

**[243.03] Special resolution**

As to special resolutions generally, see s 564 (see also the notes to s 240).

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**Subdivision 5—Share Buy-backs: Unlisted Companies**

**244. Share buy-back under contract**

- (1) An unlisted company may buy back its own shares under a contract that is authorized in advance by special resolution.
- (2) A contract may take the form of a contingent buy-back contract.
- (3) The authorization for a contract may be varied, revoked or from time to time renewed by special resolution.
- (4) A special resolution conferring, varying, revoking or renewing the authorization for a contract is subject to sections 245 and 246.

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**[244.01] History**

This section is derived from ss 49D and 49E of the former Companies Ordinance (Cap 32).

For the equivalent provision in the UK, see Companies Act 2006, s 694.

**[244.02] Overview**

Section 244 gives an unlisted company authority to buy back its own shares only in accordance with a contract approved by special resolution in accordance with ss 245 and 246. Any variation, revocation or renewal of the authority to enter into a contract to buy back its own shares by an unlisted company also requires a special resolution.

The rights of a company under a contract approved under this section are not capable of being assigned (s 250), but may be released: s 251.

**[244.03] Unlisted company**

For the definition, see s 2(1).

**[244.04] Special resolution**

As to special resolutions generally, see s 564. As to the use of the written resolution procedure instead of passing a resolution at a meeting, see ss 548–561.

**[244.05] Contingent buy-back contract**

Subsection (2) makes provision for authorising contingent buy-back contracts, and is derived from s 49E of the former Companies Ordinance (Cap 32). For the meaning of ‘contingent buy-back contract’, see s 203(1).

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**245. Resolution authorizing contract: disclosure of contract details**

- (1) This section applies in relation to a special resolution to confer, vary, revoke or renew the authorization for a contract under section 244.
- (2) A copy of the proposed contract (if it is in writing) or a memorandum setting out its terms (if it is not) must be made available to members—
  - (a) in the case of a written resolution, by being sent to every member of the company at or before the time when the proposed resolution is sent to them; or
  - (b) in the case of a resolution proposed at a meeting, by being made available for inspection by members of the company—
    - (i) at the company’s registered office or at a place prescribed by regulations made under section 657, for a period of not less than 15 days ending on the date of the meeting; and
    - (ii) at the meeting.
- (3) A memorandum referred to in subsection (2) must include the names of members holding shares to which the proposed contract relates.
- (4) A copy of a proposed contract made available under subsection (2) must have annexed to it a memorandum specifying any of those names that do not appear in the proposed contract.
- (5) The special resolution is not effective if the requirements of this section are not complied with.

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**[245.01] History**

This section is derived from s 49D(5) and (7) of the former Companies Ordinance (Cap 32).

For the equivalent provision in the UK, see Companies Act 2006, s 696.

**[245.02] Overview**

The importance of compliance with the requirements as to display and inspection of the contract or written memorandum of its terms as well as the requisite details as to the holders of shares proposed to be bought must not be overlooked since failure to comply renders the special resolution ineffective: see sub-s (5).

**[245.03] Special resolution, written resolutions**

See the notes to s 244.

**[245.04] Registered office or place prescribed by regulations**

As to the registered office, see s 658. As to the regulations made under s 657, see the Company Records (Inspection and Provision of Copies) Regulation. Under s 3 of that Regulation, the prescribed place is 'a place in Hong Kong'. Accordingly, the proposed contract or memorandum of its terms can be made available for inspection at the registered office or at any other place in Hong Kong.

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**246. Resolution authorizing contract: exercise of voting rights**

- (1) This section applies to a special resolution to confer, vary, revoke or renew the authorization for a contract under section 244.
- (2) If the special resolution is proposed as a written resolution, a member holding shares to which the resolution relates is not an eligible member for the purposes of Subdivision 2 of Division 1 of Part 12 (written resolution) in respect of those shares.
- (3) If the special resolution is proposed at a meeting, the resolution is not effective if—
  - (a) any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares; and
  - (b) the resolution would not have been passed if the member had not done so.
- (4) For the purposes of subsection (3)—
  - (a) a member holding shares to which the resolution relates is to be regarded as exercising the voting rights carried by those shares not only if the member votes in respect of them on a poll on the question whether the resolution should be passed but also if

- the member votes on the resolution otherwise than on a poll;
- (b) any member of the company may demand a poll on that question; and
  - (c) a vote or a demand for a poll by a person as proxy for a member is the same as a vote or a demand by the member.
- (5) The special resolution is not effective if a demand for a poll referred to in subsection (4)(b) is refused.

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#### [246.01] History

This section is derived from s 49D(4) and (7) of the former Companies Ordinance (Cap 32).

For the equivalent provision in the UK, see Companies Act 2006, s 695.

#### [246.02] Overview

The effect of s 246 is to invalidate a special resolution to confer, vary, revoke or renew authority for a buy-back of own shares by an unlisted company under s 244 under certain circumstances. If a member whose shares are to be bought back under that resolution votes on it, using any of the votes on those shares, and the resolution would not have been passed without his so doing, the resolution is invalid: sub-s (3). In the event of a members' written resolution, a member holding shares to which the resolution relates is not to be regarded as a member who would be entitled to vote: see sub-s (2), and the definition of 'eligible member' in s 547(2).

#### [246.03] Votes on a poll

See the notes to s 238.

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### 247. Variation of authorized contract

- (1) An unlisted company may agree to a variation of a contract authorized under section 244 if the variation agreement is authorized in advance by special resolution.
  - (2) The authorization for a variation agreement may be varied, revoked or from time to time renewed by special resolution.
  - (3) A special resolution conferring, varying, revoking or renewing the authorization for a variation agreement is subject to sections 248 and 249.
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**[247.01] History**

This section is derived from s 49D(6) of the former Companies Ordinance (Cap 32).

For the equivalent provision in the UK, see Companies Act 2006, s 697.

**[247.02] Overview**

While s 244(3) allows for variation of the authorisation for a buy-back contract by an unlisted company, s 247 provides for the requirements in order for a company to agree to a variation of any buy-back contract that has been authorised under s 244. The variation agreement must be authorised by special resolution in compliance with ss 248 and 249.

**[247.03] Special resolution**

See the notes to s 244.

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**248. Resolution authorizing variation: disclosure of details of variation**

- (1) This section applies in relation to a special resolution to confer, vary, revoke or renew the authorization for a variation agreement under section 247.
- (2) A copy of the proposed variation agreement (if it is in writing) or a memorandum giving details of the proposed variation agreement (if it is not) must be made available to members—
  - (a) in the case of a written resolution, by being sent to every member of the company at or before the time when the proposed resolution is sent to them; or
  - (b) in the case of a resolution proposed at a meeting, by being made available for inspection by members of the company—
    - (i) at the company's registered office or at a place prescribed by regulations made under section 657, for a period of not less than 15 days ending on the date of the meeting; and
    - (ii) at the meeting.
- (3) There must also be made available to members in accordance with subsection (2) a copy of the original contract or memorandum, together with any variations previously made.
- (4) A memorandum referred to in subsection (2) must include the