

TABLE OF CONTENTS

<i>Publisher's Note</i>	v
<i>Disclaimer Statements</i>	vii
<i>List of Contributors</i>	ix
<i>List of Abbreviations</i>	xi
<i>Table of Cases</i>	xiii
<i>Table of Legislation</i>	xv

CHAPTER 1 SOURCE OF COMPANY LAW, COMPANIES AND OTHER FORMS OF BUSINESS ORGANISATION

Chapter Overview	1
I. Source of Company Law in Hong Kong	3
II. Companies and Other Forms of Business Organization	6
Discussion Forum	11
References	13
Appendices	14

CHAPTER 2 FORMATION OF COMPANIES

Chapter Overview	23
I. Different Types of Companies	25
II. Private Company	25
III. Private vs Public Companies	25
IV. Listed Company	26
V. Dormant Company	26
VI. Methods of Acquiring a Company	26
VII. Factors to be Considered for Pre-incorporation	27
VIII. Incorporation of a Company Limited by Shares Procedures	27
IX. Other Consideration of Choice of Company Name	30
X. Capacity and Power of Company	33
XI. Post-incorporation Procedures	36
XII. Continuing and Annual Obligations of a Company Limited by Shares	37
XIII. Registration of a Non-Hong Kong Company under Part 16 of Companies Ordinance	38
Discussion Forum	41
Practical Guidance and Commentary	47
References	49
Appendices	50

CHAPTER 3 BOARD OF DIRECTORS, SECRETARIES AND RESPONSIBLE PERSONS

A. Directors.....	310
B. Company Secretary.....	331
C. Responsible Person.....	335
Discussion Forum.....	337
Practical Guidance and Commentary.....	343
References.....	345
Appendices.....	346

CHAPTER 4 LAW AND PRACTICE OF COMPANY MEETINGS

I. Definition of Meetings.....	409
II. Main Sources of Law on Company Meetings.....	410
III. Types of Company Meetings.....	410
IV. Requisites for a Valid Meeting.....	420
V. Location of General Meetings.....	421
VI. Notice of AGM.....	421
VII. Proceedings at Meeting.....	422
VIII. Definition of Quorum.....	423
IX. Meaning of Terms Used in the Agenda/Business Discussed at the Meeting: Standing Orders/Rules of Order, Motions and Amendment.....	423
X. Chairperson.....	423
XI. Proxy.....	424
XII. Corporate Representative.....	424
XIII. Rights and Obligations of a Proxy.....	425
XIV. Length of Notice.....	425
XV. Voting.....	427
XVI. Minutes of Meeting.....	428
XVII. General Meetings – Businesses/Agenda.....	429
XVIII. Shareholders' Resolutions in Writing.....	429
XIX. Adjournment.....	430
XX. Directors' Resolutions in Writing.....	431
XXI. Committee Meetings.....	431
XXII. Class Meeting.....	432
XXIII. Meetings of Creditors.....	432

XXIV. Court to Order Meeting.....	432
XXV. Role of Company Secretary in Meetings.....	433
XXVI. Role of Chairperson in Meetings.....	433
XXVII. Role of Chairperson at AGM under Listing Rules.....	433
XXVIII. Examples for Ordinary Resolutions.....	433
XXIX. Examples for Special Resolutions.....	434
Discussion Forum.....	435
Practical Guidance and Commentary.....	447
References.....	448

