned Ordinance, or in Table A in the First Schedule to this Ordinance; “authorized financial institution” (認可財務機構) means an authorized institution within the meaning of section 2 of the Banking Ordinance (Cap. 155); “book and paper” (簿冊及文據) and “book or paper” (簿冊或文據) include accounts, deeds, writings, and documents; “certificate of solvency” (有償債能力證明書) means a certificate issued under section 233; “Commission” (監察委員會) means— (a) subject to paragraphs (b) and (c), the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap. 571); (b) where any relevant transfer order made under section 25 of that Ordinance is in force, the recognized exchange company concerned or both the Securities and Futures Commission and the recognized exchange company concerned, in accordance with the provisions of that order; or</p>	<p>2. Interpretation – <i>mel, cf CO s 2(1) etc</i> (1) In this Ordinance— accounting transaction (會計交易), in relation to a company, means a transaction that is required by section 373 to be entered in the company’s accounting records, excluding a transaction arising from the payment of any fee that the company is required by an Ordinance to pay; articles (章程細則), in relation to a company, means the articles of association of the company; Note— Please also see section 98. A condition of an existing company’s memorandum of association is to be regarded as a provision of the company’s articles. associated company (有聯繫公司), in relation to a body corporate, means— (a) a subsidiary of the body corporate; (b) a holding company of the body corporate; or (c) a subsidiary of such a holding company; body corporate (法人團體)— (a) includes— (i) a company; and (ii) a company incorporated outside Hong Kong; but (b) excludes a corporation sole; certified public accountant (practising) (執業會計師) has the meaning given by section 2(1) of the Professional Accountants Ordinance (Cap. 50); commencement date (生效日期), in relation to any provision of this Ordinance, means the date on which that provision comes into operation; Companies Register (公司登記冊) means the records kept under section 27; company (公司) means— (a) a company formed and registered under this Ordinance; or (b) an existing company;</p>

Reference in old Companies Ordinance/other law	New Companies Ordinance
<p>(c) where any relevant transfer order made under section 68 of that Ordinance is in force, the recognized exchange controller concerned or both the Securities and Futures Commission and the recognized exchange controller concerned, in accordance with the provisions of that order; “company” (公司) means a company formed and registered under this Ordinance or an existing company; “company limited by guarantee” (擔保有限公司) and “company limited by shares” (股份有限公司) have the meanings assigned to them respectively by section 4(2); “contributory” (分擔人) has the meaning assigned to it by section 171; “court” (法院、法庭) means the Court of First Instance; “creditors’ voluntary winding up” (債權人自動清盤) has the meaning assigned to it by section 233(4); “debenture” (債權證) includes debenture stock, bonds and any other debt securities of a company whether constituting a charge on the assets of the company or not; “default fine” (失責罰款) has the meaning assigned to it by section 351(1A)(d); “digital signature” (數碼簽署) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553); “director” (董事) includes any person occupying the position of director by whatever name called; “document” (文件) includes summons, notice, order, and other legal process, and registers; “electronic record” (電子紀錄) has the meaning assigned to it by section 2(1) of the Electronic Transactions Ordinance (Cap. 553); “entitled person” (有權利的人), in relation to a listed company, means a person who under section 129G(1) as read with the proviso thereto is entitled to be sent copies of the documents mentioned in that section; “existing company” (現有公司) means a company formed and registered under the Companies Ordinance 1865 (1 of 1865), or the Companies Ordinance 1911 (58 of 1911); “financial year” (財政年度), in relation to any body corporate, means the period in respect of which any profit and loss account of the body corporate laid before it in general meeting is made up, whether that period is a year or not; “founder member” (創辦成員) means a person who has signed his name on a memorandum in accordance with section 4(1); “general rules” (一般規則) means general rules made under section 296 and includes forms; “group accounts” (集團帳目) has the meaning assigned to it by section 124(1); “group of companies” (公司集團) means any 2 or more companies or bodies corporate one of which is the holding company of the other or others; “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;</p>	<p>company secretary (公司秘書) includes any person occupying the position of company secretary (by whatever name called); contributory (分擔人), in relation to a company, means a person liable to contribute to the assets of the company in the event of its being wound up; Court means the Court of First Instance; court (法院) means a court of competent jurisdiction of the Hong Kong Special Administrative Region and includes a magistrate; debenture (債權證), in relation to a company, includes debenture stock, bonds and any other debt securities of the company, whether or not constituting a charge on the assets of the company; director (董事) includes any person occupying the position of director (by whatever name called); document (文件) includes— (a) a summons, notice, order and any other legal process; and (b) a register; electronic record (電子紀錄) means a record generated in digital form by an information system, which can be— (a) transmitted within an information system or from one information system to another; and (b) stored in an information system or other medium; existing company (原有公司) means a company formed and registered under a former Companies Ordinance; financial year (財政年度)—see section 363; former Companies Ordinance (《舊有公司條例》) means— (a) the Companies Ordinance 1865 (1 of 1865); (b) the Companies Ordinance 1911 (58 of 1911); or (c) the predecessor Ordinance; founder member (創辦成員)— (a) in relation to a company formed and registered under this Ordinance, means a person who signs on the company’s articles for the purposes of section 62(1)(a); or (b) in relation to an existing company, means a person who subscribed to or signed on the company’s memorandum of association; group of companies (公司集團) means any 2 or more bodies corporate one of which is the holding company of the other or others; identity card (身分證) means an identity card issued under the Registration of Persons Ordinance (Cap. 177); Index of Company Names (《公司名稱索引》) means the index of names kept under section 30; information system (資訊系統) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);</p>

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<p>“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;</p> <p>“incorporation form” (法團成立表格) has the meaning assigned to it by section 14A(1);</p> <p>“issued generally” (公開發出), in relation to a prospectus, means issued to persons who are not existing members or debenture holders of the company;</p> <p>“liquidator” (清盤人) includes a provisional liquidator holding such office by virtue of section 194;</p> <p>“listed company” (上市公司) means a company which has any of its shares listed on a recognized stock market;</p> <p>“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—</p> <p>(a) a receiver or manager of the property of the company; or</p> <p>(b) a special manager of the estate or business of the company appointed under section 216;</p> <p>“members’ voluntary winding up” (成員自動清盤) has the meaning assigned to it by section 233(4);</p> <p>“memorandum” (章程大綱) means the memorandum of association of a company, as originally framed or as altered in pursuance of any enactment;</p> <p>“the minimum subscription” (最低認購額) has the meaning assigned to it by section 42(2);</p> <p>“non-Hong Kong company” (非香港公司) has the meaning assigned to it by section 332;</p> <p>“notice of intent” (意願通知書) means a notice of intent referred to in regulations made under section 359A(2);</p> <p>“offer to sell” (售賣要約), in relation to any shares or debentures, includes—</p> <p>(a) any act or omission or other thing calculated to invite offers to purchase the shares or debentures;</p> <p>(b) any reference to offer for sale;</p> <p>“officer” (高級人員), in relation to a body corporate, includes a director, manager or secretary;</p> <p>“officer who is in default” (失責高級人員) has the meaning assigned to it by section 351(2);</p> <p>“Official Receiver” (破產管理署署長) means the Official Receiver appointed under the Bankruptcy Ordinance (Cap. 6);</p> <p>“place of business” (營業地點), in relation to a non-Hong Kong company, has the meaning assigned to it by section 341(1);</p> <p>“prescribed” (訂明) means as respects the provisions of this Ordinance relating to the winding-up of companies, prescribed by general rules, and as respects the other provisions of this Ordinance, prescribed by the Chief Executive in Council;</p>	<p><i>listed company</i> (上市公司) means a company that has any of its shares listed on a recognized stock market;</p> <p><i>listing rules</i> (《上市規則》) means the rules made under section 23 of the Securities and Futures Ordinance (Cap. 571) by a recognized exchange company that govern the listing of securities on a stock market it operates;</p> <p><i>manager</i> (經理), in relation to a company—</p> <p>(a) means a person who performs managerial functions in relation to the company under the directors’ immediate authority; but</p> <p>(b) excludes—</p> <p>(i) a receiver or manager of the company’s property; and</p> <p>(ii) a special manager of the company’s estate or business appointed under section 216 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);</p> <p><i>member</i> (成員), in relation to a company, means—</p> <p>(a) a founder member of the company; or</p> <p>(b) a person who agrees to become a member of the company and whose name is entered, as a member, in the company’s register of members;</p> <p><i>non-Hong Kong company</i> (非香港公司) means a company incorporated outside Hong Kong that—</p> <p>(a) establishes a place of business in Hong Kong on or after the commencement date of Part 16; or</p> <p>(b) has established a place of business in Hong Kong before that commencement date and continues to have a place of business in Hong Kong at that commencement date;</p> <p><i>officer</i> (高級人員), in relation to a body corporate, includes a director, manager or company secretary of the body corporate;</p> <p><i>Official Receiver</i> (破產管理署署長) means the Official Receiver appointed under the Bankruptcy Ordinance (Cap. 6);</p> <p><i>ordinary resolution</i> (普通決議)—see section 563;</p> <p><i>predecessor Ordinance</i> (《前身條例》) means the Companies Ordinance (Cap. 32) as in force from time to time before the commencement date of section 2 of Schedule 9;</p> <p><i>recognized exchange company</i> (認可交易所) means a company recognized under section 19(2) of the Securities and Futures Ordinance (Cap. 571) as an exchange company for operating a stock market;</p> <p><i>recognized stock market</i> (認可證券市場) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);</p> <p><i>redeemable shares</i> (可贖回股份) means shares that are to be redeemed, or are liable to be redeemed, at the option of the company or the shareholder;</p>

