

- Section 33** [...] (Repealed 28 of 2012 ss. 912 & 920)
- Section 34** [...] (Repealed 28 of 2012 ss. 912 & 920)
- Section 35** [...] (Repealed 28 of 2012 ss. 912 & 920)
- Section 36** [...] (Repealed 28 of 2012 ss. 912 & 920)

PART II
SHARE CAPITAL AND DEBENTURES

INTRODUCTION

Whilst the bulk of the provisions in Part II have been repealed and removed to the new Companies Ordinance (Cap. 622), the provisions concerning Prospectuses and the Allotment of shares and debentures remain active. These provisions were largely untouched and not amended by the Companies Ordinance Rewrite process – caselaw and practices pre-dating the enactment of Cap. 622 in these areas thus continue and remain valid. **II.001**

Outside of the provisions on Prospectuses and Allotment, readers should also note in this Part that s 48A on the Construction of references to offering shares or debentures to public and s 79 concerning the Payment of certain debts out of assets subject to floating charge in priority to claims under charge also remain in force. **II.002**

Reference should be made to the Third and Fourth Schedules herein for further details on Matters to be Specified in Prospectus and Reports to be set out therein and the Form of Statement in lieu of Prospectus to be delivered to Registrar by a Company which does not issue a Prospectus or which does not go to Allotment on a Prospectus Issued, and Reports to be set out therein respectively. **II.003**

Reference may also be made to Cap. 32L for the Companies (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice. **II.004**

Division 1 – Prospectus

Section 37 Dating of prospectus

A prospectus issued by or on behalf of a company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

(Amended 78 of 1972 s. 4)

COMMENTARY

Enactment history

- 37.001** This section was derived from s. 34 of the Companies Act 1929 (UK), and was amended in 1972.
- 37.002** After relevant guidelines had been issued by the Securities and Futures Commission in 2003, many provisions concerning prospectus under this part of the Ordinance, i.e. ss. 37–41, were substantially revised under the Companies (Amendment) Ordinance in 1972 and Sch. 1 of the Companies (Amendment) Ordinance in 2004.
- 37.003** The Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance in 2011 transferred the regulation of public offers of structured products in the form of shares and debentures from the prospectus regime under the Companies Ordinance to the regime for public offers of investments under the Securities and Future Ordinance (Cap. 571). The provisions under this Part shall continue to govern securities other than structured products.

Companies (Winding-Up and Miscellaneous Provisions)(Amendment) Bill 2015

- 37.004** *The heading preceding this section is proposed to be amended as 'Division 1' by the Companies (Winding-Up and Miscellaneous Provisions)(Amendment) Bill 2015 to enhance the clarity and navigability of this Ordinance.*

Overview

- 37.005** This section only governs matters regarding the date of prospectuses. For other requirements in relation to form and content, **see section 38**. For requirements governing dating of a prospectus offering for subscription or purchase shares in or debentures of a company incorporated outside Hong Kong, **see section 342**.

Defining "prospectus"

- 37.006** "Prospectus" is defined in s. 2(1) of the Ordinance.
- 37.007** Section 2(1)(a) provides for a broad and open-ended definition of prospectus, meaning any prospectus, notice, circular, brochure, advertisement, or other document offering to or inviting offers by the public for subscription or purchase of any shares in, or debentures of, a company, for cash or other consideration; and s. 41(1) further provides that where a company allots or agrees to allot any of its shares in, or debentures with a view to all or any of those shares or debentures being offered for sale to the public, any

document by which the offer for sale to the public is made are deemed to be a prospectus, and are subject to the relevant rules of law.

Section 2(1)(b) excludes any publication falling within s. 38B(2), i.e. advertisements concerning prospectus, and any documents concerning offers specified in Part 1 of Sch. 17, and so provisions governing prospectuses under this Ordinance are inapplicable to them. **37.008**

However, Sch. 18 requires provision of warning statements in documents, including prospectuses and many documents concerning offers specified in Part 1 of Sch. 17, despite that they are not considered as "prospectus" by virtue of Sch. 17. **37.009**

In deciding whether a document falls within the definition of "prospectus", one must consider whether it is "an offer to the public" or "invitations to the public". References shall be made to s. 48A(1) regarding the definitions of these concepts, **see section 48A**. **37.010**

The original definition of "prospectus" in s. 2(1)(a) only covered prospectuses issued by a company registered in Hong Kong under the Ordinance. It was not until the introduction of the Companies (Amendment) Ordinance in 2004, that the provisions were revised so as to cover prospectuses issued by companies incorporated outside Hong Kong whether or not it has established a place of business in Hong Kong. Further, Part XII of this Ordinance regulates the sale of shares and offer of shares for sale by companies incorporated outside Hong Kong. **37.011**

It is to be noted that ss. 39A, 39B, 41, 41A & Schs. 20 & 21 extend the definition of "prospectus" to certain documents and the application of relevant provisions in the ordinance thereto. **37.012**

Section 38 Specific requirements as to particulars in prospectus

(1) Subject to the provisions of section 38A, every prospectus issued by or on behalf of a company must either be in the English language and contain a Chinese translation or be in the Chinese language and contain an English translation, and must state the matters specified in Part I of the Third Schedule and set out the reports specified in Part II of that Schedule, and the said Parts I and II shall have effect subject to the provisions contained in Part III of the said Schedule. (Replaced 78 of 1972 s. 5. Amended 83 of 1995 s. 5)

(1A) Every prospectus to which subsection (1) applies must contain a statement specified in Part 1 of the Eighteenth Schedule. (Added 78 of 1972 s. 5. Amended 83 of 1995 s. 5; 23 of 2004 s. 56; 30 of 2004 s. 2)

(1B) If any prospectus is issued which does not comply with or contravenes the requirements of subsections (1) and (1A), the company and every person who is knowingly a party to the issue thereof shall be liable to a fine. (Added 78 of 1972 s. 5. Amended 7 of 1990 s. 2)