CHAPTER 5 SHARE CAPITAL AND LOAN CAPITAL, REGISTRATION OF CHARGES

I. Definition of 'Capital'.....	449
II. Kinds of Capital Referred to in Companies Ordinance (Cap.622).....	449
III. Transitional Arrangement.....	450
IV. What is a Share?.....	450
V. What is a Debenture?.....	450
VI. Debenture Stock.....	451
VII. Bonds vs Securities.....	451
VIII. Share Capital.....	451
IX. Pre-Emption Right/Statutory Restrictions on Directors' Power to Allot Shares.....	454
X. Return of Allotment.....	456
XI. Kinds of Share Capital Referred to Companies Ordinance (Cap.622).....	456
XII. Purposes for Having Different Classes of Share Capital.....	457
XIII. Classes of Share Capital.....	457
XIV. Difference Between Shares and Debentures.....	460
XV. Factors Considered to Raise Funds by Either Equity Financing or Debt Financing.....	462
XVI. Methods of Raising Capital.....	463
XVII. Main Board Listing or Growth Enterprise Market Board Listing.....	463
XVIII. Civil and Criminal Liabilities for Misstatements in Prospectus under the Companies (Winding-Up and Miscellaneous Provisions) Ordinance.....	465
XIX. Major Basic Requirements for Listing Equity Securities.....	468
XX. Main Methods of Marketing Shares.....	469
XXI. Borrowing Power of a Company.....	471
XXII. Types of Debenture.....	472

XXIII. Trust Deed.....	473
XXIV. Methods of Raising Loan Capital.....	474
XXV. Chargor and Chargee.....	474
XXVI. Receiver.....	480
Discussion Forum.....	482
Practical Guidance and Commentary.....	491
References.....	492
Appendices.....	493

CHAPTER 6 ALTERATION AND REDUCTION OF SHARE CAPITAL AND SHARE BUY-BACKS

I. Alteration of Share Capital.....	523
II. Way of Alteration of Share Capital.....	523
III. Court Free Procedures for Reduction of Share Capital (Solvency Test).....	526
IV. Reduction of Share Capital.....	527
V. Purchase of Own Shares (Buy-Back of Shares).....	532
VI. Disclosure of Purchase of Own Shares.....	540
VII. Other Source of Law for Share Buy-Back (in Addition to the Companies Ordinance (Cap.622)).....	540
VIII. Financial Assistance to Acquire its Own Shares.....	541
Discussion Forum.....	543
Practical Guidance and Commentary.....	550
References.....	551
Appendices.....	553

CHAPTER 7 TRANSFER AND TRANSMISSION OF SHARES, REGISTRATION OF OTHER DOCUMENTS

I. Comparison of Transfers and Transmission of Shares.....	599
II. Comparison Between Share Transfer and Share Transmission.....	605
III. Procedures for Share Transfer.....	606
IV. Proper Instrument of Transfer and Contract Notes.....	606
V. Penalties for Late Stamping.....	608
VI. Nominee Shareholders.....	608
VII. Apply Section 45 of Stamp Duty Ordinance (Cap.117) – Intra-Group Transfer.....	609

VIII. The Documents Commonly Received and Registered by a Share Registrar/the Company.....	611
IX. Relevant Registration Procedures.....	611
Discussion Forum.....	619
Practical Guidance and Commentary.....	625
References.....	626
Appendices.....	627

CHAPTER 8 ACCOUNTS AND AUDIT, ANNUAL AND CONTINUING COMPLIANCE

I. Accounting and Auditing Requirements.....	649
II. Timing for Companies Laying the Accounts.....	650
III. Content of Financial Statements.....	653
IV. Content of Directors' Report.....	654
V. Auditors' Responsibilities.....	663
VI. Appointment of Auditors.....	663
VII. Qualifications and Disqualifications for Appointment.....	663
VIII. Protection to the Auditors.....	664
IX. Appointment and Removal of Auditor Prior to Expiration of Term of Office under the Listing Rules.....	664
X. Resignation of Auditors.....	664
XI. Auditor's Report.....	665
XII. Basic Elements of an Auditor's Report.....	665
XIII. Rights of an Auditor.....	671
XIV. Auditors' Attendance at AGM under Listing Rules.....	671
XV. Directors' Responsibility for Accounts.....	671
XVI. Duties of an Auditor.....	672
XVII. Misstatement in Auditor's Report.....	672
XVIII. How Important are the Accounts.....	673
XIX. Expectations to an Auditor.....	673
Discussion Forum.....	674
Practical Guidance and Commentary.....	684
References.....	686
Appendices.....	687