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<p>“printed” (印刷、印製) means produced by ordinary letterpress or lithography or by such other process as the Registrar in his discretion may accept;</p> <p>“private company” (私人公司) has the meaning assigned to it by section 29;</p> <p>“prospectus” (招股章程)—</p> <p>(a) subject to paragraph (b), means any prospectus, notice, circular, brochure, advertisement, or other document—</p> <p>(i) offering any shares in or debentures of a company (including a company incorporated outside Hong Kong, and whether or not it has established a place of business in Hong Kong) to the public for subscription or purchase for cash or other consideration; or</p> <p>(ii) calculated to invite offers by the public to subscribe for or purchase for cash or other consideration any shares in or debentures of a company (including a company incorporated outside Hong Kong, and whether or not it has established a place of business in Hong Kong);</p> <p>(b) does not include any prospectus, notice, circular, brochure, advertisement, or other document—</p> <p>(i) to the extent that it is a publication falling within section 38B(2); or</p> <p>(ii) to the extent that it contains or relates to an offer specified in Part 1 of the Seventeenth Schedule as read with the other Parts of that Schedule;</p> <p>“recognized certificate” (認可證書) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);</p> <p>“recognized exchange company” (認可交易所) means a company recognized under section 19(2) of the Securities and Futures Ordinance (Cap. 571) as an exchange company for operating a stock market;</p> <p>“recognized exchange controller” (認可控制人) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);</p> <p>“recognized stock market” (認可證券市場) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);</p> <p>“record” (紀錄) includes not only a written record but any record conveying information or instructions by any other means whatsoever;</p> <p>“Registrar” (處長) means the Registrar of Companies appointed under section 303;</p> <p>“Registrar’s index of company names” (處長公司名稱索引) means the index of names kept by the Registrar under section 22C;</p> <p>“relevant financial documents” (有關財務文件), in relation to a listed company, means the documents required to be sent under section 129G(1) in respect of the company;</p> <p>“reserve director” (備任董事) means a person nominated as a reserve director of a private company under section 153A(6);</p> <p>“resolution for reducing share capital” (股本減少決議) has the meaning assigned to it by section 58(2);</p>	<p><i>registered non-Hong Kong company</i> (註冊非香港公司) means a non-Hong Kong company that is registered in the Companies Register as a registered non-Hong Kong company;</p> <p><i>Registrar</i> (處長) means the Registrar of Companies appointed under section 21(1);</p> <p><i>reserve director</i> (備任董事), in relation to a private company, means a person nominated as a reserve director of the company under section 455(1);</p> <p><i>Secretary</i> (局長) means the Secretary for Financial Services and the Treasury;</p> <p><i>shadow director</i> (幕後董事), in relation to a body corporate, means a person in accordance with whose directions or instructions (excluding advice given in a professional capacity) the directors, or a majority of the directors, of the body corporate are accustomed to act;</p> <p><i>share</i> (股份)—</p> <p>(a) means a share in a company’s share capital; and</p> <p>(b) if any of the company’s shares is converted into stock, includes stock;</p> <p><i>share warrant</i> (股份權證) means a warrant—</p> <p>(a) stating that the bearer is entitled to the shares specified in the warrant; and</p> <p>(b) enabling the shares to be transferred by delivery of the warrant;</p> <p><i>special resolution</i> (特別決議)—see section 564;</p> <p><i>specified form</i> (指明格式) means the form specified under section 23;</p> <p><i>unlisted company</i> (非上市公司) means a company that does not have any of its shares listed on a recognized stock market;</p> <p><i>written resolution</i> (書面決議)—see Subdivision 2 of Division 1 of part 12.</p> <p>(2) In this Ordinance—</p> <p>(a) a reference to this Ordinance includes any subsidiary legislation made under this Ordinance; and</p> <p>(b) a reference to a provision of the predecessor Ordinance, except in Part 21 and Schedule 11, includes the provision, or such part of the provision, having a continuing effect under Schedule 11 or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).</p> <p>(3) In this Ordinance—</p> <p>(a) a reference to a manager of the property of a body corporate includes a manager of part of that property;</p> <p>(b) a reference to a receiver of the property of a body corporate includes—</p> <p>(i) a receiver of part of that property; and</p> <p>(ii) a receiver of the income arising from that property or part of that property; and</p> <p>(c) a reference to the appointment of a manager or receiver made under powers contained in an instrument includes—</p> <p>(i) an appointment made under powers conferred by an Ordinance; and</p> <p>(ii) an appointment made under powers that, by virtue of an Ordinance, are implied in and have effect as if contained in an instrument.</p>

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<p>“a resolution for voluntary winding up” (自動清盤決議) has the meaning assigned to it by section 228(2);</p> <p>“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;</p> <p>“share” (股、股份) means share in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied;</p> <p>“share warrant” (認股權證) has the meaning assigned to it by section 73;</p> <p>“specified corporation” (指明法團) means a company or a non-Hong Kong company;</p> <p>“specified form” (指明格式), in relation to a particular provision of this Ordinance, means the appropriate form specified for the time being under section 2A, for the purposes of that provision;</p> <p>“structured product” (結構性產品) has the meaning given by section 1A of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);</p> <p>“summary financial report” (財務摘要報告), in relation to a listed company, means a summary financial report of the company which complies with section 141CF(1);</p> <p>“Table A” (A表) means Table A in the First Schedule;</p> <p>“the time of the opening of the subscription lists” (開立認購名單的時間) has the meaning assigned to it by section 44A(1);</p> <p>“unlimited company” (無限公司) has the meaning assigned to it by section 4(2);</p> <p>“unlisted company” (非上市公司) means a company which does not have any of its shares listed on a recognized stock market.</p>	<p>(4) For the purposes of this Ordinance—</p> <p>(a) a document or information is sent or supplied in hard copy form if it is sent or supplied—</p> <p>(i) in paper form; or</p> <p>(ii) in a similar form capable of being read;</p> <p>(b) a document or information is sent or supplied in electronic form if it is sent or supplied—</p> <p>(i) by electronic means; or</p> <p>(ii) by any other means while in electronic form; and</p> <p>(c) a document or information is sent or supplied by electronic means if it is sent or supplied in the form of an electronic record to an information system.</p> <p>(5) In subsection (4)—</p> <p>(a) a reference to sending a document—</p> <p>(i) includes supplying, delivering, forwarding or producing the document and, in the case of a notice, giving the document; but</p> <p>(ii) excludes serving the document; and</p> <p>(b) a reference to supplying information includes sending, delivering, forwarding or producing the information.</p> <p>(6) A note located in the text of this Ordinance is provided for information only and has no legislative effect.</p>
<p>351 Provision for punishment and offence</p> <p>...</p> <p>(2) For the purpose of any provision in this Ordinance which provides that an officer of a company who is in default shall be liable to a fine or penalty, “officer who is in default” (失責高級人員) means any officer of the company, or any shadow director of the company, who knowingly and wilfully authorizes or permits the default, refusal or contravention mentioned in such provision.</p> <p>-----</p> <p>Companies Act 2006 (U.K.)</p> <p>1121 Liability of officer in default</p> <p>(1) This section has effect for the purposes of any provision of the Companies Acts to the effect that, in the event of contravention of an enactment in relation to a company, an offence is committed by every officer of the company who is in default.</p> <p>(2) For this purpose “officer” includes—</p> <p>(a) any director, manager or secretary, and</p> <p>(b) any person who is to be treated as an officer of the company for the purposes of the provision in question.</p>	<p>3. Responsible person – new provision, cf CO s 351(2), UKCA 2006 ss 1121, 1122</p> <p>(1) This section applies—</p> <p>(a) where a provision of this Ordinance provides that a responsible person of a company or non-Hong Kong company commits an offence if there is—</p> <p>(i) a contravention of this Ordinance, or of a requirement, direction, condition or order; or</p> <p>(ii) a failure to comply with a requirement, direction, condition or order; or</p> <p>(b) where this Ordinance empowers a person to make subsidiary legislation that will contain such a provision.</p> <p>(2) For the purposes of the provision, a person is a responsible person of a company or non-Hong Kong company if the person—</p> <p>(a) is an officer or shadow director of the company or non-Hong Kong company; and</p> <p>(b) authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention or failure.</p> <p>(3) For the purposes of the provision, a person is also a responsible person of a company or non-Hong Kong company if—</p>

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<p>(3) An officer is “in default” for the purposes of the provision if he authorises or permits, participates in, or fails to take all reasonable steps to prevent, the contravention.</p> <p>1122 Liability of company as officer in default</p> <p>(1) Where a company is an officer of another company, it does not commit an offence as an officer in default unless one of its officers is in default.</p> <p>(2) Where any such offence is committed by a company the officer in question also commits the offence and is liable to be proceeded against and punished accordingly.</p> <p>(3) In this section “officer” and “in default” have the meanings given by section 1121.</p>	<p>(a) the person is an officer or shadow director of a body corporate that is an officer or shadow director of the company or non-Hong Kong company;</p> <p>(b) the body corporate authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention or failure; and</p> <p>(c) the person authorizes or permits, participates in, or fails to take all reasonable steps to prevent, the contravention or failure.</p>
<p>6 Translations</p> <p>(1) A translation of a document shall be deemed to be a certified translation in the prescribed manner for the purposes of the Ordinance if—</p> <p>(a) it is certified by the person making the translation to be a correct translation; and</p> <p>(b) the person making the translation is believed to be a person who is competent in translating a document into the English or Chinese language, as the case may be, by and is so certified by a person referred to in subparagraph (2).</p> <p>(2) A person may make a certification under subparagraph (1)(b) if he is—</p> <p>(a) where the translation is made in a place outside Hong Kong—</p> <p>(i) a notary public practising in that place;</p> <p>(ii) a lawyer practising in that place;</p> <p>(iii) a professional accountant practising in that place;</p> <p>(iv) an officer of a court of law duly authorized by the law of that place to certify documents for any judicial or other legal purpose;</p> <p>(v) a consular officer in that place;</p> <p>(vi) a professional company secretary practising in that place; or</p> <p>(vii) such other person as may be specified by the Registrar; or</p> <p>(b) where the translation is made in Hong Kong—</p> <p>(i) a notary public practising in Hong Kong;</p> <p>(ii) a solicitor practising in Hong Kong;</p> <p>(iii) a certified public accountant (practising) within the meaning of section 2 of the Professional Accountants Ordinance (Cap. 50); (10 of 2005 s. 226)</p> <p>(iv) a consular officer in Hong Kong; or</p> <p>(v) a professional company secretary practising in Hong Kong.</p>	<p>4. Certified translation – mel, cf Companies (Forms) Regulations (Cap. 32B) reg 6</p> <p>(1) For the purposes of this Ordinance, a translation made in Hong Kong of a document is a certified translation if—</p> <p>(a) it is certified as a correct translation of the document by the translator; and</p> <p>(b) a person specified in subsection (3) certifies that in that person’s belief the translator is competent in translating the document into English or Chinese (as the case may be).</p> <p>(2) For the purposes of this Ordinance, a translation made in a place outside Hong Kong of a document is a certified translation if—</p> <p>(a) in the case of a translator specified in subsection (4), it is certified as a correct translation of the document by the translator; or</p> <p>(b) in the case of any other translator—</p> <p>(i) it is certified as a correct translation of the document by the translator; and</p> <p>(ii) a person specified in subsection (5) certifies that in that person’s belief the translator is competent in translating the document into English or Chinese (as the case may be).</p> <p>(3) The person specified for the purposes of subsection (1)(b) is—</p> <p>(a) a notary public practising in Hong Kong;</p> <p>(b) a solicitor practising in Hong Kong;</p> <p>(c) a certified public accountant (practising);</p> <p>(d) a consular officer in Hong Kong; or</p> <p>(e) a professional company secretary practising in Hong Kong.</p> <p>(4) The translator specified for the purposes of subsection (2)(a) is a translator appointed by a court of law of the place.</p> <p>(5) The person specified for the purposes of subsection (2)(b)(ii) is—</p> <p>(a) a notary public practising in the place;</p> <p>(b) a lawyer practising in the place;</p> <p>(c) a professional accountant practising in the place;</p> <p>(d) an officer of a court of law duly authorized by the law of the place to certify documents for any judicial or other legal purpose;</p> <p>(e) a consular officer in the place;</p>