(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(3) Subject to the provisions of section 38A, it shall not be lawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section: (Amended 78 of 1972 s. 5)

Provided that this subsection shall not apply if it is shown that the form of application was issued— (Amended 30 of 2004 s. 2)

- (a) in connexion with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures;
- (b) in relation to shares or debentures which were not offered to the public; or
- (c) in connexion with an offer specified in Part 1 of the Seventeenth Schedule as read with the other Parts of that Schedule. (Added 30 of 2004 s. 2)

If any person acts in contravention of the provisions of this subsection, he shall be liable to a fine. (Amended 6 of 1984 s. 259; 7 of 1990 s. 2; 30 of 2004 s. 2)

(3A) This section shall not prevent the publication of the English version only of a prospectus in an English language newspaper or the Chinese version only in a Chinese language newspaper, nor the publication in such newspaper together with the prospectus of a form of application relating thereto. (Added 6 of 1984 s. 22)

(4) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

- (a) as regards any matter not disclosed, he proves that he was not cognisant thereof; or
- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
- (c) the non-compliance or contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial or was otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 19 of Part I of the Third Schedule, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed. (Amended 78 of 1972 s. 5)

- (5) This section shall not apply—
 - (a) to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; or
 - (b) to the issue of a prospectus or form of application relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being listed on a recognized stock market; (Amended 6 of 1984 s. 259; 10 of 1987 s. 11; 5 of 2002 s. 407)

but, subject as aforesaid, this section shall apply to a prospectus or a form of application whether issued on the formation of a company or subsequently. (Replaced 78 of 1972 s. 5)

(6) Nothing in this section shall limit or diminish any liability which any person may incur under— (Amended 28 of 2012 ss. 912 & 920)

- (a) the general law;
- (b) the provisions of the pre-amended Ordinance having a continuing effect under Schedule 11 to the Companies Ordinance (Cap. 622) or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1);
- (c) this Ordinance apart from this section; or
- (d) the Companies Ordinance (Cap. 622). (Amended 28 of 2012 ss. 912 & 920)

(7) It is hereby declared that the provisions of the Third Schedule applied by this section are also applied to a guarantor corporation in relation to an offer or invitation to the public to subscribe for or purchase debentures of a company. (Replaced 30 of 2004 s. 2)

(8) In subsection (7), **guarantor corporation** (提供擔保的法團), in relation to an offer or invitation to the public to subscribe for or purchase debentures of a company, means a corporation that guarantees or agrees to guarantee—

- (a) the repayment of any money received or to be received by the company in response to the offer or invitation;
- (b) any other obligations of the company under or in respect of the debentures; or

- (c) in favour of the company any amount-
- (i) to which the company is entitled; and
 - (ii) receipt of which, as stated in the prospectus concerned, is intended to enable the company to wholly or partly discharge any of its obligations under or in respect of the debentures. (Added 30 of 2004 s. 2)

COMMENTARY

Enactment history

38.001 This section was derived from s. 35 of the Companies Act 1929 (UK), and had been amended from time to time since its enactment.

38.002 Pursuant to ss. 912 and 920 of the Companies Ordinance in 2012, subsection (6) was amended that everything after “may incur” was substituted with:

“under—

- (a) the general law;
- (b) the provisions of the pre-amended Ordinance having a continuing effect under Schedule 11 to the Companies Ordinance (Cap. 622) or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1);
- (c) this Ordinance apart from this section; or
- (d) the Companies Ordinance (Cap. 622).”

Defining “prospectus”

38.003 The term “prospectus” is defined in s. 2 of the Ordinance. See also paragraphs [37.005]–[37.011].

Defining “court”

38.004 The term “court” is defined as the Court of First Instance, see section 2(1).

Overview

38.005 This section sets out the requirements on the form and content of prospectuses, in addition to the requirements set out in: (i) Parts I, II & III of Sch. 3; (ii) Part 1 of Sch. 18; (iii) the general law; (iv) the repealed provisions that have continuing effect under Sch. 11 of the new Companies Ordinance (Cap. 622); and (v) other sections under this Ordinance. For requirements governing particulars to be contained in prospectuses offering for subscription or purchase shares in or debentures of a company incorporated outside Hong Kong, see section 342.

Subsection (1): language used in the prospectus

Every prospectus must either be in the English language and contain a Chinese translation or be in the Chinese language and contain an English translation. **38.006**

It is to be noted, however, that the Securities and Futures Commission can exercise its powers under s. 38A of this Ordinance to enable the issue of separable English and Chinese versions of prospectuses, provided that both versions are made available to the public at each place where, and for so long as, the distribution of the documents takes place.¹⁴ **38.007**

Further, every prospectus must also contain a statement specified in Part 1 of Sch. 18, see subsection (1A). **38.008**

Subsection (3A): publication of the prospectus

Subsection (3A) allows the publication of the English version of a prospectus only in an English language newspaper or the Chinese version only in a Chinese language newspaper, with or without a form of application relating thereto. **38.009**

Subsections (1B) and (3): offences

Subsection (1B) provides that the company and every person who is knowingly a party to the issue of any prospectus that contravenes or fails to comply with s. 38(1) & (1A) are liable to a level 5 fine, punishable summarily, see Schedule 12. **38.010**

Further, subsection (3) provides that, subject to s. 38A, it is unlawful to issue any form of application for shares in or debentures of a company without a prospectus that complies with s. 38, and any person acts in contravention is liable to a level 6 fine, punishable summarily, see Schedule 12. **38.011**

Subsections (3) & (4): defences

Subsection (3) does not apply in situations where the form of application was issued in connection with a *bona fide* invitation to a person to enter into an underwriting agreement; where the offers of shares and debentures were not made to the public; or where the offer is one specified in Part 1 of Sch. 17, see proviso. **38.012**

Subsection (4) provides that a director or other persons responsible for the prospectus shall not be liable for non-compliance or contravention of s. 38, if he proves that he was not aware of such non-compliance or contravention; that the non-compliance or contravention arose from an honest mistake on his part; or that the non-compliance or contravention was, in the opinion of **38.013**

¹⁴ Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (11 May 2001).

the court, in respect of matters that were immaterial or would otherwise be reasonable for the court to excuse.