CHAPTER 9 RECONSTRUCTION, TAKEOVER, LIQUIDATION AND DISSOLUTION

I. Reconstruction, Amalgamation and Dissolution..... 691

II. Compromise and Arrangement 691

III. Court May Order Meeting of Creditors or Members to be Summoned (Companies Ordinance s.670)..... 691

IV. Scheme of Arrangement..... 692

V. Takeovers and Mergers 694

VI. Code on Takeovers and Mergers..... 695

VII. Winding-Up (under the Companies (Winding-Up and Miscellaneous Provisions) Ordinance Cap.32) (“CWUMPO”)..... 700

VIII. The Companies (Winding-Up and Miscellaneous Provisions) (Amendment) Ordinance 2016 708

IX. Registrar’s Power to Strike off Name of Company not in Operation or Carrying on Business 714

Discussion Forum 715

Practical Guidance and Commentary..... 728

References..... 730

Appendices..... 731

CHAPTER 10 FEW MORE STEPS TO COMPLETE COMPANIES ORDINANCE REWRITE

I. Other Legislations Will/Have Come into Force..... 921

II. Next Legislative Amendments to Companies Ordinance (Cap.622) 922

III. Some Proposed Amendments to the Companies Ordinance (Cap.622) and its Subsidiary Legislation..... 925

IV. Unresolved Issues under the Current Companies Ordinance (Cap.622) – Privacy Versus Transparency 936

V. Hong Kong Government Launches Two Consultations on Legislative Proposal to Enhance Regulatory Regime for Combating Money Laundering and Terrorist Financing on 6 January 2017 937

References..... 939

Index 941

SOURCE OF COMPANY LAW, COMPANIES AND OTHER FORMS OF BUSINESS ORGANISATION

Chapter Overview

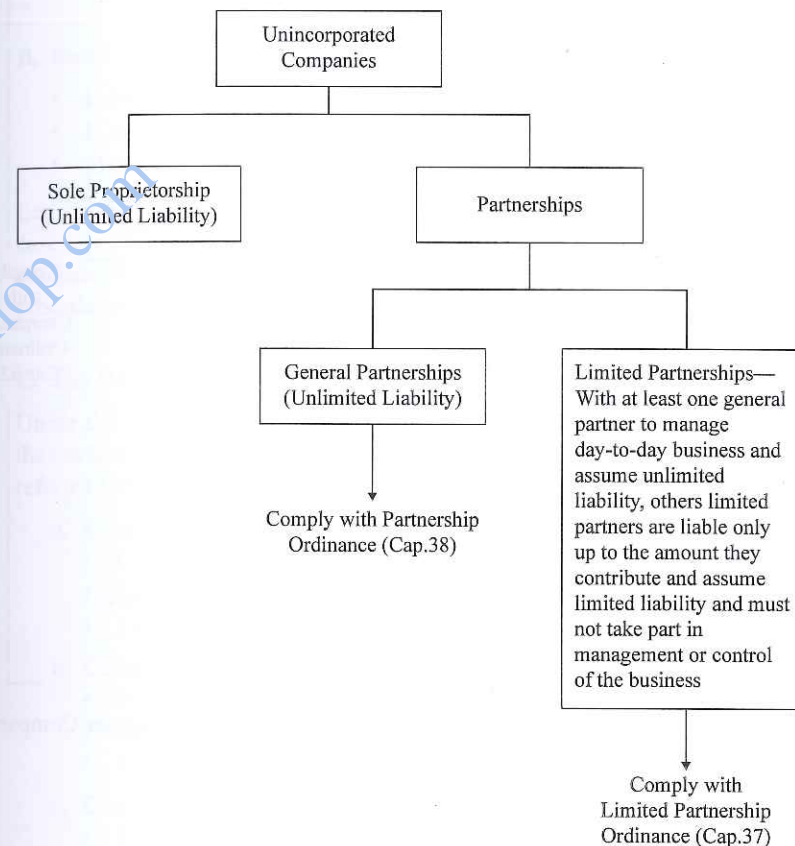


Diagram 1.1 Classification of Sole Proprietorship, General Partnerships and Limited Partnerships.