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Reference in old Companies Ordinance/other law	New Companies Ordinance
	(f) a professional company secretary practising in the place; or (g) any other natural person specified by the Registrar. (6) The Secretary may, by notice published in the Gazette, amend subsection (3), (4) or (5).
344A Dormant companies (1) A company may pass a special resolution— (a) declaring that the company will become dormant either as from the date of delivery of the special resolution to the Registrar or as from a later date as is specified in the special resolution; (b) authorizing the directors of the company to deliver to the Registrar the special resolution; and (c) declaring that prior to the company ceasing to be dormant, the directors of the company shall deliver to the Registrar a further special resolution, declaring that the company intends to enter into a relevant accounting transaction. (2) (Repealed 28 of 2003 s. 108) (3) Upon delivery of the special resolution passed under subsection (1), the company shall be deemed to be a dormant company for the purposes of this section as from the date of such delivery or, if the resolution specifies a later date for commencement of the company becoming dormant, as from that later date. (4) A company which is deemed to be a dormant company under subsection (3) is exempt from complying with the requirements of sections 107 to 111, 122 to 134, 140A to 141 and 141C to 141D. (5) A company shall cease to be deemed to be dormant under subsection (3) upon delivery to the Registrar of the further special resolution referred to in subsection (1)(c). (6) If, during the period between the date on which a company is deemed under subsection (3) to have become a dormant company and the date on which the further special resolution referred to in subsection (1)(c) is delivered to the Registrar, a company enters into a relevant accounting transaction then— (a) the exemption conferred by subsection (4) shall cease as from the date of the relevant accounting transaction; and (b) any shareholder of the company who knew or ought to have known about the relevant accounting transaction and all directors of the company shall be personally liable for any debt or liability of the company arising out of the relevant accounting transaction. (7) In subsection (6), “director” (董事), in relation to a company, includes a shadow director.	5. Dormant company – <i>mel</i>, of CO s 344A, 16th Sch (1) If a qualified private company passes a special resolution specified in subsection (2), and the resolution is delivered to the Registrar for registration, the company is a dormant company for the purposes of Parts 9, 10 and 12 as from the date mentioned in subsection (2)(a) as declared by the resolution. (2) The special resolution specified for the purposes of subsection (1) is one— (a) declaring that the qualified private company will become dormant as from— (i) the date of delivery of that resolution to the Registrar; or (ii) any later date that is specified in that resolution; and (b) authorizing the directors to deliver that resolution to the Registrar for registration. (3) If— (a) before the repeal of section 344A of the predecessor Ordinance by section 912, a company passed a special resolution under subsection (1) of that section, and the resolution has not been delivered to the Registrar; and (b) the resolution is delivered to the Registrar for registration after the repeal, the company is also a dormant company for the purposes of Parts 9, 10 and 12 as from the date of delivery of the resolution to the Registrar or as from a later date as is specified in the resolution. (4) If, immediately before the repeal of section 344A of the predecessor Ordinance by section 912, a company was a dormant company for the purposes of that section, the company continues to be a dormant company for the purposes of Parts 9, 10 and 12 as from the commencement date of this section. (5) A company that is a dormant company for the purposes of Parts 9, 10 and 12 ceases to be such dormant company if— (a) the company passes a special resolution declaring that the company intends to enter into an accounting transaction, and the resolution is delivered to the Registrar for registration; or (b) there is an accounting transaction in relation to the company. (6) In this section— qualified private company (合資格私人公司) means a private company that is not a company specified in subsection (7). (7) A company specified for the purposes of the definition of qualified private company in subsection (6) is— (a) an authorized institution as defined by section 2(1) of the Banking Ordinance (Cap. 155); (b) an insurer as defined by section 2(1) and (2) of the Insurance Companies Ordinance (Cap. 41);

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(8) This section does not apply to— (a) a company that is not a private company; or (b) a company specified in the Sixteenth Schedule as a company to which this section does not apply. (9) In this section— (a) a company is dormant during any period in which no transaction occurs which is, for the company, a relevant accounting transaction; (b) “relevant accounting transaction” (有關會計交易) means a transaction which is required by section 121 to be entered in the company’s books of account (disregarding any transaction which arises from the payment of any fee which the company is required to pay by any Ordinance).	(c) a corporation licensed under Part V of the Securities and Futures Ordinance (Cap. 571) to carry on a business in any regulated activity as defined by section 1 of Part 1 of Schedule 1 to that Ordinance; (d) an associated entity, within the meaning of Part VI of the Securities and Futures Ordinance (Cap. 571), of a corporation mentioned in paragraph (c); (e) an approved trustee as defined by section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); (f) a company having a subsidiary that falls within paragraph (a), (b), (c), (d) or (e); or (g) a company that fell within paragraph (a), (b), (c), (d), (e), (f) or (g) at any time during the 5 years immediately before the special resolution is passed. (8) The Financial Secretary may, by notice published in the Gazette, amend subsection (7).
48A Construction of references to offering shares or debentures to the public (1) Any reference in this Ordinance to offering shares or debentures to the public shall, subject to any provision to the contrary contained therein, be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner, and references in this Ordinance or in a company’s articles to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be similarly construed. (2) Subsection (1) shall not be taken as requiring any offer or invitation to be treated as made to the public if it can properly be regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving it, and in particular— (a) a provision in a company’s articles prohibiting invitations to the public to subscribe for shares or debentures shall not be taken as prohibiting the making to members or debenture holders of an invitation which can properly be regarded as aforesaid; and (b) the provisions of this Ordinance relating to private companies shall be construed accordingly. (3) For the avoidance of doubt, it is hereby declared that the provisions of the Seventeenth Schedule shall not be construed to prejudice the generality of this section.	6. Offering shares or debentures to public, etc. – <i>mel</i>, of CO s 48A (1) In this Ordinance, a reference to offering shares or debentures of a company to the public includes offering them to a section of the public, whether selected— (a) as members or debenture holders of the company; (b) as clients of the person making the offer; or (c) in any other manner. (2) In this Ordinance and in a company’s articles, a reference to an invitation to the public to subscribe for shares or debentures of a company includes an invitation to a section of the public, whether selected— (a) as members or debenture holders of the company; (b) as clients of the person making the invitation; or (c) in any other manner. (3) Neither subsection (1) nor subsection (2) operates to treat a private offer of shares or debentures, or a private invitation to subscribe for shares or debentures, as an offer or invitation made to the public. (4) In particular— (a) a provision in a company’s articles prohibiting invitations to the public to subscribe for shares or debentures is not to be regarded as prohibiting a private invitation to subscribe for shares or debentures to be made to members or debenture holders; and (b) the provisions of this Ordinance relating to private companies are to be construed accordingly. (5) In this section, an offer of shares or debentures, or an invitation to subscribe for shares or debentures, is a private offer or invitation if the offer or invitation can properly be regarded, in all the circumstances, as being— (a) not calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or (b) a domestic concern of the persons making and receiving the offer or invitation.

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<p>Companies Act 2006 (U.K.) 1135 Form of company records (1) Company records— (a) may be kept in hard copy or electronic form, and (b) may be arranged in such manner as the directors of the company think fit, provided the information in question is adequately recorded for future reference. (2) Where the records are kept in electronic form, they must be capable of being reproduced in hard copy form.</p> <p>1138 Duty to take precautions against falsification (1) Where company records are kept otherwise than in bound books, adequate precautions must be taken— (a) to guard against falsification, and (b) to facilitate the discovery of falsification. (2) If a company fails to comply with this section, an offence is committed by every officer of the company who is in default. (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.</p>	<p>(5) If subsection (1) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues. (6) If subsection (3) or (4) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.</p> <p style="text-align: center;">----- <i>Transitional</i> -----</p> <p>76. Books of account – Part 9, Sch 11 <i>Sections 121 and 348C of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to books of account for a financial year beginning before the commencement date of Subdivision 2 of Division 4 of Part 9 and ending on or after that commencement date.</i></p>
<p>121 Keeping of books of account ... (3A) Any books of account which a company is required by this section to keep shall be preserved by it for 7 years from the end of the financial year to which the last entry made or matter recorded therein relates. (4) If any person being a director of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he shall, in respect of each offence, be liable to imprisonment and a fine: Provided that— (a) in any proceedings against a person in respect of an offence under this section consisting of a failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that those requirements were complied with and was in a position to discharge that duty; and (b) a person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.</p>	<p>377. How long accounting records to be preserved – <i>mel, cf CO s 121(3A), (4), UKCA ss 388(4), 389(1)</i> (1) This section applies to any accounting records, or any accounts and returns, that are required by section 373(1) or 374(2) to be kept. (2) The company must preserve the records, or the accounts and returns, for 7 years after the end of the financial year to which the last entry made or matter recorded in the records, or the accounts and returns, relates. (3) A director of a company who fails to take all reasonable steps to secure compliance with subsection (2) commits an offence and is liable to a fine of \$300,000. (4) A director of a company who wilfully fails to take all reasonable steps to secure compliance with subsection (2) commits an offence and is liable to a fine of \$300,000 and to imprisonment for 12 months. (5) If a person is charged with an offence under subsection (3), it is a defence to establish that the person had reasonable grounds to believe, and did believe, that a competent and reliable person— (a) was charged with the duty of ensuring that subsection (2) was complied with; and (b) was in a position to discharge that duty.</p>
<p style="text-align: center;"><i>Reference in old Companies Ordinance/other law</i></p> <p>Companies Act 2006 (U.K.) 388 Where and for how long records to be kept ... (4) Accounting records that a company is required by section 386 to keep must be preserved by it— (a) in the case of a private company, for three years from the date on which they are made; (b) in the case of a public company, for six years from the date on which they are made.</p> <p>389 Where and for how long records to be kept: offences (1) If a company fails to comply with any provision of subsections (1) to (3) of section 388 (requirements as to keeping of accounting records), an offence is committed by every officer of the company who is in default.</p>	<p style="text-align: center;"><i>New Companies Ordinance</i> <i>Transitional</i></p> <p>76. Books of account – Part 9, Sch 11 <i>Sections 121 and 348C of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to books of account for a financial year beginning before the commencement date of Subdivision 2 of Division 4 of Part 9 and ending on or after that commencement date.</i></p>
<p><i>New provision</i></p> <p>Corporations Act 2001 (Australia) 290 Director access ... Court order for inspection on director's behalf (2) On application by a director, the Court may authorise a person to inspect the financial records on the director's behalf. (3) A person authorised to inspect records may make copies of the records unless the Court orders otherwise. (4) The Court may make any other orders it consider appropriate, including either or both of the following: (a) an order limiting the use that a person who inspects the records may make of information obtained during the inspection; (b) an order limiting the right of a person who inspects the records to make copies in accordance with subsection (3).</p> <p>Companies Act (chapter 50) (Singapore) 199. Accounting records and systems of control ... (5) The Court may in any particular case order that the accounting and other records of a company be open to inspection by a public accountant acting for a director, but only upon an undertaking in writing given to the Court that information acquired by the public accountant during his inspection shall not be disclosed by him except to that director.</p>	<p>378. Court may order accounting records to be inspected on director's behalf – <i>new provision, cf SCA s 199(5), ACA s 290(2) to (4)</i> (1) On application by a director of a company, the Court may by order authorize a person to inspect the company's accounting records on the director's behalf. (2) Unless the Court otherwise directs, a person so authorized may make copies of the accounting records. (3) The Court may make any or all of the following orders— (a) an order limiting the use that a person so authorized may make of the information obtained during the inspection; (b) an order limiting the right of a person so authorized to make copies in accordance with subsection (2); (c) any other order that it thinks fit.</p>