- 38.014 Subsection (4) further provides that a director or other person shall not be liable for the failure to include in a prospectus a statement regarding matters specified in s. 19 of Part I of Sch. 3, i.e. a director's interests regarding the promotion and formation of the company, if he proves that he did not have knowledge of the matters not disclosed.

Subsections (1) & (3): exemptions by the Securities and Futures Commission

- 38.015 Subsequent sections 38A(1) & 38A(2) provide that the Securities and Futures Commission may make exemptions under subsections (1) & (3).¹⁵

Subsection (8): guarantor corporations

- 38.016 Subsection (8) defines guarantor corporation, and subsection (7) extends the application of Sch. 3 to a guarantor corporation in relation to an offer or invitation to the public to subscribe for or purchase debentures of a company.

Section 38A Exemption of certain persons and prospectuses from compliance with certain requirements

(1) Where it is proposed to offer any shares in or debentures of a company to the public by a prospectus or class of prospectuses issued generally, there may, on the request of the applicant, and subject to such conditions (if any) as the Commission thinks fit, be issued by the Commission a certificate of exemption from compliance with any or all of the requirements of the relevant provisions if, having regard to the circumstances, the Commission considers that the exemption will not prejudice the interest of the investing public and compliance with any or all of those requirements—

- (a) would be irrelevant or unduly burdensome; or
- (b) is otherwise unnecessary or inappropriate. (Replaced 30 of 2004 s. 2)

(2) Whether or not a request referred to in subsection (1) has been made, the Commission may, by notice published in the Gazette, and subject

¹⁵ See further in the Securities and Futures Ordinance (Cap. 571). Note also that s. 3 of the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (11 May 2001) had been repealed by L.N. 181 of 2004.

to such conditions (if any) as the Commission thinks fit and specified in the notice, exempt—

- (a) any class of companies; or
- (b) any class of prospectuses issued by companies, from any or all of the requirements of the relevant provisions if, having regard to the circumstances, the Commission considers that the exemption will not prejudice the interest of the investing public and compliance with any or all of those requirements, in the case of that class of companies or prospectuses, as the case may be—
- (c) would be irrelevant or unduly burdensome; or
- (d) is otherwise unnecessary or inappropriate. (Replaced 30 of 2004 s. 2)

(3) Where exemption from compliance with section 38(1) and (3) in relation to the requirements of the Third Schedule is granted under this section, whether by the issue of a certificate of exemption or by a notice in the Gazette, the certificate or notice, as the case may be, shall be expressed to have effect with regard to all of the requirements of the Third Schedule or to such of them as are specified in the certificate or notice, as the case may be.

(4) In this section, *relevant provisions* (有關條文) means any of the provisions of—

- (a) section 38(1), (1A), (3) or (7), 38D(3) or (4), 42(1) or (4), 44A(1), (2) or (6) or 44B(1) or (2); or
- (b) Part 1 of the Twentieth Schedule or Part 1 of the Twenty-first Schedule. (Added 30 of 2004 s. 2)

(5) The Commission may, by order published in the Gazette, amend subsection (4). (Added 30 of 2004 s. 2)

(6) The Commission shall publish, by the use of the Internet, such particulars of exemptions granted under subsection (1) as it considers appropriate. (Added 30 of 2004 s. 2. Amended 9 of 2012 s. 50)

(7) Where the Commission proposes to issue—

- (a) a notice of exemption under subsection (2); or
- (b) an amendment order under subsection (5),

it shall publish a draft of the proposed notice or order, in such manner as it considers appropriate, for the purpose of inviting representations on the proposed notice or order by the public. (Added 30 of 2004 s. 2)

(8) Where the Commission issues a notice or order mentioned in subsection (7) after a draft is published under that subsection in relation to the notice or order, it shall—

- (a) publish, in such manner as it considers appropriate, an account setting out in general terms—

- (i) the representations made on the draft; and
 - (ii) the response of the Commission to the representations; and
- (b) where the notice or order is issued with modifications which in the opinion of the Commission result in the notice or order being significantly different from the draft, publish, in such manner as it considers appropriate, details of the difference.
(Added 30 of 2004 s. 2)

(9) Subsections (7) and (8) do not apply if the Commission considers, in the circumstances of the case, that—

- (a) it is unnecessary or inappropriate that such subsections should apply; or
- (b) any delay involved in complying with such subsections would not be—
 - (i) in the interest of the investing public; or
 - (ii) in the public interest. (Added 30 of 2004 s. 2)

(Replaced 86 of 1992 s. 3)

COMMENTARY

Enactment history

38A.001 The original section was replaced in 1992, and further amendments were made in 2004, replacing subsections (1) & (2) and adding subsections (4)-(9).

Overview

38A.002 This section allows the Securities and Futures Commission to issue certificates of exemption from various requirements under this Ordinance, either upon request or on its own motion. The basis for granting exemptions on its own motion are set out in subsections (1) & (2), and procedural and formalities requirements are provided in the other subsections. For exemptions of certain persons and prospectuses from compliance with certain requirements for offers of any shares in, or debentures of, a company incorporated outside Hong Kong, see **section 342A**.

Section 38AA Exemption for structured products

Expanded Cross Reference:

17, 18, 19, 20, 21, 22

If it is proposed to offer any shares in or debentures of a company that are structured products, the following provisions do not apply in relation to the offer—

- (a) sections 37, 38, 38A, 38B, 38BA, 38C, 38D, 39A, 39B, 39C, 40, 40A, 40B, 41, 41A, 42, 43, 44, 44A, 44B and 48A;
- (b) the Third Schedule; and
- (c) the Seventeenth to the Twenty-second Schedules. < * Note - Exp. X-Ref.: Schedules 17, 18, 19, 20, 21, 22 * >

(Added 8 of 2011 s. 18)

COMMENTARY

Enactment history

This section was added in 2011, pursuant to s. 19 of the Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance in 2011, which transferred the regulation of public offers of structured products in the form of shares and debentures from the prospectus regime under the Companies Ordinance to the regime for public offers of investments under the Securities and Future Ordinance (Cap. 571).