Division 4, Subdivision 3

Reference in old Companies Ordinance/other law	New Companies Ordinance
<p>123 General provisions as to contents and form of accounts</p> <p>(1) Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of its financial year, and every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year.</p> <p>(2) A company's balance sheet and profit and loss account shall comply with the requirements of the Tenth Schedule, so far as applicable thereto.</p> <p>(3) Save as expressly provided in Part III of the Tenth Schedule, the requirements of subsection (2) and the said Schedule shall be without prejudice either to the general requirements of subsection (1) or to any other requirements of this Ordinance.</p> <p>(4) Where compliance with the requirements of the Tenth Schedule and other requirements of this Ordinance as to the matters to be included in a company's balance sheet and profit and loss account or in a statement annexed to those accounts—</p> <p>(a) would not be sufficient to give a true and fair view of the state of affairs or the profit or loss of the company; or</p> <p>(b) is inconsistent with the requirement to give a true and fair view of the state of affairs or the profit or loss of the company,</p> <p>then—</p> <p>(c) in the case of paragraph (a), additional information that is necessary to give a true and fair view thereof shall be given in the accounts or statement, as the case may require; and</p> <p>(d) in the case of paragraph (b), the directors of the company shall depart from those requirements to the extent that is necessary to give a true and fair view thereof with the reasons for and particulars and effects of such departure to be given in the accounts or in a statement annexed to those accounts.</p> <p>(5) Subsections (1) and (2) shall not apply to a company's profit and loss account if—</p> <p>(a) the company has subsidiaries; and</p> <p>(b) the profit and loss account is framed as a consolidated profit and loss account dealing with all or any of the company's subsidiaries as well as the company and—</p> <p>(i) complies with the requirements of this Ordinance relating to consolidated profit and loss accounts; and</p> <p>(ii) shows how much of the consolidated profit or loss for the financial year is dealt with in the accounts of the company.</p> <p>(6) If any person being a director of a company fails to take all reasonable steps to secure compliance as respects any accounts laid before the company in general meeting with the provisions of this section and with the other requirements of this Ordinance as to the matters to be stated in accounts, he shall, in respect of each offence, be liable to imprisonment and a fine. Provided that—</p>	<p>379. Directors must prepare financial statements – <i>mel, cf CO ss 123 to 126, 129C, 141D, UKCA s 393, 394, 399</i></p> <p>(1) A company's directors must prepare for each financial year statements that comply with sections 380 and 383.</p> <p>(2) Despite subsection (1), if the company is a holding company at the end of the financial year, the directors must instead prepare for the financial year consolidated statements that comply with sections 380, 381 and 383.</p> <p>(3) Subsection (2) does not apply—</p> <p>(a) if the company is a wholly owned subsidiary of another body corporate in the financial year; or</p> <p>(b) if—</p> <p>(i) the company is a partially owned subsidiary of another body corporate in the financial year;</p> <p>(ii) at least 6 months before the end of the financial year, the directors notify the members in writing of the directors' intention not to prepare consolidated statements for the financial year, and the notification does not relate to any other financial year; and</p> <p>(iii) as at a date falling 3 months before the end of the financial year, no member has responded to the notification by giving the directors a written request for the preparation of consolidated statements for the financial year.</p> <p>(4) If, as respects any financial statements a copy of which is laid before a company in general meeting under section 429, or sent to a member under section 430 or otherwise circulated, published or issued by the company, a director of the company fails to take all reasonable steps to secure compliance with subsection (1) or (2), the director commits an offence and is liable to a fine of \$300,000.</p> <p>(5) If, as respects any financial statements a copy of which is laid before a company in general meeting under section 429, or sent to a member under section 430 or otherwise circulated, published or issued by the company, a director of the company wilfully fails to take all reasonable steps to secure compliance with subsection (1) or (2), the director commits an offence and is liable to a fine of \$300,000 and to imprisonment for 12 months.</p> <p>(6) If a person is charged with an offence under subsection (4), it is a defence to establish that the person had reasonable grounds to believe, and did believe, that a competent and reliable person—</p> <p>(a) was charged with the duty of ensuring that subsection (1) or (2) (as the case may be) was complied with; and</p> <p>(b) was in a position to discharge that duty.</p>

Reference in old Companies Ordinance/other law	New Companies Ordinance
<p>(a) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the said provisions or the said other requirements, as the case may be, were complied with and was in a position to discharge that duty; and</p> <p>(b) a person shall not be sentenced to imprisonment for any such offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.</p> <p>(7) For the purposes of this section and the following provisions of this Ordinance, except where the context otherwise requires,—</p> <p>(a) any reference to a balance sheet or profit and loss account shall include any notes thereon or document annexed thereto giving information which is required by this Ordinance and is thereby allowed to be so given; and</p> <p>(b) any reference to a profit and loss account shall be taken, in the case of a company not trading for profit, as referring to its income and expenditure account, and references to profit or to loss and, if the company has subsidiaries, references to a consolidated profit and loss account shall be construed accordingly.</p> <p>124 Obligation to lay group accounts before holding company</p> <p>(1) Where at the end of its financial year a company has subsidiaries, accounts or statements (in this Ordinance referred to as "group accounts") dealing as hereinafter mentioned with the state of affairs and profit or loss of the company and the subsidiaries shall, subject to subsection (2), be laid before the company in general meeting when the company's own balance sheet and profit and loss account are so laid.</p> <p>(2) Notwithstanding anything in subsection (1)—</p> <p>(a) group accounts shall not be required where the company is at the end of its financial year the wholly owned subsidiary of another body corporate; and</p> <p>(b) group accounts need not deal with a subsidiary of the company if the company's directors are of opinion that—</p> <p>(i) it is impracticable, or would be of no real value to members of the company, in view of the insignificant amount involved, or would involve expense or delay out of proportion to the value to members of the company; or</p> <p>(ii) the result would be misleading, or harmful to the business of the company or any of its subsidiaries; or</p> <p>(iii) the business of the holding company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking;</p> <p>and, if the directors are of such an opinion about each of the company's subsidiaries, group accounts shall not be required:</p> <p>Provided that the approval of the Financial Secretary shall be required for not dealing in group accounts with a subsidiary on the ground that the result would be harmful or on the ground of the difference between the business of the holding company and that of the subsidiary.</p>	<p>78. Accounts and directors' report – Part 9, Sch 11</p> <p>(1) Sections 122, 123, 124, 125, 126, 128, 129, 129A, 129B, 129C, 129D, 129G, 141C, 161, 161A, 161B, 161BA and 161BB of, and the Tenth Schedule to, the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to accounts for a financial year beginning before the commencement date of Subdivision 3 of Division 4 of Part 9 and ending on or after that commencement date.</p> <p><i>Transitional</i></p>

Reference in old Companies Ordinance/other law	New Companies Ordinance
<p>(3) If any person being a director of a company fails to take all reasonable steps to secure compliance as respects the company with the provisions of this section, he shall, in respect of each offence, be liable to imprisonment and a fine:</p> <p>Provided that—</p> <p>(a) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty; and</p> <p>(b) a person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the court dealing with the case, the offence was committed wilfully.</p> <p>(4) For the purposes of this section a body corporate shall be deemed to be the wholly owned subsidiary of another if it has no members except that other and that other's wholly owned subsidiaries and its or their nominees.</p>	
<p>125 Form of group accounts</p>	
<p>(1) Subject to subsection (2), the group accounts laid before a holding company shall be consolidated accounts comprising—</p> <p>(a) a consolidated balance sheet dealing with the state of affairs of the company and all the subsidiaries to be dealt with in group accounts;</p> <p>(b) a consolidated profit and loss account dealing with the profit or loss of the company and those subsidiaries.</p> <p>(2) If the company's directors are of opinion that it is better for the purpose—</p> <p>(a) of presenting the same or equivalent information about the state of affairs and profit or loss of the company and those subsidiaries; and</p> <p>(b) of so presenting it that it may be readily appreciated by the company's members, the group accounts may be prepared in a form other than that required by subsection (1), and in particular may consist of more than one set of consolidated accounts dealing respectively with the company and one group of subsidiaries and with other groups of subsidiaries, or of separate accounts dealing with each of the subsidiaries, or of statements expanding the information about the subsidiaries in the company's own accounts, or any combination of those forms.</p> <p>(3) The group accounts may be wholly or partly incorporated in the company's own balance sheet and profit and loss account.</p>	
<p>126 Contents of group accounts</p>	
<p>(1) The group accounts laid before a company shall give a true and fair view of the state of affairs and profit or loss of the company and the subsidiaries dealt with thereby as a whole, so far as concerns members of the company.</p>	

Reference in old Companies Ordinance/other law	New Companies Ordinance
<p>(2) Where the financial year of a subsidiary does not coincide with that of the holding company, the group accounts shall—</p> <p>(a) deal with the subsidiary's state of affairs as at the end of its financial year ending with or last before that of the holding company, and with the subsidiary's profit or loss for that year; and</p> <p>(b) state the reasons why the financial year of the subsidiary does not coincide with that of the holding company.</p> <p>(3) Without prejudice to subsection (1), the group accounts, if prepared as consolidated accounts, shall comply with the requirements of the Tenth Schedule, so far as applicable thereto, and if not so prepared shall give the same or equivalent information.</p> <p>(4) Where compliance with the requirements of the Tenth Schedule and other requirements of this Ordinance as to the matters to be included in a company's group accounts or in a statement annexed to the group accounts—</p> <p>(a) would not be sufficient to give a true and fair view of the state of affairs or the profit or loss of the company and its subsidiaries; or</p> <p>(b) is inconsistent with the requirement to give a true and fair view of the state of affairs or the profit or loss of the company and its subsidiaries, then—</p> <p>(c) in the case of paragraph (a), additional information that is necessary to give a true and fair view thereof shall be given in the group accounts or statement, as the case may require; and</p> <p>(d) in the case of paragraph (b), the directors of the company shall depart from those requirements to the extent that is necessary to give a true and fair view thereof with the reasons for and particulars and effects of such departure to be given in a statement annexed to the company's group accounts.</p>	
<p>129C Accounts to be annexed, and auditors' report to be attached, to balance sheet</p>	
<p>(1) The profit and loss account and, so far as not incorporated in the balance sheet or profit and loss account, any group accounts laid before the company in general meeting, shall be annexed to the balance sheet, and the auditors' report shall be attached thereto.</p> <p>(2) Any accounts so annexed shall be approved by the board of directors before the balance sheet is signed on their behalf.</p> <p>(3) If any copy of a balance sheet is issued, circulated or published without having annexed thereto a copy of the profit and loss account or any group accounts required by this section to be so annexed, or without having attached thereto a copy of the auditors' report, the company and every officer of the company who is in default shall be liable to a fine.</p> <p>(4) This section does not apply to a copy of a balance sheet incorporated into a summary financial report of a listed company and issued, circulated or published as part of the report.</p>	

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<p>141D Power of shareholders of certain private companies to waive compliance with requirements as to accounts</p> <p>(1) Where all the shareholders of a private company agree in writing that this section shall apply with respect to a financial year of that company—</p> <p>(a) the following provisions of this Ordinance shall not apply with respect to that financial year, that is to say, sections 121(2), 123, 129, 129A, 129D, 129E and 141(3);</p> <p>(b) the company's balance sheet as at the end of that financial year shall comply with the requirements of the Eleventh Schedule;</p> <p>(c) there shall be attached to the balance sheet a report by the directors with respect to—</p> <p>(i) the state of the company's affairs;</p> <p>(ii) the amount (if any) which they recommend should be paid by way of dividend;</p> <p>(iii) the amount of (if any) which they propose to carry to the reserve fund, general reserve or reserve account shown specifically on the balance sheet or to a reserve fund, general reserve or reserve account to be shown specifically on a subsequent balance sheet;</p> <p>(d) the directors' report so attached shall be approved by the board of directors and signed on behalf of the board either by the chairman of the meeting at which it was approved or by the secretary of the company;</p> <p>(e) the auditors' report shall state—</p> <p>(i) whether or not the auditors have obtained all the information and explanations which they have required; and</p> <p>(ii) whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.</p> <p>(2) The shareholders shall not in any financial year of the company enter into an agreement for the purposes of subsection (1) with respect to more than one such financial year.</p> <p>(3) This section does not apply to a private company which—</p> <p>(a) has any subsidiary or is a subsidiary of another company formed and registered under this Ordinance or an existing company; or</p> <p>(b) carries on banking business and holds a valid banking licence granted under the Banking Ordinance (Cap. 155); or</p> <p>(c) is a corporation licensed under Part V of the Securities and Futures Ordinance (Cap. 571) to carry on a business in any regulated activity within the meaning of that Ordinance; or</p> <p>(d) either solely or in common with any other business, carries on any insurance business otherwise than solely as an agent; or</p> <p>(e) by way of trade or business, other than banking business, accepts loans of money at interest, or repayable at a premium, otherwise than on terms involving the issue of debentures or other securities; or</p>	

Reference in old Companies Ordinance/other law	New Companies Ordinance
<p>(f) owns and operates ships or aircraft engaged in the carriage of cargo between Hong Kong and places outside Hong Kong.</p> <p>(4) Without prejudice to any other provision of this Ordinance, if any person being a director of a company fails to take all reasonable steps to secure compliance with the requirements of subsection (1)(c) and (d), he shall, in respect of each offence, be liable to imprisonment and a fine:</p> <p>Provided that—</p> <p>(a) in any proceedings against the person in respect of an offence under this subsection, it shall be a defence to prove that he had reasonable ground to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that the said paragraphs were complied with and was in a position to discharge that duty; and</p> <p>(b) a person shall not be sentenced to imprisonment for any such offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.</p> <p>-----</p> <p>Companies Act 2006 (U.K.)</p> <p>393 Accounts to give true and fair view</p> <p>(1) The directors of a company must not approve accounts for the purposes of this Chapter unless they are satisfied that they give a true and fair view of the assets, liabilities, financial position and profit or loss—</p> <p>(a) in the case of the company's individual accounts, of the company;</p> <p>(b) in the case of the company's group accounts, of the undertakings included in the consolidation as a whole, so far as concerns members of the company.</p> <p>(2) The auditor of a company in carrying out his functions under this Act in relation to the company's annual accounts must have regard to the directors' duty under subsection (1).</p> <p>394 Duty to prepare individual accounts</p> <p>The directors of every company must prepare accounts for the company for each of its financial years</p> <p>[Note— unless the company is exempt from that requirement under section 394A.] Those accounts are referred to as the company's "individual accounts". Words in s. 394 inserted (1.10.2012 with application in accordance with reg. 2 of the amending S.I.) by The Companies and Limited Liability Partnerships (Accounts and Audit Exemptions and Change of Accounting Framework) Regulations 2012 (S.I. 2012/2301), regs. 1, 8</p> <p>399 Duty to prepare group accounts</p> <p>(1) This section applies to companies that are not subject to the small companies regime.</p> <p>(2) If at the end of a financial year the company is a parent company the directors, as well as preparing individual accounts for the year, must prepare group accounts for the year unless the company is exempt from that requirement.</p>	

Reference in old Companies Ordinance/other law	New Companies Ordinance
<p>(3) There are exemptions under— section 400 (company included in EEA accounts of larger group), section 401 (company included in non-EEA accounts of larger group), and section 402 (company none of whose subsidiary undertakings need be included in the consolidation).</p> <p>(4) A company to which this section applies but which is exempt from the requirement to prepare group accounts, may do so.</p> <p><i>For ss 123, 126, 141D, see above.</i></p> <p>2B Construction of references to parent company, etc.</p> <p>...</p> <p>(3) The provisions specified for the purposes of subsection (2) are sections 123, 124, 125, 126, 127, 128, 129, 129A, 129D, 133, 140, 141, 161, 161B, 161BA, 163B and 163D and the Second Schedule, the Third Schedule, the Fourth Schedule and the Tenth Schedule.</p> <p>-----</p> <p>Companies Act 2006 (U.K.)</p> <p>464 Accounting standards</p> <p>(1) In this Part “accounting standards” means statements of standard accounting practice issued by such body or bodies as may be prescribed by regulations.</p> <p>(2) References in this Part to accounting standards applicable to a company’s annual accounts are to such standards as are, in accordance with their terms, relevant to the company’s circumstances and to the accounts.</p> <p>(3) Regulations under this section may contain such transitional and other supplementary and incidental provisions as appear to the Secretary of State to be appropriate.</p> <p>Corporations Act 2001 (Australia)</p> <p>296 Compliance with accounting standards and regulations</p> <p>(1) The financial report for a financial year must comply with the accounting standards.</p> <p>Small proprietary companies</p> <p>(1A) Despite subsection (1), the financial report of a small proprietary company does not have to comply with particular accounting standards if:</p> <p>(a) the report is prepared in response to a shareholder direction under section 293; and</p> <p>(b) the direction specifies that the report does not have to comply with those standards.</p> <p>Small companies limited by guarantee</p> <p>(1B) Despite subsection (1), the financial report of a small company limited by guarantee does not have to comply with particular accounting standards if:</p> <p>(a) the report is prepared in response to a member direction under section 294A; and</p> <p>(b) the direction specifies that the report does not have to comply with those standards.</p>	<p>380. General requirements for financial statements – <i>mel, cf CO ss 2B(3), 123, 126, 141D, ACA ss 296, 297, UKCA s 464</i></p> <p>(1) The annual financial statements for a financial year—</p> <p>(a) must give a true and fair view of the financial position of the company as at the end of the financial year; and</p> <p>(b) must give a true and fair view of the financial performance of the company for the financial year.</p> <p>(2) The annual consolidated financial statements for a financial year—</p> <p>(a) must give a true and fair view of the financial position of the company, and all the subsidiary undertakings, as a whole as at the end of the financial year; and</p> <p>(b) must give a true and fair view of the financial performance of the company, and all the subsidiary undertakings, as a whole for the financial year.</p> <p>(3) The financial statements for a financial year must comply with—</p> <p>(a) if the company falls within the reporting exemption for the financial year, Part 1 of Schedule 4; or</p> <p>(b) if the company does not fall within the reporting exemption for the financial year, Parts 1 and 2 of Schedule 4.</p> <p>(4) The financial statements for a financial year must also comply with—</p> <p>(a) any other requirements of this Ordinance in relation to the financial statements; and</p> <p>(b) the accounting standards applicable to the financial statements.</p> <p>(5) If, in relation to any financial statements, compliance with subsections (3) and (4) would be insufficient to give a true and fair view under subsection (1) or (2), the financial statements must contain all additional information necessary for that purpose.</p> <p>(6) If, in relation to any financial statements, compliance with subsection (3) or (4) would be inconsistent with a requirement to give a true and fair view under subsection (1) or (2), the financial statements—</p> <p>(a) must depart from subsection (3) or (4) (as the case may be) to the extent necessary for it to give a true and fair view; and</p> <p>(b) must contain the reasons for, and the particulars and effect of, the departure.</p> <p>(7) Subsections (1), (2), (5) and (6) do not apply if the company falls within the reporting exemption for the financial year.</p>

Reference in old Companies Ordinance/other law	New Companies Ordinance
<p>Further requirements</p> <p>(2) The financial report must comply with any further requirements in the regulations.</p> <p>297 True and fair view</p> <p>The financial statements and notes for a financial year must give a true and fair view of:</p> <p>(a) the financial position and performance of the company, registered scheme or disclosing entity; and</p> <p>(b) if consolidated financial statements are required—the financial position and performance of the consolidated entity.</p> <p>This section does not affect the obligation under section 296 for a financial report to comply with accounting standards.</p>	<p>(8) In this section—</p> <p>(a) accounting standards (會計準則) means statements of standard accounting practice issued or specified by a body prescribed by the Regulation; and</p> <p>(b) a reference to accounting standards applicable to any financial statements is a reference to accounting standards as are, in accordance with their terms, relevant to the company’s circumstances and to the financial statements.</p> <p>(9) This section has effect subject to section 382.</p> <p>-----</p> <p><i>Transitional</i></p> <p>78. Accounts and directors’ report – Part 9, Sch 11</p> <p>(1) Sections 122, 123, 124, 125, 126, 128, 129, 129A, 129B, 129C, 129D, 129G, 141C, 161, 161A, 161B, 161BA and 161BB of, and the Tenth Schedule to, the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to accounts for a financial year beginning before the commencement date of Subdivision 3 of Division 4 of Part 9 and ending on or after that commencement date.</p>
<p>2B Construction of references to parent company, etc.</p> <p>...</p> <p>(3) The provisions specified for the purposes of subsection (2) are sections 123, 124, 125, 126, 127, 128, 129, 129A, 129D, 133, 140, 141, 161, 161B, 161BA, 163B and 163D and the Second Schedule, the Third Schedule, the Fourth Schedule and the Tenth Schedule.</p> <p>124 Obligation to lay group accounts before holding company</p> <p>(1) Where at the end of its financial year a company has subsidiaries, accounts or statements (in this Ordinance referred to as “group accounts”) dealing as hereinafter mentioned with the state of affairs and profit or loss of the company and the subsidiaries shall, subject to subsection (2), be laid before the company in general meeting when the company’s own balance sheet and profit and loss account are so laid.</p> <p>(2) Notwithstanding anything in subsection (1)—</p> <p>(a) group accounts shall not be required where the company is at the end of its financial year the wholly owned subsidiary of another body corporate; and</p> <p>(b) group accounts need not deal with a subsidiary of the company if the company’s directors are of opinion that—</p> <p>(i) it is impracticable, or would be of no real value to members of the company, in view of the insignificant amount involved, or would involve expense or delay out of proportion to the value to members of the company; or</p> <p>(ii) the result would be misleading, or harmful to the business of the company or any of its subsidiaries; or</p> <p>(iii) the business of the holding company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking;</p>	<p>381. Subsidiary undertakings to be included in annual consolidated financial statements – <i>mel, cf CO ss 2B(3), 124, UKCA s 405</i></p> <p>(1) Subject to subsections (2) and (3), the annual consolidated financial statements for a financial year must include all the subsidiary undertakings of the company.</p> <p>(2) Where the company falls within the reporting exemption for the financial year, one or more subsidiary undertakings may be excluded from the annual consolidated financial statements in compliance with the accounting standards applicable to the statements.</p> <p>(3) Where the company does not fall within the reporting exemption for the financial year—</p> <p>(a) one subsidiary undertaking may be excluded from the annual consolidated financial statements if the inclusion of the subsidiary undertaking is not material for the purpose of giving a true and fair view of the financial position, and of the financial performance, mentioned in section 380(2)(a) and (b); and</p> <p>(b) more than one subsidiary undertaking may be excluded from the annual consolidated financial statements if the inclusion of those subsidiary undertakings taken together is not material for the purpose of giving a true and fair view of the financial position, and of the financial performance, mentioned in section 380(2)(a) and (b).</p> <p>(4) This section has effect subject to section 382.</p> <p>-----</p> <p><i>Transitional</i></p> <p>78. Accounts and directors’ report – Part 9, Sch 11</p> <p>(1) Sections 122, 123, 124, 125, 126, 128, 129, 129A, 129B, 129C, 129D, 129G, 141C, 161, 161A, 161B, 161BA and 161BB of, and the Tenth Schedule to, the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to accounts for a financial year beginning before the commencement date of Subdivision 3 of Division 4 of Part 9 and ending on or after that commencement date.</p>