38AA.001

Defining “structured product”

“Structured product” is defined in s. 1A of Part 1 of Sch. 1 to the Securities and Futures Ordinance (Cap. 571), see **section 2(1)**.

38AA.002

Overview

The specified sections and schedules of this Ordinance no longer apply to offers relating to structured products. For exemptions for structured products regarding offers of any shares in or debentures of a company incorporated outside Hong Kong, see **section 342AA**.

38AA.003

Section 38B Advertisements concerning prospectuses

(1) Subject to subsection (2), it shall not be lawful for any person to publish or cause to be published—

- (a) by way of advertisement any extract from or abridged version of a prospectus; or
- (b) an advertisement in relation to a prospectus or proposed prospectus,

whether in the English or Chinese language or in any other language in relation to shares or debentures of a company whether incorporated in or outside Hong Kong. (Replaced 30 of 2004 s. 2)

(2) Notwithstanding subsection (1)—

- (a) the publication of an extract from or abridged version of a prospectus which is in accordance with such requirements

- (ii) if the court has varied the minimum number of members, to less than the minimum number ordered by the court.

~~(8) The continuing members of the committee, if not less than 2, may act notwithstanding any vacancy in the committee.~~

(8) The continuing members of the committee may continue to act despite any vacancy in the committee if the total number of continuing members of the committee is not reduced—

- (a) to less than 3; or
(b) if the court has varied the minimum number of members, to less than the minimum number ordered by the court.

COMMENTARY

Enactment history

207.001 This section was derived from s. 199 of the Companies Act 1929 (UK). There is no equivalent or similar section in the Insolvency Act 1986 (UK).

Companies (Winding-Up and Miscellaneous Provisions)(Amendment) Bill 2015

207.002 This section is proposed to be amended by the Companies (Winding-Up and Miscellaneous Provisions)(Amendment) Bill 2015.

Overview

207.003 This section sets out the general constitution and proceedings of a committee of inspection consisting of creditors and contributories.

Duties of the committee

207.004 The committee of inspection is in a fiduciary relationship with the creditors and the contributories. They are therefore not entitled to derive any profit from any transaction arising out of the winding-up or to receive out of the assets any payment for services rendered by the committee in connection with the administration of the assets, see *Re F T Hawkins & Co Ltd* [1952] Ch 881.

Streamlining winding-up process

207.005 One of the major policy objectives of the Companies (Winding-Up and Miscellaneous Provisions)(Amendment) Bill 2015 is to streamline the winding-up process. In a creditors' voluntary winding-up, the creditors may appoint a committee of inspection under this section for the purposes of representing creditors and contributories, and supervise and give

directions to the liquidator during the winding-up process. Under the (Amendment) Bill, a number of provisions are proposed to improve the proceedings of COIs.

This section is proposed to be amended so that a vacancy in the COI may remain unfilled in certain circumstances. Under the proposed amendments, it is unnecessary to fill a vacancy if the total number of continuing members does not fall below the prescribed minimum number, and if the liquidator and majority of continuing members agree that it is unnecessary for the vacancy to be filled, having regard to the position of the winding-up.

207.006

Section 207A Representatives of members of committee of inspection

(1) Subject to subsection (5), a member of the committee of inspection may, in relation to the business of the committee, be represented by a person authorized by the member for that purpose.

(2) A person is authorized by a member only if the person holds—

- (a) a general power of attorney from the member; or
(b) a letter of authority that—
(i) entitles the person to act as the member's representative (either generally or specifically); and
(ii) is signed by or on behalf of the member.

(3) A proxy given by a member of a committee of inspection in relation to a meeting of the creditors, of the members or of the contributories is treated as a letter of authority to act generally as the member's representative in relation to the committee, unless the proxy contains a statement to the contrary.

(4) The chairperson of a meeting of the committee may—

- (a) call on a person claiming to act as a member's representative to produce the person's general power of attorney or letter of authority; and
(b) exclude the person from the meeting if it appears that the person's authority is deficient.

(5) A member of the committee must not be represented by a body corporate, an undischarged bankrupt or a person who is subject to a voluntary arrangement with the person's creditors.

(6) A person must not—

- (a) on the same committee, act as the representative of more than one member at any time; or
(b) act both as a member of the committee and as the representative of another member.

(7) If the representative of a member signs a document on behalf of the member, the representative must state below the signature whether the representative is signing under a general power of attorney or under a letter of authority.

(8) The acts of the committee are valid despite any defect in the authorization or qualifications of a member's representative.

COMMENTARY

Enactment history

207A.001 This section is proposed to be added to this Ordinance by the Companies (Winding-Up and Miscellaneous Provisions)(Amendment) Bill 2015.

Streamlining winding-up process

207A.002 One of the major policy objectives of the Companies (Winding-Up and Miscellaneous Provisions)(Amendment) Bill 2015 is to streamline the winding-up process. In a creditors' voluntary winding-up, the creditors may appoint a committee of inspection under this section for the purposes of representing creditors and contributories, and supervise and give directions to the liquidator during the winding-up process. Under the (Amendment) Bill, a number of provisions are proposed to increase the efficiency of the proceedings of COIs.

207A.003 Under this new section 207A, a member of a COI may be represented by another person where that person is duly authorized by a letter of authority or general power of attorney.

Section 207B Remote attendance at meetings of committee of inspection

(1) This section applies to a meeting of a committee of inspection held under this Ordinance, except a meeting held under rule 74 of the Companies (Winding-up) Rules (Cap. 32 sub. leg. H).

(2) If the liquidator considers it appropriate, the meeting may be held and conducted in a manner that enables persons who are not present together at the same place to attend it.