Reference in old Companies Ordinance/other law	New Companies Ordinance
	<p>(b) it is to be regarded as being received by that other person at the end of the period specified in section 823 after whichever is the later of the following—</p> <p>(i) the time when the document or information is first made available on the website;</p> <p>(ii) the time when that other person receives a notification under subsection (3)(c).</p> <p>(13) In this section— equivalent debenture holders (相應債權證持有人), in relation to a person to whom a document or information is sent or supplied by a company, means the debenture holders of the company ranking equally for all purposes with the person.</p>
<p><i>New provision</i> Companies Act 2006 (U.K.)</p> <p style="text-align: center;">Schedule 5 Part 5 Other agreed forms of communication</p> <p>(15) A document or information that is sent or supplied otherwise than in hard copy or electronic form or by means of a website is validly sent or supplied if it is sent or supplied in a form or manner that has been agreed by the intended recipient.</p>	<p>834. Communication in other forms – new provision, UKCA Part 5 Sched 5</p> <p>(1) This section applies if a document or information is sent or supplied by a company to another person otherwise than in electronic or hard copy form or by making it available on a website.</p> <p>(2) The document or information is sent or supplied to that other person for the purposes of an applicable provision if the document or information is sent or supplied in a form or manner that has been agreed by that other person.</p>
<p>133. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.</p> <p>-----</p> <p>Companies Act 2006 (U.K.)</p> <p style="text-align: center;">Schedule 5 Part 6 Supplementary provisions</p> <p>Joint holders of shares or debentures</p> <p>16 (1) This paragraph applies in relation to documents or information to be sent or supplied to joint holders of shares or debentures of a company.</p> <p>(2) Anything to be agreed or specified by the holder must be agreed or specified by all the joint holders.</p> <p>(3) Anything authorised or required to be sent or supplied to the holder may be sent or supplied either—</p> <p>(a) to each of the joint holders, or</p> <p>(b) to the holder whose name appears first in the register of members or the relevant register of debenture holders.</p> <p>(4) This paragraph has effect subject to anything in the company's articles.</p>	<p>835. Joint holders of shares or debentures – new provision, cf CO Table A reg 133, UKCA Part 6 Schedule 5</p> <p>(1) This section applies if—</p> <p>(a) a provision of this Ordinance authorizes or requires a document or information to be sent or supplied by a company to the holders of its shares or debentures; and</p> <p>(b) a document or information is required to be sent to joint holders of the shares or debentures.</p> <p>(2) Subject to anything in the company's articles, the document or information is sent or supplied to the joint holders for the purposes of the provision if the document or information is sent or supplied to—</p> <p>(a) each of the joint holders; or</p> <p>(b) the holder whose name appears first in the company's register of members or register of debenture holders.</p> <p>(3) Subject to anything in the company's articles, anything to be agreed or specified by the holders for the purposes of this Division must be agreed or specified by all the joint holders.</p>

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Reference in old Companies Ordinance/other law	New Companies Ordinance
<p>134. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, within Hong Kong supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.</p>	<p>836. Death or bankruptcy of holder of shares – new provision, cf CO Table A reg 134</p> <p>(1) This section applies if—</p> <p>(a) a provision of this Ordinance authorizes or requires a document or information to be sent or supplied by a company to the holders of its shares; and</p> <p>(b) a holder of the shares is dead or bankrupt.</p> <p>(2) Subject to anything in the company's articles, the document or information is sent or supplied to that holder for the purposes of the provision if the document or information—</p> <p>(a) is sent or supplied to the persons claiming to be entitled to the shares in consequence of the death or bankruptcy by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address within Hong Kong supplied for the purpose by the persons so claiming; or</p> <p>(b) until such an address has been so supplied, is sent or supplied in any manner in which it might have been sent or supplied if the death or bankruptcy had not occurred.</p>
<p>168BAI Member or debenture holder may require hard copy</p> <p>(1) A member or debenture holder of a company may, within 28 days after the date of receiving from the company a document or information, otherwise than in hard copy form, request the company to send or supply to the member or holder the document or information in hard copy form.</p> <p>(2) The company must send or supply to the member or holder the document or information in hard copy form, free of charge—</p> <p>(a) within 21 days after the date of receiving the request; or</p> <p>(b) if the document or information requires an action to be taken by the member or holder, within 7 days after the date of receiving the request.</p> <p>(3) If a company contravenes subsection (2), the company, and every officer of the company who is in default, commit an offence, and each is liable to a fine.</p>	<p>837. Member or debenture holder may require hard copy – mel, cf CO s 168BAI</p> <p>(1) A member or debenture holder of a company may, within 28 days after the date of receiving from the company a document or information, otherwise than in hard copy form, request the company to send or supply to the member or holder the document or information in hard copy form.</p> <p>(2) The company must send or supply to the member or holder the document or information in hard copy form, free of charge—</p> <p>(a) within 21 days after the date of receiving the request; or</p> <p>(b) if the document or information requires an action to be taken by the member or holder, within 7 days after the date of receiving the request.</p> <p>(3) If a company contravenes subsection (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.</p>

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Cap. 622 Part 19 (Investigations and Enquiries)

Introduction

Part 19 (Investigations and Enquiries) deals with investigations and enquiries into a company's affairs by inspectors and the Financial Secretary. It modernises the existing provisions by reference to similar mechanism in the Securities and Futures Ordinance (Cap. 571) (SFO) and Financial Reporting Council Ordinance (Cap. 588). This Part also provides a new power for the Registrar to obtain documents, records and information for the purposes of ascertaining whether any conduct that would constitute certain offences relating to giving false or misleading statement has taken place. This new power will facilitate enforcement and safeguard the integrity of the public register.

Division 1 defines or otherwise explains certain expressions used in Part 19.

CAP 622, PART 19, DIVISION 1

Reference in old Companies Ordinance/other law

(5) In this section, any reference to officers or to agents shall include past, as well as present, officers or agents, as the case may be, and for the purposes of this section the expression "agents", in relation to a company or other body corporate, shall include the bankers and solicitors of the company or other body corporate and any person employed by the company or other body corporate as auditor, whether any such person is or is not an officer of the company or other body corporate.

2 Interpretation

(1) In this Ordinance, unless the context otherwise requires—

"authorized institution" (認可機構) means an authorized institution within the meaning of section 2(1) of the Banking Ordinance (Cap. 155);

"books" (簿冊) includes accounts and accounting information, however compiled or stored, and whether recorded in a legible form or recorded otherwise than in a legible form but is capable of being reproduced in a legible form;

"document" (文件) includes—

- (a) any register, books and tape recording;
- (b) any input or output, in whatever form, into or from an information system; and
- (c) any other document or similar material (whether produced mechanically, electronically, magnetically, optically, manually or by any other means);

"information" (資料) includes data, text, images, sound codes, computer programmes, software and databases, and any combination thereof;

"officer" (高級人員)—

- (a) in relation to a corporation, means a director, manager or secretary of, or any other person involved in the management of, the corporation; or
- (b) in relation to an unincorporated association or partnership, means any member of the governing body of, or any other person involved in the management of, the association or partnership;

"record" (紀錄) means any record of information (however compiled or stored) and includes—

New Companies Ordinance

838. Interpretation ^{new provision, of CO s 145(5), SFO Part 1 Sched 1, FRCO s 2(1)}

(1) In this Part—

agent (代理人), in relation to a company, includes—

- (a) a banker or solicitor of the company; and
- (b) a person, whether an officer of the company or not, who is engaged as an auditor of the company;

authorized institution (認可機構) has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155);

books (簿冊) includes accounts and accounting information, however compiled or stored, and whether or not recorded in a legible form;

delegate (獲轉授人)—

- (a) in relation to an inspector, means a person to whom the inspector has delegated any power under section 850(1);
- (b) in relation to the Financial Secretary, means a person to whom the Financial Secretary has delegated any power under section 870;
- (c) in relation to the Registrar, means a public officer to whom the Registrar has delegated any power under section 874;

document (文件) means—

- (a) any register, books or tape recording;
- (b) any input or output, in whatever form, into or from an information system; and
- (c) any other document or similar material (whether produced mechanically, electronically, magnetically, optically, manually or by any other means);

information (資料) includes—

- (a) data, text, images, sound codes, computer programmes, software and databases; and
- (b) any combination of the things mentioned in paragraph (a);

inspector (審查員) means—

- (a) a person appointed under section 840 or 841 to investigate a company's affairs; or
- (b) a person appointed under section 853 to continue an investigation;

officer (高級人員), in relation to a body corporate, means a director, manager or company secretary of, or any other person involved in the management of, the body corporate;

record (紀錄) means any record of information (however compiled or stored) and includes—

- (a) any books, deed, contract, agreement, voucher and receipt;
- (b) any document or other material used with or produced by an information system;
- (c) any information that is recorded otherwise than in a legible form but is capable of being reproduced in a legible form;