(3) If the meeting is held and conducted in the manner referred to in subsection (2), a person attends the meeting if the person is able to exercise any rights of the person to speak and vote at the meeting.

(4) For the purposes of this section—

- (a) a person is able to exercise the right to speak at a meeting if the person, during the meeting, is in a position to communicate to all those attending the meeting, any information or opinion the person has on the business of the meeting; and
- (b) a person is able to exercise the right to vote at a meeting if—
 - (i) the person is able to vote, during the meeting, on resolutions or determinations put to the vote at the meeting; and
 - (ii) in determining whether such resolutions or determinations are passed, the person's vote can be taken into account at the same time as the votes of all the other persons attending the meeting.

(5) If the meeting is to be held and conducted in the manner referred to in subsection (2), the liquidator must make the arrangements the liquidator considers appropriate to—

- (a) enable those attending the meeting to exercise their rights to speak and vote;
- (b) verify the identity of the persons attending the meeting; and
- (c) ensure the security of any technology used to enable attendance.

(6) The requirement under section 206A(6) for notice to be given of a specified place for a meeting may be satisfied by specifying the arrangements the liquidator proposes to enable persons to exercise their rights to speak and vote if, in the reasonable opinion of the liquidator—

- (a) a meeting will be attended by persons who will not be present together at the same place; and
- (b) it is not necessary or expedient to specify a place for the meeting.

(7) In making the arrangements mentioned in subsection (5) and in forming the opinion mentioned in subsection (6)(b), the liquidator must have regard to the legitimate interests of the members of the committee or their representatives attending the meeting in the efficient conduct of the business of the meeting.

(8) The liquidator must specify a place for the meeting if—

- (a) the notice of the meeting under section 206A(6) does not specify a place for the meeting; and
- (b) at least one member of the committee requests the liquidator to specify a place for the meeting in accordance with section 207C.

COMMENTARY

Enactment history

207B.001 This section is proposed to be added to this Ordinance by the Companies (Winding-Up and Miscellaneous Provisions)(Amendment) Bill 2015.

Streamlining winding-up process

207B.002 One of the major policy objectives of the Companies (Winding-Up and Miscellaneous Provisions)(Amendment) Bill 2015 is to streamline the winding-up process. In a creditors' voluntary winding-up, the creditors may appoint a committee of inspection under this section for the purposes of representing creditors and contributories, and supervise and give directions to the liquidator during the winding-up process. Under the (Amendment) Bill, a number of provisions are proposed to increase the efficiency of the proceedings of COIs. Section 207B proposes to allow the remote attendance of members at COI meetings.

Section 207C Procedure for requests that place for meeting should be specified under section 207B

(1) This section applies to a request under section 207B(8)(b) to specify a place for the meeting.

(2) The request must be made at least 5 days before the date of the meeting that is stated in the notice of the meeting given by the liquidator under section 206A(6).

(3) If the liquidator considers that the request has been made in accordance with this section, the liquidator must—

(a) give written notice to all the persons who were given notice of the meeting under section 206A(6)—

- (i) that the meeting is to be held at a specified place; and
- (ii) as to whether the date and time are to remain the same or not;

(b) set a date for the meeting, which must not be later than 7 days after the original date, and a time and place for it; and

(c) give 5 days' notice of the date, time and place to all the persons who were given notice of the meeting under section 206A(6).

(4) The notices required by subsection (3)(a) and (c) may be given at the same time or at different times.

(5) If the liquidator has specified a place for the meeting in response to a request to which this section applies, the liquidator, or a person appointed by the liquidator in writing, must attend the meeting in person at that place.

(6) In calculating the number of days mentioned in subsections (2) and (3), Saturdays and general holidays are to be excluded.

COMMENTARY

Enactment history

This section is proposed to be added to this Ordinance by the Companies (Winding-Up and Miscellaneous Provisions)(Amendment) Bill 2015. **207C.001**

Streamlining winding-up process

One of the major policy objectives of the Companies (Winding-Up and Miscellaneous Provisions)(Amendment) Bill 2015 is to streamline the winding-up process. In a creditors' voluntary winding-up, the creditors may appoint a committee of inspection under this section for the purposes of representing creditors and contributories, and supervise and give directions to the liquidator during the winding-up process. Under the (Amendment) Bill, a number of provisions are proposed to increase the efficiency of the proceedings of COIs. **207C.002**

Further to section 207B above, which provides for remote attendance at COI meetings, this new section 207C provides for the procedure to request a specified place for such a meeting. **207C.003**

Section 207D Written resolution of committee of inspection

(1) Anything that may be done by a resolution passed at a meeting of the committee of inspection may be done, without a meeting and without any previous notice being required, by a written resolution of the committee.

(2) A reference to the date of passing a resolution or the date of a meeting is, in relation to a written resolution of the committee, the date on which the written resolution is passed under section 207G(1).

(3) A written resolution of the committee has effect as if passed by members of the committee at a meeting of the committee.

(4) Subsection (1) does not apply to a resolution sanctioning the making of calls by a liquidator under section 226.

(5) A resolution of the committee may be proposed as a written resolution only by the liquidator.

COMMENTARY

Enactment history

207D.001 This section is proposed to be added to this Ordinance by the Companies (Winding-Up and Miscellaneous Provisions)(Amendment) Bill 2015.

Streamlining winding-up process

207D.002 One of the major policy objectives of the Companies (Winding-Up and Miscellaneous Provisions)(Amendment) Bill 2015 is to streamline the winding-up process. In a creditors' voluntary winding-up, the creditors may appoint a committee of inspection under this section for the purposes of representing creditors and contributories, and supervise and give directions to the liquidator during the winding-up process. Under the (Amendment) Bill, a number of provisions are proposed to increase the efficiency of the proceedings of COIs.

Written resolutions: sections 207E–207K

207D.003 This new section 207D proposed to enable COIs to make decisions through written resolutions, the duties of the liquidator and requirements for which are set out below in the proposed new sections 207E–207K.

Section 207E Circulation of written resolution

(1) A liquidator may seek to obtain the agreement of the members of the committee of inspection to a proposed written resolution by sending to every member of the committee a copy of the resolution.

(2) The liquidator may send a copy of the resolution under subsection (1)—

- (a) by sending a copy to every member at the same time so far as reasonably practicable;
- (b) if it is possible to do so without undue delay, by sending—
 - (i) the same copy to each member in turn; or
 - (ii) separate copies to each of a number of members in turn; or
- (c) by sending copies to some members at the same time and sending a copy or copies to the other members in accordance with paragraph (b).

(3) For the purposes of this section, a copy of the proposed written resolution may be sent to a representative of a member designated for that purpose instead of the member and it is to be regarded as a copy sent to the member.

(4) The liquidator must ensure that the copy of the proposed written resolution sent under this section contains, or is accompanied by, the following information—

- (a) how to signify agreement to the resolution under section 207G;
- (b) the date by which the resolution must be passed if it is not to lapse under section 207H(1);
- (c) the right of the member to request a meeting under section 207F(1); and
- (d) the date by which the request must be received by the liquidator under section 207F(2).

(5) The validity of the resolution, if passed, is not affected by a contravention of subsection (4).

Section 207F Request for summoning meeting to consider resolution

(1) A member of the committee of inspection or the representative of a member may request the liquidator to summon a meeting of the committee to consider the matters raised by the resolution sent under section 207E.

(2) The request—

- (a) must be in writing; and
- (b) must be received by the liquidator within 7 business days from the circulation date.

(3) A request made in accordance with this section takes effect as a request made under section 206A(3).

Section 207G Procedure for signifying agreement to proposed written resolution

(1) A written resolution is passed when—

- (a) all the members of the committee of inspection have signified their agreement to it; or
- (b) a majority of the members of the committee have signified their agreement to it, and a period of 7 business days beginning on the circulation date has ended without any request to summon a meeting having been made under section 207F(1).

(2) A member of the committee signifies agreement to a proposed written resolution when the liquidator receives from the member or the member's representative a written document—

- (a) identifying the resolution to which it relates; and
- (b) indicating the member's agreement to the resolution.

(3) A member's agreement to a written resolution, once signified, may not be revoked.

Section 207H Period for agreeing to proposed written resolution

(1) A proposed written resolution lapses if—

- (a) it is not passed before the end of the period of 28 days beginning on the circulation date; or
- (b) the liquidator receives from a member of the committee of inspection or the representative of a member a request made in accordance with section 207F to summon a meeting.

(2) The agreement of a member of the committee to a proposed written resolution is ineffective if signified after the resolution lapses under subsection (1).

Section 207I Liquidator's duty to notify members of committee of inspection that written resolution has been passed

(1) If a written resolution of the committee of inspection is passed, the liquidator must, within 15 days after the resolution is passed, send a notice of this fact to every member of the committee.

(2) A notice under this section may be sent to the representative of a member designated for that purpose instead of the member.

Section 207J Liquidator's duty to keep record of written resolution that has been passed

A liquidator must keep—

- (a) a copy of every resolution passed as a written resolution of the committee of inspection; and
- (b) a note that all or a majority of the members of the committee have signified agreement to the relevant written resolution.

Section 207K Communication with liquidator by electronic means for the purpose of written resolution

(1) If the conditions in subsection (2) are satisfied, a member of a committee of inspection may send to a liquidator by electronic means—

- (a) a request under section 207F(1); or
- (b) a document signifying agreement to a proposed written resolution referred to in section 207G(2).

(2) The conditions are that—

- (a) the liquidator—
 - (i) has agreed, generally or specifically that a document may be sent to the liquidator by electronic means; and
 - (ii) has not revoked the agreement; or
- (b) the liquidator is to be regarded as having so agreed as described in subsection (4).

(3) For the purposes of subsection (1), a document is sent to a liquidator by electronic means if—

- (a) the document is sent to an electronic address—
 - (i) specified for the purpose by the liquidator generally or specifically; or
 - (ii) regarded under subsection (4) as having been so specified for the purpose;
- (b) the document is sent in a form, and by a means, that, in the reasonable opinion of the member, will enable the liquidator to—

- (i) read the document, or, to the extent that it consists of images, to see the document with the naked eye or with a suitable corrective lens; and
- (ii) retain a copy of the document;
- (c) the document is sent in the manner as described in section 205A(3)(a) or (b); and
- (d) the document is authenticated in one of the following ways—
 - (i) the identity of the member is confirmed in a manner specified by the liquidator;
 - (ii) if the manner has not been specified, the communication contains, or is accompanied by, a statement of the identity of the member, the truth of which the liquidator has no reason to doubt.

(4) If the liquidator has given an electronic address in any document containing or accompanying a proposed written resolution of the committee, the liquidator is to be regarded as having agreed, subject to any conditions or limitations that the liquidator may have specified in the document, that any document relating to that resolution may be sent by electronic means to that address.

(5) For the purposes of subsection (2)(a)(ii), an agreement to allow sending documents by electronic means is only to be regarded as having

- (b) where the other undertaking has subsidiaries, deal with the profits or losses and the assets and liabilities of the undertaking and its subsidiaries in the manner provided by paragraph 31(3) in relation to the company and its subsidiaries.