Reference in old Companies Ordinance/other law	New Companies Ordinance
<p>(a) any books, deed, contract, agreement, voucher and receipt;</p> <p>(b) any document or other material used with or produced by an information system;</p> <p>(c) any information that is recorded otherwise than in a legible form but is capable of being reproduced in a legible form;</p> <p>(d) any document, disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of other equipment) of being reproduced; and</p> <p>(e) any film (including a microfilm), disc, tape or other device in which visual images are embodied so as to be capable (with or without the aid of other equipment) of being reproduced;</p>	<p>(d) any document, disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of other equipment) of being reproduced; and</p> <p>(e) any film (including a microfilm), disc, tape or other device in which visual images are embodied so as to be capable (with or without the aid of other equipment) of being reproduced.</p> <p>(2) For the purposes of this Part, a body corporate is an associated body corporate of a company if—</p> <p>(a) the body corporate and the company are members of the same group of companies; or</p> <p>(b) the body corporate and the company are substantially controlled by the same person.</p>

CAP 622, PART 19, DIVISION 2

Division 2 provides for the investigation of companies' affairs by inspectors. Section 839 defines expressions used in Division 2. Clauses 840 and 841 set out the circumstances under which the Financial Secretary may or has to appoint an inspector to investigate a company's affairs. Sections 843 to 845 provide that the Financial Secretary may give directions regarding an investigation, including its scope and termination. Clauses 846 to 849 set out the powers of an inspector – new powers include the power to require persons to preserve records or documents before production to an inspector, and to verify by statutory declaration any answer or explanation given to an inspector. Section 850 provides for the delegation of powers by an inspector. Sections 851 to 853 deal with the resignation and revocation of appointment of an inspector, and appointment of a replacement inspector. Sections 855 to 857 provide for the preparation of interim and final reports on an investigation. Section 858 requires an inspector, before sending a draft report to the Financial Secretary, to send a copy of the draft to any person who would be adversely affected on the publication or disclosure of the report and give the person an opportunity of being heard. Sections 859 to 861 provide for the filing, provision of copies and publication of reports. Section 862 contains evidential provisions relating to a report prepared by an inspector. Section 863 sets out offence provisions for non-compliance with requests made by inspectors, and section 864 provides that an inspector may apply to the Court of First Instance for an inquiry into the failure to comply with an inspector's requirements and order compliance with inquiries. Section 865 sets out the limitations on the use of incriminating evidence obtained in an investigation. Section 866 provides for the payment of expenses of an investigation. For the purposes of this Division, the provisions in section 146 of Schedule 11 should be borne in mind where a petition presented under section 168A(1) of the previous Companies Ordinance was presented but has yet to be determined, sections 168A(2), (2C), (3), (4) and (6) shall continue to apply to that petition. Similarly, under section 147 of Schedule 11, where an application has been made under section 168J(1) and has yet to be determined, or an application has been made under sections 144(2) and 145(4) has been made and yet to be determined, section 168J(2) of the predecessor Ordinance shall continue to apply to such an application.

Division 2, Subdivision 1

Reference in old Companies Ordinance/other law	New Companies Ordinance
<i>New provision</i>	<p>839. Interpretation – In this Division— <i>company</i> (公司)—</p> <p>(a) in section 840, includes a registered non-Hong Kong company;</p> <p>(b) in section 841, includes a non-Hong Kong company;</p> <p><i>final report</i> (最終報告) means the final report mentioned in section 856;</p> <p><i>interim report</i> (中期報告) means the interim report mentioned in section 855;</p> <p><i>investigation</i> (調查) means an investigation into a company's affairs under section 840 or 841.</p>

Division 2, Subdivision 2

Reference in old Companies Ordinance/other law	New Companies Ordinance
<p>142 Investigation of the affairs of a company on application of members</p> <p>(1) The Financial Secretary may appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the Financial Secretary may direct—</p> <p>(a) in the case of a company having a share capital, on the application either of not less than 100 members or of members holding not less than one-tenth of the shares issued;</p> <p>(b) in the case of a company not having a share capital, on the application of not less than one-tenth in number of the persons on the company's register of members.</p> <p>(2) The application shall be supported by such evidence as the Financial Secretary may require for the purpose of showing that the applicants have good reason for requiring the investigation, and the Financial Secretary may, before appointing an inspector, require that applicants to give security in such amount as he may require for payment of the costs of the investigation.</p> <p>143 Investigation of the affairs of a company in other cases</p> <p>(1) Without prejudice to his powers under section 142, the Financial Secretary—</p> <p>...</p> <p>(b) may do so if the company by special resolution declares that its affairs ought to be investigated by an inspector appointed by the Financial Secretary and the company gives security in such amount as the Financial Secretary may require; and</p>	<p>840. Appointment of inspector on application by company or members – <i>mel, cf CO ss 142, 143(1)(b)</i></p> <p>(1) The Financial Secretary may, on application by a company, appoint a person to investigate the company's affairs if the company has by special resolution declared that the company's affairs ought to be so investigated.</p> <p>(2) The Financial Secretary may also appoint a person to investigate a company's affairs—</p> <p>(a) for a company having a share capital, on application by—</p> <p>(i) at least 100 members; or</p> <p>(ii) members holding at least 10% of the shares issued; or</p> <p>(b) for a company not having a share capital, on application by at least 10% in number of the persons on the company's register of members.</p> <p>(3) An application for the purposes of subsection (1) or (2) must be supported by the evidence required by the Financial Secretary to show that the applicant has good reason for requesting the investigation.</p> <p>(4) The Financial Secretary must not appoint a person under subsection (1) or (2) to investigate a company's affairs unless the Financial Secretary is satisfied that it is in the public interest to do so.</p> <p>(5) The Financial Secretary may, before making an appointment under subsection (1) or (2), require an applicant for an appointment under subsection (1) or (2) to give security for the payment of the expenses of the investigation, in an amount specified by the Financial Secretary.</p> <p style="text-align: center;">----- <i>Transitional</i></p> <p>142. Investigation by inspectors appointed under section 142 or 143 of predecessor Ordinance – Part 18, Sch 11</p> <p>(1) This section applies if, before the commencement date of Division 2 of Part 19—</p> <p>(a) an inspector was appointed under section 142 or 143 of the predecessor Ordinance by the Financial Secretary to investigate the affairs of a company; and</p> <p>(b) a final report on the investigation has not yet been published.</p> <p>(2) Sections 144, 145, 145A, 145B, 146, 146A, 150, 151, 152B, 152D and 152F(1) of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to the investigation.</p>
<p>143 Investigation of the affairs of a company in other cases</p> <p>(1) Without prejudice to his powers under section 142, the Financial Secretary—</p> <p>(a) shall appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the Financial Secretary may direct, if the court by order declares that its affairs ought to be investigated by an inspector appointed by the Financial Secretary; and</p>	<p>841. Appointment of inspector on Court's or Financial Secretary's initiative – <i>mel, cf CO ss 143(1)(a), (c), (2), 146A</i></p> <p>(1) The Financial Secretary must appoint a person to investigate a company's affairs if the Court by order declares that the company's affairs ought to be so investigated.</p> <p>(2) The Financial Secretary may appoint a person to investigate a company's affairs if it appears to the Financial Secretary that there are circumstances suggesting that—</p>

Reference in old Companies Ordinance/other law	New Companies Ordinance
<p>...</p> <p>(c) may also do so if it appears to the Financial Secretary that there are circumstances suggesting—</p> <p>(i) that the business of the company has been or is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive of any part of its members or that it was formed for any fraudulent or unlawful purpose; or (Amended 78 of 1972 s. 16)</p> <p>(ii) that persons concerned with its formation or the management of its affairs have in connexion therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members; or</p> <p>(iii) that its members have not been given all the information with respect to its affairs that they might reasonably expect. (Added 4 of 1963 s. 8. Amended 6 of 1984 s. 98)</p> <p>(2) The power of the Financial Secretary under subsection (1)(c) shall be exercisable with respect to a body corporate notwithstanding that it is in course of being voluntarily wound up.</p> <p>146A Extension of Financial Secretary's powers of investigation to certain bodies incorporated outside Hong Kong</p> <p>Sections 143 to 149 and section 150 shall apply to all bodies corporate incorporated outside Hong Kong which have a place of business in Hong Kong or have at any time had a place of business therein as if they were companies registered under this Ordinance, but subject to such (if any) adaptations and modifications as may be specified by regulations made by the Financial Secretary.</p>	<p>(a) the company was formed for a fraudulent or unlawful purpose;</p> <p>(b) the company's affairs are being or have been conducted—</p> <p>(i) in a manner unfairly prejudicial to the interests of its members generally or of one or more members;</p> <p>(ii) with intent to defraud its creditors or the creditors of any other person; or</p> <p>(iii) for any other fraudulent or unlawful purpose; or</p> <p>(c) the persons concerned with the formation of the company or the management of its affairs have, in relation to the formation or management, engaged in fraud, misfeasance or other misconduct towards it, its members or its creditors.</p> <p>(3) The Financial Secretary must not appoint a person under subsection (2) to investigate a company's affairs unless the Financial Secretary is satisfied that it is in the public interest to do so.</p> <p>(4) The Financial Secretary may appoint a person under subsection (2) to investigate a company's affairs even though the company is in the course of being wound up voluntarily.</p> <p style="text-align: center;">-----</p> <p style="text-align: center;"><i>Transitional</i></p> <p>142. Investigation by inspectors appointed under section 142 or 143 of predecessor Ordinance – Part 18, Sch 11</p> <p>(1) This section applies if, before the commencement date of Division 2 of Part 19—</p> <p>(a) an inspector was appointed under section 142 or 143 of the predecessor Ordinance by the Financial Secretary to investigate the affairs of a company; and</p> <p>(b) a final report on the investigation has not yet been published.</p> <p>(2) Sections 144, 145, 145A, 145B, 146, 146A, 150, 151, 152B, 152D and 152F(1) of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to the investigation.</p>
<p>151 Notice to Registrar</p> <p>Upon the appointment of an inspector under section 142 or 143 and upon the submission of his final report, the inspector shall forward to the Registrar a notice of such appointment or submission, as the case may be, in the specified form.</p>	<p>842. Notice of appointment as inspector to be delivered to Registrar – <i>mel</i>, cf CO s 151</p> <p>(1) A person who is appointed as an inspector under section 840 or 841 must deliver a notice of the appointment to the Registrar for registration.</p> <p>(2) The notice must be delivered to the Registrar within 15 days after the date of the appointment and must be in the specified form.</p> <p style="text-align: center;">-----</p> <p style="text-align: center;"><i>Transitional</i></p> <p>142. Investigation by inspectors appointed under section 142 or 143 of predecessor Ordinance – Part 18, Sch 11</p> <p>(1) This section applies if, before the commencement date of Division 2 of Part 19—</p> <p>(a) an inspector was appointed under section 142 or 143 of the predecessor Ordinance by the Financial Secretary to investigate the affairs of a company; and</p> <p>(b) a final report on the investigation has not yet been published.</p> <p>(2) Sections 144, 145, 145A, 145B, 146, 146A, 150, 151, 152B, 152D and 152F(1) of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to the investigation.</p>