(Amended 12 of 2005 s. 15)

- 34. (1) This paragraph shall apply in the case of every company whose financial statements at the last date to which the financial statements have been prepared disclose that either a value exceeding 10 per cent of the value of the assets of the company or a value of not less than \$3000000 is placed on the company's interests in land or buildings. (Amended 28 of 2012 ss. 912 & 920)
- (2) A valuation report with respect to all the company's interests in land or buildings which shall include the following particulars of each property—
 - (a) the address;
 - (b) a brief description;
 - (c) the use at the date of the report;
 - (d) the nature of the tenure;
 - (e) a summary of the terms of any sub-leases or tenancies, including repair obligations, granted by the company;
 - (f) the approximate age of buildings;
 - (g) the present capital value;
 - (h) the estimated current net rental, being the estimated average net annual income from the property accruing to the company over a long period of years (not being less than 3 years) before taking into account tax and any interest or mortgage expenses but after taking into account management and maintenance expenses.
- (3) A report for the purposes of sub-paragraph (2) shall state—
 - (a) whether the valuation—
 - (i) is the current value in the open market, stating whether—
 - (A) on an investment basis, or
 - (B) on a development basis, or
 - (C) on a future capital realization basis;
 - (ii) is the current value as an asset of a going concern;
 - (iii) is the value after development has been completed; or
 - (iv) has any other basis (which should be stated);

- (b) where the valuation is based on value after development has been completed—
 - (i) the date when the development is expected to be completed;
 - (ii) the estimated cost of carrying out the development or (where part of the development has already been carried out) the estimated cost of completing the development; and
 - (iii) the estimated value of the property in the open market in its present condition.
- (4) If the company has obtained more than one valuation report regarding any of the company's interests in land or buildings within 6 months before the issue of the prospectus then all other such reports shall be included.

Part III

Provisions applying to Parts I and II of Schedule

- 35. Paragraphs 15 (so far as it relates to preliminary expenses) and 19 shall not apply in the case of a prospectus issued more than 2 years after the date at which the company began to carry on business.
- 36. Every person shall, for the purposes of this Schedule, be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—
 - (a) the purchase money is not fully paid at the date of the issue of the prospectus;
 - (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;
 - (c) the contract depends for its validity or fulfilment on the result of that issue.
- 37. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.
- 38. References in paragraph 10 to subscribing for shares or debentures shall include acquiring them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.

39. For the purposes of paragraph 12 where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

40. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than 3 years, the financial statements of the company or business have only been prepared in respect of 2 years or 1 year, Part II shall have effect as if references to 2 years or 1 year, as the case may be, were substituted for references to 3 years.

(Amended 86 of 1992 s. 18; 28 of 2012 ss. 912 & 920)

41. The expression financial year (財政年度) in this Schedule means the year in respect of which the financial statements of the company or of the business, as the case may be, are prepared, and where by reason of any alteration of the date on which the financial year of the company or business terminates the financial statements of the company or business have been prepared for a period greater or less than a year, that period is for the purposes of this Schedule to be regarded as a financial year.

(Amended 28 of 2012 ss. 912 & 920)

42. Any report required by Part II shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

43. Any report by accountants required by Part II shall be made by accountants qualified under the Professional Accountants Ordinance (Cap. 50) for appointment as auditors of a company and shall not be made by any accountant who is an officer or servant, or a partner of or in the employment of an officer or servant, of the company or of the company's subsidiary or parent undertaking or of a subsidiary of the company's parent undertaking; and for the purposes of this paragraph the expression officer (高級人員) shall include a proposed director but not an auditor.

(Amended 6 of 1984 s. 259; 12 of 2005 s. 15)

44. For the purposes of paragraph 6, the description of a person, that is to say, his profession, trade or other occupation shall be stated with particularity and precision; and the description "Company Director" shall be inadequate unless supplementary information is provided stating the nature of the relevant company's business.

45. For the purposes of this Schedule, *address* (地址) in the case of a natural person means the place of his usual residence.

46. Any valuation report required by Part II—
- (a) shall not state or imply that any land or building has been professionally valued unless the valuation is made by a professionally qualified valuation surveyor who is subject to the discipline of a professional body;
 - (b) shall not be made by a person who is an officer or servant or proposed director of the company or the company's subsidiary or parent undertaking or of a subsidiary of the company's parent undertaking; and
 - (c) shall not be made by a company which—
 - (i) is the company's subsidiary or parent undertaking or a subsidiary of the company's parent undertaking; or
 - (ii) has either a paid up capital of less than \$1000000 or the assets of which do not exceed liabilities by \$1000000 or more as shown in the company's last balance sheet.

(Amended 12 of 2005 s. 15)

47. (Repealed 30 of 2004 s. 2)

(Third Schedule replaced 78 of 1972 s. 21)
(Format changes—E.R. 1 of 2014)

Fourth Schedule

[sections 2B & 43]
(Amended 12 of 2005 s. 16)

INTRODUCTION

- Sch4.001** The Fourth Schedule sets out the form of a statement in lieu of a prospectus which is to be delivered to the Companies Registrar by a company that does not issue a prospectus, or which does not go to allotment on a prospectus issued under section 43 above.
- Sch4.002** The Schedule is divided into three Parts: the first concerning the form of the statement, and the contents; the second listing the reports to be set out with the statement; and finally, provisions relevant to both foregoing Parts.
- Sch4.003** Save for some minor technical amendments, these provisions were largely untouched and not amended by the Companies Ordinance Rewrite process – caselaw and practices pre-dating the enactment of Cap. 622 in these areas thus continue and remain valid.

Part I

Form of Statement and Particulars to be contained therein

COMPANIES (WINDING-UP AND MISCELLANEOUS PROVISIONS) ORDINANCE

Statement in lieu of Prospectus delivered for registration by
[Insert the name of the company]

Pursuant to section 43 of the Companies (Winding-Up and Miscellaneous Provisions) Ordinance

(Amended 28 of 2012 ss. 912 & 920)

Delivery for registration duly authorized by (Insert the name of every director who has authorized and signed this Statement).	
---	--

The amount of the issued share capital of the company. (Amended 28 of 2012 ss. 912 & 920)	\$
Divided into	Shares of \$ each. " " " " " "
Amount (if any) of above capital which consists of redeemable shares. The earliest date on which the company has power to redeem these shares.	Shares of \$ each.
Names, descriptions and addresses of directors or proposed directors. If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	1. shares of \$ fully paid. 2. shares upon which \$ per share credited as paid. 3. debenture \$
The consideration for the intended issue of those shares and debentures	4. Consideration
Number, description and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.	1. shares of \$ and debentures of \$
Period during which option is exercisable.	2. Until
Price to be paid for shares or debentures subscribed for or acquired under option.	3.
Consideration for option or right to option.	4. Consideration-

Persons to whom option or right to option was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures. Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company except where the contract for its purchase or acquisition was entered into in the ordinary course of the business intended to be carried on by the company or the amount of the purchase money is not material.	5. Names and addresses-
Amount (in cash, shares or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price \$ Cash \$ Shares \$ Debentures \$ Goodwill \$
Short particulars of any transaction relating to any such property which was completed within the 2 preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director or proposed director of the company had any interest direct or indirect.	
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or	Amount paid. Amount payable
Rate of the commission.....	Rate per cent.
The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.	

Estimated amount of preliminary expenses. By whom those expenses have been paid or are payable.	\$
Amount paid or intended to be paid to any promoter.	Name of promoter. Amount \$
Consideration for the payment	Consideration-
Any other benefit given or intended to be given to any promoter.	Name of promoter- Nature and value of benefit-
Consideration for giving of benefit.	Consideration-
Dates of, parties to and general nature of every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than 2 years before the delivery of this statement).	
Time and place at which the contracts or copies thereof may be inspected or (1) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (2) in the case of a contract wholly or partly in a language other than the official languages, a copy of a translation thereof in English or Chinese or embodying a translation in English or Chinese of the parts in a language other than the official languages, as the case may be, being a translation certified in the prescribed manner to be a correct translation. (Amended 23 of 1998 s. 2)	
Names and addresses of the auditors of the company (if any).	

Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connexion with the promotion or formation of the company.	
---	--

(Signatures of the persons above-named as directors or proposed directors, or of their agents authorized in writing.)

.....

Date:

Part II
Reports to be set out

1. Where it is proposed to acquire a business, a report made by accountants (who shall be named in the statement) upon—
 - (a) the profits or losses of the business in respect of each of the 5 financial years immediately preceding the delivery of the statement to the Registrar; and
 - (b) the assets and liabilities of the business at the last date to which the financial statements of the business were prepared. (Amended 28 of 2012 ss. 912 & 920)
2. (1) Where it is proposed to acquire shares in an undertaking which by reason of the acquisition or anything to be done in consequence thereof or in connexion therewith will become a subsidiary of the company, a report made by accountants (who shall be named in the statement) with respect to the profits and losses and assets and liabilities of the other undertaking in accordance with sub-paragraph (2) or (3), as the case requires, indicating how the profits or losses of the other undertaking dealt with by the report would, in respect

of the shares to be acquired, have concerned members of the company, and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

- (2) If the other undertaking has no subsidiaries, the report referred to in sub-paragraph (1) shall- (Amended 12 of 2005 s. 16)
 - (a) so far as regards profits and losses, deal with the profits or losses of the undertaking in respect of each of the 5 financial years immediately preceding the delivery of the statement to the Registrar; and
 - (b) so far as regards assets and liabilities, deal with the assets and liabilities of the undertaking at the last date to which the financial statements of the undertaking were prepared. (Amended 28 of 2012 ss. 912 & 920)
- (3) If the other undertaking has subsidiaries, the report referred to in sub-paragraph (1) shall- (Amended 12 of 2005 s. 16)
 - (a) so far as regards profits and losses, deal separately with the other undertaking's profits or losses as provided by sub-paragraph (2), and in addition deal either- (Amended 12 of 2005 s. 16)
 - (i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the other undertaking; or
 - (ii) individually with the profits or losses of each subsidiary, so far as they concern members of the other undertaking;
 or, instead of dealing separately with the other undertaking's profits or losses, deal as a whole with the profits or losses of the other undertaking and, so far as they concern members of the other undertaking, with the combined profits or losses of its subsidiaries; and
 - (b) so far as regards assets and liabilities, deal separately with the other undertaking's assets and liabilities as provided by the last foregoing sub-paragraph and, in addition, deal either- (Amended 12 of 2005 s. 16)
 - (i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other undertaking's assets and liabilities; or
 - (ii) individually with the assets and liabilities of each subsidiary;

and shall indicate as respects the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

(Amended 12 of 2005 s. 16)

Part III

Provisions Applying to Parts I and II of this Schedule

3. In this Schedule the expression *vendor* (賣主) includes a vendor as defined in Part III of the Third Schedule, and the expression *financial year* (財政年度) has the meaning assigned to it in that Part of that Schedule.

4. If in the case of a business which has been carried on, or of an undertaking which has been carrying on business, for less than 5 years, the financial statements of the business or undertaking have only been prepared in respect of 4 years, 3 years, 2 years or 1 year, Part II shall have effect as if references to 4 years, 3 years, 2 years or 1 year, as the case may be, were substituted for references to 5 years.

(Amended 12 of 2005 s. 16; 28 of 2012 ss. 912 & 920)

5. Any report required by Part II shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

6. Any report by accountants required by Part II shall be made by accountants authorized under the Companies Ordinance (Cap. 622) for appointment as auditors of a company and shall not be made by any accountant who is an officer or servant, or a partner of or in the employment of an officer or servant, of the company or of the company's subsidiary or parent undertaking or of a subsidiary of the company's parent undertaking; and for the purposes of this paragraph the expression *officer* (高級人員) shall include a proposed director but not an auditor.

(Amended 12 of 2005 s. 16; 28 of 2012 ss. 912 & 920)

7. For the purposes of Part I, the description of a person, that is to say, his profession, trade or other occupation shall be stated with particularity and precision; and the description Company Director shall be inadequate unless supplementary information is provided stating the nature of the relevant company's business.

8. For the purposes of Part I, *address* (地址) in the case of a natural person means the place of his usual residence.

(Fourth Schedule replaced 78 of 1972 s. 21. Amended L.N. 187 of 1993; 83 of 1995 s. 23)

(Format changes—E.R. 1 of 2014)