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Division 2, Subdivision 3

Reference in old Companies Ordinance/other law	New Companies Ordinance
<p><i>New provision</i></p> <p>Companies Act 1985 (U.K.)</p> <p>446A General powers to give directions</p> <p>(1) In exercising his functions an inspector shall comply with any direction given to him by the Secretary of State under this section.</p> <p>...</p> <p>(4) A direction under this section—</p> <p>(a) may be given on an inspector's appointment,</p> <p>(b) may vary or revoke a direction previously given, and</p> <p>(c) may be given at the request of an inspector.</p>	<p>843. General power of Financial Secretary to give directions regarding investigation – <i>new provision</i>, cf UKCA 1985 s 446A(1), (4)</p> <p>(1) The Financial Secretary may give directions to an inspector regarding an investigation.</p> <p>(2) The Financial Secretary may give directions under this section—</p> <p>(a) on the Financial Secretary's own initiative; or</p> <p>(b) at the request of the inspector.</p> <p>(3) The Financial Secretary may vary or revoke any directions given under this section.</p>
<p><i>New provision</i></p> <p>Companies Act 1985 (U.K.)</p> <p>446A General powers to give directions</p> <p>...</p> <p>(2) The Secretary of State may give an inspector appointed under section 431, 432(2) or 442(1) a direction—</p> <p>(a) as to the subject matter of his investigation (whether by reference to a specified area of a company's operation, a specified transaction, a period of time or otherwise), or</p> <p>(b) which requires the inspector to take or not to take a specified step in his investigation.</p> <p>(3) The Secretary of State may give an inspector appointed under any provision of this Part a direction requiring him to secure that a specified report under section 437—</p> <p>(a) includes the inspector's views on a specified matter,</p> <p>(b) does not include any reference to a specified matter,</p> <p>(c) is made in a specified form or manner, or</p> <p>(d) is made by a specified date.</p> <p>...</p> <p>(5) In this section—</p> <p>(a) a reference to an inspector's investigation includes any investigation he undertakes, or could undertake, under section 433(1) (power to investigate affairs of holding company or subsidiary);</p> <p>(b) "specified" means specified in a direction under this section.</p>	<p>844. Financial Secretary may give directions regarding subject matter of investigation etc. – <i>new provision</i>, cf UKCA 1985 s 446A(2), (3), (5)</p> <p>(1) Without limiting section 843, the Financial Secretary may give directions to an inspector with respect to any or all of the following—</p> <p>(a) the terms or subject matter of the investigation (whether by reference to a specified area of a company's operation, a specified transaction, a specified period of time or otherwise);</p> <p>(b) the matters the inspector must take into account or must not take into account in conducting the investigation;</p> <p>(c) the steps the inspector must take or must not take in conducting the investigation.</p> <p>(2) Without limiting section 843, the Financial Secretary may also give directions to an inspector to require that the interim report or final report of the investigation—</p> <p>(a) is to include the inspector's opinion with respect to a specified matter;</p> <p>(b) is not to make reference to a specified matter;</p> <p>(c) is to be made in a specified form or manner; or</p> <p>(d) is to be completed by a specified date.</p> <p>(3) In this section—</p> <p>specified (指明) means specified in directions given under this section.</p>
<p><i>New provision</i></p> <p>Companies Act 1985 (U.K.)</p> <p>446B Direction to terminate investigation</p> <p>(1) The Secretary of State may direct an inspector to take no further steps in his investigation.</p> <p>(2) The Secretary of State may give a direction under this section to an inspector appointed under section 432(1) or 442(3) only on the grounds that it appears to him that—</p>	<p>845. Financial Secretary may give directions to terminate or suspend investigation – <i>new provision</i>, cf UKCA 1985 s 446B(1), (2)</p> <p>(1) Without limiting section 843, the Financial Secretary may, at any time before the completion of an investigation, direct the inspector—</p> <p>(a) to terminate the investigation; or</p> <p>(b) to suspend the investigation for a period as specified by the Financial Secretary.</p>

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Reference in old Companies Ordinance/other law	New Companies Ordinance
<p>(a) matters have come to light in the course of the inspector's investigation which suggest that a criminal offence has been committed, and</p> <p>(b) those matters have been referred to the appropriate prosecuting authority.</p>	<p>(2) If the inspector is appointed under section 841(1), the Financial Secretary must not give directions under subsection (1)(a) unless—</p> <p>(a) it appears to the Financial Secretary that—</p> <p>(i) matters have come to light in the course of the investigation which suggest that a criminal offence under the laws of Hong Kong has been committed; and</p> <p>(ii) those matters have been referred to a law enforcement agency; or</p> <p>(b) the giving of the directions is approved by the Court.</p>

Division 2, Subdivision 4

Reference in old Companies Ordinance/other law	New Companies Ordinance
<p>145 Production of documents, and evidence, on investigation</p> <p>(1) It shall be the duty of all officers and agents of the company and of all officers and agents of any other body corporate whose affairs are investigated by virtue of section 144 to produce to the inspector all books and documents of or relating to the company or, as the case may be, the other body corporate that are in their custody or power, to attend before the inspector when required so to do and otherwise to give to the inspector all assistance in connexion with the investigation that they are reasonably able to give.</p> <p>(1A) If an inspector considers that a person other than an officer or agent of the company or other body corporate is or may be in possession of any information concerning its affairs, he may require that person to produce to him any books or documents in his custody or power relating to the company or other body corporate, to attend before him and otherwise to give him all assistance in connexion with the investigation which he is reasonably able to give; and it shall be the duty of that person to comply with the requirement.</p> <p>(2) An inspector may examine on oath the officers and agents of the company or other body corporate, and any such person as is mentioned in subsection (1A), in relation to the affairs of the company or other body, and may administer an oath accordingly.</p> <p>150 Saving for solicitors and bankers</p> <p>Nothing in sections 142 to 149 shall require disclosure to the Financial Secretary or to an inspector appointed by him—</p> <p>...</p> <p>(b) by a body corporate's bankers as such of any information as to the affairs of any of their customers other than the body corporate.</p>	<p>846. Inspector may require production of records and documents etc. — <i>mel, cf CO s 145(1), (1A), (2) and s 150(b), SFO s 183(1)(d), (4), FRCO s 28(1)(c), (5)</i></p> <p>(1) An inspector appointed to investigate a company's affairs may, by notice in writing, require any of the persons specified in subsection (2) to do any or all of the following—</p> <p>(a) produce, within the time and at the place specified in the notice, any record or document specified in the notice that—</p> <p>(i) is or may be relevant to the investigation; and</p> <p>(ii) is in the person's custody or power;</p> <p>(b) take all reasonable steps to preserve the record or document before it is produced to the inspector;</p> <p>(c) attend before the inspector at the time and place specified in the notice, and answer any question, whether on oath or otherwise, relating to any matter under investigation that the inspector may raise with the person;</p> <p>(d) answer any question relating to any matter under investigation that is specified in the notice;</p> <p>(e) give the inspector all other assistance in connection with the investigation that the person is reasonably able to give.</p> <p>(2) The persons are—</p> <p>(a) the company;</p> <p>(b) an officer or former officer of the company;</p> <p>(c) an agent or former agent of the company;</p> <p>(d) a person whom the inspector has reasonable grounds to believe—</p> <p>(i) to be in possession of any record or document that contains, or is likely to contain, information relevant to the investigation; or</p> <p>(ii) otherwise to be in possession of that information.</p>

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Reference in old Companies Ordinance/other law	New Companies Ordinance
<p>183 Conduct of investigations</p> <p>(1) The person under investigation or a person whom the investigator has reasonable cause to believe has in his possession any record or document which contains, or which is likely to contain, information relevant to an investigation under section 182, or whom the investigator has reasonable cause to believe otherwise has such information in his possession, shall—</p> <p>...</p> <p>(d) give the investigator all assistance in connection with the investigation which he is reasonably able to give, including responding to any written question raised by the investigator.</p> <p>...</p> <p>(4) Neither section 182 nor this section shall be construed as requiring an authorized financial institution to disclose any information or produce any record or document relating to the affairs of a customer to the investigator unless—</p> <p>(a) the customer is a person whom the investigator has reasonable cause to believe may be able to give information relevant to the investigation; and</p> <p>(b) the Commission is satisfied, and certifies in writing that it is satisfied, that the disclosure or production is necessary for the purposes of the investigation.</p> <p>28 Powers to require production of records and documents, and to require attendances and answers, etc.</p> <p>(1) The investigator may, in writing, require a person who is, or was at the material time, the auditor or reporting accountant of the listed entity, or a person whom the investigator has reasonable cause to believe to be in possession of records or documents that contain, or are likely to contain, information relevant to the relevant irregularity or to the question whether or not there is such an irregularity, or a person whom the investigator has reasonable cause to believe to be otherwise in possession of such information, to—</p> <p>...</p> <p>(c) respond to any written question relating to any matter under investigation that the investigator may raise with him;</p> <p>...</p> <p>(5) The investigator or an authorized officer shall not require an authorized institution to disclose any information, or produce any record or document, relating to the affairs of a customer of the institution under this section unless—</p> <p>(a) the customer is a person whom the investigator or officer has reasonable cause to believe may be able to give information relevant to the investigation; and</p> <p>(b) the investigator or officer is satisfied, and certifies in writing that it is satisfied, that the disclosure or production is necessary for the purpose of the investigation.</p>	<p>(3) An inspector must not require an authorized institution to produce any record or document, or disclose any information, relating to the affairs of a customer of the institution under subsection (1) unless—</p> <p>(a) the inspector has reasonable grounds to believe that the customer may be able to provide information relevant to the investigation; and</p> <p>(b) the inspector is satisfied that the production or disclosure is necessary for the purposes of the investigation and so certifies in writing.</p> <p>(4) In subsection (1)(b), a reference to preserving a record or document includes preventing a person from—</p> <p>(a) removing, disposing of or destroying the record or document;</p> <p>(b) erasing, adding to or altering in any other manner an entry or other particulars contained in the record or document; or</p> <p>(c) interfering in any other manner with, or causing or permitting any other person to interfere with, the record or document.</p> <p>(5) An inspector may administer an oath to any person for the purposes of subsection (1)(c).</p> <p>-----</p> <p><i>Transitional</i></p> <p>142. Investigation by inspectors appointed under section 142 or 143 of predecessor Ordinance — Part 18, Sch 11</p> <p>(1) This section applies if, before the commencement date of Division 2 of Part 19—</p> <p>(a) an inspector was appointed under section 142 or 143 of the predecessor Ordinance by the Financial Secretary to investigate the affairs of a company; and</p> <p>(b) a final report on the investigation has not yet been published.</p> <p>(2) Sections 144, 145, 145A, 145B, 146, 146A, 150, 151, 152B, 152D and 152F(1) of the predecessor Ordinance, as in force immediately before their repeal, continue to apply in relation to the investigation.</p>

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